

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

Evidence from Association of Directors of Social Service and Welsh Local Government Association – RISC 08 / Tystiolaeth gan Cymdeithas Cyfarwyddwyr Gwasanaethau Cymdeithasol Cymru a Cymdeithas Llywodraeth Leol Cymru – RISC 08

## **The Regulation and Inspection of Social Care (Wales) Bill**

Health and Social Care Committee Stage 1 Written Evidence – Joint response on behalf of the Association of Directors of Social Service (ADSS) Cymru and the Welsh Local Government Association (WLGA)

**1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?**

The Bill is only one part of a number of measures, including the Social Services and Well-Being (Wales) Act and the Well-being of Future Generations (Wales) Bill that have a mutual dependency. These interdependent parts, including regulation and inspection, need to be strongly connected and complementary, so that they produce a whole system, the objective of which focuses on improving the well-being of the whole population, as well as improving the quality of care and support in Wales.

We recognise that social care has changed significantly since the last major regulatory change in Wales with a growth of mixed forms of support. With the implementation of the Social Services and Well-being (Wales) Act which will transform social care in Wales, as well, it would appear to be sensible to bring our regulation and inspection legislation up to date and review and reduce any complexity that exists under previous legislative frameworks.

**2. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill adequately take account of them?**

As mentioned above the Bill is just one part of a number of measures that seek to secure well-being for citizens and to improve the quality of care and support

in Wales and so the Bill is dependent on the other measures being successfully implemented and ensuring that each support the aims of the others. The Bill does seek to make fundamental changes to the regulation and inspection framework in Wales, such as the re-constitution of the Care Council for Wales, a move towards service based regulation and a greater focus on outcomes. These changes do not come without barriers, such as changes in requirements on providers and what they are reporting and the need for new systems to be able to manage this. The Bill takes account of a number of these barriers, for example the introduction of new offences to support the submission and accuracy of these reports. The biggest barriers will however be around the culture change within organisations needed to implement these new provisions and with the costs that are associated with the changes. The Explanatory Memorandum (EM) concludes that there will be additional costs associated with the Bill, particularly around the move to a service based model of registration and the introduction of a quality judgement framework, however it also recognises that there are some elements where it has not been possible to calculate costs making it difficult to ascertain all of the financial implications of the Bill.

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

The Bill's emphasis on focusing on the individual with a shift to outcomes-based regulation, as well as providing citizens with more opportunities to access information about services in which to make decisions on, should have a positive benefit for all citizens, including those with protected characteristics. Based on what we have seen we do not believe that there are any issues, though as the provisions are further developed it will be important to assess any potential impact that the changes may have.

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

We have commented on a number of issues throughout this response that suggests that more work is necessary on a number of matters to strengthen the Bill.

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

There is a considerable number of provisions included in the Bill for subordinate legislation, including regulations, guidance and code of practice making powers for Welsh Ministers. There are also rule, guidance and code of practice making powers for Social Care Wales' – without knowing the detail that will come through as a result of these it is difficult to say what any unintended consequences may be. However, there are some areas of risks, which are covered in more detail later, in response to the questions on the provisions in the Bill. For example, there may be some unintended consequences as a result of the introduction of a Quality Judgement Framework and the introduction of registration fees.

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

The original white paper on the future of regulation and inspection of care and support in Wales set out the benefits of moving to a service based model of regulation. The joint ADSS and WLGA response to the White paper (which can be found at: <http://www.wlga.gov.uk/download.php?id=5872&l=1>) welcomed this move as there should be a greater likelihood of being able to identify systemic failures on the part of providers and allow the addressing of these issues at an organisational level. It should also provide useful information about the culture and values across settings and it will be important to enable the regulatory body to both drill down into services and at a whole organisation level.

This approach does need to be balanced with not reducing the focus on settings, direct service delivery and the impact on users. It is important to ensure each setting is still inspected appropriately and that there is a level playing field in inspection between smaller and larger organisations. Managers of individual parts of the service must be clear that responsibility rests with them, not with head office. It also needs to be clear that if one part of a service has difficulties there is not an automatic judgement made against the service as a whole.

The Explanatory Memorandum (EM) identifies that the change to a service based model of registration is the preferred option but that this model will involve substantial transitional costs for the service regulator estimated at £1,471,000 for 2016–17. Given the financial challenges facing public services we need to ensure that this shift in approach will bring about value for money and that any added benefit outweighs the costs that are associated, particularly given the fact that EM identifies that 78% of independent service providers have only one setting.

There are some concerns over the proposed Quality Judgement Framework (QJF). In principle a QJF could be a useful tool for the citizen as it should enable them to compare and contrast services more easily. However, there is a big challenge to ensure that the framework is meaningful and effective, helping bring about a real improvement in services. There is a very real risk that the score would be the sole focus and any narrative would be lost. Rather than having a score, or a one word descriptor, we need to be focusing on having something that is succinct and encapsulates the whole performance, allowing citizens to make informed decisions. A poor quality judgement on a service provider which might be the home of choice for current residents will be disturbing and it is essential that such judgements are reliable, consistent and easily understood by the citizen. QJF's can be subjective and as a result do not provide consistent information / messages, unless that subjectivity can be reduced or removed it will always be open to challenge.

Experience has also taught us that the market moves quickly and individual service provider's performance can vary throughout the year. There will be a challenge as to how to keep the QJF up-to-date to inform citizens and ensure that people are making decisions based on accurate and reliable information.

In our joint response to the original White paper we outlined our views on the introduction of registration fees, identifying that as a fee would add to the current burden of tight margins for many providers and that ultimately this cost would be passed along to the citizen through the fee system then the potential benefits are unclear, as such we are not in support of this element of the Bill.

**7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes**

**for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services.**

Establishing an outcomes focused approach is to be welcomed and something that both the WLGA and ADSS Cymru have previously endorsed. In achieving this, there needs to be a greater focus on integrating the inspection process towards the achievement of improved well-being outcomes across the public sector. Work is required to redevelop current systems and approaches to establish workplace cultures that are based on people's needs rather than systems and processes. Strengthening service users' voices, so that their aspirations are reflected in the way in which services are delivered, will drive improving standards and provide the context for this shift in focus. In order to respond effectively and better understand how the working environment will have to change, inspectors and regulators will need to understand the challenges faced by the citizen, the workforce and service providers.

There is a clear link with the current Welsh Government consultation on performance measures under the Social Services and Well-being (Wales) Act which ADSS Cymru and WLGA are also responding to. This sets out how social services performance will be measured to ensure that they are meeting the duties of the Social Services and Well-being (Wales) Act, with a greater focus on measuring well-being and the achievement of outcomes. Our main point in response to the consultation is pertinent here – without a stronger clarity about 'what good looks like' we will all struggle to know how best to gather evidence to convince ourselves and others that the performance is good or excellent, rather than 'good enough'.

The Bill places a responsibility on local authorities to produce both an annual report and a local market stability report. Whilst much of the detail of these are to be prescribed in regulations it is important that neither of these become overly burdensome. Local authorities already produce an Annual Report of the Director of Social Services and so it is hoped that the regulations will build on what is in existence rather than looking to re-create anything.

Under the Social Services and Well-being (Wales) Act local authorities will be required to produce a population assessment, which under the draft code of practice, is to be produced once every local government electoral cycle and based on the LHB footprint. Any expectation on the local market stability

reports needs to link in with these other duties, otherwise we run the risk of duplicating work – The EM references an ‘annual statement of the social care market’ – it would seem unrealistic and unwieldy for local authorities to have to undertake this work on an annual basis whilst the population assessment is undertaken every 4 years. It would make sense to bring the frequency of production of the local market stability reports in line with the population assessment, with a need to review them during their lifetime as appropriate. A better understanding of the market and future trends is a good thing and local authorities have made efforts towards this. A Commissioning Framework was developed in 2010 which provides guidance under Section 7(1) of the *Local Authority Social Services Act 1970* in the form of standards which local authorities are expected to achieve. The Framework’s commissioning standards set the benchmark against which the effectiveness of local authority commissioning will be measured. The standards centre on the development of evidence-based commissioning plans and their delivery through effective procurement. Since then the Social Services Improvement Agency (SSIA) have also developed guidance to support the development of Market Position Statements. We need to be sure that placing a duty on local authorities to undertake an assessment of their sector will add value to the work that is already being done. Whilst the EM identifies the difficulties in attributing a cost to the process it does recognise that ‘undertaking the required analysis of the social care market in Wales will require specialist research skills, particularly skills associated with modelling’. This is equally applicable on a local level and so the production of these reports will require both time, expertise and resources for them to be effective.

The overlap of requirements in the Bill and the Social Services and Well-being (Wales) Act around producing a population assessment, an annual report and a local market stability report highlights the need to ensure that any legislation being passed compliments and links with existing, or planned responsibilities / duties. In addition to the requirements resulting from both the Bill and the Social Services and Well-being (Wales) Act, the Well-being of Future Generations (Wales) Bill puts local well-being plans on a statutory basis and the White paper on reforming local government talks about Council Leaders producing a manifesto and annual statement, with the Chief Executive responsible for producing an Annual Report.

## **8. What are your views on the provisions in Part 1 of the Bill for the development of market oversight of the social care sector?**

Anything that reinforces in the public mind, as well as with public sector commissioners, that social care, as well as health care, is a sector where provision derives from public, third and private sector bodies is to be welcomed. In both children's and adult services, providers have been in a position of considerable power in the market place, often because of public sector agencies' inability to think and behave commercially and therefore anticipate how the market will respond to changing economic and political trends.

'Shaping the market' is clearly a role for public sector commissioners and the regulators have a potentially helpful role to play in reinforcing a strengthened role of commissioners, but one that is built on mature and respectful relationships with providers. Legislative change should be a driver in shaping the market and the Social Services and Well-Being (Wales) Act 2014 makes a clear directional change, away from traditional and institutional response to people's needs and towards services and responses that have at their heart, offering improvements in people's lives and giving people more control over their lives and their care and support, where possible offered to people in their own homes and neighbourhoods.

The development of commissioning plans and strategies will be best undertaken between commissioners and providers, since providers will have intelligence about what works well for people and that people appreciate. That should be the basis on which future plans are developed. So whilst providers should not shape the market alone, neither should commissioners operate without the necessary dialogue with providers. Regulators should be free to bring their intelligence to the table, recognising any conflicts of interest, but without their contribution, the picture is incomplete.

We welcome oversight for CSSIW on the financial and corporate governance of the 'larger players' in the market, but it may be necessary for those powers also to be available in relation to smaller providers, particularly in a regional market place that can easily be destabilised, particularly by action against or closure of smaller domiciliary care providers. A review, as set out in Part 1, would place on the provider the requirement for contingency planning, but the experience in

using 'escalating concerns' procedures suggests that contingency planning should be a collective responsibility for all key stakeholders in dealing with a potential business failure and this should be reflected in legislation.

The development of local and regional market position statements is a step that should offer greater intelligence about stability and the scope for development to meet changing needs and demands. The regional footprint is more likely to be the most helpful configuration, since the scale of provision should allow greater flexibility in dealing with market changes, though flexibility will be required as in some circumstances a sub-regional approach may be more beneficial. These position statements should provide the foundations for a 'national market stability report'. The national report has to be continually 'work in progress', in order that commissioners and providers can demonstrate and learn how to show responsiveness to people's changing needs and wishes, as well as to the legislative landscape and what it suggests about commissioning intentions over the next 10/15 years.

**9. What are your views on the provisions in Part 3 of the Bill to rename and reconstitute the Care Council for Wales as Social Care Wales and extend its remit?**

It is important that we move from a position where there is insufficient clarity about where the responsibility for improvement sits and equally important that it is recognised that there are potential conflicts of interest between the role of regulator and that of promoting, encouraging and requiring improvement. There will also need to be a mature conversation about the distinction between improvement, that requires current arrangements to deliver better outcomes, and innovation, that requires that new responses are developed to meet changing expectations and demands, as well as new legislative requirements, as set out in Social Services and Well-Being (Wales) Act 2014. These will both need to be addressed through an agency with 'improvement' as one of its key drivers.

The regulatory function of Care Council for Wales has been important in giving the public confidence in the social care workforce and holding the workforce to account. Being able to remove a worker from the register to practice is a critical characteristic. It signals that poor practice is not tolerated, even where there

may be explanations and it has reinforced a sense of personal, professional responsibility amongst the workforce.

The resources available for improvement will be put to better use if they are pooled and driven by a single objective, to ensure that people who receive services experience increasingly better outcomes.

The renaming and reconstituting of Care Council for Wales (CCfW) as **Social Care Wales (SCW)**, with an extended remit, should build on the strengths of CCfW, particularly in giving service-users a voice and a part to play in the education of social workers and other social care workers. It is essential that this aspect of the CCfW's work and history is taken forward by SCW. In addition there should be at least the same level of representation on SCW for service users, as that provided by CCfW. Ensuring Local Government representation will also be important, particularly around the new remit to support improvement.

The extent of third sector and private provision needs to be better recognised through grants and assistance to support improvement available from SCW, as the stability of the market will partly depend on the continual professional development of the workforce and proper career pathways in all sectors of the workforce. It is worth restating that of 1780 regulated social care settings in Wales in 2011/12 only 218 were owned by local authorities and of nearly 12m hours of domiciliary care provided, only 3.6m was provided by local authorities. We believe that the majority of the social care workforce, in third sector and private agencies, has to have increased access to the attention and resources for their continuing professional development.

We welcome the remit for undertaking studies to improve the effectiveness, efficiency and/or economy of care and support, as that will help to demonstrate 'what good looks like', as we have referred above to the significance of being able to understand that. We believe that local authority performance and improvement should remain a sector-led and sector-owned model, with local government being best placed to support local authorities in many of the areas which are critical to local authority performance and improvement. This includes: understanding the local context and priority setting; financial planning and viability; political and managerial leadership; governance and decision-making; and organisational capacity. Local government has a successful track record for supporting service improvement and we would want

to see this role continuing through the use of elements such as peer review / challenge and self-assessment.

#### **10. What are your views on the provisions in parts 4–8 of the Bill for workforce regulation?**

The approach proposed in relation to workforce regulation for SCW is generally welcomed, particularly consolidating existing powers to regulate the workforce into a single statutory provision. In addition we welcome the clarity and explicit nature of the procedures for registration and fitness to practice, with greater autonomy to SCW in developing the rules governing the process of regulation.

Whilst the Bill 'recognises the broad nature of the social care workforce', it does not provide sufficient detail to give confidence to workers in third and private sector agencies that their needs are being properly considered or indeed that those workers, who make up the majority of the social care workforce, who are not social workers, are being given appropriate attention and recognition for the part they play in supporting people to lead fulfilling lives.

The work of the Law Commission (2014) should be a useful aid to develop this part of the Bill, with its recommendations, in England, for a single legal framework for all health and social care professionals. At the very least in Wales, this suggests the need for dialogue and much closer collaboration between SCW and bodies such as Health and Care Professions (HCPC) in the future, as we see greater collaboration and integration between local government and NHS in Wales. This is supported in the Social Services and Well-Being (Wales) Act 2014, with its emphasis on promoting the well-being of people to avoid later crises, with a shared responsibility for that purpose between NHS and local government reinforced by the Act.

We would support the proposals in the Bill for the removal of voluntary registration, but believe that there should be early discussions about the significance of leaving domiciliary workers and care home workers unregistered and therefore unregulated. We note the requirement to ensure that all regulated services have a registered manager, but this can only be a first step to offering greater protection within the law for all social care workers. This would be a huge call on resources and it would need to be focused on improving people's

lives and their experiences of services, rather than pursuing the objective of 'widening registration'.

We support the removal of dual registration for managers, placing the responsibility for registration solely with SCW.

On the matter of protection of title, we believe that there was benefit in protecting the title of social worker through the Care Standards Act 2000. The extension of this protection to other social care workers will need a wide debate with all key stakeholders.

We believe that it is wise for SCW to hold a list of people who are barred from practice and welcome an approach that differs from DBS, by referencing standards of conduct to which workers should adhere. However as stated in previous consultation responses we do not believe that the use of prohibition orders will be helpful as this is likely to cause confusion with the DBS processes and could lead to less public protection and assurance.

#### **11. What are your views on the provisions in part 9 of the Bill for cooperation and joint working by regulatory bodies?**

The developing trend and future plans suggest that more provision will be jointly provided between agencies and by a multi-professional and multi-disciplinary workforce. To improve the regulatory context for these changes, targeted at improving people's experiences of services and delivering better outcomes, requires that regulators reflect the service landscape and work together, letting go of sectional interests, and focusing on a maxim that suggests, 'doing it better means doing it together'. This complements the move away from assessing whether minimum standards are being met, towards an assessment of the well-being of the people receiving services.

It will be hugely helpful to have the level of cooperation required spelt out in the Bill, specifically identifying powers to cooperate in the exercise of their functions, to carry them out jointly and to be able to delegate functions to each other.

Sharing of information, or the lack of it, has been a real impediment to sharing responsibility and ensuring that the Bill makes it clear that sharing information

is expected to be the default position, rather than the exception, will set a standard for others to follow.

**12. In your view does the Bill contain a reasonable balance between what is included in the face of the Bill and what is left to subordinate legislation and guidance?**

Our response has raised a number of issues that we believe can be dealt with in subordinate legislation and guidance and our view is that the balance is adequate at present.

**13. What are your views on the financial implications of the Bill as set out in parts 6 and 7 of the Explanatory Memorandum?**

As identified earlier there are a considerable number of provisions included in the Bill for subordinate legislation, including regulations, guidance and code of practice and so without knowing some of the detail behind the provisions within the Bill it is difficult to know what many of the financial implications will be. The Bill itself fundamentally changes the regulation and inspection framework in Wales and, as reflected in the EM, there will be transitional costs associated with these changes, most of which fall on the current regulatory bodies. There are also new duties created, for example local authorities, in addition to the production of an annual report, will need to produce a local market stability report which will have a resource impact on local authorities to produce. We also need to be careful that as funding for improvement across the sector is consolidated through a single body in the form of Social Care Wales that local authorities do not lose the ability to focus on improvement or to be able to respond to performance issues that they have previously been able to.

Most frontline services are facing considerable cuts in the current climate, so the impact of costs associated with these changes should not be underestimated and should not risk further destabilising care providers.

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

Not at this stage