



## 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 – 7 (151 i 175)

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 414 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 – 7 (151 to 175)

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 414 pages (including title pages).

## Consultation Response Form

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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?

On behalf of Care Forum Wales – which has over 450 members who are registered care providers

If you want to receive a receipt of your response, please confirm your email address, here: [mary@careforumwales.co.uk](mailto:mary@careforumwales.co.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?

Care Forum Wales primarily represents registered adult providers of social care. However, the potential for this policy to spread to adult social care has caused concern amongst some of our members and made them question the value of making further investments in their provision. A clear statement that this policy will not be implemented in adult social care would be helpful to avoid further destabilizing the adult market.

Fundamentally, the implementation of this policy will come down to the definition of profit. All organisations, in whatever sector, need to balance the books. Indeed, under RISCA, registered care providers are required to be financially sustainable or notify Care Inspectorate Wales. This means maintaining appropriate reserves as well as surpluses to reinvest in the provision and an appropriate reward for investment of time and money and reasonable accounting for the risk involved. If these things are excluded from the definition of 'profit' we do not see a problem. However, if they are not we do not see how the necessary supply of places for vulnerable children can be maintained.

**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 cannot see how this proposal will not reduce the supply of services. Some current services will inevitably exit the market, and there does not seem to be any clear plan to replace them in real time. Any attempts to create new services run

directly by local authorities or not-for-profit organisations are likely to require significant investment of public funds. We would question whether such use of money should be prioritized given the current pressure on public funding and other parts of the sector. We also note that the Competition & Markets Authority said “*we did not find evidence that providing local authority placements was any less costly to local authorities than purchasing placements from private providers.*” The consultation notes that demand already outstrips supply and this is putting costs up. It is hard to see how this proposal to further reduce supply will help.

This reduction in overall supply seems almost inevitably to lead to an increase in unregistered and unregulated placements of children and thus to undermine our regulatory system.

Currently, we understand there is a reduction in the number of home-grown Welsh SMEs in the sector but an increase in the proportion of large corporate providers. We wonder how this fits with Welsh Government’s prosperity for all economic strategy and the focus on the foundation or everyday economy.

These disbenefits are likely to impact predominantly on vulnerable young people including those with disabilities and may also affect those who need to transition into the adult system.

**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 suggestion would be as in our answer to 1.1 above, that reserves, surpluses to reinvest in the provision and an appropriate reward for investment of time and money and reasonable accounting for the risk involved should be excluded from the definition of profit. We cannot see any reasonable objection to payment for work done or investment of time and money made. Indeed any organization providing services would have to pay for these. There is also a need to pay for risk and future investment. In order to borrow to invest in services organisations will be required to show a healthy balance sheet which reflects in their EBITDAR.

We quote here from Let’s Agree to Agree (published in 2018), commissioned by Welsh Government and commended by them to local authorities <https://ipc.brookes.ac.uk/files/publications/Cost%20of%20Residential%20Care%20oolkit%20August%202018.pdf> on commissioning adult care home placements

“Return on Capital Employed (ROCE) is an essential part of care fees. It is necessary for the enterprise to remain viable and to continue to deliver the service. The income is required by the provider for several purposes:

- Servicing the ‘capital employed’ in other words the money tied up in the home that could otherwise be used for another purpose and providers may withdraw or not invest in renewing stock if the return is insufficient.
- A return to the provider for running and managing the enterprise in addition to the traditional management tasks always provided, such as appointing and overseeing the manager, managing the finances etc. New requirements introduced under RISCA from 2018 have been placed on the Responsible Individual – these will all need to be taken into account.
- A provision for the risk related to the enterprise, this is both the financial and reputational risk dependent on unknowns like future fees, changes in demand or commissioning policy. These will need to cover for example dips in occupancy, which cannot be made up by, for example, selling the same bed twice later in the year in the way that other businesses might.
- A provision for upgrading and improvement of the facilities both premises and services.”

These are all factors that any provider, in whatever sector would need to pay. For example, in the not for profit or public sector the return to the provider will be in the form of a salary rather than a dividend, but the payment would still need to be made.

**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 think the definition is fundamental to the policy and therefore should be in primary legislation and subject to appropriate scrutiny for a matter this fundamental.

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

We fail to see how the switch from what is set out in the consultation document – Over 80% of care homes for children and young people in Wales are run by the private sector – can possibly be achieved in the timescales envisaged without leaving vulnerable children in Wales without registered placements. We understand one delay in bringing new provision on stream is the lack of supply of building firms to take on projects. We assume such firms are allowed to make a profit?

**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?

Inevitably those private providers who currently work across the children and adult sectors and are therefore able to provide continuity of care for young people transitioning to adult services will no longer be able to do so.

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

We would suggest instead that the policy is reviewed.

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

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

We would reiterate our concerns in relation to sufficient supply of services.

**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 believe the top priority should be to ensure appropriate care for our most vulnerable children.

**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 current reduction in Welsh SMEs providing services and increase in larger UK wide organisations may well have a detrimental effect on the Welsh language.

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

**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 understand the rationale for this change which at best we view to be misguided and undermining the excellent provision provided by some services in the for profit sector as well as some in other sectors. We cannot see an evidence base for this change either in terms of cost savings, quality or priorities in terms of limited current capacity in the social care sector. We are concerned that this agenda is diverting money from other areas of social care where it would be better spent e.g. improving the terms and conditions of the workforce in order to deliver a better service.

## 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 think the proposal to extend direct payments to those receiving CHC makes sense. However, we are concerned about a two tier system in care provision with a heavily regulated and registered workforce in domiciliary care agencies and care homes and a parallel unregistered and unregulated workforce of personal assistants and micro carers undertaking very similar roles.

**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 these proposals will enable some people to better tailor the care and support they receive to their needs. However, we are concerned that the rise in provision by micro carers and personal assistants is creating a two tier workforce. We have people doing essentially the same jobs some of whom are required to be registered and regulated and others who are not. We are also aware of worrying examples where this has undermined fair work e.g. lack of holiday pay, training etc.

**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.

We believe everyone providing social care should be subject to a basic level of registration.

**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?

As indicated in 2.1, we would like to see a level playing field in registering and regulating those providing care.

**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?

See 3.2 – our work is mainly with adults but similar issues apply for children

**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 recognise the consultation says evidence of the efficacy of implementing such a proposal is mixed. Before a decision to implement any such change is made we would therefore like to see further analysis. We would want any analysis to include consideration of whether the likely additional burden of responding to a likely increase in reporting would outweigh any benefits. If such a duty were to be introduced would like to see a clear pro-active education campaign to ensure all relevant people were aware of their duty.

**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 consultation says the evidence is unclear. We would expect such a duty to lead to an increase in reporting “to be on the safe side” by those who were law abiding. However, we are unsure how many of those cases reported would turn out to merit reporting and there is potentially a significant burden in responding to them. Conversely those who currently chose not to report might still chose not to do so. Therefore there is a danger of increasing bureaucracy for little or no result.

**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?

They should replace existing duties to reduce complexity and confusion. Any new and old duties should be streamlined to minimise duplicate reporting.

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

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

The answer to this question will depend on the evidence of the efficacy of such an introduction.

**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 such a duty were to be introduced there is an argument to introduce gradually for different categories to judge efficacy. Alternatively publicity and informing relevant people would be easier to manage if a number of categories were introduced at the same time.

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

Any sanctions should be proportionate.

**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?

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?

We are concerned about the burden this would place on providers – particularly SMEs. In particular providers would be in a very difficult position if there are items that they are required to share in their annual return but it would be inappropriate to publish.

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

We believe this could be disproportionate given the reasonable difficulties providers might have as outlined in 4.5 above.

**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

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

Yes

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

Yes

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

Yes

**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?

Yes

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

Yes

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

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

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

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.

Seem sensible

**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

**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 make sense. If someone is currently registered but has not quite completed the requirements to re-register it does not make sense to de-register them while waiting for them to do so.

**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

**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

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

If the issues for which it was imposed have now been dealt with

**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.

These proposals seem a sensible streamlining of current processes

**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.

In general we are concerned about the effect registration is having on the ability to retain and recruit a social care workforce. This is an additional pressure right across the sector for a workforce that is still not appropriately rewarded for undertaking a professional role. However, there are particular pressures in domiciliary care where workers are now having to re-register and complete the full qualification. Given the proportion of the current workforce that is part-time we would like to see part-timers given longer to satisfy registration requirements. We would also like to see the ability for workers to continue with their initial registration rather than complete the full qualification after three years.

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

There are 5 questions about this chapter.

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

Please explain your reasoning.

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

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

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

Please explain your reasoning.

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

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

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

## Proposed changes to legislation on social care and continuing health care

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

great idea but where will they be found? think it probably best to go back to local authority provision

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.

go back to local authority providers cut out the middle man

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?

think you will not get organisations coming forward in enough numbers to meet need

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

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

ok but don't think these organisations exist in Wales in enough numbers

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?

go back to direct provision, much cheaper and you can regulate with training etc to the staff YOU employ

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?

Why would organisations take up this work - not many philanthropic organisations about here

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?

Care of kids is the vital thing with love and education it does not matter what language they speak as long as they have a good command of English spoken and written for their working futures

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.

fine

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.

not enough services for people to use their continuing care monies to get the care they need whether for profit or non profit

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

don't know do you?

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.

more direct service provisions and cut out the middle organisation

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?

where is the help coming from? many people now lonely as not many clubs or community transport. not many carers to support people living at home. GPs don't want to be bothered to provide care in the community it is too expensive for them and what ever money you may have there is no private health care in North Wales

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?

Non

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?

Yes all have a moral duty but who do we report things too? How are you going to protect the whistle blowers?

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?

Yes all have a moral duty but who do we report things tooHow are you going to protect the whistle blowers?

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.

provide direct services

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

don't know - do you?

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?

sit alongside

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?

Everyone has a duty to report concerns and do not leave out Religious and sports facilities.

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?

Everyone

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

depends upon the severity and the circumstances

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?

none

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.

none

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

*No Response*

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

yes

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?

with police advice and assistance

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?

still depends upon the circumstances

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?

still depends upon the circumstances - not always black and white

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

yes but where?

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?

depends upon the circumstances

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

yes

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

yes

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?

only in exceptional circumstances

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?

if ceased then ok

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?

depends what is being asked for

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

yes

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

yes

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

yes

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

yes

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

depends on the circumstances

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

yes

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

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

*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.

depends on the circumstances

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:** carol richardson

**Organisation (if applicable):** -

**E:mail:** [REDACTED]

**Telephone:** -

**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*

# 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?

The arrangements for ensuring care for children looked after are complex and would benefit from simplifying. The consultation documents notes that children themselves do not wish to be profited from and therefore the aim of introducing legislation that only allows 'not-for-profit' providers to register is a laudable aim, but the focus must be and remain on the children. Where there is insufficient provision in a local area, independent providers may still be necessary to ensure capacity within the system.

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.

As noted above, the aims are laudable and chime with the feedback from the children themselves. The children must be the primary focus for these changes since they are most likely to be the winners, or losers if we get this wrong.

Currently across Wales there are insufficient placements for children. This is especially the case for children with complex needs. The funding that is necessary to cover the costs of providing care and all the necessary requirements for the child – such as clothing and entertainment – should not be reduced by organisations profiting, though there must be sufficient funding for providers to cover their costs.

By eliminating for profit providers there should be more money available to directly help the children looked after, and the providers. The funding diverted from 'for-profit' providers can be used to directly fund further provision or to increase funding for those with complex needs.

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

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

What would be the effects and implications of this?

As previously noted, organisations must have sufficient funding to cover costs otherwise they risk having to withdraw from providing care, which lets children down. Irrespective of the funding, one of the issues felt by children looked after, is the constant movement around providers, not properly having their needs met (including a stable home) and feeling let down by the system.

Therefore, the definition of the type of organisation would not necessarily provide the correct restriction or provider in and of itself. An expression of the way that trading surplus is expended, or reinvested in the provision itself would help to provide further clarity.

**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?**

Any changes to legislation must be subject to proper scrutiny. Therefore, we would not support unilateral amendment of law without proper process being followed. Where amendments are necessary, for example, due to developments in law and practice, properly scrutinised secondary legislation should enable the necessary changes to be implemented in a timely fashion.

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

As with our previous responses, it will be key to ensure the continuity of provision. Only with the guarantee of adequate, high-quality provision will it be acceptable or even possible to make the necessary changes.

We have concern around the potential loss of skills and experience if employees currently working within private sector provision are unable to transition to not-for-profit employers. In the short-term this could lead to instability and uncertainty in the market which could lead to employees seeking secure employment elsewhere. Ultimately the transition could mean significant redundancies which would exacerbate the current shortage of placements for children looked after. We would expect steps to be taken to address both of these concerns before such situations arise.

**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?**

Children looked after are vulnerable and at risk by virtue of their circumstances. Any change to their home, transport, education or local environment could lead to challenging behaviour, resentment and depression amongst other mental health concerns. There will need to be significant resources expended to support and counsel the children to ensure their confidence and security. The process of preparation should begin as soon as possible in order to give adequate time before any change is implemented.

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

We would hope to see draft guidance available for discussion and consultation before it is issued.

**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?**

It is important that there is a unified approach to the implementation of any new care strategy. Therefore, we agree with the Welsh Minister that the policy, once agreed, should not be undermined by practices which go against its spirit and intention. As noted above, the children must be the primary focus for these changes since they are most likely to be the winners, or losers if we get this wrong. Only with the guarantee of adequate, high-quality provision will it be acceptable or even possible to make the necessary changes. Therefore, any timeframe must be adequate to allow the proper transition of provision (children and staffing) to take place.

We mention in our previous answer that there is concern around the potential loss of skills and experience if employees currently working within private sector provision are unable to transition to not-for-profit employers and we would expect steps to be taken to avoid this becoming a possibility.

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?

Again, the key considerations here must be the wellbeing of the children looked after through the continuation of a well-funded and appropriate system staffed by highly-skilled and trained professionals. Any risk to this must be carefully considered, assessed and mitigated in order to avoid undermining the transition.

This is particularly important in terms of ensure sufficiency of provision. We know that one of the ways that private provision is important in the system at the moment, is the lack of sufficient, appropriate placements in the towns and cities where the provision is required. Consequently, children looked after can be moved to other provision outside of the area, or placed in private placements that are available locally.

To guard against this a full review should be undertaken of the current not-for-profit system to identify gaps. A full assessment of those private placements that are transitioning to not-for-profit may reduce and eliminate some of the places with lack of provision but not all.

Finally, children looked after should be asked about the quality of the provision they experience since it may be appropriate for some settings, both private and not-for-profit, to be closed if they are not meeting the needs of the children.

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*

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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*

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*No Response*

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

*No Response*

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

*No Response*

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

Please explain your reasoning.

*No Response*

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

*No Response*

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

*No Response*

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

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

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

*No Response*

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

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

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

*No Response*

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

*No Response*

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

What effects do you think there would be?

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

*No Response*

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

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

*No Response*

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

*No Response*

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

*No Response*

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

*No Response*

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

*No Response*

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

*No Response*

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

*No Response*

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

*No Response*

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

*No Response*

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

*No Response*

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

*No Response*

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

*No Response*

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

*No Response*

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

*No Response*

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

*No Response*

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

*No Response*

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

*No Response*

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

*No Response*

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

*No Response*

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

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

*No Response*

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

What effects do you think there would be?

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

*No Response*

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

*No Response*

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

*No Response*

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

Please explain your reasoning.

*No Response*

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

Please explain your reasoning.

*No Response*

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

Please explain your reasoning.

*No Response*

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

Please explain your reasoning.

*No Response*

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

*No Response*

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

Please explain your reasoning.

*No Response*

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

What effects do you think there would be?

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

*No Response*

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

*No Response*

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

*No Response*

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

Please explain your reasoning.

We are in favour of education and childcare settings being safe places for staff and the children they work with. We are clear that regulation, high-quality training and qualifications and appropriate government support are necessary to ensure that Early Years Childcare and Education is recognised as a profession.

With this in mind we have some concerns that early years and childcare workers might be considered 'social care workers'. We are clear that early years and childcare professional are educators who also provide social care, but it is unhelpful for the distinction contained within the consultation to be conditional. This vagueness does no one any benefits and potentially allows the necessary training and support from an education position to be ignored in favour of social care, when in reality the role is a careful balance of the two.

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.

Further to our previous answer we are keen to ensure that our members working in early years education are trained and qualified to a high standard. The Welsh Government can facilitate this through proper regulation which reflects the full, multi-faceted role of an early years educator. Therefore, there will need to be careful consideration of how to unite the two key roles of education and care and recognise the importance of both.

This may raise issues with the training courses offered by colleges and universities and may require re-training for existing staff to ensure that they are fully aware of the responsibilities of being a 'social care worker' as well as an early years educator.

It will also be important for staff and employers to be a part of any transition to the new definition to ensure they feel a part of the change. There is the real danger that staff may feel that social care is not a part of their job role and therefore this change will be nul and void in practice.

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:** Martin Hodge  
**Organisation (if applicable):** Community Union | Education & Early Years  
**E:mail:** MHodge@Community-TU.org  
**Telephone:** XXXXXXXXXX  
**Your address:** 465c Caledonian Road, London, N7 9GX

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

Email address

MHodge@Community-TU.org

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

*No Response*

## Consultation Response Form - WG45428

### Proposed changes to primary legislation in relation to social care and Continuing NHS Healthcare

Your name: Tracy Amos

Organisation (if applicable): Pembrokeshire County Council

Email / Telephone number: tracy.amos@pembrokeshire.gov.uk

Your address: Pembrokeshire County Council, County Hall, Haverfordwest, SA61 1TP

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 Pembrokeshire County Council

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

**Tracy.amos@pembrokeshire.gov.uk**

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

There are 12 questions about this chapter.

<p><b>Question 1.1:</b> 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?</p>	<p>Excessive profits from providing care should be eliminated, but companies providing high quality care with a reasonable operating profit margin can allow for investment in the sector which is much needed. Definition of an operating model that defines not for profit is essential to transition the market to the Governments defined outcome, where the alternative model is developed prior to eliminating the existing model. In defining the model there must be clarity on how investment in provision can be maintained to support continued capital investment for a provider, to best serve the needs of children and young people.</p> <p>Transition arrangements must be clear for the market and for Local Authorities to ensure that where applicable children with stable and positive outcomes are not put at risk by this change which could adversely impact their life.</p> <p>Commissioning arrangements need to be consistently applied in line with any legislative change, so attention required to establish a need for national arrangements in that regard.</p> <p>This will not assist on its own as there will be other ways for companies to designate profits so as to bypass legislation, in the same way that companies can avoid tax. What needs to be considered is what is done with any profits that an organisation makes: if they are using it to develop and improve services, or amend pricing to the benefit of local authorities, or are using it for the benefit of young people, then we should welcome this.</p> <p>Introduction of new legislation may result in changes to other existing legislation and where necessary alignment to other legislation will need to be made clear, such as: Regulation and Inspection of Social Care (Wales) Act 2016 and relevant Financial Conduct Authority legislation.</p>
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<p><b>Question 1.2:</b> What in your view are the likely impacts of the proposal? You may wish to consider, for example:</p> <ul style="list-style-type: none"> <li>• Benefits, and disbenefits;</li> <li>• Costs (direct and indirect), and savings;</li> <li>• Impacts upon individuals and groups with protected characteristics;</li> <li>• Other practical matters such as cross-border issues.</li> </ul> <p>Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.</p> <p>Please explain your reasoning.</p>	<p>Risk of instability in the market, during transitional phases, and lack of local placements across Wales. Potential phasing could help with only new registrations being allowed from not for profit and existing ones maintained for a reasonable timescale?</p> <p>We need to also consider the implications for transitional arrangements from child to adult.</p> <p>Will there be sufficient capital investment opportunities available for not for profit providers to enter the market or acquire current operations? The budget position for Local Authorities is going to limit borrowing opportunities it is expected.</p> <p>Will there be enough funding for development / maintenance of services and skills to encourage care workers to see this sector as their career and not just as an alternative to not being able to find any other work?</p> <p>Will pay levels offered to skilled workers be competitive in a market where retail employers pay sometimes more per hour than care sector employers?</p> <p>If the approach is phased in how do we provide incentive to skilled carers so they opt to work for the non-profit organisations as opposed to private providers paying more?</p> <p>We may lose smaller providers, or see those that are large enough to manage in a way that masks profit-making take a larger slice of the market which will not provide such a choice for commissioners. We may see organisations register in England near to borders and market in Wales with some local authorities bordering England being particularly vulnerable to such shifts in the market.</p> <p>Placing a requirement for organisations to use any profits to promote social value, community development or external projects to the benefit of looked after and formerly looked after children would be a huge benefit. For example, setting up a charitable trust.</p>
<p><b>Question 1.3:</b> One approach could be for the legislation to define ‘not-for-profit’ in terms of the types of organisation that</p>	<p>Defining what is felt to be a reasonable return on investment may be prudent so that we are all aware what is meant by the term ‘surplus’. As above clarity on the definition of not for profit is essential.</p>

<p>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?</p>	<p>Defining the operating model needs also to consider a business flexibility to respond to factors that require emergency responses, so having an agreed working balance is therefore essential.</p> <p>Definitely think that a definition of how surplus is used should be included.</p>
<p><b>Question 1.4:</b> Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of 'not-for-profit' through subordinate legislation?</p>	<p>Yes</p>
<p><b>Question 1.5:</b> What are your views on the proposed timings for the primary legislation to come into effect?</p>	<p>Needs to be phased carefully not to destabilise the market and to allow for growth of not for profit provision.</p> <p>A market shift of this type will take considerable time and resource to make the transition successful, 2026 does not feel sufficient to achieve the objectives.</p>
<p><b>Question 1.6:</b> 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?</p>	<p>We need to be able to use a "When I'm ready" approach and to avoid hard service boundaries for children as they become adults, flexibility or approach based on individual needs is essential rather than age based i.e. reaching 18th birthday.</p> <p>If we place the needs of the children and young people at the center then should the transition not focus on the care provider transitioning to non-profit. Stability of placements/care provided that are producing good outcomes are at risk is transition is not handled appropriately.</p>
<p><b>Question 1.7:</b> What are your views on the issuing of guidance to support the implementation of the primary legislation?</p>	<p>Guidance should be in place for a considerable period before the enactment date of the legislation. Wider consultation on guidance to be offered ahead of introduction, to include providers and local authorities and young people with their representatives (e.g. Voices from care)</p>
<p><b>Question 1.8:</b> What are your views on using legislation to place a restriction on local authorities to commission</p>	<p>Risk of instability in the market during transitional phases, and lack of local placements across</p>

<p>placements from 'not-for-profit' organisations only? In particular:</p> <ul style="list-style-type: none"> <li>• Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?</li> <li>• What would be the benefits, disbenefits and other implications of such an approach?</li> <li>• What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?</li> </ul>	<p>Wales. Potential phasing could help, with only new registrations being allowed from not for profit and existing ones maintained for a reasonable timescale whilst new providers are developed, suggest 3-5 years</p> <p>Define the parameters of commissioning plans would be preferable to determine local planning against local needs</p> <p>This would depend on how the market develops after introduction of legislation as this approach may risk limiting choice. What if we needed a specialist placement provider based in England for example which we often do?</p>
<p><b>Question 1.9:</b> 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?</p> <p>Are there any actions which would guard against such activity?</p>	<p>There could be a legal challenge against legislation in restraint of trade or state aid potentially but that is a matter of speculation.</p> <p>I would guard against any process that disadvantage the young people in receipt of services, should for example they be taken advantage of to support a commercial/contractual debate, this could be a risk.</p> <p>Continued engagement and transparency with the market should guard against any of that sort of practice which would bring into question the ethos of a provider.</p> <p>There is the risk of providers ending contracts and providers moving to a purchaser who maintains their current trading arrangements outside of Wales. De-stabilizing the market and current placements.</p>
<p><b>Question 1.10:</b> We would like to know your views on the effects that the legislative changes to eliminate profit</p>	<p>If capacity reduces we may see a disproportionately high percentage of Welsh language provision lost from the sector, if children are placed across the border due to lack of capacity it becomes less likely they will have support in Welsh.</p>

<p>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?</p> <p>How could positive effects be increased, or negative effects be mitigated?</p>	<p>As this approach is defined within a Wales legislative arrangement then this should enhance complimentary legislation specific to the Welsh language offer by developing more provision with new non-profit providers entering the Wales market</p>
<p><b>Question 1.11:</b> 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.</p>	<p>If companies can prove that operating surplus is supporting local communities and Welsh Language this should be excluding from "not for profit" considerations.</p> <p>Market change with revised commissioning plans allows opportunity to ensure specifications further determine equality of offer in language and other aspects.</p>
<p><b>Question 1.12:</b> 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</p>	

<p>number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.</p>	
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## Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

<p><b>Question 2.1:</b> 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.</p>	<p>We fully endorse the proposal for people who are eligible for CHC to have the same levels of voice and control they would via a social care package and direct payments. Our public have told us for many years that this is a barrier for them and leads to unnecessary changes in their care arrangements at what can already be challenging times in their lives. This more seamless approach fits well with the principles of the social services and wellbeing(Wales) act, and we look forward to implementing the change with our NHS colleagues.</p>
<p><b>Question 2.2:</b> What in your view are the likely impacts of the proposal? You may wish to consider, for example:</p> <ul style="list-style-type: none"> <li>• Benefits, and disbenefits;</li> <li>• Costs (direct and indirect), and savings;</li> <li>• Impacts upon individuals and groups with protected characteristics;</li> <li>• Other practical matters such as cross-border issues or transition to the new arrangements.</li> </ul>	<p>Benefits, and dis-benefits; Benefits to the person and their family are hugely significant, we have a plethora of information that supports the direct payment agenda making a real difference to people’s lives. People being able to maintain their PA as they transition between health and social care services allows for greater flexible and offers continuity of provision. Benefits to Health &amp; social care: Care provision in Wales is very difficult to source at present, enabling people to maintain their personal assistants through any transitions is not only better for the person but avoids the need to source such care from any agency or direct provision, making best use of the overall capacity across the system Costs: direct payments are some £5-£10 per hour cheaper than an equivalent package of care via commissioned or in house service provision, therefore by allowing direct payments for CHC there will be a cost saving to Health Boards.</p>

<p>Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.</p> <p>Please explain your reasoning.</p>	<p>The change may increase uptake of CHC amongst DP recipients, this should not be seen as a disadvantage though, as is about people having the right level of support to meet their needs in the best way.</p> <p>Better partnership working. The change will avoid some of the challenges faced by MDT's when DP's are not available and person has clear health needs that are above and beyond S47 duties for social care but the person does not want to "lose" their PA's Costs (direct and indirect), and savings;</p> <p>Impacts upon individuals and groups with protected characteristics;</p> <p>The change should benefit all groups and is more equitable than the current frameworks such as independent user trusts as it will support a wider range of neurodiversity, voice, choice and control. It also removes the inequity in relation to direct payments for people who receive social care support to those who receive health support.</p> <p>Other practical matters such as cross-border issues or transition to the new arrangements.</p> <p>The change removes the inconsistency across the England-Wales border which is welcomed.</p> <p>Transitionally, Local Authorities would wish to offer support to our health colleagues in relation to the direct payments agenda, its systems processes and administration. This is an area where we feel there is potential to work in partnership to meet the needs of our population.</p> <p>Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.</p> <p>Local Authorities have a long history of direct payments and we would wish to offer support to our health colleagues in relation to this agenda, its systems processes and administration. This is an area where we feel there is potential to work in partnership to meet the needs of our population</p>
<p><b>Question 2.3:</b> What lessons can we learn from other countries' practice in this area?</p>	<p>We feel there are lessons from across the border in England about allowing DP's for CHC which are welcomed, there are local lessons too in Wales about the effective use of direct payments for people in receipt of social care that can support NHS colleagues</p>
<p><b>Question 2.4:</b> Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.</p>	<p>HB &amp; LA's could consider use of a shared resource to administer direct payment and/or a pooled fund arrangement. Independent user trusts are also an option but fall considerably short of the flexibility and governance surrounding direct payments so would not achieve the same outcome</p>

<p><b>Question 2.5:</b> 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?</p>	<p>There is a wide range of direct payment information already in place across Wales from Social Care that can be built on for people receiving health care, wherever possible we would suggest building on this rather than creation of new stand-alone materials. People have asked us for continuity of care and work in integrated ways, we would want to remain true to this and work in partnership to deliver this.</p>
<p><b>Question 2.6:</b> 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?</p>	<p>Direct payments allows recipients to actively recruit personal assistants who are fluent in their language of choice, and are from their local community, there is therefore real potential for a positive impact on use of Welsh language within people's care provision which is to be encouraged and welcomed. Early implementation of the change is needed.</p>
<p><b>Question 2.7:</b> 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</p>	<p>Direct payments allows recipients to actively recruit personal assistants who are fluent in their language of choice, and are from their local community, there is therefore real potential for a positive impact on use of Welsh language within people's care provision which is to be encouraged and welcomed. Early implementation of the change is needed.</p>

<p>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.</p>	
<p><b>Question 2.8:</b> 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.</p>	<p>The change of legislation to specifically allow direct payments for CHC is welcomed, it will not however be a panacea for all the challenges surrounding CHC and transfers from social care to health care. We need this change to be a catalyst for improved working relationships, better MDT decision making and fair and transparent implementation of the CHC framework, which at present is not always the case. CHC eligibility is extremely closely scrutinised by health boards and thresholds applied by panels are consistently above those set out in legislation and case law. We need to work collaboratively on this agenda as people who currently have social care direct payments trigger eligibility for CHC, and to keep the person their family and codes of practice at the heart of such decision making, if we do not the change in legislation will simply leave even more people disenfranchised. In summary the change is welcomed but needs to be accompanied by a corresponding change in practice.</p>

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

There are 11 questions about this chapter.

<p><b>Question 3.1:</b> 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?</p>	<p>Will this be supported by the appropriate training, advice and reporting mechanisms, together with appropriate level of support for the person reporting the child at risk?</p> <p>Fully supportive of this, as it is part of our value base as professionals, and our shared responsibility for safeguarding that if we see a child is at</p>
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	risk that we act on it. This will further strengthen the principle that it is everybody's business.
<b>Question 3.2:</b> 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?	Most codes of professional practice and registration with Social Care Wales are already explicit about these duties and expectations. There is risk that a new additional duty will disproportionately increase reporting without addressing underlying risks. Local Authority resource challenges mean we would be unlikely to be able to manage a significant increase in demand to deal with screening reports that are triggered based on a duty rather than on the code of practice and risk stratifications therein.
<b>Question 3.3:</b> What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach? Please explain your reasoning.	There is risk that a new additional duty will disproportionately increase reporting without addressing underlying risks. Local Authority resource challenges mean we would be unlikely to be able to manage a significant increase in demand to deal with screening reports that are triggered based on a duty rather than on the code of practice and risk stratifications therein.
<b>Question 3.4:</b> What lessons can we learn from the duties to report in other countries?	
<b>Question 3.5:</b> 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?	Are we sure the duties under the 2014 act are not delivering? What evidence can be viewed to explain this concern.
<b>Question 3.6:</b> 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 be a general duty for any organised groups

(b) What are your views on this in respect of adults?	
<p><b>Question 3.7:</b> 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:</p> <p>(a) What are your views on this in respect of children (under the age of 18)?</p> <p>(b) What are your views on this in respect of adults?</p>	<p>It should apply to all persons who might be considered under Section 5 concerns i.e. anyone working directly with vulnerable people, but also to anyone working directly with children in all settings.</p>
<p><b>Question 3.8:</b> What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?</p>	<p>vetting &amp; barring considerations and/or removal of public body funding</p> <p>Recorded sanction with registering body and/or employer, with a final warning for first offence and gross misconduct in event of second failure to report.</p>
<p><b>Question 3.9:</b> 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?</p>	<p>Cannot see that this would have an impact.</p>
<p><b>Question 3.10:</b> 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.</p>	<p>As above.</p>

<p><b>Question 3.11:</b> 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.</p>	
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#### 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.

<p><b>Question 4.1:</b> (a) <i>Identifying unregistered services - power to obtain information:</i> Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any</p>	<p>YES</p>
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person where there is reasonable cause to believe that they are providing a service which should be regulated?	
<b>Question 4.2:</b> (a) <i>Identifying unregistered services - power to obtain information:</i> 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
<b>Question 4.3:</b> (a) <i>Identifying unregistered services - power of entry:</i> 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
<b>Question 4.4:</b> (a) <i>Identifying unregistered services - power of entry:</i> 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
<b>Question 4.5:</b> (b) <i>Publication of annual returns:</i> Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?	YES
<b>Question 4.6:</b> (b) <i>Publication of annual returns:</i> Do you agree with the proposal to create a related offence of failing to publish an annual return?	YES
<b>Question 4.7:</b> (c) <i>Publication of inspection reports:</i> 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

<p><b>Question 4.8:</b> <i>(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?</i></p>	<p>Yes, unless it is clear they intend to provide one in future</p>
<p><b>Question 4.9:</b> <i>(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?</i></p>	<p>YES</p>
<p><b>Question 4.10:</b> <i>(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?</i></p>	<p>Yes, unless they intend to provide one in future</p>
<p><b>Question 4.11:</b> <i>(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?</i></p>	<p>YES</p>
<p><b>Question 4.12:</b> <i>(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</i></p>	<p>YES</p>

Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?	
<b>Question 4.13:</b> <i>(d) Improvement notices and cancellation of registration – power to cancel a service provider’s registration in prescribed circumstances:</i> 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
<b>Question 4.14:</b> <i>(e) Responsible individuals – making representations:</i> 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
<b>Question 4.15:</b> <i>(e) Responsible individuals – sending the improvement notice to the service provider:</i> 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
<b>Question 4.16:</b> <i>(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:</i> Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?	YES
<b>Question 4.17:</b> <i>(f) Definition of ‘Care’ for children and young people:</i> Do you agree with the proposal to adjust the definition of ‘care’ in section 3	

<p>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?</p>	
<p><b>Question 4.18:</b> What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:</p> <ul style="list-style-type: none"> <li>• Benefits, and disbenefits;</li> <li>• Costs (direct and indirect), and savings;</li> <li>• Impacts upon individuals and groups with protected characteristics;</li> <li>• Other practical issues.</li> </ul> <p>Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.</p> <p>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.</p>	
<p><b>Question 4.19:</b> 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?</p>	
<p><b>Question 4.20:</b> 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.</p>	

<p><b>Question 4.21:</b> 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.</p>	
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### Questions on Chapter 5: Amendments to regulation of the social care workforce

There are 9 questions about this chapter.

<p><b>Question 5.1:</b> 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.</p>	YES
<p><b>Question 5.2:</b> 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.</p>	YES
<p><b>Question 5.3:</b> 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.</p>	YES
<p><b>Question 5.4:</b> 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.</p>	YES
<p><b>Question 5.5:</b> What, in your view, would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order?</p>	Clear rationale for the decision
<p><b>Question 5.6:</b> What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:</p> <ul style="list-style-type: none"> <li>• Benefits, and disbenefits;</li> </ul>	

<ul style="list-style-type: none"> <li>• Costs (direct and indirect), and savings;</li> <li>• Impacts upon individuals and groups with protected characteristics;</li> <li>• Other practical issues.</li> </ul> <p>Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.</p> <p>Please explain your reasoning.</p>	
<p><b>Question 5.7:</b> 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?</p>	
<p><b>Question 5.8:</b> 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.</p>	
<p><b>Question 5.9:</b> 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.</p>	

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

There are 5 questions about this chapter.

<p><b>Question 6.1:</b> We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare</p>	<p>Yes in favour.</p>
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<p>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?</p> <p>Please explain your reasoning</p> <p>.</p>	
<p><b>Question 6.2:</b> What in your view would be the likely impacts of the proposal? You may wish to consider, for example:</p> <ul style="list-style-type: none"> <li>• Benefits, and disbenefits;</li> <li>• Costs (direct and indirect), and savings;</li> <li>• Impacts upon individuals and groups with protected characteristics;</li> <li>• Other practical issues.</li> </ul> <p>Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.</p> <p>Please explain your reasoning.</p>	
<p><b>Question 6.3:</b> 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?</p>	No effect.
<p><b>Question 6.4:</b> 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.</p>	No impact.

**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: Amy Bainton

Organisation (if applicable): Barnardo's Cymru

Email / Telephone number: [REDACTED]

Your address: [amy.bainton@barnardos.org.uk](mailto:amy.bainton@barnardos.org.uk)

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

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

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

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

There are 12 questions about this chapter.

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

Yes, we believe that this will deliver the Programme for Government commitment on eliminating profit from children's social 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.

There are a number of potential impacts of the proposal – with the potential for both negative and positive consequences.

Barnardo's Cymru supports the ambition to remove private profit from placement provision in children's social care. We believe that in the long-term, this could foster a system that delivers innovation in children's care, and puts the child's needs at the centre of the system we design. We view this ambition as one that requires a systems-change approach to how we view children's social care, and we should not be limited in our ambitions as to what this can achieve.

We spoke to care-experienced young people that are supported by Barnardo's Swansea<sup>1</sup> about this proposal and their views. The group of six young people were aged 16 – 19.

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<sup>1</sup> <https://www.barnardos.org.uk/what-we-do/services/barnardos-swansea-bloom-life-coaching>

Barnardo's Swansea supports care-experienced young people who are transitioning to independence or semi-independence through supported housing, mentoring, befriending and helping them to realise their ambitions.

Young people unanimously felt that money invested in their care should remain in the system to benefit them, rather than being removed in private profit which was viewed as going to anonymous stakeholders who were unlikely to play any role in young people's lives, or in Wales.

Young people felt that they were taken advantage of by companies that provide care for them on the basis of private profit and were skeptical about whether these same companies truly had their best interests at heart.

Young people also felt that private companies who existed to make a profit from children's social care had an interest in there being more children taken into care, not less, whereas these young people felt strongly that the system should be designed to keep families together wherever possible and that good quality residential care and fostering for children and young people should be a safely managed last resort.

Barnardo's Cymru recognises that many private care providers have the best interests of young people at heart, but the results of this focus group demonstrated the perception held by many care-experienced young people about who provides their care, why they are motivated to do it, and how this influences their feelings about their care throughout childhood and early adulthood.

This demonstrates that there is the potential for care-experienced young people to benefit from receiving care and support from organisations where it is recognised that their motivation is to ensure the best possible outcomes for these young people, and not to profit from their care. This could improve young people's perception of their care, improve relationships with providers and enable children and young people to feel even more confident that their care and support is provided by those who are fully invested in their wellbeing and long-term outcomes.

In the longer term, this policy could also make Wales a leader in providing children's social care and services. Alongside the other commitments in the radical reform agenda, this could set Wales apart from many other nations in setting a positive and inclusive culture for the provision of children's social care. We would urge Welsh Government to remain

committed to co-production and working closely with young people and children when developing the future of this agenda.

We would urge Welsh Government to consider what other innovative approaches could be adopted as part of transitioning to a different way of commissioning and providing care. For example, Barnardo's created Gap Homes<sup>2</sup> — a project that offers homely, affordable housing for young people leaving care.

The young people we support tell us that this project has provided them with a more certain future and has been a vital stepping-stone to independent living

There is a chance that as a result of the changes this policy will bring to the sector, private providers will leave Wales and new/other providers will need to take their place. This creates an opportunity for us to rethink how we deliver children's social care and how we can create better care for children and young people. The current housing crisis means that there's not a lot of available housing, let alone for young people leaving care who are particularly vulnerable.

The housing that's sometimes offered to them can be so unsuitable that it can set them back and undermines any support they've been offered. This can have truly devastating consequences, including resulting in homelessness.

We would hope that as we approach this huge change to how children's residential care is delivered, we are able to move forwards adopting innovative practices such as the Gap Homes model and many others and ensure that children and their views are at the centre of the care we deliver.

Any major change must be managed to minimise disruption and discontinuity for children and young people. The importance of stability to this cohort of young people cannot be overstated. Despite welcoming the ambition of this policy, Barnardo's Cymru does have concerns about the potential unintended consequences of this large-scale change, particularly in the short-term and during the transition.

We have outlined several concerns related to this proposal and how they could be mitigated.

## **Workforce issues**

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<sup>2</sup> <https://www.barnardos.org.uk/blog/giving-care-leavers-somewhere-safe-and-stable-call-home>

Barnardo's Cymru is concerned that social care in Wales is not currently in a stable state from which to make a significant change. Wales is facing a social care crisis across the sector that is already having significant effects on the landscape, with a recruitment and retention crisis that is seriously hampering the sector's ability to respond to major change.

It is a concern that with the sector already being so unstable, further changes could exacerbate this, particularly if providers were to abruptly leave Wales and create further churn and staff shortages.

Whilst private providers exiting the market may lead to staff looking for jobs with new, third sector providers, given the pressure on the social care workforce it is not unlikely that staff may choose to leave the sector completely and look for other opportunities with better pay, less risk and fewer antisocial hours, all of which are sadly the hallmarks of working in children's social care.

The workforce that we rely on to care for children in residential settings is one of the most dedicated and professional, doing one of the most important and often difficult jobs. Despite this, they are part of a system that is under significant stress for a multitude of reasons including high caseloads, staffing issues, risks relating to safeguarding and much more.<sup>3</sup>

As part of the approach to removing profit from care, we would urge Welsh Government to invest in new efforts to ensure that children's social care is viewed as an attractive career opportunity that is well-paid, respected and supported. This should include support for training and education, and a campaign focusing on the huge contribution of the social care sector to the lives of children and young people. Children's social care staff are as important to our society as NHS staff, and we would look to the efforts to support NHS staff in recent years as an example of the perception of a social care career that must be fostered.

As part of making children's social care an attractive career, and to encourage more people to consider working in the sector, we must tackle the demonisation of social workers that has taken place in parts of the media, and the abuse that social workers often receive that would not be tolerated in other professions (whilst continuing to ensure that where

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<sup>3</sup> Children's social services and care rates in Wales: A survey of the sector CASCADE Centre for Children's Social Care and Wales Centre for Public Policy, Cardiff University September 2021 [https://www.wcpp.org.uk/wp-content/uploads/2022/03/220216-Childrens-social-services\\_en\\_final.pdf](https://www.wcpp.org.uk/wp-content/uploads/2022/03/220216-Childrens-social-services_en_final.pdf)

there are mistakes or poor practice these are addressed robustly). We hope to work with Welsh Government on this.

If we do not invest in the future of the workforce, the social care crisis will become even more acute at a time when we will rely on them to deliver stability and certainty to young people when they are otherwise facing yet more change and upheaval in their lives.

When discussing foster carers and those working in the care system, our focus group of care-experienced young people said that 'a more honest message about caring' is needed, and they hope to see it come about because of this change.

*"At the moment, the portrayed message is that caring and looking after children and young people is a rewarding and great experience, but this is portraying a false reality. Caring has its challenges and this should be highlighted."*

Many of the young people said they knew carers who nearly gave up after a few months due to the challenges they faced but were not informed about.

### **Supporting children close to home**

We fully support Welsh Government's commitment in the Programme for Government to supporting more children in residential care closer to home. Again, we know that this is something that is already an issue in so many parts of Wales.

As part of removing profit from care, Welsh Government should consider how we ensure the provision of high-quality care that meets the needs of children and young people in the communities that they are from. With the potential removal of private companies, this could be difficult to achieve for new, third sector providers. Steps must be taken to ensure that we can provide high-quality residential care in every area of Wales, and that children's residential care can be delivered in every part of Wales where children need to access it.

### **Unregulated placements**

There are already high numbers of unregulated placements of children in certain areas of Wales. The Competition and Markets Authority's review of the children's social care market in Wales stated that:

*"We were told consistently by local authorities in Wales that it is especially difficult to find placements for children with more complex needs and for older children. We were also told that some children are placed in an unregulated setting due to the lack of an appropriate children's home place, and so cannot legally be given the care they need. We also understand that in some cases children are being placed in unregistered settings, notwithstanding the fact that this is illegal."*<sup>4</sup>

It has been as recently as the last few weeks that media articles have highlighted the lack of appropriate housing and placements available in Wales, with one young mother and her baby left with no option but to live in a hotel for four months with no access to cooking equipment aside from a kettle.<sup>5</sup>

There is the potential that there could be a short-term increase in the number of children in unregulated, inappropriate placements because of further pressure on the numbers of placements available. This will be exacerbated by the potential removal of private sector provision because they are better able to take decisions across wider geographical areas due to greater access to capital investment. This suggests there needs to be a staged withdrawal to enable not-for-profit providers to access capital investment and build placement provision across much wider geographical areas than currently permitted. Access to capital investment should be supported by Welsh Government, for both providers and local authorities.

We would also ask that Welsh Government consider additional support for providers. Quality standards should be put in place to ensure that the same high standards are met for children and young people in all settings, and that providers are supported to deliver this. There may be learning from the standards due to be introduced shortly in England that may be helpful.

### **Churn and disruption**

In the short term, there is a chance that private providers will choose to give up their interests in Wales and move to markets elsewhere that do not require them to alter their business model.

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<sup>4</sup> Children's social care market study final report Wales – The Competition and Markets Authority, March 2022 p.25  
summary [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1059604/Wales\\_summary.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1059604/Wales_summary.pdf)

<sup>5</sup> <https://www.bbc.co.uk/news/uk-wales-63416465>

If this happens, other providers will need to be encouraged to step in and take on more fostering and residential opportunities. Welsh Government should consider how to remove barriers to third sector providers entering the market whilst also ensuring that the workforce is protected.

We note that there has been little consultation with potential third sector providers to understand whether they would enter the market in Wales, and what support they would need if they were to do so. We would suggest that Welsh Government undertake this planning in order to understand the potential landscape in the aftermath of the change and taking into account the need for plurality. Large and small third sector providers will need to feel supported to potentially enter the market, for example through capital investment and capacity building funds, and they will have different support needs to do so.

We already have a significant lack of fostering families compared to the need for foster families in Wales. Barnardo's has issued an urgent appeal for more people to come forward as potential foster parents. The pressing need for new foster carers comes at a time when Barnardo's has seen a decline in the number of people coming forward to be foster carers. With the average age of a Barnardo's foster carer aged 55 and older, the advancing age of many foster carers means an increasing number are now retiring.

There has been an 18% increase in fostering referrals over the last year, and for children over the age of 11 that figure is 25%.<sup>6</sup> Steps must be taken to ensure that when private providers remove support in Wales, this does not lead to more foster parents retiring and exacerbating an already stark problem.

It is our concern that the current Transfer Protocol for foster parents transferring between agencies will not be suitable in the wake of eliminating profit from care if private sector agencies exit Wales. We would urge Welsh Government to work with local authorities and third sector partners to consider how the process can be smoother and fast-tracked where there are children and young people settled in long term homes with foster parents who will need to transfer to another agency for support. Under the current transfer protocol fostering families have to go through the full assessment process, including all checks, references and

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<sup>6</sup> Data from Barnardo's UK Fostering services

Figures released by Barnardo's show that between August 2021 and July 2022, the number of children referred to its UK-wide fostering services was 19,996. This is a rise of 28 per cent, compared with the previous 12-month period when the figure was 15,642.

In England the rise in referrals was 28 per cent, in Wales 18 per cent and in Scotland 50 per cent.

reapproval at panel when changing agencies, which is frustrating and time consuming for foster parents.

Without this, there is the risk that more foster parents will choose to retire early, particularly those who might be approaching retiring age and face choosing between several months of re-assessment or early retirement.

### **Properties and commissioning**

It is Barnardo's Cymru's view that this change to children's social care will require a change to the way we view commissioning in the future, and that a traditional commissioning response will not be compatible with embedding these changes.

For example, many bids for residential children's homes currently work on the assumption that a prospective provider either has access to a property that is fully renovated or has the means to fund capital spend on building new properties themselves. There is rarely provision within the bid specification for support from the commissioner with this.

For new providers to enter the market and help fill any potential gaps that are left by private providers, this could be a barrier to providing support.

We would urge Welsh Government to consider how providers can be supported with this, particularly whether capital funding can be provided to local authorities, so that the local authority is the owner of the property and commission out the residential services to third sector providers. This partnership model could help build stability and diversity.

Another way to prevent property from being a barrier to providers is to look to housing associations to support this change. Children's care providers, whilst best placed to support young people, are not necessarily experts in property, and with the right support from local authorities and housing associations they would not need to be. This policy change could be an opportunity to explore how better partnerships can be fostered between local authorities, housing associations and third sector providers so that each organisation can bring their expertise to a partnership and share the responsibility of establishing and operating a high-quality residential home for children and young people.

We hope that such a landmark change in social care in Wales will lead to a refresh as to how we do many things, with the space to identify new opportunities to work together in different ways to traditional

commissioner-provider relationships rather than just seeking to replace what may become a gap if established providers choose to move on.

**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?

Requiring all registered providers of children's social care to be defined by their status as 'not-for-profit' is a straightforward and simple way of ensuring the change intended to be brought by this policy is realised.

That said, this will need to come hand-in-hand with effective monitoring of these arrangements. We would not want to see the spirit of this policy undermined were a private provider able to register as a Community Interest Company, for example, to maintain a legal presence in Wales despite not making any other changes to their model of supporting children and the amount of profit they make from the care of children.

We would expect that the Charity Commission alongside Care Inspectorate Wales would play a role in providing appropriate oversight of the organisations that were registered as non-profit and approved to provide children's care in Wales. This would ensure that those who were registered met the legal requirements of registration in Wales, as well as meeting the spirit of the legislation.

We favour this option as one which is easy to understand for all providers, including third sector providers who may choose to step in and provide support as new providers.

Defining the restriction based on an idea of 'trading surplus' is not practical because a number of third sector providers will have a trading surplus built into their contracts, which is reinvested in the care of children.

**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

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

The timings of the legislation depend heavily on how Welsh Government intends for the changes to be made and implemented by non-profit

providers. We are concerned about the timings outlined in this consultation document.

We would need to understand more about Welsh Government's plans and the implications for existing providers before being able to comment fully on the proposed timings.

Barnardo's feels strongly that there should be a phased approach to implementing any changes, so that learning can be taken from the initial phases and implemented elsewhere. This is a large-scale change and implementing this in one swift period will not enable the sector to benefit from an approach which promotes and prioritises stability and continuity for children, young people and staff working in the sector.

Barnardo's Cymru would strongly favour a phased approach which includes a pilot period, whereby there is support and encouragement for local authorities to work in partnership with housing associations and third sector providers to pool their expertise and share the responsibility for providing children's social care. This would enable local authorities and partner providers to design and plan services based on local needs, sufficiency and property issues. We believe this would promote a sustainable model. There should also be a period of time built in for learning from a pilot so that other areas may benefit from what they have learned from the transition. A phased approach should also include funding for capital and investment in capacity building.

**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?

Barnardo's invests significant amounts of time and money in engaging with young people if there is due to be a change in who provides their care so that they understand the changes and to help manage their feelings and expectations about this.

If a Barnardo's service is closing, for example, (likely due to a change in commissioning decisions), we invest in a significant amount of interim planning that helps young people understand the changes (including undertaking an Equality Impact Assessment), when changes were coming, and how those adults responsible for their care would ensure that these changes did not affect their day-to-day care and support. We are proud of how seriously we take our commitment, both to young people and to our staff.

We cannot speak to the way that a private provider would manage a similar transition, if they were planning to leave Wales because of the change, but we would be concerned about the potential for abrupt changes, causing significant upheaval for children and for staff. As we have already discussed, with the social care workforce already facing significant challenges, we would be concerned about the potential for further churn in the system and the impact this could have on children and staff.

This is a particular concern given that the timescales are short.

Barnardo's Cymru would urge Welsh Government to consider how contingency planning can be undertaken with all parts of the sector to minimise and mitigate any potential disruption that could have a significant impact on children, young people and staff.

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

Guidance will be a critical part of the implementation of the legislation. The changes brought about will be significant for everyone working in the sector.

Issuing guidance to providers and potential future providers is critical and should be available in good time before any changes begin to be made, to help providers, staff and children and young people understand what to expect.

There should also be guides and communications that are co-designed by young people to help children understand the changes that are coming and how this could affect them, whilst also giving them the opportunity to ask questions before any such changes begin to be made.

**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 have responded to this question above, particularly in question 1.1

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

We have responded to this question above, particularly in question 1.1

**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 would be our hope that with the investment in a homegrown children's social care sector, a strong presence for the Welsh language could be developed. We hope that Welsh Government will use this opportunity to invest significantly in a Welsh social care sector that portrays the values that we all believe in, develops staff from the beginning to the end of their careers and makes them feel valued throughout, and can deliver excellent standards for children and young people in their communities.

However, it is unavoidable that in the short-term the potential shake-up to the sector could result in a temporary loss of Welsh-speaking staff and provision for children if providers pull out abruptly and there is a temporary loss of roles in Wales.

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

We are disappointed to note that Welsh Government has not published a Child's Rights Impact Assessment with this consultation. We would urge Welsh Government to ensure that this is published as soon as possible.

Young people in our focus group also discussed how they hoped that removing profit from care would create a step-change in the future of children's social care in Wales. One young person expressed his hope that more money would be invested in prevention work to keep families together, discussing the fact that while he was taken into care as a baby, by the time his sisters were born years later his Mum had received support and was able to keep her daughters in her care, while he remained in the care system. He asked why it took so long to support his Mum, and why this support couldn't have been provided sooner so that he too could have remained in the care of his family.

Care-experienced young people said that the words they would want to describe the care system would be 'life-changing' and that foster carers should be able to see themselves as 'doing good in the world'.

Finally, we would be interested to learn what Welsh Government feels are the lessons to be learned from progress already made on eliminating profit in Scotland and any other nations that can provide us with insight.

## 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?

Reporting and responding effectively to concerns about abuse of children is vital to ensure children's protection.

Mandatory reporting needs to be considered in a way that prevents unintended consequences. Child protection professionals need to be empowered to build trust with a child, which is essential to uncovering the full extent of child neglect and abuse, which often happens in a non-linear way. There should be an assumption that professionals would always report child abuse, except in certain defensible situations. For example, where a professional is still gathering information about a CSA report, because a child has not disclosed in a linear way. There needs to be nuance around mandatory reporting, so that these kinds of situations can be taken into account.

Taking a binary approach to mandatory reporting could hamper professionals' ability to build relationships with children, as survivors had shared with the Independent Inquiry on Child Sexual Abuse, potentially meaning that fewer children would feel safe or able to disclose what has happened to them.

Any move to mandatory reporting needs enough long-term sustainable investment to create stable, specialist support in the various settings designed to protect children, alongside increasing resource in statutory agencies and for multi-agency forums. Pathways need to be made available to support children during the criminal justice process, including access to trauma-informed counselling and therapeutic support.

We would welcome further information from Welsh Government on exactly what issue they seek to resolve by proposing the introduction of mandatory reporting, and how it is viewed that mandatory reporting meets this need.

Some Barnardo's practitioners referenced the fact that in many previous reports and inquiries a breakdown in communications between agencies and departments was partially to blame for failed information sharing that could have led to greater action to protect a child. Will mandatory

reporting help solve this problem? Or will further, concurrent action, need to be taken? We look forward to hearing more from Welsh Government on this.

We would urge Welsh Government to consider mandatory reporting in the wider child safeguarding context, and for a raft of supportive mechanisms (and investment) to be considered alongside any proposals on mandatory reporting.

**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.

### **Potential benefits**

#### *Increased identification and increased investment*

There is evidence from other jurisdictions that the implementation of mandatory reporting results in an increase in identification of children at risk.<sup>7</sup> Increased identification can also lead to a more rapid cultural change, ensuring that children are better protected.

To respond to an increase in cases, it would be vital that the introduction of mandatory reporting would come hand-in-hand with significant investment in safeguarding support. Safeguarding hubs are already incredibly overstretched and the increase in activity and reporting that this change could create will only be manageable with investment in the system to support children, young people and the staff tasked with responding to their needs. We already hear about a build-up of cases in Safeguarding Hubs whereby children at risk are reported but there is not sufficient capacity for post-identification care.

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<sup>7</sup> <https://www.iicsa.org.uk/document/professor-ben-mathews-model-law-mandatory-reporting-child-sexual-abuse-england-and-wales>

There will also need to be investment in training for staff across the social care sector to ensure that these responsibilities and the support available are embedded across Wales.

### *Greater intelligence gathering*

If Welsh Government were to follow the recommendations of the Independent Inquiry on Child Sexual Abuse (IICSA) and introduce mandatory reporting for responsible individuals such as teachers, sports coaches, etc, this could create a better level of information about a child's life and experiences. This could help with improved and more timely decision making, although there are negative consequences for this, such as the ability of other sectors (teaching, youth clubs, etc) to take on this role without significant investment in training and support.

## **Potential disbenefits**

### *Dissuading children from disclosing abuse*

Mandatory reporting of abuse could mean that children are less likely to disclose abuse to professionals. Children may be reluctant to go through a criminal investigation, particularly if they are worried about criminalising their abuser or if their abuser has threatened further harm if they tell professionals. This would be particularly heightened for children from communities that hold negative views of and relationships with the police.

### *Preventing professionals from building trusted relationships with children*

Mandatory reporting means that those working with children lose discretion as to when to act on reports of abuse and share information with third parties. Child victims often share information gradually, in a non-linear way, after building trusted relationships with professionals. If a professional had to report a disclosure of abuse immediately, this may prevent further information being disclosed.

Mandatory reporting would also mean that interventions which focus on addressing trauma and facilitating recovery may take second place to statutory agency processes and criminal investigations, which may not necessarily lead to the best outcome for the child.

### *Workforce morale*

There are concerns that, given we are already facing a social care workforce crisis in Wales, this could exacerbate issues with poor workplace morale and an inability to recruit more staff and retain others.

As we have discussed elsewhere in this consultation response, there is a significant need to address shortages across the social care sector, and to invest in making social care careers attractive and sought-after. We would be concerned that any negative consequences on workplace morale could further hamper our ability to recruit and retain staff at such an important time.

We would be concerned about whether these changes would create little practical change to organisations that already hold a reporting duty but would raise anxiety at a time that we know that there are already issues with mental health and wellbeing issues in the sector,<sup>8</sup> and burnout that leads many to leave social work.

### *Multiple reports*

There are concerns that if a legal duty were created, different professionals might submit multiple reports about the same child to make sure that they meet their individual liabilities and requirements which could flood an already overstretched system.

### *Supervision*

When consulting with Barnardo's staff on this proposal, some were concerned that for more junior or inexperienced staff, supervision and working with more experienced staff is a key part of putting together the jigsaw pieces that they might observe in a child's behaviour and wellbeing, in the absence of a disclosure. Less experienced staff work with managers in supervision to talk through their professional judgement and concerns about a child, and then decide whether a report is required. It was highlighted that this is an important part of developing as a new social care worker and that this should be considered as part of changing the landscape in which we require staff to undertake this role. Mandatory reporting may lead to an increase in erroneous reports made by new or inexperienced professionals, increasing pressure on the system.

### *Poverty*

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<sup>8</sup> The BASW Annual Survey of Social Workers and Social Work: 2021 A summary report  
[https://www.basw.co.uk/system/files/resources/basw\\_annual\\_survey\\_summary\\_report\\_2021.pdf](https://www.basw.co.uk/system/files/resources/basw_annual_survey_summary_report_2021.pdf)

Recent research from Children in Wales has highlighted that children are being wrongly identified as potentially suffering from neglect, when in fact families are struggling with poverty and the cost-of-living.

One social worker was quoted as saying:

*"We have recently worked with a family under the category of neglect. As it turned out, Mum was not neglectful, she was poor."*<sup>9</sup>

How will potential new requirements around mandatory reporting ensure that we do not see a spike in children reported as experiencing neglect unfairly bringing parents into a criminal justice process when in fact the whole family is in need of support due to the acute level of the cost-of-living crisis and poverty in Wales?

We would welcome more clarity from Welsh Government on concerns related to poverty and how we will not inadvertently target and stigmatise certain groups of people because of this.

### **Potential risks**

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

We do not have any research to add to 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 would need more information from Welsh Government on exactly what they propose to introduce before being able to answer this question.

**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)?

As there has not been a definition of the wider group of professionals in relation to this questions, it is difficult to answer this fully without further clarity. We would assume that those professions that would come under

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[https://www.childreninwales.org.uk/application/files/6416/6487/3691/CIW\\_Poverty\\_report\\_2022\\_English.pdf](https://www.childreninwales.org.uk/application/files/6416/6487/3691/CIW_Poverty_report_2022_English.pdf)

such a duty are those where the employees are already under a duty to report under the terms of their employment. What would be the mechanism to individualise it to individual workers over and above those professions/organisations already invoking such a duty already – any Governmental sponsored duty would have, in practicality, to be mediated by those identified organisations.

From a voluntary sector perspective, many organisations including Barnardo's Cymru largely employ non-professionals in child social care provision, so this raises questions about whether an independent disciplinary body would have to be established – if not, then would be reliant on voluntary agencies internal disciplinary procedures.

(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)?

Barnardo's strongly believes that safeguarding should be everybody's business. We know that public perception around how to respond to concerns about a child's welfare or safety are generally very low, and we would welcome more guidance and communications for the general public about how to react about a child that they have concerns for.

That is very different from creating a legal duty, and we would welcome more clarity from Welsh Government on who they intend to extend this duty to in order to respond.

Alternatively, we would welcome the opportunity for the consultation to be extended until Welsh Government has published their response to IICSA's final recommendations, so that our response can take this in fully.

(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?

We would be concerned were a criminal sanction to be attached to this reporting duty, due to the potential impact on workplace morale and our ability to recruit new social workers and staff to the social care sector.

Reporting or not reporting should not necessarily be seen as binary. We should seek to build a balanced reporting system that protects children

and young people, whilst also guarding against professionals being punished for not reporting at a particular moment in time, when in fact they are building up a relationship and/or a picture of evidence and need some discretion to determine the best point to report.

Child protection professionals need to be empowered to build trust with a child, which is essential to uncovering the full extent of child neglect and abuse, which often happens in a non-linear way. There should be an assumption that professionals would report child abuse, and a defensible position unless they did not. Taking a binary approach to mandatory reporting could hamper professionals' ability to build relationships with children, potentially meaning that fewer children would feel safe or able to disclose what has happened to them.

**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: Jonathon Broadbery

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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? On behalf of an organisation

If you want to receive a receipt of your response, please confirm your email address, here: [sarah.coates@ndna.org.uk](mailto:sarah.coates@ndna.org.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?

**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.

In principle NDNA would agree with extending the role of Social Care Wales to cover childcare and play workers and we have worked on joint recruitment campaigns in the past. However, we would want to see further detail and clarity on the impact this would have. For example as noted within chapter 5 of this consultation there are requirements in Section 82(2) for Social Care Workers to be registered. As the proposal is for Childcare & Playworkers to be treated as Social Care Workers will this include the requirement to be registered? Whilst there is ongoing discussions about the benefit of registration, NDNA feel that there many things that need to be given consideration and consultation should be undertaken prior to this becoming a requirement. In addition would this move exclude the possibility of registration falling under the Education Workforce Council (EWC) without it even being given consideration. We would want to see the detailed proposals clearly set out and consulted on with staff, employers and other stakeholders in the sector before any changes are made.

Furthermore the consultation notes within chapter 6, point 6 that childcare workers and play workers will be included as a 'class' of social care worker. Further clarification is requested around this point as to whether childcare and playworkers will fall under the general definition of Social Care Workers or if there will be a separate class of worker. During the pandemic childcare and playworkers were excluded from some protections and considerations as they did not fall under the definition of social care worker. We would be keen to understand the impact of any changes on childcare and playworkers, if they were to be under a new, different or separate classification of Social Care Workers.

**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;

If childcare and playworkers are under the definition of social care workers will this have an impact upon qualifications and the ability for social care workers to transition across job roles within the social care workforce? This would need further consideration to ensure that all workers within the childcare and playwork workforce

have the required knowledge and skills to work within the sector as required by the current qualifications framework.

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

The consultation notes that those who volunteer at settings will also come under the term social care worker for the purpose of the change in regulations, many providers rely on volunteers to support them to meet ratio's and often to provide additional services for children in their care with volunteers often working on an irregular basis i.e parents supporting on an ad hoc basis - is there a planned definition for volunteer?

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

Please explain your reasoning.

During the pandemic a number of providers highlighted that they felt undervalued by the Welsh Government for the service that they provided whilst there was increased recognition of the education workforce. There have been discussions about the need to raise the profile of the childcare and playwork workforce to ensure that the sector is recognised for the work that they do and that parents value them as early educators and nurturers. Work has been ongoing to include early years in the curriculum continuum and to show the importance of learning and development in the early childhood education and care discussions. If the childcare and playwork sector are being classed as social care workers there is a concern that it will exacerbate the current situation with the focus remaining on the 'care' element of the role rather than the early education element. This could risk damage to the standing of the workforce, undermining the importance of early education and make recruitment challenges harder rather than professionalise the workforce.

**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: **Mark Bowler**

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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?

**Response on behalf of Conwy's Social Care and Education Department.**

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

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

We agree, otherwise we will have operators continuing to deliver in Wales for children from England.

This provision will support the aim, but at the same time will have a big impact on market stability. Ideally we feel that for this to work, it needs to be implemented across the whole of England and Wales for consistency otherwise this could increase the risks and cause more problems for Wales.

We feel that the principals are right, but we have significant concerns with regard to sufficiency of the current market to meet the demand and as a consequence children may end up in unregulated settings provided by third sector organisations who are not equipped to deliver registered residential 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.

Benefits – this could result in a market of providers whose core values are focussed on providing good and stable homes for children. We agree that this could support Local Authorities to develop local provision and keep children close to home.

We feel that there are financial benefits and long term potentially more financially sustainable placements for children.

We hope that the proposal will bring costs down to a reasonable level to help Local Authorities achieve services on budget.

Dis-benefits – Significant concerns for the short term market stability. The current local market does not have capacity to meet the current demand. This can be

reduced through appropriate transition planning and will require investments and collaborations across Wales.

We could potentially lose some good providers who do not wish to become not-for-profit which may result in difficulties with placing children with complex needs in Wales. There is a risk of more and not less cross border placements and higher costs in the short term. We need to know what each individual provider is planning; are they going to switch to become a not-for-profit organisation or are they going to close their settings in Wales. We are also concerned that new providers are being put off from opening up new services in our area because of this proposal.

This could also have a knock on impact on third sector organisations in their capacity to deliver preventative services in the community. More work is required with private and third sector colleagues to prepare them for the proposed changes, and there needs to be feedback on their thoughts with regard to this consultation.

Running Residential homes is costly, therefore the costing models have to be realistic and allow for more complex needs and also walking nights etc. A real focus needs to be on developing therapeutic services because the CAMHS waiting lists are so long and not always activating change.

Impact on groups with protected characteristics – This could be positive in terms of the development of local provision for children and young people with disabilities which can then become homes for life as they become adults.

We feel again that the principles are correct but we have concerns around placement sufficiency, which may lead to more unregistered placements, especially in the short term while the market gets established.

This will also put pressure on the Independent Fostering Associations and Care Homes with regard to how they are going to convert these placements to not-for-profit. What support will they receive?

The risk with regards to profit making companies who are providing good quality care, and do not wish to switch over to not-for-profit is higher for those with a disability. These services are delivered by a smaller number of specialist providers and there will always be that requirement for more specialist's settings, whether that is solo setting or a more therapeutic environment that we may not be able to deliver on alongside the matching of children within the local authority provision.

Other practical matters - We would like to suggest that there could either be a cap on the profit being made or that a requirement is made that the profit making organisations invests in social value with that profit.

Local authorities do not know how much funding will be required for this transition to take place until the individual companies have made their decision as to whether they will register to become a not-for-profit organisation or if they will no longer take children from Wales into their settings. We don't know how many will close, or if local

authorities will be provided with the funded needed to set up those resources needed. There needs to be more detail provided to all local authorities around the transition period and what it is going to look like.

Crisis intervention / assessment centres – if we are unable to make an emergency placement in a not-for-profit setting what will the process be and how will this impact on the Local Authorities?

**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 would welcome restrictions on surplus perhaps with this being directed into development of local provision. Utilising social value to ensure any surplus is redirected back into the local community to support the agenda to help children. Supporting the preventative agenda but also supporting children and young people to ‘move on’. Another suggestion is supporting the local economy in terms of apprenticeships and supporting young people into employment as they move out of the residential setting.

We feel that it is important that this is consistent across the whole of Wales and England, and would welcome more information with regard to how this is going to be monitored going forward. If the local authorities have to monitor this in future we will require the breakdown costs involved in this being calculated now.

We would like to re-iterate that the quality of the care for children should not be compromised during this process.

We also feel it is important that a Framework and processes be provided by Welsh Government to ensure clarity and within this there needs to be guidance for a local authority who is unable to find a placement for a child in a not-for-profit setting e.g. if a child has specialist requirements that cannot be met by the current providers. Will the local authority be penalized? How will this be policed?

**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 as this is a significant change and no doubt there will be learning that results in the need to amend.

We feel strongly that this needs to be consistent between England and Wales.

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

A detailed timetable would assist in thinking about transitional planning and whether the suggested timescales are realistic. However we need to improve the experiences

of children looked after and therefore we cannot afford to delay actions that will improve quality.

We would ask where the funding for this transitional period is coming from? We would need guaranteed additional funding to create in-house resources to cover the transition period which would allow local authorities enough time without having the budget implications to set this up.

We feel that there is a need for a Regional plan as well as a local one and collaboration between Local Authorities and the Local Health Board at a regional level is essential for this to work.

There is going to a requirement for support to providers regarding expectations and what the funding models will look like for not-for-profit organisations so that they can make informed decisions. This will hopefully increase the likelihood that 'for profit' providers will make the necessary transition and not leave the market.

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

As part of the transition process in relation to this legislation we need to ensure that the best interests of each child is central. There should be the potential to sustain a child in their current placement where this is clearly in their best interests, particularly also where children are nearing their 18<sup>th</sup> birthday for example.

Fostering placements – If a Fostering agency does not wish to continue as not-for-profit, what is the process for transition? We need to make sure that we are notified as soon as possible as this may have big impacts on a child's placement. We need to ensure there is a seamless transition from one carer to another, especially in a Fostering household. We also need to consider who they are going to be supervised and supported by.

This will impact especially on children aged 16/17 who are currently in residential placements if providers are not willing to move over to not-for-profit.

We will also need to consider CIW regulations for Supported Living type projects for 16-18 year olds and a similar not-for-profit agenda. Unregulated placements are being accessed too often for this cohort.

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

We would welcome any guidance produced by Welsh Government.

**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 presume that this would restrict placements outside Wales. Where there is a lack of specialist provision for the needs of a child, there should be some flexibility to commission the service that will best meet the child's needs. Where the Local Authority is able to demonstrate that they have exhausted all potential options in terms of not-for-profit, they should be able to go outside the regulations, in the child's best interests. However Local Authorities should also be working regionally to develop specialist provision.

Local Authorities should have the flexibility to offer the child centred care and support if they are not able to find a not-for-profit placement, the option to commission privately e.g. specialist placements. Restricting this would be setting the Local Authority up to fail. This could also have an impact on safeguarding children.

There must be a clear review process. If Local Authorities are struggling and there is an impact on placement sufficiency, will they receive additional support? There will also be clear budget implications and Local Authorities will need to be supported by Welsh Government.

With regard to timescales we feel that we would need at least 3-5 years to make these changes, staffing resource implications, service re-structure would need to be re-aligned to ensure capacity, and then the transition process, with reviews built-in in order to feedback to the Welsh Government.

We would also welcome information with regard to the lessons learnt in Scotland whom already have not-for-profit settings in place.

**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?

Organisations may by the very nature of 'for profit' companies, seek ways to undermine. Local Authorities should have robust placement pathways that are open and transparent and enable them to demonstrate robust adherence to the principles of 'not-for-profit' care.

We feel there is a need to explore what is happening in England. As this will help significantly if the same approach is being taken in England as well as Wales. We are concerned that some companies may move their operations from Wales to England which could undermine the process.

We feel the punitive measures should not be used with Local Authorities as they do not work (such as fines for making a placement outside of the framework). The Local Authority will always put the needs of the child first.

We would like transparency about how providers' accounts work – i.e. to ensure that money is not being hidden or not being directed back in the way we expect.

**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 always important to promote the use of the Welsh language and the development of local provision will only improve provision.

This also depends on the ethos of the provider. It can be met by profit or not-for-profit providers. Welsh language needs of people being placed in England (due to a lack of placements in Wales), does have an impact on the Welsh language.

All providers in Wales should have the equivalent of the 'Active Offer' and should be able to offer a bilingual service.

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

As above, providers should have the equivalent of the 'Active Offer' and be able to offer bilingual services if required.

**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 would ask if considerations of funding have been scoped out? As the proposal will have a massive impact on budgets, there will need to be financial support from Welsh Government for the transition process.

There needs to be an all Wales commitment and everyone needs to sign up to it otherwise it will fail. There also is a need to align our resources regionally to enable all local authorities to utilise each other's resources i.e. vacancies / voids, and to support each other.

We feel that there should be a review process to enable us to go back to Welsh Government and seek further guidance or financial support if required.

Foster Wales needs to be strengthen further, utilising their registration / framework across all local authorities. The data that is submitted by all local authorities on an annual basis to Fostering Wales needs to be aligned to avoid duplicating data collections.

We require more information around how this is going to be reviewed.

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

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

We agree with the outlined proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. It enables those who receive health funding to have the same choice, control and autonomy as those that receive support from the local authority.

**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 – There is a cost benefit. Local Authorities over the last five years have provided evidence to the Welsh Government with regard to cost avoidance that can be provided through the use of direct payments. This is in the context already overstretched budgets for both Health and Local Authorities.

Dis-benefits – We feel that the Health Boards currently do not have the internal infrastructure to deal with this new way of working. Establishing staffing levels and putting systems in place will require an initial outlay. We feel that the Health Board can look at this as a ‘spend to save’ initiative. Alternatively there is potential to discharge elements of the operation to an external provider or Local Authority within their boundaries, who may already have these associated infrastructures and knowledge in place.

There are a number of concerns around governance and as part of the development work we feel that consideration should be given to accredited training, as this can be difficult to access for recipients.

We feel that those people who receive joint funding from both the Local Authority and Health could be put in a position where they are having to manage and report on two very different operated schemes. This has happened historically with Direct Payments and the Independent Living Fund. We need to ensure that schemes are developed with the recipient in mind, and to ensure the scheme is as viable for as many people as possible. We acknowledge that it is going to be difficult for Health Boards working across the number of different Local Authorities, but it does then strengthen the need for a single agent lead.

There needs to be a more cohesive work with Local Authorities who have the infrastructure in place with the knowledge and ability. The Health Boards could discharge their duty to the Local Authority to run this on their behalf.

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

We feel that lessons can be learnt from the English Health Board. Through the Care Act they have been able to make Direct Payments for a number of years. There is also a need to look at external support agencies who provide services in Wales in addition to providing services in England - they could provide a more independent view regarding lessons learnt.

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

We would suggest that Health have patients involved in looking at the Commissioning and tendering of Bespoke services whenever possible.

**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?

Health Boards can look towards the work already done by the Local Authorities, though we do acknowledge there would be some variances. We suggest they could set up a Joint Working Group between Health Boards and the Local Authorities, this would also enable Local Authorities to adapt their own working practices where appropriate for a more joint approach to support recipients especially when moving from one agency to another if already in receipt of Direct Payments.

We would suggest that the Consultation Group (which comprises of recipients, Local Authorities and Health), which is already in existence is utilized as a Working Group to develop things.

**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 have found that Direct Payments has provided positive opportunities for recipients to have their services provided in their preferred language.

There could however be an impact on the availability of Personal Assistants with regard to the recipient's preferred language due to the current staffing market situation.

**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.

We could be more proactive under Direct Payments with regard to Upskilling the workforce with vocational training, and we could be more proactive in signposting people to access a lot of free courses to improve their Welsh language skills, which would then increase their work opportunities.

**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.

In the latter part of the Consultation document it refers (Chapter 4) to Social Care Workforce registration, but there is no mention of future registration of Direct Payments staff. We are aware that this has been discussed for a number of years and we would request an update with regard to Welsh Government's long term intention.

## 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?

We feel that this is about people having trust in the person who they are reporting to. There may be an element of people requiring training to enable them to understand risks and the consequences of not reporting a child at risk. Also providing people with support to enable them to report any child at risk, so that they are not frightened to do so. This will strengthen policies that sit underneath safeguarding i.e. Whistleblowing.

**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 feel this needs to be on an equal footing the same as safeguarding for children and young people. A duty to report any child or vulnerable adult at risk.

**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 change would clarify for safeguarding leads, managers and organisations what formal action, if any, should be taken if a professional has failed to report a safeguarding concern. This has, to date, been lacking in the safeguarding process.

There are wider concerns that a failure on the part of a professional to report a matter may lead to direct action against the worker thus adding to the increasing numbers of position of trust cases. This will impact on some agencies if sanctions against individuals lead to increased numbers of suspensions and possible dismissals. This could also impact on recruitment and retention of staff.

We feel there would need to be enhanced training for staff and support should be provided to them so that they feel they are able to report anybody at risk. This should also be written into policies and embodied into training so that staff feel supported if they do report.

We need to ensure that there is the capacity/resources are available within reviewing offices to cope with the expected increase of referrals, which will have a cost implication.

We feel that the Safeguarding app that can be put on people's phone straight away should be advertised more widely, possibly having the app embedded within all Safeguarding related policies and training on the use of the app should be rolled out.

Dis-benefit – could this potentially be a resource issue for CPS and the police around new legislation if this is going to be a criminal offence. There is also a potential resource issue for Local Authorities who may see an increase in cases which would impact on capacity within the Safeguarding Teams.

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

There is mixed evidence from other countries. But would suggest that lessons could be learnt as to what were the issues/barriers that prevented those staff in certain organisations from reporting abuse. We feel this is the area that needs to be addressed.

**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?

They should sit alongside the existing duties. This should promote wider agreed reporting between agency and employee, and will ensure that employees continue to be supported in the process.

**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 are of the view that the reporting duties need to be widened to include the sport/leisure and religious settings and should apply equally in respect of both children and adults. These areas have historically had inconsistent regulation, policy, reporting and application of safeguarding and as such it has been difficult to monitor them. Whilst some organisations and sports i.e. football, have improved safeguarding processes over recent years, many other organisations have not, and introducing a mandatory duty would ensure they move toward improved compliance.

There are questions around how confessions in the churches for example are going to be managed and whether the Welsh Government will consider this the same as therapy and counselling sessions (which are all classed as confidential unless there is a safeguarding issue).

We know that most females are abused within the home or by someone they know, whereas most males are abused by someone in a position of trust. So there needs to be a consistent approach across all types of sporting organisations and activities that is not just targeted at the larger organisations.

We are working towards making CCBC a Disclosure Friendly Authority, where by anyone can feel they can come to us to report a child/vulnerable adult at risk, abuse etc.

We feel there needs to be a national campaign via TV, leaflets, posters etc. to encourage more children to come forward to ask for help when they are being abused.

There is also a need to strengthen working with education around the relationships lessons that address what is and isn't acceptable, and to improve the understanding of the parents/guardians about the content and importance of these lessons, to help reduce the negativity around the subject. Links to home educated children also need to be strengthened.

We feel that this should be across the board, including commissioned placements and needs to be a legal mandate with training provided to these settings. This would be better as national training programme to ensure everyone is being trained to the correct standard as set by Welsh Government.

Safeguarding could also be embedded on to the Social Care Wales portal.

**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?

All current identified groups across the sector should adopt such mandatory reporting by individuals, as well as the additional wider groups referred to in question 6. The initial response to the statutory partner duties in the 2014 Act meant that voluntary and third sector agencies felt on the one hand excluded and also able, initially, to avoid themselves of having to apply the duties to their agencies. The mandatory duty would ensure that all agencies apply consistent practice.

No reason to exempt someone from this.

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

Regulated professions should have clear sanctions within their Code of Practice arrangements similar to those within the current hearing processes of SCW and NMC etc. thus ensuring that all cases are considered in proportion to the failed reporting situation. For consistency a similar process should apply for non-regulated roles, but as noted above may impact on position of trust (or equivalent process) referral numbers

We feel the need to adopt a similar approach regarding position of trust to the failing to report. Is this due to a lack of training or was it wilful? Proportionate with the failing to report, different levels of sanctions may be appropriate.

**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 do not see a direct impact on the Welsh language as a mechanism for people to report in the language of their choice is already in place.

This could booster an organisations need to have a Welsh speaking member of staff.

Welsh speaking children should have the opportunities to speak to someone in Welsh e.g. Childline. We are concerned by current practice which is not ideal as they have to advise they want to speak Welsh and will then receive a booked time slot.

**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 see a direct impact on the Welsh language as a mechanism for people to report in the language of their choice is already in place.

This could booster an organisations need to have a Welsh speaking member of staff.

Welsh speaking children should have the opportunities to speak to someone in Welsh e.g. Childline. We are concerned by current practice which is not ideal as they have to advise they want to speak Welsh and will then receive a booked time slot.

**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.

We believe the commitment to mandatory reporting by individual professionals has been one of the clear main findings and recommendations of the Independent Inquiry into Child Sexual Abuse (IICSA), and therefore, to not implement this recommendation would bring into serious question the work and commitment placed on the IICSA.

We would suggest there is a televised campaign to explain what exploitation means, raising public awareness as a rolling campaign.

We recommend that consideration is given to what works already and how this can be replicated in other establishments/organisations.

We also recommend that advocacy should be promoted to ensure those who do not have a voice especially with financial abuse have the support they require.

## 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.

**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?

We are in agreement with this proposal.

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

We are in agreement with this proposal.

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

We are in agreement with this proposal.

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

We are in agreement with this proposal.

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

We feel that there could be a cost implication for smaller providers if they have to publish their annual returns bilingually. If it stays with CIW then CIW don't have the option to not provide it in Welsh. So it benefits the Welsh reader for it to stay with CIW. Also some providers may not have the means or facilities to publish their annual returns.

We feel that currently individuals looking for the annual returns would not naturally look at the provider's website for them but would look on CIW's website. We suggest that CIW could possibly have a link to each provider's website for individuals to view the annual returns.

We feel that annual returns do not provide a full picture or narrative to explain the data within them and could be misleading for members of the public. For example if a provider has 30 beds and in 12 months they have had 90 individuals stay with them, people may not understand that some of these people were there for a short respite or have moved to another provider. The reports could lead to incorrect assumptions being made.

We would suggest that CIW utilises the Data Portal to ensure that providers have uploaded their annual returns.

We would request more clarification as to the specific ask to providers with regards to these annual returns. Are providers being asked to publish their annual returns on their websites, if they have one, or to produce a physical document?

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

We are in agreement with this proposal.

**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?*

We would question not publishing an inspection report if it is left with an open action or an open improvement notice given. The provider will not be able to show that the

needed improvement has been made potentially giving the wrong impression of the service.

Given the significant improvements required by some providers in these reports, it is concerning that the public is not made aware via published reports, in particularly the families of residents. Any decisions not to publish a report should be taken in the context of previous performance. Prospective residents and families should have the full picture.

We request more clarity and information with regard to what circumstances this proposal is referring to.

**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?

We agree if this means a saving with regard to CIW resources. But would highlight the need to ensure that there is a link with new registrations to enable checks to be made to ensure that any previous improvement notices given to that provider are flagged.

**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?

We agree if this means a saving with regard to CIW resources. But would highlight the need to ensure that there is a link with new registrations to enable checks to be made to ensure that any previous improvement notices given to that provider are flagged.

**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?

We agree if this means a saving with regard to CIW resources. But would highlight the need to ensure that there is a link with new registrations to enable checks to be made to ensure that any previous improvement notices given to that provider are flagged.

**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?

We agree with this proposal and feel that the data could be utilised to show any trends in the market in a particular area/county

**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?

We feel that the Improvement timescales need to be in proportion to the Improvement Notice that has been given to the provider, especially if this is in relation to any structural improvements.

**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?

We agree with this proposal.

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

We agree with this proposal, and feel that providers should be allowed to making representations, appropriately and within the timescales agreed.

**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?

We agree with this proposal.

**Question 4.16:** *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to

the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

We agree with this proposal, as there could be a genuine reason why the provider is unable to designate a replacement Responsible Individual straight away.

**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 feel that there is some ambiguity at the present time with regard to the definition of 'Care' for children and young people and agree that this needs to be clarified.

We agree that 'care' should include the provision of parental type care.

We would request clarity with regard to the age range that Welsh Government is looking at in this respect.

**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.

Benefits – could potentially be a saving for CIW with regard to resources. May also have the potential to speed up some processes.

Dis-benefits – potential cost implications for providers to produce their annual returns bilingually.

**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 only impact that there could be with regard to the Welsh language would be if a provider was unable to produce their reports bilingually.

**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.

The only impact that there could be with regard to the Welsh language would be if a provider was unable to produce their reports bilingually.

**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.

We have no further comments

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

**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.

We agree with this proposal and feel that it is a positive way forward.

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

We agree with this proposal.

**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 feel that 18 months is a long time for someone to be suspended whilst waiting to hear about their fitness to practice.

**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.

We agree with this proposal where there is a need to be able to revoke an interim order straight away in the case of safeguarding.

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

We feel that it would be necessary and appropriate for a Fitness to Practice panel to revoke an interim order if for reasons of safeguarding or any serious criminal charge.

**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.

Benefits – We feel that there are benefits to staff with regard to being able to register whilst completing their training. Speeding up processes where there is a need to be able to revoke an interim order straight away in the case of safeguarding.

Dis-benefits - 18 months is a long time for someone to be suspended whilst waiting to hear about their fitness to practice.

**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 see any impact here on the opportunities for people to use the Welsh Language.

**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.

We don't see any impact here on the opportunities for people to use the Welsh 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.

We have no further comments

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

**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?

This would depend on the qualifications/criteria required to be registered. Some Play Workers may not have completed the full qualification and may have only the basic low level qualification. Will this mean that they are still able to maintain an offer of service or will they need to access further funding to recruit qualified Play Workers? Will this be implemented in the same way as Domiciliary Care Workers whereby staff will have a reasonable timeframe to complete the training and registration?

Experience has shown that the cost of a registration scheme can put people off applying for the roles, especially as most Play Workers are only part-time or casual members of staff. How will this affect the high number of students employed for example? There is a risk that the registration will in the short term significantly affect staffing levels and the availability of services.

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

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

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

Please explain your reasoning.

We feel that the service should be registered and individuals who undertake this work should be regulated. This includes whether they are providing a service away from the parent/carer/guardian or not and whether this is in specific accommodation or in the community.

Benefits – the system would be more robust under the Care Framework. It has potential to upskill workers and professionals in the services provided. It could provide a boost to staff morale, making them feel more valued as a profession and could potentially help with retention of staff in the long run. Covid showed the value of childcare in times of national emergency. Without the willingness of settings to provide care to frontline keyworker staff the ability of services and business to

respond to the needs of the community would not have been possible. Some settings felt undervalued during this period, so the recognition will help.

Dis-benefit – There is a potential loss of some funding streams due to their criteria. There is also the potential loss of staff, unless they are compensated for their training and registration. Often Play Workers work part-time or seasonally which impacts on the price they are willing to pay for registration. Re- registration every three years may also be challenging without funding available to support people. Many play organisations are in the voluntary sector and this will place additional pressure on the voluntary administrators

Costs – There could also be a cost implication to Local Authorities to pay for the training and to register their staff. Some individuals working in childcare / play workforce may only work 12 hours (or less) a week therefore the cost implication of registering may deter people – especially in rural areas as settings may only offer morning 2 hour sessions. This may also impact Welsh medium settings. What happens if individuals move roles or have more than one role in multiple settings i.e. May work in a sessional childcare environment in the morning and an after school club later in the day. Would they need to register with each employer or will it be one registration to practice system and each employer would endorse the individual if they worked in multiple settings.

Will this cover all organisations who have Play Workers and playgroups for example churches and other religious groups?

Enrolment on the register could this process be combined with DBS. i.e. if individuals have to have their DBS completed then apply for the register may involve longer timescales which could impact effective recruitment processes.

How would the register respond to individuals who are continuing their professional development i.e. qualified to level 3 and working towards level 5 will it be a fluid ongoing registration that can be added to?

**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?

Depending on what sort of qualifications are required to register and what financial costs are involved has potential to have an impact on the Welsh language if it excludes local applications to the roles. The current workforce do struggle to employ Welsh medium individuals. If people don't want to register it may potentially reduce the size of the Welsh speaking workforce we already have.

**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.

Promoting – ‘More than just words’ is the Welsh Government’s Strategic Framework for the Welsh Language in Health and Social Care.

Promoting – Local Authority’s WESP

Camau – welsh language training opportunities available for settings to access including entry level.

Work in partnership to achieve - “Since increasing Welsh-medium early years childcare provision is essential to our aim of achieving a million speakers, we need to ensure a coordinated plan to develop this important workforce”. – (Cymraeg 2050: A million Welsh speakers)

Work in partnership with our umbrella organisations (Mudiad Meithrin / NDNA / Pacey Cymru / Clybiau Plant Cymru Kids Clubs / Early years Wales)

**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.

This consultation is looking at Childminders and Play Workers. Will this be expanded in the future to cover other professions / organisations that work with children and young people i.e. Sports, summer holiday activities and voluntary organisations?

The registration process needs to be as simple as possible. Would the register improve the workforce conditions and increase wages

Clear communication to keep the sector informed.

Clear qualification framework

Help and support available to childcare settings with the registration process

Clear timescales of when and how it would be implemented if endorsed.



## **Complex Care (ABUHB) - Response to consultation about proposed changes to primary legislation on social care and Continuing NHS Healthcare.**

**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.**

In agreement that further voice and control for adults receiving CHC and a degree of control over their package of care is required, however there must be a strong Governance Framework to support this. Direct payments are easier to apply in social care because there is not a need for a Registered Professional to delegate the task, the Delegation Framework needs to be considered within any proposals because there are clearly tasks that a Registered Nurse will not be able to delegate.

**Question 2.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example: - Benefits, and disbenefits; - Costs (direct and indirect), and savings; - Impacts upon individuals and groups with protected characteristics; - Other practical matters such as cross-border issues or transition to the new arrangements. Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome. Please explain your reasoning.**

The benefits will provide greater voice and control for the patient and will fill gaps within the independent provider sector (especially domiciliary care) which is significantly under resourced. However, without a strong Governance Framework the risks appear to great when considering the Healthboard will remain accountable for the care that is commissioned. In some cases, the Delegation Framework will not enable the task to be delegated so there needs to be a clear framework identifying criteria where this approach will be applicable or not.

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

In England Personal Healthcare Budgets are used but has not been without its issues. It would make sense to consult with NHS England to understand the issues that have arisen to put measures in place to counter them. They also use Independent User Trusts, so this also needs to be explored.

**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.**



Personal Healthcare Budgets appear the best way forward but there needs to be a strong governance framework to support this. A concern with an Independent User Trust is that you are introducing a third party which also needs to be Governed just the same as directly paying the patient to source their care.

**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?**

As highlighted their needs to be clear criteria set out when this approach would be applicable or not which has to be in line with the delegation framework. There also needs to be a governance framework attached that ensures the care can be delivered safely that receives timely review.

**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?**

It would likely enable service users a greater opportunity to source care that could be delivered through the Welsh Language because that could be requested within the requirement of the role. The NHS would be more constrained in sourcing care that provides Welsh speakers because they remain few in the ABuHB catchment area within the health & social care sector.

**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, it would be about the pool of people available who speak Welsh but it's unlikely any changes to the proposal will impact upon this under the equality act. It will no doubt increase the pool of available carers who can speak Welsh but that will likely diminish dependant on the skill level required to deliver the care.

**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 CHC Framework directs more collaborative approaches in delivering health and social care in partnership with Health Boards and Local Authorities, in particular the need for more joint packages of care. We need to consider if frameworks for this approach needs careful consideration within this proposal. In many cases the CHC care package requires highly skilled input that could not be delegated under the direct payment's framework but there may be elements that the Local Authority could pick up under social inclusion etc.

<b>Completed by: -</b>	
Paul Walding	Assistant Divisional Nurse
Hayley Jones	Head of Business & Performance
Date:	1 <sup>st</sup> November 2022

## Consultation Response Form

Your name: Joel Martin

Organisation (if applicable): Carmarthenshire County Council

Email / Telephone number: [REDACTED]

Your address: 3 Spilman Street, Carmarthen, SA31 1LA

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?

Organisation

If you want to receive a receipt of your response, please confirm your email address, here: [JSMartin@carmarthenshire.gov.uk](mailto:JSMartin@carmarthenshire.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?

**Yes. However, we are concerned by the proposed timescales for implementation.**

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

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

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

Please explain your reasoning.

**We agree with the principle, which will eliminate a small number of private providers from charging excessive costs for placements. However, the current timescale for implementation of this proposal raises concerns, as at present our local authority is struggling to identify appropriate placements for a small number of individuals, and the demands for placements has increased since the COVID-19 pandemic. Further, private providers are already aware of Welsh Government's proposals, and this had led to a loss of these providers. We are also concerned about the impact on individuals if they have to move placements. We believe it is essential that before these arrangements are put in place that there is support available to ensure that there is sufficient provision to meet the demand for placements. It is therefore essential that sufficient time is given to allow local authorities and others to build up their resources.**

**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 object to this proposal. However, we would reiterate our concerns about the timescales for implementation of the proposal. The Welsh Government will be aware of shortfall in foster carers nationally, and the availability of regulated placements. Whilst steps are being taken to address this, these will have budgetary implications and will require sufficient time to implement.**

**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, there needs to be flexibility to meet the demands on the sector, being able to amend the definition of not for profit will enable Welsh Government to react and respond to the situation at the time.**

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

**As mentioned above, this is the area where we are most concerned. We believe the current timescales are too rapid. There needs to be sufficient time allowed so that private organisations can convert to not for profit organisations, for new organisations to go through the registration process with CIW, and for the local authority to build up sufficient inhouse support to meet the demand without the existence of private for profit organisations.**

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

**As a local authority we are very committed to building up inhouse provision. We are aware of the benefits of children being placed locally. We are seeing LAC numbers increasing though and therefore sufficient time must be allowed to meet this need.**

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

**We would welcome guidance to support the implementation of the legislation. Providers need to be clear on what is expected of them in order that they can continue to support the sector with a sufficient number of placements to meet the demand.**

**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 we are supportive of this approach. However, we are concerned about the timescales proposed for elimination of not for profit providers, and whether currently there will be sufficient resources available to meet demand. We would prefer that the transition occur over a longer period of time to ensure that there is sufficient resilience within the sector to meet the demand without any private for profit provision.**

**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 are concerned that the timescales proposed could lead to insufficient placements being available to meet the demand, which would undermine the intention to eliminate profit from the care of children looked after in Wales. We would suggest that the proposed timescales may not give sufficient time for local authorities and other organisations to have sufficient provision. We would suggest that Welsh Government revisit these timescales and consider allowing a longer transition period.**

**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?

**Greater inhouse and local provision will inevitably help ensure that children remained placed locally in Wales, which will support the ability to meet the needs of children through the medium of Welsh**

**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.

**See 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.

**We agree with these proposals. We find that the loss of direct payments is a significant concern for individuals who receive them, particularly when an individual is considering consenting to a decision support tool (DST) to establish eligibility for continuing healthcare. We are aware of a number of individuals who have declined a DST because of concern that they will lose their direct payments, and thus control over who is employed to provide their care. We appreciate that the Welsh Government has within its 2022 CHC Framework given clearer guidance on ways that individuals can have some control over how their needs are met if they are eligible for CHC. However, we are aware that individuals do not feel that independent user trusts or the Local Health Board's employing their former personal assistances gives them the same voice, choice, and control as a direct payments, because with these other options the individual with care and support needs cannot be the employer.**

**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 for continuing health care will enable individuals to continue to be the employer of their chosen personal assistants. This will ensure that individuals have control over who meets their care and support needs and a say over how those needs are met. The benefits to the individual of having**

**control over this issue is likely to be considerable. It will also ensure that it avoids situations where a individual who is clearly eligible for CHC declines an assessment for such for fear of losing their direct payments, which places the local authority in the very difficult situation of determining whether the current care arrangements can continue because direct payments cannot currently be used to meet health care needs, unless they are incidental or ancillary (Section 47 of the Social Services and Well-being (Wales) Act 2014 and Paragraph 133 of the Part 4 Code of Practice thereto). Further, it enables the person to be cared for by individuals who already know the person, ensuring continuity of care.**

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

**As Welsh Government will be aware the UK Government in England made changes to the NHS Act to permit direct payments for a number of aspects of health care including CHC a while ago. Given that there are similarities in our legal systems it would seem appropriate to adopt a similar approach to England in this regard.**

**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.

**Not that we aware of. As explained above Independent User Trusts and Health Board's employing former personal assistants do not appear to give the individual the same voice, choice, and control as direct payments. However, it is our understanding that such options would still be available. The only other option we are aware of is one Health Board in Wales employing a micro enterprise to provide care and support to a former direct payment recipient.**

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

**If the Welsh Government intends to create bespoke guidance for direct payments for CHC, we suggest, that a substantial proportion of the Part 4 Code of Practice to the Social Services and Well-being (Wales) Act regarding direct payments could be included in that new guidance. We would welcome some additional content on issues like the minimum age of personal assistants, and minimum age of suitable persons,**

**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 would argue that the introduction of direct payments for CHC would have a positive effect on the Welsh language as individuals will have choice in who meets their care and support needs, including the recruitment of Welsh speaking personal assistants.**

**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.

**See 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?

**Whilst all efforts to enhance the duty to report are to be welcomed. We would prefer that the current statutory duty to report be extended to other organisations such a private care providers, religious organisations, and voluntary organisations. In essence those organisations which should have their own safeguarding policy. We believe this would make the safeguarding process more robust.**

**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?

**Whilst all efforts to enhance the duty to report are to be welcomed, as above we would prefer that the current statutory duty to report be extended to other organisations.**

**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 extension would place greater responsibility on individuals to report safeguarding concerns, which may have some benefit. However, if the statutory duty to report were extended to other organisations as cited above, this would ensure that all organisation adopted a consistent response towards reporting safeguarding. It would also eliminate any sense of uncertainty on whether to report or not.**

**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?

**If this is to be introduced we believe that they should sit alongside. There is a potential for individual failure to report. However, there could also be a possible institutional failure, so both duties should sit alongside each other.**

**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 would suggest that these be extended to other organisations, private domiciliary carers and care home workers, religious and sport settings. We would suggest that the duty be extended to all those to whom the ‘Social Services and Well-being (Wales) Act 2014: Working Together to Safeguarding People: Code of Safeguarding Practice For individuals, groups, and organisations offering activities or services to children and adults in Wales’ applies.**

**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?

**See above**

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

**At present, employers can take action against employees through breach of their contractual obligations. The Welsh Government could consider some form of civil penalty fine for such a failure.**

**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 favorably 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 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.

**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?

**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?

**Yes**

**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**

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

**Yes**

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

**Yes**

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

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

**Yes**

**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?

**Yes**

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

**Yes**

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

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

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

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.

**Most of the above amendments will improve the ability of CIW to undertake their role in a more efficient and effective manner.**

**In terms of cost there will be some cost to the local authority in becoming responsible for publishing the annual return such a translation and easy read costs but this is unlikely to be significant. We believe this change may increase the number of individuals who read the annual return and could prompt more engagement.**

**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 favorably 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 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.

**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**

**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**

**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**

**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**

**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 favorably 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 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.

**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.

**Yes**

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

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

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

Please explain your reasoning.

**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 favorably 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 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.

**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.

**We would invite the Welsh Government to consider extending the definition of social care worker to day centre workers. We believe day centre workers should be registered in the same manner as domiciliary care workers. These individuals undertake personal care tasks like domiciliary care workers, and they provide care and support to a number of individuals for a significant part of the day.**

## Consultation Response Form

Your name: Rocio Cifuentes MBE , the Children's Commissioner for Wales

Organisation (if applicable): The Office of the Children's Commissioner for Wales

Email / Telephone number: post@childcomwales.org.uk

Your address: The Office of the Children's Commissioner for Wales, Llewellyn House, Harbourside Business Park, Port Talbot

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 from the Children's Commissioner for Wales, Rocio Cifuentes MBE.

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

post@childcomwales.org.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?

*As the Children's Commissioner for Wales (CCFW), I support the proposal to introduce legislation that will prohibit the ability for profits to be generated from the care of vulnerable children and young people.*

*This position is firmly grounded in children's rights. I want confidence that Wales' care system is rights based, with children's best interests – as set out in Article 3 of the United Nations Convention on the Rights of the Child (UNCRC) – being the lead consideration for any decisions made about a child's life and care.<sup>1</sup>*

*Whilst the ability to profit from the care of vulnerable children remains possible in our care system, we can never satisfactorily rule out that financial decisions are not a driver in the decisions made about how or where a child is cared for.*

*Therefore, introducing legislation that moves away from the current approach to deliver a 'not for profit' service landscape is something I support. This approach would build upon the unique commitments we have in Wales already to upholding children's rights, such as the Rights of Children and Young Persons (Wales) Measure 2011 – which puts a duty on Government Minister's to pay due regard to and uphold the UNCRC, and, in the Social Services and Well-being (Wales) Act which places a duty on all those delivering functions of the Act (eg – any responsibilities relating to the care and support of children) to pay due regard to children's rights.*

*The Office of the Children's Commissioner for Wales has long been supportive of initiatives to explore how profit making can be removed from Wales' children's care services and have made several recommendations to Ministers on this issue. Under the leadership of my predecessor, Professor Sally Holland, the Office made a call in our Annual Report, 2016/17<sup>2</sup>, for;*

<sup>1</sup><https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>2</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2017/10/A-Year-of-Change-CCFW-Annual-Report.pdf>

*“Welsh Government to ensure that local authorities deliver their duties under the Social Services and Well-being (Wales) Act 2014 to involve children and young people in the design and delivery of services, and, increase the range of not for profit services so that money invested in social care services can be spent on improving outcomes for children rather than providing returns for shareholders”.*

*Despite acceptance of this recommendation, little action was taken to deliver this commitment at the time.*

*In 2018, the Public Accounts Committee undertook an inquiry<sup>3</sup> into the care of looked after children, with concerns about the profit-making ability of some providers being raised by those giving evidence. Whilst strengths were identified in this inquiry, such as the 4C's Commissioning Framework, concerns were raised in evidence that local authorities were paying high prices for placements for some of the most complex young people in for-profit making settings. This highlighted concerns that finite resources for the care of vulnerable young people were being redirected and not reinvested in to care services. The inquiry also highlighted the commissioning challenges faced by local authorities, with those giving evidence highlighting the struggles they had faced to find placements that suit the needs of the children in their care.*

*(NB: My Office has undertaken significant work to put forward proposals on how Wales can develop regionally commissioned services for children with the most complex needs through a ‘No Wrong Door’ approach)<sup>4</sup>.*

*The Office continued to make calls to address profit making in children’s care services in subsequent Annual Reports to Welsh Government, all of which were accepted by Welsh Government Ministers. In summary, these recommendations set out the following;*

- *In 2018/19 - Welsh Government must commit to taking concrete actions within the next year towards reducing and ultimately ending profit making in children’s care services, without detriment to children and young people’s current care arrangements.<sup>5</sup>*
- *In 2019/20 – [The Commissioner] will be asking all political parties to make a commitment to removing profit from children’s social care services in their manifestos for the May 2021 Senedd elections.<sup>6</sup>*

<sup>3</sup> <https://senedd.wales/laid%20documents/cr-ld11857/cr-ld11857-e.pdf>

<sup>4</sup> <https://www.childcomwales.org.uk/publications/no-wrong-door-bringing-services-together-to-meet-childrens-needs/>

<sup>5</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2019/10/Annual-Report-2018-19.pdf>

<sup>6</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2020/10/Annual-Report-2019-20.pdf>

- *In 2020 – We published a Manifesto for Children and Young People. We wanted political parties to support calls to stop private companies making a profit from children’s homes and foster care.<sup>7</sup>*
- *In 2020/21 - The Welsh Government must bring forward a roadmap by 1st April 2022 setting out the timescale and actions they will take to safely phase profit out of children’s social care provision.<sup>8</sup>*

*In 2020/21, the recommendation formed part of Welsh Government’s Programme for Government. In 2022, the Competitions and Market Authority<sup>9</sup> study into the functioning of children’s care services further evidenced the need for a shift in approach to the way care services are delivered and commissioned for children in Wales. The CMA report highlighted a poor functioning market for children, where excessive profits were being generated against a back-drop of poor outcomes for children, bringing to light the follow issues;*

- *“It is clear that the placements market, particularly in England and Wales, is failing to provide sufficient supply of the right type so that looked-after children can consistently access placements that properly meet their needs, when and where they require them.”*

*The report highlighted how many children are living far from where they would call home without a clear child protection reason for this. In Wales 31% of looked after children are placed outside of their LA.*

*Concerns were raised that children were unable to access therapies or facilities that they need;*

- *“While the amount of provision has been increasing in Wales, primarily driven by private providers, this has not been effective in reducing difficulties local authorities face in finding appropriate placements, in the right locations, for children as they need them. That means, in tangible terms, children being placed far from their established communities, or placements failing to meet the needs of children, to a greater extent than should be the case.”*

*Despite these poor outcomes and lack of choice of suitable provision, private providers demonstrated significant and steady profit margins, particularly the largest providers. Independent Fostering Agencies demonstrated profit margins of 19.4% and children’s homes (across 3 nation data-set) averaged 22.6%.*

<sup>7</sup>[https://www.childcomwales.org.uk/wpcontent/uploads/2020/09/CCfWSeneddElectionManifesto2021\\_FINAL\\_EN.pdf](https://www.childcomwales.org.uk/wpcontent/uploads/2020/09/CCfWSeneddElectionManifesto2021_FINAL_EN.pdf)

<sup>8</sup> <https://www.childcomwales.org.uk/publications/annual-report-20-21/>

<sup>9</sup> <https://www.gov.uk/cma-cases/childrens-social-care-study>

**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 role of the Children's Commissioner for Wales is to protect and promote the rights of all children and young people in Wales, therefore I will set out how I believe children and young people's rights and entitlements may be impacted by the proposal, using the Children's Rights Impact Assessment (CRIA) Approach that my office promotes with public bodies and schools across Wales<sup>10</sup>. This is based on the five principles of a children's rights approach; embedding, equality and non-discrimination, empowerment, participation, and accountability, which was developed with support from Professor Simon Hoffman and Dr Rhian Croke at the Swansea Observatory on Human Rights of Children.*

*Whilst I acknowledge that a CRIA has been completed as part of the Integrated Impact Assessment, in its draft form it fails to acknowledge any conflicts with children's rights. Whilst I am supportive of the proposals, as set out above, my Office has always advocated transition to a not-for-profit care system, that places children, and their rights and needs, at the centre. Whilst I agree this policy and change in law will have many benefits for children's rights (as set out below) remaining live to potential infringements or conflicts is critical. I would urge Welsh Government Officials to revisit the CRIA after this consultation exercise and seek to elaborate on the impacts this policy may have for children's rights.*

<p><i>Embedding Children's Rights</i></p> <p><i>This links to Wales' wider commitment to children's rights, such the Rights of Children and Young Persons (Wales) Measure – which puts a duty on Government Minister</i></p>	<p><i>This proposal has the potential to further embed the due regard duty and support its practical implementation, by working to eliminate profit-making as a factor in the delivery of children's care services. It has an ambition to ensure children are cared for closer to home, in a care system that retains and reinvests funding for continual improvement, delivering better outcomes for children.</i></p> <p><u><i>Potential positive impacts on the following rights:</i></u></p>
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<sup>10</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2017/04/The-Right-Way.pdf>

*to uphold the UNCRC, and also, in the Social Services and Well-being (Wales) Act.*

*Article 3 – adults should work in the best interests of children. Removing profit making capabilities can further ensure decisions are made on the basis of best interest not profit.*

*Article 4 – government's do all they can to ensure that children receive their rights. Welsh Government using their devolved competence to deliver for children in Wales.*

*Article 9 – rights to family life – when a child has been separated from their birth family, contact should be maintained with parents and siblings if in the child's best interest. Supporting children to remain within their communities can support this right, as well as focussing on developing suitable provision for sibling groups.*

*Article 20 – children should be awarded special protections if they cannot live with parents. These proposals seek to strengthen existing rights commitment to this group, as set out in SSWBA. This also links to the Programme for Government commitment to explore radical reform of children's care services.*

*Article 25 – the right to regular review of placement when in care. Ensuring children stay closer to home and in regular contact with Social Workers and Corporate Parents can strengthen this right.*

*Article 27 – to ensure looked after children can access an adequate standard of living to help them reach their potential. Reinvesting and innovating in services can continue to strengthen this right.*

*Article 39 – the right to recover from trauma. This should be an underpinning principle of the proposal, to deliver a robust care system that can meet the needs of vulnerable young people.*

*Potential negative impacts:*

*As stated in the CMA report, there could be a disorderly exit from the placement market. It is therefore critical that Welsh Government and Local Authorities remain live to trends in registrations and closures, and can respond*

	<p><i>promptly to concerns. Failure to do some could impact on Article 27 and Article 20.</i></p> <p><i>Children should also be protected from placement moves wherever possible to protect the Article 25 right and rights to education and healthcare (Articles 24, 28 and 27). This is where Welsh Government should list what mitigations will be put in place to address these potential negative impacts.</i></p>
<p><i>Equality and Non-discrimination – how does this impact children with protected characteristics? Will it affect some children differently?</i></p> <p><i>This policy has the potential to lead to the development of a care placement landscape that is developed solely in response to children’s needs.</i></p>	<p><u><i>Potential positive impacts;</i></u></p> <p><i>Article 2 – non-discrimination - all looked after children will have equal rights to be looked after in a way which does not profit from their care. No looked after child should be looked after differently. All placements/homes will be modelled on the same principles.</i></p> <p><i>Services will meet a range of needs, developing services for those with disabilities, promoting access to Article 23 – the right to enjoy the best possible life in society and to remove obstacles for children with disabilities and Article 39 – the right to recover from trauma and neglect.</i></p> <p><u><i>Potential negative impacts;</i></u></p> <p><i>Failure to develop or commission provision under the new model to meet a range of young people’s needs could mean that some children are more adversely affected than others.</i></p> <p><i>Welsh Government and Local Authority risk registers must be live to this and take account of the risks to ensure any impacts can be mitigated.</i></p>

<p><i>Empowerment – How will this proposal help children take up their rights?</i></p>	<p><u><i>Potential positive impacts</i></u></p> <p><i>Focus needs to be given to how children will be empowered to share their views at a strategic level on this policy, but also on an individual level, such as ensuring all eligible children and young people are empowered to take up the offer of independent advocacy, should they wish to share any views on proposals. This is an important safeguard for children but also a means of empowerment for children, to become more involved in the decisions that impact their lives and supported to participate.</i></p> <p><i>TGP Cymru have long raised concerns about access to independent advocacy in private residential homes. Through their ‘Out of Sight – Out of Rights’ research, they found that 100% of local authority children’s homes commissioned a visiting advocacy service, in comparison to 5-10% of children’s homes in the independent sector.<sup>11</sup> Following this research, TGP Cymru have called for visiting advocacy arrangements to be a requirement for Registration and Inspection with Care Inspectorate Wales, to further embed this entitlement into services for vulnerable children. This is a recommendation I support and believe strengthening access to advocacy should be something that is delivered in tandem with these proposals, acting as a means of ensuring children can reach out to a regular independent adult. With proposals to amend the Regulation and Inspection of Social Care (Act) Wales being set out in later chapters – this provides a good opportunity to explore this change.</i></p> <p><i>Failure to ensure children can share their views strategically and on an individual level will have a negative impact on children’s Article 12 right to have their voices heard and taken seriously in matters which affect them.</i></p>
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<sup>11</sup> <https://www.tgpcymru.org.uk/evaluation-of-covid-19-residential-visiting-advocacy-project/>

<p><i>Participation of children – how will children be included in the development of this policy?</i></p>	<p><i>I am aware that plans were in place in September 2022 to engage with children and young people on a range of topics, including the not-for-profit policy proposal, but this was postponed due to the State Funeral. My Office has been clear that it is keen offer support on the day to facilitate conversations.</i></p> <p><i>Ensuring children are involved in the development of this proposal supports their Article 12 right to share their views on issues that affect them and their Article 17 right to access information in a way they can understand.</i></p> <p><i>I am aware that the 4C’s Young Commissioners have undertaken excellent work on developing commissioning principles and values, setting out what they expect and want to see from a children’s home or foster placement.<sup>12</sup> My Office has also supported a range of organisations to develop Charters, coproduced with young people – to set out clearly to children how services will act for children and how they will support their UNCRC rights. There is a clear space here for children and young people to shape expectations on providers going forward.</i></p> <p><i>Failure to involve children would impact their right to participate and share their views as discussed above.</i></p>
<p><i>Accountability – how will you be accountable to children on this policy? How will you report on progress? Is there a mechanism for children to hold us to account for progress?</i></p>	<p><i>It is important that those affected by this decision have an opportunity to engage in discussions around this and to hold decision makers to account. Whilst the Programme Board is supported to do this, I think a focus should be given to how the complex issue can be communicated to young people and where they can go to share views, for example, with the development of resources in accessible language, which can support conversations on the topic. This could support those working in settings to explain, if asked, about the policy.</i></p> <p><i>Consideration should be given to this during the transition but also, post 2026 when the new models have been developed. This would support children’s Article 12 and Article 17 rights – to share views and to receive information in age appropriate ways.</i></p>

<sup>12</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2021/04/Specification-Statement-poster-002.pdf>

**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 key principle underpinning my Office's call in this area is to ensure that the money that is currently diverted away from services in the form of profits or dividends, is, under the new approach, re-invested into our services for children and young people. Ensuring there is transparency and traceability of costs is essential, therefore I would be supportive of exploring, via the Programme Board, what models or approaches could be proposed as a means of achieving 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?

*Whilst I am supportive of a flexible approach enabling Welsh Ministers to remain live to alter definitions, I do believe there needs to be certainty for providers. Any definition must be clear and unambiguous to avoid misinterpretation. Support should be offered to providers with interpretation when required.*

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

*This is an ambitious timeframe, but the need for change is imminent. Confidence in delivery would be aided if Welsh Government could publish greater details on its plan for implementation. As called for by my predecessor, a roadmap of delivery to demonstrate the safe, phasing out of profit from children's care services should be developed to support this change. This would aid the Programme Board in their scrutiny and support of this policy's delivery. It would also support providers in preparing for this change.*

**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?

*Whilst I am in support of the proposals to remove profit, it is critical that focus is placed on developing provision that will meet the new not-for-profit-model. It's hugely important this is communicated early on to providers in order to support a smooth as possible transition. It is also key that resources are directed towards local authorities to develop new in-house provision, working regionally in some regards to offer placements that meet a range of needs. The CMA report highlighted the challenges in commissioning some local authorities face, so it is important that action is taken to minimise any challenges arising or worsening. The most recent data from Stats*

*Wales indicates that whilst 135 children are placed in residential homes in the LA boundary, 345 are in homes outside of the LA boundary.<sup>13</sup> Without individual level data we cannot determine the reasons why these children are placed outside of their LA but, it highlights the need for local authorities to work collaboratively, to develop provision on a regional basis to support the breadth of needs if we are to offer homes to children nearer to their communities.*

*We know that at times, due a lack of appropriate or available placements, children are placed in unregistered settings – these are settings or placements that are operating without registration. They are often services that should be registered in line with the Regulation and Inspection of Social Care (Wales) Act (RISCA) and inspected by Care Inspectorate Wales (CIW) as they are offering ‘care’ and ‘support’ to children. I have raised concerns about the usage of unregistered placements in my annual report, calling on Welsh Government to establish a working group to explore the issue of unregistered placements and unregulated accommodation.<sup>14</sup>*

*Whilst often used as a last resort, children placed in unregistered accommodation lack the protection of the safeguards that a registered placement can offer.*

*Therefore I welcome the proposals set out in Chapter 4 to strengthen the powers of CIW to identify unregistered services (more is set out on this proposal in Chapter 4).*

*My predecessor and I have urged for a review to be taken of RISCA to explore how this can be addressed. I urge that this work be progressed in tandem with this policy and legislative proposal to ensure that all children are placed in safe, registered placements, and the proposal to remove profit does not exacerbate this issue. This must involve working closely with local authorities and Care Inspectorate Wales to ensure any trends of this nature are monitored and promptly addressed. Whilst a Practice Direction<sup>15</sup> is in place for placements in unregistered children’s homes, I am mindful that more action needs to be taken to limit the prospects for use, as failure to do so may undermine the policy intention to ensure all children and young people in Wales, who are looked after, are looked after in a setting that is with a registered, not for profit, provider. We would not want to find that children were being placed in unregistered ‘for-profit’ provision, as alternative provision that fits the new model of care hasn’t been developed. New provision does take time to develop, which is why Welsh Government must work closely with the sector to explore transitional support to those who are keen to adapt their models and to continue delivering care.*

<sup>13</sup> <https://statswales.gov.wales/Catalogue/Health-and-Social-Care/Social-Services/Childrens-Services/Children-Looked-After/childrenlookedafterat31march-by-localauthority-placementtype>

<sup>14</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2022/10/Annual-Report-and-Accounts-2021-22-v2.pdf>

<sup>15</sup> <https://www.judiciary.uk/wp-content/uploads/2019/11/PG-Placements-in-unregistered-childrens-homes-in-Eng-or-unregistered-care-home-services-in-Wales-NOV-2019.pdf>

Advocacy:

*As mentioned above, I would like to see RISCA amended to strengthen requirements on children's homes to offer visiting advocacy provision. This can act as an important safeguard and participation method for children during the transition phase and ensure that children are being provided with independent advice and support.*

Leaving care arrangements:

*Developing suitable provision must be a focus of this work. I would not like to see children or young people moved on from placements where they are doing well, to create capacity. Particularly for older young people, who can live independently from the age of 16.*

*This will be discussed more below in regards to the consultation section on the Regulation and Inspection of Social Care (Wales) Act 2016 and proposals to amend section 3 of the Act.*

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

*I support this proposal to help communicate expectations and requirements of providers and those commissioning their services. It will also help reiterate young people's entitlements under this new 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?

*Above I have set out my concerns about a potential increase in the use of unregistered placements, if the transition to not-for-profit- services is not managed effectively.*

*Local authorities need to be well resourced to be able to offer and commission a range of not-for-profit placements to the children within their care. I am aware that some funding has been allocated to deliver this, but no details are available yet to understand what provision will be developed.*

*I would urge the focus to remain on strengthening and developing local provision. I would not want to see children placed further afield as placements are not available locally. Therefore I am supportive of exploring with the Programme Board any proposals that could restrict the commissioning from providers that do not meet the not-for-profit models.*

**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's hugely important a robust commissioning framework is developed to support the embedding of this policy, giving local authority commissioners confidence in acting in line with the new requirements.*

*I would also be supportive of Welsh Government developing spaces to have on-going conversations with the sector as this policy embeds, as well as maintaining a risk-register to monitor trends. I am aware that as part of the Basic Income Pilot scheme, officials have remained tuned in with those delivering the new approach, ensuring issues are monitored and responded to promptly. Adopting a similar open style of communication with commissioners and providers may be welcomed.*

*I have set out above my concerns that failure to address the use of unregistered accommodation for some of the most vulnerable children could lead to an increase in its usage by LA's commissioning placements from de-registered for-profit-providers.*

**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?

*I believe this policy is likely to have a positive impact on the Welsh language, as more children will be supported to remain in placements in Wales and within their local authority. As highlighted by the Welsh Language Commissioner and others, there is a need to increase Welsh speaking within the workforce so that children can*

*access services through the language of their choice (in line with their Article 30 right under the UNCRC). Work developing new provision should ensure alignment with the actions of the More Than Just Words 5 year plan<sup>16</sup>.*

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

As above.

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

There are a number of recommended legislative changes that Welsh Government have accepted in response to my Office's previous Annual reports, which are not set out in this consultation. They include;

1. **Introducing new legislation that would ensure Personal Advisor support is available for care leavers up to the age of 25.** Whilst I recognise that direction has been given by Welsh Government ministers for leaving care teams to deliver this extension, the Social Services and Wellbeing Act (Wales) 2014 has not been amended to secure this extension. Therefore, it is currently an expectation and not a statutory entitlement for care leavers. My office takes an active role through the Investigation and Advice service to uphold this extension but are eager to see relevant legislation amended to secure this right. I have continued to raise this issue in my Annual Report for 2020/21. As this has been accepted by Welsh Government, I would like to receive greater assurances that this legislative change will be timetabled.
2. **Proposals to extend Corporate Parenting duties.** A key part of reforming children's social care services is to strengthen public bodies' roles and expand Corporate Parenting duties to other important services, such as health, education and housing. I would have expected to see proposals to strengthen these duties included in this consultation, as this is a key commitment of the Programme for Government. My office has expressed

<sup>16</sup> <https://gov.wales/sites/default/files/publications/2022-07/more-than-just-words-action-plan-2022-2027.pdf>

concern that a voluntary approach to strengthening duties will not deliver the change we wish to see. Legislative change to impose new duties to share the responsibilities as Corporate Parents is required.

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

There are 8 questions about this chapter.

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

*I would expect to see consideration given to children and young people becoming eligible for Continuing NHS Healthcare arrangements as they reach adulthood to be involved at the earliest appropriate opportunity. Young people have rights to information (Article 17), to share their views (Article 12) rights to the best possible health care (Article 23) and rights as a disabled young people to be involved in society and have government's remove structural barriers to promote their inclusion (Article 23). These arrangements should meet the requirements of the Welsh Government's Transition and Handover Guidance<sup>17</sup> for health boards, so that they are properly supported well in advance and throughout their transition to Continuing NHS Healthcare arrangements.*

*I have not responded to the further questions in this chapter because they do not apply directly to children and young people.*

<sup>17</sup> <https://gov.wales/transition-and-handover-childrens-adult-health-services>

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

There are 11 questions about this chapter.

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

*I am supportive of exploring the implications of imposing a duty to report a child at risk directly on individuals within relevant bodies. It is every body's duty to act in a child's best interest (Article 3) and adults have a duty to pay due regard to children's rights under Article 34 to be protected from sexual exploitation and abuse.*

*As evidenced in the final report from the Independent Inquiry in to Child Sexual Abuse, many victims of CSA/E do not disclose what has happened to them, and this proposal may be a way to further strengthen confidence in our reporting system.*

*In my annual report I made a recommendation to Welsh Government that, following the final publication of the Independent Inquiry in to Child Sexual Abuse, Welsh Government must coordinate and publish a Welsh Implementation Plan to ensure its learning and recommendations are implemented by Welsh Government and other public bodies in Wales. Young people themselves should be participants in this work. This will need to be done safely and sensitively.*

*Before coming to a final position on imposing a duty, I would like further details on the Welsh Implementation Plan to reflect on how a range of measures will be used to strengthen our response to identifying and preventing child sexual abuse. With the final IICSA report published just this October, I am aware that organisations, as well as my own, will still be reflecting on the breadth of the recommendations. Therefore whilst I support the notion of exploring the duty to report, I am keen for further considerations to take place across the sectors on this proposal.*

*Steps have been taken in Wales to promote the early identification of abuse, such as with the publication of the All-Wales Practice Guides and the CSA Centre for Excellence 'signs and indicators' resources.<sup>18</sup> Building on this practice is essential to give confidence that all those working with children are confident in delivering in line with the All-Wales Safeguarding Procedures. Strengthening existing preventative practice, as set out in the Procedures, can support a move away from placing an onus on children to disclose, towards an approach that identifies early warning signs.*

<sup>18</sup> <https://www.csacentre.org.uk/knowledge-in-practice/practice-improvement/signs-indicators-template/>

*Therefore in the interim of developing an Implementation Plan, building consistency in practice should remain a focus for Welsh Government.*

*The new RSE Code being rolled out across Welsh schools provides an important opportunity to communicate messages around safeguarding. Children will be learning in an age appropriate way about bodily autonomy, safe and healthy relationships and privacy. It is likely that children may be more likely to disclose concerns or incidences of abuse, so those supporting children must be confident in their understanding to act on these disclosures.*

*Therefore, I am of the view that greater consultation will be needed surrounding this proposal to understand its breadth and implications. Nevertheless, I agree with the principle to explore this proposal with the sector.*

**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?

N/A

**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.

*My office will respond in more detail should a separate consultation with further details on this proposal be published. I am aware that work has been commissioned by Welsh Government to explore with the sector the potential implications of the IICSA recommendations, as well as exploring what has been achieved through Welsh Government's National Action. I am keen to see this issue consulted on in more detail once this work has been completed.*

## 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 – I have growing concerns about the use of unregistered placements and am keen to see action taken to support regulators to respond to any concerns relating to its usage. In my annual report I put forward a recommendation setting out what I would like to see:*

*Welsh Government must establish a working group in 2022/23 to explore the issue of Unregulated Accommodation and Unregistered Placements. The aims of this work must be:*

- *To collect data to build an understanding of its usage in Wales;*
- *To consider the needs of affected young people to identify where there are shortfalls in suitable accommodation; and*

- *To explore whether changes are needed in the regulation system in Wales to award young people stronger protections. Work needs to be concluded within this Senedd term including any regulatory changes that are required.*

*I believe this recommendation and associated actions should be delivered in tandem with the proposals set out in this consultation, to help identify gaps in current provision, which leads local authorities to use unregistered placements.*

*I was recently alerted to a concerning case, regarding the use of agency staff to staff unregistered placements. The provider is operating in England and Wales. The provider was operating without registration and using agency staff to staff the placements. This creates a double safeguarding concern, that some of the most vulnerable children are being looked after by staff who may not have been subject to thorough checks and registration with Social Care Wales, and, are not in a placement that is registered as a care home by Care Inspectorate Wales, with the oversight of a Registered Manager. I am aware that CIW have notified local authorities that they are aware of this practice but far more needs to be done to prevent this circumstance arising. In this circumstance, both CIW and myself had limited powers to act. Therefore, any proposal to strengthen CIW's powers are supported by myself and Office.*

*The case above also raised concerns about my Office's own remit to act and reach children subjected to these types of placements. Unlike the Children's Commissioner for England and the Older Peoples Commissioner for Wales, I do not have a power of entry for the purposes of interviewing a person in relation to their powers to review organisations' discharge of their functions. In addition to these proposals I would recommend consideration being given to how the Children's Commissioner for Wales' remit may be extended to include power of entry into any premises other than a private dwelling at any reasonable time, for the purposes of speaking with a child or young person in relation to their powers to review organisations' discharge of their functions.*

*In 2021, my predecessor wrote to Welsh Government Ministers and the Children and Young Peoples Branch within Welsh Government, setting out where the Children's Commissioners remit and legal powers could be strengthened in this regard, setting out suggested areas which could be strengthened, such as through the power to access institutions and documentation to support in the investigating of concerns.*

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

*Yes – we have a clear regulatory framework in Wales. Those offering placements outside of this should be required to provide information on their service and be held to account. Regulated placements are an important safeguard for children, therefore*

*I am supportive of measures to ensure the regulator is able to access accurate information on a service which is suspected to be operating without registration. As set out above my own remit could be strengthened in this regard.*

**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 – I support this proposal to strengthen CIW's powers.*

*As mentioned above, a review of my own powers in relation to entry for the purposes of investigation and delivery of functions would be welcome.*

**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 – as above I support strengthening measures powers of the regulator to help ensure all children who require a care placement are cared for in a registered placement. Any setting offering care and support to young people should be transparent in their operations and be accountable to the regulator for the delivery of those services.*

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

*Yes – this has been a long standing issue for my Office. I have concerns that the current definition is too adult focussed and may be contributing to some young people being placed in unregulated accommodation from the age of 16, as they are assessed as not needing 'care' but just 'support' under the current definition.*

*My office is concerned that some young people from the age of 16, are required to live independently at a much earlier age than their peers and this can put that at great disadvantage for their future.*

*As set out in my Annual Report, under RISCA, all children needing care under the age of 16 must be in a regulated and registered placement, although as discussed above, we know at times this does not always happen. However, some 16 and 17 year olds do not necessarily have to live in regulated accommodation, as from 16 some can begin the process of leaving care. Young people can be assessed as needing just 'support' and not 'care and support'. This means young people can live*

*in accommodation that does not provide care, and therefore isn't required to register with CIW as this falls outside of CIW's remit. The accommodation options can vary greatly, from 'When I'm Ready' placements, supported lodgings placements, semi-independent living arrangements or completely independent accommodation, and even places like hostels and B&B's. These come under the umbrella term of 'unregulated placements'. We are concerned that the quality and standards of accommodation can vary greatly, as there is currently no guiding standards or regulations to govern this area of accommodation. Whilst we know of some excellent supportive settings, some young people can become very vulnerable if living in poor accommodation with limited support.*

*Under this proposal, this may result is those more nurturing settings being required to register, but may leave some of the more concerning types of provisions falling outside of the new definition. This is why I would like to see Welsh Government take a lead on understanding the various types of accommodation options local authorities utilise to support care leavers, as recommended in my Annual Report.*

*I would urge that young people are consulted on any proposals relating to this issue, as I am aware that young people will have different views on when they are ready to leave care and be viewed as capable of living without parental guidance.*

*For example, recently I met with young women living in temporary accommodation. Despite many elements of the provision being complimented, they felt that they were not prepared at all for the transition of living independently and were eager to leave the provision to end being what they felt was 'watched over'. I do feel that this group of young people are very likely to share different views, depending on their circumstances and past experiences as to what 'parental type care' looks and feels like at this age.*

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

There are 5 questions about this chapter.

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

Please explain your reasoning.

*Yes – I am supportive of this proposal to register child care and play workers with Social Care Wales. This is another important step in safeguarding children and further strengthening the workforce.*

## Consultation Response Form

Your name: Beth Evans

Organisation (if applicable): Carers Wales

Email / Telephone number: beth.evans@carerswales.org

Your address: Unit 5, Ty Nant Court, Morganstown, Cardiff CF15 9SS

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?

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?

If it is a legislative requirement then yes.

**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.

There may be some unintended consequences of moving 'for profit' care for looked after children. Some organisations will inevitably close their doors, however there seems to also be adequate 'lead in' time to enable other not for profit organisations to develop and take their place. There must however be enough information to support 'for profit' providers to possibly turn their business around into 'not for profit' and also enough information and support for other providers to come forward and develop services.

**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?

If it is truly to be a 'not for profit' service then any surplus should be returned to the commissioning body or be used to develop further services. There should not be the taking out of 'excessive fees' by parent companies and the fees that are acceptable should be detailed at the outset by Government and via commissioning contracts.

**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 useful to have the power available even if that power is not immediately used.

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

There needs to be adequate lead in time but during that lead in time adequate information provided on process, practice, guidance, transition, commissioning processes and the development of Codes of Practice to accompany legislation should be available in plenty of time.

**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?

It must be done as soon as possible.

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

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

I think it will go some way to deliver the commitment to eliminate profit from the care of looked after children but it needs to be done in co-production with organisations to ensure that the views are taken into account in terms of timescale and what they actually need in terms of support, guidance etc and especially for organisations to transition from 'profit' to 'not for profit'.

Appropriate timescales should be co-produced with local authorities, commissioners and the not for profit services to ensure that they are realistic and can be met. This may help with transition and give organisations time to adjust/develop services.

**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?

Again, I would suggest that you work with organisations/local authorities to co-produce and decide what is acceptable in terms of what can/cannot be deemed as profit, and where there is a profit, how that profit is to be used to develop further services. There needs to be robust accounting, transparency and effective monitoring of services/commissioning processes.

**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 is potential for more Welsh language services to evolve and develop.

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

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



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

There are 8 questions about this chapter.

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

I wholeheartedly agree with the proposal. For many years carers have raised this very issue with us that when the person they care for moves on to CHC, any direct payments they were receiving for various aspects of their care was then withdrawn by local authorities. This has often had a devastating effect on disabled people and their family carers as the services and staff they were accustomed to were no longer an option and no longer available to them. This has meant a loss of choice, voice and control about when and how care and support needs were met. There has always been legislation in place to encourage joint working between health and social care, however with each sector having their own budgets, inevitably arguments have arisen over who provides what. The outcome is that often, service users and carers are left foundering between services. Anything that can be done to ensure that the NHS and Las tailor joint packages of care will be very much welcomed.

**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 obviously be for the person in receipt of care and support, enabling them to start or continue with their direct payments package. This in turn could be more cost effective and save the NHS money in staff time as well as other resources to meet care needs.

There may be difficulties however for individuals to recruit care work support due to the Direct Payment rates involved and lack of social care workers. This may be more acute in rural areas due to travel costs etc. It must also not be seen as a way to pass the onus on to individuals to find their own care workers. This has also been happening, where someone has been assessed as having an eligible need, no care workers to meet that need so offering direct payments and expecting service users to find someone to provide care, that in effect doesn't exist.

It must also be made clear that family members can be paid using Direct Payments.

Direct Payment rates also need to reflect the care market in local areas to ensure that hourly rates are comparative or better than other employment sectors to encourage care workers to take up the jobs.

Ensure that where there is a dispute over which statutory organization provides what, that the service user is provided with the necessary payment as soon as possible and that any dispute is resolved later between the bodies. This will ensure that continuity of care continues, if someone is already in receipt of a direct payment or where someone wants to take up a direct payment they can do so as soon as possible.

**Direct Payments for carers in need of support should also be included in this legislation.** Often carers have told us that because someone is on CHC that wrongly Las have refused services to them as they believe that the NHS should provide them with the support. This also needs to be urgently addressed and clarified.

**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.

Not to my knowledge.

**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?

Explicitly say that the law has changed

That LAs and LHBs by law are now required to work together

How and who will have the responsibility for supporting the unpaid family carers

That DP recipients have the choice of who they employ, including family, people on self employed contracts etc

**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?

It enables people to have the choice of whom they employ to meet their needs, this includes welsh speaking care workers

**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.

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**Direct Payments for carers in need of support should also be included in this legislation.** Often carers have told us that because someone is on CHC that wrongly LAs have refused services to them as they believe that the NHS should provide them with the support. This also needs to be urgently addressed and clarified.

**In relation to the remainder of the consultation we have no particular comments as this is not our area of expertise.**

## Consultation Response Form

Your name: Judith Brooks

Organisation (if applicable): Merthyr Tydfil County Borough Council

Email / Telephone number: judith.brooks@merthyr.gov.uk

Your address: Civic Offices, Merthyr Tydfil

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?

The response is sent on behalf of the organisation – Merthyr Tydfil County Borough Council – Social Services Directorate.

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

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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 would support these proposals because they offer a much-needed progression for people with complex needs who value the control that direct payments offers over how their care needs are met. It would remove a significant barrier for people who have existing direct payments packages to having their health needs appropriately met when the time comes. However, we would like to see this widened from only those with a primary health need.

We would like to ensure that there is a power in law for the NHS to use direct payments to meet some health needs of those who do not meet the threshold for CHC but would benefit from joint funding. We have people who, although they do not quite meet the threshold of a primary health need, do have needs that are above social care and therefore must be met by the NHS. To allow direct payments to be used for these people, it is important that legislative changes do not specify CHC eligibility to avoid the creation of a two-tier service within adult services.

There are also, ad hoc health needs that could be appropriately met using an existing social care package. For example, a person with high care needs has appointments in a specialist health clinic on a regular basis. They require the support of a carer at all times in order to attend. It would be much easier for the clinic to commission extra support within the direct payments package in place than to source a service to support the person. It would also have the added benefit of the carers understanding the person's needs and having a prior relationship. At the moment, the NHS has no means of easily supporting this. We have a person using hours provided to meet their well-being outcomes for leisure in order to have these health needs met.

**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.

An extension of the use of direct payments across health and social care, if applied correctly, will offer greater choice and control to individuals in receipt of services. It would also make services more transferrable when needs increase and through transition into adult services.

It is important to recognise the limits of services provided through direct payments and the proposal for guidelines to limit their use in certain areas is welcome, such as specialist health services. Personal assistants must have access to the appropriate training and support to ensure they are effective in providing the care needed. They do not have the back-up of a team or supervision outside of the person they care for. A structure will need to be in place to review how services are carried out to ensure they remain appropriate to the need. However, services such as district nursing could be utilised in this task.

There will be additional costs in the administration of direct payments and the possible need for additional nursing staff to review their use and provide appropriate training. However, we have found that they can also be a very cost-effective way of providing services on the whole. Agency provided care also has to be reviewed and, while they are responsible for ensuring staff are appropriately trained, this is reflected in their increased unit costs. Resources can be much more effectively targeted to individual plans using direct payments.

There could be considerable savings made in reduced waiting times on hospital discharge. We have two people who have been in hospital some months longer than they would have been had they been able to use direct payments to meet their health needs. For one person, who is receiving end of life care and wished to die at home, discharge liaison staff have worked tirelessly over months to source a suitable care agency without success. There was a care package in place which, had they been able to access direct payments, they could have taken over with the existing staff. Training and supplemental nursing services were available from district nurses. Unfortunately, this option was not open and the length of time it took to resolve issues meant that the personal assistants had to take other jobs. Even though these types of situations should be few and far between, the potential resource savings would be significant.

The wider implementation of discharge to assess would also be a significant benefit of reducing the time it takes to discharge people from hospital and ensure assessments are completed at the appropriate time. It would allow people to be

discharged home from hospital with health needs above that of social care but who no longer need a hospital bed. An assessment to determine whether a person has a primary health need could then take place after appropriate recuperation at home.

For language and cultural needs, it is possible for an individual to ensure that all the care staff in their pool are able to meet their needs appropriately. Compatibility is built into the recruitment of personal assistants. It would be much more challenging for this to be achieved solely with the use of agencies because they have a much wider pool of staff and plans to fulfil meaning that matching can be subject to the organisations needs as much as individual needs.

In service user groups such people with intellectual, neurological or neurodevelopmental disabilities, we have found that the relationships which can be built up when you have a consistent staff base becomes vital to the success of the plan. Staff who can understand a frame of reference of someone with communication difficulties can be the key in achieving a successful outcome.

In all protected characteristics there is a benefit when you have greater control over who provides your care. For people wishing to specify the sex of their carer due to possible trauma, or for people with needs around their gender and wish for support with expressing and affirming their identity, they will have full control on those aspects of their care. Autistic people wishing to benefit from similar communication and empathy would be able to recruit on that basis. It is the control in the hands of the individual which is the key.

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

In England, when creating Personal Health Budgets, eligibility for children and young people was included, which is something that is not part of this proposal. Given the challenges of constructing 3 party care plans for children to meet all their social, health and educational needs, it could be beneficial to have that added flexibility in the Welsh proposals. We have examples of situations where unmet health needs could have easily been addressed through an extension of a young person's direct payments commissioned by health.

Northern Ireland have Health and Social Care Trusts and meet needs through a "health and social care assessment". While a harmony of the service to this level may be unnecessary to achieve what this proposal sets out to achieve, some form of shared administration could be beneficial. For instance, are health boards and local authorities going to maintain separate support mechanisms for direct payments?

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

There is no alternative to a change in the law, as the current law prohibits direct payments being used in the way suggested. However, changes would be needed alongside the legislation to ensure that the desired outcomes are achieved.

It is very important that health boards are incentivised to offer the choice and control that comes with direct payments. A legal power does not necessarily encourage large organisations to make the changes necessary to embed this into their work. Administrative supports need to be put in place as, without good reason to do it, health boards are not likely to put in the structures necessary to make this succeed. For that reason, it would be helpful if health boards had to report on the numbers of direct payments offered and provided to evidence commitment to the practice.

**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?

Guidance which is accessible and easy to understand would be beneficial for all those involved in the provision of direct payments. It would be most helpful if there were only one set of guidance which encompassed direct payments for both social and health care needs.

In the local authority, we have found that the quality of support provided by the agencies we engage to support users of direct payments is key to its success. They provide the bulk of the support to people receiving direct payments, along with payroll and other administrative duties. It would be helpful if the health board and local authority harmonised those arrangements because it would minimise difficulties for those receiving support from both commissioning bodies and make transition to another service seamless. People using the services would also be reassured to have the same advisor and not have to take on a new administrative system.

**Question 2.6:** We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh

language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Direct payments gives people using a social care service complete control over who provides their care. This allows them to specify their language needs at the point of recruitment in a way that the use of organised care through an agency does not. It would be hard, in an area such as Merthyr Tydfil, with a lower percentage of bilingual residents, to ensure that all staff fulfilling a particular care plan were Welsh speakers. This has become even more challenging with the sector wide staffing shortages. These opportunities to match Welsh speaking staff and service users, are much more achievable with the use of dedicated personal assistants. With the current arrangements, people who will be used to receiving their service in the language that they are most comfortable, may then lose that vital support when their needs increase beyond the limits of social care. It can only be a protective factor if the person is able to keep those aspects of their care plan when responsibilities for commissioning their care change. Even when personal assistants are employed by the agency providing care on behalf of the health service, although they will make their best efforts, agencies cannot guarantee that they will be the staff used on every call for a particular service user. It is important to note that this particular benefit of direct payments translates to specific needs around all language and cultural 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.

Increasing choice and control for service users will have the effect of promoting opportunities to receive care in your chosen language. It could be possible for information to be collated on personal assistants who are able to provide services in Welsh which could widen the use of the 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.

This removes one of the main barriers to people choosing whether to have an assessment of a primary health need. The other is concern about the effect on their benefit entitlement. There are people who, despite having very complex needs, have most of their needs fulfilled by family members and their care is very cost effective to the state as a result. It would not be equitable to equate needs to those people who receive care in hospital. It is important that disability benefits can continue to support these people and their families to enjoy a rightful life in their community even when their needs exceed the threshold for Continuing NHS Healthcare. Good information about the effect of assessment on benefits would be appreciated and any effects that their care arrangements change should be mitigated to ensure that the person can continue to receive safe and appropriate care in their community.

## 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?

We agree that the need for the cover for duty to report is essential however the placing of the responsibility on individuals will blur their individual responsibilities with their role as part of an organisation.

**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?

In respect of adult reporting the diversity of individuals that are involved in various support roles would be problematic to list here. Placing additional individual duty to report on volunteers may result in them choosing not to volunteer.

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

It is difficult to suggest sanctions as this would cover a range of professional and non professional staff and it would be unrealistic to provide the same expectation and level of sanctions on professionals and volunteers.

**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?

We agree with this proposal

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

We agree with this proposal

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

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

We agree with this proposal

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

We agree with this proposal

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

Placing the responsibility to make the annual returns publicly available will place additional pressures on care providers especially single providers who may not have a website and will need to print the document.

The publication on CIW website may have implications for CIW however it is often one of the first areas that users of the services visit to view the inspection reports and having the annual returns on the same site will be more user friendly and make access to the information easier for citizens rather than having to visit several sites to compare information.

**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?

It is not clear what will be achieved by making it an offence not to publish the annual return and again making this an offence is more likely to have impact on smaller providers.

**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?

Whilst we would agree that there is not a need to report every visit by CIW there needs to be parameters set in respect of what is and isn't published rather than rely on the discretion of individual inspectors .

**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?

We agree with this proposal

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

We agree with this proposal

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

There would need to be clear links with future registration process so that a provider who would have had their registration removed had they not ceased operating would not need to declare that they had a registration cancelled if they were to set up another care 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?

We agree with this proposal

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

We agree with this proposal

**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?

We agree with this proposal

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

We agree with this proposal

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

We agree with this proposal as there could be a delay in appointing a new RI, however there should be a timescale included for when an RI can be absent.

**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.

We agree with this proposal as it would retain experience within the role

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

We agree with this proposal as there could be occasions where the individual has been unable to renew their registration as they have not met the requirements but will be able to do so in the near future

**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 agree with this proposal

**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.

We agree with this proposal as further information may come to their attention that requires the suspension of registration

**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: Angela Wood, Executive Director of Nursing and Midwifery

Organisation (if applicable): Betsi Cadwaladr University Health Board

Email / Telephone number: Angela.Wood2@wales.nhs.uk

Your address: Block 5 , Carlton Court, St Asaph Business Park, St Asaph,  
Denbighshire. LL17 0JG

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

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?

We recognise that there is a need to demonstrate quality of placement and to strengthen the communication and assurances that placing local authorities have in ensuring that funding is being used appropriately to deliver the best quality and outcomes for these children. We are however concerned that 'eliminating' profit may further inhibit the necessary investment from the private sector in both continuing current settings and expanding the current provision to meet the increasingly complex needs of children who require this types of complex placements.

There continues to be a national shortage of places for children who are taken into care, in all settings. There is a national shortage of foster carers as well as residential settings. Moreover, for those children and young people in care who require complex care and/or a therapeutic placement, there is a critical shortage of places.

Increased transparency in the accounting for settings and individual packages, with consideration of capping profits either/or at a setting or individual package level may better support a sustainable and developing model of provision.

There is an urgent need to ensure that staff in privately provided settings have the appropriate training and expertise to support the increasingly complex young people in their care. Many staff in these settings are on relatively low wages, when we think about the responsibilities and challenges that caring for many of these young people bring. Developing the assurance framework that private (indeed all) settings should be sharing with placing local authorities and health services, including assurances for skills development within these settings, to upskill and better value this important workforce, would be a good medium term approach to both improving and assuring care and support for these young people.

Changes to commissioning approaches will require careful monitoring. It is possible that changes to the market could result in appropriately skilled placements being much further away from local areas and services, and the emotional/psychological cost of this for the young people could outweigh any financial benefit .

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

The likely benefits of the legislation, if successful, would be to support the Increase in children being placed within North Wales and the positive impact that has on language, culture and families. It would also allow continuity of the professionals working with the child or young person.

The potential disbenefits would be a reduced provider market that would not be able to meet the requirements of the child or young person requiring placement, compounding the issue of a lack of good quality placements to meet the needs of the cohort of young people requiring residential/ specialist residential/ specialist foster care. In this scenario, more young people are likely to be placed further away in private care in England/Scotland where profit making care companies are still able to operate.

**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 agree that the legislation should define what organisations would qualify under a "not for profit" banner. This definition will need to be sufficiently detailed to enable easy classification of organisations without excessive bureaucracy for commissioning organisations. The concept of open book accounting may be necessary to ensure transparency over use of public resources and application of trading surpluses where these exist.

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

The less ambiguity there is in primary legislation the better and therefore we consider that the 'not for profit' definition should be clearly defined in the primary legislation.

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

There has been an ongoing issue for several years now with regard to access to specialist placements for children. The proposed timescale is 5 years away and it is recognised that these types of service changes are likely to be subject to long term planning. Experience may suggest this proposal will take longer to fully implement and embed. Where differing arrangements exist from those in England, this can often cause delays in access to care. This can be harmful for the children involved and will need careful consideration as proposed legislation and regulations are developed.

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

It is unclear what the proposed legal provisions will mean for providers who are registered to care for young people aged 16-25. Clarification will be required as to how the “not for profit” provisions change in a scenario where transition at 18 years old takes place with a single provider.

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

Guidance needs to be specific and achievable, with resources allocated, where required, to ensure effective adoption. The launch of any guidance should be comprehensive and a training package should be provided to all invested agencies and professionals including health, Local Authorities, Education, private and the third sector organisations, with clear and measurable outcomes defined by Welsh Government.

**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?

Local Authorities have overall responsibility when looking to place a Child or Young Person, however Health Boards have responsibilities to meet the health needs of the individual wherever they are placed. We consider it essential to understand how this legislation may affect the rights of the child (UNCRC) and the responsibilities of the Health Board..

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

The central challenge will be to ensure that there is a robust provision of service to meet need and consideration is therefore required as to how any

potential decisions from current providers to leave this market can be mitigated.

An alternative approach to a “profit focus” might be to have a ‘tiered system’ approach, where fees for each tier are set by Welsh Government/ CIW whether the provider is a private sector, not-for-profit, or publicly owned provider.

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

Such an approach would most likely need to be piloted, reviewed, evaluated and reports published and adapted based on findings of the pilot and then generalised across Wales with a package of training to ensure effective implementation. This could potentially take over 3 years, however the timescales would be dependent on the resources allocated to the project work.

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

There may be a challenge with organisations which operate across legislative boundaries where provisions are different. Ensuring transparency and adherence to the “not for profit” provision in complex organisational and financial models could prove particularly challenging. Not being able to assure such provisions would undermine the purpose of the legislation.

**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 is a risk that under such legislative requirements, the number of providers willing to register with CIW and operate in Wales could be extremely limited. Therefore resources would be severely impacted and children would have to be placed over the border. This in itself would have a negative effect on the child/young person being able to continue to practice communication and utilise Welsh language.

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

Welsh Government could place further duties on organisations to ensure that young people have access to care in the Welsh medium if they so wish. As part of system reform, Welsh Government could include in the RISCA regulations that care providers in Wales must be able to demonstrate a level of proficiency in the use of the Welsh language and an active offer.

**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.

Eliminating profit from the care of children looked after is potentially a big challenge for Welsh Government and commissioners. Without a published strategy and significant investment from Welsh Government to bringing these services 'in house' or attracting charitable/ not-for-profit organisations to Wales, Welsh young people who are looked after would be disadvantaged and as a consequence be at increased risk of ACEs due to the instability in the market place that this policy is likely to create, at least in the short to medium term.

## 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 support increasing the patient voice and control over how their personal and health care is managed. A form of direct payments (DP) is a natural progression from social care direct payments and has been established in England via Personal Health Budgets as hugely beneficial for some patients in receipt of CHC. Notional and 3<sup>rd</sup> party managed Direct Payments systems are supported by BCUHB.

The direct payment system developed in Wales may be different to the English personal Health Budget system, however there is considerable learning and experience to be drawn from the English experience to support a smooth and swift transition for Welsh citizens.

A key learning from English CCG experiences is that direct payments as notional budgets and 3<sup>rd</sup> party managed budgets can be extremely helpful to citizens. Fully released direct cash payments can be challenging for families to manage. For commissioners there are challenges in gaining assurance and demonstrating accountability. Many CCG's in England now only offer notional or a form of 3<sup>rd</sup> party managed direct payments.

3<sup>rd</sup> party managed DP's can range in management from intensive support e.g. of employer responsibilities, accounting skills, resourcing consumables and providing the commissioner assurances to more light touch where families are willing and able with adequate training and supervision to deliver sustainable care.

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

You may wish to consider, for example:

- **Benefits, and dis-benefits;**
- **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

The benefits for individuals of direct control via a payments system on their personal care has huge impact and therefore weighting.

What DP will do is to have a massive impact on individual families, who by definition of CHC eligibility, have complex health needs to manage within their households. Patients will be able to have a greater access to carer support within their prescribed care boundaries to support an optimal approach to care timing, organisation and especially personality and skill fits with the family and carers.

Both family and carers have needs to be met that need careful integration to manage within the confines of a domestic environment, which must be managed within the very personal and safe space of the wider household family. Poor cultural fits and poor understanding of personal needs of all parties, including the patient, the family household and the carers, as workers with rights and safeguards, is what often leads to recurrent challenges and breakdown of complex domiciliary care.

Having a recognised voice and control, a good carer family fit and understanding of carers is critical to the safety and security of the care package and patient's health and wellbeing. This offers the opportunity for common ground and understanding to be established within the family in a way that is virtually impossible to achieve in a large organisation. Evidence is that having a family member with very complex and /or life limiting condition can adversely impact on other siblings development and needs being met, divorce rates and wider social and health issues. For some families direct payments may support mitigating, or at least partially mitigating these risks and/ or impacts.

Dis-benefits

Not all people who are entitled to fully funded CHC care will have care needs, personal skills and circumstances and family/ household circumstances that are suitable for a form of direct payments, irrespective of the level of support they could receive. Not all will wish for the burden and responsibilities that come with direct payments.

People with fluctuating needs and / or mental capacity, a variable source of legal decision makers or unstable family situations may struggle to support direct payments even with risk mitigations and safeguards in place. Similarly, patients requiring immediately/ very short notice care will not have the time and scope to advertise, employ and arrange bespoke care through direct payments even where the application and approval in principle for direct payments is smooth and efficient. This may apply to end of life care or clinical escalation scenarios.

Where families have a family member with long term complex health needs, family dynamics can become altered even with the best of intentions in the family.. Additional checks and safeguards will need to be in place to ensure patients have an appropriate voice and control in their own care where family members are the key decision makers in their care,. Simply having the patient on the board is not sufficient as they could be a minority decision maker in the overall board make up. The appropriate make up of decision making processes will need to be individually tailored, reviewed and kept as a key point of focus at all times.

The range of possibilities for the mode of direct payment delivery is complicated, vast and a dynamic picture. There are a lot of complex options for families to consider to make an informed choice for their own lives and care. Health Boards will need to be able to support these fully informed choices, either directly or by commissioned support services (local or national) to enable patients to make the decisions for direct payments and will require clear guidance and resource to undertake this support. Front line MDT's prescribing health and social care delivery will require considerable support at a very local level to understand the range of care possibilities and the implications for legal, regulatory, quality and safety boundaries within these options.

Wider strategies such as national directives for statutory bodies supporting carbon targets or social value targets will be a significant step removed from any influence or control regarding these, where families directly arrange their own care. Similarly, national and regional strategic priorities to support a particularly portion of the population with a service provision incentive such as stabilisation of the domiciliary care market may not align with individual family preferences for care delivery. Many personal assistants commissioned though social care are paid at a higher rate than independent domiciliary care providers pay. This disparity of terms and conditions not only further inflates the current market disparity of pay rates, but potentially fundamentally undermines the stability of the wider independent domiciliary care market if they lose more experienced staff to the direct payment sector of the market. This, combined with wider statutory body moves to bring provision "in house" to enhance their own service stability and resilience, poses a significant risk to the established independent domiciliary care market. Rapid change could lead to gaps in provision which may have a significant negative impact on whole health and social care system flow and capacity.

## Costs indirect and direct, savings

Transactional care delivery costs under direct payments are typically less than traditionally commissioned care costs from independent providers. However, it is unlikely that there will be savings from direct payments as the overheads to support safe management of direct payments can be much higher.

Direct costs may include family legal, business, employer responsibilities training, support and advice e.g. additional carer advocacy, as carers and employers, legal representatives of the patient and for example as a trustee board member of an IUT. In addition there are business set up costs e.g. where the family choose to set up an IUT, micro provider or carer cooperative, set up costs such as first year business liability and indemnity insurances, business management and accounting; until it is built into the overarching care costs for future years. This may be through a commissioned 3<sup>rd</sup> party management broker, to the family direct, a combination of these or involving a new structure in NHS wales. A low management support 3<sup>rd</sup> party broker may be 8-10% of a care package levy. A higher support level where, for example, the broker manages staff recruitment, advertisement, staff responsibilities, rostering and payroll in collaboration with the family, costs may be as high as 40% or more of the care package.

## Impacts on people with protected characteristics

Generally protected characteristics should have a greater protection with direct payments , allowing for more patient choice and decision making in where and how they receive care. This which may impact on current traditional models of care i.e. a higher number of older people are currently cared for in residential settings and may chose with direct payments to remain at home which is positive but may destabilise the residential care market .

## Practical matters e.g. cross border commissioning.

There will be a number of practical areas where very clear guidance is needed to specifically address the issues.

Cross border management between England and Wales is already challenging and time consuming as the nuances in NHS England and NHS Wales impact on individuals. The additional of a welsh version of Direct Payments for CHC clients that is different to the NHS England PHB's is a further source of challenge and potential obstacle to a smooth care journey and best care journey experience. To a lesser extent, movement across HB's in Wales will also need clarity.

Continuing Health Care is not an eligibility for life. Many people who are assessed as having sufficiently complex and unpredictable health needs will retain their eligibility for life following reviews however, this should not be assumed in line with the CHC Framework Wales 2021. Given this it may be preferable that people with fluctuating health needs would be advised to be excluded from direct payments. This may not be the only scenario of CHC eligibility being appropriately withdrawn. For example, a behaviour challenged dementia patient whose behaviour and so care needs are unpredictable, challenging and require high intensity and skill input to predict and manage will be eligible. With the natural progression of their dementia in terms of disease progression, they may have reduced health needs as they are no longer challenging and/or unpredictable. In such circumstances they may then be reviewed and found to be not eligible for fully funded health care.

CHC eligibility is binary - eligible or not eligible. The practical reality however is that people's individual needs do not always fit into clear binary categories and a person with borderline eligibility, could be non-eligible at the following needs assessment. This poses a significant issue for commissioners where the patient is CHC eligible and requests direct payments but subsequently has to transition back to social care when they have taken on responsibilities such as legally employers etc.

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

Early experiences in England of DP's resulted in several amendments to the original law facilitating payments which are useful to note. On a practical/ operational delivery level learning includes the following issues.

Full direct payments with no 3<sup>rd</sup> party brokerage can lead to two issues. Firstly, where there is poor clarification of the 'independent' status of the direct payment when the commissioner is responsible for monitoring care delivery to a level that provides a high level of assurances on care quality, or secondly there is no/ insufficient assurance gained by the commissioners and the care package could be at unknown/ high risk of harm and accusations of poor commissioner support.

End of life care may bring about a short term eligibility for CHC funded care for the individual, but not always. End of life CHC funded care and clinical escalation 'in case' care plans need very careful consideration of safety, timeliness, access and practical deliverability of plans with a DP arrangement and are more likely to work in an integrated hybrid or traditional funding model.

There is confusion in England over the terms used. Personal Health Budgets are a notional budget with notional, IUT and 3<sup>rd</sup> party as a forms of management of a PHB. A DP is a direct transfer of cash. Different terms have a different legal basis

and therefore it is critical that there is clarity in definitions in any solution adopted in Wales.

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

Notional budgets and hybrid model approaches are currently under used. Regimental budget and role definitions within health (and social care) structures inhibit a flexible approach where for example a district nurse team, or community intensive team could be allocated a notional budget and have a plan of delivery agreed with the family from internal services. Hosting employment arrangements to be able to broaden or relax general NHS terms and conditions for example, for a temporary paid honorary contract as HB host on behalf of a family, or act as an arm's length provider may support routine transitions, short term care needs and crisis escalations as well as long term packages. This could help balance the families direction in care and how it is allocated with the HB overall commissioning, quality and resource requirements.

3<sup>rd</sup> party independent organisations with a tripartite agreement between carers/patient, commissioner and 3<sup>rd</sup> party.

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?

Guidance regarding the following issues would be critical: -

Clear inclusion and exclusion criteria for applications for direct payments. Considerations regarding fluctuating conditions, mental capacity and triage and assessment against a standard risk and sustainability tool for equity of access and an appeals process is required. Guidance regarding the move to a pilot process/ implementation plan and assurance.

Clarity of scope of the direct payments and what can be included and what specifically excluded e.g. out of UK care, alcohol and tobacco. Who can be paid e.g. England exclude household members.

Guidance regarding the specific roles and responsibilities linked to lines of accountability for various roles in the DP arrangements. This includes family, trust board members, HB as commissioners, 3<sup>rd</sup> party brokerage parties. Clarity over sign off assurance processes required within HB e.g. sign off for MDT prescribed care,

translated to a commissioning care plan and then to a family devised care delivery plan..

Standardised national KPI requirements at various levels of the DP management including triggers for early concerns, an escalating concerns process and a withdrawal/ decommissioning of DP process.

Contract, procurement, monitoring and funding requirements, roles and responsibilities for management and sub commissioning by HB's e.g. to 3<sup>rd</sup> party management brokers.

Guidance and processes required to transition care funding in a DP arrangement to and from social care, children's transitions and any impacts from appeals of CHC eligibility and appeals for DP impacts including possible CHC retrospective cases.

Guidance on the patient/ family support requirements, offer and signposting including a patient guidance leaflet.

Situations where an individual declines a CHC assessment. There is an assumption that this issue will dissipate when CHC direct payments are available. However, this may not necessarily be so and if guidance for Health DP's and social care DP's vary at all there will be a cohort of patients where this is retained and guidance to avoid a dispute process would be beneficial to all parties.

Guidance regarding sustainability and wider system risks and priorities including any ceilings of care guidance.

**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?**

For certain areas where welsh is the first language predominantly having personal choice on recruitment will support communications and welsh language in those areas. Where communications are even more critical due to the person's condition this choice will help the patient immensely.

**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.**

Where Welsh language is the preferred communication medium of families having access to guidance, leaflets, training supports advocacy services and business support services in Welsh would be extremely beneficial.

Of note looking at our local population changing preferred language needs, having a central national repository for translated documents in a variety of languages would be extremely beneficial for families and those supporting them. In North Wales Polish would be particularly useful.

**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.**

For HB's there are a number of appeal scenarios that will create additional resource requirements and workloads for HB's, potentially impacting local authorities' resources and notably impacting on the patient care journey quality and satisfaction. For example, if not all CHC funded care would be safe and appropriate to commission through a form of direct payments, where direct payment requests are declined or withdrawn there will need to be a standardised appeals process including an external escalation process. This may involve additional legal advice, access and requests from HB's CHC Retrospective reviews guidance and the implications following a period of prior CHC eligibility in the CHC retrospective review would need careful consideration and guidance for HB's.

It will need to be clear for families how they are signposted to independent legal support, who is appropriate legal support and how families pay for the legal support would benefit from clarification.

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## 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 would support the introduction of such a duty, however we would encourage further consideration of “relevant bodies” to ensure that such a provision has the maximum possible benefit. Introducing such a provision will however present the challenge of how compliance is evidenced and organisations and individuals held account.

**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?

See response to 3.1 above.

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

Earlier identification of those at risk would be a benefit, along with increased awareness in the wider population, increased ownership for risk reduction and the potential for preventative actions. The challenge however is how such a duty to report is monitored for compliance.

There is a risk that introducing this approach could lead to over reporting and defensive practice and a proportionate response is required. In such a scenario, lead services and partner agencies might become inundated with reporting. Whilst increased reporting could be seen as positive from the aspect that it protects children and adults, reporting when it is not needed would be a concern as this practice could generate additional work for busy teams with the result that high risk cases could be at risk of delayed identification and intervention. The potential increase in reporting would without doubt lead to a need for additional finances and resources to respond in an appropriate and timely manner

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

England and Scotland, like Wales have a duty to report. Data relating to Enquiries, and activities evidences an increase in cases under such arrangements.

**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?

Ideally they would sit alongside existing duties. There is a clear distinction between organisational duties and individual duties and these will each require appropriate systems and process to ensure effective adoption.

**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 would support the adoption of common reporting requirements for children and adults. Whether an individual is working directly with adults or children there should be a duty to report those at risk of harm. However, the identification of ‘individuals’ needs to be clear and robust. Whilst recognising the challenges of extending the provision to include 3<sup>rd</sup> sector and other organisations, we would support this approach to maximise opportunities to identify people at 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)?
- (b) What are your views on this in respect of adults?

Our initial view is that all employees of Relevant Bodies should have a duty to report. This would however need to be supported by adequate training and support for these staff to endure that they can discharge their responsibilities appropriately. In determining the final coverage there will need to be an assessment of the benefits and risks associated with the proposed changes and their potential impact on service provision

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

We would not support the use of the term ‘sanctions’ at this stage of the consultation. Determining and appropriate “sanction” requires careful consideration as do the means by which such an approach could be implemented. In implementing this, could there be a knock on effect that will impact the current Section 5 (Concerns about Practitioners and Those in Positions of Trust) Legislation? Currently the subjectivity of the threshold of reporting under section 5 points to the challenges of standardisation as the determination of “Risk” can be subjective and involve many individuals and organisational judgements.

**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 duty to report so that people have an understanding of the implications, similar action should be taken to the Defence of Reasonable Punishment Act implementation, with a robust training and communication plan in place in both Welsh and English. We must also be mindful of the Welsh Active Offer where information and communication is freely available in Welsh without being requested which is law in Wales. New and current legislation should adhere to this.

**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 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.

With reference to the definition of ‘Relevant Partner’, the enquiry (IICSA) clearly identified the high risk areas and included both political and religious groups who are

not identified currently as Relevant Partners. We would suggest that this proposed legislation needs to be very clear in defining what is in scope.

If a broader definition is adopted then there is a risk that more pressure and expectation will be placed upon statutory organisations/public bodies whilst omitting the hard to govern, influence and monitor organisations- including voluntary and 3<sup>rd</sup> sector.

## 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.

## WG Consultation November 2022

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

#### Gwent Regional Response

*This response is submitted on behalf of all 5 Gwent local authorities, BGCBC, CCBC, MCC, NCC and TCBC*

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

### Questions for chapter 1

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?

Profits for large children's social care providers are higher than one would expect in a well-functioning market, and the lack of placements leaves local authorities in a weak position when attempting to negotiate the price of a placement. There has been a steady increase of privately run children's homes across Gwent and a lack of competition aligned with increasing demand for places is driving up costs.

#### Disbenefits

However, the impact of moving to a 'not for profit' model of commissioning has not been sufficiently understood. LAs in Gwent are already aware of providers moving out of Wales due to the proposed 'not for profit' model being considered. The number of 'not for profit' care providers across Wales is very limited and they will not have the capacity to fill the gaps in provision as 'for profit' organisations leave the market. The current proposals could substantially increase the number of children and young people that LAs need to source placements for over the next 3 years while the number of suitable, available placements decreases. This is likely to lead to more placements operating without registration in Wales, pushing up costs and essentially undermining what the proposals wish to achieve.

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.

#### Disbenefits

### **Capacity and Costs**

There is a very limited number of 'not for profit' providers in Wales. Those who do operate in Wales have small portfolios and almost exclusively provide accommodation for children and young people with disabilities. Providing accommodation, care and

support for children and young people who are looked after is complex and highly regulated, expecting smaller, 'not for profit' organisations to move into the sector to fill the gap left by for profit providers over the next 3 years to meet demand is not realistic.

The proposals could create a more hostile market environment, which may have a disproportionate impact on effective smaller enterprises who add social value to local communities, thereby perversely leading to increased strength of large UK commercial providers that may target the lack of sufficiency in suitable residential provision. This is a major concern for local authorities in relation to both quality and price.

Of the 5 LAs in Gwent only Newport and Caerphilly currently have established in house provision. These homes look after children with very complex care and support needs who cannot easily be supported in alternative settings, these in house homes do not generate significant savings for Newport or Caerphilly and all 5 Gwent LAs are already forecasting budgetary overspends for this financial year. The current proposals will increase demand for in-house provision leading to greater budgetary pressures.

It is also noted that the 'National Transfer Scheme' for unaccompanied asylum-seeking children aligned with the war in Ukraine means that the number of children who are looked after is predicted to rise putting further pressure on LAs in terms of capacity and demand.

### **Transition**

There are concerns regarding how the sector will sustain the existing market whilst moving to a 'not for profit' model. If the continuity of care and support for children and young people is to be maintained, it is inevitable that partners will need to develop the new system while maintaining the old. This will have budgetary implications for LAs and partners as they will need to find money to fund both systems during the 3 year transition period.

### **Joint Commissioning Arrangements**

The proposals will impact on joint commissioning arrangements, in particular:

- Bespoke commissioned arrangements for single children
- Placements established to support children with disabilities into adulthood
- Secure placements, in particular where children have been placed in England.

Clarity is needed on these issues which should be underpinned by a firm understanding of the impact the proposals could have on the outcomes for children and young people in these situations, especially for children with significant complex needs that require very specialist care, sometimes not provided in Wales.

### **Cross Border Issues**

The proposals state that LAs will not be able to commission placements in England if they are for profit providers. However, a judicial hearing may rule that a child's needs cannot be met within the LA or indeed Wales and a placement would need to be sourced in England, this could potentially be with a for-profit provider across the border. This type of scenario requires further consideration.

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 term 'not for profit' requires greater definition. Profit or 'surplus' is required if an organisation is to reinvest in the care and support it provides. Even 'not for profit' organisations aim to make a profit but that is reinvested in the service provision rather than distributed to shareholders.

#### Disbenefits

Restricting how trading surplus is expended could overly complicate the commissioning process for LAs and for providers.

LAs and health boards often have complex procurement procedures which smaller 'not for profit' and third sector organisations find difficult to work with. If smaller third sector organisations are to play a greater role in providing children's care provision, then simpler commissioning procedures may help. It may be beneficial to commission on the basis of outcomes for children and young people rather than activities, resources and how trading surplus is expended thus simplifying the procurement process and encouraging the 3<sup>rd</sup> sector into the market.

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 above.

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

#### Disbenefits

The proposed timing of 3 years for primary legislation to come into effect is far too ambitious. Moving to a 'not for profit' model is not a route many current for profit organisations wish to explore and it is anticipated that many will simply cease their operations in Wales. This coupled with the lack of 'not for profit' providers currently operating in Wales will result in LAs having to increase their in-house capacity to accommodate children and young people who are looked after. Sourcing suitable properties or land, the procurement of building firms, registering with the CIW and the recruitment of staff is an extremely long process and could easily run over the proposed timings raised in the consultation. It is also difficult to predict demand for placements and the complexity of need which does not incentivise providers to develop new placements given the time and costs associated with developing new provision.

#### Potential benefits

A longer timeframe would allow LAs to pursue the ambitions of the proposal whilst decreasing the risks associated with the current approach i.e., a decrease in quality, registered placements. It would also support the gradual and safe expansion of in-house and not-for-profit service provision including the development of joint

enterprises with RSLs. A longer timeframe would also provide Welsh Government the opportunity to legislate for how much 'surplus' must be re-invested into services for children who are looked after.

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?

#### Disbenefits

The wellbeing and positive outcomes of children and young people who are looked after can be adversely affected by multiple transitions to different placements. The proposals could create unnecessary, additional transitions for children and young people impacting on their ability to develop and form attachments. It is vitally important that the views, wishes and feelings of children and young people who are looked after are heard and considered as part of these proposals.

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

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?

#### Disbenefits

There is a risk that the restriction on LAs to commission from not for profit organisations only could make the current situation worse by creating higher demand for placements while reducing capacity as 'for profit' providers are likely to decide to no longer operate in Wales. This could lead to more unregulated placements of children and young people with complex needs, leading to higher costs to LAs and further market instability. A full impact assessment should help identify alternative timescales.

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?

#### Disbenefits

As stated above there is a risk that the proposals could significantly reduce supply and increase demand creating a lack of sufficiency that becomes filled by larger providers who offer unregulated placements at inflated cost due to the lack of competition. This would undermine the intention of the proposals.

1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh

language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

A potential reduction in the number of providers, and reinvested profits, may lead to a reduction in training and workforce development.

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.

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.

## **Chapter 2: Introducing direct payments for continuing NHS healthcare**

### **Questions for chapter 2**

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.

Increasing the voice, choice and control of citizens receiving CHC and supporting them to lead the lives they wish is a welcome ambition. Under the current system continuity of care is often lost once a person receiving a DP is assessed as having a CHC need, and this proposal could provide a solution to that issue, leading to improved wellbeing outcomes for individuals. As highlighted in the proposal it could also prevent citizens declining a CHC in order to maintain the independence and relationship they have developed with their PA.

These proposals would be particularly important for young adults who may have ongoing educational needs, those with commitments such as children, employment, social and vocational interests. Having more control over care delivery would support individuals to increase their autonomy and participate more fully in their lives.

There are limited examples where citizens have used DPs to meet their health needs, but this is dependent on exceptional circumstances and a willingness from all stakeholders to work creatively and in partnership. There are also examples of those in receipt of DPs paying assessed charges for health services that should be free at the point of delivery. Implementation of the proposals should eliminate this.

However, the proposals as they stand, lack detail which presents a number of important issues that require careful consideration.

### **Financial Responsibility**

The decision making process for who holds the financial responsibility for a person with a CHC need, particularly those with a mental health issues and/or a profound disability remains inconsistent and there continues to be friction in the way CHC guidance is interpreted. It would be pertinent to solve these issues before implementing DPs for Continuing Health Care.

### **Delivery and Governance**

The proposal does not detail who will hold the responsibility for the delivery of direct payments to citizens with a CHC. Will health boards be expected to develop their own systems and teams for direct payment delivery, or is the expectation that this role will be passed to LAs who already have DP systems and teams in place with health as the primary funder? The former potentially creates a duplication of effort, while the latter creates significant governance issues in terms of oversight, responsibility and capacity of existing LA DP teams. If the health board is to be the lead practitioner a transition period will be required as people move from an LA DP to a CHC DP.

If a person is eligible for CHC their health requirements will need to be met by a PA with the necessary skills and training. This seems to suggest that delivery and governance **must** be led by health boards? Health boards could support the transition process by recruiting existing PA's where appropriate adjusting the terms and conditions to meet the requirements that will be set out in their guidance.

### **Registration with CIW**

Currently PA's work '*wholly under the direction and control*' of the individual they support making them exempt from registration on the condition that care, and support is provided '*without the involvement of an undertaking acting as an employment agency or employment business.*' It is important to consider if the identification of a CHC need and the tasks that run alongside it changes this exemption. If the health board starts to direct and control the health tasks a PA completes then these exemptions may no longer apply.

### **Pay and Conditions**

Recruitment and retention of PA's is very difficult for citizens, low pay means there is often a shortage of applicants and those who do apply often lack the right skills suitable for the role. This often creates significant waiting lists. Asking existing PAs to take on health tasks without the right financial incentives to match the level of responsibility could drive PAs to find work elsewhere.

There is also the risk, if pay and conditions are not aligned across the piece, that PAs could move into CHC work as a way to make more money, creating greater instability for direct payment recipients in terms of recruitment and retention.

This is an important factor to be considered and one which needs addressing across the whole of health and social care. Professionalising the role of PA and recognising skills within a national pay structure may help.

### **Training and Confirming Competence**

The proposal creates a significant training commitment, who will be responsible for funding and facilitating this training and confirming the competence of PA's who have completed it?

### **Contingency Planning**

Currently the DP recipient is advised to and has to make their own contingency plans if their PA is sick or on leave. Family members can typically cover these small gaps in care and support. However, finding a PA trained and competent to cover more complex health tasks could prove to be more difficult and potentially place further pressure on community nursing and local primary care teams.

### **Children and Families**

The consultation document states that these proposals are specifically for adults. Are similar proposals planned for children with complex needs and their families? There would be considerable benefits for children (and their families) transitioning to adult social care or health services.

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

Benefits will include continuity of care and the potential preservation of good working relationships between the PA and DP recipient. The proposals also prevent individuals from using their own financial resources to contribute to their care as this would now be free at the point of access. The proposals, as outlined, supports individuals having greater control over the support they require meeting one of the fundamental principles of the SSWB (Wales) Act.

#### Disbenefits

### **Agencies**

The proposal states that local health boards should consider a range of options, in line with the revised national framework for CHC's and that these could include the LHB employing staff (either directly or **via an agency.**) As evidenced within other areas of the sector, most notably children's social work, agencies have been 'profiteering' from the current recruitment and retention issues across the sector and driving up costs for providers. Employing PAs via an agency will need to be considered in terms of mitigating the risk of agencies potentially driving the market, increasing costs to the health board, LAs and individuals.

### **Cross Border Arrangements**

Delivery of DPs across LAs can be uneven making transition from one LA to another problematic. Where someone is receipt of DP with a CHC it will be vitally important

that any transition from one health board to another is managed appropriately so there is no shortfall in care provision. Transitions not managed correctly could present a risk to the individual and increase pressure on community nursing and primary care teams.

### **Contingency Planning**

As stated above, a lack of thorough contingency planning could place further pressure on local primary healthcare and community nursing teams.

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

Consultation with liability insurers who support direct payment recipients and personal health budgets in England would be beneficial, they will be able to provide a unique and important viewpoint on the proposal. However, there are distinct cultural, geographical and socio-economic differences in Wales that must be considered when exploring or adopting practices from other areas.

CIW should also be consulted to ascertain if someone being in receipt of a CHC impacts the registration exemptions PA's currently work under.

#### **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.**

Micro Care. A number of local authorities in Wales have developed or are in the process of developing micro care networks. Self-employed care and support workers should be consulted as part of this proposal. Currently exempt from registering with CIW, this may change if the person they are supporting is assessed as having a CHC.

#### **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?**

DP recipients and their families need to be clearly informed who is ultimately responsible for the direct payment and where the funding is coming from. Current information provided by LAs regarding direct payments can differ. Information needs to be consistent, clear and free from jargon. It would also be beneficial to provide accessible information in easy read formats and for this to be available in one place.

There also needs to be robust and clear explanation to what the health budget will and will not fund and any actions that will be taken if an individual strays from this or uses inappropriately.

Regular and clear reviews of the Health Budget as well as a clear and robust transition process if someone moves from a DP to a CHC and if a CHC ends, allowing all scenarios to be covered.

Appropriate and timely training for all assessing parties, practitioners and partners is key to successful implementation of the proposal. This needs to be rolled out and embedded before the proposal goes live.

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?

Given the scarcity of PA's it may prove more difficult, particularly in South East Wales, to recruit a PA that can deliver care and support in Welsh if this was a direct request of a person receiving a CHC DP. This could significantly delay DP take up. Access to Welsh language training for PAs could help mitigate this.

All information should be produced bilingually.

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.

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.

How would individuals with learning disabilities be able to benefit from the opportunity of CHC direct payments? Individuals with learning disabilities eligible for CHC are often accommodated within specialist provision some distance away from where they live. Could DPs be used to provide more bespoke opportunities for individuals within their own communities?

What would be the implications if someone with a CHC DP were assessed as no longer having a primary health need? How would the handover to social services be managed, what would be the impact on budgets and the individual's continuity of care?

The consultation document states that these proposals are specifically for adults. Are similar proposals planned for children with complex needs and their families?

Co-production of these new arrangements has not been raised in the proposal document. What involvement have citizens had in the development of these new arrangements?

### **Chapter 3: Mandatory reporting of children and adults at risk**

#### **Questions for chapter 3**

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 Social Services and Well-being (Wales) Act 2014 places a legislative duty on certain groups of professionals to report a child at risk to the local authority. Mandated

groups include local authority staff; police; probation and offender services including youth offending; health staff working for Local Health Boards and NHS trusts.

The Wales Safeguarding Procedures accurately reflects statutory guidance and states 'if any person has knowledge, concerns or suspicions' which is already placing the responsibility to report upon the individual. Whilst the statutory guidance does not impose a legal requirement to comply, it requires practitioners and organisations to take it into account and, if they depart from it, to have clear reasons for doing so.

A number of professional regulators and bodies (predominantly those in the health and social care sectors) require their members to report any concerns about a child's safety or well-being. A professional's failure to adhere to such standards or codes of conduct may result in misconduct or fitness to practise proceedings against them. Therefore, we believe we have been operating in this spirit for some time whereby organisations already reinforce their workforce's duty to report (DTR) through training and contractual employment expectations/agreements.

### 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 Social Services and Well-being (Wales) Act 2014 places a legislative duty on certain groups of professionals to report an adult at risk to the local authority. Mandated groups include local authority staff; police; probation and offender services including youth offending; health staff working for Local Health Boards and NHS trusts.

The Wales Safeguarding Procedures accurately reflects statutory guidance and state 'if any person has knowledge, concerns or suspicions' this is already placing the responsibility to report on the individual. Whilst statutory guidance does not impose a legal requirement to comply, it requires practitioners and organisations to take it into account and, if they depart from it, to have clear reasons for doing so.

A number of professional regulators and bodies (predominantly those in the health and social care sectors) require their members to report any concerns about an adult's safety or well-being. A professional's failure to adhere to such standards or codes of conduct may result in misconduct or fitness to practise proceedings against them. Therefore, we believe we have been operating in this spirit for some time whereby organisations already pass on the duty to report to staff through training and contractual employment expectations/agreements.

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

#### Benefits

- Increased reporting leading to more children and adults being safeguarded.
- NSPCC Policy Briefing (2016)<sup>1</sup> reported that some individuals who operate in institutions that work with children and adults have sought to cover-up, conceal,

<sup>1</sup> Strengthening duties on professionals to report child abuse NSPCC Policy Briefing 2016 (Lisa McCrindle, Senior Analyst, NSPCC Strategy Unit)

or ignore known abuse within their institution. The proposed change could increase levels of reporting about organisational abuse as this will prevent the perceived conflict of interest between protecting the child and protecting the institution's reputation.

### Disbenefits/Risks

- It could lead to an increase in the number of inappropriate DTRs being made for fear of repercussions placed on the individual if they failed to report.
- An increasing number of DTRs could impact on the delivery of preventative services as local authorities need to prioritise statutory safeguarding responsibilities.
- If the sanctions imposed on organisations such as criminal prosecution/ fines etc moved to the individual this could lead to individuals being fearful or could result in repercussions and impact on recruitment levels.

### Cost

- There will be cost implication to training packages and awareness raising programmes on any new legislation.
- Will all staff in every workforce need to be regulated? This will have a training and cost implication attached.

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

Research suggests that there is no clear evidence that the proposed changes would have a positive impact on safeguarding children or safeguarding adults. There have been reports that these changes will increase referrals and the identification of children and adults at risk but there appears to be a mixed picture on if this is providing further safeguards.

The NSPCC Policy Briefing (2016)<sup>2</sup> report evidence from other countries where this form of mandatory reporting has been introduced suggests that it may have unintended consequences including:

- Children are discouraged from reporting abuse because of concerns about being catapulted into criminal investigation.
- Heightened reporting levels overwhelm the child protection system, diverting resources and focus away from service delivery into assessment and investigation; leaving it less able to respond to meet the needs of children.
- Heightened reporting levels do not lead to an increase in the capacity of services to respond to need. In fact, it has been shown in some cases to undermine capacity to respond.
- Reporting driven by the process rather than focusing on the needs of the child.
- Failing to address the underlying reasons why individuals do not report abuse.

<sup>2</sup> Strengthening duties on professionals to report child abuse NSPCC Policy Briefing 2016 (Lisa McCrindle, Senior Analyst, NSPCC Strategy Unit)

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 individual reporting duties were to be introduced for children and adults, it is our view that these should sit alongside the existing duties on organisations under the 2014 Act to ensure that individuals and organisations both remain responsible.

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)?**

These should apply to current relevant partners **and** organised sports/activities and religious settings.

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

These should apply to current relevant partners **and** organised sport/activities when there may be vulnerable individuals taking part.

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)?**

Members of regulated professions and employed staff to include unregulated staff and volunteers.

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

Members of regulated professions and employed staff to include unregulated staff and volunteers.

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

We think that it would be proportionate or appropriate to continue with existing performance procedures which are currently in place for each profession. Employers can already take disciplinary action; professional associations can withdraw registration and the Disclosure and Barring Service can ban someone from working with children.

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 introduction of individual reporting duties may increase the numbers of overall DTRs which would have a proportionate impact on those DTRs made and responded to in the medium of Welsh.

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 are not aware of any adverse effects that introducing individual reporting duties would have on people's opportunities to use the Welsh language / treating the Welsh language no less favourably than the English language.

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.

## **Chapter 4, 5 and 6: Amendments to regulation of service providers and Responsible Individuals.**

### **Identifying unregistered services**

We propose to amend the 2016 Act to enable CIW to require information from any individual where there is reason to believe that they are providing a service which should be regulated. This proposition includes extending the offence when failure to provide information when required occurs. Penalties could include a fine or up to 2 years imprisonment.

Providers in Gwent have suggested that they agree with this amendment.

#### Benefits

This will deter individuals from providing unregulated services.

#### Disbenefits

However, while providers in Gwent have reported that they agree to this amendment, some providers indicated that the suggestion of imprisonment as a penalty is unnecessary. Providers reported that in this instance, unregulated services should be supported to become regulated provisions. During the COVID-19 pandemic, unregulated services such as day centres may have been required to undertake roles associated with regulated services, as individuals were unable to move to regulated provisions due to COVID outbreaks, social distancing requirements, temporary legislative changes and staffing issues. The disadvantage of this amendment is that individuals could be subjected to penalties when they are moved between services to ensure business continuity.

In line with Inspection regulations, it is proposed that an inspector may enter and inspect any premises which they have reasonable cause to believe:

1. The premises have been, or are being used to provide a service

## 2. The premises have been, or are being used in connection with the provision of a regulated service

It is an offence to obstruct an inspector or fail to comply with a requirement imposed by an inspector, and it is proposed that the offence for this could be a fine, up to 2 years imprisonment or both.

Providers in Gwent agreed with this proposal

### Benefits

This measure will deter unregulated services from operating.

### Disbenefits

The potential penalty of imprisonment is unnecessary. As stated previously, the COVID pandemic placed significant pressures on providers. Unregulated services were required to work flexibly to ensure continuity for individuals. While providers agree to inspections, consultations with providers prior to inspections would be beneficial to avoid potential imprisonment.

At present, providers are required to submit annual returns to CIW, which are then published online. It is proposed that the responsibility to publish annual reports will now be placed on the provider, alleviating data protection issues for CIW. This will potentially incur financial costs for providers who do not have website facilities.

### Benefits

Providers will publish their own reports in their preferred format.

### Disbenefits

While some providers have reported that they agree with this amendment and will publish their own reports, other providers have indicated that this would place too much pressure on smaller services. Staffing numbers in care provisions have reached critical levels, with domiciliary care providers reporting that they are already using office-based staff to supplement care delivery in the community. Placing a requirement to publish reports would add significant pressure to already strained resources. Also, many smaller providers do not currently have a website sufficient to host annual reports, so this would be an added cost.

At present, it is a requirement that inspection reports are produced for all inspections; full inspections, focussed inspections, provider inspections and thematic inspections. It is proposed that flexibility is provided to CIW to determine instances where inspection reports are not suitable to be published, such as instances where the location of children's residential facilities could be identified. Some visits will also not require publication of an inspection report.

Providers in Gwent agree with this amendment.

## **Improvement notices and cancellation of registration**

Propose that the requirement of CIW to follow improvement notice processes to remove a regulated service or a place from which a regulated service is provided from

a service providers registration because they are no longer providing that service or using that place to provide a service.

Providers in Gwent agree with this amendment.

Propose to enable CIW to remove a condition on a service provider's registration, without giving notice of proposal and a notice of decision, when the circumstances which led to the imposition of the condition no longer apply.

Providers in Gwent have reported that they do not agree with this measure. Providers reported that they should always receive notice of changes to registration, regardless of whether the condition continues to apply.

Cancelling a service providers registration currently requires CIW to follow improvement notice process. It is proposed that the notice process is removed, and CIW are able to cancel the registration of a service provider who no longer provides any regulated service.

While some Gwent providers agree with this amendment in instances when providers no longer provide a regulated service, but some providers have stated that they should be given notice of any amendments made to registration.

At present, CIW can specify the information required to support an application, and providers must supply a statement detailing as to how they will continue to comply with regulations. It is proposed that CIW can request information from a service provider who is cancelling their registration and exiting the market. This will create clarity for providers around the information that is expected in these circumstances.

While some providers in Gwent agree with this amendment, others have expressed concerns around this. When providers are exiting the market, it may be difficult to obtain information, dependent on circumstances (some Responsible Individuals or Registered Managers may be unavailable). Concerns around the previous amendments stipulating a potential imprisonment should a provider not supply information in a timely manner were also expressed.

At present, in the instances of improvement notices being served on providers, timescales for additional information are currently very tight. It is proposed that CIW will have the ability to extend timescales in instances of requests for further information.

Providers in Gwent agree to this amendment. These changes would provide some flexibility for providers, especially given the current staffing issues and already evident strain on resources.

In instances where reasons for registration cancellation are irretrievable, it is proposed that CIW will no longer provide an improvement notice prior to registration cancellation.

Some providers in Gwent agree with this amendment.

### Disbenefits

However, others have stated that an improvement notice should be provided in all instances, to allow providers sufficient time and support to amend their service prior to cancellation. In instances of imprisonment, providers should still be given suitable notice to allow them to potentially secure other means of continuing their business.

### **Responsible Individuals**

Responsible individuals will be given the opportunity to make representations to CIW should an improvement notice be given, or they are given notice of cancellation of their delegation.

Providers in Gwent agree with this amendment.

At present, there is no requirement for the improvement notice given to Responsible Individuals to be also given to the service provider. It is proposed that the service provider, in future, also be given the improvement notice. This will aid transparency of information.

Providers in Gwent agree to this amendment. This will allow for transparency in information in Providers, and also help to avoid inappropriate recruitment.

It is proposed that, in the event of a change to Responsible Individuals, a provider can apply to CIW for a variation of conditions of their registration, to remove a Responsible Individual, even if they are not designating the replacement Responsible Individual as part of the same application.

### **Benefits**

Providers in Gwent agree with this amendment. This amendment will allow for flexibility in recruitment for providers, while allowing them to maintain continuity of business.

### **Definition of care for children and younger people**

In the context of residential services for children, activities must take place which reflect the type of care that a parent would offer a child (guidance, direction and boundaries etc.). Such services, particularly provided for older children, could be described as care. It is proposed that the definition of care is amended to reflect the different types of care that may be applicable in children's social care settings where accommodation is provided.

### **Amendments to regulation of the social care workforce**

Currently individuals appointed as a member of SCW holds office for 4 years. It is proposed that they are able to be re-elected once following this period.

### **Benefits**

Providers agree with this amendment. This will provide continuity in Social Care Wales.

At present, individuals undergoing registration with SCW are required to meet qualifications set in Section 82(2). If a person is applying to renew their registration but do not meet the requirement, their registration will lapse, which can cause registration to lapse and individuals losing employment. It is proposed that SCW will have the power to grant extensions to registrations to allow individuals flexibility to ensure they meet the necessary requirements.

### Disbenefits

Providers agree with this amendment. This will allow providers to retain their current workforce as much as possible without incurring amendments to service delivery, and aid recruitment.

At present, interim orders are placed on registered persons, placing restrictions on their ability to practice, while Fitness to Practice investigations are undertaken into allegations against them. Interim orders can remain in place for up to 18 months. Extensions on this investigative period can be gained through applying to the Care Standards Tribunal. It is proposed that the Act will allow a panel to review and extend interim orders as appropriate.

Providers agree with this amendment.

It is proposed that the Act be amended to provide a Fitness to Practice panel with the ability to revoke an interim order, during review proceedings where appropriate.

Providers agree with this amendment.

## Consultation Response Form

Your name: Angela Bourge

Organisation (if applicable): Cardiff Council

Email / Telephone number: [REDACTED]

Your address: Room 335, County Hall, Atlantic Wharf, Cardiff. CF10 4UW

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

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

Sent on behalf of Cardiff Council Adults and Children's Services

If you want to receive a receipt of your response, please confirm your email address, here: [A.Bourge@cardiff.co.uk](mailto:A.Bourge@cardiff.co.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?**

Yes, we agree that through legislation is a way to deliver the outcome of eliminating private providers from operating in Wales.

**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.**

There are many benefits to this. Cardiff Council fully supports the principle of this change, however we need to be wary of the potential consequences and how already these announcements are currently destabilising the market.

The loss of private providers to England (and them only expanding in England) is likely and seems to be well recognised.

However, what is presenting itself as a much more immediate risk is that care providers who are providing services to both under 18 and over 18 clients are simply deciding to expand their adult provision in Wales to the detriment of children provision.

In order to mitigate the risk, we need to, at pace increase the size of the residential provision in Cardiff.

To do this in Cardiff we could welcome additional capital support to buy, build and redevelop homes with a view to either running in-house, commissioned or a mixture of the two. We believe that through Council ownership of the building, will support the timely increase of provision in Cardiff. The risk significantly reduces of providers leaving the market or having regulatory restrictions place on them and closing as we will retain the building and can recommission it with a new provider. In addition through the ownership of the building, the type of service provided can quickly change to meet out local needs.

Immediately, we do not anticipate any difference in costs, the consultation document references that "in some areas the level of profit being taken out of these services is in excess of 20% for children's residential care and approaching this for independent

fostering.” We do not in Cardiff see a commissioned price difference of a residential or fostering placement being lower if the organisation is for profit or not for profit. Further consideration and analysis of this would be good to understand whether that profit margin is a result in higher levels of pay for staff or through efficiencies in how the organisation is run.

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

It is very difficult to comment on this without seeing a proposed definition or full list of the types of organisations that would be on this list. Cardiff Council would welcome the opportunity to further comment on that when it is available.

**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?

As per response to 1.3 we would need the detail to comment on.

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

We are currently deeply concerned about the timescales being discussed and we would appreciate urgent discussions with LA’s on ways to increase the supply in their area. In Cardiff we are taking an ambitious accommodation strategy to be approved by Cabinet in January that will focus on significantly increasing the number of homes in Cardiff to meet demand.

It also needs to be recognised that the impact and the destabilisation of the market is happening now and clarity is needed for all concerned, without this more providers will leave or cease their expansion plans with this current uncertainty.

**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?

Cardiff have been working with some providers who support over 18 yrs disabled young adults to encourage them to look to support younger children at 16/17 as part of their transition. i.e. a property could be sought for a 16/17 year old and they are supported by the provider with a view of the young person turning 18 and remaining in that property long term. However, the new legalisation prohibits such arrangements taken place.

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

This is welcomed especially if this provides the clarity needed.

**Question 1.8:** What are your views on using legislation to place a restriction on local authorities to commission placements from ‘not-for-profit’ organisations only? In particular: - Do you think it would support us to deliver the commitment to eliminate

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

This needs careful consideration and seems very difficult to implement. The suggestion here would be simple for a LA to understand i.e. if they are registered with CIW they are ok to use. If this is applied to placements outside of Wales on a practical level who would maintain a list of English providers who meet the definitions of the legalisation and who's responsibility will this fall to?

In addition, we feel there needs to be flexibility in the legalisation that ensures the well-being of the child and the best placement is sought under specific circumstances.

**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?

Apologies this question would need to be more specific to enable us to answer.

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

If the outcome of these changes result in more Wales children being placed in England, this real risk would have a negative impact on the offer of Welsh Language not just in their placement but also access to a Welsh Language School.

Mitigation is significant capital investment to increase the number of placements in Cardiff.

**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.

If it was implemented alongside significant capital support to increase the provision locally so that children and young people can access placements in Wales and all accessible to a Welsh language school.

**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.

**Cardiff Council Adult Services agree with these proposals and see them as a positive step forward.**

**When transitioning from social care to health care it currently has a fundamentally negative impact on peoples' lives if using direct payments. This proposal would be a good option to have for individuals, allowing those who choose it to have more control over their services. Currently, it can be very upsetting and difficult for those people who have direct payments under social care funding when they become eligible for continuing health care. This would resolve that problem.**

**Other reasons include:**

- **It will provide a fairer process when people are transitioning to their needs being met by health.**
- **It will alleviate people's concerns that by having their needs met by health will result in losing the control, consistency and continuity of their care staff.**
- **Social care practitioners may have more confidence in promoting direct payments when a person's needs may be eligible for CHC in the future.**
- **It may open discussions about rates of pay for personal assistants who undertake health care tasks.**
- **It could resolve the issues of continuity and consistency of care staff when moving over to CHC.**

**As the proposal only relates to adults, from a Children's Services perspective it would be useful to have a standard approach across children and adult legislation.**

**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

- Individuals would have more choice over services
- Individuals already receiving direct payments could maintain familiar services as their funding changes
- Individuals will be able to continue to be in control of their lives and direct their care and support to suit their lives.

### Disbenefits

- It can be more difficult to ensure appropriate standards of care under a DP (ie training and qualification of staff)
- This can cause close and loving relationships (family/close networks) to become based on finances leaving some individuals with no one in their life who is not paid to be there. This could make life more difficult when a person wants family to support with a need which is not eligible for funding.
- It can be more difficult to ensure individuals safety (safeguarding is far more difficult under DP e.g. direct payments workers may be less likely to report violence or abuse as they could lose their job). Need to have a duty to report concerns.
- There needs to be caution when setting up direct payments for health that clear distinctions are made so as not to confuse individuals, families, professionals where the funding is from and who is responsible for the support to administer the Direct Payments particularly where there may be joint packages.

Welsh Government should consider consulting with Liability Insurers across Wales, England, Scotland and Ireland that support Direct Payments and Personal Health Budget users for feedback on the positives and negatives they have experienced.

Whilst the proposal relates to adults only at this stage, there are benefits for both adults and children.

There is no clear definition between what constitutes a social care need and what constitutes a health care need and therefore it is essential that both health and social services work together to ensure needs are met. At present there is a difference on what provision is available if an adult or child is deemed to meet the criteria for CHC or CC.

Within Children Services we have seen children who are deemed to have Continuing Care decline support from health as they wish to continue with a direct payment from children services. This not only impacts upon children services budget as the cost is not co funded with health but also the commissioning and oversight of the packages remains with the Local Authority when the primary need may be best met via health.

For some children, families have employed a relative to meet their child's complex needs via a DP. Due to the demand within the market, we know domiciliary care agency support can often be costly, inconsistent, with packages of care being uncovered. When the package of care is delivered by a family member there can be on occasions greater consistency of care and needs being met. By not allowing the flexibility for children or adults with CC /CHC to receive a DP, there is a greater reliance being placed on agency care.

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

England has personal health budgets in place and there is relevant research around this area to consider.

In England these changes have already been made for both adults and children. It is something that is reported as being very positive allowing greater flexibility and consistency of staff for children with CC. It also allows greater support from health colleagues for our social care teams when managing complex cases.

However, if looking to England and their practices, consideration must be given to the distinct cultural, geographical and socio-economic differences in Wales.

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

This approach should be extended to Children with Continuing Care within Wales. This would allow for wider exploration of options for children with CC needs. Many of the staff who are often appointed as PA's work with the children within the school setting and therefore many of them have the necessary training and skills but cannot work with the children with CC needs outside of school without registering with an agency which is often at a greater cost to the LA.

**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?

- Clear support on the employer role and ongoing support to assist the employer/suitable person in what can be a very complex role
- Clarity regarding training requirements for a person undertaking a clinical role
- Managed banking services to ensure those who want the finances managed for them can access this (it has made many more people able to manage a DP safely locally)
- Clear guidance on approaches to risk.
- Clarity on who would be the lead organisation during a transition from social care to health with clear transition protocols.
- Clear guidance for those without mental capacity (or assumed lack mental capacity).
- More guidance is required if Independent User Trusts are to be used as an interim measure as these are confusing and complex.

**The request would be for the ask to extend to children with continuing care within Wales.**

**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 are already challenges in recruitment across the care sector, including personal assistants and obtaining Welsh speaking domiciliary carers can be difficult to identify. Introducing DP for CHC or CC would allow greater flexibility and widens the scope.**

**Currently, health board standards on Welsh Language are different to those for local authorities so these may need to be aligned to gain consistency. Welsh language officers in local authorities may want to work collaboratively with equivalents in Health Boards.**

**The Welsh Language Commissioner needs to be consulted and included as part of co-producing promotional, marketing and documentation.**

**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.

**Any changes or updates would need to be publicised, published, and communicated equally in Welsh and English. These are opportunities to promote the Welsh 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.

- 1 Clear auditing procedures for Health.**
- 2 Co-production.**
- 3 Clear guidance.**
- 4 Appropriate training and guidance for staff implementing any changes.**

## 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?

**In principle we support, with some considerations. The duty should remain in our view with both the organisation/body as well as individuals. In addition, all relevant bodies would require clear and concise coordinated guidance, to ensure that this is understood in full. Consideration would also need to be given to subsequent guidance and regulations, for instance RISCA regs to make it clear that in supervision policies, statement of purpose and staff supervision that all members of permanent, relief and temporary staff have access to relevant training, support and understanding of their responsibilities.**

**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?

**From a Children's and Adults Services perspective it would be useful to have a standard approach across children and adult legislation.**

**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 benefits include individuals having a responsibility themselves to report a concern, which should promote autonomy and a proactive response to safeguarding issues. For instance, rather than relying on other people to report they will take responsibility themselves. In theory it should also help ensure people take a responsibility for their learning, where to access information and how to report.**

**The disbenefits or risks, include that spreading the responsibilities to more individuals might mean that there is confusion and obfuscation as to whose duty it is to report. Similarly, it could mean that there are multiple referrals for the same issue if there was more than one individual present when an incident of concern occurred. This could drive up referrals. These risks can be mitigated with well-publicised and clear guidance as well training for all relevant staff. We would want bodies to also have responsibilities for raising and sharing concerns, so that it is both the individual and the organisations responsibility.**

Additional training, literature and updating of guidance will come at a cost, which is a risk when budgets for most organisations and Local Authorities are stretched. The eliminating profit from care agenda has seen some organisations start to question additional investment in children's social care. The messages will need to be clearly communicated and be written in a way to help bodies, organisations and providers to be clear that these duties are designed to provide greater clarity and transparency.

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

The Wales Safeguarding Procedures are generally well regarded and understood, which supports professionals, agencies and bodies in Wales to understand their safeguarding responsibilities. These do not exist in other countries, which makes it harder to navigate roles and responsibilities. Other countries do publicise Local Authority as well as Safeguarding Partnerships, policies and procedures in a simplified, consistent and readily available way. Policies and procedures in England for instance on a range of safeguarding matters can be easily found online for each local authority and regions website and are usually quite similar to each other. This makes it clear to all what the safeguarding expectations are. It would be beneficial in Wales for a similar approach between all LA's, with information guidance and literature to be easily accessible and in a way that compliments the WSP.

**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?

Whilst the additional duties on individuals could be clarified alongside, it might make more sense, particularly if there are other updates to the 2014 Act, for it to be updated or replaced. It should be clarified the individual duty does not replace or absolve organisations of their professional duty.

**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)?

To offer the greatest range, impact and clarity it should be undertaken more widely. As outlined above it should in our view include duties to report on both the individual as well as the organisation/body.

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

From a Children's and Adults Services perspective it would be most useful to have as consistent approach as possible to all age groups.

**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?

**Occupation types should be similar and consistent with people in positions of trust, including the above descriptions and refined in Volume 5 Working Together to Safeguard People. There is a national working group looking at s.5 of the Wales Safeguarding Procedures and it might be that this work would be of benefit in further developing the definition or sitting alongside this consultation.**

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

**Sanctions would depend on the severity of the concern or failure to report. They could range from internal training, disciplinary, investigation under s.5, registration implications (such as Social Care Wales, HCPC, EWC etc) or for more serious failures, including those where there is a proven deliberate decision not to report or worse cover up the concern, a criminal sanction or referral to Disclosure & Barring. The social care profession and recruitment in most areas is fragile, with a well-documented sufficiency issue. Other professional and voluntary agencies are starting to report similar issues with recruitment. Any messages would need to be clear and supportive and that these amendments are designed to support everyone, including staff and volunteers.**

**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?

**Any changes or amendments should not impact on the individual reporting duties on the Welsh Language in our view. The duties and requirements would stay the same.**

**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.

**Any changes or updates would need to be publicised, published and communicated equally in Welsh and English. These are opportunities to promote the Welsh Language.**

## 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, this is agreed. However, it is felt that provision should be made for Local Authorities to notify CIW if they start to provide an unregulated arrangement if they have exhausted all alternatives to make regulated arrangements and that the notification process should be standardised to require evidence of all attempts to make a regulated arrangement and a risk assessment of how the risks related to the unregulated arrangements will be mitigated.**

**For the benefits of safeguarding young people & Adults and ensuring the LA have taken reasonable steps to ensure providers of unregulated services are monitored we agree with the amendment.**

**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, this is agreed. In extending the persons to be included in having to provide information, the extension ensures that all persons who may be operating outside of regulated provision have a duty to comply with sharing.**

**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, this is agreed. The clarity of inspection of service and entry into the property ensure that where a place is being used to offer services or what are regulated provisions CIW have the right of entry.**

**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, agree with the clarity around penalties and fines which can be incurred. For consistency the same sanctions should apply as they relate to regulated arrangements.**

**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 agree. This has limited impact for LAs and it is agreed that providers should take full responsibility for the data that is published - but the need to publish the data may be problematic for smaller providers who may not have a website that they can publish information on. This could result in additional costs for some smaller providers at a time when many are struggling financially.**

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

**Yes, agreed - no issue with this apart from the need to consider the potential impact on smaller providers who may not have an existing place to publish. It would be helpful to understand the minimum fine to be imposed.**

**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, agreed - this is a very welcome amendment for the reasons set out in the consultation - particularly where the report could lead to individuals living at a particular service being identified from the report as this could lead to safeguarding**

**concerns. Some clarity on or guidance on the decision not to publish would be helpful.**

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

**Yes, agreed - this is welcome as current arrangements would seem to be unnecessarily bureaucratic and will reduce unnecessary actions where providers no longer seek to operate.**

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

**Yes, it is agreed that the current process is unnecessary, and it will reduce bureaucracy.**

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

**Yes, this is agreed. It is inappropriate to issue an improvement notice to a provider for a service that is no longer operating.**

**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, agreed - it would be helpful to standardise the response from providers as this would clearly set out expectations.**

**In light of the removal of the previous requirements it is due diligence to ensure a clear action plan on how the provider is seeking to end their registration and plans to exit the market may benefit from providing clarity if there is transference of services to other providers.**

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

**Yes, this is agreed. It is appreciated that there may be occasions where it is appropriate for CIW to extend timescales for a PAN and not to do so would seem unreasonable if the delays that have occurred are beyond the provider's control. This will provide some flexibility when progress has been made and circumstances prevent the completion within the initial timeframe**

**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 - this is agreed.**

**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, agreed - it seems fair that RIs should have an opportunity to respond and make representation in the specified circumstances if they disagree with CIW's findings and are able to provide evidence to challenge these.**

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

**Yes, this is agreed. This ensures that information is received and recorded across systems at an early stage and can take steps to address and resolve them. It will also ensure that the service provider is fully aware of the potential need to designate a new RI. This is particularly important for large organisations.**

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

**Yes, this is agreed as there may be unforeseen circumstances where a provider needs to remove an RI with immediate effect without being able to designate a new RI at the same time. This change will allow this to happen. It provides clarity on role and responsibility in particular, when the RI no longer works for the service.**

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

**Yes agreed - this provides definition and clarity on what care constitutes.**

**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.

**Generally the proposed changes in this section are welcomed. They provide greater clarity around expectations and reduce unnecessary bureaucracy.**

**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?

**Cannot identify any clear benefit or loss to the Welsh language.**

**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.



## 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 aligns practice with holding office elsewhere.**

**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 is agreed as there may be changes that have taken place following an individual's initial registration that need to be considered at the time of reregistration.**

**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.

**Agree this provides flexibility around registration and address some challenges in a pressurised workforce.**

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

**Agree this change would support providing clarity and help to support workforce policies it also ensures equality to the practitioners rights and hopefully prevent unnecessary delay in proceedings.**

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

**The development of the RIA assessment would support the interim order being revoked when other processes are in place to provide more flexibility.**

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

There are 5 questions about this chapter.

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

Please explain your reasoning.

**Yes, we would be in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector. It would bring a level of professional status to the workforce, which is not currently recognised.**

Notwithstanding this, as set out below, increased regulation of the childcare and play workforce as a 'stand-alone' action, is unlikely to address the recruitment and retention issues faced by the sector, and indeed, could run the risk of making the current situation worse.

Without commensurate improvements in pay and working conditions, the sector *“faces competition from retail, catering and hospitality with high labour market participation rates meaning that [childcare] employers compete for a limited number of workers to posts that are more physically and emotionally demanding than those in competing sectors”*

[Facing the Facts, Shaping the Future – a draft health and care workforce strategy for England to 2027.pdf \(hee.nhs.uk\)](https://www.hee.nhs.uk/publications/facing-the-facts-shaping-the-future-a-draft-health-and-care-workforce-strategy-for-england-to-2027.pdf)

It would be valuable to understand what, if any impact, regulation has had on recruitment and retention in other social care sectors, and indeed whether any negative or positive affect has been noted e.g., have more individuals left/joined the sector?

There are potential risks to professionalising the workforce through this route. Doing so may act as a barrier to new entrants to the childcare and play sector, which is already struggling, and/or, it may increase the number of current workers leaving the sector, as regulation could be seen as a new burden.

The independent report on the Registration of the Childcare, Play and Early Years workforce in Wales noted:

*“In general, improving pay was seen as an essential part of any effort to improve the status of CPEY workers. It was widely acknowledged by participants that the potential benefits of the registry for workers – to improve recognition and status alongside increased professionalisation – will be limited if the issue of pay and working conditions are not also addressed at the same time. Some participants made clear that if the goal is to professionalise the workforce, then registration plays a very small part and what is needed is actually funding settings at a level that enables them to pay people a reasonable wage for the qualifications that they hold.”*

[Registration of the Childcare, Play and Early Years workforce in Wales: independent review | GOV.WALES](#)

**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.

Without commensurate improvements in pay/terms and working conditions, requiring childcare and play workers to register and provide details of annual training is unlikely to address the issues facing the sector, and could have a negative impact.

The Social Care Wales report “*National Conversations: with the Child Care, Play and Early Years sector in Wales*” which sought the views of the sector following the Covid 19 pandemic noted that;

*“Although support was available through Welsh Government, CWLWM partners and local authorities, there was a strong sense of feeling undervalued and underappreciated. This was particularly articulated in relation to not being seen as professionals alongside others such as teaching staff.”*

Our view is that this cannot be taken as the sectors full support for ‘regulation’, without accompanying further key changes, to address recruitment and retention.

[National Conversations: with the Child Care, Play and Early Years sector in Wales \(socialcare.wales\)](#)

A significant barrier to implementing this as a change will be any cost implications for individual staff (fees) and for settings (maintaining CPD for regulated staff).

We are unsure how this proposed change would affect individuals and groups with protected characteristics.

Such a proposal has the potential to decrease capacity, both within the workforce and across the sector making it a greater challenge to deliver services such as the Childcare Offer and Flying Start, and for caregivers to access flexible services.

Childcare roles attract minimum rates of pay, based on role and function, qualifications, etc. Compulsory registration, as per teaching, social work, social care, with accompanying funding to ‘top-up’ workers’ salaries to minimum rate, based

**on role, and qualifications, paid directly to the worker, may increase the positive effect of any proposed change.**

[Ireland introduces first ever minimum pay rates for early learning and childcare sector | Nursery World](#)

**It would encourage staff to gain qualifications above the level of their current job (succession planning), mean staff working in the most economically deprived areas, with settings with the lowest fees, wouldn't be penalised.**

**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?

**It is not clear how this approach would impact on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English, unless this was a requirement of registration. However, this may also act as a disincentive and further exacerbate the recruitment and retention issues faced by the sector.**

**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: Tracy Jones

Organisation (if applicable): Wrexham County Borough Council

Email / Telephone number: [REDACTED]

Your address: Crown Buildings, 31 Chester Street, Wrexham, LL13 8BG

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?

Wrexham County Borough Council Social Care Department

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

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

There are 12 questions about this chapter.

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

*Yes, there was agreement that introducing the legislation will offer consistency, but there needs further clarity as to how small scale providers will be supported in the transition to Not for Profit. There is a concern that if the smaller agencies are unable to transition over, there could be a loss of quality to service provision which the smaller agencies bring.*

**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 benefits of the proposal are the alignment of core values and principles of providers. There is the potential for Local Authorities to grow into the sector, which will improve the focus of outcomes on children rather than profit.*

*Disbenefits is in the retention of assets (care provided). It is felt that large scale profit based providers can absorb financial and systemic risk, whereas the risks will be much higher for the smaller providers. There are also concerns around the residential market – will there be enough interest in running Children's homes independently?*

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

restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

***Yes, all agreed, but felt that clearer guidance is required, as there is the potential for profit to be redirected back in to the organisation. It is also queried whether there will be sufficient flexibility in trading surplus for contingency risk management and development.***

**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, there was general agreement. It was felt that it will be prudent to give Ministers the power to amend the definition as this will be a work in progress going forward***

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

***There was general agreement that anytime scale can be challenging, but all felt that Local Authorities need to be fully engaged in creating and commissioning services. Challenges were considered in terms of the market being uncertain of adjustments.***

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

***It was felt that there could be risks of losing assets/resources in the transition – especially work force challenges. Also need to consider provision for older adolescents and the fluctuation between children and adult worlds, and what it could mean to semi-independent providers.***

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

***All agreed it will be vital for detailed guidance to be in place.***

**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 benefits are that it gives a clear position to both Local Authorities and Health who will need to re-think commissioning strategies. This makes for consistency in applying the same approaches across other jurisdictions.***

***There is however a concern that this could restrict specialist availability which may only be available through the private sector. This could then impinge on highly specialist and bespoke placements. Need to consider scales, and how this would be implemented***

**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?

***All agreed this would need to be responded to depending on how the market adapts. There could be a need to interpret accountancy rules and company definition to understand how we could guard against such things as internal recharges.***

**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 part of the “Active Offer” all individuals are offered the opportunity to conduct their conversations and assessments in Welsh and English.***

***Positive effects would be increased through recruitment of Welsh speaking staff and the ability to identify Welsh speakers within each Department, and promote the use and development of the Welsh language. Negative effects would be mitigated by ensuring there will not be any delays to support or conduct assessments for citizens requesting their appointment through the medium of Welsh.***

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

***As above. In addition, it offers the ability to create statistics of the need for Welsh language.***

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

*It would be helpful to understand how these measures will be aligned with health arrangements to ensure consistency.*

*How will leaving care and housing responsibilities be taken into account?  
Would there need to be some exemptions for care experienced young adults?  
It is felt clarity is required here.*

## 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.

***Agree; Improving choice and control of support is definitely a benefit – there should be a simpler process removing barriers as it is important to ensure governance for health, to have people properly trained in Direct Payments to provide continuity. Need to evidence at clinical review that need has been met.***

**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 are major benefits to the individual and to the organisation. There are different Direct Payment rates across Wales so need to understand the rates of healthcare. Also need robust commissioning arrangements in place as there could be disagreement between what is considered a 'health' need between social care and health teams so need to look at an integrated approach at the operational level to reduce duplication in practitioner resources.***

***Negative effects – lack of clarity as to what constitutes a nursing need, and what is considered a social need. Consider the need for practitioner training to have a clear understanding of the process.***

***Cross border issues – if health use the same approach, need to consider portability to another Health Board.***

***Choice and control over support should not be too prescriptive - consider changing the language from 'activity' focused, to 'outcomes' focused.***

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

***Consider implications of pooled budgets - Look at contributions and put budget together as a joint assessment.***

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

***Joint commissioning processes to help pool knowledge and experience for a seamless approach.***

**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.

***Appropriate governance, safe guarding, employment law, and safe recruitment practices all need to be considered. Contingency planning to help families manage risk as the process for Direct Payments can become ambiguous if they become too prescriptive giving off a negative impact.***

***Any legislative changes need to incorporate the Direct Payment principles to reduce misinterpretation***

***If there is a primary care need, it should include a social care need under the SSWBW Act so it may be beneficial to implement a training pathway to promote consistency and ensure the onus is not being put back on the family member.***

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

***As part of the "Active Offer" all individuals are offered the opportunity to conduct their conversations and assessments in Welsh and English.***

***Positive effects would be increased through recruitment of Welsh speaking staff and the ability to identify Welsh speakers within each Department, and promote the use and development of the Welsh language. Negative effects would be mitigated by ensuring there will not be any delays to support or***

***conduct assessments for citizens requesting their appointment through the medium of Welsh.***

**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. In addition, it offers the ability to create statistics of the need for Welsh 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.

***Variation of rates across each Local Authority and how rates are set by Health could have a negative impact on how families delegate tasks.***

***Challenges – need to consider implications of additional requests placed on families to carry out some of the tasks practitioners may not be able to do (i.e. insulin injections)***

## 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:** *It is already a requirement of safeguarding procedures, but processes are not always followed, so this will strengthen those responsibilities under this legal framework. It is however felt that clarity is required on consequences on what happens if not reported?*

**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:** *There should be one set of procedures.*

**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 –** *there is a duty on the individual so new legislation will ensure reporting processes take place – this will support children and adults from further risks.*

**Dis-benefits -** *Small organisations may have concerns of whistle blowing depending on individual organisational policies as there could be a power imbalance which could be challenging for the individual. Could also generate an increase in referrals which impact on resources – need to ensure appropriate referrals are received aligning to all Wales procedures.*

**Cost implications re training –** *need to ensure all organisations understand the implications imposed upon them – need clear understanding of who will be responsible for governance/overseeing process – need to be explicit of responsibility to individual of the legislation in place.*

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

***All partners should have a duty to report concerns, but it is felt that the general public is more challenging as who will police/check this – it is felt that there is more information needed as to what happens in other countries? If the general public report to a responsible organisation then surely there is a duty for that specific organisation to report on?***

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

***It is felt that it should sit alongside existing duties, as organisations still need to be held responsible and accountable***

**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?

***As above: This should sit alongside existing duties, and should include relevant partners, as well as other settings. Many partners are regulated, so within the Code of Practice or Conduct, you would expect there to be a duty to report. It is felt that a misconception of the public is that all organisations are checked/registered so for those who are unregistered there will be no legislative support (and the public may be unaware of this?)***

**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?

***It is felt that regardless of whether it is a child or an adult at risk, the duty should be placed on an individual in contact with both children and/or adult services;***

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

***It is felt that this needs to be proportionate as there is a need to take into account the context of compliance or non-compliance - could lead to huge***

***cost implications. Organisations should have their own internal processes and procedures of reporting.***

***Negative impacts could be that small or voluntary organisations do not have the back up of having safeguarding policies in place. This could have huge cultural change and cost implications??***

**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?

***As part of the “Active Offer” all individuals are offered the opportunity to conduct their conversations and assessments in Welsh and English.***

***Positive effects would be increased through recruitment of Welsh speaking staff and the ability to identify Welsh speakers within each Department, and promote the use and development of the Welsh language. Negative effects would be mitigated by ensuring there will not be any delays to support or conduct assessments for citizens requesting their appointment through the medium of 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.

***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.

***It is felt that smaller unregulated organisations, or self-employed/sole traders do not have the same safeguarding processes in place, so this is considered a huge gap in terms of public safeguarding.***

## 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?

***General consent all in agreement – especially around care homes/day service provision.***

**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?

***General consent all in agreement that this should all sit under the same framework.***

**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?

**General consent all in agreement.**

**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?

**General consent all in agreement.**

**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?

**All Agreed should be amended, as no personal information is contained in the 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?

**No all disagreed. It is felt that there should be steps implemented beforehand to enable time scales depending on circumstances. It was suggested that maybe insert an option to explain the reason for failing to publish.**

**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?

**It was felt that further clarification is required here as to when you do or do not need to prepare and/or publish a report, to understand how this will affect transparency.**

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

**There was a general consent of Disagreement. It is felt that retaining the improvement notice offers opportunities to learn and implement change**

**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?

***It was felt that this question is a little ambiguous and there is a requirement for further communication and clarification.***

**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?

***The General consent all disagreeing. It was felt that by removing the requirement to cancel registration could open up opportunities to continue trading on a private basis***

**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?

***General consent all agreeing – it was felt that it was important to understand why a service provider are 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?

***Yes all agreed that being able to extend would be beneficial and will help to provide appropriate information.***

**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?

***There was a tendency to agree but all felt further context around prescribed circumstances would be helpful, as an improvement notice does serve a purpose, but is dependent upon individual circumstances***

**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?

***General consent all agreeing.***

**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?

***General consent all agreeing as this offers an opportunity for sharing of information.***

**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?

***General consent all agreeing as this would assist with risk management planning, and allow some flexibility to meet the stages required to appoint a new Responsible Individual.***

**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?

***General consent all agreeing as it is felt that this will reinforce existing practice. However it is felt that a review of definition of ‘Care’ is needed to understand the context of ‘care’ and consider adapting parenting-to-age range as this could impact on the semi-independent market where 16/17 year olds are located across Wales.***

**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.

***Whilst it is felt that the positive impact of the proposals will offer continuity of support through internal and external providers, bringing a degree of flexibility, the negative aspects could bring potential resource implications and put pressure on unregistered services. Clarity is required as to who would be responsible for the registration of social care workers as day care services and other services have no requirement for registration at the moment***

**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?

***As part of the “Active Offer” all individuals are offered the opportunity to conduct their conversations and assessments in Welsh and English.***

***Positive effects would be increased through recruitment of Welsh speaking staff and the ability to identify Welsh speakers within each Department, and promote the use and development of the Welsh language. Negative effects would be mitigated by ensuring there will not be any delays to support or conduct assessments for citizens requesting their appointment through the medium of Welsh.***

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

***As above. In addition, it offers the ability to create statistics of the need for Welsh 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.

***General consent all agreeing***

**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.

***Agree - it was felt that this will enable growth and flexibility within the workforce but will need checks in place to strengthen conditional registration.***

**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.

***Agree - This would allow a full and fair investigation to be completed, especially where complex cases are concerned***

**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.

***General consent all agreeing***

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

***It was felt that further clarity was required around this point – especially in a situation where potentially dangerous or new evidence comes to light.***

**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?

***As part of the “Active Offer” all individuals are offered the opportunity to conduct their conversations and assessments in Welsh and English.***

***Positive effects would be increased through recruitment of Welsh speaking staff and the ability to identify Welsh speakers within each Department, and promote the use and development of the Welsh language. Negative effects would be mitigated by ensuring there will not be any delays to support or conduct assessments for citizens requesting their appointment through the medium of Welsh.***

**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. In addition, it offers the ability to create statistics of the need for Welsh 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.

*There was general agreement, but it was felt that there is a gap around play work which would need further consultation. The feeling is that this would impact on pay scales, resources and T&C's. What would be the impact on third sector provision compared to statutory provision as well as implications with the private market? All felt there needs to be a consistent framework.*

**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.

***Agree that all should be treated the same.***

***Positive impacts: there would be consistency of quality across all provision.***

***Negative impacts: financial implications around costs and who pays for registration – especially with regards to third sector. This could lead to changes within sectors as people move sector to avoid cost implications which in turn risks further pressures on recruitment and retention of staff. It was also felt that sensitivity to the current climate should be taken in to account (i.e. cost of living crisis)***

**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?

***As part of the “Active Offer” all individuals are offered the opportunity to conduct their conversations and assessments in Welsh and English.***

***Positive effects would be increased through recruitment of Welsh speaking staff and the ability to identify Welsh speakers within each Department, and promote the use and development of the Welsh language. Negative effects would be mitigated by ensuring there will not be any delays to support or conduct assessments for citizens requesting their appointment through the medium of Welsh.***

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

***As above. In addition, it offers the ability to create statistics of the need for Welsh 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.

## The Spinal Injuries Association – Care Policy

SIA is the leading national user-led spinal cord injuries charity, representing c. 50,000 SCI individuals across England, Wales and Northern Ireland.

Spinal Injuries Association believes that every spinal cord injured (SCI) person must get the specialist care and support they need to lead a fulfilled, happy and productive life. Failure to do so runs the risk of SCI people not being able to properly manage both the physical and mental aspects of their condition, which will inevitably lead to medical issues that will require time-consuming and expensive treatment and consequently put even greater pressure on the NHS.

SIA recognise that to achieve a fulfilled life for all injured people and their families, in their wide diversity, a more coordinated, accessible, expert, and vociferous community is needed. To achieve this, we are building an association for all – one that can support our sector to be greater than the sum of its parts – growing capacity and expertise, raising voice and influence, and coordinating increasingly accessible support and services to all who need it.

### Social Care

Social care has been repeatedly deprioritised and defunded by successive UK governments. This displays a lack of care for disabled and elderly people who may require care.

The current national debate around the future of social care is also plagued by a misconception that social care is only for elderly people, and is focussed around those in care homes. In reality, one third of those who receive care are adults of working age. We need a system that addresses their needs, and their right to a fulfilled life.

SIA believes that a national care service is needed to provide care that is free at the point of use. It should be focussed on the right to independent living. This does not mean the right to live by one's self (indeed, in some cases fulfilling the right to independent living may require a live-in care worker) but the right to live with the same opportunities, choices and control as everybody else in our society.

SIA believes that this right to independent living, as is set out in the UN Convention on the Rights of Persons with Disabilities should be brought into UK statute. From there, a national care service would have a clear aim for what it must achieve for those who require care.

### The core principles of a National Care Service:

SIA would like to see the creation of a National Care Service that provides personal care to those who need it regardless of their circumstances or income. It should be a truly national service that is free at the point of use, just as the National Health Service is.

Importantly, it must also be a universal service, that meets the needs of all who require care, regardless of age or living arrangements. Too often in the past,

A National Care Service must be genuinely co-produced and co-managed to allow service users or future service users in its pre-launch phase) maximal input to ensure that it is designed to work for those who receive care. This means that service users will not just merely be consulted, but will be well represented throughout the governance structures of the service.

As has been well documented, the current care system suffers due to the poor conditions and poor pay of its workforce. This results in consistent shortages of care workers, a problem which has only intensified since Brexit due to the large numbers of care workers from EU countries which the UK has historically relied upon. This is accompanied by poor morale and motivation for existing care workers which also results in a poor standard of care.

It is therefore essential that care workers must be well paid for the important work they do as part of a National Care Service, regardless of whether they are employed by the public or private sectors. Acceptable standards of minimum pay must be enforced across the sector to ensure that the undervaluing of the sector does not continue.

This minimum pay floor should be above the National Minimum Wage that is legislated for across the entire UK economy. Providing intimate personal care requires a substantial level of trust, and is of utmost importance to service users who absolutely rely on care workers to enable them to live their lives. It should therefore be a career which actively fosters reliability and commitment.

It should also be a career which entails training and educational opportunities to its workforce as well as career progression. This will not only help to raise the profession in the eyes of the general public, it will also help the poor retention rates in the profession. Ultimately, this will lead to a better standard of care across the board.

A National Care Service must also work hand in glove with the National Health Service as well as other vital public services which disabled people rely on, as well as the Department for Work and Pensions. A major problem for our members is repeatedly being assessed and re-assessed by various public agencies who do not share information, and all often require proof that unchanging needs have not evolved to require less care.

It is also worth highlighting that without well-funded and well-functioning universal public services, the right to independent living cannot be fulfilled. We must also address the dearth of accessible transport, accessible leisure facilities, accessible employment opportunities and accessible housing if this is to be achieved.

As the National Care Service is a universal service, we believe it must be paid for via general taxation. We are cautious of any moves to fund the service through a wealth tax. This is partly because this is what has frequently been suggested by previous governments and it has come to nothing, but partly because it largely rests on the idea that the service will be used by elderly people who are likely to have taxable assets and generational wealth (as per the thinking of the Department of Health up until the 2010 General Election). A National Care Service must be truly universal however, and cater for the needs of everybody who requires care, not just elderly people. Any funding system that is premised on only or primarily older people using the service would be too vulnerable to future governments limiting access to the service for those who are of working age and require care.

Additionally, it should not be funded through any form of local taxation, due to there being less wealthy areas of the country where a substantial tax based to fund the service may not exist. We must aim to move away from the postcode lottery where levels of service vary wildly across the country, and move towards a universal system that provides the appropriate level of care for everybody.

Emphasising that it is a universal service funded through general taxation, available to anybody who requires care, would demonstrate that every single person in our society may need care at some point in their lives due to age, illness or physical trauma.

Although the service must be free at the point of use, many of SIA's members benefit from the flexibility and agency that is afforded to them through Personal Budgets or Direct Payments that allow the service user to become the direct employer of those who provide their care. The introduction of this system, albeit unevenly across the UK, was a major win for the disability rights movement over the last 30 years, and it is of utmost importance that a National Care Service does not threaten the opportunities for independent living that Personal Budgets or Direct Payments afford.

It is notable that the Scottish government did not fully lay out their position of Personal Budgets or Direct Payments with the current introduction of their National Care Service.

That same cannot be repeated for the introduction of such a system elsewhere in the UK. Personal Budgets or Direct Payments, or an alternative system that enables service users to be in full control of their care, must be in place for those who request it, including those in receipt of Continuing Healthcare, after the creation of a National Care Service.

Although we believe care itself should be free at the point of use, if hotel costs are to remain in place for residential care (the costs of the actual accommodation, minus the care costs), we believe they must be capped over the period of a lifetime, as per the Dilnot report. Due to serious shortage of accessible housing in this country, it is not uncommon for our members to be housed either temporarily or permanently in residential care settings, despite being significantly younger than most of the other residents. This normally comes at huge cost to their mental health and recovery.

## Consultation Response Form

Your name: UNISON Cymru Wales

Organisation (if applicable): As above (contact Alastair Gittins)

Email / Telephone number: [a.gittins@unison.co.uk](mailto:a.gittins@unison.co.uk)

Your address: UNISON Cymru Wales, UNISON House, Custom House Street, Cardiff, CF10 1AP

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 from UNISON Cymru Wales.

If you want to receive a receipt of your response, please confirm your email address, here: [a.gittins@unison.co.uk](mailto:a.gittins@unison.co.uk)

### About UNISON Cymru Wales

UNISON is the UK's largest trade union organising and representing 1.3 million public sector workers UK wide, including 100,000 public sector workers across Wales.

Our members, 85 per cent of whom are women, work in the delivery of public services through direct public sector provision, private and voluntary contractors providing public services, and in the essential utilities. They include frontline staff and managers, working full or part-time in public administrations, local authorities, health and social care, the police and justice service, university, colleges and schools, the electricity, gas, environment and water industries, transport, and in the voluntary and community sectors.

UNISON represents thousands of care workers across Wales and our response is guided by their experiences.

## 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, and UNISON believes in the removal of the profit motive from all care provision. The need to generate a profit and the commissioning model undermine the quality of care provision as well as the employment conditions of the care workforce.

The *Our Manifesto - 1,000 Voices Cymru* document produced by Voices from Care Cymru, contains powerful testimony about how the profit motive leads looked-after young people feel to like commodities:

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

Source: <https://vfcc.org.uk/our-manifesto/#1605111414102-6bd80024-88e3>

A more compassionate, person-centred approach to care means removing for-profit providers.

**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.

There is little knowledge of exactly how much money and resource are removed from the care system as profit to providers and the costs of commissioning model, including from the provider side in terms of bidding. The benefits could therefore be great.

We also know the Competitions and Market Authority this year found the profit motive for provider companies delivering care for children to be as high as 20-22% -

which is excessive at a time of tight public finances. This is a significant money which is not going into direct care or to the workforce.

The benefits would be even greater if the current commissioning model is removed and for the presumption to be of public delivery in the first instance.

Commissioning care is an industry, which should be removed.

We understand change will require significant upfront investment to allow local authorities capacity to expand, but the medium to long term will deliver savings because of the elimination of profit and removing the commissioning model. This can help to offset initial costs.

The June 2022 Equality and Human Rights Commission report, *Experiences from health and social care: the treatment of lower paid, ethnic minority care workers*, specifically highlighted the outsourced commissioning model itself as negatively impacting disproportionately on Black care workers. So, removing profit and as UNISON recommends, the commissioning model, would be in line with the *Race Equality Action Plan: An Anti-Racist Wales*.

We know most care workers in Wales are women and are very low paid. If more care was delivered publicly, it would be easier to ensure fair pay and conditions, lifting thousands of women and their families out of in-work poverty.

There is a fear and some evidence that private sector providers may remain in Wales, but only take placements from English local authorities. If this happens it would surely impact on the capacity of looked-after children's services here. This may require more urgent building of local authority capacity and highlights the priority and real motive of private sector providers.

**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?

If services were provided directly by the local authority, it would remove these complications.

There is potential for delay in implementing this policy if there are legal disputes over the definition of 'not-for-profit'. Therefore, the priority should be expanding direct local authority provision.

**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?

Welsh ministers should have all the powers they need to ensure the core objectives of the policy are achieved.

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

We'd like this change to come into effect as soon as possible, but we recognise many local authorities don't have the necessary capacity. They need time to build-up children's services experience, homes and foster care.

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

It is very likely care workers in this field will be anxious about their future and the impact of transition on children they care for. It's vital to shield children from care workers' anxieties by providing clear, transitional arrangements, which are negotiated with trade unions to reassure staff that there is a need for committed care workers and they will retain work.

Specifically, funding and smooth mechanisms for bringing services in-house should be developed with trade unions at an early stage and care workers should have access to trade unions to support them through the transition.

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

Guidance is helpful but robust legislation is crucial.

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

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

This would be huge progressive step forward and our answer to Q.1.2 is relevant here. However, we also believe commissioning not-for-profit organisations should only be a supplementary option to enhance direct public delivery, i.e., the expectation would be the service is provided directly by the local authority and only if it cannot, should it go to an external, non-profit provider.

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

The best guard is strong and robust legislation. It is a key manifesto commitment based on moral values and Welsh government and local authorities should organise a publicity campaign on why this change is best for clients and staff and to build public support.

It is important to work in social partnership with stakeholders like trade unions and looked-after children's advocates.

**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?

Directly delivered services would have the capacity and resources to facilitate and encourage care workers to learn Welsh with the support of their employer, something the private and voluntary sector may struggle to achieve.

**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.

Please see response for Q.1.10

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

This is undoubtedly a good start and a step in the right direction. We feel the values that underpin this policy should apply right across social care. Holistically across health and social care, the existence of profit as a driver for providers can only continue to drive down pay and conditions for care workers and continue to make it difficult to recruit care workers in the numbers we are projected to need.

## 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 disagree. Direct payments in social care are not working and it would be a mistake to expand on their provision. Of those eligible in Wales only 5% to apply for direct payments. It has failed as a method of delivery.

There is plenty of evidence to suggest personal assistants who are directly employed by clients using direct payments are disadvantaged, with poor employment rights, including low pay, poor holidays, no training and significant barriers in accessing employment justice. They are isolated, have no collective voice and as a result have weaker individual voices and can feel exploited.

We acknowledge the aspiration for those in receipt of direct payments to have greater control over the support they receive, but think the protection and living standards of personal assistants cannot be ignored.

Personal assistants should be recruited and employed directly by local authorities to ensure transparency, and day-to-day management of personal assistants and the design of the support they wish to receive can reside with service users, supported by local authority contracts. This doesn't inhibit a service user's individual control and freedom and ensures fairer employment practice.

We will never ease the acute pressure on the NHS without significantly improving care services.

UNISON healthcare members have described their frustration in how health board and local authority wrangling to agree Continuing Healthcare Funding costs can significantly delay patient discharge home or to another care setting. This aggravates the NHS bed crisis across Wales and causes patients and families distress.

It should be a priority to examine how agreement might be reached more quickly to expediate the movement of patients and so treat them in a more respectful manner.

Ultimately, Wales needs a National Care Service with the parity of esteem to the NHS and concerted investment. A National Care Service would put dignity for clients and staff at its heart.

**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.

Please see our response to the previous question.

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

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**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.

Rather than direct payments, there could be a system of direct control, like teaching assistants in schools employed by local authorities and their management is devolved to school governors.

Personal assistants should be employed by local authorities and be on National Joint Council negotiated conditions but living day-to-day control in the hands of clients supported by local authority contracts.

We support the idea to continue with the professionalisation agenda, that personal assistants should be registered with Social Care Wales with the same requirements (ethical and continuing professional development).

**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?

Sectoral pay bargaining across social care would help to ensure fair wages and employment conditions are provided for all and thousands of low paid women are lifted out of in-work poverty.

It can be argued that public money given in direct payments is procurement and therefore should be subject to the same procurement regulations as elsewhere. Local authorities should be forced to account for that money. UNISON knows of cases of misuse of public money and there should be research on how recipients of direct payments use them and whether there is appropriate use of public money.

**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?

If a person in receipt of direct payments is a Welsh speaker, they are likely to want personal support from a Welsh language speaker. However, they are not likely to spend their resources on helping personal assistants to learn Welsh. If the individual care worker was employed by a local authority there is more likelihood they could be encouraged and supported to learn Welsh.

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

Please see our response to the previous question.

**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.

Analysis of the personal assistant workforce shows it does not reflect the diversity of wider society. The recent *Research on the Employment of Personal Assistants in Social Care Final Report*, found 97% are white and we know there is a tendency for people tend to employ people who look like them. More work needs to be done here to improve diversity and ensure no-one faces barriers to becoming a personal assistant.

### **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.

We make an observation outside of the formal social care response but consistent with 'Considerations of whether the duties to report children and adults at risk of harm, abuse or neglect should be expanded to apply directly to individuals within relevant bodies'.

There is an issue of local authority and school employed counsellors. The Welsh government says counsellors should be British Association for Counselling and Psychotherapy (BACP) members, an organisation that whilst not on a statutory footing like the Nursing and Midwifery Council, does have a code of conduct and a complaints procedure. Membership, however, is not compulsory and there are children being provided with confidential and private counselling in schools by Counsellors with zero regulation and with a zero commitment to sign up to the most basic of oversight by a body which provides such a code.

We know of a current example where a BACP member has whistle-blown because children in a school are provided counselling by a counsellor who has not yet even completed training and practices unsupervised. This is a safeguarding scandal waiting to happen.

Every counsellor and student counsellor (who should always be supervised), must be registered with the BACP because children, quite possibly already on the social care radar and with highly complex and traumatic history, are at risk of harm from non-regulated, often non-qualified people calling themselves counsellors. Their relationship with children is both 1-1 and confidential, so even parents are not notified of the conversations, and only head teachers in most generalised of terms.

## 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: Joe Powell

Organisation (if applicable): All Wales People First

Email / Telephone number:

Your address: All Wales People First, PO Box 1988, Newport, NP19 1DT.

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?

All Wales People First.

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

joe@allwalespeople1st.co.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?

No. It is naïve to assume that 'not-for-profit' organisations do not benefit from providing services to children or adults. Even if they do not make a profit as such, there are financial incentives to keep people dependent on services rather than helping them to develop their potential and move them on. The Social Services and Wellbeing (Wales) Act has not addressed the issue of the Market (services) dictating needs and shoehorning those perceived needs in to limited boxes. On the contrary, individuals' needs should be shaping and dictating the market, with the range of provision needing much more flexibility. As long as this continues, we will nurture a lifelong reliance on inflexible services which may not be the best solution for the individual.

**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.

Eliminating the Private sector from CIW registers may at best eliminate a lot of the profit incentives around delivering services but as mentioned in our previous answer, non-profit organisations does not mean that service delivery does not still have financial incentives, which can unwittingly lead services to keep the individuals they support dependent on them.

Whether a service makes a profit or not, financial incentives will hinder not help the Welsh Government's aspirations laid out in the Social Services and Wellbeing (Wales) Act to put people at the centre of their own wellbeing outcomes. Nor will it be preventative.

We must also take into account the risk that many services could go out of business over the autumn and winter. Colleagues in England predict that forty percent of services will no longer exist after the cost of living crisis. Whilst this is purely anecdotal, we cannot rule this out as a possibility, and neither can we rule out the possibility that we will not see a similar picture in Wales across all care services. Perhaps we are not well placed to be choosy about the services which are funded. Our concern is driven by emphasis on quality and being person centred. Whilst it is important that services do not make a profit it is just as important that services deliver outcomes which do not nurture lifelong dependence.

There would likely be cost benefits through reducing profit from delivering care, but this in itself will not necessarily change the outcomes for disabled individuals. For example, eliminating profit could fund more services, but if care is not person centred then even non-profit making services could still keep people dependent on a limited range of provision. If a preventative, person centred approach to services is not taken early on, then the scope for making savings will be limited and focussed on reactive solutions to lifelong care needs.

For example, where services genuinely promote independence and better community participation, savings could be made through avoiding unnecessary advocacy, which is often used as a reactive crisis intervention. There could also be a reduced need for mental health interventions, through thinking more flexibly about alternatives to traditional care and support - Like help to make adequate social connections, friendships and relationships.

It is a source of much frustration to our members, that ten years on since Welsh Government's 'No Winterbourne in Wales' campaign, that people with learning disabilities are still being placed out of county and many of the same mistakes appear to be rhetoric. In our member's experiences, there still exists a gulf between aspiration and implementation. Unless this is addressed then the scope of what is being proposed in this consultation will be impaired. Our members and member groups say that it is crucial that Welsh Government and Regional Partnership Boards work together and with people with learning disabilities themselves, to work out how to bring about some real change through the Social Services and Wellbeing (Wales) Act and through implementing the strategies designed to aid its delivery.

**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?

As mentioned previously we need to be careful of two things:

- 1) That we do not assume that a service being 'not for profit' means that the outcomes being delivered are not primarily motivated by financial incentives.
- 2) The strain on care services, especially during the cost of living crisis during Autumn and Winter may put enormous pressure on the sector and we may lose a lot of our services as a result. This and the difficulties in retaining and

recruiting staff will likely exacerbate this. We may not truly have the luxury of choosing which providers we fund.

**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. But as previously mentioned it is important to be aware that this in itself will not be enough to change a culture where the market drives the need rather than needs driving the outcome. It is not enough to be not for profit. Services for individuals with learning disabilities in particular, should also be able to demonstrate how they are reducing the dependence of those they support on their services, where alternatives to services could work better for some.

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

As mentioned previously we need to learn the lessons from the Social Services and Wellbeing (Wales) Act about the difference between legislation that is aspirational and real quality implementation on the ground. Legislation does not appear to guarantee outcomes, and services are already under considerable strain.

**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 our experience transition is still an issue from child to adult services. A lot of this is because of the different funding revenues that are available for children and adults which often means a transition is not as seamless as it should be. We hope that by placing an emphasis on what is delivered with the funding rather than the amount which is actually funded, this could be an important cornerstone in helping with transition. Of course there needs to be an emphasis on reducing dependence on services through alternatives in the context we have explained previously.

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

Guidance would certainly aid the legislation in our view. However, it is important to stress that unless the legislation is sufficiently prescriptive, then the guidance will inevitably be limited by interpretation caveats. As such, it could regurgitate much of the same outcomes we are familiar with - delivering on the basis of what decision makers can and will deliver under the guise of limited resources, with little scope for affecting real change in the interests of meaningful outcomes.

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

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

This appears to be aspirational given the current shortage of care staff and provision, and the ongoing challenges we are expecting to face in the social care sector. Local authorities may not be able to meet the demand for services if there is any restriction on the services they can procure. Services are essential for many individuals, and exacerbating an already stretched resource pool could place individuals who need and rely on services in danger.

**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?

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**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?

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**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.

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**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.

Whilst it is important that a profit is not made through provision of children's services, it is also important to understand that just because a service is 'not for profit', it does not necessarily mean they do not have financial incentives in terms of how they provide those services.

It is important that we do not stifle growth and development thus keeping children dependent on services if alternatives could be a better match. It is important to recognise that using resources better is also conducive to eradicating profit. The key to this is in measuring how far services increase independence for those they support.

## 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 largely agree with these proposals. They would increase the autonomy of the person using a service and would be more realistic way of ensuring that the services funded meet the genuine needs of the person using the service. It would also put the person at the centre of choosing they own wellbeing outcomes as championed in the Social Services and Wellbeing (Wales) Act.

**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 would hope, if implemented properly the proposal would put the person at the centre of their own wellbeing outcomes as championed in the Social Services and Wellbeing (Wales) Act. This would give them greater autonomy, choice and control. It would also remove a lot of the unnecessary and costly bureaucracy which can delay and stifle a service being commissioned.

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

We are not aware of practice in other countries that are any or much better than we have in Wales but we believe the best lessons Welsh Government can learn are from its counties that have already embraced the personalisation agenda. Monmouthshire for example. This gives a good picture of how direct payments can work in Wales and how they assist the delivery of key Welsh legislation such as the Social Services and Wellbeing (Wales) Act.

**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 strongly recommend that the Welsh Government engages with an organisation called Vanguard - a systems design organisation based in England. Vanguard have worked all over the United Kingdom to help funders understand how they can better use resources to deliver better outcomes. All Wales People First are currently scoping some work with Vanguard and local authorities, to show what is and what is not effective within commissioned services.

**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?

It is important that the guidance is produced in a range of accessible formats such as Easy Read, and is laid out simply and clearly. If the process is not simple and clear then it will inevitably lead to mistakes being made. In many of our members experiences as well as my own personal experience as a former user of care services, navigating the system is the biggest challenge when trying to take control of one's own wellbeing outcomes.

To give an example of the extent to which inaccessible systems and information can impact negatively on people: In my own experience the system was designed to keep me locked in to it. My care budget was significant and I was likely a lucrative contract for my providers. The process of liberating me and equipping me with what I needed to live independently was a challenge for even experienced advocates to navigate. Professionals refused to believe that I could survive let alone thrive as an active citizen. Yet in 2012, with the support of a rather formidable advocate and team of support staff, I went from living in care at a cost of thousands per year, to renting my own flat with a much smaller support budget. 10 years on I am a homeowner, taxpayer, Chief Executive, and I have zero support budget. There will undoubtedly be many more stuck in the system, without a voice and without the means to know and understand their rights, let alone understand and challenge the system which insists is there for their own good.

**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 do not envisage any negative effects on the Welsh language. All information produced by the Welsh Government should be produced in an Easy Read format in both English and Welsh, at the same time as the non accessible versions.

**Question 2.7:** Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to

use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Please see our answer to question 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?

It is critical that there is a duty directly on individuals to report a child at risk to relevant bodies. Given the high-profile cases (albeit adult services) of Winterbourne View, Mendip House, Whorlton Hall, Ty Coryton and most recently 'Edenfield' in which the media exposed the atrocities at play, rather than the inspectorate itself raising concerns. This poses serious questions about the effectiveness of our inspectorate in England and Wales, and the confidence of whistle blowers to raise their concerns with the service provider.

**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?

Our answer is the same as that outlined in section 3.1

**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 most obvious benefit is that we safeguard the child and we address the issue of concern immediately. We also aid the preventative approach in addressing the issue and saving further escalation of a situation that could further damage the child and require further interventions -mental health support or advocacy for instance, which may not be necessary if the issues were addressed at the time they happened. This would be the cost benefit but the cost should not even be a consideration in this case. The safeguarding of a vulnerable child should always come before the cost.

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

As mentioned in the previous answers, the biggest lesson we can learn is from the high profile cases of Winterbourne View, Mendip House, Whorlton Hall, Ty Coryton and most recently 'Edenfield' in which cases of abuse were brought to light by the media and not flagged by the inspectorate who had given positive reviews on all

those services involved. It is imperative that those working in services are empowered to report concerns to the inspectorate.

**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?

They should sit alongside the existing duties. They should strengthen the duties that already exist.

**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?

Yes, these duties should be introduced under said section of the 2014 Act and this should apply for children and 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?

Our views are that that anyone coming into regular contact with children or adults, whether they are paid staff or volunteers should be under a legal duty to report any issue they feel is abusive to the person being supported. Whether that be emotionally, financially, physically or sexually. This includes staff who are not paid as carers (kitchen and office staff for instance).

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

Failure to comply with an individual reporting duty, where the person genuinely is aware there is a problem and does not fulfil that duty, should result in instant dismissal from their post. This is because of the danger a child or vulnerable adult could be possibly exposed to and because it needs to be made very clear to everyone working in close contact with a child or adult, that there are no mitigating circumstances for not reporting 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?

We can not envisage negative impact on the use of the Welsh language. We just ask that any information provided or published is produced in an Easy Read format, in English and Welsh and is produced at the same time as the non-accessible versions.

**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.

Please see our response to 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.

It is important that we work with and understand the role of the wider inspectorate. Whether within health or social care it is concerning that at least five high profile abuse cases within the United Kingdom (four in England and one in Wales) have been exposed by whistle blowers through the media and not through the service provider or the inspectorate.

In all five cases the inspectorate gave the services a good rating before they were exposed. We need to understand why this happened. It is important to understand the ratio between cases of abuse uncovered by the inspectorate and that of the media. This will give an insight into whether there is a larger issue at play here in terms of confidence to whistle blow. Are the inspectorates using their powers adequately and fully? Are potential whistle blowers restricted, limited, or in fear consequence if they whistle blow? Is the inspection system itself robust enough to detect abuse and to reassure and protect prospective whistle blowers? It is important we understand this if we are to rule out the possibility of there being other such abuses in other services in Wales.

## 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, from the information given in the consultation document this appears to be a sensible amendment to the act.

**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, from the information given in the consultation document this appears to be a sensible amendment to the act.

**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, from the information given in the consultation document this appears to be a sensible amendment to the act.

**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, from the information given in the consultation document this appears to be a sensible amendment to the act.

**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, from the information given in the consultation document this appears to be a sensible amendment to the act.

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

Yes, from the information given in the consultation document this appears to be a sensible amendment to the act.

**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?

We do not agree. This could provide a caveat for reducing transparency. It is reasonable that reports are published so that it is possible for people outside of the inspectorate monitor correlation between inspection findings and incidents.

**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?

We do not agree. This could provide a caveat for service providers who move to work with another service or set up a new business. The improvement notice should be issued and stay on record.

**Question 4.9:** (d) *Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to

amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

Yes, from the information given in the consultation document this appears to be a sensible amendment to the act.

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

Yes, from the information given in the consultation document this appears to be a sensible amendment to the act.

**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, from the information given in the consultation document this appears to be a sensible amendment to the act.

**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, from the information given in the consultation document this appears to be a sensible amendment to the act.

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

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**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, from the information given in the consultation document this appears to be a sensible amendment to the act.

**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, please see our answer to 4.8

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

Yes, from the information given in the consultation document this appears to be a sensible amendment to the act.

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

Yes, from the information given in the consultation document this appears to be a sensible amendment to the 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.

We hope the proposals will provide a balance between protecting people who use services whilst also removing any unnecessary bureaucracy to empower the inspectorate to work more efficiently.

**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 can not envisage anything that the proposals in this chapter would have on the Welsh Language. We just ask that any information provided or published is produced in an Easy Read format, in English and Welsh and is produced at the same time as the non accessible versions.

**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.

Please see answer to question 4.19.

**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 seems reasonable given the information presented in the consultation.

**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 seems reasonable given the information presented in the consultation.

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

Yes, seems reasonable given the information presented in the consultation.

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

Yes, this seems reasonable given the information presented in the consultation.

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

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

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

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

Please explain your reasoning.

We hope the proposals will provide a balance between protecting people who use services by keeping a strong workforce in practice, whilst also introducing reasonable flexibility to the inspection process by removing unnecessary bureaucracy which can stifle progress.

**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 do not envisage any negative effects. We would just request that any information provided is produced in an Easy Read format in both English and Welsh and is produced at the same time as the non accessible version.

**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.

Please see the answer to question 5.7.

**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.

Yes, we agree. Extending the definition would help to give clarity and consistency of accountability. We agree with the reasoning set out in the consultation.

**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.

This will likely be a more efficient and effective way of working which can only be positive for the person being cared for. We agree with the reasoning set out in the consultation.

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

We do not envisage any negative effects. We would just request that any information provided is produced in an Easy Read format in both English and Welsh and is produced at the same time as the non accessible version.

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

Please see answer to question 6.3.

**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 – Proposals for Primary Legislation in relation to children’s social care, Continuing Health Care, mandatory reporting and regulation and inspection**

**Children in Wales** is the national umbrella organisation in Wales for children and young people’s issues, bringing organisations and individuals from all disciplines and sectors together. One of our core aims is to make the **United Nations Convention on the Rights of the Child (UNCRC)** a reality in Wales. Children in Wales campaigns for sustainable quality services for all children and young people, with special attention for children in need and works to ensure children and young people have a voice in issues that affect them.

Children in Wales works closely with its member organisations and has an established and recognised number of national professional forums and networks. This provides an opportunity for a broad range of our members to share knowledge and expertise on particular thematic priorities, with a view to maximizing capacity and impact across the sector and to coproduce agreed positions in relation to policy and legislation.

Children in Wales also manages and facilitates the **Young Wales** programme of work through funding from Welsh Government. This initiative provides an opportunity for a broad range of children and young people to be involved in national decisions which will have an impact on their lives. It also provides a key role and function in respect of supporting participation activity and adherence to the National Standards for Children and Young People’s Participation at a local level

For further information on the work of **Children in Wales**, please see [www.childreninwales.org.uk](http://www.childreninwales.org.uk).

### **Our Response**

Children in Wales welcomes the opportunity presented to provide a response to the Welsh Government’s consultation on ‘**Proposals for Primary Legislation in relation to children’s social care, Continuing Health Care, mandatory reporting and regulation and inspection**’.

In line with our organisations priorities, which includes the realisation of the full implementation of the UNCRC in Wales, and enhancing the well-being of all children and young people, including those most disadvantaged, our response will predominantly focus on matters most pertaining to **children and young people**.

Our response will focus on the following sections of the consultation

- Chapter 1: Eliminating profit from the care of children looked after
- Chapter 3: Mandatory reporting of children and adults at risk
- Chapter 6: Extending the definition to social care worker to include childcare and play workers

To inform our response, we have engaged in discussions with a number of our stakeholders prior to the consultation emerging (in relation to Chapter 1) through our professional networks and general correspondence, and drawn upon our extensive work in the policy areas of children’s rights, safeguarding, advocacy, care experienced children and early years. In October, we organised a bespoke meeting with a number of our national children’s charity members to inform this response and that of their organisations (Chapters 1 and 3), and policy colleague in our organisation, and externally, to inform other sections. (Chapter 1, 3 & 6)

### **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?**

Introducing provision in legislation will support the Programme for Government commitment.

However, the question should be framed to ask

*“Do you think that introducing provision in legislation that only allows ‘not-for-profit’ providers to register with CIW **will deliver improved outcomes for children looked after?**”*

We welcome all considerations being given to ways in which to improve the outcomes for children placed in care, including the urgent need to address the current pressure on placements choice and availability, and to resolve many of the well-documented supply-side and workforce challenges.

Whilst we support the overarching proposal in principle, and to explore ways in which the current system can be rebalanced, there are a number of significant considerations to be made in the first instance. This includes the need to reconsider the proposed timescales and a pressing need for an Implementation Plan to be published, providing the necessary roadmap of the steps, actions and milestones to be achieved throughout the transitional period prior to any legislation coming into effect.

**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.**

There are clear risks which WG will already be aware of, yet the consultation does not set out a frank assessment of these, or the actions being taken to prevent or mitigate potential negative impacts. The consultation presents a series of positive outcomes which are anticipated to emerge from the proposed changes, but without the necessary evidence base to back up such claims. A risk management strategy should be produced as part of an Implementation Plan.

Central to this is the potential for a reduction in placements in Wales, certainly in the short to medium term if current independent and profit making providers decide to withdraw or reduce their services prior to legislation coming into force. This could also be true upon the legislation taking effect, if replacement registered provision isn't secured.

With the number of children placed in care continuing to rise and demand for quality placements outstripping supply, securing sufficiency should be the central priority upon which this proposal will either succeed or fail. Any reduction in provision will fuel the risk of children being placed in unsuitable and unregistered placements, or remain in situations where there is increased risk of harm. This is in addition to the negative implications any reduction of supply will have for the current under-pressure workforce, and a potential further decline in foster carers.

Whilst we anticipate that discussions are on-going between WG and providers in this regard, there is little in this consultation by way of any assurances that this is the case and what options are being considered. How realistic is it for some of the large residential care providers to begin transitioning, or for others to fill any void with as little disruption for children as positive.

It is also unclear what support is being provided to help some organisations transition; to help not-for-profit providers potentially expand existing high quality provision, or new providers to enter this space. Are any new strategic partnership arrangements being considered or proposed, which encourage innovation and collaboration, alongside new models of commissioning and coproduction across organisations and sectors, including

housing. Approaches taken by the Scottish Government should help inform possible approaches to rebalancing care of children here in Wales.

**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 is need for an agreed definition of precisely what is understood to be a ‘not for profit’ organisation, distinct from the types of organisations who will predominantly be impacted by these changes. To date, much of the debate around ‘profit making’ and ‘private’ has to a degree, been far too negative, fuelled by reports of inflated costs and excessive financial burdens placed upon local authorities, particularly when in an emergency, at short notice, in particular geographical areas where provision may be low, prompted by large corporate private equity bodies. Less recognition has been given to the assertion that some profit-making organisations provide a good quality service, stability and deliver positive outcomes for children, many in small residential units.

Less consideration appears to have been made regarding the level of profit a provider is accumulating and what it is being used for. Profit can be reinvested back into a service to improve the provision received by children placed in care. In such instances, resource can be positively re-invested in workforce development, salaries, recruitment, retention and infrastructure. Indeed, ‘not for profit’ organisations will also secure a surplus to re-invest back into their provision.

It does not necessarily follow that only ‘not-for-profit’ organisations make best use of their resources and deliver better outcomes for children. More investment to address current workforce challenges should be prioritised as part a broader framework to improving outcomes for children placed in care.

The risk in defining ‘not for profit’ too stringently, would be to reduce provision in the short to medium term if current independent and profit making providers decide to withdraw their services completely. Whilst we anticipate that discussions are on-going between WG and providers in this regard, there is little in this consultation by way of any assurances that this is the case and what options are being proposed. Steps being taken to support ‘not for profit’ providers to expand high quality provision and diversify, should be clearly set out in a published Implementation Plan.

**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, with the understanding that WG policy officials developing the full detail of any subordinate legislation on behalf of WG Ministers do so in full consultation with relevant stakeholders (including the organisations the changes are expected to affect and the recipients of those services, including children); by preparing an Explanatory Memorandum and a full Children’s’ Rights Impact Assessment (CRIA). Any amendments must be laid before the Senedd for scrutiny

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

Whilst it is always prudent to agree and publish timescales for actions to be completed by, it is not entirely clear from the narrative provided how these timescales were determined, and what evidence was presented to inform these decisions. Given the complexity of the proposals and the actions which need to take place in advance of legislation taking effect, we share concerns expressed by others that the timescales are overly ambitious and risk causing disruption to services and children. Timescales should be free of manifesto commitment constraints.

Without a clear roadmap through a published implementation plan incorporating a risk management strategy, setting out the steps to be taken and milestones to be achieved, it is challenging to envisage the timescales being delivered as currently proposed, whilst allowing sufficient time for all partners to make the necessary structural and legal changes i.e. some providers to transition; some providers to expand and new providers to emerge (alongside the possibility of some providers reducing and/or choosing to cease operations)

**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?**

What is required is a robust implementation plan, which clearly sets out the objectives, steps, actions and milestones to be achieved throughout this 'transitional period', and by which partner(s).

We are informed through the consultation that work is currently underway which sets out some of the objectives one would wish to see included in an implementation plan, but there is a lack sufficient detail.

It is also unclear what actions have been taken to date to engage current and prospective future partners. For example, we have received correspondence from some existing not-for-profit organisations that no approaches have been made to consider expanding existing provision, or indeed, developing any new provision.

Further, it is not clear what steps are currently being taken to engage and support 'private providers' to transition to not-for-profit models of care, or indeed how many wish to do so.

If the intention is to reform current placement arrangements to deliver better outcomes for children placed in care, an implementation plan must sit within a more overarching framework which addresses the plethora of challenges and crisis's the current system faces, which have been well documented and reported.

Whilst the PoG commitments, which seek to build upon the work of the previous WG and its collaborative programme of work overseen by the Ministerial Advisory Group for Children are laudable, this alone does not provide the transformation change which is urgently needed. Despite best efforts, the current system is already struggling – unregulated

placements, workforce and staff shortages, foster carers shortages, more support needed for families to enable children to remain at home where it is in their best interests and safe to do so etc. - all exacerbated by the Covid-19 pandemic.

The considerable body of work overseen by the previous WG Residential Care Task and Group, of which Children in Wales were members of, receives no recognition in respect of these proposals. It is not clear how this work has informed these proposals.

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

Statutory Guidance should be produced, and publically consulted upon, to support any primary legislation. This could set out achievable timescales for implementation, which should be phased.

**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 have provided a response to this question through our responses to the other questions

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

The WG will wish to ensure that sufficient time and capacity is given at this initial stage to engage with, and secure compliance to explore options for transforming placement arrangements for all children placed in care. This should include all current partners who deliver existing provision, whether this is commissioned to independent or third sector organisations, or provided by a local authority, as well as any future prospective service providers. This should also include informed engagement with children as recipients of current services. A 'communication plan' should be set out within the Implementation Plan, as we have advocated for, to ensure that all partners are clear as to the route map and expectations placed upon their involvement and availability to engage in the process, and to aid transparency.

**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.**

If implemented as intended, we do not envisage that the proposals will have a negative impact of delivering improved outcomes for children and young people who use, and have access to information through the Welsh language. The Welsh language, in line with Article 30 of the UNCRC, should be seen as an integral component in the delivery of these proposals and the deliverables set out in this consultation. It is essential that information is provided in Welsh on all matters which will impact on children and young people, and that all services and activities are available through the medium of Welsh

**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.**

Children in Wales alongside some of our members, are willing to be involved, as appropriate, in any further considerations.

We express disappointment that no Children's Rights Impact Assessment was made available as part of this consultation to inform the proposals and our response. This would have helped to better understand the steps Welsh Government have taken when ensuring compliance with the UNCRC in line with legislation (Rights of Children and Young Person's Measure) and the recent guidance published by WG officials in the children's rights branch to support colleagues discharge statutory duties on behalf of ministers - <https://gov.wales/childrens-rights-scheme-manual-welsh-government-staff>

The WG should take the opportunity of bringing forward legislation to improve outcomes for children in care by also including new duties upon independent residential care services to secure independent advocacy arrangements for children and young people. Our member organisation, TGP Cymru, have long campaigned for existing independent advocacy provision to be extended and available as an 'active offer' for all children in residential care

settings, and we would draw your attention to their consultation response for more detail on this matter.

### **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 welcome consideration being given to ways of better protecting children and young people from abuse, harm and neglect, and to strengthen existing mandatory reporting arrangements. Whilst we do not oppose this proposal in principle, there are a number of significant considerations to be made in the first instance.

Since the release of this Consultation, we note that the IISCSA has now published its final report which the WG and other stakeholders, including Children in Wales through our involvement in the Wales Reference Group, have helped to inform. We welcome the Deputy Ministers recent statement noting her intention to consider the recommendations in full and provide a response in due course. The WG will now wish to take into account the IISCSA final recommendations to extend mandatory reporting duties to include those engaged in regulated activities and in trusted positions.

It is not clear whether it is the WG's intention to place a mandatory reporting duty on individuals within existing 'relevant partners' as currently set out in the SS&WB Act, or to introduce new legislation which would allow for new duties to be placed on individuals in other relevant bodies that are currently not listed in that Act.

Our preference would be for new legislation to be introduced to address some of the notable gaps in the SS&WB Act, particularly in respect of duties placed upon education and other notable public bodies. Changes to mandatory reporting duties could, for example, be applied to the 48 public-bodies listed in Section 6 of the Well-being of Future Generations Act, and would align with steps being taken by WG to extend Corporate Parenting Duties for care-experienced children and young people to more public bodies.

WG will therefore wish to consider the IISCSA recommendations alongside responses to this consultation and determine which relevant bodies will be subject to the 'duty to report'. Consideration will also need to be given as to how changes could be applied to all individuals within the relevant bodies, recognising the transient nature of some parts of the workforce within some public bodies, for example volunteers, agency staff and internships.

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

No comment to make

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

**Please explain your reasoning.**

Placing a mandatory reporting duty on individuals in relevant bodies alone will not guarantee better outcomes for children, or better protect children from abuse, harm or exploitation in the future.

Steps will need to be taken alongside introducing any new duty to report.

These include (for example)

- Significant investment should be made in quality training and professional development opportunities across the workforce, to ensure that every individual who has a duty to report has the necessary knowledge and understanding of the process and rationale for these changes, as well as the necessary confidence and capability to be able to take appropriate action
- Urgent improvement in the child protection system so that there is sufficient capacity, with those tasked with receiving reports of children at risk not overwhelmed, and able to respond effectively to all reports from individuals who have concerns about a child or young person.
- Robust support mechanisms for all individuals within every relevant body, including designated/named professionals for safeguarding, so that every individual who has a duty to report is properly supported in their role, and fully inducted into any new roles.

Introducing these steps, alongside any duty to report will help to minimise any unintended consequences. For example, some individuals may be reluctant to undertake any interventions or discussions with children which could trigger a disclosure. Some individuals may feel under pressure to report for fear of sanctions or incurring criminal proceedings. Some individuals, particularly those starting off in their careers, will need on-going advice and support on child protection matters to help address any anxieties or worries they may have.

The benefits of introducing a mandatory reporting duty on individuals in relevant bodies, could include earlier identification and timely responses to risks and harm to children, and enhanced sharing and partnership arrangements between relevant agencies.

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

We have not undertaken any research into the lessons learnt from the duty to report in other countries. However, we are aware that both our member organisations NSPCC Cymru and Barnardo's Cymru have examined international evidence which we understand shows mixed results (we refer WG to their responses)

**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?**

As referenced in our response to question 3.1, there are notable gaps in the list of 'relevant partners' in the SS&WB Act. Our preference would be for new legislation to be introduced which addresses these gaps by including other relevant bodies who have direct engagement with children and families, and does not remove any existing duties placed on organisations under the Act in respect of 'children 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)?**

As referenced in our response to Question 3.1 and 3.5, our preference would be new legislation to be introduced which addresses the notable gaps in the SS&WB Act by including a reporting duty on other relevant bodies (in our response to Question 3.1. We have made a number of suggestions linked to the WBoFG Act)

However, we note that this consultation does not appear to be proposing extending existing reporting duties to more organisations but introducing new duties on individuals. Therefore, we could have a system where there is a duty to report children in risk placed on some individuals within relevant bodies (not yet determined) but not on their organisation. For example, a new duty could be placed on an employee in a YOT team alongside the existing duty on the YOT Service, but only on an employee in a sports organisation and other agencies not listed as 'relevant bodies' under the SS&WB Act.

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

No comment to make

**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)?**

In our response to Question 3.1, we made a number of observations in respect of who any duty to report should be extended to.

The IICSA makes a number of points in this regard, drawing upon the views from survivors and previous child sexual abuse inquiries where perpetrators had not been exposed and fell through the net.

We would wish to see a clear rationale for any reason why a particular group of individuals in a position of responsibility and trust, should not be included, regardless of whether that person is receiving a salary or payment. If the intention of the proposals is to provide greater protections for all children and enhanced reporting arrangements, then all individuals working in such situations, regardless of whether they are regulated or not, should be considered for inclusion at the very onset. If a case can then be made for some individuals to not be included, then a clear rationale should be made at that point.

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

No comment to make

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

We note that the consultation does not provide any commentary in this regard or put forward any possible options for consideration in respect of introducing sanctions for failure to comply. The IICSA came out in favour of criminal sanctions being applied in certain circumstances, which the WG will wish to consider alongside the recommendation that a Child Protection Authority be created.

A further consideration which should be considered is that under existing legislation, whilst a duty to report a child at risk is an organisational duty, there are no sanctions for not doing so. Therefore, an unintended consequence of these proposals, is that we could introduce a system where sanctions are applied to individuals but not to the employing organisation.

**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.**

If implemented as intended, we would envisage that the proposals will have a positive impact of delivering improved outcomes for children and young people who use, and have access to information through the Welsh language. The Welsh language, in line with Article 30 of the UNCRC, should be seen as an integral component in the delivery of these proposals and the deliverables set out in this consultation. It is essential that information is provided in Welsh on all matters which will impact on children and young people, and that all services and activities are available through the medium of Welsh

**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.**

We understand that the WG have 6 months to respond to the recommendations of ISCCA. We would suggest that there is a period of reflection and deliberation, and consideration of other forthcoming child protection inquiry recommendations, prior to their being a formal response.

Not having timescales attached to this section of the consultation is perhaps a 'good thing' in this instance. It is essential that time is taken to get this right. More detail is also needed against several of the proposals, such as which relevant bodies and individuals are to be included, and the system of sanctions.

Children in Wales alongside some of our members, are willing to be involved, as appropriate, in any further considerations.

Finally, we express disappointment that no Children's Rights Impact Assessment was made available as part of this consultation to inform the proposals and our response. This would have helped to better understand the steps Welsh Government have taken when ensuring compliance with the UNCRC in line with legislation (Rights of Children and Young Person's Measure) and the recent guidance published by WG officials in the children's rights branch to support colleagues discharge statutory duties on behalf of ministers - <https://gov.wales/childrens-rights-scheme-manual-welsh-government-staff>

### **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.**

Overall, we are in agreement with the proposal to extend the definition of 'social care worker' to include both childcare and play workers.

The rationale for our response is that these changes will contribute towards

- Elevating the status of the roles
- Support experienced and well trained staff
- Improve quality of service across the sector and ultimately for children
- Enhance the understanding and professionalism of the workforce
- Highlight the importance of the sector
- More support for the sector
- Provide clarity and clear recording of training and CPD
- A consistent approach, recognising the importance of the child regardless of the setting they are in.
- Support monitoring and ability to engage with sector to aid policy and practice development
- Clearer understanding for parents
- Representation and support from Social Care Wales
- Bring qualifications under a unified framework

**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.**

Please see our response to 6.1.

Please also see the more detailed response from our member organisation Play Wales in respect of the play elements of this chapter.

**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.**

If implemented as intended, we would envisage that the proposals will have a positive impact of delivering improved outcomes for children and young people who use, and have access to information through the Welsh language. The Welsh language, in line with Article 30 of the UNCRC, should be seen as an integral component in the delivery of these proposals and the deliverables set out in this consultation. It is essential that information is provided in Welsh on all matters which will impact on children and young people, and that all services and activities are available through the medium of Welsh

**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.**

We express disappointment that no Children's Rights Impact Assessment was made available as part of this consultation to inform the proposals and our response. This would have helped to better understand the steps Welsh Government have taken when ensuring compliance with the UNCRC in line with legislation (Rights of Children and Young Person's Measure) and the recent guidance published by WG officials in the children's rights branch to support colleagues discharge statutory duties on behalf of ministers -

<https://gov.wales/childrens-rights-scheme-manual-welsh-government-staff>

Finally, we wish to draw your attention to the response from our members Play Wales, alongside other play and childcare organisations with expertise and knowledge in this area

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

Keep my response anonymous: No

Your name: Sean O'Neill

Organisation (if applicable): Children in Wales

E-mail number: [sean.oneill@childreninwales.org.uk](mailto:sean.oneill@childreninwales.org.uk)

Your address: 21 Windsor Place, Cardiff

## Proposed changes to legislation on social care and continuing health care

### Deadline 7 November 2022 - Consultation Response Form

Your name: Dr Grace Krause

Organisation (if applicable): Learning Disability Wales

Email / Telephone number: [grace.krause@ldw.org.uk](mailto:grace.krause@ldw.org.uk), [REDACTED]

Your address: Learning Disability Wales, 41 Lambourne Crescent Cardiff Business Park, Llanishen, Cardiff, CF14 5GG

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 Learning Disability Wales

If you want to receive a receipt of your response, please confirm your email address, here: [grace.krause@ldw.org.uk](mailto:grace.krause@ldw.org.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?

We are very happy to see Welsh Government moving towards removing private profit from provision for children's services. We would like to encourage Welsh Government to explore the possibility of also doing so for adult social care services.

The Policy Proposal makes a convincing case for why private profit has no place in the provision of children's services. You write that:

*Our aim is to ensure that public money invested in the care of children looked after does not profit individuals or corporate entities, but instead is spent on children's services to deliver better experiences and outcomes for children and young people, addressing service development and improvement and further professional development for staff (page 3)*

You also state that up to 20% of the money put into residential care for children is lost to private profit. We would like to know what the equivalent number is for adult services and ask Welsh Government to explore the feasibility to come to similar resolutions in terms of addressing the issue.

While we do not have up-to date information for Wales, we note that a 2016 report from the *Centre for Health and Public Interest* on the impact that privatisation had had on the quality of care in England found that "Both the quality of care in adult social care and the terms and conditions of the workforce have declined over the past two decades as a result of privatisation. The report also shows that turnover rates are higher, and rates of pay considerably lower, in the private care sector than in the public sector. In addition, 41% of community-based adult social care services, hospice services and residential social care services inspected by the Care Quality Commission since October 2014 were found to be inadequate or requiring

improvement<sup>1</sup>". We believe that findings like that may imply a strong case to critically investigate the role of private providers in adult social care in Wales.

**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 1.6:** 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 significant amount of work will need to be done to ensure that those individuals currently being supported by for-profit providers are successfully transitioned to new providers with continuity of care and minimal disruption to their daily lives. There is a risk that some for-profit providers might suffer significant financial difficulties if this goes ahead and this could lead to some going into liquidation or simply withdrawing services overnight, potentially leaving vulnerable people with no care and support. It is essential that contingency plans are in place to avoid people ending up being transferred to expensive out-of-area placements away from their families, friends and communities due to a lack of alternative, good quality local provision.

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

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<sup>1</sup> Bob Hudson (2016): The failure of privatised adult social care in England: What is to be done?  
<https://chpi.org.uk/wp-content/uploads/2016/11/CHPI-SocialCare-Oct16-Proof01a.pdf>

It is important that all guidance around this is produced with accessibility in mind. We urge Welsh Government to take accessibility more seriously, given the inaccessibility of this process. The proposals in this document have a clear and important impact on people with a learning disability as well as young people. As such it is extremely disappointing that this consultation was not conducted in a more accessible way. There was no easy read material for this consultation available originally. An easy read summary was published approximately two weeks before the submission date. As it was only a summary, the easy read document was too vague for anyone to develop a real understanding of the proposals and be able to make informed decisions about the content. There was also no easy read questionnaire available.

It is also worth noting that the proposal itself was not written with accessibility in mind. It would have been good to give the document another edit to make sure things are phrased clearly and questions are asked in the most straightforward way possible.

## 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 support the implementation of direct payments for health budgets as they are something disabled campaigners have been asking for a long time. People with a learning disability often do not feel like they have control over their lives. We also know that many disabled people do not feel they have the control over their medical treatment that they should. Giving people more control over their medical decisions is a good step towards this.

**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.

Our concern however is that these changes could possibly disadvantage people with a learning disability by placing a disproportionate administrative burden on them.

You give the reason for wanting to implement personal health budgets as enabling greater voice and control for adults and moving towards more integrated, person centred provision within health and social care. You write that you are also promoting fairness and continuity to care is important. We agree that all of these are important goals and that Personal Health Budgets can play an important part of addressing these issues.

However, we are concerned that in times of austerity and systematic underfunding of the NHS people may choose to accept Personal Health Budgets because they cannot get the care they need. It is important that NHS funding is protected and people's choices and autonomy are given the support they need.

We are concerned that people with a learning disability might feel pressured to take on health budgets because the care they get otherwise is not adequate. They then might find that they struggle with the administrative burden that comes with health budgets. It is important that people with a learning disability and family carers receive substantial support in using the budgets if they chose them.

Support also needs to be put in place to make sure people with a learning disability who chose the Personal Health Budgets get support when something goes wrong with the services they are buying. Measures need to be put in place to make sure predatory providers do not take advantage of people using the budgets.

## Consultation Response Form

Your name: Claire Holt

Organisation (if applicable): Bridgend CBC

Email / Telephone number: Claire.Holt@bridgend.gov.uk

Your address: Civic Offices, Angel Street, Bridgend. CF31 4WB

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 a collective of staff/team responses**

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

**Claire.Holt@bridgend.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?

**Introducing the provision within legislation will support the commitment to eliminate profit only if it is introduced at a time where levels of sufficiency are achievable within these provisions. The approach should be two handed, gradual, and well communicated as this will potentially require children moving from placements where they are achieving good outcomes and are settled, albeit in a provision that is for profit. How is it proposed the local authority should exercise its functions having regard for the voice of the child balanced against the legislative requirement in such a circumstance?**

**From our monitoring experience in Adult Social Care, there are many private providers who provide excellent care – and some NPO's that do not – and the company status itself is not necessarily a prerequisite for quality care, so we're not 100% clear how adopting this would necessarily improve quality/outcomes, nor even be more cost-effective.**

**We can see the argument from an ideological perspective that removing profit = more money spent on care, but can we be sure this will translate into reality? WG/CIW would also need to consider transitional arrangements and consider if they could provide initial support to private providers to become not for profit. I would be thinking this could be a direction of travel for all regulated care services, so I would perhaps think twice (as a private enterprise) about investing in care.**

**This is a challenging and complex area that requires the flexibility of a mixed market and the above proposal could de-stabilise considerably, as well as drastically limit the current options open to Children's Services. This could also set a worrying precedent for the wider care sector, who may see this is a first step to removing profit from all of social care – which is already a hugely pressurised area with capacity gaps.**

**Could a 'fair' profit be considered instead – which could link to existing benchmarking data (such as Laing and Buisson) which indicated profits/rates of return in the region of 10-12% as 'fair'?**

**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 of the proposal are as outlined, regarding increased local provision that is not for profit, however it is unclear how the fostering recruitment issue will be addressed outside of the financial element, the report of the National Association of Fostering Providers details that the issues related to foster carer recruitment are not solely related to finances. In addition our local authority has had experience of needing to move children to a new placement (residential) owing to the home having to close as a result of staffing crisis, how is it proposed to address the staffing crisis to enable sufficiency in the context of not for profit provision. If success in sufficiency were achieved in the context of this proposed legislation there would potentially be significant savings to the local authority, not only in terms of placement costs but travelling and time spend travelling expenses accrued from visiting provision out of area. What is proposed with regard to England and will there be anything in place to ensure Welsh children are prioritised for Welsh placements? How does this impact on local authorities near the England Border where it is not inappropriate to place in an English LA as this is neighbouring. Where children have a care planning need/ risk requiring an out of area placement how will this work – can Welsh authorities subject to this legislation procure a for profit Ofsted regulated home in England?**

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

**It would be positive for the expectation to be that any surplus is put to improvement/ development of the provision**

**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?

**A fairly ambitious aim, but unless there is support to develop sufficiency of not for profit placements that are able to meet the diverse needs of care experienced children within Wales local authorities will be put in a position where they are unable to comply with regulation regarding commissioning only not for profit providers. In such a circumstance where there is not a placement for a young person in not for profit provision what options are open to the local authority.**

**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.

**Any proposals which further empowers individuals' engagement in their care and support plans and strengthens voice and control is welcomed. An increase in advocacy provision may be required to ensure that some individuals are enabled to express their wishes.**

**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.

**Agree that there needs to be flexibility for people and families faced with serious illness, which direct payments would allow for. However, as those entitled to CHC will be the most vulnerable in society leaving them open to abuse there would need to be some form of monitoring in place to ensure safeguarding and quality? There also needs to be assurances that people won't be adversely impacted financially due to the introduction of the above, as currently healthcare provided by the NHS is free at the point of need – but note the responsibility will be on the NHS to implement, which is positive news.**

**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?

**In terms of mandatory reporting, the duty to report by individuals of stated organisations is already specified within the Social Services and Well-being (Wales) Act 2014– so possibly highlighting and strengthening individuals' responsibilities as part of the organisation reporting requirements might be more appropriate and proportionate?**

**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?

**In terms of mandatory reporting, the duty to report by individuals of stated organisations is already specified within the Social Services and Well-being (Wales) Act 2014– so possibly highlighting and strengthening individuals' responsibilities as part of the organisation reporting requirements might be more appropriate and proportionate?**

**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?

**See 3.1 and 3.2**

**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?

### Agree with this proposal

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

**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?

**Agree with this proposal**

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

**Agree with this proposal**

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

**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?

**Agree with this proposal**

**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?

**Agree with this proposal**

**Question 4.9:** *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a

service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

**Agree with this proposal**

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

**Agree with this proposal**

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

**Agree with this proposal**

**Will CIW make the information supplied by the service provider public?**

**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 this proposal**

**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?

**Agree with this proposal**

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

**Agree with this proposal**

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

**Agree with this proposal**

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

**Agree with this proposal**

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

**Agree with this proposal**

**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.

**Agree with this proposal in principle, however, this would depend on what SCW consider to be 'certain circumstances. Would this include for example someone who is required to provide further evidence of CPD or a social worker awaiting the result of a qualification such as the Consolidation Programme.**

**Or someone who has declared a health issue that may impair their ability to practice but the health issue may be temporary.**

**Or a registrant who is subject to a fitness to practice hearing.**

**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.

**Yes agreed – regulation should be extended to include childcare and play workers. However, it might have an unintentional adverse impact, as has been seen in homecare i.e people leaving/not entering the sector due to registration requirements and this then impacting on availability and increased costs and outgoings, especially for people with young children.**

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

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

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

Please explain your reasoning.

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

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

opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

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



***Proposals for primary legislation in relation to children's social care, Continuing Health Care, mandatory reporting and regulation and inspection  
Welsh Government November 2022***

**A response from All Wales Black, Asian, Minority Ethnic Engagement Programme, EYST Wales  
(Submitted by email November 2022)**

**Introduction –**

The All Wales Black, Asian and Minority Ethnic Engagement Programme is a Welsh Government funded project which aims to provide a strong voice for race equality in Wales. Since the commencement of the programme in 2017, EYST Wales has continued engaging and consulting Minority Ethnic networks with diverse representation of Minority Ethnic individuals, by way of regular engagement and awareness sessions on three thematic specialisms: Children and Young People; Older People; and Black, Asian and Minority Ethnic People and Policing.

The Engagement project continues working with partners and stakeholders, to provide expert advice on race equality to inform and influence Welsh Government policies and public services, to better reflect and respond to the needs of Black, Asian, and Minority Ethnic communities in Wales. This includes providing evidence-based responses to key Welsh Government consultations and proposing changes to legislation, including their impact on Minority Ethnic communities.

As this Welsh Government Proposal is in relation to issues affecting Children and Young People, and Older People, we will be responding where appropriate with a focus on how these proposals could affect Minority Ethnic people, and whether further considerations are needed.

**Consultation Response**

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

There are 12 questions about this chapter.

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

***We welcome the proposal to end profiteering from the care of children looked after. We feel that requiring only 'not-for-profit' providers to register with Care Inspectorate Wales is a good first step, however this will need to be implemented carefully, monitored closely, and support must be given to suitable 'not-for'profits' to navigate the registration programme, who may be unexperienced in tendering for such contracts.***



**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 feel that the overall benefits of this proposal are dependent on how it is implemented and would not be able to give a satisfactory answer without more details.*

*In terms of impacts on individuals and groups with protected characteristics, we want to strongly emphasize the importance of cultural and religious awareness for Minority Ethnic Children, when they are being placed into a care setting, whether that is foster care, respite, or care home. The child's religion, cultural diet, and language need to be prioritized and maintained, as part of their human rights.*

**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?

*Should these proposals move forward, this definition within the legislation should have a consultation of its own. On first inspection we do not have any objection to a definition on the types of organization that would qualify as 'not-for-profit', if it ensured that there was relevant scrutiny of providers. We feel above all else, the needs of children must always be front and centre of any decision, and we would welcome restrictions on trading surplus only being expended in a way that clearly benefits children and the quality of care that they receive.*

**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?

*To answer this question, we would need more information on reasons to amend the definition, beyond speeding up the process, and if there would be any scrutinization of the subordinate legislation amendment.*

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



Ethnic Minorities  
& Youth Support  
Team Wales

Tim Cymorth  
Lleiafrifoedd Ethnig  
& Ieuenctid Cymru

*We feel that the timings seem appropriate and give current providers several years to transition to a 'not-for-profit' model. We would however emphasise that timelines MUST put wellbeing of the children first, and these transitions must not happen at a speed that negatively impacts children and families.*

*We also feel it is important that the new legislation demands both new providers and current providers have 'not-for-profit' status at the same time. We do not agree that current providers should have an additional year from April 2026 to April 2027 to continue making profit, when new providers will be expected to be 'not-for-profit' from April 2026.*

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

*As mentioned above, the timelines must put children's wellbeing at the heart of the planning, and ensure that regular evaluation is undertaken to identify if the implementation is having adverse effects. In addition to this, it is important to consider the additional strain on local authorities and service providers in implementing big changes. To maintain good quality care for children, the professionals involved at all levels must not be so stretched by the implementation timeline that they cannot do their job effectively. High quality support to implement must be given to all involved professionals.*

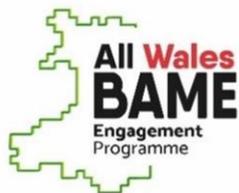
**Question 1.7:** What are your views on the issuing of guidance to support the implementation of the primary legislation?

*We support the issuing of guidance as a good first step, and would like to see this guidance available in a number of community languages and other accessible formats. We would also hope to see any visuals in the guidance represent intersectional diversity. In addition to the issuing of guidance, we feel extra support should be given to new 'not-for-profit' organizations to learn how to register with CIW and tender for contracts.*

**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 feel initially local authorities should be given extra support to move away from dependency on 'for-profit' providers, and towards only using 'not-for-profit' providers. Children's wellbeing must be put at the centre of all decisions, and the obvious disbenefit of*



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*restricting local authorities in commissioning 'for-profit' providers would be that if there simply aren't enough 'not-for-profit' providers in their area, who do they use? This decision to legislate restrictions must be made very carefully. We are in favour of providing extra support to local authorities to change their commissioning processes, supporting current providers in that area to move over to a 'not-for-profit' model, and encouraging current 'not-for-profits' to become providers, in the first instance. Any legislation restrictions should only be for situations where a local authority is clearly not committing to removing profit from children looked after, despite support, guidance, and alternative options.*

**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 feel that in addition to legislation, if these proposals go ahead, resources must be made available for a scrutinizing panel, to ensure any organization claiming to be 'not-for-profit' really is, that trading surplus is invested where it is meant to, and that care provision is of a high quality. One possibility, which could undermine the intention to eliminate profit, is parent bodies of 'NFP's charging excessive fees, or paying excessive salaries to senior employees. We suggest creating a framework of acceptable costs, which all providers must adhere to. This would include limits on a range of fees, salaries and other costs, and should prevent profiteering through these tactics.*

**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 believe that it is important to consider how these legislative changes could affect all languages spoken in Wales, including Welsh. In response to this question on Welsh specifically, positive effects could be increased by making it mandatory for any 'not-for-profit' provider who receives Welsh Government Funding to provide all their information bilingually. As part of their costings when tendering, they could all include a budget for providing employees with Welsh Language classes if they do not speak Welsh, or wish to improve their Welsh skills.*

**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.

*To treat the Welsh Language no less favourably than the English Language, the legislation should be provided bilingually, and anyone wishing to apply as a provider should be given the opportunity to apply in Welsh if they choose.*

**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.

*Within the consultation document it is noted that currently there is insufficient care provision for children looked after in Wales, and this can mean children being placed very far from home. We want to raise how this adversely affects children from Minority Ethnic backgrounds, who are not only placed far from home, but within settings that do not reflect their own culture, language or religion. A range of professionals and carers who these children come into contact with, such as social workers and fosterers, may not have sufficient Cultural & Religious awareness. In some cases, a child may be in a care setting far away from their biological family, for so long, that they completely lose their native language. Their religion and associated practices may not be understood, such as a need to pray, and wash beforehand. Eating familiar food can be a big comfort during a traumatic time, but they may be fed food that is completely foreign to them, or against their religion. We strongly feel that as part of the proposed changes to the provision of care for children in Wales, the Welsh government must ensure providers are trained appropriately in Cultural & Religious Awareness/Culturally & Religiously Appropriate Care, and where a child cannot be placed in a setting that reflects their own cultural background, the social workers and care providers have a duty to ensure the child is supported to continue speaking their native language and observing their religion, as is their human right.*

## 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 proposals that support people with health conditions to have more choice and control over their care. We feel that giving powers to Local Health Boards to make direct payments to individuals, will help to open up access to care provision that feels right for the individual.*



**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 the likely impacts of these proposals would be to remove barriers to appropriate care for people who are eligible.*

*Positive effects could be increased by ensuring the same provisions are available across all local health boards and local authorities, as well as ensuring the process to access these direct payments and care packages is also the same across all areas of Wales. It must not be a postcode lottery.*

*In terms of impacts upon individuals and groups with protected characteristics, we would like to highlight the need to ensure guidance and any related information is available in a range of community languages, and that consideration is given to Culturally & Religiously Appropriate Care. For instance, within the proposals, Welsh Government have suggested a power to prescribe further matters, including what sort of health care direct payments can be used for. If there will be limits on what direct payments can be used for, it is very important to ensure that the list of accepted support is reflective of our diverse communities and their needs. This could be support to maintain their religious practices, dietary requirements, their native language, and support with translation.*

**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?**

*The guidance should be available in a range of community languages, and practitioners/personal assistants should receive training in Culturally & Religiously Appropriate Care and understanding Stigma. This will help support people from Minority Ethnic Communities, to understand what they are entitled to, access the right support, and feel there are appropriate options for them. Translation support should be provided to anyone who has a language barrier, it must not be assumed they will have this support from their own family or community. It also must not be assumed that a person can read in their native language, and audio guidance should be available in a range of community languages, including English, as some members of minority groups are not literate.*

**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.**

*We believe that aswell as encouraging Welsh language through advertising for Welsh Speaking personal assistants and carers, there should also be emphasis put on encouraging speakers of other community languages to take up these positions, to ensure a diverse range of languages are celebrated and utilized within Welsh Health Care, to reflect the many languages spoken by people accessing direct payments.*

**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 would welcome more information on how these changes will be monitored and measured to oversee whether their implementation has positive or negative effects on direct payment users. In*



*particular, we would like to see data collected on how effective these changes are for Minority Ethnic people. We welcome the suggestion that guidance will be co-produced with input from service users and people with lived experiences of direct payments/CHC, and we encourage you to ensure that there is input from ethnically diverse service users also.*

### 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 in favour of imposing a duty to report a child at risk, 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?

*We are not in favour of imposing a duty to report an adult at risk, 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.

*We feel this duty to report should not be imposed on individuals within relevant bodies, for the following reasons – Often, when we see failures to report safeguarding issues, it is due to a lack of training, support, and adequately staffed teams. It is rarely because the individual can see something should be reported, and has decided not to. The responsibility to ensure the individual can spot safeguarding issues and report them effectively lies firmly with the organisation who employs them. Putting this duty on to individuals could lead to more scapegoating when there are failures, and the associated costs of investigating and punishing an individual could be used far more effectively by investing in training and recruitment of staff, and funding organisations that work in the community, with people who are at risk of harm or abuse, or at risk of becoming perpetrators themselves.*

**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?

*We do not support the introduction of these reporting duties to broader settings such as religious and sports groups, however we do support additional support and training to these groups. We feel it is important that anyone who works in a setting with children, young people, and vulnerable adults knows how to spot safeguarding concerns, and where to report them, if necessary. People working in these settings should be given the tools to educate others on appropriate behaviour, what defines abuse, and restorative practice.*

**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.

*As mentioned previously, we are not in favour of imposing these reporting duties to individuals within relevant organisations, and further opposed to the responsibility being rolled out to community group settings such as religious and sport groups. We would like to highlight that there can be cultural differences in people's understanding of safeguarding issues and abuse. Someone may inadvertently behave abusively, as that behaviour may be normalized in their culture. It is far more important to create safe non-judgmental spaces where people can be educated about UK and Welsh Laws to do with safeguarding, the harmful effects of abuse in all forms, and learning how to replace abusive behaviour with respectful behaviour. Instead of punishing group leaders if they have not reported a safeguarding concern, we should be offering them extra support with prevention through education.*

#### **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?

*We welcome the proposal to adjust the definition of 'care' so as to clarify the meaning and expectation of 'care' within the 2016 Act. We would also recommend the inclusion of Culturally & Religiously Appropriate Care, that includes a duty to provide opportunities to speak a native language, attend places of worship, be offered a designated space to pray, and meals which reflect a person's cultural diet.*

**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.



*In principle, we welcome the proposal if its outcome means more support, guidance, education and training for childcare and play workers.*

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

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

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

Please explain your reasoning.

*We are not opposed to this proposal, however we would like to draw attention to how this change may affect people from Minority Ethnic communities working or volunteering in childcare and play worker roles. If mandatory training and qualifications are introduced, will there be a consideration on how this may exclude people who are second language English or illiterate, and may struggle to complete certain types of training or qualifications? Where will training or studying be held, and what level of commitment will be needed? Will it be difficult to attend for people who have a lack of transport, childcare issues, or poor health? Will support and guidance from SCW be accessible for people who have language barriers, are illiterate, or have no access to technology such as laptops? We suggest that any changes brought about by being defined as a 'Social Care Worker', are carefully looked at to ensure they do not inadvertently exclude or disadvantage Ethnic Minority people.*

**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.

**Ymateb gan Ombwdsmon Gwasanaethau Cyhoeddus Cymru i  
ymgyngoriad Llywodraeth Cymru 'Newidiadau arfaethedig i'r  
ddeddfwriaeth ar ofal cymdeithasol a gofal iechyd parhaus y GIG'**

Diolch am y cyfle i ymateb i'r ymgynghoriad hwn.

### **Ein rôl**

Fel Ombwdsmon Gwasanaethau Cyhoeddus Cymru (OGCC), rydym yn ymchwilio i gwynion a wnaed gan aelodau o'r cyhoedd sy'n credu eu bod wedi dioddef caledi neu anghyfiawnder drwy gamweinyddu neu fethiant gwasanaeth gan gorff o fewn fy awdurdodaeth, sydd yn ei hanfod yn cynnwys yr holl sefydliadau sy'n darparu gwasanaethau cyhoeddus sydd wedi'u datganoli i Gymru. Mae'r rhain yn cynnwys:

- llywodraeth leol (cyngorau sir a chynghorau cymuned)
- y Gwasanaeth Iechyd Gwladol (gan gynnwys Meddygon Teulu a deintyddion)
- landlordiaid cymdeithasol cofrestredig (cymdeithasau tai)
- Llywodraeth Cymru, ynghyd â'i chyrrff nodedig.

Gallwn ystyried cwynion am ofal cymdeithasol a drefnwyd yn breifat neu ofal cymdeithasol a ariennir, yn ogystal â gwasanaethau gofal lliniarol ac, o dan amgylchiadau penodol, agweddau ar ofal iechyd a ariennir yn breifat.

Rydym hefyd yn ymchwilio i gwynion bod aelodau etholedig awdurdodau lleol wedi torri eu Codau Ymddygiad, sy'n nodi'r egwyddorion ymddygiad cydnabyddedig y dylai aelodau eu dilyn mewn bywyd cyhoeddus.

Bydd y pwerau ymchwilio ar ei liwt ei hun a roddwyd inni o dan Ddeddf Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) 2019 (Deddf OGCC 2019) yn ein caniatáu i ymchwilio pan fydd tystiolaeth yn awgrymu y gall fod methiannau systematig, hyd yn oed os nad yw defnyddwyr gwasanaeth eu hunain yn codi cwynion. Sefydlodd y Ddeddf hefyd yr Awdurdod Safonau Cwynion (CSA) i ysgogi gwelliant mewn gwasanaethau cyhoeddus trwy gefnogi ymdrin â chwynion yn effeithiol gan ddefnyddio gweithdrefnau enghreifftiol, hyfforddiant a chasglu a chyhoeddi data.

## **Cyflwyno taliadau uniongyrchol ar gyfer Gofal Iechyd Parhaus**

Rydym wedi ystyried cwynion yn y gorffennol lle mae defnyddwyr gwasanaeth wedi bod yn anfodlon oherwydd eu bod wedi colli dewis ac annibyniaeth pan fyddant yn trosglwyddo o daliadau uniongyrchol awdurdodau lleol i becyn GIP a reolir gan y GIG. Nid ydym wedi cael cwynion tebyg yn ddiweddar, sy'n awgrymu o bosibl nad yw hwn yn fater o bwys mawr i'r cyhoedd yng Nghymru. Fodd bynnag, ar sail ein gwaith achos blaenorol, rydym yn cefnogi'r cynnig hwn mewn egwyddor.

## **Estyn y gofyniad o ran hysbysu gorfodol am blant ac oedolion sy'n wynebu risg**

Os gosodir y ddyletswydd hon ar unigolion, hefyd rhaid cael gweithdrefn glir i gwyno nad yw person wedi hysbysu am blant ac oedolion sy'n wynebu risg.

Mae'n bwysig bod Llywodraeth Cymru yn ystyried a ellid ymchwilio i gwynion o'r fath o dan Reoliadau Gweithdrefn Gwynion y Gwasanaethau Cymdeithasol (Cymru) 2014.

Ymhellach, mae'n bwysig pwysleisio na fyddai ein swyddfa yn gallu ymchwilio i gwynion o'r fath. Mae hyn oherwydd bod gennym yr awdurdod i ystyried cwynion am sefydliadau. Tra daw gweithredoedd unigolion sydd wedi'u cyflogi neu eu contractio gan gyrff cyhoeddus o fewn ein cylch gwaith, gallwn ond gwneud argymhellion i unioni anghyfiawnder neu wella gwasanaethau i sefydliadau ac ni ddaw materion yn ymwneud â materion math o bersonél o fewn ein cylch gwaith.

Er y bydd gan gyrff rheoleiddio proffesiynol rôl allweddol o gynnal safonau proffesiynol ac unrhyw faterion addaswydd i ymarfer a godir, ni all y gyrff hyn ystyried cwynion am anghyfiawnder neu niwed gan aelodau unigol o'r cyhoedd.

Felly, rydym yn awgrymu bod Llywodraeth Cymru yn ystyried y mater hwn ac yn cadarnhau a ellid ystyried y cwynion hyn o dan Reoliadau 2014 neu a fyddai achwynwyr angen llwybr amgen. Os mai Rheoliadau 2014 yw'r llwybr priodol, mae hefyd yn bwysig cadarnhau'r dewisiadau sydd ar gael i achwynwyr nad ydynt yn fodlon ar y ffordd y mae eu cwyn wedi'i datrys yng Ngham 2 (Ymchwiliad Ffurfiol).

**Sylwadau cloi**

Hyderwn y bydd y sylwadau hyn yn ddefnyddiol i chi. Os dymunwch drafod unrhyw un o'r pwyntiau a wneuthum, mae croeso i chi gysylltu ag Ania Rolewska, ein Pennaeth Polisi ([ania.rolewska@ombudsman.wales](mailto:ania.rolewska@ombudsman.wales)).

**Michelle Morris****Ombwdsmon Gwasanaethau Cyhoeddus Cymru****Tachwedd 2022**

Mae'r ymateb yma hefyd ar gael yn Gymraeg.

This response is also available in Welsh.



**Response by the Public Services Ombudsman for Wales  
to the Welsh Government's consultation 'Proposed changes to legislation  
on social care and continuing health care'**

Thank you for the opportunity to respond to this consultation.

### **Our role**

As Public Services Ombudsman for Wales (PSOW), we investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction, which essentially includes all organisations that deliver public services devolved to Wales. These include:

- local government (both county and community councils)
- the National Health Service (including GPs and dentists)
- registered social landlords (housing associations)
- the Welsh Government, together with its sponsored bodies.

We can consider complaints about privately arranged or funded social care and palliative care services and, in certain specific circumstances, aspects of privately funded healthcare.

We also investigate complaints that elected members of local authorities have breached their Codes of Conduct, which set out the recognised principles of behaviour that members should follow in public life.

The 'own initiative' powers we have been granted under the Public Services Ombudsman (Wales) Act 2019 (PSOW Act 2019) allow us to investigate where evidence suggests there may be systemic failings, even if service users themselves are not raising complaints. The Act also established the Complaints Standards Authority (CSA) to drive improvement in public services by supporting effective complaint handling through model procedures, training and collecting and publishing complaints data.

**Introducing direct payments for continuing health care**

We have considered complaints in the past where service users have been dissatisfied by the loss of choice and autonomy when they transferred from local authority direct payments to CHC package managed by the NHS. We have not had such complaints recently, which could suggest that this is not a pressing issue for the Welsh public. However, based on the past casework we are supportive of this proposal in principle.

**Extending mandatory reporting of children and adults at risk**

If this duty is placed on individuals, there must also be a clear procedure to complain that a person has not reported children and adults at risk.

It is important that the Welsh Government considers whether such complaints could be investigated under the Social Services Complaints Procedure (Wales) Regulations 2014.

Furthermore, it is important to underline that our office would not be able to investigate such complaints. This is because we are empowered to consider complaints about organisations. Whilst the actions of individuals who are employed or contracted by public bodies fall within our remit, we may only make recommendations to remedy injustice or improve services to organisations and matters relating to personnel type issue are not within our remit.

Although professional regulatory bodies will have a key role in maintaining professional standards and any fitness to practice issues raised, these bodies are not able to consider complaints of injustice or harm from individual members of the public.

Therefore, we suggest that the Welsh Government considers this issue and confirms whether these complaints could be considered under the 2014 Regulations or whether an alternative route for complainants would be needed. If the 2014 Regulations are the appropriate route, it is also important to confirm the options available to complainants who are not satisfied with how their complaint has been resolved at Stage 2 (Formal Investigation).

## **Closing remarks**

We trust that you will find these comments useful. Should you wish to discuss any of my points further, please do not hesitate to contact Ania Rolewska, our Head of Policy ([ania.rolewska@ombudsman.wales](mailto:ania.rolewska@ombudsman.wales)).

A handwritten signature in black ink that reads "M.M. Morris." The signature is written in a cursive, slightly slanted style.

**Michelle Morris**

**Public Services Ombudsman for Wales**

**November 2022**



Programme and Legislative Implementation Team  
Social Services and Integration Directorate  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

7 November 2022

Dear Programme and Legislative Implementation Team,

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

Thank you for the opportunity to respond to the Welsh Government [consultation](#) on proposed changes to legislation on social care and continuing health care. Mindful of the scope of this consultation, we are better placed to comment on some issues than others.

Our response focuses on aspects of the consultation that we view as particularly relevant to nursing and midwifery professionals, and where we can best offer our experience and support in our role as regulator. We will only be responding to two areas and have therefore set out our response in a letter rather than using the response template.

We are the UK's independent, statutory regulator of nursing and midwifery professions. We regulate [758,303](#) nursing and midwifery professionals, including [38,268](#) nurses and midwives in Wales. Our purpose is to promote and uphold the highest professional standards in order to protect the public and inspire confidence in the professions.

We welcome the aim to improve the quality of experience for everyone who uses social care services in Wales. We are committed to working with the Welsh Government to support this aim through our unique perspective as the regulator of nursing and midwifery professionals in Wales.

#### **Introducing direct payments for continuing health care**

We welcome the focus on person-centred care for Continuing Health Care (CHC). We support the introduction of direct payments for continuing health care. We would seek

23 Portland Place, London W1B 1PZ  
020 7333 9333  
[www.nmc.org.uk](http://www.nmc.org.uk)

We're the independent regulator for nurses and midwives in the UK, and nursing associates in England. Our vision is safe, effective and kind nursing and midwifery that improves everyone's health and wellbeing.

Registered charity in England and Wales (1091434) and in Scotland (SC038362)



to work together with the Welsh Government on plans to develop the process, governance and guidance on CHC, as nurse assessors make a vital contribution.

It is important to recognise the difficult experiences of people who apply for CHC. We have analysed the concerns to us on CHC, where nurses have been involved in the assessment. The main themes were listening to the views of individuals and families, financial impact and the implications of self-funding, the need for issues to be addressed locally and lack of transparency in decision-making. It is important for the Welsh Government to take these issues into consideration as it moves forward with implementation.

We have made a commitment to continue to share our findings with other key stakeholders, to influence policy and process changes for people to have an improved experience of applying for CHC funding. We would be happy to share further information with you.

We are developing online supporting information for professionals to ensure they take a person-centred approach to CHC assessments, and we would value the opportunity to discuss our insights with you in more detail.

### **Extending mandatory reporting of children and adults at risk**

Public protection is our central concern as a regulator of individual healthcare professionals. We are acutely aware of the impact of abuse on people, as outlined in the recent publication of the [final report](#) of the Independent Inquiry into Child Sexual Abuse.

Our [Code](#) and [Standards](#) make clear that professionals on our register have a responsibility to report concerns of children and adults at risk.

[Section 17](#) of our Code requires nursing and midwifery professionals to raise concerns immediately where they believe a person is vulnerable or at risk and needs extra protection. To achieve this, they must take all reasonable steps to protect people who are vulnerable or at risk of harm, neglect and abuse. They must also share information if they believe someone may be at risk of harm, in line with the laws relating to the disclosure of information. Moreover, they must have knowledge of and work within the relevant laws and policies about protecting and caring for vulnerable people.

We acknowledge the concerns identified about the effectiveness of the existing system and we are committed to working with the Welsh Government to further strengthen the system.

However, we do not advocate the introduction of an individual statutory duty for mandatory reporting with either criminal sanctions or offences. This would be contrary to an open cultures approach. It would also expose professionals in Wales to criminal sanctions that they are not exposed to elsewhere in the United Kingdom, which has workforce risks for Wales.



This could add to existing workforce pressures that have increased with the pandemic. Workforce pressures is one of the top reasons for nursing and midwifery professionals leaving the NMC register in our most recent [annual leavers' survey](#). In Wales, this was cited by 18 percent of respondents.

We are keen to understand if analysis has taken place on how this new duty would interact with other existing statutory and reporting duties. This would help avoid discrepancies in approach and different standards of obligation and sanctions being placed on professionals.

Reporting should be driven by the needs of individuals rather than process. The primary duty of professionals is to patients and service users. In constructing any new duty, nurses, midwives and other regulated professionals should be able to maintain their professional discretion so that they can take account of individual circumstances. We would welcome further clarification on the Welsh Government's intentions to ensure that a mandatory approach will not have the effect of diminishing individual professional discretion.

If mandatory reporting is introduced, there needs to be clarity on the timescales for reporting. This raises the question as to whether any duty should be qualified by a specific time period given that there needs to be discretion to defer reporting so as to take account of the circumstances of each case. It might be best to require a reasonable time period to report rather than immediately. The needs of people using services must come first and it may not be practical to report immediately.

We would like to understand more about how the Welsh Government will monitor this new duty and share information with us as a regulator. Any sanctions imposed on professionals considering this new duty should be proportionate.

We would be keen to feedback on the legislative draft of this new duty. We would also like to see more evidence of the impact of this proposed change before changes are introduced.

We thank you again for the opportunity to respond to this consultation and please do not hesitate to contact us to discuss this further.

Yours sincerely,

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