

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

Evidence from Care Forum Wales – RISC 11 / Tystiolaeth gan Fforwn Gofal Cymru – RISC 11

1. Care Forum Wales would like to thank the Health and Social Care Committee for the opportunity to provide written evidence on the Regulation and Inspection of Social Care (Wales) Bill. In our evidence, we seek to respond to some of the general matters raised in the consultation and to those provisions within the bill that are relevant to our members.
2. Care Forum Wales is the main professional representative organisation for independent providers (both third and private sector) of health and social care services in Wales. Our 450 plus members provide services across the full range of ages and settings, including looked after children, domiciliary care, supported living, residential and nursing care homes and hospices.
3. In our original response to the bill, Care Forum Wales confirmed broad support for the direction of travel and the need to update legislation to reflect current circumstances – the increasing dependency needs of people receiving care services and the higher expectations of society for quality services against a background of financial austerity. As an organisation we are keen to promote three key principles that we believe are central to achieving the required outcomes for citizens:
 - commissioning for quality
 - regulating against commissioning
 - building a professional and qualified workforce fit for the future.

Translating these into action requires a focus on quality and a genuine commitment to partnership and co-production. All of this chimes with the findings of two recently published and respected reports, “A Place to Call Home” by the Older People’s Commissioner for Wales (OPC) and “John Kennedy’s Care Home Enquiry” for the Joseph Rowntree Foundation.

4. John Kennedy’s report supports what Care Forum has been saying for a long time that society has to agree what it expects of publically funded care. This is not just a question of money, but about identifying what good, sustainable service looks like and recognising good performance. Both the OPC and John Kennedy recognised that we have some excellent care homes. We want to be able to identify such “beacon” homes so that they can provide inspiration and pass on their knowledge. We support the need for a “scores on the doors”

approach. Citizens want a simple system that reflects choice and availability of local services, along the lines of the Food Hygiene Ratings System where a rating of 1 does not mean that the premises have to close. Interestingly we never receive complaints from members about Local Authority inspections on hygiene scores because they are conducted in a supportive way. This is also what we want to see in regulation of care. Overall we need a regulation system that is flexible and allows people to share best practice; a system that is based on support to develop rather than on compliance; a system that is fair and transparent with an effective right of reply; a system that reflects the rounded experience of people receiving services and their families; a system that adds value and is not just a tick box exercise. This approach underlines the findings in the OPC's review of residential care. The review found no regulatory failings amongst any providers, but found that the system does not support quality because it is too bound by paperwork. There will always be a minority of providers that fail, but this is never intentional, hence regulation and the threat of de-registration will never be enough alone. Quality has to be built in and can only be achieved through clarity and support. Where something does go genuinely wrong we need to be able to learn from it together.

5. Once we understand what good quality is, it needs to be reflected in clear commissioning guidance. There is a particular lack of statutory commissioning guidance within the NHS in Wales which was highlighted in the recent Judicial Review action by Forge Care Homes et al against the Local Health Boards, which demonstrated that there is misunderstanding and misinterpretation of such guidance as does exist on Funded Nursing Care. Where commissioning guidance exists for social care, commissioners are not currently policed or held to account. The majority of Local Authorities do not commission at a rate that supports quality outcomes or payment of a wage that will encourage a professional workforce. We understand one local authority pays a fixed rate of £35 for an 8 hour "sleep in" shift that does not enable the provider to pay even the minimum wage; we regularly hear of Local Authorities telling providers that they are spending too much on food or staff levels. Our colleagues in UKHCA have identified £15.74 per hour as being the lowest rate at which domiciliary care can be commissioned whilst enabling payment of the minimum wage: yet the lowest fee paid in Wales is just £9.16. Domiciliary care is increasingly being purchased on the basis of on-line auctions, such as the Matrix system in Cardiff, that drive the price to the bottom and do not adequately reflect a quality element. There is a major difference in the residential care commissioned by Local Authorities across Wales, ranging from £419 per week in Powys (average fee) to £524 in Vale of Glamorgan (minimum fee). There is also the long standing issue with Funded Nursing Care paid by Local Health Boards towards care packages for those residents in care homes who have a combination of health needs and social care needs (commissioned by the Local Authority).

6. For this reason, we are very keen to see regulation of commissioning placed on the same footing as regulation of service provision and, whilst this may eventually fall out of the bill as it progresses, we would want to see it clearly expressed now. Current regulation of

commissioning is not strong enough and does not hold statutory provision for funded care sufficiently to account under the law. Commissioners both in Local Authorities and Local Health Boards must clearly state what they are commissioning for and should be regulated against this. In the spirit of professionalism and accountability, we also see value in commissioners registering with the workforce regulator.

7. Provision of good care can only be achieved with a professional and motivated workforce, another theme strongly endorsed by John Kennedy. We believe that all social care practitioners should be registered – Registered Care Managers should manage registered staff. This would both professionalise the workforce and give assurance to people using care services. However, the threat of being removed from the register is not enough in itself and needs to be backed up by support and we fully endorse Welsh Government's plans for the new Social Care Wales as an opportunity for improving and supporting practice. Social Care Practitioners are undervalued, often under paid because of low fee levels and have no governing or support body in the same way as nurses, for instance, have the Nursing and Midwifery Council. Care Forum Wales has long argued for social care practitioners to have access to such a body and have set up the Academy of Care Practitioners. Although still in formative stage, our vision is to build a professional body that builds in quality and support in the same way we would like to see services supported by the regulator.

8. The success of regulation and quality of care is underpinned by the need for collaborative working and co-production. Gwenda Thomas, the previous Deputy Minister for Social Care, deserves much credit for developing the notion of national partnerships and collaborative working between Welsh Government, commissioners and providers through legally constituted organisations. Unfortunately this level of collaboration does not always exist below Welsh Government level. For instance, in handing down his decision on the Judicial Review on Funded Nursing Care, Mr Justice Hickinbottom was critical of the lack of engagement by the Local Health Boards with their colleagues in Local Authorities and providers. We would like to see more explicit instructions within the bill to emphasize partnership working and to ensure that the national partnership and leadership arrangements are replicated as Welsh Government intend at regional level.

9. The bill in its current form is not fully developed, which makes it difficult to comment upon in detail. This is a concern given that poor law making in the past has resulted in tensions e.g. between CRB and employment law when first introduced. We have already indicated on the key areas that we would like to see more explicitly addressed. We are broadly supportive of the general direction of travel, but would need to see more detail of what is proposed in relation, for example, to providers' annual statements. We also remain concerned about the potential to introduce registration fees. Given that the majority of care is funded by the statutory sector we see this as simply moving money around the

system without improving the quality of regulation and increasing public expenditure on collection.

10. However, we also recognise the need to maintain flexibility within the bill to ensure that it can register future services, encourage innovations and maintain choice such that people are not shoe-horned or constrained by regulated services. The bill needs to be fit for purpose beyond 2027. In general terms, as detail develops and the implications become clearer, we would stress the need to continue the progress made on partnership working, for continued consultation moving forward and for the National Assembly for Wales to continue scrutiny.

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