



Cynulliad Cenedlaethol Cymru **The National Assembly for Wales**

Y Pwyllgor Iechyd a Gofal Cymdeithasol **The Health and Social Care Committee**

Dydd Mercher, 3 Mehefin 2015
Wednesday, 3 June 2015

Cynnwys
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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Alun Davies	Llafur Labour
John Griffiths	Llafur Labour
Mike Hedges	Llafur (yn dirprwyo ar ran Lynne Neagle) Labour (substitute for Lynne Neagle)
Altaf Hussain	Ceidwadwyr Cymreig Welsh Conservatives
Elin Jones	Plaid Cymru The Party of Wales
Darren Millar	Ceidwadwyr Cymreig Welsh Conservatives
Gwyn R. Price	Llafur Labour
David Rees	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Lindsay Whittle	Plaid Cymru The Party of Wales

Eraill yn bresennol
Others in attendance

Mark Drakeford	Aelod Cynulliad, Llafur (y Gweinidog Iechyd a Gwasanaethau Cymdeithasol) Assembly Member, Labour (the Minister for Health and Social Services)
Kate Johnson	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government
David Pritchard	Pennaeth Rheoleiddio a Datblygu'r Gweithlu, Llywodraeth Cymru Head of Regulation and Workforce Development
Mari Williams	Cyfreithiwr, Llywodraeth Cymru Lawyer, Welsh Government

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Amy Clifton	Gwasanaeth Ymchwil Research Service
Helen Finlayson	Ail Glerc Second Clerk
Rhys Morgan	Rheolwr Craffu Scrutiny Manager

Dechreuodd y cyfarfod am 10:03.
The meeting began at 10:03.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions

[1] **David Rees:** Good morning. Can I welcome Members to this morning's meeting of

the Health and Social Care Committee? We'll be taking our final evidence session for the Regulation and Inspection of Social Care (Wales) Bill this morning. Could I first of all welcome our new Member, Altaf Hussain? Welcome to the committee.

[2] **Altaf Hussain:** Thank you.

[3] **David Rees:** You're replacing Janet Finch-Saunders. Can we put on record our thanks to Janet Finch-Saunders for her work as committee member during the time she spent with us? Can I remind Members the meeting is bilingual? If you need simultaneous translation from Welsh to English, the headphones are available—channel 1 for the translation. If you prefer to use them for amplification, then please ensure they're on channel 2. There's no scheduled fire alarm this morning, so if one does occur, please follow the directions of the ushers. We've received apologies from Lynne Neagle and we have Mike Hedges substituting for her. Welcome, Mike. Can I remind Members, finally, to turn off mobile phones or put them on 'silent', please, or any other electronic equipment, which may interfere with the broadcasting equipment?

10:04

**Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru):
Sesiwn Dystiolaeth 17
Regulation and Inspection of Social Care (Wales) Bill: Evidence Session 17**

[4] **David Rees:** Can we therefore move straight into the session this morning? Can I welcome the Minister for Health and Social Services, Mark Drakeford, to this morning's session? Minister, as you know, you came to the first session, and you'll be interested that this is the final session where you'll have a chance to perhaps clarify some of the issues that have arisen during the evidence sessions. Can you introduce your officials for us, please?

[5] **The Minister for Health and Social Services (Mark Drakeford):** Yes. Thank you, Chair. I'm accompanied by the same team of officials who were with the committee the first time I appeared—David Pritchard, who is head of regulation and workforce development at the Welsh Government, and Mari Williams and Kate Johnson, who are Welsh Government lawyers.

[6] **David Rees:** Thank you for that and can I also thank you for the written evidence we've received since the last meeting in which you clarify some of the points? If it's okay now, we'll go straight into questions? Gwyn.

[7] **Gwyn R. Price:** Thank you, Chair. Good morning. Minister, many stakeholder stress the need for a rights-based approach and called for a duty of due regard to the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities, and for the UN Principles for Older Persons to be added to the face of the Bill. The Commissioner for Older People in Wales set a public challenge to the Welsh Government to make a real policy intent on the rights-based approach. Minister, would you consider accepting this?

[8] **Mark Drakeford:** Chair, can I begin just by reiterating something that I've said before? I think I said it the first time I was here. It's never my starting point that the Bill that is presented at the very outset cannot be improved and that there aren't ways in which the scrutiny process will strengthen the Bill by the time it finally, hopefully, reaches the statute books. So, there'll be a number of opportunities this morning, I would guess, in which there'll be things that I'll be able to respond to positively. This is not one of them. I do think that a number of the people who provided evidence to the committee have mistaken two things.

First of all, because something isn't on the face of this Bill does not mean that it is not already a duty, because it may be a duty already placed in other parts of statute. I'm not in favour, as a general principle, of simply repeating things that are already in the law every time a new law is brought forward. Welsh Ministers are already subject to duties in relation to the UNCRC and other principles and, legally, let's not forget, the Care and Social Services Inspectorate Wales is simply the Welsh Ministers—the Welsh Ministers discharging their responsibilities via CSSIW. So, just as Welsh Ministers are under a duty in these regards, so is the inspector already. So, I'm not keen simply just to keep repeating stuff because people can't see it on the face of this Bill when it's a duty already.

[9] Secondly, I think there is a distinction to be made between declaratory rights and effective rights. I'm actually, in this Bill, interested in effective rights. And the rights we're making effective in this Bill are rights for people to have their wellbeing outcomes at the centre of the way that the service is provided and then regulated and inspected. The 2014 Act requires a national statement of wellbeing outcomes, which I will publish, and then this Bill, the companion Bill to the 2014 Act, requires the regulation and inspection system to report against the way in which those wellbeing outcomes are being achieved. I think it is a rights-based Act already, but it's a rights-based Act in making people's rights effective rather than simply putting a set of declaratory principles, once again, on the face of the Bill.

[10] The point I was going to end with, Chair, is this: if the committee, when you are weighing up all the evidence and coming to write your report, believes there is a genuine gap that needs to be filled, then I will look at that carefully. And if there is a genuine gap where we need to bring forward an amendment at Stage 2 to make sure that we put that gap right, then I would obviously be willing to consider doing that. But, at the moment, I struggle to see where the gap is.

[11] **Gwyn R. Price:** I thank the Minister for clarifying that. Obviously, you think it is covered, and I'm sure it is, in the 2014 Bill, and it carries on from there—

[12] **Mark Drakeford:** It does.

[13] **Gwyn R. Price:** —and so you don't believe it's right and proper to keep going back to it every time this occurs. Thank you for clarifying that. Thank you, Chair.

[14] **David Rees:** Alun.

[15] **Alun Davies:** The interesting thing about sitting on committees including different Ministers, of course, is that you hear entirely different approaches. I sat and listened to a Minister telling me not long ago that declaratory rights were absolutely central to this Government's approach on different matters, but I tend to agree with you rather than that Minister, I must say. But in terms of your approach, the Bill is very much about public bodies, public authorities and about how we manage and regulate those and how they function. I agree with what you said about the right to wellbeing outcomes; I think that is profoundly important and I think that is where I would want us to be, but can you assure me, Minister, that the rights that are contained both in this piece of legislation and its sister legislation will provide a constituent of mine with the absolute right to a high-quality service and a right that can be enforced in law?

[16] **Mark Drakeford:** Three things, Chair: first of all, I think there is a place for declaratory rights. It's just that in this particular instance, they've already been declared because we're already committed to the UNCRC and the principles in relation to older people and we don't need to declare them again. It's very important to say that, actually, the Bill is about private providers as much as it is about public authorities. Most social care is not provided now directly by public authorities, but by the private sector or the third sector, and

the regulation and inspection regime that this Bill sets up will apply equally to them all.

[17] But to come to the substantive points that Alun is making, this is a Bill about regulation and inspection. The way that it would have an impact on the individual person in Alun's constituency is this: if an individual was receiving a service that did not meet their wellbeing needs, then the regulation and inspection regime that this Bill sets up would be part of the way in which they would be able to make sure that that deficit was attended to, because it will require the regulator and the inspector to report against the achievement of those wellbeing outcomes and to do so in a public way and to do so in a way that your constituent would be able to have access to that. If the person was a direct user of the service, then the Bill sets up rights for the user, for example, to be interviewed in private by the inspector, to have their concerns relayed to the inspector without the anxieties that sometimes people feel that, if they do express concerns about a service, then that will result in some adverse consequence for their family member or whoever the concern is about. The Bill attempts to overcome that by providing for this private consultation. So, I think that there are very specific and practical ways in which the Bill, in regulation and in inspection, would meet the concerns that Mr Davies has raised.

[18] **Alun Davies:** Just to clarify then: in your view, this Bill provides my constituent, who would be a user of services—I accept what you say about public and private; I don't disagree with that—with an absolute right to the wellbeing ambitions being met by that provider. They have an absolute right to that and that will be contained in law.

[19] **Mark Drakeford:** I'm very reluctant to use the term 'absolute right' because very few rights indeed in law are absolute; they are almost all qualified in one way or another. This is not a Bill about the provision of the service—that was the 2014 Act. This is a Bill about the regulation and inspection regime that gives members of the public, and the public at large, assurance that the services that the 2014 Act requires to be provided are actually being delivered by those whose job it is to provide them and, therefore, gives them redress and ability to challenge things when things go wrong.

[20] **David Rees:** Minister, in the sense of the rights, obviously section 40 does refer to the UNCRC, but doesn't refer to the United Nations Convention on the Rights of Older Persons, although that was placed in the 2014 Act. Will you be looking to perhaps look back at section 40 to make sure that it's comparable to the 2014 Act? Also, in our written evidence from the Welsh Language Commissioner, there's been concern over the lack of involvement of the Welsh language within the Bill. I just wonder where your feeling is on that one as well.

[21] **Mark Drakeford:** Chair, I said at the beginning that I hoped there'd be some opportunities during the morning where I could say that, having reviewed the evidence that you've had, we're already committed to making some changes to improve the Bill, and the section 40 point that you raise is one of those. Having looked at the evidence that you've had, I agree that section 40 does not properly parallel the way that the 2014 Act approaches that matter. We will look to bring forward a Government amendment at Stage 2 to include a reference to the UN principles for older people in section 40 to make sure that there is a proper match to the way in which the 2014 Act deals with that matter.

10:15

[22] On the Welsh language issue, I'll start by saying that I'm completely at one with the Welsh Language Commissioner in wanting to ensure that social care services for people whose first language/preferred language would be Welsh—that we are able to make sure that those services are provided. Is that best done by a reference to the Welsh language on the face of the Bill? Well, that's not the approach we have taken. You will remember, I'm sure, from the way we rehearsed these things last time I was here, that section 26 of the Bill is where

standards that service providers need to meet, to match, will be set out, and then the inspector will regulate against those standards. It's inconceivable to me that, if you were inspecting a home where there were people who needed a service through the Welsh language, that wouldn't be one of the standards that you were reporting against. So, I think the Bill does provide, and I'm very keen that it does provide, for the points that the Welsh Language Commissioner has made, but I think it does it already in the way that I've described.

[23] **David Rees:** Okay, thank you. Lindsay, moving on.

[24] **Lindsay Whittle:** Thank you, Chair. Good morning, Minister. I want to talk about extending workforce registration. We know the Bill does not extend the list of staff required to register, but we've heard evidence from the older people's commissioner, Unison, the College of Occupational Therapists, Age Cymru, who all support the view that they should. When would you consider extending the workforce registration to cover domiciliary care staff and residential care staff in adult homes in light of the fact that you've just said that that's where most of the care is provided and in light of the evidence that we've received? And, if you're not prepared to do that, can you tell us what assurances you can give that vulnerable service users will be protected?

[25] **Mark Drakeford:** Thank you, Lindsay. I think the debate here really is one about timing, rather than intention. I think I said, when I was here back in March, when somebody asked me about whether I thought—you know, was there a priority list for the next group of people to be added to the register, and I said that I thought domiciliary care workers would be my top preference. And I do believe that the Act will, in time, lead to the extension of regulated parts of the workforce. So, it's a question of timing, rather than intent. I don't want to put it on the face of the Bill, because the system is still absorbing the last group of workers who were made subject to compulsory registration—that is to say, domiciliary care managers. The system is going to be going through a period of transition as a result of this Bill, and I'm keen that Social Care Wales, as it will be, will continue to meet its existing statutory obligations. We're not removing any groups from the register. And when we're in a position where we can do it practically, then I agree that we should move to extend registration, but we're not at that point just yet. But I'm repeating my basic intention that that's the direction of travel we're in.

[26] You have heard evidence from others that is slightly more precautionary on this point. The Carers Trust Wales, I saw, had anxieties both about the costs that fall on very small providers of services, if you move to extend regulation, and whether this would have the effect of crowding out of the system we have in Wales some very important, but very small, providers, and also made a point, which is important to me, which is, if we're not careful, we talk ourselves into a position where we think it's the regulator who is mostly responsible for the quality of the workforce. Well, actually, it's not, is it? It's the employer who has the primary responsibility for making sure that the workforce is of a sufficient standard and quality, and Carers Trust Wales, I think, made a point to you that, if we're not careful, the insistence on just adding to the register tends to absolve the employer of responsibilities, making it look like it's the individual worker who is to be held responsible. So, I want a balance in the system, to make sure that we don't take our eye off the ball or the responsibilities that employers have, and I am, with officials, working on some further ideas as to how we could require employers to publish additional information about the workforce that they employ. But, while it would not be a register in the sense that we talking about here, it would be publicly available information so that someone making a choice, for example, about a care home, would be able to see how many people are employed, what qualifications they have, what training they'd been offered, what sort of turnover of staff that particular home has to absorb, and I think that that is a way in which we might be able to do something immediately that is within this general ballpark of the Act, but actually makes it clear that the employer has responsibilities in this area as well as the registrant and the regulator.

[27] **Lindsay Whittle:** Thank you—through you, Chair—Minister, for that. I certainly don't wish to denude the owners of care homes of their responsibilities, I just want to protect, and I'm sure you do as well, the people who live in those care homes. I think the registration and training of domiciliary care workers are important. These are people who are in daily contact, sometimes hourly contact, with the residents, whereas the owners, with respect, are probably not. These are the people who can recognise early signs of dementia, early signs of illness and they can do so if they have the proper training and, I believe, if they are registered as well. I think it gives greater security of comfort to not only the residents who are going into the homes, but to the relatives of those residents as well. I am wondering how you plan then to continually monitor that area as you have said and will you be coming back to us to give us further details?

[28] **Mark Drakeford:** Well, thank you for that. I don't disagree with almost anything that was said. We would understand here that registration by itself, of course, is not a guarantee of anything. Later today in the Assembly we will be talking about a gross failure of care where everybody involved was a registrant of one sort or another. So, by itself, it isn't a guarantee. But we will continue to discuss, with the sector itself and with Social Care Wales, particularly in its new guise having responsibility for training and workforce development. We'll talk, of course, with the third sector organisations who represent the voice of users and carers and so on, and we'll look for emerging evidence elsewhere. As I say, my view of it is that it's not a question of whether we will extend but when we will manage to be at a point where we can sensibly do that.

[29] **Lindsay Whittle:** I accept what you say. Thank you, Minister.

[30] **David Rees:** Thank you, Minister. We've got people now who want follow-up questions: Elin, Darren and then we'll go on to John.

[31] **Elin Jones:** Just then on that, are you confident that the legislation as outlined now gives you sufficient powers to make that extension without the need for further primary legislation at any other point?

[32] **Mark Drakeford:** I'll make sure—if anybody will help me with this—. But my view is that the legislation very clearly does that. It would be through regulations. It would not require new primary legislation. They would be through the affirmative process.

[33] **Mr Pritchard:** Yes.

[34] **Mark Drakeford:** If we were to add any new group to the requirement to register, that would have to come in front of the Assembly through the affirmative process, but it would not require primary legislation.

[35] **Elin Jones:** Okay. And then just quickly on that, you outline in section 79, of the register for Social Care Wales—it notes 'social workers' and then

[36] 'social care workers of any other description specified by the Welsh Ministers'.

[37] We've had some difficulty, I think, in this committee, understanding what you mean—what will be that social care workforce that will be registered in the early years of this legislation's being implemented. Who is that social care workforce, then—not the social worker part of it?

[38] **Mark Drakeford:** Anybody who is on the register now and is required to be on the register now will continue to be required to be on the register under the new Act, if it becomes

an Act. But the Act gives Welsh Ministers, through regulations, through the affirmative procedure, the ability to add new groups to the register. But anybody who's on the register now will be on the register under this Act.

[39] **Elin Jones:** So, you're not persuaded at this point to move to include further groups of social care workers at an early stage in the implementation of this Act?

[40] **Mark Drakeford:** Not at this point, and, therefore, not on the face—not adding another group on the face of the Bill. But, as I was explaining to Lindsay, it's a question of timing rather than intention.

[41] **David Rees:** Darren.

[42] **Darren Millar:** If it is a question of timing rather than intention, Minister, why not put them on the face of the Bill, giving you discretion to introduce regulations at a future date? It's very clear from the evidence that we've received that carers, those in receipt of social care services, want to see particularly domiciliary care workers on some sort of register. We've had a solution put forward by the Care Council for Wales. They've suggested a licensing-based approach, with a fee of around £25 per year. Surely, this would improve the status of domiciliary care workers. It would give some assurances as well. I heard what you said—I listened to it very carefully—about putting some further responsibilities and burden on employers to be able to publish information about their workforce, but remember that many people are engaging in direct payments, maybe directly employing individuals, so they're not necessarily going through some sort of agency these days. So, if you want to give some confidence to that structure, bearing in mind that some individuals work for two or three employers because of the part-time nature of some of this work, wouldn't it be better to have some sort of licensing system or registration system for domiciliary care workers on the face of the Bill to give that confidence that you will actually deliver something in the short to medium term, without having to rely on, albeit your intention of goodwill to do this at the moment—because, of course, you may not always be the Minister for Health and Social Services?

[43] **Mark Drakeford:** I'm relieved to hear that. [*Laughter.*] Well, obviously, I'll think about what Darren has suggested. In some ways, it seems to me they come to the same thing: either we put them on the face of the Bill but say, 'But we're not doing them now' or we say, 'We're not doing them now and we can do it through the mechanism the Bill sets up'. But let me deal with the licensing issue because that's, I think, an interesting and important one. I've looked to see what the care council has proposed in relation to licensing, and it seems to me that it's almost exactly what the Bill proposes apart from in one important instance because the difference between our system and the care council's system lies in the lay-led model of resolving fitness-to-practise issues. The care council's licensing model would remove that. In essence, and this is probably unfair, but, in essence, the care council becomes the judge and the jury in relation to fitness-to-practise matters in a licensing system. They identify the person who is to be made subject to that process. They bring the process. Their officials decide whether or not the person is to lose their right to practise or not.

[44] In our system, Social Care Wales identify the person, they prepare the case and so on, but it is an independent lay panel that actually makes the decision. Now, our system is the one that the Law Commission propose. We believe that our system is properly compliant with the Human Rights Act 1998, but our system is more expensive, because the reason that Social Care Wales came up with a figure of £25 is that the costs in the registration system are not in actually just getting someone's name on the register—it's in dealing with what happens when somebody does something that puts their right to be a registrant in doubt. Our system is more expensive than Social Care Wales's system, but we think that our system better protects the rights that people have, remembering that a decision to remove somebody from the register is

a decision to remove their right to pursue their livelihood in that way. So, it's a genuinely important decision, and we think the lay-led system that we have is a preferable one, albeit that it does then make the system more expensive.

[45] **David Rees:** Okay. John.

[46] **John Griffiths:** On a sort of allied question in terms of the social care workforce, we'd heard in evidence that there was some confusion as to how provisions in this Bill relate to the wider social care workforce—sections within it. I think that confusion has been addressed in terms of fitness-to-practise provisions. I just wonder if you feel that any further clarification is needed beyond that or whether you think it is now sufficiently clear within the provisions of the Bill.

[47] **Mark Drakeford:** Chair, I will definitely ask for some help in setting out the way the Bill goes about this aspect, but what we have done in this part of the Bill is to transpose the existing system—the system based on the Care Standards Act 2000, which is well understood in practice in Wales, having been run for the last 15 years—and simply transpose that way of doing things into the new Act. It is complex, I agree, and, sometimes, complex matters end up with complexity in the way that the law has to respond to them. I will probably ask Mari if she can set out for you the way in which the Bill deals with this matter. If the committee, having heard this and everything else you hear, thinks that there are ways in which we still do need to clarify the situation, then I'll read very carefully what the committee says.

[48] **Ms Williams:** As the Minister says, the definition of social care worker has been derived from the Care Standards Act 2000. What we have done is replicate the systems there. So, in section 78, it sets out what it means to be a social care worker, and it sets out those key persons who are always considered social care workers for the purposes of the Bill. So, those include those persons you might expect to see, such as social workers and managers of regulated services, so, managers of care homes, managers of domiciliary care services, et cetera. So, the Bill clearly sets out that those persons will always be social care workers for the purpose of the Bill. What sections 78(2) and 78(3) enable Welsh Ministers to do by regulations, subject to the affirmative process, is to bring in other categories of social care workers within that definition. So, those include persons working in unregulated services—inspectors, for example. So, there's the ability there to bring in a broader category of persons, who then might not necessarily be those persons who would be required to register, or the fitness-to-practise provisions would apply to them.

[49] The Bill, then, as you progress through the Bill, is clear as to what parts of the Bill apply to what social care workers. So, the provisions relating to registration, for example, in Part 4, apply to people who must register with Social Care Wales, and, as you've pointed out, Part 6 is clear that it only applies to registered persons. So, that part of the Bill will only apply to people who are required to be registered. As I say, it follows the Care Standards Act, which I think is well understood in practice, but, as the Minister says, if there's anything that we can do to better clarify that—

[50] **John Griffiths:** Okay, Chair. Thanks very much.

[51] **David Rees:** Thank you. We move on now to questions from Mike Hedges.

[52] **Mike Hedges:** My questions are finance questions. The CSSIW themselves have raised concerns about their capacity to undertake assessments of financial sustainability of large service providers. What is the Minister's response to their view?

[53] **Mark Drakeford:** Well, my response, I think, is this, Chair: first of all that this is a very important new part of the Bill. This comes out of the experience with Southern Cross, as

Members will be aware, when public authorities suddenly had to pick up the pieces of an organisation that, without any prior warning, suddenly ceased to trade. When you have a very large provider where that happens, it has a significant impact on public services and the public purse. What this part of the Bill aims to do is to give CSSIW greater powers, and obligations as well, to be aware of the financial circumstances of large providers, and therefore to have early warning in place where it becomes clear that there are reasons for concern. Now, I understand that CSSIW will have to build up its capacity to be able to discharge this new responsibility. The regulatory impact assessment makes it clear that we intend to provide them with new funds to do that. I can imagine that they might need to buy in expertise in the early stages to complement their own ability to build up their own capacity. We do have some capacity in Welsh Government to assist in that, because, in the housing association field, the Welsh Government carries out financial viability judgments on a regular basis of those large organisations.

[54] The other way in which I think CSSIW will be able to discharge this responsibility is through its work with the Care Quality Commission, because the regulator in England is already operating the system. It started it in April of this year and it'll have a year under its belt, at least, before our regulator needs to do it. There's lots of joint work between them. The big providers who are big providers in Wales are almost always the big providers who are big providers in England, and I don't expect CSSIW to spend money doing things that CQC has already done and will be able to share with them.

[55] **Mike Hedges:** Can I come back to you with two questions?

[56] **Mark Drakeford:** Yes, of course.

[57] **Mike Hedges:** You compared it with housing associations, but housing associations' finances are basically fairly simple: they don't have borrowing and they don't register abroad, for example. They don't have third party ownership and they don't rent from one part of the organisation. Their accounts are relatively straightforward. I understand, in terms of Southern Cross, they had exceptionally complicated accounts and differential ownership of different parts of the organisation. I accept your view that big providers in England and Wales are likely to be the same big providers. There are two questions, really and one is: will you really be leaning on the English system in order to deal with the joint big providers, because they'll probably have greater financial capacity?

[58] And, secondly, they can be not large in terms of numbers, but they can have overwhelming dominance of a local market, certainly in some of the more widespread counties—and I wish Kirsty Williams was in here to help me, now—in places like Breconshire, for example. If you had somebody who was a major provider in Brecon and Radnorshire, it's very difficult to look from Builth Wells to go elsewhere. So, are you going to look at large local providers as well as just large total providers?

[59] **Mark Drakeford:** Okay. I'll try and take them in reverse order, Chair. No, the Bill only introduces these powers in relation to large national providers and not on relatively small organisations that may have a dominant position locally. We expect there to be between 10 and 15 organisations altogether across Wales that will be captured by this part of the Bill, so there is no policy intent, at the moment, to do what Mike was suggesting, except, of course, that the Bill does require local market stability reports to be produced at local authority level, where you would expect those issues to be picked up. Personally, I do think that the relationship with CQC will be very important in this area, both because they will already have experience of doing it, and because the interests will be very close, and because they do have a larger resource, inevitably, than CSSIW will have.

[60] On the third point, I accept entirely what Mike said—housing associations are not the

same as these very large, complex providers. But there is some expertise, and that's the only point I was making, that the Welsh Government already has in making financial viability judgments and CSSIW will be able to draw on that as one contribution to the job that they're now being expected to do.

[61] **Mr Pritchard:** If I may just add, the regulations, of course, which will be brought to the National Assembly, will set out the criteria for selecting those providers that are subject to the scheme of market oversight, and that can include if they are specialists in the sector et cetera, et cetera. So, that will be able to be discussed.

[62] I have had conversations, as officials, with colleagues in housing, and the housing associations actually can be quite complex, because there are a series of companies that are often involved and they have to unpick that. But what is quite interesting out of that is that there is actually some crossover in terms of the actual companies between that sector and our own sector. So, there may well be opportunities not just in terms of learning, but in terms of the same organisations that are under scrutiny.

[63] **Darren Millar:** Isn't one of the problems with the financial viability judgments that, very often, individual homes might be making significant profit and doing rather well, financially, whereas the overall groups might not? And, if it becomes apparent to the media, investors and the banks, et cetera, that a business is the subject of a financial viability inquiry by the Welsh Government, doesn't that put those businesses at even greater risk of collapse and, therefore, isn't there a potential adverse impact on the market as a result of some of the tools that you've put in this box that is the Bill?

[64] **Mark Drakeford:** Well, I agree that that's a very important point, and it's obviously one that we have thought about in the way that we construct this part of the Bill. There will be very strict rules in relation to who has access to this information and how information is shared in this part of the Bill, because we don't want to have unintended consequences. In doing that, we very much have mirrored the way the legislation has been constructed in England, because while I do think there is a genuine, proper public purpose in making sure that organisations that take their profits, very largely, from money supplied from the public purse, and where they fail there is a very big impact on public services—and there's a genuine public interest in making sure that regulators are sighted on some of those things—it has to be done in a way that does not send out signals that would have an adverse impact on companies that are actually perfectly viable, but are maybe having to deal with difficulties in one part of an organisation, as against very flourishing other parts. So, I'm very alert to the point, and it's a very fair point to make. We think that we've dealt with it in the way the Bill is constructed. As I say, we are very much paralleling the way that it's been done elsewhere.

[65] **Darren Millar:** Just in terms of market oversight, then, Minister—if I may go on, Chair—you've made reference to the 22 local authorities, each individually bearing some responsibility for the development of a market oversight plan, if you like, in their own areas. Do you think that that's overly complex, given that we've got health board areas and many of the local authorities might need to plan on that basis? Don't you think that there ought to be some requirement on the face of the Bill for collaboration between local authorities, where that is sensible, particularly where there are health board boundaries that may be more useful for these sorts of market plans and assessments?

[66] **Mark Drakeford:** Again, I think it's a very useful point that's being made. I think I said, when I was last in front of the committee, that we will be exploring with our local authority partners whether some of these duties would be better discharged at a regional level, and the regions, as you know, in the 2014 Act are the health board footprints. I don't think it's necessary to put it on the face of the Bill; it's an operational matter, I think, really, as to the best boundaries on which a local market stability report should be produced, and it may vary

from one part of Wales to another. You could argue, for example, that Powys ought to have its own local market stability report because of the fairly unique circumstances that it faces, compared to some other local authorities in the same region. So, we will take a pragmatic approach to that. We'll do it in conversation and discussion with the sector, and the points that Darren makes, I think, are very bound to feature in those discussions.

[67] **David Rees:** Mike, do you want to come in on this?

[68] **Mike Hedges:** Just on this very point, I mean, health boards are fine, but I don't think they do cover an area that is rational, in my opinion. Certainly, in our area, Chair, you've got Neath Port Talbot and Swansea. Our health board movement is with Bridgend, but the movement of people is, as you know, Minister, in from the Amman, from Llanelli and even from the Gwendraeth.

[69] **Mark Drakeford:** Well, Chair, it's why I said 'a pragmatic approach'. A local market stability report that includes Cardiff and the Vale of Glamorgan—you know, the footprint of Cardiff and Vale LHB—may well be very sensible, rather than having two separate ones. There will be other LHB footprints where the interests of different local authorities may not be so coincidental that it would make sense simply to have one report.

[70] **David Rees:** Okay. Elin.

[71] **Elin Jones:** There's been a running theme in the evidence that we've taken about the fact that this legislation seems to run behind the practice of the integration of care, and the fact that the legislation focuses on regulation and inspection in the social care context and doesn't really reflect the practice that's emerging on the integration of care.

10:45

[72] I know you've given a response previously to that, that you will look at regulation and inspection and integration in the context of a new Green Paper, but we did have a suggestion from the Commissioner for Older People in Wales who said that one way of ensuring that there was more integration to regulation than inspection was to place a joint duty upon both health and social care regulating bodies to regulate and inspect integrated services, so that even though you continue to have two separate bodies, you would have joint duties on them to jointly regulate and inspect those facilities or services that are now fully integrated. They could be the virtual ward models, or the Cylch Caron models that hopefully will develop soon in Tregaron and already exist in other places. So, do you have any comments on the older persons' commissioner's view that a joint duty of inspection and regulation could be a way of ensuring that this Bill, once passed, is not out of step with practice?

[73] **Mark Drakeford:** Thanks. It's an interesting discussion and we've been listening carefully to what's being said. But I think it is probably important for us to be clear that this is a Bill that is on the regulation and inspection of social care. Had it been a Bill that dealt with the regulation and inspection of healthcare, it would have been a very different Bill. So, my starting point is that we've got to be careful about the boundaries of the Bill and what it set out to achieve.

[74] I probably will just return to what I said when I was last in front of the committee: that the place where these things will be thrashed out will be in the Green Paper rather than in the Bill. In some ways, this discussion began in this committee, in the report the committee produced on HIW, which asked for a detailed piece of work to be done in this area. That's what Ruth Marks did in her report. Ruth, as you know, concluded that the case for a single regulator, bringing together HIW and CSSIW, was a proposition on which there were

different views. Not everybody agreed with it, and some people have reflected on the experience of the Care Quality Commission in England, which, having brought the two regulators together, now appears to be disaggregating them again because it finds that the sort of skills and abilities that you need to carry out an inspection of an organ donation service, for example, are not the same as you need to carry out an inspection of a fostering service. So, CQC is beginning, under the one umbrella, to return to two separate regulatory streams. In the Green Paper, as I think the First Minister said yesterday on the floor of the Assembly, what we will do will be to set out the proposition, invite views, and the Government's position will be to listen and to learn from the best evidence. What I am confident about, though, Elin, is that, if the Green Paper were to result in a single regulator for Wales, the provisions in this Bill would be very easily translatable and applicable to that new world. There's nothing in this Bill that would get in the way of that happening, and there's nothing that we would not be able to achieve in that new world as a result of this Bill.

[75] **Elin Jones:** Can I just ask, then, on timing and the Green Paper: will this Bill be on the statute before that Green Paper starts its consultation process?

[76] **Mark Drakeford:** No. My aim is to publish the Green Paper before the summer recess, so it will be available to Members early in the process of this Bill. But, any legislation that flows from the Green Paper will inevitably fall to the next Assembly and whoever is responsible for these things then.

[77] **David Rees:** So, the Green Paper, we'll be aware of it for Stage 2.

[78] **Mark Drakeford:** It will be available in advance of Stage 2—well in advance of Stage 2.

[79] **David Rees:** Alun on this point.

[80] **Alun Davies:** In terms of the structures that you've just outlined in response to Elin Jones, one of the areas of the evidence that we've taken over the last few months that did give me some cause for concern was talking to the regulators, and the culture that I picked up of regulation in this area was one that struck me as being very cosy, not a regulation that was sufficiently robust in order to pick up on individual problems and then to address those problems—and I think we've seen evidence of failure on a number of occasions. Are you convinced, Minister, that this Bill will provide the structure, but will also provide a culture of regulation that will be absolutely and entirely intolerant of any potential failure?

[81] **Mark Drakeford:** Well, thanks, Alun; that's a very interesting question. I don't think, if you talk to many providers of residential care, for example, that they would regard their relationship with CSSIW as a cosy one. They most often complain to me about what they regard as a rather gritty relationship. My starting point is that I do not want a regulatory system in which I regard the regulator and the provider as enemies of one another. That's not my starting point. I'm very keen that the regulation and inspection regime in Wales is focused on improvement, wherever it can be, rather than simply in exposing failure and walking away—writing a report and walking away. But, I do accept that the danger in a small place like Wales is that everybody comes to know everybody else and that relationships that ought to be constructive and challenging can shade into being too cosy, and we have to make sure that that doesn't happen. I think the way that the Bill addresses that is through the step change that it introduces to the involvement of users and lay people in the inspection process.

[82] I generally think that the way in which you avoid people who are always involved in the same trade becoming used to things that are not acceptable to people who are outside that trade is to make sure that you've always got fresh eyes coming in and looking at it, and sometimes asking questions that the people who are doing it all the time have forgotten the

need to ask. The Bill quite certainly is in a different place to where we've been before in its requirement on both CSSIW and the care council to publish and provide a statement on how they will involve users, carers and lay people in the inspection regime in future. I am hopeful that that will be the perspective that keeps the system honest in the way that it has to be, while not crowding out the ability of the regulator to be able to assist services that, with some extra help and advice, can turn the corner from being not where we would like them to be to being services that provide a good quality of care to people in the future.

[83] **David Rees:** Before we move on, I apologise, because the sun is now coming out and, unfortunately, a mechanical failure means that we can't protect you from the sun. I'm sorry about that.

[84] **Mark Drakeford:** I can see you.

[85] **David Rees:** John and then Darren.

[86] **John Griffiths:** We've heard evidence that there is a perceived lack of reference to commissioning in the Bill, and I think you've previously stated, Minister, that that would be dealt with under a section in the Bill, but then subsequently that you're likely to deal with it in a code under the 2014 Act. I just wonder if you could expand a little on how you will deal with commissioning, and in what way.

[87] **Mark Drakeford:** Thank you, John, and apologies if I inadvertently caused confusion with the answer I gave when I was in front of the committee last time. I hope that that was clarified in the letter that John referred to of 19 May; I'll ask probably David to just set that out one more time for the committee this morning.

[88] Could I say more generally that I think the discussions that the committee has had and the evidence it's had on commissioning have been among the most important strands in what you've heard? I do want to think very carefully about the evidence that you've taken in this area. Only this morning, we talked about the discussions that I need to have with officials to see whether the Bill does meet some of the concerns that people have expressed to you, remembering that the Bill is not about commissioning. Commissioning is what local authorities do, and they do it under the terms of the 2014 Act and the 2010 guidance that was issued and which we are in the process of updating and will reissue shortly.

[89] The Bill is about how regulators and inspectors report on the discharge of those functions by local authorities that have the responsibility for commissioning, and that the Bill gets that hinge sufficiently clearly and directly in the way that it sets it up, so that people can be confident that when local authorities are discharging their commissioning responsibilities, the regulator and the inspector will be regularly attending to that and putting their conclusions about the quality of commissioning into the public domain in a way that would allow people in this room and elsewhere to have confidence that local authorities are doing a good job of it. I've read people's concerns that the Bill doesn't necessarily nail that down sufficiently clearly. If in your report you have any advice about how that might be better done, then I will be looking carefully at what the committee has to say.

[90] **David Rees:** In that sense then, Minister, do you intend to perhaps prescribe that analysis of the local commissioning services be included in the local reports?

[91] **Mark Drakeford:** Yes, Chair, that is one of the places where, thinking of the things that have come in front of the committee, I've seen people say to you that a market stability report must consider and reflect on commissioning. I find it difficult, to be honest, to see how you could produce a report that didn't do that, but if it's helpful to make it explicit in the Bill that commissioning would be one of the strands that a market stability report would have to

report on, then I'm happy to think about an amendment that would make that explicit.

[92] **David Rees:** Thank you. Darren.

[93] **Darren Millar:** Minister, the evidence that's come through from different quarters has suggested that there are two sections that the Bill could do with having that it doesn't currently have. The first is in relation to whistleblowing. There was a very clear commitment from the previous Deputy Minister for Social Services that a whistleblowing section would appear in this Bill. There isn't one. Do you have any proposals to address that as the Bill proceeds via amendment at Stage 2?

[94] **Mark Drakeford:** Thank you, Darren. I'm very alert to the commitments given previously by Ministers. In exploring this whole issue, there are some genuine complexities about competence in this area. And this is employment law, which is not devolved. We cannot put anything on the face of our Bill that would make it appear as though the Assembly was seeking to legislate in an area in which the Assembly doesn't have competence to legislate. You will know that the rights of workers in relation to whistleblowing are covered by the Employment Rights Act 1996, and that includes all social care and social workers. What I do intend to do, however, and this is consistent with what Mrs Thomas said, is to use the regulation-making powers, which are there in sections 26 and 27 of the Bill, to require providers to have whistleblowing and concern-raising policies and practices in place, which are designed to ensure that social care workers are supported to make disclosures and raise concerns. I will set out in the code, or the guidance, rather, that section 28 of the Bill allows me to issue, exactly how I would expect providers to have those policies and procedures in place. So, the Bill will strengthen whistleblowing and make it clear in the sector that this is something that the sector must regard as a proper source of information about the quality of the practice that is carried out. But, I intended to do in that way, therefore to avoid some of the anxieties that have been raised with us about the Assembly appearing to want to legislate in an area that others would not regard as being our province.

11:00

[95] Now, the Member will be aware that this is a contested area. I brought a legislative consent memorandum to the floor of the Assembly back in March, when the Secretary of State in the Department of Health in England took new powers, under the employment Act, in the health field. My view was that that was clearly within the competence of this Assembly, but that was fiercely disputed by Whitehall, which continued to send me letters, right up and past the point when the LCM was passed by the Assembly, to say that we had no business passing these at all.

[96] **Darren Millar:** Do you mind me asking, Minister, if you've had any discussions with the UK Government, with the Wales Office, regarding the competency around this issue, because I suspect that there would be no resistance whatsoever to you putting a section on whistleblowing on the face of this Bill, as has been the previous commitment of the Welsh Government? As I understand it, there have been no discussions whatsoever.

[97] **Mark Drakeford:** Kate, do you want to—?

[98] **Ms Johnson:** We haven't on this issue, no.

[99] **Darren Millar:** Why not? Why haven't you had discussions?

[100] **Mark Drakeford:** Because the law is clear. It's not within competence. It's there in the Government of Wales Act 2006—employment law is not a competence of the National Assembly.

[101] **Darren Millar:** That is if you consider this to be a matter of employment law. I think people here consider this to be a matter of safeguarding those people who are under the care of social care workers. This is clearly contestable; I understand that and appreciate you being so upfront about your reservations around it. However, I cannot comprehend why you've not had discussions with the UK Government regarding whether they would support your ability as a Welsh Government to bring forward amendments in order to put this onto the face of the Bill. I think it's pretty lax, to be honest, that you haven't had those discussions so far at this late stage.

[102] **Mark Drakeford:** There are some sensible things there and there are some things that are not sensible at all. The sensible things are these—. There's no disagreement between us about what we would like to achieve, because the protection of people who wish to raise concerns is a shared ambition. Do we need to ask Whitehall for its view on a matter on which its view is crystal clear, and is it lax of us not to have gone back to ask them for their view on something when I know what the answer is already?

[103] **Darren Millar:** Well, I don't think you do know the answer.

[104] **Mark Drakeford:** Well, you don't think so, but I've just explained, Chair, to you what happened when this Assembly took action under the Employment Rights Act 1996, shortly before the general election, when I had utterly unambiguous letters from Whitehall telling me that I had no business asking the Assembly whether we were content for Whitehall to legislate in this area because we had no rights in it whatsoever, despite the fact that that was unambiguously in the field of health, and I was quite sure that I was right to bring that in front of the Assembly. Now, I'm perfectly happy, if it will satisfy Members, to write a letter to the Secretary of State for Wales asking his view on whether employment law is something that I could amend through this Act.

[105] **Darren Millar:** I don't—

[106] **David Rees:** Can I—? The Minister has given in his answer and we will accept the answer from the Minister on that particular point.

[107] **Darren Millar:** With respect, Chair, I do not accept the Minister's answer. Of course if you write saying that you want to amend employment law, there's going to be a challenge from the UK Government. I don't think that we're suggesting that you write to request that dispensation be given to the Welsh Government to make changes to employment law; we're simply asking you to have a discussion about whether there's an appropriate section that can be introduced to the Bill that protects individuals who want to blow the whistle on poor practice that may be putting individuals at risk. I think that's an entirely different proposition that you can make to the Wales Office and the UK Government, and I would suggest that that is the way in which you might want to approach it.

[108] If I can move on, Chair, to the second question that I wanted to introduce, there is another section that has been suggested is missing from this Bill, and that is an appeal section, a right of redress, if you like, for any individuals who might want to challenge decisions over eligibility to social care support and services, including eligibility for support and an ability to challenge any support for carers. Are you able to give us your view on whether you might be able to introduce something on that?

[109] **Mark Drakeford:** I'm very happy to think about that and I'll write to the committee with any view. My initial reaction would be that that would be a proper material for the 2014 Act, which is about the way that services are provided and whether people have a right to a service, rather than for a Bill that is to do with regulation and inspection. But I'm very happy

to look at what Darren has said and to see whether there is any issue.

[110] **David Rees:** I appreciate that, Minister, but could you make sure that we have a written response quite quickly because we obviously have a deadline—?

[111] **Mark Drakeford:** We'll look at that—

[112] **Darren Millar:** Of course, this Bill does talk about eligibility.

[113] **Mark Drakeford:** We'll look at that point as fast as we can and get back to you on that.

[114] **David Rees:** Thank you. Elin.

[115] **Elin Jones:** On two issues that have been raised during our evidence sessions and may well appear as amendments at some point in the process: one is on commissioning of 15-minute care slots and the ability, or not, of the Bill to ensure that commissioning either prohibits the use of the 15-minute care slots or commissions on the basis of time that is required to undertake the care that is commissioned—. The second issue is on zero-hours contracts of the care workforce and the use of zero-hours contracts by providers of care and whether you believe that this Bill could be amended, or whether you have an intention to amend it, to ban the use of zero-hours contracts for the social care workforce.

[116] **Mark Drakeford:** To take the two questions in order: it's the 2014 Act that requires local authorities, when they are commissioning care, to make sure that the length of any visit is sufficient to discharge whatever care was required during that visit. That's the amendment that was put late in the process of the 2014 Act and that's the law that the National Assembly has now put on the statute book. This Bill will allow the inspectors to inspect against that duty. So, that's the duty that local authorities must discharge and the Bill will put into the public domain the conclusions of the regulation and inspection regime to see how they have discharged that new responsibility. So, in the way that we talk about this, quite often, on a companion-Act basis, it does pick up the point that Elin—

[117] **Elin Jones:** Inspect the commissioners or inspect the providers?

[118] **Mark Drakeford:** It's a duty on the commissioners to ensure that, when they are entering into contract with providers, the contract they are entering into, for a length of time that a visit will take, is sufficient to discharge whatever care is required during that visit. So, it's on the local authority that the duty lies.

[119] **Ms Johnson:** If I can just assist the Minister, the duty is in the 2014 Act, in section 34. The regulatory function of CSSIW to inspect local authorities with regard to their compliance with that duty is in section 56 of the Bill, which inserts section 149B into the 2014 Act, and it's those powers that will be given to CSSIW to inspect local authorities with regard to their compliance, but the duty will be on local authorities and not on providers.

[120] **Mark Drakeford:** On zero-hours contracts, it had been my hope that we would have had a Government in Westminster that would have dealt with this matter in the way that they ought to be dealt with, because we're back into the discussion that we've already had about zero-hours contracts being related to employment law. Can the Bill have an impact on zero-hours contracts? I believe it can, but we have to be careful in the way that we craft it, because our ability to make a difference in the law in this area has to be on the basis of the quality of care that is provided and not on the arguments that some of us might well share about the nature of zero-hours contracts themselves. So, I believe that, through the standards that the Act will set up about quality of care, we will be able to track that back to the nature of the

contracts that are let and to whether those contracts actually deliver the quality and standards that the Act will set out. So, I do intend that the Act allows us to make some progress in that area, but we will have to do it in a way that is clearly within the competence of the Assembly.

[121] **Elin Jones:** Well, just on that, would it be possible for us to have a note on how you intend to use the legislation as it's currently drafted to develop those standards, then, and how that would lead to commissioners or providers not being able to employ via zero-hour contracts?

[122] **Mr Pritchard:** For Members, it's a question of timing, to some extent, and how quickly you require that. The Welsh Government, as you'll be aware, is undertaking research into zero-hour contracts in public services at the moment. That research has not yet been completed and published, but that will inform some of those arguments about whether there is an impact or a relationship between zero-hour contracts and the quality of care. So, I think it's perfectly possible for us to do that, Minister, but if you want it in time for your report, that may not be actually possible, given the evidence that we need to gather.

[123] **David Rees:** I think, in this sense, it may be important that we have it before Stage 2 commences, if possible, because that will give Members an opportunity to review it before Stage 2 commences.

[124] **Mark Drakeford:** Yes, that's fine. We'll get it to you as soon as we can.

[125] **David Rees:** Thank you. Minister, one of the things the Commissioner for Older People in Wales actually did indicate to us was a question as to fitness to own a home, as it did not appear to be within the remit of the Bill. I just wondered whether you'd given any thought to the concept of that proposal as to whether there should be a fitness to own a care home and that included within the Bill.

[126] **Mark Drakeford:** I may have just misunderstood the point that the older persons' commissioner was making, Chair, but I'm a bit baffled, really, by the idea of 'fitness to own', because the Bill has no impact on people's ability to own property. What it does have a direct impact on is people's ability to run a care service from the property that they own.

[127] **David Rees:** I'm sure that's what she meant.

[128] **Mark Drakeford:** So, fitness to provide? Absolutely, and the Bill does that. If you own a property, and then you decide that you want to run a care home service from that property, then you will have to register, because it will be a registered service, and in order to be able to register as a provider, you will have to meet all the tests that are there to show that you are a fit and proper person to be allowed to run that service. So, if that's the sense in which the older persons' commissioner meant it, I'm entirely with her, and I think that the Bill does what she asks. In terms of owning property, I think that's a different discussion altogether.

[129] **David Rees:** Okay. Alun?

[130] **Alun Davies:** In terms of those tests, of course, one of the absolutely fundamental tests of the success of this legislation will be that it addresses the issues raised by the older persons' commissioner in her report last year, 'A Place to Call Home?'. I think we agreed when you appeared in front of the committee at that time, that was an absolutely devastating piece of work and reflected very poorly on standards of care in many places—not all, but far too many. Could you outline to us briefly how you believe this Bill will address the issues raised in that report and how it will help ensure that no future older persons' commissioner writes a similar report?

[131] **Mark Drakeford:** I'll do my best to do that now, Chair, but also to say that very relevant to this whole discussion will be the report of Dr Margaret Flynn in the Jasmine connection, and, as you know, we've had the benefit of some discussions with her about her emerging findings in relation to fitness to—

[132] **Alun Davies:** We've seen the letter on that.

[133] **Mark Drakeford:** You've seen it, so that's very material.

[134] **David Rees:** Members received the letter this morning, so they may not have had time to digest it properly.

[135] **Mark Drakeford:** Okay, well, I'm glad we've been able to get that to you. So, I think the way that the Bill does it is that section 7 of the Bill makes it clear that, before granting an application for registration—as a care home, for example—Welsh Ministers must be satisfied that the requirements of regulations made under section 26 will be met. Section 26 then gives Ministers a regulation-making power to impose requirements as to the fitness of a person to be a service provider.

11:15

[136] I'm very happy to say this morning that my understanding of fitness will go well beyond financial fitness. There will be other considerations that we will want to bring to bear in terms of people being able to demonstrate that they are a fit person to be a service provider. We will work with the sector to make sure that the tests are relevant and proportionate and so on, but that's the way that the Bill sets out a mechanism to do what the older persons' commissioner and Alun were asking to be achieved.

[137] **David Rees:** Darren.

[138] **Darren Millar:** Just one question, Minister, and this is on the prospect of a ratings system for social care services. There appears to have been widespread support for a ratings system, I think it's fair to say, but there's also a little bit of a hesitation in terms of the potential for an unintended consequence for both hospitals where a discharge might be slower than it could have been, and indeed on those services that might act very swiftly to put things right but may need to wait a long time until their next inspection for a higher rating. Can you tell us, should you be minded to introduce a ratings system—and I hope you will, having spoken to individuals and taken the evidence—will you be able to provide for a swift re-inspection, on providers paying for that inspection of course, as is currently the case with the food hygiene ratings system, for example?

[139] **Mark Drakeford:** Yes, thank you, Darren. I go back to the discussion we had earlier in the process: I, too, agree that a ratings system is a good thing and should come in, but I also agree with some points you made earlier in the process about getting it right and working with the sector. Nothing would be worse than a ratings system that then loses public confidence. Part of that is about thinking about unintended consequences. We are very alert to the need to make sure that, if a premises gets a rating that it thinks it can improve by some quick action, which tells a more accurate story about the quality of the service it provides, then we must provide for the system to do that.

[140] **David Rees:** Okay, thank you. Just two quick questions from me, Minister, towards the end. We've had evidence from third sector organisations, and the individual responsibility question arose. How would that be identified, based upon the definitions within the Bill, for third sector organisations that are perhaps UK wide? Will you perhaps be looking at how the

Bill can address that issue?

[141] **Mark Drakeford:** Chair, we believe the Bill does provide sufficient flexibility in the way that a responsible individual is identified, to be able to accommodate the needs of the third sector. They are different in the way that they are structured to other providers. I've asked my officials to make sure that we have those conversations with some of the organisations that provided evidence to you, to explain to them how we can use the flexibility of the Bill to allow them to comply with its requirements in a way that meets their needs and circumstances.

[142] **David Rees:** Okay, thank you for that. We've also heard evidence from various witnesses about the extension of not the regulated individuals but the regulated services—particularly advocacy, for example. The Children's Commissioner for Wales was very strong on the importance of including advocacy within the regulated services. Have you given any thought to the extension of regulating services? Also, perhaps, tagging on to that, there's the question she raised about the anomaly with the special residential school.

[143] **Mark Drakeford:** Thank you. I'll probably ask Kate or Mari to deal with the schools issue, because it's quite technical. I said in front of committee last time and gave a commitment that advocacy would be the first in line to become a new regulated service once the Bill is up and running. I've had a discussion with the children's commissioner. She knows a great deal more than I do about children's advocacy, and she thinks it's in a state where it could be regulated now. We will want to bring in advocacy in a much wider sense as a regulated service, including advocacy in the fields of mental health, learning disability, older people and so on. I think that is a bigger job than simply putting children's advocacy on the face of the Bill. So, my position remains that we will make advocacy a regulated service. It will be the first new service we will add to the list, and we will do that once the Bill is on the statute book in proper discussions with the sector, to make sure that the sector in the round is able to match up to the requirements you could have on it, once it becomes a regulated service.

[144] **David Rees:** And the residential special school?

[145] **Ms Johnson:** Yes, well, the definition of a care home service in the Bill is set out in Schedule 1 and excludes 'school'. However, many residential special schools do fall within the definition of a care home service. The 'school' definition in the Bill deals with boarding schools that are regulated elsewhere, and what we need to understand is what characteristics there are of a residential special school at the moment, such that some of them are falling outside the definition of a care home service. That's where the Minister has asked CSSIW to assist in terms of ascertaining what those characteristics are, so the definition in the Bill can be firmed up and we can bring those residential special schools that are falling out of the system of regulation at the moment into the system.

[146] **David Rees:** Okay, thank you for that. Time is up, Minister. Therefore, can I thank you for your time this morning giving evidence? It's been very helpful for us. Thank you very much. Obviously, you'll get a copy of the transcript for any factual inaccuracies that you may identify, as you've already identified previously. So, thank you very much, once again.

[147] **Mark Drakeford:** Thank you all, very much indeed.

11:21

Papurau i'w Nodi
Papers to Note

[148] **David Rees:** I will move on to the next item on the agenda, as the witnesses leave. Can we note the papers, please, of the minutes of 13 May, the additional information we've received from Carers Trust Wales, Age Cymru, Age Alliance Wales and the British Association of Adoption and Fostering? Okay. We've also received additional information recently from the Fostering Network and the older people's commissioner. We haven't had time to put them into this week's papers, but they will be circulated to Members and published on the Bill's webpage. Can we also note the correspondence from the Minister with regard to an update on the inquiry we undertook into the GP workforce in Wales, which commented specifically on the additional training period that was being discussed—of the two years' additional, rather than the one year for the GPs? Can we note that? Thank you very much for that.

11:22

Cynnig o dan Reol Sefydlog 17.42(vi) i Benderfynu Gwahardd y Cyhoedd o
Weddill y Cyfarfod
Motion under Standing Order 17.42(vi) to Resolve to Exclude the Public from
the Remainder of the Meeting

Cynnig:

bod y pwyllgor yn penderfynu gwahardd y cyhoedd o weddill y cyfarfod, yn unol â Rheol Sefydlog 17.42(vi).

Cynigiwyd y cynnig.
Motion moved.

Motion:

that the committee resolves to exclude the public from the remainder of the meeting, in accordance with Standing Order 17.42(vi).

[149] **David Rees:** Can I now propose, in accordance with Standing Order 17.42(vi), that we resolve to meet in private for the remainder of this meeting? Are you all content with that? Thank you very much.

Derbyniwyd y cynnig.
Motion agreed.

Daeth rhan gyhoeddus y cyfarfod i ben am 11:22.
The public part of the meeting ended at 11:22.