

Senedd Cymru | Welsh Parliament

Y Pwyllgor Iechyd a Gofal Cymdeithasol | Health and Social Care Committee

Bil Iechyd a Gofal Cymdeithasol (Cymru) | Health and Social Care (Wales) Bill

**Ymateb gan** Family Fostering Partners, | **Evidence from** Family Fostering Partners,

---

## **General principles of the Bill**

### **1. What are your views on the general principles of the Health and Social Care (Wales) Bill?**

---

(we would be grateful if you could keep your answer to around 500 words)

The motivating principle for the Health and Social Care Wales Bill should be ensuring a sufficient number of foster parents are available for children who are unable to live with their biological families. However, the current Bill does nothing to achieve this principle, the drive to exclude for-profit providers seems to be driven more by political ideology rather than empirical evidence. The published commitment to remove profit has already led to a decline in investment and has even driven a not-profit provider to leave Wales due to the divisive atmosphere it created. This political approach overlooks the needs of children and does nothing to ensure that there are an adequate number of homes for children who are looked after.

The government claims to have strategies to decrease the number of children in care, a commendable goal but challenging to realise due to the complex causes for children becoming looked after. Consequently, it would seem both rational and reasonable that the government should have to demonstrate that it can indeed reduce these numbers before limiting the spectrum of available care providers by eliminating for-profit entities. Moving forward with this Bill without such assurance risks causing irreversible harm if we later find that the reduction in children needing care is unattainable, investment lost over years cannot be simply undone.

Furthermore, the rationale behind the Bill has been inconsistent, cited as cost-saving, improving quality, aligning with personal beliefs of ministers, or reflecting the views of the children in care. We shall go into more detail on this matter in our answers to other questions. For now, we would like to highlight the fact that the government could decide to grow not-for-profit provision and limit for-profit care in a myriad of other ways. For example, the government could prohibit for-profit providers from being members of the 4c's All Wales Framework, or by expanding the definition of not for profit to allow Social Enterprises or Employee Owned Trusts. We have not seen any justification for pushing

forward with the Bill as currently written as opposed to following some other route towards the political objective of removing profit.

It is crucial for members of the scrutiny committee to set aside personal political views and consider the tangible evidence. Pushing forward without thorough evaluation could have severe repercussions for children in Wales. If we fail to decrease the number of children in care, fail to boost not-profit provision, and continue to see a reduction in for-profit care providers, the responsibility for the resultant lack of adequate, safe homes for Wales' vulnerable children will lie with those who did not scrutinise the government's claims. We must seek to heed the warning made by the former First Minister Carwyn Jones when he stated that Wales shouldn't become a "strategy factory", this Bill combines strategy (the hope of reducing numbers without evidence this can be achieved) and policy, where some of the most vulnerable in our society will have to bear the consequences if strategy is unable to achieve the policy aims.

## **2. Is there a need for legislation to deliver the Welsh Government's stated policy intention?**

---

No

### **Please outline your reasons for your answer to question 2**

(we would be grateful if you could keep your answer to around 500 words)

The general principle of the Health and Social Care Wales Bill should be ensuring that there is a sufficient number of foster parents available for children in Wales. The government's explanatory memorandum, Section 3.15, acknowledges the growing challenge in matching children with suitable fostering families:

"Matching the needs of children with appropriate placements across the range of options such as fostering and care homes, is becoming more difficult"

Despite recognising this issue, the Bill, in its current form, offers no new measures to expand the pool of foster families, exacerbating the existing problem. This contradiction is also evident in Section 3.14, where it notes:

"a long-term trend of increasing use of care, along with presentation of more complex needs, and has presented significant challenges to local authorities."

It is unreasonable to highlight this issue in the memorandum yet continue with the Bill in its current form. There is no justification for prohibiting for-profit providers before the government has demonstrated clearly that it's able to decrease the trend of an increasing number of children requiring long term care, and of their needs becoming more complex.

The same CMA report quoted by the government in their own memorandum for this Bill and used as justification for removing profit states that:

“Our evidence suggests that the cost to local authorities of providing their own children’s home placements is no lower than the cost of procuring placements from private providers, despite their profit levels”

This is conveniently left out of all press releases and written justifications for this Bill’s principles. Furthermore, when discussing the Welsh Governments aims of removing profit from the care of children who are looked after, the CMA in the exact same report used as justification for the principles of this Bill states they:

“Have not found evidence that limiting for-profit provision would result in better outcomes for children and local authorities in the long term.”

Consequently, there is an inherent flaw in the logic stated in section 3.18, where Welsh ministers state that the children’s social care market is not functioning well, but the same ministers have decided to go against the findings of the CMA and claim without any justification that “the profit incentive is a key reason why the market is not functioning properly”.

We hope that this committee will be the ones to scrutinise the decision to push forward with this Bill. There is currently very little evidence that this Bill will improve outcomes for children, it seems that such evidence has been cherrypicked to fit a narrative, those who will suffer as a consequence are some of the most vulnerable in our society. Without scrutiny and oversight of this Bill’s main principles there is a real risk that in 5 to 10 years’ time, high quality private investment will have ceased, by then it will be too late to undo the damage caused by this Bill.

### **3. What are your views on Part 1, Chapter 1 of the Bill (sections 1-13), which makes provision intended to restrict the extraction of profit by providers of children’s care home services, secure accommodation services and fostering services**

---

(we would be grateful if you could keep your answer to around 500 words)

In addressing the current Health and Social Care Wales Bill, we have previously outlined the significant risks associated with its principal aim. Therefore, this section will focus on proposing constructive amendments to mitigate these risks while recognising the ongoing evidence that suggests removing for-profit provision does not necessarily reduce costs, increase quality, or improve the availability of services. In fact, such changes risk exacerbating difficulties in matching children with local placements.

Amending the Definition of Profit

Currently, the Welsh Government restricts permissible organisational structures to meet "not for profit" criteria to just four types. This narrow definition overlooks the potential contributions of other viable models such as social enterprises and employee-owned trusts. By broadening the criteria to include these models, the Bill will align with the government's political objectives while minimising adverse impacts. Including these structures would provide a more flexible transition pathway for providers currently operating under conventional corporate frameworks, thereby preserving service continuity and innovation.

### Regulating For-Profit Provider Access

Another option of meeting the manifesto aims by gradually reducing for-profit participation in the care of children could involve restricting their membership in the fostering framework, rather than an outright immediate ban. Such a policy would prioritise not-for-profit entities in the referral and matching processes while still allowing for-profit providers to serve as a last resort. This method would enable the Welsh Government to evaluate the effectiveness of its strategies aimed at reducing the number of children in care. If the number of children needing care decreases, the reliance on for-profit providers will naturally diminish. Conversely, should the need not decrease, the availability of for-profit services will prevent a sharp decline in available care options.

### Conclusion

The Bill's primary objective is to phase out for-profit childcare provisions, yet the justification for such a drastic measure often overlooks the practical consequences, notably the potential withdrawal of current providers from the market. There is a concerning lack of evidence suggesting that for-profit providers will adapt to or remain operational under the new regulations during the transition period. It is crucial for proponents of the Bill to prepare for the possibility that these changes could lead to a significant reduction in the availability of suitable placements for foster children in Wales.

In summary, while the intent behind the Bill to reform childcare services in Wales is clear, its execution requires careful consideration to avoid unintended harm to the very individuals it aims to protect. Expanding the definition of not-for-profit entities and adopting a phased approach to reducing for-profit participation are essential steps towards a more balanced, effective legislative outcome. These amendments would safeguard against potential disruptions in service while maintaining the diversity and resilience of the care provision landscape in Wales.

## **4. What are your views on Part 1, Chapter 2 of the Bill (sections 14-22 and schedule 1), which makes a number of amendments in relation to social care services, social care workers and local authority social services, intended to ensure that the 2014 and 2016 Acts can operate fully and effectively**

---

(we would be grateful if you could keep your answer to around 500 words)

N/A

**5. What are your views on Part 2 of the Bill (sections 23-26 and schedule 2), which relates to health care, and makes amendments to the National Health Service (Wales) Act 2006 in order to enable the introduction of direct payments within NHS Continuing Healthcare**

(we would be grateful if you could keep your answer to around 500 words)

N/A

**6. What are your views on Part 3 of the Bill (sections 27-30) which contains a number of general provisions, including in relation to regulations, interpretation, consequential and transitional provisions, and coming into force provisions**

(we would be grateful if you could keep your answer to around 500 words)

N/A

## **Implementation and impact of the Bill**

**7. Are there any potential barriers to the implementation of the Bill's provisions? If so, what are they, and are they adequately taken into account in the Bill and the accompanying Explanatory Memorandum and Regulatory Impact Assessment?**

(we would be grateful if you could keep your answer to around 500 words)

Putting aside our significant concerns regarding this Bill, how such a law is implemented is largely irrelevant because the mere announcement of the legislative goals caused a decrease in investment.

Nevertheless, when it comes to the implementation, we do have concerns regarding 3 foundational claims which are often repeated without substantiation, these are:

- 1) The government will succeed in reducing “the number of children in care” (Section 3.41 of the memorandum) prior and during the transition period.
- 2) Assuming that existing not-for-profit organisations can expand to replace the current for-profit providers.
- 3) An assumption that a sufficient number of for-profit providers will be able to transition to not-for-profit models.

While we all hope for the Welsh Government's success in safely reducing the number of children in care, historical efforts and the complex nature of childcare suggest there is little evidence that such reductions can be achieved to the extent necessary to compensate for

the decrease in provider availability. Furthermore, it is imprudent to pass this Bill in its current form without first ensuring these foundational changes are achievable; doing so risks reducing the provision of care without a corresponding decrease in need.

Over the past two years, despite government claims of supporting not-for-profit growth, we have witnessed a well-established and high-quality not-for-profit provider exit Wales, indicating a trend contrary to the governments stated aims.

Finally, there is little evidence that current for-profit providers will be able to transition into one of the models provided in this Bill and there is little evidence that providers will be willing to continue to operate during the transition period. More providers might be encouraged to transition if the Bill were to recognise and include other viable models, such as social enterprises and employee-owned trusts.

In summary, the successful implementation of this Bill's aims hinges on three challenging objectives: reducing the number of children in care, encouraging the expansion of not-for-profit provision, and facilitating the transition of for-profit providers to not-for-profit models. Failure to meet any of these goals could lead to dire consequences for children who are looked after across Wales.

To mitigate these risks, the definition of not-for-profit should be expanded. Organisations such as Cwmpas, the 4C's, and NAFP have tirelessly advocated for a broader definition, which would allow the Bill to be implemented in a way that minimises harm whilst achieving the political aims. It is crucial for stakeholders to challenge and hold the government accountable to ensure that the legislation serves the best interests of children in Wales effectively and compassionately.

## **8. Are any unintended consequences likely to arise from the Bill?**

(we would be grateful if you could keep your answer to around 500 words)

The proposed Bill poses significant risks to the availability of foster care and residential services for children in Wales. If the underlying assumptions fail, as discussed in response to question 7, the consequences could be severe. Although the government has multiple ways to fulfil its manifesto pledge, the current version of the Bill is likely to cause more harm than good. Modifying the Bill to include a broader range of care models could mitigate these risks, furthermore, expanding the scope to include Social Enterprises would align with the Social Services and Well-being Act 2014 which imposes a duty on local authorities to promote social enterprises.

Additionally, other measures could be considered, such as only allowing not-for-profit organisations to access the All Wales Fostering Framework or ensuring that all providers are required to achieve a level of corporate responsibility through schemes such as B Corp

certification. This consultation presents a critical opportunity to amend the Bill as it's currently written so that the governments manifesto commitments can be achieved without risking sufficiency.

Finally, it is crucial to ensure that foster parents retain the freedom to work with the provider of their choice, whether that's a local authority or an independent agency. Under current HMRC rules, foster parents in every Local Authority (LA) and Independent Fostering Agency (IFA) are considered self-employed, allowing them to select organisations that align with their values and provide optimal support and training. Limiting the number of available providers in Wales will inevitably reduce these choices, leading to decreased competition and potentially poorer support. This restriction poses a risk of foster parents exiting the sector if they cannot obtain the necessary support. Worryingly, our research indicates that forcing foster parents to switch providers will lead a significant number to stop fostering altogether. Should this Bill be enacted in its current form, there's a real concern that Wales could lose a large portion of its experienced foster care workforce. The best way of ensuring that this does not happen is to support the transition of for-profit providers into not-for profit structures.

**9. What are your views on the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum?)**

---

(we would be grateful if you could keep your answer to around 500 words)

N/A

**10. What are your views on the Welsh Government's assessment of the financial and other impacts of the Bill as set out in Part 2 of the Explanatory Memorandum?**

---

(we would be grateful if you could keep your answer to around 500 words)

It is essential to commission further research on the financial impact of this Bill, as the figures and methodologies outlined in the Regulatory Impact Assessment appear disconnected from practical realities. There is a serious risk that overly favourable financial projections are being used to support the Bill in its current form, which in turn, would expose local authorities and the Welsh Government to unforeseen financial liabilities in the years to come.

For instance, ADSS Cymru projects a 10% cost reduction in residential care provided by local authorities, attributing this to the "absence of a need to generate a return on capital". However, this assumption contradicts findings from the CMA, which indicate that the costs for local authority provision are comparable to those of private providers, including capital costs. Similarly, projected savings in foster care—anticipated at 30%—lack empirical



support. The CMA report highlights that while local authorities might sometimes offer more cost-effective placements, direct comparisons are challenging due to varying child needs and service models. The data underpinning ADSS Cymru's forecasts, sourced from Foster Wales, requires a nuanced evaluation that considers the specific needs of children in both LA and IFA care, rather than a broad cost comparison. A more detailed cost analysis is likely to have significant repercussions for the bottom-line financial implications of the Bill.

The projected savings in the Bill are based on two key assumptions: Firstly, as mentioned above, there is the assumption that local authority (LA) provision will prove to be more cost-effective. Secondly, that foster parents currently affiliated with for-profit Independent Fostering Agencies (IFAs) will overwhelmingly transition to LA care instead of opting for not-for-profit IFAs. Such an assumption is precarious and is not backed by empirical evidence, risking further inaccurate financial projections. Foster parents often choose IFAs for the additional support such organisations can provide. If these foster parents decide to continue fostering after new legislation is enacted—though many may choose not to—our research suggests that it is more likely that they will opt for not-for-profit IFAs rather than LAs. Consequently, the estimates in the regulatory impact assessment appear significantly flawed; it is improbable that LA foster care provision will increase by the projected 26.2% to 42.3%. Instead, the increase in not-for-profit IFA provision will likely exceed the modest 1.3% to 2.3% currently forecasted. Given the Regulatory Impact Assessment's projection that costs for not-for-profit provision will remain unchanged, the anticipated savings are unlikely to materialise. This scenario exposes financially strained local authorities to significant financial liabilities stemming from these inaccurate projections. Such miscalculations could further exacerbate the fiscal challenges facing these entities, underscoring the need for a more accurate and reliable financial assessment before proceeding with the Bill.

It is concerning that such a crucial Bill is being advanced based on questionable financial estimates that fail to accurately compare different types of provision. Notably, Scenario A from the Regulatory Impact Assessment suggests that the most streamlined approach would be for a majority of for-profit providers to transition to new organisational models. This reiterates the need to ensure that the models in scope are ones which encourage as many providers as possible to transition away from a Ltd by shares corporate structure.

In conclusion, without additional in-depth research into the financial implications of the Bill as it stands, there is a substantial risk that local authorities will bear the brunt of the impact due to insufficient examination of the budgetary projections. This underscores the urgent need for more thorough financial scrutiny to avoid placing undue burden on LA's.

**11. What are your views on the Welsh Government's integrated impact assessments (set out in Part 2 of the Explanatory Memorandum), including the Children's Rights Impact Assessment**

---

(we would be grateful if you could keep your answer to around 500 words)



Given the concerns previously expressed, we find no evidence that this Bill, in its current form, will achieve the goal of ensuring "a range of good-quality stable placements." (section 9.6) Without actively encouraging and supporting as many existing providers as possible to transition to a not-for-profit model, the risk to "placement sufficiency and stability" (section 9.7) will likely persist beyond the short-term period mentioned in the Explanatory Memorandum. The most effective way to minimise such risks is by broadening the models currently included within the scope of the Bill.

Moreover, it is crucial to communicate clearly that foster parents deserve fair compensation for their round-the-clock work. There is a genuine concern that the well-intentioned effort to prevent children from feeling like commodities could inadvertently lead foster parents to feel undervalued and hesitant to seek the compensation they rightfully deserve. Balancing these contrasting goals—ensuring children do not feel transactional while providing foster parents with adequate compensation—presents a significant challenge. Therefore, the government must be precise in their messaging, affirming that foster parents are entitled to, and should receive, adequate compensation for their indispensable role. This clarity is essential to prevent exacerbating the current problems with placement sufficiency.

## **Development of the policy and legislative proposals**

### **12. What are your views on the approach taken by the Welsh Government to the development of the policy and legislative proposals reflected in the Bill.**

#### **Among any other issues, please consider in particular the approach to engaging and consulting with stakeholders**

---

(we would be grateful if you could keep your answer to around 500 words)

The engagement process leading up to the publication of this Bill has been disappointingly one-sided. We have previously suggested amendments that align with the government's manifesto goals while minimising potential harm. Despite efforts by organisations like the 4C's, Cwmpas, and NAFP to broaden the range of models to allow for profit removal without harming the care of children, the Bill frustratingly remains unchanged. It still incorporates models that experts have consistently criticised as overly restrictive since they were originally mooted in 2022. There is no valid reason why the manifesto's objectives cannot be met by incorporating new not-for-profit models such as Social Enterprises, which would complement the Social Services and Well-being Act of 2014, Employee Owned Trusts, or Companies Limited by Guarantee without share capital. To proceed with the Bill in its current form is to prioritise politics over the well-being of children and foster parents.

Additionally, the lengthy delay of over six months between the original consultation submission and the publication of the consultation has compromised the accuracy of the data used, adding another layer of concern.

Finally, the government's lack of clarity in defining "profit" and detailing the strategies to achieve their objectives has created a divisive and hostile environment for those who work to look after children. This atmosphere has had severe repercussions: a respected not-for-profit provider has chosen to leave Wales, certain local authorities are refraining from long-term placements with dedicated families because those families foster with IFAs, and social workers employed by IFAs have been advised by their local authority colleagues to seek new employment due to an impending ban on all IFAs. Additionally, the distribution of letters to foster parents, insinuating that they must transfer to local authority care to continue fostering their children, has caused significant distress. One foster parent was brought to tears, fearing the loss of a child they consider family unless they switch to a local authority that cannot provide comparable support.

It is imperative that this polarising "us vs them" narrative, which indiscriminately categorises all Independent Fostering Agencies, regardless of their structure, as inferior to local authority care, be thoroughly reassessed and rejected. A more inclusive and supportive approach is essential to safeguard the well-being of children and maintain the integrity of the foster care system.

## **Any other issues**

### **13. Are there any other issues that you would like to raise about the Bill, the accompanying Explanatory Memorandum and Regulatory Impact Assessment, or any related matters?**

---

(we would be grateful if you could keep your answer to around 500 words)

To summarise, although we believe that this Bill will not lead to improved care, outcomes, or financial savings, we recognise that it fulfils a manifesto commitment. Consequently, here are suggestions on how to achieve the political goals while minimising potential disadvantages or risks:

Expand the Models:

Consider the work conducted by the 4C's, Cwmpas, and NAFP on viable models. We're aware that some providers have also submitted possible new models to government representatives, however, the Bill as it is currently written still uses the initial proposals put forward in 2022, which have not been updated or expanded upon. It is crucial that these newer models are seriously considered to ensure the legislation can be enacted in a manner which fulfils manifesto commitments whilst meeting current care needs.

We recommend prohibiting any IFA with a Ltd by shares corporate structure from operating in Wales, but supporting high-quality providers who wish to continue offering care by transitioning to Social Enterprises, Employee Owned Trusts, or a voluntary organisation limited by guarantee (similar to regulations in Scotland). Supporting as many providers as possible in transitioning to a not-for-profit model is crucial for maintaining adequate care for children in Wales.

#### Ensure Consistency:

The care landscape in Wales has seen significant changes over the past two years, which is not conducive to ensuring high-quality care. Once this Bill is enacted, there is a critical need for consistency. It would be prudent to limit the powers of ministers to make substantial amendments to key aspects of the Bill without extensive consultation.

#### Facilitate Cross-Border Collaboration:

Given the porous nature of the border between England and Wales, it is essential that the Bill accommodates the reality of communities regularly crossing the border. Local authorities should have the flexibility to match children with carers based on suitability rather than geographical limitations. Moreover, as organisations transition, they may face challenges with cash flow or raising capital and might rely on entities in England to guarantee their debt. Ensuring this remains an option is vital.

#### Reevaluate Financial Projections:

We have significant concerns regarding the financial projections in the Regulatory Impact Assessment. It is imperative to conduct a thorough study comparing like-for-like provision costs and assessing the percentage of foster parents willing to transition. Without this analysis, there is a risk that local authorities will be burdened with significant unexpected costs.

