



Cynulliad Cenedlaethol Cymru **The National Assembly for Wales**

Y Pwyllgor Iechyd a Gofal Cymdeithasol **The Health and Social Care Committee**

Dydd Iau, 21 Mai 2015
Thursday, 21 May 2015

Cynnwys
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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynnddi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Alun Davies	Llafur Labour
Janet Finch-Saunders	Ceidwadwyr Cymreig Welsh Conservatives
John Griffiths	Llafur Labour
Elin Jones	Plaid Cymru The Party of Wales
Darren Millar	Ceidwadwyr Cymreig Welsh Conservatives
Gwyn R. Price	Llafur Labour
David Rees	Llafur (Cadeirydd y Pwyllgor) Labour (Committee Chair)
Lindsay Whittle	Plaid Cymru The Party of Wales
Kirsty Williams	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

Eraill yn bresennol
Others in attendance

Kate Chamberlain	Arolygiaeth Gofal Iechyd Cymru Healthcare Inspectorate Wales
Dr Samantha Clutton	Barnardo's Cymru
Hywel Dafydd	Swyddfa Comisiynydd Plant Cymru Office of the Children's Commissioner for Wales
Cecile Gwilym	NSPCC Cymru NSPCC Wales
Yr Athro/Professor Sally Holland	Comisiynydd Plant Cymru Children's Commissioner for Wales
Nia Roberts	Arolygiaeth Gofal Iechyd Cymru Healthcare Inspectorate Wales
Lin Slater	Bwrdd Iechyd Lleol Aneurin Bevan Aneurin Bevan Local Health Board
Catriona Williams	Plant yng Nghymru Children in Wales
Lynda Williams	Bwrdd Iechyd Lleol Cwm Taf Cwm Taf Local Health Board

Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance

Amy Clifton	Gwasanaeth Ymchwil Research Service
Helen Finlayson	Clerc Clerc
Sian Giddins	Dirprwy Glerc Deputy Clerk
Gareth Howells	Cynghorydd Cyfreithiol Legal Adviser

*Dechreuodd rhan gyhoeddus y cyfarfod am 09:18.
The public part of the meeting began at 09:18.*

Cyflwyniad, Ymddiheuriadau a Dirprwyon Introductions, Apologies and Substitutions

[1] **David Rees:** Good morning. Can I welcome Members to this morning's session of the Health and Social Care Committee of the National Assembly for Wales, during which we will continue our evidence sessions in relation to the Regulation and Inspection of Social Care (Wales) Bill? Can I remind Members of some housekeeping business, please? If you have mobile phones, can you please either put them on 'silent' or switch them off? And can you ensure that any other electronic equipment that may interfere with the broadcasting equipment is switched off or on 'silent'? There are no scheduled fire alarms this morning, so, if one does go off, please follow the directions of the ushers. It is bilingual and, therefore, if you need simultaneous translation from Welsh to English, the headphones are available. It is channel 1 for the translation and, if you need amplification, it is channel 2. We've received apologies from Lynne Neagle and there'll be no substitute on behalf of Lynne this morning. So, if you're okay, we'll go straight into the first evidence session this morning.

09:19

Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru): Sesiwn Dystiolaeth 13 Regulation and Inspection of Social Care (Wales) Bill: Evidence Session 13

[2] **David Rees:** Can I welcome the commissioner for children in Wales, and can I congratulate you on your post? Obviously, you've only been in post for a short while. If you'd like to introduce yourself first and your colleague—

[3] **Professor Holland:** I'm Sally Holland and I'm the Children's Commissioner for Wales.

[4] **Mr Dafydd:** Hywel Dafydd, public affairs officer for the commissioner.

[5] **David Rees:** Okay. Thank you for that. Before we go into the session with the commissioner, I'll just remind Members that we have received a letter from the Children, Young People and Education Committee in relation to the aspects of this particular Bill that relate to children. They decided not to undertake their own scrutiny, but have asked us to ensure that we provide them with any evidence from these sessions this morning. We'll go therefore now into questions. I'll start with Gwyn Price, please.

[6] **Gwyn R. Price:** Thank you, Chair. Good morning, both. You say in written evidence that you want to see an explicit duty to give due regard to the UNCRC to all persons exercising functions in the Bill, and then training on UNCRC should be compulsory to allow staff to retain their registration. Could you say a bit more about this and why you believe it's so important?

[7] **Professor Holland:** To have the UNCRC on the face of the Bill?

[8] **Gwyn R. Price:** Yes.

[9] **Professor Holland:** You'll be aware that the Minister sees this Bill as being a companion Bill to the Social Services and Well-being (Wales) Act 2014, and I was very pleased to see the UNCRC on the face of the Social Services and Well-being (Wales) Act 2014. So, it's partly about—the first point is just about giving it the same parity and status in both Acts. So, that would be the first point. But I want to make the point that we don't think it should just be on the face of the Bill for symbolism's sake. I don't want that to be a knee-jerk response: 'Why isn't the UNCRC there?' It's much more important than that. I want it to be there to drive real change for children. I think sometimes we fall into a little bit of a trap of thinking about children's rights as just being about the participation part, the right to be heard, and the right to make choices, the right to have their voice heard. But we need to remember that there are lots of other important parts of the UNCRC, including the right to the provision of services for their needs, and the right to protection. Obviously, that broader view of the UNCRC we mustn't forget. Having it on the face of the Bill really emphasises and reinforces the Rights of Children and Young Persons (Wales) Measure 2011 and the duty on Ministers to ensure that the UNCRC is embedded right through our legislation and our policy. If we put it on the face of the Bill, it will extend the duty of due regard to the UNCRC to all persons exercising functions under the Bill, as it is in the Social Services and Well-being (Wales) Act 2014. So, I think it gives that consistency across.

[10] What else do I want to say about it? When we're thinking about measuring social services' performance under this Act, having the UNCRC there helps us think about what we're looking for when we're measuring performance in relation to services for children. I'm aware that work's at quite an advanced stage of developing a code of practice in relation to measuring social services' performance, and there's a framework of indicators for measures, including a wellbeing statement for people. I've already set out a view that the securing rights and entitlements domain of the wellbeing statement, as applied to children and young people, should relate more broadly to the UNCRC. So, as I say, at the moment, it seems to be looking at a rather narrow view of the UNCRC, of looking at article 12, the right to be heard. I'd like us to be thinking about children's rights more broadly and thinking about provision and protection as well as participation.

[11] **Gwyn R. Price:** You want continuity, really, between the last Act—just to tie the two Acts together.

[12] **Professor Holland:** Absolutely. Do you want to add anything more about due regard?

[13] **Mr Dafydd:** I think that, in the child rights impact assessment for the Bill, there is a great onus on the best interests of children being paramount in all considerations. The Care and Social Services Inspectorate Wales already includes the principles of UNCRC as it engages with children and young people and as it undertakes inspections. I think the due regard duty is a more demanding duty than merely having regard to the UNCRC, and I think that's important to set out, in the sense that it's similar to the due regard duty under the Equality Act 2010. So, it would offer a citizen or a child or a young person recourse via the complaints process, should they feel their rights had not been respected and it could lead, further down the line, to judicial review. It gives them another avenue for recourse as well as the complaints procedures.

[14] **David Rees:** Alun, on this particular topic.

[15] **Alun Davies:** Yes. I was interested by this part of your evidence, because I was on the committee in the previous Assembly that legislated on the Rights of Children and Young Persons (Wales) Measure 2011. Our conversations at that time were that, by placing the duty into a single Measure, as we did at that time, that would encompass all future legislation and actions of Government and by Government in its wider sense. So, I was unsure as to—. Having put this on the statute book, we're now being asked to put a reference to the UN agency on every subsequent piece of legislation. Is that really necessary, in your view?

[16] **Professor Holland:** I think that, in any piece of legislation that impacts on children, which is, of course, the majority of legislation that the Assembly considers, it is necessary. It further embeds it—

[17] **Alun Davies:** So, why does that Measure not do that in itself, in the way that it was designed to do?

[18] **Professor Holland:** Well, the Measure puts a duty on Ministers, and it almost assumes a kind of trickle-down effect on all the services underneath the remits of the Ministers. By embedding it in the legislation, we're much more directly requiring those exercising functions under each of the Bills to give due regard to the UNCRC. I think it's more direct, and I think it helps us with article 42 of the UNCRC, which is a duty on Governments to promote the UNCRC to the public, raising awareness that it's there, it's important and it's a central part of how we carry out our legislative and policy programme in Wales. I just think it more strongly embeds it. It's getting nearer to what the UN Committee on the Rights of the Child are calling for when they're asking for the UNCRC to be incorporated into the laws of states.

[19] **David Rees:** Thank you. Lindsay.

[20] **Lindsay Whittle:** Thank you, Chair. Good morning. I want to talk about advocacy. I notice that you, commissioner, have said that advocacy services should be specified as a regulated service on the face of the Bill. Welsh Government does disagree with you and wants to give the Bill more time to become established. I'm thinking of bringing an amendment in on this particular aspect, and in order to assist me to persuade this committee to support a future amendment, could you perhaps expand further on why you believe regulations of advocacy should feature on the face of the Bill? Who do you think should take responsibility in the interim period, when Welsh Government does eventually decide to put advocacy on the face of the Bill?

[21] **Professor Holland:** You'll be aware that both of my predecessors have been on a long journey, really, in calling for the further embedding of advocacy services into children's services across Wales, and Keith Towler produced a number of reports about advocacy services. In fact, in the 2011 report, 'Missing Voices', he called for interim measures to be put in place on regulation, but that call wasn't taken up at the time. I think that children's advocacy services are ready to be regulated, and they're ready to be regulated now, and the providers have agreed that they are ready to be regulated as well. I'm aware that in the policy intent, it's clearly stated that there's an expectation that advocacy services will become regulated in time, but I don't see any reason why it couldn't be on the face of the Bill now.

[22] The Bill already distinguishes between different specific children's services, and advocacy actually is a really important service for our most vulnerable children in our society. These are workers who have access to children individually; not only are they looked-after children who, in themselves, are amongst our most vulnerable in society, but these are usually children who are in some sort of bother or difficulty and therefore need to access advocacy services. They might be unhappy with a decision that's been made about them, for example, or unhappy with the care that they're receiving. So, the advocates are in a very important role,

a very responsible role with our most vulnerable children, and I would like to see those individuals and the service providers for them being regulated.

[23] We don't really know yet, because they've not been inspected before, how consistent the quality of advocacy services is across Wales. Some of the investigations my predecessor carried out showed that there was certainly some inconsistency in terms of the level of offer of advocacy services, and the availability of advocacy services to children and young people. So, we know there's variability there, but we don't really know that much about the quality of that service being provided. Advocacy services also are named on the face of the Social Services and Well-being (Wales) Act 2014, so, again, if we're looking at consistency across the two Acts, these companion Acts, I think it would make sense in that way. I suppose my answer is that I don't see why they shouldn't be included, and I think there are very compelling reasons why they should be included. Do you have anything to add, Hywel?

09:30

[24] **Mr Dafydd:** Yes. We have national standards for the provision of children's advocacy services across Wales now. However, there is no way of enforcing them or measuring if those standards are being adhered to by advocacy providers. There is work going on with Welsh Government, the Association of Directors of Social Services and the Welsh Local Government Association around moving towards a national approach for advocacy, so seeking to raise awareness more consistently across the board and seeking to inform parity in service level agreements on a regional basis through a regional collaborative model, very similar to the National Adoption Service. So, there are moves there, and I think there was a technical group in the interim period, between the development of the White Paper and the Bill being laid, for the exploration of advocacy being regulated. So, there is work already under way. As the commissioner says, for parity with the Bill, advocacy services are prescribed on the face of the social services Act, and we do know from the 'Missing Voices' report and from the work that Care and Social Services Inspectorate Wales recently carried out, which was a thematic review into looked-after children and care leavers, that, when children do receive advocacy services and good-quality advocacy services, they enjoy good outcomes from accessing such services.

[25] **Lindsay Whittle:** Just a quick supplementary, Chair, through you. Would I be overdramatic in saying that, if it is not regulated immediately, there is a grave danger to some of our young people?

[26] **Professor Holland:** It might be a bit overdramatic, but—[*Laughter.*]

[27] **Elin Jones:** Keep out of it. [*Laughter.*]

[28] **Lindsay Whittle:** Tell me as it is. [*Laughter.*]

[29] **Professor Holland:** Hand on heart, we don't have evidence of damaging practise by advocacy workers by any means, but, as I say, they have a very important role with our most vulnerable children, and I see no reason why these services shouldn't be, and I see lots of reasons why they should be, regulated as soon as possible. I think it should be an amendment added to the Bill.

[30] **Lindsay Whittle:** Thank you for your brutal honesty. I admire it, and I hope I'm wrong. I hope I'm wrong.

[31] **Professor Holland:** As do I, yes.

[32] **David Rees:** And, just to remind Lindsay that, at the moment, we're still on Stage

1—we haven't even got past Stage 1 yet.

[33] **Lindsay Whittle:** Yes, I know.

[34] **David Rees:** John.

[35] **John Griffiths:** I think, in terms of inspections, you've identified the need for young people to have an advocate in order to get their point of view across to inspectors. Is that something that's borne out from actual experience of inspections and any analysis that you've done?

[36] **Professor Holland:** Okay. So, I suppose, again, it's thinking about—. I'll let Hywel come in on what's come into our office in terms of casework because, obviously, I'm only in my first month of being the commissioner, so I don't know the whole history of our casework. I think our call and our response as part of the Bill is just thinking about the position of children and young people who might be living in a care home and their lives, their everyday lives, and what it might feel like to have inspectors come in. As you'll know, children and young people who live in residential care, often have been on a very long journey to get there. They may have had a series of failed foster care placements and are likely to have come from a pretty traumatic background. Living in residential care, they come across so many different professionals coming into the system in all sorts of different ways, with lots of strangers coming in and out. Their lives are lived in a kind of semi-public way. They have review meetings where their teacher, their care worker, their social worker, et cetera, will come in and discuss in front of the child, hopefully with them, about things like their self-care abilities and that kind of thing. They're living already really almost a kind of semi-public, regulated life, in some ways. I know that providers do their very best to protect them and give them as normal a care life as possible.

[37] So, in this call, we're thinking about inspectors coming in as yet another person coming in to look at their lives and how their lives are being led. It's important that they have the opportunity to talk to inspectors. It's very important that their settings are inspected, but we think that, for some children and young people, it might be helpful to have an independent person who they trust and who's not the actual provider being inspected. It could be their social worker, but, sometimes, it might be more appropriate for it to be an independent advocate, perhaps someone they've already met through other services for other reasons, just to introduce the notion of the inspector, rather than having yet another stranger coming in and asking them questions about intimate details of their everyday lives. That's the reasoning behind it. It won't be needed in every case, I imagine.

[38] **David Rees:** Okay, John?

[39] **John Griffiths:** Yes, except I think you invited Hywel to tell us whether there's any—

[40] **Professor Holland:** Oh, yes; sorry.

[41] **John Griffiths:** —analysis or evidence that supports that.

[42] **Mr Dafydd:** I think there are case examples that we have through the office where a child and young person has felt uncomfortable with an inspection, keeping in mind that inspections are unannounced, so it's another unannounced person coming into their home. I think, from that, we should learn that there should be scope for that unannounced inspector to be able to return to that premise and to support the child to understand what process is going on and enable them to have their voice heard through the support of an advocate.

[43] **Professor Holland:** I think the committee will be aware that CSSIW piloted the involvement of young people as experienced care lay inspectors last year and I think that was seen to be a successful pilot, and that's also another way forward. In my previous job, before I came here, I was doing some research and used some of the young people who acted as peer inspectors and so I heard quite a lot about their experiences of doing that. I think that having had recent experiences themselves of living in those situations, they felt that young people found it easier, often, to speak to them and they were able to make them comfortable as part of the inspection, as well as bringing their own unique insights to the role. So, I also support the further extension of that pilot.

[44] **David Rees:** In your evidence, you actually identified that the annual report consideration, particularly the possibility of quality ratings, could have a negative impact on some children in certain circumstances. Do you want to expand upon that a little bit and perhaps discuss how you think it could be best managed to ensure that those negative impacts are not taking place?

[45] **Professor Holland:** Sure. It might have seemed a bit odd of me as commissioner expressing some concern about children being given information and, obviously, I do support children and young people being given and having full access to information about the quality of the service that they're being provided with, but I think we just need to think carefully about how that might be done—again thinking back to the sort of situation of being a child or young person living in a children's home setting. They are a vulnerable group, of course, and they're not consumers in any sense of the word in terms of being able to have a range of options available for choosing where they may live. They may well have had very little choice about where they live. There's a real shortage of care placements for children and young people in Wales, so if an inspection finds some less-than-adequate care, but keeps that setting open, then we need to think about how that might feel for the child or young person to receive that information. I'm not saying they shouldn't have that information, but I think it could make them feel more vulnerable in the setting that they're in—

[46] **David Rees:** So, it's not about the actual reporting or the possible quality ratings. It's more about the management of the information and process.

[47] **Professor Holland:** It's about the process. It's about following through the logic that if these annual reports are being published, then they'll be available to children and young people, and thinking about how that might feel for somebody receiving that service. I think the best people to ask would be children and young people themselves who are living in those kinds of settings, perhaps through looked-after children forums, about how best to manage that process. It's just thinking through the logic of any possible unintended consequences of the Bill. I do support the publishing of the annual reports, but we need to think about, and be aware of, the fact that children and young people will access those reports.

[48] **David Rees:** Okay. Thank you. Can I also ask a question, in a similar vein, in a sense, about the regulated residential schools, which you've highlighted? You've actually indicated that you would advocate

[49] 'for all children in residential special school settings who have care and support needs to receive regulated services'.

[50] You identify this as an anomaly in the Bill.

[51] **Professor Holland:** Yes.

[52] **David Rees:** Therefore, in your interpretation, the Bill doesn't cover those children and those services.

[53] **Professor Holland:** It only covers them if they accommodate children for more than 295 days a year. So, if they're in a residential special school and they return home for the school holidays, then they wouldn't be a regulated service. I'm just going to check with Hywel I've got that technical bit right.

[54] **Mr Dafydd:** No, that's completely right. Yes.

[55] **Professor Holland:** So, in a residential special school, children and young people will often be receiving lots of personal care, often of quite an intimate nature, and it appears to us to be an anomaly. Now, some of those schools are open 52 weeks a year and they would be regulated, but, obviously, some of the children go home. I think this anomaly could be rectified through the Bill just by requiring all residential special schools to register with the inspectorate. I think that, already, children's homes that provide in-house education register with both CSSIW and Estyn. So, it would be the same kind of process for residential special schools.

[56] **David Rees:** Okay. Darren.

[57] **Darren Millar:** Yes; thank you, Chair. I just wanted to ask you about workforce registration. The Bill obviously requires social workers to be registered before they can practice. It also talks about other social care workers, but it doesn't talk about domiciliary care workers, requiring them to be registered, nor does it talk about other individuals who may be engaging with young people and providing support—foster carers, for example. What are your views on extending the requirement to register to domiciliary care workers, particularly those, obviously, working with children, and perhaps to foster carers?

[58] **Professor Holland:** Okay. So, I'll think about foster carers first. To be honest, I think it's a complex one, and I don't think I want to come out firmly on one side or the other. I would imagine that the Care Council for Wales and foster care associations may want to give you further views on this. To be an approved foster carer, there is, of course, already a very complex process to go through. We're very confident, or generally confident, when foster carers have gone through that complex assessment and have been approved by a panel, that they are fit to look after vulnerable children and young people. There is a risk if we extend registration to them. There could be an extra unnecessary burden. It might slow down their availability to be foster carers. We're desperately short of foster carers in Wales. We don't want to discourage them by extra regulation.

[59] There's also the issue of the sort of status of foster carers and how we want to view them in our society, really, and in our care structure. Again, this is a finely tuned one, really. I've talked to lots of foster carers, children and young people about this over the years. Do we want to encourage the idea of foster care as being a family home where people are providing as close to a family-like environment as possible for children and young people, or do we want to view it as a professional service provided by professionals?

[60] Now, I support the view of foster carers being treated as trusted colleagues who should receive training, because they're doing a job that's much harder than being a birth parent. So, I think they should be required to undergo training by their provider, but I think we have to strike a balance between over-formalising the foster carer role and encouraging them to provide a loving, caring environment. When you talk to children and young people who live in care or who have left care, what they really care about is whether someone wanted to genuinely care for them in the role of a parent. On the other hand, as I say, I also want us to regard foster carers as trusted colleagues. If they were registered they would be able to move perhaps to a new local authority or to a different provider and continue to be a registered foster carer without having to go through the approval process again, because

they're only approved with that one provider. So, I think it's finely balanced. I'm sorry that's not—. I don't really want to come down on one side of the fence or the other on this. I think really the best people to ask on this are foster carers, and the current regulator.

09:45

[61] **Darren Millar:** And in terms of domiciliary care workers, do you feel that registration should apply to them? The Care Council for Wales suggested some sort of licensing—a simple, straightforward licensing regime for some care workers—might be more appropriate than a fully blown registration scheme with a small annual fee, but at least they could be in receipt of any material that needs to be shared in terms of their training needs, et cetera, and some sort of central registration would be then taking place.

[62] **Professor Holland:** Again, we don't want to put people off providing this kind of service by over-formalising it. On the other hand, sometimes, for example, we have people who would come under the category of domiciliary care workers who might be providing short breaks for children and young people at home, but not overnight, in which case they would be registered foster carers. They are caring for some of our most vulnerable children. I certainly support as many safeguards as are necessary being put into place for those carers, but I think I would accept the care council's opinion on that. I don't know if you've got anything to add to that, Hywel?

[63] **David Rees:** Alun.

[64] **Alun Davies:** In terms of how we define care, the Older People's Commissioner for Wales was very clear that she had some significant concerns about some of the definitions used in the Bill and elsewhere with its task-based approach, and the rest of it; I think you've raised some concerns as well. I wonder if you could give us what your alternative definition would be.

[65] **Professor Holland:** Okay. Well, I concur with the older people's commissioner. I think care is a much broader concept than just carrying out physical tasks, whether you're caring for older people, for children and young people or for disabled adults. I've mentioned a few times that this Bill is perceived as being a companion Bill to the Social Services and Well-being (Wales) Act 2014. We have broader definitions within the Act. We have a concept of wellbeing within the Act, which I think is a useful one for us to think about as a starting definition for care. It's important to have that kind of connectivity between the Act and the Bill. I would want a broader definition to include the concept of care as being, yes, about providing physical care—that's a very important element of it—but care is also a social thing. It's about relationships between carer and cared-for, it's about emotional care—that's a very important element—it's about caring for people's mental health, and sometimes for their more general, spiritual wellbeing, perhaps, as well as their physical wellbeing. So I just think a broader definition, and probably going back to the meaning of wellbeing in the 2014 Act, would be a good place to start. I brought it along with me in case you asked a question like this, and it starts by talking about physical wellbeing being in relation to physical, mental and emotional wellbeing and protection from abuse and neglect, which is probably a really good place to start.

[66] **David Rees:** You haven't given us a definition, but I think you have identified the areas you believe the definition should be referring to. Thank you. John.

[67] **John Griffiths:** In terms of whistleblowing, there's nothing currently proposed in the Bill in that regard, but we know that the report on child abuse in north Wales felt that statutory procedures covering whistleblowing were necessary, and we know that various assurances were given by Gwenda Thomas in terms of other legislation that was proceeding

through the Assembly; that whistleblowing would be addressed, perhaps, in legislation dealing with registration, for example. So, I'd be interested in your view as to whether this particular Bill should have provision for whistleblowing, and, if you think that is necessary, why you think so?

[68] **Professor Holland:** I think that whistleblowing would fit within this Bill, and I would support a provision for supporting whistleblowing being included in this Bill. I think the National Assembly could be instrumental here in, sort of, setting up an expectation that professionals and care workers will report abuse and neglect by colleagues or within their institutional processes. The ongoing history and legacy of the north Wales care homes scandal is a salutary reminder, really, of how, within closed institutions, in particular, such as children's homes or adult care homes, cultures can emerge where it can be very difficult, particularly for the lowest status workers, to both recognise and report that neglect or abuse is happening. So, yes, I would support it. We would expect regulators and inspectors to be asking questions as part of the inspection process about how whistleblowing could be enabled and supported within any place that they are inspecting, which is why it could fit within this Bill.

[69] **David Rees:** Okay, John?

[70] **John Griffiths:** Okay, Chair.

[71] **David Rees:** Elin.

[72] **Elin Jones:** We've had evidence from people dealing mainly with adult care that the Bill should be extended to regulate commissioning of care in order to ensure that commissioning is done on the basis of outcomes, rather than driven by price and cost. I don't know whether you have any thoughts on whether that would be useful in the context of children's care.

[73] **Professor Holland:** I certainly support the notion that our inspection and regulation regime should be looking at outcomes, rather than just best value for money. That's certainly, again, one of the themes that go through the social services and wellbeing Act and should be strongly embedded in this Bill. We certainly don't just want to be either commissioning or inspecting services on the basis of the outputs that they have achieved, or the processes that they've put in place. Those things are important, but they're not as important as whether people get better or are able to achieve their goals or have enhanced wellbeing under services—in other words, the outcomes. So, I support that aspect of it.

[74] I haven't got a strong view on the commissioning, but, to me, that could make sense. Do you have anything to add to that, Hywel?

[75] **Mr Dafydd:** No. We did do a piece of work around the commissioning of advocacy services, and we could share the findings of that with the committee, if that would inform their scrutiny of the Bill.

[76] **David Rees:** If you could send us a copy, that would be very helpful.

[77] A question from me, then: clearly, section 57 of the Bill actually provides powers to the Welsh Ministers to regulate the exercise of local authority functions relating to looked-after children or accommodated children. Now, the Welsh Government said it intends to make regulations to specify who is fit to carry out work with these groups and the fitness of premises, in that sense. Do you have any views on that? It's about actually exercising the functions to talk about who is fit to undertake certain functions for the local—[Inaudible.]—children, and looked-after children or children who are accommodated, and the Welsh

Government wouldn't make any regulations for that purpose. Have you had a chance to look at that aspect and take any view on that? If you haven't, fine. Perhaps you could give us a note.

[78] **Professor Holland:** I'd bet you Hywel's got a view on it.

[79] **Mr Dafydd:** We've looked at it very, very quickly, and it restates much of what's already in the Care Standards Act 2000 as I understand, but I think, for time purposes, we could follow up with a note, and a more detailed response.

[80] **David Rees:** That would be very helpful.

[81] **Professor Holland:** Absolutely. I don't want to blunder in without having had time to reflect, so I'd much rather follow it up by note.

[82] **David Rees:** That's fine. Are there any other questions from Members? Can I therefore thank you very much for your evidence this morning? Can I also thank you for the written evidence we received beforehand? It was very helpful. You will receive a copy of the transcript for any factual inaccuracies; please let us know if there are any. So, once again, thank you very much for your time.

[83] **Professor Holland:** Thank you very much.

[84] **Mr Dafydd:** Diolch yn fawr.

[85] **Yr Athro Holland:** Diolch.

[86] **David Rees:** We are on schedule for the next session at 10 a.m. We'll have a five-minute break. Back at 10 a.m.

*Gohiriwyd y cyfarfod rhwng 09:55 ac 10:01.
The meeting adjourned between 09:55 and 10:01.*

**Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru):
Sesiwn Dystiolaeth 14
Regulation and Inspection of Social Care (Wales) Bill: Evidence Session 14**

[87] **David Rees:** Can I welcome Members back to this morning's session of the Health and Social Care Committee? We move into our second evidence session this morning on the Regulation and Inspection of Social Care (Wales) Bill. Can I ask the witnesses to introduce themselves, and we'll go from my right to left?

[88] **Ms Gwilym:** Good morning, Chair. My name is Cecile Gwilym. I'm a policy officer for the NSPCC in Wales.

[89] **Dr Clutton:** My name is Sam Clutton, and I'm the assistant director for policy for Barnardo's Cymru.

[90] **Ms C. Williams:** I'm Catriona Williams, chief executive of Children in Wales.

[91] **David Rees:** Thank you very much for that, and can I thank Barnardo's and NSPCC for the written evidence we've received as well, prior to this session? If it's all right with yourselves, we'll go straight into questions. Obviously, the three of you—the three organisations—will have similar views and may have some varying views, but if something's

already been said, don't feel you have to say it again, if that's okay. Gwyn Price, do you want to start?

[92] **Gwyn R. Price:** Thank you, Chair. Good morning, everybody. Two of the charities—I think Barnardo's and NSPCC—stressed the need to add duties to give due regard to the United Nations Convention on the Rights of the Child in their evidence. What do they believe could be the consequences if the Bill is not amended to this effect?

[93] **Ms Gwilym:** If I start, to us, human rights should be at the centre of the regulation and inspection regime. So, we are obviously disappointed that there's currently no due regard duty for persons exercising functions under the Bill to the UNCRC in particular. I think the consequences, if the Bill isn't amended, would be that, obviously, to us, some of the provisions wouldn't be implemented effectively. Obviously, if the Bill is to help ensure that vulnerable children's wellbeing outcomes are delivered through the provision of social care services, then we would expect a due regard duty to be included in the Bill, because rights and entitlements are at the heart of the definition of 'well-being'. So, in other words, we don't really feel that wellbeing can be delivered without a due regard duty being at the heart of the regulation and inspection system.

[94] **David Rees:** Sam?

[95] **Dr Clutton:** I would support what Cecile has said, and just add to that that this is being regarded as the sister Bill to the Social Services and Well-being (Wales) Act 2014. On the face of the Social Services and Well-being (Wales) Act is that those carrying out functions under that Act should demonstrate due regard to the UNCRC. There is, at the moment, no scrutiny process in place to ensure that that is delivered. Actually, if the R&I Bill was also about demonstrating due regard, we would hope that that would support some proper scrutiny of the delivery of the Social Services and Well-being (Wales) Act with regard to how those exercising functions demonstrate that regard to the UNCRC. There's no measure in place at the moment to oversee the implementation of that.

[96] **Ms C. Williams:** Yes, I'd support colleagues. I think there are consequences. Somehow in Wales, we seem to have got the rhetoric of UNCRC everywhere, but not actually delivering—in some respects. I think what we need is regulators to do this, particularly if there's a function of improvement in Social Care Wales. They should be leading and monitoring how well the UNCRC is actually being delivered. We were delighted to have it on the face of the Social Services and Well-being (Wales) Act, but it needs to be actually implemented. So, I think the due regard duty is essential. There are a lot of training implications, a culture shift, and there are also the other conventions: the UN Convention on the Rights of Persons with Disabilities and also the UN Principles for Older Persons. So, if this is a citizen-centred regulatory function against the Social Services and Well-being (Wales) Act, then it should be there.

[97] **Gwyn R. Price:** Okay, thank you very much.

[98] **David Rees:** Alun, do you want to come in on this?

[99] **Alun Davies:** I take the point that it's about implementation and practical delivery. I accept that. Putting that to one side, we're thinking here in terms of the architecture or the statutory framework within which these policies or services will be delivered. I remember sitting on a Measure committee in the previous Assembly, which put the UNCRC on the statute book. The purpose of doing it that way at that time was to ensure that all future pieces of legislation would fall within that statutory framework. So, I'm a bit surprised to hear, four years later, that we need to actually go through every piece of legislation and put this back into each individual Bill, because the purpose of the previous legislation was to preclude the

need to do this in future legislation.

[100] **Dr Clutton:** Can I comment on that? The Rights of Children and Young Persons (Wales) Measure 2011 actually puts the due regard duty on to Welsh Ministers. What the Social Services and Well-being (Wales) Act does is put that duty on those carrying out functions under the Act, so those commissioning and delivering social care within Wales. I think that is the difference. We can hold Welsh Ministers to account in terms of whether, in the decisions they're making, they are demonstrating due regard for the UNCRC—and we've spoken elsewhere about the need for that system to be further scrutinised and for more support for that scrutiny—but actually there is no duty on those delivering legislation within Wales to have due regard to the UNCRC apart from in the case of the Social Services and Well-being (Wales) Act. There has been a lot of challenge to us trying to get the same duty put on the face of other legislation that is being passed, because of fears about the implications of that in terms of actually implementing children's rights at the operational level, I believe.

[101] **Alun Davies:** Okay. Can we make a note of this? I accept your point, by the way, but the debate we had when that Measure was passed—and we went through exactly this argument at the time—was that placing a duty on the Minister meant placing a duty on the services delivered by that Minister, whether by local authority, by Welsh Government, or by a third party. At the end of the day, it's the Minister responsible for all of those different things, because this has got implications for other areas, as well, of course. If that is not the case, then clearly that has implications for other pieces of legislation and for legislation in other fields, as well. So, it would be useful if we could make a point of this.

[102] **David Rees:** Okay, we could make the point about the scheduling of the duty and responsibilities. This is important. Right, Lindsay.

[103] **Lindsay Whittle:** Thank you, Chair. Good morning. I wanted to ask you about advocacy, please. Do you share the children's commissioner's views that advocacy services should be regulated without delay and should feature on the face of the Bill? You'll be aware that Welsh Government believe the Bill needs more time to be established. I'm wondering what your thoughts are on that, please.

[104] **Ms C. Williams:** I think I'd like to kick off, really. I think one of the issues for the wider children's sector—and the Children in Wales membership is statutory, third sector and independent sector—is that this Act is all about people, both children and adults, and I think what we actually have in terms of advocacy is two different sets of what's happened. The children's advocacy work has been around for 15 years, and I think the adult sector is catching up. So, we definitely feel there's got to be an immediate inclusion of advocacy within this legislation to make it actually happen. It's one of the biggest protectors for children and young people—looked-after children, in particular—to ensure that their needs, rights and entitlements are being met, and this is an implementation measure. We would agree with the children's commissioner.

[105] **Ms Gwilym:** I would support that, as well. If you take the case of looked-after children, and you think of a situation where you've got a variety of different workers working with a young person, you've potentially got a situation where the advocate would be the only professional who wouldn't be regulated. So, we feel that, given how vulnerable these young people are, it would make sense for advocacy services to be regulated as well.

[106] **Dr Clutton:** And we would support the Children's Commissioner for Wales's review has established the need for regulation of advocacy services. Giving the citizen a strong voice is at the heart of the Social Services and Well-being (Wales) Act, and we need additional measures to ensure that that can be delivered for children and young people.

[107] **Lindsay Whittle:** If I can quote Simon Cowell, Chair, that's three fat yesses, I think, which is really good and pleases me, because I'm also a supporter of that. In the interim period, then, who do you think should be responsible? You know that the national standards for the provision of children's advocacy are being revised at the moment, but no-one has any responsibility for measuring advocacy practice against those standards. So, who should do it?

[108] **David Rees:** Any views? Catriona?

[109] **Ms C. Williams:** Well, I think it's essential that we have the systems in place. I'm a co-chair of Voices from Care Cymru, and one of the challenges there is peer advocacy, because that is not within regulations. So, there are lots of different levels. But, yes, the regulator should be able to measure. I think one of the conundrums with this particular field is the variety of different disciplines involved, and so how that works out. Part of me feels that there needs to be more of a coming together of all the different regulatory bodies to be able to look at the real-life situation of children and young people, and which professionals are all around them, but that's a much bigger exercise than is possible at the moment. The inspectorates should be able to look at what's happening, the regulatory bodies. I think there's an opportunity here to make sure that Social Care Wales is able to take that on.

[110] **Lindsay Whittle:** Thanks very much.

[111] **David Rees:** Thank you. John.

[112] **John Griffiths:** I think there's a general agreement that service users in general need to be empowered to a greater extent and be better informed about the service provision that they receive, so it's a bit counter-intuitive, in a way, I think, to hear the charities expressing concern that young people and children would have information shared with them on the performance of those providing services to them. So, could you set out your concerns and whether you think that annual reports and quality ratings shouldn't be shared with service users, or whether you think that some of the dangers that you see could be mitigated in some way but the sharing could still take place?

[113] **Dr Clutton:** I think that the way in which the issue needs to be approached in relation to children and young people is different from how that has to be approached for adults, in terms of the way in which the information is presented to them. So, for example, when schools were rated and a traffic-lights system was introduced a few years ago, there was information at that time shared with the Children's Commissioner for Wales's office about children being distressed that they were attending failing schools. In the same way, if we take for example a child who is looked after, we've had a number of local authorities across Wales that have been in special measures in the recent past, how would you feel if your corporate parent, your local authority, was under special measures? What would that mean to you? How would that make you feel about your best interests and how you were being looked after? Now, that is not to say that that child in an authority that is under special measures is not being well looked after, but we need to think carefully about how we manage sharing that information in a way that doesn't cause any emotional distress.

[114] **Ms Gwilym:** If I can come in on what Sam's just said, I think the key difference between children and adults is the notion of choice. Children don't have a choice when it comes to placements, and we know that the way that placements are actually matched to children and young people is a complicated process that obviously should meet their needs, but there's also the question about a shortage of specialist placements for children with complex needs.

10:15

[115] So, we know that there are, unfortunately, other considerations that are taken into account when it comes to placing a child, so really, how much choice has that child got when it comes to where it's going to live, and who it's going to live with? So, I think we wouldn't say that we don't want information about performance to be shared with children and young people; we think it's perfectly proper that they should be informed, but we think that it should be managed in a really sensitive manner and that, at all times, there should be support for them to express concerns and that they should be, at all times, aware of what they can do, if they have a concern in their placement—if there's an allegation, for instance, about abuse or neglect—about who they can go to, and that they don't feel isolated in a place where, all of a sudden, they have this information that there are concerns about the quality of care, and maybe they would actually echo these concerns, but don't know where to go. So, I think, it's about striking a balance between that: between giving the information, but giving it in a supportive way for the young person.

[116] **David Rees:** Your concerns, therefore, are about how it's managed and the support the child receives during that process.

[117] **Ms Gwilym:** Yes.

[118] **Ms C. Williams:** I think I have one additional comment: it's around who is deciding what is in the annual report, because the whole ethos of all of this raft of legislation is about being citizen centred. Children are not small people; they're children, and what we do have to do, I feel pretty strongly, is child-proof everything that's going through at the moment to make sure that it's fit for purpose for children and young people. So, for instance, I'd really like to see children and young people as lay inspectors in the inspection system and us being able to track how children and young people are influencing the way in which the annual report is produced so that it is fit for purpose to avoid—. I think that's one of—. The move to the service model of regulation from, you know—. You could have an organisation—. A lot of this has come from the collapse of the adult-services-for-older-people type of thinking. If organisations collapse, then a lot of people are moved out of their homes. With children, we think of foster placements. A foster family is not being regulated, as such; they might be brilliant, but the service might be regarded as failing. So, as Sam says, we've got to think of this; although it's a 'people' piece of legislation, there are children in that.

[119] **David Rees:** That goes back to how information is disseminated and managed and how the child is supported, doesn't it?

[120] **Dr Clutton:** And accommodated children cannot act as consumers in the way that perhaps an older person and their family might advocate to move them to a new residential placement. Those decisions are not—. The child and the child's parents, by default, cannot make those decisions.

[121] **David Rees:** John.

[122] **John Griffiths:** I think there are some interesting issues here because I think children and young people have the right to know what quality of service they're receiving and it's about accountability and also pressure within the system for improvement, isn't it? So, I think there are a lot of issues, but I guess we take the points about how the information is presented and managed and what support is in place.

[123] **Ms C. Williams:** May I make one extra point? I think what we have learnt from the school system is the stress levels—. We've heard this from children, about how stressful it is for them in schools when the teachers are under pressure because they're being monitored closely. I think the philosophy of this exercise is to improve services and measure progress, as

opposed to criticism, and I think that how it's implemented will be very important in terms of how the children understand it.

[124] **David Rees:** Alun, do you want to come in on this?

[125] **Alun Davies:** Yes. I appreciate the points you're making. Representing Blaenau Gwent, I know exactly how these issues about special measures are seen, not just within different elements of the community, but in the community as a whole, and it does have an effect on people—you're right about that. But what has a greater effect, of course, is a failing service and that is what we have to address. I think it would be an absolute disaster if we were to say that—. We understand that there could be short-term pain and uncertainty and difficulties—and I don't run away from that at all—but, surely, the greatest drive and imperative to improve services is transparency and sunlight, and that means that we have to be open with people—service users—whatever their age or age group, about the services that are being provided, and we have to be brutally frank about the failings that exist within services. We've seen, in all sorts of different parts of public life, how a culture, if you like—which might be well meaning, but essentially covers up failure—will have an impact, not just on service users later in life, but on the system as a whole. I don't see how we could ever accept a situation whereby quality ratings and quality standards are not public, are not made public, and where people providing services are not held to account.

[126] **David Rees:** Before you answer the question, telling us what your views are, actually that should happen, but it's how that information is disseminated and managed for the children. Is that right?

[127] **Dr Clutton:** Yes, and the support that's provided to children and young people in receiving that information.

[128] **Ms C. Williams:** And also what 'good' looks like, and who decides what 'good' is. For me, when it's within this zero-to-100-years-old framework, is the children's expertise within that decision making? Are the children themselves, who are at the centre of receiving the service, influential in deciding what a good service is? We've learnt a lot from Voices from Care's work in corporate parenting, and other charities working with looked-after children, where professionals decide what 'good' is, but the child might feel, actually, 'I don't think it's very good here'. But, we fully accept that we can't have failing services, absolutely.

[129] **Ms Gwilym:** Could I just make an additional point, Chair? Just coming back to what you said about quality standards being made public and thinking particularly about local authorities, I think what we need to ensure as well is that, when annual reports are published and they highlight shortcomings, there's also a process by which the public can see what the local authority or the organisation is doing to put these things right, so that we don't end up with a system where it's just a quality rating, where you have headlines of, 'Such and such is failing', but nobody really knows what's happening then in order to learn lessons and to improve practice. Otherwise, it's a bit like you end up with a situation where you almost pitch people against each other, but you don't really know actually what good is being done in order to ensure how service users, who should be at the centre of the system, are actually benefiting in the long run from the standards being made public. So, really, for us, it's about improvement also being made public, so that service users can see what's happening to remedy any of the problems that have been highlighted.

[130] **Alun Davies:** I don't disagree with that, as it happens; I think you've got to have a rounded and enriched report that actually says more than a very blunt and bald assessment. But there's great value to simplicity and clarity as well. You know, one of the reasons we have three lights on traffic lights is that people can get that, and get it easily, and I think one of the most successful drivers we've seen, in terms of public standards, has been the food

hygiene standards. I wouldn't go somewhere that didn't have a 5 or a 4; I simply wouldn't use it. And I accept what you're saying, Ms Gwilym, but I think, at the same time, we need to stress the importance of transparency and clarity, and if the service user—the potential service user—really is at the centre of policy, surely policy should be to drive improvement, and that should be first, second and third.

[131] **Dr Clutton:** Oh, yes. I think the only point we're making, to use your example of the hygiene rating, is that adults may be able to make a decision about which restaurant they're going to, but children are taken into the restaurant by an adult without having a choice about whether they go in or not. I suppose that's—

[132] **Alun Davies:** But that makes it even more important, not less.

[133] **David Rees:** Okay, thank you. Elin.

[134] **Elin Jones:** Yes, I wanted to raise the issues that have been raised in the Barnardo's evidence. It's on the definition of 'responsible person' and how that is relevant to the third sector, because the definitions as they stand are: 'owner', 'partner', 'member of company board' and 'senior officials in local authority'. It may need to be a wider definition to encompass the kind of work that the third sector is involved in as well. So, perhaps you could suggest how that could be done. And then, just in terms of the work that all your organisations do, whether you think that the term 'social care worker', which will be registered, encompasses the work that some of your workers in the third sector actually do or whether that definition needs to be clarified or extended in some way also?

[135] **Dr Clutton:** To take the first part of the question, or the first question, part of the issue for us is that because Barnardo's is a UK organisation that operates within Wales, and we have a senior management structure within Wales and our own director, in terms of corporate body and charity status et cetera, we're not clear about the implications. So, at the moment, we are required to be registered as an adoption agency with Ofsted because Barnardo's is an adoption agency and we deliver part of that within Wales. But, for our fostering services et cetera, we are registered unregulated in Wales by the Care and Social Services Inspectorate Wales. We're not clear—. It appears that a lot of the wording in these elements of the Bill are related to where things have gone wrong with independent providers for older people et cetera. We're not arguing that that doesn't need to be in there, but there needs to be some thought about how it will impact in relation to the third sector, which is not necessarily going to have the corporate positions that are described within the Bill. What we've asked for is some discussion, perhaps, with officials on how that could apply in the case of the third sector. In relation to the second issue, I'm not sure that I'm still clear about what a social care worker is in terms of the Bill.

[136] **Elin Jones:** That's exactly the answer that I wanted you to give.

[137] **Dr Clutton:** So, a lot of this is about: what are the implications and what is it going to mean for us as a provider and an organisation? We've got stringent training and quality assurance processes in place for our staff, but we don't necessarily believe that all staff need to be highly qualified in order to operate well in social care settings. At the same time, quite frankly, social care within Wales can't afford a very highly qualified social care workforce at this time. So, it's about putting measures in place to ensure that we know we've got quality of staff, we know they've got mandatory training and we know that they're delivering and that they're scrutinised.

[138] **David Rees:** Can I ask the other two about the definitions of a social care worker?

[139] **Ms Gwilym:** I'd have to look at it again and come back to the committee, if that's

okay.

[140] **David Rees:** It's fine.

[141] **Ms Gwilym:** What I would say is that in our own workforce, we do have a number of qualified social workers who would then be required to register with Social Care Wales. We also have a number of other professionals such as play therapists, counsellors and so on. So, I guess they would probably fall under the definition of a social care worker, but I'd have to double check the Bill and come back to the committee, if that's okay.

[142] **David Rees:** Catriona.

[143] **Ms C. Williams:** During the development of the Social Services and Well-being (Wales) Act 2014, we did make representation about the issues that Sam has mentioned for Barnardo's. I think, perhaps, what we feel is that the legislation is particularly looking at the statutory sector and the independent sector. So, the practicalities of holding somebody who is the chief executive of a UK-wide organisation—it'll apply to quite a lot of charities across all different sectors—who is based in London and who is not actually the manager of the Wales operation, do need to be sorted out.

[144] The second point is that one of the concerns that I have—and it's not the first time that I've said it—is that for children, we've got an early years and childcare workforce with a different set of regulations and then we've got a social care workforce. One of the opportunities that we've got with all of this is that new models of working is what's being sort of encouraged. Originally, when we made representation to all of the legislation, it was about Barnardo's workforce. If you have a family centre, you have a range of people in that centre: literacy workers, substance misuse workers, counsellors, et cetera. Actually, going back several years, those big family centre operations included more non-social workers than social workers. So, I think this definition of the social care workforce is really important. Like Cecile, I'll probably get back to you with a written comment, but the fact that children actually have early years and childcare workforce regulations elsewhere is a problem.

10:30

[145] **David Rees:** Thank you for that. Okay, Elin?

[146] **Elin Jones:** Yes, that's fine.

[147] **David Rees:** Darren, do you want to come in on this?

[148] **Darren Millar:** I just wanted to ask, one suggestion that came forward from the Care Council for Wales was that a lighter touch regulation regime, a licensing sort of approach, might be more appropriate for domiciliary care workers and perhaps care workers in care homes who aren't social workers themselves. Can you see anyone who's working with children perhaps fitting into that sort of lighter touch licensed care worker regime, which they have suggested might be more appropriate? Would you advocate for that sort of approach or not?

[149] **Ms C. Williams:** I think we'd have to get back to you. It's always with children that safeguarding issues have to be firmly put in place. What we might do is have a word with the Care Council for Wales about what they actually had in mind when they said that. I don't know—. There's a variety of people who interface with children. What we should learn from the past is sometimes, if you over-regulate, you might lose some of the workforce, and that is a danger in Wales. We haven't—

[150] **Darren Millar:** If I may, Chair, I just wanted to ask about—

[151] **David Rees:** Before you ask, did the other two wish to answer that particular question?

[152] **Dr Clutton:** No—*[Inaudible.]*

[153] **Darren Millar:** We had an interesting discussion with the children's commissioner about foster carers as well, and whether there would be any benefit perhaps to foster carers who might be approved by one agency or one local authority, but might then relocate et cetera—. If they were registered in some way, perhaps that registration could apply across the whole country, for them to be able to be approved, effectively, across the whole country. Is that something that you think the foster care system might benefit from?

[154] **Ms Gwilym:** With foster carers, it's not a clear cut answer. I know that's probably not what you want to hear. But, I think Members will probably be aware that the Scottish Government decided not to regulate foster carers because there were concerns that, for instance, there would be too much of a burden on fostering agencies to keep sending information to a central point and that would delay the placement process and could be detrimental to children and young people.

[155] Now, on the other hand, obviously, there are benefits, as you highlighted, to registering foster carers just once and then for them to be able to move around. And, there's also the whole issue around raising the professional status of foster carers. But, I think it has to be considered carefully because I think there's a real danger, if you introduce a system that potentially could be quite cumbersome, you'd end up delaying the process of placement, which is already quite lengthy and complicated. There is such a shortage of foster carers in Wales that it has to be looked at quite carefully. I'm sure foster carer organisations will have a view that they'll want to give this committee.

[156] **Dr Clutton:** I agree and I think there's some accountability in relation to foster carers having to go through a new process of approval with a new agency, rather than being a registered person who can just move around between providers.

[157] **Kirsty Williams:** Having looked through the evidence that you've submitted, I haven't seen any reference to the importance and the appropriateness of the Bill with regard to the commissioning of services by local authorities. It seems to me, unless you get commissioning right, that that has a profound impact on the quality of service that is then able to be delivered by people. So, we spend a lot of time regulating and inspecting people delivering the service, and there seems to be, under this Bill, not a great deal of time looking at the adequacies of the commissioning arrangements on behalf of local authorities. I wonder if you have a view on how we could improve the Bill, if you thought it needed improving, with regard to commissioning.

[158] **Ms Gwilym:** As regards the specifics of how it could be improved, it's not an area where we're expert, but, from a personal point of view, I would say I agree that, obviously, if you look at commissioning, you need to look at making sure that the process is delivering outcomes and enhancing wellbeing, rather than just looking at financial considerations. Obviously, value for money is an important part of the commissioning process, but it has to be fit for purpose as well. But as to exactly the mechanics of it, I don't think I can really comment any further.

[159] **Ms C. Williams:** Actually, you've made a really important point because the bulk of services may well be commissioned in the future and I think, if we could strengthen the Bill, that would be excellent from the point of view of making sure that whatever is commissioned

to deliver for children and young people has a workforce that is trained in working with children and young people.

[160] One of the fears that I have with this all-age legislation is that, gradually, we might lose the impetus for the fact that staff should be trained in child development. That is a very basic thing when working with children. So, that's something that—. To be quite honest, there's such a lot of legislation at the moment, Kristy, that we're struggling capacity-wise to keep up with all the different details of it all. But, that is a very important area and I will go back and see where we might be able to help the committee with our thoughts.

[161] **David Rees:** Samantha, do you have anything to say on commissioning?

[162] **Dr Clutton:** Yes, just in terms of trying to think about how that might be applied in terms of whether we would have quality standards for commissioning arrangements. I suppose that those arrangements are already informally in place, but could there be—. Perhaps we could provide supplementary information.

[163] **David Rees:** Okay, thank you for that. John.

[164] **John Griffiths:** In terms of whistleblowing, there's nothing in the Bill, as currently phrased, in terms of whistleblowing. I know that many people feel that that's an important area in terms of bringing problems to light and making sure that those within a service feel that they will not suffer adverse consequences, as it were, if they bring things to light, if you can frame things properly and have effective provisions in place. Is it something that you think is a real gap in this legislation? Would you like to see something included on whistleblowing and, if so, do you have any thoughts as to what it might be?

[165] **Ms C. Williams:** Definitely. It should be included and it is an omission. There have been policies in existence that actually haven't delivered necessarily, so if we could strengthen it, certainly our members in Children in Wales would be very supportive of that—the fact that you should be disciplined if you don't report. You know, those sorts of things that whistleblowers have not whistleblown because they've been—. Potential whistleblowers haven't said what they're worried about, really is—. I think the point about transparency and openness about what's happening in systems is essential and whistleblowing is part of that. I know that Voices from Care's position is that it's almost as bad to not whistleblow as to be a perpetrator. It is a responsibility of the workforce to look after children.

[166] **Ms Gwilym:** Just briefly, I have a couple of points. We fully support what Catriona just said. Obviously there should be provisions in the Bill about whistleblowing. If this Bill is the sister Bill to the Social Services and Well-being (Wales) Act, there are provisions in the Act that obviously place a duty to report adults and children at risk, so this should be replicated in the Regulation and Inspection of Social Care (Wales) Bill.

[167] Just as far as the details are concerned, I'm sure Members will be aware of the current debate around mandatory reporting, which is currently happening at UK level. I think what would need to happen, probably, would be for the principle to be included in the Bill, but the specifics to be worked out in regulations. I think there's a consultation that is about to start at UK level, working out how the details of mandatory reporting would work. Obviously, as NSPCC, we support a form of mandatory reporting of known abuse in certain circumstances and institutions. So, we would naturally support provisions on whistleblowing to be included in this Bill.

[168] **Dr Clutton:** Just to support the fact that I think that the inclusion of putting whistleblowing on a strong statutory basis can only help to safeguard children and young people.

[169] **David Rees:** Okay. Thank you. Can I just ask Cecile specifically? In the NSPCC written evidence, you actually identified in the response to the question on co-operation and joint working that you thought the Bill missed an opportunity to deliver increases of efficiency in regulation. Can you just clarify a little bit as to why you think the Bill has missed that opportunity?

[170] **Ms Gwilym:** It was really to echo some comments that I think have been made by, mainly, the Social Care and Wellbeing Alliance Wales. What the Bill doesn't seem to do is to deal with the fact that they are professionals who are registered with other regulators. For instance, if you look at the integration of health and social care, which everybody sees as beneficial, there don't seem to be any provisions made for the development of joint courses, for instance, and integrated career pathways for people who work in health and social care. So, for instance, you'd have people who'd have to register with Social Care Wales, but they might already be registered with another body. So, I think it's just clarifying—. I'm not an expert on the registration of other professions, but it seemed to me—

[171] **David Rees:** So, you're concerned about a possible clarification of the dual registration with different regulators.

[172] **Ms Gwilym:** Yes. I think that there are issues that need to be unpicked there, and I'm sure other organisations will have probably given more detailed evidence, but it was just to flag it up in support of what the Social Care and Wellbeing Alliance had said previously.

[173] **David Rees:** Others have flagged it up; thank you. Any Members got any other questions? Therefore, can I thank you very much for your evidence this morning? It's been very helpful. You will receive a copy of the transcript. If there are any factual inaccuracies, please let us know as soon as possible. Thank you very much, once again. I now propose that we have a break and that we should return at 11 a.m. this morning for our next scheduled session.

[174] **Elin Jones:** Do you think we could bring it forward?

[175] **David Rees:** Are they here?

[176] **Ms Finlayson:** We'll double-check.

[177] **David Rees:** We'll double-check and if we can, we'll open a bit earlier.

[178] **Darren Millar:** What if we just agree to take five minutes?

[179] **David Rees:** Ten minutes, then. Shall we come back at 10.50 a.m? Okay. Thank you.

*Gohiriwyd y cyfarfod rhwng 10:42 a 10:55.
The meeting adjourned between 10:42 and 10:55.*

**Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru):
Sesiwn Dystiolaeth 15
Regulation and Inspection of Social Care (Wales) Bill: Evidence Session 15**

[180] **David Rees:** Can I welcome Members back to this morning's evidence sessions on the Regulation and Inspection of Social Care (Wales) Bill? We go into our next evidence session this morning and can I welcome Kate Chamberlain from Healthcare Inspectorate Wales and Nia Roberts from Healthcare Inspectorate Wales? Good morning. Can I thank you

for the written evidence you have submitted to the committee? If it's okay with yourselves, we'll go straight into some questions.

[181] **Ms Chamberlain:** That's fine.

[182] **David Rees:** Gwyn.

[183] **Gwyn R. Price:** Thank you, Chair. Good morning.

[184] **Ms Chamberlain:** Good morning.

[185] **Gwyn R. Price:** Could we have your views on the adequacy of the current arrangements for inspecting healthcare in residential settings, given the views of the older people's commissioner that they are inadequate, and whether the Bill will or should address issues around this?

[186] **Ms Chamberlain:** In terms of inspecting the healthcare in nursing and residential care home settings, clearly, that's the responsibility of CSSIW at the moment, rather than Healthcare Inspectorate Wales. They do employ individuals as part of their inspection workforce who've got qualifications in that area, who do have backgrounds in nursing and they do look at what is happening in terms of fundamental care standards when they go into these homes. It's difficult for me to be too precise, obviously, because it's not my particular inspectorate, but I am aware that we've been working with them over the past year in terms of thinking about how that is inspected, particularly with a view to aligning it with the way that we look at those sorts of care standards in specific health settings. So, it is an area that I know is currently being developed further in terms of the framework that they use for inspections.

[187] **Gwyn R. Price:** But the Minister did say that you are co-operating with CSSIW on this matter.

[188] **Ms Chamberlain:** We do co-operate with them. We've been working with them on the framework that we use. We have an integrated clinical—what's the word for it—clinical forum. So, I have a director of clinical services who's a qualified nurse. We bring together those with a nursing background from across the two inspectorates to make sure that we're applying common standards and that we're maintaining professional development.

[189] **Gwyn R. Price:** Okay, thank you.

[190] **David Rees:** Clearly, the Bill, at this point in time, highlights the co-operation between the two inspectorates and does not actually identify a particular single inspectorate as part of the creation of the Bill. But we have a service-model approach for this Bill and you have an establishment-model approach, so how's that going to actually work effectively?

[191] **Ms Chamberlain:** I think it's important to distinguish between the NHS and the independent sector, because, clearly, a lot of the work that we do is with NHS services, and the independent healthcare provider sector is relatively small in comparison. For the NHS and local authority work, so the type of work that we would do with CSSIW and those public services, the move to service-based regulation for independent providers compared with establishment for ourselves is not going to be a major problem.

[192] I think it does become slightly more complex when you start looking at more integrated care services that are provided in different service models through independent healthcare providers. It's almost a shame that that's not the way that the Bill itself addresses it, but, having said that, there's never a perfect time, I think, to bring forward this sort of legislation. There is an opportunity, through the forthcoming Green Paper, to think about how

we can align the approaches taken in the health sector and in the social care sector better.

[193] **David Rees:** A question then: commissioning. Clearly, the social care commissioning activities in local authorities and health boards should be regulated. Do you believe that that is the proper process? Should this Bill be used to ensure regulation of the commissioning services?

[194] **Ms Chamberlain:** I think it depends on what you mean by the term ‘regulation of’. If you’re talking about the oversight of the commissioning process by local authorities and by health boards in terms of what they commission, there is an ability to do that at present. So, CSSIW has done a review of commissioning in the last two years. We are working more and more closely with health boards in terms of the way in which they take forward their oversight and their governance roles. We also work closely with CSSIW, so that we can share intelligence where we believe there might be issues that need to be fed back on commissioning to the health boards.

[195] What would be added by the inclusion in the Bill, I’m not entirely clear, but, if it’s a strengthening of the existing arrangements and simply placing a requirement to do so, I don’t think that would be a problem.

11:00

[196] **David Rees:** Okay. John.

[197] **John Griffiths:** I wonder if you could give us your view on the aspect of the requirements in the Bill for local authorities to undertake an assessment of the local care markets, and particularly how that might impact on local health boards, and whether you would see, for example, any likely impact in terms of delayed transfers of care.

[198] **Ms Chamberlain:** I think it’s helpful to think about there being this local oversight of what the capacity is in the care market. I mean, it’s clear that there is an interface with health services. We find that ourselves in our inspections. Obviously, people who are medically fit to be discharged do remain, at times, for too long within hospital settings, and that does create problems for the system. I think what’s helpful about the legislation is that it quite explicitly refers to the need for these market assessments to be conducted with partner bodies such as the health board, and obviously the public service boards will assist in that as well. It shouldn’t be an independent assessment by the local authority. It should be a common public service understanding of what the needs are in an area, and the needs of the population, and therefore what is available to meet those needs, where the risks are, and what the impacts are likely to be on the various bodies that may be picking up on the consequences of those risks. So, for me, I think the requirement to do something of that sort is very helpful, but it needs to be done in partnership and it needs to be jointly owned.

[199] **John Griffiths:** Could you say a bit about how you would expect those assessments to work in practice?

[200] **Ms Chamberlain:** Of the local market?

[201] **John Griffiths:** Yes.

[202] **Ms Chamberlain:** Off the top of my head, I would expect there to be some assessment of what the likely level of need is going to be: so, a proper understanding of both the current population and the population trends, where things are likely to be going. Obviously, there are a lot of data sources that can inform that in terms of population projections. I would expect there to be a good understanding then of what the demand for

services is likely to be. I would expect the bodies to be working together to think about what the new models of meeting those demands might be, so it shouldn't just be an assessment of current need; it should be an assessment of where things could go. Having looked at what the need is likely to be, and the various methods of meeting those needs in the future, I would expect there to be an element of joint work across the services to think about what the options might be for supply in terms of the services that need to be available.

[203] **John Griffiths:** Okay.

[204] **David Rees:** Darren.

[205] **Darren Millar:** John's just touched on delayed transfers of care, but one of the proposals in the Bill is powers for Ministers to be able to develop a rating system as a result of the inspection. Do you see foresee any potential unintended consequences where there might be limited choice for somebody who may need to go into residential care in terms of the potential impact on people who perhaps are bedblocking, if there's a low rating that has been given, in some way, shape or form, to a local service that may be the only service available in that area to meet someone's need?

[206] **Ms Chamberlain:** If the rating system is well defined, consistent and evidence based, and if that rating system is demonstrating that the service being provided to the individual is of poor, limited, needs-improvement quality, then I'm not sure that the alternative is not to have a rating system in case it impacts upon the availability of the placements. I think the more appropriate focus is possibly on making sure that the rating system is used to drive improvements, and is used as a tool to make sure that we really drive up improvements in care.

[207] I think problems are likely to come possibly in two areas. One problem that I can see in a rating system, apart from the fact that it's very difficult to be absolutely consistent in those sort of systems that require professional judgment, is that I think there's always a risk that the conversations with providers will centre around the appropriateness of the score rather than the improvements that are needed in the service. So, that is one very significant risk—that, actually, the rating becomes the point, not the quality of service. I think the other difficult time is likely to be in terms of transition. So, the move to a rating system may well expose or make far more visible difficulties in service improvement that may have been there for a while, but simply haven't been able to be shifted. So, it may impact on demand in the short term, but I would hope that, in the longer term, if it is proportionate, well evidence-based, and is used to drive improvement, it may contribute to an improvement in service quality.

[208] **Darren Millar:** The evidence where rating systems are effectively used—on food hygiene and, indeed, in schools—is that that drives choice and people vote with their feet sometimes to go elsewhere: either take their children elsewhere or use an alternative provider. There just isn't that level of choice for many people, is there, when it comes to a social service, particularly in terms of perhaps a residential or nursing care bed in a locality. Do you not foresee a potential consequence for someone having an extended bedblocking period if there is a low rating given, and do you feel that one way potentially to resolve that might be somehow to facilitate a request for re-inspection being available, or a request for a focused re-inspection, if you like, on those elements where there were shortcomings, which could perhaps be paid for by a service provider in order to have that rating reviewed sooner rather than just when the next periodic inspection comes around?

[209] **Ms Chamberlain:** Can I give you two answers to that?

[210] **Darren Millar:** Yes.

[211] **Ms Chamberlain:** My first answer is to that is—. Let's assume, for the sake of argument, that you've got an inspection frequency where, having been inspected, you wouldn't expect to be inspected for another year. What you, effectively, want people to do is to improve things as soon as possible and there is no incentive to do so if they're not going to get recognition for that quite soon. So, I can see that there would be an argument for, as you say, providers being able to invite inspectors to come in much sooner to validate the improvements that they've made. The cynic in me says that I don't just want to see improvements, I want to see sustained improvements. So, I couldn't say that I wouldn't, if I were the inspecting body, then want to go back possibly quite soon afterwards to make sure that the improvements that have been put in place have been sustained. So, I've got no problem with what you're suggesting, but there are also certain consequences and risks that would need to be managed in that system.

[212] **Darren Millar:** Okay. Thank you.

[213] **David Rees:** There have been questions as to the definition of a social care worker and, clearly, the roles that are played. There have also been concerns expressed over the possible regulation and dual registration perhaps of some of those who would definitely fall under your auspices in one sense in the health professions. How do you think the Bill is dealing with the situation of that scenario, where you may have some workers who are registered with health professions, maybe the Health and Care Professions Council as one body, but then Social Care Wales may also require registration?

[214] **Ms Chamberlain:** I'll invite you to come in in a moment, Nia. I think it's going to be a direction of travel. If we move towards more integrated teams, there are going to be people that are providing a variety of functions. We don't regulate health professionals specifically ourselves, but we do work with the health professional regulators. I think the fundamentals in terms of the way that we work are to make sure that, for whatever service we're inspecting, the professionals that are delivering it have the right qualifications for that particular service, and that can vary according to the service. I don't know if you want to come in more on the cross-sector aspects, Nia.

[215] **Ms Roberts:** Just to add to that, just to say that, with regulated health professionals, there does need to be a system in place so that any issues in relation to their registration were only dealt with once. So, for example, with nurses who are registered with the Nursing and Midwifery Council, if there were issues around their fitness to practice, they would be dealt with there before being dealt with by, currently, the Care Council for Wales. So, as long as the systems were in place that were adequate to make sure that people weren't being dually regulated—.

[216] **David Rees:** So, it's important to ensure that the systems are in place so that the individual is accountable to the appropriate registration and regulator.

[217] **Ms Roberts:** Yes.

[218] **David Rees:** Okay. Any questions?

[219] **Elin Jones:** Well, you've answered my question already, really, so I really wasn't going to ask it again, but it is about the integration of health and social care inspection and regulation. You've already alluded to the fact that the timing maybe isn't perfect, and that this Bill is here now, and the Green Paper will come that will discuss integration in greater policy detail. My view is that this Bill is already out-dated because practice and policy is ahead of legislation in what's on offer here. So, I'll just ask really whether you think there is anything in this Bill that allows you to work in a more integrated manner with CSSIW. I'm thinking in

particular of healthcare provision that is now provided in nursing homes or in extra care, or in homes—community hospital beds in my area, for example, have closed and the provision is now in nursing homes or in homes, but it's health provision. Does this Bill make it clearer for patients and families where they expect the regulation and inspection of the health service to be provided?

[220] **Ms Chamberlain:** I'm going to answer this sort of slightly differently. I almost would like the individual receiving the service not to need to know which organisation is regulating or inspecting. I don't think they should have to be able to distinguish themselves whether something is in the health sector or in the social care sector. There's nothing specifically in the Bill that makes it easier for CSSIW and us to work together, but that's partly because there aren't organisational barriers to us working together as it is. So, we're located within the same organisation; we're located within the same building. Imelda Richardson and I work quite closely together. We have joint inspection programmes of deprivation of liberty safeguards. We are looking, at the moment, at scoping a joint piece of work on services for individuals with learning disabilities. As I've said, we work together across the professionals that we employ to bring them together in their common forum so that we can discuss common issues. We sit on each other's working groups to make sure that we can, as far as possible, align. So, the challenge, I think, in terms of proper integration is not specifically necessarily what's within the Bill; it's making sure that all the other frameworks that we are working within are properly aligned. So, are the standards that are expected of the health care in the healthcare and social care sector properly aligned? Are the standards, the policies—those sorts of areas—making sure that, when we go out to do the joint work, we have a common set of expectations that we are inspecting against? And I think that is something that is developing; it can get better, it can go further.

[221] At the moment, in terms of integrated care services, whether in establishments or in multidisciplinary community-based teams, we do work with CSSIW on a case-by-case basis to say, 'We have this service here, which is both health and social care; how can we best, within the current frameworks, make sure that we join up in the way that we inspect?' I wouldn't say that we do that well in every single case at the moment, but it is something that we are systematically working through.

[222] **Elin Jones:** So, would it, on a practical level, then be that CSSIW lead an inspection, but that there's a health inspector who goes for—. I'm thinking of, say, a residential care home, a local authority residential care home, in Ceredigion that would have joint care beds commissioned by the health service. Who is qualified to look at the actual provision on the joint care beds and the nursing provision there?

[223] **Ms Chamberlain:** At the moment, that would be inspected by CSSIW, and they would have nurses as part of their staff who would take part in those sorts of inspections. If there are issues there with the commissioning that is taking place by health boards, then they would feed that back to us if they had significant problems with it, as well as being able to, on an individual basis, talk to the health boards. We're also bringing in a system of reporting back, on a sort of annual basis, to health boards on the entirety of what we know and what we find, so we have another lever that we can pull or another means that we can use to feed those issues back so that they are getting to health boards at board level and not just an individual commissioning team level. I'm not sure that answers your question, but—

[224] **Elin Jones:** Yes, it answers my question, but, you know, I'm not convinced, and I'm not sure whether you're convinced that it's completely perfect as it stands. You've already said that the Green Paper will look to resolve some of these issues so that they more adequately reflect what's happening in practice.

[225] **Ms Chamberlain:** I don't think it's necessarily helpful to be moving to a system of

service-based regulation in social care whilst we're still working with the establishment-based. I'm looking forward to beginning to address some of those issues. We also have some legislative gaps for HIW that we're hoping, through the Green Paper, we'll be able to move to fill, and, again, some of those flow from the fact that we are still working with legislation that is based on establishments and settings. So, no, I certainly don't think it's perfect, but I do think we'll have a window of opportunity to begin to make it significantly better.

11:15

[226] **David Rees:** Can I clarify a point, then? I'll take a slightly negative view, in the sense that you've said that it doesn't make it any easier; does the Bill actually create any barriers for you?

[227] **Ms Chamberlain:** No, I don't think it does. I tend to think that the Bill is a step on the way somewhere. Providing we know what the ultimate destination is, I think it's possible to make it work whilst we get to something that is more aligned and more integrated across sectors. So, I don't think, in the meantime, it's going to create significant barriers for us and CSSIW in terms of the way that we work.

[228] **John Griffiths:** In terms of public engagement and lay assessors, in your evidence to the committee, you state that public engagement and use of lay reviewers is important to you as an organisation. Do you think that the Bill as currently framed adequately caters for public engagement and the use of lay assessors? Perhaps also, what's your view on the use of community health councils and whether they could undertake inspections?

[229] **Ms Chamberlain:** The Bill as currently framed, I think, you know, yes. I've got no problems with the Bill as it's currently framed. We do already, as we've said in our evidence, use lay inspectors as part of our inspections. We have also been piloting, last year, particularly on the GP inspections, using members of the CHC as part of our inspection teams. I think the key thing for me is—. I almost don't like to use the phrase 'inspection' when it comes to the community health councils, because I think that can be confusing to the public. The community health councils' role is in visiting, scrutiny and monitoring, rather than inspection per se. So, they have a right of entry and it's entirely right that they should—if they're aware of concerns—be going out and looking at some of those concerns. Are you asking me whether community health councils should be extending their role into social care?

[230] **John Griffiths:** What role you think they could usefully undertake in terms of this Bill, really, and what this Bill will provide for.

[231] **Ms Chamberlain:** Going back to the answer I gave to the question earlier, I tend not to be in favour of arbitrary sectorial distinctions that wouldn't necessarily make a great deal of sense to the public—whether they're the public as a service user or public as a patient. I think the role of the community health councils, in terms of advocacy, in terms of public engagement, can be quite valuable. We want to use them further, for example, in terms of helping us to gather patient views prior to thematic reviews. So, we're exploring with them how we can work more effectively with them that way. So, increasingly, as we begin to think about integrated services, it makes sense for the community health councils to be thinking about how they gather the views of those that are using integrated health and social care services. I don't think it's necessarily helpful for the public to have to think, 'Is this healthcare; can I go to the community health council?'

[232] **David Rees:** Kirsty.

[233] **Kirsty Williams:** Can I address the issue of commissioning? The witnesses coming after you—some of the health boards—have talked about their concerns about the lack of

focus that the Bill, as currently drafted, has on the role of commissioning of services. I have concerns that we spend a great deal of time and attention inspecting those that deliver care on the front line, but actually, if that has been commissioned poorly, that has an impact on the ability of those people on the front line to provide care. I wonder whether you have any views on whether there is sufficient focus in the legislation, as currently drafted, on the role of commissioners and commissioning in providing good service, and whether that should be a greater focus of inspection and regulation.

[234] **Ms Chamberlain:** I referred to this in one of my earlier questions—

[235] **Kirsty Williams:** Sorry.

[236] **Ms Chamberlain:** It's alright. I think there's two questions here. One: I don't think it's necessary to have the focus in the legislation. I think we have the capacity to do more work on commissioning. We have flows of information between CSSIW and us that go through to commissioners. We're probably better, I would think, almost, at ensuring that flow of information with regard to independent healthcare providers, possibly, than we are in terms of social care at the moment. That needs to be improved. So, it's not necessary to have it on the legislation. I'm not saying it wouldn't be helpful maybe to have that focus in there as a way of giving more emphasis to it. So, it's not that it needs the legislation in order to happen.

[237] **Kirsty Williams:** Okay. Often, we don't need legislation to make things happen. There is nothing to stop people doing the right thing. But, as we see, time and time again, human beings are fallible and they don't do the right thing unless, perhaps, they are forced to do that, or are held accountable to do that, and sometimes the only way of doing that is by law and via legislation. So, you say that there's capacity at the moment. I can think of some really hideous examples of where commissioning has gone horribly wrong. So, if the capacity is already there, what do you think the barriers are to ensuring that commissioning doesn't fail?

[238] **Ms Chamberlain:** Focus and attention, which is why, in terms of the legislation, I don't think it would be unhelpful to have it within the Bill.

[239] **David Rees:** Okay, Kirsty?

[240] **Kirsty Williams:** Yes, thank you.

[241] **David Rees:** Could I ask you, then—? On page 5 of your written evidence you've talked about the role of Social Care Wales, and you've clearly identified an importance to separate the improvement aspects of its work from the regulation aspects of its work. You've also talked about the interplay within the improvement functions within the health services. Do you want to expand on that a little bit?

[242] **Ms Chamberlain:** I'm sorry; could you just repeat the second part of the question?

[243] **David Rees:** You talked about the interplay with the improvement functions within the health services, and the importance of that aspect, particularly given the direction of travel towards increased integration of services, as we've already been discussing this morning. Do you want to expand upon your views on that aspect of it?

[244] **Ms Chamberlain:** I feel a little bit like a broken record, really, which is this—. I tend to have a view that if we say that we are seeking to move towards integrated services, then, by having an improvement function that focuses on social care, and an improvement function that focuses on healthcare, we are at risk of reinforcing sectoral boundaries, whereas, actually, we want to be trying to break them down. It's important to cut across that boundary. So, an improvement function that is based within this organisation needs to be very clear about its

partner organisation that is working within the health service, and there needs to be sufficient focus on how we bring about improvements that are about developing and improving services in line with new models of delivery, rather than simply reinforcing and making better the existing ones.

[245] **David Rees:** Okay. Thanks. Are there any other questions? No; there are no more questions. I thank you very much for your evidence this morning. You'll receive a copy of the transcript to check for any factual inaccuracies. Please let us know if there are any as soon as possible.

[246] **Ms Chamberlain:** Okay. Thank you.

[247] **David Rees:** Thank you very much. We'll move on straight now to the next set of witnesses. [*Interruption.*] I understand we only have one of the witnesses here at present. We'll have to have a five-minute break while we wait for the other one to arrive.

*Gohiriwyd y cyfarfod rhwng 11:22 ac 11:32.
The meeting adjourned between 11:22 and 11:32.*

**Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru):
Sesiwn Dystiolaeth 16**

The Regulation and Inspection of Social Care (Wales) Bill: Evidence Session 16

[248] **David Rees:** Can I welcome Members back to this morning's session of the Health and Social Care Committee, where we take our final session this morning on the evidence regarding the Regulation and Inspection of Social Care (Wales) Bill? Can I welcome our witnesses? Will you introduce yourselves and the organisation you represent, please?

[249] **Ms Slater:** Yes, my name's Lin Slater, and I'm an assistant director of nursing for Aneurin Bevan university health board.

[250] **Ms L. Williams:** I'm Lynda Williams. I'm the director of nursing, midwifery and patient services at Cwm Taf university health board.

[251] **David Rees:** Thank you very much. I appreciate you're here representing your board, but you also represent, obviously, the local health boards in relation to consideration of the Bill. We'll go straight into questioning, if that's okay with you. Can I ask Gwyn Price to start?

[252] **Gwyn R. Price:** Thank you, Chair. Good morning.

[253] **Ms L. Williams:** Good morning.

[254] **Gwyn R. Price:** It's on regulation and social care services, and I'd like to ask you whether the local health boards welcome the new approach in the Bill of a service-based model for regulation and inspection and an outcomes-based approach.

[255] **Ms L. Williams:** Shall I go first? Yes, we absolutely welcome anything that will improve the quality and the standards of the private care home sector. It gives the opportunity to enhance the regulation and inspection elements and, obviously, as commissioners of the service, along with the local authority, it helps us in our commissioning decisions with regard to the provision that's available to us to place patients.

[256] **Ms Slater:** I suppose I would only add to that that we are looking at services for older

people in the future. We're not just looking at improving care in individual care homes, but we're looking at improving care across a whole service area. So, yes, we would welcome that approach.

[257] **Gwyn R. Price:** Two yesses. Thank you very much, Chair.

[258] **David Rees:** Since you've talked about commissioning, perhaps we'll go on to Kirsty.

[259] **Kirsty Williams:** You mentioned the importance of commissioning, and evidence to the committee to date has suggested that the Bill should include a greater focus on the regulation of commissioning, which would help improve the focus on quality outcomes and quality experience for individuals. Your colleagues at the Hywel Dda university health board, in their written submission, stated that the Bill overlooks the commissioning activities of health boards, and you've just referred to that, that you often jointly commission services alongside colleagues in local government. I'd be interested in whether you think, from your perspective, commissioning is adequately looked at in the legislation.

[260] **Ms L. Williams:** I think we've got two bites of this cherry, Kirsty. We've got the Social Services and Well-being (Wales) Act 2014 as well, which sets out a partnership framework within which we can jointly work, including pooled budgets. So, that's an opportunity in itself. But I think there has to be regard for the planning and commissioning role of health boards, and I think that it could be strengthened in this Bill. I think our colleagues from Hywel Dda were right to raise that as an issue. We jointly commission services with our local authorities for NHS-funded care, also known as FNC, and we obviously solely commission care for individuals with continuing healthcare needs, where the primary need is for healthcare. Therefore, as a health board, I alluded to our planning function, and our commissioning function is very, very important within that. There is an opportunity, I think, to strengthen the Bill with the commissioning focus, but obviously it would need to link in with the Social Services and Well-being (Wales) Act as well.

[261] **Kirsty Williams:** Could you give me an idea, when local health boards are currently being inspected and regulated, of how your commissioning role is looked at currently?

[262] **Ms Slater:** With care homes specifically?

[263] **Ms L. Williams:** In general.

[264] **Kirsty Williams:** In general. As you said, commissioning, continuing healthcare services, and those kinds of placements. Does anybody look at what you are up to?

[265] **Ms L. Williams:** No. Obviously, our regulator and inspector is HIW. We've just heard from our colleagues in HIW. They seldom inspect and regulate the core functions of the health board, particularly around our commissioning practice and, indeed, our planning practices. It is more around the services that we deliver, as opposed to the other core functions of the health board. So, I think it is a very opportune question, really.

[266] **Kirsty Williams:** Brilliant. Thank you very much.

[267] **David Rees:** [*Inaudible.*] Does the board actually receive reports on commissioning?

[268] **Ms L. Williams:** The board receives regular reports on commissioning and the quality of the care in the organisations that we commission services from. That's certainly right, from my report.

[269] **Ms Slater:** Yes.

[270] **Alun Davies:** I'm interested in the process of report, because you've just said you have this relationship in terms of commissioning and in terms of regulation. The Commissioner for Older People in Wales's report last autumn, 'A Place to Call Home?', did it come as a surprise to you?

[271] **Ms L. Williams:** It didn't tell us anything we didn't already know, I think, but I think it did set it out in a way that was helpful for us as organisations, and I think it gave the older persons' service user perspective very loud and clear, to be perfectly honest with you. It's given us the opportunity to develop an action plan, jointly, in partnership with our local authority, certainly in the Cwm Taf area. Obviously, there is an emphasis on the regional collaborative boards to pursue that.

[272] **Ms Slater:** Absolutely, I would agree. We have developed quite an extensive improvement plan and action plan for Aneurin Bevan health board that sets out all the things that we wish to continue to do with care homes and domiciliary care services to improve quality and standards of care within those care homes. There's an awful lot that we're actually doing already, for example going into care homes with continence services, with tissue viability nursing, and making sure that there's a real flow of health service personnel through care homes, through GPs, pharmacists and others. It's about trying to capture all of that, to identify what the gaps are and where we need to concentrate our efforts. So, I think that's been particularly helpful to do that.

[273] **Alun Davies:** I think it went a bit further than that, didn't it? I'm not suggesting there are bad people doing bad things. There are some very good people trying to do the right things. But, you know, reading that report, it painted a picture of systemic failure: the failure of the health board; the failure of regulation; and the failure of service provision. I don't see how you read it in any other way. So, how do you think this piece of legislation will change fundamentally the culture? It seems to me that, sometimes, there is too cosy a culture of regulation. The regulation that I see here in this sector is very different to what I'm used to in industry—very different and much closer. Do you think that this piece of legislation will change fundamentally how we regulate, for argument's sake, the care home sector, which will mean that there will be no future report such as we saw from the older persons' commissioner?

[274] **Ms Slater:** Our experience is that culture is beginning to change, and we hope that it will continue to change, and health boards, working with others, will aim to do all that they can to do so. What's very important, I think, is the relationship between the care providers, those who commission care—and that includes the health boards and the local authorities—and the regulators. We all need to be very, very much working together. I think the new legislation, the new regulations, will bring additional rigour to that process, but it is important that we do have that triangulation of information, that we are all working together. Sometimes, that is not always the case.

[275] **Alun Davies:** But you need accountability in that, as well, don't you?

[276] **Ms Slater:** Yes.

[277] **Alun Davies:** What struck me was that there were a lot of the things going on because you didn't have the accountability and the culture of regulation anywhere close to being right.

[278] **Ms L. Williams:** I think, from a commissioning and contracting perspective, we're very clear as health boards and local authorities what our roles and responsibilities actually

are. I think the new Bill actually strengthens the responsibility on the care home providers. The regulation around the responsible individual is much more direct and controlled than it has been in the current legislation, and I think that that can only be helpful, because, as you said, the accountability and responsibility is very important—and that isn't only for us as commissioners and contractors, but for the provider as well.

[279] **Ms Slater:** Perhaps there is room for greater clarity about the roles and responsibilities within the Bill of the health boards.

[280] **Alun Davies:** Do you think you need to change culture?

[281] **Ms Slater:** I'm sorry?

[282] **Alun Davies:** Do you think you need cultural change?

[283] **Ms Slater:** There are a lot of things that we need to do to bring about cultural change, aren't there?

[284] **Alun Davies:** I asked if you think you need it. You accept that you need it, yes?

[285] **Ms Slater:** Do we—

[286] **David Rees:** We're focusing on the Bill. The question, I suppose, is, will the Bill help drive cultural change?

[287] **Ms Slater:** Yes, I believe it will.

[288] **Ms L. Williams:** Yes, I definitely think it will.

[289] **David Rees:** Kirsty, do you want to come back, and then I've got Janet to come in?

[290] **Kirsty Williams:** Yes. Actually, I think that cultural change and this triangulated approach that you've just talked about does actually happen on the ground. In the disaster that has been Powys domiciliary care, the people who were actually partly driving change and actually calling out bad care were the district nurses, who were actually in people's homes, seeing things that were going wrong, and then reporting back to say, 'I'm not happy as a professional with what I have just seen or what is going on in that house'. So, I think it is changing, but I'm just wondering—and I don't want to set hares running, but you said that nobody looks at your commissioning arm—could you give us a sense of how much of that commissioning for continuing healthcare you're doing? How many people are we talking about in your organisation? I guess it would be a small part of what you do in entirety.

[291] **Ms L. Williams:** I don't think I actually said no-one looks at our commissioning, Kirsty—

[292] **Kirsty Williams:** HIW doesn't.

[293] **Ms L. Williams:** Well, I think what I said was HIW don't look directly at our commissioning function; what they do is service-review. So, where they look at a service, they'll look at all aspects of that service, both delivery and the planning and commissioning of it. So, if they had a themed inspection, they would look at all of those aspects. So, commissioning may or may not be a part of that. From a continuing healthcare perspective, from a contracting perspective, I suppose we're talking about 1,000 care home placements in Cwm Taf, and we've got a team of 5.62 whole-time equivalents, which would be nurses, administration and finance support to that function. So, it is a part of our commissioning

function, but it's not a huge part of our commissioning function.

[294] **Kirsty Williams:** Sorry, I was just trying to get a question of scale.

[295] **David Rees:** I'm always amazed by 0.62 of a person. Janet?

[296] **Janet Finch-Saunders:** The boundaries between health and social care are not always straightforward, you've said in your evidence, and consideration must be given to ensuring that there are no services, establishments or agencies that will escape the provisions of either regulatory regime. Does this Bill prevent any falling outside?

[297] **Ms L. Williams:** Falling outside of the regulation and inspection?

[298] **Janet Finch-Saunders:** Yes.

[299] **Ms L. Williams:** It appears to cover all providers. So, Kirsty alluded to the domiciliary care providers in Powys, which was quite catastrophic, actually, and I think the Bill does help with that overarching provision. Obviously, it very much needs to focus on the quality of the delivery by the provider, and I think that that is where the inspection arm of the regulation helps. I don't know whether Lin has anything to add to that.

11:45

[300] **Ms Slater:** I would just agree, and I think that, absolutely in terms of the inspection arm, it's very important, of course, that all angles are considered through the inspection, so that the inspection teams do have the right skills and knowledge to inspect the care being delivered from all perspectives. Obviously, we're thinking particularly about health care and nursing care, and the importance of having—

[301] **Ms L. Williams:** And that would include liaising with the people who are commissioning those services as well. We already have very strong links with CSSIW and HIW within our organisations anyway.

[302] **Janet Finch-Saunders:** So, for instance, are they covered, the social workers and domiciliary care workers who go into somebody's house, maybe an elderly disabled person, who may be helping with their personal hygiene needs? Are they covered in this Bill?

[303] **Ms Slater:** They are through the regulation of the social care workers, and I think that that's a very, very important step forward. I think maybe in the fullness of time we would like that extended to healthcare support workers as well, because they undertake a similar function. But, certainly, to ensure that social care providers have a workforce that is trained, competent and regulated, going into people's homes where, as you say, people are perhaps most vulnerable because they're out of sight, then I think that's vitally important. We welcome that.

[304] **Janet Finch-Saunders:** Thank you.

[305] **David Rees:** Okay. Darren?

[306] **Darren Millar:** I just wanted to ask you about—. We've had the figures again today, which have been published, which have demonstrated that, unfortunately, delayed transfers of care—delayed discharge from hospital, rather—are going up. One of the things that this Bill seeks to do is to improve the stability of the market by requiring local authorities to prepare market assessments. Do you think that they would be better done on a health board basis, rather than having 22 of these market assessments across Wales? Do you think fewer would

be better, particularly given the role that you need to play and the input that you need to have into them, because there's nothing on the face of the Bill that suggests that you ought to have an input, but I would have thought that you were a key player in it?

[307] **Ms L. Williams:** I think we would wholeheartedly agree with you, Darren, in that we've got to understand the joint commissioning and joint contracting responsibilities of both organisations. And, certainly, as I said earlier, we've got a vested interest in making sure that the market is providing good-quality, high-standard, reliable services, because, as you rightly say, it affects the patient flow through our secondary care services. And, it actually affects our ability to deliver good primary and community services as well, because people won't only enter the care home sector from hospital; they will actually enter from the community that they live in as well. So, I would absolutely endorse the point that we need to be part of that market analysis. Indeed, Welsh Government have just commissioned a national market analysis through the care home steering group that I sit on as a health board representative.

[308] **Darren Millar:** You were nodding away during that.

[309] **Ms Slater:** I would entirely agree.

[310] **Darren Millar:** Do you think there should be a duty for a local authority to work with you in the preparation of those market assessments?

[311] **Ms L. Williams:** Absolutely.

[312] **Darren Millar:** What about this issue of them being just local authority wide? Should they be on a health board basis, rather than on a local authority basis? What's your view on that?

[313] **Ms L. Williams:** I think it would work better on a health board basis, if I'm entirely honest with you, but then I come from a small health board area where the two local authority partners work very well with us anyway. It might be slightly different from an Aneurin Bevan perspective, which is a much larger organisation and more disparate.

[314] **Ms Slater:** Yes. We do have good relationships with all our local authorities, but, again, to undertake that work across five local authority areas does present more challenges, obviously.

[315] **Darren Millar:** But, some sort of duty to consider collaboration with neighbouring local authorities and engagement with the health board in the production of that would be helpful you think.

[316] **Ms Slater:** Yes.

[317] **Ms L. Williams:** You could argue that it might be better to do it on a regional basis—say, on a south-east Wales regional basis—because what we do know is that neighbouring authorities place individuals in neighbouring authority areas. Certainly, where you've got care homes on the borders, as we have in Cwm Taf, we regularly get Caerphilly residents being placed in Taff Ely and we regularly get the top of the Rhymney valley residents being placed in Merthyr, mostly because it suits the relatives' needs—it's near to where they live, or whatever. But, actually, from a choice perspective, you have to have that ability to be able to move around the area, as opposed to it being very local authority area driven, if you like.

[318] **Darren Millar:** You made an important reference there to choice. Of course, there is no choice in some areas. In some parts of Wales there are very few care home beds that are

actually available, yet one of the things that the Bill also seeks to establish, or may establish as a result of the Bill, is a rating system for service providers. Do you think that that potentially could have a detrimental impact on the ability of—? If the only provision is a poor rating in an area, do you think that that's potentially going to have an unintended consequence somewhere for the health service or—?

[319] **Ms Slater:** I think they'd welcome the Minister's comments on that and the need for perhaps further consultation on that particular aspect of the Bill. I think it's really, really important that there is good-quality information available for the public, obviously—the people who are trying to choose care homes for themselves or for their relatives. It's absolutely vitally important. You know, it's too early to say because there needs to be further discussion, but I am concerned, I suppose, about the unintended consequences of a rating system for the reasons that you have just said. I'm perhaps mindful also of people within care homes where their rating system's dropped, and what impact that has in terms of their confidence in the carers who are looking after them. It may also, of course, impact on costings because I presume that if you're running a care home with a star rating of 5, you would expect to charge more than somebody with a star rating of 2. So, there are all sorts of things that we, I think, perhaps need to consider further. In March of this year, in Gwent, we launched the Think About Me programme. It's linked to TripAdvisor. It's a rating system that is used by care homes, by relatives and residents themselves. There's a website so people can upload their own personal experiences, just as you would if you went to a hotel and enjoyed your stay there. You can put those remarks on the website, so that other people can look at your personal experiences. I think that that's quite empowering for families.

[320] **Darren Millar:** That's not a regulated approach, but you think that sort of informal system might be a better approach, do you?

[321] **Ms L. Williams:** It's quite powerful, really, isn't it? Most of us will have gone on TripAdvisor at some point in our personal lives. But, actually, some people don't know what they don't know, and what we often find, when we have a home that we are working with under the escalating concerns policy, is that the relatives and the people within there actually want the home to continue, even though we feel that the standards are not good. That's often because it is local; they are able to visit regularly. Sometimes their experience is different to what we actually view from a monitoring perspective. That's an important point as well that maybe wouldn't be picked up through that more informal system.

[322] **Darren Millar:** Okay. Thank you.

[323] **David Rees:** Okay. Kirsty?

[324] **Kirsty Williams:** Yes; I just wanted to go back to this idea of the market reports. You're quite right: the situation is fluid. People don't stay within the boundaries of their own local area and it impacts there greatly. But you said that you talk about a regional basis. If I can be parochial for a minute, where does Powys sit within that? What do you do with Powys? That's always the question, isn't it? What do you do with Powys in a regional set-up?

[325] **Ms L. Williams:** And I think that that is the difficulty, really: what is a true region, isn't it? Maybe the national piece of work would help us with that. Maybe it would be able to tell us what the market looks like across Wales and where the areas of high usage and lower availability are, and that could help us envisage what any sort of regional market analysis could look like. So, I think that that would be quite a powerful review for us, really, going forward.

[326] **David Rees:** Can I ask, obviously, about the registration of the workforce? Clearly, you come from an area where many members of your workforce are registered and regulated

as such. The Minister has indicated that he doesn't initially intend to change the status quo on this. What's your view? Should there be an introduction of more registration straight away, or do you think that the status quo is the right way forward?

[327] **Ms Slater:** I'm sorry. It's very difficult to hear.

[328] **David Rees:** I do apologise—[*Laughter.*]

[329] **Ms L. Williams:** As you say, we come from a regulated profession, therefore, we would have a particular view about the regulation of a workforce and a profession. I can only think that regulation is a good thing. But, obviously, with regulation comes a whole host of other things that you need to put in place. That could become cumbersome if it's not appropriately applied. Therefore, consideration would need to be given as to what that regulation looked like and which parts of the workforce were regulated or not.

[330] **David Rees:** Are there any elements of the workforce you think should be regulated that don't appear to be regulated in the first instance?

[331] **Ms L. Williams:** I think Lin alluded to the social care workforce, and I think we have, both from a health and social care perspective, an army, if you like, of individuals who are direct care givers who are currently unregulated. So, the question for me would be, as Lin posed earlier: if we regulate the social care workforce, what does that mean for our healthcare workers, too? They are support workers delivering personal care and direct patient care.

[332] **David Rees:** Out of curiosity, because we've been clarifying what a social care worker is: do you have a definition?

[333] **Ms Slater:** I think it depends on who employs them, by and large. Often, the actual delivery of personal care can be interchangeable. If you ask a healthcare support worker and a social care worker what they deliver, obviously it depends on the setting in which they deliver it as opposed to the actual care.

[334] **Ms L. Williams:** And who their employer is, as opposed to what it is they actually do. If we're working more towards an integration agenda, as our policy drivers are currently driving us, which is right and proper, then there will be even more blurring of boundaries as you look at health and social care. If you look at the reablement focus, if you're looking at reablement workers, it shouldn't really matter where those sit, because it is about ensuring that the individual reaches their full potential at any given point in their pathway.

[335] **David Rees:** One final point on that: the Bill obviously talks about a variety of workers, and you've already identified those who are already registered with their professions, do you think the Bill is clear enough in identifying the different responsibilities of the regulators, in the sense of Social Care Wales compared to their professional regulator, the Health and Care Professions Council, for example? It is clear enough, clarifying who is accountable to whom?

[336] **Ms Slater:** Yes, I believe so. I didn't pick up any—. I felt clear, reading it. Others may disagree.

[337] **Ms L. Williams:** I was going to say that we've got a difference of opinion then, because I wasn't clear, if I'm entirely honest, and you have to be honest. I was not clear about where the levels of responsibility and accountability were from a professional perspective and from a Social Care Wales perspective. I personally think the Bill could be strengthened in that way.

[338] **David Rees:** Well, that shows that there is still confusion existing.

[339] **Ms L. Williams:** Yes.

[340] **David Rees:** Are there any other questions from Members? I thank you very much for your attendance this morning.

[341] **Ms L. Williams:** Thank you.

[342] **Ms Slater:** Thank you.

[343] **David Rees:** It's been very helpful. Thank you very much indeed. You will receive a copy of the transcript for any factual inaccuracies you can spot. Please let us know if there are any. Once again, thank you very much.

11:57

Papurau i'w Nodi Papers to Note

[344] **David Rees:** If Members are happy to go on to the next item, papers to note, you will note that I mentioned in the first session that we have received correspondence from the Children, Young People and Education Committee. Are we happy to note that correspondence? Thank you very much for that.

11:58

Cynnig o dan Reol Sefydlog 17.42(vi) i Benderfynu Gwahardd y Cyhoedd o Weddill y Cyfarfod Motion under Standing Order 17.42(vi) to Resolve to Exclude the Public from the Remainder of the Meeting

Cynnig:

bod y pwyllgor yn penderfynu gwahardd y cyhoedd o weddill y cyfarfod, yn unol â Rheol Sefydlog 17.42(vi).

*Cynigiwyd y cynnig.
Motion moved.*

Motion:

that the committee resolves to exclude the public from the remainder of the meeting, in accordance with Standing Order 17.42(vi).

[345] **David Rees:** In accordance with Standing Order 17.42, I propose that the committee now resolves to meet in private for the remainder of this meeting. Everyone happy? Thank you very much.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11:58.
The public part of the meeting ended at 11:58.*