

Y Pwyllgor Iechyd a Gofal Cymdeithasol

Lleoliad:
Ystafell Bwyllgora 3 – Senedd

Dyddiad:
Dydd Iau, 21 Mai 2015

Amser:
09.05

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



I gael rhagor o wybodaeth, cysylltwch â:

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Agenda

Yn ei gyfarfod ar 13 Mai 2015, penderfynodd y Pwyllgor, o dan Reol Sefydlog 17.42(vi), i wahardd y cyhoedd ar gyfer eitem 1 o gyfarfod 21 Mai 2015

1 Bil Lefelau Diogel Staff Nyrsio (Cymru): trafodaeth ar y drefn ystyriaeth ar gyfer trafodion Cyfnod 2 (09.05 – 09.15)

Sylwer: Bydd trafodion Cyfnod 2 ar y Bil hwn ond yn mynd ymlaen os cytunir ar yr Egwyddorion Cyffredinol ar 3 Mehefin 2015.

2 Cyflwyniad, ymddiheuriadau a dirprwyon

3 Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru): sesiwn dystiolaeth 13 (09.15 – 10.00) (Tudalennau 1 – 36)

Yr Athro Sally Holland, Comisiynydd Plant Cymru

Hywel Dafydd, Comisiynydd Plant Cymru

4 Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru): sesiwn dystiolaeth 14 (10.00 – 10.45) (Tudalennau 37 – 54)

Samantha Clutton, Barnardo's Cymru

Cecile Gwilym, NSPCC Cymru

Catriona Williams, Plant yng Nghymru

Egwyl (10.45–11.00)

5 Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru): sesiwn dystiolaeth 15 (11.00 – 11.30) (Tudalennau 55 – 62)

Kate Chamberlain, Arolygiaeth Gofal Iechyd Cymru

Nia Roberts, Arolygiaeth Gofal Iechyd Cymru

6 Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru): sesiwn dystiolaeth 16 (11.30 – 12.00)

Lin Slater, Bwrdd Iechyd Prifysgol Aneurin Bevan

Lynda Williams, Bwrdd Iechyd Prifysgol Cwm Taf

7 Papurau i'w nodi (12.00)

Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru): gohebiaeth gan y Pwyllgor Plant, Pobl Ifanc ac Addysg (Tudalen 63)

8 Cynnig o dan Reol Sefydlog 17.42(vi) i benderfynu gwahardd y cyhoedd o weddill y cyfarfod (12.00)

9 Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru): trafod y dystiolaeth (12.00 – 12.15)

10 Bil Iechyd y Cyhoedd (Cymru): paratoi ar gyfer gwaith craffu (12.15 – 12.25) (Tudalennau 64 – 65)

Mae cyfyngiadau ar y ddogfen hon

National Assembly for Wales / Cynulliad Cenedlaethol Cymru
[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

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

Evidence from Children's Commissioner for Wales – RISC 51 / Tystiolaeth gan Gomisiynydd Plant Cymru – RISC 51



Comisiynydd Plant Cymru Children's Commissioner for Wales

Ymateb i Ymgynghoriad / Consultation Response

Date / Dyddiad: 07 May 2015

Subject / Pwnc: Regulation and Inspection of Social Care (Wales) Bill

Background information about the Children's Commissioner for Wales

The Children's Commissioner for Wales is an independent children's rights institution established in 2001. The Commissioner's principal aim, under the Care Standards Act 2000, is to safeguard and promote the rights and welfare of children. In exercising their functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC), as stipulated in regulation 22 of the Children's Commissioner for Wales Regulations 2001. The Commissioner's remit covers all areas of the devolved powers of the National Assembly for Wales insofar as they affect children's rights and welfare.

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. It is the most widely ratified international human rights instrument and gives children and young people a wide range of civil, political, economic, social and cultural rights which State Parties to the Convention are expected to implement. In 2004, the Welsh Assembly Government adopted the UNCRC as the basis of all policy making for children and young people and in 2011, Welsh Government passed the Rights of Children and Young Persons (Wales) Measure, which places a duty on Welsh Ministers, in exercising their functions, to have 'due regard' to the UNCRC.

This response is not confidential.

My responses to specific consultation questions are below. I have not responded to every consultation question but only to those of direct relevance to my remit.

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

1.1 Regulation and inspection are key mechanisms for ensuring that children and young people receive safe and effective statutory services and as Children’s Commissioner for Wales, I welcome the intentions of the Regulation and Inspection of Social Care (Wales) Bill (hereon referred to as the Bill). The current agenda of legislative change in relation to the provision of social care services in Wales call for the further development of regulation and inspection processes that will be fit for purpose in meeting the new social care policy and practice landscape. I welcome the intention to introduce an outcome-based approach to support a process focussed on the service user rather than on systems. I am aware that work is at an advanced stage in developing the code of practice in relation to measuring social services performance, through a framework of indicators for the measures already included in the Well-Being Statement for people who need care and support and carers who need support. I have already set out my view that the ‘securing rights and entitlements’ domain of the well-being statement as applied to children and young people should directly relate to the UNCRC in my response to the consultation on measuring performance under the Social Services and Well-being (Wales) Act (the Act). The current measures for this domain as set out in the Well-Being Statement are directed at issues related to the realisation of Article 12 of the UNCRC. Outcomes related to Article 12 are significant, however ‘securing rights and entitlements’ as applied to children and young people should consider the wider application of all the articles of the UNCRC. Work to develop an understanding of subjective well-being measures to regulate and inspect care and support services, must be informed by engagement with children and young people themselves and by the rights afforded to them through the UNCRC.

1.2 The framework to measure performance has the potential to support transparency, accountability and delivery of better outcomes for children and young people who access social services. My office has set out its views in the past on the need for standards and indicators to do more than tell us whether authorities are complying with set timeframes for completing processes. For example, the current set of statutory performance indicators for Welsh local authorities from April 2012 includes the performance indicator (PI): “The percentage of eligible, relevant and former relevant children that have pathway plans as required”. This is an important PI

and provides for an assessment of the numbers of young people, with eligibility, who are having this statutory entitlement met. However it tells us nothing about the quality of pathway plans, the degree to which young people have been given a voice in the decisions affecting them as contained in the pathway plan or the outcomes of those pathway plans in terms of young people's well-being. The proposed Results Based Accountability framework approach is intended to look at population outcomes and at service performance and promises to offer a more robust assessment of the impact of service provision on the lives of children and young people, which is to be welcomed. I concur with CSSIW's assertion in their most recent Annual Report that minimum standards are not enough, and all efforts should be focused on supporting services to achieve excellence¹.

1.3 The outcomes statements and measures should be underpinned by the UNCRC, as the Minister has a duty to have due regard to the UNCRC under the Rights of Children and Young Persons (Wales) Measure 2011 (Rights Measure). I welcome the recognition within the Children's Rights Impact Assessment (CRIA) that the Bill should allow greater opportunity for children and young people to shape the services they receive to deliver outcomes that will meet their specific needs. Article 3 of the UNCRC states that 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'. CSSIW already includes the principles of the UNCRC as it engages with children and young people to capture their views on the quality of care and support they receive, and such processes should be extended and strengthened under the new arrangements.

1.4 I am reassured by the fact that standards will continue to have a central place in the regulatory framework. Standards provide a framework against which regulators and I can scrutinise the quality of services being provided to children and young people. In relation to safety for example I would want assurance that a residential children's home had in place child protection policies and procedures and was compliant with health and safety requirements and that staff were appropriately qualified. At the same time a child may be placed in a residential children's home that has in place child protection policies and procedures and is compliant with health and safety requirements but that does not necessarily mean that the child feels safe. It does not tell us whether the child knows where they can go to raise concerns, if they have information about advocacy, complaints or if they know who they can contact to speak to about why they do not feel safe. Therefore I welcome the proposed balance between these standards and evidence of outcomes for children and young people.

¹ <http://cssiw.org.uk/docs/cssiw/report/150304annualreport3en.pdf>

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

2.1 I understand the basis of proposals to introduce a new service based regulatory system in order to respond to and accommodate emerging models of service. The Bill encompasses the inspection of Adoption services which are constituent parts of the National Adoption Service and it is obviously essential that the regulatory system is developed in pace with new service models.

2.2 I would seek assurance that proposals to introduce a new service based regulatory system will include clear guidance on transparent governance arrangements and lines of accountability. The development of new models of service and regional working arrangements must be underpinned by clear governance and accountability arrangements.

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

3.1 The Equality and Human Rights Commission (EHRC) have detailed public authorities, including Regulators, and Inspectorates, to promote and protect human rights when carrying out public functions². If a public authority fails to comply with the Human Rights Act 1998 (HRA), a person who is affected by that failure may be able to take action on this basis in the UK courts. CSSIW are already recognized by the EHRC as an Inspectorate who have been working to promote compliance with human rights obligations, which is to be commended and I hope that the Bill is utilised as a vehicle to ensure that due regard is given to the UNCRC by regulatory bodies and service providers.

3.2 The Explanatory Memorandum sets out the intention to restate the powers of the Health and Social Care (Community Health and Standards) Act 2003 within the revised legislative statute for social care in Wales, which will now include regulating duties imposed on local authorities to give due regard to the UNCRC under section

² <http://www.equalityhumanrights.com/publication/human-rights-action-case-studies-regulators-inspectorates-and-ombudsmen>

7 of the Act, though this is not explicitly stated on the face of the Bill. In keeping with the Welsh Ministers' duties to also give due regard under the Rights Measure, it would seem fitting for this duty to be ascribed to the inspectorate as they undertake the functions of regulation and inspection. Indeed, by extending the duty of due regard to the UNCRC to all persons exercising functions under the Bill, as it is in the Act, we can further embed children's rights within Welsh legislation. I believe that this could help heighten public awareness of the UNCRC and help us to further foster a culture which promotes thinking about the impact of what goes on in society on children, which challenges bad practice and promotes positive outcomes. Practical improvements leading to beneficial outcomes are essential for the duty of due regard to have real meaning.

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

4.1 The need for a regulation and inspection framework to accommodate advocacy services was a recommendation from my office's review of independent professional advocacy services, 'Missing Voices' (Recommendation 28, 2011). My predecessor therefore welcomed the proposals within the White Paper to introduce changes that will allow Welsh Government to establish appropriate registration requirements for advocacy services. I am aware that the Minister has given the directive for Advocacy services to become regulated within the first tranche of regulations emanating from the successful passage of the Bill³, however I am of the view that Advocacy Services should become specified as a regulated service on the face of the Bill, in keeping with the inclusion of Advocacy Services on the face of the Social Services and Well-being (Wales) Act, and to enshrine the emphasis of empowering children and young people with a stronger voice and control over the services they receive. The Statement of Policy Intent for the subordinate legislation proposes that advocacy services require more time to become established, however my assessment differs, especially in relation to children's Advocacy Services, as they have been established within the social care sector across Wales for the last 15 years. In prescribing the meaning of regulated services, the Bill already distinguishes specific children's services and I believe that children's Advocacy Services are ready to become regulated, and the providers themselves have confirmed that they would embrace the development, which could move towards elevating

³ <http://www.senedd.assembly.wales/documents/s38565/25%20March%202015.pdf>

the profession to an equal status alongside the agencies and professionals they interact with on a daily basis. Vitrally, a service which is in direct contact with children and young people who have care and support needs, who are often in vulnerable situations, should be a regulated one in order to safeguard the service users.

4.2 The National Standards for the provision of children’s advocacy services in Wales⁴ are currently being revised as a means to determine a clear set of good practice guidelines against which advocacy provision could be measured in Wales. The previous set of standards were welcomed and were expected to become an important part of advocacy development, monitoring and quality assurance. However, it appears that no one has been given any responsibility for measuring advocacy practice against these standards as they are voluntary and not enforceable.

4.3 It is my Office’s long standing view that a means of regulation and inspection must be established as a matter of urgency to progress advocacy to a level where we can be confident of its quality and reach⁵. Inspectors need to be given the opportunity to shine the light on both good and poor practice to inform practice development and improvement. In response to the series of reports my predecessor published following use of statutory powers to review advocacy provision, Welsh Ministers confirmed that CSSIW have already taken an integrated approach to ascertain whether the voice of the child is heard as part of the inspection methodology, which provides a strong foundation to build a regulatory framework for advocacy upon.

4.4 The work of the Care and Social Services Inspectorate Wales’s (CSSIW) recent thematic inspections into ‘safeguarding and care planning of looked after children and care leavers who exhibit vulnerable or risky behaviours’⁶ provides further evidence on the benefits of advocacy to children and young people. CSSIW found that the children and young people they interviewed as part of the review were effectively safeguarded; knew about advocacy and knew how to access it. It is reassuring to hear this, because I would expect those looked after children who display risky behaviours to be apprised of the benefits of advocacy, and to have access to an advocate to support them through challenging situations. CSSIW recognise that given the focus the case sample reviewed in each local authority encompassed, inclusive of some of the most challenging and complex case management issues, the inspection represented only a small cohort of each authority’s wider looked after

⁴ <http://www.wales.nhs.uk/sites3/Documents/441/Advocacy%20Standards-e.pdf>

⁵ <https://www.childcomwales.org.uk/uploads/publications/285.pdf>

⁶ <http://cssiw.org.uk/our-reports/national-thematic-report/2014/safeguarding-and-care-planning-of-looked-after-children-and-care-leavers/?lang=en>

children and care leaving population⁷. In contrast, the evidence base from 'Missing Voices' was gathered from the views of a much broader cohort of children and young people who have a statutory entitlement to independent advocacy, across a timespan starting with the Commissioner's 'Lost After Care' report in 2011⁸. The challenge for duty bearers now is to ensure that there are consistent, high quality services accessed by eligible children and young people all across Wales, and a move toward a regulated service would advance the advocacy journey that Wales has been on over the last 15 years.

4.5 The central recommendation from 'Lost in Care: the Waterhouse report', published in 2000, was for the establishment of an independent Children's Commissioner for Wales whose duties should include ensuring children's rights are respected through oversight of the operation of children's advocacy⁹. As such, the role of the Commissioner and her office is interdependent with the principles behind advocacy as a primary safeguarding service. The White Paper stated that the Bill to follow 'may also include the duties and powers of the Children's Commissioner for Wales, which currently derive from the Care Standards Act'. My predecessor met with Welsh Government officials to discuss this and indicated his view the time is right for a revised legislative framework for the Children's Commissioner for Wales. I concur with this as there has been considerable constitutional and legislative change since the inception of the role in Wales over fourteen years ago and there is a need to develop a new legislative framework for the independent children's rights institution in Wales to reflect this.

4.6 I welcome the opportunity to engage further with Ministers and relevant officials over the coming months to consider this issue in further detail. The fact that the majority of the Care Standards Act 2000 will be subsumed by legislation proposed here (and that enacted for England) means that action to put in place a firm legislative framework for the role of Children's Commissioner for Wales cannot be delayed for too long a period. The Independent Review into the role and functions of the Children's Commissioner for Wales recommended that the legal framework governing the Children's Commissioner for Wales should be consolidated and simplified into one piece of Welsh legislation¹⁰. My office agrees that legislation should be consolidated and

⁷ <http://cssiw.org.uk/docs/cssiw/report/140828lacbridgenden.pdf>

⁸ <http://www.childcom.org.uk/uploads/publications/250.pdf>

⁹ Lost in Care, 2000

http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/en/publicationsandstatistics/publications/publicationspolicyandguidance/DH_4003097

¹⁰ <http://gov.wales/docs/dsilg/publications/cyp/141210-childrens-commissioner-reportv3-en.pdf>

simplified into a new Children and Young People's Bill that will ensure that the Children's Commissioner for Wales has the power to act on all matters which relate to or affect children in Wales.

4.7 There is an anomaly in relation to the regulation of residential special schools, which have National Minimum Standards that are used by CSSIW when it undertakes welfare inspections¹¹. There is a separation of National Minimum Standards for all other schools which provide accommodation for children. Boarding schools which accommodate or arrange accommodation for any child for more than 295 days a year, or intend to do so, are required to register as children's homes with the CSSIW and are then subject to the Children's Homes Regulations 2002 and the National Minimum Standards for Children's Homes rather than standards in relation to residential special schools. Further work is required to address this anomaly through the Bill and its subordinate legislation, as I would advocate for all children in residential special school settings who have care and support needs to receive regulated services, not just a service that is inspected against Minimum Standards but without any powers of enforcement. My counterpart in England has ascertained the views and experiences of children and young people in residential special schools, and consequently called for the formulation of comprehensive, ambitious and outcome focused quality standards to replace the current National Minimum Standards¹², and I echo the same call for Wales as a starting point to further safeguard children attending these schools.

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

5.1 By relating the definition of "care" within the Bill to physical tasks and the mental processes related to those tasks seems to disproportionately focus on physical needs rather than emotional well-being as it does within the Act. I would expect there to be greater connectivity with the meanings of well-being, care and support from the Act as the Bill moves through the scrutiny process.

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

6.1 While I welcome the intention to strengthen openness and transparency by service providers careful consideration of how the publication of annual reports will be understood and perceived by children and young

¹¹ <http://cssiw.org.uk/docs/cssiw/general/130910nmsspecialschoolsen.pdf>

¹² http://www.childrenscommissioner.gov.uk/content/publications/content_909

people will be needed. In terms of the presentation of annual reports and their contents great care would be needed to ensure that the material produced on issues such as, for example, corporate governance arrangements can be set out in a way that children and young people can comprehend. Children and young people may need support to assist them in understanding the role and contents of a service provider's annual report. I recommend that consultation with national, regional and local forums, including peer led looked after children forums and youth forums, be undertaken to explore how best to address the need for support in understanding an annual report for children and young people in different circumstances. It may also be necessary to put in place measures to ensure that children and young people have access to an independent person or advocate to help them understand the contents and implications of an annual report.

6.2 More fundamental than this though is my concern about the impact an annual report could have on children and young people in specific circumstances. For example should a child placed in a residential children's home be provided with an annual report containing information about complaints against staff and what impact might this have on their emotional well-being? Should they feel that they do not wish to remain in that residential placement as a result of the information contained in that annual report what actions will be open to them in the context of limited placement availability within each authority? I would expect children and young people to be provided with information about support from an independent advocacy service at the same time they receive any annual report so that they get support to express and resolve any concerns they may have as a result of information contained in an annual report. Careful consideration is needed of how this process is managed as the proposals go forward. It will not be sufficient for children and young people to be simply provided with an annual report (even if produced in an accessible way) without the safeguards of measures that will ensure that they understand why the annual report is important, what it says and what it means for them.

6.3 A Quality Judgement Framework supported by a transparent and consistent approach to assessing the quality of services would provide a useful tool for those tasked with scrutinising the quality and consistency of services provided to children and young people across Wales. The evaluation of the Pilot Quality Judgement Framework for early years found that there was overall support from inspectors towards moving to a new system approach¹³, but there was little consideration of the impact on children in receipt of such services, and this would have to be factored in as the framework is extended wider. In considering how useful such an approach could be for children and young people, the provision of clear information about the safety and quality

¹³ <http://cssiw.org.uk/docs/cssiw/general/150204qjfevalen.pdf>

of the services they use would have to be provided within a supported system in the same way as that I have set out for annual reports above.

6.4 My predecessor often highlighted the crucial importance he placed on systems that support the child to have a voice as a central part of good safeguarding practice. Access to independent professional advocacy is a key part of this and I am engaged with Welsh Government in relation to the strengthening of current arrangements in response to my office's review of advocacy services 'Missing Voices'. Robust implementation of this entitlement is essential. In addition evidence from serious case reviews tells us that where children and young people are not afforded the opportunity to speak to an independent person without a parent or carer present they can be denied the right to share any concerns they have. Children and young people continue to have the option to speak to those responsible for inspecting the service provider without a member of service staff being present. However children and young people may need to be introduced to the inspector by a trusted adult who can explain their role in advance of any meeting. Additionally some children and young people may wish to have an advocate or other independent representative present to assist them in expressing their views or concerns when meeting with an inspector. As inspections are unannounced, the capacity to return to meet with children and young people should be inbuilt into the whole process.

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

7.1 I welcome the intention to strengthen the role of the service regulator in terms of their relationship with local authorities, and have made specific reference to the scrutiny of services against their duties of due regard to the UNCRC above. Responsible and informed commissioning is also key to securing good quality services that can meet the needs and demands of children and young people.

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

9.1 I wish to acknowledge the important work and leadership that has been provided by the Care Council for Wales. The proposals to reconstitute the Care Council for Wales into Social Care Wales to provide strong leadership on the improvement agenda in addition to existing functions is to be welcomed. I would like full

consideration to be given to the relationship between the functions exercised by this new institute and opportunities to promote the UNCRC and a child rights based approach to social care practice in line with Welsh civic society's commitment to the Convention.

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

10.1 Children and young people in Wales have the right to expect that the practitioners and professionals with whom they come into contact as a result of care and support needs have been subject to a thorough consideration of their suitability to fulfill positions of trust. Workforce registration is key to safeguarding measures and potentially gives greater affect to article 19 of the UNCRC (take all appropriate legislative, administrative, social and educational measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardians(s) or any other person who has care of the child). I would wish to see training on the UNCRC and children's rights included as a requirement of induction and continuous professional development in order to retain registration.

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

11.1 I welcome the proposals to introduce measures to strengthen information and intelligence sharing between regulators. We know that robust information sharing is at the heart of measures to keep children and young people safe.

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

12.1 The 'Policy intent for regulations to be made under this Bill' document provides a useful oversight of the subordinate legislation we will expect, and there is significant detail on the face of Bill, which I believe would be strengthened through stronger legislative linkages made with the Act, especially in relation to advocacy, meanings of care and support, and duties of due regard to the UNCRC.

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

13.1 I am acutely aware that the CSSIW and other inspection budgets are being stretched and that any new regulatory responsibilities need to be fit for purpose and either have funding linked to it or be integrated systematically into a current framework.

Submitted by:



Professor Sally Holland

Children's Commissioner for Wales

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

Evidence from Barnardo's Cymru – RISC 29 / Tystiolaeth gan Barnardo's Cymru – RISC 29



Title: Regulation and Inspection of Social Care (Wales) Bill

From: Dr Sam Clutton, Assistant Director, Policy

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1. Information and working context of Barnardo's Cymru

Barnardo's Cymru has been working with children, young people and families in Wales for over 100 years and is one of the largest children's charities working in the country. We currently run 85 diverse services across Wales, working in partnership with 18 of the 22 local authorities. In 2013-14 we worked with in the region of 8,300 children, young people and families directly and a further almost 22,000 through less direct work; including open groups and outreach work. Barnardo's Cymru services in Wales include: care leavers and youth homelessness projects, young carers schemes, specialist fostering and adoption schemes, family centres and family support, parenting support, community development projects, family support for children affected by parental imprisonment, domestic abuse and parental substance misuse, short breaks and inclusive services for disabled children and young people, assessment and treatment for young people who exhibit sexually harmful or concerning behaviour and specialist services for children and young people at risk of, or abused through, child sexual exploitation and young people's substance misuse services.

Every Barnardo's Cymru service is different but each believes that every child and young person deserves the best start in life, no matter who they

are, what they have done or what they have been through. We use the knowledge gained from our direct work with children to campaign for better childcare policy and to champion the rights of every child. We believe that with the right help, committed support and a little belief, even the most vulnerable children can turn their lives around.

- **This response may be made public.**
- **This response is on behalf of Barnardo's Cymru.**

Barnardo's registered Charity Nos. 216250 and SCO37605
Rhifau Cofrestru'r elusen Barnardo's 216250 a SCO37605

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

- We agree that legislation is needed to address the new requirements of and social care practice resulting from the Social Services and Wellbeing (Wales) Act.
- We welcome the policy intent of the Bill as the basis to secure quality care and support for vulnerable children and young people in Wales and believe that the introduction of two regulations- one of which will focus on the well-being of individuals related directly to the well-being outcomes contained in the National Outcomes Framework will potentially strengthen arrangements to hold providers accountable on the basis of the experiences of children and young people themselves.
- However, careful consideration is needed of the mechanisms through which, in practice the ambition to 'put the citizen at the centre' will be realised for children and young people.
- The Social Services and Wellbeing (Wales) Act requires that those carrying out functions under the Act demonstrate due regard to Part 1 of the United Nations Convention on the Rights of the Child (UNCRC). There are no provisions within the Bill for the scrutiny or regulation of services against the duty to demonstrate due regard to the UNCRC.

2. What are the potential barriers to implementing the provisions of the Bill and does the Bill adequately take account of them?

- The Bill is heavily biased towards statutory and independent sector providers and more consideration of application with regard to the third sector is required. We would suggest that direct further

consultation is required with the third sector and we would be happy to contribute to these discussions to ensure that the proposed legislation is fit for purpose across sectors.

- More consideration of the degree to which the policy intent of the Bill can be practically realised as applied to the case of children and young people is needed.

3. Do you think there are any issues relating to equality of protection for different groups of service users with the current provisions in the Bill?

- While we do not necessarily believe that the protection of children is jeopardised or that there is inequity in provision for children within the Bill we can identify issues related to the implementation of the Bill that may mean that the policy intent cannot be practically realised without causing children and young people emotional distress.
- For example a child is placed by a local authority in foster placement. The decision about which foster placement this should be is made by an authority on the basis of the placements that are available to them (in-house, or commissioned from the third or independent sector) and suitability of the placement to meet the needs of that child. In a scenario of a child in a foster placement receiving a copy of an annual report about their foster placement providing agency which raised concerns that child will be unable to 'take their business elsewhere' – that decision is outside their control. They would need measures in place such as access to an advocate, IRO etc to speak on their behalf with their placing authority. They may be happy in their foster placement but become aware that the provider agency is not doing well and may be deregistered. While this is an unlikely scenario what measures would be put in place to ensure that the child is able to: understand their right to know; exercise their right to know/access information such as annual reports; get support to understand what the information means; exercise their right to move to a new placement is they have concerns about the placement provider with whom they have been placed? Without adequate support the impact of information could be potentially detrimental to their feelings of stability and to their emotional well-being.

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

- We believe that there needs to be further consideration of application in relation to the third sector. For example para 3.73 in relation to Responsible Individuals the list provided includes:

'owner, partner, member of company's board or senior official in the local authority'. Further clarity is needed in relation to who such an individual might be in the context of a voluntary organisation. Technically as applied to Barnardo's this might mean that the CEO who oversees Barnardo's UK or a member of the organisations Corporate Management Board would be responsible because of our registration with the Charity Commission and our corporate structure as a UK organisation. However the Director of Barnardo's Cymru or a member of the Senior Management team in Wales might be a more appropriate person. Greater clarity is needed. This does not mean that we are against the introduction of a provision to introduce a statutory Responsible Individual requirement.

- Barnardo's Cymru is currently registered as an adoption agency (at the UK level and registered in England), as a fostering provider, for domiciliary, full day care, sessional day care, crèche, and home based support. We are not clear what the future arrangements for the registration and regulation of our services not covered by the Bill will be?

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

- We do not object to the proposal to introduce a service based model of regulation. However the implications of this for us as an organisation providing regulated services in Wales is unclear. Currently because of the way in which we are registered as a UK charity our adoption work in Wales is regulated in England and inspected by Ofsted. At the same time our fostering services are registered in Wales and regulated by CSSIW. We are unclear on the interpretation of the Bill proposals as set out in the Explanatory Memorandum. Would the changes proposed mean that both our adoption and fostering services would be registered and regulated in England or that they would both be registered and regulated in Wales in the future. As currently worded we are unclear and the proposals could be interpreted as leading to either outcome.

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

- These issues are dealt with largely in our answers to earlier questions.
- We have raised questions about the implications of the move to a service based model and the impact this might have on us as a UK registered charity operating in Wales as Barnardo's Cymru (question 5 response).

- We have raised issues about the need for additional consideration of how the provisions of the Bill in relation to engaging the public can be realised and delivered in a way that meets the best interests of the child (question 3 response). The same considerations would have to be given in relation to powers to introduce 'quality ratings'. The Children's Commissioner for Wales raised concerns about the impact that the traffic lighting of schools had on the well-being of children attending schools rated as needing considerable improvement. What would be the impact of a child receiving information that they had been placed with a foster placement provider with a low quality rating? This is not to say that failing service provision should not be identified, challenged and dealt with. However in reality while this information is important for commissioners etc a child will not be in a position to demand that they receive a new placement with a provider with a higher quality rating. There would have to be a process of support and a response to a poor quality rating that assured a child that their wellbeing was important and that they were not to be left in a placement with a provider who had received a poor quality rating.
- We share the concerns set out in para 3.101 in relation to the introduction of registration fees. The demands of a new social care system as introduced through the Social Services and Wellbeing (Wales) Act at a time of constrained public funding already present a challenge for the statutory sector and for the voluntary sector in terms of commissioning demands of 'more for less'. Additional financial demands on the system at this time could potentially put further strain on systems in a way that could undermine the policy intent of the Bill.

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

- We welcome provisions for consideration of outcomes for service users in reviews of social services performance related directly to the wellbeing statement and national outcome framework.
- We have set out elsewhere the challenges of public involvement for children and young people and adequate consideration must be given to the measures needed to ensure that this policy intent is realised in a meaningful way for children and young people.
- What is the relationship between the duty to undertake a population well-being assessment to inform social care commissioning under Part 2 of the Social Services and Wellbeing (Wales) Act and the duty to report on local markets for social

care services? It would be useful to set out the relationship between these two processes.

8. What are your views on the provisions of Part 1 of the Bill for the development of market oversight of the social care sector? For example, assessment of the financial and corporate sustainability of service providers and provision of a national market stability report.

- We routinely supply information on the financial and corporate sustainability of our organisation as part of commissioning processes and with regard to due diligence processes. It would be useful to ensure that the requirements of the Bill do not duplicate current processes but rather provide a framework to consolidate information which is already required by commissioners.

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

- The reconfiguration and extension of functions of the Care Council of Wales as Social Care Wales offers the opportunity for a joined up approach to social care improvement and support for practice development.
- However clear governance arrangements to support transparency will be needed to ensure that as workforce regulator and social care improvement agency Social Care Wales is able to maintain an independent position to that of Welsh Government. There should also be consideration of clear lines of accountability and strong working relationships with independent bodies such as the Children’s Commissioner for Wales.
- We are unclear whether the remit of Social Care Wales in terms of social care improvement will extend beyond the remit of regulated professions to the wider social care workforce?
- We would seek assurance that social care improvement programmes take full account of the need to include the voluntary sector social care workforce in opportunities for training and practice development.

10. What are your views on the provisions in Part 3-8 of the Bill for workforce regulation? For example, the proposals not to extend registration to new categories of staff, the removal of voluntary registration, and the introduction of prohibition orders.

- We support measures to support a high quality social care workforce but we do not believe that there is a need to extend registration to new categories of staff. The power to extend

registration would require proper consultation with all social care worker employers and any extension would need to be introduced over a reasonable time scale.

- We support the introduction of prohibition orders to ensure that children and young people are safeguarded.
- We would welcome further details on the ways in which the regulation of education and training for social care workers will operate. All our staff and volunteers receive mandatory training in safeguarding and child protection, equality and diversity and confidentiality and data protection. Additional training offers on issues such as recording, specialist areas of practice and evidenced interventions are also provided. Will the workforce regulator be required to assess the quality and standard of the training we offer to our staff or will we be required to ensure that staff attend training accredited or assured by the workforce regulator? If the role of Social Care Wales includes the inspection and approval of courses for the registered workforce will this power extend to the inspection and approval of education and training for the non-registered social care workforce as a result of the power to regulate the education and training of the 'social care workforce' – is this the wider social care workforce?
- We would seek assurance that grants and access to education and training to support the social care workforce will be made available to voluntary sector providers as well as the statutory sector.

NSPCC

C Y M R U | W A L E S

National Assembly for Wales / Cynulliad Cenedlaethol Cymru

[Health and Social Care Committee / Y Pwyllgor Iechyd a Gofal Cymdeithasol](#)

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

Evidence from NSPCC Wales - RISC 20 / Tystiolaeth gan Y Gymdeithas Genedlaethol er Atal Creulondeb i Blant - RISC 20

Response to

National Assembly for Wales' Health and Social Care Committee's Consultation on The Regulation and Inspection of Social Care (Wales) Bill 2015

Date: April 2015

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**MAE POB PLENTYNDOD WERTH BRWYDRO DROS
EVERY CHILDHOOD IS WORTH FIGHTING FOR**

Tudalen y pecyn 44

About the NSPCC

We're leading the fight against child abuse in the UK and Channel Islands. We help children who've been abused to rebuild their lives, we protect children at risk, and we find the best ways of preventing child abuse from ever happening.

Abuse ruins childhood, but it can be prevented. That's why we're here. That's what drives all our work, and that's why – as long as there's abuse – we will fight for every childhood.

We help children rebuild their lives, and we find ways to prevent abuse from ruining any more. So when a child needs a helping hand, we'll be there. When parents are finding it tough, we'll help. When laws need to change, or governments need to do more, we won't give up until things improve. Abuse changes childhood. But so can we.

Introduction

Key issues

- Human rights should be at the centre of the regulation and inspection regime. **Despite the strong focus on outcomes, NSPCC Cymru/Wales is disappointed that there is no duty for persons exercising functions under the Bill to have due regard to the United Nations Convention on the Rights of the Child (UNCRC), the United Nations Principles for Older Persons and the United Nations Convention on the Rights of Disabled People.**
- Due to the numbers of provisions to be determined by subordinate legislation, **NSPCC Cymru/Wales is concerned that it is difficult to build a picture of what the full effect of the Bill will be, beyond section 5 of the Explanatory Memorandum.**
- NSPCC Cymru/Wales welcomes the provision for publication of local authority annual reports on the exercise of their social services functions. **We feel these reports should contain provisions on how well children who return home from care are supported to stay with their families, as this is not currently published.**

NSPCC Cymru/Wales welcomes the opportunity to respond to the Health and Social Care Committee's consultation on the general principles of the Regulation and Inspection of Social Care (Wales) Bill 2015.

Outcomes based regulation and inspection regime: welcome. Rights based approach and delivering change for service users. Caveat: this will only be truly effective if performance measures are meaningful. (Will the NOF apply to all providers?)

The NSPCC is an independent social care provider and the majority of our resources come from donations. NSPCC Cymru/Wales delivers a number of services to children and young people in Wales in three centres based in Cardiff, Swansea and Prestatyn. Our areas of focus are as follows:

- Physical abuse in high-risk families
- Supporting children in care
- Babies
- Sexual abuse
- Neglect

However, our services are not provided within a residential setting and as such **do not fall within the remit of the service regulator or the Bill.**

The audit and inspection of our services is carried out by an internal inspection unit, whose role is to promote and ensure the highest professional standards and the continued improvement of services and activities. The Inspection Unit is independent of the activities which it inspects. It does not undertake line management tasks outside the unit.

All inspections are individually planned within an established methodology which draws on recognised inspection practice, for example from the statutory inspectorates. All inspection reports are submitted to the Chief Executive and representatives of the Board of Trustees.

The views of children and young people who are service users are collected through a variety of channels during the inspection of our various services. Inspectors can set up on-line chats through the NSPCC on-line community N-Spire, which has been developed by young people; have face to face conversations or observe sessions. These will then be included in the inspection report.

In addition, some of the practitioners who deliver our services are qualified social workers, and as such are subject to the Care Council for Wales requirements for registration and professional development.

NSPCC Cymru/Wales is a member of the Social Care and Wellbeing Alliance Wales (SCWAW). SCWAW seeks to identify, and address, issues affecting social care and wellbeing and their impact on people in Wales. We support the comments submitted by SCWAW in their response to the consultation.

General

1. Do you think the Bill as drafted will deliver the stated aims (to secure well-being for citizens and to improve the quality of care and support in Wales) and objectives set out in Section 3 (paragraph 3.15) of the Explanatory Memorandum? Is there a need for legislation to achieve these aims?

1.1 NSPCC Cymru/Wales feels that the Bill has the potential to improve the regulation and inspection of social care in Wales to achieve better outcomes for service users. The Explanatory Memorandum (section 3.9) clearly states the need for legislation in order to avoid loopholes and complexity.

1.2 However, we feel that the Bill needs to be strengthened in a number of areas.

1.3 Improved well-being and outcomes for service users can only be achieved if a rights-based approach to regulation and inspection is adopted. NSPCC Cymru/Wales feels strongly that **there should be a due regard duty to human rights treaties (UNCRC, United Nations Principles on the face of the Bill in the same way as section 7 of the Social Services and Wellbeing (Wales) Act 2014.**

1.4 NSPCC Cymru/Wales agrees with SCWAW's view that the objective to improve information sharing and co-operation would be best achieved by a more explicit expectation to work with all other regulatory bodies in Wales. This includes regulators of members of the social care workforce already regulated by other, often UK regulators and co-operation with existing health inspectorates and workforce and improvement bodies.

1.5 We also feel that the improvement of workforce development and regulation will require co-operation with a range of other bodies and clarity over how the bill relates to different groups of workforce in different ways.

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

2.1 The provisions of the Bill will not be implemented effectively unless a rights-based approach to regulation and inspection is adopted (see our comments under paragraph 1.3).

3. Do you think there are any issues relating to equality in protection for different groups of service users with the current provisions in the Bill?

3.1 NSPCC Cymru/Wales feels that there is a potential issue of equality in relation to children and young people. A significant part of the Bill is about service users accessing service performance information and making an informed choice about their care and support options.

3.2 In order for children and young people to have access to service performance information, there will be a **need for this information to be available in a language and format they understand.** There is also a need to recognise that having access to performance information in relation to some children's placements, for example residential

placements, could be potentially unsettling for vulnerable children. It is imperative that access to information is **managed in a sensitive way, and that independent sources of support and advocacy are offered to the child or young person.**

Provisions in the Bill

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

6.1 We can see the benefit in being able to single out a poorly run service without affecting others run by the same agency. **We are pleased that the Bill only requires service providers to register with the regulator once,** with the possibility to vary initial registration. This allays the concern we expressed during the consultation on the White Paper that moving to a service based model of regulation could increase the administrative burden on service providers, as they would need to complete separate paperwork for each service. We saw this as a particularly big issue for smaller, third sector service providers, who may not be able to continue operating under increased administrative requirements.

6.2 NSPCC Cymru/Wales agrees that quality ratings can be a useful tool to aid greater transparency and scrutiny. However, it is important that a quality judgement framework is used in a way which can identify how progress can be made rather than just becoming a way to score services against each other.

6.3 In our response to the White Paper, we expressed concerns about proposals to introduce a fee for the registration of care and support services. We felt that this would have a potentially serious impact on third sector and small providers, particularly as it was unclear whether an organisation providing multiple services would have to pay multiple fees. Sections 3.98 to 3.101 of the Explanatory Memorandum do provide helpful information on the intended effect of the legislation, and **we are pleased that the Welsh Government has stated that the introduction of a fee should only take place if the impact on the market is understood and worked through, and that work will take**

place with the sector before deciding whether to introduce a fee for service registration.

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

7.1 We agree with the Bill's approach which places citizens at the centre of service delivery. It is right that their wellbeing should be viewed as one of the benchmarks driving service performance and improvement.

7.2 An outcomes-based approach is also particularly useful to ensure that the United Nations Convention on the Rights of the Child is fully embedded into service delivery.

7.3 We will be concentrating comments on local authorities' annual reports on social services performance. We feel very strongly that they should **contain information about how well children who return home from care are monitored and supported to stay with their families.**

7.4 The majority of children who leave care return home to live with a parent, relative or other person with parental responsibility. Statistics show that in the last 3 years, more than half of children leaving care did return home (51%).

7.5 Unfortunately, returning home does not seem to guarantee stability for children. A recent request from NSPCC Cymru/Wales to Stats Wales shows that 27% of children who went home in 2008/09 had returned to care by 31st March 2014. Figures also show huge variations between local authorities: in some areas, only 14% of children who went home 5 years ago have returned to care, but in others, nearly half have returned (47%).

7.6 Failed attempts to return children home from care can cause them lasting harm. Repeatedly moving in and out of care has a profoundly damaging impact on our most vulnerable children.

7.7 Key to supporting children who return home from care to stay with their families is **measuring how well local authorities monitor and**

support them. There is currently a lack of data being routinely collected about children who return home from care. Better data would allow managers to target resources on those children and families who are most likely to be in need of a more intensive service. Better data collection would also allow local authorities to measure the impact of their reunification practice.

7.8 This should form part of local authorities' annual reports and we would wish to see **regulations under section 55 of the draft Bill make provision for information on reunification practice and performance to be collected and reported on as part of local authorities' annual reports.**

7.9 Annual reports should evidence progress made in relation to implementing quality standards and performance measures detailed in the draft Code of Practice relating to measuring social services performance, issued under section 145 of the Social Services and Wellbeing (Wales) Act 2014, which is currently out for consultation.

7.10 In the draft Code of Practice, NSPCC Cymru/Wales feels that a number of performance measures should be added to quality standard 5 ("local authorities must support people who need care and support and carers who need support to safely develop and maintain healthy domestic, family and personal relationships") to ensure that information on reunification is collected:

Group 1: children who cease to be looked after when they return home

- How many children returned home from care each year in the previous 3 years?
- How many of the children who return home, re-entered care?
- What was the length of stay at home before returning to care? (less than 3 months, 3-6 months, 6-12 months etc)
- What are the need codes for children who return home from care and for those who re-enter care?
- What was the status for these children at the point at which they returned home (did they have eligible needs for care and support, were they on a child protection plan?)
- How many children experienced further episodes of return home and re-entry into care?

Group 2: Children who are placed with parents on return home:

- How many children were placed with parents in the previous 3 years?
- How many of these placements with parents broke down?
- What were the placement outcomes for these children?
- How many of the children placed with parents had their care order discharged?
- How many of them re-entered care?

For group 1 and group 2:

- percentage of children who were returned to their families in the last year with a care and support plan in place.
- percentage of children who were still in contact with and receiving support from social services one year after returning home.
- Percentage of children who receive support from social services one year after returning home and who are achieving the well-being outcomes in their care and support plan.

7.10 NSPCC Cymru/Wales will also be calling for regulations under section 84 of the Social Services and Wellbeing (Wales) Act 2014 (care and support plans for looked after children) to include provisions for better monitoring and support for children who return home from care.

7.11 With an appropriate care and support plan in place, and robust monitoring and reporting on practice and performance, we can ensure that vulnerable children and their families are supported to stay together in a way which safeguards and promotes children's well-being.

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

10.1 We support SCWAW's comments and agree that improvement of workforce development and regulation will require co-operation with a

range of other bodies and clarity over how the Bill relates to different groups of workforce in different ways.

10.2 As we indicated in our response to the White Paper, we support the removal of voluntary registration.

10.3 We have some concerns over the introduction of prohibition orders. A negative register will have to be carefully drawn up in order to ensure that there is no duplication with the disclosure and barring scheme (DBS) which is already up and running in England and Wales. The scheme is already recording centrally those people who are unsuitable to work with children or adults in education, caring and supportive roles. Developing a negative register could create an added layer of administration, and overlap with the DBS. There could also be an element of doubt if a person is barred on one register but not the other. **We are pleased that Ministers only intend to introduce such a scheme after full consultation across the sector.**

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

11.1 As was highlighted by SCWAW in their response, we are concerned that these refer only to co-operation in relation to social workers. There needs to be explicit reference to interaction in relation to the NHS and other parts of the sector. Section 174 identifies the regulatory bodies as Welsh Ministers and Social Care Wales. It is disappointing there is no reference to co-operation and joint working with the Health and Care Professions Council, the Nursing and Midwifery Council and other regulators. The alliances consider this might be a missed opportunity to deliver increases of efficiency in regulation.

11.2 We are disappointed there is no reference to co-operation in relation to the wider roles of Social Care Wales given both the policy direction for, and reliance on, greater integration for the delivery of the change desired from the Social Services and Well-being (Wales) Act. For example, workforce development and education commissioning for occupational therapists, nurses and others is undertaken by the Workforce Education Development Service. There seems to be a missed opportunity to consider integrated workforce planning, joint course development and approval and integrated career frameworks for the whole social care workforce. The Bill offers an ideal opportunity to co-operate in recognising

qualifications across the sector to allow joint appointments; integrated working and movement of staff between local government and NHS employers and reduce the need for staff to 'redo' similar qualifications to named recognised qualifications by one part of the sector.

07 Mai 2015

Ymateb i'r ymgynghoriad ar Fil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru).

Mae Arolygiaeth Gofal Iechyd Cymru (AGIC) yn croesawu'r cyfle i gyfrannu tystiolaeth er mwyn ystyried egwyddorion cyffredinol Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru).

Trafodir rôl AGIC yn Atodiad 1.

Cyffredinol

1. A ydych yn meddwl y bydd y bil, fel y mae wedi'i ddrafftio, yn cyflenwi'r **amcanion** arfaethedig (sichrau llesiant ar gyfer dinasyddion a gwella ansawdd gofal a chymorth yng Nghymru) **a'r bwriadau** a nodir yn Adran 3 (paragraff 3.15) y Memorandwm Esboniadol? A oes angen deddfwriaeth er mwyn cyflawni'r nodau hyn?

Mae AGIC yn cefnogi amcanion a bwriadau'r Bil hwn, ac yn credu eu bod yn unol â darpariaeth Deddf Gwasanaethau Cymdeithasol a Llesiant 2014, a Bil Llesiant Cenedlaethau'r Dyfodol, wrth ganolbwyntio ar ganlyniadau ar gyfer pobl a sichrau eu llesiant.

Mae AGIC yn credu bod angen y ddeddfwriaeth hon, ac mae'n bwysig bod y system reoleiddio'n gallu ymateb i fodolau newydd ar gyfer darparu gwasanaethau a sichrau llesiant ar gyfer dinasyddion yn y dyfodol. Wrth i fwyfwy o bobl dderbyn gofal yn y gymuned ac yn eu cartrefi eu hunain, mae'n bwysig y rhoddir digon o ystyriaeth i leoliadau integredig a gwasanaethau sy'n darparu gofal iechyd a gofal cymdeithasol i bobl.

2. Beth yw'r **rhwystrau** posibl wrth weithredu darpariaeth y Bil (os oes unrhyw rai), ac a yw'r Bil yn rhoi digon o ystyriaeth iddynt?

Rydym yn croesawu'r cyfle i symud i fodel ar gyfer rheoleiddio sy'n seiliedig ar wasanaeth, a'r ymdrechion a wneir gan y Bil hwn i symleiddio'r fframweithiau deddfwriaethol ynglŷn â rheoli gofal cymdeithasol. Fodd bynnag, hoffem nodi y bydd rheoleiddio darparwyr gofal iechyd annibynnol yng Nghymru yn parhau i gael ei seilio ar Ddeddf Safonau Gofal (2000), a chanolbwyntio ar sefydliadau a lleoliadau. Felly bydd anghysondebau'n parhau rhwng y sectorau iechyd a gofal y bydd yn rhaid mynd i'r afael â nhw.

3. A ydych yn credu bod unrhyw faterion yn ymwneud â **chydreddoldeb** wrth amddiffyn grwpiau gwahanol o ddefnyddwyr gwasanaeth yn y ddarpariaeth gyfredol yn y Bil?

Dim byd penodol wedi'i nodi

4. A ydych yn credu bod unrhyw beth o bwys **ar goll** yn y Bil, neu a ydych yn credu bod agweddau sydd angen eu cryfhau?

Rheoleiddir gofal iechyd annibynnol yng Nghymru o dan Ddeddf Safonau Gofal 2000. Mae Arolygiaeth Gofal Iechyd Cymru (AGIC) yn rheoleiddio gwasanaethau gofal iechyd yng Nghymru ar ran Gweinidogion Cymru.

Mae AGIC yn gyfrifol am gofrestru ac arolygu gofal iechyd annibynnol yng Nghymru. Mae hyn yn cynnwys rheoleiddio ysbytai annibynnol, clinigau annibynnol, asiantaethau meddygol annibynnol a deintyddion preifat. O dan ddarpariaeth Rheoliadau Gofal Iechyd Annibynnol 2011 (Cymru), mae AGIC yn cofrestru 'sefydliadau ac asiantaethau'. Mae darpariaeth y Bil hwn yn golygu y bydd gofal cymdeithasol yn cael ei reoleiddio trwy fodel ar gyfer rheoleiddio sy'n seiliedig ar wasanaeth, ond bydd gwasanaethau iechyd yn parhau i gael eu cofrestru fel 'sefydliadau ac asiantaethau'. Nid yw'r ffiniau rhwng gofal iechyd a gofal cymdeithasol bob amser yn syml, ac mae'n rhaid rhoi ystyriaeth i sicrhau nad oes gwasanaethau, sefydliadau nac asiantaethau sy'n osgoi darpariaeth y naill gyfundrefn reoleiddio na'r llall.

5. A ydych yn credu y bydd unrhyw ganlyniadau anfwriadol yn codi o'r Bil?

Dim byd penodol ar wahân i'r rhyngwyneb rhwng gofal iechyd a gofal cymdeithasol a nodwyd uchod.

Darpariaethau yn y Bil

6. Beth yw'ch barn ar y ddarpariaeth yn rhan un o'r Bil ar gyfer **rheoleiddio gwasanaethau gofal cymdeithasol?**

Er enghraifft, symud i fodel ar gyfer rheoleiddio sy'n seiliedig ar wasanaeth; ymgysylltu â'r cyhoedd; a phwerau i gyflwyno graddau ansawdd a chodi ffioedd.

Rheoleiddio sy'n seiliedig ar wasanaeth

Mae AGIC yn cefnogi symud tuag at fodel ar gyfer rheoleiddio sy'n seiliedig ar wasanaeth, ac yn credu y byddai gweithred o'r fath yn rhoi manteision i ddarparwyr gwasanaeth trwy broses gofrestru fwy hyblyg. Byddai hefyd yn rhoi manteision i'r rheoleiddiwr trwy ei alluogi i fynd i'r afael â materion ar lefel y darparwr.

Rydym hefyd yn nodi'r cynnig i gyflwyno rhestr o wasanaethau a reoleiddir y gellir ei diwygio trwy reoleiddio. Bydd yn bwysig sicrhau bod deddfwriaeth yn ddigon hyblyg i gael ei haddasu er mwyn sicrhau y gellir rheoleiddio modelau cyfnewidiol o ddarparu gwasanaethau a datblygiadau ym maes gofal integredig yn briodol.

Ymgysylltu â'r cyhoedd

Mae dull AGIC o arolygu'n seiliedig yn gryf ar archwilio profiad y cleifion a'r bobl sy'n defnyddio'r gwasanaethau hynny. Yn draddodiadol, felly, rydym wedi edrych tu hwnt i gydymffurfiaid i archwilio ansawdd gwasanaeth.

Mae AGIC yn credu bod ymgysylltu â'r cyhoedd yn hanfodol i unrhyw gyfundrefn arolygu. Yn ystod pob arolygiad mae AGIC yn treulio amser yn siarad â chleifion, gofalwyr a phobl eraill er mwyn adrodd am brofiad y claf yn y lleoliad. Mae AGIC hefyd yn defnyddio arolygwr lleyg mewn llawer o'u harolygiadau er mwyn ymgysylltu â'r cyhoedd yn well.

Mae AGIC hefyd yn ymgysylltu â'r cyhoedd trwy wahodd defnyddwyr gwasanaeth i fod yn aelodau o'n Bwrdd Cynghori.

Tryloywder ac atebolrwydd

Mae AGIC yn cydnabod pwysigrwydd rhoi gwybodaeth glir a dealladwy am ansawdd gwasanaethau i'r cyhoedd.

Rydym yn cefnogi'r cynnig y dylai darparwyr orfod cyhoeddi disgrifiad agored a gonest am y gwasanaethau maent yn eu darparu. Rydym yn cytuno y dylai adroddiadau arolygu ac adroddiadau blynyddol fod ar gael i'r cyhoedd, ac rydym yn cyhoeddi ein holl adroddiadau arolygu ar ein gwefan.

Mae AGIC yn gallu deall gwerth potensial system raddio; yn enwedig yn achos gofal cymdeithasol lle mae'n bosibl y bydd nifer o ddarparwyr sy'n darparu gwasanaethau tebyg. Fodd bynnag, bydd yn rhaid ystyried cyflwyno graddau ansawdd yn ofalus iawn. Bydd yn rhaid dysgu gwersi trwy brofiad rheoleiddwyr eraill sydd wedi cyflwyno graddau er mwyn sicrhau bod y system newydd yn ddibynadwy, yn gyson ac yn addas at y diben. Rydym yn cytuno y bydd angen i ni ymgynghori â rhanddeiliaid a'r cyhoedd gryn dipyn er mwyn penderfynu ar y dull cywir.

Ffioedd: Ers mis Ebrill 2011, mae lleoliadau gofal iechyd annibynnol wedi talu ffi i gofrestru gydag AGIC, o dan ddarpariaeth Rheoliadau Gofal Iechyd Annibynnol (Ffioedd) 2011. Mae'n rhaid talu ffi i gofrestru, i wneud unrhyw newidiadau i'r cofrestriad ac wedyn yn flynyddol er mwyn cynnal y cofrestriad. Mae deintyddion preifat wedi talu ffi i gofrestru gydag AGIC ers mis Ionawr 2009. Byddai'n ymddangos yn deg i ofyn i ddarparwyr gofal cymdeithasol hefyd dalu ffioedd cymesur.

7. **Beth yw'ch barn ar y ddarpariaeth yn rhan 1 o'r Bil ar gyfer rheoleiddio gwasanaethau cymdeithasol awdurdodau lleol?**

Er enghraifft, ystyried canlyniadau ar gyfer defnyddwyr gwasanaeth mewn adolygiadau o berfformiad gwasanaethau cymdeithasol, cynnwys y cyhoedd yn fwy, a dyletswydd newydd i adrodd am farchnadoedd lleol ar gyfer gwasanaethau gofal cymdeithasol.

Mae AGIC yn credu bod yr amrywiaeth arfaethedig o faterion a fydd yn cael eu cynnwys yn arolygiadau AGGCC ac adolygiadau awdurdodau lleol yn ddigon eang.

Rydym yn cefnogi'r syniad y dylai awdurdodau lleol gynnal asesiad o farchnadoedd lleol. Dylent wneud hyn trwy ymgynghori'n agos â'r gwasanaethau iechyd lleol, gan fod tystiolaeth bod pwysau yn y system gofal cymdeithasol yn effeithio ar wasanaethau iechyd. Er enghraifft, lle nad oes darpariaeth gofal cymdeithasol digonol, mae pobl hŷn yn tueddu i aros yn yr ysbyty am gyfnodau hirach nag y byddai eu hanghenion meddygol yn mynnu. Mae hyn yn arwain at bwysau ar welyau mewn rhannau eraill o'r system. Hefyd, mae'n gallu effeithio ar y capasiti tymor hir i fyw'n annibynnol.

8. Beth yw'ch barn ar y ddarpariaeth yn Rhan 1 o'r Bil ar gyfer datblygu **trosolwg o farchnad y sector gofal cymdeithasol**?
Er enghraifft, asesu cynaliadwyedd ariannol a chorfforaethol darparwyr gwasanaethau, a darparu adroddiad cenedlaethol ar gynaliadwyedd y farchnad.

Mae'n bwysig defnyddio'r wybodaeth a'r dadansoddiadau sy'n sail i asesiadau marchnadoedd lleol gyda'i gilydd, er mwyn llywio asesiad strategol ehangach o ddarpariaeth a risg mewn perthynas â gwasanaethau gofal cymdeithasol yng Nghymru.

O fewn yr asesiad risg mae'n glir ei bod yn bwysig bod y rheoleiddiwr yn ystyried iechyd ariannol a chorfforaethol darparwyr yn gyffredinol – yn enwedig darparwyr mawr. Fodd bynnag, hoffem nodi bod cyflwyno gofyniadau sylweddol yn y maes hwn yn debygol o olygu y bydd angen i'r rheoleiddiwr gael staff sy'n gymwysedig mewn meysydd nad ydynt yn gysylltiedig â'r maes yn draddodiadol – fel dadansoddi ariannol manwl.

9. Beth yw'ch barn ar y ddarpariaeth yn Rhan 3 o'r Bil ar gyfer ailenwi ac ailgyfansoddi **Cyngor Gofal Cymru** yn Gofal Cymdeithasol Cymru ac estyn ei gylch gwaith?

Nid oes gan AGIC farn ar ailenwi Cyngor Gofal Cymru.

Mewn perthynas â'r cylch gwaith estynedig, mae AGIC yn nodi y bydd Gofal Cymdeithasol Cymru yn ymgymryd â swyddogaethau gwella. Bydd angen eglurdeb ynglŷn â sut y bydd swyddogaethau gwella Gofal

Cymdeithasol Cymru yn cyd-fynd â'r swyddogaethau gwella yn y gwasanaethau cymdeithasol, yn enwedig o ystyried y tueddiad at gynyddu nifer y gwasanaethau sy'n cael eu hintegreiddio.

O ran y swyddogaeth gyfunedig o reoleiddio gweithwyr proffesiynol, pennu safonau ar gyfer addysg a bod yn gorff gwella, mae'n bwysig bod gwahaniaethu clir rhwng gweithrediad pob rhan o'r corff cyfunedig.

10. Beth yw'ch barn ar y ddarpariaeth yn rhannau 4–8 o'r Bil ar gyfer **rheoleiddio'r gweithlu?**

Er enghraifft, y cynigion i beidio ag estyn cofrestriad i gategorïau newydd o staff, i dynnu cofrestriad gwirfoddol, ac i gyflwyno gorchmynion gwahardd.

Nid oes gennym farn benodol yn hyn o beth.

11. Beth yw'ch barn ar y ddarpariaeth yn Rhan 9 o'r Bil ar gyfer **cydweithredu a chydweithio rhwng cyrff rheoleiddio?**

Mae AGIC yn croesawu'r ddarpariaeth statudol ar gyfer cynyddu cydweithio a chydweithredu. Mae AGIC eisoes yn gweithio'n agos gyda rheoleiddwyr eraill fel AGGCC ar arolygiadau thematig fel gweithredu Trefniadau Diogelu Rhag Colli Rhyddid, ac ar waith sydd ar y gweill ar wasanaethau i bobl sydd ag anabledau dysgu.

Fel y rheoleiddiwr a'r arolygiaeth ar gyfer gwasanaethau iechyd, mae AGIC yn rhannu gwybodaeth yn weithredol ag asiantaethau eraill yn ôl yr angen er mwyn sicrhau bod dull cydgysylltiedig o wella gwasanaethau. Rydym yn trefnu cyfarfodydd rheolaidd lle mae amrywiaeth eang o reoleiddwyr iechyd a gofal yn dod at ei gilydd er mwyn rhannu gwybodaeth a chynlluniau.

Pwerau dirprwyedig

12. Yn eich barn chi, a oes cydbwysedd rhesymol yn y Bil rhwng yr hyn sydd wedi'i gynnwys ar **wyneb y Bil** a'r hyn sy'n dod o dan **is-ddeddfwriaeth a chanllawiau?**

Oes. Bydd llawer o'r manylion wedi'u gadael ar gyfer is-ddeddfwriaeth yn gofyn am ymgynghoriad ac ystyriaeth, felly, cynamserol fyddai cynnwys hyn ar wyneb y Bil.

Goblygiadau ariannol

13. Beth yw'ch barn ar **oblygiadau ariannol** y Bil fel y ceir yn rhannau 6 a 7 o'r Memorandwm Esboniadol?

Nid oes gennym farn benodol yn hyn o beth.

Unrhyw sylwadau eraill

14. A oes unrhyw sylwadau eraill yr hoffech eu gwneud am adrannau penodol yn y Bil?

Ddim ar hyn o bryd. Mae AGIC yn edrych ymlaen at y cyfle i drafod ein safbwynt yn fanylach mewn tystiolaeth lafar o flaen y pwyllgor.

Arolygiaeth Gofal Iechyd Cymru (AGIC) yw'r arolygiaeth a rheoleiddiwr annibynnol ar gyfer gofal iechyd yng Nghymru.

Diben

Darparu sicrwydd annibynnol a gwrthrychol i'r cyhoedd ynglŷn ag ansawdd, diogelwch ac effeithiolrwydd gwasanaethau gofal iechyd, gan wneud argymhellion i sefydliadau gofal iechyd i hyrwyddo gwelliannau.

Gwerthoedd

- **Canolbwyntio ar y claf:** mae profiadau cleifion, defnyddwyr gwasanaeth a'r cyhoedd yn ganolog i'r hyn rydym yn ei wneud
- **Didwylledd a gonestrwydd:** yn y ffordd rydym yn adrodd ac yn ein holl ymwneud â rhanddeiliaid
- **Cydweithio:** meithrin partneriaethau effeithiol yn fewnol ac yn allanol
- **Proffesiynoldeb:** cynnal safonau uchel o ddarpariaeth a cheisio gwelliant parhaus
- **Cymesuredd:** sicrhau effeithlonrwydd, effeithiolrwydd a chymesuredd yn ein dull o weithredu.

Canlyniadau

Rhoi sicrwydd:

Rhoi sicrwydd annibynnol ynglŷn â diogelwch, ansawdd ac argaeledd gofal iechyd trwy reoleiddio effeithiol a thrwy adrodd yn agored ac yn eglur ar ein harolygiadau a'n hymchwiliadau.

Hyrwyddo gwelliant:

Annog a chefnogi gwelliannau mewn gofal trwy adrodd a rhannu arfer da a meysydd lle mae angen gweithredu.

Cryfhau llais cleifion:

Sicrhau bod profiad y claf yn ganolog i'n prosesau arolygu ac ymchwilio.

Dylanwadu ar bolisi a safonau:

Defnyddio ein profiad o ddarparu gwasanaethau i ddylanwadu ar bolisi, safonau ac arfer.

David Rees AC
Cadeirydd y Pwyllgor Iechyd a Gofal Cymdeithasol

6 Mai 2015

Annwyl David,

Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru)

Yn dilyn fy llythyr a anfonwyd ar 16 Mawrth, mae'r Pwyllgor Plant, Pobl Ifanc ac Addysg bellach wedi ystyried y dystiolaeth ysgrifenedig a ddaeth i law yn yr ymgynghoriad yng Nghyfnod 1 o'r Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru).

Nodwn i dystiolaeth sy'n cyfeirio'n benodol at blant a phobl ifanc ddod i law oddi wrth dri sefydliad (Barnardo's Cymru, NSPCC Cymru ac ATL). Mae'r dystiolaeth hon yn nodi yn glir oblygiadau'r Bil a'r effaith o ran y modd y gellid cyflawni darpariaethau penodol yn ymarferol, ond mae'r tri sefydliad, mae'n ymddangos, i gryn raddau o blaid y Bil.

Mae'r Pwyllgor hefyd yn deall bod y Pwyllgor Iechyd a Gofal Cymdeithasol wedi trefnu sesiwn banel ar gyfer 21 Mai yn ymwneud â'r Bil ac y bydd honno'n canolbwyntio'n benodol ar faterion plant.

Gan ystyried y dystiolaeth a gafwyd, ynghyd â'r sesiwn graffu a drefnwyd ar gyfer 21 Mai, mae'r Pwyllgor Plant, Pobl Ifanc ac Addysg felly wedi cytuno i beidio â chynnal ei waith craffu ei hun ar y Bil. Serch hynny, mae'r Pwyllgor yn annog y Pwyllgor Iechyd a Gofal Cymdeithasol i sicrhau bod unrhyw bryderon a godir sy'n ymwneud â phlant a phobl ifanc, gan gynnwys yr hyn a nodir uchod, yn cael eu hystyried yn ei waith craffu yng Nghyfnod 1.

Yn gywir



Ann Jones AC / AM
Cadeirydd / Chair



Eitem 10

Yn rhinwedd paragraff(au) vi o Reol Sefydlog 17.42

Mae cyfyngiadau ar y ddogfen hon