

Care Council for Wales' Response to the Health and Social Services Committee's call for evidence as part of the consultation on the Regulation and Inspection of Social Care (Wales) Bill

General

1. *Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?*
 - 1.1 The Care Council for Wales (Care Council) welcomes the broad aims of the legislation with its focus on public protection through the provision of high quality regulated services and a system of workforce regulation that supports the workforce to practise effectively and safely. The Care Council has always emphasised the responsibility on both social care providers and the workforce in ensuring high quality services whilst also advocating the principle that regulation has a significant role in promoting and supporting high quality provision, as well as addressing areas of poor practice.
 - 1.2 In relation to workforce regulation and development, we believe that legislation is required to achieve new powers which will support the workforce in the sector and to support the transition of the Care Council into Social Care Wales. Much of the legislation restates processes currently undertaken by the Care Council with regards to regulating the social care workforce. However, the additional legislation will enable Social Care Wales to carry out its new service improvement function, which is welcomed, as it will achieve coherence in driving forward improvement across the sector.
2. *What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?*
 - 2.1 The primary barriers to achieving high quality provision are the wider pressures on the sector in terms of increasing volumes and complexity of need at a time of significant resource pressures. These lie outside the scope of regulation. The legislation seeks to address these issues through provision for improved planning and market analysis, a focus on high quality professional practice and enhanced co-ordination of improvement activity to address agreed national priorities. Critical to the success of this legislation will be the formation of clear links with the Social Services and Wellbeing (Wales)

Act 2014, with regulation and service improvement and development being linked rather than separate activities.

3. *Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?*

3.1 The legislation should support equality particularly for those groups that are reliant on services provided by the social care sector. We welcome the explicit reference to the provision of services through the Welsh language and to groups with protected characteristics.

4. *Do you think there are any major omissions from the Bill or are there any elements you believe should be strengthened?*

4.1 This question will be addressed in our responses below.

5. *Do you think that any unintended consequences will arise from the Bill?*

5.1 In relation to service regulation, we do not foresee any unintended consequences although careful monitoring of the impact of implementing the legislation will be required to ensure that there are no negative consequences for a sector that is somewhat unstable at present.

5.2 For workforce regulation, we feel that the detail on the face of the Bill may restrict the ability in the future to respond to new patterns of service and workforce groups for whom other regulatory approaches may be more appropriate.

Provisions in the Bill

6. *What are your views on the provisions in Part 1 of the Bill for the regulation of social care services? For example moving to a service based model of regulation, engaging with the public, and powers to introduce inspection quality ratings and to charge fees.*

6.1 The provisions within the Bill are designed to improve the transparency of regulated provision and improved public understanding of, and involvement in, social care provision. Central to this development will be improved public information on the care sector. We consider the obligation to produce annual reports to be a part of this, and as such we welcome this requirement. Such approaches undertaken in collaboration with the sector should result in increased public protection, public accountability, improved public understanding of the care sector and should help to inform and enable individuals who use services in making decisions about their care. This should result in higher expectations of social care provision through wider ownership of matters of quality and safety of provision.

- 6.2 A suitable fee regime for regulatory activities may be appropriate. However if fee collection results in service costs being increased to recoup the cost of fees or if the cost of fee collection outweighs the income received, the application of fees may need to be reconsidered.
7. *What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.*
- 7.1 The move to a focus on outcomes is to be welcomed, both for individuals using services and the population as a whole. However the difficulty of defining and measuring outcomes that have meaning is notoriously problematic and remains largely untested. The requirement that statutory services have a duty of oversight for the local social care economy is welcomed as a key to supporting high quality service commissioning. Key to this is robust and reliable data. We welcome the role of Social Care Wales in this and the work which is underway to strengthen the data available and plans to have intelligence and evidence which can be used in making decisions about the sector.
- 7.2 Sometimes the language in the Bill can appear traditional in comparison to that of the Social Services and Well-being (Wales) Act. It may therefore be appropriate to amend some elements of it, for example, to reflect the shift from 'services' to 'provision'.
8. *What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.*
- 8.1 As stated above, market oversight at the national and local level is to be welcomed, as is assessment of the financial stability and sustainability of providers. However achieving such transparency may be difficult due to the complex nature of the sector. Achieving meaningful information at both national and individual provider level will only be attained by close working with providers who recognise that transparency is critical in being a part of the social care sector.
9. *What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?*
- 9.1 The Care Council welcomes the principle of reconstituting the Care Council as Social Care Wales with an extended remit. The Care Council has operated

from the outset on the basis that regulation of the workforce and development of the social care workforce are firmly linked with the one activity supporting the other. The additional elements of service improvement, research and public information will bring further key levers into a cross-sectoral, co-ordinated approach to raising the quality of provision. Much of the detail of the proposal remains to be determined and it will be vital that there is proper alignment of resources to the ambitions.

9.2 The Care Council and many of the stakeholders regret the loss of its branding, which is well known and respected in the sector. However the Care Council looks forward to working with Welsh Government and other key partners in developing the proposals for Social Care Wales through to implementation in 2017 and beyond.

10. *What are your views on the provisions in Parts 4 - 8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.*

10.1 The Care Council is pleased that the Bill provides powers to extend regulation to other groups of social care workers in the future. However, we remain uncertain whether the level of detail on fitness to practise processes on the face of the Bill may restrict the future consideration of alternative approaches to regulating these groups of workers.

10.2 We note that the Regulatory Impact Assessment points to financial costs as the main reason for not extending mandatory registration. Therefore, we are keen to share the work we have done on possible other approaches to regulation of the non-regulated workforce which may provide economic and practical alternative solutions. In our response to the consultation on the *White Paper on The Future of Regulation and Inspection of Care and Support in Wales*¹, we proposed a licencing model of vocational workforce regulation. The system has many benefits and could help realise the ambitions of the Welsh Government in this area.

10.3 The key feature of the model is its focus on supporting care workers to practice safely and effectively through provision of accredited training and guidance, while at the same time addressing areas of poor or dangerous practice by removing those workers from the workforce. Disciplinary action and fitness to practise is first and foremost the responsibility of the employer, who then informs the regulator of the outcome. The regulator can then remove an employee's licence if their practice fails to meet standards. We estimate that the costs of this system for the regulator could be covered by an annual tax-deductible fee of around £25 per person per annum. Further information on the model is at Appendix 1.

¹ Welsh Government, September 2013

- 10.4 We would request that due consideration is given to allowing enough flexibility in relation to the fitness to practise provisions within the Bill to enable the Minister, through Regulations, to extend regulation to other groups of workers through an alternative regulatory model, at a time that may be appropriate.
- 10.5 In its response to the consultation on the Bill the Care Council, in common with the vast majority of other respondents, stated that prohibition orders or negative registers have very little positive benefit, but numerous negative elements. For example, it would introduce significant costs with no income from fees. Furthermore, it would focus on negative practice without benefits such as supporting high quality provision and recognising high quality practitioners. The view of the sector on a negative register is also acknowledged in the Explanatory Memorandum². We do not therefore consider that the option of a negative register would provide Social Care Wales with a viable alternative model to full mandatory registration.
- 10.6 The Care Council agrees that a reliance on voluntary registration is not appropriate, although reports from care workers and employers who have supported their care staff to register indicate that voluntary registration has provided a means of recognising the contribution of the care workforce. As indicated above, we believe that alternative models of licensing regulation are available to replace voluntary approaches.
11. *What are your views on the provisions in Part 9 of the Bill for cooperation and joint working by regulatory bodies?*
- 11.1 We welcome the proposals in the Bill in relation to co-operation and joint working and are of the opinion that they will enhance the current collaborative work being undertaken between the Care Council and CSSIW.

Delegated powers

12. *In your view does the Bill contain a reasonable balance between what is included on the face of the Bill and what is left to subordinate legislation and guidance?*
- 12.1 While the majority of the Bill appears to provide an appropriate level of detail for such legislation, we are concerned, as mentioned in our answer to question 10 above, that this balance may not have been achieved in the sections on fitness to practise, and that this may restrict Social Care Wales from being able to further develop this area and explore alternative models of regulation in future.
- 12.2 We are aware that the majority of this detail derives from the draft legislation produced as a result of the outcome of the Law Commission's review on the

² See page 71

regulation of health care and social care professionals in England³, which has yet to be made into law. This may result in Social Care Wales being unable to respond to changes in UK approaches to workforce regulation, particularly in the social care sector, and may therefore inhibit future collaboration between UK bodies.

Financial implications

13. *What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?*
- 13.1 The Care Council would make the following points regarding the costs outlined in the Regulatory Impact Assessment (RIA).
- 13.2 In looking at the costs of workforce regulation models, the RIA only considers the existing mandatory registration model with increased fees. The Care Council submitted costs for the licencing model of vocational workforce regulation, referred to above (10.2) which we consider to be more appropriate for the regulation of the non-regulated social care workforce at a future date. It is noticeable that no RIA has been undertaken on the costs of introducing the prohibition orders provision included in the Bill.
- 13.3 The assessment of the costs of regulating social care worker training is based on an application of the model employed for social worker training. The nature of social care worker training is significantly different, with a current emphasis on work based learning. Also the number of staff is significantly greater and potentially the number of courses requiring approval will be significantly greater. The view of the Care Council is that decisions regarding the model for regulation of social care worker training will need to be made on the basis of the most effective use of regulatory powers within the context of the existing quality assurance structures for care worker training and capable of being implemented with the resources available.
- 13.4 The remit of Social Care Wales is broad, and whilst it provides an opportunity to achieve more cohesion and strategic direction, its success in achieving this will depend upon a planned, comprehensive approach with cross-sectoral support. While the RIA identifies a range of existing funding streams there is limited evidence regarding the infrastructure required to support the breadth of remit proposed, in addition to the transitional costs. The Care Council is of the opinion that very careful planning is urgently required to ensure that priorities are identified at the earliest opportunity to ensure that the most effective programme is available for the sector which is capable of being delivered within the resource envelope identified.

³ Regulation of Health Care Professionals and Regulation of Social Care Professionals in England, Law Commission, April 2014

Other comments

14. *Are there any other comments you wish to make about specific sections of the Bill?*

14.1 The Care Council welcomes the Bill and the important opportunity it brings to support the development of the social care sector and the social care workforce. It offers the possibility for Wales to do something new and different that will raise understanding and awareness of the social care sector. It will ensure Wales is well placed to respond to the significant changes and challenges that the social care sector will face in the forthcoming decade.

How licencing could expand the regulation of the social care workforce in a cost-effective, rigorous and proven manner

Executive Summary

We propose a new model of regulation to support the professionalisation of the social care workforce in Wales in order to raise standards of practice, to support workers to practice safely and to improve the protection of some of the most vulnerable people in our society. We propose a licencing system which has a proven track record with other groups of skilled workers.

Benefits

- Licencing provides workers with:
 - ~ access to accredited training to obtain required qualification;
 - ~ receipt of support, advice and information to maintain quality practice.
- Improved career prospects and image for the workforce.
- Workforce data for employers, Welsh Government and others.
- Increased public assurance and confidence due to stronger safeguards and quality of the workforce
- Cost-effective and proportionate.
- A proven model of regulation, used effectively by Gas Safe and others over many years.

Types of workers which could be licenced

- Adult care home workers.
- Domiciliary care workers.
- Personal assistants.

Key elements of licencing

- Licencing to include:
 - ~ requirement to obtain mandatory qualification – either upon initial application or by three year renewal;
 - ~ agreement to abide by the Code of Practice;
 - ~ three year licencing cycle;
 - ~ evidence of on-going training and learning required upon renewal.
- Disciplinary proceedings to include:
 - ~ employer to investigate alleged breach of the Code and refer workforce regulator of its decision;
 - ~ officer decision to remove or retain individual's licence;
 - ~ internal and external appeals processes.
- Employers' role to include:
 - ~ regular upload of employees' information to the workforce regulator;

- ~ support qualification and on-going learning attainment;
- ~ undertake disciplinary processes and refer employees to the workforce regulator.

Costs

- Estimated annual registration fee of £25-£30 per annum, per registrant (reducing to £20-£24 after tax relief).
- Potential increase in training costs.
- A potential impact on pay levels as a consequence of professionalisation.

How licencing could expand the regulation of the social care workforce in a cost-effective, rigorous and proven manner

1. Introduction: the debate on widening regulation

1.1 The Care Council for Wales (Care Council) has long called for a new way of regulating parts of the care workforce. In its *White Paper on The Future of Regulation and Inspection of Care and Support in Wales*⁴, the Welsh Government stated that it ‘has prioritised the professionalisation of the care and support workforce’. The Care Council considers that part of this professionalisation agenda is the extension of its powers to raise standards of practice to other groups of the social care workforce in Wales. We stated in our response to the consultation on the White Paper:

“The issue therefore is not whether to regulate the wider workforce but rather to be prepared to explore different models of regulation for public assurance which would also support the drive for a sustainable, high-quality, valued workforce”.

1.2 We believe that in order to protect individuals who use services and to raise standards in the workforce, the powers held by the Care Council should be expanded to include those workers for whom registration is currently voluntary (see 2.3). However, it is also accepted that the current regulatory regime, as outlined in 2.4 below, would not be sustainable if it was expanded because of the cost. It is further acknowledged that a different type of workforce improvement model is required for social care workers compared with that for social care managers and social workers, to better reflect the nature and salaries of their roles.

1.3 This report looks at a new licensing model for raising standards; the key drivers for this model; comparative models from other sectors; a proposed new model for the social care workforce; and generic costs of a new model. It states the key outcomes that would be beneficial to a range of stakeholders including the workers themselves, individuals who use services and employers.

2. Current practice

2.1 The Care Council has been the regulator of the social care workforce in Wales since its inception in 2001. Its regulatory powers derive from the Care Standards Act 2000. These have been implemented in practice through Regulations and Rules for registration and disciplinary proceedings. The Council maintains a Register of certain social care workers. It can remove people from the Register through its investigative and hearings processes when the practice of these workers is found to be impaired and that they have failed to uphold the standards in the Code of Practice for Social Care Workers (the Code of Practice). Once removed these people cannot practice as registered social care workers.

2.2 The groups for whom registration is currently compulsory and the dates from when registration became compulsory are:

- Social work students (from 2004);

⁴ Welsh Government, September 2013

- Social workers (from 2005);
- Residential child care managers (from 2007);
- Residential child care workers (from 2008);
- Adult care home managers (from 2011);
- Domiciliary care managers (from 2013).

Together these groups account for 16 per cent of the social care workforce. The remaining 84 per cent of the workforce are unregulated. These include:

- Adult home care workers;
- Domiciliary care workers;
- Personal assistants.

2.3 Since 2005, registration has been voluntary for adult care home workers and domiciliary care workers. However, the Regulation & Inspection of Social Care (Wales) Bill will close the voluntary register.

2.4 The same regulatory process applies to each of the groups on the compulsory register. This involves:

Registration

When applying to register, an applicant must evidence: good character, conduct and fitness to practise; the required qualification (upon application or at renewal); the appropriate fee; and agreement to adhere to the Code of Practice. The application must be endorsed by the employer.

Registration is renewed every three years. A registrant must evidence the same elements as above and demonstrate 90 hours or 15 days of post registration training and learning. Apart from social workers, the renewal must be endorsed by the employer.

If the Care Council is minded not to grant an application or renewal, the case is considered by a Registration Committee.

Investigation and Hearings

When an allegation is received that a registrant has failed to uphold the standards in the Code of Practice, an investigation is undertaken. The Care Council is able to undertake such inquiries as it considers necessary depending upon the circumstances of each case. Following this the case may be closed with no further action, or a registrant may be offered the ability to accept an undertaking (a condition/s upon their registration), or they may be removed from the Register by agreement with officers, or the case may be referred to the hearings process.

The hearings process may involve a registrant appearing before an initial committee, whereby they could be suspended on an interim basis from the Register or receive interim conditions on their registration whilst the investigation is being undertaken. A final hearing committee has the ability to admonish, suspend, place conditions on or remove a registrant from the Register.

3. Key drivers for a new licensing model

- 3.1 One of the key drivers for a new licensing model is to improve protection for some of the most vulnerable people in our society. This need has been clearly exemplified in the media through, for example, the BBC's Panorama programme *Undercover Care: The Abused Exposed* concerning the abuse of elderly residents in care homes in England. Further investigations of abuse in the past include the Police investigation of abuse in adult care homes in Gwent (Operation Jasmine) and the abuse of people with learning disabilities at Winterbourne View Hospital in England.
- 3.2 It is becoming more apparent also that the work now undertaken by adult care home workers and domiciliary care workers is of a much more skilled and specialised nature. It requires specific expertise and qualifications as work is increasingly delegated from other professionals. This was highlighted in the Report of the Mid Staffordshire NHS Foundation Trust Public Inquiry (the 'Francis Report'). The report also recommended the registration of health care support workers in England.
- 3.3 The increased drive to move to community provision can be seen in the Social Services and Well-being (Wales) Act 2014. The ability of people to recruit their own personal assistants via the direct payment scheme supports the development of a new model. It will provide assurance that such workers are trained and work to set standards.
- 3.4 Raising standards across the workforce would help to raise the status of the sector. This will help to attract more people to social care which may not currently be seen as an attractive career opportunity. This could help alleviate recruitment and retention difficulties.

4. Potential groups to be included in the new licensing model

- 4.1 It is estimated that there are around 70,000 workers currently employed in the formal social care sector in Wales, of which approximately 11,000 are registered with the Care Council. The domiciliary care workforce and the adult care home workforce comprise a significant part of the remainder. However, this figure does not include personal assistants, self-employed, housing sector workers, or workers who provide care on an informal basis, all of whom could become part of the new licensing scheme.
- 4.2 A range of care is provided in the sector, from informal care at home to intensive formal care and support involving a variety of health and social care professionals. Some groups are already subject to formal regulatory processes and we believe that other groups in the formal care sector could be appropriately addressed by a new model to support high quality practice.
- 4.3 While a new model seeks to raise the standards of practice generally, as it can be seen to be applicable to all care workers, issues of public protection and risk should determine priorities for future development. The Care Council believes that, where the state or its agencies determines who provides care for individuals, there is a duty on the state to ensure that person is trained and is safe to work. Where an individual chooses their own care, they should have access to the highest level of information to support them in making an appropriate choice.

5. The licencing model in other sectors

5.1 Research has been undertaken by the Care Council regarding the licencing model in other sectors. The models looked at were:

- Gas Safe;
- Approved Driving Instructors;
- Approved Competent Persons (building regulations);
- Security Industry Authority.

5.2 The key features of these models are that they include:

- Qualification and character requirements;
- On-going continuing professional development requirements;
- Advice and support is provided for practice;
- Officer removal in fitness to practise cases;
- Appeals mechanisms are compliant with Article 6 of the European Convention on Human Rights (ECHR) which is that 'everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal'.

Importantly, the model does not include an expensive disciplinary process managed by the workforce regulator. Instead, this is the responsibility of the employer, who must then inform the regulator of the outcome.

6. The proposed licencing model for social care

Overview

6.1 Licencing models as described above place significant emphasis on seeking to keep workers on a formal list as opposed to allowing them to operate in a hidden economy. Every effort is made to support workers in practising safely. Guidance and support is provided. Accredited training and access to resources to maintain quality practice to registered individuals is actively encouraged. Removal from the list is seen as a last resort.

We believe that such an approach would serve care workers well. Theirs is a skilled job where the safety of the public is of prime importance. As noted below at 9.1, there are many potential benefits to the workforce of adopting this model, including better training and higher status.

6.2 Therefore, we propose that a licencing model should be introduced for defined groups of care workers in Wales. To become a licenced care worker under such a system, a person would need to be qualified and committed to on-going continued professional development and learning. Where concerns exist about a worker's practice, the primary duty would lie with the employer to investigate such matters, determine an appropriate course of action and, where appropriate, refer individuals to the workforce regulator.

Licensing and fitness to practise processes

6.3 The flowcharts at Annex 2 and 3 outline proposed licencing and fitness to practise processes. The licencing process would involve an option for employers to upload bulk information on their employees to the workforce regulator on a regular basis.

This information would be sent by the workforce regulator to the employees for their agreement and their agreement to abide by the Code of Practice. Workers would be licenced for three years which would require renewal on a three yearly cycle. Renewal would require evidence of training and learning since licencing. Where workers did not hold the required qualification upon initial licencing, they would be licenced on condition that they obtained it by their first renewal. This process would be managed by officers. An appeal processes, ultimately to an independent body, would be available.

- 6.4 Where there has been an alleged breach of the Code of Practice, an employer will be required to investigate and refer the matter to the workforce regulator. The workforce regulator's officers would then make a decision on which sanction to apply. This could include the revocation of the worker's licence to practice. The officer's decision would be based on the information supplied by the employer, and any additional information required. An appeals process, including to an independent body, would be available.
- 6.5 Employers would play a key role in the new model, in relation to the support they provide to their employees and their interaction with the workforce regulator. They will be required to, for example:
- Provide regular (for example, quarterly) information regarding their employees to the workforce regulator;
 - Support qualification and post registration and learning attainment;
 - Undertake disciplinary processes where there has been an alleged breach of the Code of Practice;
 - Refer employees to the workforce regulator;
 - Provide disciplinary information to the workforce regulator and co-operate with their processes.

Legal advice

- 6.6 Legal advice has been obtained by the Care Council on the development of the licencing model. This included advice on whether ability for officers to remove workers' licence complied with Article 6 of the European Court of Human Rights (the right to a fair trial). The advice confirmed this would be possible providing the system included certain provisions, including, primarily, an appeals process⁵.
- 6.7 It is proposed that, if a new model was implemented for certain groups, then the workforce regulator would operate two different systems in parallel. Licencing would be appropriate for skilled workers and mandatory registration for executive and

⁵According to the Care Council's legal advice, in order to comply with the common law requirement for fairness and the potential application of Article 6 in the more serious cases, the system would have to make provision for:

- a. receipt of written submissions from the registrant
- b. guidelines to show how decisions are to be approached
- c. a skilled and experienced staff of arbiters to decide cases at first instance
- d. a process for review
- e. a process for appeal before an adjudicator who is independent from the original decision maker
- f. the potential for an oral hearing either at first instance or on appeal where there are disputed issues of fact which must be resolved by assessment of the credibility of witnesses
- g. sufficiently detailed written decisions at each stage.

'Advice on the Alternative Model Means of Regulation for Some Social Care Workers', Hugh James Solicitors, 30 April 2014

management roles. The Care Council's legal advice has confirmed that this is possible⁶.

UK models compared

- 6.8 With regards to the models in the other countries of the UK, Scotland and Northern Ireland register adult care home and domiciliary care workers, as well as other groups, using the current regulatory model. In England, the Health and Care Professions Council has proposed the implementation of negative registration for social care workers, whilst keeping the current model for social workers. We do not support the proposal in the Regulation & Inspection of Social Care (Wales) Bill that a negative register of social care workers should be introduced. The evidence shows that prohibition orders or negative registers have very little positive benefit, but numerous disadvantages. They have significant costs with no income from fees. The focus on negative practice fails to support high quality provision and recognition of high quality practitioners. This view is shared by many in the care sector, which is acknowledged in the Bill's Explanatory Memorandum⁷.
- 6.9 The proposed model can be seen as a lighter touch approach located between the full health professional regulatory model, on which the Care Council's Register is based, and the proposal for a negative register. It is deemed to be appropriate to skilled workers and is also designed to actively support high quality practice. Licencing would be introduced in phases, which would be carefully monitored throughout its development and implementation.

7. Potential costs of licencing

Overview

- 7.1 The introduction of licencing would potentially have cost implications in three areas:
- i. Training costs for the sector;
 - ii. Salary costs for a licenced workforce;
 - iii. Costs for administering the scheme (registration and fitness to practise).
- 7.2 It is estimated that over 50% of the unregulated workforce already have the required qualifications. Licencing would enable those who weren't qualified to gain the qualification within the first three year licencing cycle. Any potential increase in training costs that employers may face for their unqualified workers could be mitigated by better targeting of training resources at qualifications required for licencing and not therefore, as currently, for a wide range of qualifications.
- 7.3 In order to reflect the more complex and diverse nature of the roles of social care workers, and to have a qualified and effective workforce of the future, it is being increasingly acknowledged that the issue of pay will need to be examined. There is a growing acknowledgement that a living wage for these workers is now required which will be set at a higher level than the basic minimum wage in order to achieve the qualified workforce that will be required for the future.

⁶ According to the Care Council's legal advice, "the creation of a separate form of regulation for second tier workers is not precluded by law"

⁷ P.71, Explanatory Memorandum, Regulation & Inspection of Social Care (Wales) Bill

- 7.4 One of the aims of licencing is that it would be less costly than current registration and disciplinary processes. This would be enabled through, for example, electronic application processes, including uploading of applicants in bulk by employers. A key determinant of the cost of the current model of mandatory registration is the cost of disciplinary processes, including investigations and hearings. Under the licencing model it is the employer who is under the duty to undertake a thorough investigation. The workforce regulator is simply required to decide on the appropriate sanction. This model has been assessed to provide significant financial savings.

Estimated costs for the workforce regulator

- 7.5 Licencing will require additional capacity and close working relationships with employers. Work has begun to cost the model building on the current on-line services to ensure an effective, proportionate and efficient regulatory service. To make the application process as streamlined and as cost-effective as possible, employers would be required to upload workforce information in bulk, to be processed by the workforce regulator's staff. The estimated costs of the application process would be £5-£7 per person.
- 7.6 With regards to disciplinary procedures, employers would be expected to manage the investigation and hearing. The findings would then be forwarded to the workforce regulator for an officer's decision on a sanction.
- 7.7 Given the percentage of cases that currently go through full regulatory procedures and the number of workers, it is estimated that these costs could be recovered through an annual licence fee of £25-£30 per person. However these fees are eligible for tax relief which would reduce the fee to £20-£24.

8. Implications for the informal care sector

- 8.1 In order to maintain public protection and safeguards for individuals who purchase their own care, a high level of information should be made available which would include a list of workers whose licence has been revoked to aid them in making safe recruitment decisions.
- 8.2 High profile information provided through media and service contacts can also provide guidance and advice on safe recruiting processes. In addition, either workers or their employers in the informal care sector could potentially choose to be part of the scheme. This would enable them to access the benefits in relation to training, guidance etc available to those within it.

9. Key outcomes and benefits

- 9.1 It is envisaged that the key outcomes and benefits of licencing would be:

For the workforce

- Trained workforce: all workers would be required to attain a required qualification ensuring that they would be trained to the same standards and have obtained a qualification recognised by the workforce regulator. As obtaining a qualification will be a requirement of being licenced, this will ensure access to accredited training for workers.

- On-going competence: licenced workers will need to keep their training and professional development up-to-date and show evidence of this on renewal. Access to resources to maintain quality practice would be made available.
- On-going support for workers: the 'membership-style' benefits for licenced workers would be: receipt of support, advice and information from the workforce regulator to help them with their practice and conduct, for example practice guidance and additional guidance on specific matters eg maintaining professional boundaries.
- Other care workers, e.g. informal care providers: by either opting to licence themselves or having their employer licence them, it will allow them to have access to training and the other on-going support as outlined above.
- Improved career prospects and image for the workforce: being required to obtain a qualification and being a licenced worker
 - will improve the image of the workforce, and potentially reduce recruitment and retention difficulties over time.
- Improved protection for the workforce: being qualified, working to set standards in the Code, receiving practice guidance on how to undertake their roles, should all help to provide a structure to the workforce on how they are expected to work with the aim of preventing them from putting themselves or others at risk of harm. It also places responsibility on employers to ensure their workforce adhere to this structure, thereby providing additional assurance to workers that they are able to achieve and adhere to it.

For employers

- Data on the workforce: by regulating and recording additional groups of workers, the workforce regulator will be able to provide employers, the Welsh Government and others with a fuller, more informative picture of the social care workforce, which will help with workforce planning and related issues.
- Recruitment: as workers will have to be qualified and have continued their learning and training for licencing purposes, this will provide assurance to employers of the quality of their practice. The benefits associated with licencing should also lead to an improved image of the social care workforce which should in turn attract more people to the sector, thus further improve recruitment.
- Training: the requirement for all workers to be qualified will guarantee employers access to accredited training for their workers.
- A sustainable workforce: employers will gain a workforce which is qualified, whose licencing membership provides them with support to improve their practice, thus reducing retention issues.

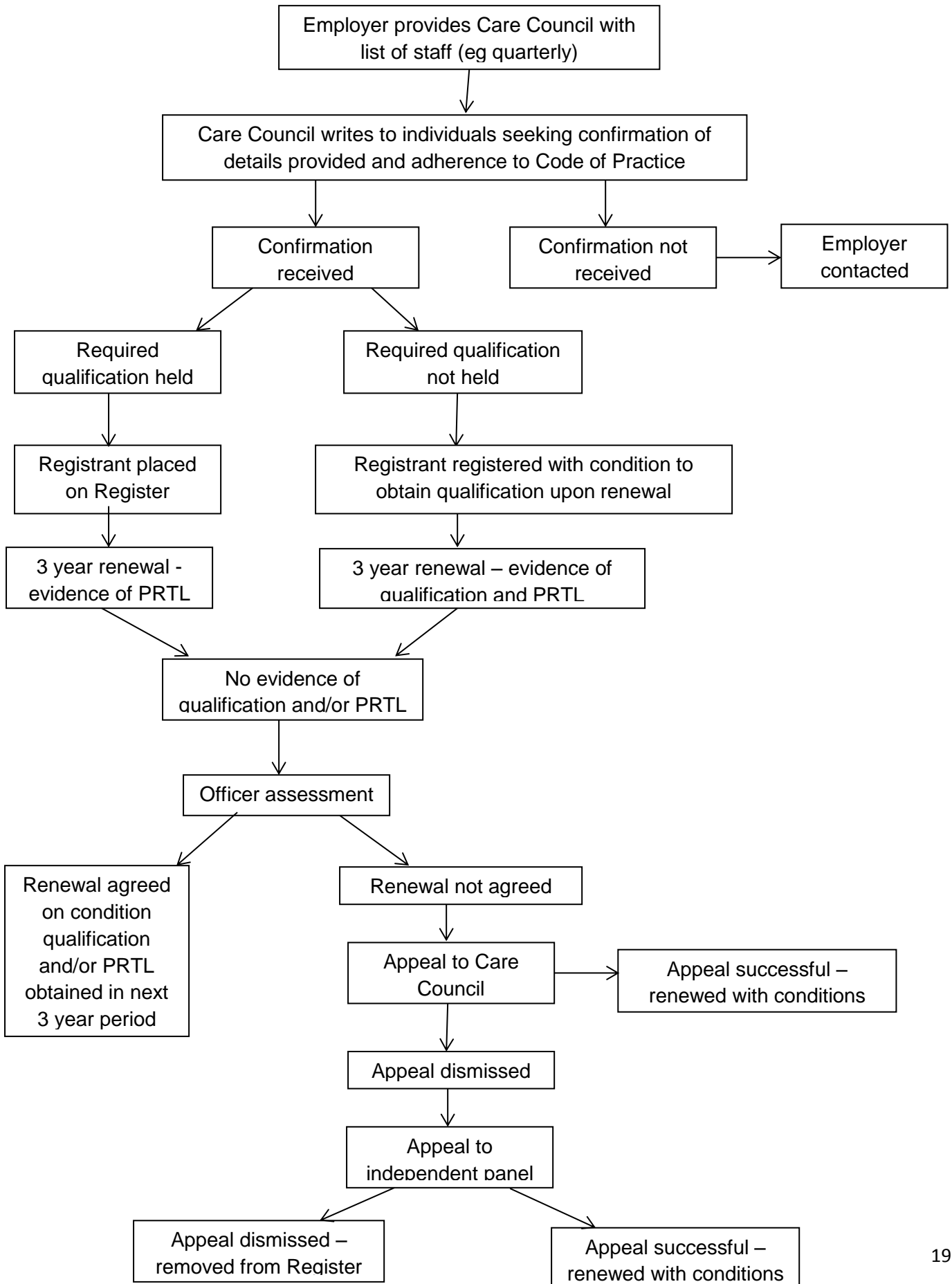
For individuals using services and the public

- Increased public assurance: the licencing of adult care home and domiciliary care workers who work directly with vulnerable people in care homes or in an individual's own home, and who are required to undertake increasingly specialised tasks, would provide assurance that these workers are qualified and

can be held to account if something were to go wrong. The same applies for other types of licenced care workers.

- Increased public confidence: having an accountable workforce would increase public confidence in the process and also in the workforce itself.
- Increased public information: individuals would have access to information regarding workers who had their licence removed so that they can check before recruiting someone on an informal basis.
- Stronger safeguards in place: by regulating more workers, it will be possible to prevent those who are found to have failed to uphold the required standards from working by removing their licence, thus extending the protection that workforce regulation can provide to vulnerable individuals.
- Better care and support: the aim of licencing, and the outcomes set out above, should lead to and ensure the ultimate outcome of improving the quality of the workforce which would lead to improved care and support for individuals who use services.

New licensing process



New fitness to practise process