



Rhif: WG47837

Llywodraeth Cymru

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

Ymatebion i'r ymgynghoriad – 5 (101 i 125)

Nodwch y canlynol:

- Mae'r ymatebion yn y ddogfen hon yn cael eu cynnwys yn yr iaith neu'r ieithoedd y cawsant eu cyflwyno.
- Wrth ymateb i geisiadau, mae swyddogion Llywodraeth Cymru wedi golygu enwau, cyfeiriadau a manylion cyswllt unigolion.
- Mae Llywodraeth Cymru hefyd wedi golygu enwau, cyfeiriadau, manylion cyswllt a gwybodaeth arall yn ymwneud ag unigolion eraill, fel arfer i sicrhau preifatrwydd, neu mewn ymateb i gais penodol.
- Yn sawl un o'r ymatebion, mae adrannau lle nad yw ymatebwyr wedi cynnwys eu safbwyntiau i benodau neu gwestiynau.
- Mae'r ddogfen hon yn cynnwys 346 o dudalennau (gan gynnwys y tudalennau pennawd).



Number: WG47837

Welsh Government

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

Consultation responses – 5 (101 to 125)

Please note the following:

- Responses contained within this document are presented in the language or languages in which they were submitted.
- In response to requests, Welsh Government officials have redacted individuals' names, addresses and contact details.
- Welsh Government officials have also redacted other individuals' names, addresses, contact details or other information, usually for reasons of privacy, or in response to a specific request.
- Within several responses, there are sections where respondents have not included their views to chapters or questions.
- This document contains 346 pages (including title pages).

Consultation Response Form

Your name:

Cheryl Gayther

Organisation (if applicable):

Police and Crime Commissioner for Dyfed-Powys

Email / Telephone number:

[REDACTED] / [REDACTED]

Your address:

Police and Crime Commissioner for Dyfed-Powys, OPCC, PO Box 99, Llangunnor,
Carmarthen, Carmarthenshire, SA31 2PF

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

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

Police and Crime Commissioner for Dyfed-Powys

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

cheryl.gayther@dyfed-powys.police.uk

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

There are 12 questions about this chapter.

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

Section 75 of the Social Services and Well-being (Wales) Act 2014 ('the 2014 Act') places a duty on local authorities to secure sufficient accommodation to meet the needs of their looked after children population. Section 81 of the 2014 Act requires local authorities to ensure placements are made within their own area unless it is not reasonably practicable to do so. The Part 6 Code of Practice (Looked After and Accommodated Children) states that local authorities must consider the benefits of having a number of providers, offering a range of accommodation to meet different needs.

As noted in the Police and Criminal Evidence Act 1984 and Children's Act 1989, there is a requirement placed on police to transfer children who have been charged or refused bail, into the care of the Local Authority and there is a duty on the Local Authority to accept these transfers.

In reference to the above there are issues with the provision of secure accommodation, this leads to children being retained in custody unnecessarily and does not meet the requirements of the Act. There are also problems with the availability of social workers/appropriate adults which leads to yet more delays and prolonged periods in custody.

In addition to those who have been remanded, consideration needs to be given to those children who need a safe alternative accommodation other than custody. The number of children that require a safe place are higher than those that need secure accommodation. Requests to social services for alternative accommodation for children are being denied due to no alternative accommodation being available, resulting in children being detained at Police Stations overnight.

Dyfed-Powys Police are not alone in this situation, the lack of provision is having an impact across Wales.

Dyfed-Powys Police (DPP) also experiences demand from children from other police areas who are being placed in care homes in the Dyfed-Powys area due to capacity issues elsewhere. Being displaced in an unfamiliar area, often being moved from urban, connected areas to rural, isolated ones is traumatic, and often results in young people reported as missing from care.

In July 2020 there was an incident where a young person residing in a care home in the Dyfed-Powys area took a car without consent with the intention of driving home to Brighton where she lived. She crashed the car and received a youth caution. The youth was 12 years old and when asked if she could go back and do anything differently she replied 'Yes I'd drive straight home'

Between April 2019 and April 2022 there were 776 incidences in care homes in the DPP area where police attendance was requested, the most common type being children going missing.

Funding from the Police and Crime Commissioner for Dyfed-Powys ensures that an independent de-briefing, support, and mediation service for children, young people and their families who have been reported as missing and at risk of sexual exploitation or victimisation can be provided. This service is provided by Llamau.

15% of the young people referred for de-brief by Llamau displayed signs of possible child sexual exploitation (CSE). Issues were identified during debriefs where young people were at significant risk as both victims and perpetrators of crime.

Llamau were able to provide the necessary support and mediation in these cases to try to break this cycle.

The impact of the service has been demonstrated both in terms of benefits to those receiving the service, as well as an ongoing reduction in incidents of missing young people being reported.

During 2021-22, 429 missing children and young people were referred to Llamau for the de-briefing service.

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

There are 11 questions about this chapter.

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

It is imperative that the needs of the child are placed first. The act defines a 'child at risk' as 'a child who— (a) is experiencing or is at risk of abuse, neglect or other kinds of harm, and (b) has needs for care and support (whether or not the authority is meeting any of those needs).'

Police already have a duty to report, albeit that is an organisational duty and not an individual one. Placing a duty on individuals within relevant bodies would further ensure the safeguarding of children, the importance of which cannot be underestimated.

All individuals who are in the position of working with or having contact with children should be ensuring at all times that they report children at risk and placing a duty on them individually to do so can only enhance the process. More guidance would be required on how this would be implemented, monitored and the consequences for non-reporting. This would undoubtedly need to be discussed with trade unions and other representatives to ensure the responsibility on individuals and the consequences are proportionate and realistic.

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

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

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

Any measures which can improve the service that both children and adults at risk receive must be welcomed. In terms of applying this more widely consideration needs to be given to people who work in sectors on a voluntary basis. If a legal duty were placed on individuals who volunteer at their local sports club, church, youth groups etc. with potential consequences for non-reporting then this could have a devastating impact on the volunteering workforce in Wales.

One potential solution to this would be imposing the duty on professionals as a condition of their employment providing this was agreed by trade unions. Volunteers could then potentially be covered not as individuals but under their organisations.

Consultation Response Form

Your name: Dr Clare Lipetz, Professor Euan Hails, Nadine Gould

Organisation (if applicable): ABUHB Family and Therapies Division, CAMHS, Complex Care

Email / Telephone number:



Your address:

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

☐

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

ABUHB

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

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

There are 12 questions about this chapter.

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

Eliminating profit from the care of children looked after (CLA) is in line with NHS principles of healthcare which relates to component of some packages of care. Eliminating profit from social care of CLA is a political decision. ABUHB supports the principle of value in health and social care and accountability for the financial spend on care. As we do not currently have two systems, we cannot confirm whether the cost of care with not-for-profit providers would be higher or lower for shared care packages we contribute to as this had not been tested.

We do not know the profit margins of the agencies we use for shared packages of care. There is no definition of excessive profit margins. ABUHB recognises the high costs of specialised care to providers including training, registration and reporting costs.

The proposed transition period is short. Significant expansion is required of the pool of non-profit-making providers. This is a huge concern as there is a lack of placements available now. This results in CLA being placed in unregulated/unregistered (with CIW) placements. Health do not share the commissioning for such placements for children and young people if care is shared with local authorities although the cost is shared. Clinical governance is lacking and requires considerable non-funded input from health care to support high risk packages of care.

Highly specialist placements are used on a case-by-case basis out of area including in England and Scotland. These are usually for mental health secure placements (specialist residential schools used in England are registered charities so therefore would not be affected by this legislation). While the aim is to repatriate children to their local community, the degree of support and specialist care cannot be provided solely by health or local authority staff and therefore care agencies are relied upon for placements in Wales.

It is recognised by psychiatry and psychology experts that care settings can be traumatic for already traumatised children and can potentially lead to more complex care packages being needed as adults. Clear quality indicators and monitoring of any placements (profit or non-profit) is required to avoid damaging children's mental health. The eliminating profit agenda requires transition to well-developed services which do not currently exist. The transition period is an ambitious timeframe and the Health Board will require reassurance that not for profit services will be in existence by the time the legislation is in force. Social care commissioning expertise rests with local

authorities. As three of five local authorities in the ABUHB have less provision, the likelihood of using private providers and unregulated placements is variable by area.

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

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

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

Please explain your reasoning.

The goal of not-for-profit care can only be achieved if there is investment across local authorities in care provision. This includes healthcare staff for CLA with complex additional health needs provided within a care package. For example:

1. Investing in workforce development: education and training of staff; considering pay structures. For example, rates of pay for some agency healthcare staff are much higher than health would usually offer. Likewise, specialist foster carers should be paid for the 24 hour care they offer to make the role financially viable and sustainable. Increasing the pool of foster carers from different backgrounds is important.
2. Investing in partnership opportunities for LA/health/third sector joint ventures for high standard accommodation. There is a lack of buildings (care homes of various sorts with high standard accommodation safe for children and young people) and provision is variable across local authorities. Therefore some LAs are more reliant on private providers than others.
3. Addressing the geographical variation between LAs is an issue and resources are not shared across geographical boundaries. Where LA boundaries are within Health Board boundaries, all LA resources for shared care of CLA should be considered. It may be pragmatic to consider resource sharing more widely across regional areas or the whole of Wales.

Regarding costs, ABUHB is not aware of the evidence that not-for-profit care will reduce costs particularly for highly specialised care packages with high staff to child ratios. However, it may improve financial governance of high cost care packages. There may be other avenues to improving governance and methods to analyse cost benefits and value out with the proposed legislation. Integrated commissioning and funding, i.e. between LA and health, could be piloted to have shared governance (financial and clinical), ensure value of care packages and assess cost differences between profit making agencies and not for profit placements. Areas of successful

cooperative partnership working in Wales should be shared to achieve support the country to deliver best practice in financial and clinical governance.

Health care for CLA is based on inclusion and respect for all. It is recognised that some CLA who require enhanced specialist provision may have protected characteristics. It is important that no one characteristic should have priority over another, and all should be accommodated and cared for. Children may have more than one protected characteristic and therefore be multiply disadvantaged and potentially more exposed to prejudice in society. An awareness of the holistic needs of children is essential and should be provided. The comment regarding foster carers above reflects the need for an increase in diversity of carers and also applies to health and social care staff. Recruitment strategies should also support staff who themselves have protected characteristics as staff groups should fully reflect our communities and the people we serve.

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

Legislation needs to balance the requirement for value in health and social care at all levels. 'Trading surplus' is unlikely to be transferred from profit making providers to reinvestment in health and social care. Not-for-profit providers would still require a surplus to remain viable from financial year to financial year. Public sector/WG could potentially be required to incentivize providers, thereby reducing the overall desired financial benefit of regulation.

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

Yes: however, this could not then have multiple changes and could (presumably) not create commercially advantaged areas. Unable to comment further.

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

See 1.1. The proposed transition period is short for the scale of change required.

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

The current system requires an early approach to transition from child to adult care to allow for development of placements. Due to the current lack of placements, it can be difficult to plan a placement far in advance. Opportunities for investing in bespoke provision should exist at an early stage. Improvements can be made in health and LA areas to reduce the anxiety for patients and families around development and

transition of care packages. It is worth noting that high quality health, social and education care has resulted in increased numbers of children with profound disabilities surviving and thriving to adulthood. Seamless transition is our goal which is rarely achieved as smoothly as we would wish.

The situation now gives us the experience and expertise to predict huge difficulties in managing a transition from current providers to a not-for-profit system which is not yet in existence.

LA/healthcare percentage of costs for children's care packages is an area of constant negotiation and challenge. Many of the children are CLA. Any mechanism to simplify the system is welcomed and this could be assessed via an integrated funding and commissioning pilot to assess value in health and social care.

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

It is essential to provide appropriate guidance and support to health boards, LAs and providers.

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

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

There is a risk to CLA care provision that needs to be considered in delivering this political commitment as not for profit providers need to be established and approved (with CIW).

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

It would improve financial governance and allow assessment of value in social care and shared care for CLA. It is likely to destabilise an already fragile sector.

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

At least 5 years eg 1 year planning, 1 year pilot, 1 year implementation, 1 year review, 1 year roll out. It would require significant certainty the milestones had been achieved to avoid a reduction of providers.

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to

eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

Setting fair pay scales of staff (with a maximum) in line with NHS/LA guidance as agencies and public sector compete for a small pool of staff. Financial incentivisation or guarantees in the form of advance commissioning may be required. This would nominally reduce profit but would increase or maintain costs overall.

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

The draft Welsh Language Impact Assessment is proposed this will enable further consideration of this area.

There will potentially be benefits in terms of Welsh language provision, in that local authorities must assess the sufficiency of care and support provided for these placements through the medium of Welsh. It is hoped that this will stimulate the growth of new provision to meet identified need and demand. (This will contribute to the national well-being goals of a Wales of a vibrant culture and thriving Welsh language and a more equal Wales).

See comments regarding diversity of children and care providers. Access to Welsh medium education should also be available to CLA who have special needs. This may not be in a school setting. Provision of suitable care may only be available outside Wales. Ongoing support of Welsh education provision/language support should be considered to provide culturally competent care. Many agency staff used in care packages are not resident in Wales and have not had the benefit of exposure to Welsh on a daily basis and are totally unfamiliar with the Welsh language.

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

As above

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

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

There are 8 questions about this chapter.

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

This would not impact on Children's Continuing Care. From our experience it is often a question asked by families and would be helpful to know how well this has worked in England and what challenges there may have been. There are cases of social care direct payments to families being withdrawn which has increased the requirements of health care provision, effectively withdrawing an element of care that was personal to them.

Some families who have access to direct payments are not able to find a suitable direct payment worker. Other types of respite have not been developed and essentially these families are left with no practical support or respite. It would be a shame to expand this service into adults without addressing how to find a suitable direct payment worker first.

Direct Payments and IUT's are in principle a good proposal. This will require robust guidance and additional support for families and staff members in the legal processes associated with the development of Trusts, as well as the negotiation and support from both HB and LA organisations which in reality are likely to then both be funding directly to the individuals. This could be HB based support or consideration given to all wales leads (demand dependant).

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

You may wish to consider, for example:

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

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

Please explain your reasoning.

Direct payments allow patient autonomy and should be used to personalise care which may include an extension of health care provision or use of services that are not recommended or provided by standard NHS services.

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

Differing approaches, locality care, community care provision focus, therapeutic provisions, 0 to 25 provisions, shared care models (3rd Sector, Health, Local Authority). Family based provisions (open dialogue etc).

Some other areas have opted out of IUT's and chosen Personal Health Budgets as this offers more control and ownership for those with capacity and also removes the requirement for a Trust to be set up. The option to use a combination of these approaches would be more beneficial to reach a wider range of individual needs, abilities and circumstances.

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

Expansion of the Social Care Sector interlinked with health care providers.

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

Robust and detailed understanding of who is responsible and who pays for the legal support required.

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

The draft Welsh Language Impact Assessment is proposed this will enable further consideration of this area.

There will potentially be benefits in terms of Welsh language provision, in that local authorities must assess the sufficiency of care and support provided for these placements through the medium of Welsh. It is hoped that this will stimulate the growth of new provision to meet identified need and demand. (This will contribute to the national well-being goals of a Wales of a vibrant culture and thriving Welsh language and a more equal Wales).

There may be a paucity of Welsh speaking staff available in some areas. The availability of training, support and guidance in Welsh may be an issue.

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

As above

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

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

There are 11 questions about this chapter.

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

Existing duty to report requirements and current legislation should be working well. If there is evidence that it is not, this should be addressed through existing systems rather than new legislation. Is there evidence of institutional reluctance to report?

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

As above

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

Please explain your reasoning.

It is possible that increased reporting would occur which may make it harder to actually safeguard high risk children and adults due to the work required to address all reports.

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

Unable to comment.

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

Existing corporate responsibilities should remain. Defer to Child Safeguarding expertise to address this issue

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

- (a) What are your views on this in respect of children (under the age of 18)?
 - a. There are likely to be training issues. Widening the scope e.g. religious and sporting settings for all children is welcomed.
- (b) What are your views on this in respect of adults?
 - a. As above.

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

- (a) What are your views on this in respect of children (under the age of 18)?
 - a. Regulated individuals/organisations
 - b. Supported volunteers in recognised and accredited settings
- (b) What are your views on this in respect of adults?
 - a. As above

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

Removal of license to provide service, sanctions, close scrutiny and SS support and moderation.

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

The draft Welsh Language Impact Assessment is proposed this will enable further consideration of this area.

There will potentially be benefits in terms of Welsh language provision, in that local authorities must assess the sufficiency of care and support provided for these placements through the medium of Welsh. It is hoped that this will stimulate the growth of new provision to meet identified need and demand. (This will contribute to the national well-being goals of a Wales of a vibrant culture and thriving Welsh language and a more equal Wales).

Reporting is possible in Welsh and English.

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

As above

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

The recommendation of the Independent Inquiry to Child Sexual Abuse recommendations should be considered and implemented: [Executive Summary | IICSA Independent Inquiry into Child Sexual Abuse](#)

The report has particular individual reports and recommendations. The support for individual reporting (whether within new legislation or existing DTR requirements in organisations and by professionals) is essential. The voice of victims is throughout the report e.g part F “All I needed was one person to act”

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

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

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

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

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

There are 21 questions about this chapter.

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

Yes

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

Yes

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

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

Yes.

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

Yes

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

Yes

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

If it is a requirement, there should be a proportionate penalty.

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

Yes: Should this depend on the size of the provider? How onerous will this be?
There is likely to be a time and financial cost to the level of reporting.

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

Any notices about the provider should be given to the provider.

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

No, see above

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

No

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

Yes

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

Yes

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

Yes

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

Yes

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

Yes

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

Unable to comment

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

This should include all areas of parental type care including some areas of adapted care e.g tube feeding, administering prescribed and over the counter medication that a parent would normally undertake.

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

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

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

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

The proposals would enable greater governance and the ability to act when a provider is not providing a safe or adequate service.

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

The draft Welsh Language Impact Assessment is proposed this will enable further consideration of this area.

There will potentially be benefits in terms of Welsh language provision, in that local authorities must assess the sufficiency of care and support provided for these

placements through the medium of Welsh. It is hoped that this will stimulate the growth of new provision to meet identified need and demand. (This will contribute to the national well-being goals of a Wales of a vibrant culture and thriving Welsh language and a more equal Wales).

Encouraging development of Welsh language placements, trained carers and offering educational opportunities to children is important. E.g Urdd membership for child/placement, Welsh learner access etc.

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

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

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

There are 9 questions about this chapter.

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

Unable to comment.

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

Yes, with robust, monitored and timescale actions to enable continuation of care and service delivery.

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

Yes, to enable continuity of service provision and limit disruption to individual service users.

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

Yes, in order to ensure safe and effective care management and delivery to individuals.

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

Safety, safeguarding, unregulated placements, unfit accommodation, staffing skill mix and levels, lack of service rationale or safe provision, no biopsychosocial approach used.

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

- Benefits, and disbenefits;

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

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

Please explain your reasoning.

The proposals would enable greater monitoring and governance and the ability to act when a provider is not providing a safe or adequate service.

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

The draft Welsh Language Impact Assessment is proposed this will enable further consideration of this area.

There will potentially be benefits in terms of Welsh language provision, in that local authorities must assess the sufficiency of care and support provided for these placements through the medium of Welsh. It is hoped that this will stimulate the growth of new provision to meet identified need and demand. (This will contribute to the national well-being goals of a Wales of a vibrant culture and thriving Welsh language and a more equal Wales).

See comments in previous sections

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

As above

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

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

There are 5 questions about this chapter.

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

Please explain your reasoning.

ABUHB defer to LA responses. Childcare and playworkers in health are governed by NHS policies and reporting including those from NGOs and volunteers.

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

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

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

Please explain your reasoning.

Proposal would emphasise that safeguarding is everyone's business. Organisational safeguarding responsibility should not however be diluted.

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

The draft Welsh Language Impact Assessment is proposed this will enable further consideration of this area.

There will potentially be benefits in terms of Welsh language provision, in that local authorities must assess the sufficiency of care and support provided for these placements through the medium of Welsh. It is hoped that this will stimulate the growth of new provision to meet identified need and demand. (This will contribute to the national well-being goals of a Wales of a vibrant culture and thriving Welsh language and a more equal Wales).

Nil to add

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

Nil to add

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

Consultation Response Form

Your name: Annie Evens

Organisation (if applicable): [REDACTED]

Email / Telephone number: [REDACTED]

Your address: [REDACTED]

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

☐

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

This is my own response working for an organisation.

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

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

There are 12 questions about this chapter.

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

Yes, but I think that this will have a negative impact on the children in other ways; such as being placed in unregulated placements which could be at a reduced standard to what they have been provided in the past.

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

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

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

Please explain your reasoning.

The number of homes available to the young people will reduce which are already difficult to find, which means they will be placed further away resulting in higher costs plus a negative impact on their well-being.

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

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

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

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

A high number of children living in children's homes will lose their homes. Many children go through childhood, teenage years into adults in these homes but this will impact their development.

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

I think this is something that needs to be done.

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

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

No I think this will limit their ability to find appropriate placements for the young people.

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

Benefits would be less money being spent but regardless, the young people will lack suitable homes required for their needs and will mean moving further away than necessary. Also being taken away from necessary professional practices.

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

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to

eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

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

As a Welsh speaker myself, there isn't a guarantee that welsh speakers are available in all Welsh homes and cannot always be facilitated.

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

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

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

There are 8 questions about this chapter.

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

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

You may wish to consider, for example:

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

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

Please explain your reasoning.

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

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

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

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

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

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

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

There are 11 questions about this chapter.

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

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

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

Please explain your reasoning.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There are 21 questions about this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Orbis Education & Care: Response to Welsh Government consultation on ‘Proposed changes to legislation on social care and continuing health care’

November 2022

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Introduction

Orbis is pleased to provide this submission to the Welsh Government as it consults on proposed changes to legislation on social care and continuing health care.

By way of background, Orbis is a specialist, best-in-class provider of care and education services for children and adults with complex needs associated with autism and social, emotional, and mental health needs. We employ over 900 people in Wales, who provide care and support to almost 200 children and adults across 30 locations right across the nation.

Our mission is simple, to improve the quality of life for individuals in our care to enable them to thrive. We take a person-centred approach to everything we do, focusing on personal strengths, interests and aspirations to empower individuals to enjoy a life that is active, socially valued and fulfilling.

We welcome the Welsh Government's overarching ambition to "improve the quality of experience for everyone who uses [Welsh] social care services", but we fundamentally disagree with proposals to eliminate profit from the provision of children's social care.

We are deeply concerned that the proposals outlined in this consultation would exacerbate existing challenges in Welsh children's social care, such as sufficiency and workforce shortages. This would ultimately have a negative impact on outcomes for vulnerable children and young people.

In this document, we have set out our detailed thinking on the proposals outlined in the consultation's accompanying documents, informed by our experience as a leading provider of children's services.

Whilst Orbis is committed to working constructively with the Welsh Government to ensure that delivering quality outcomes for children remains at the heart of the legislative, policy and regulatory framework in Wales, we will always use our voice to stand up for vulnerable children and will robustly defend against any steps that could negatively impact their outcomes.

Grounding our approach in outcomes

Outcomes in children's social care

Orbis prides itself on delivering quality outcomes for the children and young people in our care. Across 30 locations, we care for almost 200 children and adults — the majority of whom have highly complex needs requiring specialist care and support. Often these are the children that local authorities and smaller providers are not able to support due to the complexity of their needs.

We understand that there isn't a 'one-size fits-all' model of education and care. In our settings, every child's needs are supported individually through intensive interactions, in a way that is most relevant and impactful for them personally.

We are evaluated on a regular basis by Care Inspectorate Wales (CIW) and Estyn and we are proud of our strong record of delivering excellent care for young people.

Our external scrutiny is supplemented by quarterly Regulation 73 visits conducted by Orbis' three Responsible Individuals (RIs), and bi-annual quality of care reviews prepared by home managers with input from RIs. These enable us to closely monitor the quality and consistency of care across all of our sites and share best practices between home managers.

We also have a dedicated Quality Assurance team who operate independently of the Operations team and report directly to the CEO. The Quality Assurance team carry out a range of audits and support visits to each of the sites and provide a critical analysis of the performance of each service. This analysis is shared with all internal stakeholders and action plans devised and monitored to ensure the highest standards of care are being provided. We also make these audits available to CIW and external stakeholders.

The quality of our care is at the heart of what we do. Our quality is demonstrated by the strength of our referrals and by the progression of around half of the children in our care into our adults' service.

We strongly believe that the Welsh Government's proposals for changes to the legislation on children's social care should be driven primarily by a similar focus on quality to improve overall outcomes for vulnerable children and young people across Wales, rather than a focus on ideology alone.

The Welsh Government must clearly set out how its proposals are grounded in a child-first approach, and how they would better enable providers of children's social care to ensure that all children are placed in the right setting to meet their needs.

Case study: IH -Tegfan House

IH is a teenager who has been living at Tegfan since 2018. IH had a difficult upbringing and was neglected by their parents. Before Tegfan, IH was in the foster care provision but sadly had been moved around several times, before finally being accepted at Tegfan.

The transition period was difficult and at first IH found it difficult to trust and build positive relationships with people. IH struggled to make friends with the other young people living at the home and relied heavily on the staff team to do the most basic tasks, like personal hygiene, maintaining cleanliness of their bedroom and cooking the simplest meals.

Staff worked hard to build up trusting relationships with IH and for them to feel like Tegfan was their home and a safe place. Once the relationships had been established, staff worked on small goals with IH to help with their appearance, and to help them build their self-esteem by introducing a programme to improve their personal hygiene and complete simple housework tasks.

The hardest challenge our staff team had was to help support IH to spend time on their own and become more independent as they were very reliant on staff.

Over four years, IH has flourished and with the help and support of the staff is now a confident young person, who can complete domestic and personal hygiene tasks and loves using their independent time out to venture out by themselves. They have even joined a local sports team, attending regular training and games, all independently.

This hasn't been easy, but they have worked hard with the staff to build positive, professional relationships and learn some basic life skills to help them continue their journey through life.

How Orbis is finding new ways to improve outcomes for children

At Orbis, we have consistently worked to improve outcomes for the children and young people in our care and education settings. In our care, children live, play and learn, and grow and progress in our supportive and welcoming homes, schools and pioneering day services.

Sustained funding flows have enabled us to invest heavily in our provision. This has included investment in our staffing teams, who undertake regular and extensive training, including a rolling training and certification programme, to ensure that they always deliver high quality care provision.

Investment has also enabled us to expand vital services that local authorities struggle to provide, such as therapeutic care, to meet increasing demand and support local sufficiency. This support is vital to meeting the increasing complexity of children and young people's needs and challenges. Without this, we would simply have been unable to meet the increasing demand in the sector and support sufficiency in Wales, whilst delivering the quality care and support that we believe all vulnerable children and young people should have access to.

Case study: Child TB - Ty Galan

TB came to Orbis in 2018 following a breakdown of a family placement, amid concerns that they were engaging in high risk behaviour, including accessing chatrooms and images on the dark web. At this point, TB refused to engage in education and any activities and ate a restricted diet.

TB was placed in an environment that met their needs and made TB feel safe. TB's core team supported them with a consistent approach in which boundaries were put in place

by staff, and they have now engaged with counselling and are starting to process events in their past which were factors in their harmful behaviour.

As a result, TB now enjoys company and doing activities with staff, and they share their home with two other young people. This is a huge achievement for TB as when they moved in this would not have been possible.

Furthermore, TB has developed skills and independence and is looking at possibilities of a semi/supported adult placement when they leave.

TB has made great progress and we are proud that they have a positive future ahead of them.

Barriers to quality outcomes for children and young people

A stretched workforce

Social care providers across Wales, and the UK more widely, are struggling with an acute workforce shortage. This shortage is impacting the majority of adult and children's care settings, including some of our services despite sustained investment to recruit and train new staff.

The factors driving this shortage are complex, but some of the key factors include the impact of the Covid-19 crisis, which saw many experienced social workers leave the labour market, a lack of investment by both the UK and Welsh Government's to create career pathways into the sector, and reduced migration of skills workers from the EU.

Difficulties with recruitment means that existing staff in the sector are facing increasing workloads and have come under additional pressure as demand continues to grow. A unified focus on the recruitment of good quality children's social care staff is integral to ensuring high quality provision that then translates to good outcomes for looked after children and young people.

Solving this challenge will require significant investment from both the UK and Welsh Governments, along with efforts to increase confidence amongst independent providers to enable them to take long-term investment decisions to train a new generation of social care workers in Wales.

Sufficiency

The number of looked after children in Wales, and across the UK, is continuing to rise. The latest data from the Children's Commissioning Consortium Cymru shows a 62% rise in the number of referrals to children's services in Wales in the 12-months to August 2022. There is a particular increase in demand for provision for children and young people requiring integrated and complex care packages.

Furthermore, the Association of Directors of Children's Services (ADCS) Cymru and Welsh LGA have jointly warned that the children's services sector in Wales is at "breaking point" and is struggling to cope with the challenges of increased demand and complexity of cases being presented to councils daily.

Whilst Orbis has taken steps to expand its provision across Wales in recent years – made possible by continual investment in our business – the Welsh Government's proposals to eliminate profit from children's services has created significant uncertainty, limiting our ability to continue to invest in expanding our provision.

Meanwhile, as local authorities scramble to meet rising demand, there has been an increase in the number of placements being commissioned with providers Operating Without Registration (OWR). CIW data shows that across Wales, there were 31 placements with OWR providers in the whole of 2021, compared to 40 in the first eight months of 2022 alone.

This is very concerning, and we recommend that the Welsh Government takes urgent action to ensure that this trend is reversed and children are only placed with providers OWR in emergency situations, if at all.

The future of children's social care in Wales

The risks associated with eliminating profit

Given the challenges we have set out above, particularly relating to the current shortage of placements for children's social care in Wales, we do not believe that the Welsh Government's approach to eliminating profit in the sector is the right course of action at this time.

Independent providers in Wales play a critical role in meeting the current and growing demand for placements, helping to fill gaps as local authorities struggle to meet their statutory requirements. Independent providers currently provide around 86% of children's services placements in Wales.

Whilst the documents accompanying this consultation suggest that children's services providers operating on a for-profit basis in Wales would be given time to transition to a not-for-profit model, many independent providers including Orbis would find it impossible to operate on this basis and would be forced to leave the Welsh market – regardless of the time they are given to transition. Independent providers who are able to transition to a not-for-profit model would find themselves deprived of crucial funding to continuously invest in their provision.

Without provision of placements and investment in children's services from Orbis and other independent providers in Wales, there would be an even more acute capacity crisis, and thousands of looked after children would not receive the care and support that they so desperately need. In stark contrast to the Welsh Government's ambition to end out of area placements and drive up quality in the sector, a loss of capacity at this scale would see

vulnerable children and young people from Wales placed either in OWR provision or (depending the outcome of the other strand of the consultation) further from home, across the border in England.

As we have already explained, Orbis invests a significant proportion of our profits into growing our provision, investing in our workforce, and improving outcomes for vulnerable children and young people. Our ability to invest as a business is also enabling us to train new children's social care staff and provide specialist training to help equip staff to deal with children and young people with the most complex needs whilst progressing in their careers.

Orbis is a Welsh success story – we were founded in 2006 in Cardiff and now operate right across Wales. We remain deeply committed to Wales and the children and young people we support, and would greatly regret being forced to move away from children's services provision at a time when every placement in the sector is so vitally needed.

The steps we need to take

The Welsh Government is right to examine children's social care in Wales to identify opportunities to improve provision and create better outcomes for vulnerable children and young people. This ambition, however, can only be delivered through the adoption of a child-centric approach that prioritises outcomes over ideology.

At Orbis, we employ hundreds of highly skilled and dedicated staff and invest heavily in our provision. Although we are the largest independent provider in Wales, many smaller providers are similarly committed to delivering high quality outcomes and have spent years building expertise and strengthening relationships with local authorities.

The Welsh Government should recognise this important contribution and abandon its plans to eliminate profit from children's services. Proceeding with this policy would be an act not only of self-sabotage, but of potential harm to vulnerable children and young people who rely on placements that can only be delivered by independent providers like Orbis.

Conclusion

As we have outlined above, Orbis has significant expertise of providing specialist education and residential care for vulnerable children and young people. We are deeply committed to improving outcomes for children across Wales, and strongly believe that the Welsh Government should take a clear evidence-based approach that prioritises outcomes as it reviews the legislative, policy, and regulatory context of children's social care.

There are a number of challenges facing the children's social care sector at present, and we remain committed to working with the Welsh Government, CIW, and local authorities to explore

how these challenges can be resolved. We look forward to engaging with the Welsh Government through this ongoing process.

Orbis Education and Care, November 2022

Consultation Response Form

Your name: **Narinder Sidhu – Professional Officer**

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

☐

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

Submitted on behalf of the British Association of Social Workers – Cymru

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

narinder.sidhu@basw.co.uk

Please see our responses for Part 2 and 3.

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

There are 8 questions about this chapter.

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

We agree and welcome the outlined proposals detailed in Chapter 2 which supports and embeds the principles and values of personalisation which are embedded in the Social Services and Well-being Act (2014), the Regulation and Inspection of Social Care (Wales) Act 2016 and the Regulated Services (Service providers and Responsible Individuals) (Wales) Regulations 2017.

We believe that personalisation can be achieved via the method of using direct payments to enable adults who qualify for NHS funded continuing health care to choose, decide and purchase healthcare, care and support which best meets their individual needs.

Social workers are often lead co-ordinators of health and care services and we would welcome such measures which promotes the dignity and wellbeing of those rely on such services. We believe and fully support the proposed framework which will empower citizens who receive such care by providing them with the opportunity to manage their care more effectively by allowing greater participation and control.

One of the fundamental principles of the Social Services and Well-being (Wales) Act 2014 is voice and control. These proposals are likely to strengthen existing multi-agency person centred approaches which aim to meet the needs of individuals and place them at the centre of their care. Assessment and care planning is a partnership between the individual and the professional. Therefore, it is likely that focussing on what matters to the individual using a strengths-based approach is more likely to lead to more effective outcomes when considering and achieving wellbeing. These proposals are likely to encourage and assist in satisfying individual wellbeing needs.

Other fundamental principles of the Act which include prevention and early intervention may be impacted on further too as co-production encourages individuals to become more involved in the design and delivery of services bespoke to their needs which may impact favourably on the minimisation of any escalation of critical

need. These proposals will also enable those with complex health needs resulting in improved health outcomes for those individuals.

This will enhance the principles of the [United Nations Convention on the Rights of Disabled People](#). As the professional body for social workers, we encourage both self-determination and autonomy in any decision-making process which when considering health care options, both play a crucial role in contemporary clinical ethics. In addition, we are pleased that the proposals support the social model of disability which aligns to our values and ethics within our profession.

Ideally, if these new related processes are undertaken and administered correctly in a timely manner, they ensure and strengthen an individual's right to choose how their service is delivered. Consequently, services are more likely to match assessed need and expressed wishes and personal circumstances.

In addition, considering [person-centred values](#), those subjected to mental incapacity decisions will be treated in a person-centred manner with their human rights respected. These proposals will lead to further dignity and wellbeing when dealing with complex decision making and care planning for both the patient and practitioner working in partnership supporting the concept and values of empowerment.

Individuals will be in control of their financial affairs in line with their wishes which is ever more prevalent during this current climate with the cost of living and negative impact of poverty across Wales.

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

You may wish to consider, for example:

Benefits, and disbenefits;

Costs (direct and indirect), and savings;

Impacts upon individuals and groups with protected characteristics;

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

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

Please explain your reasoning.

[Wales is projected to have a higher share of older people in its population](#) compared to the rest of the UK. In addition, its working age population is set to gradually decrease in the coming decades. These demographics must be considered when planning and delivering CHC incentives for adults in Wales as Welsh society changes and costs increase. The number of adults requiring CHC in Wales is highly likely to increase as [future trends](#) indicates people are likely to live longer. We hope that Welsh Government will use these forecasts to achieve a healthier Wales and create review processes for those on CHC to be less bureaucratic and timelier to ensure the CHC direct payments change with the individual's needs.

COVID-19 reinforced our understanding of how digital technologies are an enabler of transformation, as set out in [A Healthier Wales](#) which demonstrated our ability to introduce new digital systems nationally at pace and shows how professionals and patients can quickly adapt to new technology enabled ways of working. However, we also acknowledge that there are systemic challenges that place additional pressure on the healthcare system which relies heavily on collaboration between multiple agencies, with various pieces of legislation aspiring to set out principles for an improved better-connected system. This must be considered when considering any administration of assessing eligibility and processing of such payments ensuring our healthcare systems are fit for the future. We trust that people's personal data shall continue to be fully protected in line with current laws and regulations.

Research tells us that individuals from diverse communities do not often access social and health care and engage fully in assessment and care planning due to significant barriers which are yet still to be fully explored. This recent [report from ADSS](#) identified on some of these. There is still much more authentic learning and co-production with those with living experience to be explored and addressed.

Health boards must ensure that these new measures are accessible and used by individuals with protected characteristics which include minoritised ethnic communities including Gypsy, Roma and Travelling communities and trans people who are often secluded from health and education systems resulting in poor health outcomes, poor wellbeing and no authentic opportunity to exercise their voice and control across the health and social care sector in Wales.

Welsh Government has promised to implement and fund the commitments made in the [Wales Anti-Racist Action Plan](#) (AWAP) eliminate inequality in all its forms including within health and social care. BASW Cymru are keen to see AWAP being at the forefront of legislative creation and reforms. Focus must be given to making systems more inclusive. Care and support must be provided in line with equality laws with due regard to each person's age, gender, religion, race, sexual orientation, culture, language and abilities etc. BASW Cymru promote and support strengths-based person-centred care.

Language and comprehension of a complicated system; must be simple and easy to utilise.

Adequately funding for advocacy services to ensure citizens can use their voice and access the choice and control provided to them.

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

In regard to England, we know from the [ADASS \(Association of Directors of Adult Social Services\) Waiting for Care Report \(May 2022\)](#) that in England '**506,131 people were waiting for assessments, reviews, and/or care support to begin.**' This is a significant increase from the 294,353 people reported as waiting in September 2021.

In addition, these findings in England confirm concerns which are prevalent in all nations including Wales. Findings clarified that *'that despite staff working relentlessly over the last two years, levels of unmet, undermet or wrongly met needs are increasing, and the situation is getting worse. The growing numbers of people needing care and the increasing complexity of their needs are far outstripping the capacity to meet them'*. The new evidence also found that *'not only are people waiting longer for care assessments, reviews, care packages and personal budgets, but family carers are having to shoulder greater responsibility and are being asked to take paid or unpaid leave from work when care and support are not available for their family members.'* Furthermore, *'making the focus of resources on acute hospitals, without addressing care and support at home, means people deteriorate and even more will need hospital care.'*

We invite Welsh Government to consider the above concerns whilst exploring the validity of the proposed systems to enact any legislative changes to avoid further negative impact and deterioration in significant key areas of health and social care. Equally, we urge Welsh Government to use higher quality data and analysis to better understand whether people's needs are being met in an effective and timely manner which will support innovative and effective solutions.

We also invite Welsh Government to consider how they can ensure an open dialogue with those with living experience from diverse communities. We have observed outsourcing to organisations that have little insight and networking into communities with living experiences of real-life issues. We would support and welcome some dialogue with BASW Cymru about this so we can support Welsh Government to successfully achieve their set legislative and policy objectives.

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

We believe further work is required on ensuring a true multidisciplinary approach is taken between health and social care. Social workers play a prominent part in health care assessment, decision making, care planning and reviewing; this must be recognised, and the social care workforce voice must also be sought out when considering systems and processes regarding direct payments.

There should be no barriers to access and community awareness must be raised – this is likely to be more effectively achieved in community settings face to face rather than via literature.

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

There must be robust uncomplicated systems in place for practitioners to implement direct payments with ease. Adequate budget officers/holders must be embedded into teams across Wales to ensure the implementation of these proposal are done at ease. We know that social care and health practitioners are over-stretched and have no room for additional administration tasks. Additional administration staff must be funded to process such direct payments as this cannot be left to practitioners to navigate.

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

We support Welsh Government in relation to its aims to encourage more [families to speak Welsh](#) and to transmit the language to the next generation as part of the initiative to increase the number of Welsh speakers by 2050. We believe that all information about health and social care services should be provided in ways which are effectively communicated and meaningful in a person-centred way so that those being offered, accessing, or using services. This includes those who prefer the Welsh language as their preferred language who should have this option.

Information delivered in easy read should also be considered likewise so should translations in various languages.

BASW Cymru urge the Welsh Government to consider specific consideration and actions for those who identify with having additional needs, impairments, or health conditions to support them to access information about these new proposed direct payments and have the opportunity to raise their queries in the appropriate communication method aligned with their specific communication needs.

If people do not know that this support exists due to poor communication and lack of awareness, they are unlikely to access it. We understand that there are many people awaiting compensation due to not knowing they could access such support which has had negative implications on their lives. The long term financial impact of not raising awareness and supporting people to apply is significant and cannot be underestimated.

We hope that provision will be made for a bi-lingual information, advice, and assistance service. This will support people to access, clear and relevant information about this new addition to direct payment and the local services in their area. This is likely to alleviate confusion and allow people to seek solutions earlier on and not in crisis. This service will also support a and strengthen a preventative approach which is vital in health and social care planning. It will form a proactive measure to assist individuals to make well informed decisions about their own lives and live the life they want to which affects overall happiness and wellbeing.

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

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

The Social Services and Well-being (Wales) Act 2014, promotes greater integration and co-operation between public services in the planning, commissioning and delivery of care and support, particularly between health and social care. We hope that these proposals will further support the integration of services. However, there

must be adequate funding in place for the sector to grow securely to meet the needs of individuals who require specialist services for complex needs.

In addition, consideration must be given to associated key factors when considering principles of personalisation in social care. We support the [Make Caring Visible, Valued and Supported: Carers Week 2022 Report](#) which recommends that Welsh government must invest in a series of measures that include:

- Embed transparent, measurable, and long-lasting commitments to better value and invest in care, and carers, within relevant performance frameworks to drive transformative policy and spending action.
- Invests in social care significantly in the short term with sustained investment over the longer term.

BASW Cymru query how the Welsh Government ensure that the voice of unpaid carers and domiciliary care services shall be captured, and this feedback analysed to reduce further strain on them.

We also query whether appropriate funding will be made to invest in new resources and ways to deliver care that will allow individual using CHC direct payments to have a range of sufficient choice in Wales to meet specific need and also complex care needs.

BASW Cymru sought the views of the social work teams within the Common Access Point and Integrated Short Term Social Work Services in Bridgend County Council. The teams were delighted to see that voice and choice was a key driver for groups of people who are often very frail and vulnerable.

There were a couple of key concerns triggered by the vulnerable nature of the group which were shared:

- Case Management and commissioning arrangements – The paper was silent on what new arrangements would be put into place to ensure the quality of the clinical services that users would be commissioning while in their own homes. Health Boards currently monitor the quality of Nursing Care provided in a care home setting. The team felt that the staff who are employed to provide clinical care in the community in user's homes should be required to Register with Health Improvement Wales.
- Liberty Protection Safeguards – Continuing Health Care by its very nature, intensity and complexity in comparison to social care could have the unintended consequence of restricting individual liberty, however no provision has been made for protecting the rights of those who may fall into this category.

BASW Cymru believe that these proposals are likely to subsequently impose responsibilities on local authorities to shape markets that will promote the

development, availability and accessibility of care and support services that are responsive to individual needs which in line may support market shaping and commissioning. If this is funded appropriately and not seen as an afterthought, we envisage that this is likely to have a longer-term positive impact on the health and social care sector in Wales as it supports the Act which places more emphasis on local authorities promoting partnerships between all stakeholders, including public services, social enterprises, and businesses.

We believe that these proposals, if implemented correctly in a timely manner, will restore person-centred values and practices that were negatively impacted on due to Covid-19.

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

There are 11 questions about this chapter.

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

[Section 130 of the Social Services and Well-being \(Wales\) Act 2014](#) created a duty on certain public bodies to inform the local authority if they have 'reasonable cause to suspect' that a child within the local authority's area is 'at risk of abuse, neglect or other kinds of harm'. The duty came into effect on 6 April 2016. It applies to local authorities, police, providers of probation services, local health boards, NHS trusts and Youth Offending Teams, who are all defined as 'relevant partners' of the local authority. This duty applies at an organisational level, rather than to individual professionals working within these organisations. The Act did not create a sanction for failing to report a child at risk.

BASW Cymru advocate and promote that anyone working with or dealing with children and young people in any setting are responsible for their wellbeing and ensuring that they are not at risk of any harm. We support the view that anyone witnessing significant harm to a child or suspects a child to be at risk of significant harm should trigger a duty that compels them to report it to the relevant authority immediately in the best interest of the child's welfare and safety.

Imposing a duty to report a child at risk directly on individuals within relevant bodies will extensively strengthen existing safeguarding procedures. This legal duty should deter individuals from withholding and not sharing vital information and concerns in their professional capacity.

This legal duty will place additional pressure on relevant bodies and organisations to investigate cases of suspected abuse. Whilst BASW Cymru agree with these proposals, we urge the Welsh Government to consider the impact on a social work profession which was in crisis pre-pandemic and remains in further crisis post-pandemic.

It is hoped that a mandatory duty to report a safeguarding concern on individuals may capture more early intervention opportunities preventing further harm to children and young people and providing more opportunities to keep families together. However, resources must be in place for this to happen. We urge for greater funding into local authorities to invest and sustain their social care services and recommend more focus and funding on prevention and early intervention services. Simply only adding funding into mandatory reporting shall not suffice as this leads to form of

tertiary and secondary prevention leaving fewer resources available for primary prevention; still leaving children at risk of harm.

[The Children \(Abolition of Defence of Reasonable Punishment\) \(Wales\) Act 2020](#)

came into force on 21 March 2022. BASW Cymru believe that mandatory reporting legislative measure would further safeguard children from physically punishing children which is now illegal in Wales. The overarching objective of this law is to protect children's rights by prohibiting physical punishment of children by parents and those acting in loco parentis. This gives children the same protection from assault as adults. Mandatory individual reporting laws must be clear; easy for all relevant parties to understand.

One of the key recommendations by the [Independent Inquiry into Child Sexual Abuse \(IICSA\) in its final report](#), was that professionals must be under a legal duty to report child sexual abuse, and face criminal sanctions for not doing so, to tackle the systemic under-identification of Child Sexual Abuse (CSA). BASW Cymru believe that placing a duty on individuals within relevant bodies is required to safeguard children from harm. However, we recommend that the scope of 'relevant parties' must be extended as this law must capture settings where children spend their time including religious and sports settings across Wales. Most mandatory reporting laws specify a list of mandated reporters, who are generally individuals who come into contact with children in the course of their work and are therefore assumed to be in a position to spot the signs of abuse. However, BASW Cymru welcome Welsh Government to think outside this box. To consider and understand child abuse research which shows that child abuse occurs in various settings, and it is not the sole responsibility of those who come into the contact with children in the course of their employment. To truly protect children, we must consider imposing individual mandatory reporting duties outside the current 'relevant partners' ideology and widen this limited application. In a minority of jurisdictions, including Australia's Northern Territory, mandatory reporting applies to all (adult) citizens. In the best interest of our children, BASW Cymru welcome and support a thorough exploration of this for Wales.

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

For the similar reasons above, we support the principle of imposing a duty to report an adult at risk directly on individuals within relevant bodies. We believe this will strengthen and enhance existing safeguarding practices within relevant organisations.

A mandatory duty placed directly on individuals from 'relevant partners' who are working with and supporting adults will ensure additional alertness and active vigilance. BASW Cymru also welcome the definition of 'relevant partner' being

widened to include all health and social care (including when carers visit the adult's home to undertake their duties), religious and recreational settings. For example, considering older adults and adults with disabilities are at higher risk of abuse and often remain vulnerable within their own homes; there must be a mandatory reporting process where those that witness, or suspect abuse can report it to the local authority for further inquiry.

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

Please explain your reasoning.

A mandatory reporting duty would strengthen existing safeguarding measures in Wales for both children and adults. [The Crime Survey for England and Wales \(CSEW\)](#) estimated that one in five adults aged 18 to 74 years experienced at least one form of child abuse, whether emotional abuse, physical abuse, sexual abuse, or witnessing domestic violence or abuse, before the age of 16 years (8.5 million people). High quality data which shows the prevalence of child and adult abuse specifically in Wales would be beneficial and form part of the ongoing monitoring and reviewing process.

Notably, mandatory reporting duties are likely to be as effective as the organisation who implements them and follows them with full intent. There should be a consistent uniformed approach; this will require clear guidelines with no wiggle room, grey areas, or loopholes. Mandatory reporting can be hindered by organisations as evidence and survivors' narratives inform us that there are perpetrators who work within those very organisations that are set up to protect and support children and young people. Perpetrators that are employed by those organisations that legislation defines as 'relevant partners'. The duty to report can be hindered in these circumstances leaving the child and adult at risk.

Whilst organisations must ensure their staff do not abuse by placing focus on reporting and investigating staff as part of these accountability mandatory processes, there must also be focus on victims and survivors of abuse and their best interest. We understand that the mandatory reporting measures could deter families from seeking help and public awareness and information sharing will play a key part in this journey.

Criminal sanctions may encourage adults to report child abuse. [The Independent Inquiry into Child Sexual Abuse \(IICSA\)](#) found that allegations and indicators of child sexual abuse were under-reported by adults who ought to have reported them. For any legislation to be successful in protecting children and adults from harm, a systemic change is required. The inquiry said its investigations had shown that "systemic change is needed to ensure allegations of child sexual abuse are reported", with several cases of children making disclosures without action being

taken to inform relevant authorities. Reasons for this included organisations' desire to safeguard their reputations or "protect their own" and them not finding victims' disclosures sufficiently credible.

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

Globally across all humanitarian settings, these mandatory reporting laws consist of legislation and policies which vary in scope and practice. Success of these laws widely depends on whether each setting complies and fully understands the duties placed upon them. **The obligation to report must be clearly defined so organisations and their staff are confident as to when the duty to report is triggered.** Individuals must understand that the duty is triggered with suspicion of abuse alone.

Mandatory reporting must be done in a timely manner – these must be clearly outlined in any reporting regulations with no room for any ambiguity and delay. Delay is harmful to the best interest of the child.

Comprehensive guiding principles in case work are a fundamental part of the reporting duty journey. The likelihood of reporting may be effective however, if the case work management is poor it causes further harm to the child.

Information sharing at a multi-agency level must be just as effective. Confidentiality must be understood and not a barrier to reporting and information sharing.

The legal implications of not reporting must be clear and concise. The duty must not be able to be passed to another. The duty must remain with the individual who was first alerted, and the onus must be on them to report. This should avoid confusion, delay and human error.

Poor compliance is related to misunderstanding and uncertainty. Ongoing training plays a fundamental part in compliance.

The [Caring for Child Survivors of Sexual Abuse Guidelines](#) provide comprehensive guidance for service providers on mandatory reporting requirements that can be applied to both adults and children. The guidelines recommend that to appropriately comply with mandatory reporting laws, service providers must have a thorough understanding of the mandatory reporting laws in their setting. The elements of mandatory reporting that mandatory reporters should agree upon to create the safest and most effective reporting mechanisms include first answering the question: Does a mandatory reporting law or policy exist in my setting? If yes, procedures should be established by answering these key questions:

- Who is required to report cases of child abuse?

- Who are the officials designated to receive such reports?
- When is the obligation to report triggered (i.e., with suspicion of abuse? Report of abuse?)
- What information needs to be shared?
- What are the reporting regulations regarding timing and other procedures?
- How is confidentiality protected?
- What are the legal implications of not reporting?

These guidelines must be considered when exploring legislation, policy, and procedures in Wales as they provide valuable insight and transferable knowledge relating to child and adult safeguarding and abuse.

Legislation must clearly distinguish the different types of abuse and neglect which must be reported. Notably, [research](#) shows that it is vital to consider the different types of child abuse and neglect, before exploring the nature and operation of mandatory reporting laws in different contexts. The major types of harm (physical abuse, emotional abuse, sexual abuse and neglect) must all be considered separately to best inform discussions and the analysis of optimal approaches in law, policy and practice.

In addition, this research conducts an empirical cross-jurisdictional comparison of the reporting and identification of child sexual abuse in jurisdictions with and without mandatory reporting and concludes that mandatory reporting laws appear to be associated with better case identification.

Legislation must distinguish the different extent of harm which will activate the mandatory reporting duty. There are differences in the extent of suspected harm which activates the reporting duty. Safeguarding laws are concerned with acts and omissions that are significantly harmful to the child's health, safety, wellbeing or development. The legislation uses indeterminate concepts such as 'significant harm' or 'detriment'. These are concepts which in practice are interpreted in many ways, but generally except for cases that are clearly very serious, this ambiguity may cause confusion and uncertainty for reporters.

Psychological abuse, emotional abuse and neglect in practice create indeterminacy which may be particularly problematic. For example, how can Welsh Government ensure that the mandatory reporting laws protect children who have been exposed to family violence?

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

There is a legal duty in Wales – under [section 130 of the Social Services and Well-being \(Wales Act\) 2014](#) – on specified public bodies to report suspected abuse, neglect or harm of a child to the relevant local authority however, there are loopholes as to who is to report. The current legislation does not include independent schools and voluntary and religious organisations and specifies no criminal sanctions for a failure to do so. It is not impactful.

These loopholes must be addressed, and we would recommend a thorough review of the current legislative measures to protect children and support replacing with new legislation which will capture all settings and protect children from all types of harm or continue with current legislation which means risking perpetrators from continuing to abuse.

In relation to mandatory reporting relating to concerns or suspicions about abuse conducted by those within the organisation. The option of ‘dealing with concerns in-house’ must be removed, by requiring organisations to report the concern to an external body and take advice regarding appropriate investigation and response. Should the organisation choose to ignore this requirement, criminal sanctions could be upheld. This would help prevent the perceived conflict of interest between protecting the child and protecting the organisation’s reputation.

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

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

We support the ideology that everyone within society is responsible for safeguarding children. In regard to legislative measures in under [section 162 of the 2014 Act](#), BASW Cymru recommend that the current ‘relevant partner’ definition be extensively widened.

[The Independent Inquiry into Child Sexual Abuse \(IICSA\)](#) recommends that ‘mandated reporters’ should comprise any police officer, anyone defined as carrying out a regulated activity with children under the [Safeguarding Vulnerable Groups Act 2006](#) or anyone defined as being in a position of trust with a child under the [Sexual Offences Act 2003](#). The latter two categories include social workers, Cafcass family

court advisers, foster carers, children's home staff, teachers and healthcare staff working with children, among many other groups.

We advocate that anyone working with, caring for, supporting a child, supervised or unsupervised, paid or unpaid capacity should fall within the meaning of position of trust in its legal definition. Abuse can occur within many different settings including sports and religious settings where children are often left unattended. BASW Cymru recommend that mandated reporters should include a minister of religion and a person who is an employee of, or volunteer in, an organisation formed for religious or spiritual purposes. Similarly, sporting or recreational organisations must be added to the list of 'relevant partners' so they are included with other key mandatory reporting organisations. The [Whyte Review](#) is the independent report into examining allegations of mistreatment in the sport of gymnastics and evidence that the welfare and safety of children in sports settings is completely necessary. BASW Cymru argues that the report's recommendations alone are not robust alone to safeguard children from child abuse in gymnastic settings. Legislative measures must apply to sports settings or some children will remain at risk.

[Over 90% of sexually abused children were abused by someone they knew.](#) Child abuse is more than often perpetrated by an individual who is often known to the child or has access to the child via a family/friend relationship or an organisational relationship. BASW Cymru recommend that serious focus is given to mandatory reporting relating to concerns or suspicions about abuse conducted by those within the organisation. To tackle the serious matter where organisation hide or cover up the abuse, the option of 'dealing with concerns in-house' must be removed and if ignored this should lead to a criminal sanction. This will hopefully eradicate any conflict of interest between protecting the child and protecting the organisation's reputation. BASW Cymru support the view that 'turning a blind eye' to child abuse should be a criminal offence. Turning a blind eye can manifest by organisations moving staff on and moving staff around. Individuals may turn a blind eye and not report due to misplaced loyalty to a work colleague, fear for their own job security, etc.

A mandatory duty to report must incorporate settings and those that work in such settings on a voluntary or paid basis if children are to be fully protected from harm. Legislation must incorporate any non-compliance to be seen as assisting the perpetrator.

We support that in the best interest of children that any imposed mandatory duty to report should be akin to the mandatory reporting duty to report female genital mutilation; clear and concise.

The sanction must make it clear that the protection of children is paramount and a failure to respond to abuse is not an acceptable option.

BASW Cymru hold the same views and recommendations on safeguarding adults from harm. We welcome similar legislative measures for safeguarding vulnerable adults from harm.

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

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

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

Please see response to question 3.6 above. In the best interest of children BASW Cymru support individual reporting duties to be extended to include members of regulated professions, employed staff regardless of whether they are regulated, paid or unpaid and to include all volunteers. Children deserve protection from harm, and we believe leaving certain individuals out of the mandatory reporting duty is leaving some of our children unprotected. We would like to see vulnerable adults be afforded the same protection.

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

Any sanctions are meant to encourage reporting. BASW Cymru support the introduction of a criminal offence to cover-up, conceal or ignore known child abuse. This would mean that all professionals working with children would be subject to a duty to report known child abuse and if they fail to do so criminal sanctions could apply. Such sanctions would make it clear that the protection of children is paramount and a failure to respond to abuse is not an acceptable option.

Failure to comply to a mandatory reporting duty must be adequate otherwise any legislative reforms will not achieve their intended objectives. Mandatory reporting laws focus on serious cases more likely to require child protection and services. Ideally, any sanction should encourage the reporter to comply with the duty; there should be a serious sanction which is proportionate to the seriousness of the case.

Any sanctions must deter those who intend to remain silent and must be adequate and proportionate or we risk perpetrators continuing abuse.

Notably, the mandatory reporting duty on reporting female genital mutilation has no criminal sanction however, non-compliance would be considered by the professional's regulatory body, and may lead to disciplinary proceedings. There is guidance that suggests that employers must [pay due regard to the seriousness of breaches of the duty](#). Criminal sanctions are likely to be more effective in cases of child abuse.

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

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

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

BASW Cymru query how a mandatory reporting laws will consider and safeguard unborn children who require protection? BASW Cymru recommend that any mandatory reporting laws should clearly include a prenatal reporting duty too as to capture abusive prenatal behaviour and protect the unborn child.

Furthermore, adults with capacity have choice and can make unwise or unhealthy choices during their adult life cycle. Mandatory reporting requirements can create dilemmas for mandatory reporters because of the potential for conflict with the guiding principles of respect for confidentiality, dignity, and rights of survivors. While mandatory reporting is often intended to protect survivors (particularly children), in some cases following mandatory reporting procedures conflicts with the guiding principles for working with survivors, including confidentiality and self-determination.

Clear guidance and leadership must be provided when dealing with complex cases. For example, mandatory reporting of cases of sexual violence or intimate partner violence can leave the survivor at great risk of harm from the perpetrator, family members or community members. Every organisation must be enabled to deal with the consequences of mandatory reporting in these situations and avoid further harm in the best interest of the survivor. There must be clear guidelines to protect the survivor and transparent decision-making. This example just shows how important it is that a full package of support is offered to the survivor to keep them safe; this requires adequate funding in services such as domestic abuse refuges, advocate

services, victim support services etc. Mandatory reporting will ignite further obligations that the authorities will have to fulfil and this doing this without adequately funded services will cause harm in various ways and could leave the survivor at further risk of significant harm. Attitudes must also change alongside individual mandatory reporting duties. The responses of disbelief and distrust and the victim-blaming that young people have experienced and are experiencing can have direct negative impact on their futures and long-term outcomes. This can be evidenced in current research when examining [protecting children from trafficking and modern slavery](#).

Safeguarding practice must be underpinned by good governance. Any legislative arrangements must be underpinned by excellent policies and procedures and implemented and monitored to ensure that people engaged in delivering services take effective steps to protect children from abuse. Inspection regimes and regulatory requirements play a key role in ensuring that effective policies and procedures and training and awareness activities are in place.

Mandatory reporting laws are a beneficial approach which contributes to child protection but must be appropriately drafted, reporters must be properly trained, and child protection systems must be properly resourced to respond to reports. Under-resourced existing child protection systems exist across Wales are unable to cope with current demand. There is an ongoing crisis within the social work profession which includes poor recruitment and retention of social workers. Without the investment of full social work student bursaries and adequate funding; social care will be unable to cope. It is also likely to lead to more social workers leaving the profession as working for local authority becomes more and more unviable.

BASW Cymru query the Welsh Government on how they intend to adequately fund and resource public services (including child protection services) to fulfil their existing duties and the new duties which the mandatory reporting laws will bring to both the adult and children sectors across Wales?

Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

I feel that the focus should be on value for money, I am not convinced that eliminating profit making providers of care will bring value for money.
Where is the evidence that a not-for-profit organisation is going to provide better quality of care?
Where is the evidence that a not-for-profit organisation is going to cost less?

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

I think that narrowing the options of available services is not going to be in the best interest of children and young people, this could be particularly detrimental to those children and young people who need specialist provision, and not achieve the aim of giving children and young people better outcomes and experiences.

Q3. Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

I am unsure as to who is going to judge profit, but I think that profit making providers who invest heavily into improving services need to be recognised, in terms of the benefits to the Children and young people in their care.

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

I think there should be an emphasis on value for money, which will not be considered under this proposed legislation.

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

I fail to see how services will be replaced in the proposed timescale, and will have a detrimental effect on the Children and Young People.

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

In terms of transition brought about by the proposed changes to legislation, it is bound to be unsettling for young people to be moved to another setting.

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

unsure

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

answered in previous questions

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

as previous answers

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

As previously stated, I think that value for money and the quality of service should be the main focus.

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

unsure

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

I think that as long as the direct payments are sufficient to cover the cost of the individual care needs then it is an absolute benefit.

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

allowing the freedom to make choices can only be of benefit, however as previously stated the direct payment amount would have to be realistic in terms of being able to cover the cost of provision.

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

unsure

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

unsure

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

unsure

Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

unsure

Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

unsure

Q20. Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q21. Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

I think it is important that every adult within relevant bodies recognises their duty to report concerns about children/adult well - being.

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

as above

Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

unsure

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

unsure

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

i think individual reporting duties should these sit alongside, or replace, the existing duties on organisations under the 2014 Act

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

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

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

i think that ideally there should be a legal duty on all adults, to report any safeguarding concerns.

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

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

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

as above

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

I would like to see adverts on tv and social media sites explaining why it is so important not to look the other way, or assume that someone else would report safeguarding concerns.

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

unsure

Q30. Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

unsure

Q31. Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

see Q 3.8

Q32. Question 4.1: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

yes, undoubtedly, however, i would want to be sure that there were alternative, better suited alternative arrangements for the people using these services

Q33. Question 4.2: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

yes

Q34. Question 4.3: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

yes

Q35. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

yes

Q36. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

yes

Q37. Question 4.5: (b) Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

unsure
what would be the benefit of this?

Q38. Question 4.6: (b) Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?

unsure

Q39. Question 4.7: (c) Publication of inspection reports: Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

unsure

Q40. Question 4.8: (d) Improvement notices and cancellation of registration – variation of registration as a service provider: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

unsure

Q41. Question 4.9: (d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

unsure

Q42. Question 4.10: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

unsure o

Q43. Question 4.11: (d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration: Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

unsure

Q44. Question 4.12: (d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice: Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

unsure

Q45. Question 4.13: (d) Improvement notices and cancellation of registration – power to cancel a service provider’s registration in prescribed circumstances: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

unsure

Q46. Question 4.14: (e) Responsible individuals – making representations: Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

totally agree

Q47. Question 4.15: (e) Responsible individuals – sending the improvement notice to the service provider: Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

totally agree

Q48. Question 4.16: (e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual: Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

there would need to be very good reason, then I would agree

Q49. Question 4.17: (f) Definition of ‘Care’ for children and young people: Do you agree with the proposal to adjust the definition of ‘care’ in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being ‘care’ within the meaning of the 2016 Act?

unsure

Q50. Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

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

No Response

Q51. Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q52. Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q53. Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q54. Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once?

Please explain your reasoning.

No Response

Q55. Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances?

Please explain your reasoning.

No Response

Q56. Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months?

Please explain your reasoning.

No Response

Q57. Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate?

Please explain your reasoning.

No Response

Q58. Question 5.5: What, in your view, would make it necessary and appropriate for a 'fitness to practise' panel to revoke an interim order?

No Response

Q59. Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q60. Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q61. Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q62. Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q63. Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

No Response

Q64. Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q65. Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q66. Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

No Response

Q67. Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No Response

Submit your response

Q68. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name:

Organisation (if applicable):

E:mail:

Telephone:

Your address:

Q69. If you want to receive a receipt of your response, please provide an email address.

Email address

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

Keep my response anonymous

Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

I do not agree with the proposal as it would have a negative impact in supporting the delivery of the Programme for Government by creating unnecessary barriers to providers entering the market.

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

I only believe it will stifle entrants to the market in an already challenging environment which will lead to children not receiving the services required.

Q3. Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

No Response

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

No, I think we need to be transparent and not be economical with the truth. Organisations need profit to reinvest in services.

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

I believe it needs more time for cross party debate.

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

No Response

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

No Response

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

I believe the strategy is narrow minded and will not support the provision of services.

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

No Response

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

No Response

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

No Response

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

No Response

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

No Response

Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q20. Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q21. Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

No Response

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

No Response

Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

No Response

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

No Response

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

No Response

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

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

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

No Response

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

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

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

No Response

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No Response

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q30. Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q31. Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q32. Question 4.1: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

No Response

Q33. Question 4.2: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

No Response

Q34. Question 4.3: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

No Response

Q35. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q36. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q37. Question 4.5: (b) Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

No I do not agree. If Welsh ministers want annual returns then they need to be responsible for the content.

Q38. Question 4.6: (b) Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?

No. I think the policy is draconian.

Q39. Question 4.7: (c) Publication of inspection reports: Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

No Response

Q40. Question 4.8: (d) Improvement notices and cancellation of registration – variation of registration as a service provider: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

No Response

Q41. Question 4.9: (d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

No Response

Q42. Question 4.10: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

No Response

Q43. Question 4.11: (d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration: Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

No Response

Q44. Question 4.12: (d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice: Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

No Response

Q45. Question 4.13: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

No Response

Q46. Question 4.14: (e) Responsible individuals – making representations: Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

No Response

Q47. Question 4.15: (e) Responsible individuals – sending the improvement notice to the service provider: Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

No Response

Q48. Question 4.16: (e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual: Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

No Response

Q49. Question 4.17: (f) Definition of 'Care' for children and young people: Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

No Response

Q50. Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

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

No Response

Q51. Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q52. Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q53. Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q54. Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once?

Please explain your reasoning.

No Response

Q55. Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances?

Please explain your reasoning.

No Response

Q56. Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months?

Please explain your reasoning.

No Response

Q57. Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate?

Please explain your reasoning.

No Response

Q58. Question 5.5: What, in your view, would make it necessary and appropriate for a 'fitness to practise' panel to revoke an interim order?

No Response

Q59. Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q60. Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q61. Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q62. Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q63. Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

No Response

Q64. Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q65. Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q66. Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

No Response

Q67. Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No Response

Submit your response

Q68. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name:

[REDACTED]

Organisation (if applicable):

[REDACTED]

E:mail:

[REDACTED]

Telephone:

[REDACTED]

Your address:

[REDACTED]

Q69. If you want to receive a receipt of your response, please provide an email address.

Email address

No Response

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

Keep my response anonymous

Consultation Response Form

Your name: Nicola Edwards

Organisation (if applicable): Head of Nursing Safeguarding, Swansea Bay University Health Board

Email / Telephone number: nicola.edwards@wales.nhs.uk [REDACTED] [REDACTED]

Your address: Swansea Bay University Health Board, 1 Talbot Gateway, Port Talbot, SA12 7BR

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

☐

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

Response on behalf of:

Lynda Collier, Head of Safeguarding Children, Betsi Cadwaladr University Health Board

Tina Jenkins, Senior Nurse Safeguarding & Public Protection, Velindre NHS Trust

Linda Hughes-Jones, Head of Safeguarding, Cardiff and Vale University Health Board

Mandy Nichols-Davies, Head of Safeguarding, Hywel Dda University Health Board

If you want to receive a receipt of your response, please confirm your email address, here: nicola.edwards@wales.nhs.uk

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

There are 12 questions about this chapter.

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

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

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

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

Please explain your reasoning.

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

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

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

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

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

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

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?
- What would be the benefits, disbenefits and other implications of such an approach?
- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

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

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

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

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

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

There are 8 questions about this chapter.

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

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

You may wish to consider, for example:

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

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

Please explain your reasoning.

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

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

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

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

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

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

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

There are 11 questions about this chapter.

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

There are conflicting thoughts and views on the principle of imposing a duty to report a child and adults at risk.

Raising the profile of Safeguarding can only be a positive and this would reinforce individual responsibilities. However, current organisational duties and responsibilities, supported by statutory guidance together with the Wales Safeguarding Procedures provide advice for individuals and organisational on what is required if a person has suffered harm or is likely to suffer harm.

In principle, this proposal has clear benefits and emphasises individual's responsibilities and expectation on them as professionals. This may also prevent third party referring, i.e., education relying on safeguarding lead or Head Teacher completing the report.

Currently, this is an expectation within Health Boards, although this may progress to prosecution following the recently published recommendations from IICSA

There is a need to understand the risk versus the benefit of imposing the duty to report and would this only apply to regulated professionals or all employees, including volunteers and what would be the sanctions?

There would be implications in relation to Part 5 of the Wales Safeguarding Procedures, which are currently being re written, with a potential increase in referrals. Also individuals will be more likely to submit inappropriate reports to protect themselves.

Will imposing the Duty to report improve outcomes or processes?

Relevant bodies needs to be clarified, ie not absorbed into wider Acts/legislation/Guidance

? Risk to young people and adults and their autonomy related to capacity and their human rights

The IICSA report published 20th November 2022 states anyone who works with children and does not report CSA should be prosecuted.

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

There are conflicting thoughts and views on the principle of imposing a duty to report a child and adults at risk.

Raising the profile of Safeguarding can only be a positive and this would reinforce individual responsibilities. However, current organisational duties and responsibilities, supported by statutory guidance together with the Wales Safeguarding Procedures provide advice for individuals and organisational on what is required if a person has suffered harm or is likely to suffer harm.

Currently, this is an expectation within Health Boards, although this may progress to prosecution following the recently published recommendations from IICSA.

This proposal has clear benefits and emphasises individual's responsibilities and expectation on them as professionals.

There is a need to understand the risk versus the benefit of imposing the duty to report and would this only apply to regulated professionals or all employees, including volunteers and what would be the sanctions?

There would be implications in relation to Part 5 of the Wales Safeguarding Procedures, which are currently being re written, with a potential increase in referrals. Also individuals will be more likely to submit inappropriate reports to protect themselves.

Will imposing the Duty to report improve outcomes or processes?

Relevant bodies needs to be clarified, ie not absorbed into wider Acts/legislation/Guidance

? Risk to young people and adults and their autonomy related to capacity and their human rights

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

Please explain your reasoning.

Earlier identification of those at risk would be a benefit, increased awareness in the wider population, increased ownership for risk reduction.

How would you govern this duty?

There could be over reporting and defensive practices, services might become inundated.

Depleted workforce, increased pressure on individuals/sectors and recruitment/retention of staff

Professional judgement may be lost

Potentially this could have an adverse impact

Diluted responses from Local Authorities, increased pressures on resources

There would be the benefit of increased accountability for those who put themselves forward to provide a service to individuals who have needs for care and support. This would also prevent third party referring.

A clear benefit would be that individuals may consider safeguarding as part of an analysis of a situation. However, it may have a negative effect with individuals reporting when there are not safeguarding concerns. This may be done through fear of retribution if a report is not made. This then has an impact on the number of reports being submitted and subsequent impact on resources across agencies, with inevitable cost and funding implications.

Safeguarding has spent much time and effort in it move away from punitive responses to reflective practice and 'lessons learnt'. If an individual fails to submit a report this could lead to the return of a 'blame culture' and punitive approach.

There remain unknown questions: Who will 'police' this'? What would be the process for managing non-compliance? What additional training may be required to implement the duty? All of these have an impact on resources and staffing.

It would afford greater protection to individuals and enable action on historical cases, which may prevent further abuse in the future. However, further guidance would be needed for professionals and how to respond with historical child sexual abuse disclosures as part of psychological therapy for example. This has further been considered in the context of the IICSA report (2022) and the recommendation to prosecute those who fail to report child sexual abuse. While we recognise the intention of this recommendation, clear guidance for practitioners would be needed to support them in complying with legislation and their professional codes. Detailed consideration would need to be given in certain circumstances, for example, should an alleged perpetrator of historical child sexual abuse identity be disclosed to the therapist, but it would be against the adult making the disclosure wishes to report. For a therapist to report, it may adversely affect the therapeutic relationship; the individual may withdraw from therapy resulting in further harm to themselves.

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

As far as I am aware mandatory reporting does not exist in the other three UK nations.

Global evidence does not indicate if this is a useful way forward or not.

The consultation has acknowledged that the impact for children is mixed in other countries. There is no reference to adults. It would be beneficial to consider in more detail the positive and negative impact of this proposal from countries where this has been implemented and analyse how this would project.

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

This is considered as a moral duty also

If implemented, it would be beneficial to have it sit alongside existing duties on organisations to prevent confusion and provide clarity.

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

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

If implemented it is vital that this covers all aspects, thus preventing ambiguity. The IICSA report has provided evidence of the need to apply this duty to those in religious and sports settings. There could however be a negative impact in that staff may not be willing to undertake roles in organisations, due to the added statutory responsibility.

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

It is our view that they should be applied more widely and be as equally applicable to children and adults, recognising that those defined as an adult at risk would have the same access rights to most groups as those who would not fit with the definition of an adult at risk.

If working directly with vulnerable adults or children then there should be a duty to report those at risk of harm

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

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

If implemented it is vital that this covers all aspects, thus preventing ambiguity. There could be a negative impact in that there may be a reduction in the number of volunteers, as they may not wish to have the added statutory responsibility.

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

Apply the same duties to children and adults at risk – should apply to any group that has some form of formal group status, either in terms of a regulatory role or person facing, or anyone in receipt of payment to deliver care and support.

As Question 3.7, regardless of paid or unpaid employment

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

Uncertain on the use of the word 'sanctions' or what the 'sanctions' would achieve in relation to improving outcomes for adults or children at risk.

We need to be mindful of the impact the Professional Allegation/ Concern process under Part 5 of the Wales Safeguarding Procedures has on employees. We often experience staff being absent from work long term due to the stress from the onset of the process. The Adult Safeguarding process often identifies an employee as the alleged perpetrator of neglect or abuse towards a patient. The process needs to be consistently managed with collaborative working with HR and area management teams.

This will likely increase the number of referrals made by colleagues against a work colleague. Professional abuse cases within Safeguarding has increased overwhelmingly since the pandemic.

It is essential that there is not a return to blame culture and that reflective practice and lessons learnt is incorporated into any sanctions. Repeated failures to report would need to be addressed in disciplinary processes.

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

This would be important to consider in relation to the promotion of the duties, so that people have an understanding and implications, similar to the Children (Abolition of Defence of Reasonable Punishment) Wales Act 2020.

There is a need to be mindful of the Welsh Active Offer which is law in Wales.

It is essential that reporting mechanisms are bilingual, and that children, young people, and adults can speak to professionals in their preferred language.

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

As Question 3.9

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

How will reporting duties be governed?

Sanctions are not considered to be a positive intervention.

There is a concern around work load increase

Within Safeguarding we have moved away from a punitive/blaming response towards a Learning culture. Will the proposed introduction undo the Safeguarding learning culture that has developed?

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

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

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

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

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

There are 21 questions about this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There are 9 questions about this chapter.

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

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

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

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

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

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

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

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

Please explain your reasoning.

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

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

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

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

There are 5 questions about this chapter.

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

Please explain your reasoning.

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

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

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

Please explain your reasoning.

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

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

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

Consultation Response Form

Your name: [REDACTED]

Organisation (if applicable): **Community Support Services, Denbighshire County Council**

Email / Telephone number: [REDACTED]

Your address: **Denbighshire County Council, PO Box 62, Ruthin LL15 9AZ**

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

☐

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

On behalf of Community Support Services, Denbighshire County Council

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

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

There are 12 questions about this chapter.

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

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

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

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

Please explain your reasoning.

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

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

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

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

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

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

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?
- What would be the benefits, disbenefits and other implications of such an approach?
- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

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

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

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

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

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

There are 8 questions about this chapter.

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

Yes, we fully support this proposal. 'Voice and control' is equally important for citizen's when it comes to meeting their health needs.

Although current guidance has strengthened this, i.e. 'in the spirit of co-production' we don't feel it is strong enough, leaving it open to local health decision making and risking unequitable practice.

It would have been good to see the proposal as a 'duty' as opposed to a 'power' to ensure consistency.

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

You may wish to consider, for example:

Benefits and disbenefits;

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

Please explain your reasoning.

- In addition to benefits to citizens, this proposal is aligned to our vision for more integrated health and Social care service provision and practice. It also ensures a smoother transition for those individuals transferring from local authority direct payments for care and support to a CHC package, arranged by the NHS to meet all health and care needs. Current situation can compromise a person's control.
- DPs opens up new ways to deliver care, which in the current climate with the serious crisis we are experiencing with lack of health and social care staff this must be a benefit.
- Costs (direct and indirect), and savings; potential savings, as opens up opportunities to access 'less traditional types' of care which in the main are less costly i.e. Personal Assistants, Micro-providers etc.
- Impacts upon individuals and groups with protected characteristics; positive
- Other practical matters such as cross-border issues or transition to the new arrangements. Removes the cross-border issues and the challenges of

transition for some citizens, who have established relationships with those providing care and support.

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

Any lessons learnt should inform implementation/guidance etc.
It would be really beneficial to incorporate the lessons learnt from England

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

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

Advice look to guidance for Local Authorities and mirror it.
It would make sense to mirror current Direct Payment guidance for local authorities. This is especially important in terms of those individuals transferring from local authority direct payments for care and support to a CHC package – again to ensure a smooth transition

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

Positive, direct payments a perfect fit with person-centred planning.
Potential to have a positive effect as increasing the individual's choice and control in terms of how and from whom they purchase support gives greater control in terms of choice of language of service delivery.

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

The proposal as it is, is sufficient as per answer to Q 2.6

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

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

There are 11 questions about this chapter.

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

Agree – important to ensure an individual as well as relevant body has a duty to report. Particularly regulated professionals

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

Agree – important to ensure an individual as well as relevant body has a duty to report. Particularly regulated professionals

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

Please explain your reasoning.

Such an approach would ensure consistency especially in terms of imposing a duty on all regulated professionals.

It also underlines the message that Safeguarding is everybody's business and ensures an individual's 'buy in' to this concept.

It could also support individuals to report when there may be a 'reluctance' to do this by their organisation.

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

It would be useful to consider lessons learnt from other countries to inform any decisions

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

It should sit alongside the existing duties on organisations.

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

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

Should apply more widely than just relevant partners

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

Should apply more widely than just relevant partners

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

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

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

Difficult to reply to this question – in principle we don't think there should be any difference between regulated professions and other staff / individuals working with children and / or vulnerable adults, however implementing and regulating this may be practically prohibitive.

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

Similar to sanctions for social care staff

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

Neutral effect

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

N/A

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

N/A

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

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

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

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

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

There are 21 questions about this chapter.

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

Agree, if there is reasonable cause to believe they should be regulated

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

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

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

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

Not sure what this is intended to achieve?

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

As above – not sure what this is intended to achieve – the ARs are self-reported documents

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

Could compromise transparency and equity

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There are 9 questions about this chapter.

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

Yes, we can ill afford to lose any of our Social Care workforce.

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

Yes, for reason above.

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

Yes, for reason above

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

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

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

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

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

Please explain your reasoning.

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

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

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

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

There are 5 questions about this chapter.

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

Please explain your reasoning.

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

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

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

Please explain your reasoning.

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

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

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

Consultation Response Form

Your name: **David Howes – Director of Social Services**

Organisation (if applicable): **Swansea Council**

Email / Telephone number: david.howes@swansea.gov.uk

Your address: **Swansea Council, Guildhall, Swansea SA1 4PE**

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

☐

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

This is a response of behalf of the Social Service Directorate in Swansea Council

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

Jane.whitmore@swansea.gov.uk

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

There are 12 questions about this chapter.

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

The introduction of legislation as described will go some way to eliminating profit from the care of children looked after (CLA), however we do have major concerns on how and the pace at which this will be achieved. To answer this question fully, it would be helpful to know what definition of 'not for profit' Welsh Government intend to use.

A particular concern is that in Wales we currently have companies offering unregistered placements and charging extortionate fees. Due to the lack of availability for our most vulnerable children with complex needs and/or challenging behaviour local authorities continue to place with these organisations.

The requirement to register with CIW is not currently preventing these organisations from trading and the consultation document makes no mention of what changes will be made that will allow for these providers to be better policed or removed from the marketplace.

Although CIW state there is regulation in place to prevent/deter LAs from placing with providers who are operating without registration will the introduction for organisations who register with CIW to be not for profit increase the number of unregulated placements in the market?

Given that the vast proportion of Providers are private companies and came into this area of work to maximise profit, be it personal or corporate, it is unlikely that they will want to engage in working in a way that is the antithesis of all they stand for. This is likely to cause a massive drop in capacity that will not be easy to replace. Based on this, the CIW proposal on "not for profit only" would be pointless, unless we move quickly to start generating internal capacity to make up for shortfalls in the private sector

We endorse the feedback from children and young people suggests who have expressed strong feelings about being cared for by privately owned organisations that make a profit from their experience of being in care.

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

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

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

Please explain your reasoning.

Positive

- Government support for local authorities to develop their in-house provision. More control of the marketplace especially the type and quality of placements that are developed. (More solo or duo placements and complex needs, more secure placements)
- The collapse of some 'for profit' foster agencies may free up carers to become registered with local authorities which will allow for quality assuring, training and opportunities for the expansion of local authority fostering provision
- Potential to lower and control the cost of residential and IFA placements or at least arrest the pace of increases that we are currently experiencing.
- Providers will be more inclined to provide better training and work conditions as they will have less to gain by squeezing their overheads.
- Increase the number and variety of vacancies
- Better matching opportunities = better outcomes for children and young people
- Save money on IFA placements (where unit costs are staggeringly higher) would release more budget for preventative and therapeutic resources (helping with placement stability), plus there is the potential for more investment in foster carer retention activities.

Negative

- We are currently struggling to accommodate young people between the ages of 14 – 17 years. If providers leave the marketplace in anticipation of the new legislation before the not-for-profit providers and local authorities have developed their offer we may be at crisis point much earlier than 2027. This could be mitigated by a form of 'buy back scheme' where suitable properties are purchased on behalf of Local Authorities (although this would require the availability of capital funding via grants).
- If Welsh providers are consistently cheaper than their English, Irish or Scottish counterparts there will be fewer beds available in a system that is already under immense pressure. Charging a weekly placement fee for any local authority placing from outside of Wales, this could create fee parity with the rest of the UK and fund policing of the new legislation. If this fee was collected and submitted by the provider, they may be less inclined to take young people from outside of Wales.
- If homes close due to the new legislation young people will suffer un-necessary upheaval and additional distress. The solution in part would be the 'buy back' option described above.
- Private equity IFAs will likely find loopholes to remain profitable i.e. run from England (dependent on the not for profit definition agreed by Welsh Government)
- The bigger IFAs could buy out the smaller ones which could decrease the supply. This in turn will almost certainly increase the placement costs (economies of scale - supply and demand) and market monopoly.
- If IFA carers choose not to transfer over to Welsh Local Authorities, it could mean that more children and young people will need to be placed outside of Wales.
- The 3rd sector and not-for-profit are not dissimilar to commercial IFAs in what they charge LAs; sometimes the not-for-profit agencies charge more when offering specialist placements.
- What will happen to children who are placed in commercial IFAs who decide to sell out and not continue as a not-for-profit agency

- LAs not being able to meet their sufficiency duty due to lack of available and suitable placements.

Welsh Government will need to produce very concise legislation which prohibits IFAs to finding loopholes.

Possibility of businesses folding, meaning a higher demand on placements. Investment needed in LAs to better resource teams and support for foster carers to increase capacity to grow in-house carers and reduce/remove the need for IFA placements.

WG should and will, do all the meaningful consultation that is required, with significant numbers of prospective users/workers and of course communities, before they plan policy and implementation. Adequate time should be given to “soft test” responses by Focus Groups that are involved in the roll-out of any policy.

The Policy should be tested in real conditions, scaled to be representative of users/workers before a full roll-out, or make any flagged-up amendments

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

We do not agree with the defining ‘not for profit’ as a specific type of organisation as it may exclude valid alternatives. It would be preferable to go solely with identifying how trading surplus can be expended.

Limiting how surplus can be expended would be difficult to monitor.

The legislation needs to be clear to set instructions and defining ‘not for profit’ and the way trading surplus is expended in order that manipulations of the legislation cannot be made.

However again this continues to run the risk of organisations and companies closing, increasing the demand on LAs.

There must be only one definition, to avoid duplication of what is happening in Scotland whereby there are multiple ways of expressing “not for profit” and of course how any operational surplus can be spent. Due care must be taken to allow enough leeway in spending to ensure growth and most of all, to maintain the interest of providers, who may see it as too restrictive

Any surplus generated by the not-for-profit IFAs should only be allowed to go to the carers themselves to achieve placement stability and ensure the best outcomes are achieved for children and young people.

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

It would be beneficial in closing loopholes. It is likely that many amendments will need to be made on this legislation, so it would be wise to include the power to amend enshrined in primary legislation, it will allow changes in law to be made when any developments in law arise.

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

The timing of the legislation is dependent on clarity on what the definition of 'not for profit' actually is. Proposed timelines are tight. There needs to be adequate transition time, this will not be an easy piece of work, and we need to ensure that children are not adversely effected by any of this.

However the timescales have to be balanced about the worry we have that it gives IFAs have a long period of time to find loopholes, clarity is critical.

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

The main concern is for continuity for looked after children many of these children and young people have experienced loss, uncertainty and upheaval and any transition will need to be sensitive to their needs. That is why it is important where possible for local authorities to take over homes that intend to close within their boundaries.

We must put our children first and make any transition seamless, with as little disruption as possible. Providers should be consulted with widely to ensure continuity of the service

If any IFAs decide to 'sell up' rather than become not-for-profit and their carers have Swansea children then we need to ensure that there is enough time to plan their transition to alternative foster carers, plus ensure that any support required for these children and young people is available and no gaps in support is experienced.

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

It needs to be communicated often, early, in simple terms within a lot of different forums including groups and one to one, face to face.

Considering the major change in policy that will be taking place, it will be crucial that there is clear, concise guidance, in a user –friendly format (Welsh/English) that will allow the people who will be subject to the implementation of primary legislation, to understand and operate within the legislation without having a Law Degree.

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

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?
- What would be the benefits, disbenefits and other implications of such an approach?
- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

Without having prepared for the transition by way of replacing lost placements it is potentially a mammoth task, and only by understanding how this piece of work will be undertaken will local authorities be able to fully support the vision.

Would this be necessary if legislation is stopping any businesses for profit registering with CIW?

We would need to be confident that capacity was available with LAs and not for profit organisations and they were suitably resourced before enforcing this. If the number of placements does not meet the demand this would result in local authorities failing to meet their sufficiency duty. Local Authorities should not be forced to choose which legislation to comply with and then facing the consequences of non-compliance. They need to be allowed to continue to make decisions that are in the best interests of children and young people.

Whilst we would only be able to place children and young people in not-for-profit IFAs and residential children homes, and therefore it will eliminate profit from the care of children, there is the potential for the following to happen:

- Third sector IFAs do not charge any less than commercial IFAs. Therefore, whilst we can say that IFAs aren't profit making, LAs won't experience a decrease in placement costs and therefore can't invest any predicted savings from IFA placement costs in preventative or therapeutic schemes. IFAs will decide to sell up or all the changes will create anxiety amongst IFA carers. This could then encourage them to transfer over to their LA fostering service.
- More local authorities creating more bespoke provision that requires notification to CIW of operating without registration, placing greater burden on already overstretched and under-resourced social work teams.

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

Positive support to providers that buy in to the new way of working, and rigorous enforcement should providers seek to undermine the elimination of profit in the care of children.

For the legislation to work and achieve the aims of the Welsh Government, it will need to stipulate strict rules on how IFAs transition to not-for-profit, including them not being able to operate from England, as well as providing support to help IFAs understand how they would be able to operate successfully in Wales.

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

We don't believe it will have an effect either way. The CIW currently expect an active Welsh offer in homes.

We do not hear a lot about the Welsh language having an important impact on the matching of young people.

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

N/A

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

We are concerned about continuity of care for the young people currently accommodated. Many homes are owned by Private Equity Firms and Pension Companies who we believe will quickly exit the market once profit is eliminated.

There is a serious shortage of specialist facilities at this time and local authorities can't wait until 2027 for new provisions to come on line. Providers are becoming more and more risk averse, there is a shortage of foster carers meaning younger less complex young people are being accommodated in residential homes and these organisations are less likely to take older more complex young people

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

There are 8 questions about this chapter.

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

We agree, as it would increase the voice choice and control for many more people who had primary health needs. The issue of concern is that it should be ensured that there is one system for administering and governance of DP for people who are both funded by Health or social service. It would also remove the risk to social care of the provision of health services by default. There would be considerable benefits for children transitioning to adult social care or health services. The Welsh Audit Commission report of 06.04.22 recognised in its findings that 'in house' provision of support for DP was the preferred vehicle for facilitating client support.

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

You may wish to consider, for example:

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

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

Please explain your reasoning.

There would be an increased coordination of the process for Health Boards. The process would need to be the same for all organisations. There would be a resource issue for the Health Board to manage this extra demand. There are also commissioning and funding issues that should remain consistent for all organisations otherwise this will cause considerable confusion. There may also be a supplementary benefit in that people who had previously declined to be assessed under CHC Guidance would then agree to engage in the assessment process. This would lead to an increase in people funded under CHC having a DP. This would also mean that people were having support and oversight from the appropriate agency and risk would be reduced. Client contribution to their care costs would also be negated if DP funding was via the health service. The benefit in this arrangement is that service users would be happier and more content with care arrangements that they engaged in and had control over. This would increase satisfaction and reduce complaints.

A 'one budget' approach if this could be achieved would significantly reduce current 'in fighting' as to which organisation ultimately pays for the service. If barriers and 'silo working' practices

are stripped away, the end user of services would benefit with the assessed support identified as needed being delivered in a timely fashion and cross organisation support to ensure continuity of delivery.

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

Below are examples;

- [Legal considerations NHS Continuing Health Care and Direct Payments in Wales – Luke Clements \(interesting legal position\)](#)
- [Direct-Payments-and-Personal-Health-Budgets.pdf \(landmarkchambers.co.uk\)](#)
- [Stories of how Personal Budgets/DP is being used NHS England » Videos](#)
- [NHS England » Patient stories](#)
- [NHS England » Professional stories](#)
- [Our Stories Archive - People hub](#)

Other countries' approaches [Case Study: Trieste | Living Well UK \(livingwellsystems.uk\)](#)
[Individualised Funding – funded by the Ministry of Health | Ministry of Health NZ](#)

Evaluations [PHBE: Personal Health Budgets Evaluation - England PersonalHealthBudgets_EvidenceScan.pdf - Europe](#)

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

It may be of benefit to put Independent User Trusts on a more formal basis and streamlining the process. This should assist local health boards in promoting this as an option.

Pooled budgets have been considered for Health and social care in Wales. These have been used to support PA in local recruitment for local demand. Better commissioning arrangements to recruit and retain the PA workforce via meaningful contracts that can sustain a body of PA's.

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

Greater clarity is required regarding the services that are included and excluded in this arrangement where people are eligible for CHC and any issues regarding PA registration. Clear process regarding how to access a DP when subject to CHC would be necessary. Greater access to independent Advocacy at the outset would be very beneficial to people DP support. The creation of a body to act as a responsible person in the absence of someone to fulfil this role would be very useful. Clarity needed regarding whether a managed account would be acceptable as part of these arrangements. Clarity regarding the barriers to such arrangements would be required at the outset. Ensuring CHC patients have access to organisations that offer support for DP recipients

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

language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

There should be no barriers to such arrangements as legislation covers Welsh Language.

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

It is assumed that with an increase in the availability of non-professional carers the availability of people with Welsh as their first or preferred language would increase the availability of Welsh speaking PA's. This would also be true for all other people whose first language was not English and increase the availability of other methods of inclusive communication (Makaton/BSL/PECS – non exhaustive list).

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

Co-producing these new arrangements has not been discussed or mentioned in this proposal. What involvement have service users had in the development of these new arrangements. Clear guidance about the new proposal and detail regarding what can be provided and by whom is vital. Guidance should be clear, easy to read and easy to follow for service users and professionals. Direct Payments as an option for all should be provided with equity, parity, clarity, transparency and delivered in a timely manner for all organisations throughout Wales.

Should the proposal finally be adopted, then a 'joined up' Communication Strategy needs to be devised incorporating all parties supporting client's accessibility to the new service and detailing the support available to navigate through this.

There are also key considerations that the staff delivering the expanded DP service are appropriately instructed, trained, informed and supervised with clearly defined role profiles and job descriptions.

There is currently an All-Wales Direct Payment Forum and a Direct Payment Advisor Forum that serve to support both development of the service and broad parity in delivery. It would be prudent that any developments capitalise on the significant amount of work already completed and ongoing.

Nationally and Internationally the Citizens Network and Dr Simon Duffy are doing some innovative work on personalised budgets that may be worth exploring.

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

There are 11 questions about this chapter.

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

We are not sure that there is a need for mandatory reporting, from our regular reviews of referrals and safeguarding audits we do not see evidence that statutory agencies do not report safeguarding concerns. The Children Act 2004 already placed a number of duties on agencies and these could be mirrored in the SSWB Act.

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

This is consistent with current practice, partner agencies report safeguarding concerns, our data performance information would support this. There is no evidence to suggest that partner agencies do not report safeguarding concerns. Partner agencies appear to understand from the rate of referral that safeguarding is everyone's business. There is a tendency at times to be risk averse, however the adult services duty system ensures that safeguarding reports are appropriate.

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

As noted above in Child and Family Services we have no evidence that partner agencies don't report safeguarding concerns. We would be concerned that we are removing professional judgement from other areas and that we would see an increase of unnecessary referrals and professionals will see safeguarding is everyone's responsibility as everyone's responsibility to report. This will be intrusive for families, potentially impact on capacity at front doors and lead to the risk that significant issues are missed in the number of reports being escalated. We do not think this approach helps professional judgement, rather it raised anxiety which could lead to risk adverse decision making.

In Adult services evidence suggest that partner agencies already report safeguarding concerns, as indicated above the adult services duty system removes any inappropriate safeguarding reports via consultation, this also reduces the risk of missing significant harm.

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

We are not aware of international social work practices. In England, again we are not aware that these duties to report have not had a significant impact of keeping children safe.

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

These should be imbedded in either the Wales Safeguarding Procedures or within the Act, though both options are unnecessary and problematic for the reasons set out above.

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

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

They should apply to every organisation, charity, registered business or affiliated bodies.

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

As above, they should apply in every organisation, charity, registered businesses or affiliated bodies

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

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

Every organisation should have a safeguarding lead and it should be that staff report non-urgent safeguarding concerns to those persons who would then advise and refer (with parental consent unless it places the child at risk). It should be an organisation responsibility and not an individual person

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

Again same applies as in respect of children.

Each organisation should have a safeguarding lead and has received a level of safeguarding training, which is repeated every few years. Staff in any given organisation would report non-urgent safeguarding concerns to that person who would be able to advise on the next steps.

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

Currently if organisations and specific people fail to comply they would be subject to HR processes, investigations by their regulatory bodies and Part 5 of the Wales Safeguarding Procedures. These seem sufficient in most cases. For small organisations or private businesses then there needs to be more powers for police or LA's to prevent them from operating if there are significant safeguarding concerns

In Adult Services organisations own internal HR procedures should be able to deal with any non-compliance of organisations procedures, as indicated above, Part 5 of the Wales Safeguarding Procedures captures individuals in a position of trust who neglects their safeguarding duties because of the serious consequences of staff member lack of action

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

There are staff that can deal with safeguarding concerns in either language, this will not have an impact either way.

There would be no negative impact, however there may be a positive impact given that individuals at risk may be able to converse and discuss their concern in their first or most prominent language, which will be beneficial especially at times of crisis.

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

N/A

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

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

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

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

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

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

There are 21 questions about this chapter.

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

Agree with proposal as it would safeguard individuals who require care and support and may be residing in unregistered services. It gives CIW the same rights to information as for regulated services. Does not impact on registered services.

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

Agree requirement to provide information in a timely manner and sanctions if not adhered to. Expectation that information should be made available within given timescale, but need to consider how this information could be made available in the absence of the person to whom the request is made.

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

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

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

Publication of Annual Reports – responsibility changes from CIW to the of the provider – concerns over cost if smaller home/organisation (We have our own website so should be manageable). If not published, can be fined, again this may be an issue for smaller organisations/homes. Can see the reasoning, to prevent data breaches GDPR etc. Need to be clear on who will be responsible for this within the organisation, e.g., will it need to go through information governance for checking?

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

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

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

Question 4.9: *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to

amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

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

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

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

[Agree with extend timescale for information when improvement notice are issued.](#)

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

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

Agree Responsible individuals the right to make representations to the Welsh Ministers (CIW), against an improvement notice or cancellation of their designation, provided these are made within the time limit specified within the notice.

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

Agree require that any improvement notice given to a Responsible Individual is also sent to the service provider.

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

Agree allow a service provider to apply to the Welsh Ministers (CIW) for a variation of conditions of their registration to remove a Responsible Individual even if they are not designating the replacement.

Agree with Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual as long as there are robust alternative arrangements in place to support the registered services during any transition period. Unsure how this would work in practice but would need to give clear timescales on when new RI could be in place.

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

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

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

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

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

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

We don't believe it will have an effect either way.

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

N/A

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

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

There are 9 questions about this chapter.

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

Agree

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

Provide SCW with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances – potentially to be set out in regulations. The inclusion of such a power on the face of the 2016 Act would provide SCW with the ability to consider exceptional cases and reinforce trust that the system can be fair and flexible, where necessary.

Once registered staff have 3 years to maintain their registration so we would need to be very clear on the circumstances, so this did not become normal practice. How would this be decided?

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

We propose to amend the 2016 Act to allow a panel¹¹ to review and extend interim orders as appropriate, up to the maximum of 18 months so a registered person's right to a fair hearing is protected. They will also help to ensure that processes are not unduly protracted. This appears to be a more straightforward approach, efficient and cost-effective setting appropriate timescales on orders taking account of the individual circumstances.

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

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

What would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order? Would need further work to determine where this would be appropriate with a consultation on the proposed circumstances where this would be appropriate. Perhaps a working group to look at this before agreement.

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

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

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

Please explain your reasoning.

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

[We don't believe it will have an effect either way.](#)

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

[N/A](#)

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

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

There are 5 questions about this chapter.

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

Please explain your reasoning.

Agree that the definition of a social care worker should include childcare and play workers.

This will recognise their work and bring a professional approach to the workforce aligned to other providers. It will offer consistency and protection as these workers would be subject to the same registration requirements as the rest of the registered workforce.

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

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

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

- Benefits on raising the profile and importance of this workforce
- Training and workforce development
- Rates of pay

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

We don't believe it will have an effect either way.

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

opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

N/A

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

Health Inequalities & Healthy Communities
Welsh Government
Cardiff
CF10 3NQ

04 November 2022

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

Introduction

BMA Cymru Wales is pleased to provide a response to the Welsh Government consultation on proposals for primary legislation on children's social care, continuing health care, mandatory reporting and regulation & inspection.

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

Response

Our response focuses specifically on the content of chapter 3; namely the proposal to introduce mandatory reporting of children and adults at risk. The recommendations proposed in this chapter will have wide-ranging implications across the health and social care landscape and therefore are of significant consequence to our members.

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

The BMA has been considering the issue of mandatory reporting of child abuse for a number of years, periodically reviewing the evidence and weighing up the potential risks and benefits. At the Association's Annual Representative Meeting (ARM) in 2015, BMA policy was passed to support 'in principle' the introduction of mandatory

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reporting legislation. The BMA believes, on balance, that the benefits of introducing a mandatory reporting duty outweigh the risks; but there are a number of prerequisites critical to the safe introduction of any new legislation, including:

1. **A public health focus** – shifting professionals and the public’s perception of child safeguarding reporting and intervention.
2. **Awareness** - raising awareness of child abuse amongst professionals and the public.
3. **Training and support** – ensuring adequate resourcing of up-to-date accessible training and round the clock support and advice for professionals.
4. **Pathways** - proper resourcing of appropriate care pathways.
5. **Commitment to scientific evaluation** - ongoing evaluation of the impact and effectiveness of any new measures.

The formal part of any statutory reporting process should be user-friendly, quick, and straightforward. The duty should fall on the individual. This does not stop the individual seeking advice and support from a more senior and experienced colleague on how best to manage making the report, if time allows.

The BMA’s position paper on mandatory reporting of child abuse outlines the BMA’s position in more detail and can be found enclosed with this submission at [Annex A](#).

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

The BMA does not believe that the same statutory measures should be extended to vulnerable adults. There are similar, but also significantly different legal and ethical challenges relating to vulnerable adults. The BMA’s guidance *Vulnerable adults and confidentiality*¹ goes into more detail. For example, the term ‘*vulnerable adults*’ can encompass both adults with and without capacity. How a doctor may respond to a vulnerable adult with capacity and a competent child will differ. In the BMA’s view, doctors should encourage vulnerable adults with capacity to access and receive appropriate support, but adults with capacity have the right to make decisions about how they manage the risks to which they are exposed, and such decisions should ordinarily be respected.

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

In response to the question regarding risks and benefits, one of the challenges in rating whether a risk or benefit could happen is that all are possible. Whether they materialise

¹ Available at www.bma.org.uk/advice/employment/ethics/mental-capacity/vulnerable-adults-and-confidentiality

in practice will depend on how any mandatory reporting duty is implemented, the context within which it is implemented, and the government's ongoing commitment to ensure it is fit for purpose – for example, by ensuring adequate resourcing of:

- awareness campaigns
- training and support
- care and safeguarding pathways

In addition to the potential risks, benefits and issues listed in the consultation paper, the BMA would add the following:

Possible benefits:

- Ensures people take responsibility for reporting rather than assuming someone else will do so.
- Makes a clear statement that government is taking the problem of child abuse seriously.
- Depending on how a system is developed, there is the potential to develop a standardized, and uniform reporting and response mechanism. This in turn could enable an overview of the true nature and extent of child abuse and neglect in Wales.
- In addition to raising awareness, it should be an opportunity to educate key professionals and the wider population about the importance of tackling child abuse and the appropriate processes for reporting.
- Removes any ambiguity around whether a threshold to disclose has been reached.

Possible risks:

- The child protection system gets over-loaded, and resources are drawn away from high-risk cases of significant harm. There is both an explosion in the number of reports and a proportionate decline in the number of reports which are substantiated.
- It inhibits self-referrals by both children and parents as they lose control of what happens to them.
- It discriminates against vulnerable populations who are subject to over-reporting.
- It is a reactive rather than a proactive system.
- Doctors will be legally obliged to report in cases where it is contrary to the best interests of a child.

Possible issues:

- That the threshold for reporting may be challenging in practice without adequate training – particularly in cases of low-level neglect and emotional abuse.
- How abuse is defined – for example, the BMA's response to the UK government's 2016 consultation on a statutory definition of child sexual exploitation (CSE) highlighted concerns that the proposed definition might include young people engaged in normal sexual behaviour. This could deter

young people from seeking professional advice for fear of initiating child safeguarding procedures.

As noted earlier, these are potential benefits and risks – the BMA believes many risks can be mitigated and benefits promoted if they are given due consideration in the development and implementation of any new duty.

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

As well as lessons learned from other countries, it should be noted that although there is currently no explicit statutory obligation to report child abuse in the UK, there are already legal and professional obligations placed on doctors to respond to child abuse and promote the welfare of children. For example:

- If followed collectively, the General Medical Council's (GMC) guidance Protecting children and young people: The responsibilities of all doctors, The Children Act 1989 and statutory guidance effectively makes reporting of child abuse mandatory, unless it is contrary to the best interests of a child.
- In Northern Ireland there is a statutory duty to disclose any 'arrestable offence' under section 5 of the Criminal Law Act 1967, which includes most offences against children (with a few exceptions – for example, consensual underage sexual activity where both partners are under 18).
- In England and Wales, there is a mandatory duty to report 'known' female genital mutilation (FGM) in under 18s, to the police, within one month of it becoming known.

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

Doctors are already subject to professional and legal obligations to act. For example, as outlined above, the General Medical Council's (GMC) guidance Protecting children and young people: The responsibilities of all doctors, The Children Act 1989, and Working Together to Safeguard Children.

New legislation will complement these obligations and potentially widen their scope to other professional groups.

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

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

The statutory duty to report should apply to all regulated professionals who identify abuse in the context of their professional work. For example, a person who is registered and works as a healthcare professional, a teacher, police officer or a social care worker.

Welsh Government may wish to consider whether non-regulated NHS and care staff, including those in management positions, should also have a role in reporting.

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

The BMA does not believe that the new statutory measures should extend to adults.

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

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

The statutory duty to report should apply to all regulated professionals who identify abuse in the context of their professional work. For example, a person who is registered and works as a healthcare professional, a teacher, police officer or a social care worker.

Welsh Government may wish to consider whether non-regulated NHS and care staff, including those in management positions, should also have a role in reporting.

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

The BMA does not believe that the new statutory measures should extend to adults.

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

The BMA strongly believes that the focus of sanctions should be on learning and development opportunities for individuals, teams and organisations. These are available through existing professional and organisational sanctions – for example, the GMC refers to coaching, mentoring, and training in its sanction's guidance.

Professional sanctions would not preclude referral to the Disclosure and Barring Service (DBS) in some individual circumstances, but this should not be routine for all breaches of a new duty.

The BMA strongly believes that there should not be criminal sanctions for the duties proposed in the consultation paper.

Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on

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

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

We do not have any substantive comments to make regarding questions 3.9 or 3.10 other than to note that if concerns are raised in Welsh there should be no undue delay in them being addressed.

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

One of the challenges when considering statutory mandatory reporting is that different people can mean different things by the term. There is also a challenge in designing a system that is simple and straightforward for all professions to understand, whilst allowing some scope to respond most effectively to the individual needs of a child. The BMA's vision for how mandatory reporting legislation should work, and the prerequisites that need to be in place before such legislation should be introduced, in addition to those outlined in the consultation response, are set out below:

1. Threshold for mandatory reporting

There should be nationally agreed tiered thresholds for reporting obligations. Some tiers should be captured on the face of statute, others in professional standards and guidance. In some cases, it should be mandatory to report, in others mandatory to discuss. It is crucial that any legislation does not create barriers to professionals seeking advice at an early stage and/or where there are low level concerns. Legislation should also allow either a single point of contact or a limited range of appropriate reporting options, for example to organisational safeguarding leads, designated officers in safeguarding authorities or, in cases where a child is at immediate risk of serious harm, additionally to the police. This would enable regulated professionals to exercise their professional judgment, within set statutory limits, as to the best way to promote the welfare of an individual child.

2. Recipients of the report

Under the legislation, there should be scope for the reporter to report either to:

- a designated officer within a single authority with the necessary specialist skills, experience, and resourcing. This person should be a member of a new style multi-agency child protection team and should be able to respond

appropriately to the information. A single authority would help ensure clarity for reporters, a clear line of responsibility and accountability, and a coordinated standardised response.

- a designated officer at the most appropriate 'relevant authority' based on which professional is best placed to promote the welfare of the child. In many cases this will be a designated person in the local authority with safeguarding responsibilities, not the police. The BMA propose that a 'relevant authority' could include:
 - local authority designated officer with safeguarding responsibilities and
 - in addition, in some circumstances, the police.

Whichever approach is adopted, it needs to be clear who has the lead role once a report is made and, where possible, a commitment to keep a reporter updated on any significant developments as a consequence of the report.

3. Timeline

Legislation should be drafted broadly to allow sufficient time for a wide range of circumstances. Reporting should be timely and within a set time period, but there should be some scope within this period for the timing of the report to be guided by the individual circumstances of the case, including ongoing levels of risk. For example, if immediate action is needed to safeguard a child, there should be immediate reporting. If, however, a competent child needs more time to accept and feel in control of his/her situation before any formal reporting, and there are no immediate safeguarding concerns, this should also be accommodated to create a safe and empowering environment. An example is the female genital mutilation (FGM) reporting duty under the Serious Crime Act. Statutory guidance states that it is best practice for reports to be made by close of the next working day, but in exceptional cases the legislation allows reports up to one month after identification.

The reasons why a decision has been made to not report immediately (but still within the set time period) should be documented.

BMA position paper – mandatory reporting of child abuse (Oct 2016)

The BMA supports, in principle, the introduction of ‘mandatory reporting’ child abuse legislation and insists that any introduction is scientifically evaluated.

Mandatory reporting legislation should:

1. contain tiered thresholds for reporting obligations based on the level of harm to a child and whether abuse is known, suspected or abuse is considered a risk
2. apply to all regulated professionals²
3. allow reports to be made either to:
 - a. the designated officer of a single ‘relevant authority’ or
 - b. the designated officer in a limited range of appropriate ‘relevant authorities’ based on the welfare of the child¹⁰
4. allow reports to be made within a set time period, with some scope within this set period for the timing of the report to be dictated by the individual needs of a child
5. initially address any failures to report by identifying and addressing any training needs for the professional. Ultimately, any sanction for failing to report should be a professional, regulatory sanction; *not a criminal sanction*
6. only be introduced after a number of prerequisites have been met

What does the BMA mean by ‘mandatory reporting’?

² For the purpose of this paper, a regulated professional is a person who is registered and works as — a healthcare professional, a teacher, police officer or a social care worker.

¹⁰ For the purpose of this paper, a child is defined as a child or young person from birth until their 18th birthday.

One of the challenges when discussing statutory mandatory reporting is that different people can mean different things by the term. There is also a challenge in designing a system that is simple and straightforward for all professions to understand, whilst allowing some scope to respond most effectively to the individual needs of a child. The BMA's vision for how mandatory reporting legislation should work, and the prerequisites that need to be in place before such legislation should be introduced, are outlined below.

1. Threshold for mandatory reporting

There should be nationally agreed tiered thresholds for reporting obligations – a possible approach is outlined on page 15. Some tiers should be captured on the face of statute, others in professional standards and guidance. In some cases it should be mandatory to report, in others mandatory to discuss. It is crucial that any legislation does not create barriers to professionals seeking advice at an early stage and/or where there are intermittent low level concerns. Legislation should also allow either a single point of contact or a limited range of appropriate reporting options, for example to organisational safeguarding leads, designated officers in safeguarding authorities or, in cases where a child is at immediate risk of serious harm, additionally to the police. This would enable regulated professionals to exercise their professional judgment, within set statutory limits, as to the best way to promote the welfare of an individual child. For the purpose of this position paper, the *Working Together to Safeguard Children* definitions of 'abuse' are being used (see page 18-19). Within these definitions are a range of physical and sexual acts, and *persistent* emotionally abusive and neglectful treatment *that may result in the serious impairment of a child's development*.

2. The reporters

The statutory duty to report should apply to all regulated professionals who identify abuse in the context of their professional work. For example, a person who is registered and works as a healthcare professional, a teacher, police officer or a social care worker. The formal part of any statutory reporting process should be user-friendly, quick and straightforward. The duty should fall on the individual. This does not stop the individual seeking advice and support from a more senior and experienced colleague on how best to manage making the report, if time allows.

3. Recipients of the report

Under the legislation, there should be scope for the reporter to report either to:

- a designated officer within a single authority with the necessary specialist skills, experience and resourcing. This person should be a member of a new style multi-agency child protection team and should be able to respond appropriately to the information. A single authority would help ensure clarity for reporters, a clear line of responsibility and accountability, and a coordinated standardised response.

- a designated officer at the most appropriate 'relevant authority' based on which professional is best placed to promote the welfare of the child. In many cases this will be a designated person in the local authority with safeguarding responsibilities, not the police. The BMA propose that a 'relevant authority' could include:
 - local authority designated officer with safeguarding responsibilities
 - and ▪ in addition, in some circumstances, the police.

Whichever approach is adopted, it needs to be clear who has the lead role once a report is made and, where possible, a commitment to keep a reporter updated on any significant developments as a consequence of the report.

4. Timeline

Legislation should be drafted broadly to allow sufficient time for a wide range of circumstances. Reporting should be timely and within a set time period, but there should be some scope within this period for the timing of the report to be guided by the individual circumstances of the case, including ongoing levels of risk. For example, if immediate action is needed to safeguard a child, there should be immediate reporting. If, however, a competent child needs more time to accept and feel in control of his/her situation before any formal reporting, and there are no immediate safeguarding concerns, this should also be accommodated to create a safe and empowering environment. An example is the female genital mutilation (FGM) reporting duty under the Serious Crime Act. Statutory guidance states that it is best practice for reports to be made by close of the next working day, but in exceptional cases the legislation allows reports up to one month after identification.³ The reasons why a decision has been made to not report immediately (but still within the set time period) should be documented.

³ See page 25 of statutory guidance at www.gov.uk/government/uploads/system/uploads/attachment_data/file/512906/Multi_Agency_Statutory_Guidance_on_FGM_FINAL.pdf

A possible tiered threshold approach for reporting obligations:

	Definition	Duty	Duty captured
'Known' / 'Probable' abuse	<p>Where, in the opinion of the regulated professional, abuse is 'known'⁴ as a consequence of:</p> <ul style="list-style-type: none"> • an under eighteen year old reporting that abuse has been carried out on him/her; and/or • a healthcare professional observes physical and/or psychological signs of child abuse. <p>(Based on female genital mutilation (FGM) Serious Crime Act definition)</p>	<p>Report to a designated officer in a relevant authority.</p> <p>A 'relevant authority' could include:</p> <ul style="list-style-type: none"> • local authority with safeguarding responsibilities and/or • the police 	Statute
Suspected abuse	<p>Where, in the opinion of the regulated professional, there is a serious level of concern about the possibility of child abuse due to certain features and/or indicators.¹³</p> <p>(Based on NICE guidelines)</p>	<p>Report to:</p> <ul style="list-style-type: none"> • local safeguarding lead and/or • designated officer in 'relevant authority'. 	There are differences of opinion whether this should be captured in statute and/or professional standards

⁴ Based on definition of 'known' for mandatory reporting of female genital mutilation (FGM) under the Serious Crime Act 2015 – see multi-agency statutory guidance at www.gov.uk/government/publications/multi-agency-statutory-guidance-on-female-genital-mutilation ¹³ Based on definition in - National Institute for Health and Clinical Excellence (NICE) (2009) *Child maltreatment: when to suspect maltreatment in under 16s: NICE guidelines [CG89]*. London: NICE. Available at www.nice.org.uk/guidance/CG89/chapter/introduction

A child is thought to be at risk of abuse (harm may not yet have occurred)	Where, in the opinion of the regulated professional, a child is considered to be at risk of <i>significant</i> harm.	Report to a designated officer in a 'relevant authority'. In some circumstances, this may require immediate reporting to the police.	Professional standards
	Risk of harm	Seek advice and report to local safeguarding lead. This may lead to a report to a designated officer in a 'relevant authority'.	Professional standards

5. Sanctions

The focus of sanctions should be on learning and development opportunities for individuals, teams and organisations. The sanction for failing to report should, if and when appropriate be professional sanctions, and **not** criminal sanctions.

6. Prerequisites

The BMA's support 'in principle' for mandatory reporting legislation acknowledges that a number of conditions need to be met before legislation can safely be introduced, specifically:

A public health focus

- a. changing the perception and culture of child safeguarding reporting and intervention, both for professionals and the public (including parents), so intervention is viewed more positively and as a normal part of supporting the welfare of children

Awareness and perceptions

- b. raising awareness of child abuse amongst professionals

- c. raising awareness of child abuse, including any duties of regulated professionals to report, amongst communities and the public at large

Training and support

- d. developing in partnership with key stakeholders, level three national training standards, including agreed materials and practical courses for professionals. To be successful, there needs to be adequate time and resources ring fenced for the training, funded at a national level. Training should be more than one-off events and include modules on:
 - identifying child abuse, based on the latest evidence
 - how to respond to a child's safeguarding, physical and psychological needs when child abuse is known, suspected or considered a risk
 - identifying and responding to opportunities for early intervention
 - engagement and communication skills.
- e. ensuring good mechanisms are in place for professionals to:
 - have the time to consider and respond to child abuse, and
 - seek timely support and advice 24/7, 365 days a year.

Pathways

- f. proper resourcing of appropriate care pathways:
 - to support survivors and potential victims of abuse
 - for early intervention supportive measures for families
- g. standardising MASHs (multi-agency safeguarding hubs).

These measures would need to be regularly reviewed to ensure that they are, and remain, effective. Any legislation and supporting measures should be designed and developed in conjunction with children, both those that have been abused and those that have not, to ensure they are fit for purpose.

Commitment to scientific evaluation

- h. the introduction of mandatory reporting child abuse legislation must be scientifically evaluated. For example, evaluating:
 - the impact on the outcomes for children
 - the impact on the relationship between healthcare professionals and communities
 - any impact on health inequalities
 - any unintended consequences

Context

Current obligations

It should be noted that although there is currently no explicit statutory obligation to report child abuse in the UK, there are already legal and professional obligations placed on doctors to respond to child abuse and promote the welfare of children. For example:

- If followed collectively, the GMC guidance,⁵ The Children Act 1989⁶ and statutory guidance⁷ effectively makes reporting of child abuse mandatory, unless it is contrary to the best interests of a child.
- In Northern Ireland there is a statutory duty to disclose any 'arrestable offence' under section 5 of the Criminal Law Act 1967, which includes most offences against children (with a few exceptions – for example, consensual underage sexual activity where both partners are under 18).¹⁷
- In England and Wales, from October 2015 there is a mandatory duty to report 'known' female genital mutilation (FGM) in under 18s, to the police, within one month of it becoming known.⁸

Definition of abuse

The definition of abuse currently cited in the statutory guidance *Working Together to Safeguard Children*⁹ (England) is:

'Abuse: A form of maltreatment of a child. Somebody may abuse or neglect a child by inflicting harm, or by failing to act to prevent harm. Children may be abused in a family or in an institutional or community setting by those known to them or, more rarely, by others (e.g. via the internet). They may be abused by an adult or adults, or another child or children.'

⁵ GMC. *Protecting children and young people: The responsibilities of all doctors* (2012) www.gmc-uk.org/guidance/ethical_guidance/13257.asp

⁶ The legislation can be found at www.legislation.gov.uk/ukpga/1989/41/contents

⁷ For example, Department for Education (2015) *Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children*. London: HM Government. Available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf ¹⁷ The legislation can be found at www.legislation.gov.uk/ukpga/1967/58/section/5

⁸ The legislation can be found at www.legislation.gov.uk/ukpga/2015/9/section/74/enacted

⁹ Department for Education (2015) *Working together to safeguard children: A guide to inter-agency working to safeguard and promote the welfare of children*. London: HM Government. Available at www.gov.uk/government/uploads/system/uploads/attachment_data/file/419595/Working_Together_to_Safeguard_Children.pdf

Abuse includes neglect and physical, emotional, and sexual abuse, defined in *Working Together* as follows:

Physical abuse	A form of abuse which may involve hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer fabricates the symptoms of, or deliberately induces, illness in a child.
Emotional abuse	The persistent emotional maltreatment of a child such as to cause severe and persistent adverse effects on the child's emotional development. It may involve conveying to a child that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person. It may include not giving the child opportunities to express their views, deliberately silencing them or 'making fun' of what they say or how they communicate. It may feature age or developmentally inappropriate expectations being imposed on children. These may include interactions that are beyond a child's developmental capability, as well as overprotection and limitation of exploration and learning, or preventing the child participating in normal social interaction. It may involve seeing or hearing the ill-treatment of another. It may involve serious bullying (including cyber bullying), causing children frequently to feel frightened or in danger, or the exploitation or corruption of children. Some level of emotional abuse is involved in all types of maltreatment of a child, though it may occur alone.
Sexual abuse	Involves forcing or enticing a child or young person to take part in sexual activities, not necessarily involving a high level of violence, whether or not the child is aware of what is happening. The activities may involve physical contact, including assault by penetration (for example, rape or oral sex) or non-penetrative acts such as masturbation, kissing, rubbing and touching outside of clothing. They may also include non-contact activities, such as involving children in looking at, or in the production of, sexual images, watching sexual activities, encouraging children to behave in sexually inappropriate ways, or grooming a child in preparation for abuse (including via the internet). Sexual abuse is not solely perpetrated by adult males. Women can also commit acts of sexual abuse, as can other children.

Neglect	<p>The persistent failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development. Neglect may occur during pregnancy as a result of maternal substance abuse. Once a child is born, neglect may involve a parent or carer failing to:</p> <ul style="list-style-type: none"> • provide adequate food, clothing and shelter (including exclusion from home or abandonment); • protect a child from physical and emotional harm or danger; • ensure adequate supervision (including the use of inadequate caregivers); or
	<ul style="list-style-type: none"> • ensure access to appropriate medical care or treatment. <p>It may also include neglect of, or unresponsiveness to, a child's basic emotional needs.</p>

Similar definitions are used by the Scottish,¹⁰ Welsh¹¹ and Northern Irish¹² governments. The *Working Together* definitions are also used in the NICE clinical guideline *When to suspect child maltreatment*.¹³

A statutory definition of child sexual exploitation (CSE) is expected to be added to *Working Together* in the near future.

October 2016

¹⁰ The Scottish Government (2014) *National guidance for child protection in Scotland*. Edinburgh: The Scottish Government. Available at www.gov.scot/Resource/0045/00450733.pdf

¹¹ Welsh Government (2007) *Safeguarding children: Working together under the Children Act 2004*. Cardiff: National Assembly for Wales. Available at <http://gov.wales/topics/health/publications/socialcare/circular/nafwc1207/?lang=en>

¹² Area Child Protection Committees (2005) *Regional child protection policy and procedures*. Area Child Protection Committees. Available at www.healthni.gov.uk/publications/area-child-protection-committees-regional-policy-and-procedures

¹³ National Institute for Health and Clinical Excellence (NICE) (2009) *Child maltreatment: when to suspect maltreatment in under 16s: NICE guidelines [CG89]*. London: NICE. Available at www.nice.org.uk/guidance/CG89/chapter/introduction

Consultation Response Form

Your name: [REDACTED]

Organisation (if applicable): Disability Wales

Email / Telephone number: [REDACTED]

Your address: Disability Wales Brydon House, Block B. Caerphilly Business Park
Van Road Caerphilly CF83 3ED.

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

☐

Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation? This response is sent on behalf of Disability Wales, with feedback from a survey circulated amongst members and two interviews.

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

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

There are 12 questions about this chapter.

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

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

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

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

Please explain your reasoning.

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

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

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

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

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

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

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?
- What would be the benefits, disbenefits and other implications of such an approach?
- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

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

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

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

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

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

There are 8 questions about this chapter.

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

We agree with these proposals. Many disabled people prefer to use direct payments as the ability to choose their own care, develop a relationship with a support worker and personalise their support is extremely important to them. The ability to choose to do this is a vital part of independent living. Of the 16 survey participants, 8 disabled people told us that they would be more likely to apply for CHC if they could continue with direct payments, some have chosen to not apply due to concern about losing their direct payments and the agency that they provide, alongside losing the support currently received. This creates a situation in which disabled people who are eligible for this support functionally cannot access said support without sacrificing a vital part of their care.

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

You may wish to consider, for example:

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

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

Please explain your reasoning.

One positive impact would be access to appropriate care. Disabled people have told us that, despite being eligible for continuing healthcare, they have chosen not to apply out of concern of losing their direct payments. This is a very real worry, one disabled person answering our survey told us that after a health scare, she was transferred to continuing healthcare without knowing what that entailed and ended up having to fire the staff she had worked with for decades because she was no

longer eligible for direct payments "[person] had 6 Personal Assistants that were made redundant when Direct Payments were taken away, some had been with [person] for 20 years."¹ This caused significant distress for her to lose those relationships that had been built over that time and impacted the quality of her care.

We believe that this change would result in better quality support for disabled people. This is because allowing disabled people the ability to make decisions on their own care and support allows them to tailor it more carefully to their individual needs. One disabled survey respondent told us that the benefits break "down the central control that limits choice to the lowest cost care providers and results in people getting a poor quality of life."²

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

This is already the case in England³ and Scotland,⁴ the main lesson to learn from this is that Wales is trailing behind these countries on this issue. In England, organisations such as Disability Rights UK have noted that the introduction of personal health budgets in continuing healthcare in 2014 has led to disabled people having great autonomy over their lives and healthcare decisions. This has been extended to include wheelchair users, allowing them a budget to purchase their own wheelchair and disabled people who access services under the Mental Health Act.⁵ In a blog post for Think Local Act Personal, Isaac Samuels describes personal health budgets as having "changed his life" following being sectioned.⁶ Following the precedent set by other countries in the UK would significantly help disabled people living in Wales to have access to the same level on control over their support as a disabled person living in Scotland or England and aligns well with the Welsh Government's aims to support disabled people's access to independent living.

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

We believe that direct payments are the most effective way to achieve the same affect.

¹ Disability Wales Survey Participant

² Disability Wales Survey Participant

³ NHS England, "Personal Health Budgets in NHS Continuing Healthcare", <https://www.england.nhs.uk/personal-health-budgets/personal-health-budgets-in-nhs-continuing-healthcare/>

⁴ Scottish Government, "Social Care (Self-directed Support) (Scotland) Act 2013: Statutory Guidance", <https://www.gov.scot/publications/statutory-guidance-accompany-social-care-self-directed-support-scotland-act-2013/pages/13/>

⁵ Disability Rights UK, "Government to extend personal health budgets to 200,000 by 2024", <https://www.disabilityrightsuk.org/news/2019/february/personalhealthbudgetextension>

⁶ Isaac Samuels, "Through Personal Health Budgets I Have Changed My Life", <https://www.thinklocalactpersonal.org.uk/Blog/Through-personal-health-budgets-i-have-changed-my-life/>

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

Specific support for disabled people managing direct payments should be included. One concern raised in our survey was from a disabled person who is worried about the admin and the energy required to hire their own care staff and support, Welsh Government providing support on this would be extremely beneficial.

Clear guidance and information about what precisely this would mean for disabled people is also required. Changes to systems that provide care can be extremely stressful, even if that change is a positive one. It is important that those currently receiving continuing healthcare and those looking to apply for continuing healthcare are properly supported and informed of what this would mean. Some participants listed that there is a misconception about direct payments causing an additional cost for disabled people, “there is a perception that Direct Payments is linked to recipients making a financial contribution [...] there is a genuine anxiety that associating CHC with direct payments may lead to patients paying for health care”⁷ it is important that these worries are reassured.

Issues around current effectiveness of how direct payments and CHC is communicated were also raised “No-one has offered primary care or mentioned it to me so I struggle alone the best I can. A great deal of the time I either get forgotten about or told someone will contact me back and no-one ever does, even up to 18 months of waiting.”⁸ One disabled person responding to our survey said that, despite eligibility, they had never heard of CHC before this consultation “I didn't know that I could have applied for it until I saw the original survey.”⁹ There must be firm commitments to ensure that information about direct payments and CHC is communicated clearly.

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

No comment.

Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to

⁷ Disability Wales Survey Participant

⁸ Disability Wales Survey Participant

⁹ Disability Wales Survey Participant

use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No comment.

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

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

There are 11 questions about this chapter.

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

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

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

Please explain your reasoning.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There are 21 questions about this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

There are 9 questions about this chapter.

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

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

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

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

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

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

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

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

Please explain your reasoning.

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

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

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

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

There are 5 questions about this chapter.

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

Please explain your reasoning.

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

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

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

Please explain your reasoning.

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

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

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

Consultation Response Form

Your name: [REDACTED]

Organisation (if applicable): **The Children's Society**

Email / Telephone number:

Your address: [REDACTED]

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

☐

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

This response is sent on behalf of The Children's Society.

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

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

There are 12 questions about this chapter.

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

See answer to Questions 1.2 and 1.8.

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

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

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

Please explain your reasoning.

We welcome in principle Welsh Government's proposal to change the children's social care market such that it will consist of not-for-profit providers only. However, we have concerns relating to the potential impact of the transition period on children and young people, and on the availability of good quality placements for children and young people, so we would like to discuss our concerns about the proposal that we believe Welsh Government should consider before progressing.

The first concern we have is the timeframes within which the primary aims of the proposal are expected to be achieved – specifically, that new providers of children's social care registering with Care Inspectorate Wales (CIW) must have 'not-for-profit' status from April 2026; and that any 'for-profit' providers will need to transition to having 'not-for-profit' status, and register with CIW as having such status, by April 2027. We believe that these timeframes do not provide enough time for providers and other stakeholders to reach these aims, or do not provide enough time for these aims to be reached safely.

In addition to the insufficient timeframe within which the transition is expected to happen, we are concerned that disallowing 'for-profit' providers from operating in Wales will worsen the current problem of there being a lack of supply to meet demand. This means increased costs for local authorities when seeking and purchasing child social care provision; placing children in settings that might not be appropriate to their needs; and, in more severe instances, a risk of delay in securing a placement for a child and that child remaining in an environment that is unsafe for them to be. Retaining the current proposed timeframe could force 'for-profit' providers to either cease or withdraw their operations in Wales, thereby removing supply from the market and exacerbate the risks of increase costs for local authorities, a lack of appropriate provision, or insufficient availability of provision in general.

Whilst we recognise Welsh Government's intention that some 'for-profit' providers might wish to transition into becoming 'not-for-profit' providers and that it will support such providers to make that transition, we believe that the timeframe that is currently set for this to take place is not sufficient. Changing from a 'for-profit' to a 'not-for-profit' provider will require providers to undergo structural change, which is a process that can be time-consuming. Not all providers who wish to transition will have the expertise to make these structural changes, and not all providers who wish to transition will be able to transition at the same pace and within the proposed timeframe. This might force a number of providers to cease operations, thereby worsening the problem of a lack of supply to meet demand.

Additionally, local authorities are not in a position to buy these 'for-profit' providers because they cannot financially afford to do so, and in the case of residential care settings, they do not have the skills or knowledge to run a residential care setting. Furthermore, in an instance of a severe lack of supply, local authorities may be forced to turn to large providers who have the financial resources to meet that lack of capacity, which are the providers whose practices Welsh Government are trying to tackle. We also have heard anecdotally that local authorities and providers do not feel supported in the process of making the transition to becoming a 'not-for-profit' provider, which, along with the insufficient amount of time to make these changes, create an environment in which it is difficult to work. As well as allowing more time to transition, Welsh Government need to listen to the concerns of local authorities and providers, and support those providers who want to transition to becoming 'not-for-profit' providers, and do so throughout the entire transitioning process.

As well as helping 'for-profit' providers who want to transition to being 'not-for-profit' providers, we note in the consultation document that Welsh Government want to "encourage new not-for-profit creation of provision." Whilst we welcome this, there is a lack of knowledge about how Welsh Government is realising this or will realise this. It is crucial that any work undertaken to encourage new 'not-for-profit' provision is done in collaboration with local authorities. According to the Competition and

Markets Authority (CMA), [local authorities in Wales use their resources reactively](#), rather than on planning for future need. Additionally, CMA reports that local authorities have [difficulty in shaping the market](#), such as by signalling their needs and encourage providers to operate in their areas. Therefore, local authorities are forced to use resources reactively, meaning that they often take any placement that is available, even if these placements are not appropriate or are unable to meet the needs of particular groups of children and young people – such as unaccompanied and separated children and young people, or children and young people with complex needs.

Additionally, with regard to residential care settings, opening such a setting can be a lengthy process. Anecdotally, we have heard that recently it took a local authority five years to open a residential care setting. Amongst the possible causes of this lengthy duration is the current planning requirements in Wales. According to CMA, [due to the planning system in both Wales and England](#), care providers face difficulties in gaining planning permission to set up and open new children's homes. For example, providers often face outdated views about children's homes and looked after children held by people living in an area in which a provider wants to open a home, as well as facing losing a potential property due to a rival bidder for use of the property as a home for a family.

For Welsh Government to achieve its aim of encouraging more 'not-for-profit' provision to be established, it will need to work more closely with local authorities to shape the child social care market to meet their needs and increase supply of appropriate provision. This could be done by supporting local authorities to work more collaboratively to shape the child social care market, thereby strengthening their bargaining position to attract providers to establish in their areas provision needed by children and young people in their care. We believe that increasing supply needs to be prioritised to ensure that there is enough appropriate capacity for local authorities to use for placing children and young people – an issue that might become even more urgent if 'for-profit' providers cease or withdraw operations in Wales. Local authorities must be supported by Welsh Government to fill the supply gap by creating more care setting capacity, and must be allowed more time to do so than has been outlined in the consultation document.

We also note in the consultation document Welsh Government's aim to support "existing not-for-profit organisations who wish to expand their provision." Although we support this aim, we have heard from 'not-for-profit' providers that they are not receiving support from Welsh Government to expand, and that their concerns about their lack of capacity to expand are not being listened to by Welsh Government. We urge Welsh Government to work more collaboratively with current 'not-for-profit' providers to learn whether or not they have the capacity to expand, and if so, to support them throughout the process of expansion. For 'not-for-profit' providers who want to expand but do not have the capacity to do so, or for 'not-for-profit' providers

who are unsure about expanding, Welsh Government need to incentivise these providers to expand, and support them throughout the process of expansion.

Taken together, we recommend that, in the short-term, Welsh Government shift its focus away from 'eliminating profit' and towards 'rebalancing' the child social care market such that more 'not-for-profit' providers are able to establish or expand, without eliminating 'for-profit' providers in too short a timeframe. In doing so, we believe that supply can be increased to meet demand in such a way that local authorities will face less difficulty in placing children and young people in appropriate care settings, and that transitioning the market to one that is made up entirely of 'not-for-profit' providers will be a process that is done safely and with minimal disruption to children and young people. As mentioned previously, the current timeframe within which it aims for these changes to happen is insufficient, so Welsh Government needs to allow enough time for this process to happen.

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

See answer to Question 1.8.

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

See answer to Question 1.8.

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

See answer to Question 1.2

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

See answer to Question 1.2

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

See answer to Question 1.2

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

- *Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?*
- *What would be the benefits, disbenefits and other implications of such an approach?*
- *What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?*

We are not opposed to the use of legislation in principal to bring about changes to the child social care market, but we have concerns which we discuss in more detail in Question 1.2.

Our main concerns are about the use of legislation to set a timeframe within which Welsh Government intend for changes to the child social care market to be made; the focus on 'eliminating profit' without the recognition of the need for a gradual transitioning period towards a market of 'not-for-profit' providers (the 'rebalancing' of the market); and the risk of the removal of local authorities' ability to respond to needs specific to their areas.

To expand on the last point, some of the responses to Welsh Government's 2021 white paper on 'improving social care arrangements' expressed concerns about the introduction of a national framework. They believed that a national framework "would be inflexible, at the expense of local autonomy, [and that the] importance of local circumstances was highlighted and the ability of organisations to define and secure provision in a way that meets their own priorities."

We are concerned that introducing legislation to eliminate profit without enough consultation and preparatory work with local authorities and providers might risk having the same outcome of removing local decision-making and local authorities' ability to respond to their specific needs. Before the drafting of any potential legislation, we urge Welsh Government to do more preparatory work with local authorities and care providers, with the aim of finding the balance between ensuring that any future arrangements provide local authorities with the agency to respond to local needs, allow them to lead on the work of increasing the supply of care provision to meet demand, but providing them with the support and recourses to develop capacities to undertake this work. In the case of 'for-profit' providers, Welsh Government must support these providers throughout the process of transitioning to being 'not-for-profit' providers.

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

As well as defining what is meant by 'not-for-profit', there needs to be clarification and distinction between different types of 'for-profit' providers. In the case of residential care settings, although most providers are 'for-profit', only a small proportion are large providers making a large amount of profit. Most of the 'for-profit' providers are small and medium-sized enterprises, often run by former social workers, who do not make a large amount of profit, and any surplus that they earn are often reinvested back into their businesses. Additionally, we have heard from colleagues working closely with local authorities and providers that these small and medium-sized businesses which provide "quality and diverse services", both in residential and foster care settings. We also heard that these providers find that the intention to 'eliminate profit' from the provision of care to children and young people devalues the work that they do, and that some are not in a position to transition to being a 'not-for-profit' provider and have been forced to cease operations.

We believe that it is crucial that 'for-profit' providers who provide good care to children and young people should not feel devalued and demoralised. It is important to make a distinction between small and medium-sized businesses and large providers to make a high amount of profit from their operations, and that the work to be undertaken with these different types of 'for-profit' providers needs to reflect this distinction. More specifically, small and medium-sized businesses need to be recognised not as opportunists who merely want to make as much money as possible, but as providers of important and quality services to children and young people. If they want to transition to being 'not-for-profit' providers, Welsh Government need to work with them during the transition period to undergo any necessary structural changes or develop additional capacity.

Consultation Response Form

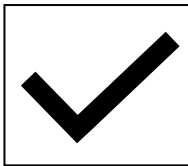
Your name: [REDACTED]

Organisation (if applicable): **Home for Good**

Email / Telephone number: [REDACTED]

Your address: [REDACTED]

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



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

On behalf of the organisation, Home for Good

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

Home for Good submission to consultation on proposed changes to legislation on social care and continuing health care

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

There are 12 questions about this chapter.

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

Home for Good supports the ambition of the Welsh Government that services provided to care for Wales’ most vulnerable children should fundamentally be rooted in seeking to promote their best outcomes and provide the stability, safety and love that they need. We recognise that residential and foster care provision across Wales serves the majority of children in care and therefore welcome the starting point of this consultation in seeking to eliminate unnecessary profit-making from these services. We do think that introducing legislation that allows only ‘not-for-profit’ providers to register with Care Inspectorate Wales will contribute to reducing profit/surplus in the children’s social care sector and ensure public funds are focused on improving outcomes for vulnerable children, provided a clear set of parameters for ‘not-for-profit’ are developed. We appreciate that development of these parameters will require careful consideration as, for example, Venture Capital owned residential and fostering providers already have ‘not for profit’ subsidiaries operating in Scotland.

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

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

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

Home for Good has a vision to find a home for every child who needs one. We are particularly concerned and focused on supporting children who wait the longest for the home that they need, or

who are furthest away from experiencing love, safety and stability. This includes larger sibling groups, teenagers, children with additional needs and children from UK minority ethnic backgrounds. We recognise that finding homes for these children often requires an added degree of intentionality and that at present, many of these homes may be being found by 'for-profit' providers. We recognise the need to ensure that children's interests are placed front and centre and therefore think that measures to eliminate profit-making from the sector are needed. However, we must ensure that in doing so, sufficient measures are taken to address the increased need around sufficiency to ensure that children do not fall through the gaps, particularly during the transition to this new model in Wales. Consideration must be given around what incentives could be developed to ensure as many 'for profit' providers transition to a 'not-for-profit' model as possible and that existing 'not-for-profit' providers are incentivised to expand their provision.

Given Wales's border with England, it is vital that consideration is given as to how these proposals will be implemented in relation to children from England being placed across the Welsh border and vice versa. This may work against the spirit of the proposal and perversely incentivise 'for-profit' providers to work with English partners and local authorities, rather than having to change their practice.

On the issue of cost there seems to be a mixed picture. The England Fostering Review found that Barnardos and Action for Children charged more than the average 'for profit' IFA fee. We would suggest this needs to be taken into account and looked at carefully.

On the issue of sufficiency there could be a high risk of losing access to residential and fostering placements. This could become particularly prevalent in the present economic context where demand for both is likely to increase as more families come under financially induced crisis which makes it less financially viable for people to pursue fostering as a career. Therefore, it becomes increasingly important to access groups with greater intentionality towards fostering/adoption/special guardianship/supported lodgings such as the Christian church.

Regarding a system-wide view we point out that Home for Good's mission means we focus on growing the opportunity for vulnerable children to be placed in a family environment where they are able to flourish. We would suggest that any change needs to invest in parallel to the growth of other permanence options such as special guardianship (particularly other than from foster care), adoption and with direct or extended family which are traditionally already serviced through a combination of the statutory and 'not for profit' sectors.

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

See response to question 1.1. It is likely that a set of parameters / rules will need to be established rather than purely referring to a legal entity type. For example, it may be appropriate to state that the parent organisation at all levels must also be a form of 'not for profit' entity. However, this would

generate a significant structural change in the market and is most likely to result in 'for profit' IFAs preferring to offer their foster carer capacity in Wales to English local authorities and reduce their ongoing investment.

Where possible, legislation should support organisations when 'profit' is re-invested into improved services for children and their carers. Investing surplus on better-quality services should be encouraged.

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

Yes, we support this proposal. There may be unforeseen loopholes within the definition of 'not-for-profit' developed and therefore it is vital that Welsh Ministers have the ability to amend a definition in response, to ensure the reduction of unintended consequences.

Furthermore, the types of 'not for profit' entities may continue to evolve, for example Community Interest Companies were introduced in 2005, and it would be beneficial for the legislation to be able to cater for such changes. It is imperative that any amendments are meaningfully consulted on.

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

Home for Good supports the proposed timings and timelines suggested for the transition towards a wholly 'not-for-profit' sector. Whilst we must work with pace to ensure that children in the care system now are being provided with the best possible care, this must be held in balance with recognising the time needed for new 'not-for-profit' services to develop and/or for private providers to transition to 'not-for-profit' models. To not provide sufficient time for these processes could result in a sharp drop-off in homes available to children which would further exacerbate existing sufficiency challenges. This must not happen.

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

Support for carers would be essential. In any such transition carers will need to be confident they will receive good levels of placement support – and research show this is key to both placement stability and retention of carers. Home for Good's experience developing peer and community support networks for foster carers and adopters through Christian church communities shows that such support can be created and sustained outside and complementary to fostering providers' own support, and therefore could be a key mitigation in the proposed transition.

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

Home for Good welcomes the issuing of guidance to support the implementation of primary legislation. In order to encourage not-for-profit providers to expand their services and for-profit providers to transition their model it is vital that the Government provides robust and thorough support to providers about how to make these changes; providing clarity on the kinds of models they support and want to champion. This is vital for ensuring that provision across the care system is maintained and enabled to grow, rather than facilitating a sharp drop-off and decline, which will ultimately have an adverse impact on children and young people.

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

- *Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?*
- *What would be the benefits, disbenefits and other implications of such an approach?*
- *What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?*

We recognise the need to ensure there is published clarity around the definition of 'not-for-profit' organisations if this legislation is introduced. Local authorities already have a rightly robust spectrum of duties in the care they provide for children and young people and if an added limitation on their ability to source homes, such as that suggested, is introduced, it must be accompanied by thorough support to enable local authorities to continue meeting their other statutory duties, particularly around sufficiency.

Home for Good's mission means we believe that children and young people in care should be placed in a family environment wherever possible and suitable, and appropriately supported. In a context of only being able to place with 'not for profit' providers there is the risk that the marginal sufficiency is residential provision or some form of unsupported community placement, and therefore an increasing number of children and young people become placed inappropriately. This is shown to negatively affect their outcomes and life trajectories. We suggest any legislation should ensure children and young people are appropriately placed and achieve permanence as the priority, and then any measures related to requiring local authorities to place with 'not for profit' organisations be in the context of the prevailing sufficiency context.

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

Consideration must be given to the differences across the border around the use of 'for-profit' provision and how the suggested proposals would interact and interplay with the different system within England. Conversations with neighbouring English local authorities may be necessary to reach agreement on commissioning and use of provision across the border, in either direction.

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

No response.

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

No response.

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

No response.

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

There are 11 questions about this chapter.

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

We support the principle of imposing a duty to report a child at risk on a specific individual within relevant bodies. It is imperative that where there are concerns about a child or adult's wellbeing, there is clarity within relevant bodies about where responsibility lies for reporting such concerns.

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

We identify that there would be risks within this approach of ensuring the nominated individual is made aware of the concerns in a timely manner and has all the information at their disposal to thoroughly report these concerns. Alternative arrangements must be put in place to cover leave of absences, holiday and unforeseen absence to ensure this process is not disrupted. In addition, it is vital that the relevant bodies ensure there is sufficient capacity within the individual's role and responsibilities to prioritise this responsibility.

There would be a need for training regarding checks and balances to ensure such reporting requirements do not generate a very risk averse response which creates unnecessary distress for those reported and consume system resource in dealing with such cases.

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

Countries such as Republic of Ireland, Australia and USA have duties to report requirements and anecdotally these countries' children are no better safeguarded in practice. One idea that might be worth considering is that practitioners need to work hard to be culturally humble and have a good awareness of faith issues so that they are making decisions on reporting in a manner that is fully aware.

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

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

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

We wish to highlight that adults can be any individual over the age of 18 and we recognise the vulnerability of some adults to abuse, including care leavers, those with additional needs and individuals who have experienced prior trauma or exploitation. It is therefore vital that there is not a drop-off in provision to protect individuals when they become adults, as we recognise that vulnerability to abuse does not disappear overnight at the turn of an 18th birthday.

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

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

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

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

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

There are 21 questions about this chapter.

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

We agree with the proposal to adjust the definition of 'care' in the 2016 Act to provide greater clarity about what is understood as providing care to children and young people. Given the varied range of needs among young people up to the age of 18, we suggest that emphasis is given on providing

parental-type care that is centred around the needs of the child or young person to emphasise that this will look different depending on the age, maturity and needs of every young person.

One point of consideration that would be useful here is Supported Lodgings. This can be a grey area depending upon the level of support provided, the age of the young person and their route into the placement, for example, care leaver versus homelessness. It is also worth noting that sometimes Supported Lodgings placements provide necessary support to young people who are not in care, nevertheless it is often valuable, essential and preventative for those young people on the edge of care.

Welsh Government:**MPS**

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

November 2022

MPS submission to the Welsh government consultation on proposals for primary legislation in mandatory reporting

Executive summary

MPS welcomes the opportunity to respond to Welsh government consultation on proposals for primary legislation in relation to children's social care, Direct Payments for continuing health care, mandatory reporting and regulation and inspection

MPS is the world's leading member-owned, not-for-profit protection organisation for doctors, dentists and healthcare professionals with over 300,000 members around the world. Our in-house experts assist members with the wide range of legal and ethical problems that can arise from their professional practice

As a medical defence organisation, MPS has a particular view on this topic which applies to healthcare professionals and their duty to safeguarding and patient safety. We are only able to provide views with regards to members of regulated professions which we support – healthcare professionals-. In our submission, we are only focusing on chapter 3, mandatory reporting of children and adults at risk, as we believe this is the area that can have most impact on our members.

MPS is fully committed to the principles of safeguarding of children and vulnerable adults and we understand the need for reporting any concerns to the relevant authorities. However, we are concerned with the prospect of introducing mandatory reporting in legislation as this would remove a level of judgement that it is necessary to exercise on a case by case basis and could place an additional burden on healthcare professionals. As I am sure the Welsh Government are aware, healthcare professionals already have a duty to report any concerns as established in GMC guidance and this applies to both children and adults at risk and we therefore not see the need to introduce further legislation involving regulated healthcare professionals.

Chapter 3: Mandatory reporting of children and adults at risk

Questions for chapter 3

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

MPS supports the current legislation which requires an organisation to report children and adults at risk to the relevant authorities to protect them from harm.

We also understand why the Welsh government may feel that it is necessary to review the duties contained within the 2014 act and expand this legal requirement to individuals. However, we

believe that introducing this requirement in legislation may not always allow healthcare professionals to act in a child's best interest.

The requirement for an individual to report a child at risk would, in the main, be in line with the *Good medical practice* guidance produced by the GMC which places a duty on all doctors to protect and promote the health and well-being of children and young people. The GMC's guidance "*Protecting children and young people: the responsibilities of all doctors*" makes it clear that doctors *must* tell an appropriate agency if they are concerned that, "*a child or young person is at risk of, or is suffering, abuse or neglect unless it is not in their best interests to do so*". Of note, the last part of this sentence is important "...*unless it is not in their best interests*". The GMC, in their guidance, recognise that there may be exceptional circumstances when it is not in a child at risk's best interests to share information with relevant authorities. Any legal duty to report may remove this element of discretion potentially leading to decisions which are not in a child's best interests.

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

MPS supports the current legislation and the guidance from the GMC on reporting vulnerable adults. We are concerned with introducing mandatory reporting as this could remove the element of judgement that may be necessary to exercise on individual case by case basis.

The GMC has some guidance on the reporting of adults surrounding four principles: protection, empowerment, proportionality and partnership. The guidance advises doctors to "*take prompt action if you think that patient safety, dignity or comfort is or may be seriously compromised*." It also states that the adult should participate as fully as possible in the decision as all adult safeguarding processes and laws in the UK say that safeguarding procedures must be person-centred and must take account of the views and wishes of the adult concerned.

The GMC also gives doctors some guidance with regards to situations that can arise when confidentiality rights must be balanced against duties to protect the welfare of patients who may be unable to protect themselves. This guidance establishes some questions such as whether they have the capacity to decide whether to accept help, whether anyone else is at risk of harm and whether the disclosure could be justified in the public interest for example because others may be at risk of serious harm or death if disclosure is not made.

The GMC's guidance therefore allows for a situation where an adult with capacity at risk of harm does not consent to disclosure to relevant authorities and a doctor might abide by that patient's wishes in circumstances where their decision does not expose others to risk of serious harm or death.

The GMC does make it clear that, where a patient lacks capacity and is at risk of or experiencing abuse or neglect, it would "*usually be appropriate to tell a responsible person or authority*".

Therefore there is already a regulatory requirement for doctors to consider notifying relevant authorities when an adult is at risk of, or suffering, abuse or neglect but this is more nuanced than a legislative requirement to report all cases, as decisions to disclose will be dependent on the specific circumstances of the case.

By imposing a duty on an individual to report an adult at risk, this may risk being contrary to the patient-centred approach advised by the GMC.

MPS therefore would understand imposition of a requirement on individual doctors to report adults at risk where that adult lacks capacity to make the decision on disclosure and where that

disclosure is in that adult's best interests or in circumstances where failing to disclose may put others at risk of death or serious harm.

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

MPS believes that if the government is minded to proceed placing this requirement on individuals not only on organisations it must consider that this will inevitably put some more pressure on already stretched doctors and healthcare professionals.

As such, we believe that clear guidance must be produced and sent to all healthcare practitioners, and this requirement should be mirrored in GMC guidance and *Good Medical Practice* to ensure that all doctors have access to advice on the latest safeguarding laws.

The benefit of placing this requirement on all individual healthcare professionals could hopefully be that more children and vulnerable adults will be protected.

One risk we anticipate is that, if a duty to report to a relevant authority is imposed on individual healthcare professionals, regardless of the patient's views on the matter and regardless of whether it is in the best interests of a patient who lacks capacity, this might risk unintentional harm to the patient or damage the doctor patient relationship.

One further risk that we anticipate for healthcare professionals and one that we would like the government to consider is that healthcare workers who may unintentionally have failed to report an adult or child at risk could be faced with legal consequences. We do not believe healthcare professionals should be held to account if they failed to comply with this legal requirement unintentionally.

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

MPS does not have any comments on this question.

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

MPS believes that any duties that the government is minded to introduce on individuals should be complimentary, so sit alongside, the duties on organisations under the 2014 Act, as in some cases it may be the organisation which is better placed due to resourcing or other issues to report the adult or child at risk.

Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act

(including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

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

MPS does not have any comments on this question.

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

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

MPS can only comment on this duty being imposed on individual healthcare professionals, which as we have stated we do not support due to this requirement already existing as part of their professional regulation. We do not have any comment on this duty being imposed on other regulated professions or individuals.

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

MPS does not have any comments on this question.

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

MPS does not have any comments on this question.

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

MPS has no comment on this question.

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

MPS has no comment on this question.

About MPS

MPS is the world's leading protection organisation for doctors, dentists and healthcare professionals with more than 300,000 members around the world.

Our in-house experts assist with the wide range of legal and ethical problems that arise from professional practice. This can include clinical negligence claims, complaints, medical and dental council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries.

MPS is not an insurance company. We are a mutual non-for-profit organisation and the benefits of membership of MPS are discretionary as set out in the Memorandum of Articles of Association.

Contact

Should you require further information about any aspects of our response to this consultation, please do not hesitate to contact us.

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Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

No, we think the current proposal is flawed and ill-judged. It is our belief that the proposal will result in reduced sufficiency, increased cost and ultimately poorer outcomes for children and young people which is not in line with the programme's aims.

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Benefits, and dis-benefits;

The proposal is already having a negative impact on providers in the independent sector investing in developing provision in Wales. It is likely to significantly reduce choice for foster parents and have a negative impact on the recruitment of new foster parents and retention of experienced fostering families. In the last five years we have recruited 76 new foster families in Wales. If our ability to operate is hampered those families may not have joined the sector. The independent sector has provided a hive of creativity and to reduce desirability to operate in Wales will undoubtedly have a negative impact on future innovation and ability to meet children's needs in a broad sense. Our inspection report quotes:

"We (CIW) found that children and young people receive good quality care based on their individual needs and preferences. There are good quality assurance systems in place and good consultation processes with children and young people, foster carers and professionals, ensuring the continuing improvement of the service. The agency is pro-active in encouraging participation of children and young people in all aspects of their day to day care."

There are some considerable staffing recruitment and retention difficulties in social care for children and a shortage of foster parents. The current proposal is exacerbating instability in the sector.

There is no evidence that not for profit services provide better quality provision.

There is no evidence this proposal is in line with children's views and wishes.

Costs (direct and indirect), and savings;

There is no evidence to support that provision of services within a not for profit model will bring any cost efficiencies or benefits. This is a view supported by the evidence gathered within the market study of children's social care published in 2022, by the Competition and Markets Authority.

To legislate against profit making would take significant planning and investment prior to and the level of investment would actually increase costs.

Impacts upon individuals and groups with protected characteristics;

As identified above, the proposals are likely to impact negatively on sufficiency and therefore ability to meet children's needs in a broad sense. In particular children with disabilities and complex needs, unaccompanied children and children from minority ethnic backgrounds.

Other practical matters such as cross-border issues;

Depending on legislation, driving placement options to outside borders.

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

Please explain your reasoning;

We believe it is fanciful and idealistic to believe that you can legislate and services will adapt without negative impact. To undo profit making would take significant planning and investment prior to legislating, in order to protect the interests of the sector and the children and young people receiving services.

Governments both central and devolved need to focus efforts on working with the qualitative providers in the independent sector to improve sufficiency and variety of placement choices, tackle some of the poor quality providers who operate and invest in front line preventative services for families. This would be of far greater benefit than taking this ill-judged path that has been the subject of wide scepticism both from the independent sector and those responsible for commissioning services.

Q3. Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

Our view is that these proposals are unworkable and any form of suggesting operating as 'not-for-profit', despite the definition is flawed and will not achieve the programme's aims.

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

No, we disagree with the proposal in its current form.

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

We disagree with the proposal in current form and therefore feel the timings are unrealistic and will impact negatively on the sector, sufficiency of provision and ultimately outcomes for children and young people.

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

Should the primary legislation proposed be introduced, we could experience providers in the independent sector reducing their operating capacity in Wales. There are multiple concerns listed above that may have a negative affect during any transition but the most concerning potential adverse impact during transition would be the hampering of local authorities ability to safeguard children in need of help and protection.

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

We do not support the proposal in current form and disagree with implementation of primary legislation and any supplementary guidance.

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

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

No, we believe it will reduce choice and placement options for children and reduce options for Local Authority social workers in an area where options are already severely limited.

Should sufficiency be impacted, history tells us that there will be an increase in unregistered services who are notorious for high fees and poor quality. Local Authorities will have no choice but to use them whether they are legal or not. Legislation has made this illegal in England and just this week an article in the media features a decision to place in an unregistered service by a high court judge that is illegal, but there are no viable options or alternatives.

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

As above

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

Implementing a mandatory restriction would not be something we can see would be of benefit to anyone, especially children requiring placement options.

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

Given there is such widespread resistance to the proposals we envisage many services may try to find ways to work around it therefore creating a potentially expensive 'monitoring' taskforce just to keep control. This could result in further unnecessary spend.

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

We are supportive of the aim to preserve the Welsh language and have several initiatives such as access for all foster parents and staff to an on-line Welsh learning platform and ensuring there are Welsh speaking members of staff. We also provide bi-lingual information and documents for our foster parents and young people and offer supervisions, visits and meetings in Welsh. All of these are initiatives we have introduced and are concerned these would be lost should primary legislation be implemented.

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

We are supportive of the aim to preserve the Welsh language and would like to be able to continue with our initiatives in the future.

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

We do not support the proposals in current form. It is our belief that this proposal is prioritising political ideology above the experiences and progress of children and young people in Wales.

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

No Response

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

No Response

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

No Response

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

No Response

Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q20. Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q21. Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014) directly on individuals within relevant bodies?

No Response

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

No Response

Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

No Response

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

No Response

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

No Response

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

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

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

No Response

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

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

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

No Response

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No Response

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q30. Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q31. Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q32. Question 4.1: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

No Response

Q33. Question 4.2: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

No Response

Q34. Question 4.3: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

No Response

Q35. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q36. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q37. Question 4.5: (b) Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

No Response

Q38. Question 4.6: (b) Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?

No Response

Q39. Question 4.7: (c) Publication of inspection reports: Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

No Response

Q40. Question 4.8: (d) Improvement notices and cancellation of registration – variation of registration as a service provider: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

No Response

Q41. Question 4.9: (d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

No Response

Q42. Question 4.10: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

No Response

Q43. Question 4.11: (d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration: Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

No Response

Q44. Question 4.12: (d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice: Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

No Response

Q45. Question 4.13: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

No Response

Q46. Question 4.14: (e) Responsible individuals – making representations: Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

No Response

Q47. Question 4.15: (e) Responsible individuals – sending the improvement notice to the service provider: Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

No Response

Q48. Question 4.16: (e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual: Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

No Response

Q49. Question 4.17: (f) Definition of 'Care' for children and young people: Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

No Response

Q50. Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

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

No Response

Q51. Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q52. Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q53. Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q54. Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once?

Please explain your reasoning.

No Response

Q55. Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances?

Please explain your reasoning.

No Response

Q56. Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months?

Please explain your reasoning.

No Response

Q57. Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate?

Please explain your reasoning.

No Response

Q58. Question 5.5: What, in your view, would make it necessary and appropriate for a 'fitness to practise' panel to revoke an interim order?

No Response

Q59. Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q60. Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q61. Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q62. Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q63. Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

No Response

Q64. Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q65. Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q66. Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

No Response

Q67. Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No Response

Submit your response

Q68. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name: Nicola Thomas

Organisation (if applicable): Polaris Community

E:mail: [REDACTED]

Telephone: -

Your address: [REDACTED]
[REDACTED]

Q69. If you want to receive a receipt of your response, please provide an email address.

Email address

[REDACTED]

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

Yes, however this will come at a cost to the children and young people who are looked after. There will be an increase in unregulated placements, this is an area that is already increasing at an alarming rate. Children and Young People will be at risk given the limited if not reduced access to specialist provision that can meet their needs. Local Authorities are choosing to place children and young people in private care, based on the quality of care and the positive outcomes.

If the above proposed legislation comes into place approximately 80% of provisions will be removed, resulting in a further shortage of specialised placements to meet the children and young person's needs. This will also result in job losses causing Wales to become high on the unemployed list.

There will be an increase in financial costs to the Welsh taxpayers - are they aware of these proposed changes and the affect it will have on them.

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

I am currently unable to see any benefits to the proposal.

The disbenefits are numerous:

1. Welsh children will be moved further away from their families and home as local authorities start looking to place children and young people in England and further afield in order to ensure a high level of care is provided. This can have a negative impact on the young person.
2. Welsh children will begin to lose their Welsh identity and will not access the Welsh language.
3. Higher number of Welsh Children and young people will be placed in unregulated placements - effects of this is that they will be of a high risk.
4. Given the current financial climate we are in - this is not a money saving proposal for the taxpayer, this proposal will require high level of funding which will be taken from the taxpayer's purse.
5. People will leave Wales in search of jobs within the sector - again a negative impact on the financial position of Wales
6. Specialised training of staff in order to provide high level of care will not be adopted by this proposed legislation. Having worked in both public and private care, I have experience and knowledge in this area.

There will be no savings in this proposal only additional costs. Properties will need to be purchased to ensure places for children and young people who are looked after. Where will this money come from? There will be an increase to local government of transport costs as children and young people are transported to have family visits. Increase in costs on overnight stays at hotels etc if staff need to remain close by. Increase in social worker etc travelling costs.

Q3. Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

The Welsh Government should not control how a private care home invests its money, nor should it control how they operate. If this was to occur then they would be effectively local authority run - given the closures of local authority run care homes over the years, this provides an idea of the poor care provided by local authority run homes.

The proposal of 'no-profit' eliminates the option of employee buy in - this option would result in less profit being made by the owner/s.

Companies currently based in Wales will simply move to England resulting in no money being invested into the Welsh economy.

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

There is currently no definition of 'not-for-profit' that identifies or highlights what type of provision is acceptable to the Welsh Government.

This is causing high levels of uncertainty amongst staff and providers.

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

Should the legislation come into effect, the timings have not been thought out and it is apparent that those deciding the timescales have not worked within the care sector at all or for a period of time. There will be no transition from what is currently in place and Welsh Government will effectively have to start from scratch in opening care homes. This is a timely process if completed correctly and if Welsh Government will want to put the child or young person's needs first.

In addition to purchasing, adapting and opening homes, Welsh Government will need to employ the required number of qualified and experienced staff, train new staff and register with CIW unless they are planning on opening unregulated placements. They will also have to look at each referral to ensure that the mix is correct for each home and each child or young person will need to be admitted over a period of time allowing each to settle into the home before another child or young person is admitted.

Welsh Government will need to ensure specialist training is provided to staff or access to professional bodies is available to meet the needs of the children and young people.

Welsh Government will also need to look at education for the children and young people placed with them as many of them will be unable to manage mainstream settings. A high number of current providers offer education on site with a qualified teacher.

The proposed timings have not been thought out correctly and is a clear indication that Welsh Government do not have the experience or expertise to effectively open care homes whereby the children and young people will be at the forefront of decisions made.

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

Should the proposal become legislation 80% of care homes will close resulting in a high number of children and young people losing their 'home'.

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

There are no views as this would be a requirement. It would be interesting to see what this guidance would be as Welsh Government appear to have a very poor understanding of the care home sector for children and young people.

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? - No, the number of children and young people who require placements far exceeds what is already currently available both in the private and public sector. Given the time Welsh Government will require to deliver the proposal children and young people will not be placed, therefore increasing the risk they are currently at.

What would be the benefits, disbenefits and other implications of such an approach?
Unregulated placements would increase further. More children and young people would not be placed in suitable homes.

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

I don't think such an approach would be feasible.

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

It is apparent that Welsh Government are unable or refusing to acknowledge the risks that this proposal would bring.

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

There will be an increase in children being placed further away from their home/family/friends.

Are Welsh children and organisations being penalised for living and operating in Wales as this appears to be a Welsh proposal only,

There will be an increase in unregulated placements.

Children and Young People will lose their Welsh identity being placed further away. Welsh language will not be offered and will be lost at a time when Welsh Government are trying to promote the Welsh Language and culture.

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Supporting current provisions in Wales and helping them to commit to Welsh being available.

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

As indicated throughout, I believe this proposal would increase the risk to children and young people, causing them significant harm. Referrals are increasing annually and to remove 80% of care homes would have a detrimental effect on the care and safety of these children and young people.

Where is the evidence to support the proposal other than Welsh Government opinion. What risk assessments have been completed to identify the proposal will be in the best interests of children and young people who have been placed into care.

Where is the evidence that taxpayers support this proposal with the information provided to them of the costs that this will incur to them?

Why are Wales being penalised when we are providing high levels of care - such a decision should be a UK decision and therefore taken to Government and not a proposal for Wales.

Why hasn't the Welsh Government sent out letters with proposals to all care staff in order that they can have their view on the proposal?

How will Welsh Government manage high levels of sickness or situations such as COVID - will they bring in staff from other departments to help run care homes. This is something Welsh Government / local authorities did during COVID where they moved staff from one department to another. This is something that would not work within the care sector.

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

No Response

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

No Response

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

No Response

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

No Response

Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q20. Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q21. Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

No Response

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

No Response

Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

No Response

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

No Response

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

No Response

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

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

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

No Response

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

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

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

No Response

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No Response

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q30. Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q31. Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q32. Question 4.1: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

No Response

Q33. Question 4.2: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

No Response

Q34. Question 4.3: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

No Response

Q35. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q36. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q37. Question 4.5: (b) Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

No Response

Q38. Question 4.6: (b) Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?

No Response

Q39. Question 4.7: (c) Publication of inspection reports: Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

No Response

Q40. Question 4.8: (d) Improvement notices and cancellation of registration – variation of registration as a service provider: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

No Response

Q41. Question 4.9: (d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

No Response

Q42. Question 4.10: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

No Response

Q43. Question 4.11: (d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration: Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

No Response

Q44. Question 4.12: (d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice: Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

No Response

Q45. Question 4.13: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

No Response

Q46. Question 4.14: (e) Responsible individuals – making representations: Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

No Response

Q47. Question 4.15: (e) Responsible individuals – sending the improvement notice to the service provider: Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

No Response

Q48. Question 4.16: (e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual: Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

No Response

Q49. Question 4.17: (f) Definition of 'Care' for children and young people: Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

No Response

Q50. Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

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

No Response

Q51. Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q52. Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q53. Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q54. Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once?

Please explain your reasoning.

No Response

Q55. Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances?

Please explain your reasoning.

No Response

Q56. Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months?

Please explain your reasoning.

No Response

Q57. Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate?

Please explain your reasoning.

No Response

Q58. Question 5.5: What, in your view, would make it necessary and appropriate for a 'fitness to practise' panel to revoke an interim order?

No Response

Q59. Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q60. Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q61. Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q62. Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q63. Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

No Response

Q64. Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q65. Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q66. Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

No Response

Q67. Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No Response

Submit your response

Q68. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name: Julie Brooks
Organisation (if applicable): Landsker Child Care
E:mail: [REDACTED]
Telephone: [REDACTED]
Your address: [REDACTED]

Q69. If you want to receive a receipt of your response, please provide an email address.

Email address

[REDACTED]

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

Not at all.

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Our young people are cared for in the most dignified, respectful way. With well trained staff who deliver good care with integrity and full commitment to the role. I fear if this was to happen the care system would slip back into poor practice from staff due to poorly funded local authorities care homes. who staff do not receive the appropriate training and knowledge to ensure they can safeguard the children whom reside in their homes.

Q3. Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

No Response

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

Ridiculous

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

Terrible

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

No

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

.

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

The government are looking for anyway possible to gain

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

No Response

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

My experience is that there is more opportunities for a consistent approach and support to the Welsh language

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

No Response

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

No Response

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

No Response

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

No Response

Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q20. Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q21. Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

No Response

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

No Response

Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

No Response

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

No Response

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

No Response

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

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

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

No Response

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

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

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

No Response

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No Response

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q30. Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q31. Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q32. Question 4.1: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

No Response

Q33. Question 4.2: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

No Response

Q34. Question 4.3: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

No Response

Q35. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q36. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q37. Question 4.5: (b) Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

No Response

Q38. Question 4.6: (b) Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?

No Response

Q39. Question 4.7: (c) Publication of inspection reports: Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

No Response

Q40. Question 4.8: (d) Improvement notices and cancellation of registration – variation of registration as a service provider: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

No Response

Q41. Question 4.9: (d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

No Response

Q42. Question 4.10: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

No Response

Q43. Question 4.11: (d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration: Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

No Response

Q44. Question 4.12: (d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice: Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

No Response

Q45. Question 4.13: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

No Response

Q46. Question 4.14: (e) Responsible individuals – making representations: Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

No Response

Q47. Question 4.15: (e) Responsible individuals – sending the improvement notice to the service provider: Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

No Response

Q48. Question 4.16: (e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual: Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

No Response

Q49. Question 4.17: (f) Definition of 'Care' for children and young people: Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

No Response

Q50. Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

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

No Response

Q51. Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q52. Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q53. Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q54. Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once?

Please explain your reasoning.

No Response

Q55. Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances?

Please explain your reasoning.

No Response

Q56. Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months?

Please explain your reasoning.

No Response

Q57. Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate?

Please explain your reasoning.

No Response

Q58. Question 5.5: What, in your view, would make it necessary and appropriate for a 'fitness to practise' panel to revoke an interim order?

No Response

Q59. Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q60. Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q61. Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q62. Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q63. Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

No Response

Q64. Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q65. Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q66. Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

No Response

Q67. Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No Response

Submit your response

Q68. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name: [REDACTED]

Organisation (if applicable): -

E:mail: [REDACTED]

Telephone: [REDACTED]

Your address: [REDACTED]

Q69. If you want to receive a receipt of your response, please provide an email address.

Email address

[REDACTED]

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

Keep my response anonymous

Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

No Response

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q3. Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

No Response

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

No Response

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

No Response

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

No Response

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

No Response

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

No Response

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

No Response

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

No Response

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

No Response

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

No Response

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

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Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

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Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q20. Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q21. Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

Agree in principle but I am concerned about 2 aspects:

- 1) the service is already seen as high legislation/responsibility but low pay industry to work in, so without altering this perception this change may further exacerbate the issues with recruitment and retention already existing in this industry
- 2) without proper oversight/training/resourcing risks the systems being overwhelmed with low-risk reports (potentially even no-risk reports due to people overreporting "just in case"), leading to high-risk reports being missed/responded to too late.

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

Agree in principle but I am concerned about 2 aspects:

- 1) the service is already seen as high legislation/responsibility but low pay industry to work in, so without altering this perception this change may further exacerbate the issues with recruitment and retention already existing in this industry
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Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

No Response

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

No Response

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

No Response

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

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

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No Response

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

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

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

If reporting duties are introduced they should apply to all occupation types and roles.

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No Response

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

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yes

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yes, but time frames must be reasonable

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Q35. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

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Q37. Question 4.5: (b) Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

no

Q38. Question 4.6: (b) Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?

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Q39. Question 4.7: (c) Publication of inspection reports: Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

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Q40. Question 4.8: (d) Improvement notices and cancellation of registration – variation of registration as a service provider: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

No Response

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No Response

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Q43. Question 4.11: (d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration: Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

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yes

Q47. Question 4.15: (e) Responsible individuals – sending the improvement notice to the service provider: Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

yes

Q48. Question 4.16: (e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual: Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

No Response

Q49. Question 4.17: (f) Definition of 'Care' for children and young people: Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

No Response

Q50. Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

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

4.5- if providers publish returns, rather than CIW, how will welsh ministers ensure the general public know how to access a specific service's return?

Q51. Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q52. Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q53. Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

4.5 if providers are to be responsible for publishing their own reports, how will this happen? On a provider's website? If so what if a provider does not have a website.

Q54. Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once?

Please explain your reasoning.

No Response

Q55. Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances?

Please explain your reasoning.

No Response

Q56. Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months?

Please explain your reasoning.

No Response

Q57. Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate?

Please explain your reasoning.

No Response

Q58. Question 5.5: What, in your view, would make it necessary and appropriate for a 'fitness to practise' panel to revoke an interim order?

No Response

Q59. Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q60. Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q61. Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q62. Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q63. Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

No Response

Q64. Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q65. Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q66. Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

No Response

Q67. Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No Response

Submit your response

Q68. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name: Richard Mascarenhas
Organisation (if applicable): The Old Vicarage Care Home
E:mail: [REDACTED]
Telephone: [REDACTED]
Your address: [REDACTED]

Q69. If you want to receive a receipt of your response, please provide an email address.

Email address

No Response

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

Consultation Response Form

Your name: Dr Aideen Naughton

Organisation (if applicable): Public Health Wales

Email/Telephone number:

[REDACTED]

Your address: PHW Capital Quarter, 2 Tyndall Street, Cardiff CF10 4BZ

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

☐

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

On behalf of Public Health Wales in relation to chapters one and three only.

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

[REDACTED]

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

There are 12 questions about this chapter.

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

The legislation clearly aligns with the motivation to drive profit-driven organisations away from a local authority's choice of options and gives a message to young people that they are not being used for financial gain. However, due to an ever growing increase in children entering care and their increasing level of need there is concern that this move may reduce the number of suitable available placements for children.

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

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

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

Please explain your reasoning.

The legislation will deliver a clear message to organisations and to the children and families local authorities' support, that profiting from children is not acceptable. If profit (estimated 20%) is removed, and then costs may be reduced – cost savings that can then be used to provide higher standards of care and other interventions to children in care. There will be a benefit if enough high-quality places can be created to meet the need within each Local Authority, thus keeping children closer to home. This will require additional initial funding and investment, adequate estates/properties, recruitment of a variety of practitioners to meet the wide ranging needs of children and training of all practitioners to maintain skills and competencies. There is a clear risk that 'for profit' providers will withdraw from Wales leaving a deficit in provision. Will not-for-profit providers seek other ways to make profit that will not be monitored or via loopholes? Is there a risk providers will register under a category that will not be covered by any changes? The legislation will put more responsibility onto

local authorities to provide care and support on the needs of the child/young person, which it might be unable to fulfil. If funding is reinvested into the public sector then this will improve local communities and enhance opportunities for all who work with children in care. The legislation will need to be clear and concise on the main objectives and how this will be delivered and evaluated.

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

Putting restrictions on trading surplus may limit spending on what the organisation assesses as being required to meet the needs of the children. Will this limit how we meet individual needs of children? Could a spending plan that is needs led be designed and agreed by regulators?

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

Yes, this would ensure the definition could be amended if needed to meet the objective.

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

This is ambitious and the consensus is that a longer period is required to achieve this successfully. Giving a longer period may allow some children currently placed in such settings to move on either by leaving care or transitioning to another provision in a more timely and effective manner ensuring their needs can be adequately met in the new provision. There is a risk that a cut-off point may result in emergency action being needed if this has not been managed appropriately in a shorter period.

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

There may be cases where for-profit providers choose to operate up until the deadline and then close or relocate outside of Wales. In reality, we are generally talking about children's homes here, for some children where they have lived for many years and where the care provided meets all their needs. Any change may cause considerable disruption to some children if their home decides not to become not for profit. Some of the children live in homes that provide highly

specialised care by a multidisciplinary team; we need assurance that these types of home remain available. Homes may look to offer different types of environments to manage costs; this may decrease the specialist homes available. There is already a shortage of specialised placements, which needs to be increased not decreased. Currently difficulties lie within the transition of children due to delays in the notification process and health receiving information in a timely manner. A high turnover of social workers, a deficit in suitable placements, a lack of foster carers, residential placements and therapeutic carers coupled with a rise in complex needs of children impacts this transition process even further.

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

National Guidance will be helpful to support consistency across Wales. However this will only work if all areas apply the guidance in the same way.

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

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?
- What would be the benefits, disbenefits and other implications of such an approach?
- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

In principle, it is a welcome concept but is dependent on the availability of suitable placements within the not-for-profit groups. There are children placed in specialist placements outside of Wales because the provision is not available in Wales or where such provision exists, the setting has no vacancies due to demand outstripping available placements. Is there a risk that children will be placed in a placement led by not for profit/what is available in Wales rather than need? There will always be a small number of children with exceptional needs that only a fraction of providers can meet. However, positives would be that all placements will be monitored and regulated with a clear vision for care and future intentions. It is likely to require at least 2-3 years for this to be safely implemented within Wales.

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

Companies may register their company in England and have holiday accommodation in Wales which they will use on a more permanent basis. This process would enhance transparency within settings and the process of securing suitable placements for children, will implement clear contracts re provision and full comprehensive monitoring and one would hope that these activities will be included in the information contained in inspection reports and available to social workers seeking placements. Does there need to be clearly defined multi agency involvement when a new home is looking to register in Wales?

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

If placements are available in local areas this may naturally see children placed in communities where Welsh is spoken. Placing children near their home/family community has long been the intention of legislation and guidance. In my experience care providers recruit from a wide area including from across Welsh borders, with staff travelling to work over a 3-4 day period, therefore spoken Welsh may low, even in more Welsh speaking areas. This has no link to profit.

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

Investment in local recruitment, training, pay and retention may encourage welsh speakers and or provide opportunity for staff to learn welsh. Companies regulated with CIW may have to evidence all comms/forms/literature are available in the medium of welsh.

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

Profit is not always directly attributable to the level of care; we should always be assured that care standards are integral to registration not their accounting. Is there a risk we will see stable homes where a high standards of care being provided become unviable and close leaving a significant gap?

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

There are 8 questions about this chapter.

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

Public Health Wales is not well placed to comment on this section

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

You may wish to consider, for example:

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

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

Please explain your reasoning.

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

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

There are 11 questions about this chapter.

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

On balance, we disagree with mandatory reporting being extended directly onto to certain individuals, as there is already a strong mandate through the statutory duty to report via the SSWA 2014.

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

On balance, we disagree with mandatory reporting being extended directly onto to certain individuals, as there is already a strong mandate through the statutory duty to report via the SSWA 2014.

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

Please explain your reasoning.

The evidence that mandatory reporting (as proposed in the consultation) leads to improved outcomes for children is mixed. At a time when resources are very limited in the statutory investigating agency, the evidence suggests that this places an increased burden on already strained services. There is a risk that it would divert time on current cases of children at risk to assessing new referrals. It would be expected to cause a similar increase in report on adults at risk if mandated as well. This would inevitably include cases that would currently not meet the current threshold for referral due to the fear of sanctions upon professionals. Diverting resources to assessing referrals make it even less likely that there will be sufficient available resources to meet the needs of children or adults at risk.

The Covid pandemic and the current 'cost of living' crisis have added to the problems faced by health and social care. However the strain on services and the increasing workload and staffing difficulties pre-date both of these issues and have been long term challenges for a significant period of time with no identified path to alleviate these concerns regarding the burden this could put on already

strained services.

Concerns over legal sanctions where people do not report may have an impact on recruitment for services e.g., health and social care where recruitment and retention are already significant issues. This is a potential issue for recruiting volunteers to third sector services and recreational/sporting organisations.

The proposed legislation will mandate reporting of certain types of abuse as they meet a certain threshold. However, other types of harm, which are more difficult to evidence but arguably, have greater long-term impact such as psychological/emotional harm may be outside a mandated reportable concern.

There is a risk that professionals may become confused about their current duty and responsibility to recognise and respond to abuse and neglect.

Implementation of a mandatory reporting duty may also result in less consideration of the most appropriate stage for referrals, leading to a 'tick box' approach. It may deter practitioners from working effectively with children and adults at risk, potentially engendering an attitude that once the report has been made they have discharged their responsibilities. There is a risk that it may discourage victims from seeking counselling. It may dissuade adults at risk from disclosing incidents for fear of being forced into residential care or hostile legal proceedings.

It introduces an ethical dilemma for practitioners: mandated duty to report and requirements to respect and ensure patient confidentiality and wellbeing. There is an acknowledged impact on relationships between professionals and adults at risk. The adult's right to self-determination may get lost in the middle of the decision-making. The autonomy and individual rights of children will also be impacted.

Mandatory reporting offers a clear societal message that abuse will not be tolerated. This is a clear message in the recently published report of the Independent Inquiry into Child Sexual Abuse (IICSA). However, the current legislation makes this very clear already. Another argument in its favour is that it protects the Whistle-blower in institutional abuse.

Introduction of mandatory reporting on individuals is supported often more by the legal profession and police forces as a preventative strategy through helping to identify perpetrators and stop instances of abuse. This is put forward as an economic and social justice argument. This is contrasted with a public health approach to prevention with further investment in resources and public education (as is already being progressed in Wales).

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

The definition of who is to be the focus of the intervention is critical. The literature points to problems in defining issues of risk for adults; too broad a definition can result in over reporting and limited resources focussed on investigation, rather than on intervening and supporting significant cases of concern. Key concepts identified are those of protection, empowerment and proportionality. These are key components of the legislation in Wales already. A person centred approach needs to balance protection with the individuals rights.

Regarding the experience of Ireland where mandatory reporting of children at risk was introduced for specific roles and professions, an early review suggested that there was a need for a more nuanced approach. It recognised that there was no allowance for professional judgement and that this has had an impact on the child victim's autonomy and a real lack of respect for the individual child's rights.

The consultation seems to be seeking views on proposals that will introduce a hybrid model into the current framework of reporting, which is already more formal than those frameworks that exist in the other three home nations of the UK. In some of these, so called, hybrid models they include certain types of mandatory reporting which depend on the perceived harm to adults or surround issues of capacity. This may have advantages, as it tends to limit the duty imposed on designated persons to their organisational or institutional context. The literature suggests that it can enable targeting of early intervention measures such as flagging of high numbers of reportable incidents or where multiple referrals regarding client to client incidents relate to an individual client.

There are however a number of disadvantages too. Often interventions are targeted at those viewed to lack capacity; such approaches can be considered discriminatory and exclusionary when supported decision-making processes are absent.

Overall, there is a paucity of literature that reports on the impact of mandatory reporting on improving long-term outcomes for children or adults at risk.. There does not seem to have been much new evidence to demonstrate the benefit of this approach since the UK government "Reporting and acting on child abuse and neglect: Summary of consultation responses and Government action" in 2018. They concluded that the consultation had not demonstrated conclusively that the introduction of a mandatory reporting duty or a duty to act improves outcomes for children and stated that evidence suggested issues around information sharing, professional practice and decision making are more likely to be at the crux of incidents where children do not receive the protection they need. They also go into detail on risks associated with mandatory reporting.

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

We do not agree with extending the duty to individuals.

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

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

We do not agree with extending the duty to individuals. Existing reporting duties could be extended as suggested more widely.

What are your views on this in respect of adults?

We do not agree with extending the duty to individuals. Existing reporting duties could be extended as suggested more widely.

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

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

We do not agree with extending the duty to individuals. Existing reporting duties could be extended as suggested more widely.

If it were introduced all occupations and roles covered by the legislation would need to be specified.

An alternative is to limit mandatory reporting to the 'responsible bodies' (such as the Chief Executive Officer or equivalent) for public sector agencies, independent institutions, secure accommodation, religious organisations, sports bodies. If an investigation determined subsequently that such a responsible body was aware of a safeguarding concern involving an employee or volunteer but failed to make a duty to report in line with the Wales Safeguarding Procedures, then the CEO or equivalent should be liable. This would address the main concerns of 'cover up' highlighted in the recent final report of IICSA.

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

We do not agree with extending the duty to individuals. Existing reporting duties could be extended as suggested more widely.

If it were introduced all occupations and roles covered by the legislation would need to be specified.

An alternative option is to limit mandatory reporting to the 'responsible bodies' (such as the Chief Executive Officer or equivalent) for public sector agencies, independent institutions, secure accommodation, religious organisations, sports bodies. If an investigation determined subsequently that such a responsible body was aware of a safeguarding concern involving an employee or volunteer but failed to make a duty to report in line with the Wales Safeguarding Procedures, then the CEO or equivalent should be liable. This would address the main concerns of 'cover up' highlighted in the recent final report of IICSA.

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

As we do not agree with the mandatory individual reporting duties we do not agree with sanctions.

Sanctions against individuals would need to be able to effectively differentiate between those who choose not to report and those who otherwise fail to report concerns about child abuse and neglect. Sanctions would lower the threshold for practitioners choosing to report a concern and lead to the issues already stated earlier in this response. Current relevant partners can use existing organisational and professional regulatory processes.

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

We can see no impact from this measure on the Welsh language.

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

language and on treating the Welsh language no less favourably than the English language.

We do not agree with the proposal to introduce individual reporting duties.

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

The introduction of mandatory reporting may offer professionals increased powers to prevent and reduce the abuse of children and adults, but this could also have a detrimental effect on the dynamic of relationships within families, and between families and professionals (especially for doctors, nurses, AHPs, teachers and therapists). Is lack of reporting the main problem in Wales? This question should be addressed first and the new Wales Repository (part of the Single Unified Safeguarding Review) should be employed to this end.

While Mandatory reporting and legislation can offer a very public appearance of doing something about a problem, its effectiveness will depend on the provision of adequate funding for proper support services and programmes in the community. Ultimately, the success of any legal approach rests with professional judgment, knowledge and skills of practitioners in balancing autonomy with protection. In Wales, we are continuing to work hard to put in place mechanisms to listen and act on the views of children and adults who are at risk of having their human rights violated. These mechanisms, which include independent advocacy, should be strengthened and properly resourced.

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

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

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

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

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

There are 21 questions about this chapter.

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

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

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

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

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

There are 9 questions about this chapter.

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

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

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

Please explain your reasoning.

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

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

There are 5 questions about this chapter.

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

Please explain your reasoning.

Public Health Wales is not well placed to comment on this section

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

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

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

Please explain your reasoning.

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Public Health Wales is not well placed to comment on this section

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

Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

No Response

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q3. Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

No Response

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

No Response

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

No Response

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

No Response

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

No Response

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

No Response

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

No Response

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

We at the Motor Neurone Disease Association welcome the proposal of introducing direct payments for continuing health care in Wales.

Motor Neurone Disease (MND) is a fatal, rapidly progressing disease that affects the brain and spinal cord. It kills a third of people within a year and more than 50% within two years of diagnosis. MND leaves people locked in a failing body, unable to move, talk and eventually breathe. Six people a day die from MND in the UK. There is no cure.

Due to the complex and rapidly progressing nature of MND, the needs of those living with MND are continually changing, which means that need specialist care. Due to the complexity of the condition and associated care needs, people living with MND frequently have difficulty accessing the care they need. Direct payments have the potential to allow those living with MND to source their own specialist care providers who will be able to deal with their complex needs.

To enable this, direct payments must be set at a level that allows people living with complex conditions such as MND to source specialist care that meets their needs. Generic care provision is inadequate for many people living with MND, who require care staff with specialist expertise, with sufficient training and expertise to support people living with severe, complex and rapidly progressive disability.

Many people living with MND make use of vital equipment at home to maintain life, health and wellbeing, including artificial respiration, communications equipment and mobility equipment. Care staff must have the necessary expertise to work with this equipment and support those who use it. This type of specialist care invariably comes at a higher cost than generic care packages and direct payments must be set at a level which reflects this need. Failure to do so has the potential to put the health, wellbeing and indeed the lives of people living with MND at risk.

In addition, the provision of direct payments must be accompanied by a workforce strategy to ensure that the required specialist care is available in all areas across the country. Direct payments will be of no benefit in areas where care staff with the required skills and training are simply not available.

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

We believe that the introduction of direct payments could result in cost saving as sourcing private care may be less costly than social care provision. As no two cases of MND are the same, we believe that direct payments could enable people to source and receive the care that is specific to them while enabling them to live with a degree of independence and dignity. Direct payments would allow for a more personalised care package that would meet the specific needs of the individual. As those living with MND would be able to make their own arrangements, this could result in faster access to a care package.

Direct payments could result in those who are living with MND receiving care based on current needs at pace, as care needs are impacted and change regularly by the degenerative nature of the disease. We believe that the introduction of direct payments could result in those living with MND maintaining their independence and there could be a greater match of needs and deliverables.

However, as above, the potential of direct payments to support better access to care will only be realised if payments are set at an adequate level, enabling access to specialist care provision for those who require it, and if they are accompanied by a workforce strategy to address gaps in access to specialist care workers across the country.

In addition, it must be recognised that people living with MND and other complex conditions are dealing with profound impacts on their physical and mental health and wellbeing. They must be provided with adequate support, advice and guidance to enable them to make effective use of direct payments. Those who do not wish to use direct payments must continue to have the option to have their care arranged on their behalf.

We are concerned about the transition to new arrangements as this could result in gaps in care provision. For someone who is living with MND and who has complex and rapidly changing needs, it is vital that there is no gap in care provision during the transitional period.

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

No Response

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

No Response

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

No Response

Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

We believe that introducing direct payments for continuing NHS health care would allow the flexibility for those who need care to source carers who are Welsh speaking if that is the individual's language preference. This would allow for a more person-centric approach to individuals care needs.

This could also result in the Welsh language being spoken in more settings and may result in the increased uptake of Welsh being spoken throughout Wales.

Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Same as above.

Q20. Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

We understand that people living with MND, due to their complex needs, have struggled to have their CHC package fulfilled due to the lack of carers available to deal with their complex care needs.

MND is a rapidly progressing disease and as a result their needs change frequently. The introduction of direct payments would allow those living with the disease to make changes to their care provision sooner, as long as staff with the required expertise are available in their local area. There is a clear need for a workforce strategy to address existing deficiencies in access to skilled care across the country.

Q21. Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

No Response

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

No Response

Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

No Response

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

No Response

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

No Response

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

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

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

No Response

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

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

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

No Response

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No Response

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q30. Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q31. Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q32. Question 4.1: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

No Response

Q33. Question 4.2: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

No Response

Q34. Question 4.3: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

No Response

Q35. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q36. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q37. Question 4.5: (b) Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

No Response

Q38. Question 4.6: (b) Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?

No Response

Q39. Question 4.7: (c) Publication of inspection reports: Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

No Response

Q40. Question 4.8: (d) Improvement notices and cancellation of registration – variation of registration as a service provider: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

No Response

Q41. Question 4.9: (d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

No Response

Q42. Question 4.10: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

No Response

Q43. Question 4.11: (d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration: Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

No Response

Q44. Question 4.12: (d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice: Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

No Response

Q45. Question 4.13: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

No Response

Q46. Question 4.14: (e) Responsible individuals – making representations: Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

No Response

Q47. Question 4.15: (e) Responsible individuals – sending the improvement notice to the service provider: Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

No Response

Q48. Question 4.16: (e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual: Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

No Response

Q49. Question 4.17: (f) Definition of 'Care' for children and young people: Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

No Response

Q50. Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

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

No Response

Q51. Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q52. Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q53. Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q54. Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once?

Please explain your reasoning.

No Response

Q55. Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances?

Please explain your reasoning.

No Response

Q56. Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months?

Please explain your reasoning.

No Response

Q57. Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate?

Please explain your reasoning.

No Response

Q58. Question 5.5: What, in your view, would make it necessary and appropriate for a 'fitness to practise' panel to revoke an interim order?

No Response

Q59. Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q60. Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q61. Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q62. Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q63. Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

No Response

Q64. Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q65. Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q66. Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

No Response

Q67. Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No Response

Submit your response

Q68. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name: Millie Jenkins
Organisation (if applicable): Motor Neurone Disease Association
E:mail: [REDACTED]
Telephone: [REDACTED]
Your address: [REDACTED]

Q69. If you want to receive a receipt of your response, please provide an email address.

Email address

[REDACTED]

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

No Response

Proposed changes to legislation on social care and continuing health care

Q1. Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

No, it will only increase unregulated not for profit use. Since the announcement of the Government commitment to eliminate profit there has been a significant increase in Local Authority use of unregulated placements due to current providers not expanding services to meet the desperate needs of Local Authorities. By restricting registration to NFP provision only, the opportunities for unregulated provision are increased significantly.

Q2. Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Young People are being placed at significant risk to fulfil a badly thought-out manifesto pledge. 'Eliminating profit' makes a great headline, but the impact of delivering such a promise is that Wales's most vulnerable Young People will lose the safety of highly regulated placements. Local Authorities have neither the funding or desire to run their own provision. Without significant investment in the sector, it is an absolute impossibility to achieve the manifesto pledge. The costs involved for Local Authorities to attempt such a plan will mean significant increases in Council Tax at a time when savings need to be a priority. Legally, no consideration has been given to cross-border issues, such as Welsh placements in England and English placements in Wales. There has been NO guidance in terms of how this will be managed. The effect on provision is ALREADY HAPPENING. Care providers are already stopping expansion and moving current provision into England or reregistering as adult services unaffected by the proposal. Wales has always struggled with provision. if the (as yet undefined) 'profit' in the sector is so high as to warrant political statement, why is the market not flooded with providers? The truth is, profit making providers in Wales are making little more than a standard salary, providing employment for local workers, investing in local areas and most importantly, delivering strong outcomes for Young People.

Q3. Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify.

Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended?

What would be the effects and implications of this?

A profit 'cap' would be a solid starting point for negotiation with providers. Whether 'per bed' or as a percentage of overall bottom line profit, this could potentially see higher reinvestment. A focus on providers making (and removing by way of dividends) higher than average profit would be a much more sensible approach. Limiting the types of organisations that would qualify for registration will only restrict the care and support that good providers can offer to vulnerable Young People.

Q4. Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

Yes, in the slight hope Welsh Ministers may see this as being a completely unacceptable approach to the provision of care given to Young People.

Q5. Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

Genuinely at this stage, a decision needs to be made sooner rather than later. Either this is going ahead and providers can move onto registration in England, or it is dropped and providers can start reinvestment in Wales.

Q6. Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

Local authorities are not equipped with the expertise to take over 'for profit' provision. 'For profit' business owners have offered assistance to local authorities in opening and running their own homes but are met with looks of abject horror that consideration is being given to them opening and operating services.

Local authorities are fighting a losing battle in terms of currently placing children in good quality regulated provision and know that they will fail children if care is left to them or to NFP organisations.

Q7. Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

Firstly, the Government needs to establish what they are hoping to achieve. If it's a headline 'we eliminated profit', that can happen. But when the question 'but at what cost' appears, Ministers will need to distance themselves from responding. Children will be failed.

Q8. Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only?

In particular: Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? What would be the benefits, disbenefits and other implications of such an approach? What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales? Potentially, but the outcome will be criminal charges against Local Authorities not able to meet the restriction. It will not be possible for Local Authorities to meet this.

What would be the benefits, disbenefits and other implications of such an approach? Local Authorities will eventually be forced to speak out against the legislation and damage the reputation of the Welsh Assembly.

What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales? Once there are sufficient vacancies among Local Authority and NFP homes.

Q9. Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales?

Are there any actions which would guard against such activity?

It is not a possibility; it will absolutely happen. As the proposed legislation is not legal, this will be challenged.

Are there any actions which would guard against such activity? Sit around the table with For Profit providers and establish common ground. Bring in a team of advisors that will engage in meaningful discussion and agree to put Looked After Children first.

Q10. Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

None. The Welsh language offer is already a condition of registration so there is no impact either way.

Q11. Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

The only route to increasing the use of Welsh language would be to consider holding or working towards a qualification as a condition of employment.

Q12. Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

I am concerned that the focus is driving away the responsibility of care of vulnerable children from people financially invested in positive outcomes and towards 9-5 workers with no financial burden. Currently, for profit providers can lose substantial investment through negative outcomes. Local Authority employees are not answerable in the same way and can move from role to role without fear of financial impact.

Q13. Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales.

Do you agree or disagree with these proposals?

Please explain your reasoning.

No Response

Q14. Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical matters such as cross-border issues or transition to the new arrangements Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q15. Question 2.3: What lessons can we learn from other countries' practice in this area?

No Response

Q16. Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect?

If so, please outline below.

No Response

Q17. Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate.

Can you identify anything that it would be helpful to include in this guidance?

What other support should be provided?

No Response

Q18. Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q19. Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q20. Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q21. Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

No Response

Q22. Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126 (1) of the 2014 Act) directly on individuals within relevant bodies?

No Response

Q23. Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

No Response

Q24. Question 3.4: What lessons can we learn from the duties to report in other countries?

No Response

Q25. Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

No Response

Q26. Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

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

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

No Response

Q27. Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

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

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

No Response

Q28. Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

No Response

Q29. Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q30. Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q31. Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q32. Question 4.1: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

No Response

Q33. Question 4.2: (a) Identifying unregistered services - power to obtain information: Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

No Response

Q34. Question 4.3: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

No Response

Q35. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q36. Question 4.4: (a) Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

No Response

Q37. Question 4.5: (b) Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

No Response

Q38. Question 4.6: (b) Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?

No Response

Q39. Question 4.7: (c) Publication of inspection reports: Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

No Response

Q40. Question 4.8: (d) Improvement notices and cancellation of registration – variation of registration as a service provider: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

No Response

Q41. Question 4.9: (d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

No Response

Q42. Question 4.10: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

No Response

Q43. Question 4.11: (d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration: Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

No Response

Q44. Question 4.12: (d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice: Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

No Response

Q45. Question 4.13: (d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

No Response

Q46. Question 4.14: (e) Responsible individuals – making representations: Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

No Response

Q47. Question 4.15: (e) Responsible individuals – sending the improvement notice to the service provider: Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

No Response

Q48. Question 4.16: (e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual: Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

No Response

Q49. Question 4.17: (f) Definition of 'Care' for children and young people: Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

No Response

Q50. Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

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

No Response

Q51. Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q52. Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q53. Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q54. Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once?

Please explain your reasoning.

No Response

Q55. Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances?

Please explain your reasoning.

No Response

Q56. Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months?

Please explain your reasoning.

No Response

Q57. Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate?

Please explain your reasoning.

No Response

Q58. Question 5.5: What, in your view, would make it necessary and appropriate for a 'fitness to practise' panel to revoke an interim order?

No Response

Q59. Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q60. Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q61. Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

No Response

Q62. Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

No Response

Q63. Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

No Response

Q64. Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example: Benefits, and disbenefits Costs (direct and indirect), and savings Impacts upon individuals and groups with protected characteristics Other practical issues Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

No Response

Q65. Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be?

How could positive effects be increased, or negative effects be mitigated?

No Response

Q66. Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language

No Response

Q67. Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

No Response

Submit your response

Q68. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

Name:

[REDACTED]

Organisation (if applicable):

[REDACTED]

E:mail:

[REDACTED]

Telephone:

[REDACTED]

Your address:

[REDACTED]

Q69. If you want to receive a receipt of your response, please provide an email address.

Email address

No Response

Q70. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

Keep my response anonymous

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

Consultation Response Form

Organisation (if applicable): **Powys Teaching Health Board**

Email / Telephone number: [REDACTED]

Your address: **Bronllys Hospital, Bronllys, Brecon LD30LU**

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

☒

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

Response on behalf of Powys Teaching Health Board

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

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

There are 12 questions about this chapter.

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

PTHB response - Ethically this is the right thing to do, however there are risks associated with service supply. Those risks should be taken by Welsh Government to effect positive change over time.

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

- Benefits, and disbenefits;

PTHB response – The benefits are that it will eliminate those from the system who see the care of children as a commodity and support those organisations who would seek to invest profits back into the services offered to make continuous improvements and better outcomes for children and young people.

PTHB response - The disbenefits are to consider will this create a shortage of providers in an interim period of structural change in an already challenging system? Contingencies would need to be in place. Children will still need to be *looked after*, where do they live when demand outstrips provision?

- Costs (direct and indirect), and savings;

PTHB response - In theory this should produce cost benefits and quality improvements. It should help to control the market and it should help stability for children. In terms of savings for Local Authorities, it may enable reinvestment in preventative services and continued drivers towards alternatives to care. Families need substantial and tangible support. The reinstatement of social care run nurseries with extended opening hours for example, will reduce risk and support families where neglect is an issue in two ways. Firstly, by supporting the under-school-age children in a healthy learning and developmental environment. Secondly by engaging with parents in a more constructive and practical way.

- Impacts upon individuals and groups with protected characteristics;

PTHB response - None noted

- Other practical matters such as cross-border issues.

PTHB response - This is a potential area of difficulty where Welsh children are looked after in England if there are different rules.

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

Please explain your reasoning.

PTHB response – Positive effects could be increased through societal and community awareness raising and support to potential not for profit organisations who want to do this critical work. Support them rather than make it so hard that it becomes counter-productive. Be realistic about the standards. There is learning for CIW here too.

PTHB response - Negative point, this will require investment, the change period will not be without cost.

Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

PTHB response - Yes, there would need to be evidence such reinvestment in a planned way. Services need to pay their staff to recruit good quality personnel, but instead of shareholders having the bonus of brand-new high-end cars, those year-end profits need to be put back into quality improvements around Workforce and Estates as well as other areas that require dynamic growth. Care must be taken to close any potential loopholes.

Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?

PTHB response - Yes, as long as this is clear and straight forward

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

PTHB response - This is major change and will need significant time, 3 to 5 years most likely if the new system is to be ready.

Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

PTHB response - The law pertaining to profit, economic and quality systems of the care sector should be the same for adults.

Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

PTHB response - Care should be taken in any such change, but the system must change.

Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only? In particular:

PTHB response - Care should be taken in any such change, but the system must change. I think this is a question for local authorities to answer. Any restrictions have the potential for impacting on local authorities being in a position of not being able to meet their statutory obligations.

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?

PTHB response – whilst it would be our desire that legislation wasn't necessary, for an all-Wales consistent approach, it probably is.

- What would be the benefits, disbenefits and other implications of such an approach?

PTHB response – these have already been stated

- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

PTHB response – this has already been stated

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

PTHB response – this questions is not clear, approaches to proposals from whom?

Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

PTHB response - Care needs to be taken to represent the language needs of all children who are looked after. Legislating for Welsh language provision may eliminate otherwise good providers. Agree with the promotion of the Welsh language with providers, but it should be one of a number of legislative components.

Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

PTHB response - as previous question

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

PTHB response - There remain concerns that the market may be severely limited if placing a further restriction on local authorities to commission care placements for children and young people from not-for-profit organisations only. The significant issue is the funding of children's social care and how will this be adequately resourced to ensure that non for profit organisations can enter and sustain in the market and that commissioners are adequately resourced to meet the demand.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

PTHB response – Agree with the proposals. With the focus on patient voice and control, there are some concerns though around the expectations of families and the capacity of Health Boards.

Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;

PTHB response - Enabling patients to have some control over who and how their care is delivered is critical. It will provide flexibility and choice. It can support continuity in care provision where a person in receipt of DP's from the local authority becomes eligible for CHC. Take the burden off existing service providers and open the market to the wider sector.

- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues or transition to the new arrangements.

PTHB response - This may impact on the differing governance systems with different regulatory bodies across borders.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

PTHB response - There are no negative effects, but health boards have no experience of managing this support type and would require training in the administration of Direct Payments. The possibility of a shared arrangement with local authority would be a positive approach. Whichever approach is implemented, there is a requirement for

resource investment. Health Boards would need the resources to create the infrastructure for the safe and effective administration of a new system.

Question 2.3: What lessons can we learn from other countries' practice in this area?

PTHB response - It would be worth communication with England regarding any learning from the system of Individual /Personal Health Budgets.

Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

PTHB response - Could there be an All Wales approach to this to manage? This could provide consistency.

Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

PTHB response - Case examples are always helpful for practitioners, flow charts for process and awareness raising and training. (Designed and delivered by a central provider).

Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

PTHB response - This could only be positive in that there may be improved options for patients in who they choose to provide their health needs.

Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

PTHB response - As already stated

Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

PTHB response - There are a number of concerns:

Access to Direct Payments for those in receipt of CHC is critical for the reasons already stated. We would reiterate the need for national investment to ensure consistent delivery and overarching governance. Equally, enabling all health boards in Wales to have the resources to deliver DPs to their patients effectively.

Risks relating to delegation of accountability, where Registrants are needing to support delegation of tasks to unregistered carers. This could have a capacity issue for teams, including the need to maintain competence and assurance.

The limitations of reliance on unregistered carers (where Direct payments do not make such requirements).

The need for clarity over organisational accountability, where CEOs of Health Boards remain accountable for the CHC function, and how this might impact them.

The absence of an eligibility test for suitability of the individual to handle and manage direct payments, unlike that which occurs in England.

The increased capacity needed to manage the additional burden of brokerage and case management.

The principle may be suitable for longer term and chronic health cases, but less easily adopted for fast track and urgent care cases, due to the complexity of the process.

Some clarity is needed to understand the financial risks for this within the Health Board.

Any move towards this would need recognition of time for adoption of new processes.

Questions on Chapter 3: Mandatory reporting of children and adults at risk

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

In principle, this proposal has clear benefits and emphasises individual's responsibilities and expectation on them as professionals. This may also prevent third party reporting.

Raises the profile and reinforces responsibilities.

The health board already expects and supports staff to raise reports

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

This proposal has clear benefits and emphasises individual's responsibilities and expectation on them as professionals.

Raises the profile and reinforces responsibilities.

The health board already expects and supports staff to raise reports

Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

Increased accountability for individuals who provide care and services

Prevent third party reporting.

May promote safeguarding as part of the wider analysis of a persons/family/child's circumstances

Safeguarding often involves building a picture of the concern, working with people and families in the first instance to encourage them to be involved in identifying their strengths and areas for improvement, this can take time and building relationships is essential. Reports should not be delayed, however while practitioners work with families safeguarding concerns may take time to evidence – what will happen in these instances where professional judgement has been applied

There are benefits in those circumstances where practitioners deliberately choose not to report or cover up/turn a blind eye to concerns and do nothing to protect children/vulnerable adults from abuse/neglect – however could this be covered by other pieces of legislation that already exist - part 5 of the Wales Safeguarding Procedures

What constitutes delay/ not reporting?

Could we move back to a blame culture? Safeguarding reviews and incidents focus/reflect on practice improvement and learning lessons not putting sanctions on individuals

LA could see a significant increase in reports as practitioners fear the consequences of not reporting, this may result in inappropriate reports which in turn takes away from those that require a timely response

We promote safeguarding is everyone's responsibility yet bringing this duty to registrants may give a different message

Will registrants overseeing/delegating tasks be responsible for staff not covered under the duty

Significant changes would need to be made to national/regional and local training packages which would require additional resources

Could this deter people coming into a role where you could be prosecuted

Will the duty equally apply to adults and children?

Question 3.4: What lessons can we learn from the duties to report in other countries?

The consultation acknowledges that the impact for children is mixed in other countries. More analysis of both positive and negative impacts is required

There is no reference to adults, does this mean the duty does not exist in adults anywhere else?

Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

If introduced, the recommendation would be for it to sit alongside existing duties to report that are already placed on organisations

Would not want to dilute in any way an organisations responsibility to report and ensure their staff have the relevant knowledge and skills and safeguarding supervision to undertake their role.

Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

If implemented it is vital that this covers all aspects, thus preventing ambiguity and provide a clear message. The IICSA report has provided evidence of the need to apply this duty to those in religious and sports settings. There could however be a negative impact in that staff may not be willing to undertake roles in organisations, due to the added statutory responsibility.

(b) What are your views on this in respect of adults?

It should be as equally applicable to children and adults.

We must consider some adults may not be adults as risk

Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

(a) What are your views on this in respect of children (under the age of 18)?

If implemented it is vital that this covers all aspects, thus preventing ambiguity

(b) What are your views on this in respect of adults?

Apply the same duties to children and adults at risk – should apply to any group that has some form of formal group status, either in terms of a regulatory role or person facing, or anyone in receipt of payment to deliver care and support.

Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

We note the IICSA report suggest prosecution, I am unclear what this may look like, who will monitor this.

Organisations should have disciplinary processes in place and apply them consistently

Could we strengthen what is already in place;

PART 5 – Managing Allegations against those in a Position of Trust which already exists and must be used appropriately and consistently across organisations

Need more consistency in reporting to professional bodies/DBS

Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

It is essential that reporting mechanisms are bilingual, and that children and adults can speak to professionals in their preferred language.

Training material and campaigns would need to be available in Welsh

Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

See Q 3.9

Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

The IICSA report is in response to historical child sexual abuse, there has been legislative changes to put a duty to report on organizations since the review was commissioned.

Placing a duty of individuals will apply to all types of abuse?

Practitioners currently are responsible for ensuring a report they submit is received by the LA and they agree with the outcome/actions. Will sanctions apply to reports where no further Action was taken and this is deemed later to be an inappropriate response, who will be responsible in this instance.

Reporting is one aspect to keeping people safe/raising concerns, other aspects include the action taken following the report

Consultation Response Form

Your name: Karen Jones and Stephen Vickers

Organisation (if applicable): SOLACE Wales

Email / Telephone number: chief.executive@npt.gov.uk

Your address: Civic Centre, Port Talbot, SA13 1PJ

Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

☐

Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation?

This response is submitted on behalf of SOLACE Wales

If you want to receive a receipt of your response, please confirm your email address, here:

Chief.executive@npt.gov.uk

Questions on Chapter 1: Eliminating profit from the care of children looked after

There are 12 questions about this chapter.

Question 1.: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

SOLACE Wales agrees that the public money invested into the care of children looked after should benefit those who need care and support and that these services should not be primarily delivered for profit motives.

In planning to rebalance the model of care and support, SOLACE Wales urges the Welsh Government to plan transition from the current model to an alternative model carefully so as to avoid unintended negative consequences. The needs of children and young people currently looked after in 'for profit' placements and those who might need such placements until sufficient 'not for profit' alternative are available needs to be paramount.

SOLACE Wales welcomes action to better control the development of care provision. Care homes are often developed in places where property prices are relatively modest and where quality employment is in short supply. This can have the effect of importing children and young people from other areas placing additional burdens on the safeguarding authority, other public services and other agencies. It is unclear if the requirement to register with CIW would enable such control to be exercised, what CIW would base its decisions on and how it would be enforced in practice. We would seek more local control over developments within a local authority area, possibly through the planning system, to control development so it meets assessed needs.

Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Benefits might include:

- Funds reinvested into more/better services to meet the needs of children looked after;
- Increased potential to reinvest funds in earlier intervention & preventative support & services;
- Improved alignment of supply and local need;

Reduced costs for safeguarding authorities, other public services and other agencies where supply currently exceeds local assessed need;

Disbenefits might include:

- Negative market distortion reducing placement choice and availability;
- Children increasingly disconnected from their own families & communities
- Short term increase in placement moves if providers withdraw;
- Loss of employment in areas where services could withdraw;
- Challenges to CIW decision making;
- Potential conflict with other laws;

Other issues might include:

- Ability to recruit and retain a sufficient and quality workforce;

Question 1.3: One approach could be for the legislation to define ‘not-for-profit’ in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

There are established definitions of ‘not for profit’. SOLACE Wales does not have a view on which of those would best suit the policy intent.

Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of ‘not-for-profit’ through subordinate legislation?

Whilst the definition of NFP might be helpful, prescribing how trading surplus is expended runs risks that may outweigh any benefit. For example, increased administration and auditing burdens and less flexibility on the part of the provider to invest in business improvement & development.

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

SOLACE Wales takes the view that safeguarding the interests of children and young people should take precedence over an arbitrary timescale for effecting change. Planning & timescales for changes should though factor how minimum disruption and harm to the support for children & families will be considered during implementation

Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

See earlier comments

Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

This is a significant policy change and it would therefore appear essential that there is effective guidance to support the implementation of legislation proposed and to ensure the policy intent guides action.

Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from 'not-for-profit' organisations only? In particular:

- Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?
- What would be the benefits, disbenefits and other implications of such an approach?
- What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?

SOLACE Wales takes the view that the circumstances and care market in local authority areas will vary from place to place and it is likely that the pace of transition will similarly vary. Any restriction on an authority's ability to place a child/young person according to their assessed need will need very careful consideration to ensure the statutory duties placed on local authorities and directors of social services are not undermined.

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

We would welcome early action that provides individual local authorities with powers to better control the establishment of care providers within the local authority area.

This would enable local authorities to better regulate the care market in the context of assessed local need.

Financial support to local authorities to facilitate the rebalancing of the care market would also be important, alongside a commitment from other agencies, in particular the NHS to enable specialist services to be available within the local area to enable the development of safe, quality care provision.

Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

It is difficult to assess as it would be expected that workforce would be drawn from the local population and consequently it would be envisaged that the impact should be neutral.

Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Where care is commissioned there should be a requirement for providers to adhere to the Welsh Language Standards set out in the Compliance Notice for the relevant local authority.

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

SOLACE Wales agrees with the principle that people receiving care and support and who qualify for continuing health care should have the choice of a direct payment and continuity of care. The Social Services and Wellbeing (Wales) Act 2014 made clear that service users should have voice, choice and control and this proposal would respond to that principle.

Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues or transition to the new arrangements.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Benefits would appear to include:

- Voice, choice and control of service users is respected and acted upon;
- Continuity of care;
- Avoidance of further pressure on other parts of the health and care system;
- Potential to clarify eligibility for CHC

Dis-benefits would appear to include:

- The proposal is for a power rather than a duty on health boards. To what extent will there be a duty on health boards to embrace the principle of voice, choice and control?

- Ability of those providing care and support under a direct payment to be able to effectively cater for any increased needs
- There is a risk that the voice of the patient is increasingly lost. Investment would be required to ensure that patients are involved, can understand and can challenge decisions of providers of care.

Question 2.3: What lessons can we learn from other countries' practice in this area?

Unknown

Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

SOLACE Wales does not have a view

Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

- Training for service users and those providing care and support.
- Helplines/access to support services to help manage the employment aspects of the arrangements on a paid for basis
- Advocacy for those entitled to CHC

Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

- This could be beneficial as the control and choice would be with the service user

Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Unknown

Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

The area of continuing health care criteria continues to be an area which would benefit from legal clarification so that service users are not required to contribute to the costs of services that they are entitled to receive free at the point of delivery.

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

SOLACE Wales is supportive of the proposals in this chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

Question 3.4: What lessons can we learn from the duties to report in other countries?

Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

Simplicity and clarity will help those subject of a duty to report to understand their responsibilities and to act on them. There are already too many overlapping responsibility within the safeguarding arena, often labelled differently which creates confusion.

Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current ‘relevant partners’ under section 162 of the 2014 Act (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

- (a) What are your views on this in respect of children (under the age of 18)?
- (b) What are your views on this in respect of adults?

Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

- (a) What are your views on this in respect of children (under the age of 18)?
- (b) What are your views on this in respect of adults?

Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

It seems likely that sanctions would be proportionate to the role that the individuals subject of the duty perform. For example, it would not seem appropriate for the sanctions applied to a qualified and registered social worker to be the same as the sanctions that might apply to a bus driver.

Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Unlikely to have a direct impact

Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Unknown

Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 4: Amendments to regulation of service providers and responsible individuals

Part 2 and Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the basis on which Care Inspectorate Wales ('CIW') – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of 'regulated services'.

This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:

- a) Identifying unregistered services
- b) Publication of annual returns
- c) Publication of inspection reports
- d) Improvement notices and cancellation of registration
- e) Responsible individuals
- f) Definition of 'Care' for children and young people

Questions on proposed amendments relating to each of these matters follow.

There are 21 questions about this chapter.

SOLACE Wales is broadly supportive of these proposals,

Question 4.1: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

Question 4.2: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

Question 4.3: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from

which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

Question 4.4: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

Question 4.5: *(b) Publication of annual returns:* Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

Question 4.6: *(b) Publication of annual returns:* Do you agree with the proposal to create a related offence of failing to publish an annual return?

Question 4.7: *(c) Publication of inspection reports:* Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

Question 4.8: *(d) Improvement notices and cancellation of registration – variation of registration as a service provider:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

Question 4.9: *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

Question 4.10: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration:* Do you agree with the proposal to amend the

2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

Question 4.11: *(d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration:* Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

Question 4.12: *(d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice:* Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

Question 4.13: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

Question 4.14: *(e) Responsible individuals – making representations:* Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

Question 4.15: *(e) Responsible individuals – sending the improvement notice to the service provider:* Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

Question 4.16: *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you

agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

Question 4.17: *(f) Definition of 'Care' for children and young people:* Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 5: Amendments to regulation of the social care workforce

There are 9 questions about this chapter.

Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once? Please explain your reasoning.

Yes – this would enable Social Care Wales to retain expertise if no other alternative is available.

Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances? Please explain your reasoning.

Yes, this would provide risk-based flexibility.

Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months? Please explain your reasoning.

No view

Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate? Please explain your reasoning.

Yes, where there is clear evidence that this would be an appropriate course of action. The impact of proceedings on individuals is significant and when it is clear that there is evidence to challenge the ongoing relevance of interim orders they should be revoked earliest.

Question 5.5: What, in your view, would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order?

Where the evidence clearly points to the order no longer being supportable.

Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;

- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Unlikely to be an impact

Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Unkown

Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 6: Extending the definition of social care worker to include childcare and play workers

There are 5 questions about this chapter.

SOLACE Wales is broadly supportive of this but would wish to see more detail of the cost benefits in the regulatory impact assessment.

Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on

opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 6.5: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Consultation Response Form

Your name: Gethin Rhys

Organisation (if applicable): Cytûn (Churches together in Wales)

Email / Telephone number: gethin@cytun.cymru

Your address: Cytûn, Room 3.3, Hastings House, Fitzalan Place, Cardiff CF24 0BL.

Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

☐

Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation?

This response is on behalf of Cytûn (Churches together in Wales). Cytûn represents the principal Christian denominations in Wales together with a number of other Christian organisations. A full list of members can be found at <https://www.cytun.co.uk/hafan/en/who-we-are/> Our member churches have between them around 150,000 adult members and meaningful contact with many more children, young people and adults through worship and work in every community in Wales. Some of our member churches and organisations have submitted their own responses to parts of this consultation.

If you want to receive a receipt of your response, please confirm your email address, here:

gethin@cytun.cymru

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014 directly on individuals within relevant bodies?

- We fully understand the need to be vigilant regarding child safety. All those who work (paid or unpaid) with children and young people in churches undergo appropriate safeguarding training and are DBS checked. Each local church or children/youth organisation has a person (or persons) designated to receive reports of any concerns relating to a child. They are trained in how to respond, how to report to the safeguarding officer of the relevant church denomination or network or its safeguarding agency, and when to report directly to a local authority or police. We therefore support Recommendation 13 of the IICSA Final Report to create a category of 'mandated reporters', who are all people who should have been appropriately trained to fulfil such a duty, as this in many ways corresponds to existing protocols found in church safeguarding policies.
- We support IICSA Recommendation 13 to introduce mandatory reporting when a 'mandated reporter' "receive a disclosure of child sexual abuse from a child or perpetrator; or witness a child being sexually abused" (IICSA Final Report p. 225), although the third criterion for mandatory reporting recommended by IICSA "observe recognised indicators of child sexual abuse" appears open to many different interpretations. However, the current duty under the SSWAct in Wales relates to reporting a "risk of abuse, neglect or other kinds of harm and the child has needs for care and support", which is a much wider category of observations to be reported. Assessing a risk as widely defined in the SSWAct in Wales is a specialised skill not likely to be available to most workers not directly trained in assessing risks in children, and most unlikely to be available to the average volunteer who simply wishes to help out with children's work.
- Many of those who get to know children in our churches best are volunteers who care deeply about the children in their care. They may not, however, be people who are used to, or confident in, dealing with people in authority, especially regarding sensitive matters. While they will all have been trained to raise any concerns with the relevant local safeguarding officer (who will be someone they know and trust), they may not be confident about assessing degrees of risk or reporting to official bodies. We are concerned that placing this onerous duty directly on unpaid volunteers, with the threat of criminal sanction if they fail to notice a risk factor that should have been reported, will deter many from volunteering. This would undermine the availability of

homework clubs, children's clubs, uniformed organisations, Sunday Schools and many other facilities which support some of the most vulnerable children in Wales. If such facilities have to close, there will be no-one to notice that a child is at risk and children may ultimately be harmed rather than helped.

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

- We fully understand the need to be vigilant regarding adults at risk. All those who work (paid or unpaid) in churches undergo appropriate safeguarding training and are DBS checked. Each local church or church organisation has a person (or persons) designated to receive reports of any concerns relating to an adult at risk. They are trained in how to respond, how to report to the safeguarding officer of the relevant church denomination or network or its safeguarding agency, and when to report directly to a local authority or police. We therefore support Recommendation 13 of the IICSA Final Report to create a category of 'mandated reporters', who are all people who should have been appropriately trained to fulfil such a duty, as this in many ways corresponds to existing protocols found in church safeguarding policies.
- We support IICSA Recommendation 13 to introduce mandatory reporting when a 'mandated reporter' "receive a disclosure of child sexual abuse from a child or perpetrator; or witness a child being sexually abused" (IICSA Final Report p. 225), although the third criterion for mandatory reporting recommended by IICSA "observe recognised indicators of child sexual abuse" appears open to many different interpretations. However, the current duty under the SSWAct in Wales relates to reporting a "risk of abuse, neglect or other kinds of harm and the child has needs for care and support", which is a much wider category of observations to be reported. If the proposal is to extend this much wider definition to the mandatory reporting of adults at risk, we believe that assessing such a widely defined risk is a specialised skill not likely to be available to most workers not directly trained in assessing such risks, and most unlikely to be available to the average volunteer who simply wishes to help out with adults in need.
- Many of those who get to know adults at risk in our churches best are volunteers who care deeply about the people with whom they work. They may not, however, be people who are used to, or confident in, dealing with people in authority, especially regarding sensitive matters. While they will all have been trained to raise any concerns with the relevant local safeguarding officer (who will be someone they know and trust), they may not be confident about assessing degrees of risk or reporting to official bodies. We are concerned that placing this onerous duty directly on unpaid volunteers, with the threat of criminal sanction if they fail to notice a risk factor that should have been reported, will deter many from volunteering. This would undermine the

availability of foodbanks, warm banks, clubs for people with dementia and for carers, Welsh language societies and provision and many other facilities which support some of the most vulnerable adults in Wales. If such facilities have to close, there will be no-one to notice that an adult is at risk and they may ultimately be harmed rather than helped.

Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach?

Please explain your reasoning.

- **Benefits:** Reports may be made to statutory authorities about adults or children at risk which would otherwise have gone unnoticed.
- **Disbenefits:** (i) Because of the threat of criminal sanctions, it is likely that people will be cautious and report every possible risk, resulting in many spurious or trivial reports where a 'risk' has been perceived, but is imaginary or grossly exaggerated. This is especially true regarding children or adults with dementia. Most lists of risk factors as an indicator of potential abuse, for example, include a child or adult with dementia being 'withdrawn' – but many are withdrawn for a whole range of factors which do not betoken 'risk' in the sense of the Act. This could lead to social services departments being overwhelmed with reports and being unable to sort the urgent from the purely precautionary and trivial reports, thus leading to reduced .
(ii) The onerous nature of this duty and the potential for criminal sanctions is likely to lead to a reduction in unpaid volunteers, who are absolutely essential in the running of all church activities with children and adults at risk. In current circumstances, we are especially concerned at the potential loss of foodbanks, warm banks and other emergency provision, which has been encouraged by Welsh Government, where all attendees are by definition at risk.
(iii) These facilities will also be imperilled by the imposition of additional costs.
- **Costs:** There will be a cost in providing additional training for all staff and volunteers in this duty. Currently, one person in each church or organisation is appropriately trained to filter and risk assess any concerns that arise. To train all volunteers and staff to this level will involve engaging professional services and will be costly.
- **Savings:** We cannot identify any savings.
- **Equality impacts:** (i) The multiple disbenefits and costs will disproportionately affect volunteers who are socio-economically deprived, as they will not be able to afford the cost of training, and will in many cases not have the confidence to engage in mandatory reporting direct to statutory authorities. This will reduce volunteering opportunities for people who are socio-economically deprived. As third sector services in areas of socio-economic deprivation are disproportionately dependent on volunteers (rather than paid

staff), this will also reduce the availability of such services to those who are socio-economically deprived, and thus be contrary to the socio-economic duty under the Equality Act.

(ii) The multiple disbenefits and costs will reduce volunteering generally. This will affect many organisations, but religious organisations are traditionally especially dependent on volunteers. The vast majority of churches in Wales either have no paid staff at all, or share a single paid staff member (usually a cleric) with several other churches. Any reduction in volunteering caused by the imposition of such a duty will therefore affect religious organisations disproportionately.

(iii) In the case of religious organisations there will be difficulty identifying who counts as a volunteer for the purposes of the legislation. In many churches every single attendee has a voluntary 'job' – welcoming at the door, giving out hymn books, preparing communion, taking up the offertory, cleaning the building, fulfilling maintenance tasks, playing the organ, etc. Will all of these individuals be subject to this onerous duty and therefore subject to criminal sanctions if they fail to report a risk? If so, it is likely that some people will no longer feel able to attend their place of worship, thus effectively depriving them of the freedom to worship which is guaranteed under the Human rights Act 1998.

Question 3.4: What lessons can we learn from the duties to report in other countries?

- We note that para 8 of the consultation document states that “evidence .. is mixed” regarding other countries. As we do not have the capacity to undertake our own research, we believe that Welsh Government should publish this evidence in order that we and our safeguarding advisors might form a view on this question.

Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the 2014 Act?

- We believe that the existing duty on organisations is far more likely to result in urgent referrals being made appropriately than the proposed duty on individuals, and should therefore be retained.
- As many residential activities for children and young people held in Wales involve children, and often their local leaders, crossing the border from England, we feel strongly that reporting duties should be consistent across England and Wales, and should follow the IICSA recommendations rather than those being consulted on by Welsh Government.

Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current 'relevant partners' under section 162 of the 2014 Act

(including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings, etc., and in particular:

- (a) What are your views on this in respect of children (under the age of 18)?
- (b) What are your views on this in respect of adults?
- Should the duty be extended to individuals in religious settings: (i) The multiple disbenefits and costs will disproportionately affect volunteers who are socio-economically deprived, as they will not be able to afford the cost of training, and will in many cases not have the confidence to engage in mandatory reporting direct to statutory authorities. This will reduce volunteering opportunities for people who are socio-economically deprived. As third sector services in areas of socio-economic deprivation are disproportionately dependent on volunteers (rather than paid staff), this will also reduce the availability of such services to those who are socio-economically deprived, and thus be contrary to the socio-economic duty under the Equality Act.
- (ii) The multiple disbenefits and costs will reduce volunteering generally. This will affect many organisations, but religious organisations are traditionally especially dependent on volunteers. The vast majority of churches in Wales either have no paid staff at all, or share a single paid staff member (usually a cleric) with several other churches. Any reduction in volunteering caused by the imposition of such a duty will therefore affect religious organisations disproportionately.
- (iii) In the case of religious organisations there will be difficulty identifying who counts as a volunteer for the purposes of the legislation. In many churches every single attendee has a voluntary 'job' – welcoming at the door, giving out hymn books, preparing communion, taking up the offertory, cleaning the building, fulfilling maintenance tasks, playing the organ, etc. Will all of these individuals be subject to this onerous duty and therefore subject to criminal sanctions if they fail to report a risk? If so, it is likely that some people will no longer feel able to attend their place of worship, thus effectively depriving them of the freedom to worship which is guaranteed under the Human rights Act 1998.

Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

- (a) What are your views on this in respect of children (under the age of 18)?
- (b) What are your views on this in respect of adults?
- Should the duty be extended to volunteers: (i) The multiple disbenefits and costs will disproportionately affect volunteers who are socio-economically

deprived, as they will not be able to afford the cost of training, and will in many cases not have the confidence to engage in mandatory reporting direct to statutory authorities. This will reduce volunteering opportunities for people who are socio-economically deprived. As third sector services in areas of socio-economic deprivation are disproportionately dependent on volunteers (rather than paid staff), this will also reduce the availability of such services to those who are socio-economically deprived, and thus be contrary to the socio-economic duty under the Equality Act.

(ii) The multiple disbenefits and costs will reduce volunteering generally. This will affect many organisations, but religious organisations are traditionally especially dependent on volunteers. The vast majority of churches in Wales either have no paid staff at all, or share a single paid staff member (usually a cleric) with several other churches. Any reduction in volunteering caused by the imposition of such a duty will therefore affect religious organisations disproportionately.

(iii) In the case of religious organisations there will be difficulty identifying who counts as a volunteer for the purposes of the legislation. In many churches every single attendee has a voluntary 'job' – welcoming at the door, giving out hymn books, preparing communion, taking up the offertory, cleaning the building, fulfilling maintenance tasks, playing the organ, etc. Will all of these individuals be subject to this onerous duty and therefore subject to criminal sanctions if they fail to report a risk? If so, it is likely that some people will no longer feel able to attend their place of worship, thus effectively depriving them of the freedom to worship which is guaranteed under the Human rights Act 1998.

Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

- We believe that it is wholly disproportionate to impose criminal sanctions on an individual, especially a volunteer, for failing to perceive or correctly assess a risk to another person, perhaps on the basis of minimal contact. If there are to be criminal sanctions, they should apply only to the category of 'mandated reporters' identified in the IICSA Final Report.

Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

- i) The multiple disbenefits and costs will disproportionately affect volunteers who are socio-economically deprived, as they will not be able to afford the

cost of training, and will in many cases not have the confidence to engage in mandatory reporting direct to statutory authorities. This will reduce volunteering opportunities in Welsh for people who are socio-economically deprived. As third sector services in areas of socio-economic deprivation are disproportionately dependent on volunteers (rather than paid staff), this will also reduce the availability of such services to those who are socio-economically deprived, and thus be contrary to the socio-economic duty under the Equality Act.

(ii) The multiple disbenefits and costs will reduce volunteering generally. This will affect many organisations, but Welsh language organisations for children and adults at risk are traditionally especially dependent on volunteers. Many Welsh language organisations, including Welsh language churches, either have no paid staff at all, or share a single paid staff member (often a regional co-ordinator or similar) with several other local organisations. Any reduction in volunteering caused by the imposition of such a duty will therefore affect Welsh language organisations disproportionately, and undermine Welsh Government's target for a million Welsh speakers.

(iii) In the case of many organisations there will be difficulty identifying who counts as a volunteer for the purposes of the legislation. In many organisations every single attendee has a voluntary 'job' – welcoming visitors, booking speakers, collecting membership fees, preparing the annual programme, cleaning up after the meeting, playing the piano, etc. Will all of these individuals be subject to this onerous duty and therefore subject to criminal sanctions if they fail to report a risk? If so, it is likely that some people will no longer feel able to attend Welsh language activities, and Welsh language social, cultural and leisure activities for children and adults will be imperilled.

Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

- We can see no benefits of this kind in this proposal.

Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Questions on Chapter 6: Extending the definition of social care worker to include childcare and play workers

There are 5 questions about this chapter.

Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

- We understand the reasons for this proposal. We would note, however, that if the definition is – as proposed in Chapter 6 para 9 – extended to include volunteers, we would be concerned at any introduction of a requirement for such volunteers to register or undergo mandatory training (other than safeguarding training). Many church-based childcare and play settings depend on volunteers to provide additional support for the children, and this is often a feature of the provision valued by children and parents/carers alike. However, the imposition of additional regulatory burdens is likely to reduce the pool of willing volunteers and ultimately reduce the quality of provision.

Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical issues.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

- Positive effects: We note the suggestion that Social Care Wales could provide better support for workers and volunteers if the legal definitions are changed, and we would support the provision of such support for church-based childcare and play settings.
- Negative effects: if the definition is – as proposed in Chapter 6 para 9 – extended to include volunteers, we would be concerned at any introduction of a requirement for such volunteers to register or undergo mandatory training (other than safeguarding training). Many church-based childcare and play settings depend on volunteers to provide additional support for the children,

and this is often a feature of the provision valued by children and parents/carers alike. However, the imposition of additional regulatory burdens is likely to reduce the pool of willing volunteers and ultimately reduce the quality of provision

Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

- Positive effects: We note the suggestion that Social Care Wales could provide better support for workers and volunteers if the legal definitions are changed, and we would support the provision of such support for Welsh medium childcare and play settings. We would encourage Social Care Wales to ensure that such support is tailored to the needs of workers in Welsh-medium settings.
- Negative effects: if the definition is – as proposed in Chapter 6 para 9 – extended to include volunteers, we would be concerned at any introduction of a requirement for such volunteers to register or undergo mandatory training (other than safeguarding training). Many Welsh medium childcare and play settings depend on volunteers to provide additional support for the children, especially in developing their Welsh language skills, and this is often a feature of the provision valued by children and parents/carers alike. However, the imposition of additional regulatory burdens is likely to reduce the pool of willing volunteers and ultimately reduce the quality of provision. Given the importance of childcare and play to the Welsh Government's target of 1 million Welsh speakers, this could detract from achieving this goal.

Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

- It is important that no additional regulatory burdens are imposed on Welsh-medium childcare and play settings, and especially on volunteers in such settings.

Question 6.5: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.