

Consultation Response Form

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Responses to consultations may be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please place a tick in the box:

Please tell us who you are responding on behalf of. For example is this your own response or is it sent on behalf of an organisation?

On behalf of the Homecare Association.

The Homecare Association is a member-led professional association, with over 2,300 homecare provider members across the UK. Our members encompass the diversity of providers in the market: from small to large; predominantly state-funded to predominantly private-pay funded; generalist to specialist; live-in services to visiting services and from start-ups to mature businesses. Our purpose is to enable a strong, sustainable, innovative and person-led homecare sector to grow, representing and supporting members so that we can all live well at home and flourish in our communities.

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Questions on Chapter 1: Eliminating profit from the care of children looked after

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

The majority of our members do not provide care for children looked after; we would, therefore, like to limit our response to a more general comment.

We are concerned that eliminating profit from the care of looked after children will de-stabilise the market and could limit competition and encourage consolidation in the market. This could reduce choice for children being placed with services, and mean a move away from the possibility of using local, smaller scale SMEs with strong links to their local communities, and result in large-scale closure of good provision without any alternatives being put in place

We are concerned that Care Inspectorate Wales reported in their Annual Report this year that there are already insufficient placements for some children.

“There is placement insufficiency for children with care and support needs. Children are needing support at a much younger age often due to the emotional and behavioral impact of adverse childhood experiences. Homes for children in residential care and foster care are difficult to access for those children and young people with the most complex needs. As a result, some children are being placed far from home and sometimes outside of Wales. Even more concerning, an increasing number of children are moving into temporary care homes that are operating illegally because they are not registered with CIW.”

It is likely that the availability of care will reduce as a result of the not-for-profit policy. The disruption to children and young people could be significant with the possibility of children being placed further away from their original communities, potentially even across the border or in unregistered temporary services.

We believe that care should be commissioned on the quality of the service provided and would urge the Government to consider whether this action will have adverse unintended consequences that could be detrimental to those children and young people that we are trying to serve.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

We agree that Direct Payments can be a valuable option for people receiving Continuing Health Care (CHC). Direct payments, whilst not the best choice for everyone, can allow greater choice and flexibility for people who are arranging their own support.

Direct payments alone, however, are not sufficient to ensure that people have voice and control. Direct payments are only truly effective where there is a thriving market for care provision that provides choices and options. At the moment, homecare services are significantly underfunded and are having difficulty retaining staff as a consequence. (We understand from our members that fee uplifts on the position illustrated in our [2021 Homecare Deficit](#) report have not kept pace with rising costs. Fees offered were already significantly below the cost of delivery in many cases). This must be addressed if we are to truly promote voice and control.

Direct payments also need to be paid at a level that actually meets the cost of providing care, they should not be seen as a cost saving measure.

Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

- Benefits, and disbenefits;
- Costs (direct and indirect), and savings;
- Impacts upon individuals and groups with protected characteristics;
- Other practical matters such as cross-border issues or transition to the new arrangements.

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

As the consultation document highlights, Direct Payments have the potential to improve continuity of care when a person moves from a local authority funded arrangement to an NHS funded arrangement. Relationships are key in care and this could be a clear benefit in some cases. However, we are aware of instances where fees paid by Health Boards are actually lower than the rates paid by Local Authorities. Health Boards should ensure that costs, for what are often complex packages of care, are fully met. When people leave hospital their care need may have changed, it is important that there are care assessments to acknowledge any changes needed in their care package.

We are concerned that paragraph 17 of the consultation document says “It is envisaged that these proposals will open up new ways to deliver care, reducing strain on domiciliary care services”

Domiciliary care services are strained due to staff shortages, which is significantly related to the fact that the funding to the sector receives from public bodies is not sufficient to sustain attractive pay, terms and conditions.

Creating alternative forms of care delivery (for example personal assistants, which are unregulated, so have lower costs) may just reduce the pool of people prepared to work in services that are regulated, managed and require registration with Social Care Wales; with more careworkers moving to work as personal assistants instead. So, this could cause labour market displacement rather than ‘reduced strain’ or an expansion of market options. This could result in negative consequences both for a workforce that may be self-employed with less rights and also for quality of care if more takes place in the unregulated sector.

We urge the Welsh Government to urgently address the capacity issues in domiciliary care by recognising the true cost of delivery, the skilled nature of care work, and reviewing the current registration requirements.

It is also important to recognise that some people who receive direct payments will wish to use those to purchase services from a registered domiciliary care provider, and this requires capacity in the market.

Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

We would encourage more commissioners in Wales (not just in the NHS) to move away from time and task commissioning towards outcomes focused practice; as was indicated in the Rebalancing Care White Paper.

Approaches that give more freedom for care providers and those using services to negotiate how best to use the funding allocated to meet a persons’ needs, for example, can improve service flexibility, quality and delivery (like

Independent Service Funds in England). There are commissioners in Wales who have explored alternative approaches similar to this and this could form part of the work that the National Commissioning Board and others are doing around a new National Commissioning Framework.

Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

Please ensure that homecare providers are consulted in the development of this guidance.

The guidance should include indications on best practice for smooth transitions from local authority funded direct payments to Health Board funded direct payments. This should include good communication with the provider in question.

It should be clear how Health Boards will set rates for Direct Payments to ensure that they are sufficient to cover costs of delivering care.

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014) directly on individuals within relevant bodies?

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the 2014 Act) directly on individuals within relevant bodies?

It is of vital importance that all staff in the social care sector take safeguarding seriously, and that there are appropriate accountability mechanisms. However, the idea of a mandatory reporting duty on individuals does raise some concerns. One being that the sector already has significant recruitment and retention difficulties, partly because careworkers undertake responsible roles for low reward. Increasing personal risk for staff may cause some anxiety (even in staff who do their utmost to get everything right). It could also drive risk-averse reporting by staff who are not confident of when to raise and not raise issues. In some cases this might identify serious cases that would otherwise go unnoticed, which would be beneficial. However, it could also generate a lot of activity that would distract from the most serious cases.

There is already an organisational duty to act, as well as professional registration processes if any misconduct is involved. We would, therefore, have concerns about the introduction of a legal duty on individuals. However, this does raise the question about whether some parts of the sector, for example personal assistants, should be subject to registration, which are not at present.

Questions on Chapter 4: Amendments to regulation of service providers and responsible individuals

Part 2 and Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the basis on which Care Inspectorate Wales ('CIW') – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of 'regulated services'.

This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:

- a) Identifying unregistered services
- b) Publication of annual returns
- c) Publication of inspection reports
- d) Improvement notices and cancellation of registration
- e) Responsible individuals
- f) Definition of 'Care' for children and young people

Questions on proposed amendments relating to each of these matters follow.

There are 21 questions about this chapter.

Question 4.1: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

Question 4.2: *(a) Identifying unregistered services - power to obtain information:* Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

Question 4.3: *(a) Identifying unregistered services - power of entry:* Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

Question 4.4: (a) *Identifying unregistered services - power of entry:* Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?

In response to questions 4.1-4.4: we agree. Regulated providers need to be confident that they are not being undercut by unregulated services who are able to evade investigation whilst not maintaining appropriate standards. For this reason, standard provisions that allow information to be obtained seem reasonable.

We believe that the purpose of regulation and the role of CIW is public protection. This should be determined by the nature of the care work rather than a careworker's employment status.

Question 4.5: (b) *Publication of annual returns:* Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?

Question 4.6: (b) *Publication of annual returns:* Do you agree with the proposal to create a related offence of failing to publish an annual return?

We would have some concerns about this proposal. As you've identified, there is a question over whether all care providers have suitable websites to publish annual returns on. There may also be a question of how easy annual returns will be to find.

Questions could arise about technical problems - would a provider be penalised, for example, if they had a temporary, or unknown problem with their website provision?

Is there a risk that providers will face on publishing their returns if their annual returns (of necessity) contain sensitive information? Can this be addressed?

On the question of the offence – we would request further details. Is it likely that the sanction for someone who both fails to publish and fails to submit their annual return would be more severe than currently for those who do not submit their annual return? If so, is this justified?

Question 4.7: (c) *Publication of inspection reports:* Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?

In principle, it seems reasonable to allow CIW flexibility to not publish reports in exceptional circumstances, where this is in the interests of people receiving the service. However, the final wording of the amendment will be important. It

is desirable that there are clear guidelines around when reports are not published for the sake of transparency.

Question 4.8: *(d) Improvement notices and cancellation of registration – variation of registration as a service provider:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?

Potentially. Would there be a process for providers to appeal if there is a difference of opinion or misunderstanding about whether the provider is still providing a service; or providing a service from a particular place or not?

Question 4.9: *(d) Improvement notices and cancellation of registration - removal of a condition on a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider's registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

Yes. This seems more efficient.

Question 4.10: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration:* Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

In most cases this would likely be welcome. However, as above: would there be a process for providers to appeal if there is a difference of opinion or misunderstanding about whether the provider has ceased to provide a regulated service?

Question 4.11: *(d) Improvement notices and cancellation of registration – information from providers who are cancelling their registration:* Do you agree with the proposal to create a regulation-making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?

Yes, this should lead to a greater level of consistency.

Question 4.12: *(d) Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice:* Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?

Yes, we agree that there may be circumstances in which cancelling a service providers' registration may be a disproportionate approach to them not being able to provide certain information by the deadline. It is important that guidelines around this are transparent, and expectations clear, however.

Question 4.13: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

Only if there is certainty that the situation is genuinely irretrievable. Is an appeal mechanism possible if there is a difference of opinion over that point?

Question 4.14: *(e) Responsible individuals – making representations:* Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

Yes, it would be better if this practice were recognised in the legislation. It is important that individuals are able to make representations regarding their position.

Question 4.15: *(e) Responsible individuals – sending the improvement notice to the service provider:* Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

Yes, this would provide for better communication and give the service provider more opportunity to respond.

Question 4.16: *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

Yes, this does happen in practice sometimes, so it would provide greater clarity to provide for it.

Question 4.17: *(f) Definition of 'Care' for children and young people:* Do you agree with the proposal to adjust the definition of 'care' in section 3 of the 2016 Act in order

to place beyond doubt that the provision of parental-type care is recognised as being 'care' within the meaning of the 2016 Act?

This provision is less likely to apply to our members, so we will leave comment to others.

Questions on Chapter 5: Amendments to regulation of the social care workforce

There are 9 questions about this chapter.

Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once? Please explain your reasoning.

Yes, as the consultation says, this aligns with standard practice for public appointments of this nature.

Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances? Please explain your reasoning.

Yes, we would welcome the opportunity for there to be some leniency in the requirements for renewal of registration. One concern would be to ensure that this 'flexibility' is operated fairly and that there are clear criteria about when it can be used.

We would also urge Social Care Wales to consider whether a lower tier of registration with fewer qualification requirements might be offered. Casual and/or part-time workers may choose to work in the NHS or as personal assistants without having to meet the qualification requirements of registration. We believe this is contributing to the ongoing workforce shortages in domiciliary care in Wales.

Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months? Please explain your reasoning.

Providing that, as you say, the person's ability to appeal the interim order is not affected this seems sensible. If the panel is easier and faster to convene than the Tribunal then, this would be beneficial.

Delays may sometimes be necessary. However, interim orders may affect a person's prospects and day to day employment and every effort should be made to resolve issues quickly. If there is a pattern of increasing delays this must be addressed through resourcing or review of the approach taken and not just through an easy delay process.

Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate? Please explain your reasoning.

Yes, if the panel has been convened to consider the circumstances around a particular individual it makes sense to consider that holistically rather than requiring a focus only on a particular strand of a case. Interim orders will have a significant effect on the individual and their employer and if there are good reasons for their revocation it would be better to do this sooner rather than later (providing it can be done with confidence).

Question 5.5: What, in your view, would make it necessary and appropriate for a Fitness to Practise panel to revoke an interim order?

If, for example, it becomes clear through proceedings and evidence considered that the original rationale for the interim order was misconceived, no longer applicable or has been superseded.

Questions on Chapter 6: Extending the definition of social care worker to include childcare and play workers

There are 5 questions about this chapter.

Question 6.1: We would like to know your views on the proposal to extend the definition of 'social care worker' to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector?

Please explain your reasoning.

We have no major objections. However, there are possible instances in which it is important for social care workers (i.e. residential and domiciliary careworkers, staff of supported living arrangements etc) and childcare workers to be treated differently – presumably this would still be possible as registrants would be identifiable due to different categories of registration. Officials using this categorisation for policy work in future will need to be more aware than ever of the variety of roles within care work.

We would urge the Welsh Government to ensure that if Social Care Wales' remit is expanded that it is adequately resourced to cope with this.