

General principles of the Bill (1/4)

The Explanatory Memorandum for the Health and Social Care (Wales) Bill states that the Bill is intended to eliminate private profit from the care of children looked after, and to enable the introduction of direct payments for Continuing NHS Healthcare. It will also make amendments to ensure that the Regulation and Inspection of Social Care (Wales) Act 2016 and Social Services and Well-being (Wales) Act 2014 are able to operate fully and effectively.

1. What are your views on the general principles of the Health and Social Care (Wales) Bill?

The Fostering Network is supportive of the key principles and aims of the Bill and the rebalancing towards not for profit. We have based our submission on conversations with our members over the past two years on the benefits, risks and ways to mitigate these risks. Our members in Wales include all 22 Local Authorities, and 12 independent providers, five of which are not for profit providers. The majority of our members welcome the Welsh Government aspiration to remove profit in principle but have concerns about the timescales, impact and workability of the process.

A recent report from the Wales Centre for Public Policy which explored the opinion of experts on eliminating profit from children's social care found "consensus that there are major and longstanding issues around the quality and sufficiency of placements for children looked after, with consequent impacts on outcomes."¹ It reported that placement decisions are often based on availability rather than need. It also noted that there are increasingly more out-of-area placements which are not in the child's best interests. These challenges are further impacted by factors relating to the social care workforce where there is greater reliance on unregulated agency staff, and where private companies are entering the market for profit rather than prioritising children's outcomes. The Fostering Network echoes these concerns about the issues in children's social care, specifically within foster care, so we hope that there will be a focus alongside this Bill on improving the quality of care and sufficiency of placements to ensure the best outcomes for children.

We have some concerns around the details of the transitional processes and timeline, particularly given that the numbers of children in care in Wales are almost the highest ever, at 7,210 in 2022/23.² We believe it is important that these details are made clear with enough time for appropriate action so that there can be the least disruption to children.

Footnotes:

1 Expert-opinion-on-eliminating-profit-from-care-of-children-looked-after.pdf (wcpp.org.uk)

2 The highest ever was 7,265 in 2020/21

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

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

3. Please outline your reasons for your answer to question 2

The Fostering Network believes that there is a need for legislation to deliver the Welsh Government's intention to eliminate profit from children's social care to ensure that this is robust. We would seek assurances that safeguards will be in place with an appropriate level of scrutiny during the legislative process. This policy intention has far reached impacts on children and the social care system, so we believe that the legislative process and the safeguards that this will provide are crucial to ensuring that it is delivered effectively and in a way that provides improved outcomes for children.

4. What are your views on Part 1, Chapter 1 of the Bill (sections 1-13), which makes provision intended to restrict the extraction of profit by providers of children’s care home services, secure accommodation services and fostering services

As the leading fostering charity, we answer only in relation to the extraction of profit from fostering services and outline a summary of the views of our members.

In order to prevent the dominance of large UK and international social care organisations once the Bill takes effect, it is crucial that small, community-based fostering services are supported in their not-for-profit form. These smaller services often have a strong focus on supporting children and young people to remain in their communities when safe, near their birth family and siblings. There is concern that an opportunity to protect smaller SMEs has been missed and that only legislating to remove profit is not sufficient to achieve better outcomes for children. In addition to the Bill, local authorities (LAs) need to implement stringent social value assessments for all not-for-profit children’s care providers in Wales, ensuring that supply chains align with the not-for-profit ethos and preventing surplus funds from being redirected as profit for back-office support functions or salaries. Transitioning to a not-for-profit model alone is unlikely to change organisational cultures, however, commissioning arrangements can significantly influence these cultures.

We believe that eliminating profit should be the basis for ensuring the needs of foster carers and those of children are being prioritised over shareholder interests. Some of our members are concerned that LAs may not fully understand their full production costs, which could then render this approach unsustainable if this has not been accounted for correctly. Additionally, those we consulted were concerned that this could lead to a destabilised sector and fewer choices of placement for Welsh children needing foster care in turn, this could result in more children entering residential care at a younger age, or having to be placed out-of-area or outside of Wales into England, for example. We, therefore, are supportive of the intention to eliminate profit from fostering services as long as the sufficiency of foster care is thoroughly explored and understood within this context.

5. What are your views on Part 1, Chapter 2 of the Bill (sections 14-22 and schedule 1), which makes a number of amendments in relation to social care services, social care workers and local authority social services, intended to ensure that the 2014 and 2016 Acts can operate fully and effectively

6. What are your views on Part 2 of the Bill (sections 23-26 and schedule 2), which relates to health care, and makes amendments to the National Health Service (Wales) Act 2006 in order to enable the introduction of direct payments within NHS Continuing Healthcare

7. What are your views on Part 3 of the Bill (sections 27-30) which contains a number of general provisions, including in relation to regulations, interpretation, consequential and transitional provisions, and coming into force provisions

Implementation and impact of the Bill (2/4)

8. Are there any potential barriers to the implementation of the Bill’s provisions? If so, what are they, and are they adequately taken into account in the Bill and the accompanying Explanatory Memorandum and Regulatory Impact Assessment?

The key barriers to implementation identified by our members centre on the proposed timelines and transitional arrangements, which they do not think are currently robust enough. It is vital that these take a child centred approach and ensure that all decisions around the transitional timeframes are made in children’s best interests. Our members have expressed concerns that the transitional arrangements will allow foster carers to remain registered with for-profit fostering services whilst they have a child in placement as there is currently no clear guidance on how long this should be allowed for. There is a concern that for-profit services will not be able to maintain and sustain the ‘business’ if they are unable to place new children, and will therefore go into administration, causing more instability for children. We would also suggest a new risk assessment is carried out by Welsh Government once for-profit providers have decided if they will transfer to charities or not in order to understand how many children will still be in placements with for-profit services.

Our members who are already charities are concerned that they have been told by Welsh Government that there is no money available to support them with the likely increase of foster carers they will have, following the transition period. This is despite LAs having been awarded circa £64m over 3 years to support the eliminate profit agenda. They believe that, if they were to be properly funded and supported, the third sector would be able to do more to increase sufficiency in a more targeted way.

9. Are any unintended consequences likely to arise from the Bill?

We are concerned that this Bill could result in Wales having less foster carers than we have currently. This is worrying as we estimate that Wales are already in need of 400 more foster carers within the next year. It is, therefore, crucial that the transfer protocols are clear and that foster carers and fostering services are aware of the processes that need to take place. Furthermore, we know from conversations with our members that the Welsh Government and AFKA good practice recruitment guide⁴ is not being followed by LAs. Our research and FOIs carried out last year also reveal there are still many inconsistencies between LAs, including for fees and allowances which we believe will not help prevent this likely net loss of foster carers during this process.

We are also concerned about the negative impact on children and young people currently placed with foster carers who are with profit making IFAs. As mentioned above, there is a risk of instability for children and young people if the for-profit provider they are placed with does not transfer to not-for-profit and then is financially unable to sustain their provisions.

There is likely to be a worsened impact on areas where there are more profit making IFAs and higher numbers of children in care, such as Cardiff. It is vital that it is made clear how these will be supported with the transition to ensure stability for children and sufficiency of placements.

The effect on specialist placements that are often mostly or completely provided by for-profit fostering services is another area of concern. Placements such as parent and child, and placements for siblings are already difficult to secure so it is crucial that none of the current foster carers are lost during this process, and that LAs and not-for-profit providers become more able to provide these placements.

Concerns have been raised with us that when profit making IFAs transfer to not-for-profit fostering services, they may still charge high prices to LAs and reinvest their profits by paying higher salaries or investing in other ways, therefore continuing to cause the sector to be financially unsustainable. We would like to know how this will be monitored by the Welsh Government, especially for services that also operate outside of Wales and would remain profit making in other areas.

Consideration should also be made as to the impact on independent providers who are currently using a profit-making model. Members have told us they feel they are now being labelled as 'bad' and demonised for their financial model. They will need to be supported effectively to transition, to ensure that this reputation does not carry forward and have negative consequences for their foster carers and the children placed with them.

10. What are your views on the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum?)

11. What are your views on the Welsh Government's assessment of the financial and other impacts of the Bill as set out in Part 2 of the Explanatory Memorandum?

12. What are your views on the Welsh Government's integrated impact assessments (set out in Part 2 of the Explanatory Memorandum), including the Children's Rights Impact Assessment

We support NYAS's submission to the Committee which states that the views or voices of the children and young people this will affect have not been adequately heard, consulted or addressed. The young care experienced people we have worked with often feel strongly that they are not listened to, so we believe it is important that this Bill does not add to those feelings.

The CRIA says "However, it is acknowledged there is a risk to placement sufficiency and stability as we build resilience and there is the potential for this to have a negative impact on children's rights and their outcomes in the short term" but the Bill or explanatory memorandum do not set out how this will be effectively mitigated. It also says that the Bill is in the best interests of the child, but we are concerned that if this is not mitigated, these proposals would not be.

13. What are your views on the approach taken by the Welsh Government to the development of the policy and legislative proposals reflected in the Bill.

We are concerned about the lack of stakeholder involvement with children and young people affected by this Bill throughout this process and believe that it is important that the voice of children is adequately heard and respected in the development of this Bill.

Many of our members have also reported that foster cares are not aware of the proposed changes and what this will mean for them, or what they will have to do if they need to transfer. We have also been told by our for-profit members that their carers and staff have felt demonised, which is unlikely to help with retaining foster carers and experienced social workers during this time.

Any other issues (4/4)

14. Are there any other issues that you would like to raise about the Bill, the accompanying Explanatory Memorandum and Regulatory Impact Assessment, or any related matters?

Our charitable independent members have highlighted that greater scrutiny is needed in respect of the impact of funding that has already been allocated to LAs from Welsh Government. A percentage of this was meant to be for LAs to work with the third sector, however they have not seen this funding being allocated to them and would like to better understand what is happening with it.

For children in Wales to have the best possible foster carer provision available to them the focus must be on them and what they need. Positive outcomes occur when consistent, high-quality, recruitment and retention practice is embedded across all aspects of service delivery. We would advise that there is an urgent need for improved data collection, scrutiny and evaluation across the fostering sector in Wales. Without improvements to this data collection, the impact on children will not be seen.