



## **Consultation Response**

### **Regulation and Inspection of Social Care (Wales) Bill: Stage 1**

**April 2015**

#### **Introduction**

Age Cymru is the leading national charity working to improve the lives of all older people in Wales. We believe older people should be able to lead healthy and fulfilled lives, have adequate income, access to high quality services and the opportunity to shape their own future. We seek to provide a strong voice for all older people in Wales and to raise awareness of the issues of importance to them.

We are pleased to respond to the consultation on the future of Regulation and Inspection of Care and Support in Wales.

#### **Headline Issues**

With a background of recent scandals in the provision of health and social care, we believe that there is a need for a robust regulation and inspection framework for social care in Wales. It is essential that this is built around the service user and able to challenge organisational cultures that are not delivering the desired outcomes for the individual. Standards relating to quality and dignity should provide a clear marker of what we expect with regard to the provision of care to vulnerable older people.

With regard to this Bill, and its ability to provide this framework, we have particular concerns about:

- The failure to extend registration of social care workforce groups to include domiciliary care workers and care workers employed in providing adult residential care. In a recent (February 2015) survey question by ICM on behalf of Age Cymru, 92% of the 1000 respondents believed that domiciliary care workers should be registered
- A potential conflict of interest in the role and remit of Social Care Wales (SCW) – protection of the public should be paramount and we have doubts as to whether SCW can be both a regulator and an improvement/training agency
- A lack of clarity in the terminology used both within this Bill and in terms of read-across to definitions contained within the Social Services and Well-being (Wales) Act 2014 (SSWA)

- A lack of recognition of carers throughout this Bill, which should recognise and reflect the position that they are accorded by the SSWA

**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?**

- 1.1. The protection of vulnerable older people who are in need of care and support, and their carers who need support, is vitally important. It therefore follows that the regulation and inspection system that carries out this role must be robust and fit for purpose. The Explanatory Memorandum demonstrates that there are good grounds why the current situation creates complexity and loopholes that could reasonably be avoided through the use of legislation, as well as the importance of ensuring quality services are delivered. It also recognises that there is a need to learn from serious incidents that have taken place in both health and social care in recent years. Many of these cases involved vulnerable older people. It is essential that we, as a society, provide proper and appropriate protection. On this basis, we welcome the introduction of the Bill.
- 1.2. It is not always clear from the Bill how its objectives will be achieved. In part, this derives from the situation where regulation and inspection focuses upon the activities of organisations delivering services whereas the new ethos of social service delivery, as set out in the SSWA is person-centred. The Bill needs to ensure that the desired outcomes of the person in need of care and support and the carer in need of support are not lost as a result.
- 1.3. There is an inequity in Human Rights protection for people who self-fund their care. Currently all residential care services provided or arranged by local authorities in Great Britain are covered by the Human Rights Act (HRA). Previously, a loophole existed which meant that care home services provided by private and third sector organisations under a contract to the local authority were not considered to fall within the scope of the HRA. Following a sustained campaign this loophole was closed by section 145 of the Health and Social Care Act 2008. However, care home residents who are eligible for care but who, due to means testing, have to arrange and pay for their own care (so-called self-funders) lack the full protection of the Act. We note the position that amendment of the HRA and its interpretation lies outside the powers of the National Assembly for Wales but we remain concerned about levels of human rights protection for people who self-fund their care services.
- 1.4. We hear from our local Age Cymru partners, a frustration at the lack of supervision of the work carried out by care workers in the community, and perhaps more importantly, the lack of time care workers have with each client. We believe that a task-based, rather than outcomes-based, approach to care plans and commissioning has resulted in poor practices in some areas of Wales. Many of our local Age Cymru partners are very concerned about the current quality of domiciliary care in their area. Increasing numbers of older people are reporting that their domiciliary care packages are being cut to 15-20 minute calls.
- 1.5. For example Age Cymru Swansea Bay report that clients are making choices between going to the toilet and getting something to eat, particularly as at

least 5 minutes of the call time is taken by completing admin and call monitoring. Another example was an older person having to have cold baths as there is not enough time to wait for the boiler to heat the water in a 20 minute call. This is clearly unacceptable and it is crucial that urgent improvements are made to the quality of care to maintain dignity. We would like to see outcomes-based commissioning across Wales and an end to 15 minute care visits as standard practice. Consideration should be given to including the type and cost of social care being commissioned in the local market stability reports, or the local authority annual report, as the commissioning process undoubtedly impacts upon the level and quality of care that is able to be delivered.

- 1.6. We are concerned that there is a lack of recognition of carers in the Bill as it currently stands. The SSWA is clear on the need to provide support to carers, effectively acknowledging the vital role that they play in providing care to their loved ones. It is therefore essential that this Bill reflects the significance attached to carers in that Act. As the submission by the Wales Carers Alliance demonstrates, this could often be done through quite small amendments on the face of the Bill. Carers should be included, for example, through their involvement in the inspection of service providers.
- 1.7. With regard to regulation of the workforce, we are concerned that there is a lack of clarity in some Parts of the Bill as to the way in which its provisions relate to different groups of the workforce, some of whom are registered with the regulator, some of whom are regulated with other regulators and some of whom are not registered individually. We would welcome clarity to enable easy identification of which provisions relate to which workforce groups. Whilst in places this is provided by the Welsh Government statement of policy intent previously submitted to the Committee, it is not always reflected on the face of the Bill. It is essential that it should be clear throughout when the remit of the Bill relates to all social care workers and when it relates only to those regulated by SCW.

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

- 2.1. A significant barrier to the effective operation of this scheme in practice would be the continued lack of funding within the social care sector as a whole. Whilst we recognise that efforts have been made to protect social services' budgets in Wales, further investment is needed if we are to provide quality person-centred care to the most vulnerable in our society.
- 2.2. A qualified, well-supported social care workforce is also essential in delivering such care. Currently, social care workers are often not regarded highly despite the vital nature of the work that they do. We welcome moves to provide support through the training-related role of SCW. However, it is not clear that it will benefit those key staff, such as domiciliary care workers, who provide what is often intimate personal care to vulnerable people in their own homes.
- 2.3. There is a lack of clarity relating to the reach and remit of SCW as it would be constituted in this Bill. In part this relates to its joint role as both the regulator and the improvement agency for the workforce. There is a potential for a conflict of interest to emerge here and it is essential that protection of the public through the workforce role is paramount. There is also a lack of clarity

in some sections where its remit appears to cover the whole social care workforce, even though some of these are covered by other regulatory bodies such as the Health and Care Professions Council (HCPC). In order for the framework to operate effectively whilst avoiding fragmentation and duplication, it needs to be absolutely clear at every point where its remit covers the whole social care workforce and where it covers only those who are registered with it in its role as regulator.

2.4. As the Explanatory Memorandum rightly recognises, there is a clear need to ensure that there is consistency and accuracy in the reports produced by inspectors and regulatory staff. Whilst subjective impressions are inevitable, there is also a need for objective criteria to ensure reports are consistent and build public confidence in the system. The reports also need to be written in a way that is both accessible and meaningful to the public. However, establishing objective criteria that can be applied to a person-centred social services ethos which should encourage growing variation and flexibility in terms of the services being delivered may prove to be a challenge.

**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?**

3.1. We are concerned by the intention of the Bill to see compulsory registration for social care staff working in residential homes for children and young people, but not for social care staff working in residential homes for adults, many of whom will be older people. The inference is that different levels of protection are being provided to vulnerable groups as a consequence of these different expectations with regard to registration. However, the recent scandals referenced as a learning point for this Bill revolved around the provision of adult social care, most often care for older people. This suggests that this vulnerable group is in need of equal levels of protection which the Bill as it stands would not provide.

3.2. As noted above, the primary function of Social Care Wales should be the protection of service users.

3.3. Age Cymru also believes that the Bill should require social care services to include in their annual report how they are meeting their requirements under the Equality Act.

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

4.1. The Bill could reasonably be strengthened in ways that both acknowledge and encourage more integrated working. There are issues around cooperation between regulators which would benefit from further clarification, but also useful scope for encouraging integration with regard to conducting inspections and workforce development that is being under-exploited at the moment. This would allow further strengthening of the system, as well as possible opportunities for streamlining, that would help to prevent fragmentation and duplication.

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

5.1. There are concerns around the definition of care as it is currently laid out in the Bill, especially when it is read across with definitions provided in the SSWA. It is our belief that the definition laid out in the Bill does not take

sufficient account of the importance of relationships and the need for quality interaction. Relationships between social care workers and those in need of care and support will inevitably shape the views of the latter in terms of whether they consider their desired outcomes are being met by the service provided. A focus on physical tasks detracts from this important element.

- 5.2. There is a question mark over whether definitions in this Bill that differ from those used in the SSWA may create different legal expectations, and thereby cause confusion among service providers about the expectations they have to meet.
- 5.3. A number of the service providers who will have to produce an annual return will be small organisations, often operating in the third sector. Where possible, the annual return of third sector organisations should align with reporting responsibilities that already exist through their status of charities.

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

- 6.1. The SSWA intends to introduce person-centred care which may result in a more varied and flexible landscape of service provision than currently exists. It may be challenging to capture this.
- 6.2. We welcome the commitment to engaging with the public. We would like to see greater clarity in terms of the channels to be used for engagement, and the extent of the engagement to be undertaken. This is one of those points at which it would be useful to reference carers to ensure their involvement in the regulation and inspection processes. It is important to involve service users and their families in the design of the process; ask what matters most to them and what they want to see included in the range of reports that will flow from this framework.
- 6.3. We would like to see greater inclusion of lay inspectors (with experience of using services) as part of the inspection team, with a role in unannounced inspections and an equal voice in decision-making. Inspection teams must also include professionals with an understanding or experience of the care and/or support service being provided.
- 6.4. We welcome the introduction of an inspection quality ratings system, which should allow the public to compare the quality and safety of services. The current lack of differentiation makes it very difficult for people using services to effectively compare and judge quality of services. We have heard from people in Wales that choosing a care home can be a difficult process and that CSSIW reports are not very helpful in the process and also vary hugely in the quality of reporting and content. A ratings system would also help to foster a culture in which service providers are encouraged to aim higher rather than simply comply with requirements. Properly done, this system has the potential to allow those in need of care and support, and their loved ones, to make better informed choices about services.
- 6.5. In some areas, inspection quality ratings may also serve to highlight limited choice or availability, especially where the available services are receiving less good ratings. It would be useful to see this element considered under either the market oversight provision or the population needs assessment of the SSWA. It is essential that any such information is presented in ways that

are easily accessible to all. In view of the types of decision that may be influenced by such ratings, it is essential that information covers issues such as service capability to accommodate sensory loss, cognitive impairment and other issues which may affect the decision made by an older person and their loved ones regarding choice of service provision.

**7. What are your views on the provisions in Part 1 of the Bill for the regulation of local authority social services? For example, the consideration of outcomes for service users in reviews of social services performance, increased public involvement, and a new duty to report on local markets for social care services**

7.1. We strongly support the requirement for local authorities to undertake a risk assessment about continuity of service to help to prevent provider failure. We have been calling for stronger regulations to ensure that inspected care homes can prove that they are financially viable and reduce consequent threats to the safety and wellbeing of residents.

7.2. As highlighted above, if services become more flexible and varied in response to the shift towards person-centred care, this may be difficult to capture. Nevertheless, it is entirely appropriate that the ability of services to help achieve the desired outcomes of the individual be taken into account as part of reviewing performance.

7.3. Again, there could be mention in here of the need to involve carers as (well as) service users.

**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? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.**

8.1. We welcome the intention of these provisions. It is clear from the current situation that insufficient thought has been given to addressing levels of demand that are likely to arise in coming years, especially with regard to the need for services to cope with a growing number of older people with complex conditions. Market oversight should be used to provide an evidence base to make the argument for investment to address these challenges.

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

9.1. As highlighted above, we feel that the Bill currently lacks clarity on when references being made to social care workers relate only to those registered with SCW and when provisions relate to the entire workforce.

9.2. We are concerned that there is the potential for a conflict of interest between the role of Social Care Wales as a workforce regulator and its role as an improvement and training agency. Protecting the public is of vital importance and should be clearly separated from any other roles under its remit.

**10. What are your views on the provisions in Parts 4-8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.**

- 10.1. We are deeply concerned by the decision taken not to extend the registration of workforce groups to include domiciliary care staff. It is currently the case that domiciliary care workers are significantly less regulated than other groups of professionals, such as security workers and gas fitters and in a recent survey question by ICM on behalf of Age Cymru, 92% of the 1000 respondents believed that domiciliary care workers should be registered. Extending registration to this group would provide better protection on safeguarding grounds by preventing people deemed unsuitable by one care provider being able to get a job at another provider.
- 10.2. We believe that full registration is needed in order to provide a strong level of protection for vulnerable older people. We note that the Bill contains provisions for the introduction of a 'negative register' (via the use of prohibition orders) at a future point in time for those categories of social care workers not directly registered with Social Care Wales (or presumably any other regulator). However, we are not convinced that this offers a sufficiently strong level of protection to the most vulnerable people in our society.
- 10.3. Whilst it is true that we have not seen a scandal in the domiciliary care sector on the scale of those that have been uncovered in both residential care and healthcare settings in recent years, the risk exists as a consequence of the fact there is inevitably less opportunity to provide supervision and oversight to a care worker operating alone in the privacy of someone's own home. The lack of oversight, when coupled with a high turnover within the work force, is viewed as a significant factor exacerbating threats to the human rights of older people<sup>1</sup>. We believe that there is a strong case for the registration of social care workers providing personal care in the homes of vulnerable, and often frail, older people.
- 10.4. Registering individual staff members who provide domiciliary care can also be used to enhance the status of their profession as well as ensuring that there is adequate protection for people receiving those services. In line with the comments made in our response to Question 3, we also believe that social care workers employed within adult residential care should also be registered, otherwise current legislative provisions appear to provide different levels of protection for groups of vulnerable people.
- 10.5. As the Explanatory Memorandum demonstrates, uptake of the voluntary registration scheme had been very limited. It is therefore reasonable to remove it as it was not serving to enhance public confidence in the system.

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

- 11.1. We would like to see this part of the Bill used to encourage and promote greater cooperation between SCW and other regulatory bodies such as the HCPC.
- 11.2. We also believe there is room for improving service delivery and minimising duplication by encouraging cooperation to establish mutual recognition of equivalent (or even superior) qualifications to ensure that highly competent and qualified staff do not have to re-take qualifications (sometimes at a lower level than those they hold) before being able to take up a post in social care. This makes no sense from the point of view of workforce

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<sup>1</sup> I Koehler (2014): *Key to care. Report of the Burstow Commission on the future of the home care workforce:* p20

development, or in terms of improving integration and joint working between related sectors.

**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?**

12.1. In as far as we are able to distinguish, the balance would appear to be reasonable but it is difficult to comment more fully at this stage.

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

13.1. With regard to the financial implications of the Bill, we do not believe that we are in a position to make informed comment. We note, however, that a number of the projections are based upon assumptions concerning the size of the workforce that could be open to challenge. We also note that it is often anticipated in the Explanatory Memorandum that no costs will accrue from the changes made other than transition costs and are concerned that this may be an overly optimistic underlying assumption.

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

14.1. We are concerned in the lack of consistency in definitions and terminology, both within the Bill itself and also between this Bill and the Social Services and Well-being (Wales) Act 2014. In order for the Bill to be able to achieve its objectives, we need to achieve clarity in the use of language and definitions.