Welsh Parliament
Health and Social Care Committee

Health and Social Care (Wales) Bill:
Stage 1 report

October 2024

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Stage 1 report

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About the Committee

The Committee was established on 23 June 2021. Its remit can be found at: **www.senedd.wales/SeneddHealth**

Current Committee membership:

Committee Chair: Russell George MS
Welsh Conservatives

Mabon ap Gwynfor MS
Plaid Cymru

John Griffiths MS
Welsh Labour

Lesley Griffiths MS
Welsh Labour

Sam Rowlands MS *
Welsh Conservatives

Joyce Watson MS
Welsh Labour

* Sam Rowlands MS was appointed as temporary Chair for part of this inquiry.

The following Members attended as substitutes during the scrutiny of the Bill:

Gareth Davies MS
Welsh Conservatives

Heledd Fychan MS
Plaid Cymru

Altaf Hussain MS
Welsh Conservatives

The following Member was also a member of the Committee during the scrutiny of the Bill:

Mark Drakeford MS *
Welsh Labour

* Following his appointment to the Welsh Government on 7 August 2024, Mark Drakeford MS formally recused himself from all committee activity.

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Recommendations

Recommendation 1. A majority of the Committee recommends that the Senedd supports the general principles of the Health and Social Care (Wales) Bill. ..... Page 40

Recommendation 2. The Welsh Government should continue to work with partners to explore business models currently not provided for in the Bill that would promote the principles of social enterprise whilst still being not-for-profit. ..... Page 86

Recommendation 3. The Welsh Government should amend the Bill to include regulation-making powers to enable the Welsh Ministers to take steps to close any loopholes enabling extraction of private profit from the care of looked after children, should they become apparent in the future. Such regulations should be subject to the affirmative procedure. ..... Page 86

Recommendation 4. The Welsh Government should prepare and publish a detailed offer of the guidance and support that it will make available to private and independent providers wishing to transition to a not-for-profit model. This should be done as a matter of urgency and should be accompanied by a communication plan. ..... Page 86

Recommendation 5. The Welsh Government should make a clear commitment to the level of future funding and support it will make available to local authorities beyond the transition period to support the 'eliminate profit' agenda. As a minimum, this should set out funding for the next five years, which will be a crucial time for local authorities in developing their own provision. ..... Page 87

Recommendation 6. The Minister should write to us, within six months of publication of this report, with details of:

- the work undertaken by the Eliminating Profit Programme Board in monitoring and evaluating the implementation of the 'eliminate profit' policy so far;
- The more formal evaluation of the Bill proposed by the Minister, including who will be involved in this review, its terms of reference and how frequently it will report. ..... Page 88

Recommendation 7. The Minister should consider and respond to the recommendation from the Children, Young People and Education Committee, based on its extensive scrutiny of this policy area, "that the Bill be amended to make it mandatory for foster carers to register with Social Care Wales in order to provide foster placements for looked after children, thereby accelerating progress towards a national register of foster carers". ..... Page 91

Recommendation 8. The Minister should review the evidence from stakeholders setting out their significant concerns about the transition timescales proposed by the Welsh Government, and their potential to exacerbate existing sufficiency problems, in order to assure herself that the policy is deliverable within the timescales proposed, without having a detrimental effect on looked after children and young people..... Page 92

Recommendation 9. The Minister should prepare and publish a report on progress with the transition to a not-for-profit model. This should include an update, by local authority, on the number of placements leaving the market and the number of new placements created, and should reflect on the stability of existing placements. It should also include details of the consultation with children and young people directly affected by the Bill and the numbers taking up the active offer of advocacy. This should be done at six monthly intervals, starting from the date of the Stage 1 debate..... Page 92

Recommendation 10. The Minister should ensure that any guidance or Code of Practice issued in relation to section 13 confirms that the Bill does not prevent local authorities from placing a child in a supplementary placement prior to Ministerial approval being granted, and that Welsh Government officials are able to act on behalf of Welsh Ministers to approve placements, if necessary. Such guidance should emphasise that the use of supplementary placements should not become the default position, particularly during challenging times. ..... Page 93

Recommendation 11. The Minister should prepare and publish an annual report on supplementary placements approved by the Welsh Ministers under the Bill. This report should include anonymised data on matters including, but not limited to, the age-bracket of the child; local authority; the type of placement requested (for profit foster, for profit, residential, out-of-county, out-of-Wales, unregistered); whether the child was already in the placement, cost bracket). An exception must apply to any report produced in line with this recommendation, to the effect that the report must not include any data which, when read in conjunction with any other publicly available information, would enable any individual to be identified. The Minister should include provision for this on the face of the Bill..... Page 93

Recommendation 12. When correcting paragraph 55 of the Explanatory Notes to remove the term 'unregistered' placement, the Minister should make it explicit that placements which are not registered with Care Inspectorate Wales are unlawful and must not be used as 'supplementary placements' or under any other circumstances. Page 94

Recommendation 13. The Welsh Government should commit to producing accessible resources aimed at informing children and young people about the Bill and how to make known their views on it. Page 95

Recommendation 14. The Minister should amend the Bill to include provision for an active offer of advocacy for children and young people whose care arrangements may be affected by the Bill. Page 95

Recommendation 15. The Minister should amend section 10 of the Bill to make it explicit that:

- placing a child "near to" the local authority's area means a bordering or adjacent local authority, and
- the use of this provision should be exceptional circumstances.

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Recommendation 16. The Minister should set out the actions being taken by the Welsh Government in relation to awareness-raising of mandatory reporting, by organisations, of child sexual abuse. She should do this in time to allow Members to consider her response and be able to table amendments to the Bill if they do not believe these actions are sufficient. Page 97

Recommendation 17. The Minister should provide an update on progress with the development of the central hub to support the implementation of direct payments for continuing healthcare. This should include details of its current operational status, staffing numbers, operating costs and the number of people receiving advice and support. It should be produced within six-months of the Stage 1 debate, and annually thereafter. Page 125

Recommendation 18. The Minister should amend the Bill to make provision for a 'right to information, advice and support' for individuals seeking to take up direct payments for continuing healthcare. Any guidance issued under this provision should include information about transitions between social care and CHC, and should promote continuity of care as far as possible. Page 125

Recommendation 19. The Minister should give further consideration to the concerns of stakeholders that, in rural areas in particular, direct payments can sometimes be the only available option in the absence of other services. She should work with partners to consider how any service limitations in these areas can be managed and how best to support the individuals affected by them. ..... Page 125

Recommendation 20. The Minister should provide an update periodically setting out her assessment of the progress being made to prepare health boards for their new responsibilities in this area. This should be done on a six-monthly basis, and should start following completion of the Stage 1 debate. As part of this, the Minister should ensure that health boards are actively working with local authorities to learn from their experiences and best practice. ..... Page 126

Recommendation 21. The Minister should write to us in six months with an update on progress with the development of the new performance framework and implementation plan for CHC in Wales. This should include guidance on safe delegation of appropriate tasks and details of the metrics developed specifically for direct payments to enable progress and success to be measured..... Page 127

Recommendation 22. The Minister should:

- monitor the spend by health boards over the initial three years of the policy, and report back at the end of this period on the financial position of health boards as regards their ability to continue to fund and deliver direct payments for continuing healthcare, and
- continue to monitor and review spending by health boards on this policy going forward. ..... Page 127

Recommendation 23. The Minister should work with relevant Cabinet colleagues and wider partners to promote the role of Personal Assistant (PA), to drive up the numbers of applications and to improve retention of staff longer term. Appropriate training will be an important part of this work..... Page 128

Recommendation 24. The Minister should update the Committee, upon completion of the CHC framework review, highlighting any changes and additional eligibility guidance that have been provided as a result of the review. ..... Page 128

Recommendation 25. The Minister should ensure that the UN Convention on the Rights of Disabled Persons features prominently in guidance issued on Part 2 of the Bill. ..... Page 129

Recommendation 26. The Minister should:

- ensure that the post-implementation review of the Bill considers the awareness, amongst social care users, about the new option of direct payments for CHC;
- agree to make available the datasets from LHBs which are intended to provide a picture of take-up of direct payments for CHC across Wales, and
- provide details of the timescales for the post-implementation review. ..... Page 129

1. Introduction

1. On 20 May 2024, the **Health and Social Care (Wales) Bill** ('the Bill') and accompanying **explanatory memorandum** were introduced into the Senedd. On 21 May 2024, the Minister for Children and Social Care[1] made a **statement** on the Bill in plenary.

2. The Bill was **referred** to this Committee, by the Business Committee, for Stage 1 scrutiny, with a reporting deadline of 11 October 2024.

Terms of reference

3. To inform its work, the Committee agreed the following terms of reference:

To consider:

- The general principles of the Bill and the need for legislation to deliver the stated policy intentions;
- The Bill's provisions (summarised below), including whether they are workable and will deliver the stated policy intentions:
  - Part 1, Chapter 1: provision of social care services to children: restrictions on profit (sections 1-13)
  - Part 1, Chapter 2: miscellaneous amendments in relation to social care services, social care workers and local authority social care functions (sections 14-22 and schedule 1)
  - Part 2: Health Care (sections 23-26 and schedule 2)
  - Part 3: General (sections 27-30)
- Any potential barriers to the implementation of the Bill's provisions and whether the Bill, the accompanying Explanatory Memorandum and the Regulatory Impact Assessment, takes account of them;

[1] Designated as the Member in charge of the Bill, under Standing Order 24.4. Previously known as the 'Minister for Social Care', the Minister's title was changed as part of the First Minister's announcement of her new Cabinet on 11 September 2024

- The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the Explanatory Memorandum);
- Whether there are any unintended consequences arising from the Bill;
- The Welsh Government's assessment of the financial impacts of the Bill as set out in Part 2 of the Explanatory Memorandum;
- The Welsh Government's integrated impact assessments (set out in Part 2 of the Explanatory Memorandum), including the Children's Rights Impact Assessment; and
- The approach taken by the Welsh Government to the development of the policy and legislative proposals reflected in the Bill, including the approach to engaging and consulting with stakeholders.

Committee's approach to scrutiny

4. The Committee issued an open call for evidence on the terms of reference. This took place between 24 May and 28 June 2024. 39 **responses** were received.

5. We held oral evidence sessions with the Minister for Children and Social Care on 6 June and 17 July 2024. In addition, we have exchanged correspondence[2] with the Minister on a number of matters relating to the Bill.

6. We held a series of oral evidence sessions with witnesses, including private, independent and not-for-profit children's organisations, organisations representing young people, disabled people and carers, representatives of local government and local health boards. We also held two private stakeholder events, one with disabled people and one with care experienced young people.[3]

7. The Committee is grateful to all those who contributed to our work.

Scrutiny of the Bill by other Senedd committees

8. The Finance Committee and Legislation, Justice and Constitution Committee heard evidence from the Minister on their respective areas of interest. Both have produced reports on their findings, which can be found on the **Bill's homepage**.

[2] Correspondence available via the Health and Social Care (Wales) Bill page
[3] Details of oral evidence sessions, including transcripts and webcasts, available on the Health and Social Care (Wales) Bill page

9. The Children, Young People and Education Committee, which has a particular interest in the policy area of Part 1 of the Bill, wrote to us with their views on the Bill based on evidence they have collected over the course of this Sixth Senedd. We are grateful to them for their work.

2. Policy background: restricting profit

Looked after children by placement

10. Welsh Government data included in the EM **shows** 7,265 children were in fostering and residential settings in Wales in 2021. Of these, 5,075 (or 70%) were in foster care and 535 (or 7%) were in residential settings. The remaining 1,655 (or 23%) were in 'other settings'. Using data from the RIA, the table below shows the percentage of children in care by provider type.

Provider type	Residential settings (2021)	Foster Care (2022)
Private sector	81%	35%
Voluntary sector	6%	5%
Local authority	13%	60%
Total	**100%**	**100%**

Source: Health and Social Care (Wales) Bill, Explanatory Memorandum Tables 7.8 and 7.9

11. As of June 2023, the Welsh Government estimates that 1880 children are placed by Welsh local authorities in independent/ private placements in Wales -

- Placed with independent foster agencies: 1284
- Placed with independent residential providers: 596

More children in care, and increasingly complex needs

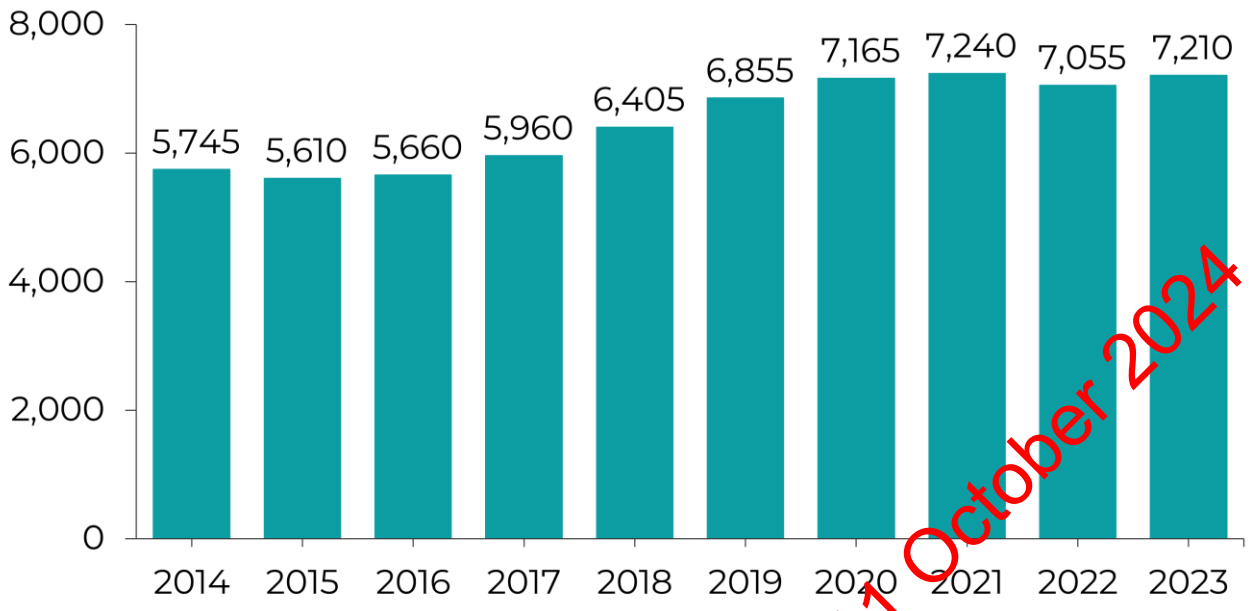
12. More than one child in every hundred children in Wales is now in care.

13. These numbers have increased significantly: 7,210 children were looked after by Welsh local authorities as at 31 March 2023 - an increase of 26% since 2014. The **care rate in Wales** increased by 83% between 2003 and 2022.

14. In 2023 there were 116 per 10,000 children in the care of Welsh local authorities, compared to 71 per 10,000 in the care of local authorities in England.

15. In evidence to the Finance Committee as part of the Welsh Government's draft budget 2024-25, **ADSS and WLGA said** that cases are becoming more complex.

Children looked after at 31 March



Source: StatsWales, Children looked after at 31 March by local authority, gender and age

Welsh Government consultation

16. In 2022, the Welsh Government consulted on **proposed changes to legislation on social care and continuing health care**.[4] That consultation focused on four 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.

17. The Welsh Government subsequently published a **summary of responses** in June 2023. Of the **200 respondents**, 153 commented on proposals to 'eliminate profit from the care of children looked after'.

[4] Proposed changes to legislation on social care and continuing healthcare, Welsh Government

Competition and Markets Authority Report

18. The Competition and Markets Authority (CMA) report, **Children's social care market study report** and the **Wales summary**, were published in 2022.

19. The CMA looked at the position across England, Scotland and Wales, and discussed placement costs and profit levels. It found that children's social care services in Wales cost around £350 million a year but it did not estimate how much of that was profit. It said:

> *"Our assessment is that such a ban or profit cap is not necessary to deliver a well-functioning placements market. However, we recognise that factors beyond our remit are relevant to this decision, and that it is the role of democratically-elected governments to weigh them up."*

20. It found:

> *"Overall, our view is that there are significant problems in how the placements market is functioning, particularly in England and Wales. We found that:*
>
> - *a lack of placements of the right kind, in the right places, means that children are not consistently getting access to care and accommodation that meets their needs;*
> - *the largest private providers of placements are making materially higher profits, and charging materially higher prices, than we would expect if this market were functioning effectively; and*
> - *some of the largest private providers are carrying very high levels of debt, creating a risk that disorderly failure of highly-leveraged firms could disrupt the placements of children in care."*

21. In May 2024, a Welsh Government commissioned review **concluded** there is "little published primary evidence pertaining to comparable outcomes, particularly from within a UK context" about "for-profit" children's residential and foster care.

22. However, it noted strong UK-based evidence that children are more likely to be placed outside their local area under a "for-profit" system and that

demonstrated an association between "for-profit" provision and poor placement stability and continuity. It also noted strong UK-based evidence to demonstrate a link between "for-profit" provision and poor placement quality.

23. In its Wales summary (March 2022), the Competition and Markets Authority **said**:

> *"While there are instances of high and low quality provision from all types of providers, the evidence from regulatory inspections gives us no reason to believe that private provision is of lower quality, on average, than local authority provision."*

International evidence

24. Some directly relevant points of interest in the recently published Welsh Centre for Public Policy report: **International Evidence: Placement Provision for Children and Young People Looked After** included:

- *"We did not set out to discover, nor have we found, whether there is clear evidence or experience that any one approach is better than others. […]There may nevertheless be important lessons to explore about the desired balance between state, private and third sector ownership and governance through comparison with other countries."*
- *"The cost of care continues to rise in most countries. Increasing professionalisation and shortage of provision is driving average costs up."*
- *"Placement availability is at a premium, and organisations in most of the countries we spoke to often struggle to find appropriate placements, particularly for 'hard to place' children and young people, at whatever cost."*
- *"There tends to be a mix of providers of care, with countries delivering some care (both fostering and residential) direct through in-house state institutions, as well as via independent providers, and no country relying solely on state-provided care."*
- *"[…] all find strategic commissioning, planning, and market shaping challenging. […]Many countries have approaches*

> *to helping their local authorities work together in groups (or at a national level) to increase their buying power and influence over the market."*

25. Looking at the balance between state, private and third sector provision it says:

> *"Some countries appear to have a very small private provider sector, confined mainly to the provision of specialist residential care requiring one-off placements on an occasional basis. In these examples, foster care provision tends to be organised and delivered by a state body. Often in these countries, pay rates for foster carers are relatively low, focused on allowances and foster care is not generally regarded as a 'professional' task."*

3. General principles of the Bill

The Bill's provisions

26. The Bill, as introduced, has 30 sections, arranged into three parts, and two schedules. It contains provisions to:

- restrict the making of profit by providers of children's home services, secure accommodation services and fostering services for looked after children (Part 1, Chapter 1);
- require local authorities to submit an annual sufficiency plan to Welsh Ministers in respect of accommodation for looked after children, and to take all reasonable steps to secure sufficient accommodation provided by not-for-profit entities, either within or near to its areas, to meet their needs (Part 1, Chapter 1);
- enable the introduction of direct payments for NHS Continuing Healthcare (CHC) (Part 2); and
- make amendments to ensure that the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') and Social Services and Well-being (Wales) Act 2014 ('the 2014 Act') are able to operate fully and effectively (Part 1, Chapter 2).

Note on terminology: 'restricting' or 'eliminating' profit

27. Chapter 1 of the Bill itself refers to 'restricting the making of profit' in providing social care services to children, whereas the Explanatory Memorandum and other Welsh Government documents accompanying the Bill use the term 'eliminating profit'.

28. Responding to a question as to why these two terms are used interchangeably, the Minister said:

> *"The provisions are not intended to prevent a fostering service business or a children's home business from generating a trading surplus from their operation. In that sense, the Bill does not prevent providers of these services making a profit. However, the provisions of the Bill are intended to ensure that any trading surplus or profit is retained within the business to be re-invested in either growing the business or in improving the*

> *quality of the services which the business provides. The provisions of the Bill are intended to prevent a provider from extracting profit from the business in the way shareholders of a limited company, for example, are commonly rewarded. This is the sense in which the Bill is said to eliminate private profit from services providing care for looked after children."*[5]

29. This report refers to 'restricting profit', as this is the terminology used in the Bill.

Legislative competence and human rights considerations

30. Following the introduction of the Bill, the Llywydd **wrote**[6] to the Health and Social Care Committee and the Legislation, Justice and Constitution Committee to draw their attention to her consideration of the Bill's compatibility with the rights set out in the European Convention on Human Rights (ECHR).

31. Her overall conclusion was that the provisions in the Bill are compatible with the ECHR. However, she went on to say that her view "is that the position in relation to certain provisions is finely balanced, with persuasive arguments both for and against compatibility". She enclosed a summary of the human rights considerations that are relevant to the Bill.

32. On 12 June 2024, we wrote[7] to the Minister to ask for her assessment of the human rights considerations in relation to this Bill, particularly as to whether the provisions of the Bill restricting the ability to make profit could engage the rights under Article 8, and the right to peaceful enjoyment of possessions under Article 1 of the First Protocol to the European Convention on Human Rights. The Minister replied on 28 June 2024[8], setting out her views in Annex B to that letter. We draw this evidence to the attention of the Senedd as part of its consideration of the general principles of the Bill.

Children and Young People's views

33. Article 12 of the United Nations Convention of the Rights of the Child means that children have the right to be listened to and taken seriously when adults are making decisions that affect them.

[5] Letter from Minister for Social Care to Legislation, Justice and Constitution Committee, 9 July 2024
[6] Letter from the Llywydd, 10 June 2024
[7] Letter from Health and Social Care Committee to Minister for Social Care, 12 June 2024
[8] Letter from the Minister for Social Care to the Health and Social Care Committee, 28 June 2024

34. During our evidence-gathering, we held a private stakeholder event with a group of young people to discuss their views on Chapter 1 of the Bill. We also held a public evidence session with young people. These sessions have informed our thinking on Chapter 1 of the Bill.[9]

35. We are very grateful to those young people for taking the time to speak to us. We are also grateful to Voices from Care Cymru for their support in arranging these sessions.

What we were told

36. During our sessions, young people told us:

It is very important that our placements are close to our home area so that we can see our friends and stay in our own school. We want to be close to people we know and to have contact with our family when that is a safe thing to do. We get moved a lot and it is hard to fit into new communities.

> *"What was important when I was in care was the location of my placement, because, when I was in care, I was out in the middle of nowhere, where I didn't have anyone around my own age that I could build friendships with. All my friends were all in the town where my high school was. And that was like 10, nearly 11 miles away from my house. So, I couldn't build any lasting friendships".*
>
> *Rowan Gray*

We want safe, secure placements – somewhere to call 'home', where we don't have to be worried about being moved on.

> *"It's really important that we have a placement that we know we can stay in permanently, and that we're not going to be moved within 24 hours of living in that placement, or we're not going to be moved within a week of living in that placement."*
>
> *Joanne Griffith*

[9] Record of Proceedings ("RoP"), 10 July 2024: Health and Social Care (Wales) Bill page

If we do have to move, we should be given notice.

> *"An hour and a half before I came into care, I was told that I was going into care, and I didn't even know where I was going. I got into a car with a duty social worker. I didn't know this woman, I didn't know where I was living."*
>
> *Elliott James*

We want carers to be properly trained to support us.

> *"I think, obviously, the training is really important, but, as a young person, I don't think it's taken seriously, because I lived in a foster placement and they'd been fostering for 15 years—I hadn't lived with them for 15 years. So, she had a letter come through the door saying about training, and it wasn't mandatory. And she said that, where she's got three kids of her own and she's been fostering for 15 years, she doesn't need that training. But she couldn't take care of me the way she should have with the mental health problems that I have."*
>
> *Rhian Thomas*

We want caring people and not to be mistreated. We want to be shown love and affection so that we can build trust and healthy relationships.

> *"We need a placement that we know that we can call home, we know that we can trust the foster carers, we know that we can build that relationship with them, and even being able to have hugs with foster placements is extremely important, because we need to learn to build a healthy relationship around us."*
>
> *Joanne Griffith*

We want to stay together with our siblings.

> *"I think it's important, when young people come into care and they're a set, so they've got siblings, that they're kept together."*
>
> *Rhian Thomas*

We want placements that can provide for our language/cultural needs.

> During the private event, one young person told us that she had come from a Welsh speaking family, but had been placed with foster carers who were not Welsh speakers. She said she had struggled with the placement because she was not confident in speaking English when she was young.

Money from placements should be re-invested in services and training. We want better mental health services, nice food and a bed. Placements for children with learning difficulties make more money.

> *"A lot of young people are being let down by the system currently. A lot of young people, their local authority won't pay for specialist care for these young people when they desperately need it."*
>
> *Elliott James*

Young people don't always know if it is a profit or not-for-profit placement. Children in care want to be looked after by people who treat you as if they were your own. They "don't want to be advertised with a price tag".

> *"My social worker recently disclosed, for a standardised residential placement that hasn't got any high-tariff behaviours, the company that the child is with is being paid £5,000 a week. If £3 of profit was taken for every £10, that's £1,500 a week that's been taken off this young person, for the support."*
>
> *Elliott James*

We support removing profit but we have concerns that some companies will stop providing care and leave. Care isn't stable at the moment.

> *"I agree with the Bill—I so heartedly agree with it—but my biggest concern, if and when it does get stopped, if it does, is that all these companies are just going to end up packing up and just going elsewhere, because they no longer are able to profit off us, and that's going to cause a lot of problems for all the kids that are being looked after by all these different companies."*

Rowan Gray

We don't really trust local authorities with this. We've been let down for so long. If the law is passed, there should be strong rules about what has to happen and someone should check this is being done. There should be consequences if it isn't.

> *"There are two areas that I think need a massive amount of improvement: training and accountability. Because, if my local authority had actually done what they'd said that they were going to do, I wouldn't be sat here; I would be currently in Bristol, living with my mother. But, because there was no accountability within my local authority, they went back on their word, which they'd given to my mother, and I ended up in long-term foster care."*
>
> *Rowan Gray*

Evidence from stakeholders

Restrictions on profit (Part 1, Chapter 1)

37. The majority of stakeholders who commented on the provisions of the Bill relating to restricting profit in the care of looked after children supported the general principles. This included some private providers. All stakeholders highlighted barriers to implementation.

38. There were significant concerns about the unintended consequences on the market, the timescale required for local authorities to develop new in-house provision and the length of time and complexity for a 'for-profit provider' to transition to a 'not-for-profit model'. These are dealt with later in this report.

39. Barnardo's Cymru told us that the Bill "comes at a critical time for care-experienced children and young people in Wales" saying that "Wales has been working towards radically reforming children's social care, to ensure that we improve outcomes and see fewer children coming into care". They went on to say:

> *"Eliminating profit has been a central plank of the reform agenda, and although we hold concerns around sufficiency, stability and ensuring adequate provision for children to be*

> *cared for close to home, we support the ambition to eliminate profit from the care of looked after children."*[10]

40. Home for Good & Safe Families said that they "strongly believe that by ensuring that only not-for-profit entities or local authorities can provide residential, secure accommodation, and foster care, the Welsh Government is ensuring that all care services prioritise the wellbeing of children over financial gain".[11]

41. Similarly, ADSS Cymru and All Wales Heads of Children's Services (AWHoCSs) told us:

> *"We recognise and share the policy intent behind the removal of profit for the care of children looked after. We believe that the care of children who are in the care system should be driven by their best interests, needs and rights, rather than by financial motives or market forces. We agree that the profit motive can create perverse incentives and distortions in the provision and commissioning of care, leading to poor outcomes, high costs and reduced accountability."*[12]

42. Both Barnardo's Cymru and Voices from Care Cymru said that children and young people had told them that they did not want private companies 'profiting' from having children in their care. Helen Mary Jones from Voices from Care Cymru said there were two things that young people wanted them to raise:

> *"One is the principle, the idea of being sold off to the lowest bidder on a website, which is what happens to children (…) For us, there are issues here around the United Nations Convention on the Rights of the Child, and particularly the right of a child not to be economically exploited, and it certainly feels to young people that they are*
>
> *also there's the issue of the amount of money that comes out of the system. (…) companies are taking 25 per cent, 30 per cent profit. And as one of the young people worked out for us, that means that, for every £10 that the Welsh taxpayer is paying to look after a looked-after child, up to £3 of that is going straight into the pockets of shareholders. And we don't believe, and our*

[10] HSCWB4
[11] HSCWB16
[12] HSCWB30

> *young people don't believe, that that's a very sound economic prospect for the Welsh Government."*[13]

43. Whilst supporting the Bill, a number of stakeholders, including ADSS Cymru and Voices from Care Cymru, described the elimination of profit from the care of looked-after children as being "one piece of a jigsaw puzzle"[14]. Sarah Crawley from Barnardo's Cymru told us:

> *"I believe that the principles and the ambition of eliminating profit are absolutely the right thing to do, but it is only one small aspect of the care of a child."*[15]

44. Similarly, Rachel Thomas from the office of the Children's Commissioner for Wales said:

> *"it's important to see this Bill as a necessary step as part of that wider transformation of children's social care, and so the ability to bring children and young people back closer to home so that they can maintain their links in the community, their links with their family and their support networks."*[16]

45. Despite this support in principle, however, most stakeholders expressed significant concerns about a broad range of issues relating to the Bill's implementation and its potential impact on the lives of looked-after children and young people. These concerns related particularly to sufficiency of not-for-profit placements, transitional arrangements and proposed timeframes, and the accompanying funding for the policy.

46. Llamau said that although the general principles of the Bill were "both promising and critical for ensuring better care and support for vulnerable groups", they recognised the potential impact of the Bill on young people currently in for-profit provision, "especially those achieving positive outcomes and demonstrating reinvestment".[17]

47. The Fostering Network, although "supportive of the key principles and aims of the Bill and the rebalancing towards not for profit", said they had concerns around the details of the transitional processes and timeline, "particularly given the

[13] RoP, 10 July 2024, paras 69-70
[14] RoP, 27 June 2024, para 103
[15] RoP, 27 June 2024, para 9
[16] RoP, 10 July 2024, para 66
[17] HSCWB15

numbers of children in care in Wales are almost the highest ever." They were concerned that the Bill "could result in Wales having less foster carers than we have currently", which they described as worrying given their estimates that "Wales is already in need of 400 more foster carers within the next year".[18]

48. Children in Wales-Plant Yng Nghymru, whilst expressing support for the "vision and aims of the legislation", drew attention to what they described as:

> *"significant challenges, risks and considerations ahead if ministerial aspirations are to be fully realised. This includes, but is not limited to, the timescales currently being proposed in the Bill for transitional arrangements which many of our members believe need reconsidering, as well as the impact on sufficiency of provision, the current workforce and children directly. (…)"*

49. They said that "the elimination of profit should be seen as significant, but only one part of a much wider programme of work required to reconfigure services for children". There are, they said, "well documented workforce challenges, budgetary constraints, growing demand and complexity of need in the community, the impact of which are placing additional strains upon public and third sector services which are unsustainable".[19]

50. In their view:

> *"if Ministers are seriously committed to radically reforming children's social care in Wales, other pieces of the jigsaw require urgent attention too, yet have not formed part of this Bill or any other legislation expected during this Senedd term."*[20]

51. NYAS Cymru were also supportive of the principle of eliminating private profit from the care of looked after children, saying they "remain committed to the view that no child or young person should ever feel like their experiences of care, or they themselves, are an opportunity for organisations to profit off".[21]

52. Like other stakeholders, though, they too were concerned about how the Bill will be delivered in practice, saying they did not believe that the Welsh Government had "fully considered every possible unintended negative consequence Part 1 of the Bill may have on children's lives, nor do we believe

[18] HSCWB6
[19] HSCWB18
[20] HSCWB18
[21] HSCWB14

appropriate measures have been put in place to mitigate this." They went on to say that they were "concerned that the introduction of this Bill is likely to disrupt the stability and day-to-day lives of a significant number of children in Wales".[22]

53. CIPFA, whilst not commenting on the "broad ethical questions" around the Bill, said:

> *"there is the risk that eliminating the profits of providers will lead to a series of significant, unintended consequences. These consequences include the handing back of contracts, the closure of services, market failure, workforce leaving the market during a time when there is a workforce crisis, loss of skills, disruption to placements, negative impacts on looked after children's outcomes, the investment required being more than estimated, and more.(...)*
>
> *the Welsh Government must ask if they are willing to take these risks in the short- and medium-term."*

54. In contrast to the majority support for Chapter 1, a small number of stakeholders said they did not support these provisions in the Bill, arguing that the policy was driven "more by political ideology than empirical evidence"[23], and that more effective commissioning of services would be a better alternative to the approach taken in the Bill[24].

55. Private and independent providers of children's services argued strongly that 'profit' did not mean poor quality services or outcomes for children and young people. Harvey Gallagher from the Nationwide Association of Fostering Providers told us that independent providers, like his,

> *"offer really high-quality (...) services for children with complex needs—more complex needs than the local authorities are able to provide for themselves—and they do it at a good value for money."*[25]

56. Family Fostering Partners told us that they believed the Welsh Government "could decide to grow not-for-profit provision and limit for-profit care in a myriad of other ways", and that they "have not seen any justification for pushing forward

[22] HSCWB14
[23] HSCWB7, HSCWB9
[24] HSCWB9, HSCWB13
[25] RoP, 27 June 2024, para 119

with the Bill as currently written as opposed to following some other route towards the political objectives of removing profit."[26]

57. A number of stakeholders[27] sought to distinguish between 'profit' and 'profiteering', saying that the proposals in the Bill to restrict profit did not recognise the distinction between large multi-national organisations that extract excessive profits and small, owner-run businesses that reinvest the majority of profits. Some, including TACT and the Fostering Network, also suggested that an opportunity had been missed to safeguard smaller SMEs in Wales.

58. The Children's Homes Association felt that, whilst legislation was needed to tackle "the unethical practice of some of the largest children's social care providers", it believed that the Welsh Government "can meet its policy objectives without the dangerous and disruptive blanket approach of removing all profit from children's residential care, including by looking at effective strategic commissioning."[28]

59. They went on:

> *"It is our evidence-based view that the financial, social, and human costs of eliminating profit have been dangerously underestimated, and that the policy will not only worsen the sufficiency crisis in Wales but directly impact the wellbeing and life chances of children and young people for whom the Welsh government has a duty of care. Further, it will create a barrier for local authorities to deliver their Statutory Duties."*[29]

60. The CHA also argued that the "policy is inconsistent with and contrary to the recommendations in Competition and Markets Authority report", which it says recommended an enhanced and improved approach to commissioning external services for children looked after.[30]

61. First Affinity Fostering Care[31], Amberleigh Care Limited[32] and the Nationwide Association of Fostering Providers (NAFP) questioned the Welsh Government's

[26] HSCWB7
[27] Including the Children's Homes Association (HSCWB13) and Mark Carwardine (HSCWB9)
[28] HSCWB13
[29] HSCWB13
[30] HSCWB13
[31] RoP, 27 June 2024, para 134
[32] HSCWB3

claim that the principle behind the policy was based on the views of children. NAFP told us:

> *"the principle [of eliminating profit] is often stated as being based on the views of children. We believe that the evidence published to support this claim is very weak. Young people feel strongly about the quality of care they receive, not about the organisation providing that care."*[33]

62. NAFP argued that "foster care and children's homes are not the same" and that "generalist policies will not address the different issues that impact on foster care and children's homes. They said that the principle of removing profit from the care of looked-after children "will not address the key barriers to improving foster care for children". They, too, argued that the focus should instead be on "better commissioning by local authorities" as well as "closer regional working and a new spirit of collaboration between local authorities and IFAs [independent fostering agencies]".

63. In addition, the private and independent providers we heard from criticised what they described as "the misinformation around the level of profits being made by providers. Dr Deborah Judge from Birribi told us:

> *"this figure of £910 per week per child was being thrown out there as the norm. We've worked out that our rate is £165 per week per child. (…) we worked through the pandemic (…) and that year, our profits were 11 per cent. Subsequent to that, our profits have been 3 per cent, then 3 per cent, and then, in this last financial year, probably 8 per cent or 9 per cent, and we employ 670 staff."*[34]

64. Similar points were made by Woodlands Ltd and the CHA, who said:

> *"the majority of providers in Wales—if not, it's a small proportion—are not making anywhere near the levels of profit that are quoted in the big headline articles."*[35]

65. In addition, the CHA drew attention to the costs put forward by the Welsh Government, saying:

[33] HSCWB28
[34] RoP, 27 June 2024, para 141
[35] RoP, 27 June 2024, para 148

> *"they've demonstrated that the cost per child per week in the independent sector is £3,811, whereas, in local authority provision, it is £5,265 per child per week on average. That's not including education and therapeutic costs as well, so that's a 38 per cent difference in cost base."*[36]

66. Some private and independent providers[37] told us that they had been "subject to a very hostile environment" during the lead-in to the Bill as a result of being "lobbed into the same pot" as other providers, irrespective of the level of investment or the degree of profit.[38]

Children's Rights Impact Assessment

67. The Welsh Government has a legal duty under the Rights of the Child and Young Persons (Wales) Measure 2011 to give 'due regard' to children's rights in every decision it makes. Child's Rights Impact Assessments (CRIAs) are its chosen vehicle for delivering this.

68. Both Children in Wales-Plant yng Nghymru and NYAS Cymru questioned whether the Welsh Government had taken full account of children's rights in preparing the Bill.

69. Children in Wales-Plant yng Nghymru said that the Children's Right Impact Assessment "provides insufficient detail and assurance that children's rights have been fully taken into account during the drafting of this Bill and that all the risks have been mitigated".[39]

70. NYAS Cymru made similar points, arguing that "the introduction of Part 1 of the Bill runs the risk of compromising children's rights in Wales". They said they were "disappointed that Welsh Government have not published a full or comprehensive CRIA that truly considers this". They asked the Welsh Government to publish a comprehensive CRIA "as a priority to ensure that full consideration has been made to how Part 1 of the Bill could comprise children's rights, and what can be done to mitigate this".[40]

[36] RoP, 27 June 2024, para 146
[37] Including First Affinity Fostering Care, Woodlands Ltd, Birribi
[38] RoP, 27 June 2024, para 122
[39] HSCWB18
[40] HSCWB14

Monitoring and evaluation

71. As regards the formal evaluation and review of Part 1 of the Bill (as referenced in paragraphs 10.3-4 of the Explanatory Memorandum), Children in Wales-Plant yng Nghymru called for regular reports on progress, by the Eliminating Profit Programme Board, to be made public and shared with Senedd Members. They also said that timescales were needed in respect of the proposed formal evaluation.[41]

72. The issues referred to above relating to Part 1, Chapter 1 of the Bill above are covered in more detail in Chapter 4 of this report.

Regulation of service providers, responsible individuals and the social care workforce (Part 1, Chapter 2)

73. We received a small amount of evidence on this Chapter of the Bill. Those who responded were generally supportive of the principles, again with some comments on or questions about implementation. These matters are covered in more detail in Chapter 5 of this report.

Direct payments for continuing healthcare (Part 2)

74. There was broad support for the general principles of Part 2 of the Bill from those who commented on the proposals for direct payments for continuing healthcare, with stakeholders saying that direct payments offer people choice and control over their care. Disability Wales said this was an issue that disabled people have been campaigning about for many years, as direct payments "allow a level of flexibility that is not available under other systems".[42]

75. Disability Wales, Learning Disability Wales, and Carers Wales all indicated their support for the proposal, with Learning Disability Wales saying:

> *"People with a learning disability often feel that they don't have enough choice and control in their lives, so the option to have a direct payment we see as a positive."*[43]

76. Carers Wales said that, although the unpaid carer themselves might not be receiving direct payments through continuing healthcare, they still believed that the Bill mattered "immensely" for unpaid carers because the type of community

[41] HSCWB18
[42] HSCWB37
[43] RoP, 12 June 2024, para 106

healthcare and the level of support provided to their loved one has "a big impact on the level of care that family members and unpaid carers have to provide". They also noted that many will have a role in applying for, administering and managing direct payments with, or on behalf of, their loved one who they care for.[44]

77. As with Part 1 of the Bill, there were, however, a number of concerns about the implementation of the proposals, particularly in relation to the Bill's impact on the social care workforce, governance and delegation arrangements, and the availability of and pay rates for personal assistants. There were also concerns about the possible burden that direct payments could place on individuals, and calls for good quality information, advice and support for individuals wishing to take them up.

78. The All Wales Forum of Parents and Carers of People with Learning Disabilities welcomed the introduction of direct payments for CHC, but went on to say:

> *"it is important to acknowledge and address some of the issues we know exist within the delivery of them [direct payments] within social care in order for this to work seamlessly. If we're to achieve equality of status for social care alongside health, we need to enable and enforce a culture where they can truly be equal partners in care delivery."*[45]

79. Similarly, the WLGA[46] and ADSS Cymru, whilst both supportive of the introduction of direct payments for CHC, also made reference to their implementation, saying

> *"It is vital that this change comes with a significant improvement in how CHC works in practice. CHC is not currently applied consistently across Wales, with variation of interpretation between health boards."*[47]

80. A number of stakeholders, including Learning Disability Wales and local government representatives, were clear that direct payments would not necessarily be the right option for everyone, mainly because of the additional administrative burden that comes with direct payments. They felt strongly that people should not be 'pushed' into accepting direct payments unless they were

[44] RoP, 12 June 2024, para 107
[45] HSCWB12
[46] HSCWB31
[47] HSCWB30

the right option for them, and they should not be seen as "the only option if you want to have any sort of voice and control".[48]

81. Jake Smith from Carers Wales highlighted what he described as "the reluctance and, in some cases, fear people might have from changing their care package and potentially taking up continuing healthcare, even with direct payments." He said that the independent evaluation of the Social Services and Well-being (Wales) Act 2014 had found a widespread feeling of frustration among service users and carers about having to "fight the system for what little they get". This, he said, created a reluctance to move to a different package of care, which might mean that people are less likely to take up the offer of moving to CHC, even with direct payments.[49]

82. We heard from disabled people and stakeholders about difficulties faced by some recipients of direct payments under the current system. In particular, we heard about a lack of flexibility and uncertainty over what the funds can be spent on. They said this was partly due to variations in the quality of care and support plans, which, if not sufficiently clear and comprehensive, could lead to the person being told they cannot use the funds in the ways they want to. In addition, we heard that some people feel there is a lack of co-production in developing care plans which also contributes to these issues. On this point, Nathan Lee Davies told us:

> *"I've had a very negative experience with direct payments. The local authority have recently clawed back £33,000 of my direct payments that I was saving for a proposed short break. And I find it very difficult to spend my money in the way I want."*[50]

83. He went on to say that the legislation "looks like a move in the right direction" but that he doesn't believe the Bill "addresses the entire problem, namely the failure to apply the 5 principles of the SSWBA 2014 on the ground."[51]

84. The Motor Neurone Disease (MND) Association welcomed the introduction of direct payments for CHC, but said that "in order for this change to be impactful, it must come with adequate support and signposting, a clear plan to address the

[48] Andrew Morgan, WLGA (RoP, 27 June 2024, para 390) and Samantha Williams, Learning Disability Wales (RoP, 12 June 2024, para 118)
[49] RoP, 12 June 2024, para 140
[50] RoP, 12 June 2024, para 5
[51] HSCWB33

issues within the social care workforce and a review of the level of direct payments."[52]

85. The issues referred to above are covered in more detail in Chapter 6 of this report.

Evidence from the Minister

Restrictions on profit (Part 1, Chapter 1)

86. The Bill's Explanatory Memorandum (EM) states that, through the Updated Programme for Government, the Welsh Government is seeking to further improve social care, and the health and social care interface, in Wales.

87. In relation to the provision of social care services to children and young people, the EM says:

> *"The commitment to 'put in place a framework to remove profit from the care of looked after children' is a clear part of the Welsh Government's wider vision for whole system change.*
>
> *The aim is to ensure that public money invested in the care of looked after children - starting with care home services for children and fostering services - does not profit individuals or corporate entities, but instead is spent on children's services, to deliver better experiences and outcomes for young people..."*

88. The Minister described the Bill as "pivotal for our broader transformation vision on children's services". She said the Welsh Government had decided to pursue the Bill because it was "concerned that the market is not functioning effectively and is not meeting the needs of children." She went on to say:

> *"We don't believe that profits should continue to be made from caring for children whose circumstances require them to be in the care of the local authority, and instead what we're going to be doing is transitioning to a not-for-profit model for care for looked-after children to ensure that public money invested in accommodation and fostering care for care-experienced children is not extracted out as profit, but is reinvested back*

[52] HSCWB21

> *into the system to support better outcomes, sustainable services and the professional development of staff."*[53]

89. She emphasised that the Bill should not be seen in isolation, but as part of the Welsh Government's "wider transformation programme" in this policy area.[54] She told us:

> *"part of what we are trying to do with this legislation is to ensure that we have accommodation, where that is needed and where that is necessary, that helps to keep a child closer to their family connections, their friends, their education systems, their social groupings, their community links, all of that.*
>
> *We cannot continue with a situation that rips the most vulnerable children out of those communities just to place them in residential care that is cheaper to run elsewhere in the country."*[55]

90. In her view, "doing nothing in this area is really not an option for us", not only because of the views expressed by children and young people that they do not wish to be treated as commodities, but because of the "unsustainable" costs for local authorities as a result of the current system:

> *"In 2016-17, I think the cost to local authorities of looked-after children was around £65 million. We've seen that increase in less than 10 years to nearly £200 million; that's a 300 per cent increase.*
>
> *Somewhere in the region of 20 per cent to 25 per cent of that is being extracted as private profit (…) if we continue on this trajectory, we are going to see within another 10 years potential costs for looked-after children approaching £1 billion."*[56]

91. The Bill, she said, "is really about sending a very clear signal that this is something that we take very seriously and is not going to be a voluntary process".[57]

92. Adding to this, Anthony Jordan, Head of Programme and Legislative Implementation within the Welsh Government's Social Services and Integration

[53] RoP, 6 June 2024, para 15
[54] RoP, 6 June 2024, para 15
[55] RoP, 6 June 2024, para 58
[56] RoP, 6 June 2024, para 53
[57] RoP, 6 June 2024, para 70

Directorate, stated that current powers of direction held by the Welsh Government in relation to local authorities' social care functions would not be able to be used to direct the exercise of their commissioning functions, which was why primary legislation had been considered as necessary.[58]

Regulation of service providers, responsible individuals and the social care workforce (Part 1, Chapter 2)

93. In relation to the regulation of service providers, responsible individuals and the social care workforce, the Bill will make a number of amendments to help support the workforce to operate more effectively.

94. The EM says the proposed amendments aim to address specific issues and discrepancies within the 2014 and 2016 Acts to bolster the functionality of the regulatory framework and assist Care Inspectorate Wales (CIW) and Social Care Wales (SCW) in fulfilling their regulatory responsibilities.

Direct payments for continuing healthcare (Part 2)

95. The EM states that demand for a policy change in this area has been growing "to address concerns of unfairness and lack of voice and control faced by disabled and seriously ill people".

96. It says that the changes to be implemented as a result of the Bill should potentially lead to more individuals agreeing to undergo NHS Continuing Healthcare (CHC) assessments, without fear of losing an entitlement to direct payments, and therefore having their complex health needs better managed as a result of having their full package of healthcare and care funded by the NHS.

97. Introducing this Part 2 of the Bill, the Minister told us that it was intended to give disabled people and those with long-term health needs "much more control and voice over how and by whom their care is delivered."[59]

Our view

98. In our consideration of the general principles of the Bill, we have looked in detail at the evidence we received from stakeholders and the Minister, both orally and in writing. Importantly, we have heard from young people in care. We recognise this group of stakeholders will be directly affected by this change.

[58] RoP, 13 July 2024, para 13
[59] RoP, 6 June 2024, para 16

99. In this section, we set out our high-level thoughts on the overarching principles of the Bill, and indicate our in-principle position on each of these. The remaining chapters of this report deal with the specific concerns of stakeholders about each of the main Parts of the Bill and our detailed views on them.

100. Firstly, in relation to Part 1, Chapter 1 of the Bill; restrictions on profit. As a Committee, we are united in the belief that all care provided to looked after children should be rooted in achieving the best possible outcomes for those children, in a supportive and nurturing environment which meets their individual needs. A majority of us believes that this is best achieved by the restriction of private profit from the care of looked after children.

101. We heard very powerful evidence from care experienced young people who told us that they did not want to be treated as a commodity. They argued strongly in favour of the principle that money spent on the care of looked after children should benefit those children directly, and should not be extracted in the form of private profit.

102. We acknowledge the views of those who do not support the general principles of this Bill and the time they have given to help us with our considerations. We have also heard genuine concerns about the implementation of the Bill, and have reflected on these views in detail later in this report.

103. As a Committee, our primary concern must be the well-being of children in the care of Welsh local authorities and getting the best possible outcomes for them as a result of the significant amount of public money that is spent on placements. Based on the evidence we have heard, the current situation presents sustainability challenges. Without exception, frontline charities who support children in care support this Bill. It is also clear to us that care experienced children themselves support the removal of profit from their care. For these reasons, the majority of us support the general principles of this Part of the Bill.

104. In saying this, we recognise that the Bill should not be seen in isolation, and is just one part of the Welsh Government's 'transformation agenda' in this policy area.

105. We are acutely aware of the significant challenges associated with giving effect to this policy, and we make a number of recommendations to the Welsh Government in this report which seek to address these.

106. Second, in relation to Part 1, Chapter 2; regulation of service providers, responsible individuals and the social care workforce. This was not an area in

which we received much evidence, and those who did comment were broadly content with the principle of the proposals. As such, we are content, in principle, with the proposals in this Chapter.

107. Finally, in relation to Part 2; direct payments for continuing healthcare. We support the principle of making direct payments available to those individuals in receipt of continuing healthcare. We recognise that direct payments may not necessarily be the best option for all individuals, and that there will be no obligation to make use of them. However, as we heard in evidence, for those who find them suitable, they can provide an important additional element of choice and control for that person in their own care.

108. Again, there are a number of significant implementation challenges associated with this policy. We have sought to reflect the evidence we heard on these challenges in this report, and we have made a number of recommendations to the Minister.

Recommendation 1. A majority of the Committee recommends that the Senedd supports the general principles of the Health and Social Care (Wales) Bill.

4. Part 1: Social Care, Chapter 1 – provision of social care services to children: restrictions on profit

Overview

109. Eliminating private profit from the care of children looked after[60] is a Welsh Government Programme for Government[61] commitment. Part 1 of the Bill contains substantive provisions in respect of:

- Restricting the making of profit in the provision of care home services provided wholly or mainly to children, secure accommodation services and fostering services (referred to as "restricted children's services"). (sections 2-9)
- Local authority functions in respect of accommodation for looked after children: duties to secure sufficient accommodation; duty to prepare and publish an annual sufficiency plan; applications to the Welsh Ministers for the approval of a 'supplementary placement' where there is no alternative placement or where the local authority considers none of the available "not-for-profit" placements would be consistent with the child's well-being (sections 10-13)

Evidence from stakeholders

Providers must be 'not for profit' entities

Permitted business models

110. The Bill will require a provider of restricted children's services that is registered with Care Inspectorate Wales to be a "not-for-profit" entity, defined as either:

- a charitable company limited by guarantee without a share capital;

[60] Terminology: Whilst the term 'care experienced children' is now widely used, 'looked after children' is used in legislation. Welsh Government statistics refer to 'children looked after'. These terms have a legal meaning and they refer to children under 18 who are 'looked after' by local authorities.
[61] Programme for Government, Welsh Government

- a charitable incorporated organisation;
- a charitable registered society; or
- a community interest company limited by guarantee without a share capital.

111. The EM notes that the market in Wales currently includes a "broad spectrum of businesses differing in size, scope, and objectives with vastly different commercial models", including:

- Small and Medium-sized Enterprises "typically owned and operated by people with experience in children's social care" and owned by those "almost always based in Wales".
- Larger companies, including entities that run multiple services owned by public limited companies and those owned by private equity. These larger companies "often have services on either side of the Welsh border". These "provide a significant market share of Welsh children's social care but operate across vast geographies and industrial sectors".

112. A number of stakeholders questioned the not-for-profit models provided for in the Bill, suggesting that alternative models could be explored that could "solve the profiteering issue" without taking the "blanket approach" of seeking to eliminate profit.[62]

113. The Nationwide Association of Fostering Providers told us that the models proposed were "not sufficient for an easy transition to not-for profit for current IFAs". In their view:

> *"Additional simpler and less costly structures, such as a not-for-profit company limited by guarantee (as with NAFP), would better support an efficient transition. There are also for-profit structures, such as employee owned trusts, widely accepted as 'ethical', that have not been included where the blunt definition of 'profit' is the only criteria. It is also unclear why it was even necessary to list acceptable models."*[63]

[62] HSCWB7, HSCWB13, HSCWB28
[63] HSCWB28

114. A number of others, including Cwmpas, Family Fostering Partners and the CHA, also called for an employee-owned model to be included as one of the models in the Bill. On this point, Cwmpas stated:

> *"Whilst employee-owned businesses can be profitable, and are therefore currently outside of the scope of the legislation, it is a democratic ownership model that can be established on the basis of profit for purpose."*

115. CHA told us that it represents 22 members and just over 400 beds in Wales, and that "none of our members are willing to transition at the moment". It went on:

> *"(…) that is not to say they would not consider it if the models that were proposed—if there were alternatives, such as, for example, employee-owned trusts, (…) and, for example, if CIC's got maybe a degree of share capital as an alternative. So, if the models were workable, that would likely change, but, at the moment, from our membership in residential, there is nobody at the moment willing to transition, with the lack of information that is out there."*[64]

116. Family Fostering Partners told us that there was "no valid reason why the manifesto's objectives cannot be met by incorporating new not-for-profit models such as Social Enterprises, employee owned trusts or companies limited by guarantee without share capital".[65]

117. Sally Jenkins, ADSS Cymru and Chair of the 4Cs Board, told us that ADSS Cymru would be "really keen to see some further exploration" of the four models proposed in Bill saying:

> *"Local authorities have a duty to promote social enterprise co-operatives and what we would like to see is some join-up between the models that are agreed within the Bill and what we're able to do."*

118. Part of the reason for this, she said was:

> *"that we fear an unintended consequence (…) of small, local businesses that provide good-quality, local care, employing*

[64] RoP, 27 June 2024, para 186
[65] HSCWB6

> *local people are at risk of going out of business, whereas the very big hedge-fund, private equity companies, who leave us most with distaste and alarm in this arena, will be able to continue to deliver, but what they will do is they will place a management charge and a recharge to us."*[66]

119. She said this was something that was starting to be seen already, "where you see complex legal arrangements of arm's-length provision from England to Wales, where you have not-for-profit delivery in Wales but an arm's-length company in England".[67]

120. Similarly, the WLGA referred to its "significant concerns" over the number of providers who may not want to change their model of provision, and the impact this might have on the availability of future placements. They said:

> *"there will be a need to further consider whether these definitions [of a not-for-profit entity] provide enough scope for providers to be able to operate as a not-for-profit entity."*[68]

121. Linked to this, a number of other stakeholders, including TACT Cymru and Llamau, also referred to the potential for loopholes in the models proposed in the Bill, and the need for the Welsh Government to ensure there could be no circumventing of the rules.

122. Mike Anthony from TACT Cymru said his organisation had concerns relating to the community interest company model proposed in the Bill. Drawing on the experiences of TACT in Scotland, he said:

> *"That is something that concerns us, just in terms of being able to still have shareholders make a profit, but, on the surface, appearing to be not-for-profit and we are concerned that that still means that money is coming out of Wales, if you've got companies turning to that structure."*[69]

123. Similarly, Home for Good & Safe Families highlighted the potential for for-profit providers to "seek to circumvent" the restrictions under the Bill by collaborating with English partners and local authorities. They argued that it would be necessary for the Welsh Government to partner with relevant UK

[66] RoP, 27 June 2024, para 279
[67] RoP, 27 June 2024, para 279
[68] HSCWB31
[69] RoP, 27 June 2024, para 28

Government departments and issue clear guidance to Welsh and English local authorities.[70]

Support for providers to transition

124. We heard from a number of stakeholders that more guidance and support was needed for organisations to transition to a not-for profit model. Mike Anthony from TACT Cymru told us:

> *"we should encourage [SMEs] to move over to be charitable organisations, but it's felt like there hasn't been the level of support there. I know one organisation that told us in one of the meetings that it had taken them two years to get ready to become a charity, and that had put off a lot of people along the way."*[71]

125. Barnardo's Cymru, the Children's Society and Action for Children all made similar points, with Action for Children reporting that different local authorities had taken different approaches to engaging with providers which had been "a little bit clunky". They said there was a need for an "overview of the way forward" to avoid this in the future.[72]

126. The Children's Society told us there was a "lack of detail" about how the Welsh Government will support providers who wish to transition. They went onto say:

> *"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."*

127. The CHA also highlighted the process that providers will have to go through to transition, saying "the word 'transition' is also a bit of a red herring. Providers

[70] HSCWB16
[71] RoP, 27 June 2024, para 27
[72] RoP, 27 June 2024, para 73

can't actually transition; they would have to close down their current business and open up another business as a separate legal entity".[73]

128. Colin Tucker from First Affinity Fostering Service said that the work and costs associated with transitioning to a new business model were "significant and yet we're being offered no help".[74]

129. Referring to the transition period after April 2027, the Children's Homes Association pointed to provisions in the Bill that allow existing private providers to remain registered subject to conditions imposed by regulations", saying that "without detail on what these conditions are, providers cannot make sound business decisions or understand how these conditions may impact their business."[75]

Costs and potential savings

130. The Regulatory Impact Assessment (RIA) estimates the cost to local authorities for implementing the policy to eliminate profit from the care of looked after children is £185.7m - £245.5m.

131. Of this, between £107.1m and £142.8m is the capital cost to purchase and refurbish properties to replace capacity that is expected to be lost when for-profit providers exit the market in Wales. It says that "this cost to local authorities is expected to be at least partially offset by a reduction in outturn costs".

132. The EM also outlines benefits from the policy, which include:

- Lower local authority outturn for children's care because of 'eliminating profit' (from £194.0m to £253.9m).
- The residual value of residential care homes for children at the end of the appraisal period (from £64.3m to £85.7m).

133. The EM says the increase in national expenditure on placements is proportionately higher than numerical increases. While the number of children in residential placements has increased from 355 to 590 (or 66%) since 2016-17, spending has tripled (from £65.4m in 2016-17 to £198.3m in 2022-23). Corresponding data for foster care showed the number of children in foster care

[73] RoP, 27 June 2024, para 164
[74] RoP, 27 June 2024, para 177
[75] HSCWB13

increased by 11% while spending increased by 23% (from £116.8m in 2016-17 to £143.8m in 2022-23).[76]

134. The RIA is supported by costs estimates produced by ADSS Cymru, at the Welsh Government's request.[77]

135. Both the WGLA and ADSS Cymru have been clear about the financial pressures facing local authorities as a result of the rising costs of caring for looked after children:

> *"'during 2023-24 alone councils faced additional in-year pressures amounting to £219m, 50 per cent of this is attributable to social services pressures and builds on a £93m social services overspend in 2022-23'. In 2024-25 social care budgets are facing an estimated pressure of £261m. In 2025-26 this will be £187m and £197m in 2026-27.*
>
> *Cumulatively, across all services, the pressures building up in the system across local government, and the resulting budget gap, means that the outlook is extremely stark and the options for many local services will be unpalatable."*[78]

136. The WLGA said that, "whilst the RIA sets out that this cost to councils is expected to be at least partially offset by a reduction in outturn costs, this is calculated over a 10-year period. Experience shows that this will be cost avoidance rather than cashable savings".[79]

137. It went on to say:

> *"It is also important to note that the ADSS Cymru report which accompanies the RIA and considers some of the cost implications highlights that some of the operational savings that have been identified with moving to a local authority model from a for-profit model are contested.*
>
> *In addition, the Competition and Markets Authority (CMA) report referenced throughout the RIA found that the cost to local authorities of providing their own children's home*

[76] Explanatory Memorandum (EM), page 59
[77] Eliminating profit from the care of children who are looked after: contribution to the Regulatory Impact Assessment, ADSS Cymru, March 2024
[78] HSCWB31
[79] HSCWB31

> *placements is no lower than the cost of procuring placements from private providers, despite prominent levels of profit."*[80]

138. The WLGA was clear that the 'eliminate profit' policy would require "significant investment from the Welsh Government at a time when resources will be stretched more than ever". They called for the Welsh Government "to be clear as early as possible" about what funding will be provided and when it will be available to enable planning."[81]

139. Similarly, ADSS Cymru referred to the "significant investment and support" that would be required from the Welsh Government as a result of the "responsibility and accountability for developing and providing care for children looked after shifting largely to local authorities, who will face increased pressures and expectations to ensure a sufficiency and sustainability of care provision".[82]

140. A number of other stakeholders also commented on the financial implications of the Bill, and the cost/benefit analysis put forward by the Welsh Government.

141. Children's Homes Association said that the Welsh Government had "significantly misquoted" the CMA's report in its evidence base, arguing that both the CMA and the 4Cs had found no quality issues specific to for-profit provision, noting no significant difference in quality between local authority and for-profit services.[83] They also highlighted other "key costs that have not been factored into the Welsh Government's assessment or have been underestimated", including workforce and training costs, transition costs for providers and compensation payable to providers who exit the market.[84]

142. The CHA also said that transitioning to a new business model would "divert resources and add new pressures" for businesses, saying that any transition to a new legal entity would need to be financed and could result in a debt burden to that company.

143. The Chartered Institute of Public Finance and Accountancy (CIPFA) commented on the rise in spend on residential care and says:

[80] HSCWB31
[81] HSCWB31
[82] HSCWB30
[83] HSCWB13
[84] HSCWB13

> *"Gross expenditure by Welsh local authorities on children's residential care has increased dramatically in recent years, rising from £85 million in 2017/18 to £210 million in 2022/23. This represents an increase of 146%. This is clearly an unsustainable position and demands action."*[85]

144. It went on to state:

> *"CIPFA believes that the short-term impact of the policy is likely to be greater than the estimate in the Regulatory Impact Assessment (RIA) but agrees that there are likely to be long-term benefits to the policy"*[86]

145. Family Fostering Partners said they had "significant concerns regarding the financial projections in the RIA" and said it was "imperative to conduct a thorough study comparing like-for-like provision costs and assessing the percentage of foster parents willing to transition". Without such an analysis, they said, there was a risk that local authorities will be burdened with significant unexpected costs.[87]

146. Both NYAS Cymru and the Children's Commissioner referred to the need for financial support for the third sector:

> *"I am aware of funding that has been made available to local authorities to expand their provision of in-house and within area provision. However, I understand that there may be barriers to third sector organisations accessing any funding of this nature at present. If this is correct, I think this is a missed opportunity, as the third sector will have a valuable role in supporting this policy."*[88]

147. Similarly, NYAS said "there are several third sector organisations who provide foster and residential services who may be able to assist with a potential decrease in provision, and additional funding would assist this."[89]

Funding for transition

148. The Welsh Government has committed £68 million over three years to support this objective: 2022-23: £13m; 2023-24: £26m; and 2024-25: £29m. In 2023,

[85] HSCWB27
[86] HSCWB27
[87] HSCWB7
[88] HSCWB8
[89] HSCWB24

the WLGA referred to the eliminate profit policy proposals and the £68 million funding saying:

> *"The commitment to eliminate private profit from the care of looked after children was highlighted as having a detrimental impact on the availability of placements with risks around the adequacy of the grant funding to fully cover transitional costs and the risk if the period of transition does not extend beyond the current funding period of 2024-25."*[90]

149. Both NYAS Cymru and Home for Good & Safe Families welcomed the £68m investment by the Welsh Government but did not feel that it would be sufficient. Home for Good & Safe Families argued that "to ensure the continued success and stability of this Bill, we strongly advocate for additional support beyond 2025."

150. They encouraged the Welsh Government to announce a new financial support package that extends throughout the transitional period and beyond 2027, describing this as "crucial" for local authorities to fully adjust to the new system[91].

151. The WLGA and ADSS Cymru both referred to future funding, with Sally Jenkins from ADSS saying that local authorities needed clarity from the Welsh Government about any future funding that would be made available to support local authorities.[92]

Transition and ensuring sufficient placements to meet demand

152. The majority of stakeholders expressed strong and serious concerns about arrangements for transitioning to the new not-for-profit models and ensuring sufficiency of future placements. They explained that their concerns were set against a backdrop of pre-existing, long-term challenges in securing enough placements for looked after children in both foster and residential care.

153. This issue is covered in the EM, which refers to "demand outstripping supply" and says, "there is an insufficient supply of residential and foster care placements to meet the wide-ranging needs of our looked after children population". In

[90] WLGA evidence to the Finance Committee on the Welsh Government draft budget 2024-25
[91] HSCWB14 and HSCWB16
[92] ROP, 27 June 2024, paras 331-332

addition, ADSS and the WLGA have previously said that cases are becoming more complex[93], and this was also highlighted by other stakeholders[94].

154. Stakeholders described the scale of the change that would need to take place to transition to an entirely not-for-profit model, with Barnardo's telling us:

> *"At the moment, there are 49 residential provisions within local authorities, and there are 245 private profit-making provisions. That's a vast change to move from, for all of us across any sector within Wales (…)"*[95]

155. In relation to fostering provision, TACT said:

> *"I think I saw some figures at the end of last year saying there were just under 1,300 children in independent fostering placements. Now, between Barnardo's, Action for Children, TACT and another charitable organisation I know of (…) I think there are fewer than 200 children in our placements. So, we're only a sixth of the number of independent placements, so it's a massive challenge to be able to meet that."*[96]

156. ADSS Cymru said the Bill represented "the biggest single change for children's services—indeed, social care—since the Children Act was introduced in 1991. It's of enormous scale and impact for children's services, and we've never been asked to manage something of this scale before."[97]

157. We heard concerns that removing profit in the timeframe proposed could exacerbate existing sufficiency problems, particularly in the short to medium term. This, in turn, could lead to significant disruption for looked after children and young people as some private providers withdraw placements, and the third sector and local authorities work to increase their provision.[98]

158. There were also concerns about a lack of sufficiency leading to an increase in out-of-area placements or in unregistered accommodation, particularly for those with more complex needs or requiring specialist homes.

[93] ADSS and WLGA, response to Finance Committee consultation on Welsh Government draft budget 2024-25
[94] HSCWB7, HSCWB18
[95] RoP, 27 June 2024, para 79
[96] RoP, 27 June 2024, para 89
[97] RoP, 27 June 2024, para 282
[98] Including: HSCWB5, HSCWB10

159. NYAS Cymru said they did not believe that Part 1 of the Bill was "currently in a position where it can be brought into legislation without causing unnecessary disruption to the lives of children living in private provision across Wales."[99]

160. Family Fostering Partners said there was a "concerning lack of evidence suggesting that for-profit providers will adapt to or remain operational." They believed it was "crucial for proponents of the Bill to prepare for the possibility that these changes could lead to a significant reduction in the availability of suitable placements for foster children in Wales".[100]

161. The Children's Society suggested that focusing instead on supporting more not-for-profit providers to expand or establish themselves could increase supply in a more managed way that would be easier for local authorities and involve less disruption to children.[101]

162. In contrast, Home for Good & Safe Families said that, while they recognised the significant burden the Bill places on local authorities, "we firmly believe that this is an important and necessary step toward creating a healthier, more sustainable care system". In their view, "while there will undoubtedly be challenges in the transition, the long-term benefits of a system focused solely on the welfare of children cannot be overstated".[102]

163. Amongst the concerns of stakeholders about future sufficiency was the level of current uncertainty. ADSS Cymru told us that "one of the issues is that we don't yet know fully what it looks like, how many providers are actually going to transition to the not-for-profit model and what the gap is going to mean in that regard". They said that, although unlikely,

> *"if none of them transition to a not-for-profit model, we'd be looking at a requirement for an additional 204 residential homes in Wales, with 653 beds, based on current figures. (…) those figures fluctuate, and, as it currently stands, whilst they might be stabilising, there's a possibility that those numbers will further increase."*[103]

[99] HSCWB14
[100] HSCWB7
[101] HSCWB10
[102] HSCWB16
[103] RoP, 27 June 2024, para 304

164. Similar points were made by the Fostering Network, Barnardo's Cymru and Children in Wales-Plant yng Nghymru, who said:

> *"It is somewhat concerning that at this point in time it is not clear how many for profit providers will leave the market, meaning that the potential for disruption and negative impact and demands placed upon children is quite significant, not only in respect of their accommodation but also their connections with family, friends, school, health services, communities and their relationships with current carers who will also be impacted."*[104]

165. A number of stakeholders, including the Children's Society, referred to the practical challenges facing local authorities in setting up new residential homes for children, including the time and resources involved. On this point, Sally Jenkins, ADSS Cymru, told us:

> *"It's a two-year run-in to establish a children's home; accessing the capital and revenue in parallel is really challenging."*[105]

166. Additionally, we heard of the importance of developing provision in communities "where children are from as opposed to areas where property is cheaper or easier to procure".[106]

167. Following the Committee's initial evidence session on the 6 June, the Minister for Children and Social Care provided a local authority breakdown. It shows that 7 of the 22 authorities have all their residential provision in the 'for profit' sector.

168. In relation to foster care, stakeholders highlighted the challenges in developing and increasing the number of foster carers, particularly in light of the decreases they had seen in the numbers of people prepared to be a foster parent. Sarah Thomas from the Fostering Network said:

> *"We are facing a crisis in relation to fostering. We know that there are children going into residential provision who should*

[104] HSCWB18
[105] RoP, 28 June 2024, paras 301-302
[106] HSCWB4

> *be going into foster care, but we do not have enough foster carers."*[107]

169. Sally Jenkins, ADSS, told us that moving foster carers from working for an independent fostering agency to a local authority "is a process". She said that work with the Welsh Government was already underway to ensure those processes are as robust as possible, "but that is a challenge".[108]

170. Family Fostering Partners were critical that the Bill "offers no new measures to expand the pool of foster families, exacerbating the existing problem".[109]

171. In relation to the current position across local authorities, ADSS Cymru said this was "hugely variable" with "very little work required" in one local authority, "hundreds of placements that will be required" in a couple of the larger local authorities, and in the remaining authorities, "it will be tens".[110]

172. Sally Jenkins from ADSS Cymru told us that, in her own authority, despite work to develop children's homes over the last 10 years, there was still a need to develop a further two homes to match their current need. She said that specialist provision for disabled children was something they would "struggle to manage on a local authority basis" and would need to look at regionally.[111]

173. The importance of regional working to ensure sufficiency was also referenced by a number of other stakeholders, including the Fostering Network, TACT, Barnardo's Cymru.

174. In relation to secure placements, the Royal College of Psychiatrists Wales said it was "imperative that eliminating profit isn't pursued to the detriment of the particular needs and vulnerabilities of children requiring secure accommodation". To that end, they welcomed section 12 of the Bill, which will require local authorities to report to the Welsh Ministers on how they have, or are expecting to, increase the amount of secure accommodation available. However, they argued that it was currently unclear what consequences local authorities would face if they failed to increase such provision.[112]

[107] RoP, 27 June 2024, para 18
[108] RoP, 28 June 2024, paras 301-302
[109] HSCWB7
[110] RoP, 27 June 2024, para 299
[111] RoP, 27 June 2024, para 300
[112] HSCWB23

Disorderly exit of private providers

175. Many stakeholders raised concerns about the possibility of a 'disorderly exit' of private providers as a result of the Bill, and the effect this would have on future provision of placements.

176. Barnardo's Cymru said that Wales is "facing a social care crisis" and they were "concerned that social care in Wales is not currently in a stable state from which to make a significant change". They went on to say:

> *"It is a concern that with the sector already being so unstable, further changes could exacerbate this, particularly if providers were to abruptly leave Wales and create further churn and staff shortages. The Explanatory Memorandum notes that it is still unclear what level of churn should be expected from the changes to the sector, although we have already seen some private providers choose to leave Wales."*[113]

177. The WLGA said that "if current for-profit providers decide to exit the market or reduce their services, there is a risk of a sudden and critical shortage of placements, especially for children with complex needs".[114]

178. CIPFA made a similar point, saying that the reference in paragraph 7.84 of the RIA suggests that small numbers of for-profit providers will convert to not-for-profit models. They said, in the most optimistic scenario, local authorities will have to secure provision for 50% of the 87% of looked-after children in Wales, which equates to 233 children. "If for-profit providers leave the market quickly, this will cause significant disruption to the care of a large proportion of looked after children in Wales."[115]

179. The Children's Home's Association has said that only one of its members operating in Wales has expressed any interest in converting to 'not for profit' and anticipates the closure of 21 homes and 331 placements, likely to be for children with high support needs.[116]

[113] HSCWB4
[114] HSCWB31
[115] HSCWB27
[116] HSCWB13

Impact on the workforce

180. A number stakeholders highlighted the possible impact of the Bill on the social care workforce which, they said, was already "in crisis".

181. They feared that the policy could see an increase in staff leaving the sector due to concerns about job security (if providers chose to leave the market), or to seek employment elsewhere with better pay, less risk and fewer antisocial hours, "all of which are sadly the hallmarks of working in children's social care".[117]

182. NYAS Cymru called for the Welsh Government to "develop a plan to support the workforce and retain staff during this transition".[118]

How to support the not-for-profit sector

183. A number of stakeholders, including Barnardo's Cymru and the Fostering Network, discussed how best to support the not-for-profit sector, with the Fostering Network calling for the opening of a "social care register for foster carers in order for them to ensure that they have that same level of status as social workers and residential care workers".[119]

184. The CYPE Committee also supported the development of a national register of foster carers, and had previously recommended this to the Welsh Government as part of their own inquiry work. That recommendation had been accepted in part by the Welsh Government, although "disappointingly, it is clear from the Fostering Network's recent evidence (…) that the work is not progressing".

185. As such, the Committee asked us to consider recommending to the Welsh Government "that the Bill be amended to make it mandatory for foster carers to register with Social Care Wales in order to provide foster placements for looked after children, thereby accelerating progress towards a national register of foster carers".[120]

186. Sally Jenkins, ADSS Cymru and Chair of the 4Cs Board, however, told us that "an absolute wealth of data" is held in relation to for-profit and not-for-profit providers and, as such, she was not sure what purpose a national foster register would hold.[121]

[117] HSCWB4, HSCWB13
[118] HSCWB14
[119] RoP, 27 June 2024, para 18
[120] Letter from the Children, Young People and Education Committee, 18 July 2024
[121] RoP, 27 June 2024, para 351

187. The Fostering Network highlighted the importance of having a process by which foster carers can remain approved as foster carers during the transitional period, so that "they can keep that registration, in the same way a social worker can, and move from one employer to another".[122] They also highlighted the need for:

> *"a clear communication to our fostering families right now, as soon as possible, to tell them what this transition will look like, to give them the reassurance that they need, (…) and relay these concerns before people do leave the sector, because foster carers will be, and are, very concerned, and they will leave, and we need this provision to remain in Wales."*[123]

Timescales for transition

188. The specific timings for the introduction of the 'not for profit' powers are not on the face of the Bill. Section 4 of the Bill sets out transitional arrangements for existing providers of a restricted children's service (who were registered prior to the new 'not-for-profit' requirements).

189. The Explanatory Memorandum sets out that the intention is for the provisions of the Bill to be brought into effect so that:

- From 1 April 2026, new providers registering with CIW will be required to have "not-for-profit" status.
- From 1 April 2027, existing "for profit" providers will be subject to transitional provisions, subject to some exceptions. This includes a power to prevent providers from providing a place for any new child after a certain date.

190. While the Explanatory Memorandum indicates that new for-profit providers cannot register from 2026, there is no indicative date in the EM, nor a specified date in the Bill, from which existing for-profit providers will not be able to provide placements.

191. The Bill includes regulation making powers allowing Welsh Ministers to determine the end of the transition period for restricted children's services. The Statement of Policy Intent for Subordinate Legislation says:

[122] RoP, 27 June 2024, para 56
[123] RoP, 27 June 2024, para 86

> *"The power will allow Welsh Ministers to determine the end of the transition period for restricted children's services, including the ability to respond to the potential need to determine different days in relation to different types of service and different descriptions of service provider; for example, if the achievement of not-for-profit placement sufficiency is uneven across service types."*

192. There were significant concerns from most of the stakeholders who responded on this matter about the timescales for transition, with some stakeholders suggesting that a timeframe of 10 to 15 years could be needed[124].

193. The WLGA said that "transitioning from a mixed market to a non-profit model will demand significant time, resources, and planning". They noted that, as currently set out there is no timeframe for the length of the transition period, however the costings in the RIA imply that this could be over a 3-year period. In their view, given the amount of work required to take this commitment forward and the need to avoid as much disruption as possible, this would be an "overly ambitious aim" and that "a longer period of time will be needed".

194. They went on to say:

> *"It is essential that the transitional period, along with the financial costs and implications are monitored closely with adequate timescales applied. This will need to take into consideration a range of factors including the level of demand for placements in restricted services, and the speed of replacement of for-profit by not-for-profit provision. Any decision to bring the transition period to a close will need to be informed by close engagement with councils and careful consideration of children's rights under Article 8 of the UNCRC."*[125]

195. Darren Mutter from ADSS Cymru said that if local authorities and the sector were not given enough time to transition, "the risk is that there will be an enormous decrease in the numbers of placements and beds available for young people".[126]

[124] If not now, then when? Radical reform for care experienced children and young people (senedd.wales), para 185, Findings of stakeholder events - March 2023.pdf (senedd.wales), page 14
[125] HSCWB31
[126] RoP,. 27 June 2024, para 340

196. He went on to say:

> *"as we have seen in the past years, as our sufficiency problems have increased, we've had to make unregulated arrangements for the children that are not as safe, do not provide as good outcomes, as do regulated provision, and they place enormous pressure on local authority staffing and budgets. But most of all, they place those children at greater risk,*
>
> *—and the fear is that we will plough into a situation where the numbers of situations that are operating without regulation (…) will increase exponentially, with a number of vulnerable children in those unregulated settings being placed at greater risk when compared to situations where they would be placed in regulated and managed settings."*[127]

197. The Children's Society were similarly concerned about the impact of the timeframes on children's safety, saying that they "did not provide enough time for providers and other stakeholders to reach these aims (…) safely".[128]

198. They went on to say that the lack of information about which for-profit providers will benefit from the transitional arrangements "brings uncertainty and instability to providers and to children in care." They said that clarity was needed about the timescales, and this should be provided before the regulations are published.[129]

199. Children in Wales-Plant Yng Nghymru said that the transition phase "demands adequate time and has to be properly managed to minimise any disruption to children's continuity of care and allow time for the market to readjust and the non-profit sector to grow". They called for the current timetable for the transition phase to be "reconsidered" and for a risk assessment to be published.[130]

200. Action for Children was concerned that the "transitional arrangements may not be long enough and force a crisis in the already overloaded existing provision".[131]

[127] RoP, 27 June 2024, para 340
[128] HSCWB10
[129] HSCWB10
[130] HSCWB18
[131] HSCWB5

201. CIPFA said they were concerned that the timelines "underestimate the scale of the challenge in implementing the policy" and are "marked by optimism bias".[132]

202. NYAS Cymru "do not agree with the Welsh Government's aim for all for-profit providers to be transitioned by 2027", saying they did not think this timeframe was "appropriate or realistic given that private providers of children's social care currently make up the majority of all placements in Wales." They also felt that the Welsh Government's transition plan was not robust enough to support the timeframe.[133]

203. The Children, Young People and Education Committee told us that a deadline of 1 April 2027 for existing for-profit providers to transition to not-for-profit providers would be "wholly inadequate to fully mitigate all of the risks of placing all children in fully not-for-profit care placements".

204. In relation to the powers for Welsh Ministers to make regulations about the transitional arrangements, the CYPE Committee said they were "concerned that there is no fixed end date for those transitional arrangements". In their view, it is "important to have clarity over the date by which profit will be removed from children's care". They urged the Welsh Government to "set out clearly an end date for the transitional arrangements, having first consulted fully and constructively with local authorities and other key stakeholders to ensure that a lack of not-for-profit placements does not push children into unsafe unregistered accommodation".[134]

205. Barnardo's Cymru were concerned about the potential for "further churn" within the social care workforce if the transition was to happen too quickly[135]. However, they told us:

> *"I don't think we should take the foot off the gas in terms of progressing this over the next two years."*[136]

206. They did, however, feel that it would be "very, very difficult" to have eliminated all profit from care across Wales by 2027. They suggested a "phased transition period beyond 2027 for a further 12 months or more, and that would

[132] HSCWB27
[133] HSCWB14
[134] Letter from the Children, Young People, and Education Committee, 18 July 2024
[135] RoP, 27 June 2024, para 53
[136] RoP, 27 June 2024, para 93

then enable you to be able to use for-profit providers but only for that period of time".[137]

207. In contrast, the Children's Commissioner and TGP Cymru said they were "not actually advocating for a delay or an extension of the timetable":

> *"We want it to be managed carefully and sensibly, but not delayed.*
>
> *(...) it's not about a cliff-edge point in any of this work. We're not saying, 'From this point, everyone will move on 1 January, or whatever date, and that will be that'; this is about the managed transition and plan for this. I think that if you push the date back for it to even start, then the investment and the work won't follow, so you need to have the firm date in place to make the actions happen that need to happen."*[138]

208. Similarly, TGP Cymru said the benefit of a deadline was having something to work towards. Their concern, they said was that "the focus needs to be on the quality of placements for young people, as opposed to the deadline being on the current placements."[139]

209. Care Inspectorate Wales told us that one of the things they "particularly value" about these provisions is that there is "no hard end":

> *"So, as from 1 April 2026, no for-profit provider can register with Care Inspectorate Wales to provide services. But the transition of the April 2027, which means that, with a supplementary placement agreed by Welsh Ministers, a child can be placed in a for-profit service, means that we're not facing a cliff."*[140]

Exceptions to allow 'not for profit'

Supplementary placements

210. Section 13 sets out the ways in which looked after children are to be accommodated in "the most appropriate placement". The Explanatory Notes to

[137] RoP, 27 June 2024, para 93
[138] RoP, 10 July 2024, paras 102-103
[139] RoP, 10 July 2024, para 98
[140] RoP, 17 July 2024, para 199

the Bill say that a placement can be in "unregistered accommodation (on a temporary basis or in cases of urgency)".

211. Local authorities must make an application to the Welsh Ministers for approval to place a looked-after child somewhere other than a 'not-for-profit' entity, referred to as a "supplementary placement". The Bill sets out the steps that local authorities must take if an application for a supplementary placement is rejected by the Welsh Ministers.

212. A number of stakeholders, including NYAS Cymru, Voices from Care Cymru, CHA, TGP Cymru and the Children's Commissioner, expressed concerns about the approval of supplementary placements and how the process would work in practice, and called for clarity around the criteria for Ministerial decision-making.

213. Sarah Crawley from Barnardo's Cymru, said:

> *"I'm concerned about ministerial sign-off not being particularly practical when, at 5 or 6 o'clock of an evening on a Friday, you've got a young person that needs an urgent placement and you just don't have the provision. And it could have knock-on consequences to further unregulated placements being used."*[141]

214. NYAS Cymru told us they "do not believe this duty should be placed on Welsh Ministers" but instead recommended that "local authorities set up an 'on call panel' to make the decision", which could be accompanied by a duty on local authorities to report all applications to designated Ministers on a monthly basis to keep the Welsh Government informed and to enable intervention when necessary.[142]

215. The CHA also called for the approval process to be delegated to local authorities, saying they were "well-positioned to make these decisions promptly and effectively".[143]

216. Darren Mutter from ADSS Cymru said that the process of Ministerial approval for supplementary placements "represents a separation out of the decision-making responsibility and the consequent management of the risk. He said that, for him, those two matters could not be separated. He went on to say:

[141] RoP, 27 June 2024, para 93
[142] HSCWB14
[143] HSCWB13

> *"Heads of service, directors, make very important risk-balanced decisions, and they then go on and own that risk, which is quite right. We can't have a situation, in my view, where a Minister who is removed from the operational realities of individual children's situations is making decisions about those individual children and then leaving the heads of service or the directors to manage the consequent risk. (…) The person that makes those risk-based decisions has to be also owning that risk, and that for me can only sit in local authority head of service or director hands."*[144]

217. Home for Good and Safe Families proposed that the Children's Commissioner's Office should be responsible for making decisions about supplementary placements, because "its statutory rights and extensive knowledge of the sector is better equipped to make decision that prioritise the welfare of children."[145]

218. More broadly, ADSS Cymru called for more detail to be provided both in relation to exemptions for children currently within the system, but also for those who may require very specialist placements that can only be sourced in for-profit provision, for example in England.[146]

219. The WLGA and Voices from Care Cymru both felt there was a need for more information about how the approval process would work in practice. Voices from Care Cymru told us there was a need for "clear criteria, so that people can understand the basis on which that decision is being made, and particularly that the child themselves can understand the basis on which that decision is being made".[147]

220. Rachel Thomas, from the Office of the Children's Commissioner, also touched on retrospective approvals, questioning whether they really act as a safeguard within the system.[148]

Unregistered accommodation and Deprivation of Liberty Orders

221. Placing children in care in unregistered accommodation is illegal in England and Wales. 'Unregistered accommodation' is the term widely used to describe

[144] RoP, 27 June 2024, para 13
[145] HSCWB16
[146] RoP. 27 June 2024, para 311
[147] RoP, 10 July 2024, para 153
[148] RoP, 10 July 2024, para 155

accommodation in which the provider delivers 'care' to a child under 18, but is not registered with Care Inspectorate Wales.

222. Children can be deprived of their liberty for welfare reasons or risks to their safety. A decrease of available placements has meant that when a suitable secure placement cannot be found in any of these settings, the High Court can use its powers to deprive the child of their liberty in an unregulated placement.

223. Children in Wales-Plant yng Nghymru told us they did "not support the proposals in section 13 for unregistered accommodation to be considered an appropriate option for any length of time for any child, and reject the proposal for it to be placed in legislation." They continued:

> *"Placing a child in unregistered accommodation is currently illegal in Wales and should remain so. We raised concerns with the UN Committee on the Rights of the Child regarding children being placed in unregistered accommodation which have since been reflected in their recommendations."*[149]

224. The Children, Young People and Education Committee told us that they believed the provisions in section 13 "would lead to an unacceptably high risk of an increased use of unregistered accommodation which would not provide the levels of care and support that children and young people in care deserve."

225. They went on to say:

> *"We are deeply concerned about these new provisions, which provide a route for local authorities to place children in children's homes that are not registered (…)*
>
> *We note the safeguards set out in the new sections 81B(3) to (8) of the 2014 Act, and the mandatory reporting arrangements in section 75D. But we are not convinced that these provisions mitigate the risks of normalising unregistered placements. Our concerns are compounded due to the likely short-term shortage of not-for-profit placements for children (…) which may lead local authorities to place even more children in unregistered accommodation, including an increasing number of children who have been deprived of their liberty."*[150]

[149] HSCWB18
[150] Letter, Children, Young People and Education Committee, 18 July 2024

226. CIW said they recognised the pressure on local authorities to find places for children, saying they did not know of a single head of children's services who wanted to place a child in an unregistered setting. They said they had done a lots of work to highlight the scale of the problem and to work with partners in local authorities to ensure that, where children are placed in unregistered services, it was for as short a time as possible.[151]

227. They told us:

> *"We will be watching as an inspectorate (…) very closely to make sure that those figures [for placements in unregistered settings] don't climb, because (…) we would worry about with any increase in services operating without registration, and we'll be monitoring it particularly carefully as we go through this transition period."*[152]

228. We asked CIW whether the provisions in the Bill and explanatory memorandum relating to supplementary placements will act to effectively 'legalise' and normalise unregistered placements in Wales, because the Bill, as drafted, does not prohibit any unregistered placement being used for a child of any age. Further, paragraph 55 of the Explanatory Notes to the Bill refers to a placement meaning accommodating a child in unregistered accommodation on a temporary basis or in cases of urgency. In response, the Inspectorate told us:

> *"we made a query to Welsh Government about that. And my understanding is that that is an incorrect use of the word. So, sometimes, the words 'unregulated' and 'unregistered' are mixed up.*
>
> *So, what we've been told is that the intention was that that reference should be 'unregulated'. (…) we were content with the response that we got that that was an unintentional reference within the explanatory memorandum, and sure that will be—I'm hoping that will be—altered."*

[151] RoP, 17 July 2024, paras 205-206
[152] RoP, 17 July 2024, paras 205-206

Impact on affected children

Involving children and young people in the proposals

229. A number of stakeholders questioned how the views of children and young people affected by the Bill had been reflected within it.

230. This point was made by NYAS Cymru, who called for an accessible 'young person' version of the legislation and consultation. Similar points were made by TGC Cymru and Children in Wales-Plant Yng Nghymru, who said they were "not aware of resources having been produced to help inform children of the proposed changes and to support organisations to effectively engage the voices of children in their responses".[153]

231. The Children's Commissioner for Wales said that the need to inform young people affected by the Bill was a point she had "repeatedly raised" with Welsh Government. She said she would like to see more "direct communication with and for young people" and that she had "asked the Minister to produce a letter and/or video to young people to provide reassurances to them around the Bill's instruction but I am unsure whether or not this has been done".[154]

232. NYAS Cymru told us that one of their concerns:

> *"is that children and young people currently who are going to be affected by this legislation don't know this is going to happen (…) I would say the majority don't know. So, I think there needs to be a real regard for engaging more with children and young people".*[155]

Advocacy

233. NYAS Cymru and TGP Cymru both state that an active offer of advocacy is needed for any child affected, or potentially affected, by the Bill, saying that only a "very small percentage of young people placed in private accommodation access independent professional advocacy, despite meeting the eligibility criteria"[156]. NYAS Cymru told us:

> *"Advocacy is at the heart of safeguarding. We know it's to make sure that children and young people have independence, that*

[153] HSCWB1
[154] HSCWB36
[155] RoP, 10 July 2024, para 135
[156] HSCWB25

> *they have a right to see somebody in confidence about anything that they're concerned about, to get it stopped, started or changed. So, I think that advocacy should be at the heart of offering that provision to children and young people through this Bill."*[157]

234. Similarly, the Children's Society argued that provision should be included in the Bill to offer specialist advocacy for children affected by changes to their care arrangements as a result of the Bill. This offer, they said, should "enable children to have a say in any changes that are happening to them and for that to contribute to decisions pertaining to replacing them with other providers".[158]

235. We also heard that the Bill was a "missed opportunity" to legislate for provision of a residential visiting advocacy service for children's care homes. TGP Cymru told us they had "long been calling" for such provision to be a requirement of regulation and inspection of private residential homes.[159]

236. This call was echoed by the Children, Young People and Education (CYPE) Committee, and formed the subject of a recommendation by that Committee to the Welsh Government in a previous inquiry into services for care experienced children and young people. That recommendation was rejected by the Welsh Government, who argued that the 'active offer' of advocacy was extended to children in residential settings.

237. The CYPE Committee argued, however, that relatively few independent care homes have advocates, and staff working in independent care homes are not always as aware of children's advocacy rights as they should be. They saw the Bill as an "ideal legislative vehicle" for this to be taken forward and asked us to consider recommending that the Bill be amended:

> *"so that the provision of residential visiting advocacy for each and every children's care home is a requirement for registration as a provider of children's care homes in Wales".*[160]

[157] RoP, 10 July 2024, para 166
[158] HSCWB10
[159] RoP, 10 July2024, para 122
[160] Letter, Children, Young People and Education Committee, 18 July 2024

Other children's issues

Accommodation 'within or near to ' the local authority

238. Section 10 of the Bill amends section 75 of the Social Services and Well-Being Wales 2014 Act to specify that the local authority must take "all reasonable steps to secure" accommodation for looked after children rather than "steps to secure, so far as reasonably practicable" as is currently the case under the 2014 Act.

239. Subsection 1 requires that this accommodation is "within, or near to, the authority's area" rather than the current requirement that it "is within the authority's area".

240. The Explanatory Notes (EN) set out that "this enables local authorities to make arrangements with other local authorities to develop new children's homes and foster care placements". The EN go on to say that this amendment "acknowledges that there will be circumstances in which a child placed outside of the local authority's area may be nearer to their home community than if they were placed in a different part of the local authority's area".

241. NYAS Cymru told us it did not agree with section 10 of the Bill. In their view, this wording is not strong enough to ensure that placing children and young people out of area "does not become the 'default' option for local authorities".

242. They also felt that the use of the language 'near to' is unclear and may be interpreted differently by local authorities which, they said, could lead to inconsistent practice across Wales. They urged the Welsh Government to define the term 'near to' in section 10 to "make clear which is the appropriate maximum distance a child or young person can be moved away from their local area."[161]

243. Similarly, the Children, Young People and Education Committee told us they "would have serious concerns if the provisions in section 10 lead to more children being placed outside their home area". They said the overwhelming view across the evidence they had taken in two significant inquiries was that, "for the majority of children, out of area placements increase the risk of children going missing, being criminalised or sexual exploited, not to mention making it more difficult to maintain relationships with their birth family or friends or avoid the need to move schools". They went on to say:

[161] HSCBW14

> *"Even when it is the right decision to place a child in a different local authority, local authorities **must** consistently follow regulations and guidelines relating to information sharing to ensure that being in an out of area placement does not compromise the quality of safeguarding for any child."*[162]

Sufficiency plans

244. Section 11 of the Bill amends the 2014 Act to insert a new duty on local authorities to prepare and publish an annual sufficiency plan before the beginning of each financial year. It must detail the steps the local authority will take in that year to fulfil its duty to take all reasonable steps to secure accommodation for looked after children. Before publishing the plan, a local authority must prepare a draft and submit it to the Welsh Ministers for approval. Section 11 also sets out the procedure to be followed if the plan is not approved.

245. Sally Jenkins, ADSS Cymru and Chair of the 4Cs Boards, told us that there was a need for:

> *"significantly more detail in relation to the proposed sufficiency plan but also how it aligns with existing work. So, for example, under each of the regional partnership boards, we already have duties in terms of market position statements, and those refer exactly to how we work with our providers. So, specifically, in relation to the sufficiency plan, that is what we would like to see."*[163]

246. Mike Anthony from TACT Cymru told us that a "lack of market position statements from local authorities" had made it difficult to plan and take managed risks with development. He said that the sufficiency plan proposals in the Bill sounded positive, but he also argued that more information was needed about them.[164]

247. The Children's Homes Association said they were unclear what happens if a sufficiency plan is not approved, saying it could "imply that by proxy Welsh Government are dictating what the sufficiency plan should contain, ignoring whether it is reasonable or achievable for the local authority".[165]

[162] Letter, Children, Young People and Education Committee, 18 July 2024
[163] RoP, 27 June 2024, para 288
[164] RoP, 27 June 2024, paras 44-45
[165] HSCWB13

248. They also said they were "concerned about the additional burdens this will place on local authorities by having to produce an annual sufficiency plan, and whether this will make any material difference to achieving the policy objectives".[166]

Mandatory reporting for specific individuals

249. In her evidence, the Children's Commissioner refers to the omission from the Bill of a requirement for specific individuals to report child sexual abuse, as included in the Welsh Government's earlier consultation on proposals for the Bill. She points to "a recent case of the headteacher from North Wales recently convicted of sexual offences involving pupils as an example of where it appears that compliance with the existing frameworks may have been significantly lacking, leading directly to harm to these young women".

250. We asked the Minister why the Welsh Government had chosen not to include provision for mandatory reporting for specific individuals in the Bill, and she said the government believed that the current approach, which mandates organisations to report rather than individuals, "is the right approach for us in Wales".[167]

251. Responding to this, the Children's Commissioner said that "a key factor for an organisation-level duty to be successful must be awareness raising"; that policies should reflect the organisation's responsibilities and that regular and refresher training is provided to all staff. She went on to say:

> *"The information shared by Welsh Government sets out why they don't wish to make changes to the current legislation, but doesn't set out the actions they are now taking on awareness raising for example. In order to accept their reasoning, I would respectfully suggest that more detail is required in that respect, to be assured that the current plans are sufficient to ensure children are being kept safe."*[168]

[166] HSCWB13
[167] RoP, 6 June 2024, para 21
[168] Letter, Children's Commissioner for Wales, 12 September 2024

Evidence from the Minister

Providers must be 'not-for-profit' entities

Permitted business models

252. We questioned the Minister about the models proposed in the Bill and asked whether she would consider changing the Bill's approach to reflect the calls of some stakeholders to treat small and medium enterprises differently from the large providers owned by public limited companies or private equity firms.

253. The Minister said that providers had told them that, rather than defining 'not-for-profit', it would be more helpful for the Bill to set out the acceptable models. She said there were continuing conversations with the sector around other models, for example, employee-ownership organisations. However, any model involving the extraction of profit was not acceptable to the Welsh Government.[169]

254. Further to this, Anthony Jordan, Head of Programme and Legislative Implementation within the Welsh Government's Social Services and Integration Directorate, confirmed that, amongst others, the Welsh Government had been speaking directly to the Children's Commissioning Consortium Cymru and Cwmpas:

> *"we have been discussing with them quite specifically what exactly it is, in terms of the qualities that come with, for example, an employee-owned trust vehicle that they think might make it aligned with our policy imperative, and how does that differ, how do those qualities differ from the qualities that are inherent in our four models.*
>
> *And those conversations, I think, have been useful—not breakthrough conversations yet, but they are informative and we will, of course, be reflecting on them once they've come to a conclusion, which I'm hopeful they will do fairly shortly."*[170]

255. As regards the potential for loopholes in the proposed legislation, we asked the Minister whether the provisions in the Bill were sufficiently tightly drawn to prevent for-profit delivery of services in the future. She said that the Welsh

[169] RoP, 17 July 2024, para 32
[170] RoP, 17 July 2024, para 32

Government had "learned from the experiences of Scotland" and made it clear in the Bill that only the four not-for profit models proposed were acceptable:

> *"And anything that we see as seeking to get around that, like the introduction of management fees or similar sorts of arrangements, would be seen to be for-profit and therefore not fitting within the terms of the legislation, and would not then be eligible for registration."*[171]

256. Anthony Jordan added that, in addition, the Welsh Government had taken powers to look at the question of unreasonable payments. He said:

> *"that is designed to be a way in which we can maintain an oversight and satisfy ourselves that money is not being taken out of provision in a way that disguises the extraction of profit."*[172]

257. Penny Hall told us that the Welsh Government was "working closely with providers" to understand the barriers involved in changing business models and how best to support existing providers to do this.[173] On this point, the Minister confirmed that it was "in our interest to work with" providers in the process of transition. She went on to say:

> *"despite the fact that we've been very clear about our position on this, we actually have seen, in the system, over the last year or so applications for another 24 or 25 for-profit providers wanting to come in and set up in Wales in the full knowledge that they may well be expected to transition to a not-for-profit model at some point in the future. So, it's really not putting anybody off at the moment and we certainly haven't seen any for-profit providers exiting the sector yet."*[174]

Costs and potential savings

258. In relation to the costs of the current system, the Minister said:

> *"In 2016-17, I think the cost to local authorities of looked-after children was around £65 million. We've seen that increase in less than 10 years to nearly £200 million; that's a 300 per cent*

[171] RoP, 17 July 2024, para 16
[172] RoP, 17 July 2024, para 17
[173] RoP, 17 July 2024, para 27
[174] RoP, 17 July 2024, para 29

> *increase. Somewhere in the region of 20 per cent to 25 per cent of that is being extracted as private profit.*
>
> *If we continue on this trajectory, we are going to see within another 10 years potential costs for looked-after children approaching £1 billion. The option of just sitting here and saying that that's okay and we'll continue to do that is not an option that I think is a reasonable or viable one."*[175]

259. She said that, in times of financial hardship for local authorities, they were looking at every way they could make the most of the money that is available to them, and "they very much see this as the long-term answer and response to the provision of looked-after children".[176]

260. We put to the Minister the evidence from the WLGA that savings arising from the Bill were likely to be cost avoidance rather than cashable savings, so would not go back into the care of children.

261. Responding to this, she said:

> *"I don't accept that. I think we need to be very clear about this. This is not going to produce savings overnight. (…) we're working very closely with local authorities. We know that this will require some initial investment. We know that, for local authorities and the third sector, this may require quite a significant upfront capital investment, and we're working very closely with them on how we can support that and how local authorities themselves can use their borrowing powers to support that.*
>
> *I don't accept the premise that this will end up costing local authorities more, when we have private providers at the moment that basically dictate the market because they are so big. (…) So, this is about really giving the control back to local authorities in terms of the ongoing costs. We would anticipate that we would start to see those savings being seen by local authorities within a 10-year period."*[177]

262. On funding for the transition, the Minister stated that the investment of £68 million over three years "should be seen as enabling our approach, not a

[175] RoP, 6 June 2024, para 53
[176] RoP, 17 July 2024, para 42
[177] RoP, 17 July 2024, para 37

substitute for legislation". She said it was being used to "bolster the ability of both the local authority and third sector to provide residential and foster care services, by developing workforce capacity, recruitment and skills".[178]

263. She said that, in addition to revenue funding, the Welsh Government wanted to "build on our broader capital investments across care and support for children's services" in the provision of more beds and homes and, to that end, Regional Partnership Boards had been allocated £25.4m from the Integrated Care Fund and Housing with Care Fund to deliver 40 residential accommodation schemes for children across Wales. She reported that half of these are residential schemes for children with complex needs that will deliver 96 beds in total; of these, 5 are already operating with 15 beds.[179]

264. She went on to say:

> *"We are still three years away from our intended implementation date of April 2027, with many providers having waited to see the provisions in the Bill before determining their futures. We will continue to work closely with all parts of the sector as we move closer to April 2027 so as to ensure we have as accurate a picture as possible of local authority forecasting and modelling alongside provider intentions."*

265. Looking ahead, and following requests from local government for clarity about future funding, we asked the Minister what would be the annual financial commitment from Welsh Government going forward to develop the not-for-profit provision.

266. She told us there was not an agreed budget beyond this financial year. She did, however, say that she recognised the pressure on local government finances, and that these proposals are a high priority for Government and will be considered as part of the forthcoming budget round.[180]

Transition and ensuring sufficient placements to meet demand

267. We put to the Minister the evidence we had heard about concerns relating to the arrangements and timeframes for transition. She told us that the Bill included

[178] Letter from the Minister for Social Care, 28 June 2024
[179] Letter from the Minister for Social Care, 28 June 2024
[180] Letter from the Minister for Social Care, 28 June

a number of measures which, when taken together, would "serve to ease that transition process as far as possible":

> *"transitional arrangements, which will enable existing not-for-profit providers to continue to operate; the ability of local authorities to continue to place children in for-profit provision, where that is consistent with their well-being; and, subject to Welsh Ministers' approval, new duties on local authorities in respect of sufficiency and sufficiency plans"*[181]

268. In relation to timeframes, we asked the Minister whether a longer period of time was needed to move from the current system to the future model. She said that, whilst a reasonable period was necessary for the transition to work effectively, to ensure that we've got sufficiency in the system", this policy was not "coming out of the blue":

> *"We've had an eliminate programme in place now for the best part of three years (…) where local authorities have been able to prepare and to build capacity within their own areas for moving towards a not-for-profit provision."*

269. She said she saw the transition "moving relatively quickly" from April 2026.

270. It would be "key", she said, to continue discussions with the sector "about getting as many of them as possible to transfer to one of the not-for-profit models that we propose in this Bill":

> *"We know that there are many good providers there who we think we could really work well with by transitioning them to not-for-profit deliverers of children's care."*[182]

271. In relation to secure placements, the Minister said the intention was to reduce the number of children in secure or tier 4 accommodation because it can lead to them being placed further from home. She confirmed that secure provision was "very much" part of the elimination of profit programme and that "we are looking particularly at accommodation that is smaller and that is regionally based to support children in their own locations".[183]

[181] RoP, 6 June 2024, para 114
[182] RoP, 6 June 2024, para 62
[183] RoP, 17 July 2024, para 90

272. In relation to work on sufficiency, Albert Heaney, Chief Social Care Officer for Wales, told us that the Welsh Government had, "smartly and appropriately" been making use of funding from a number of sources in addition to the £68 million on eliminate, including "the regional integration fund, working with regional partnership boards to begin to develop placements locally". He said that, whilst that process takes time, "we are beginning to see now the fruit of that seed of funding coming through, with additional placements being designed".[184]

Disorderly exit of private providers

273. We raised with the Minister the concerns of stakeholders about the possibility of a disorderly exit of private providers and the implications of this for the children and young people currently in their care. Responding to this, she said that this was "not something that we're just dropping on local authorities, this is something they've been preparing for over a period of time".[185]

274. She went on to say:

> *"we actually have seen, in the system, over the last year or so applications for another 24 or 25 for-profit providers wanting to come in and set up in Wales in the full knowledge that they may well be expected to transition to a not-for-profit model at some point in the future. So, it's really not putting anybody off at the moment*[186].
>
> *(…) And we have seen no for-profit providers exit the system knowing that this legislation is around the corner. So, again, I am not convinced by the argument that we're going to see a mass exodus, disorderly or otherwise."*[187]

275. Further to this, Anthony Jordan told us:

> *"We've seen one adoption service, one adult and children's home without nursing and a total of four children's homes voluntarily exit the sector, which is a very low number. Our proposals have been known throughout that time. (…) All of the statutory framework we've put around transition has been designed in order to avoid any need for providers to exit,*

[184] RoP, 6 June 2024, para 81
[185] RoP, 6 June 2024, para 114
[186] RoP, 17 July 2024, para 29
[187] RoP, 17 July 2024, para 53

> *certainly in a disorderly way, and actually in any way at all, if they can get behind our agenda."*[188]

276. Alistair Davey, Deputy Director of Enabling People, Social Services and Integration Directorate, Welsh Government, acknowledged the need for the Welsh Government to work more closely with some local authorities, depending on the level of privately provided care within their area:

> *"We've got over 1,000 children in care in Cardiff and about 80 per cent in private provision. So, that's one of the local authorities we really will need to work closely with. You'll find others with very little provision from the private sector. So part of this is we know that we have variation across Wales in terms of rates of children in care, but also their reliance on private because, generally, they're the bigger geographical areas."*[189]

277. The Minister said she "would hope that there will be orderly transition, because for many of those providers, they will still be contracted to continue to look after children in Wales. And there will still be a role for some specialist placements".[190]

278. She also confirmed that the Welsh Government would continue discussions with existing providers:

> *"We don't want these providers to leave the sector. Some of them are providing excellent care for children and we would want to retain that expertise and that excellence in the system. So, it is in our interest to work with them and to work with them in the process of transition."*[191]

Timescales for transition

279. In relation to the timescales for existing for-profit entities to convert to a not-for-profit model, the Minister told us that the Welsh Government was "very ambitious for this programme" and that, from April 2027, they were expecting to see existing for-profit providers transitioning to one of the four models proposed in the Bill.[192]

[188] RoP, 17 July 2024, para 54
[189] RoP, 6 June 2024, para 118
[190] RoP, 17 July 2024, para 53
[191] RoP, 17 July 2024, para 29
[192] RoP, 17 July 2024, para 19

280. We challenged the Minister on the proposed timings, given the evidence we had heard about the complications associated with changing models to a company limited by guarantee or any type of charitable entity. She acknowledged that, "depending on the size and the nature of the organisation, it will be simpler for some to do that than it will be for others". She also told us that the Welsh Government had set up an elimination board, and that the for-profit and not-for-profit providers were part of that transition programme, "so they're very much involved in discussions with us about how they can transition to one of the new models".[193]

281. Further to that point, Anthony Jordan stated:

> *"we are working on the minimum really, realistically, that there will be a two-year period between the Bill (…) receiving Royal Assent and the first restrictions coming in on existing providers and their ability to take placements. That, we think, is a reasonably generous amount of lead-in time, and, of course, it's not a cliff edge. Providers will still be able to operate in their legacy for-profit mode for a period of time, but that will be controlled by provisions we have put in the Bill around approval of placements."*[194]

282. As regards the length of the transitional period, the Minister informed us that this "will be determined by a range of factors including the level of demand for placements in restricted services, and the speed of replacement of for-profit by not-for-profit provision. Any decision to bring the transitional arrangements to a close will need to be done in a manner and at a time which is compatible with Convention rights."[195]

283. She went on to say that, "given the many variables and the potential impact upon vulnerable children if their permanent placements were cut unduly short, it would not be prudent at this time to project and set on the face of the Bill when this optimum point will be reached".[196]

284. The Minister recently set out to the Legislation, Justice and Constitution Committee that the regulation making powers to set end dates for the transitional period "would be open to Welsh Ministers to bring the transition

[193] RoP, 17 July 2024, para 21
[194] RoP, 17 July 2024, para 25
[195] Letter from the Minister for Social Care, 28 June 2024
[196] Letter from the Minister for Social Care, 28 June 2024

period to an end in a staged way, allowing local authorities whose task of removing reliance on for-profit providers is more difficult to have more time but introducing full implementation for other areas sooner."

285. We asked her about the risks associated with such a staged approach, and whether treating local authorities differently could act as a 'perverse incentive' for local authorities to retain the status quo. The Minister told us:

> *"Local authorities are at different stages of the process, and so you can't force everybody to get to the same place at the same time; that's part of what we're trying to do. It's part of what the elimination programme is about with local authorities that we're investing in to give them the resources to be able to build that capacity."*[197]

286. Adding to this, Anthony Jordan said that the Welsh Government had made provision in this respect in order to be able to make some allowances for local authorities "genuinely struggling" to eliminate profit within the required timescales. He also said they were thinking about the provision "in terms of making a distinction between different types of service":

> *"So, it might be that, actually, we could bring the transition period for fostering services to a close rather more quickly than we could for residential care services, because I think the signs are more positive there that fostering services will wish to transition.*
>
> *(...) and the same with secure accommodation services where there are, currently, no for-profit providers of secure accommodation. So, we might want to bring that in more quickly again still. That's essentially the way we're thinking of using that particular power."*[198]

Exceptions to allow 'not for profit'

Supplementary placements

287. In relation to supplementary placements, the Minister confirmed that Welsh Government officials would be able to act on behalf of Welsh Ministers to sign-off placements. She also confirmed that the Bill would not prevent local authorities

[197] RoP, 17 July 2024, para 64
[198] RoP, 17 July 2024, para 66

from placing a child in a supplementary placement prior to Ministerial approval being granted[199], and that Welsh Ministers may issue a Code of Practice under section 145 of the Social Services and Well-being (Wales) Act 2014 to clarify expectations on practice in this area.[200]

288. The Minister confirmed that, after the end of the transition period, any placement of a child in for-profit provision would need to be outside Wales as it would not be possible to be registered as a for-profit provider in Wales. She went on to say:

> *"However, given sufficiency of not-for-profit provision will be a dominant factor in determining whether to bring the transitional arrangements to an end, we anticipate the need for a Welsh local authority to place a child in for-profit provision in England after that point will only arise in exceptional circumstances."*[201]

289. Further to this, Albert Heaney confirmed that the Welsh Government had been meeting with UK government colleagues "to explore cross border issues", as both governments wanted to see their own children being looked after closer to home.[202]

290. In relation to the criteria to be used by Welsh Ministers in assessing a supplementary placement request, the Minister told us:

> *"Welsh Ministers will comply with section 81B(4) which requires them to grant an approval where they are satisfied that the conditions of that subsection are met.*
>
> *They will need to be satisfied that the application has been made in accordance with the requirements and that the local authority has done enough to show that there is no alternative placement with a not-for-profit provider which meets the child's needs and that the proposed placement is reasonable in all the circumstances."*[203]

[199] RoP, 6 June 2024, para 123; Letter from the Minister for Social Care, 28 June 2024
[200] Letter from the Minister for Social Care, 28 June 2024
[201] Letter from the Minister for Social Care, 28 June 2024 and RoP, 6 June 2024, para 128
[202] RoP, 6 June 2024, para 126
[203] Letter from the Minister for Social Care, 28 June 2024

291. We put to the Minister the evidence we had heard from Care Inspectorate Wales about the potential for the Bill to effectively 'legalise' and normalise unregistered placements in Wales because, as drafted, it does not prohibit any unregistered placement being used for a child of any age, and also because paragraph 55 of the Explanatory Notes refers to a placement meaning accommodating a child in unregistered accommodation on a temporary basis or in cases of urgency.

292. In response, the Minister confirmed:

> *"The Government is clear that the provisions in the Bill relating to the approval of supplementary placements will not act to effectively 'legalise' or normalise unregistered placements. These provisions enable Welsh Ministers to approve a placement with a registered for-profit provider of children's residential or foster care who is subject to the wider transitional arrangements set out in the Bill. It will not enable Welsh Ministers to authorise an unregistered placement."*

293. She stated she was "aware there has been some confusion regarding the reference to 'unregistered accommodation' in the Explanatory Notes to the Bill" and that the intention was to refer to "accommodation where there is no requirement to register because the placement is not with a foster carer and the arrangements fall outside the definition of 'a care home service'.".

294. She went on to say:

> *"More recent usage of the terms 'unregistered accommodation' and 'unregulated accommodation' have tended to distinguish between two things, the term unregistered accommodation being used to refer to arrangements which fall within the scope of activity where there is a requirement to register but where the provider is not in fact registered and unregulated accommodation being used to refer to arrangements which fall outside the scope of regulated activity and therefore where registration is not required.*
>
> *The former is not the sense in which 'unregistered' is used in the Explanatory Notes."*

295. She confirmed that the ENs would be revised to clarify this point.[204]

296. In relation to the potential for increased use of unregistered accommodation and Deprivation of Liberty Orders, we asked the Minister whether she was concerned that these issues could worsen in the short to medium term with the removal of profit from the sector. She told us:

> *"Work on that has already been taking place, and we are seeing the numbers of services operating without registration falling, in terms of the placements (…) we're looking towards the minimal use of unregistered placements as well. It's about increasing and building the resilience into the arrangements of suitable places. That's what this whole programme is focused on."*[205]

Impact on affected children

Active offer of advocacy

297. In relation to the call from some stakeholders for an active offer of advocacy to be made to children and young people in care, the Minister said "it wouldn't be part of this legislation".

298. However, she said she was "very keen to ensure that children's voices absolutely remain central" and that "if children need access to that level of support then we should seek to facilitate that".[206]

299. Penny Hall said this was a matter the Welsh Government was talking to advocacy providers about.[207]

Other children's issues

Accommodation 'within or near to' the local authority

300. We asked the Minister whether the Bill might enable local authorities to place children further away from their homes than they currently do, as suggested to us by some stakeholders.

[204] Letter from the Minister for Social Care, 6 September 2024
[205] RoP, 6 June 2024, para 92
[206] RoP, 17 July 2024, para 68
[207] RoP, 17 July 2024, para 70

301. The Minister confirmed that the Welsh Government's policy intention in this area was to allow local authorities to place a child just over the border in another local authority, rather than further away within their own boundary. She went on to say:

> *"we're very clear that what that means is it's near to where the child lives and that that is more important than whether it actually sits within a county boundary."*[208]

302. This was further confirmed in correspondence, where she stated:

> *"Our intention is not to change what is in the best interests of the child. If the professional view is that the child should be within the local authority area, then the references to "near to" in the sufficiency plan provisions are not intended to change that.*
>
> *Local authorities are best placed to identify, commission and deliver the services children and young people need. (...) There may be opportunities to make placements near to children's communities that are across a local authority boundary but are closer to a child's home community than an alternative placement at the other end of a local authority area, our pragmatic approach allows for this and facilitates greater partnership working to create new provision regionally."*[209]

Sufficiency plans

303. In relation to the duty on local authorities to prepare and publish an annual sufficiency plan for accommodation for looked-after children, we asked the Minister to set out the reasons why the Welsh Government might reject a sufficiency plan and why the Bill is silent on what happens if a second draft of a sufficiency plan is rejected.

304. Responding to this, she said that the sufficiency plan must detail the steps the local authority will take in that year to fulfil its sufficiency duty and must include certain information, including the estimated number of children the local authority will be looking after who it will be unable to place in not-for-profit provision; an assessment of the available accommodation as well as the extent to

[208] RoP, 17 July 2024, para 77
[209] Letter from the Minister for Social Care, 28 June 2024

which that accommodation is within, or near to, the local authority's area. Other prescribed information must also be provided.

305. She went on to say that if, having scrutinised the plans, Welsh Ministers consider that the required information has not been provided or the progress towards not-for-profit provision is unsatisfactory, the Welsh Ministers may decline to approve the plan. In which case, they must notify the local authority, provide reasons and specify a period within which a further plan must be submitted.

306. She confirmed that the Bill provides that the same process applies where the Welsh Ministers decide not to approve a further draft, and "therefore it is clear that the Welsh Ministers may continue to withhold approval for successive iterations of a local authority's sufficiency plan".[210]

Mandatory reporting

307. We asked the Minister why the Welsh Government had chosen not to make provision in the Bill in relation to mandatory reporting by specific individuals of child sexual abuse. She said the government had reached this decision following "direct discussion and consultation" with its safeguarding stakeholders and partners and believed that the current approach, which mandates organisations to report rather than individuals, "is the right approach for us in Wales". She added that this mandate on organisations in Wales had no parallel elsewhere in the UK.[211]

308. Adding to this, Albert Heaney told us that the Welsh Government had "worked very closely" with the independent inquiry into child sexual abuse during its work, "always looking at lessons to be learned, taking this very seriously, recognising the impact upon victims and families' lives". He said that the government "will always continue to look to strengthen our safeguarding arrangements".[212]

309. The Minister also referred to legislation introduced by the previous UK government in this area which fell at the prorogation of Parliament. She said:

> *"We don't yet know if the new UK Government will want to resurrect that piece of legislation. If they do, it might be an*

[210] Letter from the Minister for Social Care, 28 June 2024
[211] RoP, 6 June 2024, para 21-29
[212] RoP, 6 June 2024, para 36

opportune time for us to have the conversation with them around that."[213]

Our view

Providers must be not-for-profit

Permitted business models

310. A majority of us are opposed to the principle of large, private equity firms being able to draw profits from providing care for the most vulnerable children and young people in our society. We recognise that arrangements of this kind exist in Wales to an extent, and a majority of us support the aim to bring this to an end.

311. We recognise, however, that other, smaller ventures currently in operation provide good-quality, local care, employing local people. We believe that, if this Bill passes, providers of this kind should be both encouraged and supported to move to a different not-for-profit model of operation.

312. More broadly, we believe it is fundamentally important that high quality accommodation for looked after children and young people is provided where it is needed; keeping that child close to their family and friends, and their wider community ties, ensuring the best possible outcomes for that child.

313. To this end, a majority of us support the business models proposed within the Bill to the extent that they seek to bring to an end the extraction of private profit from the care of looked after children.

314. We note, however, evidence from a number of stakeholders, in particular the Directors of Social Services and the 4Cs, about further exploration of other models which would promote the principles of social enterprise.

315. We acknowledge that conversations are ongoing between Welsh Government and partners about this. We believe there is merit in continuing those conversations and exploring, with partners, other models that would be attractive to existing providers whilst preserving a not-for-profit ethos.

[213] RoP, 17 July 2024, para 79

Recommendation 2. The Welsh Government should continue to work with partners to explore business models currently not provided for in the Bill that would promote the principles of social enterprise whilst still being not-for-profit.

316. In supporting the business models proposed in the Bill, we are acutely aware of the need to learn from experiences elsewhere, and ensure that the legislation is drawn sufficiently tightly to prevent private companies from circumventing the rules by complex legal or administrative means.

317. We believe it would be advisable for the Bill to contain regulation-making powers to enable Welsh Ministers to take steps to close any loopholes enabling extraction of private profit, should they become apparent in the future. Such powers should require the full consideration and consent of the Senedd prior to their approval.

Recommendation 3. The Welsh Government should amend the Bill to include regulation-making powers to enable the Welsh Ministers to take steps to close any loopholes enabling extraction of private profit from the care of looked after children, should they become apparent in the future. Such regulations should be subject to the affirmative procedure.

Support for providers to transition

318. We recognise that, for those who wish to transition to a not-for-profit model, this will not necessarily be an easy or straightforward process. It will likely involve the winding up of their existing business and the establishment of a new, not-for-profit entity, with all the associated work and costs.

319. This was a matter of real concern for stakeholders at a time of considerable uncertainty for many when they face important decisions about the future of their respective businesses. It would be a reassurance if they had a clear and detailed offer of guidance and support from the Welsh Government, setting out what support they could expect to receive and when that would be available. This should be part of a heightened communication and engagement plan with private and independent providers, designed to provide greater clarity and certainty about the transition process.

Recommendation 4. The Welsh Government should prepare and publish a detailed offer of the guidance and support that it will make available to private and independent providers wishing to transition to a not-for-profit model. This should be done as a matter of urgency, and should be accompanied by a communication plan.

Costs and potential savings

320. The cost of providing care to looked after children has increased dramatically over the past decade, with future projections indicating a position that is unsustainable for public finances.

321. There has been much discussion of the Welsh Government's estimated costs of implementing the Bill, and its interpretation of the Competition and Markets Authority's report. Private providers, in particular, argued strongly that 'profit' did not equate to poor quality, and that the costs of providing local authority residential and foster care had been underestimated.

322. It is clear that the Welsh Government's 'eliminate profit' policy will require substantial investment, especially in the short to medium term, as the responsibility for providing sufficient and sustainable care for looked after children shifts to local authorities, to an extent that is currently unknown. This is, of course, at a time when the resources available to local authorities are already under enormous pressure.

323. The Welsh Government has already committed £68 million directly to this policy, plus additional funding from a number of other streams, but there was a strong call, particularly from local authorities and directors of social services, for the Welsh Government to give a clear commitment to the future funding that would be made available to support local authorities beyond the transition period.

324. The Minister has said she recognises the pressures facing local government finances, but that there is not an agreed budget beyond this financial year. We do not believe this to be a satisfactory position,

325. Under this policy, local authorities will be assuming a significant level of risk as a result of future uncertainties around the number of providers who will agree to transition, the impact of the policy on the workforce, potential disruption to placements and negative impacts on children's outcomes, and the potential for the investment required being greater than anticipated. Local authorities must be given a clear picture of the future financial support they can expect to receive from the Welsh Government for delivering their contribution to this key manifesto commitment.

Recommendation 5. The Welsh Government should make a clear commitment to the level of future funding and support it will make available to local authorities beyond the transition period to support the 'eliminate profit' agenda. As a

minimum, this should set out funding for the next five years, which will be a crucial time for local authorities in developing their own provision.

326. More broadly, the Minister has said she expects that local authorities will start to see savings within a ten year period. Clearly, given the significance of the policy, the financial commitment involved and the level of future uncertainties, the Welsh Government will need to have robust financial monitoring and evaluation arrangements in place.

327. We are aware that there will be a role for the Eliminating Profit Programme Board in monitoring and evaluating the implementation of this chapter of the Bill. Further, that consideration will be given, over the coming months, to a more formal evaluation and review of the policy[214]. The Minister should provide more detail on both of these elements, including details of how she will monitor and evaluate the outcomes of the funding provided in this area.

Recommendation 6. The Minister should write to us, within six months of publication of this report, with details of:

- the work undertaken by the Eliminating Profit Programme Board in monitoring and evaluating the implementation of the 'eliminate profit' policy so far;
- The more formal evaluation of the Bill proposed by the Minister, including who will be involved in this review, its terms of reference and how frequently it will report.

Transition and ensuring sufficient placements to meet demand

328. Transition and sufficiency of placements were two of the headline concerns for stakeholders with the 'eliminate profit' policy, particularly given the pre-existing, long-term challenges in securing enough placements for children looked after by Welsh local authorities in both foster and residential care.

329. Despite policies and funding aimed at reversing the trend, the numbers of looked after children have increased significantly over the last ten years, with needs becoming increasingly complex.

330. As a committee, we have real concerns about the implementation of Part 1 of the Bill, and the impact this could have on children and young people looked

[214] EM, page 148

after. The scale of the challenge facing local authorities, social services and providers themselves cannot be underestimated.

331. There are huge risks to the sufficiency and suitability of residential and foster places for looked after children, especially in the short to medium term, as an unknown number of providers exit the market and local authorities and the third sector work to build capacity. This, in turn, could increase the already significant challenges in finding suitable, stable, safe accommodation for looked after children, particularly those with more complex needs. Most concerning in all of this is the potential for negative outcomes for children and young people if the transition is not managed effectively.

332. The Welsh Government must do all it can to ensure an orderly transition that minimises, as much as possible, any disruption to children and young people who are currently in safe and stable for-profit placements. Throughout this coming process, the needs of children and young people must be paramount, with a focus on ensuring sufficiency and stability of high-quality placements which meet the needs of the individual, provide a safe, supportive environment designed to deliver the best outcomes for children and young people, and ensure close links with family, friends, and education and support services.

333. We were concerned to hear that the current position across local authorities in terms of existing provision is so variable. Continued and expanded regional working arrangements will be important in the drive to ensure future sufficiency.

334. We are also concerned that a lack of sufficiency could lead to an increase in out-of-area placements or in unregistered accommodation, particularly for those with more complex needs or requiring specialist homes.

Disorderly exit

335. The level of uncertainty associated with the Bill is most strongly felt in the potential for an unknown number of providers to exit the market in a disorderly way. This could have huge implications for future sufficiency, creating a sudden and critical shortage of placements if a greater than expected number of providers leave the market quickly.

336. The young people we spoke to told us that stability and consistency of placements were very important to them.

337. It is imperative that current providers are offered advice and support to transition to one of the new business models. We have set out our views on this in paragraphs 318-319 and Recommendation 4.

338. It will also be necessary to consider the impact of the Bill on the social care workforce, regularly described as being "in crisis". We heard evidence that the Bill would exacerbate existing workforce pressures, with staff choosing to leave the sector altogether. This, in turn, could lead to a sudden end to many residential and fostering placements, with the loss of years of experience and skills. The Welsh Government needs to ensure it has in place a robust plan to support and retain the social care workforce during the transition.

339. We note the CYPE Committee has consistently raised concerns about the challenges facing the children's services workforce. It has specifically done this in the context of support for care experienced children in its report: **If not now, then when? Radical reform for care experienced children and young people**. The evidence we have heard suggests these problems persist and we draw the Minister's attention to the CYPE Committee's recommendations on this issue.

340. In relation to the provision of secure placements, we note the Minister's confirmation that secure provision was part of the Welsh Government's elimination of profit programme, and that work was underway to ensure provision of suitable, regionally-based accommodation.

How to support not-for-profit sector

341. In terms of support for the not-for-profit sector, we draw to the Minister's attention the evidence we heard in relation to the opening of a social care register for foster carers to ensure they have the same level of status as social workers and residential care workers.

342. The Welsh Government has already partly accepted a recommendation made by the Children, Young People and Education Committee (CYPE) on this matter. On this basis, we believe the Welsh Government should consider the recommendation made to us by the CYPE Committee "that the Bill be amended to make it mandatory for foster carers to register with Social Care Wales in order to provide foster placements for looked after children, thereby accelerating progress towards a national register of foster carers".

343. We also draw to the Minister's attention to the evidence we received about the need for clear communication with fostering families about the transition and what it will mean for them.

Recommendation 7. The Minister should consider and respond to the recommendation from the Children, Young People and Education Committee, based on its extensive scrutiny of this policy area, "that the Bill be amended to make it mandatory for foster carers to register with Social Care Wales in order to provide foster placements for looked after children, thereby accelerating progress towards a national register of foster carers".

Timescales for transition

344. As drafted, the Bill does not include specific timings for transition, although we note the Minister's evidence that the Welsh Government is "very ambitious" for this programme, and saw the transition "moving relatively quickly" from April 2026.

345. We received a lot of evidence from stakeholders setting out their detailed concerns about what they considered to be the unrealistic timescales for transition proposed by the Welsh Government, and how this could exacerbate existing sufficiency problems with the sudden loss of existing provision. This is something that local authorities and the third sector, in particular, were really worried about. We urge the Minister to give full consideration to these concerns.

346. We also draw her attention to the calls by the CYPE Committee to "set out clearly an end date for the transitional arrangements, having first consulted fully and constructively with local authorities and other key stakeholders to ensure that a lack of not-for-profit placements does not push children into unsafe unregistered accommodation".

347. There is no doubt that transitioning to a new not-for-profit model demands time, and that it must be properly managed in order to minimise disruption to children and young people, and enable the market to adjust and the not-for-profit sector to expand.

348. We agree that making provision for a transition period is a sensible approach, ensuring that there is no "cliff-edge" in the process. Equally, we feel it is important for all parties to have a clear idea of the deadlines they are working towards, as that provides a point of focus. It is also important to avoid a long term scenario of 'drift' whereby a small number of 'for profit' providers continue to provide and monopolise what was previously a larger market.

349. The Welsh Government must monitor the transition period closely, with particular attention paid to the level of demand for placements, the nature of that demand and the speed by which existing services are replaced by not-for-profit

provision. We were reassured by the Minister's evidence that these factors would influence any decision to bring the transition period to an end, and that this will be done in a manner and at a time compatible with UNCRC Convention rights.

350. It will be imperative for the Bill to be carefully reviewed, and for close attention to be paid to monitoring progress towards the overall goal of removing private profit. To this end, we believe the Minister should commit to preparing and publishing a report on progress with the transition, and that this should be done at six monthly intervals from the date of the Stage 1 debate.

Recommendation 8. The Minister should review the evidence from stakeholders setting out their significant concerns about the transition timescales proposed by the Welsh Government, and their potential to exacerbate existing sufficiency problems, in order to assure herself that the policy is deliverable within the timescales proposed, without having a detrimental effect on looked after children and young people.

Recommendation 9. The Minister should prepare and publish a report on progress with the transition to a not-for-profit model. This should include an update, by local authority, on the number of placements leaving the market and the number of new placements created, and should reflect on the stability of existing placements. It should also include details of the consultation with children and young people directly affected by the Bill and the numbers taking up the active offer of advocacy. This should be done at six monthly intervals, starting from the date of the Stage 1 debate.

Exceptions to allow not-for-profit

Process for granting supplementary placements

351. We acknowledge the concerns of some stakeholders about the principle of seeking Ministerial approval for supplementary placements, and their suggestions for other appropriate authorities who might be better placed to provide that approval. Further, we note their concerns that the need for Ministerial approval might delay the placing of a child in an emergency.

352. We believe that the requirement for Ministerial approval provides an important check and balance to the decision of a local authority to place a child with a for-profit provider, albeit on a temporary basis or in cases of urgency. The principle of Ministerial approval for certain decisions relating to children's social services is established, although this is in very specific circumstances which are infrequent. In the case of this Bill, we note that it cannot be predicted how often

the process of Ministerial approval would need to be instigated and therefore how onerous this might potentially be, especially in cases where time is of the essence.

353. In the case of supplementary placements, we believe Ministerial approval will bring an important level of rigour to the decision-making process, and guard against the use of supplementary placements becoming 'normalised' during particularly challenging times, especially for children with more complex needs requiring specialist placements at short notice.

354. Further, we draw stakeholders' attention to the Minister's confirmation that the Bill would not prevent local authorities from placing a child in a supplementary placement prior to Ministerial approval being granted, and that Welsh Government officials would be able to act on behalf of Welsh Ministers to approve placements, if necessary. We hope this provides some reassurance on this point, although we note the concerns that this potentially means an additional placement move for a child if retrospective permission was not granted.

Recommendation 10. The Minister should ensure that any guidance or Code of Practice issued in relation to section 13 confirms that the Bill does not prevent local authorities from placing a child in a supplementary placement prior to Ministerial approval being granted, and that Welsh Government officials are able to act on behalf of Welsh Ministers to approve placements, if necessary. Such guidance should emphasise that the use of supplementary placements should not become the default position, particularly during challenging times.

355. In relation to the criteria the Minister will use in assessing a supplementary placement request, it is vital that this is clearly set out so that there can be an understanding of the basis on which a decision to approve the use of a supplementary placement has been made. We note the Minister's evidence that section 81B (inserted by section 13 of the Bill) sets out the relevant requirements and that, amongst other things, the Minister must be satisfied that there is no suitable alternative placement available that meets the needs of the child and that the placement is reasonable in all the circumstances.

356. More broadly, we believe it will be important to monitor the use of the powers to approve supplementary placements and we call on the Minister to report on this, on an annual basis.

Recommendation 11. The Minister should prepare and publish an annual report on supplementary placements approved by the Welsh Ministers under the Bill. This report should include anonymised data on matters including, but not limited

to, the age-bracket of the child; local authority; the type of placement requested (for profit foster, for profit, residential, out-of-county, out-of-Wales, unregistered); whether the child was already in the placement, cost bracket). An exception must apply to any report produced in line with this recommendation, to the effect that the report must not include any data which, when read in conjunction with any other publicly available information, would enable any individual to be identified. The Minister should include provision for this on the face of the Bill.

Unregistered accommodation and deprivation of liberty orders

357. We had some concerns about the potential for the Bill to effectively 'legalise' and normalise unregistered placements in Wales because, as drafted, it does not prohibit any unregistered placement being used for a child of any age. We note paragraph 55 of the Explanatory Notes refers to a placement meaning accommodating a child in unregistered accommodation on a temporary basis or in cases of urgency. Similar points were made by the Children, Young People and Education Committee in their recent letter to us.

358. Having raised this with the Minister, we welcome her confirmation that the Bill is not intended to enable Welsh Ministers to authorise an 'unregistered' placement. We further welcome her commitment to amend the Explanatory Notes to clarify the position that an appropriate "placement" under section 13 of the Bill will include "unregulated" accommodation, rather than "unregistered" accommodation, as currently provided for in paragraph 55 of the Explanatory Notes.

359. Whilst this is welcome, it is imperative that this is made as explicit as possible in the revised Explanatory Notes.

Recommendation 12. When correcting paragraph 55 of the Explanatory Notes to remove the term 'unregistered' placement, the Minister should make it explicit that placements which are not registered with Care Inspectorate Wales are unlawful and must not be used as 'supplementary placements' or under any other circumstances.

Impact on affected children

360. It is essential that children and young people potentially affected by this Bill are fully engaged and supported during this period of change. They should be kept informed throughout the process, offered appropriate advice and support, and be involved in the decisions which affect them.

361. We were disappointed to hear from stakeholders about a lack of information having been made available to children and young people about the Bill, and we believe that the Welsh Government should produce accessible resources aimed at informing children and young people about the Bill and how to make their views on it known.

Recommendation 13. The Welsh Government should commit to producing accessible resources aimed at informing children and young people about the Bill and how to make known their views on it.

362. In relation to the provision of advocacy services, we agree with stakeholders that this is an important issue, particularly in light of the corporate parenting responsibility to make decisions for care experienced children as any 'good parent' would for their own child. We cannot allow children and young people to 'read between the lines' about whether the Bill means they might have to live elsewhere.

363. There is nothing in the Bill that will mean there is an 'active offer' of advocacy to children and young people during this process. We recognise that the Welsh Government's approach to advocacy is based on best practice and that this is an area they say they are talking to advocacy providers about. However, we feel strongly children and young people need a more solid commitment, and that the Bill should include a specific active offer of advocacy for children and young people whose care arrangements are potentially affected by the Bill.

364. The Children, Young People and Education Committee wrote to us on the subject of advocacy more widely, and specifically asking us to consider recommending that the Bill be amended so that the provision of residential visiting advocacy for each and every children's care home is a requirement for registration as a provider of children's care homes in Wales. We draw the Minister's attention to their recommendation.

Recommendation 14. The Minister should amend the Bill to include provision for an active offer of advocacy for children and young people whose care arrangements may be affected by the Bill.

Other children's issues

Accommodation "within or near to" the local authority

365. In relation to out-of-area placements, we note the Minister's evidence that the Welsh Government's intention in this area is to enable local authorities to have

some flexibility to work in partnership to make placements near to a child's community that are across a local authority boundary but are closer to a child's home community than an alternative placement at the other end of a local authority area.

366. However, we recognise the concerns of stakeholders about the possibility that section 10 of the Bill could lead to more children being placed outside their home area "as a default position". The Children, Young People and Education Committee wrote to us on this point, saying that "for the majority of children, out of area placements increase the risk of children going missing, being criminalised or sexually exploited, not to mention making it more difficult to maintain relationships with their birth family or friends or avoid the need to move schools".

367. We share their view, and the views of the others who gave evidence to us on this point, that out-of-area placements should be avoided wherever possible. We also concur there is a real risk of local authorities taking a wider interpretation of this wording than Welsh Government intends, in circumstances where there is a shortage of placements.

368. As such, we believe the Minister should consider tightening the wording of section 10 to make explicit that 'near to' means a bordering or adjacent local authority. Further, that that the use of this provision should be in exceptional circumstances and not the default position if other provision is not available. We believe this would allow the Welsh Government to deliver it policy intention, whilst also providing a safeguard that children are kept as close as possible to their home area, where that is safe to do so.

Recommendation 15. The Minister should amend section 10 of the Bill to make it explicit that:

- placing a child "near to" the local authority's area means a bordering or adjacent local authority, and
- the use of this provision should be exceptional circumstances.

Sufficiency plans

369. In relation to the duty in section 11 for local authorities to prepare and publish annual sufficiency plans, we draw the Minister's attention to the evidence from ADSS Cymru and the 4 Cs calling for "significantly more detail" in relation to proposed sufficiency plans and how they will align the existing regional placement planning and commissioning.

Mandatory reporting

370. In relation to mandatory reporting by specific individuals of child sexual abuse, we note the Minister's evidence that the Welsh Government's approach in this area mandates organisations rather than individuals and that this decision had been reached following direct discussion and consultation with stakeholders and partners. However we also note that the Welsh Government's summary of consultation responses[215] on this issue says that "of the 91 respondents who provided an answer, 57 agreed or tended to agree with the principle of imposing a duty to report children at risk, directly on individuals within relevant bodies."

371. We draw the Minister's attention to our most recent correspondence with the Children's Commissioner on this point, where she says that awareness raising is a key factor for an organisation-level duty to be successful, and suggests that the Welsh Government should produce more detail on the actions they are taking on awareness raising to provide assurance that its approach is sufficient to ensure children are being kept safe.

372. We invite the Minister to set out the actions being taken by the Welsh Government specifically in this regard. The Minister should do this in time to allow Members to consider her response and be able to table amendments to the Bill if they do not believe these actions are sufficient.

Recommendation 16. The Minister should set out the actions being taken by the Welsh Government in relation to awareness-raising of mandatory reporting, by organisations, of child sexual abuse. She should do this in time to allow Members to consider her response and be able to table amendments to the Bill if they do not believe these actions are sufficient.

[215] 'Proposals for primary legislation in relation to children's social care, Continuing Health Care, mandatory reporting and regulation and inspection', Consultation - summary of responses, Welsh Government

5. Part 1: Chapter 2: Miscellaneous amendments in relation to social care services , social care workers and local authority social care functions (sections 14-22)

Overview

373. Sections 14 to 17 of the Bill make provision in respect of the regulation of social care services providers.

374. Sections 18 to 19 make provision relating to the registration and fitness to practice of social care workers.

375. Sections 20 to 22 make provision relating to local authority social services functions.

Evidence from stakeholders

376. A small number of stakeholders provided evidence on this Chapter of the Bill.

377. Homecare Association raised concerns about the burden that the requirement in section 14 would place on providers, particularly small businesses.

378. Section 14 amends the Regulation and Inspection of Social Care (Wales) Act 2016 to change the current duty on Care Inspectorate Wales to submit and publish annual returns for care providers, and instead places the duty onto service providers themselves. It also makes failure to publish an annual return within a prescribed time limit an offence.

379. In relation to the publication of annual returns, the Homecare Association told us that they remained concerned about the practicalities of the requirements, including whether "well-intentioned providers may receive fines if they, for example, experience technical issues with their websites". They said there needed to be a "fair process for following up apparent breaches with rights to explain and appeal".[216]

380. Similarly, Llamau told us there was "potential risk of inaccurate data from smaller providers with limited capacity and central functions. However, they felt

[216] HSCWB24

this could be a positive development "if managed well", saying that, by sourcing data directly from providers, "we can hold them responsible and accountable, we can enhance the accuracy and reliability of the information".[217]

381. Margaret Rooney, from Care Inspectorate Wales (CIW), told us that this was an aspect of the Bill that CIW very much welcomed, as it would mean the responsibility for the data protection aspect of annual returns would lie with the provider, who is the data owner.[218]

382. Referring to the concerns of others about the burden of the requirement and, in particular, the creation of the offence for failure to publish an annual return with the time limit, she told us:

> *"we always take a proportionate approach to how we would enforce something. Our aim is to support providers through a change and to encourage improvement.*
>
> *So, any use of a criminal power, which might be, in this case, a fixed-penalty notice, would be an absolute last resort, but at the same time, it is useful to have something like that to be used in those circumstances, hopefully very rarely—very rarely—where a provider might persistently either not submit an annual return or publish an annual return."*[219]

Evidence from the Minister

383. The Explanatory Memorandum says that the provisions in section 14 will greatly reduce the burden on Care Inspectorate Wales, who will not need to check the returns for potential data protection breaches. It estimates the cost saving for CIW will equate to approximately £8,300 per year.

384. The EM notes that the change could result in time or cost implications for providers in setting up and maintaining websites for any that do not already have their own websites. However, the Welsh Government considers there to be sufficient time before the requirement comes into force for providers to set up a website. It estimates that one-third of current providers do not currently have a website, and says the aggregate cost for establishing websites is estimated to be between £144,730 and £247,100.

[217] HSCWB15
[218] RoP, 17 July 2024, para 265
[219] RoP, 17 July 2024, para 266

385. The EM also states that the Welsh Government is aware that 150 providers have failed to submit their annual return by the required deadline, thus breaching the requirement within the Regulations.

Our view

386. We have considered the limited evidence before us on Part 1, Chapter 2 of the Bill.

387. We note the concerns of a small number of stakeholders about the practicalities of section 14 in particular. We draw to their attention the evidence from Care Inspectorate Wales that their aim is to take a proportionate response to enforcement, and to support providers through a change and to encourage improvement.

6. Part 2: Health Care (sections 23-26)

Overview

388. Sections 23-26 of the Bill make provision in respect of health care:

- Section 23 provides an overview of Part 2.
- Section 24 makes provision to allow direct payments in health care. It enables Welsh Ministers to make regulations about whether, when and how direct payments may be made, and the information, advice or support provided in connection with direct payments.
- Section 25 introduces Schedule 2, which makes a number of minor and consequential amendments in relation to direct payments for health care.
- Section 26 relates to the provision of health services by local authorities.

Background

389. The Programme for Government contains a commitment to "improve the interface between continuing health care and direct payments".

390. Continuing Health Care (CHC) is a complete package of ongoing care (to meet all assessed health and care needs) arranged and funded solely by the NHS through local health boards (LHBs), where an adult's primary need has been assessed as health based. Direct payments are not currently possible for CHC.

391. For social care, legislation is in place that enables local authorities to make direct payments to individuals to enable them to secure services to meet their eligible needs for care or support. Direct payments for social care allow people to receive cash payments from a local authority to buy their own care and support services (to meet eligible needs), for example they may employ a Personal Assistant or care worker of their choice.

392. The Bill will make provision to enable local health boards to make direct payments to people for Continuing NHS Healthcare (CHC). Welsh Ministers will be able to set out details and conditions of when the direct payments could be made available under regulations. Regulations may also specify the arrangements for providing information, advice or other support in connection to direct payments.

393. In England, personal health budgets (PHBs), the equivalent of direct payments, have been permissible for adults' and children's CHC since 2014.

394. The Welsh Government's intention is that the policy in this Part of this Bill is implemented in spring 2026.

Evidence from stakeholders

Information, advice and support

395. In its 2022 report, Audit Wales found that the systems to manage and support people to use direct payments vary widely across Wales, with service users and carers receiving different standards of service. The report concluded that people in Wales are not consistently supported to take up direct payments; and there is more for local authorities to do to promote awareness and understanding of direct payments amongst service users.

396. Issues of advice and support relating to direct payments were raised with us by stakeholders. They told us there was the need for information and support about the changes that will be made as a result of the Bill, and also to enable people to manage direct payments, in particular, the administrative burden associated with employing staff.

397. The All Wales Direct Payments Forum said that, in their experience, direct payments in social care can be "life changing for many people". However,

> *"becoming an employer, understanding the role of being an employer, taking on that personal responsibility, evaluating risk and ensuring that all parties are safe is daunting, and I don't think we can underestimate the importance and the necessity for really high-quality support to people."*[220]

398. Cecilia Kenny told us that people can be "scared about taking on something they don't understand" because they are not given enough information to make informed choices about the right option for them. She said that "changing from one scheme to the other is not going to make it easy for everybody, unless the communication and the details of it are very clear."

399. Learning Disability Wales suggested that expertise was needed within each local authority and health board area "where people can go to get really good quality advice and support before they make that step, and also during." In their

[220] RoP, 27 June 2024, para 376

view, people should have a "right to support" if they chose to use direct payments.[221]

400. Jason Bennett, ADSS Cymru, told us that "outcome-focused, strength-based approaches to working with families" were really important:

> *"We don't leave people alone with a pot of money; we put a support service in around them, which is a direct payment support service that operates really well. People have that support on tap to access at any time that they need it."*[222]

401. Both Carers Wales and Learning Disability Wales referred to the role of advocacy services in supporting service users and families through the CHC process, and in providing mediation when necessary:

> *"We know, unfortunately, that many people find it quite difficult to access advocacy services, but, of course, it can make a world of difference to people, and it really helps people to engage with the myriad of organisations, the official processes."*

402. We also heard evidence of the importance of co-production, both in terms of any refinements to the Bill but also in the production of guidance, information and advice for carers and for service users.[223]

403. The MND Association told us that, while they welcomed the Minister's proposal for support to be provided on a 'Hub' basis, "we believe more detail and more proactive, targeted support is needed".[224]

Preparing health boards for new responsibilities

404. In terms of preparations by health boards for their new responsibilities under the Bill, we heard that health boards could gain information and advice not just from local authorities, but from other direct payment support specialist providers across the country, and that doing that would be key.[225]

405. ADSS Cymru said they would not want to see health boards setting up new direct payments teams and services, as local government already had that infrastructure in place. They said that, tapping into that existing infrastructure

[221] RoP, 12 June 2024, para 194
[222] RoP, 27 June 2024,. para 380
[223] RoP, 12 June 2024
[224] HSCWB21
[225] RoP, 27 June 2024

would provide continuity of care for the individual, keeping the transition as seamless as possible, and maintaining a spirit of integrated working.[226]

406. Mark Cooper from the All Wales Direct Payments Forum said he had been working alongside his local health board for the last two years in preparation for the changes to be brought about by the Bill. That opportunity to work in partnership with the health board had, he said, been really useful in helping to understand each other and to find solutions to some of the problems.

407. Health boards themselves acknowledged the challenges facing them and said "the knowledge and skills gap cannot be underestimated". Jennifer Winslade from ABUHB said the process would be "a learning curve" and that health boards would need additional support in terms of training, establishing a system and a process. For this, she said they could "look across the border to our English colleagues", and also to local authorities to share their experience which, she said, they had indicated a willingness to do.[227]

408. Further, Health boards told us that the relevant people within their organisations had been working for some time with Welsh government policy colleagues to prepare for implementation of the Bill.[228]

Managing transitions between social care and NHS continuing healthcare

409. A number of stakeholders highlighted the importance of managing the transition between social care and NHS continuing healthcare.

410. In their evidence, health boards recognised that people can "move in and out of eligibility", although they said it was much more common for people to become eligible, rather than the other way around. They said that, where people are no longer considered eligible for CHC and require a different package of care, this process can be "clunky".[229]

411. Carers Wales said there was a need to make sure that those transitions were "as seamless as possible, because unpaid carers and, of course, families and people with that health need, don't need that extra level of stress and burden."

412. The WLGA said they were concerned "that the current system will continue with health and councils using two different systems and processes". They said it

[226] RoP, 27 June 2024
[227] RoP, 10 July 2024, para 187
[228] RoP, 10 July 2024, para 202
[229] RoP, 10 July 2024, para 228

would be important to set out how the transition between the two systems will be managed, whilst ensuring that no individual is left without funding and support during the transition phase.[230]

413. Carers Wales suggested there might be a role for Llais in helping people to navigate the relevant processes and also in providing mediation and support in the discussions between local authorities and health boards.[231]

'Right to return'

414. We heard from a number of disabled people and stakeholders that people are likely to be fearful of stepping into the unknown with CHC direct payments. Some suggested that individuals might be reluctant to accept a CHC assessment and take up the offer of continuing healthcare unless there was a safety net in the form of a 'right to return' to local authority direct payments if they feel they needed to.

415. Chris Hall, on behalf of Nathan Lee Davies, told us:

> *"if a person in Nathan's circumstances on direct payments (…) was classified as eligible for [CHC], he runs the risk of not being able to go back to (…) the status quo of having direct payments with the local authority. So, he could be told he's eligible. Then he says, 'But I don't actually want to now that I've seen what it entails. (…) I want to go back to receiving my direct payments from the local authority'. And at that point, the local authority will say, 'Well, you can get your care somewhere else and, therefore, we don't have to provide it.'"*[232]

416. He went on to say:

> *"I think that Nathan, and many people who are disabled, will say, 'It's better the devil I know.' Rather than jumping into a swimming pool and saying, 'I'll see if I can swim', they're saying, 'I'll stay on the edge of the pool because at least I'm not drowning.'"*[233]

[230] HSCWB31
[231] RoP, 12 June 2024, para 194
[232] RoP, 12 June 2024, para 10
[233] RoP, 12 June 2024, para 69

417. Similarly, BASW Cymru felt that those who opt for direct payments for Continuing NHS Healthcare should have a right to return to receiving support from local authorities.[234]

418. However, Jason Bennett from the All-Wales heads of adult services group, Vale of Glamorgan Council and ADSS Cymru, queried whether a right of return would be possible. He explained that, if a person's needs had become 'health needs',

> *"section 47 of the Social Services and Well-being (Wales) Act 2014 will prevent a local authority from providing that support. So, if that person's needs have deteriorated and become even more complex, we wouldn't be able to guarantee a return.*
>
> *(...) if you're eligible for CHC, by definition, you become non-eligible for local government services."*[235]

419. That, he said, should not prevent the relevant authorities from working together to understand what has gone wrong, why the individual feels the arrangements are not working for them, and to explore alternative pathways to providing care.[236]

Governance and delegation

420. Health boards and local government both highlighted the need for increased governance arrangements to ensure safe delegation of care by health boards to PAs.

421. ADSS Cymru warned that quality of care may suffer if the care being provided was not regulated, or could not be assured as being to the required standard:

> *"(...) one of the challenges of moving to Direct Payments through CHC is how to ensure that health boards have clear governance structures in place for delegation of appropriate tasks to PAs. This is important because the health-related needs and tasks they do may depend on the local health*

[234] HSCWB22
[235] RoP, 27 June 2024, para 298
[236] RoP, 27 June 2024, para 298

> *board's direction and control, not the individual's. This is an area that needs more clarity."*[237]

422. Others raised similar concerns about a potential worsening of the quality of care for CHC recipients when commissioning their own care using direct payments without the regulation of the NHS, and the individuals experiencing adverse outcomes as a result.

423. In its response to the Welsh Government's consultation, Care Forum Wales says it was concerned about a two tier system in care provision with a heavily regulated and registered workforce in domiciliary care agencies and care homes and a parallel unregistered and unregulated workforce of personal assistants undertaking very similar roles. It believed everyone providing social care should be subject to a basic level of registration.

424. The WLGA noted that PAs are not currently subject to the same registration and regulatory requirements as others in the social care workforce, and this may need to be reviewed if complex health related tasks are required, especially if the local health board (rather than the individual) directs and controls the tasks that a PA completes.[238]

425. Jennifer Winslade from ABUHB agreed:

> *"you do need a framework for governance and, in particular, clinical governance to ensure that providers are fit for purpose and remain fit for purpose so that individuals aren't placed at risk of harm."*[239]

426. She suggested that there was work that could be done nationally "around ensuring that we're really clear about what's safe to be delegated to a personal assistant." She noted that:

> *"England have a quality assurance framework that I think we could build on in terms of what we want in Wales for our citizens."*[240]

427. More broadly, Gaynor Williams, NHS Wales Health Collaborative, told us that there was not, currently, "a performance framework for CHC in Wales, so there is

[237] HSCWB30
[238] WLGA response to Welsh Government consultation
[239] RoP, 10 July 2024, para 194
[240] RoP, 10 July 2024, para 197

no formal way of knowing how we're doing across Wales at the moment". She went on to say that developing metrics for direct payments for CHC will be "essential" so that progress and success can be captured and measured.[241]

Financial support for health boards

428. The Bill proposes around three years of financial support before the health boards take on the costs themselves. We asked health boards whether they thought that would be sufficient.

429. In response, they said that, demand-led services like CHC were difficult to plan for, and that budgets would have to be flexible depending on the level of need of the individual.

430. We heard from Gaynor Williams that the "resource position is really, really challenging at the moment", and that the experience from England, during initial implementation, "was that it cost 20 per cent extra for every package of care that was delivered through direct payments", although that cost reduced over a three-year period to parity with an NHS-provided package of care.

Workforce fragility

431. Some stakeholders were concerned that the Bill could exacerbate the current care workforce crisis, highlighting disparities in pay and conditions between different but similar roles, such as healthcare support workers, PAs and care workers. They said there was a danger this could lead to "labour market displacement" and greater instability of the workforce, with social care workers moving to work as PAs, thus reducing the pool of people prepared to be registered care workers.[242]

432. Jason Bennett from ADSS Cymru told us:

> *"The same worker in the NHS as a healthcare support worker will be on a significantly higher salary than a domiciliary care worker or a personal assistant. So, when we look at expanding things like continuing healthcare, we have to bear that in mind."*[243]

433. Homecare Association said:

[241] RoP, 10 July 2024, para 261
[242] Homecare Association, evidence to Welsh Government consultation
[243] RoP, 27 June 2024, para 458

> *"Having more demand for Personal Assistants in an area and less demand for homecare services may just see the people who would have worked in a homecare provider taking work as a PA – i.e. displacement of the workforce and a weakening of local homecare offerings and not expansion. This has happened in England, for example, in Somerset, where regulated providers have lost over 2000 care workers to become PAs."*[244]

434. The MND Association said that the "move towards more flexibility with direct payments will not be a positive change unless it is accompanied by a sustainably resourced social care workforce that is readily available to deliver the support needed".[245] Further, they said that direct payments "are of no benefit in areas where care staff with the required skills and training are not available".[246]

435. Social care staffing shortages were highlighted as a barrier to successful implementation of the Bill. The Older People's Commissioner told us that "Insufficient access to suitable domiciliary care will make it hard for the Bill to achieve its aims in practice".[247]

Sufficiency and variation of pay rates set by local authorities and health boards

436. A number of stakeholders highlighted the variation in pay rates currently set by local authorities and health boards. Some called for the payment to be the same across Wales, ensuring equal access to support, and others said it was vital that the rates were high enough to purchase good quality services and pay workers fairly.[248]

437. The MND Association told us:

> *"We are (…) aware of discrepancies in the approach in implementing CHC between different local health boards (LHBs) in Wales. (…) It is vital that the level of payment is the same across Wales, so that people living with MND and their carers have equal access to support."*[249]

[244] HSCWB24
[245] HSCWB21
[246] HSCWB21
[247] HSCWB32
[248] HSCWB21, HSCWB24
[249] HSCWB21

438. Carers Wales stated to us that the hourly rate offered through direct payments varied across Wales, and that some unpaid carers worried when it appeared to them that the pay rate was not sufficient to procure staff. They said this problem could be more acute in rural areas, due to matters like travel costs.

439. They said they had been told by one unpaid carer that the hourly rate they had been provided by the local authority fell some way short of the hourly rate required by local agencies, meaning that the carer was faced with having to top-up that hourly rate from their own pocket.[250] They told us that pay rates, and the way they are set, should be subject to scrutiny:

> *"I think local authorities should have to set out why they have set that pay rate for that area, and if service users and carers don't believe that pay rate is sufficient, there should be a mechanism to review that and challenge it so it can be updated if it isn't accurately reflecting the local workforce."*[251]

440. Conversely, the Older People's Commissioner said:

> *"One of the factors affecting the supply of domiciliary care is health boards' ability to offer higher rates of pay to care workers. This may mean that the risk of someone not being able to find a domiciliary care provider would be reduced because NHS funding would enable them to offer more pay than someone receiving a direct payment from a local authority for social care.*
>
> *If so, this would militate against the statement in paragraph 3.56 of the Explanatory Memorandum that 'the approach should also support the principle of partnership working and integration, therefore allowing an improved interface between the delivery of local authority direct payments and direct payments made by the NHS in Wales.'"*[252]

441. Local authority representatives said there needed to be continuity and consistency across Wales (and across social care and health) on pay rates, and:

> *"it is true that in some places there will be a commissioned care provider that will have a* different *rate from the health board*

[250] RoP, 12 June 2024, para 139
[251] RoP, 12 June 2024, para 140
[252] HSCWB32

> *than they will from a local authority. That happens in nursing homes as well as in domiciliary care, because they're on a different framework. What I suppose we would hope with direct payments, if we were to do it together, is we have an agreed rate for a PA. That would be our appeal, I suppose, if we do it together."*[253]

Direct payments being used as a last resort in the absence of services

442. Some stakeholders told us they were worried that direct payments might be used as a 'last resort' in the absence of services. Learning Disability Wales said it was concerned that in times of financial pressures on the NHS, people may choose to accept direct payments because they cannot get the care they need:

> *"We are concerned that people with a learning disability might feel pressured to take on health budgets because the care they get otherwise is not adequate. They then might find that they struggle with the administrative burden that comes with health budgets."*[254]

443. Carers Wales said the move must not be seen as a way to pass the onus on to individuals to find their own care workers. This, it said, had already been happening, "where someone has been assessed as having an eligible need, no care workers to meet that need so offering direct payments and expecting service users to find someone to provide care, that in effect doesn't exist".

444. The Older People's Commissioner made a similar point, stating that local authorities sometimes offer direct payments to older people as a last resort, especially in rural areas, where there are particular problems with the availability of domiciliary care.

445. ADSS Cymru admitted:

> *"in some areas it [direct payments] has been the only way somebody in a rural area could get the support they needed, because there wasn't a homecare provider available"*[255].

[253] RoP, 27 June 2024, para 411
[254] RoP, 12 June 2024, para 118
[255] RoP, 27 June 2024, para 459

Personal assistants

446. In 2022, Audit Wales reported that Personal Assistants (PAs) are essential to people making the most of direct payments, but that service users often struggle to recruit them.[256] This came through clearly in the evidence we heard, particularly from disabled people themselves, who described the difficulties in recruiting and retaining PAs as "almost a revolving door".[257]

447. Shahd Zorob said she had experienced similar problems, and said at the moment she cannot recruit people on the current wage. She explained the difficulties:

> *"the pay is not good enough. It doesn't attract anyone. You can go to Aldi or the other shops and earn more. In this job you're doing a lot more. And then people don't treat it as if it's a real job. People think it's quite a simple job, they don't take it seriously."*[258]

448. Health board representatives described PAs as "gold dust", and said they were not convinced that the workforce was there to meet demand, particularly for the next wave of direct payment recipients.

449. Stakeholders told us that there was a need to recognise and value the role of a PA in order to attract and retain staff. The WLGA said it was important that the role of personal assistance was seen as being a "worthwhile job"[259]. Learning Disability Wales agreed, saying:

> *"Working as a PA is an incredibly dedicated role, which requires a lot of responsibility and an investment, and takes a lot out of you as a person (…).*
>
> *unless we start really valuing that role, we are just going to keep seeing people leaving the care system in droves, because we just don't value it, I don't think, and society doesn't value it enough either."*[260]

450. Local authorities and health boards both recognised the pressures on the PA workforce, and the pressing need to improve recruitment and retention. They told

[256] Direct Payments for Adult Social Care, April 2022, Audit Wales,
[257] RoP, 12 June 2024, para 41
[258] RoP, 12 June 2024, para 39
[259] RoP, 27 June 2024, para 453
[260] RoP, 12 June 2024, para 151

us about some of the initiatives they had in place to try to address this. Mark Cooper from the All Wales Direct Payments Forum said:

> *"We're working with approximately 600 PAs across Flintshire, and we've worked really hard to improve the offer, to make that professional, to create an induction certificate and a framework for improvement and a range of other incentives. We've tried really hard to work in partnership with those PAs, so that they feel part of the broader social care system, that they do feel valued and involved in something."*[261]

451. Jennifer Winslade from ABUHB said she saw a "real opportunity to think about how we create careers in health and social care",

> *"and how we do that collaboratively, in a way that enables people to enter either domiciliary care, a care home or a healthcare setting, but to have a career in health and social care that we can facilitate, so we're not in competition for each other, we're working together to create the workforce of the future, based around the future needs of the population. (...)"*[262]

452. Disability Wales suggested that the creation of a "national independent living centre", which could

> *"help to establish a bigger and better care force, because the whole pool would be together, and people would tap into that pool, and everyone would be able to offer their own expertise. Because a lot of the time, it's only when talking to peers that you find out the correct information".*[263]

CHC eligibility and funding disputes

453. WLGA and ADSS Cymru were both concerned that existing challenges in the way CHC currently operates may undermine the potential benefits of the legislation. They have previously said that local authorities were increasingly having to fund more complex care packages as people are being wrongly denied CHC.[264]

[261] RoP, 27 June 2024, para 446
[262] RoP, 10 July 2024, para 244
[263] RoP, 12 June 2024, para 150
[264] Evidence to the Finance Committee

454. In their evidence to the Finance Committee during scrutiny of the Welsh Government's draft budget, they said there was a strong feeling across social services that, over time, "more and more things have been required to be funded by social services, because the health boards will not fund them under continuing healthcare".[265]

455. In a joint response to the Welsh Government's consultation on the Bill, WLGA and ADSS said it was essential that this legislative change is underpinned by a significant change in practice and implementation of CHC:

> *"The experience has been that the bar for access for CHC has been increased, despite the legal thresholds not changing. Local authorities firmly believe that the interpretation of health needs and gatekeeping practice needs to change, so that existing policies are implemented effectively. This needs urgent attention."*[266]

456. The WLGA said that the current implementation of CHC was not consistent across Wales with different thresholds being applied by local health boards, and the "costs for provision of services inappropriately fall to councils".

457. ADSS Cymru said that district nursing teams have faced long standing pressures with high demands and it was common for there to be delays in CHC assessments, and for activities to be delegated to care staff that a decade or so ago would have been delivered directly by nurses. Similarly, nursing homes can struggle to attract and retain qualified nurses, leading care providers to accept people with increasingly complex needs with "residential" settings rather than "nursing care".

458. ADSS said practitioners are now very familiar with complexity and can consider some things to be routine that would have previously considered as complex (and therefore eligible for CHC). This can lead to an unconscious bias for Multi-Disciplinary Teams (MDTs) who now tend to consider more tasks to be the responsibility of social care rather than health. ADSS said, "we need to work with MDTs to guard against this drift".

459. Andrew Morgan, leader of the WLGA, told us that

> *"It's not right on the individuals and it's not right in terms of the public services where sometimes we're in dispute, sometimes*

[265] WLGA evidence to Finance Committee
[266] Response to Welsh Government consultation

> *for many months, trying to work out who is responsible for what element of the packages. Quite often, local authorities will step in, sometimes maybe overstep our legal responsibilities, to make sure that that person is provided with support, and, quite often, we don't get reimbursed for it, even after it may well be determined that this is a continuing healthcare package for the health board rather than the local authority."*[267]

460. WLGA and ADSS believed that a national operating framework was needed which enabled the health and social care system as a whole to provide clarity about the application of the framework and guidance across Wales. They also believed there needed to be a more effective process to resolve disputes and challenge non-compliance.

461. We put these points to the local health board representatives. Gaynor Williams, National Director of Complex Care, NHS Wales, told us:

> *"in terms of the threshold being set too high, is there's no evidence at all that I've seen that that is happening."*[268]

462. She said that decisions about eligibility were made following a comprehensive assessment by a multi-disciplinary, multi-agency team. That team makes a recommendation to the health board and "only in exceptional circumstances" can the health board decline the recommendation:

> *"I can honestly say, in the past five years, I've heard of one case where the health board went and declined that recommendation."*[269]

463. Learning Disability Wales suggested that "pooled budgets would be a good option":

> *"people end up stuck in the middle, sometimes not receiving any service while social services and health boards fight it out about who's supposed to pay for it. (…) And it does often feel like it's very budget driven and one public body trying to move people on to someone else's budget."*[270]

[267] RoP, 27 June 2024, para 481
[268] RoP, 10 July 2024, para 224
[269] RoP, 10 July 2024, para 224
[270] RoP, 12 June 2024, para 169

UN Convention on the Rights of Disabled Persons (UNCRDP)

464. Disability Wales and Learning Disability Wales both felt that the Bill should include a reference to the UN Convention on the Rights of Disabled Persons. Learning Disability Wales said disabled people and disabled people's organisations have been calling for its inclusion on the face of relevant Welsh legislation for years.

465. Kat Watkins from Disability Wales told us:

> *"it absolutely needs to be part of the Bill, because there are so many articles within it for independent living and the right to healthcare and things like that that it has to be integrated. And as it currently isn't, and there is no mention of it throughout the Bill, that's not really great in my eyes."*[271]

Evidence from the Minister

Information, advice and support

466. The Welsh Government's 2022 consultation said the Welsh Government was proposing to amend the NHS (Wales) Act 2006 to include (amongst other powers) "a power for local health boards to give assistance to persons or bodies in connection with direct payments". However this isn't included as a power on the face of the Bill. The Bill as drafted says (in section 10C) that regulations may make provision about the arrangements for providing information, advice or other support in connection with direct payments.

467. We put to the Minister the evidence we had heard of the need for support for disabled people to navigate the system, and the suggestion that the Bill would be strengthened if it gave a clear right to support, and included provision for independent advocacy services.

468. The Minister responded by saying that a code of practice for advocacy was provided for in the Social Services and Well-being (Wales) Act 2014 and the Welsh Government "would be looking to use that as best practice", and apply its principles to direct payments for CHC.[272]

469. Further to this, Anthony Jordan, Head of Programme and Legislative Implementation within the Welsh Government's Social Services and Integration

[271] RoP, 12 June 2024, para 184
[272] RoP, 17 July 2024, para 135

Directorate, said that policy colleagues leading on CHC direct payments were "actively engaging" with local health boards and organisations that are experienced in providing support and advocacy for disabled people "in order to get this all set up, so that, hopefully, through the hub-and-spoke arrangements that we're envisaging will be put in place to support implementation, there will be appropriate consideration of advocacy and support for the person within that structure".[273]

470. The EM provides more detail on these 'hub-and-spoke arrangements," stating that the Welsh Government is proposing to develop a central hub for some key administrative functions, in order to create a pool of specialised staff who can deal with management of the direct payments elements. It has been assumed the central hub will need a permanent staff of 5.5 full time employees. It says "support services for those in receipt of CHC direct payments for elements such as employment support, recruitment etc. would also ideally be provided locally, with the proposal being to tap into existing services which support social care direct payment recipients".[274]

471. Additionally, the Minister confirmed that the hub will allow for a standardised 'all-Wales' approach, which will include the delivery of a national communications strategy to heighten public awareness".[275]

472. Albert Heaney, Chief Social Care Officer for Wales, told us that the concept of a "supportive hub" had been developed following the learning from experiences over the border in England".[276]

473. More generally, and responding to concerns that some people might feel anxious about taking on the burden of direct payments, Anthony Jordan stated:

> *"just to underline and reiterate that direct payments are very much being offered as an option that people can choose to take if they feel confident that, with the appropriate support, they can actually benefit from them. They won't be suitable or of interest to everyone and there is no way in which people can be compelled to take a direct payment if it doesn't meet their needs, and I think that is an important point."*[277]

[273] RoP, 17 July 2024, para 137
[274] EM
[275] Letter from the Minister for Social Care, 28 June 2024
[276] RoP, 6 June 2024, para 166
[277] RoP, 17 July 2024, para 111

Preparing health boards for new responsibilities

474. We asked the Minister to set out the work that was underway to prepare health boards for their new responsibilities.

475. Anthony Jordan told us that "constructive conversations" were underway and the Welsh Government was "very pleased with how keen local authorities are to support this process". He went on to say:

> *"One of the considerations that we have is potentially giving local authorities and/or organisations that are involved in advocating for direct payments an actual formal role in the implementation process, or in support for the CHC direct payments hub. So, I think we are in a good place; we're making satisfactory progress towards implementation of the commitment."*[278]

Managing transitions between social care and NHS continuing healthcare

476. We put to the Minister the evidence we had heard about a right for individuals to return to local authority-provided direct payments if they had moved across to CHC but felt it was not working for them, or that they were unable to manage. Anthony Jordan told us:

> *"there is unlikely to be any difference in terms of the management requirements between direct payments under social care and direct payments under CHC. One of our aims is that it will be a seamless transition, so it will feel the same. So, I don't think it should be the case that there will be a difference in the requirements upon the individual to manage, because they should be getting the support they need in order to do that.*
>
> *If their condition changes such that they can no longer manage it in the previous way, then what we would expect LHBs to do, by extension of what we'd expect local authorities to do, is to work with that person in order to find a way that they can still keep on receiving the direct payment."*[279]

[278] RoP, 17 July 2024, para 154
[279] RoP, 17 July 2024, para 124

477. He went on to confirm that a 'right to return' would not be possible under the current legislative arrangements:

> *"once a person has stepped over the threshold of their need being a primary healthcare need, then that is the responsibility of the NHS to meet that need, and the legislative position is quite clear. Conversely, the legislative position for local authorities under the Social Services and Well-being (Wales) Act 2014 is that they cannot provide for needs that are principally needs that should be met under another enactment.*
>
> *So, local authorities wouldn't be able to, as it were, repatriate the responsibility back, because that person no longer has primarily social care needs, they have primarily health needs,"*[280]

Governance and delegation

478. We questioned the Minister about the evidence from health board representatives that there is currently no performance framework for CHC.

479. In response, she said her officials will "revisit this area, including working with the Value and Sustainability subgroup to establish the best way forward to create an integrated all-Wales approach to data collection". She went on to say that the Welsh Government "will be working with our partners to scope out and develop an implementation plan for a new performance framework over the autumn and winter months".[281]

Costs and financial support for health boards

480. We drew the Minister's attention to the concerns raised by health boards about the increased costs they are likely to face as a result of the Bill, at a time when the NHS is under significant financial pressure.

481. The Minister told us that the Welsh Government anticipated that around 110 people, around 1 per cent of the continuing healthcare cohort who are currently refusing CHC assessment and remain on social care, may choose to make the transition to CHC when direct payments become available. That move, she said, would cost somewhere in the region of £4.2 million a year to local health boards between 2025 and 2028.

[280] RoP, 17 July 2024, para 125
[281] Letter from the Minster for Social Care, 6 September 2024

482. Added to the new CHC recipients opting for direct payments, she told us that the proposal is estimated to increase costs for local health boards by between £20.5 million and £24.2 million, across the seven health boards, over the 10 years from 2025 to 2035. Seen in the context of the total annual CHC spend for Wales, of around £448 million, she described this as "a relatively small figure", although she expected the figures for 2023-24 would be "considerably higher".[282]

483. Further to this, Albert Heaney said that the Welsh Government's discussions with England had shown that packages of CHC delivered via direct payments cost "roughly between 11 per cent and 16 per cent less than the traditional delivered packages." He said that, looking ahead, "there should be efficiencies and financial efficiencies that can be delivered as well, whilst producing better outcomes".[283]

484. The Minister confirmed that "none of the modelling has been based on expected savings due to lower wages for PAs and social care workforce". She said that the financial modelling had been based on an average figure of £50,000 per annum for a CHC package which had been obtained from the national care commissioning unit.[284]

485. She did not commit to providing additional funding for health boards in the future to meet the costs of direct payments for CHC, saying that this was a matter for the Cabinet Secretary for Health, but that it would be looked at "in the round" as part of budget setting for the NHS.[285]

Workforce fragility

486. Responding to the concerns of stakeholders about workforce fragility and staff shortages, the Minister said that these issues were not unknown to the Welsh Government, which had been "actively working" to improve recruitment and retention of the social care workforce:

> *"We know that we've got many, many hundreds of vacancies across Wales throughout social care. So, we have established, through Social Care Wales, something called WeCare Wales, which is a body that is promoting the recruitment, training, career development, pay progression and all of those areas in the social care workforce.*

[282] RoP, 6 June 2024, para 189
[283] RoP, 6 June 2024, para 190
[284] RoP, 6 June 2024, para 192
[285] RoP, 6 June 2024, para 194

> *And we are seeing some results from that, where we're seeing more people now coming into the sector. But it still remains a huge challenge."*[286]

487. Responding to concerns about the potential for labour market displacement resulting from the Bill, the Minister said that the Welsh Government "don't see that that will be a huge problem".[287] Adding to that, Anthony Jordan told us:

> *"we think that we're talking about small numbers in the first instance. We've calculated that probably about 110 people across Wales will be looking to move from their current direct payment arrangements with the local authority to direct payments under CHC.*
>
> *Obviously, some of them will have more than one PA, but we would anticipate that they bring them across and then we think it will be a slow burn in terms of new people coming into the CHC system or people transitioning across."*[288]

488. He said this was something the Welsh Government "will be keeping an eye on with providers and with LHBs, as commissioners of these services, as we plan towards implementation, which we're thinking will be taking place in 2026".[289]

Personal assistants

489. Specifically in relation to the reported shortages of PAs, the Minster told us that the Welsh Government expects the "vast majority of PAs" to be "drawn from the existing pool:

> *"what we anticipate happening is that a number of people who are currently in receipt of social care direct payments will transfer to the continuing healthcare direct payments, and will probably take their PA with them to provide the CHC direct payment."*[290]

[286] RoP, 17 July 2024, para 96
[287] RoP 6 June 2024, para 141
[288] RoP, 17 July 2024, para 102
[289] RoP, 17 July 2024, para 102
[290] RoP, 6 June 2024, para 137

490. She also said that the Bill provides opportunities for people who currently provide unpaid care to a friend or family member to receive payment for that.[291]

491. Longer term, Anthony Jordan confirmed that the need for an additional PA workforce was being considered as part of the Welsh Government's wider work to improve the social care workforce, and as part of the WeCare Wales recruitment campaign.[292]

492. We further challenged the Minister on the concerns of stakeholders about availability of the workforce and the payrates on offer for personal assistants. Responding to this, she said that, although the Welsh Government was "alert to those concerns", they were beyond the scope of the Bill. She went on to say:

> *"But I think what we have to do is to give consideration to that with other teams across Welsh Government and stakeholder groups, and organisations like Care Inspectorate Wales and Social Care Wales, to see if we can bring some regularity into the system."*[293]

CHC eligibility and funding disputes

493. We raised with the Minister the concerns of the WLGA and ADSS that the eligibility bar for access to Continuing Healthcare has continued to increase over time, meaning fewer and fewer people are granted access.

494. Responding to this, the Minister confirmed that "the Welsh Government gives a commitment to review the current CHC Framework (operational as of 1 April 2022) within five years of implementation". She said that the next review is anticipated to take place in 2026/27, at which point there would be an opportunity to consider incorporating additional guidance or clarification around eligibility for CHC, if this was deemed necessary by the review process.[294]

495. She went on to state:

> *"it would be timely to consider the legislative timetable of the Bill in tandem with the revision of the CHC Framework. This would enable relevant information regarding the newly*

[291] RoP, 6 June 2024, para 139
[292] RoP, 17 July 2024, para 97-98
[293] RoP, 17 July 2024, para 105
[294] Letter from the Minister for Social Care, 6 September 2024

> *established direct payments for CHC to be included in the revised Framework document.*
>
> *Given the Bill's current timetable, it is hoped that the Bill might receive Royal Assent in late Spring 2025. This will be followed by the drafting of Regulations and Guidance during 2025-26 and with the aim that some direct payments for CHC would begin during 2026. This timetable would therefore fall in line neatly with the revision of the CHC Framework."*

UN Convention on the Rights of Disabled People

496. We questioned the Minister on the suggestion from stakeholders that the Bill be amended to include specific reference to the UN Convention on the Rights of Disabled People.

497. She responded by saying that "local authorities in Wales are already subject to a duty to have due regard to the UN Convention on the Rights of Persons with Disabilities (UNCRPD)":

> *"This is specifically dealt with in paragraph 65 of the Social Services and Well-being (Wales) Act 2014 Part 2 Code of Practice: General Functions. Adding a further due regard duty into the 2014 Act would not add anything further."*[295]

Post-implementation review

498. The Explanatory Memorandum refers to a post-implementation review of the main parts of the Bill. In relation to direct payments for CHC, it states:

> *"In order to assess this proposal's effectiveness, we will commission an independent evaluation. This evaluation will cover both the implementation and the impact of the proposal. (…) The process evaluation will also include interviews with those involved in implementing the proposal to explore any barriers or issues which may have an impact on the effectiveness of the final implementation. […] The impact evaluation will then go onto test those outcomes and impacts with the intended recipients of the proposal.*

[295] Letter from the Minister for Social Care, 28 June 2024

> *(…) LHBs' own datasets will also be requested to provide a picture of take up of direct payments for CHC across Wales, and this will be monitored over time to see if the option remains accessible and if, as was seen in England, demand for the option grows."*[296]

Our view

499. The following paragraphs set out our views on the evidence we have heard on the Bill. It is worth stating that much of that evidence related to concerns about the implementation of the Bill and the wider policy area, rather than the Bill itself. These are, however, important matters and we wish to draw them to the Minister's attention.

Information, advice and support

500. It is essential that individuals considering moving across to direct payments for continuing health care are able to access good quality information, advice and support. We heard evidence that some people are not receiving enough support with direct payments currently.

501. To this end, we welcome the Minister's proposal to develop a central hub for some key administrative functions that would provide specialist support for those in receipt of CHC direct payments. We support the proposal for local provision of certain support services, such as employment and recruitment support, which would make use of existing services supporting recipients of social care direct payments. Further, we support the 'standardised, all-Wales' approach proposed by the Minister, to include the delivery of a national communication strategy to increase public awareness.

502. In all of this, co-production will be an essential element in the development of guidance, information and advice for service users and those supporting them.

503. Given the importance of the central hub to the implementation of the policy, we believe the Minister should provide an update on progress with its development periodically. This should include details of its current operational status, staffing numbers, operating costs and the number of people receiving advice and support.

[296] EM, pages 148-149

Recommendation 17. The Minister should provide an update on progress with the development of the central hub to support the implementation of direct payments for continuing healthcare. This should include details of its current operational status, staffing numbers, operating costs and the number of people receiving advice and support. It should be produced within six-months of the Stage 1 debate, and annually thereafter.

504. Further, we agree with stakeholders that individuals seeking to take up direct payments for CHC should have a right to support, and we believe the Bill should be strengthened to make specific provision for this.

Recommendation 18. The Minister should amend the Bill to make provision for a 'right to information, advice and support' for individuals seeking to take up direct payments for continuing healthcare. Any guidance issued under this provision should include information about transitions between social care and CHC, and should promote continuity of care as far as possible.

505. More broadly, we recognise that direct payments will not be suitable for everyone, and were reassured by the evidence from the Minister that they will be offered as an option for people to choose, but that there is no way in which people can be compelled to take a direct payment if it does not suit their needs.

506. We were, however, concerned by the evidence we heard from stakeholders, including ADSS Cymru, that, in rural areas, direct payments can sometimes be the only available option in the absence of any alternatives. We believe this is a matter that the Welsh Government should look into in preparation for the implementation of the Bill.

Recommendation 19. The Minister should give further consideration to the concerns of stakeholders that, in rural areas in particular, direct payments can sometimes be the only available option in the absence of other services. She should work with partners to consider how any service limitations in these areas can be managed and how best to support the individuals affected by them.

Preparing health boards for new responsibilities

507. In preparing to take on their new responsibilities, health boards must take full advantage of the learning opportunities afforded by experiences of similar arrangements in England, as well as the experiences of local authorities proving direct payments for social care. There should be no need to reinvent the wheel.

508. We were reassured to hear that local authorities have shown a clear willingness to provide assistance to health boards, and that they have been working alongside each other for some time now in preparation for the changes to be brought about by the Bill.

509. We believe that, in addition to the update on progress with development of the central advice hub, the Minister should also provide an update periodically setting out her assessment of the progress being made to prepare health boards for their new responsibilities in this area.

Recommendation 20. The Minister should provide an update periodically setting out her assessment of the progress being made to prepare health boards for their new responsibilities in this area. This should be done on a six-monthly basis, and should start following completion of the Stage 1 debate. As part of this, the Minister should ensure that health boards are actively working with local authorities to learn from their experiences and best practice.

Managing transitions between social care and NHS continuing healthcare

510. In terms of managing moves between social care and CHC, the focus should be on providing continuity of care for the individual and a seamless transition which ensures that no person is left without funding and support during the transition phase. There should be clear arrangements between local authorities and health boards setting out how this will be done.

511. On the issue of a 'right to return' to social care direct payments, this was a matter of real concern for some of the stakeholders we spoke to, who were uncertain about the new system and whether it would be suitable for them, and were fearful of changing their existing arrangements without the safety net of being able to return to their previous arrangements.

512. We note the Minister's evidence that there is unlikely to be any difference in terms of the management requirements between direct payments under social care and direct payments under CHC. Further, that a right to return would not be possible under the current legislative arrangements. Nevertheless it is important that the Minister understands the very real concerns that exist in this area so that she can ensure any appropriate action is taken.

513. While we regret that a 'right to return' is not legally possible, we hope that a 'right to information, advice and support' would go some way to mitigate the fear of the unknown for those thinking about taking up direct payments for CHC. Recommendation 18 above refers to this, and calls for any guidance to include

information about transitions between social care and NHS continuing healthcare, and to promote continuity of care for individuals moving between the two systems.

Governance and delegation

514. We support the evidence from stakeholders about the importance of ensuring that health boards have clear governance structures in place for safe delegation of appropriate tasks to PAs. Although not a matter for the Bill itself, we believe this is an area that would benefit from greater clarity from the Welsh Government.

515. We note that the performance framework for CHC in Wales is currently being revised, and that the Minister intends to work with partners to develop an implementation plan for that revised framework over the coming months. That framework must include guidance on safe delegation of appropriate tasks, and specific metrics for direct payments. We believe the Minister should keep us updated on progress in this area.

Recommendation 21. The Minister should write to us in six months with an update on progress with the development of the new performance framework and implementation plan for CHC in Wales. This should include guidance on safe delegation of appropriate tasks and details of the metrics developed specifically for direct payments to enable progress and success to be measured.

Costs and financial support for health boards

516. We believe it will be important for the Minister to monitor the spending by health boards on this policy, particularly given the financial challenges facing health boards, and the potential for longer term financial efficiencies to be delivered.

Recommendation 22. The Minister should:

- monitor the spend by health boards over the initial three years of the policy, and report back at the end of this period on the financial position of health boards as regards their ability to continue to fund and deliver direct payments for continuing healthcare, and
- continue to monitor and review spending by health boards on this policy going forward.

Workforce and personal assistants

517. The fragility of the social care workforce is well documented, and various streams of work are underway to try to tackle this. We received significant evidence that staffing shortages in social care will be a barrier to the successful implementation of the Bill. We also heard from many stakeholders about the disparity in pay rates between similar roles in health and social care, as well as in rates paid to PAs across local authorities. As such, the impact of the Bill on the wider social care workforce will need to be monitored carefully, including its effect in rural areas where problems with sufficiency are known to be particularly acute.

518. More specifically, and in relation to recruitment and retention of personal assistants, this is a very real, practical problem for many people. The Minister has said that she expects the vast majority to PAs to be drawn from the existing pool, but we know the difficulties that exist currently in this area. Longer term, we understand that initiatives are in place to try to improve recruitment and retention of PAs, including work on payrates on offer for PAs.

Recommendation 23. The Minister should work with relevant Cabinet colleagues and wider partners to promote the role of Personal Assistant (PA), to drive up the numbers of applications and to improve retention of staff longer term. Appropriate training will be an important part of this work.

CHC eligibility and funding disputes

519. In relation to CHC eligibility and funding disputes, we note the Minister's commitment to review the current CHC framework in 2026/27, and that this will present an opportunity to incorporate additional guidance around eligibility for CHC.

520. It will be important to involve local authorities in this work, given the existing tensions around eligibility. Any review will need to address the current problems identified by them.

Recommendation 24. The Minister should update the Committee, upon completion of the CHC framework review, highlighting any changes and additional eligibility guidance that have been provided as a result of the review.

UN Convention on the Rights of Disabled Persons

521. The importance of including a reference to the UN Convention on the Rights of Disabled Persons in the Bill was raised with us by disability charities. They felt that such a reference on the face of the Bill would make a strong statement, similar to the approach taken with the UN Convention on the Rights of the Child.

522. We note the Minister's statement that local authorities are already subject to a duty to have due regard to the Convention, and her view that adding a further reference to this in the Bill would not add anything further.

Recommendation 25. The Minister should ensure that the UN Convention on the Rights of Disabled Persons features prominently in guidance issued on Part 2 of the Bill.

Post-implementation review

523. We welcome the actions proposed by the Minister in the post-implementation review of the Bill. We believe that any evaluation considers the awareness, among social care users, about the new option of direct payments for CHC. We ask that the Minister makes available the datasets from LHBs which are intended to provide a picture of take-up across Wales. We also ask the Minister to provide details of the timescales for the post-implementation review.

Recommendation 26. The Minister should:

- ensure that the post-implementation review of the Bill considers the awareness, amongst social care users, about the new option of direct payments for CHC;
- agree to make available the datasets from LHBs which are intended to provide a picture of take-up of direct payments for CHC across Wales, and
- provide details of the timescales for the post-implementation review.