

Consultation Response Form

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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 supportive of the 'not-for-profit' philosophy and the values it endorses for Wales. However, the model of delivery will be a challenge. It will require significant investment through development of in-house provisions and third sector organisations to rebalance the market. There are currently small independent providers that deliver good outcomes and also reinvest profit back into their organisations for the benefit of children. With these proposed changes to legislation, we must recognise the ethical providers and that they may operate for a reasonable profit (and this profit is reinvested).

We require Welsh providers that we can depend on and that operate to deliver good outcomes. Amongst the Welsh providers we require a tapestry of good choices that can provide the varying care and support children require.

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.

Changing the legislation will allow the surplus money that is currently used as a profit for some organisations, to be reinvested into developing services that are local, bespoke and deliver good outcomes. The perceived disadvantages to the proposed changes are the concerns that those organisations currently operating in Wales may choose to move to across the English border or will only accept placements from English authorities. We may lose placements of choice, which are currently bespoke and an identified need of the local community, and the opportunity to work and

develop good working relationships may be lost. There are already current challenges with local authorities finding suitable placements for children.

Additional associated challenges will be managing safeguarding concerns of children who are not known to the area (out of county placements from English authorities), for example, police in the first instance are likely to make contact with the local authority of where the child is residing, rather than contacting the local authority that has responsibility for the child or young person; thus creating a further demand on services locally. From a safeguarding perspective with the proposed legislation changes, there may be a loss to placement choices locally (and nationally across Wales) and this will create further challenges for the local authority to manage the safeguarding of a child or young person, if placements are lost locally and children and young people are placed further away.

There will be indirect and direct costs for local authorities. Independent sector are not always accepting of children that present with challenges and therefore, cost of finding suitable placement becomes costly. With the proposed changes this will minimize this and this is a positive. However, we must ensure that there is investment into developing and building greater choice and control. Investment into specialist provisions for children that present with challenges, thus reducing the impact of breakdown in placements and being served short term or immediate notices. Developing in specialist and bespoke services will remove instances of short term placements and unregulated placements.

Providing in-house provision isn't a sustainable saving. The infrastructure of running a home, the quality of care, managing voids is costly and much investment will be required for the expansion of in-house provision and third sector organisations.

What will be the impact to services in the independent sector that are bespoke to the needs of the children, this includes children with disabilities, victims of child sexual exploitation (CSE), and perpetrators of sexually harmful behaviour? The individual local provisions that provide a scale of specialism and excellence, they need to be encouraged to remain in Wales and be promoted to further develop. Changes to primary legislation may negatively impact the specialism these independent organisations provide to meet those bespoke needs.

Being a bordering local authority to England, it may be appropriate to commission a placement out of the local community, on occasions. The outcomes and safety of placing a child or young person to a bordering local authority within England (i.e. Cheshire) may be more appropriate than placing a child or young person to a neighbouring local authority within North Wales. We need to continue to consider a child's outcomes, their wishes, aspirations, experiences, positive influences (amongst many others) and these may be better achieved within a bordering England local authority placement.

Legislation needs to allow for small ethical providers who are allowed to make a reasonable profit but can demonstrate that the profit made is reinvested back into the organisations for the benefits of the children and young people. Can all providers become part of 4c's framework? There are already independent providers in Wales that can demonstrate the values of a not for profit. They provide a strong local connection and employability opportunities in the area; we must not lose these organisations.

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?

Organisations must be able to demonstrate that they are a not-for-profit organisation. Robust tests to be introduced to ensure that organisations can demonstrate they are purely a not-for-profit and not of subsidiary profit making/driven organisations. Need to include both third sector organisations and independent providers within these tests. Furthermore, need to ensure that those organisations who demonstrate the right values are not trading at surplus and profit is capped; need to evidence reinvestments of profits are being used for the development of securing outcomes for children and young people. Finally, all providers to go through a rigorous framework (such as 4C's) as an approved provider in Wales for Wales.

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

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

Welsh Government must recognise the need for pace. Rapid expansion of in house provision in the context of placement insufficiencies is difficult and should not be developed due to placement insufficiencies and there being unregulated provisions but rather investment in appropriate provisions (in house, third sector and independent providers) is required. Lead-in times for developing in house provision and third sector organisations is lengthy. We must consider all aspects of developing provisions, this includes planning, consultation, procurement of developers, frameworks, shortage workforce within the context of the construction industry currently, timelines for recruiting a workforce, vacancy challenges and securing CIW registration. This is a minimum of two years from concept to being open, then once open a further six months to ensure operational delivery is operating successfully. The current suggested timeframe does not reflect the scale of delivery that will be needed.

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

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

It is welcomed but opportunities of a coproduced approach to developing guidance is required. To consider local authorities having a primary role of working collaboratively with the Welsh Government to support with the development of producing a guidance.

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?

There are unforeseen circumstances/situations where a placement in a profit for organisation is the best and only viable option compared to, for example, an alternative option of an unregulated placement that is not suitable and doesn't meet the child or young person's needs and outcomes. An agreed approach to appropriately commission a full profit organisation based on the needs of a child or young person is required and we don't believe that local authorities should have these decisions vetted where there are exceptional 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?

There is a risk that organisations who focus on securing profit could take creative approaches to develop a 'not-for-profit' strand to their organisations, which doesn't fully accord with the values and principles this legislation is seeking to achieve. We need for a robust application process and all organisations following a framework approach, to ensure that any organisations wishing to deliver not-for-profit are required to complete a rigorous application process to ensure that they can deliver.

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?

Cross border initiatives between other local authorities could ensure sufficiency of language choice and preference of the children. Recognising the challenges of securing workforce but having a framework for cross border of placements with other local authorities could be an option?

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.

Need to consider the challenges within the workforce and ensuring sufficient training opportunities to promote staff, managers, Responsible Individuals to the sector. An approach to attracting a workforce in residential care through a national and regional approach to workforce development training needs to be considered; promoting training opportunities for specific skills that are required to work within a residential setting, i.e. therapeutic training. Further training opportunities to increase and obtain registered managers and Responsible Individuals is necessary. To develop successful in-house provisions the workforce must be at capacity, as this has a significant impact on placements and further development for in-house provision. However, due to the nature of the role and the specific requirements to the role, there is a need for competence amongst the workforce. Pay is often competitive in a thriving area of varying work opportunities, this includes tourism and service industry. Investment will be essential to promote people to the sector and a pay scale that reflects the specialism required to undertake the role is essential.

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.

Questions have been answered by the All Wales Direct Payment Forum, which a Flintshire County Council employee within Direct Payments is a Vice Chair for the Forum.

Overall, the All Wales Direct Payment Forum (AWDPF) members agree with the proposals as it will improve voice, choice and control for people who have a primary health need. They believe it will provide greater voice, choice and self-determination to people over their lives particularly and over their health, care and support needs. These elements can be lost when transitioning from social care to health care and it currently has a fundamentally negative impact on their lives if using Direct Payments (DP). Regardless of where funding streams come from people should be able to live their life the way they wish to.

One member stated that it should be essential there is one system for administering and governance of DP for people who are both funded by health or social services. It would also remove the risk to social care of the provision to health services by default. There would be considerable benefits for children transitioning to adult social care or health services.

AWDPF felt that the changes would provide and allow a fairer process when people are transitioning to their needs being met by health. In the past people have been scared to be truthful about their needs as they were worried about leaning into the health funding process and losing the control, consistency and continuity of their care staff. People didn't want to lose the system that has worked for them and their families. Overall the suggested changes are welcomed.

The AWDPF hope these changes will bring a more equitable process, providing more choice and allowing consistency, particularly for transition. AWDPF have experienced situations where social care practitioners have been reluctant to promote DPs as they are aware a person's needs will very soon increase and tip into Continuing Health Care (CHC) in the future and as currently DP cannot be used for CHC they feel it not appropriate to offer. However, these changes will encourage and enable practitioners to be more proactive and may be more inclined to explore this option.

AWDPF members commented that often medical tasks are being completed under the radar by Personal Assistants (PA's) and this unintentional covert practice will hopefully reduce/be eradicated and PAs will receive appropriate training and governance to be able to intervene appropriately.

It will also open up discussion about rates of pay for PAs. Health care tasks being undertaken will now be suitably recompensed and will be a positive move to professionalise in the role.

AWDPF members are happy that people will be able to receive the service they require in a timely manner and receive free at the point of delivery services. Currently, so many are continuing to pay assessed charges for the services that should be free at the point of delivery.

In principle the change will improve situations where PA's who have worked for someone for a long period of time are lost due to a lack of understanding around TUPE when someone transfers to CHC. The continuity and consistency of excellent care staff lost because they are either dismissed or made redundant when in fact, they may have been able to continue their working relationship with a person.

However, caution should be taken and it is important to ensure we do not replicate personal budgets as provided in England but that any system implemented is fit for purpose and for the context of Wales. It is vital that robust governance and support is provided to the person and their staff, with appropriate insurances in place to safeguard all concerned.

Will there be a requirement to amend Section 47 of the SSWBA regarding ancillary and incidental, to reflect health budgets provided under CHC and also to reflect, where appropriate, a health board commissions the support from a local authority to support a health budget package?

A forum member asked for clarity on the following:

- Would health have a care coordinator role if there was DP and would they ensure all the DBS checks, insurance and other requirements are in place?
- Would they still take over full responsibility for the package or would they want to break down the health tasks and want us to meet all the other needs as this would impact fairer charging and would increase our workloads?
- Would they also look at insurances that cover health care tasks and who would provide the training for those tasks?

Swansea forum member stated - The Welsh Audit Commission report of 06.04.22 recognised in its findings that 'in house' provision of support for DP was the preferred vehicle for facilitating client support. Swansea Council are currently investing in expanding their 'in house' Direct Payment Support Team and are promoting DP as a priority choice in mitigating identified Practitioner Assessed Need. There is value in further exploring this exemplar model and expanding the existing team to manage and oversee any proposed changes to ensure a seamless approach and a uniformity of delivery.

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.

AWDPF felt this very much links to the first question. However, some feedback received from forum members includes;

The benefits will be continuity of care and consistency of working relationships to care and support provided to an individual. The person will not have to use their own financial resources to contribute to a service but will receive rightly a service free at the point of access. The person will be able to continue to be in control of their lives and direct their care and support to suit their lives with appropriate training and guidance.

Their 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 DP. Particularly where there may be joint packages. There will need to be clear language, systems, and a process to distinguish between a Health DP and a Social Care DP. Unless there is to be a mechanism to not replicate but work collaboratively with existing support and systems?

Furthermore AWDPF members are asking; will health have their own support service and care coordinator role? As social care do. Would they be responsible for ensuring all the DBS checks, insurance and other requirements are in place for the employer and employees?

Would health take over full responsibility for the DP package if a situation was transitioning from social care to CHC, or would health want to break down the health tasks and want social care to meet all the other needs (as this would impact fairer charging and would increase workloads)? AWDPF members reiterated the changes would provide continuity of care, consistency for employer and employees, and it also acknowledges and recognises the existing PA relationships.

Will health DPs be an extension of the existing DP provision or a separate entity? The AWDPF identified the need for clarity on how health will implement these changes? Some members have expressed concerns over the title/wording and asked for changes to be made to what they will be called, as there may be confusion.

Health rates of pay would need to be considered as health care support workers generally earn more than social care workers. Would health set rates in line with social

care? At a time when finding care staff in the Domiciliary Care market is difficult, there is added concern of staff leaving social care to work for health, and people using health budgets is concerning

All local Health Boards will need to be mindful of cross border arrangements and transition, and make allowances for anyone moving around Wales that their DP continues until a suitable time to review. Appropriate levels of governance, safeguarding and training and insurance cover must be available to PAs. Will there be additional agencies able to provide the appropriate service to someone receiving CHC or will existing services be commissioned, what will the impact be on those?

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. Could this be a possibility?

One member highlighted a response as follows: There would be an increased coordination of the process for Health Boards. The process would need to be the same for all organisations. Would there be a resource issue for the Health Board to manage this extra demand? There are also commissioning and funding issues that should remain consistent for all organisations, otherwise this will cause considerable confusion. There may also be a supplementary benefit in that people who had previously declined to be assessed under CHC Guidance would then agree to engage in the assessment process; this would lead to an increase in people funded under CHC having a DP. It would also mean that people were having support and oversight from the appropriate agency and risk would be reduced. Client contribution to their care costs would also be negated if DP funding was via the health service. The benefit in this arrangement is that service users would be happier and more content with care arrangements that they engaged in and had control over. This would increase satisfaction and reduce complaints.

A 'one budget' approach if this could be achieved would significantly reduce current 'in fighting' as to which organisation ultimately pays for the service. If barriers and 'silo working' practices are stripped away, the user of these services would benefit with the assessed support identified as required and being delivered in a timely fashion, with cross organisation support to ensure continuity of delivery.

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

Very important to ensure the changes encompass the Wales context rather than choosing a model from England and this replicated in Wales. Concerns that this does not work and long-standing forum members have experienced this with Direct Payments since 1997 when the first DPs were implemented.

There are distinct cultural, geographical and socio-economic differences in Wales that must be considered. The right support at the right time to suit the above will be key to the success of health budgets 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.

See above

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

AWDPF members accept that there needs to be clinical governance, however, there is fear that this may lead to control and the ethos needs to continue to be that people are in control. Individuals need the greatest amount of control over their lives but the clinical governance is key to their safety and so, therefore appropriate conversations, training and interaction with people is key, in order for them to understand the importance of clinical governance but be reassured they are not losing overall control.

AWDPF members are all too aware the different approaches to risk between health and social care colleagues. It is important to iron out any differences and ensure any assessment of risk is co-produced and the approach benefits all areas of the workforce. AWDPF members asked for clarity on who the lead practitioner would be during a transition situation.

There will need to be a lot of work prior to implementation to ensure that integration with health colleagues is meaningful and proactive. There is a risk that changes may destabilise effective process and systems for Direct Payment Regulation. AWDPF members acknowledge that there is already a bureaucratic process in place, despite attempts to streamline by many and that navigating different cultural aspects and viewpoints is difficult. If these are not clarified early on, this potentially will cause more issues.

Welsh Government to be mindful that any changes to be made to primary legislation changes that involvement and input from organisations (and people within these organisations) are key to the consultation and implementation processes. Above all else any guidance produced needs to be clear and AWDPF members highlighted the changes made to the code of practice with the use of the word 'must' and 'should', has helped.

AWDPF members emphasised that it is Welsh Government responsibility to ensure that new legislation is followed, implemented and interpreted correctly and that the guidance should be clear to all parties. AWDPF believe that appropriate and timely training for all assessing parties and practitioners is key and that they must understand the implications and benefits for the recipient and for Mental Capacity Act (MCA), Primary Health Board (PBH), Health Inspectorate Wales (HIW), Care Inspectorate Wales (CIW), Welsh Government and local authority, all being involved to ensure this is available and implemented ahead of the 'live' date.

AWDPF members raised the concern of individuals having capacity to consent to the new health budgets and were clear that this should be determined following the MCA and the function should be key to this area. Capacity to consent to the Health Budget must be explored with clear pathways to who can stand in the shoes of the individual and work in their best interests.

Independent User Trusts – These can be very complex, expensive and there is little or no understanding across the board how these work and how to get them up and running. If they are to be used in the interim or continue to be an option more work is required. Where trusts are in place, appropriate and robust paperwork, and support for the trustees in order to safeguard the individual, PAs and trustees is needed. Also sufficient funding for individuals to have a legal trust drawn up.

AWDPF advise there needs to be clear transition mechanisms if someone currently receives DP from social care but this is to move to health.

Training and guidance for employers giving direction to their PAs on medical interventions is needed. Will there be a requirement for them to be trained in competency to give direction regarding medical tasks to their PAs in the same way PAs will require competency, training and governance?

There needs to be clear guidance on responsibility and roles. Lessons can be learnt from DP where employers refuse to take responsibility or do not fully understand their responsibility, or are dismissive of it. There needs to be robust and clear explanation to what the Health Budget will and will not fund and any actions taken if the individual strays from this or uses inappropriately. Regular and clear reviews of the Health Budget and a process in place, for if they end, allowing all scenarios to be covered.

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?

AWDPF acknowledge there are varying opportunities for people to use Welsh across Wales and acknowledged this is variable according to the Welsh local authority standards. There are challenges for PAs, availability of Welsh speaking PAs and time to undertake language and training instruction. Health board's standards on Welsh Language are different to those that are mandatory to LA's also.

Additionally consideration for the Welsh language are the following:

- Workforce demographic profiles are different;
- Legislation and standards are different;
- Welsh language commissioner needs to be consulted and included as part of co-producing promotional, marketing and documentation;

- Welsh language officers in LAs may want to work collaboratively with equivalents in Health boards and all need to be involved;

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 answer for 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.

Will the parent of children with CCC needs be able to access the same benefits as adult? How will health audit effectiveness?

Forum members stated the following:

- Co-producing the new arrangements have not been discussed or mentioned in this proposal. What involvement have service users had in the development of these new arrangements?
- Clear guidance about the new proposal and detail regarding what can be provided and by whom is vital;
- Guidance should be clear, easy to read and easy to follow for service users and professionals. Direct Payments as an option for all should be provided with equity, parity, clarity, transparency and delivered in a timely manner for all organisations throughout Wales;
- Should the proposal finally be adopted? Then a 'joined up' Communication Strategy to be devised incorporating all parties supporting client's accessibility to the new service and detailing the support available to navigate through this;
- There are also key considerations that the staff delivering the expanded DP service are appropriately instructed, trained, informed and supervised with clearly defined role profiles and job descriptions;
- There is currently an All-Wales Direct Payment Forum and a Direct Payment Advisor Forum that serve to support both development of the service and broad parity in delivery. It would be prudent that any developments capitalise on the significant amount of work already completed and ongoing;
- Nationally and Internationally the Citizens Network and Dr. Simon Duffy are doing some innovative work on personalised budgets that may be worth exploring.

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

There are 11 questions about this chapter.

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

Consider this to be a good idea because there is a need to have individual accountability within safeguarding and this forms part of this. Safeguarding is everyone business and an onus for everyone to be responsible for safeguarding is encouraged, so as to not hide behind 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?

Yes, see above answer (question 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.

Awareness raising needs to be had in regards to any legislation changes. What measures are there to ensure this happens and effectively? HR policies, for example will need to be updated, reviewed and implemented. Potentially other legislation will need to be reviewed? How can we ensure its effectiveness and who would responsible for proceeding with this, especially if it is deemed a criminal act? Close guidance to help individuals to understand their responsibilities will be essential. Potential risks could be, does it deter people from some of the professions around children and adults? There have been high profile cases in the past where the outcome of these cases leading to a criminal prosecution and statistics have shown less applications have been received for specific relatable careers after these high profile cases. Recruitment and retention at present is also difficult.

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

Duties to report in others countries have had difficulty in implementing the changes and the punishment measures. Consistent approach has been of a concern and

should changes in legislation be made, there is a need for a thorough consultation and implementation process with relevant bodies being able to have involvement with the consultation and implementation process.

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

These should sit alongside the existing duties on organisation under the 2014 Act. A need to consider institutional cultures must be explored and to highlight these institutional cultures, where there is a concern. It is difficult for sole employees to be in a position to challenge norms. Adequate training and implementing procedures/policies, with clear guidelines must be identified. Organisations also need to be accountable and therefore, changes to the organisation where institutional cultures are of a concern is essential. How will the individual reporting duties be implemented, who will be responsible for this? Need to ensure that all parties are 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?

It should apply to the workforce within relevant parties under section 162 of the act in respect of children and for adults. Aspirationally would want it to apply more widely but how would this legislation work in practice? How would it be governed?

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

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

As discussed in Question 3.6, how practical is it to impose this? Preferably, would want all roles, where they are in are working in a capacity with children and adults to be responsible. Could it be that all roles where there is a requirement for a DBS,

have a responsibility on individual reporting duties? Again, how would this be governed?

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

Appropriate sanctions could include the removal from professional register, acknowledgement on the DBS, work based sanctions. Many of these are already in existence within the workplace but there needs to be clear guidance between identifying poor practice opposed to criminal intent, where by an individual has failed to comply with reporting a safeguarding concern intentionally. At what point would it be deemed a criminal offence? How would it be governed, monitored?

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?

Don't consider that it would have an effect

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

Bilingual opportunities promoted and having the opportunity to respond in either languages.

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?

In agreement with this, however further information and clarity around what constitutes a reasonable cause would be needed.

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?

As in Question 4.1, need to ensure there is clarity of what information is required.

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?

Understand from an enforcement element that CIW need to be identifying unregistered services. Although having the ability to obtain power of entry, should it be used, still need to have a high level of respect for the individuals potentially residing in these services and respecting their space, their environment because essentially, this is their home. In addition how would power of entry be imposed? Clarity of what information is required in obtaining power of entry when identifying unregistered services will need to be made available.

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?

Same views as in Question 4.4, need to ensure that any power of entry when identifying an unregistered service is done with dignity and not at a detriment to the people using the services.

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?

Current workload for Responsible Individuals is already great and although no concern around publishing the annual returns, it is an additional administrative responsibility.

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, anything around performance should be about the improvement of quality for services rather than punitive measures. Annual return is part of an ongoing improvement & development plan. Imposing an offence for failing to publish an annual return provides another barrier between the regulator and the enforcing agency. Could there be more opportunities of collaborative working rather than punishment?

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?

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, as this will allow for making administrative processes more straightforward

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, as this provide an additional form of security for CIW

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 additional support for providers is welcomed

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?

Need to have an understanding of who deems it is futile and how this decision would be made? What is the criteria and how would this be supported?

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, as there may be occasions where a Responsible Individual is not available, for example, leave entitlement, sickness, and jury duty

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 the proposal to amend the 2016, especially as recruitment is particularly so difficult at present.

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.

Yes, probably right thing to do and particularly as it is so difficult to recruit at present and the additional delays within the recruitment once successful candidate appointed aspect also.

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?

Ensuring equal opportunities for the use of the Welsh language as much as possible.

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.

Ensuring equal opportunities for the use of the Welsh language as much as possible.

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.

It is about ensuring that it is getting the balance right between regulation and the areas that need improvement compared to service improvement and what is being done well. Service providers are continuously trying to help people and do the right thing, and it is being aware that there are pressures from health services which are increasing. These increased pressures needs to be acknowledged and this is on occasions leading to an impact on provider services and therefore, service delivery. This is an ongoing challenge. Collaborative working approach, where possible, with CIW would be beneficial.

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, provided the conditions are clear, time sensitive and clearly defined

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

Yes but an understanding of who the panel is made up of and how many? What is criteria to be on a panel, further information providing clarity is required?

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, as above but ensuring there are no delays.

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

On review of information where any discrepancies have arisen, could this allow for a revoke to 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.

Proposed changes will seek to enhance current processes but need to ensure that there is a clarity on these changes.

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?

Promotion of bilingual opportunities

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.

Promotion of bilingual opportunities

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.

Generally supportive of the proposal in terms of raising the status and qualifications of the childcare workforce. Agree that the professionalism and heightened awareness of the Sector is needed, and to highlight the importance of pedagogy, with childcare and play workers providing social care in many forms.

It has become clear that they are at the frontline of support for very young children and are often the first practitioners who develop a holistic view of the child.

Welcome the training opportunities this would bring to the sector and the expectations on settings and training providers to expand the scope of learning.

If the impact on children is that they are further safeguarded by well qualified practitioners then the changes will be worthwhile.

Early Years childcare is not currently seen as a career choice with good career prospects, wages are suppressed and lower than other sectors including by Welsh Government funding mechanisms. We need to consider that this could be seen as further bureaucracy and therefore costs within a sector that is already at risk.

Childcare providers in areas of deprivation are closing down as unsustainable and this is where we need this role to flourish to keep children safe.

Changes to primary legislation will help to make the connection between Social Care Wales and the qualifications frameworks, 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.

Benefits of the changes in legislation will improve the status of childcare roles, highlight the importance of the profession and the training levels available creating a heightened awareness of Early Years roles as a valid and recognised career choice. The outcomes for children, with a focus on wider aspects of learning & development and safeguarding will prevail. The proposal to extend the definition of 'social care worker' to include both childcare and play workers will place a key emphasis of promoting the role of keeping children safe.

The disbenefits could be that there is a further burden on the sector and childcare settings are used as alternative to other forms of appropriate social care. The expectation of higher wages for more qualified staff falls on local authorities and funding for projects, as well as parents who already struggling with childcare fees. There are indirect and direct costs to consider, along with potential savings. Early identification of concerns or additional needs of young children within Early Years in the long term could create savings as interventions could be put in place at an earlier stage. However, costs cannot fall on settings for backfill / overtime for training if this is to work as it would have an impact upon individuals and groups with protected characteristics and other practical issues need to be considered in regards to costs.

What would not want to be seen, is that for people to be in this profession and then having to pay substantial registration fees that could outprice people from the market and taking up job roles in these professions. This is an area that we are already struggling to recruit to, and generally pays less than the retail sector pay (for example), despite the importance of this role and its value to society.

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?

An informal approach to improving the Welsh language skills of staff might be feasible (see point regarding training costs and impact). Ongoing continuing professional development expectations for staff in the sector can already be unreasonable considering the high turnover currently (practitioners are moving to retail and other higher paid jobs). There is already a significant shortage of Welsh speaking qualified applicants to the sector in Flintshire. The percentage of parents requesting Welsh medium childcare is minimal. Pressure to comply with minimum requirements for Welsh language or imposed legislation could lead to settings closing. Therefore, the sector requires further support and for people to see it as a career of choice. The Welsh language is very much a part of many settings now and would like to see this further supported by advisory roles to maintain quality childcare, and to support the sector with skills such as speech, language and communication in both English and Welsh. All the evidence shows that it is quality childcare with elements such as outdoor play that have the biggest impact. We need

to ensure it is quality provision that develops, grows and is sustainable, particularly around the Programmes of Government, including universal 2 year old, 3-4 year old childcare offer and early entitlement/foundation phase nursery 1 & 2.

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

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.