

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 Children in Wales - Plant Yng Nghymru, | **Evidence from** Children in Wales - Plant Yng Nghymru,

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)

Children in Wales welcomes the publication of the Health and Social Care (Wales) Bill and its commitment to rebalance care and support. The key proposals in respect of the intention to eliminate profit from the care of children in care are an important step forward towards the shared goals of improving outcomes and quality of provision of services for all babies, children and young people in care in Wales.

We have witnessed a significant rise in the number of children and young people entering the care system in Wales over the past 10 years and are acutely aware of the increasing pressures and demands this has placed upon the public sector workforce and their attempts to consistently deliver quality services and improved outcomes for all children in their care. All attempts to address barriers and resolve the current deficiencies in respect of placement choice, stability and availability, and many of the well-documented supply-side and workforce challenges is to be welcomed.

Introducing legislation is a bold attempt to rebalance the system and tackle many of the challenges which have proliferated the system, as well as seek to address the negative perception amongst some groups of children in respect of services making profit, how this is being used, and the excessive costs to local authorities when seeking to match a child with an appropriate setting. It is an opportunity to build capacity closer to children's communities and reduce costs for local authorities, all of which we would support.

Whilst in principle we support the vision and aims of the legislation to explore ways in which the current market can be transformed more effectively in response to the growing body of evidence citing the need for reform, we are acutely aware that there are significant challenges, risks and considerations ahead if ministerial aspirations are to be fully realised. This includes, but is not limited to, the timescales currently being proposed in the Bill for transitional arrangements which many of our members believe need reconsidering, as well

as the impact on sufficiency of provision, the current workforce and children directly. More detailed points are made below.

Children in Wales are fully committed to working with the Welsh Government, and our partners, members and other stakeholders, in our shared endeavour of improving the life chances, outcomes and experiences of all children, and to ensure they have all their rights met and that their best interest and wishes/feelings are at the forefront of all considerations. We see this Bill as an important contribution towards realising these goals.

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

Yes

Please outline your reasons for your answer to question 2

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

There is a need for legislative change to ensure that the policy intent is fully realised. By placing new and revised statutory duties upon named public bodies as key delivery agents and corporate parents for children in care, a revised statutory framework provides an opportunity to strengthen existing approaches for delivering improved outcomes for children in care, if consistently and effectively implemented in practice, supported by robust and transparent monitoring and accountability arrangements.

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)

Children in Wales welcomes attempt to rebalance the market and to seek radical solutions for improving placement choice and stability.

We support the policy aims of ensuring that public money invested in the care of children does not profit individuals or corporate entities but is used to strengthen choice and stability, and to secure improved wellbeing outcomes and life chances for all children and young people in care. The priority should always be to secure the best and most appropriate environment for every child, taking into account their rights, needs, best interests and their wishes & feelings. The care system should never be driven by motives other than these, and certainly not by any desire to accumulate excessive levels of finance and wealth.

Whilst we support the intention to remove profit, to date however, much of the debate around 'profit making' and 'private' has to a degree been negative, fuelled by reports of inflated costs, poor accountability and excessive financial burdens being placed upon local authorities, particularly when seeking to place a child with a particular set of needs in an emergency and/or in geographical locations where more specialist provision may be low or unavailable. Whilst there is a growing body of research which supports the need for change, less recognition has been given to the point that some children will have positive experiences in some profit-making organisations which reinvest elements of profit towards improving services, providing good quality specialist provision, care and support, and delivering positive outcomes for children. In fact, the EA to the Bill accepts that independent services are delivering positive outcomes with no marked difference in quality between profit and local authority provision.

Nonetheless, Committee members will wish to explore levels of profit accumulated, how this is being used and whether a sufficient proportion is being reinvested back into services to improve provision and experiences for children in care. It is unhelpful to generalise and tarnish all profit-making providers as bad, especially as they will need assistance should they wish to transition.

It does not necessarily follow that 'not-for-profit' organisations always make best use of their resources and deliver better quality care, experiences and outcomes for children. There is further discussion to be had in terms of how any surplus funds accumulated by non-profit organisations is then appropriately reinvested in their workforce, their direct services and importantly, is retained in Welsh local communities for the benefit of children and young people they are there to serve. The Bill is quiet on these matters.

Eliminating profit and rebalancing the market has the potential to create opportunities for innovation and open up spaces for children's third sector organisations and local community services to work collaboratively with local authorities to provide diverse provision and quality of care, particularly some models of community based residential and family style care. It could also result in lower costs to the placing local authorities by reducing competition for places and escalating costs, and rebalancing demand and supply.

We do not support proposals in Section 13 for unregistered accommodation to be considered an appropriate option for any length of time for any child, and reject the proposal for it to be placed in legislation (and the potential of a 'slippery slope' emerging with unintended consequences and safeguarding concerns). Placing a child in unregistered accommodation is currently illegal in Wales and should remain so. We raised concerns with the UN Committee on the Rights of the Child regarding children being placed in unregistered accommodation which have since been reflected in their recommendations and were raised in evidence provided by other agencies during the CYPE Committee 'Radical Reform' inquiry.

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)

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)

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)

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)

There are potential barriers and risks to the implementation of this legislation.

In relation to Part 1, Chapter 1, potential risks include further gaps emerging in registered provision with a reduction of placements in Wales due to the current timeframes for providers to transition. There is a need to ensure that sufficient time, support and resources are made available for existing providers to expand, diversify and/or transition towards non-profit models of service delivery, and for new providers, partnerships and collaborations to emerge. The transition phase demands adequate time and has to be properly managed to minimise any disruption to children's continuity of care and allow time for the market to readjust and the non-profit sector to grow.

Many of our members have concerns regarding the proposed timelines for transition and full implementation of the Bill. We suggest the current timetable for the transition phase is reconsidered, particularly if there is any likelihood to be adverse consequences on placement choice and provision, or any disruption in the care of children, including children with more complex needs. provided for in specialist provision. A risk assessment should be published and made available for scrutiny.

Presently we are unclear how many independent service providers intend to transition or will leave the market. Our foremost consideration is to avoid children and young people receiving, albeit in the short term, less choice and stability; a poorer quality service and being placed away from family, friends and their communities or in any unregistered provision. Consideration is also required in terms of any potential reduction in workforce numbers and the loss of experienced staff, including the number of foster carers should provision be reduced in the short term, and the adverse implications this will have on children's services already under significant pressure.

Proposals to place a duty on local authorities to secure sufficient accommodation and publish annual sufficiency plans are to be welcomed but we reiterate our concerns in respect of sufficiency of not-for-profit placements to meet all children's needs in line with the current timeframe set out in the Bill and investment made available to date. We note that the sufficiency plan will be prescribed through regulation which we have not had sight of.

Eliminating profit is not a panacea for solving all the challenges currently facing the workforce, or a solution for addressing the growing numbers of children being removed into state care. More investment is needed to help address the financial and budgetary constraints and to address current workforce challenges, including staff recruitment and retention, training, development, capacity and infrastructure. These elements should also be prioritised as part a broader whole system approach to change and improving outcomes for children in care. Once again, the Bill is quiet on many of these matters.

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)

In respect of Part 1, Chapter 1, much will depend on adequate forward planning and addressing potential risks in advance of the transition dates which may need revisiting. It is essential that any disruption for children presently in safe and stable profit-making placements is minimised and that they are fully involved in all decisions around their future care. It is somewhat concerning that at this point in time it is not clear how many for profit providers will leave the market, meaning that the potential for disruption and negative impact and demands placed upon children is quite significant, not only in respect of their accommodation but also their connections with family, friends, school, health services, communities and their relationships with current carers who will also be impacted.

There is uncertainty in respect of the implications on the existing workforce. and any potential reduction in workforce numbers, including the number of foster carers should provision be reduced in the short term, and the implications this will have on children's services more broadly. It's not yet known how many carers will wish to transition or leave,

how the transition process from one agency to another will be seamlessly managed and whether there will be any long-term implications – positive or negative – in respect of our continued drive to recruit and retain more foster carers into the system, including those providing specialist care for children with more complex needs.

It will be essential that children and young people are fully engaged and supported throughout all processes of change, and an active offer of a professional advocate must be provided to help ensure that they secure their rights and get their views heard to inform decisions around their future care. Children should be engaged sensitively and kept informed from an early stage, with robust safeguards put in place to capture their views and opinions, acknowledging that whilst the focus is on the provision of services, it is children and young people who will be most impacted by these decisions

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)

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)

Clarity is required around any future resource being made available beyond 2025 especially in light of the transition phase for current profit providers being 2027, and whether any additional support for non-profit providers is required. Given the uncertainty in terms of the landscape and sufficiency of provision in 2025 and beyond 2027, it is not clear at this stage whether further resource will be required to recruit carers and for local authorities to secure additional properties in their locality to meet both change and demand

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)

Whilst we welcome the publication of a CRIA to support the Bill, the limited content published provides insufficient detail and assurance that children's rights have been fully taken into account during the drafting of this Bill, and that all the risks, many of which we have highlighted, have been mitigated. The CRIA shares some of our concerns by acknowledging the risk to placement sufficiency and stability which could have a negative impact on children's rights and their outcomes in the short term. Simply acknowledging this without setting out the steps to be taken to mitigate the impact of this is not

satisfactory and runs counter to the duties placed upon Welsh Ministers set out in the Children's Rights Scheme in support of delivering the Rights of Children and Young Persons (Wales) Measure 2011.

We previously express our disappointment that no Children's Rights Impact Assessment was made available as part of the public consultation to inform proposals to eliminating profit from the care of children. 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 guidance published by WG officials in the children's rights branch to support colleagues to discharge statutory duties on behalf of Welsh ministers.

The Children's Rights Advisory Group (CRAG) facilitated by Welsh Government, of which Children in Wales is a members, routinely provides advice, guidance and support to officials across Welsh Government branches when developing their CRIAs. We are disappointed that in this instance, officials failed to utilise this resource and strongly urge Committee members to insist that a full CRIA is produced, published and scrutinised alongside this Bill.

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)

We were pleased to have had an opportunity to contribute to the public consultation which has informed the drafting of the bill as well as through our membership of the Transformation Delivery Group. Our engagement with various researchers during the course of the past 2 years and with our national member organisations through our policy networks have also been helpful to inform our thinking. We are also aware that a number of our members as delivery bodies were invited to contribute to the Eliminating Profit Programme Board, and there have been some opportunities for the voices of children and young people to be heard. We note that the commitment for this Board to monitor and evaluate implementation of the proposals (10.3) and would call for regular reports on progress to be made public and shared with Senedd members to aid future scrutiny. Timescales are also needed in respect of the proposed 'formal evaluation' (10.4)

However, the public communication in advance of the proposals set out in Part 1, Chapter 1, could have been better. There is a lack of information in relation to ongoing decisions in

the public domain, whilst excepting the complexity and sensitivity surrounding the journey towards eliminating profit. Whilst it is acknowledged that some groups of children with previous care experience have been engaged and forthcoming with their views of the proposal, there is a need to ensure that children currently in the care system and who will be directly affected are appropriately and sensitively engaged. It would have proved helpful to have had sight of the views of children and young people captured through robust research on these proposals to accompany this Bill.

There is a lack of accessible information on the proposals to accompany the Bill and EA especially tailored for children and young people. Aside from an easy read version in support of the consultation on the proposed changes to primary legislation on social care and continuing health care, we are not aware of resources being produced to help inform children of the proposed changes and to support organisations to effectively engage the voices of children as part of their responses.

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)

The overarching objective must be to improve quality of provision, strengthen the workforce and enhance the experiences for children in care, none of which is guaranteed exclusively through this Bill

The elimination of profit should be seen as a significant, but only one part of a much wider programme of work required to reconfigure services for children. There are well documented workforce challenges, budgetary constraints, growing demand and complexity of need in the community, the impact of which are placing additional strains upon public and third sector services which are unsustainable. This was clear in the evidence provided to the inquiry into radical reform undertaken by the Senedd CYPE Committee in 2023.

Whilst we continue to support the Welsh Government's vision and ambition and would expect to see real benefits for children in the medium-long term, our pressing concerns are the here and now. There is a need to take a whole system and whole-government approach by taking a concerted focus with adequate and sustainable resources on strengthening family support services and programmes which provide early help, intervention and preventative support, to help reduce the numbers of children entering care and to support those children whilst in care and then to safely transition towards independence. Growing levels of poverty and cost of living pressures are placing

additional strains on all services and sections of the population. The implementation gap between policy and practice remains a growing concern

These are not reason to not support this Bill, but recognition that if Ministers are seriously committed to radically reforming children's social care in Wales, other pieces of the jigsaw require urgent attention too, yet have not formed part of this Bill or any other legislation expected during this Senedd term.

