



Llywodraeth Cymru
Welsh Government

Number: WG47837

Welsh Government
Consultation – summary of response

Proposals for primary legislation in relation to children's social care, Continuing Health Care, mandatory reporting and regulation and inspection

This consultation covered the following main areas:

- Eliminating profit from the care of children looked after
- Introducing Direct Payments for Continuing Health Care
- Extending mandatory reporting of children and adults at risk
- Amendments to regulation of service providers, responsible individuals and the social care workforce

June 2023

Mae'r ddogfen hon ar gael yn Gymraeg hefyd / This document is also available in Welsh
Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg / We welcome correspondence and telephone calls in Welsh

Overview

This document provides a summary of the responses received by the Welsh Government to our consultation:

WG45428 – Proposals for primary legislation in relation to children’s social care, Continuing Health Care, mandatory reporting and regulation and inspection

The consultation was published on 17 August 2022 and closed on 7 November 2022. This exercise received 200 responses from a range of stakeholder and interested parties.

Action Required

This document is for information only.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

This document is also available in Welsh.

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Additional copies

This summary of response and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government’s website.

Link to the consultation documentation:

<https://www.gov.wales/proposed-changes-legislation-social-care-and-continuing-health-care>

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Section 1

1.1 Introduction

The Welsh Government is determined to continue to improve the quality of experience for people who use social care in Wales. Last year, we consulted on proposals for change to primary legislation which will contribute to future improvements to social care.

This consultation covered the following main areas:

- Eliminating profit from the care of children looked after;
- Introducing Direct Payments for Continuing Health Care;
- Extending mandatory reporting of children and adults at risk;
- Amendments to regulation of service providers, responsible individuals and the social care workforce. This includes extending the definition of social care worker to include childcare and play workers.

1.2 The context and rationale

Building on the vision set out in the 2011 White Paper on *Sustainable Social Services*, social care law in Wales has been reformed and consolidated through the Social Services and Well-being (Wales) Act 2014 ('the 2014 Act') and The Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act').

The Social Services and Well-being (Wales) Act 2014 established a new framework for local authority social services in Wales. The 2014 Act provides the legal framework for improving the well-being of people who need care and support, for carers who need care and support and for transforming social services in Wales.

The Regulation and Inspection of Social Care (Wales) Act 2016 provides a statutory framework for the regulation and inspection of social care services and a framework for the regulation of the social care workforce in Wales.

Through the Programme for Government, Welsh Ministers are seeking to further improve social care in Wales.

These proposed changes are, in summary:

- **Eliminating profit from the care of children looked after**
The Welsh Government is seeking whole system change for children's services, to develop services that are locally based, locally designed and locally accountable, so we can do the best for our young people, their families and communities. As one element of this, in the Co-operation Agreement between the Welsh Government and Plaid Cymru, there is a clear commitment to 'eliminate private profit from the care of children looked after'. The consultation proposed primary legislation that permits only not-for-profit providers to register with Care Inspectorate Wales (CIW) as a care home service for children or a fostering service. This would mean that only not-for-profit providers would be permitted to operate within Wales.

- **Introducing direct payments for Continuing Health Care (CHC)**

We are seeking to empower people to have greater voice and control over the care and support they receive, by enabling access to Direct Payments for adults who are eligible for Continuing NHS Healthcare, in order that they can purchase care and support that best meets their needs. The introduction of direct payments for CHC funding for adults requires amendment of the NHS (Wales) Act 2006, to include:

- a power for local health boards to make direct payments to adults (or their representative) who have been determined to qualify for NHS funded continuing health care (CHC);
- a power for Welsh Ministers to make regulations about direct payments, allowing Ministers to prescribe further matters relating to what sort of healthcare direct payments can be made for, exceptions and prohibitions, and how the scheme will operate;
- a power for local health boards to make arrangements to provide assistance to persons or bodies in connection with direct payments; similar to the arrangements which exist for assistance to people who receive direct payments for social care.

- **Extending mandatory reporting of children and adults at risk**

From its establishment in March 2015, the Independent Inquiry into Child Sexual Abuse ('IICSA') investigated the extent to which public bodies and other non-state institutions in England and Wales have appropriately fulfilled their responsibilities to protect children from sexual abuse and exploitation. During the Inquiry, there was significant discussion of 'mandatory reporting' – also referred to as a 'duty to report' – and so, in August 2022, Welsh Ministers took the opportunity of this consultation on primary legislative change, to explore views on extending the existing duties to report children and adults at risk, under sections 128 and 130 of the Social Services and Well-being (Wales) Act 2014.

The consultation – launched prior to IICSA publishing its findings and concluding recommendations – invited views about the introduction of legal requirements to report children and/or adults at risk on individuals within relevant bodies (i.e. those acting on behalf of 'relevant partners' of a local authority, who are subject to the existing duties) and whether this would better protect children and adults from harm. These views would then inform policy thinking and preparation of a response to any recommendation made by the Inquiry on mandatory reporting.

IICSA published its final report on 20 October 2022, which included a recommendation that the UK and Welsh Governments both introduce legislation to create a statutory duty, on individuals defined as 'mandated reporters', to report child sexual abuse.¹

¹ [F.6: Mandatory reporting for England and for Wales | IICSA Independent Inquiry into Child Sexual Abuse](#)

- **Amendments to the regulation of service providers, responsible individuals and the social care workforce (Regulation and Inspection of Social Care (Wales) Act 2016).**

The Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') introduced a new registration and regulatory regime for providers of care and support services ('regulated services') in Wales. It also reformed the system of registration and regulation of the social care workforce.

In light of the experience of implementing the 2016 Act, and working in conjunction with the service and workforce regulators, namely Care Inspectorate Wales (CIW) and Social Care Wales (SCW), the Welsh Government has identified some proposed amendments which it believes will serve to achieve the original policy intent; resolve anomalies within systems that have become apparent in practice; and/or to assist CIW and SCW in their regulatory processes and activities.

The proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals relate to a range of matters provided for within the 2016 Act, including:

- a) Identifying unregistered services
- b) Publication of annual returns
- c) Publication of inspection reports
- d) Improvement notices and cancellation of registration
- e) Responsible individuals
- f) Definition of 'Care' for children and young people.

Several proposed amendments to regulation of the social care workforce by SCW were also proposed, relating to:

- a) Duration of SCW members' terms of office
- b) Conditional registration of social care workers with SCW
- c) Interim orders, whilst Fitness to Practice investigations are made
- d) Revocation of interim orders.

In addition, Welsh Ministers are proposing the amendment of the 2016 Act to enable extension of the definitions of a social care worker to include all childcare and play workers, clarifying the role of Social Care Wales in support of these workers.

The chapters in the consultation document set out more detail on the context and rationale for each proposed change; explain why Ministers consider the need to introduce or amend the law in these areas, and what this is intended to achieve.

1.3 The consultation, audience and engagement

A [Written Statement](#) was issued when the consultation was published, and notification of the consultation was provided via email by Welsh Government on 17 August 2022 to a wide range of organisations² representing the following groups:

- Service providers and professionals working in social care, health, police and probation, education and childcare, and their representatives
- Users of social care services, their families, and representatives
- Adults in receipt of Continuing NHS Healthcare, their families and representatives
- Care Inspectorate Wales and Social Care Wales, and those regulated by or who engage with them.

During the consultation period the consultation was also highlighted in various newsletters including the Welsh Government Consultations newsletter, the Dysg newsletter and the SCW newsletter. The consultation was also highlighted through social media activity.

Respondents were invited to submit their views online or via email.

A [one-page summary](#) was also published, and later in the consultation period an animated explainer video was created in Welsh, English and British Sign Language (BSL) and individual chapter summaries were published. In response to requests, an Easy Read summary and consultation response form was also created.

The consultation was highlighted in a number of meetings to raise awareness and encourage responses, including:

- The Chief Social Care Officer's meetings with Directors of Social Services.
- Meetings with childcare and play stakeholders.
- A meeting of the Eliminating Profit in the Care of Children Looked After Programme Board in September.
- Presentations, including from the Deputy Minister for Social Services and the Chief Social Care Officer, during the National Social Care Conference, where a Welsh Government stand also highlighted the consultation.
- A focus group meeting with CHC and Direct Payment service users and their representatives on 13 October.
- A CHC working group involving local authorities, Local Health Boards, disabled people and representative organisations on 2 November.

1.4 Consultation response

In total the Welsh Government received 200 responses to the consultation. Not all consultees responded to all chapters of the consultation. 158 responses came from individuals and organisations based inside Wales or with UK-wide activities (referred to afterwards in this summary as 'from inside Wales'); 12 came from organisations or individuals outside Wales. In 30 cases it is unknown whether the respondent was based in Wales.

² [Consultee list](#) published September 2022.

65 respondents expressed a preference for their names and addresses not to be published. Respondents who may be identified within the document have provided their permission for Welsh Government to do so.

In terms of which sector responses came from:

- 30 responses were received from social care providers, of which 8 were from children's care homes, 6 from adult care homes, 6 from fostering services, 2 from childcare providers and 8 from other kinds of providers. 28 of these were from inside Wales and 2 from outside Wales. In total 3 of these responses asked for their organisation's names and addresses not to be published.
- 42 responses were received from public bodies, of which 21 were from local government (covering 20 local authorities and some representative organisations), 8 from NHS bodies or NHS teams, 3 from safeguarding boards or leads, 3 from police, 3 from regulatory bodies, 3 from statutory commissioners and 1 from the Public Services Ombudsman for Wales. All of these were from inside Wales. None of these responses asked for their organisation's names and addresses not to be published.
- 15 responses were received from representative bodies, of which 8 were from representative bodies for professionals, and 7 from representative bodies for providers. All of these were from inside Wales. None of these responses asked for their organisation's names and addresses not to be published.
- 3 responses were received from Trade Unions, all of which were from inside Wales. None of these responses asked for their organisation's names and addresses not to be published.
- 25 responses were received from third / voluntary sector organisations, 23 of which were from inside Wales and 2 from outside Wales. None of these responses asked for their organisation's names and addresses not to be published.
- 40 responses were received from individuals whose relationship to social care or continuing health care could be identified. 30 of these were working in the health and social care sector, 2 were service users, 1 was a family member and 1 was a foster carer, while 6 other individuals had other connections to the sector. 32 of these responses were from inside Wales, 4 from outside Wales and in 4 cases it was unknown whether the individual was from inside or outside Wales. 25 of the responses asked for their personal names and addresses not to be published, 22 of which were individuals working in the sector.
- 45 responses were received from individuals where their relationship to social care and/or continuing health care was not clearly identified. 17 of these appeared to come from inside Wales, 2 from outside Wales and in 26 cases it was unclear whether these came from inside or outside Wales. In total 37 of the responses asked for their names and addresses not to be published,

including 11 from inside Wales, 2 from outside Wales and 24 where the origin of the response was unclear.

Section 2

2.1 Summary of responses received and Welsh Government response

Consultation responses have been analysed by Welsh Government Officials and are presented as a chapter summary; this includes an overview of the respondents to each chapter.

2.1.1 Chapter 1: Eliminating profit for the care of children looked after

Summary of responses

In some cases, the issues raised were relevant across a number of consultation questions and this has been reflected in the summary.

153 of the 200 consultation responses answered the questions in this Chapter and our analysis is focused on these responses in this section.

Question 1.1: Do you think that introducing provision in legislation that only allows 'not-for-profit' providers to register with CIW will support delivery of the Programme for Government commitment to eliminate profit from the care of children looked after?

Of the 153 responses received in relation to this chapter of the consultation, 8 did not provide a response to Question 1.1.

There was opposition to this proposal from 35 of the 72 private sector organisations and individuals in the children's care sector who responded to the question. In contrast, there was support in 31 of the 44 responses received from public and third sector bodies for the principle of the central proposal to register only not-for-profit providers in Wales. There was, however, concern across all sectors about the unintended consequences of doing so, particularly the impact on the sufficiency and suitability of residential and foster care places for children looked after in future, particularly for those children that require specialist placements.

Stakeholders from a range of sectors expressed concern that due to disruption among the provider network, local authorities would not be able to meet their duties to provide suitable accommodation to meet the needs of children looked after. They felt this could mean more children being placed in unregistered placements, increasingly left at home in unsafe situations, or not having their needs properly met because choice and diversity of placements was not available. Concern about implementing this commitment now during an economic crisis and as numbers of looked after children were starting to increase was also a common feature of responses.

There were anecdotal reports from 12 respondents that disruption was being felt now with some providers already deciding not to continue to invest in Wales, withdrawing altogether or starting to restrict placements only to children from England because they felt these may be subject to longer contracts than those being offered, in the short-term, in Wales given the Welsh Government's intentions.

There were also concerns that the proposals would exacerbate the existing social care workforce pressures, with many carers and staff simply choosing to leave the for-profit sector. It was argued that, if realised, this could result in an unplanned end to many residential and foster care placements and a loss of specialist skills and experience.

15 respondents felt unable to answer the question fully without a definition of not-for-profit, whilst a few made the point that all businesses need to make some level of profit or surplus to remain viable. Some respondents suggested alternatives to the proposal such as introducing a cap on profits, or measures to ensure a certain percentage of funds are reinvested, although these respondents did not offer any detail on how this might be achieved.

14 respondents made a distinction between large multi-national organisations that extract excessive profits and small owner run businesses that reinvest the majority of profits. Most of these respondents said they would prefer a cap on significant or excessive profits.

Questions were raised regarding what support would be made available to businesses looking to transition to a not-for-profit business model, as well as regarding the role of Care Inspectorate Wales in monitoring any statutory requirement to reinvest surplus, given the commercially sensitive nature of companies' finances. A further comment raised practical issues surrounding what would be requested of companies to transition to not-for-profit, such as whether new companies would need to be formed, company structures changed, or a change in company articles made.

Whilst some respondents welcomed the additional funding being made available to local authorities to support the transition to a not-for-profit model, there were concerns raised by 8 respondents about the timescale for the proposed changes and the need to put in place the necessary not-for-profit provision before introducing the requirement for an organisation to be not-for-profit in order to register with Care Inspectorate Wales.

4 responses fully agreed that market forces should be removed from the care of children and stated that introducing a market for care had not increased sufficiency over the years, but rather that competition had created waste and repetition, with the cost of care rising and outcomes for children worsening in some cases.

Question 1.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example:

- **Benefits, and disbenefits;**
- **Costs (direct and indirect), and savings;**
- **Impacts upon individuals and groups with protected characteristics;**
- **Other practical matters such as cross-border issues.**

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome. Please explain your reasoning.

Of the 153 responses received in relation to this chapter of the consultation, 15 did not provide a response to Question 1.2.

There was agreement from 41 respondents the proposal would meet the Welsh Government's policy intention and would send a strong signal to children and young people that companies cannot be allowed to make a profit out of their social care needs.

There was also agreement within 21 of the received responses that there may be more control over the marketplace, especially in relation to the type and quality of placements that are developed, provision to support complex needs and secure placements. Some of these felt the proposal would result in a market of providers whose core values are focussed on providing good and stable homes for children alongside supporting local authorities to develop local provision and keep children close to home.

3 respondents also felt that with the withdrawal of some 'for profit' providers from the market, staff and foster carers may be 'freed up' to become registered with local authorities, allowing the expansion of local authority provision. However, there was also a counter view from 38 respondents that private sector staff and foster carers would simply choose to leave the sector rather than work for local authorities or a not-for-profit provider because of what were deemed to be less favourable conditions.

Other feedback suggested that the proposal would offer the potential to lower and control the continuing increase in the costs of private placements that local authorities are currently experiencing, and providers would be more inclined to provide better training and work conditions as they would have less to gain by reserving their expenditure. 1 response noted that children and young people would be able to access placements that better matched their needs resulting in better outcomes, and there was a view savings generated by not directing funding to private provision, could potentially be used to provide more preventative and therapeutic support which would in turn help with placement stability.

47 respondents confirmed that they did not agree with the proposal in its totality and felt there were only disbenefits associated with this proposal. Others raised concern that this major shift in policy is proposed at a time of significant instability both politically and economically in the UK and at a time when the long-term impact of Covid on children's emotional health and well-being is still being understood.

8 respondents outlined that whilst in their view the intention was right, there are already insufficient placements for children and young people who are looked after in Wales. The proposed changes could therefore offer a significantly reduced service for looked after children, impacting on local authorities who have a statutory duty to provide care in their locality for children looked after.

In general, it was felt the cost of rolling out this legislation would be high, and many respondents felt that for local authorities to provide high-quality care, there would need to be a large investment of public money and it could take a long time. In

addition, there was a view that the cost of placing children in local authority placements is similar to the cost of placing them in private sector provision and would not therefore lead to any cost savings.

19 respondents raised the risk that the current proposed timeframe could force 'for-profit' providers to either cease or withdraw their operations in Wales, thereby removing supply from the market and exacerbating the risks of increased costs for local authorities, a lack of appropriate provision, or insufficient availability of provision in general. It was suggested that changing from a 'for-profit' to a 'not-for profit' provider will require providers to undergo structural change, which is a process that can be time-consuming. Not all providers who wish to transition will have the expertise to make these structural changes, and not all providers who wish to transition will be able to transition at the same pace and within the proposed timeframe.

There was a view from 26 respondents that local authorities and providers will need to feel supported, and investment made available throughout the transition process to becoming a 'not-for-profit' provider. Work undertaken to encourage new 'not-for-profit' provision needed to be done in collaboration with local authorities. Additionally, with regard to residential care settings, it would need to be taken into account that opening such a setting can be a lengthy process and areas such as planning timescales and requirements will need to be considered.

It was suggested the Welsh Government needs to work more collaboratively with current 'not-for-profit' providers to learn whether or not they have the capacity to expand, and if so, to support them throughout the process of expansion. For 'not-for-profit' providers who want to expand but do not have the capacity to do so, or for 'not-for-profit' providers who are unsure about expanding, it was outlined that Welsh Government needs to incentivise these providers to expand and support them throughout the process of expansion.

There were issues raised in relation to the supply of staff that will be needed, which could severely undermine the ability of local authorities to provide services. It was suggested there should be a requirement placed on local authorities to pay staff at a level commensurate with the skills they hold and the responsibility that is placed upon them for the care and wellbeing of children. It was felt the not-for-profit sector needs to be adequately funded to ensure it attracts the best individuals who are rewarded for the work they do.

It was stated by 4 respondents that some local authorities do not have any in-house residential services and are not currently skilled or set up to provide the services needed for complex cases such as in specialist and highly regulated settings. Additionally, it was recognised by 18 respondents that many of the private providers in Wales have structures, skills and qualities that have been developed over many years, and such provision provides high quality/speciality (therapeutic) care and support, alongside training, development and support for carers providing that support. Many respondents felt that, if they were to leave the market, these organisations would be a significant loss to children needing to be looked after in care homes in Wales where there is a large dependency on the private sector. It was also stated there are many smaller children's homes providing excellent, specialist,

care for children, some of which have been open for a long time and which children from Wales consider to be their families and homes.

It was felt that given Wales's border with England, consideration was needed as to how these proposals will be implemented in relation to children from England being placed in Wales and vice versa. There was a view this may work against the spirit of the proposal and perversely incentivise 'for-profit' providers to work with English partners and local authorities, rather than having to change their practice.

23 respondents suggested the Welsh Government should shift its focus away from 'eliminating profit' and towards 'rebalancing' the children's social care market so more 'not-for-profit' providers are able to establish or expand, without eliminating 'for-profit' providers in too short a timeframe. In doing so, it was argued that supply could be increased to meet demand in such a way that local authorities will face less difficulty in placing children and young people in appropriate care settings, and that transitioning the market to one that is made up entirely of 'not for-profit' providers would be a process that is done safely and with minimal disruption to children and young people.

It was proposed there could be a need for an innovative and modern approach for effective collaborative partnerships as identified by the Competition and Markets Authority (CMA). This would involve local authorities, providers and potentially others such as health and education bodies, working together in partnership. It was felt this approach would offer a value for money financial model which delivers fair pricing, reinvestment in growth and quality and realistic provider profit margins. It was however recognised this approach would take time to develop and roll out to the whole market, and there would need to be an understanding that coproduction and collaboration requires local authorities and providers to share a similar vision and values as they work together to meet the needs of vulnerable children.

Question 1.3: One approach could be for the legislation to define 'not-for-profit' in terms of the types of organisation that would qualify. Do you consider that the restriction should also be expressed in terms of the way that any trading surplus is expended? What would be the effects and implications of this?

Of the 153 responses received in relation to this chapter of the consultation, 30 did not provide a response to Question 1.3.

20 responses outlined that without a clear definition of 'profit' and detail on the types of 'not for profit' organisation that would be permissible in Wales, the question was difficult to answer. In addition, 22 respondents stated they had chosen not to answer the question at all as they did not agree with the policy direction as a whole.

Of those that did respond, many agreed that specifying the types of 'not for profit' organisations that can operate in Wales would provide clarity around the delivery of the policy and make it easier for commissioning authorities to identify who they are able to contract with. It was suggested that to fulfil the policy goal, not-for-profit organisations needed to be characterised as being values-driven and responsive to

community needs alongside ensuring their offer fully meets the needs of children and young people.

There were mixed feelings on the introduction of restrictions on how surpluses can be expended. 25 responses highlighted that a focus on how the surplus is reinvested could be key to the successful delivery of this policy. 13 responses agreed that it should be made clear that any profit made should be directed towards service improvements with the children looked after at the heart of this decision, rather than the needs of shareholders. It was further suggested that the relevant scrutiny processes should be in place to prevent “for-profit” service providers from finding ways around the system and the system should support those best placed to deliver the service locally.

14 respondents made the point that all organisations need to make and keep a level of profit or surplus in order to sustain their activity. If Welsh Government were to restrict the level of surplus, this could possibly deter third sector charities and not-for-profit organisations from developing partnerships and innovative specialist provision alongside discouraging growth within the sector.

It was recognised that putting restrictions on trading surplus may also limit spending on what the organisation assesses as being required to meet the needs of the children and limit how they meet these individual needs.

It was suggested that robust tests need to be introduced to ensure that organisations can demonstrate they are purely a not-for-profit organisation and not a subsidiary of profit making/driven organisations. Furthermore, as part of this it was felt that the process should ensure those organisations who demonstrate the right values are reinvesting surpluses for the development of securing outcomes for children and young people. To support this, it was suggested that all providers sign up to a commissioning framework (such as that currently provided by the Children’s Commissioning Consortium Cymru (4C’s)) in order to be an approved provider in Wales for Welsh children. Another proposal included introducing a spending plan that is needs led that could be designed and agreed by regulators.

It was highlighted that the voice of children and young people was important to consider as the policy is implemented and therefore the young people who are impacted by these decisions should have some say in how the surplus is utilised. It was felt this would empower them to make financial decisions about the quality of care.

There was a consensus that the quality of care for children should not be compromised during this process.

Question 1.4: Do you think the primary legislation should include a power for Welsh Ministers to amend the definition of ‘not-for-profit’ through subordinate legislation?

Of the 153 responses received in relation to this chapter of the consultation, 39 did not provide a response to Question 1.4, referred to their response to Question 1.3, or stated they required further information to provide an answer.

This question elicited a mixed response from respondents. 51 responses supportive of the proposition identified several reasons as to why this would be beneficial such as; it would assist with flexibility in the definition, ensure loopholes can be closed if, or when, they arise, allow for the definition to be changed without amending primary legislation if it is not working, or meeting the objective set out; and, allowing new forms of incorporation to be introduced in future legislation.

Of those that agreed with the proposal several caveats were put forward such as, it should only be included if Welsh Government develops the full details of subordinate legislation in consultation with stakeholders, including the preparation of an Explanatory Memorandum and Children's Rights Impact Assessment.

The reasons given by a further 51 responses that did not agree with giving Ministers the power to amend the definition of 'not-for-profit' through subordinate legislation included the importance of consultation when amending definitions, concerns surrounding companies investing and developing in Wales if the definition could change without warning which could hinder transparency and erode trust in Ministers.

There was also a view that adding this power was not necessary if there is a requirement to register as 'not-for-profit' with Care Inspectorate Wales as this would be sufficient. Others felt the definition is fundamental to the policy and so needs to be included in primary legislation only. One comment stated it felt 'un-democratic' and could result in a lack of scrutiny and accountability.

Question 1.5: What are your views on the proposed timings for the primary legislation to come into effect?

Of the 153 responses received in relation to this chapter of the consultation, 26 did not provide a response to Question 1.5.

Whilst the proposed timing for registration of new providers of 1 April 2026 was generally agreed with by respondents who supported the proposal, there was widespread concern about the timescales for implementation of a transition by current for-profit providers to not-for-profit only provision. The proposed timing of the introduction of the requirements for existing providers of 1 April 2027 was felt to be overly ambitious and carried with it a risk to the safety of children and young people who require a good quality, registered and stable placement.

41 raised the issue of sufficiency highlighting that sufficient local authority and not-for-profit-capacity needed to be available and suitably resourced first before moving to a wholly not-for-profit system.

One respondent recognised there needed to be a cut-off point, otherwise the commitment to eliminate profit would remain an unachievable ambition. However, 7 felt the timeliness of the introduction of requirements for providers needed to be planned but then kept under review in order to secure a safe transition period for children looked after.

Whilst most respondents felt the 5-year timeframe proposed was not long enough there was no consensus as to what a more appropriate timeframe would be and very few respondents offered an alternative.

Question 1.6: Are there any issues in relation to transition for children looked after, local authorities and service providers you would like to draw our attention to?

Of the 153 responses received in relation to this chapter of the consultation, 47 did not provide a response to Question 1.6 or felt their responses to previous points covered Question 1.6.

49 responses highlighted an increased risk for children and young people currently supported through private independent care homes and foster carers. If these providers begin to leave the market, this could cause disruption for them. In general, it was felt there is not currently enough provision in Wales to enable children and young people to live close to home, and if this policy is not managed carefully, it could cause adverse effects for children and young people in care.

It was suggested the policy could deter many new organisations entering the market, so future supply of needs-based care provision will not be readily available for children and young people in Wales. The risk that many children could be placed outside county and outside Wales was raised, which would impact the child's identity, heritage and contact with family and others.

11 respondents felt many children placed within private provision are children with quite complex needs which local authority staff do not have the skills to support. There was therefore a view that without this specialist support, there would not be enough placements to meet these needs, resulting in local authority social workers experiencing added pressure to find suitable placements that may not be readily available in Wales. Alongside this, it was felt additional time would need to be spent by these social workers. In an already demanding role, transitioning children from stable placements to new placements -again increasing the damage and trauma for those children.

6 respondents raised concerns over the fact that many children who are living within profit-making care on a long-term basis are well-settled with those carers and will not achieve adulthood before the proposed cut-off point. These children will be receiving care that meets all their needs, and any change may cause considerable disruption if their care provider or foster carer does not transition. It was suggested that exception criteria will need to be developed to be used on a case-by-case basis, such as in circumstances whereby carers are unwilling to become local authority carers, and a similar situation may arise in a 'bespoke' or very small residential provision facility.

Another suggestion included adopting a natural attrition approach which would allow those children in existing 'for-profit' placements to remain within their current placement until they transition to adulthood/independent living/reunification with birth relatives. Any new placement arrangements for children and young people entering the care system could then be supported by the not-for-profit sector. There was general agreement that where a transition is necessary, it needs to be seamless.

Feedback from 6 respondents suggested that support for foster families through local authority provision is critical, as many families have chosen not to foster with the local authority because they feel they will not get a good level of support. It was felt that if the quality of provision was of a higher standard, then families would be naturally drawn away from the for-profit sector. It was therefore suggested there needs to be a much more collaborative and partnership approach in place, with local authorities and the third sector having a clearly defined strategy going forward, to support the recruitment and numbers of placements required. There was strong agreement that children and young people must be at the forefront of any decision made or strategy developed, as every move for a child is a traumatic life event, and caution is required to ensure that things are not made worse for them in the short and medium term.

Feedback outlined that the process for transferring foster carers from an independent agency to the local authority needs to be considered. There was an agreement that some foster carers could 'give up' if the process is too bureaucratic and time-consuming. In addition, with the potential increase of foster carers transferring to local authorities, the capacity for staff within the local authority to undertake the necessary work in a short space of time was raised as an important aspect to consider.

9 respondents suggested it is currently unclear what the proposed legal provisions will mean for providers who are registered to care for young people aged 16-25. Clarification will be required as to how the "not for profit" provisions change in a scenario where transition at 18 years old takes place with a single provider.

Question 1.7: What are your views on the issuing of guidance to support the implementation of the primary legislation?

Of the 153 responses received in relation to this chapter of the consultation, 46 did not provide a response to Question 1.7.

83 responses were supportive of guidance being issued to support the implementation of the primary legislation, if introduced. Many who supported the introduction of guidance highlighted the requirements of the guidance and factors to be considered in its development such as ensuring any guidance is realistic, detailed, clear and concise, issued in plain language, designed with accessibility in mind, and in a user-friendly format.

Alongside this, the need to issue guidance accessible to young people was highlighted as well as the need to develop guides that are co-designed by young people to help them understand the changes and how they may be affected by them.

10 comments emphasised the need to collaborate with stakeholders, providers, carers, and those with lived experience to describe the appropriate organisational models in the development of the guidance.

The timeframe associated with the issuing of guidance was raised in many of the comments from respondents, with 14 stating this needs to be available as soon as

possible, or in a timely manner. Additionally, it was felt any guidance needed to be promoted well in advance of any legislative changes, allowing sufficient time for public discussion and consultation before being issued.

Other comments suggested including case studies and good examples within the guidance, as well as providing other supporting activities such as information sessions, workshops or one to one advice, several responses expressed the view that training will be needed across all sectors.

Question 1.8: What are your views on using legislation to place a restriction on local authorities to commission placements from ‘not-for-profit’ organisations only? In particular:

- **Do you think it would support us to deliver the commitment to eliminate profit from the care of children looked after in Wales?**
- **What would be the benefits, disbenefits and other implications of such an approach?**
- **What would be an appropriate timescale for implementing such an approach, if it were to be adopted in Wales?**

Of the 153 responses received in relation to this chapter of the consultation, 34 either did not provide a response to Question 1.8 or felt their responses to previous questions covered their views on Question 1.8.

4 respondents confirmed they did not agree with the policy intention and therefore chose not to provide a response to this question.

There was very little support for this further restriction. There was significant concern, from a range of delivery partners, that preventing local authorities from commissioning any for-profit provision would make it very difficult for them to discharge their duties and would limit local authorities’ power to commission a placement that best meets the identified needs of individual children under their statutory duties.

Some (4) felt the proposal was potentially in conflict with a child’s right to receive the best possible care from their corporate parent. Particular risks for those children and young people who require integrated care services with a specialist health or education element and unaccompanied asylum-seeking children were highlighted, along with a risk to children and young people who are in long-term placements and receiving stable, good quality care outside Wales.

There was some confusion as to whether such a restriction would prevent the use of placements outside Wales. It was generally felt that where there is a lack of suitable provision for a child, there should be some flexibility to commission the service that will best meet the child’s needs. It was suggested that where the local authority is able to demonstrate it has exhausted all potential options in terms of not-for-profit, it should have the flexibility to secure the required care and support through a for-profit placement.

It was proposed a clear review process be introduced which can be accessed if local authorities are struggling to find a suitable placement and there is an impact on placement sufficiency. Further suggestions to support this concept included introducing a requirement for Ministerial sign-off, or the agreement of a board or body to whom the task is delegated by Ministers.

5 responses outlined the need to consider the number of placements that are currently commissioned in England. It was felt that if Welsh local authorities are already commissioning significant numbers of Welsh placements from 'profit making' providers in England, then this could be prohibitive and potentially disrupt existing placements, thus having a detrimental impact on children and young people as some of these children will be living in stable, well-matched, long-term placements.

Question 1.9: What are your views on the possibility of approaches being taken in response to these legislative proposals which would undermine the intention to eliminate profit from the care of children looked after in Wales? Are there any actions which would guard against such activity?

Of the 153 responses received in relation to this chapter of the consultation, 54 either did not provide a response, or stated they had no further views in relation to Question 1.9.

4 respondents outlined that they did not feel they had the knowledge or expertise to answer this question, with some confirming they did not understand the question. 19 respondents chose not to respond as they disagreed with the proposal in its entirety, citing the risks and disbenefits identified in previous answers.

8 respondents confirmed that it was difficult to answer this question without a clear definition of profit and the types of business models that will be acceptable in Wales. It was therefore suggested further consultation would be required to gather sufficient information around this issue.

Feedback from 3 respondents suggested there was no possible approach that could entirely protect against organisations maintaining profits. It was reiterated there is a need for organisations to have sufficient profits to invest in the running of the business and improving services for children and young people.

It was felt that because there is widespread resistance on the part of some providers to the Welsh Government policy, organisations will find a way to circumvent its intention. The model that had been introduced in Scotland for not-for-profit fostering services was noted, and it was recommended the Welsh Government look to learn from the Scottish Government's experience as there is still profit being extracted, despite the policy's intention.

11 responses highlighted that enforcement and anti-avoidance measures will be needed to counter the various indirect methods of extracting profits, such as payment of excessive management charges or interest on inter-company loans and payment of excessive remuneration. There was a view among 17 respondents that it will not be sufficient just to establish eligibility criteria for registering as a provider with necessary related definitions. Feedback suggested there needs to be a

continuing requirement to meet the eligibility criteria, which will require verification from time to time by providers, within a framework to provide ongoing assurance.

It was also suggested Care Inspectorate Wales would need sufficient powers to be able to detect and prevent any 'gaming' of arrangements, and that it could be better placed than the Charity Commission or Financial Conduct Authority (FCA) to know whether particular payments are above market rate. It was also suggested that a mechanism for third parties to alert Care Inspectorate Wales about potential or actual non-compliance may be appropriate. Other feedback outlined that the Welsh Government could benefit from learning from the experiences of the Charity Commission and FCA in relation to this area.

In a similar vein, to mitigate against extracting profits there were further suggestions: resources must be made available for a scrutinising panel to ensure that when organisations state they are not for profit, they actually are; that trading surplus is invested where it should be; and care provision is of a high quality. There was a suggestion that Welsh Government work with organisations and local authorities to co-produce and decide what is acceptable in terms of what can/cannot be deemed as profit, and where there is profit, how it is to be used to develop further services. There was a general agreement that there is a need for robust accounting, transparency and effective monitoring of services/commissioning processes.

Question 1.10: We would like to know your views on the effects that the legislative changes to eliminate profit from the care of children looked after will have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Of the 153 responses received in relation to this chapter of the consultation, 45 did not provide a response to Question 1.10.

16 respondents were unsure as to whether there would be any effect on the Welsh language, with some seeing no correlation at all between the legislative proposals and use of the Welsh language or little to no impact, particularly in light of existing legislative requirements around the Welsh language for all organisations.

Of those who did perceive a potential impact, 44 responses indicated that the introduction of the legislation could or would have a negative effect on the Welsh language. Several reasons were given as to why this may be the case, but many felt more children may need to be placed in England due to the lack of suitable provision in Wales if for-profit providers exited the market. It was argued this would ultimately lead to less children and young people having access to or opportunities to use the Welsh language. The potential for this outcome to be realised was thought to be increased if the proposed changes were not given sufficient time to be implemented. Others felt Welsh speakers within the existing private sector workforce may be lost if they chose not to transfer to local authority or not-for-profit provision.

Of the 15 respondents who believed the legislation would have a positive effect, 10 stated this would be due to the development of more local provision and less cross-

border placements. The point was made that if senior decision makers in organisations are in Wales there will likely be a greater focus and priority on importance of the Welsh language. It was suggested that positive effects could be increased by setting out clear expectations around the Welsh language of new market entrants. Another reason given for why the effect would be positive was the opportunity for more money to be re-invested in staff training on the Welsh language.

Question 1.11: Please also explain how you believe the legislative changes to support delivery of eliminating profit from the care of children looked after could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Of the 153 responses received in relation to this chapter of the consultation, 91 did not provide a response to Question 1.11, a further 20 felt their answer to Q1.10 covered this question also and 4 were unsure how the proposal could be changed so as to have or increase positive effects. The below therefore summarises the additional comments received from 58 respondents.

7 respondents were clear that, in their view, there were no changes that could be made which would have a positive impact, or increase the positive impact on the Welsh language, as any disruption to children and young people would be negative and ultimately sufficiency issues would result in more Welsh children placed outside Wales. 3 respondents felt the only change that could be made was for the legislative proposals not to come into force at all as they did not agree with the proposals and felt they should be re-thought. In contrast, 2 respondents saw no disadvantage of these proposals in relation to the Welsh language.

There were some suggestions provided as to how impacts of the proposal could be more positive, but these were not necessarily linked to making changes to these legislative proposals. These included introducing new legislative requirements for providers to make their services bilingual; having bilingual social care staff; for staff to hold or be working towards a qualification in the Welsh language as a condition of employment; investing in local recruitment, training, pay and retention; for care settings to have Welsh language champions to promote and encourage the use of the language; or proactively encouraging the recruitment of Welsh speaking staff in areas it is spoken more regularly, or as a requirement for some posts.

A further response suggested including an assessment of the prevalence of children and young people who use the Welsh language in the proposed location of a service to inform workforce recruitment, along with an assessment of local facilities, and education that can support the use of first language Welsh. Another emphasised the importance of the matching process and how placing Welsh speaking children with Welsh speaking carers could increase the positive effects.

A recurring theme within the suggestions that came up in responses to Q1.11, was that positive impacts could be increased by encouraging growth in current provision in Wales by not-for-profit providers, including the availability of capital support.

Question 1.12: This chapter has focused on how we can achieve the commitment to eliminate profit in the care of children looked after, and we have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Of the 153 responses received in relation to this chapter of the consultation, 79 did not provide a response to Question 1.12 or had no further comments to add.

Many responses to this question have been encapsulated within the summaries of other questions contained within this chapter.

Some responses raised concerns that Welsh Government had not undertaken consultation with the sector prior to the decision to introduce the policy to eliminate profit from the care of looked after children. There were some suggestions (15) that any change to children's services should be an evidence-based approach focusing on improving quality of services, with many respondents feeling there is no published evidence that eliminating profit will lead to this. Some points which were reiterated were that any restriction on for-profit providers will be detrimental to the looked after children population in Wales, and that there is a need to ensure a large pool of providers able to meet the ever changing, diverse complex needs of children.

Questions were raised as to why the Welsh Government did not focus on reducing or better managing profits and several responses made the point that there has been no acknowledgement given to the high levels of expertise, experience and knowledge in the private sector and small companies making a reasonable level of profit are being hardest hit.

There was some concern raised that the proposal has been around a while and the policy seems to be drifting. Some (4) responses therefore requested a detailed timetable to support planning purposes. In addition, some (2) responses stated it was vital this programme should have an ongoing review during the transitional phases to ensure any risks and mitigations are managed in sequence, to help ensure children and young people's care is firmly at the centre of planning and implementation.

Further responses stressed the importance of placing the voices of care experienced young people at the heart of developing new models of service. It was stated that listening to them and acting on what they tell Welsh Government will improve the ability to deliver for them and the children and young people that come after them.

Welsh Government response

The Welsh Government is committed to seeing children and young people living securely with their families, with many fewer ever needing to enter care. For those children who do come into care, we want their stay to be as short as is consistent with meeting their needs, close to home and with strong links to their local community. To achieve this, and to ensure a sustainable network of provision, the shape, scale and structure of current arrangements for the accommodation of

children and young people has to change fundamentally to ensure the development of stable, integrated and locally accountable provision.

We welcome the strong support from a range of public and third sector bodies for the principle of the central proposal to register only not-for-profit providers in Wales and we acknowledge the anticipated opposition to the proposal from private and third sector organisations and individuals. We note also that there was widespread concern about the impact on the sufficiency and suitability of residential and foster care places for children looked after in future, particularly for those children that require specialist placements.

We accept there are challenges associated with implementation of our proposals, but we have put in place robust programme management arrangements to assess impact and to mitigate against risk, including the establishment of a Programme Board chaired by the Chief Social Care Officer for Wales. The deployment of an additional £68m into the sector over the next three years will also be critical in supporting and driving delivery of the Welsh Government's vision. This funding will be focused on building in-house and not-for-profit residential and foster care provision, on moving children out of residential care back into a family setting, on providing locally based and designed services, including specialist provision for children with more complex needs, and on improving outcomes for children.

Many respondents to the consultation helpfully noted a range of other potential issues to be addressed to assist with a successful transition to a not-for-profit model of care.

The proposed timing of the introduction of the requirements for existing providers of 1 April 2027 was raised as a specific concern, as was the impact of the proposal to restrict local authorities from commissioning for-profit provision. The Welsh Government is of the view that arrangements can be made to manage the transition effectively and, in particular, to sustain arrangements for young people with complex needs, without delaying the overall timetable set out in this consultation. In implementing the proposed reforms, the Welsh Government will always give priority to safeguarding and promoting the welfare of children and young people.

2.1.2 Chapter 2: Introducing direct payments for Continuing NHS healthcare

Summary of responses

90 of the 200 consultation responses answered the questions in this Chapter and we have therefore focused our analysis on these responses in this section. Some respondents answered on behalf of a group of organisations e.g. a Regional Partnership Board responding on behalf of several Local Authorities.

Question 2.1: We have outlined our proposals to introduce further voice and control for adults receiving Continuing Health Care (CHC) in Wales. Do you agree or disagree with these proposals? Please explain your reasoning.

All 90 respondents answered this question. 78 agreed with the proposals or agreed in principle. Many respondents strongly agreed. There was near-unanimous support within the 78 responses for the concept of improved voice, choice and control for people who have a primary health need. Several made reference to the Social Services and Well-being (Wales) Act 2014 and said that this proposal would respond to the principles within it. Some felt the proposals did not go far enough, and that legislation should create a duty rather than a power for Local Health Boards (LHBs) to provide Direct Payments (DPs) where the patient chooses and where safe to do so.

Those respondents who agreed in principle were supportive of voice and control but had practical concerns around the implementation of direct payments, and around the need to ensure quality of care for CHC recipients if this were not directly provided by NHS staff or directly contracted agencies.

Despite being supportive of the overall aim of the proposals, respondents from LHBs listed more concerns and issues than those from local authorities (LAs), CHC recipients and / or Direct Payments users, or those representing or supporting them. The LHBs' concerns can be exemplified by one response which stated they were *'In agreement that further voice and control for adults receiving CHC and a degree of control over their package of care is required, however there must be a strong Governance Framework to support this.'*

Only 3 respondents said they did not agree with the proposals, while 9 respondents said that they neither agreed nor disagreed with the proposals.

Question 2.2: What in your view are the likely impacts of the proposal? You may wish to consider, for example:

- **Benefits, and disbenefits;**
- **Costs (direct and indirect), and savings;**
- **Impacts upon individuals and groups with protected characteristics;**
- **Other practical matters such as cross-border issues or transition to the new arrangements.**

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome.

Please explain your reasoning.

There was a very wide variety of responses to this question, with 74 responding to the question itself as well as some further potentially relevant comments being made in generalised consultation responses which were not organised specifically by the questions provided. For this reason the numbers given are indicative and based on best fit. Many impacts both positive and negative were suggested, as shown below.

Specific benefits suggested by respondents included:

- Increased voice, choice and control, and enhanced dignity for care recipients (64 responses)
- Improved continuity of care in relation to staff and packages, security for care recipients and the employees. In some cases it was felt the change might also assist with capacity issues in the system (32 responses)
- Improved quality of care due to a more fitting package of care (30 responses)
- More people eligible for CHC might agree to have it (19 responses)
- Costs of delivering care via alternative methods of care might decrease (13 responses)
- More care recipients might no longer have to contribute to the cost of their own care (9 responses - 12%)
- Better partnership working, including cross-border, could lead to improvements in CHC processes and timescales (7 responses – 9.5%)
- Improved transition arrangements might be available from children and young people's continuing care to adult CHC (7 responses)
- Improvements for personal assistants (PAs) including access to training and an enhanced profile of role (7 responses)

Disbenefits suggested included:

- Quality of care may suffer if the care being provided cannot be assured as being to the required standard, or is not regulated. (18 responses)
- Families may not be able to find suitable services or PAs who can meet their needs, especially given current capacity challenges in the social care system (16 responses)
- Families or individuals may not want the responsibility of becoming an employer or may struggle with managing a PA via direct payments, with the associated reporting of working hours etc. (13 responses – 14%)
- It could create poorer conditions for PAs to work in, and they may feel exploited (5 responses)
- There may be additional safeguarding issues to consider (8 responses)
- Costs may increase due to more people agreeing to accept CHC (8 responses)
- Disabled people could suffer adverse outcomes if they aren't supported to make good decisions on how to spend DPs (8 responses)

Question 2.3: What lessons can we learn from other countries' practice in this area?

Of the 90 respondents to the chapter, 42 answered this question. The main suggestion from individuals who responded was to look to England for good practice

or expertise in this area, with 30 of the 42 respondents suggesting this would be a helpful way forward, as DPs have been in place there for CHC since 2014. Some individuals said that it would be important to ensure that sufficient consideration is given to the cultural, geographical and socio-economic differences between Wales and England when using English examples to develop a Welsh model.

Of the total 42 responses to this question, 13 respondents also felt it would be helpful to look to Welsh local authorities for guidance given that DPs in social care have been in operation for some time.

There were responses that suggested that it might be useful to consult with liability insurers across Wales, England, Scotland and Ireland that support Direct Payments, and with Personal Health Budget users to seek advice, with 6 respondents suggesting this approach as a way forward.

As well as the areas already mentioned above, there were references made to papers written by various individuals around DP's which provided useful background on the policy area.

Question 2.4: Do you believe there are any other or complementary approaches we should be considering to achieve the same effect? If so, please outline below.

Of the overall total of 90 responses received in response to the consultation, 43 respondents answered this question. The most favoured option was to explore a shared system between health and social care to administer direct payments and/or establish a pooled fund arrangement, with 19 responses suggesting this as a possible approach.

8 responses suggested Independent User Trusts (IUTs) as an interim approach that could help. Many of the responses however stressed that IUT's would not achieve the same outcome as a change in the law to allow DPs, as well as noting that they would not be suitable for everyone.

Suggestions also came through stating that allowing the same access to DPs for children should be considered, although only 6 responses suggested this as a way forward. 4 respondents stated they did not believe there were any other approaches that should be considered aside from a change in the law.

There were further suggestions made in response to this question, such as the establishment of a National Care Service or micro-enterprises to provide care although there was not as much support for these, with 3 or less respondents suggesting these as a way forward.

Question 2.5: We will work to ensure that any legislative change is supported by robust guidance to help both payment recipients and practitioners understand how the system will operate. Can you identify anything that it would be helpful to include in this guidance? What other support should be provided?

There was a very wide variety of responses to this question. Of the 90 responses to the consultation chapter, 54 provided an answer to this question.

41 of the 54 responses stated that it would be imperative that any guidance produced should be clear and understandable to the intended recipient. A summary of the answers provided in response to the question is provided below:

- Clear guidance and support should be provided to the person and their PA(s). Some respondents noted that insurance would need to be in place for the DP recipient if they are employing staff, and that the insurer could also be a good source of advice and guidance. It was noted by many that Easy Read versions would be beneficial (33 responses)
- Clear understandable guidance should be provided on organisations' roles and responsibilities in support of a package of care, to also include information on who should pay for any legal costs if relevant – for example in the case of an IUT (31 responses)
- Clear guidance should be available on what the CHC funding package will and will not fund as well as guidance on case management, auditing and so on. The process to be followed if the DP recipient uses funds inappropriately should be outlined (23 responses)
- Appropriate levels of governance, safeguarding, training and insurance cover should be available to PAs (15 responses)
- Guidance should be available around employment of staff for DP users (14 responses)
- Guidance around transitioning from DPs in Social Care to Health (and back again where appropriate), and a continuation of partnership working throughout this process (12 responses)
- Clear guidance should be available on who can stand in for and represent the individual and work in their best interests where they do not have capacity themselves (8 responses)
- Guidance on eligibility, on considering and approving or declining requests for DPs, and on the recommended process, should be available. It was noted that guidance similar to that which exists in England might be helpful (8 responses)
- A Delegation Framework should be available for use by a health board and also by employers, giving direction to PAs on delivering medical interventions (8 responses)
- Guidance should be provided on the contingency process for health boards stepping in to provide care if none is available or if breakdowns of care occur (6 responses)
- Guidance should be available on the process to allow health boards to issue funds to an individual to purchase their own healthcare. (5 responses)

Suggestions were also made around including specific sections on how to effectively manage transition from Children's and Young People's Continuing Care to adult CHC whilst accessing DPs. It was also suggested that it would be useful to have some examples of case studies to follow for organisations. Two responses made these proposals.

Question 2.6: We would like to know your views on the effects that introducing direct payments for continuing NHS healthcare would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Of the 90 respondents to this chapter, 48 responded to this question. Of those, 35 respondents felt that the proposals would be beneficial in terms of the Welsh language due to access to DPs providing more opportunities for individuals to use and request more information through their chosen language, whether Welsh or English.

A further 5 respondents stated that they were concerned that the changes could lead to challenges with regard to individuals sourcing Welsh-speaking staff in some areas. 5 more respondents stated that they felt that the changes would have no impact at all.

A number of respondents also referred to meeting the information needs of users of other community languages, as well as there being the option to employ PAs who speak a diverse range of languages. Other methods of inclusive communication (Makaton/BSL/PECS (Picture Exchange Communication System) etc.) were also mentioned in some responses. These responses emphasised that care provided under DPs can and should be tailored to reflect the many languages spoken by people accessing CHC.

Question 2.7: Please also explain how you believe our proposals for introducing direct payments for continuing NHS healthcare could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

21 of those who responded to the chapter also responded to this question.

20 responses received referred back to their answers to question 2.6 when answering this question, due to the similarity between the two areas. Those responses have not been enumerated again here.

Of the remaining responses, the following areas were suggested as possible ways to increase positive effects on opportunities for people to use the Welsh language:

- 5 responses felt that providing a central national repository for translated documents in a variety of languages would be beneficial.
- 5 responses stated that they felt that increasing training or opportunities for PAs to access Welsh learning courses could help.
- 4 responses suggested that neighbouring organisations should work together to support specific Welsh service users with a pool of Welsh speaking PAs.

Question 2.8: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

54 respondents did not answer this question.

Of those that did respond, 16 responses took the opportunity to state that an all-Wales approach should be taken to rolling out direct payments with guidance being provided across the board to ensure a consistent approach with associated key performance indicators and targets across Wales.

Another 11 responses focused their comments on rates of pay and registration requirements for PAs, in particular the fact that health care support workers generally earn more than social care workers at present which could create issues in terms of there not being a parity of pay of conditions for PAs doing similar tasks under direct payments.

Another area which came through frequently was to ensure that any changes are accessible to individuals with protected characteristics, with 11 respondents stating this as a priority. Suggestions were made for consideration to be given to funding for advocacy services to support individuals with protected characteristics to exercise voice and control.

A further 4 responses argued that the change to introduce DPs for CHC is welcomed but that it would need to be accompanied by a corresponding change in culture and practice within delivery organisations of health and social care in order to be successful.

Welsh Government response

Welsh Government is committed to improving the interface between continuing health care and Direct Payments. The Programme for Government sets out a commitment to do this, and therefore the high degree of support for the principle of increased voice and control for those in receipt of CHC in Wales which has been conveyed through the consultation is welcomed.

In the short-term, arrangements to improve the interface between CHC and direct payments are being developed which do not involve legislative change but which will lay the foundations for direct payments for CHC, should they be introduced. The revised CHC framework (operational from April 2022) includes reference to mechanisms to support voice and control which are possible under current legislation, which include the use of Independent User Trusts (IUTs) and the health board employing personnel previously employed via direct payments. These are interim measures which, when put into effect in a particular case, may go some way towards improving the degree of voice and control people have over their care. However, it is acknowledged that IUTs, even as an interim measure, may not be the preferred option for some people with disabilities who desire a more direct approach to individual control. Guidance to support implementation of IUTs is currently being co-produced with stakeholders including LHBs, LAs, disabled people and their representative organisations.

As well as the high degree of support for enhanced voice and control, many respondents to the consultation helpfully noted potential issues to be addressed in order to ensure a successful introduction of DPs for CHC. The consultation has provided a clear indication of the range of issues, some of which can be addressed in regulations or guidance should DPs be introduced. Much can be learned, as the consultation has flagged up, from models in existence elsewhere, such as that in England where DPs have been in place since 2014. There will be much to be done, however, by partners here in Wales in order to embed an approach which suits the Welsh context should direct payments for CHC be introduced in Wales. The points made in the consultation will inform both the interim work being carried out as well as any further steps which may be taken in future to bring about increased voice and control for recipients of CHC.

2.1.3 Chapter 3: Extending mandatory reporting of children and adults at risk

Summary of responses

100 of the 200 consultation responses answered the questions in this Chapter.

Question 3.1: What are your views on the principle of imposing a duty to report a child at risk (as defined in section 130(4) of the Social Services and Well-being (Wales) Act 2014) directly on individuals within relevant bodies?

Question 3.2: What are your views on the principle of imposing a duty to report an adult at risk (as defined in section 126(1) of the Social Services and Well-being (Wales) Act 2014) directly on individuals within relevant bodies?

91 respondents provided an answer to Question 3.1, of whom:

- 57 agreed or tended to agree with the principle of imposing a duty to report children at risk, directly on individuals within relevant bodies;
- 15 disagreed or tended to disagree with the principle of imposing this duty; and
- 19 were unsure or did not state a conclusive position.

81 respondents provided an answer to Question 3.2, of whom:

- 46 agreed or tended to agree with the principle of imposing a duty to report adults at risk, directly on individuals within relevant bodies;
- 16 disagreed or tended to disagree with the principle of imposing this duty; and
- 19 were unsure or did not state a conclusive position.

72 of these respondents provided an answer to both Question 3.1 and Question 3.2, with 67 holding the same or similar views in respect of children and adults at risk. This is reflected within the summary below.

Many respondents felt that placing duties to report children³ or adults at risk⁴, on individuals working within 'relevant partners' – local authorities, Local Health Boards, NHS Trusts, the Police, Probation services and Youth Offending Teams – was essential to securing appropriate action to protect them from harm and would support the message and understanding that it is everyone's responsibility to report safeguarding concerns. Comments were made as to how placing duties on individuals would emphasise personal responsibility, improve accountability and set clear expectations within safeguarding practice. This would also negate reliance on third-party referring; could reduce cultural or systemic problems with organisational reporting; and would not allow people to hide behind others.

One respondent observed (in relation to reporting of both children and adults at risk) that even established and well understood processes are not always followed, so this would strengthen responsibilities within the legal framework. Another felt that

³ <https://www.legislation.gov.uk/anaw/2014/4/section/130>

⁴ <https://www.legislation.gov.uk/anaw/2014/4/section/126>

⁵ <https://www.legislation.gov.uk/anaw/2015/2/section/6>

witnessing significant harm to a child, or suspecting them to be at risk, should trigger a duty that compels a person to report. And there was a view that emphasising the importance of safeguarding children cannot be underestimated. Some respondents took the view that it would be appropriate for certain individuals – in accordance with the responsibilities of their role e.g. lead or designated safeguarding officers – to have a statutory duty to report children and adults at risk. Another felt that there must be more systemic ways of making improvements, than the threat of legal action.

A strong theme emerged from several responses that any legal duties on individuals should not diminish or replace organisations' (or employers') safeguarding responsibilities. Many felt it was important that people within organisations are supported to report, being suitably trained and supported to understand the relevant duties and enabled to act in accordance with them. Several respondents stressed that organisations must adopt robust child and adult safeguarding policies and regularly train their staff and volunteers, so that everyone is clear about their role and responsibilities in protecting people. It was suggested that organisational training and supervision arrangements should support all permanent, relief and temporary staff, as well as volunteers engaged in working with children or vulnerable adults.

One respondent, who tended to disagree with imposing duties on individuals (in relation to both children and adults at risk) felt that it was important to have an open and accessible system within a working environment, where people feel able to report correctly and are supported to do so. Another took the view that the responsibility for ensuring that individuals can spot safeguarding issues and report them effectively, lies firmly with the organisation who employs them; that – in the respondent's experience – failures to report were rarely due to individuals deciding not to act and was concerned that if duties were placed on individuals, this could lead to 'scapegoating'. Several respondents advocated that duties to report must be supported by robust whistleblowing arrangements, to give individuals the confidence to raise concerns within their organisation.

Several respondents, including those representing local government and Directors of Social Services in Wales, were of the view that they had been operating in this spirit for some time, reinforcing their workforces' responsibilities through training and contractual means. They felt it would be more effective in practice to improve information sharing and better support multi-agency working, including better assessments, decision-making and working with citizens, at all stages of their engagement with the safeguarding system. One local authority felt that highlighting and strengthening individuals' responsibilities, as part of organisational reporting requirements, would be more appropriate and proportionate than imposing legal duties. Other respondents questioned whether placing duties on individuals would make the current system more robust and felt there was already a strong mandate for 'relevant partners' to act, through the existing duties to report children and adults at risk.

There were several calls for evidence as to the effectiveness of these existing legal duties; with some respondents stating that their regular reviews of referrals and safeguarding audits did not suggest that statutory partners were not reporting in line with their duties, of which there is an established understanding. Others suggested there was a need to examine whether the existing duties had led to an increase in

reporting, greater identification of children and adults at risk and, ultimately, whether they are protecting more people from harm.

Some respondents believed there was little information to support that imposing duties on individuals would ensure children or adults are further prevented from risk; that evidence to date had not demonstrated conclusively the efficacy of implementing such duties; or that the introduction of mandatory reporting improves outcomes (for children). There were several calls – including from the Children’s Commissioner for Wales and Care Forum Wales – for further engagement, exploration and analysis of the purpose, scope and implications of introducing any new duties. Stakeholders expressed their interest in further opportunities to discuss and inform the Welsh Government’s approach to mandatory reporting reform. It was also felt important to consider duties to report in the wider safeguarding context and to ensure that vital support mechanisms (and investment) would accompany their implementation.

The need to strike a balance between the likely benefits of imposing a duty to report on individuals, the potential risks, and the additional burdens associated with doing so, was highlighted, especially if the duty were made absolute. Respondents raised the need to ensure that any duties are considered in a way that aims to prevent unintended consequences and maintain some degree of professional judgment or reasonable discretion – to make the right decisions at the right time, recognising that reporting may not always be in a child or adult’s best interests (within their individual circumstances) or may be against their wishes. Concern was expressed at the adverse impact unqualified mandatory reporting could have on people seeking or being brought forward for support, care and treatment (if professionals were compelled to report). One respondent suggested there should be a presumption that professionals would report child abuse, except in certain defensible situations, arguing that taking a binary approach could hamper their ability to build relationships with children, potentially meaning fewer young people would feel safe or able to disclose. If mandatory reporting were to be introduced, there were also calls to be clear on the authority to whom reports must be made and for some discretion on the timescales for reporting, to take into account the circumstances of each case.

Some respondents felt that reporting should be a matter of professional principle, within codes of practice not a legislative duty, as reporting concerns was ‘never black and white’. It was observed that existing professional codes of practice should make more explicit links to duties to report children and adults at risk. One respondent, whilst agreeing with mandatory reporting where there has been disclosure or witnessing of abuse, highlighted how the existing duties to report children and adults at risk involve some assessment of whether people may be experiencing or at risk of abuse, neglect or harm, an assessment which most people – without appropriate training – would not be able to undertake. Concerns were expressed as to how individual duties would be practically defined and applied; with guidance required on how this would be implemented and monitored, and on the consequences for non-compliance. There would need to be discussion with Trade Union representatives to ensure that duties were proportionate and realistic. An absolute duty to report all reasonable suspicions could be very onerous if applied to small, voluntary organisations or individuals.

There was some concern that placing duties directly on individuals would disproportionately increase reporting, without addressing the underlying risks, and could lead to overreporting, with individuals perhaps being “*more likely to submit inappropriate reports to protect themselves*” rather than making referrals after employing appropriate risk stratifications. Whilst in some cases increased reporting might help identify serious cases that may otherwise have gone unnoticed, it could also generate a lot of activity to distract authorities from the most serious cases and could increase the risk of losing sight of actual harm and risk. One respondent described this scenario as one in which the haystack grows and the needle becomes more difficult to find. Another felt that imposing a duty on individuals could be counter-productive, as this would not strengthen relationships between services and their communities, but instead build on the current distrust of social care. Several observations were made that any enhanced reporting duties must be delivered in parallel with a substantial increase in capacity within local authority social care services, to investigate and act upon them. One respondent felt that it would increase confidence in the system if local authorities consistently advised reporters of the outcome of their referral.

Some comments were made as to those organisations and groups to whom duties should apply. This is addressed further at Question 3.6. There were calls for greater clarity on who ‘relevant partners’ are: for example, whether they include elected members and the education sector; and whether the definition of ‘relevant partners’ should be expanded to include other notable public bodies, such as those listed in section 6 of the Well-being of Future Generations (Wales) Act 2015.⁵ There were observations that placing a duty to report on playwork settings that are not currently regulated under the Children and Families (Wales) Measure 2010⁶ could contribute to strengthening safeguarding arrangements; and that consideration should be given to whether personal assistants, in the social care sector, should be subject to registration. Others felt that further consideration should be given to how ‘relevant partners’ evidence their compliance and how individuals are held to account.

Other matters raised in response to Question 3.1 included risks to the autonomy of young people and the principle of having the individual’s voice at the centre of the safeguarding process; fears that duties to report may mean children are less likely to disclose concerns or incidents of abuse; and a suggestion that a mandatory reporting duty on all adult citizens be explored (as in Australia’s Northern Territory).

Comments received in response to Question 3.2 included that placing a duty to report on individuals within ‘relevant bodies’ would strengthen the protection and safeguarding of adults at risk; that this principle was a positive one; that adults should not be treated differently from children in this respect; that protection of adults at risk needs to be on an equal footing with that of children and young people; and that there would be benefits to having a standard approach within legislation, and a single set of procedures, for both children and adults at risk.

One respondent wished to highlight that an ‘adult at risk’ means any individual over the age of 18 who has needs for care and support, that may prevent them from

⁵ <https://www.legislation.gov.uk/anaw/2015/2/section/6>

⁶ <https://www.legislation.gov.uk/mwa/2010/1/contents/wales>

protecting themselves. This could include care leavers, those with additional needs, and individuals who have experienced trauma or exploitation. Therefore, it is vital that there is no drop off in protection or support when people reach the age of 18. Another respondent felt there should be increased alertness and active vigilance amongst those who work with and support adults in health and social care; highlighting that some older adults and people with disabilities may be at higher risk than others, including at risk within their own homes. One provider of social care for adults observed that it already had contractual requirements to report in place and would also see this as an expectation of Care Inspectorate Wales.

Whilst supporting the existing organisational duty to report adults at risk, the Older People's Commissioner for Wales expressed several concerns about introducing a legal duty on certain individuals. It is important to recognise the rights and autonomy of older people and for their wishes and feelings to be given full consideration when determining actions around safeguarding concerns, otherwise there was a risk that their voices could become marginalised. The Commissioner felt that for safeguarding interventions to be effective, practitioners need to be allowed to use their professional decision-making abilities, on an individual case basis. A duty to report, especially if enforced through sanctions, could dissuade older people from making early disclosures (which might have helped prevent abuse escalating) and could lead to disproportionate, risk-averse practices (where practitioners raise concerns routinely, without establishing the specifics of a situation). Premature reporting could harm relationships (between older people and practitioners; and older people and family members) potentially exacerbating rather than helping to eliminating abuse. Other respondents echoed that adults' views must be at the centre of decision-making; and that practitioners' understanding of the issues of consent and capacity were vital. Respect for other guiding principles such as confidentiality; the Seal of Confessional; dignity; self-determination and the rights of survivors were highlighted, along with their potential conflict with absolute duties to report.

Whilst supportive in principle of introducing mandatory reporting of child abuse – feeling on-balance that the benefits outweigh the risks, but with a number of prerequisites attached – BMA Cymru Wales were amongst respondents who disagreed with imposing a duty to report adults at risk on individuals within 'relevant bodies', noting the significantly different legal and ethical challenges relating to vulnerable adults. In its view, doctors should encourage adults with capacity to access and receive appropriate support but recognise they have the right to make decisions about how they manage risks to which they are exposed and such decisions should ordinarily be respected. The Medical Protection Society (MPS) observed that there was already a regulatory requirement for doctors to consider notifying relevant authorities when an adult is at risk of or suffering abuse or neglect, but this is more nuanced than a legal requirement to report all cases. Imposing such a duty may risk being contrary to the patient-centred approach advised by the General Medical Council. The MPS could understand the imposition of a duty to report where an adult lacks capacity to make the decision on disclosure and that reporting would be in their best interests or where failing to report may put others at risk of death or serious harm.

One respondent advised that any new legislation needs to draw an appropriate balance in where responsibilities lie between organisations and their staff and felt

that the passing of responsibility on to an individual could lead to organisations failing to acknowledge and fulfil their overarching responsibilities and may generate or contribute to a culture of blame. However, if drafted well, new legislation could encourage employers to provide necessary training and support. Another respondent stated that the imposition of duties on individuals could have negative impacts for staff – which required further investigation – while a third respondent disagreed with imposing duties on frontline staff, as this could discourage an already difficult recruitment market. Several respondents highlighted that if such a duty were introduced, there would need to be a clear, proactive education campaign to ensure all relevant people were aware of their obligations.

Question 3.3: What in your view would be the likely benefits, disbenefits, risks, costs, savings and equality impacts of such an approach? Please explain your reasoning.

36 respondents provided an answer to this question, with many identifying both potential benefits and disbenefits of imposing duties to report on individuals within 'relevant bodies'. 26 identified at least one potential benefit and 23 identified at least one disbenefit. In addition, several responses considered the likely cost and savings implications. Some commented on potential equality impacts.

Within the potential benefits identified, a common theme was that imposing duties on individuals could lead to greater accountability or ownership in the identification and reporting of safeguarding concerns, thereby reinforcing the principle that safeguarding is everyone's responsibility. Under this theme, some respondents considered that mandatory reporting would ensure that individuals in 'relevant bodies' are more likely to report risks and to not assume that others (within the organisation or other agencies) will report. It was also felt this could strengthen professional accountability and reinforce organisational duties to report. When considering organisational culture, it was felt that imposing duties on individuals would strengthen positive changes within working cultures, promote professional curiosity and could enable action on historical cases.

Several respondents highlighted that mandatory reporting could reduce reliance on third-party referrals; encourage earlier identification of risks; reduce duplication or delays in reporting; increase awareness of reporting amongst the wider population; and improve transparency and honesty within organisations. This, it was felt, would lead to increased protection and reinforcement or extension of safeguarding arrangements for children and adults at risk.

Other benefits considered were that reporting duties may lead individuals to consider safeguarding as part of their analysis of any situation, and if this led to more referrals, it could also mean local authorities have more information with which to progress cases that may otherwise have been closed. Improved intelligence gathering, information sharing and enhanced partnership working between relevant agencies were also identified as potential benefits, both in terms of preventing those who may be at risk slipping through the gaps – especially around transitions in the system – and ensuring that fewer occasions to intervene, where appropriate, are missed. A further response highlighted how legal duties would enable regulators to take enforcement action if there were providers or individuals failing to report.

When considering the likely disbenefits and risks associated with imposing duties on individuals, many noted the potential for this to increase the volume of referrals received by local authorities. Some felt this may result in duplicate referrals, or reports being made “*to be on the safe side*”, which may not lead to any action being taken but would increase pressures on services and could lead to delays in getting to the most serious cases. Alongside this, some felt there was a danger of increasing bureaucracy for little to no result, with less consideration and appropriate management of risks – more process-led action, within a more risk averse climate. One respondent observed how imposing duties on individuals may, in practice, result in lowering the existing threshold (of ‘reasonable suspicion’) for reporting. Increased intervention within people and families’ lives was seen as another disbenefit.

In terms of impacts on individuals to whom duties may be applied, it was felt that some may raise concerns due to fear of retribution if a report is not made, rather than giving the situation due consideration. Others suggested there could be a return to “*blame culture*” and “*scapegoating*” of those who do not report. That this could enable organisations to pass off their safeguarding responsibilities on to individuals, potentially diluting existing organisational duties to report. Several respondents warned of the risks of removing the exercise of professional judgement, whilst others felt mandatory reporting would not, of itself, improve the quality of practitioners’ judgement or knowing how best to respond where children or adults could be at risk.

In relation to a likely increase in referrals, many respondents observed that additional resources would be required to manage this, within local authority safeguarding teams; for training, to ensure that individuals are aware of their duty and the consequences of non-compliance; and in workforce development, at a time when resources are stretched. Some felt the associated costs of investigating and punishing individuals who fail to report could be used more effectively, towards preventing or responding to harms.

Risks and disbenefits were noted around the potential for increased pressure on individuals and sectors, which could result in reporting opportunities being missed. This, in turn, could have a direct impact on staff, causing anxiety and guilt if they fear they have not reported in a timely manner. There could also be potential risks to the personal safety of those who report and of certain staff, who may be required to attend court hearings more regularly. It was also felt there was a risk that individuals would be deterred from working within the sector, or from undertaking particular roles, due to the added statutory responsibility. This could, in turn, lead to greater workforce challenges for organisations.

Potential implications for whistle-blowers were also raised, and whilst it was recognised that legislation and policies offer some protection for individuals, against any repercussions of making a protected disclosure, those who report safeguarding concerns could, nevertheless, find themselves in vulnerable positions in the workplace.

Many respondents highlighted what they felt were key questions associated with mandatory reporting such as:

- Who will govern the duty?

- What will the process for non-compliance be?
- How will such a legal obligation be resourced?
- How will individuals be identified, from what professions, and at what levels within 'relevant bodies'?
- How will this align to the registration procedures and requirements already in place for some professionals, such as those regulated by the Education Workforce Council and Social Care Wales?

A couple of respondents highlighted the negative impact mandatory reporting could have on the therapeutic relationship between professionals and clients. It may dissuade those at risk from building trusted relationships with professionals, and making disclosures to them, or result in some practitioners being reluctant to undertake interventions or discussions which could trigger a duty to report.

In relation to costs and savings, as detailed above, many respondents noted that additional resources would be required, for example in relation to training and enforcement. Two respondents felt there may be potential savings, through the enforcement of fines, or through earlier identification and management of factors which may otherwise escalate and, for example, need mental health or advocacy support further down the line.

In terms of equality impacts, responses were mixed, with one respondent feeling these would be vastly improved, another feeling that mandatory reporting would not impact equality, but that compliance would need to be monitored to show if there was any lack of equity in enforcement action. Two respondents identified potential risks in respect of equality, for example, where poverty might be mistaken for neglect, and, as some academic research has found, that protection procedures disproportionately involve individuals from ethnic minority or low-income backgrounds.

Question 3.4: What lessons can we learn from the duties to report in other countries?

26 respondents provided an answer to this question, with many emphasising the importance of learning lessons from other countries. A few responses identified countries with mandatory reporting laws in place: these included Northern Ireland, the Republic of Ireland, Australia, some states within the United States of America, Canada, Denmark, and France.

Eight respondents cited the mixed global evidence, with some reporting that no significant adverse consequences have been identified and others being unaware of any significant impacts on keeping children safe. Further comments emphasised the need for more analysis on both the positive and negative impacts in countries where this has been implemented and on how this may impact in Wales, with a particular focus needed on any initial rises in reporting of children and adults at risk, associated with the implementation of legal duties.

Several respondents noted the difficulty in establishing firm conclusions due to the differing rules, guidelines and contexts across those countries with mandatory

reporting in operation. A further point made was that a mandatory reporting scheme had recently been considered at a UK level and dismissed.

Other respondents commented on the negative impact evidenced from countries with more universal mandatory reporting duties, with comments stating that in practice children are no better safeguarded and that it has led to social services being inundated with reports that lack substance. Some comments cite early reviews of such schemes elsewhere that have suggested the need for a more nuanced approach, and that within these duties there was little allowance for professional judgment which has an impact on a child victim's autonomy and a lack of respect for an individual child's rights. A further comment noted that often interventions are targeted at those who lack capacity, and as such, could be considered as discriminatory and exclusionary when supported, person-centred decision-making processes are absent.

One comment considered evidence from South Africa and felt that any such mandatory reporting scheme in Wales must be introduced alongside improvements to the child protection system more generally. Additional lessons identified included the difficulty in implementing the changes and non-compliance measures, with the respondent going on to highlight the importance of a thorough consultation on any implementation process.

Some respondents saw this as an opportunity for the Welsh Government to be a leader in this area and to learn from countries who have implemented such laws, as well as to better understand whether distinguishing abuse and neglect when reporting is beneficial. Others highlighted research that evidences how mandatory reporting laws appear to be associated with better case identification⁷ or early intervention measures, such as flagging of high numbers of reportable incidents.

Question 3.5: If individual reporting duties were to be introduced – for children and adults at risk – should these sit alongside, or replace, the existing duties on organisations under the Social Services and Well-being (Wales) Act 2014?

67 respondents provided an answer to this question, of whom:

- 43 felt that if individual reporting duties were to be introduced, they should sit alongside, or be incorporated within, or aligned with, the existing organisational duties to report children and adults at risk;
- 8 felt that if individual reporting duties were to be introduced, they should replace the existing duties;
- 6 disagreed with the principle of individual reporting duties; and
- 10 were unsure or did not state a conclusive position.

43 respondents to this question felt that if individual reporting duties were to be introduced, they should sit alongside or be incorporated or aligned with the existing organisational duties, provided a number of reasons for this. One reason given was that organisations have a responsibility to ensure that effective safeguarding policies

⁷ Mathews, B. 2014. "Mandatory Reporting Laws and Identification of Child Abuse and Neglect: Consideration of Differential Maltreatment Types, and a Cross-Jurisdictional Analysis of Child Sexual Abuse Reports" *Social Sciences* 3, no. 3: 460-482. <https://doi.org/10.3390/socsci3030460> ⁸ <https://www.gov.wales/working-together-safeguard-people-code-safeguarding-practice>

and systems are in place, and staff have the relevant knowledge, training, and supervision to undertake their roles. One respondent observed that despite arrangements being in place, individuals do not always perform their roles as required, therefore both duties should be in place. Another respondent recognised the potential for both individual and institutional failings.

Several respondents felt there should be no weakening of existing duties on organisations or established procedures for reporting, making comments including:

- that any new duties should not replace or absolve organisations of their duties;
- that organisations still need to be held responsible and accountable;
- that ownership needs to be taken for the duties; and
- that maintaining existing duties would avoid employers relinquishing their responsibility.

Several other respondents recognised that organisational duties are key to awareness-raising and ensuring the roll out of safeguarding training, across corporate bodies; as well as being fundamental to embedding safeguarding in their overall culture and working practices. Other comments included that the emphasis should be maintained on organisations to ensure their workforces are sufficiently trained, competent and confident to report; that organisations should continue to be collectively responsible for any failures to protect children and adults at risk; and that organisations may be better placed to report, due to resourcing and other issues.

It was observed that individual duties – sitting alongside those of organisations – could increase personal ownership and the exercise of professional curiosity, which safeguarding reviews have highlighted. There was a call for any individual duties to be introduced in a way that strengthens existing practice, without destabilising well established methods and processes that have improved safeguarding procedures in Wales in recent years. Another respondent suggested that the duties should run parallel, to begin with, to prevent cases falling through the cracks, but then kept under review.

8 respondents felt that any new duties should replace the existing duties to report children and adults at risk. Reasons for this included that it could lead to potentially conflicting requirements; that any duties needed to be clear and accessible, with no room for confusion; that new and existing duties should be streamlined, to minimise the risk of duplicate reporting; and that the focus should be on ensuring that all relevant professionals understand their duties and what action they need to take. One respondent recommended a review of current legislation to protect children and would support replacing this with new legislation to capture all settings and protect children from all types of harm.

Comments made by those 6 respondents who disagreed with the introduction of individual duties included that legal requirements should not be introduced below management level, whilst not preventing individuals from exercising their right to report; that organisational duties were more likely to result in urgent referrals being appropriately made; and that the imposition of a duty was likely to deter individuals from entering certain professions and may result in others leaving. One respondent suggested that it might be more effective, for reducing child and adult abuse, if

legislation were made in relation to those who perpetrate abuse; and another asked whether there was evidence to indicate that the existing duties to report children and adults at risk were not delivering.

Other points raised in response to this question included that there are already too many overlapping responsibilities within the safeguarding arena and that there is a need to ensure that all parties are accountable – from those who volunteer in their local club to senior positions within government, including politicians. One respondent called for analysis of how any new duty on individuals would interact with other existing statutory and reporting duties, to help avoid discrepancies in approach and different standards of obligation and sanction. Another asked for more information about any proposed duties before they felt able to answer the question.

Question 3.6: If individual reporting duties were to be introduced, should they apply to the workforce of current ‘relevant partners’ under section 162 of the Social Services and Well-being (Wales) Act 2014 (including youth offending teams in relation to children), or more widely, for example to those working in religious or sports settings etc, and in particular:

- a) What are your views on this in respect of children (under the age of 18)?**
- b) What are your views on this in respect of adults?**

66 respondents provided an answer to Question 3.6(a), of whom:

- 2 felt that if individual reporting duties were to be introduced in relation to children at risk, they should apply to the workforce of current ‘relevant partners’;
- 53 felt that if these individual reporting duties were to be introduced, they should apply more widely;
- 4 disagreed with the principle of individual reporting duties; and
- 7 were unsure or did not state a conclusive position.

60 respondents provided an answer to Question 3.6(b), of whom:

- 2 felt that if individual reporting duties in relation to adults at risk were to be introduced, they should apply to the workforce of current ‘relevant partners’;
- 46 felt that if these individual reporting duties were to be introduced, they should apply more widely;
- 4 disagreed with the principle of individual reporting duties;
- 1 disagreed with the principle of individual reporting duties in relation to adults; and
- 7 were unsure or did not state a conclusive position.

59 of these respondents provided an answer to both Question 3.6(a) and Question 3.6(b), with 54 holding the same or similar views in respect of introducing duties to report children and adults at risk. This is reflected within the summary below.

53 respondents in relation to Question 3.6(a) and 46 in relation to Question 3.6(b) felt that duties to report children and adults at risk should be applied more widely than current ‘relevant partners’ of a local authority, as defined within section 130(5) and section 128(4) of the Social Services and Well-being (Wales) Act 2014.

Comments from those who held this view included that the age of a person at risk should not matter; that wherever services provide support to children or adults at

risk, there should be a duty to protect them; and that it would strengthen safeguarding practice if the wider workforce were all working to the same guidance and procedures for reporting. Many felt it was essential that reporting duties should apply more widely, with some observing that children and adults at risk are more likely to have developed better relationships with; may be more likely, in the first instance, to disclose the dangers they face to; and that signs of abuse may be more evident to those leading activities in a range of informal settings including religious, sporting and community, rather to practitioners within statutory agencies. However, this is not always the case.

Whilst agreeing that duties should apply more widely, several respondents recognised the potential difficulties in achieving this. Some cited negative impacts on staffing, in that individuals may not be willing to undertake roles if there were added statutory responsibilities. Enforcement of any duties on non-regulated providers would be difficult and may result in fewer services operating, if there were regulatory requirements rather than best practice. There would also be significant training needs to be met, if widening the application of duties. However, despite the challenges of imposing duties on wider organisations, most respondents supported this approach, to maximise opportunities to identify and protect those at risk.

Reasons given by those who felt that duties should only apply to the workforce of 'relevant partners' – 2 respondents to both Question 3.6(a) and Question 3.6(b) – included that, aspirationally, they would want the duty to apply more widely but were unsure of how the legislation would work in practice, how this would be governed; and that instead of placing a duty on broader settings, such as religious and sports groups, there should be additional support and training available.

Some respondents – 4 in relation to both Question 3.6(a) and Question 3.6(b) – disagreed with the introduction of individual duties. Reasons for this, again included that it could discourage recruitment within the sectors to which it was applied. One respondent observed that if individual duties were widely introduced, it could lead to a system where duties to report were placed on some individuals but not their organisation. Another felt that, generally, individuals were good at reporting risks but that authorities were bad at acting upon them, and that individual duties if introduced may divert attention away from systemic failures to act. A further respondent disagreed with the principle of individual reporting duties, expressly in relation to adults.

Regarding to whom duties should be applied, 27 of those who answered Question 3.6(a) felt that everyone working with children should have a duty to report. 22 of those who responded to Question 3.6(b) took the same or similar view in relation to adults at risk. Whilst 22 of those who answered Question 3.6(a) and 22 of those who responded to Question 3.6(b) expressly stated that duties should be applied those working within religious or sports settings. One respondent welcomed this, given what they called the "*prevalence of known incidents*" occurring within those settings. Another observed that historically, reporting and application of safeguarding in these settings had been difficult to monitor and that whilst in recent years improvements in their safeguarding arrangements had been made, introducing a mandatory duty would ensure they move towards improved compliance.

Other suggestions made as to whom duties to report children and adults at risk should apply included: public schools; children's groups such as Rainbows, Scouts, Guides etc; childcare and play groups; community clubs/organised groups; charities; registered businesses; affiliated bodies; private nursing and care homes; those providing care and support for adults at risk e.g. older people, those with learning and other disabilities; support for care leavers and other with additional needs.

One respondent felt that anyone working with, caring for, or supporting a child or adult at risk – supervised, unsupervised, paid or unpaid – should fall within the meaning of being in a position of trust. Another respondent suggested that the duty to report be extended to those to whom the Working Together to Safeguard People: Code of Safeguarding Practice⁸ is addressed.

Further comments made in answer to Questions 3.6(a) and 3.6(b) included:

- There is a misconception of the public that all such organisations are checked and registered.
- Many faith settings needn't register as childcare and play providers due to their exemptions under the Children and Families (Wales) Measure 2010.
- Many organisations employ non-regulated professionals (where they are not required to be registered) which raises questions about whether an independent disciplinary body would have to be established (to support any duty imposed on them) or whether this would rely on organisations' internal disciplinary procedures.
- Two respondents supported the view that everyone within society is responsible for safeguarding, therefore, all adults should have a duty to report safeguarding concerns.
- It was important to recognise that adults are not necessarily 'adults at risk'.
- Any setting working with children or adults at risk should have a clear system of reporting, with appropriate tools and resources to empower their workforce to provide inclusive and appropriate care, with safeguarding measures. The respondent suggested that Welsh Government should put in place a framework to support the development of clear and consistent systems.
- The law should view any non-compliance with duties to report as assisting the perpetrator and that sanctions must make clear that the protection of children [and adults at risk] is paramount. Failure to respond to abuse is not an acceptable option.
- Penalties applied to those in religious or sports settings could be "lesser".
- Duties to report children and adults at risk should be clear and concise, akin to the duty on regulated professionals in England and Wales to report Female Genital Mutilation⁹.

Question 3.7: If individual reporting duties were to be introduced, which occupation types or roles should be subject to any duty (e.g. members of regulated professions; employed staff, even if they are not regulated; volunteers), and in particular:

⁸ <https://www.gov.wales/working-together-safeguard-people-code-safeguarding-practice>

⁹ <https://www.legislation.gov.uk/ukpga/2003/31/section/5B>

- a) **What are your views on this in respect of children (under the age of 18)?**
b) **What are your views on this in respect of adults?**

62 respondents provided an answer to Question 3.7(a), of whom:

- 37 felt that if individual reporting duties were to be introduced in relation to children at risk, they should apply to all the occupation types highlighted (e.g. regulated professionals, all employed staff and volunteers);
- 8 felt that if these individual reporting duties were to be introduced, they should apply to all employed staff (whether or not they are regulated);
- 4 felt that if these individual reporting duties were to be introduced, they should apply to regulated professionals;
- 5 disagreed with the principle of individual reporting duties; and
- 8 made alternative suggestions.

52 respondents provided an answer to Question 3.7(b), of whom:

- 31 felt that if individual reporting duties were to be introduced in relation to adults at risk, they should apply to all the occupation types highlighted (e.g. regulated professionals, all employed staff and volunteers);
- 7 felt that if these individual reporting duties were to be introduced, they should apply to all employed staff (whether or not they are regulated);
- 3 felt that if these individual reporting duties were to be introduced, they should apply to regulated professionals;
- 5 disagreed with the principle of individual reporting duties; and
- 6 made alternative suggestions.

All 52 respondents who provided an answer to Question 3.7(b) also responded to Question 3.7(a), with 42 holding the same or similar views in respect of introducing duties to report children and adults at risk. This is reflected within the summary below.

37 respondents in relation to Question 3.7(a) and 31 in relation to Question 3.7(b) felt that if introduced, all occupations detailed in the question should be subject to individual duties to report those at risk. Many gave the reasoning behind their answer, for example, to prevent ambiguity; to ensure that the possibility of abuse is recognised in contexts such as sports or cultural activities; or to help increase public awareness and vigilance. Several of these respondents considered the potential impacts, particularly on volunteering, if a statutory duty to report was imposed; as well as the practical challenges of implementing and regulating for all roles. In relation to volunteers, a comment was made that any duties should be placed at organisational level, as opposed to at individual level.

Some respondents – 8 in relation to Question 3.7(a) and 7 in relation to Question 3.7(b) – felt that if introduced, duties should be imposed on all employed staff, even those who are not members of regulated professions, within certain sectors working with children and adults at risk. These included education, health, social care, probation services, police, and local authorities, as well as in sports and leisure services. The need to ensure that training and support is provided to these staff was highlighted, along with the importance, when defining any list of roles, of assessing the benefits and risks associated with imposing duties and their potential impact on

service provision. Other respondents – 4 in relation to Question 3.7(a) and 3 in relation to Question 3.7(b) – felt that if introduced, duties should apply to those working in regulated professions only.

Comments from some of those who did not agree with the introduction of individual reporting duties – 5 in relation to both Question 3.7(a) and Question 3.7(b) – gave similar reasons as those disbenefits summarised under Question 3.3.

Some respondents – 8 in relation to Question 3.7(a) and 6 in relation to Question 3.7(b) – made alternative suggestions as to whom the duties should apply, such as, government employees; elected members; the Police; and social workers or managers (not lower paid staff or volunteers); or any organisation providing a care and support service. Additional comments included the need to introduce any new duties, gradually, to different categories, to assess their efficacy before extending further; and calls for more guidance and communications for the wider public about reporting concerns. Another respondent highlighted that more clear and practical advice was needed on how and who to report abuse to. A common suggestion was to consider using the criteria for eligibility for a Disclosure and Barring Service (DBS) check as the basis for individual reporting duties, i.e., those engaged in ‘regulated activity’ within the meaning of the Safeguarding Vulnerable Groups Act 2006.

One respondent felt that volunteers should be subject to individual reporting duties in respect of children but not in respect of adults at risk. Others felt that any duty in relation to adults at risk should only apply to specific roles or settings, where the prevalence of risk to individuals may be greater, and another felt that whilst reporting duties should be introduced, at some level, in relation to children, they did not support the introduction of duties in relation to adults.

Question 3.8: What sanctions do you think would be proportionate or appropriate for failure to comply with an individual reporting duty?

64 respondents provided an answer to this question with many referring to multiple types of sanctions or enforcement methods, often depending on: the settings or activities concerned; whether individuals are regulated professionals, employed staff or volunteers; or the surrounding circumstances (for example, where there have been repeated failures, whether there was suspicion rather than knowledge, and even the severity of harm or impact of the failure to report). The need for any form of sanction to be proportionate was a frequent observation. However, it was not always clear whether responses such as ‘disciplinary action’ referred to that taken by employers or by professional regulators.

It was noted that – for ‘relevant partners’ under sections 130(5) and 128(4) of the Social Services and Well-being (Wales) Act 2014 – where a ‘practitioner or person in a position of trust’ has failed to report, under Section 5 of the Wales Safeguarding Procedures¹⁰, this would satisfy the criteria for a professional strategy meeting and if the matter was substantiated, it would be for the individual’s employer to instigate disciplinary proceedings and consult with any relevant professional body and the Disclosure and Barring Service about the requirement for referral.

¹⁰ <https://safeguarding.wales/en/chi-i/chi-i-c5/>; <https://safeguarding.wales/en/adu-i/adu-i-a5/>

Responses that referred to professional or regulatory sanctions included comments about referral of individuals to their professional bodies; the use of fitness to practice reviews where individuals have not acted in line with their relevant codes of conduct; and that there should be some escalation in sanctions: for example, for a “*first time warning*” for a “*low level of harm*” professionals could receive a notation on their personal registration; but significant incidents or repeated breaches could lead to deregistration. One respondent felt there needed to be more consistency in making referrals to professional bodies and another observed how there was no criminal sanction attached to the duty to report Female Genital Mutilation but that professional disciplinary procedures were available. It was observed that, in general, everyone’s case should be considered on its merit by their professional regulator, as context may be a factor.

Responses that referred to employment sanctions included comments that for those not requiring professional registration, a failure to report should, as a minimum, be considered a development or disciplinary matter and that organisations should have mechanisms in place to take appropriate action where staff fail to report. Depending on the gravity of the case and other factors, such as repeated failures, sanctions could range from mandatory refresher training to dismissal. There were calls for disciplinary processes to be consistently applied and managed, in collaboration with HR professionals and with support for staff concerned. There were also suggestions that organisations’ disciplinary procedures should be used to take appropriate action against those volunteering on their behalf. However, several recognised the detrimental impact on staff of commencing disciplinary proceedings, often leading to staff absences due to stress. Some respondents felt it was essential there was no return to blame culture and that reflective practice and lessons learned should be incorporated into any sanctions. One emphasised the need for organisations to ensure they have clear whistleblowing and corporate safeguarding policies in place, that support an open and learning culture.

Responses that referred to criminal sanctions included comments about treating concealment, a “*cover up*” or a “*deliberate decision not to report*” abuse as criminal matters, to make it clear that protection of those at risk is paramount and failure to respond to abuse is not an acceptable option. There was some support for escalating fines or custodial sentence according to the severity of the case or repeated failures to report. One respondent felt there would need to be clear guidance identifying the difference between poor practice and criminal intent. Another was concerned that if criminal sanctions were attached to reporting duties for individuals this could impact on workforce morale and the ability to recruit new staff, particularly in the social care sector. The Royal College of Paediatrics and Child Health cited its response to a July 2021 consultation on the Duty of Candour and Being Open Framework, in Northern Ireland¹¹. It felt the impact of criminal sanctions would be detrimental and far-reaching, with anxiety created by the threat of criminalisation, which may encourage practitioners to leave practice.

An individual respondent felt there was a “*need to be cautious about criminalising people for not doing something which is not essentially part of their day job.* [This]

¹¹ <https://www.rcpch.ac.uk/resources/duty-candour-northern-ireland-consultation-response>

could lead to over-reporting or prosecution of decent people.” Another felt however that there should be “*nothing less than prison for those who fail to act on reported risks. Not upon individual for failing to report*”. One respondent suggested that those in positions of responsibility who have “*covered up’ offenders*” might be treated by the law in a similar way to those paid care workers, including adult social care workers and healthcare workers, and providers (unless excluded) who are convicted of offences involving ill-treatment or wilful neglect under the Crime Justice and Courts Act 2015¹². These offences have a range of sanctions attached from remedial or publicity orders (for providers) to fines and imprisonment (for workers).

5 respondents who answered this question referred to Recommendation 13 of the final report of the Independent Inquiry into Child Sexual Abuse (IICSA)¹³ which proposed a criminal offence for ‘mandated reporters’ who fail to report to child sexual abuse where they are in receipt of a disclosure (from a child or perpetrator) or they witness a child being sexually abused. In relation to this, one respondent was unsure what this would look like and who would monitor this; another felt that if criminal sanctions were attached to any individual duty introduced in Wales they should only apply to those identified as ‘mandated reporters’ within the IICSA report; and whilst another would not support enforcement of criminal sanctions where an individual had recognised signs but not reported (in line with IICSA’s recommendation) they would encourage such reports to be made and recommend regular training for staff to enable this. One respondent would not recommend the introduction of mandatory reporting with offences attached as this would expose practitioners in Wales to criminal sanction, where this may not be the case in other parts of the United Kingdom. The other respondent observed that an unintended consequence of imposing duties on individuals could mean that we have a system where sanctions are applied to individuals but not their employing organisations.

Several respondents disagreed with criminal sanctions being applied to any individual duties. Comments included that this would be wholly disproportionate, especially if applied in cases where volunteers had failed to perceive or correctly assess risk to another person, potentially based on minimal engagement with them. One respondent felt that placing sanctions on individuals was not the answer to ensuring that children and adults at risk are protected – instead, clear and open reporting systems within organisations, with appropriate training, support and supervision were key. There was a suggestion any sanction would need to be proportionate to the individual’s role, for example, it would not seem appropriate for the same sanction to be applied to a qualified and registered social worker and a bus driver, providing services to organisations who work with children and adults at risk. Another felt that if legal sanctions were introduced, they would need to effectively differentiate between those who had chosen not to report and those who had otherwise failed to do so. One respondent highlighted that for most practitioners, knowing a risk could have been avoided would be a burden of conscience. Some respondents suggested that individuals who fail to report children and adults at risk should be referred to the Disclosure and Barring Service for consideration of whether

¹² <https://www.legislation.gov.uk/ukpga/2015/2/part/1/crossheading/offences-involving-ill-treatment-or-wilful-neglect/enacted>

¹³ <https://www.iicsa.org.uk/reports-recommendations/publications/inquiry/final-report/ii-inquirys-conclusions-and-recommendations-change/part-f-identifying-and-reporting-child-sexual-abuse/f6-mandatory-reporting-england-and-wales.html>

to place them on the relevant barred list. However, one respondent urged that this should not necessarily be routine, for all breaches of any new duty. An individual respondent felt that failing to comply with any individual duty to report, which leads to a failure of child protection, should mean that the person is no longer permitted to work with children.

Further comments made in response to this question included:

- Determining whether children or adults are at risk can often be subjective and involve several individual and organisational judgements.
- Reporting should be driven by the needs of children and adults at risk, rather than process or fear of personal repercussions for not reporting.
- There is a need to consider who will police any sanctions and ensure that those who fail to comply are sanctioned.
- There need to be more powers for the Police or local authorities to prevent services from operating if there are significant safeguarding concerns.
- Money from any fines that are imposed should be channelled into ensuring that children and adults at risk are protected.
- The Public Service Ombudsman for Wales highlighted that if duties to report are placed on individuals, there must be a clear procedure to complain that a person has not reported children and adults at risk. It is important that the Welsh Government considers whether such complaints could be investigated under the Social Services Complaints Procedure (Wales) Regulations 2014 or whether an alternative route for complainants would be needed.

Question 3.9: We would like to know your views on the effects that introducing individual reporting duties would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 3.10: Please also explain how you believe proposals for introducing individual reporting duties could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

46 respondents made comments in relation to either Question 3.9, Question 3.10 or both, about potential impacts that introducing individual reporting duties could have on the Welsh language.

14 of these respondents did not perceive any notable effects on the use of the Welsh language or believe the introduction of individual reporting duties would mean it was treated any less favourably than the English language.

18 respondents emphasised the importance of enabling reporting through either Welsh or English, with some also highlighting the need to ensure that mechanisms are in place to support children, young people and adults at risk to make disclosures

in the language of their choice or need. Several respondents referred to the 'Active Offer', which should mean that services are provided in Welsh, without people needing to request this and felt it was essential that opportunities to communicate concerns – in person, via phone or email, or other means – are made bilingual. One respondent observed how all “*front door services*” must be able to take referrals through the medium of Welsh, so it is not treated less favourably than English. Another felt that enabling people to converse and discuss concerns in their first or most prominent language, would be beneficial for them, particularly at times of crisis.

5 respondents believed that people should have access to information and support services in the most appropriate language for them, which extends beyond Welsh and English, to other languages and includes accessible formats such as Easy Read. Several respondents highlighted the need to ensure that robust training plans and communication campaigns, to support any introduction of new duties, are developed and implemented bilingually. One respondent noted the importance of making referral forms available for completion in either/both languages; and another that organisations ensure sufficiency of Welsh speaking staff to carry out reporting and investigative duties.

Some respondents felt the introduction of new duties could have positive impacts for the Welsh language, including encouraging organisations to ensure they have (and recruit) enough Welsh-speaking staff, to support fully bilingual services; and delivering improved outcomes for children, young people and adults at risk, who use and seek to access information in the Welsh language.

Some potentially negative impacts were also identified, for example, one respondent felt that introducing individual duties to report, widely, could mean that many people will not feel confident to engage in activities or roles where they may be required to recognise signs of abuse and to report them, especially volunteers. The respondent observed that Welsh language organisations, including those who look to support children and adults at risk, were traditionally especially dependent on volunteers and therefore any reduction in volunteering, due to the imposition of a duty to report, may affect Welsh language organisations disproportionately and undermine Welsh Government aims to increase the number of Welsh speakers. There would also be negative social and well-being impacts for those individuals who attend Welsh language cultural and leisure activities.

Alzheimer's Society Cymru raised the need to be consider that when a bilingual person has a diagnosis of dementia, it is often proficiency in a second language that is lost first and therefore stressed that ensuring all aspects of the safeguarding process are equally accessible to Welsh-language speakers is essential, to prevent people becoming excluded or isolated due to a linguistic barrier.

A couple of respondents warned there should be no undue delays in referrals being made, assessments being conducted, or concerns being addressed, due any to language barriers. One respondent was concerned that the questions as to language inclusivity were solely focussed on the Welsh language and felt this may risk feeding into a hierarchy which negatively impacts those who speak other languages.

Question 3.11: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

Almost one-quarter of those who responded to questions within Chapter 3 on mandatory reporting of safeguarding concerns made comments in relation to Question 3.11 about related issues. Some issues had been raised previously, in answer to other questions within this chapter, therefore these have not been included in the following summary of additional points.

- Introducing mandatory reporting would ensure any individuals and groups (to whom the duty applied) supporting vulnerable people rethink any practices they have where they do not report openly and transparently.
- There would need to be a significant financial investment made to back any legislation which involved criminal sanctions, so that the judicial and penal services would be able to cope with this.
- It is important to use established frameworks to encourage safe and secure methods of sharing personal information – reference should be made to WASPI – the Welsh Accord for the Sharing of Personal Information which supports the sharing of information for compatible purposes, such as the duties to report children and adults at risk.
- Creating a care based, supportive environment for reporting takes effort and a cultural shift. This should be the focus of activities within services, schools and communities.
- Many smaller unregulated organisations, or self-employed/sole traders, do not have the same safeguarding processes in place as those who are regulated, which represents a considerable gap in terms of public safeguarding.
- One area that may require specific attention and clarity is in relation to practitioners working with older young people, to reinforce the duty to report children at risk applies to all under the age of 18 years.
- Support for individual reporting – whether in new legislation or existing organisational duties to report and professional duties – is essential. The voice of victims features throughout the final report of the Independent Inquiry into Child Sexual Abuse. E.g. Part F “All I needed was one person to act”
- Mandatory reporting duties are likely to be as effective as the organisation who implements them and follows them with full intent. There should be a consistent uniform approach; this will require clear guidelines with no wiggle room, grey areas, or loopholes.
- Any “*mandatory reporting laws should clearly include a prenatal reporting duty too as to capture abusive prenatal behaviour and protect the unborn child*”.

- Attitudes must also change alongside individual duties to report. Responses of disbelief, distrust and victim-blaming that young people have experienced, and are experiencing, can have a direct negative impact on their futures and long-term outcomes.
- There can be cultural differences in people's understanding of safeguarding issues and abuse. Someone may inadvertently behave abusively, as that behaviour may be normalized in their culture. It is far more important to create safe non-judgmental spaces where people can be educated about UK and Welsh laws to do with safeguarding, the harmful effects of abuse in all forms, and learning how to replace abusive behaviour with respectful behaviour. Instead of punishing group leaders if they have not reported a safeguarding concern, we should offer extra support with prevention through education.
- Any legislative arrangements must be underpinned by excellent policies and procedures and implemented and monitored to ensure that people engaged in delivering services for children and adults at risk take effective steps to protect them. Inspection regimes and regulatory requirements play a key role in ensuring that effective systems, training and awareness activities are in place.
- There is a need for greater analysis of data, to inform any decision to introduce mandatory reporting. Including how many concerns arise from failures to report; how many Section 5 (professional strategy) meetings¹⁴ are convened because of failures to report; do governing and regulatory bodies hold data on failures to report; how many individuals have subsequently been referred to the Disclosure and Barring Service and added to a barred list?
- Are the inspectorates using their powers adequately and fully? Is the inspection system itself robust enough to detect abuse and to reassure and protect prospective whistle blowers?
- There should be adverts on TV and social media explaining why it is so important not to look the other way or assume that someone else will report.
- Is lack of reporting the main problem in Wales? This question should be addressed first and the new Wales Safeguarding Repository (part of the Single Unified Safeguarding Review) should be employed to this end.
- While mandatory reporting and legislation can offer a very public appearance of doing something about a problem, its effectiveness will depend on the provision of adequate funding for proper support services and programmes in the community, including independent advocacy.
- Reporting is one aspect to keeping people safe/raising concerns, other aspects include the action taken following the report.
- Ultimately, the success of any legal approach rests with professional judgment, knowledge and skills of practitioners in balancing autonomy with

¹⁴ <https://safeguarding.wales/en/chi-i/chi-i-c5/> ; <https://safeguarding.wales/en/adu-i/adu-i-a5/>

protection. In Wales, we are continuing to work hard to put in place mechanisms to listen and act on the views of children and adults at risk.

- All those responsible for child protection, within partner agencies and others, including schools and the Police, should be registered with an independent regulator and subject to fitness to practice proceedings.
- There is concern that introducing a duty to report may deter individuals from doing so. It is feared that this can cause nervousness about the process which can lead individuals to close their eyes to what is going on.
- Consideration should be given as to what works already and how this can be replicated in other establishments/organisations.

Welsh Government response

The Welsh Government is pleased to note the level of engagement in this exploratory consultation and is grateful for all responses received to the questions relating to our existing duties to report children and adults at risk.

These views have collectively informed the Welsh Government's response to Recommendation 13 of the final report of the Independent Inquiry into Child Sexual Abuse. The report was published on 20 October 2022 and the section which relates to mandatory reporting can be viewed here: [F.6: Mandatory reporting for England and for Wales | IICSA Independent Inquiry into Child Sexual Abuse](#).

The Welsh Government response was published on 20 April 2023, and is available to read here: [Welsh Government response to the independent inquiry into child sexual abuse | GOV.WALES](#).

Following this consultation and our consideration of Recommendation 13, in both the broader safeguarding context and in light of wider findings made by the Inquiry, in the first instance the Welsh Government intends to strengthen and improve compliance with our existing regulatory frameworks across childcare, education, health and social care. This will support focus, consistency and vigilance in protection and safeguarding practice and aid non-compliance action, where necessary. We will review and appropriately consult on any legislative changes required to support this.

For example, we are consulting¹⁵ (until 7 August 2023) on regulations to designate 'special school residential services' as a 'regulated service', under the Regulation and Inspection of Social Care (Wales) Act 2016. This will mean that – as with other 'regulated services'¹⁶ – where there is any allegation or evidence of abuse, neglect or improper treatment, arising within the service or otherwise, providers must ensure that immediate action is taken to secure the safety of individuals for whom care and

¹⁵ <https://www.gov.wales/regulating-special-school-residential-services>

¹⁶ Care homes (adults and children); domiciliary support; adult placement; adoption; fostering and regulated advocacy services.

support is provided and make any appropriate referrals to other relevant agencies to ensure that individuals are safe and protected.

A new National Framework for the Commissioning of Care and Support, also out for consultation¹⁷ (until 14 August 2023), will require local authorities and local health boards to take all reasonable steps to ensure their commissioning of care and support services promotes and protects the well-being of children and adults at risk. It will highlight the need for these statutory partners to ensure that services provided on their behalf, in the discharge of their functions, have regard to the need to safeguard and promote the welfare of children and adults at risk and will remind them to have regard to relevant statutory guidance and prompt them to promote the Wales Safeguarding Procedures, in their commissioning activities.

The response to Recommendation 13 also commits, during this Senedd term, to our engaging widely and exploring views on ensuring that others – organisations, groups or individuals – who provide services or offer activities for children and for adults who may be at risk have proportionate and effective safeguarding arrangements in place. We intend to seek further views about and explore the implications of placing any duties to report children and adults at risk, on individuals, as part of the conversation. This reflects calls made in response to this consultation for further exploration and consultation to consider the detail, breadth and impacts of any new duties.

The points made in response to this consultation will continue to inform this work and any future legislation.

¹⁷ <https://www.gov.wales/rebalancing-care-and-support-programme>

2.1.4 Chapters 4, 5 and 6: Amendments to the regulation of service providers, responsible individuals and the social care workforce

Chapter 4: Amendments to the regulation of service providers and responsible individuals

Summary of responses

79 of the 200 responses received included responses in relation to the proposals in Chapter 4, representing 39% of the overall number.

Question 4.1: (a) *Identifying unregistered services – power to obtain information:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to require information from any person where there is reasonable cause to believe that they are providing a service which should be regulated?

All 65 responses received were supportive of the proposal. The remaining respondents did not provide a comment to the question posed.

Several respondents commented that the proposal was a reasonable amendment to the 2016 Act in that it would safeguard individuals. One suggested that it would deter individuals from providing an unregulated service and another welcomed any proposal to strengthen CIW's powers.

Other responses suggested a need for further information and clarity around what constitutes a 'reasonable cause' and for clarity in terms of the definitions of services that require registration.

The bureaucracy and resources required to register were raised as a potential barrier to registration.

It was suggested that there should be provision made for local authorities to notify CIW if they start to provide an unregulated arrangement when they have exhausted all alternatives to make regulated arrangements, whilst ensuring reasonable steps have been taken to safeguard individuals.

One respondent agreed with the proposal in that it would deter individuals from providing unregulated services but was concerned about the potential severity of penalty for unregistered providers.

It was suggested that the Welsh Government should establish a working group to explore the issues of unregulated accommodation and unregistered placements.

Question 4.2: (a) *Identifying unregistered services - power to obtain information:* Do you agree with the proposal to extend the offence of failing to provide information when required to do so, to include these persons?

Positive feedback was received in support of this proposal from all 57 responses to this question. The remaining respondents did not provide a comment to the question posed.

One respondent considered that the amendment will ensure that the Welsh Ministers (CIW) have the necessary legal powers to establish whether individuals are operating a service without registration. Another referred to the clear regulatory framework in Wales feeling that those not complying should be required to provide information and be held to account. This was echoed by another who agreed that failure to provide information should be treated as an offence. Another felt that the proposal could encourage more providers to seek regulation.

A couple of responses referred to timescales and ensuring that they are reasonable and clear with consideration being given to how this information could be made available in the absence of the person to whom the request is made.

Question 4.3: (a) *Identifying unregistered services - power of entry: Do you agree with the proposal to amend the 2016 Act to remove ambiguity and make it clear that the Welsh Ministers (CIW) have the power to enter and inspect any premises which they have reasonable cause to believe is (or has been) used as a place at or from which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?*

58 of the 59 responses agreed with, or were broadly supportive of, the proposal. One respondent appears to have misunderstood the intention of the question as asking about an unregulated service, rather than unregistered provision of a regulated service, and disagreed with the proposal saying that if the service is unregulated then it is nothing to do with CIW. The remaining respondents did not provide a comment to the question posed.

Positive comments were received from several respondents who welcomed the removal of any ambiguity in relation to the power of entry and inspection of suspected unregistered services. It was felt that the amendment would safeguard individuals who may be at risk from using a service which does not have the necessary oversight or measures in place to ensure their safety and well-being. One respondent suggested that the proposal would deter unregulated services from operating.

One respondent considered it a reasonable approach suggesting that where a local authority is involved it would be beneficial to have discussions ahead of using this power.

A positive response was received from another respondent who suggested that it is important that the wording of the amendment should be considered carefully to remove any ambiguity.

A few respondents suggested such inspections should be unannounced, with one respondent suggesting that this should be clearly written in the form of an amendment in the 2016 Act to avoid ambiguity. One respondent agreed with the proposal but emphasised the need to have a high level of respect for the individuals

potentially residing in these services and respecting their space and their environment because it is their home.

Question 4.4: (a) *Identifying unregistered services - power of entry: Do you agree with the proposal to extend the offence of obstructing an inspector or failing to comply with a requirement imposed by an inspector, to include these circumstances?*

Of the 57 responses received to this question, 53 specifically agreed or appeared to support the proposal. 4 responses disagreed. The remaining respondents did not provide a comment to the question posed.

Feedback agreed with strengthening the powers of the regulator. One respondent called for clarity around the penalties which could be incurred and suggested for consistency the same sanctions should apply as for regulated services.

Some feedback echoed responses submitted in the previous question, particularly around improved safeguards for people who may be at risk from using an unregulated service and the need to ensure that any power of entry is carried out with dignity and not at the detriment to the people using the service.

One respondent suggested that there may be considerations regarding the circumstances concerning an unregistered placement particularly when all other avenues have been exhausted, suggesting the need for dialogue with officials.

One respondent suggested that fines would help with compliance and proposed that service users should be able to choose how to spend such monies.

Question 4.5: (b) *Publication of annual returns: Do you agree with the proposal to amend the 2016 Act to require service providers to publish their annual returns?*

Of the 65 responses received to this question, 49 specifically agreed or appeared to support the proposal. 16 responses disagreed or tended to disagree. The remaining 135 respondents did not provide a comment to the question posed.

One respondent commented that the proposed amendment will provide transparency for the public. Feedback from several respondents raised the issue of providers who may not have a web presence/website. Some respondents suggested that support should be made available from the Welsh Government to establish the required infrastructure to enable providers without a web presence to publish their annual return. Another commented that CIW should be able to publish them. A further respondent queried whether Dewis could be utilised as an information sharing platform. One respondent commented on the additional administrative responsibility that the proposal would create.

A few respondents asked for further definition of 'publish', questioning whether platforms other than a website would be appropriate e.g., Instagram or Facebook. One respondent sought further information as to the format required for the annual return. Another respondent suggested that guidance would be required to support

implementation of this proposal. One respondent called for careful consideration before any implementation.

A number of respondents were in agreement with the proposal but questioned whether it would be appropriate for all services to publish their annual returns. A few comments touched on the sensitivity of data and potential breaches with one respondent raising the issue that publishing sensitive information could be a potential barrier to the proposed amendment.

One respondent who disagreed with the proposal suggested that the cost implications of developing and maintaining a website and having the skills involved to do so, would burden a sector that is in decline and struggling with financial sustainability, suggesting that information should be shared on request rather than by publishing.

Question 4.6: (b) *Publication of annual returns: Do you agree with the proposal to create a related offence of failing to publish an annual return?*

Of the 66 responses received to this question, 46 specifically agreed or appeared to support the proposal. 20 respondents disagreed or tended to disagree. The remaining respondents did not provide a comment to the question posed.

There were some comments about the expected timescale for publication and when action would be taken.

Some respondents whilst in agreement with the proposal called for a proportionate penalty as it was felt that the possibility of imprisonment seemed harsh particularly for smaller providers. A few respondents questioned whether this should be a criminal offence. Another respondent asked if the sanction for someone who fails to publish and submit their annual return would be more severe than for those who do not submit their annual return? One respondent raised the question of technical problems and whether a provider would be penalised if they had issues with their website.

Finally, one respondent commented that imposing an offence for failing to publish an annual return provides a barrier between the regulator and the service provider asking whether it would be beneficial to explore opportunities of collaborative working rather than punishment.

Question 4.7: (c) *Publication of inspection reports: Do you agree with the proposal to amend the 2016 Act to provide additional flexibility for the Welsh Ministers (CIW) to recognise circumstances where it may not be appropriate, relevant, or proportionate to prepare and/or publish an inspection report?*

Of the 59 responses received to this question, 49 specifically agreed or appeared to support the proposal. 8 respondents disagreed or tended to disagree. The remaining respondents did not provide a comment to the question posed.

Whilst a number of respondents agreed with the proposal, one respondent commented that there is a need for clear criteria to define the type of circumstances

where an inspection report would not be prepared or published. Other comments echoed this calling for clear parameters and the need to consider on a case-by-case basis and not just assume that reports relating to homes for looked after children or for 'vulnerable' adults are the only ones that shouldn't be published. One respondent agreed with the proposal and suggested that the reasons for not publishing the report and what type of inspection that has taken place could be made publicly available via an inspection log.

One respondent agreed in principle, qualifying this with: "if it is not an excuse for covering up malpractice".

Another respondent called for further clarity regarding the circumstances the proposal is referring to. They stressed that due to significant improvements required by some providers, it is concerning that the public will not be made aware via published reports, particularly the families of residents.

Finally, one respondent agreed in principle but commented that the proposal would not provide the commissioners/public with the evidence of an improvement or decline in the provision of the service.

Question 4.8: (d) *Improvement notices and cancellation of registration – variation of registration as a service provider: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to issue an improvement notice to a provider in circumstances where the provider is no longer providing that service or using that place to provide a service?*

Of the 47 responses received to this question, 43 specifically agreed or appeared to support the proposal; 4 respondents disagreed or tended to disagree. The remaining respondents did not provide a comment to the question posed.

A number of respondents commented that the current process is unnecessarily bureaucratic and that the proposed amendment would reduce the burden on CIW resources. One respondent stated there is no reason to pursue if the provider is no longer providing the service. Another respondent agreed with the proposed amendment commenting that it will save time for both CIW and service providers by streamlining the process of removing a service which has already ceased to operate from the registration.

Feedback from one respondent highlighted the need to ensure that there is a link with new registrations to enable checks to be made to ensure that any previous improvement notices given to that provider are flagged. Another respondent echoed this comment stating that appropriate safeguards need to be in place to protect the public from another legal entity setting up with similar personnel providing the same service (potentially at the same location).

One respondent queried whether there would be a process for providers to appeal if there is a difference of opinion or misunderstanding about whether the provider is still providing a service or providing a service from a particular place or not.

One respondent in disagreement with the proposal commented that the improvement notice should apply to the service provider, not solely the service location.

Finally, another respondent who did not agree with the proposal, felt that retaining the improvement notice offers opportunities to learn and implement change.

Question 4.9: (d) Improvement notices and cancellation of registration – removal of a condition on a service provider’s registration: Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to remove a condition on a service provider’s registration without giving a notice of proposal (section 18) and notice of decision following notice of proposal (section 19), when the circumstances which led to the imposition of the condition no longer apply?

Of the 52 responses received to this question, 38 specifically agreed or appeared to support the proposal; 8 respondents disagreed or tended to disagree, 6 neither agreed nor disagreed. The remaining respondents did not provide a comment to the question posed.

Few detailed comments were received in response to the question. One respondent commented that the current process is unnecessary and that the proposed amendment will reduce bureaucracy. Another stated that there should not be a loophole to allow providers to close a service and escape any penalties or enforcement action or reopen the service without clear evidence of managing the service appropriately. The need to ensure that there is a link with new registrations to enable checks to be made to ensure that any previous enforcement action is flagged was highlighted by another respondent.

One respondent felt that this was a reasonable approach, but suggested a timeframe be agreed for this purpose. Another respondent agreed with the proposal and simply commented “only in exceptional circumstances”.

A respondent disagreeing with the proposal stated that it is vital there is engagement with providers. Another commented that providers should always receive notice of changes to registration, regardless of whether the condition continues to apply.

Question 4.10: (d) Improvement notices and cancellation of registration – power to cancel a service provider’s registration: Do you agree with the proposal to amend the 2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

Of the 51 responses received to this question, 45 specifically agreed or appeared to support the proposal; 3 respondents disagreed, 3 neither agreed or disagreed. The remaining respondents did not provide a comment to the question posed.

Of those that responded, most agreed with the proposal, two respondents did not agree, with one commenting that removing the requirement to cancel registration could potentially open opportunities to continue trading on a private basis. This

comment was echoed within other responses. One respondent stated that there should be engagement with the provider to ensure there is no proposal to reopen the service. A few respondents raised the point that there needs to be clear links with future registration processes to enable checks to be made to ensure that previous enforcement activity is flagged.

One respondent stated that there does not appear to be any purpose issuing an improvement notice to a service provider who no longer provides a service. Another commented that it would be inappropriate to issue an improvement notice to a provider for a service that is no longer operating.

Question 4.11: (d) *Improvement notices and cancellation of registration – information from providers who are cancelling their registration: Do you agree with the proposal to create a regulation making power under Section 14 of the 2016 Act to enable the Welsh Ministers (CIW) to require information from a service provider who is cancelling their registration and exiting the market?*

Of the 54 responses received to this question, 49 specifically agreed or appeared to support the proposal; 2 respondents disagreed, 3 neither agreed or disagreed. The remaining respondents did not provide a comment to the question posed.

Comments received were supportive of the proposal. Many of the respondents commented that the information required from a service provider cancelling their registration or exiting the market would be useful in that the data could be used to explore trends in the sector. It was suggested that it was important to understand why a service provider would cancel their registration and exit the market.

One respondent commented that the proposal will align the approach for service providers exiting the market with that for those who are varying their registration. Another commented that when providers are exiting the market, it may be difficult to obtain information, dependent on circumstances (some Responsible Individuals or Registered Managers may be unavailable). Concerns were also expressed around the consequences of an offence being committed if this requirement was breached.

Responses asked if the information would be shared with the relevant commissioning bodies and whether CIW would make the information supplied by the service provider public.

Question 4.12: (d) *Improvement notices and cancellation of registration – power to extend the timescale within an Improvement Notice: Do you agree with the proposal to amend the 2016 Act to give the Welsh Ministers (CIW) the power to extend the timescale for information to be provided when improvement notices are issued?*

Of the 55 responses received to this question, 49 specifically agreed or appeared to support the proposal; 3 respondents disagreed, 3 neither agreed or disagreed. The remaining respondents did not provide a comment to the question posed.

One respondent strongly agreed with the proposal, stating that it is vital that there is a legal requirement for CIW to consider provider representations within achievable

timescales for improvements, prior to CIW's final determination. Positive feedback was received from a few respondents with the caveat that there are clear timeframes, which are proportionate to the improvement notice, especially in relation to any structural improvements. One respondent commented that guidelines need to be transparent and expectations clear.

Question 4.13: (d) *Improvement notices and cancellation of registration – power to cancel a service provider's registration in prescribed circumstances:* Do you agree with the proposal to amend the 2016 Act to enable the Welsh Ministers (CIW) to disapply the section 16(3)(b) requirement within the improvement notice – to take particular action or provide information – in prescribed circumstances, when it would be futile to apply the requirement?

Of the 48 responses received to this question, 44 specifically agreed or appeared to support the proposal; 3 respondents disagreed, 3 neither agreed or disagreed. The remaining respondents did not provide a comment to the question posed.

Most respondents agreed with this question but very few comments were submitted. Of those comments received most respondents stated that this should only apply if the situation is irretrievable. One respondent supported the proposal but suggested that a definition of 'irretrievable' may be required to ensure clarity and consistency and to avoid any unintended consequences.

One response commented that this is potentially high risk and would need very careful consideration and consultation with the sector (regarding the introduction of legislative safeguards to ensure that this was not applied inappropriately).

A few comments asked if an appeal mechanism would be possible and another stated that even upon conviction there is an opportunity to appeal a criminal charge.

Question 4.14: (e) *Responsible individuals – making representations:* Do you agree with the proposal to amend the 2016 Act to give Responsible Individuals the right to make representations to the Welsh Ministers (CIW), against any improvement notice or cancellation of their designation, provided the representations are made within the time limit specified within the notice?

Of the 57 responses received to this question, 54 specifically agreed or appeared to support the proposal; 3 respondents neither agreed or disagreed. The remaining respondents did not provide a comment to the question posed.

There were a small number of brief comments in response to this question. Comments supported this proposal with some saying that it is fair, more robust and transparent adding that an individual should have the right to representation. Some respondents stated that there should be a designated timescale specified within the notice as it is fair that Responsible Individuals should have the opportunity to respond.

One respondent commented that this would be a reasonable approach; however, they felt guidance and training would be welcomed for providers on this element.

Question 4.15: (e) Responsible individuals – sending the improvement notice to the service provider: Do you agree with the proposal to amend the 2016 Act to require that any improvement notice served to a Responsible Individual must also be sent to the service provider?

Of the 55 responses received to this question, 53 specifically agreed or appeared to support the proposal; 3 respondents disagreed. The remaining respondents did not provide a comment to the question posed.

The few comments received were very brief and supportive of the proposal. One respondent requested that consideration be given to how or if improvement notices could be shared with commissioning bodies. Another respondent suggested that a copy of the improvement notice should be sent to each individual listed as a director under Companies House for the legal entity.

Other comments received stated that the proposal will allow for better communication and give the service provider more opportunity to respond.

Question 4.16: (e) Responsible individuals – Removing a Responsible Individual without making an application to designate a new Responsible Individual: Do you agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

Of the 51 responses received to this question, 50 specifically agreed or appeared to support the proposal; 1 respondent disagreed but did not provide comment. The remaining respondents did not provide a comment to the question posed.

Feedback was given in relation to the need for clear timeframes within which an appropriate person should be appointed to the role of Responsible Individual. Several respondents supported the proposal saying that this is a good idea and feel it is a positive step allowing for flexibility in recruitment. A number of respondents commented on the need for robust alternative arrangements or clear evidence of how functions will be delivered to support the registered service during any transition period.

One respondent commented that the proposed change will provide clarity on role and responsibility when the Responsible Individual no longer works for the service.

Question 4.17: (f) Definition of ‘Care’ for children and young people: Do you agree with the proposal to adjust the definition of ‘care’ in section 3 of the 2016 Act in order to place beyond doubt that the provision of parental-type care is recognised as being ‘care’ within the meaning of the 2016 Act?

Of the 46 responses received to this question, 43 specifically agreed or appeared to support the proposal; 1 respondent disagreed, 2 neither agreed or disagreed. The remaining respondents did not provide a comment on the question posed.

Positive feedback was received in response to this question, with several respondents welcoming clarity and strengthening in respect of the definition of 'care'. One respondent welcomed this proposal as they felt the current definition is too adult focused and may contribute to some young people being placed in unregulated settings from the age of 16 years, as they are assessed as not needing 'care' just 'support' under the current definition. Another respondent suggested that the definition should include all areas of parental type care including some areas of adapted care e.g., tube feeding, administering prescribed and over the counter medication that a parent would normally undertake.

One respondent suggested that this proposal should incorporate the inclusion of culturally and religiously appropriate care, that includes a duty to provide opportunities to speak a native language, attend places of worship, be offered a designated space to pray and meals which reflect a person's cultural diet.

Some responses asked for clarity on the age range that is being considered.

One respondent asked how this will impact upon unregulated provision for young people living in supported living accommodation or supported lodgings. Another respondent called for Welsh Government take a lead on understanding the various types of accommodation options local authorities utilise to support care leavers.

One respondent stated the proposed change would have a detrimental effect on supported housing for 16 to 18 year olds as many of the organisations that provide these services would not have the infrastructure in place to register with CIW. Suggesting that legislative changes could lead to a decrease in supply of supported accommodation for young people.

Question 4.18: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- **Benefits, and disbenefits;**
- **Costs (direct and indirect), and savings;**
- **Impacts upon individuals and groups with protected characteristics;**
- **Other practical issues**

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome. Please explain your reasoning, either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

Despite a large number of respondents not responding to this question, those that did were broadly supportive of the proposed changes within this chapter.

A few respondents commented that the proposals will remove ambiguity from the legislation, providing clarity, addressing some anomalies and enable greater governance.

Some generally positive feedback was also received from respondents regarding safeguarding individuals when providers are not registered or providing a service that is “not safe or adequate.”

A recurrent theme was that there would be potential resource implications for providers in order to publish annual returns. One respondent raised the issue of data protection issues and another response asked how the public will know how to access a specific service’s returns.

One respondent emphasised the importance of any changes that provide additional powers are clearly communicated to care providers, carers and service users as part of a rights-based approach that enhances the safeguarding system.

Question 4.19: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Most respondents did not respond or provide comment to this question.

The comments received acknowledged that there would be little or no effects on the Welsh language. Several comments were raised about encouragement for documentation to be in Welsh therefore taking account of people’s language needs. One respondent commented that positive effects would be increased through the recruitment of Welsh speaking staff and the promotion and development of the Welsh language.

Feedback was given in relation to annual returns and reports being produced bilingually and the impact this would have if a provider was unable to action this.

Question 4.20: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Most respondents provided no response or comment to this question.

Of those that responded three respondents did not identify any impact in line with legislation. One respondent suggested the only impact would be if a provider was unable to produce their report bilingually.

Another respondent could not see a way that this change could favourably impact the Welsh language. One respondent suggested that templates could be created for annual returns in Welsh to be simplified.

Finally, one respondent was unsure how to answer this question. They affirmed that every effort should be made to ensure people whose preferred language is Welsh are able to fully participate in discussions on these proposals and they also raise the issue of availability of easy read documentation in Welsh.

Question 4.21: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

4 respondents raised issues in response to this question.

One suggested that Responsible Individuals become a registered category with Social Care Wales. They further suggested that if Responsible Individuals are not registered the opportunity should be taken to require service providers to inform Social Care Wales who their Responsible Individual is and to provide and maintain up-to-date contact details.

One response advocated for a Children's Minister to be appointed at cabinet level to advance and protect the rights of children and young people in Wales.

Another response raised questions in relation to the Social Services and Well-being Act (Wales) 2014.

Finally, one respondent made a comment about how a provider will publish their own reports if they do not have a website.

Welsh Government response

The proposals in this chapter of the consultation suggested improvements to the regulatory regime for providers of care and support in Wales. These were intended either to help achieve the original policy intent, to resolve anomalies that have arisen in practice, or to help Care Inspectorate Wales fulfil its functions. We welcome the high level of support for these proposals.

Respondents have raised a number of relevant questions in their responses. In some cases, these are already addressed by existing regulations and guidance, but others will be given further consideration as next steps on these proposals are considered.

Chapter 5: Amendments to regulation of the social care workforce

Summary of responses

In some cases, issues raised were repeated across a number of consultation questions. To avoid repetition, we respond to those issues only once in this document.

Only 50 of the 200 consultation responses answered the questions in this Chapter and we have therefore focused our analysis on these responses in this section.

Question 5.1: Do you agree with the proposal to amend the 2016 Act to provide that a person who has held office as a member of Social Care Wales may be reappointed once?

Of the 50 responses that answered questions in this chapter, 37 agreed with our proposal, agreeing that this aligns with the Governance Code on Public Appointments for public bodies. Seven responses felt that the proposal provided Social Care Wales (SCW) with the ability to retain expertise and an opportunity to maintain continuity when needing to recruit new Board members. Comments provided included that the proposal “...enables [a] member to continue work. It seems fair and transparent...”, or would help “...to maintain continuity and experience, as others change in the roles...”, or “...would be in line with other similar organisations and would bring benefits of continuity and stability of leadership and direction which is important when long-term strategies and frameworks are being worked towards.” These responses recognised the need to ensure that there is a clear and transparent process while also allowing some flexibility to ensure that experience and expertise can be retained for a proportionate time.

Whilst agreeing with the proposal, one response felt that it was important that the wording be focused on the maximum length of time that a Board member could have rather than the number of terms, as in some instances a member could be initially given a shorter term. They argued that if this was the case, “a second full term would only allow them to complete six-years and not the full eight as outlined in the consultation.” They also argued that SCW should have the ability to “re-appoint an outgoing, or historic Board member to committees or the Board if their skills and/or experience may be helpful to a strategic goal and is not available from other current Board members;” or be extended for a set period if the recruitment of a new member is expected to be delayed.

Over a fifth (11) of those who responded to the questions in this chapter did not answer this question.

Question 5.2: Do you agree with the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration for a person, when they are renewing their registration, in certain circumstances?

Of 43 respondents to this question, 40 agreed that the proposal to provide the workforce regulator with a power to grant conditional registration provided additional flexibility to allow an individual to be re-registered with support to meet their

obligations. One respondent felt “...*this would make sense. If someone is currently registered but has not quite completed the requirements to re-register it does not make sense to de-register them while waiting for them to do so.*” Another respondent felt that the proposal would be “...*appropriate in some circumstances. Allows some exceptions for some staff who have genuine reasons for not complying with registration requirements.*” There was broad acceptance that this was a “...*proportionate approach that removes the risk of otherwise good workers having their employment put at risk for circumstances beyond their control or relatively minor or technical reasons.*” Some felt that this would also “...*reiterate SCW’s role in supporting the registered workforce to meet their obligations and strengthen the importance of registration in creating a professional workforce;*” and would help employers to continue to deliver services to those in need.

However, some responses urged caution that unless “...*the exceptions are clearly defined and that the conditions are proportionate and time sensitive,*” there could be a risk that these could “*become normal practice.*” Another response asked that “*employers are told of any conditional registration, so that they can support the registered worker to meet the requirements with practical support;*” and that employers and SCW work together so that the conditions were monitored and complied with to ensure that all registration requirements have been met.

Two responses felt that there needed to be more information on what constituted conditional registration to make an informed decision on whether this was a solution to the problem.

Seven of the 50 responses to this part of the consultation did not provide any comments on this proposal.

Question 5.3: Do you agree with the proposal to amend the 2016 Act to allow a panel to review and extend interim orders as appropriate, up to the maximum of 18 months?

40 responses agreed with our proposal to provide SCW with the power to streamline the Fitness to Practise process and allow panels the ability to review and extend interim panels up to a maximum of 18 months without the need to apply to HM Courts and Tribunal Services (HMCTS). One response felt that “...*this would enable interim orders to be made on a much shorter timescale initially with the aim of concluding the fitness to practice process much quicker. Currently Interim Orders are being made on a much longer timescale to avoid the need to have a court hearing.*” Another respondent felt the proposal “...*may make it more likely that Interim Orders are initially imposed for the appropriate minimum period required, with the possibility of extension.*” This view was shared by a further respondent, who felt that it “...*will ensure that interim orders are used as appropriate and proportionate to the circumstances and give SCW panels the power to review and extend them, as necessary, up to a maximum total period of 18 months. This would provide for a more streamlined process, beneficial for all parties.*”

One element of the proposal was that, should investigations exceed the 18-month timescale, in these exceptional circumstances, SCW would still be required to apply to the HMCTS for any further extensions. Several confirmed that this would help to

ensure that processes are not unduly protracted, whilst protecting an individual's rights to a fair hearing. One argued "*...we believe this will reduce the imposition of unnecessarily long orders in case 6 months is not enough. This feels fairer to the person who is having their fitness to practice investigated. It will also relieve burdens on providers where they are needing to make additional arrangements to allow the person to comply with the order, for example not allowing lone working.*"

Respondents recognised that some cases may be easily concluded and therefore could be disposed of within a short timeframe, whilst other more complex cases might require longer. One felt that the proposal would "*...allow a full and fair investigation to be completed, especially where complex cases are concerned...*" which is a key objective of these processes.

However, one respondent argued that greater transparency in the process was needed – "*...an understanding of who the panel is made up of and how many? What is criteria to be on a panel, further information providing clarity is required.*" This would help individuals to understand the process and the background of the panel to be able determine their case and the evidence being presented in it.

Eleven respondents did not answer this question or provide any thoughts or comments on this proposal.

Question 5.4: Do you agree with the proposal to amend the 2016 Act to provide a Fitness to Practise panel with the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate?

33 responses agreed that this proposal would deliver a more streamlined approach to these proceedings. Some said that it "*...would enable a more streamlined approach that would be beneficial for all parties and provide greater clarity that the process is not overly prescriptive and inflexible...*" or "*...would be a reasonable approach, and provide a fair and consistent right to review for individuals..*" and "*...provides flexibility to respond to new information.*" Another commented to say that they felt "*...this change would support providing clarity and help to support workforce policies[;] it also ensures equality to the practitioners rights and hopefully [will] prevent unnecessary delay in proceedings.*" These comments felt that the proposal recognised the need for a balanced approach for a fair hearing and flexibility to ensure that new information can be heard and considered earlier in proceedings.

One respondent argued that, whilst agreeing with the proposal, there needed to be some understanding of the "*...impact of proceedings on individuals is significant and when it is clear that there is evidence to challenge the ongoing relevance of interim orders they should be revoked earliest opportunity.*" This was reinforced by another respondent who agreed that "*...this feels fairer to the person undergoing FTP proceedings and will avoid them feeling penalised while proceedings are still underway, if the need for the order is no longer there.*"

However, four of the respondents felt that there needed to be a clear "*...review process in place whereby the panel would have full access to the information related to the interim order to be able to make an informed decision on an order outside the substantive matter.*" They felt that the details in the consultation were not clear

enough and were “...not able to provide a response to this as we do not fully understand how this would be used.”

Eleven respondents to the chapter did not provide any thoughts or comments on this proposal.

Question 5.5: What, in your view, would make it necessary and appropriate for a 'fitness to practise' panel to revoke an interim order?

23 of the responses to this chapter did not provide a response to this proposal.

Of those that did answer, 22 agreed with the proposal in this question. Of these, 14 (cited that interim orders should be revoked if “...the reason for the original suspension has been resolved to the satisfaction of the panel...” or “if new information comes to light which means the need for an Interim Order is no longer required.” Or if “...new information which if previously known would have changed the original decision to put an interim order in place...” or that the “...concern has been disproved or downgraded that may reduce the risk that the person's presence in a service could pose. This may particularly apply if further evidence comes to light during an investigation.” These responses reflected on the need to ensure that interim orders are regularly reviewed during an investigation and all evidence is heard to ensure that they are proportionate and dealt with in a timely manner. Several responses felt that the proposals would streamline the process and build in greater flexibility to the process.

Some responses outlined the reasons they felt that such orders should be revoked, if more serious issues were raised – e.g. “...heightened risks evidence of harm or potential harm...”; “...safety, safeguarding, unregulated placements, unfit accommodation, staffing skill mix and levels, lack of service rationale or safe provision...” and “...criminal convictions, but only where there is an almost certainty that there is no chance that it will be overturned...” – and therefore more appropriate action should be taken.

Three respondents argued that any decision to revoke an interim order would need a clear rationale before it was taken and felt further clarification on the proposals was needed before they could make a more detailed decision. An additional response suggested the development of a working group to examine this issue further and what would be reasonable for revoking an interim order.

Question 5.6: What in your view would be the likely impacts of the proposals in this chapter? You may wish to consider, for example:

- **Benefits, and disbenefits;**
- **Costs (direct and indirect), and savings;**
- **Impacts upon individuals and groups with protected characteristics;**
- **Other practical issues**

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome. Please explain your reasoning,

either here or, if easier, please feel free to note any impacts specific to an individual proposal under the appropriate question above.

16 respondents provided a response to this question.

Of those that responded, one response felt it would bring an *“improvement on individuals with protected characteristics and other practical issues,”* whilst another argued *“There should be no impact on individuals and groups with protected characteristics, but to ensure this – all data of actions/decisions should be kept and the information reviewed regularly to look for any worrying trends.”*

Of the others that responded to this question, their answers focused more on the proposals than their impact upon those in protected characteristics. Eight responded to say they felt that the proposals would improve matters and provide greater streamlining and flexibility, which would benefit all aspects of the workforce.

Question 5.7: We would like to know your views on the effects that the proposals in this chapter would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

30 respondents to the chapter did not respond to this question.

Of those that did respond, eight responses felt that the proposals would not have any impact upon the Welsh language or opportunities to use Welsh in work or to access services. One respondent felt it might increase the opportunities but did not elaborate on how this might be. Six further responses highlighted the existing requirements to provide Welsh language services. One commented that there was already *“a responsibility to respond to requests in Welsh where requested, [but felt there was a] need to consider other languages.”* Three responses reminded us that there was already a duty on the regulator and service providers to deliver on the “Active Offer” to allow individuals the right to access services through Welsh or English. One respondent said that as *“part of the “Active Offer” all individuals are offered the opportunity to conduct their conversations and assessments in Welsh and English.”* Their response went on to add that there could be both positive and negative benefits to the proposals – e.g. *“Positive effects would be increased through recruitment of Welsh speaking staff and the ability to identify Welsh speakers within each Department, and promote the use and development of the Welsh language. Negative effects would be mitigated by ensuring there will not be any delays to support or conduct assessments for citizens requesting their appointment through the medium of Welsh.”* This was reinforced by two other responses which felt that *“we would like the any reforms to registration to commit to ensuring that the language needs of service-users and carers are taken into account to allow people to live and work in congruent linguistic communities. Access to services through the medium of Welsh, including any publication or augmented reporting rights, need to become an ‘Active Offer’ and considered throughout the registration process in addition to the planning and delivery of care...”* and *“would be a need to consider access to a request to review be able to be made with the process conducted through either Welsh or English.”*

One respondent felt that the proposals would help provide more opportunities for individuals to use and request more information through their chosen language, whether Welsh or English.

One respondent felt that these proposals would have a negative impact on the Welsh language but did not elaborate further.

Question 5.8: Please also explain how you believe the proposals in this chapter could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

18 respondents responded to this question.

Six felt that there would be no impact but provided no further details on why. One respondent felt they *“do not feel there is any way to improve engagement with the Welsh language from these changes.”* Two other responses reiterated the existing requirements to provide bilingual services for the benefit of individuals. One response reiterated their comment to the previous question that there was already *“a responsibility to respond to requests in Welsh where requested, [but felt there was a] need to consider other languages.”* Another respondent made a request to review panels to be *“...able to conduct their business in Welsh or English according to the language preference of the individual.”*

One response felt *“...there appears to be benefits in terms of processes and therefore also associated costs...”* but argued that *“...these amendments would need to have clear parameters and set review periods to avoid inappropriate use and avoidance of correct registration processed.”*

One respondent asked that *“...any additional guidance to the registration process following the suggested amendments to the 2016 Act should also be available in the Welsh language to meet the needs of carers and service-users whose first language is not English,”* whilst another asked *“any information provided is produced in an Easy Read format in both English and Welsh and is produced at the same time as the non-accessible version.”*

One respondent felt that there would be a negative impact on Welsh language services but did not provide any further details of why they thought this way.

Question 5.9: We have asked a number of specific questions in this chapter. If you have any related issues which we have not specifically addressed, please use this space to report them.

41 respondents for the chapter did not answer this question.

Of those that did respond, four respondents felt that they had no further comments to add to their responses to these questions. Another two responses focused their thoughts on registration, in particular that they were “...concerned about the effect registration is having on the ability to retain and recruit a social care workforce. This is an additional pressure right across the sector for a workforce that is still not appropriately rewarded for undertaking a professional role.” They added further that “...given the proportion of the current workforce that is part-time, we would like to see part-timers given longer to satisfy registration requirements.”

One response argued that the “Welsh Government should explore workforce planning for the Vision Rehabilitation workforce with a view to inclusion in wider adult social care workforce planning, and mandatory registration of those employed in the sector with Social Care Wales and the Rehabilitation Workers Professional Network.”

Welsh Government response

The proposals in this chapter of the consultation suggested improvements to the regulation of the social care workforce in Wales. These covered terms of office for Social Care Wales’ Board members; conditional registration of social care workers; and the process for investigations and reviews relating to fitness to practice.

Overall, we welcome the strong support for these proposals. Respondents have also raised a number of relevant points which we will consider further.

In respect of the proposal to amend the 2016 Act to provide Social Care Wales with the power to grant a conditional registration, where a person has experienced exceptional circumstances that have prevented them from renewing their registration, the Welsh Government expects SCW to consult with the social care sector on what constitutes exceptional circumstances to ensure that these are clear and proportionate; and that this will be clearly communicated with the workforce and with employers.

Respondents agreed with the proposals to provide powers to allow a Fitness to Practise Panel to review and extend interim orders as appropriate, up to the maximum of 18 months; and the ability to revoke an interim order, during review proceedings, where it is necessary and appropriate. We will continue to work with SCW to ensure that information is collected to help identify any disproportionate impacts on people sharing protected characteristics, across the entire fitness to practice process.

We welcome the recognition of the “Active Offer” and its importance across the social care sector; and recognise that the workforce regulator provides many of its services bilingually. We are content that these proposals would not affect or change this.

Other points which do not impact directly on these proposals, including wider comments made on registration, will be discussed with Social Care Wales.

Chapter 6: Extending the definition of social care worker to include childcare and play workers

This chapter proposed an amendment to the 2016 Act to clarify the legal basis for the current work of Social Care Wales (SCW) with the childcare and playwork sector by providing the Welsh Ministers with a power to make regulations specifying that childcare and playworkers are to be treated as social care workers for relevant purposes.

The proposal seeks to include those workers who provide childcare (not those in administration or other roles within settings) and are employed through a variety of contractual arrangements (permanent, fixed term, zero hours etc) as well as agency staff and those who volunteer at settings.

Overview of responses

There were 64 responses to the questions regarding the proposed change to the meaning of social care worker as outlined in the 2016 Act. The most substantial responses were from representative childcare and playwork sector organisations.

Some respondents made no substantive comments, but a number indicated whether they agreed or disagreed with some of the proposed amendments/extension.

49 respondents supported the proposal, others disagreed or were sceptical or cautious of potential unintended consequences.

Many responses, including those from childcare and playwork sector organisations, highlighted common misconceptions and uncertainty around what the proposed amendment to the definition means in practice as well as the impact of this on the Welsh language. These misconceptions are addressed at the end of each question under “Welsh Government response.”

Question 6.1: We would like to know your views on the proposal to extend the definition of ‘social care worker’ to include both childcare and play workers. In particular, are you in favour of extending the role of Social Care Wales to cover childcare and play workers working in the childcare sector? Please explain your reasoning.

49 respondents were in favour of extending the definition to ensure parity and consistency in the support available to childcare and playwork workers. Having the same development opportunities and access to resources to develop and maintain the necessary skills for their roles was specifically mentioned. The need to safeguard children and ensure they received ‘quality’ care was specifically mentioned as reasons for supporting the proposal, with a view that training would help deliver this.

4 of the respondents stated that they were not in favour of extending the definition to include childcare and playworkers but did not provide reasons.

6 responses urged caution (see below).

The remaining 5 responses to the chapter did not provide an answer or express a view.

Key themes

Difference between social care and childcare and playwork

Most of the **six** responses expressing caution, concern or disagreement regarding the proposal related to a perceived blurring of distinction between social care and childcare and playwork.

Two respondents expressed concern for the impact on social care workers and a desire to keep the sectors distinctly separate. The most notable objection was:

“This is extending the reach of an already stretched sector...and catching more than was intended in the definition of social care. It may also denigrate the role of the social care professional.”

Another replied that they were “*not totally in favour of the proposal*”. This was mainly because they felt playwork to be “*bespoke*” and that falling under the remit of SCW would “*water down*” the profession.

One respondent expressed concern as to whether playworkers specifically would be expected to “*fit in*” with social care workers but welcomed any improvement it might bring to standards and professionalism. With similar words of caution, another respondent noted that bringing playwork under SCW’s remit has the potential to, “*dilute, marginalise or alienate,*” the workforce who already felt disenfranchised when the Childminding and Daycare (Wales) Regulations (2010) and the National Minimum Standards for Regulated Childcare (2015) came into force.

One respondent suggested that, to mitigate against concerns regarding the dilution of qualifications, the role of the Playwork Education and Training Council for Wales (PETC) remains clear and defined to inform SCW’s work and that PETC Wales retains its executive function of approving qualifications for the sector, even if the SCW and PETC qualification frameworks are brought together into one.

Several respondents who urged caution appeared to believe that the proposal to “*extend the definition of ‘social care worker’ to include both childcare and play workers,*” would allow social workers to become childcare or playworkers and vice versa.

Five respondents pointed to pay rates and benefits afforded to social care workers, and argued that if childcare and playwork workers were to be included under the same definition, for parity’s sake they should expect the same to avoid further exacerbating the recruitment and retention issues within the sector.

Registration of the childcare and playwork workforce

Some respondents believed that by specifying that childcare and playwork workers as 'social care workers' the whole of RISCA would equally apply to them, most notably, the requirement for workers to register with SCW. One respondent pointed to section 80 (1) (b) within the 2016 Act which states:

“SCW must keep a register of social care workers of any other description specified by the Welsh Ministers by regulations.”

Three respondents suggested a delay to implementation of the amendment due to the current consideration being given to professional registration of the childcare and playwork workforce. These respondents believed that amending RISCA prior to the conclusion of the working group and planned consultation on registration of the workforce to be pre-empting the work and outcome of the group. In addition, it was felt that a delay to the amendment could help to ensure that any amendments would be based on accurate definitions.

SCW's existing role in relation to training and qualifications

Most respondents felt that the effects of the change would largely be positive, formalising SCW's existing role in relation to training and qualifications. Better support for the sector's workforce was the most common perceived benefit, together with more consistency in support for the whole workforce, particularly for settings and practitioners who hold various roles and work across a variety of settings and care for children across the age range, not just early years.

SCW supported the proposal as they believed it would help:

“Remove ambiguity in the legal definitions set out in the Act and remove legal uncertainty about our work across the sector...with those working outside of formal settings.”

One respondent commented that an amendment to the definition would enable SCW to fill a current gap in support for the playwork sector following the cessation of dedicated funding to SkillsActive in relation to training and skills. Two respondents suggested that an amendment could enable the creation of a single qualification framework to minimise confusion and thus simplifying entry into the sector.

Several responses expressed the opinion that better support for the childcare and playwork workforce could alleviate some recruitment and retention issues and therefore help settings to be more sustainable.

Professionalisation of the childcare and playwork workforce

Some responses argued that an amendment to the definition could elevate the professional status on childcare and play, promote the playwork sector and therefore, raise workers' sense of worth and value.

One response stated that a broadening of the definition would support the implementation of the early childhood education and care agenda and allow for

better clarity around, and continuity between qualifications. A few responses referenced collaborative working as a reason to support the proposal.

Question 6.2: What in your view would be the likely impacts of the proposal? You may wish to consider, for example:

- **Benefits, and disbenefits**
- **Costs (direct and indirect), and savings**
- **Impacts upon individuals and groups with protected characteristics**
- **Other practical issues**

Your views on how positive effects could be increased, or negative effects could be mitigated, would also be welcome. Please explain your reasoning.

In total, 25 of those who responded to chapter 6 of the consultation did not answer this question. Of the 39 who responded, 21 responded positively suggesting benefits, while 17 identified potential disbenefits to the proposal.

Benefits

Among the 21 of those who answered this question with suggested benefits, the main perceived benefit was increased support for the childcare and playwork workforce, although a few believed that it would allow for equity in pay across social care and the childcare and playwork sector.

Some responses felt that an increase in support for the workforce would raise the sector's profile and support sustainability, particularly in playwork. A number made the point that the amendment formalises Social Care Wales' role and function in relation to childcare and playwork workers. Other benefits included improved safeguarding, improvements to training and qualifications, consistency in support across provision and professionalisation of the sector.

Disbenefits

Fewer respondents, 17, suggested disbenefits to the proposal. The most common referenced disbenefit was the potential impact on SCW and other umbrella bodies in terms of an increasing remit and scope and the impact this may have on their capacity. This was not, however, an issue raised by SCW.

Several respondents appeared to believe that the proposal would mean that childcare and playworkers would be required to register to practice and cautioned about the impact of any cost and additional burden of paperwork for childcare providers in relation to registration of the workforce.

Others mentioned recruitment and retention issues, particularly if calls for equal pay and benefits were not met, or workers were expected to register. Four others emphasised the difference between social care and childcare and playwork, concerned that an amendment may "*dilute*" or "*alienate*" the workforce, specifically playworkers, with one respondent commenting that the term 'social care (workers)' "*does not reflect the ethos and values of playwork.*"

Costs

Very few respondents referred to costs in response to question 6.2. Three mentioned a potential cost burden for SCW and umbrella bodies; others argued that there would be a cost to practitioners on the basis that they would be required to register and therefore pay.

Savings

Very few respondents referred to savings in response to question 6.2. Two respondents mentioned a practical saving rather than a cost saving which would be for SCW to hold one qualification list rather than have two separate lists held for childcare and playwork by different bodies.

Practical issues

Several respondents mentioned a need for unintended consequences to be considered, mainly in respect of childcare and playwork workers being defined as "social care workers" and any arising regulatory requirements placed upon them. Another stated that it may "*Create issues with education and the inspectorates and any processes they have in place should be considered,*" although no reasoning or examples were given.

Additional comments

One respondent commented: "*Playworkers traditionally have worked with children between the ages of 3 and 12, they are not early years workers, nor are they youth workers. The inclusion of Playworkers within the role of Social Care Worker will be a recognition of the importance of the role they provide as part of the foundational economy.*"

Question 6.3: We would like to know your views on the effects that the proposal would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

37 respondents to chapter 6 did not provide an answer to question 6.3.

Of those that did respond, some provided answers reflecting on the current numbers of the Welsh speaking workforce and the availability of Welsh speaking trainers in the sector rather than a consideration of the *effects the proposal would have* on the Welsh language and any opportunities.

20 responses to the question felt there would be a positive effect on the use of Welsh language. Examples mentioned included increased opportunities to develop Welsh language to support recruitment and retention within the workforce; more 'investment' and support for the playwork sector. One respondent felt that an amendment could:

“Provide greater confidence in (Social Care Wales’) ability to support the WG’s ambitions around the Welsh language.”

One respondent argued that by increasing SCW’s remit, this could help to address a shortage of “*occupationally competent bilingual playwork trainers*” to support the workforce to develop Welsh language skills, emphasising the need for a better infrastructure to facilitate this.

There were some responses regarding ‘Mwy na geiriau’ / ‘More than just words’ 2022-25 and calls for childcare settings to be included.

One response to this question was based on the belief that if childcare and playwork workers become ‘social care workers’ they would be required to register and be subject to the same regulations as social care workers. The respondent saw a benefit in the data this would make available to a registry on the childcare and playwork workforce’s Welsh language skills.

Some respondents urged caution to ensure that the proposal did not place the sector under any additional regulatory burden.

Six respondents felt that there would not be any negative effect, with some stating that the Welsh Language Act requires English and Welsh to be given equal importance regardless. One quoted the following in their reply: “*All public bodies should be cognisant and fulfilling of their legal obligations espoused by the Welsh Language Act.*”

One respondent felt that the proposal would have a negative effect but did not explain their reasoning.

Additional comments

Two respondents commented that increased support for other languages, in addition to Welsh and English, would be welcome, and that consideration is given to any impact on workers who speak other languages.

One respondent did not comment on the effect the proposal would have on the Welsh language but noted that, “*It is important that no additional regulatory burdens are imposed on Welsh-medium childcare and play settings.*”

Question 6.4: Please also explain how you believe the proposal could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

45 respondents to Chapter 6 did not respond to this question. Of those who did, eight referenced the response they had provided to question 6.3.

One respondent made reference again to the Active Offer/Mwy na Geiriau, and said they would welcome “*greater inclusion of the childcare and play sector within this*”.

In general, however, there was no clear consideration of “*how the proposal could be formulated or changed so as to have positive effects on opportunities to use the Welsh language*”, although one respondent said that they “*do not see a way to treat the Welsh language more favourably with this change*”.

Three respondents felt that the proposal might help to promote the Welsh language with one outlining how this could lead to a more “*collaborative and cohesive childcare and play sector in Wales*” as part of a child’s continuing care journey as they age. Another noted that they “*envisage that the proposals will have a positive impact of delivering improved outcomes for children and young people who use, and have access to information through the Welsh language*”.

No impact/change was noted by another three respondents with one stressing as they had in their response to question 6.3 that this was contingent with the proposal being “*applied in accordance with other regulations/policy*”.

Others also responded in a similar vein to their responses to question 6.3 with one stressing that all public bodies should already be fulfilling their legal obligations in relation to the Welsh Language and another calling for “*no additional regulatory burdens to be placed on settings and volunteers*”.

Two respondents agreed with the importance of accessing services/support in the language of choice/need but noted that this may extend beyond English or Welsh and that due consideration should be given to other languages, with one stressing that any learning from the consultation responses should be extended to “*supporting people to use their preferred language of choice/need*”.

Question 6.5: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

Very few additional issues were raised in response to this question. Of the responses provided, most emphasised points already made. These included pointing out that the inclusion of playworkers would serve to emphasise the important role of playworker across the sector.

There were queries as to whether the definition would be further broadened to include those working in settings such as day centres and sports clubs. A comment was also made noting the absence of a Children’s Rights Impact Assessment as part of the consultation.

Welsh Government response

The Welsh Government is pleased to note the level of support for the proposed amendment to enable childcare workers and playworkers (and not just childminders and providers of day care) working in registered settings to be treated as social care

workers for some purposes, in order to access more of the support and advice provided by SCW.

The responses did highlight the need to continue to set out as clearly as possible the intended purpose of the proposed amendment, and its expected effect. Regulations already exist under section 79 of the 2016 Act (the social care worker definition). These regulations make persons registered under Part 2 of the Children and Families (Wales) Measure 2010 (childminders and providers of day care at present) 'Social Care Workers' **but only** for certain of SCW's purposes. The proposed amendment would enable the Welsh Ministers to make regulations to ensure that the entirety of the childcare and playwork workforce (not just childminders and providers of day care) are treated as social care workers for certain SCW purposes. These are:

- (a) SCW's objective of exercising its functions so as to promote and maintain high standards of conduct and practice among social care workers and public confidence in social care workers
- (b) SCW's duty to prepare and publish codes of practice for social care workers and those employing them
- (c) SCW's function of approving courses for social care workers and
- (d) SCW's related functions in relation to education and training.

Some of the concerns raised by respondents were based on misunderstandings about what the impact of the change would be:

- An amendment to the definition of 'social care worker' would not facilitate movement between social care and childcare and playwork because the National Minimum Standards for Regulated Childcare outline the qualification levels for practitioners and link to the qualification frameworks which set out accepted qualifications to work in the childcare and playwork sector (which do not include social care qualifications).
- Issues of pay rates and benefits are not set out in the 2016 Act and so amending the 2016 Act to cover childcare and playwork workers would not result in any change in this regard. Commitments such as the real living wage are policy interventions and not linked to the 2016 Act or other legislation. It is made clear in policy development that, to date, childcare is not included in the real living wage developments. The proposed amendment does not change this policy position.
- The proposed amendment to the 2016 Act and the making of any subsequent regulations under section 79 specifying that childcare and playwork workers be treated as social care workers would not mean that childcare and playworkers (as newly defined 'social care workers') must register with SCW. Such a change would require the making/amendment of further regulations, which is not the intention at this time. The proposed amendment is to ensure that SCW's current work can continue with a clear legal basis. It does not

affect the potential ways forward for registration or pre-empt any decision as to whether the childcare and playwork force will be registered or which organisation may hold a register if taken forward in the future. No decisions regarding the registration of childcare and playwork workers have been made.

- Extending the definition of 'social care worker' to include childcare and playwork practitioners would not result in the entirety of the 2016 Act applying to childcare and playwork settings.

We are grateful for the feedback provided by consultation respondents, which we will give further consideration to as we determine next steps regarding these proposals.

2.2. Next Steps

The responses to this consultation exercise and resultant analysis will inform further development of our policy and legislation, as we take forward the commitment in the Programme for Government and the Co-operation Agreement to “put in place a framework to remove profit from the care of children looked after”, and the Programme for Government commitment to “improve the interface between continuing health care and Direct Payments”. The outcomes of the consultation exercise will also inform our further work on mandatory reporting duties, and improvements to the law on regulation and inspection of social care.

We will continue to engage with our delivery partners and other stakeholders as we take forward this work.