



National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee](#) / [Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

[Regulation and Inspection of Social Care \(Wales\) Bill](#) / [Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol \(Cymru\)](#)

Evidence from Older People's Commissioner for Wales - RISC AI 08 / Tystiolaeth gan Comisiynydd Pobl Hŷn Cymru - RISC AI 08

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Prof. Mark Drakeford AM
Minster for Health and Social Services
National Assembly for Wales
Cardiff Bay
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28 May 2015

Dear Minster,

Re: Regulation & Inspection of Social Care (Wales) Bill

Following my submission of written evidence and recent oral evidence to the Health & Social Care Committee, I thought it would be helpful to summarise in writing some of the main points I raised.

The regulation and inspection of social care has a huge effect on the lives of older people, in particular on those who are more vulnerable and who often struggle to make their voices heard. Given the scale of change and the impact on older people as one of largest users of social care, it is paramount that this Bill ensures that services deliver care, support and wellbeing to older people that keeps them safe but also upholds their rights. Whilst it is a Bill about the system, it is also fundamentally a Bill about people.

Although there is much intent within the proposed Bill that I welcome, there are a number of missed opportunities that still need addressing if the Bill is to match the intent ambition and fundamental change driven by its sister Act, the Social Services and Wellbeing (Wales) Act 2014.

Whilst much of the underpinning detail of the Bill is yet to be seen, there are seven key areas that need further attention if its full intent is to be realised for older people.

- 1. Commissioning** is a significant omission from the proposed Bill. The Bill needs to drive systemic and robust cultural change to help ensure that those responsible for commissioning understand the complex needs of people. A duty must be placed on local authorities and health boards to commission against wellbeing outcomes thereby improving commissioning practices through ensuring greater consistency in care and focus by providers on quality of life. This is clearly set out in my Care Home Review¹ in Requirements for Action (6.1) that specifically referenced the Regulation & Inspection of Social Care legislation.
- 2.** The Bill as it stands does not match the intent or action from Welsh Government in relation to the **integration of health and social care**. Again, this is a significant omission from the proposed Bill. Whilst the forthcoming Green Paper may address integration between health and social care, in my view this is a missed opportunity in terms of consolidating legislation and making it easier to translate law into practice. Without a fully integrated approach to the regulation and inspection of social care, there will continue to be inadequate scrutiny in respect of the quality of life and healthcare of older people.
- 3.** The **definition of 'care'** included in the Bill focusses too heavily on process and tasks, reflecting a functional approach to care. I am concerned that it does not reflect 'quality of life' or the importance of valuing privacy, dignity, choice, rights, independence and fulfilment. A clear and shared understanding of what good care looks like must be a fundamental driver throughout this legislation. If the definition is right, it will enable services to focus on the quality of life and the lived experience of older people rather than on tasks, reducing the currently unacceptable variations in the

¹ Older People's Commissioner for Wales, A Place to Call Home, A Review into the Quality of Life and Care of Older People Living in Care Homes, 2014

standards of care and increasing focus on quality of life experienced by older people.

4. Requirements for Action (5.7) of my Care Home Review specifically referenced the Bill and called for robust regulation of the care home workforce. **Registration of the social care workforce must be extended** to residential and domiciliary care workers to ensure that older people, many of whom find themselves in a position of vulnerability with little voice and huge difficulty in standing up for their rights, are afforded the same level of safeguarding and protection as any other vulnerable person. Workforce registration, through its link to a mandatory code of practice and mandatory training, can upskill and help professionalise the sector. The proposed Bill does not extend workforce registration nor include mandatory training for the un-registered workforce. This is an area of concern and is a real missed opportunity as it will not address the issue of older people receiving care and support from care staff who do not have the appropriate level of skills, values or competencies.

5. The use of **lay assessors in the inspection process** is another omission from the proposed Bill which appeared in the White Paper. Lay assessors are often referred to as 'experts by experience' and they have been proven² to offer a different perspective to those working in service regulation and inspection. They can provide insights into the quality of care and life experienced by people and, essentially, the quality of life of older people living in care homes. Regulatory bodies should be open to challenge and lay assessors will help the regulator to see things from the person's point of view, making the inspection process far more robust as a result. Lay assessors are used in social care inspection throughout the UK and, given the expressed willingness by community health councils to participate in care home inspections the proposed Bill must not negate this long held ambition. Whilst the Explanatory Memorandum cites financial cost as a barrier (despite this being a low cost of £43,000 across all social care services), the cost of not addressing issues before they become significant is far greater.

6. I have already said that this should be a Bill about people. This legislation must **uphold people's rights** and this should be a fundamental driver

² A Critical Reflection on the Involvement of 'Experts by Experience' in Inspections, British Journal of Social Work, Scourfield, P. (2009)

behind the Bill, shaping the values of the social care sector. There must be a rights based approach reflected throughout the Bill, with the UN Principles on the face of the Bill so that all public bodies must have due regard to the UN Principles for Older Persons when discharging their duties under this Act. Failing to embed a rights based approach at the heart of this legislation will create legislation that falls short of the aspiration of the 2014 Act and is unable to drive the better care, better support and better outcomes that older people have a right to receive.

7. The proposed Bill fails to prevent those who are unfit to own a social care service, such as a care home, from operating here in Wales. Whilst the Bill places a 'fitness to practise' requirement on both the registered workforce and registered individuals but it does not place equivalent requirements on those who own services. It is my view that a **'fitness to own' requirement** should be included on the face of the Bill, allowing individuals who have previously owned services that have failed or are failing due to poor care or financial instability to be prevented from entering the social care sector in Wales.

There is much intent within this Bill that I welcome, however there is still a significant amount of work to do to ensure that the Bill's intent is made real and felt to be real by older people. I do not believe it yet fully addresses all of the issues I've raised in my Care Home Review and the expectations that older people have. I welcome the opportunity to work with you and your officials, whom I am meeting with next week, to ensure that the relevant Requirements for Action made in my Care Home Review are reflected within the Bill where appropriate, and that the potential of this Bill is fully maximised.

Yours sincerely,



Sarah Rochira

Older People's Commissioner for Wales

C.C. David Rees AM, Chair, Health & Social Care Committee

C.C Andrew Goodall, Director General for Health and Social Services and Chief Executive of NHS Wales

C.C. Albert Heaney, Director of Social Services, Children and Families



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