



Rhys Morgan, Deputy Clerk  
Health and Social Care Committee  
National Assembly for Wales  
By e-mail to: [REDACTED]

15<sup>th</sup> April 2015

Dear Mr Morgan,

**Evidence on the Regulation and Inspection of Social Care (Wales) Bill**

Thank you for the invitation from the Health and Social Care Committee to submit evidence to the consultation on the Regulation and Inspection of Social Care (Wales) Bill, which I have the pleasure to enclose with this letter.

You will be aware that United Kingdom Homecare Association (UKHCA) is the professional representative for homecare providers across the four nations of the United Kingdom. Comments in our response are based on our knowledge and experience of the development of social care regulation from all four administrations over the last 15 years.

Overall, we would like to recognise the considerable thought and drafting which have gone into the Assembly's Bill to create a streamlined legislative framework for the regulation and inspection of care and support in Wales.

We note that the Bill places many of the provisions of the legislative framework into regulations. For the convenience of the Committee we have generally confined our comments in this response to the draft Bill itself, rather than suggesting detailed points for consideration in future drafting the regulations. I would like to confirm that UKHCA is fully committed to working with Welsh Government to help shape the regulations required for the Bill once enacted.

We look forward to providing oral evidence to the Committee.

Yours sincerely,

A handwritten signature in black ink that reads "C Angel". The signature is written in a cursive style with a large, looped initial 'C'.

**Colin Angel**

Policy and Campaigns Director

Direct line: [REDACTED]

E-mail: [REDACTED]

Twitter: [REDACTED]

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## **UKHCA's Consultation Response to Regulation and Inspection of Social Care (Wales) Bill**

### **General**

**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?**

Yes. We believe that the Bill presents an enabling framework which will enable the aims and objectives to be delivered, and specifies appropriately where regulations should be made (or rules made by Social Care Wales).

It is perhaps difficult for primary legislation to be written in a way which appears to deliver a person-centred approach. However, we can see that the wellbeing of individuals in Wales is an overriding consideration in the drafting.

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

We note that the Bill requires much of the legislative framework to be delivered through regulations, which are more likely to be the source of potential barriers than the draft primary legislation. It is therefore difficult to answer this question confidently at this stage.

We make a number of observations against the relevant sections, below.

The bill appears to have been drafted in logical order and with significant attention to detail and contains helpful annotations as to the intentions and format of the legislation. Clauses are generally concise and there is sufficient reiteration to avoid unnecessary cross-referencing. In our experience, social care providers generally do not need to refer to primary legislation too frequently (Regulations generally provide the level of

granular detail which they require), however, the language within the bill is likely to pose some challenges for readers less well acquainted with legislative drafting.

**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?**

No, we have not noted any specific equality issues within the legislation.

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

No, other than the observations we make below on specific issues that should be considered when making regulations. It goes without saying that the drafting of such regulations will require considerable collaboration between Welsh Government and knowledgeable and experienced stakeholders and the citizens of Wales who will be affected by them.

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

We note in the relevant sections, below, possible unintended consequences of the Market Oversight Regime, Market Stability Reports and the rule-making powers of Social Care Wales.

**Provisions in the Bill**

**6. What are your views on the provisions in Part 1 of the Bill for the regulation of social care services?**

We are generally supportive of the regulation of social care services in Part 1.

We believe that moving to a service-based model of regulation (where organisations may hold a single registration which specifies one or more

regulated services and/or locations) is an economically effective solution for the service regulator and social care providers.

We note the number of references to consultation with the public over the framing of regulations (and rules to be made by Social Care Wales) and are pleased to see that such consultation has extended to the Codes of Practice which Social Care Wales will produce and maintain.

We strongly welcome the option for Ministers to introduce a quality ratings system, and believe that this:

- a.** Will assist people who use services to make better informed choices about homecare providers when arranging their own care (or where directing others to arrange care on their behalf);
- b.** Encourage providers to benchmark their services against their competitors and inspiring self-improvement.
- c.** Will be welcomed by social care providers as a way of recognising excellence with associated commercial benefits for so doing;

We are, however, disappointed that the definition of "Care" (Section 3) has focused on "physical tasks and needs", rather than a more holistic explanation, which in the case of community-based services may include social engagement, services which help people to remain at home (including assistance with domestic planning and finances and shopping) and assistance with health-related tasks (primarily assistance with taking medication).

We are concerned that the definition of a "domiciliary support service" is ambiguous (Schedule 1, Section 7):

- We were unable to reassure ourselves that this definition made the position of extra care housing services clear;
- We have assumed that the intention is that extra care schemes to be regulated under this definition, but question whether an organisation

which both provided accommodation and care in an extra care scheme might meet the definition of a care home service, which we do not believe would be prudent;

- We also note that the expression “vulnerability” does not appear to have been defined in the Bill.

We are disappointed to see that regulation has specifically excluded personal assistants (Schedule 1, section 7(2)(a)), as we are unable to reassure ourselves that the definition of a “social care worker” to be registered with Social Care Wales (Section 78(1)) will capture personal assistants. The position of this association is that both workers engaged by organisations and personal employers benefit from statutory registration with a workforce regulator.

We also note the intentional exclusion of “introduction-only” employment agencies regulation (Schedule 1, section 7(3)):

- Our experience elsewhere in the UK suggests that it is difficult to establish whether an “ongoing role in the direction or control of the service” is taking place or not (which could lead to some services inadvertently trading without the require registration), and
- In the majority of cases, employment agencies introducing individuals to assist with social care services generally desire registered status, for the additional assurance it provides for people who use the service and for the business itself.

As the exclusion of introduction-only services appears to be intentional, we strongly recommend Welsh Government to consider defining what “ongoing role in the direction or control of the service” in the legislation (We will happily share our views on this technical area at government’s request). This is important for ensuring that organisations are able to identify correctly whether they meet the requirements for registration and avoiding organisations trading unlawfully, with the consequent lack of protection for the public.

We note the requirement for providers to make an “annual return” to Welsh Ministers (Section 8). While this is a reasonable expectation, our

experience suggests that such returns can be onerous for small and medium enterprises to complete, and for larger organisations to coordinate. We urge Welsh Ministers to ensure that the prescribed format of these returns contains only essential information which will either be subject to systematic analysis, or assist with inspection. (The generation of data required for a poorly-designed return is disproportionate to the effort and costs involved for independent and voluntary sector businesses).

Section 25 specifies that providers must display a registration certificate conspicuously at each place where the service is provided, with the presumed intention that it is available for inspection by people who use services and those who support them. The provisions in the Bill are sensible for institutional settings, but less appropriate for community-based services, such as homecare. We suggest that:

- Welsh Government consider a requirement that the statutory regulator maintains a system where the public may inspect the registration certificate (or details of registration) in a format which can be reached on-line (for example, the provider can give people a link to copy of the certificate held on the regulator's website), or
- That providers are required to integrate this information to their websites, where they have one, (for example by using the CSSIW "widget");

We are generally pleased with the provisions of Chapter 3 (Information and Inspection). We note that Welsh Ministers may make regulations on the qualifications and other conditions to be met by individual inspectors (Section 32(2)) and hope that this will include reference to inspectors having occupational competence (or satisfactory understanding) of the different types of service they regulate.

We are pleased to see a requirement that inspection reports must be produced "as soon as reasonably practicable after an inspection has been carried out" (Section 34(1)). Our impression from providers (not just in Wales) is that delayed publication of inspection reports is a regular occurrence, and has an adverse impact on people who use services by delaying the development of action plans which could remedy failings promptly.

We note the option to introduce fees for applications, variation and maintenance of registration (Section 38). Inevitably this will be unpopular with providers, particularly small and medium enterprises. If, in the future, such fees are introduced, we urge Welsh Ministers to consider:

- a gradual introduction of such fees;
- a clear system of calculating the fees payable, which is proportionate to the organisation's size;
- to provide adequate notice of fee increases to enable organisations to budget for their costs during their planning cycle.

## **7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority services?**

We are pleased to see a requirement on local councils to produce an annual report which includes the consideration of outcomes for service users included in the reviews of social service performance. We are unclear whether the Bill has clearly specified whether the authority is expected to report on its influence within the local market as a whole, or just within the areas from which it purchases (or directly provides). If this report is constrained to the former we are not sure that the market stability report along will be sufficient to achieve the policy objective.

We would particularly like to see a requirement for councils to analyse whether the fees that it pays for social care services (or the direct payments it makes to people who use services) produce a sustainable local market, where providers are able to meet their regulatory obligations, including payment of at least the National Minimum Wage, and other terms and conditions of employment, including for example the use of guaranteed-hours contracts for workers who may wish to have them. Our tentative assumption is that this could be facilitated through requirements issued under Section 145 of the Social Services and Well-being (Wales) Act 2014.

We note that Ministers *may* undertake reviews of local authority social service functions (through the 2014 Act as amended by Section 56 of the Bill). This is a positive position, but falls short of conducting a regular review of the services of councils on a programmed basis, which we believe

is advisable, given the dominant purchasing powers of councils in the local area. Again, we would like to see the local authority's impact on their local market specifically included within the criteria of these reviews.

**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?**

We note that the effectiveness of a "market oversight" regime to monitor and provide early detection of provider failure in social care has not yet been demonstrated within the UK, and is an area about which a number of major providers in the sector have expressed a degree of scepticism to this association. That said, the author of this paper has been closely involved with the creation of the equivalent regime operated on behalf of the Department of Health by the Care Quality Commission in England, and is of the opinion that the proposed regime in the bill echoes the majority of considered thinking invested in that regime, and is probably a proportionate way to deliver the policy objective of Welsh Government.

We think that the specification of business volume, geography and specialism of providers are the right measures to determine whether a provider should enter the regime. However, we do not see an obligation for Welsh ministers to consult with experts and other interested persons in defining the regime or the entry criteria. While we hope that this will be the case in practice, it is disappointing not to see this in the legislation.

We note that while the Bill describes how organisations enter the regime (Section 58), it does not make provision for organisations exiting the regime (for example because the organisation reduces its volume, sells part of its business, etc).

Section 61 deals with matter of alerting local authorities that a service provider may be (or is) unable to provide services. This is a particularly sensitive area, where there is likely to be significant tension between local authorities (who will wish to have as much notice as possible) and providers (who will be worried that disclosing this information to naturally risk-averse authorities will become a self-fulfilling prophecy, precipitating the very failure the regime hopes to prevent). The legislation (Section 61(2))

appears to place the duty to inform councils at the point of failure, not before.

The issue of a national market stability report (Section 62) will also require careful handling. While it may have the desired effect of stimulating providers to enter the market (or to provide services differently), it may also have the opposite effect, particularly for corporate providers who provide the majority of their services in other UK administrations.

**9. What are your views in 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?**

The expanded role of Care Council for Wales as Social Care Wales appears to have been well thought through, and considerable effort appears to have been made to providing fair, equitable and robust procedures for managing processes relating to the workforce.

We particularly note the high degree of autonomy which will be given to Social Care Wales. It appears to us that Welsh Ministers have largely retained powers to intervene in issues after the fact, rather than retaining a greater degree of final sign-off of proposals before they are implemented. We assume that this is a deliberate policy intention of Welsh Ministers. This is a decision which will have been based on Welsh Ministers' evaluation of relative risk.

We are particularly concerned about lack of ministerial oversight for the fee-raising powers given to Social Care Wales for a workforce who traditionally (and regrettably) are subject to relative low pay for the highly valuable services they provide.

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

UKHCA has a long-standing policy position supporting the compulsory registration of the social care workforce, because of the benefits it can bring to professionalising a workforce and promoting the status of social care

workers. We are, however, content to see the cessation of a voluntary register, as we do not believe is an effective tool and offers few benefits for public protection (and indeed risks a false sense of security for some).

We support the principle of prohibition orders to ensure that unsuitable practitioners are removed from the sector.

We note reference to rules made for the Registrar's determination for renewal of registration for those who are subject to the regime (Section 78(2)) and hope that such rules will be made in a way which does not prevent people from maintaining an active registration in areas they are temporarily not working in.

**11. What are your views in the provisions in Part 9 of the Bill for co-operation and joint working by regulatory bodies?**

We are content with the requirements of this section.

**Delegated powers**

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

Yes. The balance is reasonable. Leaving much of the detail to regulation permits greater flexibility of keeping the legislative framework up-to-date.

We have noted in our comments to question 9, that the rule-making powers afforded to Social Care Wales provide a significant degree of autonomy from intervention by Welsh Ministers until the rules have been implemented.

## **Financial Implications**

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

We express our appreciation for the considerable work undertaken in advance of the bill through 'technical groups' run by Welsh Government and involving a wide range of stakeholders, and in correspondence between Welsh Government and ourselves which is referenced in the Explanatory Memorandum.

Producing estimates of cost on primary legislation which leaves so much of the detail to regulations is an extremely challenging task. We believe that the processes undertaken have been suitably rigorous.

We note the recognition of the costs of workforce registration to providers and the workforce. We regret to say that we are not optimistic that such costs will be reflected in the fees paid by the statutory sector for the services purchased, and we urge Welsh Ministers to continue to give thought to how councils fund the services they purchase to a sustainable level.

## **Other comments**

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

No.