

## The Children's Society



The Children's Society is a leading national charity committed to improving the lives of thousands of children and young people every year. Our work with vulnerable young people supports missing children, children with experiences of sexual exploitation, criminal exploitation, children experiencing and witnessing violence and abuse, children in or leaving care, children experiencing poor mental health and well-being and refugee, migrant and trafficked children. We work to champion the rights of young victims in all that we do.

Our policy and public affairs work in Wales focuses on three key policy areas – Adolescent Risk and Vulnerabilities, Tackling Poverty, and Young People's Wellbeing and Mental Health. We also run our Prevention Programme across Wales and England to prevent child exploitation and abuse by building connections with professionals from different sectors and regions to improve new strategic responses to prevent and disrupt child exploitation and abuse.

### ***In care: Quality services and support for children in care***

#### **Priority One: Improving arrangements and procedures for children and young people placed out of their home local authority areas**

When placing a child in a care, every effort should be made to ensure that the placement is in the child's 'home' local authority area to ensure continuity of education, access to services and social networks. However, in some instances, it is in the child's best interests that they are placed out of their 'home' local authority area. This might be the case if the child faces particular risks in their 'home' local authority area and being placed in a care setting in that area is detrimental to the child's welfare and wellbeing – for example, in their 'home' local authority area the child might face or continue experience abuse or exploitation.

## Policy context

When placing a child in another local authority area, local authorities who place the child must adhere to requirements and follow certain procedures. These requirements are primarily set out in The Care Planning, Placement and Case Review (Wales) Regulations 2015<sup>1</sup> (the 2015 Regulations). Some of these requirements include the following:

- The 2015 Regulations require the “responsible” (‘placing’) local authority to provide details “of its assessment of [the child’s] needs and the reasons why the placement chosen is the most appropriate way of meeting [the child’s] needs”, and a “copy of [the child’s] care and support plan if it has not already been provided.”
- The 2015 Regulations require the ‘placing’ local authority to provide written notice to the ‘host’ local authority and stakeholders in that area before the placement is made, likewise with emergency placements.
- The 2015 Regulations state that placing local authority must provide a placement plan to the ‘host’ local authority, and the placement plan must include information such as (amongst other things): the names and contact details of key people in the child’s life and care (such as the IRO and independent visitor); arrangements made for the child’s health (including physical, emotional and mental health) and dental care.
- The placement plan must also include information about arrangements made for the representative of the responsible authority to visit the child, the frequency of visits and the arrangements made for advice and other support to be available to the child between visits.
- The placement plan must also include information about the day-to-day arrangements “put in place by the appropriate person to keep [the child] safe” if the “responsible authority has, or is notified of, child protection concerns relating to [the child], or if [the child] has gone missing from the placement or from any previous placement.”
- The 2015 Regulations also require that the placing LA refer the child’s case to a panel before an out of area placement is made. The panel must include “representatives from the local authority in which the child is to be placed, including any relevant health and education representatives [as well as] senior officers from local authority children’s services, education departments and the local health board, who have responsibility for commissioning services and are budget holders.”

In addition to the 2015 Regulations, local authorities are required to complete the Wales Out of Area Notification Protocol, which is a form for the responsible or ‘home’ local authority to fill and share with the ‘host’ local authority when placing a child in another local authority area. The information requested on the form includes the child’s previous and current addresses; the type and date of placement; the placing local authority; the contact details of the child’s social worker or professional; and the name and address of the child’s GP. The Association of Directors of Children’s Services (ADCS) suggests other types of information that should be shared in the protocol – such as any specialist care the carer has been contracted to provide, and any

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<sup>1</sup> [The Care Planning, Placement and Case Review \(Wales\) Regulations 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

“particular needs or risks to the child such as ALN, disability, youth offending, mental health needs etc.”

## Findings

As part of our submission to this inquiry, The Children’s Society contacted all 22 local authorities in Wales to gather information about their arrangements and procedures when placing children in care settings that are outside of their ‘home’ local authority area. Our aim was to develop a better understanding of:

- how regulations are followed in local areas;
- local authorities’ arrangements and procedures when placing children out of their local authority areas;
- the information they receive from ‘placing’ local authorities, and
- arrangements and procedures they follow when faced with a safeguarding concern about a child placed in their area, such a child with a history of missing episodes.

Of the 22 local authorities in Wales, we received responses from nine. When asked about whether they share with the ‘host’ local authority the Wales Out of Area Notification Protocol when placing a child out of their areas, responses showed the variation across Wales regarding its use. There is inconsistent practice in how placing local authorities inform receiving local authorities about children whom they place in their area; only some local authorities use the Protocol. This is similarly the case regarding local authorities receiving the Protocol when a child is placed in their areas. Some receiving local authorities do receive the Protocol from the placing local authorities, whereas others do not. For at least one local authority who responded to us, most of the time notifications of a child being placed in their area are received by means other than receipt of the Protocol or through social services channels, such as via the health board.

We also asked local authorities whether they shared with the receiving local authority a Child Information Form with information on the child in whose area they are placing. The Child Information Form (CIF) enables social workers to note information about a looked after child that is not directly asked for in the Wales Out of Area Notification Protocol, such as any risks related to the child, and whether the child has a history of missing episodes. Additionally, the CIF should be shared with the placement provider in whose care a child is being placed. Based on the responses we received, it is unclear whether or not local authorities share the CIF when placing a child in another local authority area, and it is unclear when CIFs are sent – that is, before or after a placement is made. It seems to be the case that local authorities use a different form which serves the same purpose as the CIF. In the case of one local authority, it seems that they learn about a child being placed in their area after being contacted by health professionals.

Similarly, based on the responses we received, there is inconsistent practice regarding local authorities receiving the CIF when other local authorities place a child in their areas. Some do not receive the CIF, whilst others seem to receive the information that might not take the form of a CIF. There is also variation as to when the information –

whether by way of a CIF or otherwise – is received by the receiving local authority (before or after the placement is made).

We also asked local authorities, if they send the Wales Out of Area Notification Protocol when placing a child in another local authority area and not the CIF, whether they include additional information about the child requested in the Wales Out of Area Notification Protocol. Based on the feedback from local authorities, it seems that most local authorities who use the Wales Out of Area Notification Protocol provide only the information that is requested in the Wales Out of Area Notification Protocol. Relatedly, it seems that most local authorities who receive the Wales Out of Area Notification Protocol receive only the information that is requested in the Wales Out of Area Notification Protocol. Any additional information is provided by other means, such as “via email” or “discussions between Social Worker and the authority.”

This means that if a local authority shares the Wales Out of Area Notification Protocol and not the CIF, and shares only information that is requested on the Wales Out of Area Notification Protocol, there is a risk that crucial safeguarding information about a child placed in another local authority area is not shared, such as whether they have a history of missing episodes, or a known risk of abuse or exploitation faced by the child.

To expand on the safeguarding point, we asked local authorities whether they discuss with the local authority in whose area the child is to be placed arrangements for responding when the child goes missing – for example, who is responsible for offering the child a return home interview, who is responsible for conducting the return home interview, and where these decisions are recorded (CIF, Wales Out of Area Notification Protocol, or both). Based on the information we received from local authorities, local authorities take different approaches when placing a child with a history of missing episodes in another local authority area and discussing arrangements with the receiving local authority if the child goes missing. Some of the different approaches taken by local authorities include:

- Relying on professionals (care home staff) in the receiving local authority area to lead on post-missing episode arrangements
- Providers of post-missing episode support discussing arrangements with the placing local authority.
- The placing local authority leading on post-missing episode arrangements, such as completing return home interviews.
- One local authority stated that arrangements are not captured in the notification form that they use.

Similarly, when asked about discussing post-missing episodes arrangements if receiving a child from another local authority, information from respondents showed that there is varying practice. Some examples include:

- The placing local authority taking responsibility for offering and completing a return home interview with the child if they go missing.
- Discussions between placing and receiving local authorities about whether the former needs support if a child whom they have placed goes missing.

- Discussions between placing and receiving local authorities and police to decide who conducts the return home interview, but this only happens after a missing episode has happened.
- In some local authority areas, these discussions do not take place, and in others the receiving local authority is not always informed that a child has been placed in their area.

In our final set of questions we asked local authorities whether they share with the local authority, in whose area a child will be placed, the child's care plan to inform the local authority receiving the child about any specific risks faced by that child. The responses showed that there is varying practice – some placing local authorities do share care plans with the receiving local authorities, whilst others seem to not do so. Similarly, we asked local authorities whether they receive from a placing local authority the care plan of a child being placed in their care. Interestingly, based on the local authorities who responded to us, almost all local authorities who receive a child into their care from another local authority responded that they either do not receive the care plans of children being placed in their area from the placing local authority, , or do not receive them at the same time as the placement is made.

From the responses we received from local authorities, the key findings that we would like to highlight to the Children, Young People and Education Committee are the following:

- Regulations for placing children in another local authority area are not being followed consistently across Wales.
- Information sharing practices between local authorities are varied and inconsistent – specifically, there is inconsistent practice when sharing the Wales Out of Area Notification Protocol, the Child Information Form, or looked after children's care plans.
- There is inconsistency in arrangements for responding to children placed in another local authority area who go missing. It is concerning to learn that in some local authority areas discussions about where responsibility lies for supporting a child placed in another local authority area who has been missing do not take place. It is also concerning that some local authorities have these discussions only after a missing episode has taken place.
- Some local authorities are not notified that a child has been placed in their areas until a missing episode has taken place.

The primary finding from the responses we received from local authorities was the lack of a consistent approach to information sharing when a child is placed in another local authority area, or the lack of information sharing at all. These practices mean that some children do not receive the care and support they need when they are placed in a care setting far away from their homes, thereby increasing the risk both of unsuccessful placements and children not receiving appropriate support if they face particular risks, such as abuse, exploitation, or a history of missing episodes.

These findings reflect those of the 2016 Children's Commissioner for Wales' report *The Right Care*,<sup>2</sup> which examined children's social care in Wales, including out of area

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<sup>2</sup> <https://www.childcomwales.org.uk/wp-content/uploads/2016/06/The-right-care.pdf> (p.34)

placements. The report states that the “main recurring theme during discussions around safeguarding was lack of information sharing when an out of county placement is made. It was felt that all agencies are immediately ‘on the back foot’ if regulations are not followed, and the first contact they have with a young person will be when an incident has taken place.” Based on the responses we received from local authorities, it seems that the issue of inconsistent information sharing practice or lack of information sharing practice remains the case in the six years since that report.

### *Recommendations*

- In 2021, the Ministerial Advisory Group for Looked After Children (MAG) published its legacy report,<sup>3</sup> marking the end of the MAG’s work. The report’s authors say that one of the priorities of the MAG was to “develop practice guidance on out of area and cross-border placements for children and young people in residential care”. However, this piece of work was not completed, but the report states that it is an example of the MAG’s work that will be “completed” and “issued”. As of 2023, this practice guidance has not been published.

We urge Welsh Government to work with stakeholders and publish the practice guidance on out of area placements that was started by the MAG. As an integral part of the practice guidance, we recommend that it contains guidance on developing robust and consistent information sharing frameworks for all local authorities in Wales to develop and implement. To ensure consistency across Wales, it would be worth Welsh Government’s consideration that such guidance are placed on a statutory footing, meaning that all local authorities are required to develop information sharing frameworks to use when placing a child in another local authority area. Information sharing frameworks must also enable local authorities to share information when supporting children who have been placed in another local authority area and who have known risks of abuse, exploitation or a history of missing episodes.

- We also recommend that professionals working in care settings, such as children’s homes, receive training on current regulations and their requirements when supporting children who have been placed out of area. The responses we received from local authorities showed that regulations are not being consistently followed, and a possible reason for this is a lack of knowledge or understanding of, or familiarity with, current regulations. We believe that this can be addressed by training which should be available for all professionals working in children’s care settings.
- We also recommend that there is oversight of the implementation of information-sharing protocols, such as via inspections to Care Inspectorate Wales.

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<sup>3</sup> [Improving Outcomes for Children Programme \(gov.wales\)](#) (p.23)

## **Priority Two: Statutory Return Home Interviews for all children, including looked after children, who have been missing**

### **The importance of Return Home Interviews**

When a child goes missing, it is an indication that something is going wrong in their life. When they go missing repeatedly, this signals that the problem has still not been addressed.

Missing episodes can place a child or young person at significant risk or harm, including child sexual exploitation and child criminal exploitation. These harms may also be the cause of the child or young person going missing in the first place.

Missing episodes might also occur due to factors that push a child away from their home or placement, such as domestic abuse, family placement, or placement breakdown.

We can identify these as some of several 'push and pull' factors which lead to missing episodes and repeat missing episodes. A Return Home Interview can help to identify potential 'push and pull' factors by providing a child or young person the opportunity to share their experience of the missing episode, so as to identify where they were, with whom, and to understand the reasons why they went missing. This information can be used to make sure that the child or young person receives appropriate support, to try and address and disrupt the 'push and pull' factors that lead to missing episodes; and to try and prevent future missing episodes.

Throughout this process, the child or young person should be kept informed, as well as be given the right and opportunity to express their wishes and feelings when decisions are made about their lives, under Article 12 of the UN Convention on the Rights of the Child (UNCRC). Doing so enables the child or young person to play an active role in the follow-up support they receive.

Although any child and young person can go missing, some children and young people are more at risk of going missing than others. Nine in ten care experienced children or young people who go missing will be reported missing multiple times in the same year. In 2020, looked after children and young people accounted for 39% of all child missing incidents in Wales, despite making up less than 2% of the child population.

We would argue that these repeat missing episodes could be prevented if children and young people are provided with an opportunity to talk about their experiences whilst missing and the help they need, by way of a systematic approach to offering Return Interviews and follow-up support, across all of Wales. This is particularly important for children and young people who are looked after, who are at greater risk of going missing.

Additionally, recognition of the importance of Return Home Interviews was recently stated in a 2022 report as part of the Independent Inquiry into Child Sexual Abuse. The Inquiry recognised the role that Return Home Interviews play in helping to tackle child sexual abuse:

*“An RHI is an important opportunity to demonstrate to a sexually exploited child that there is a concern for his or her welfare, to develop a relationship with the child and to build a support and protection plan. It can also be a vital way of gathering relevant information about sexual exploitation that has occurred or particular factors about the missing episode indicating potential harm or a heightened risk of exploitation.” (p.93)*

## **Strengthening Welsh Government guidance**

Practice Guidance currently states that following a missing episode, “the child or young person may be offered a return home interview”. We are calling for statutory guidance to mandate that children and young people *must* be offered one.

Although the Practice Guidance includes sections on the ‘approach following an episode when a child has been missing’ and what would be a ‘proportionate response’, guidance on the importance and provision of Return Interviews is very unclear.

The Practice Guidance’s eligibility criteria for a Return Interview is vague, stating that “These services are usually made available to children where there is an identified risk of child sexual exploitation and/or because the child is looked after”. In the case of exploitation, Return Interviews are a vital safeguarding tool to identify risks. For children who are looked after, the guidance does not guarantee their entitlement to a Return Interview, which is reflected by an inequality of service access in different parts of the country.

If choosing to offer Return Interviews, there are numerous questions that a service provider or commissioner may face. Here key questions for which current Practice Guidance offers no advice:

- Who should conduct the Return Home Interview?
- Does the interviewee need to be independent of the child’s care?
- How quickly should a Return Interview take place?
- Where should the Return Interview happen?
- What is discussed in a Return Interview and what happens next?
- What happens if a child refuses to take part in a Return Interview?
- Who is responsible for a Return Interview if a child lives ‘out of area’?
- How is information from Return Interviews to be collated and analysed?

By way of comparison in England, guidance on Return Interviews is statutory and clearly sets out answers to each of these questions. Our 2020 research<sup>4</sup> has shown that where a child is reported missing, the average annual number of ‘repeat missing episodes’ per child in England was 2.9, compared to 3.5 in Wales.

## **Inequality in service and support in Wales**

Commissioning arrangements vary across Wales. Three of the four police force areas each commission Return Home Interviews across their entire police force area, encompassing all local authority areas within. The six local authorities within the fourth police force area separately provide their own in-house Return Interview services.

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<sup>4</sup> [Missing-the-Point-Report-EL-Nov.2020-1.pdf \(amazonaws.com\)](#) (p.3)

There is currently no mechanism for Welsh Government to make sure that local areas offer or commission Return Interviews, or even to understand if and how this is happening.

It is unclear how information is collated and analysed, as Return Interview service evaluations vary. Some areas commission external evaluations, while others conduct internal evaluations. Two local authorities conduct internal evaluations, one monitors quarterly via their local Missing, Exploited and Trafficked Panel, whilst others have no evaluation at all.

Children and young people do not always have a say in the service they receive and only some areas collate children and young people's views on the Return Home Interview service.

There is also variation across Wales regarding agencies who conduct Return Home Interviews. Some areas commission external independent Return Home Interview services, whilst others conduct the Interviews themselves.

### **The risks of inaction**

Currently, there is too much variability in the provision of Return Home Interviews across Wales. This variability means that children and young people who go missing face inconsistency in the form and quality of support offered to them when they return home from a missing episode.

This means that the response to a child who goes missing, and the subsequent offers of support they receive is contingent on their location; whilst one child or young person in one area might receive a Return Home Interview and follow-up support, there is no guarantee that another child or young person in a different area will receive likewise.

Some children and young people who go missing are subjected to serious sexual violence, criminal exploitation and other harm. Return Home Interviews are a preventative measure aimed at stopping or reducing those risks. Right now in Wales, children and young people will be experiencing violence and exploitation that and the opportunity to detect and address these situations is missed.

In recognition of the risks that children and young people face when they go missing, Welsh Government guidance mentions the moment when they return home as being potentially crucial to identifying risk or harm. Missing periods are referenced in All Wales Practice Guides including 'Safeguarding children from Child Criminal Exploitation', 'Safeguarding children who may be trafficked', and 'Safeguarding children from child sexual exploitation'. However, without clear guidance on Return Home Interviews, this crucial moment can be a lost opportunity.

Welsh Government can strengthen existing guidance to prevent and disrupt the various risks and exploitation children and young people face by rethinking Return Home Interviews policy in Wales. This means making Return Interviews a statutory requirement across Wales, with guidance that make sure they are offered and delivered in a systematic way across Wales and lead to appropriate follow-up support.

This also would provide valuable information to Welsh Government and stakeholders to identify trends and areas of improvement, which should be collected, analysed, and published in an annual report.

## **Recommendations**

We acknowledge that Welsh Government have commissioned research into current arrangements across Wales when children and young people go missing. This is welcome and we await the outcome. In the meantime, we continue to call for changes to be made to responses in Wales when children and young people go missing, specifically through the following recommendations:

- Independent Return Interviews must be a statutory requirement whenever children go missing.
- All Practice Guidance must be strengthened to guarantee a consistent and effective approach to supporting missing children when they return home, wherever they are in Wales.
- An annual missing children data report should be published by Welsh Government to identify trends and areas for improvement.

## **Priority Three: Introducing a guardianship scheme for all unaccompanied asylum seeking children and young people**

Although we acknowledge and support the work being done by the Independent Child Trafficking Guardians in Wales, we believe that all unaccompanied asylum seeking (UASC) children and young people should have access to a guardian, even if they have not experienced trafficking. A guardianship scheme would primarily focus on helping a child or young person navigate the process of seeking asylum, but would also provide wrap around support to help them settle and thrive in their communities. We provide examples of what such wraparound support could entail later in this response.

A guardianship scheme was recommended by the UNCRC in 2016, and a year later the Equality, Local Government and Communities Committee of the Fifth Senedd recommended that Welsh Government should introduce a guardianship scheme in Wales, as is in place in Scotland and Northern Ireland. Welsh Government accepted this recommendation in principle, stating that it wanted to explore whether a guardianship scheme could work alongside support already in place in Wales – specifically, the statutory offer of advocacy for all children and young people receiving care, and the Guardians for children and young people who have been trafficked.

In Wales and England, Section 48 of the Modern Slavery Act brought forth the introduction of Independent Child Trafficking Guardians (ICTGs) assigned to children identified as potential victims of modern slavery. The service is currently being rolled-out nationally, and operates in Wales. However, these ICTGs work only with children and young people identified as potential victims of modern slavery. In 2019, Welsh Government committed to piloting a guardianship scheme which would be available

to all unaccompanied and separated children and young people in Wales. However, as of the time of writing (2023), the pilot scheme has not been implemented.

Over recent years, guardianship schemes have been partially adopted across the UK, with models varying significantly across the UK and leaving significant gaps for thousands of children. Across the UK, Northern Ireland's 'Independent Guardians' model is the most comprehensive. The law provides for an individualised service for all unaccompanied and separated children or children who have been trafficked in Northern Ireland. The Scottish Guardianship Service was introduced in 2010 and is run in partnership with the Scottish Refugee Council and Aberlour Child Care Trust, supporting all unaccompanied children in Scotland. An evaluation of the service found widespread benefits, including its role in facilitating young people to make disclosures of trafficking and exploitation.

Although they form a small proportion of looked after children, unaccompanied and separated children often fall through the gaps in statutory support, facing subsequent risks of mental health crisis, suicide, and a high risk of going missing. We believe that all unaccompanied and separated children and young people in Wales should have access to a guardianship scheme that would offer holistic support. In addition to helping to navigate the asylum process, this holistic support could include helping unaccompanied and separated children and young people adjust to their new life; their integration into society, introducing them to new social opportunities; equipping them with day-to-day life skills, helping them to access services, and assisting them with making informed decisions about their future.

The need for a guardianship scheme for all unaccompanied asylum seeking children and young people in Wales has become increasingly pressing. At the end of 2021, the Home Office temporarily mandated the National Transfer Scheme (NTS) in an effort to end the use of hotels. This meant that every local authority across the UK with children's services would need to take in unaccompanied children. In August 2022, the Home Office offered local authorities more money if they took children within 5 days of their entering a 'UASC' hotel and raised the quota so that each local authority had to take more children.<sup>5</sup> Previously, the cap was unaccompanied asylum seeking children and young people making up 0.07% of the total population of children locally. This has now risen to now 0.1%. This means that every local authority needs to take unaccompanied asylum seeking children and young people, and take them in greater numbers.

The census through March 2022, shows there are 110 unaccompanied asylum seeking children and young people in Wales.<sup>6</sup> As NTS figures show, numbers of unaccompanied asylum seeking children and young people being transferred into Wales have grown; in 2020, three were transferred to Wales, and in 2021 this number grew to 22.<sup>7</sup> No unaccompanied asylum seeking children and young people young people were transferred in the years prior to that. Although 2022 figures are currently unavailable, we expect the number will be larger for 2022. These figures clearly establish the growing need for more services and support for these young people for

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<sup>5</sup> [Faster accommodation moves for unaccompanied asylum-seeking children - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>6</sup> [Unaccompanied asylum-seeking children being looked after at the 31 March by local authority \(gov.wales\)](https://gov.wales)

<sup>7</sup> [29/03/2006 \(refugeecouncil.org.uk\)](https://refugeecouncil.org.uk)

navigating the asylum process, which we believe a guardianship scheme would enable.

### **Recommendation**

- We call on Welsh Government to revisit its commitment in its 2019 Refugee and Asylum Seekers Plan and introduce a guardianship scheme in Wales, which would support unaccompanied asylum seeking children and young people to navigate the process of seeking asylum, and offer holistic support for children and young people as they settle in their new communities.

### ***Anything else – Additional issues for the Committee's consideration***

### **Eliminating profit from the children's social care market – issues to address**

As part of its proposal to reform children's social care, Welsh Government includes proposals to eliminate profit-making from children's social care. We welcome in principle Welsh Government's proposal to change the children's social care market so that it will consist of not-for-profit providers only. However, we would like to highlight issues about the proposal that we believe Welsh Government should consider before progressing.

#### **Timeframe**

The first concern we have is the timeframes within which the primary aims of the proposal are expected to be achieved. Specifically, that new providers of children's social care registering with Care Inspectorate Wales (CIW) must have 'not-for-profit' status from April 2026, and that any 'for-profit' providers will need to transition to having 'not-for-profit' status – and register with CIW as having such status – by April 2027. We believe that these timeframes do not provide enough time for providers and other stakeholders to reach these aims safely, if at all.

We are concerned that disallowing 'for-profit' providers from operating in Wales will worsen the current lack of supply to meet demand. This means increased costs for local authorities when seeking and purchasing child social care provision; placing children in settings that might not be appropriate to their needs; and, in more severe instances, a risk of delay in securing a placement for a child and that child remaining in an environment that is unsafe for them. Retaining the current proposed timeframe could force 'for-profit' providers to either cease or withdraw their operations in Wales, thereby removing supply from the market and exacerbating the risks of increased costs for local authorities, a lack of appropriate provision, or insufficient availability of provision in general.

Whilst we recognise Welsh Government's intention that some 'for-profit' providers might wish to transition into becoming 'not-for-profit' providers and that it will support

such providers to make that transition, we believe that the timeframe that is currently set for this to take place is not sufficient. Changing from a 'for-profit' to a 'not-for-profit' provider will require providers to undergo structural change, which is a process that can be time-consuming. Not all providers who wish to transition will have the expertise to make these structural changes, and not all providers who wish to transition will be able to at the same pace and within the proposed timeframe. This risks a number of providers ceasing operations, thereby worsening the problem of a lack of supply to meet demand.

Additionally, local authorities are not in a position to buy these 'for-profit' providers, because they cannot financially afford to do so, and in the case of residential care settings, they do not have the capacity or resources to run a residential care setting. Furthermore, in an instance of a severe lack of supply, local authorities may be forced to turn to larger providers who have the financial capacity to meet demand; the very providers whose practices Welsh Government are trying to tackle.

We also have heard anecdotally that local authorities and providers do not feel supported in the process of making the transition to becoming a 'not-for-profit' provider, which - along with the insufficient amount of time to make these changes - creates a difficult environment. As well as allowing more time to transition, Welsh Government need to listen to the concerns of local authorities and providers, and support those providers who want to transition to becoming 'not-for-profit' providers, and do so throughout the entire transitioning process.

As well as helping 'for-profit' providers who want to become 'not-for-profit' providers, we note in the consultation document that Welsh Government seek to "encourage new not-for-profit creation of provision." Whilst we welcome this, there is a lack of information about how Welsh Government is planning to realise this ambition. It is crucial that any work undertaken to encourage new 'not-for-profit' provision is done in collaboration with local authorities. According to the Competition and Markets Authority (CMA), local authorities in Wales use their resources reactively, rather than on planning for future need.<sup>8</sup> Additionally, CMA reports that local authorities have difficulty in shaping the market – for example, by effectively signalling their needs and encouraging providers to operate in their areas.<sup>9</sup> Therefore, local authorities are forced to use resources reactively, meaning that they often take any placement that is available, even if these placements are not appropriate to meet the needs of particular groups of children and young people – such as unaccompanied and separated children and young people, or children and young people with complex needs.

Additionally, opening residential care settings can be a lengthy process. Anecdotally, we have heard that recently it took a local authority five years to open a new residential care setting. Amongst the possible causes of this lengthy duration are the current planning requirements in Wales. According to CMA, due to the planning system in both Wales and England, care providers face difficulties in gaining planning permission to set up and open new children's homes.<sup>10</sup> For example, providers often face outdated views about children's homes and looked after children held by people living

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<sup>8</sup> [Wales summary \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

in an area in which a provider wants to open a home, as well as facing losing a potential property due to a rival bidder for use of the property as a home for a family.

In order for Welsh Government to achieve its aim of encouraging more 'not-for-profit' provision to be established, it will need to work more closely with local authorities to shape the child social care market to increase the supply of appropriate provision, and lead on national sufficiency planning and the ways to resource it. This could be done by supporting local authorities to work more collaboratively to shape the child social care market, thereby strengthening their bargaining position to attract providers to establish in their areas provision needed by children and young people in their care.

We believe that increasing supply needs to be prioritised to ensure that there is enough appropriate capacity for local authorities to use for placing children and young people – an issue that might become even more urgent if 'for-profit' providers cease or withdraw operations in Wales. Local authorities must be supported by Welsh Government to fill the supply gap by creating more care setting capacity, and must be allowed more time to do so than has been outlined in the consultation document.

We also note Welsh Government's aim to support "existing not-for-profit organisations who wish to expand their provision." Although we support this aim, we have heard anecdotal evidence from 'not-for-profit' providers that they are not receiving support from Welsh Government to expand, and that their concerns about their lack of capacity to expand are not being listened to by Welsh Government. We urge Welsh Government to work more collaboratively with current 'not-for-profit' providers to learn whether or not they have the capacity to expand, and if so, to support them throughout the process of expansion. For 'not-for-profit' providers who want to expand but do not have the capacity to do so, or for 'not-for-profit' providers who are unsure about expanding, Welsh Government need to incentivise these providers to expand, and support them throughout the process of expansion.

Taken together, we recommend that, in the short-term, Welsh Government focusses on 'rebalancing' the child social care market to enable more 'not-for-profit' providers to establish or expand, without eliminating 'for-profit' providers in too short a timeframe. In doing so, we believe that supply can be increased to meet demand in such a way that local authorities will face less difficulty in placing children and young people in appropriate care settings, and that transitioning the market to one that is made up entirely of 'not-for-profit' providers will be a process that is done safely and with minimal disruption to children and young people.

## **Legislation**

We also note that Welsh Government has suggested introducing legislation to bring its proposal into law. While we are not opposed in principle to the use of legislation to bring about changes to the child social care market, our main concerns are about the use of legislation to set a timeframe within which Welsh Government intend for changes to the child social care market to be made; the focus on 'eliminating profit' without the recognition of the need for a gradual transitioning period towards a market of 'not-for-profit' providers (the 'rebalancing' of the market); and the risk of the removal of local authorities' ability to respond to needs specific to their areas.

To expand on the last point, some of the responses to Welsh Government's 2021 white paper on 'improving social care arrangements' expressed concerns about the introduction of a national framework. They believed that a national framework "would be inflexible, at the expense of local autonomy, [and that the] importance of local circumstances was highlighted and the ability of organisations to define and secure provision in a way that meets their own priorities."

We are concerned that introducing legislation to eliminate profit without enough consultation and preparatory work with local authorities and providers might risk having the same outcome of removing local decision-making and local authorities' ability to respond to their specific needs. Before the drafting of any potential legislation, we urge Welsh Government to do more preparatory work with local authorities and care providers, with the aim of finding the balance between ensuring that any future arrangements provide local authorities with the agency to respond to local needs, allow them to lead on the work of increasing the supply of care provision to meet demand, but providing them with the support and resources to develop capacities to undertake this work. In the case of 'for-profit' providers, Welsh Government must support these providers throughout the process of transitioning to being 'not-for-profit' providers.

### **Supporting the transition of valuable 'for-profit' providers**

We also believe that more care is needed in making a distinction between different types of 'for-profit' providers. As well as defining what is meant by 'not-for-profit', there needs to be clarification and distinction between different types of 'for-profit' providers. In the case of residential care settings, although most providers are 'for-profit', only a small proportion are large providers making large profits. Most of the 'for-profit' providers are small and medium-sized enterprises, often run by former social workers, who do not make a large amount of profit, and any surplus that they earn are often reinvested back into their businesses. Additionally, we have heard from colleagues working closely with local authorities and providers that these small and medium-sized businesses provide "quality and diverse services", both in residential and foster care settings. We also heard that these providers find that the intention to 'eliminate profit' from the provision of care to children and young people devalues the work that they do, and that some are not in a position to become a 'not-for-profit' provider and have been forced to cease operations.

We believe that it is crucial that 'for-profit' providers who provide good care to children and young people do not feel devalued and demoralised. It is important to make a distinction between small and medium-sized businesses and large providers to make a high amount of profit from their operations, and that the work to be undertaken with these different types of 'for-profit' providers needs to reflect this distinction. More specifically, small and medium-sized businesses need to be recognised not as opportunists who merely want to make as much money as possible, but as providers of important and quality services to children and young people. If they want to transition to being 'not-for-profit' providers, Welsh Government need to work with them during the transition period to undergo any necessary structural changes or develop additional capacity.

## Recommendations

- Welsh Government should shift its focus on 'rebalancing' the child social care market such that more 'not-for-profit' providers are able to establish or expand, without eliminating 'for-profit' providers in too short a timeframe.
- Welsh Government should set a longer timeframe within which 'for-profit' providers who want to make the transition to 'not-for-profit' providers are able to do so.
- For 'not-for-profit' providers who want to expand but do not have the capacity to do so, or for 'not-for-profit' providers who are unsure about expanding, Welsh Government should incentivise these providers to expand, and support them throughout the process of expansion.
- Welsh Government should work more closely with local authorities to shape the child social care market to meet their needs and increase supply of appropriate provision.
- Welsh Government should make a distinction between different types of 'for-profit' providers, and work with small and medium sized businesses during the transition period to undergo any necessary structural changes or develop additional capacity.