

HSCWB36

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 Comisiynydd Plant Cymru | **Evidence from** Children's Commissioner for Wales

Please use this template to draft your responses to submit via the online consultation form.

Evidence from: Rocio Cifuentes, Children's Commissioner for Wales

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You do not need to answer every question, only those on which you wish to share information or have a view.

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)

I welcome the introduction of legislation to phase out profit making from children's residential, fostering and secure care in Wales. My office has long called for the safe reduction of profit in children's care services as a direct result of representations made to us from care experienced young people themselves, and this Bill brings forward the necessary provisions to make this shift.

I am unclear from the face of the Bill about the provisions relating to Continuing Healthcare and would welcome clarity around this during the passage of the Bill. I will cover this further in my answer to question 5.

I would also like to note my disappointment that Welsh Government has not taken the opportunity to legislate on outstanding areas relating to children's social care when bringing forward this Bill. In particular, the extension of personal advisor support to all care experienced young people, the application of the 'When I'm Ready' principles to young people leaving residential care at age 18, and strengthened provisions in respect of Corporate Parenting. I will cover these points in more detail within this response.

I also note that mandatory reporting was included in the pre-legislative consultation but not in the Bill, with the Government's response to the consultation indicating instead that there would be work to strengthen compliance with existing regulatory frameworks. I would like to hear more detail about what that work consists of, and would highlight the case of the headteacher from North Wales recently convicted of sexual offences involving pupils as an example of where it appears that compliance with the existing frameworks may have been significantly lacking, leading directly to harm to these young women.

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

- ☒ Yes
- ☐ No
- ☐ Don't know
- ☐ Don't have a view

Please outline your reasons for your answer to question 1

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

The current system for finding and securing suitable placements for children in care is not working. Multiple reports including from the Competitions and Markets Authority (CMA) indicate that the current marketised system is dysfunctional and not serving children's best interests

<https://www.gov.uk/government/publications/childrens-social-care-market-study-final-report>. There are several factors behind this, including the rise in overall numbers of children looked after, requiring more placements to be available, and what is noted in the CMA report in terms of placements springing up in clusters, in more affordable areas. This has led to children being placed further away from home, with placement costs escalating due to continued demand.

Amending the primary legislation is the only viable way to secure changes to the way that the market is operating, as far as we are aware, so it is necessary to bring these provisions forward in order to meet the Programme for Government Commitment. And that commitment is important to reshape the market, with the primary driver being young people being placed closer to home, and having access to ongoing support for their health and wellbeing. This will also support

with transitions out of care for young people, into communities they are familiar with and where they have built support networks and connections.

What is also required, however, is ongoing support for local authorities to ensure that they can shift towards having more sustainable provision within their areas. There are some local authorities who will be better placed than others to meet current and future demand, and this will, in part, be affected by the size of the area and its population of children looked after.

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)

I have provided views relevant to this question in my previous answer.

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)

My understanding of the terminology related to Continuing Healthcare is that this is for complex healthcare needs for over 18s, as provided by the NHS. Children and Young People's Continuing Care also provides for complex needs for those aged under 18, but importantly this is subject to statutory guidance mandating joint working and funding between health, social care, education and others, as required. The reason for raising the above point is to ensure that there is greater clarity around the provisions of the Bill to ensure that it is only intended to cover over 18s, as the provision of healthcare services is different to

complex needs provision for under 18s. The Bill, as drafted, reflects the needs of adults, children, and carers, so it is important that this point is clarified.

Direct Payments for Complex medical needs holds a greater risk associated with the employment of care givers as opposed to clinicians or medically trained practitioners. There is also the potential issue around the availability of people to fill these roles; this is already a known pressure in Social Care provision.

These pressures on families were reflected in my office's 2019 'Don't Hold Back' report on transitions to adulthood for young people with learning disabilities, noting that just co-ordinating a child's appointments is a "big job" and sees parents acting as "a secretary and administrator" just to keep track of everything, particularly where there are changes or missed appointments

<https://www.childcomwales.org.uk/wp-content/uploads/2019/10/Dont-Hold-Back.pdf>

There may also be a lack of robust safeguarding controls if services were being commissioned through methods other than formal registered and regulated services.

If these provisions are intended to include Children and Young People's Continuing Care, shifting towards commissioned services being accessed via direct payments could put enormous pressure on families of children with complex needs. I would welcome clarity from the Government on this and, if it is to include children's continuing care, how the issues and pressures identified here would be mitigated and protected against.

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)

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)

I am concerned at the potential for the provisions requiring Welsh Ministers' approval for certain placement decisions related to profit making services. Whilst I recognise the need to have close scrutiny over the transitional arrangements and to ensure that the principles and aims of the Bill are implemented fully, there is already a layer of scrutiny built in with the requirement for Local Authority annual reporting on sufficiency, and placement usage and commissioning. I think that is an important provision to provide sufficient oversight of the placements landscape and to hold local authorities to account in delivering their important duties as contained in the Bill. There are three reasons why I'm concerned about Welsh Ministers having to approve placements:

1. This may introduce delay into the decision making, which can ill be afforded given the current competition for suitable placements. I would not want suitable placements for children to be lost simply because of delays arising from an additional layer of scrutiny, which as I'll set out in the other reasons I think is unnecessary/potentially detrimental;
2. This potentially introduces decision making that may not be in children and young people's best interests and well-being; who is better placed and trusted to make those decisions than their appointed social worker and associated team and management? The Bill itself allows placement in a profit making setting where another placement would otherwise be inconsistent with a child's wellbeing. There is unlikely to be a decision of this magnitude made without Head of Service approval, and local authorities have their own scrutiny arrangements in place to keep decisions such as this under review; and
3. The annual reporting mechanism within the Bill allows for public and Governmental scrutiny of local authorities in any event, so I don't think a further layer of scrutiny/intervention is proportionate.

I do not intend to criticise Welsh Ministers or their intentions here, but aim simply to look at this proposal from a practical basis, based on the current placement landscape and the pressure to find suitable placements.

In addition, if Ministers refuse to sanction a placement, the legislation is silent as to what happens then beyond one appeal process. So if Ministers refuse to

sanction the placement after sharing reasons with the local authority and the local authority still requires this placement for a particular young person, what is the local authority to do instead? There is the potential to drive further use of unregulated placements as an alternative; there needs to be more discussion about what is the most acceptable way of delivering care and how to make this as safe and supported as possible for young people needing these provisions.

I note that there is provision for Regulations to set out a final date for placements within profit making provision in Wales, although there is currently no detail on a timescale in this regard. One potential unintended consequence with a longer transition period would be if local authorities were being asked to pay for multiple beds to continue to secure a single placement in a home which formerly would have offered two, three or four beds. In other words, it would not be desirable nor within keeping to the provisions of this Bill to see local authorities paying four-fold for a single placement to continue, when a key driver of this Bill is about ensuring money spent on placements is reinvested in care and support provision and facilities. This would not be a sustainable longer term position and needs to be considered when setting out the medium term timeline for actions associated with the Bill.

Noting that secure accommodation is also contained within this Bill, I wish to just highlight here the lack of suitable secure placements in England and Wales currently. I do not think this is related to profit making as far as Wales is concerned, as the only approved secure accommodation is owned and run by a local authority, but I wish to take the opportunity to highlight the need for other steps to be taken alongside this Bill to address this particularly acute need for our most vulnerable children and young people. This includes secure accommodation provision itself, but also step down or move on accommodation that is suitable to meet children's needs. In keeping with my earlier comments around 'When I'm Ready', I would like to see this accommodation being developed close to and in conjunction with secure accommodation facilities to ensure continuity of care and support and access to trusted adult relationships. It is likely that provision in North Wales is going to be required to be developed in this space as at present young people from North Wales are always required to travel significant distances for placements.

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)

Whilst I think it may be appropriate for Regulations to set out more detail around the transitional provisions, I would welcome more detail around this to be in the public domain to provide clarity and certainty for providers, commissioners, and most importantly children and young people.

Aligned to this point, better and more proactive communication is required to ensure the success of the Bill. This is a point I have repeatedly raised with the Welsh Government. I would particularly like to see more direct communication with and for young people. I had asked the Minister to produce a letter and/or video to young people to provide reassurances to them around the Bill's instruction but I am unsure whether or not this has been done. I have not been asked to publicise or circulate any such materials for young people.

I suspect that there may be concern about the ability to make regulations that could in future restrict how businesses are operating, as this won't provide clarity and certainty and could then cause further placement disruption if any unexpected changes are introduced via secondary legislation.

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)

I am aware of funding that has been made available to local authorities to expand their provision of in-house and within area provision. However, I understand that there may be barriers to third sector organisations accessing any funding of this nature at present. If this is correct, I think this is a missed opportunity, as the third sector will have a valuable role in supporting this policy. There may be considerable experience already within some third sector providers in residential care provision, so it would be welcome to include them in any funding provision going forward to ensure that they can play a role in this space, either as part of local authorities' bids or alongside, to supplement what local authorities will be able to deliver themselves. Government oversight of this funding would be able to ensure that provision is being opened in the areas with most need and not just, as may have been the case previously, where housing options may be cheaper or easier to obtain.

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)

As a member of a Government working group, and as a relevant organisation representing children and young people, I have had sight prior to the introduction of the Bill of a more detailed children's rights impact assessment. It remains my view that the publication of a summary only of the Children's Rights Impact Assessment (CRIA) is insufficient to demonstrate compliance with the due regard duty in the Rights of Children and Young Persons (Wales) Measure 2011. My office was able to provide commentary on the draft CRIA and I believe that the suggestions made were incorporated but I think it is a missed opportunity not to publish this assessment in full.

I understand that the Welsh Government is reviewing its use and publication of impact assessments through the different integrated assessments, so this Committee or others in the Senedd may wish to pursue that point further through their wider scrutiny of relevant ministers.

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)

As an organisation we have been consulted throughout the Bill's development including through stakeholder working groups, and research work. We welcome that the policy development has also involved children and young people; as noted previously I would like to see continued and strengthened communication with and towards young people throughout the passage of the Bill and beyond.

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 Bill is described by Welsh Government as forming part of the wider Transformation of children's services. When we look at the issues that children and young people and their families bring to our office, this Bill represents something of a missed opportunity in addressing their particular priorities and concerns.

These include the extension of Personal Advisor support for all care leavers up to the age of 25, regardless of education or employment status, embedding Corporate Parenting duties and responsibilities across the public sector, and the extension of the principles of the 'When I'm Ready' provisions to those living in residential care.

Welsh Government has, in response to reports from my office from 2016 and 2017 respectively, agreed to provide the 'When I'm Ready' protections and safeguards to young people in residential care and extend Personal Advisor support up to the age of 25. Both commitments are important ways to ensure there is no discrimination between different groups of care experienced children, and ensure that young people continue to be supported without a 'cliff edge' exit at 18 or 21.

For personal advisor support, I understand that the Government may now be of the view that primary legislation is not required. I have not seen formal advice to this effect and my office had always been told to expect this to be legislated on when a social care Bill came forward in the Senedd. If secondary legislation is suitable to achieve this aim, I would like to see a timeline for the introduction of this long overdue commitment to be secured. It does also raise a question as to why it has had to wait this long if it was not necessary to wait for primary social care legislation to make this change.

In relation to Corporate Parenting, the Welsh Government has introduced a voluntary charter but there are significant limits to what a voluntary arrangement can achieve. It is ten months since the introduction of the Charter and as yet not even every local authority and health board are signed up to its principles. As one care experienced young person in a recent meeting reflected, if even those statutory agencies are not demonstrating the importance and value of the Charter in their work how can we expect other organisations to do so?

The reason this is so important is apparent when you listen to young people themselves. For example, I recently met with an articulate group of care experienced young mothers, and I was particularly struck and saddened by what I heard in relation to housing organisations, to give just one example. One young

woman told me that personnel she encountered from her local housing association had never heard of corporate parenting, let alone what this might mean for them in practice.

Several of the young women spoke about how their housing situation had had a direct impact and negative outcome in assessments of their ability to care for their children. They spoke about being housed in unsuitable temporary accommodation such as hostels or hotels, and then being judged negatively in a parenting assessment for lacking suitable and stable housing arrangements.

These are children who have been or, in some cases, were still in the care of the state. They are reliant upon support from the state to gain access to suitable housing as they move to independent living, in some cases there is even an ongoing duty to provide them with accommodation depending on their age. And yet, not only is that duty not being met but that failure is then impacting on the human rights of both them and their children to remain living together as a family unit.

A stronger, **enforceable** corporate parenting commitment is required in order to ensure that all parts of the public sector are playing a role in supporting care experienced young people and understanding their needs from a trauma informed perspective.

It is disappointing that the opportunity has not been taken to secure these legislative changes and there is no indication how or when these actions will be taken forward.
