

Consultation Response Form

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Questions on Chapter 1: Eliminating profit from the care of children looked after

There are 12 questions about this chapter.

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

Yes, we believe that this will deliver the Programme for Government commitment on eliminating profit from children's social care.

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

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

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

Please explain your reasoning.

There are a number of potential impacts of the proposal – with the potential for both negative and positive consequences.

Barnardo's Cymru supports the ambition to remove private profit from placement provision in children's social care. We believe that in the long-term, this could foster a system that delivers innovation in children's care, and puts the child's needs at the centre of the system we design. We view this ambition as one that requires a systems-change approach to how we view children's social care, and we should not be limited in our ambitions as to what this can achieve.

We spoke to care-experienced young people that are supported by Barnardo's Swansea¹ about this proposal and their views. The group of six young people were aged 16 – 19.

¹ <https://www.barnardos.org.uk/what-we-do/services/barnardos-swansea-bloom-life-coaching>

Barnardo's Swansea supports care-experienced young people who are transitioning to independence or semi-independence through supported housing, mentoring, befriending and helping them to realise their ambitions.

Young people unanimously felt that money invested in their care should remain in the system to benefit them, rather than being removed in private profit which was viewed as going to anonymous stakeholders who were unlikely to play any role in young people's lives, or in Wales.

Young people felt that they were taken advantage of by companies that provide care for them on the basis of private profit and were skeptical about whether these same companies truly had their best interests at heart.

Young people also felt that private companies who existed to make a profit from children's social care had an interest in there being more children taken into care, not less, whereas these young people felt strongly that the system should be designed to keep families together wherever possible and that good quality residential care and fostering for children and young people should be a safely managed last resort.

Barnardo's Cymru recognises that many private care providers have the best interests of young people at heart, but the results of this focus group demonstrated the perception held by many care-experienced young people about who provides their care, why they are motivated to do it, and how this influences their feelings about their care throughout childhood and early adulthood.

This demonstrates that there is the potential for care-experienced young people to benefit from receiving care and support from organisations where it is recognised that their motivation is to ensure the best possible outcomes for these young people, and not to profit from their care. This could improve young people's perception of their care, improve relationships with providers and enable children and young people to feel even more confident that their care and support is provided by those who are fully invested in their wellbeing and long-term outcomes.

In the longer term, this policy could also make Wales a leader in providing children's social care and services. Alongside the other commitments in the radical reform agenda, this could set Wales apart from many other nations in setting a positive and inclusive culture for the provision of children's social care. We would urge Welsh Government to remain

committed to co-production and working closely with young people and children when developing the future of this agenda.

We would urge Welsh Government to consider what other innovative approaches could be adopted as part of transitioning to a different way of commissioning and providing care. For example, Barnardo's created Gap Homes² — a project that offers homely, affordable housing for young people leaving care.

The young people we support tell us that this project has provided them with a more certain future and has been a vital stepping-stone to independent living

There is a chance that as a result of the changes this policy will bring to the sector, private providers will leave Wales and new/other providers will need to take their place. This creates an opportunity for us to rethink how we deliver children's social care and how we can create better care for children and young people. The current housing crisis means that there's not a lot of available housing, let alone for young people leaving care who are particularly vulnerable.

The housing that's sometimes offered to them can be so unsuitable that it can set them back and undermines any support they've been offered. This can have truly devastating consequences, including resulting in homelessness.

We would hope that as we approach this huge change to how children's residential care is delivered, we are able to move forwards adopting innovative practices such as the Gap Homes model and many others and ensure that children and their views are at the centre of the care we deliver.

Any major change must be managed to minimise disruption and discontinuity for children and young people. The importance of stability to this cohort of young people cannot be overstated. Despite welcoming the ambition of this policy, Barnardo's Cymru does have concerns about the potential unintended consequences of this large-scale change, particularly in the short-term and during the transition.

We have outlined several concerns related to this proposal and how they could be mitigated.

Workforce issues

² <https://www.barnardos.org.uk/blog/giving-care-leavers-somewhere-safe-and-stable-call-home>

Barnardo's Cymru is concerned that social care in Wales is not currently in a stable state from which to make a significant change. Wales is facing a social care crisis across the sector that is already having significant effects on the landscape, with a recruitment and retention crisis that is seriously hampering the sector's ability to respond to major change.

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.

Whilst private providers exiting the market may lead to staff looking for jobs with new, third sector providers, given the pressure on the social care workforce it is not unlikely that staff may choose to leave the sector completely and look for other opportunities with better pay, less risk and fewer antisocial hours, all of which are sadly the hallmarks of working in children's social care.

The workforce that we rely on to care for children in residential settings is one of the most dedicated and professional, doing one of the most important and often difficult jobs. Despite this, they are part of a system that is under significant stress for a multitude of reasons including high caseloads, staffing issues, risks relating to safeguarding and much more.³

As part of the approach to removing profit from care, we would urge Welsh Government to invest in new efforts to ensure that children's social care is viewed as an attractive career opportunity that is well-paid, respected and supported. This should include support for training and education, and a campaign focusing on the huge contribution of the social care sector to the lives of children and young people. Children's social care staff are as important to our society as NHS staff, and we would look to the efforts to support NHS staff in recent years as an example of the perception of a social care career that must be fostered.

As part of making children's social care an attractive career, and to encourage more people to consider working in the sector, we must tackle the demonisation of social workers that has taken place in parts of the media, and the abuse that social workers often receive that would not be tolerated in other professions (whilst continuing to ensure that where

³ Children's social services and care rates in Wales: A survey of the sector CASCADE Centre for Children's Social Care and Wales Centre for Public Policy, Cardiff University September 2021 https://www.wcpp.org.uk/wp-content/uploads/2022/03/220216-Childrens-social-services_en_final.pdf

there are mistakes or poor practice these are addressed robustly). We hope to work with Welsh Government on this.

If we do not invest in the future of the workforce, the social care crisis will become even more acute at a time when we will rely on them to deliver stability and certainty to young people when they are otherwise facing yet more change and upheaval in their lives.

When discussing foster carers and those working in the care system, our focus group of care-experienced young people said that 'a more honest message about caring' is needed, and they hope to see it come about because of this change.

"At the moment, the portrayed message is that caring and looking after children and young people is a rewarding and great experience, but this is portraying a false reality. Caring has its challenges and this should be highlighted."

Many of the young people said they knew carers who nearly gave up after a few months due to the challenges they faced but were not informed about.

Supporting children close to home

We fully support Welsh Government's commitment in the Programme for Government to supporting more children in residential care closer to home. Again, we know that this is something that is already an issue in so many parts of Wales.

As part of removing profit from care, Welsh Government should consider how we ensure the provision of high-quality care that meets the needs of children and young people in the communities that they are from. With the potential removal of private companies, this could be difficult to achieve for new, third sector providers. Steps must be taken to ensure that we can provide high-quality residential care in every area of Wales, and that children's residential care can be delivered in every part of Wales where children need to access it.

Unregulated placements

There are already high numbers of unregulated placements of children in certain areas of Wales. The Competition and Markets Authority's review of the children's social care market in Wales stated that:

*"We were told consistently by local authorities in Wales that it is especially difficult to find placements for children with more complex needs and for older children. We were also told that some children are placed in an unregulated setting due to the lack of an appropriate children's home place, and so cannot legally be given the care they need. We also understand that in some cases children are being placed in unregistered settings, notwithstanding the fact that this is illegal."*⁴

It has been as recently as the last few weeks that media articles have highlighted the lack of appropriate housing and placements available in Wales, with one young mother and her baby left with no option but to live in a hotel for four months with no access to cooking equipment aside from a kettle.⁵

There is the potential that there could be a short-term increase in the number of children in unregulated, inappropriate placements because of further pressure on the numbers of placements available. This will be exacerbated by the potential removal of private sector provision because they are better able to take decisions across wider geographical areas due to greater access to capital investment. This suggests there needs to be a staged withdrawal to enable not-for-profit providers to access capital investment and build placement provision across much wider geographical areas than currently permitted. Access to capital investment should be supported by Welsh Government, for both providers and local authorities.

We would also ask that Welsh Government consider additional support for providers. Quality standards should be put in place to ensure that the same high standards are met for children and young people in all settings, and that providers are supported to deliver this. There may be learning from the standards due to be introduced shortly in England that may be helpful.

Churn and disruption

In the short term, there is a chance that private providers will choose to give up their interests in Wales and move to markets elsewhere that do not require them to alter their business model.

⁴ Children's social care market study final report Wales – The Competition and Markets Authority, March 2022 p.25
summary https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1059604/Wales_summary.pdf

⁵ <https://www.bbc.co.uk/news/uk-wales-63416465>

If this happens, other providers will need to be encouraged to step in and take on more fostering and residential opportunities. Welsh Government should consider how to remove barriers to third sector providers entering the market whilst also ensuring that the workforce is protected.

We note that there has been little consultation with potential third sector providers to understand whether they would enter the market in Wales, and what support they would need if they were to do so. We would suggest that Welsh Government undertake this planning in order to understand the potential landscape in the aftermath of the change and taking into account the need for plurality. Large and small third sector providers will need to feel supported to potentially enter the market, for example through capital investment and capacity building funds, and they will have different support needs to do so.

We already have a significant lack of fostering families compared to the need for foster families in Wales. Barnardo's has issued an urgent appeal for more people to come forward as potential foster parents. The pressing need for new foster carers comes at a time when Barnardo's has seen a decline in the number of people coming forward to be foster carers. With the average age of a Barnardo's foster carer aged 55 and older, the advancing age of many foster carers means an increasing number are now retiring.

There has been an 18% increase in fostering referrals over the last year, and for children over the age of 11 that figure is 25%.⁶ Steps must be taken to ensure that when private providers remove support in Wales, this does not lead to more foster parents retiring and exacerbating an already stark problem.

It is our concern that the current Transfer Protocol for foster parents transferring between agencies will not be suitable in the wake of eliminating profit from care if private sector agencies exit Wales. We would urge Welsh Government to work with local authorities and third sector partners to consider how the process can be smoother and fast-tracked where there are children and young people settled in long term homes with foster parents who will need to transfer to another agency for support. Under the current transfer protocol fostering families have to go through the full assessment process, including all checks, references and

⁶ Data from Barnardo's UK Fostering services

Figures released by Barnardo's show that between August 2021 and July 2022, the number of children referred to its UK-wide fostering services was 19,996. This is a rise of 28 per cent, compared with the previous 12-month period when the figure was 15,642.

In England the rise in referrals was 28 per cent, in Wales 18 per cent and in Scotland 50 per cent.

reapproval at panel when changing agencies, which is frustrating and time consuming for foster parents.

Without this, there is the risk that more foster parents will choose to retire early, particularly those who might be approaching retiring age and face choosing between several months of re-assessment or early retirement.

Properties and commissioning

It is Barnardo's Cymru's view that this change to children's social care will require a change to the way we view commissioning in the future, and that a traditional commissioning response will not be compatible with embedding these changes.

For example, many bids for residential children's homes currently work on the assumption that a prospective provider either has access to a property that is fully renovated or has the means to fund capital spend on building new properties themselves. There is rarely provision within the bid specification for support from the commissioner with this.

For new providers to enter the market and help fill any potential gaps that are left by private providers, this could be a barrier to providing support.

We would urge Welsh Government to consider how providers can be supported with this, particularly whether capital funding can be provided to local authorities, so that the local authority is the owner of the property and commission out the residential services to third sector providers. This partnership model could help build stability and diversity.

Another way to prevent property from being a barrier to providers is to look to housing associations to support this change. Children's care providers, whilst best placed to support young people, are not necessarily experts in property, and with the right support from local authorities and housing associations they would not need to be. This policy change could be an opportunity to explore how better partnerships can be fostered between local authorities, housing associations and third sector providers so that each organisation can bring their expertise to a partnership and share the responsibility of establishing and operating a high-quality residential home for children and young people.

We hope that such a landmark change in social care in Wales will lead to a refresh as to how we do many things, with the space to identify new opportunities to work together in different ways to traditional

commissioner-provider relationships rather than just seeking to replace what may become a gap if established providers choose to move on.

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

Requiring all registered providers of children's social care to be defined by their status as 'not-for-profit' is a straightforward and simple way of ensuring the change intended to be brought by this policy is realised.

That said, this will need to come hand-in-hand with effective monitoring of these arrangements. We would not want to see the spirit of this policy undermined were a private provider able to register as a Community Interest Company, for example, to maintain a legal presence in Wales despite not making any other changes to their model of supporting children and the amount of profit they make from the care of children.

We would expect that the Charity Commission alongside Care Inspectorate Wales would play a role in providing appropriate oversight of the organisations that were registered as non-profit and approved to provide children's care in Wales. This would ensure that those who were registered met the legal requirements of registration in Wales, as well as meeting the spirit of the legislation.

We favour this option as one which is easy to understand for all providers, including third sector providers who may choose to step in and provide support as new providers.

Defining the restriction based on an idea of 'trading surplus' is not practical because a number of third sector providers will have a trading surplus built into their contracts, which is reinvested in the care of children.

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

No

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

The timings of the legislation depend heavily on how Welsh Government intends for the changes to be made and implemented by non-profit

providers. We are concerned about the timings outlined in this consultation document.

We would need to understand more about Welsh Government's plans and the implications for existing providers before being able to comment fully on the proposed timings.

Barnardo's feels strongly that there should be a phased approach to implementing any changes, so that learning can be taken from the initial phases and implemented elsewhere. This is a large-scale change and implementing this in one swift period will not enable the sector to benefit from an approach which promotes and prioritises stability and continuity for children, young people and staff working in the sector.

Barnardo's Cymru would strongly favour a phased approach which includes a pilot period, whereby there is support and encouragement for local authorities to work in partnership with housing associations and third sector providers to pool their expertise and share the responsibility for providing children's social care. This would enable local authorities and partner providers to design and plan services based on local needs, sufficiency and property issues. We believe this would promote a sustainable model. There should also be a period of time built in for learning from a pilot so that other areas may benefit from what they have learned from the transition. A phased approach should also include funding for capital and investment in capacity building.

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

Barnardo's invests significant amounts of time and money in engaging with young people if there is due to be a change in who provides their care so that they understand the changes and to help manage their feelings and expectations about this.

If a Barnardo's service is closing, for example, (likely due to a change in commissioning decisions), we invest in a significant amount of interim planning that helps young people understand the changes (including undertaking an Equality Impact Assessment), when changes were coming, and how those adults responsible for their care would ensure that these changes did not affect their day-to-day care and support. We are proud of how seriously we take our commitment, both to young people and to our staff.

We cannot speak to the way that a private provider would manage a similar transition, if they were planning to leave Wales because of the change, but we would be concerned about the potential for abrupt changes, causing significant upheaval for children and for staff. As we have already discussed, with the social care workforce already facing significant challenges, we would be concerned about the potential for further churn in the system and the impact this could have on children and staff.

This is a particular concern given that the timescales are short.

Barnardo's Cymru would urge Welsh Government to consider how contingency planning can be undertaken with all parts of the sector to minimise and mitigate any potential disruption that could have a significant impact on children, young people and staff.

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

Guidance will be a critical part of the implementation of the legislation. The changes brought about will be significant for everyone working in the sector.

Issuing guidance to providers and potential future providers is critical and should be available in good time before any changes begin to be made, to help providers, staff and children and young people understand what to expect.

There should also be guides and communications that are co-designed by young people to help children understand the changes that are coming and how this could affect them, whilst also giving them the opportunity to ask questions before any such changes begin to be made.

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

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

We have responded to this question above, particularly in question 1.1

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

We have responded to this question above, particularly in question 1.1

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

It would be our hope that with the investment in a homegrown children's social care sector, a strong presence for the Welsh language could be developed. We hope that Welsh Government will use this opportunity to invest significantly in a Welsh social care sector that portrays the values that we all believe in, develops staff from the beginning to the end of their careers and makes them feel valued throughout, and can deliver excellent standards for children and young people in their communities.

However, it is unavoidable that in the short-term the potential shake-up to the sector could result in a temporary loss of Welsh-speaking staff and provision for children if providers pull out abruptly and there is a temporary loss of roles in Wales.

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

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

We are disappointed to note that Welsh Government has not published a Child's Rights Impact Assessment with this consultation. We would urge Welsh Government to ensure that this is published as soon as possible.

Young people in our focus group also discussed how they hoped that removing profit from care would create a step-change in the future of children's social care in Wales. One young person expressed his hope that more money would be invested in prevention work to keep families together, discussing the fact that while he was taken into care as a baby, by the time his sisters were born years later his Mum had received support and was able to keep her daughters in her care, while he remained in the care system. He asked why it took so long to support his Mum, and why this support couldn't have been provided sooner so that he too could have remained in the care of his family.

Care-experienced young people said that the words they would want to describe the care system would be 'life-changing' and that foster carers should be able to see themselves as 'doing good in the world'.

Finally, we would be interested to learn what Welsh Government feels are the lessons to be learned from progress already made on eliminating profit in Scotland and any other nations that can provide us with insight.

Questions on Chapter 2: Introducing direct payments for Continuing NHS healthcare

There are 8 questions about this chapter.

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

Question 2.2: What in your view are the likely impacts of the proposal?

You may wish to consider, for example:

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

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

Please explain your reasoning.

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

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

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

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

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

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

Questions on Chapter 3: Mandatory reporting of children and adults at risk

There are 11 questions about this chapter.

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

Reporting and responding effectively to concerns about abuse of children is vital to ensure children's protection.

Mandatory reporting needs to be considered in a way that prevents unintended consequences. Child protection professionals need to be empowered to build trust with a child, which is essential to uncovering the full extent of child neglect and abuse, which often happens in a non-linear way. There should be an assumption that professionals would always report child abuse, except in certain defensible situations. For example, where a professional is still gathering information about a CSA report, because a child has not disclosed in a linear way. There needs to be nuance around mandatory reporting, so that these kinds of situations can be taken into account.

Taking a binary approach to mandatory reporting could hamper professionals' ability to build relationships with children, as survivors had shared with the Independent Inquiry on Child Sexual Abuse, potentially meaning that fewer children would feel safe or able to disclose what has happened to them.

Any move to mandatory reporting needs enough long-term sustainable investment to create stable, specialist support in the various settings designed to protect children, alongside increasing resource in statutory agencies and for multi-agency forums. Pathways need to be made available to support children during the criminal justice process, including access to trauma-informed counselling and therapeutic support.

We would welcome further information from Welsh Government on exactly what issue they seek to resolve by proposing the introduction of mandatory reporting, and how it is viewed that mandatory reporting meets this need.

Some Barnardo's practitioners referenced the fact that in many previous reports and inquiries a breakdown in communications between agencies and departments was partially to blame for failed information sharing that could have led to greater action to protect a child. Will mandatory

reporting help solve this problem? Or will further, concurrent action, need to be taken? We look forward to hearing more from Welsh Government on this.

We would urge Welsh Government to consider mandatory reporting in the wider child safeguarding context, and for a raft of supportive mechanisms (and investment) to be considered alongside any proposals on mandatory reporting.

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

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

Please explain your reasoning.

Potential benefits

Increased identification and increased investment

There is evidence from other jurisdictions that the implementation of mandatory reporting results in an increase in identification of children at risk.⁷ Increased identification can also lead to a more rapid cultural change, ensuring that children are better protected.

To respond to an increase in cases, it would be vital that the introduction of mandatory reporting would come hand-in-hand with significant investment in safeguarding support. Safeguarding hubs are already incredibly overstretched and the increase in activity and reporting that this change could create will only be manageable with investment in the system to support children, young people and the staff tasked with responding to their needs. We already hear about a build-up of cases in Safeguarding Hubs whereby children at risk are reported but there is not sufficient capacity for post-identification care.

⁷ <https://www.iicsa.org.uk/document/professor-ben-mathews-model-law-mandatory-reporting-child-sexual-abuse-england-and-wales>

There will also need to be investment in training for staff across the social care sector to ensure that these responsibilities and the support available are embedded across Wales.

Greater intelligence gathering

If Welsh Government were to follow the recommendations of the Independent Inquiry on Child Sexual Abuse (IICSA) and introduce mandatory reporting for responsible individuals such as teachers, sports coaches, etc, this could create a better level of information about a child's life and experiences. This could help with improved and more timely decision making, although there are negative consequences for this, such as the ability of other sectors (teaching, youth clubs, etc) to take on this role without significant investment in training and support.

Potential disbenefits

Dissuading children from disclosing abuse

Mandatory reporting of abuse could mean that children are less likely to disclose abuse to professionals. Children may be reluctant to go through a criminal investigation, particularly if they are worried about criminalising their abuser or if their abuser has threatened further harm if they tell professionals. This would be particularly heightened for children from communities that hold negative views of and relationships with the police.

Preventing professionals from building trusted relationships with children

Mandatory reporting means that those working with children lose discretion as to when to act on reports of abuse and share information with third parties. Child victims often share information gradually, in a non-linear way, after building trusted relationships with professionals. If a professional had to report a disclosure of abuse immediately, this may prevent further information being disclosed.

Mandatory reporting would also mean that interventions which focus on addressing trauma and facilitating recovery may take second place to statutory agency processes and criminal investigations, which may not necessarily lead to the best outcome for the child.

Workforce morale

There are concerns that, given we are already facing a social care workforce crisis in Wales, this could exacerbate issues with poor workplace morale and an inability to recruit more staff and retain others.

As we have discussed elsewhere in this consultation response, there is a significant need to address shortages across the social care sector, and to invest in making social care careers attractive and sought-after. We would be concerned that any negative consequences on workplace morale could further hamper our ability to recruit and retain staff at such an important time.

We would be concerned about whether these changes would create little practical change to organisations that already hold a reporting duty but would raise anxiety at a time that we know that there are already issues with mental health and wellbeing issues in the sector,⁸ and burnout that leads many to leave social work.

Multiple reports

There are concerns that if a legal duty were created, different professionals might submit multiple reports about the same child to make sure that they meet their individual liabilities and requirements which could flood an already overstretched system.

Supervision

When consulting with Barnardo's staff on this proposal, some were concerned that for more junior or inexperienced staff, supervision and working with more experienced staff is a key part of putting together the jigsaw pieces that they might observe in a child's behaviour and wellbeing, in the absence of a disclosure. Less experienced staff work with managers in supervision to talk through their professional judgement and concerns about a child, and then decide whether a report is required. It was highlighted that this is an important part of developing as a new social care worker and that this should be considered as part of changing the landscape in which we require staff to undertake this role. Mandatory reporting may lead to an increase in erroneous reports made by new or inexperienced professionals, increasing pressure on the system.

Poverty

⁸ The BASW Annual Survey of Social Workers and Social Work: 2021 A summary report
https://www.basw.co.uk/system/files/resources/basw_annual_survey_summary_report_2021.pdf

Recent research from Children in Wales has highlighted that children are being wrongly identified as potentially suffering from neglect, when in fact families are struggling with poverty and the cost-of-living.

One social worker was quoted as saying:

*"We have recently worked with a family under the category of neglect. As it turned out, Mum was not neglectful, she was poor."*⁹

How will potential new requirements around mandatory reporting ensure that we do not see a spike in children reported as experiencing neglect unfairly bringing parents into a criminal justice process when in fact the whole family is in need of support due to the acute level of the cost-of-living crisis and poverty in Wales?

We would welcome more clarity from Welsh Government on concerns related to poverty and how we will not inadvertently target and stigmatise certain groups of people because of this.

Potential risks

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

We do not have any research to add to this question.

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

We would need more information from Welsh Government on exactly what they propose to introduce before being able to answer this question.

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

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

As there has not been a definition of the wider group of professionals in relation to this questions, it is difficult to answer this fully without further clarity. We would assume that those professions that would come under

such a duty are those where the employees are already under a duty to report under the terms of their employment. What would be the mechanism to individualise it to individual workers over and above those professions/organisations already invoking such a duty already – any Governmental sponsored duty would have, in practicality, to be mediated by those identified organisations.

From a voluntary sector perspective, many organisations including Barnardo's Cymru largely employ non-professionals in child social care provision, so this raises questions about whether an independent disciplinary body would have to be established – if not, then would be reliant on voluntary agencies internal disciplinary procedures.

(b) What are your views on this in respect of adults?

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

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

Barnardo's strongly believes that safeguarding should be everybody's business. We know that public perception around how to respond to concerns about a child's welfare or safety are generally very low, and we would welcome more guidance and communications for the general public about how to react about a child that they have concerns for.

That is very different from creating a legal duty, and we would welcome more clarity from Welsh Government on who they intend to extend this duty to in order to respond.

Alternatively, we would welcome the opportunity for the consultation to be extended until Welsh Government has published their response to IICSA's final recommendations, so that our response can take this in fully.

(b) What are your views on this in respect of adults?

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

We would be concerned were a criminal sanction to be attached to this reporting duty, due to the potential impact on workplace morale and our ability to recruit new social workers and staff to the social care sector.

Reporting or not reporting should not necessarily be seen as binary. We should seek to build a balanced reporting system that protects children

and young people, whilst also guarding against professionals being punished for not reporting at a particular moment in time, when in fact they are building up a relationship and/or a picture of evidence and need some discretion to determine the best point to report.

Child protection professionals need to be empowered to build trust with a child, which is essential to uncovering the full extent of child neglect and abuse, which often happens in a non-linear way. There should be an assumption that professionals would report child abuse, and a defensible position unless they did not. Taking a binary approach to mandatory reporting could hamper professionals' ability to build relationships with children, potentially meaning that fewer children would feel safe or able to disclose what has happened to them.

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

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

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

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

Part 2 and Schedule 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 ('the 2016 Act') provides the basis on which Care Inspectorate Wales ('CIW') – on behalf of the Welsh Ministers – undertakes functions relating to the registration, regulation and inspection of 'regulated services'.

This chapter of the consultation focuses on proposed amendments to the regulatory regime for regulated services, service providers and their designated responsible individuals. These relate to a range of matters provided for within the 2016 Act, including:

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

Questions on proposed amendments relating to each of these matters follow.

There are 21 questions about this chapter.

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

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

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

which a service is (or has been) provided, or which is (or has been) used in connection with the provision of a regulated service?

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

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

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

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

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

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

Question 4.10: *(d) Improvement notices and cancellation of registration – power to cancel a service provider's registration:* Do you agree with the proposal to amend the

2016 Act to remove the requirement for the Welsh Ministers (CIW) to follow the improvement notice process to cancel the registration of a service provider in circumstances when the provider has already ceased to provide a regulated service?

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

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

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

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

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

Question 4.16: *(e) Responsible individuals - Removing a Responsible Individual without making an application to designate a new Responsible Individual:* Do you

agree with the proposal to amend the 2016 Act to allow a service provider to apply to the Welsh Ministers (CIW) for a variation of the conditions of their registration to remove a Responsible Individual when they are not designating a replacement Responsible Individual as part of the same application?

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

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

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

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

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

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

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

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

Questions on Chapter 5: Amendments to regulation of the social care workforce

There are 9 questions about this chapter.

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

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

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

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

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

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

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

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

Please explain your reasoning.

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

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

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

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

There are 5 questions about this chapter.

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

Please explain your reasoning.

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

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

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

Please explain your reasoning.

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

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

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