



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

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

Dydd Mercher, 29 Ebrill 2015
Wednesday, 29 April 2015

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Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynddi 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

Eraill yn bresennol
Others in attendance

Kelly Andrews	GMB
Colin Angel	Cymdeithas Gofal Cartref y DU United Kingdom Homecare Association
Ruth Crowder	Cynghrair Ail-alluogi Cymru / Unsain Welsh Reablement Alliance / Unison
Jim Crowe	Grŵp Cyfeirio Anabledd Disability Reference Group
Melanie Minty	Fforwm Gofal Cymru Care Forum Wales
Mike Payne	GMB
Kieron Rees	Cynghrair Cynhalwyr Cymru Wales Carers Alliance
Tim Ruscoe	Cynghrair Gofal a Lles Cymdeithasol Cymru Social Care and Wellbeing Alliance Wales
Alun Thomas	Cynghrair Iechyd Meddwl Cymru Wales Alliance for Mental Health

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

Amy Clifton	Gwasanaeth Ymchwil Research Service
Helen Finlayson	Ail Glerc Second Clerk

Llinos Madeley	Clerc
	Clerk
Rhys Morgan	Dirprwy Glerc
	Deputy Clerk

*Dechreuodd y cyfarfod am 09:16.
The meeting began at 09:16.*

Cyflwyniad, Ymddiheuriadau a Dirprwyon Introductions, Apologies and Substitutions

[1] **David Rees:** Good morning. Can I welcome Members and the public to this morning's session of the Health and Social Care Committee at the National Assembly, where we continue our evidence gathering on the Stage 1 of the Regulation and Inspection of Social Care (Wales) Bill? Can I remind Members that the meeting is bilingual? If you need simultaneous translation, headphones are available on channel 1, or if you need amplification, then use channel 2. There's no scheduled fire alarm this morning, so please follow the directions of the ushers if the alarm does go off. Can I also remind Members to switch their mobile phones off or put them on silent and any other electronic equipment that may interfere with the broadcasting equipment? We have received apologies from Lynne Neale and Kirsty Williams this morning. No substitutes have been indicated.

09:16

Ymchwiliad Dilynol i Farw-enedigaethau yng Nghymru: Ystyried Ymateb y Gweinidog Follow-up Inquiry into Stillbirths in Wales: Consideration of Ministerial Response

[2] **David Rees:** Moving to the next item on the agenda, which is the follow-up inquiry into stillbirths in Wales. Members will remind themselves that, in fact, we did look at this in February 2013, and in January of this year, we asked witnesses of the original inquiry to give their views on any progress that had been made since that point. We considered the evidence received, and we wrote to the Minister accordingly to highlight the outstanding issues. We've now received a response, which you have in your pack. It outlines what has been done to address the issues, and what progress is being made and where he believes we will continue to be making progress. Based on the information we've received from the Minister, are we content now with the fact we no longer need do any further work on this particular subject at this stage, but we may well wish to look at it in our legacy report at the end of the Assembly? Are Members content with that? Thank you for that.

09:17

Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru): Sesiwn Dystiolaeth 6 Regulation and Inspection of Social Care (Wales) Bill: Evidence Session 6

[3] **David Rees:** Therefore, we now move on to our evidence sessions this morning. The first evidence session we will have is with representatives of various alliances related to the social care and wellbeing of individuals. I'll wait for them to come in.

[4] Good morning. Once you've settled down, can I remind you that the microphones will come on automatically, so you haven't got to touch anything? The headphones are available to you if you need simultaneous translation from Welsh to English, or if you need

any amplification. There are different channels. Channel 1 for Welsh to English. Channel 2 for amplification.

[5] Can I welcome Ruth Crowder, who's representing the Welsh reablement alliance this morning? Also, Jim Crowe, disability reference group; Kieron Rees, Wales carers alliance—if I get this wrong, please let me know—Tim Ruscoe, social care and wellbeing alliance; and Alun Thomas, from the Wales alliance for mental health. Can I thank you all for your written submissions to the committee on the Bill, which have provided us with some interesting points, particularly some of the issues and concerns you raised as to whether the Bill goes far enough, in one sense, in the areas covered? We'll go straight into questions, if that's okay. We have a very limited time.

[6] **Mr Ruscoe:** Excuse me, Chair. Is your microphone on? I can't hear very well.

[7] **David Rees:** It should be. I'll shout louder. *[Laughter.]* We've got a very tight schedule, as you'll appreciate. We'll keep the questions succinct from Members, if possible, and if we can get succinct answers, that would be very helpful. If you feel that one of your colleagues has already answered it, there's no need to add anything extra. It's not about adding things to the response, okay? If you are struggling to hear anything, the headphones will give you amplification—channel 2 on the headphones, okay? Gwyn Price?

[8] **Gwyn R. Price:** Thank you, Chair. Good morning, everybody. Could I have your views on whether additional services should be regulated under this Bill, and whether the witnesses agree with the Minister's prioritisation of services for future regulations—i.e. advocacy, extra care, and then on to day care services?

[9] **Ms Crowder:** I think one of the things that the social care and wellbeing alliance Wales and the Welsh reablement alliance note is that, when you look at the expectations of the Social Services and Well-being (Wales) Act 2014, they are that services will become much more personalised. So, the intent is it should be much less service-led and much more person-centred. So, given that, we would expect to see much more creativity and flexibility around the kind of services that might be provided for people to enable their independence. So, to see a list that categorises people, we just wonder how you will fix that flexibility into that list. So, only services that provide care and support will be regulated, and only services within those categories. So, we just wondered how that flexibility will be managed within that list. So, there's a potential risk that people might deliberately identify their services as not being of that list in order to not need to be regulated, but also that services may genuinely believe they don't fit into that descriptor and then may fall foul of the need to have been regulated. So, for us, I think it's an issue of how we marry up that flexibility with what is actually regulated.

[10] I think, from the reablement alliance's perspective, the priorities that the Minister gave would probably be the ones we would start with. That would seem very sensible. I think the focus has to be about how we ensure the protection of vulnerable people, particularly if they are working independently, in isolation with people, without others around them.

[11] **Mr Ruscoe:** We do have a concern that any support services purchased by the individual for their own care will not be regulated. That is a relationship of power differential, which means that there is the possibility of abuse and additional vulnerability. So, we have some concern that those sorts of purchased services are not to be regulated.

[12] **David Rees:** Can I ask for clarification? Are you concerned that they will not be regulated from the outset of the Bill but may be under the regulations, or that, in fact, they are excluded from the regulations as well?

[13] **Mr Ruscoe:** As it's written at the moment, we read it that they're excluded.

[14] **David Rees:** Okay. Thank you.

[15] **Ms Crowder:** Sorry, can I just come back? Sorry, I was nervous. From a reablement perspective, that's defined within the Bill as a preventative service and therefore wouldn't be regulated. So, that specification of only a 'care and support service', we think, needs to be very clear; otherwise, you will have services—. You know, if someone has a care and support plan and they're accessing reablement as part of the care and support plan, does it then become a caring service that should be regulated?

[16] **Mr Thomas:** I'd also add that many housing support services should not be referred to as care or care and support services. They are housing support services. How will they fit in there? Again, an awful lot of people receive support from Supporting People-funded services. Are those going to fall within that, because they're not care services?

[17] **Gwyn R. Price:** Do you agree with the priorities as well?

[18] **Mr Thomas:** Again, I'd agree with what Ruth said. The priorities are a good starting point, but I think there's a whole range of other services for people who purchase their own services in. We're now moving towards peer-mentoring services. Again, how is that going to be regulated when you've got an individual working with somebody? We've got counselling services that are provided across the breadth of social care. I know the Welsh Government has been working on identifying how you determine who is competent or who's qualified to provide that service, but, at the moment, you can put a notice up saying, 'I've done a six-week counselling course; I'd like to be a counsellor'. There are a lot of other things that need to be regulated, and I think we need to be looking at those that are not purchased by social services or health first, but are purchased by the individual, because that's where the greatest risk is.

[19] **David Rees:** Janet, you have a follow-up question.

[20] **Janet Finch-Saunders:** Yes, I'm really glad you raised that at the outset of today's meeting, because I do have concerns. I'm aware of elderly people who do buy in their own care from private agencies, and they do not know, really, who's coming into their home until that person arrives, or how qualified they are, and I think that there is an expectation that those people are regulated in some way. Clearly, as you've said, working in isolation behind closed doors in somebody's home environment, there is scope there. So, how do you think that we can encapsulate some kind of regulation, so that those people do feel confident that they are caught within that umbrella of care and support?

[21] **Mr Ruscoe:** We had some discussion about this, and there is a dilemma. How do you identify who needs to be regulated? Because of the potential of risk to an individual receiving care, there's an awful lot of preventative services that go in, which are very personal. So, that sort of relationship of abuse might—you know, the potential is there. We were considering whether we should be identifying who should be regulated because of the nature of the service rather than the title of the service. So, if the nature is of a personal nature where there is the potential for risk, is that how you should identify who should be regulated? But it's a dilemma that we didn't conclude.

[22] **Janet Finch-Saunders:** It's such a wide area because it could be someone coming in to help someone with their own personal hygiene, it could be cleaning, and it could be shopping. Certainly, some of those areas there do give cause for concern if unregulated. I thought, at the time that this Bill is going through, surely there should be some protection in place for the vulnerable people receiving that support?

[23] **David Rees:** You've actually recognised the fact that that is an issue that needs to be addressed in the Bill. Okay. John?

[24] **John Griffiths:** In terms of what should be regulated, Chair, I just wonder whether you think that preventative services should be regulated through this Bill, or whether they're best scrutinised by some other means?

[25] **Ms Crowder:** Obviously, we've already said it's important that we think about where the power relationship lies and where the potential for risk lies. It's a very difficult decision to say, 'This is defined as a preventative service and will always be a preventative service' and 'This is defined as a care and support service' if the Social Services and Well-being (Wales) Act 2014 is intending that this becomes much more a response to achieving someone's personal wellbeing outcomes.

[26] There are some other alternatives. Obviously, the large one is that you regulate absolutely everybody. There are also expectations that you can lay on the organisation, in terms of thinking about a requirement for good-quality management, good-quality training and supervision of staff. As an occupational therapist, I'm responsible, if I delegate work to someone, for the quality of that person's work, through my registration. So, you also have an opportunity to use delegation, but, I think it needs really clear thinking about whether we are defining—. If you're defining having a gardener in as a preventative service, then, clearly, we don't want a really over-heavy, inappropriate and bureaucratic process for protecting someone, but if you have got a reablement service, that will then go on as part of a care package, or if you have a very enabling ethos within a care home, then that is something that needs to be thought about. So, it's quite difficult to define it as only 'care and support' or only 'preventative'. I think we have to think about it in terms of the potential for power and risk, neglect and abuse, and look at it in that context.

[27] **Mr Rees:** To just add to what we've said, from a carer's perspective, a lot of the carers' services that are preventative in nature are not necessarily services you'd ever want to regulate, so, for example, support networks, peer support groups and those kinds of areas. So, I think the preventative term is quite broad and, actually, it's more about the service that's coming under that umbrella rather than the term or the concept itself.

[28] **David Rees:** Okay, John. Alun, on this particular point?

[29] **Alun Davies:** Yes, I'm interested because the point that Janet raised was about who is regulating the rest of it, and John then developed that. I'm interested in this whole subject of the purpose and point of regulation, and what we seek to achieve by it. I know that some of you have raised concerns in your evidence about the definition of 'care' that the Government have offered in the Bill. I don't know whether any of you have had the opportunity to look at the transcript of what the Minister has said in evidence and whether that provides you with some reassurance, but are you content today, knowing what's on the face of the Bill and how the Minister's explained that, with the Bill as it stands or do you believe that there should be a greater emphasis on the emotional wellbeing of people? I think we were all taken by the older people's commissioner's report on these matters. Do you believe that this Bill actually addresses those issues?

09:30

[30] **David Rees:** I'll start with Ruth and then come to all of you because you'll all have slightly different perspectives on this.

[31] **Ms Crowder:** The definition is of 'care', not of 'care services', not of 'care interventions', not of the kind of processes. So, when I read it and saw how care was defined,

I found that really difficult because, for me, there's a common-sense definition of care, and it's an emotional and relational one. In everyday life, we talk about care as being something that we feel for people around us. Given all the reports and all the awful news and situations we've all heard about, to then define 'care' as being tasks, and not just tasks but physical tasks, brought me up very sharp. I think that, for us, we would want to say that 'care' is different to what a care service is, and there is a definition of a care service later on. I think we have to be very careful, given the enabling intent of the Social Services and Well-being (Wales) Act 2014, given the way we want to promote voice and control for individuals, that this definition, for the Welsh Reablement Alliance, implies 'doing to' or 'doing for', rather than 'working with' people. We would want to see high-quality relational prompting, engagement, support and practice as part of care, and that's very hard to pick out in a sentence that says it's about physical tasks.

[32] If I come to mental processes, I still haven't worked out whether the mental processes are those of the individual or of the worker. So, I struggle with it as a definition that pushes us towards co-productive, equal relationships that enable people to achieve their maximum potential.

[33] **David Rees:** I want to give everyone an opportunity. I'll start with Alun.

[34] **Mr Thomas:** Trying to define 'care' anyway is too complex a task for a single Bill. We've got situations at the moment where, at the moment, Wales has a different definition of personal care to that of England in respect of prompting on medication. The domiciliary care regulations in Wales say that, if you prompt somebody to take medication, that is a personal care matter. In England, it's not. But, is it a care matter if it's an enabling programme, where you're saying to somebody, 'Have you taken your medication today?' Is that care? Is that peer support? Could that be provided by somebody who isn't a care worker? It's what that overall package is and what that holistic package is that is being provided to the individual that are going to define what the care is. Trying to work out that it's washing, it's dressing—it's too simplistic. I haven't got the answer to it either.

[35] **David Rees:** Jim.

[36] **Mr Crowe:** I think Ruth has put the dilemma very well. I think that the definition that's in this Bill is quite narrow. It's quite old-fashioned in its style. I can see why it's been done like that, though, because I suspect that the drafters are concerned about how you measure and how you therefore have cues for inspection arising from that definition. I think there are dilemmas there because, unfortunately, the sad fact is that inspection has never uncovered issues like Winterbourne View or the other cases of abuse that have come to light. They've often come through other routes, not through inspection. So, I'm conscious that there are dilemmas here. Like my colleagues, I don't have a ready answer to it.

[37] **David Rees:** Okay. Tim.

[38] **Mr Ruscoe:** Again, I think Ruth made the argument very well. At the start of your question, Alun, you asked, 'What's the point of regulation?' The baseline is the protection of individuals who require a service. In requiring a service, it's not just about my basic needs; it's about how I develop, how I survive. Identifying care as something that is very task-based doesn't actually support an individual to grow. It doesn't support their right of development. It might support their right of protection, but not their right of development. So, it's quite restrictive where the intent of the social services and wellbeing Act was very expansive in terms of the individual and the individual's growth within their care and support package.

[39] **David Rees:** And Kieron.

[40] **Mr Rees:** At the risk of echoing everyone else, I agree very much with Ruth's points over the definition of 'care', but in terms of the question about the purpose of the Bill more broadly and protecting and safeguarding wellbeing, I think, what is quite absent from the Bill, as it's currently drafted, is a recognition that social care—so, for example, replacement care and short breaks—is often commissioned to protect the wellbeing of the carer, not the person with care needs because, without that social care provision, the care needs of the person with care needs would still be delivered by the carer. The purpose of that social care is to promote the wellbeing of the carer, primarily, and I don't think there's a recognition of that throughout the Bill.

[41] **Alun Davies:** So, in terms of your response, I asked if you'd seen the Minister's response to these criticisms, you are not reassured by those responses.

[42] **Mr Thomas:** I haven't actually had a chance to read those.

[43] **David Rees:** I think, to save yourselves, if you have a chance to read those and give us a note back, unless you feel—

[44] **Mr Ruscoe:** Maybe it's the cynical nature of me that I'm not overly reassured now, but other people may be. I can't give a—. It's not something I've discussed with the membership of the alliance that I represent. To give a personal view: I'm not overly reassured.

[45] **Ms Crowder:** We can drop you a note if you would like us to, when I've liaised with the whole alliance, if that would help.

[46] **Alun Davies:** Mr Ruscoe, in your initial answer you referred to the previous Act, and so did the Minister, of course, in his response. He responded to those criticisms by referring to that Act as being the legislation that this Bill is designed to ensure is delivered. I'm surprised, therefore, that in referring to that yourself, you don't feel reassured that the Minister does so.

[47] **Ms Crowder:** I think it's important that the legislation, which stands beyond the Minister, is clear. If that is the intent of the Minister, then that's wonderful, but it needs to be on the page when this is 10 or 20 years further down. I think that would be what we would want to see.

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

[49] **Mr Thomas:** I think that the other thing that we have to remember is that this is the consultation phase that we're going through. The Welsh Government has a significant track record on identifying a holistic care and treatment plan within the mental health Measure, which looks at an enabling view of working with an individual, looking at the things that matter to that individual. So, it's turning it around. It's actually what the individual wants rather than what we think is care. I think, perhaps, there are some lessons to be learned from how the care and treatment plan within the Mental Health (Wales) Measure is developed. It looks at housing, education, medical and physical treatments, work, physical health, social care, parenting, caring responsibilities and money. It's about asking, 'What support, what help, what do you need around that?', rather than saying, 'This is the care'. You know, we should be looking at building individualised care—there's that word again—packages rather than trying to define what exactly is care. Perhaps we're talking about the care and support needs of an individual rather than what is simply care.

[50] **Mr Ruscoe:** Chair, can I return to the question?

[51] **David Rees:** Yes, by all means.

[52] **Mr Ruscoe:** The Social Services and Well-being (Wales) Act is still being defined through its subordinate legislation, and a lot of criticism of the Act was that there was not enough around the Act in terms of how the subordinate legislation was going to look. So, we're still learning what the social services and wellbeing Act is actually going to bring to us. So, I can't really, with any honesty, say that I know what the final product is going to be.

[53] **David Rees:** Okay. Thank you. We'll move on to the questions from Lindsay and then Darren.

[54] **Lindsay Whittle:** Thank you, Chair. Good morning. I can't imagine Ruth Crowder being nervous, I have to say. 'Care', of course, is a very small word but an enormous remit throughout Wales. I'd be interested in your comments, please, on the registration of service providers. You know the four categories, I guess, who are required to register with the regulator, and the Minister has said that he would like to see more. His top priority would be domiciliary care workers, which I have no objection to. I'd like your views, please, on whether you think personal assistants should be required to register. Do you have a view on the Minister's response that there is a difference in the risk of abuse in children's homes compared with adult homes, and should the regulations and registration strictly apply to them both in equal measure?

[55] **Mr Ruscoe:** Thank you. On the difference that you talked about towards the end of the question, we have a real concern that there is going to be a very different experience of the received service. So, if we took neglect, for example, if an older person or an adult is in a care situation where they're receiving care at home or in a home, there will be no tolerance of neglect. If a child is in a residential facility, there will be no tolerance of neglect. However, a child who is known to a social service, therefore a regulated body, might actually be living through neglect because it hasn't reached sufficient thresholds to actually be addressed through child protection processes. So, there is a real problem, because that's the situation that exists for children living in neglect in their own homes now, yet they are known to registered and regulated bodies. So, it exists now and it will exist when this Bill goes through. It will exist. So, there's a real difference in how things are experienced. Some of that is to do with the nature of the care provided or where the care is provided. A child is more likely to be supported to remain in their family and their family home than an adult requiring care is.

[56] **David Rees:** Does anyone else want to comment?

[57] **Mr Rees:** In terms of the registration issue, when it comes to small third sector services that prioritise carers, the concern for those services would be the potential that it passes responsibility for the quality of the care on to the individual, rather than the organisation. I think, in terms of the Wales Carers Alliance, it's probably the belief that the responsibility must sit with the organisation rather than the individual. There is also concern, with the small third sector organisations—the very social enterprises that the social services Act looks to promote—regarding the question of where the financial burden for domiciliary care workers or replacement care workers, for registration, sits.

[58] **Lindsay Whittle:** Right. I don't envisage that the financial burden for registration would be that high, but, of course, we don't know that yet. I'm particularly concerned about the Minister's remarks about the difference between children's homes and adult care homes. It is my belief that a lot of the abuse is coming to light now because the children have got more confidence and are older and able to come forward. I'm afraid the abuse for older people is long gone because our witnesses are, sadly, no longer with us. It is the registration of the care there that I'm concerned about in particular.

[59] Could I just go on then, Chair, to talk about—? We know that members of the public

would be able to access the register of care workers and managers to see whose name is on the register of those fit to deliver services or not. Do you think that that, again, should apply to all care workers, or just the four categories that we know of?

[60] **Ms Crowder:** When I come in later as Unison, we will be saying that, actually, the ideal would be that everybody is registered. I think one of the things that we have to think very carefully about—. I'll start with the issue that, at no stage in the existing system, or in this Bill, do we identify that there are staff who are registered with other regulators. So, we need to be very clear that we point, for the public, that there is a register with Social Care Wales, but there are people who are not on that register but who are registered elsewhere.

09:45

[61] We also need to be very clear, and I think, for us, one of the issues around this and your previous question is the language that's used within the Bill, around who we're talking about and when. So, is the responsible individual the person to whom you would come and who you would hold to account for abusive behaviour of staff within the organisation? And that's one of the things that we need to be clear about. If you're not going to register everybody, who is it that you're holding to account? How do we make sure that the public knows where to check and knows which register to go on? So, I think we need to be much clearer about who is registered where, what they're registered for, and then who is held to account when any of those issues are raised for staff who are not registered. But I would say, again, we need to think as well about good-quality management, about supervision, and about the ethos that we create in our organisations of being prepared to whistleblow, and expect high-quality, caring relationships.

[62] **Lindsay Whittle:** Right, thank you.

[63] **Mr Crowe:** I think our desired position would be for much wider registration of individual staff, but I think we recognise the difficulties of that financially, if for no other reason. And I think, therefore, you have to look at the competency and the training requirements of staff if you're not going to register them, certainly, in instances where abuse has been advertised, like in Winterbourne View—the staff were almost completely untrained, and competency and value base was clearly very dubious. So, I think we'd be looking for that and I think that's important in terms of the workforce elements of the Bill.

[64] Coming up on a couple of your earlier points, one of the things that we've noticed is the absence—. You talked about adult care and adult care homes and we've noticed the absence of any reference to nursing care within the Bill. I think that's a surprising omission. Really, if it is going to be regulated elsewhere, it should, nonetheless, be referred to. There should be a seamless description of how regulation will extend across all forms of adult care.

[65] **David Rees:** Thank you. Alun.

[66] **Mr Thomas:** Just on the point of registration, I think the other concern we would have is how the registration of an individual would be managed. Many people who end up being peer support workers—and we ourselves and other members of the Wales Alliance for Mental Health have a good history of employing service users as staff, going forward. When you have the Disclosure and Barring Service check through, there are many criminal offences with some people, there are histories of being sectioned under the Mental Health Act. We need to be clear that that isn't a hurdle; that actually makes some of the support staff and nursing staff better at what they do, because they can empathise more and they can engage. I think we have to be cautious in the registration process that we don't rule people out because of what's happened in their own recovery in their own lives. So, I'd be concerned, not just about the registration, but what that registration is going to mean.

[67] **Lindsay Whittle:** That's a very interesting point, which I'll follow up later on. Thank you.

[68] **David Rees:** Okay, we come on to Darren.

[69] **Darren Millar:** Yes. Thank you, Chair. Could I just ask you, in your evidence, Ruth, and yours, Tim, you refer to the lack of any reference to an appeals process for individuals so that they can challenge local authorities' or other bodies' decisions in respect of packages of care and support and the eligibility of an individual to be able to access that. Do you want to just expand on that? You made reference to the Care Act 2014 in England, suggesting that a similar approach might be taken in this Bill.

[70] **Ms Crowder:** This was something that our two alliances raised during the passage of the previous Bill. It comes to the fore, really, when you look at this and realise that, if I make a complaint—I probably shouldn't use me—if a person makes a complaint about a service and that registered practitioner then goes through a disciplinary and, potentially, a registration investigation, that practitioner has a right of appeal. They have a right of appeal to the process and, right the way through, have an opportunity to call back. The individual who's made the complaint doesn't have the right of appeal, they only have the right to complain, and that seems to us to be an inequity if what we're trying to achieve is a parity of voice and control for the person themselves. So, it could be that I'm complaining about somebody making a poor assessment decision, which means I don't access services, but all I can do is complain, I can't appeal; I would then have to return and ask for another assessment. It just feels to us that that would be something that would allow a more co-productive and more equal relationship between the person and the organisation.

[71] **Darren Millar:** Can I just ask you then, how, practically, is that addressed in the Care Act 2014?

[72] **Ms Crowder:** There is an appeals section within the Care Act and, obviously, this Bill does provide amendments to the Social Services and Wellbeing (Wales) Act 2014, so one would be able to follow the same process by putting in an amendment to the Social Services and Wellbeing (Wales) Act.

[73] **Darren Millar:** And it's just a straightforward appeals process against a decision that's made by an individual—you know, a social worker in a local authority—and it requires some independent view on the veracity of that decision.

[74] **Ms Crowder:** Yes.

[75] **Darren Millar:** With prescribed timescales, et cetera, for it to be considered.

[76] **Mr Ruscoe:** Yes. It's purely about, 'You've made a decision about my life and I need to appeal it. I'm not going to complain. I need to address that decision; I believe that's wrong.'

[77] **Darren Millar:** And, presumably, in terms of the role of carers, carers would welcome the opportunity to challenge a local authority decision about individuals in their care, particularly if that individual did not have any other advocate.

[78] **Mr Rees:** Absolutely, and not only that, but, actually, in the case of the carer themselves, there may be a decision made in terms of what support the carer's entitled to, that the carer would then have to appeal directly about their own support package.

[79] **Darren Millar:** And do carers have a right to challenge the support that's being provided to them under the Care Act 2014 in England?

[80] **Mr Rees:** I wouldn't know.

[81] **Darren Millar:** Okay, but you'd like to see the provision extended to carers.

[82] **Mr Rees:** Yes.

[83] **Mr Crowe:** If I may add something to extend the discussion a little bit, we're a little bit worried about how sincere the references are to the voice of the citizen in the Bill and how they will work through the regulations. If you look at the explanatory memo, it makes quite disparaging comments in there about the ability of users, if they're consulted in an inspection, to actually offer a view on the quality of the service that they're receiving. There's a strong statement that users of service—and there's no reference to carers at all—should be able to identify whether the outputs they're receiving are satisfactory or appropriate, but not about whether the outcomes that are going to be the product of the assistance and support that's given to them are going to be there and of what nature they're going to be. I found that a very strange statement, really, implying that service users are incapable of seeing beyond the trees that are around them towards the forest outside. So, I think there's a certain ambivalence in the Bill, about the attitude to users and carers, which needs to be tracked and monitored.

[84] **David Rees:** You've highlighted the use of language within the Bill and the EM in your written evidence, and that's definitely been noted and your example has been highlighted in that example. Darren, do you have anything further?

[85] **Darren Millar:** No. I think it's an important point, in terms of trying to capture, somehow, the views of carers as well when undertaking assessment and inspection under the Bill.

[86] **David Rees:** Okay. The next question is from Elin.

[87] **Elin Jones:** There's already been reference to the omission of nursing care from the Bill, and the Wales Alliance for Mental Health is quite strongly advocating that the Bill be strengthened and developed to include regulation and inspection across health and social care, and that it should more adequately reflect the way health and social care and integration is being delivered. Now, the response from the Minister has been to that that he wants to wait for another opportunity to do that, and we're expecting, I think, a Green Paper at some point. But do you think there are opportunities in this legislation to strengthen the Bill, to change the Bill, to more adequately reflect the realities of delivering services in the here and now?

[88] **Mr Thomas:** I think, if the Minister's going to come back with another Bill, why are we doing this now? That's the first question I'd have to ask. For years, we've had the argument about a social care model or a healthcare model; most of us in the voluntary sector, at least, have moved on a long way from that. The Welsh Government, in many of the strategies and policies that have been put in place, have moved on from that. And then we introduce a Bill that is separating them again. We're introducing something that's saying, 'CSSIW will do this bit, the Care Council for Wales will do this bit', and then we've got Healthcare Inspectorate Wales and we've got the 1,000 Lives all sitting on the other side, and then potentially we're going to do all this and then going to come up with another Bill that is going to say, 'Well, actually, now, how do we put them all together?' Do we need a moment to pause to say, 'Could we actually put HIW and CSSIW together, for a start, because you've got so many care sectors now that are cutting across? We've got issues under the Mental Health Act 1983, for example—on the code of practice for the Mental Health Act, HIW are monitoring and managing the use of sectioning under the Mental Health Act, unless

somebody is in a care setting that's registered by care standards. This is not necessary.

[89] The other thing that we've got is that, within this model, we're looking at promoting, through the development of Social Care Wales, a particular profession and a function of social work. Workforce planning in Wales has to change from looking at particular professions; it has to be looking at a sweeping workforce that can all engage at different levels. That might be health, that might be social care, it might be particular professions within the health and social care medium. But I think this is actually putting people back into the silos that the Welsh Government has taken an awful long time to get them out of in practice, and I think what this will do is just cause a burden in the delivery of services on local authorities and health boards that we don't need.

[90] **Mr Rees:** To add to what Alun was saying, I think, actually, the Bill in many ways doesn't reflect the current social care picture when it comes to carers services. In a lot of services for carers, you have staff who are trained in stoma care, who are trained in medicine management, and not just care in terms of the physical tasks that are defined in the Bill. These services are being commissioned, often jointly, by health and local authorities, and this just doesn't seem to be reflected in the language of the Bill.

[91] **David Rees:** Elin, okay?

[92] **Elin Jones:** Perfect. I agree with you.

[93] **David Rees:** Okay, thank you for that. We've obviously seen the Bill talk about greater public engagement, and you're represented in the users and the carers. I just wondered what your views are on whether you feel the provisions in the Bill to promote that greater public engagement are actually strong enough. Any comments? Kieron?

[94] **Mr Crowe:** Sorry, if I—. Clearly, it's a Bill, and, clearly, as is ever the case, a lot of emphasis is placed on the forthcoming regulations and any other supplementary guidance. But I think it's rather vague in terms of how it will pursue citizen engagement. There's one or two pointers there, both in terms of—. We're pleased to see some references to the Welsh Government needing to reflect and be accountable to citizens in some respect with its annual report on markets, and also requiring local authorities to have some engagement with users and carers, but it's rather vague, I would say.

[95] **Ms Crowder:** If we add into that, obviously, using lay inspectors and making sure that we look at how we enable people with experience of services and carers who've experienced from the other perspective to be involved in processes around either developing regulation, or in inspections themselves, that's a useful model. It will come down to the regulation and what the detail of that is. Inevitably, when you're talking about the regulation of individuals and organisations or services, there is a bottom line, isn't there, about what's acceptable and what isn't. And that, inevitably, places a power relationship with the regulator or the state, and the driver of that process. So, we need to be very clear how we give a strong voice to individuals and to people who've experienced services, and make sure that their perspective is included within this. Otherwise, it is going to be a very top-down process.

[96] **David Rees:** Kieron?

[97] **Mr Rees:** There does seem to be a lack—and I did touch on this earlier—throughout the Bill of recognition of the role of carers or carer involvement, even in what would seem like quite straightforward things. When you're looking at the powers an inspector has, an inspector is able to talk to the person receiving care, with their consent, but isn't explicitly able to talk to their carer, which would obviously offer a very valuable viewpoint when inspecting the quality of care. And, similarly, there isn't recognition about where care

might be delivered to meet carers' well-being outcomes, or, similarly, how local authorities could explain how they've involved carers in exercising their social services functions. I think it's a thread throughout the Bill, actually, that could be strengthened.

[98] **David Rees:** Okay, thank you for that. Elin.

[99] **Elin Jones:** I just wanted to ask on commissioning, then, there's no reference in the Bill to the regulation of the commissioning process in local authorities and health boards, and I was wondering whether you think that there should be provisions in the Bill for the commissioning process to be regulated in some way, and then, just to follow on from that, whether any of you have views that the Bill should be used as an opportunity to prohibit the commissioning of 15-minute care slots.

[100] **Mr Crowe:** We welcome the moves towards annual reports and the emphasis on services. We think that's good. I think that we also welcome the attempts to streamline and avoid duplication. But, certainly, from the providers in the learning disability field, the constant refrain is about the very unhelpful level of duplication of data and information that providers are required to provide both to commissioners and to CSSIW.

10:00

[101] There are huge overlaps, there's huge repetition. It appears from the Bill that there are genuine attempts going to be made to try and avoid duplication and overlap between CSSIW and other regulators, particularly the successor to the Care Council for Wales. We welcome that, but I think it'll be a great opportunity missed if there's not an attempt to address those overlaps and competition, almost, between commissioners and regulators to monitor and review services. It's unhelpful and I don't think it actually means that more is better.

[102] **Mr Ruscoe:** I was reflecting a little bit on the EU procurement directives, which make a distinction between cost and price—'price' being the price of the service; 'cost' being the greater cost to society of how you provide something, which I think, in terms of commissioning, should be accounted for in some way. I'm not sure how, Elin, but we need to recognise the greater benefit of what we are procuring and the greater expansive returns on our expenditure, rather than quite a narrow, cost-based comparison, really. I believe that's in an EU procurement directive, which I think would be one way, possibly, if we were sort of doing that, that the 15-minute care package is going to be addressed because, actually, the cost would be huge in terms of detriment to the carer, detriment to the person being cared for. The cost is enormous, but the price is really quite low.

[103] **Lindsay Whittle:** It's quality at the onset, isn't it?

[104] **Mr Ruscoe:** Yes.

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

[106] **Mr Thomas:** I think one of the key things with regulating the commissioning is that we've also got a situation where commissioners at the moment will commission on, 'We want this service provided, you bid for it, and you tell us how many staff you'll use and how you'll manage the service.' They're not asking for a service based on quality; they're asking for a service based on price. If you have a service that has to provide 30 hours of support to six individuals in a week, a quality service might have three staff on to do that because it recognises travelling time in between, it recognises the need for capacity within that. A service that is, perhaps, profit-driven will be, 'Well, we're not going to pay your travelling time in between' which means that the staff are demotivated; the staff quite often will be leaving one early to get to the next. The commissioner should stipulate the quality of the

service they want and the prices then will reflect the quality rather than driving quality down with price. We've got grave concerns that, for our client group in particular, a 15-minute intervention is almost completely useless. The only thing a 15-minute intervention might be for is to check somebody's up in the morning. But what care can you provide in 15 minutes? We're small enough in Wales that the Welsh Government can actually drive this.

[107] **David Rees:** I just wanted to know, because I think the question was: do you think this should be included in the Bill, and do you think the Bill provides the provision about the commission issues, because that's what you've got to focus on?

[108] **Mr Thomas:** I think the Bill should contain it. I'm not convinced at the moment that it necessarily is clear enough that the responsibility is with the commissioners.

[109] **David Rees:** Okay. I've got quite a few of you who want to speak. *[Laughter.]* We have limited time and John has got one final question, so can we have short answers. Kieron, you haven't answered yet.

[110] **Mr Rees:** Alun practically took the words out of my mouth. When it comes to protecting wellbeing, which is the intention of the Bill, commissioning plays such a role in that. What we're hearing from third sector care services is that they're being commissioned on price, they're being squeezed and it's putting them at risk because they're prioritising quality. And then you look at some of the policy intention in the Bill, such as to charge fees, you know, those fees may be absorbed by big providers, but, when you're looking at small third sector providers, where the majority of their funding is public money coming from local authorities anyway, where's the room there to incorporate that fee? Similarly, on the point of 15-minute care slots for carers, that 15-minute visit does not provide the carer with a break, which is what that carer needs.

[111] **David Rees** Ruth, you haven't spoken yet.

[112] **Ms Crowder:** I think the phrase, very quickly, is 'commissioning for outcomes not outputs'. So, I think, as a reablement alliance, we don't support 15-minute slots where they are inappropriate, but I think, if you prohibit them, then you restrict the potential for allowing that to happen where it would achieve the outcome. So, if someone has dementia and all you're doing is prompting medication, 15 minutes is fine. I totally agree with what everybody else has said—that it needs to be built into the commissioning that it really is 15 minutes and not two minutes because they haven't allowed for timing. But, if you commission for outcomes, then you may be able to justify why you would do a 15-minute slot. I think that has to be the focus. What is it that is to be achieved? Is that possible within the quality and the cost of the tender that you've asked for? I think that can already be looked at in the way in which local authorities will be scrutinised under the draft Bill.

[113] **David Rees:** Jim, very briefly on this point.

[114] **Mr Crowe:** Very briefly. Fifteen minutes is a symptom of broader problems around commissioning. We have excellent commissioning guidance from Welsh Government, both at the social care level and on disability, but we have local authorities that will overrule aspects of that commissioning guidance, saying that they are subject to their local authority's standing orders. Commissioning is definitely going forward with an emphasis on price rather than quality.

[115] **Mr Ruscoe:** Can I make a quick point, Chair?

[116] **David Rees:** Be very brief.

[117] **Mr Ruscoe:** I'll be very quick. It's very difficult to actually put something on the face of the Bill that is going to be very prescriptive for a local authority, but what Government can do is very clearly place on the face of the Bill what they expect. So, an expectation of Government—what they expect from a commissioning arrangement so that the sorts of things—. Outcomes rather than outputs. So, an expectation, without telling people how to do it, can be on the face of the Bill.

[118] **David Rees:** And the last question to John.

[119] **John Griffiths:** I know that there's concern about the role and responsibilities of Social Care Wales and the wider social care workforce. I just wondered if there's anything you might want to add in terms of how this Bill might be able to provide the clarity that you believe is required.

[120] **Ms Crowder:** I think, for us, the key issue is the confusion of language. So, the definition in Part 4 of the meaning of 'social care worker' is excellent, but it includes absolutely everybody, and then we use that phrase later on when we're talking about the regulatory activity. So, I think what we would really want to see is a very, very clear understanding that there are staff who are regulated by Social Care Wales, whatever we decide to call them, there are staff who are regulated by other regulators, but they are registered and regulated—they're not unregulated—and there are unregulated staff, so there is the total workforce.

[121] If you look at the strategic improvement group report—I've forgotten what the other 's' is for—they identify very clearly three distinct sets of functions: regulation, improvement, and workforce development. Each of those is mirrored within the health part of the sector by organisations that deliver those three functions. I think we need to be very clear when Social Care Wales is working with its regulated staff, when they are working with the entire workforce, in terms of an improvement function, and who they work with and integrate with and co-operate with in that process, and when they are doing the workforce development, making very sure—do I mean workforce development; yes, the workforce planning part—that they are integrating so that we have that flexibility of staff across the entire sector. It's really important that that language is clear.

[122] The last thing I would say is that the disappointing thing in the section that identifies who the regulatory bodies are is that it only says Welsh Ministers and Social Care Wales. If that were expanded to include the other regulatory bodies, then that allows that integration and those functions to be much clearer.

[123] **David Rees:** Okay; thank you for that. Jim, a final point.

[124] **Mr Crowe:** Okay. Just to say that one of the current responsibilities of the Care Council for Wales is to be a voice for the employers in the social care field. It's a very important field in employment terms in Wales. The Bill seems to be silent on the role and on whether there will be a role for Social Care Wales to be a voice for the employers of social care staff.

[125] **David Rees:** Thank you very much for your evidence this morning. It's very much appreciated and I'm sure it's given us some ideas and thoughts as to how we will move forward. So, once again, thank you very much. You will receive a copy of the transcript for any factual inaccuracies. If you identify any, please let us know so that we can get them corrected as quickly as possible. Thank you.

10:09

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

7

Regulation and Inspection of Social Care (Wales) Bill: Evidence Session 7

[126] **David Rees:** Just to inform Members that we will be moving on to the next panel. I remind Members that, unfortunately, the Domiciliary Care Association have sent their apologies this morning and will not be with us on the next panel. So, we just have the United Kingdom Homecare Association and Care Forum Wales.

[127] Before we officially start, I just remind you that, if you need translation from Welsh to English, that's available on the headphones on channel 1. It should be set up for you. If you need amplification for any reason, then that should be on channel 2 on the headphones. You shouldn't have to touch the microphones; they should come on automatically.

[128] Can I welcome, therefore, Colin Angel from the United Kingdom Homecare Association and Melanie Minty from Care Forum Wales? I thank you for the written evidence we've received. Clearly, every time we receive evidence, we want to explore it a little bit further, so we'll go straight into questions. Again, can I remind Members that questions need to be succinct, and can I ask that answers be succinct as well, if possible, please? Gwyn, do you want to start the questions?

[129] **Gwyn R. Price:** Thank you, Chair. Good morning, both. Could you tell me why you believe the whole social care workforce should be registered?

[130] **Ms Minty:** From Care Forum Wales's point of view, we want to see a professionalised workforce. It adds assurance to the vulnerable people who are in our care, but we also have a desperate need to attract a better quality workforce, and the best way of doing that is to make it a professional career, that's registered.

[131] **Mr Angel:** Primarily, registration is a safeguard for the public, to make sure that workers have had adequate checks and their conduct is satisfactory, and, where that conduct is not satisfactory, they can be removed from practice. In addition, I think it has the added benefit of professionalising a workforce. I'm a former registered nurse, and I spent my nurse training—three years, 20 weeks at the time—knowing that I was going for a qualification and that the registration could be taken away from me, and my practice was therefore very much focused on maintaining registration and having all the right behaviours present in my practice. So, it was something to aspire to and something to keep hold of.

[132] **Gwyn R. Price:** And do you believe there's a danger if they're not registered, really, in the system?

[133] **Ms Minty:** Yes. I think we're already seeing that there are issues with attracting the right people and the right calibre of people into the profession, and that's going to become more of an issue over time, especially with commissioning policies and the low wages paid to the sector. It's a very stressful job. It's a vocation that not many people have, and, if you're paid the same as someone working in a supermarket, for instance, then you're going to not necessarily attract the best calibre of people. So, registration is one part of a raft of things that I think need to be done to help get the best people in who have the correct attitude and aptitude to be carers.

[134] **Gwyn R. Price:** Thank you.

[135] **David Rees:** You will have heard the previous set of evidence about the personal assistants and direct payments, effectively, so, again, is it your view that that should be

included in the Bill and that we should be ensuring that all carers, including those funded by direct payments, are registered?

[136] **Ms Minty:** Yes; there is a loophole in the current system with personal assistants not being registered or qualified, necessarily, and what we do see—and I imagine that Colin’s members will have found this as well—is that our domiciliary care members have people coming to them, who have previously been personal assistants, who are perhaps unsuitable and shouldn’t be working in the sector. Likewise, there are issues for personal assistants being employed directly, in that vulnerable people aren’t necessarily trained as employers. So, we’ve heard of people coming in and saying, ‘I haven’t had a holiday for three years and I’m exhausted. That’s why I want to join the domiciliary care sector’. It has protection for both parties.

10:15

[137] **Mr Angel:** UKHCA is profoundly in favour of registration of the social care workforce, including personal assistants. We thought the legislation would be an opportunity for Welsh Ministers to consider that point very carefully. No doubt they have. I would echo Melanie’s points and observe the number of times I hear from providers who say they have, for example, dismissed a worker, or a worker has left after demonstrating inappropriate behaviours, and they are known to be working as a personal assistant in the local area in a very short space of time.

[138] **David Rees:** The Bill also focuses upon a service-based model, rather than an establishment-based model. That has implications. We heard evidence last week from CSSIW that they were concerned about whether the providers would actually be able to adapt readily to that. What’s your view on that point?

[139] **Mr Angel:** We see a similar system in operation in England and it has not caused any difficulty for providers that I’m aware of. It seems to be a fairly streamlined proposal in the Bill that I’m not at all concerned about. I would be interested to see CSSIW’s concerns. I’ll go and read them after this session. Thank you.

[140] **Ms Minty:** It offers a certain amount of flexibility, which would actually benefit providers. If we have a concern, it’s probably around how the settings are inspected. What we wouldn’t want is for individual managers to feel that they don’t have responsibility for the service in their home and that it rests with someone higher up in the organisation. So, there needs to be that balance still, where there’s very much still a local responsibility for service.

[141] **David Rees:** Okay, thank you. I now have questions from Lindsay, Darren and John.

[142] **Lindsay Whittle:** Sorry to jump around, but the Bill aims for an outcome-focused approach rather than the tick-box system, and it should have an emphasis on person-centred care and wellbeing. I understand there was a trial in Newport and Torfaen, which is the region that I represent in the Assembly. Could you expand further on that, please? What lessons could be learned from that tick-box system, which doesn’t sound particularly ideal to me?

[143] **Mr Angel:** No, a tick-box system generally doesn’t create the correct behaviours. Generally, you can learn, as a provider, or indeed as a regulator, to work the system, to tick the boxes, but not to achieve outcomes at the end of the process. So, outcome-based approaches are generally being considered as a very positive move in the social care world. We’re very happy to see that developing.

[144] **Ms Minty:** We very much support the move towards outcomes focus. I wouldn’t underestimate the difficulties and the challenge that presents to commissioners and providers

and even carers at a basic level. I think it's quite a culture change. We welcome the move in that direction and towards meeting individual wellbeing outcomes. A lot of its going to come down to the detail in how that's inspected and how it's commissioned and put into practice.

[145] **Mr Angel:** If I could add, I think one of the potential risks is if you try and take outcome-based approaches and create a payment-by-results system without understanding how a payment-by-results system will affect a local market. So, I think there's just one caution there. Outcomes is the right move, but if one gets too hasty over an outcomes-based approach and tries to relate that to money, you could have quite a destabilising effect on the local market. I'd urge caution in that aspect.

[146] **Lindsay Whittle:** I don't particularly want to concentrate on the market stability. This scores-on-the-doors idea, which we have in food outlets, I'm okay with for food outlets, but I do have some concerns about scores on the doors for various registrations of care homes. What are your thoughts on that?

[147] **Mr Angel:** When you say scores on the doors, do you mean a quality rating for providers?

[148] **Lindsay Whittle:** Yes.

[149] **Mr Angel:** We have very strong views from the care-providing community that a quality rating is very, very keenly sought and, indeed, that is the impression that we get from all four UK administrations. For providers themselves, it offers an opportunity to benchmark their performance against their competitors, to strive for achieving the excellent rating, and then to make sure that they keep hold of it. I think for the public, it also offers an easier way of trying to get a handle on what a service is like to receive care from—whether that's a care home or a homecare service. And, while you could have too much judgment in one overall rating, it's a good starting point for looking at: what does this service mean? I think if you don't have quality ratings, members of the public are left with inspection reports that, let's face it, are not always particularly eloquently or logically written, which then leads to: 'Yes, but what does this mean if I'm the person using the service?'

[150] **Ms Minty:** Yes, I mean, Care Forum Wales certainly supports the idea of a scoring system. We suggested the food hygiene rating because it is very simple and it is understood by everybody. Providers have been working with it. Relatives have been visiting homes with the mark. So, it is easy to understand. We've been doing quite a lot of work with CSSIW in the quality judgment framework. It's not an easy piece of work; it's very complicated. Again, it's something that is going to fall out, really, of the Bill and out of the regulations that come with it. So, my plea would really be that we continue the level of co-operation and scrutiny that we have now as we go forward, because a lot of that detail will still be coming in. But we do see a great value in it to encourage continuous improvement.

[151] **Lindsay Whittle:** It's not the right word, but the 'devil'—I don't like that word, but it's the only one I can think of—is in the detail, then?

[152] **Ms Minty:** Yes.

[153] **David Rees:** I have two Members who want to actually follow up on this: Alun and then Darren.

[154] **Alun Davies:** Thank you. I'm very pleased to hear you say what you've just said in reply to Lindsay. Could I press you a little further on that? Whether you're looking at a star rating, as we have for hotels, or food hygiene ratings on a numerical basis, it is very much a snapshot here and there, and it's a very blunt tool, though one that, I think we would all agree,

is very useful. Would you go any further than that? If I'm looking at booking something, I look at TripAdvisor, which will give comments that obviously go through a verification process, which will enrich that very blunt analysis tool. It will be able to say things about the quantitative nature of the care received rather than whether it achieves a particular threshold on a particular day.

[155] **Mr Angel:** I think there is certainly merit in the concept of service user views. My understanding of where that has been tried—for example, on the NHS Choices website for regulated services in England—is that the volume of comments coming from people who use services is both fairly polarised and not very forthcoming. So, you get: 'This is an awful service', or, 'This is a fantastic service'. You don't get them in particularly large volumes. A considerable amount of thinking has gone into whether the net promoter score might be used for gauging the experience of care services. Net promoter, I think, is probably as good as any other, and may have its own merits. I think you could put a lot of energy into individual comments and not get them back in volume. What I would, however, like to see is regulators using much more evidence from the experience of people who use services, and whether their outcomes have been achieved, than trying to garner comments just through, say, an online forum like a TripAdvisor-style model.

[156] **Ms Minty:** I would agree with that. For me, the issue is that the scores-on-the-door-type approach, or whatever we use, is part of a wider raft of changes that we need to bring in to inspection generally. That includes making more of the voice of relatives and people using services. It also means giving providers more of a right to reply, because at the moment, inspection reports are very much dealt with internally within the CSSIW, and comments and objections are not necessarily recorded or put out to the public. So, there is an important—. We do have to remember the commercial impact that these reports will have on homes. It also relies on, I think, the fact that we need commissioning for the outputs that providers are being commissioned against. So, again, we would like to see commissioning inspected as well. So, it's really part of a holistic approach, I think, that needs to be taken.

[157] **Alun Davies:** I thank you for that, but, generally the approach you'd like to take is, you know, 'Sunshine is a great detergent' as has been said on a number of occasions, that we need to put more information into the public domain. I accept what you say about polarised views and somebody can use social media to destroy somebody's reputation. That's certainly the case and I think we do need safeguards to prevent that happening, I accept that. But, you know, if we're looking at improving the outcomes for people and empowering people to make informed choices, then we do need to have those sorts of views. You know, it might be a five star on the door but when you get through that door, the service isn't five star, and we need to understand where that actually occurs and enable the public to understand that as well.

[158] **Mr Angel:** Absolutely. That's why I particularly referred to the voice of people who use services coming through the inspection process, which is where a rating system will be operated, so that it isn't the tick box 'everything looked nice in the environment', but the rating determined by the experience of the people who use the service.

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

[160] **Darren Millar:** Just on this rating issue, obviously with the scores on the doors for the food hygiene services, it's very much empowered by consumer choice: people being able to go elsewhere if that takeaway has a zero rating and the one next door has a five rating; they can make a judgment call in terms of which one they will go to. Of course, in many places there isn't a realistic choice in terms of care home provision in particular, simply because there are insufficient numbers of spaces in many localities in Wales and there may be pressure to get somebody out of hospital or to arrange a care package. There may only be one or two providers, so there's limited choice. Do you think that there is a possibility that quality ratings

in those settings may have unintended consequences elsewhere within the health and social care system, particularly, perhaps, for our hospitals, if there are low ratings? Do you think that one way, perhaps, to be able to overcome that is something that was very positively welcomed in the food hygiene rating system that we have, whereby if an inspection delivers a poorer rating than the establishment was hoping it would achieve, they are then able to apply for a re-inspection—they pay for that re-inspection, of course—and they have to demonstrate that they have delivered against the shortcomings in order to secure a higher rating? There's no provision at all for re-inspection on request, even if it's paid for by care providers, in the Bill as it currently stands. Do you think that that would be something that would be helpful?

[161] **Mr Angel:** I definitely think re-inspection—even for a fee—is certainly something that providers who receive a lower rating than they expected would welcome, and I would support that. I think, however, there would need to be sufficient balances within the system to avoid inappropriate repeat requests. So, I think you have to primarily have a ratings system that is robust, in the first place, and then prevent multiple applications for reassessment. I think where we've seen ratings systems used in the past elsewhere in the UK, part of the problem has been that the regulator has taken a very autocratic approach, so that it makes judgments that can't be questioned—only matters of factual accuracy can be questioned—and it's very unlikely for a rating to change through discussion or providing additional evidence. So, I'd be as keen to see a robust ratings system to start with, rather than just adding a sort of appeals process at the end.

[162] **Darren Millar:** And potential unintended consequences where, you know, frankly, there isn't a choice for an individual who might be in hospital but needs to go into a residential care setting?

[163] **Ms Minty:** Yes, there is, perhaps, a potential unintended consequence. Whether that'll aggravate the situation more than it already is with the lack of choice, I don't know. One thing I would say, going back to your previous point about the ratings, is that what we see with food hygiene is that they will give someone support to improve their service. At the moment, with CSSIW, it's very much a regulatory focus, which is, 'You're not achieving this. Go and sort it out yourselves.' So, what we would like to see is much more support, so that people can improve. There's no doubt in my mind that very few people set out to provide poor service, but if they need the help and they get the right sort of help, they can improve and those scores could then go up. I think the reinspection then comes in and most providers probably—

10:30

[164] **Darren Millar:** But, fundamentally, some provision for reinspection would be welcomed.

[165] **Ms Minty:** Yes.

[166] **Mr Angel:** And if I could just add, a ratings system does not in itself create a lack of choice. That's about the local market. A low rating in an area where there is little choice probably is an indicator to the commissioners of those services—from health, from social care, local government—to start asking some questions and thinking about solutions that are going to raise those ratings.

[167] **David Rees:** Do you want to go back to your original question?

[168] **Darren Millar:** Well, yes, I've got questions on the market, if that's okay. Obviously, there are requirements on the face of the Bill for local market assessments to be undertaken and, indeed, for the Minister to take a view on the market on a national basis.

They are quite rigorous in terms of the requirements, including looking into the details of finances of individual providers. What do you make of those requirements?

[169] **Mr Angel:** I have spent quite a considerable amount of time dealing with this issue with the Department of Health and the Care Quality Commission, and I think what the Bill has produced is a sensible way of trying to achieve that objective. I have had a considerable voice from providers that they're not sure that, actually, that level of forensic examination is necessarily going to predict provider failures sufficiently quickly. If you compare that to a do-nothing position, then what's in the Bill sounds very sensible.

[170] I would just note that the provision for alerting local authorities to step in to provide services to people who are at risk of provider failure in the Bill occurs at the point of failure. That's probably the most popular for providers, because it has less risk of unintended consequence of the regulator saying, 'We're worried about ABC care' and all the local authorities that purchase from that provider suddenly stopping making placements et cetera, and the provider failing anyway through cash flow problems. I think that is a particular issue that needs to be very well thought through. What's in the Bill is very clear to me about when the regulator will step in. I felt I couldn't really come to this committee without just pointing out: be very clear that that is the point that you want that to happen.

[171] **Darren Millar:** Can I just clarify this, then? So, at the moment, on the face of the Bill, it makes it clear that, if Welsh Ministers, after having a look at the financial assessments, feel that there's a possibility that a service is at risk, then that is the point at which there can be some sort of intervention. We heard that the majority of providers in Wales are individual establishments or individual organisations. They're not part of the larger chains that have a significant presence in other parts of the UK. There are some homes, obviously, that are part of those chains, but, in the main, they're not. Do you think that it will be straightforward for people to assess the financial viability of a provider, given the skills that are currently available to the inspectorate? Also, do you think that the sometimes complex arrangements of some of the larger providers, the more significant providers, are going to be easy to unpick for people who have limited forensic accounting skills at present? Do you think that they can be developed sufficiently well in order to deliver against the quite right policy objectives of the Bill, in terms of wanting to protect service users?

[172] **Ms Minty:** I think there is an issue there—well, three issues, really. One is the fact that we want a system that is straightforward and doesn't add too much to the existing level of paperwork that care homes have to wade through when they want to be getting on with the business of looking after people. The second is that, yes, for larger businesses, it is more difficult to work out the individual costs of care homes, and there are different levels of efficiencies and so on. The third is, yes, I don't think that, as it stands, there is sufficient expertise within, for instance, CSSIW, or even local authorities, possibly, to make judgments about sustainability. I think there needs to be an element of professionalism brought in that isn't there at the moment.

[173] **Mr Angel:** I think one shouldn't be surprised that they haven't got that degree of expertise. It's not a function they're currently undertaking. A couple of observations. For the smaller, independent, i.e. probably only trading in Wales, maybe from one, two or three locations, there needs to be an understanding that the financial viability of a care home and the financial viability of a domiciliary care agency look very different. So, you can't apply your thinking about a care home, and go, 'Well, this domiciliary care agency is going to be shut any minute' because they operate on different margins, et cetera. For the corporate, larger providers, which are likely to be supplying not just in Wales but other UK administrations, the ability for the regulators between administrations to share information securely, I think, is going to be quite important. Those information-sharing protocols, I believe, have been created between Wales and England, or are at least being thought through,

but if a larger provider in Wales fails, it will be failing elsewhere in the UK as well.

[174] **Darren Millar:** But isn't there a risk that one administration will deem it a risky organisation, the other won't, but, of course, if it becomes public knowledge that one person has deemed it to be an unstable organisation, then that could cause its instability and collapse?

[175] **Mr Angel:** One of the potential risks of a market oversight regime is that that information becomes public knowledge unduly quickly, when there isn't necessarily substance to it, and you get the unintended consequence of precipitating a market failure that, actually, the regime was designed not to cause, but rather to protect and allow additional provision. So, there are risks to this system.

[176] **Darren Millar:** My understanding, particularly of the care home market, is that a single bed underoccupancy or a single room underoccupancy can be the difference between profitability and non-profitability and, therefore, whether the business is at risk or not, particularly in smaller homes.

[177] **Ms Minty:** It can be for small homes. I have a member, for instance, at the moment who's only got three beds, and she's just lost one because the local authority wouldn't pay at her normal rate once the gentleman became funded, so she's just lost 33 per cent of her provision overnight. So, yes, it is crucial.

[178] **David Rees:** Alun, you want to come in on this.

[179] **Alun Davies:** In terms of the overall picture of market oversight, we heard from witnesses last week that some of the businesses involved in this sector have quite complex structures in order to manage their financial affairs. Are you confident that providers are happy to provide the level of financial information that would be necessary to deliver a robust market analysis?

[180] **Mr Angel:** Well, that will depend, of course, on what information is asked. In general terms, certainly in the work that I've undertaken—and I'm sorry to keep referring to England—providers around the table who were going to be in the regime looked at a very sensible list of financial metrics and said, 'Yes, we can provide all those' and the public limited companies—and, indeed, anyone who produces audited accounts—are producing those metrics. I think, in the large corporate organisations, where you've got several companies, the key to that is having the correct arrangements with the company that they guarantee that other organisations within the group will provide that information to Welsh Ministers. That's possible to do.

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

[182] **John Griffiths:** In terms of accountability and confidence amongst service users and their families, I think two important aspects of the debate around that are, one, about having a designated individual, as the legislation proposes, at a senior level so that it's clear where accountability rests in those terms—and I wonder whether you agree that what the Bill proposes is appropriate and necessary—and the other aspect is about whistleblowing, I think. I think there's a strong sense that staff need to feel that, if they do have concerns, those concerns can be expressed and brought to notice without ramifications for themselves, as employees of the organisation. So, I wonder whether you think that having a whistleblowing element would be appropriate and important.

[183] **Ms Minty:** Well, in terms of the individual responsibility, yes, I think there does need to be a line of sight for CSSIW on where responsibilities lie. The concern that we would have, as I mentioned before, is that we don't want that to be diluted across the different settings, so

if you have a responsible individual with several homes, we want to make sure that the managers still feel accountable for what goes on there.

[184] In terms of whistleblowing, yes, there should be something about whistleblowing. I would like to think that that's ingrained already within the care sector, and that all settings should have a policy in place, but I don't think there'd be any objection, certainly, to making that more explicit within the Bill.

[185] **Mr Angel:** The designated individual concept doesn't cause me any particular alarm, from a provider point of view. I think we've seen this in operation in other UK administrations. It's a convenient thing in terms of the state knowing who it's going to go after, but that system actually can't just be about blaming one individual. It's an organisational issue for which a designated individual is the figurehead, and they must have a sufficient degree of accountability to be the person who could change the organisation where there were problems. On whistleblowing, protecting people who use social care services is the fundamental concept for what we do, making sure they don't come to harm, and so enabling staff within an organisation to raise concerns in a safe environment is fundamental. We also know from a number of examples in the UK that organisations including the NHS do not embed those concepts well, and certainly staff do not always feel sufficiently protected and encouraged. So, this is an area that I think the whole UK needs to work on, and it's certainly one that I think Welsh Government is right to be thinking about, and how it interfaces with providers to bring those concepts into practice.

[186] **John Griffiths:** So, just further on that, Chair, only very quickly, one suggestion has been that procurement policy should have a requirement for an open and transparent whistleblowing policy and system to be in place. Do you think that would be an appropriate way of trying to ensure that the necessary safeguards are in place?

[187] **Mr Angel:** Well, you can put a requirement for a policy into a tender, and somebody can look and say, 'Yes, that was included in the tender application', but actually, what you need to see is that the policy can be demonstrated in practice. So, it's not necessarily a harmful thing to do at all, but actually that's not 'job done'; it's about what organisations do, not necessarily whether a piece of paper was submitted in a tender.

[188] **David Rees:** Obviously, you're providers, and we don't often get a chance to look at the financial implications, sometimes, of Bills, but this one will have an impact upon yourselves, on your organisations, because the regulatory impact assessment indicates that there's an additional burden that will be placed upon providers as a consequence of this Bill. I suppose I want to have your views as to the impact that might have upon providers, and perhaps also the impact of the fact that the Bill also introduces fees for regulatory actions. What's your view on that aspect of the Bill as well?

10:45

[189] **Mr Angel:** I think providers in Wales have been very fortunate up until now not to have faced registration fees. I thought the original thought behind that, which was that this was basically state money just churning around, was a very sensible approach to take. However, I guess that Wales is unusual in the UK for that. I think that, more than anything else—and this goes for both registration fees for providers and those set by Social Care Wales—those need to be introduced in a phased way and with sufficient notice for organisations to plan for those registration fees in advance. Certainly, what can happen because of Government processes is that you don't know what the fee is going to be until a few days before the new financial year and you've had to guess what fee you were going to be charged. Indeed, if the intention is to bring regulation to full cost recovery, that is something that needs to be done in a phased way so as not to destabilise particularly small and

medium-sized enterprises in Wales.

[190] **David Rees:** And in relation to the impact on the—. This is a service-led model now that we're talking about and the burdens would be mainly in transition to that model—the additional costs. How do you feel about that impact and how the sector will actually provide and deal with that?

[191] **Ms Minty:** I think there are risks to the sector in creating these costs because we know that, at present, they're probably being underfunded as it is, which is one reason why we're very keen that commissioning was also held to account and that it doesn't rest fully on the providers and that, if they are being commissioned to produce a certain level of service, that is recognised by everybody. So, yes, I think there are concerns. We would have concerns about the level of fees if they were to be introduced. Care Forum Wales, as I understand it, before my time, was quite heavily involved in persuading Welsh Government not to introduce registration fees previously because of the potential impact on the sector and the fact of moving money around in Wales because it is so heavily funded—social care. If it has to be introduced, I think we'd agree with Colin that it needs to be done in a very consultative, phased sort of way. I think we would have to be clear as well that it would be introduced in order to pay for itself rather than, as Welsh Government is suggesting, in order to increase providers' control over CSSIW because that's not going to happen. It's a monopoly situation, so that in itself is not the answer.

[192] **Mr Angel:** There's a realistic question. The majority of social care is purchased by the state rather than private individuals, but the introduction of fees is going to either come from increased fees from providers back to commissioners or the financial impact on providers' bottom line. Now, regardless of whether you think private business in social care is a good thing or a bad thing, those businesses are just that: businesses, and they need to be financially viable. So, there is a risk that fees will potentially put some small and medium-sized enterprises out of business. That's a consideration for Wales with the high number of smaller organisations in Wales delivering fantastic services.

[193] **David Rees:** Okay. Thank you. Do Members have any other questions? Just one final question from me. We talked about commissioning, and you've just actually highlighted commissioning issues there. Do you believe that the Bill, as the Minister indicates, is giving the commissioning process better grip, to use his words—basically greater strength—in being able to provide for individuals?

[194] **Mr Angel:** I think the Bill has plenty of things in it that Ministers can use to scrutinise commissioning. I don't think it's any secret that UKHCA, as a UK-wide organisation, has raised this issue repeatedly. We recently issued a report, 'The Homecare Deficit', where we used the Freedom of Information Act 2000 to look at the rates being paid for domiciliary care, by local authorities, for older people. The picture is quite distressing really. We've worked out what the price per hour of care should be. Very few councils in Wales, or indeed anywhere else in the UK, pay that price. That's an area that I think Government needs to think about very carefully. We've got a lot of talk at the moment about the use of zero-hours contracts and the national minimum wage. Don't be surprised that zero-hours contracts are used in a section where care is being purchased at about £2 per hour less in home care than we believe it should afford. Ministers should use the powers that they have given themselves in the Bill to look at local authorities. We'd like to see that being used routinely, rather than just investigating authorities where there are individual concerns.

[195] **Ms Minty:** Similarly, we would like to see it perhaps more explicit and more detail of how that will actually be achieved. For us, it's very much about commissioners being equally accountable with providers for services that are delivered, and that they should be inspected as well by CSSIW.

[196] **David Rees:** Thank you for your evidence this morning and for your attendance. You will receive a copy of the transcript; any factual inaccuracies you may identify, please let us know as soon as possible. Once again, thank you both for your initial help with our Stage 1 report.

[197] **Mr Angel:** Thank you very much.

[198] **Ms Minty:** Thank you very much.

[199] **David Rees:** I propose to the committee that we have a break until 11:05.

*Gohiriwyd y cyfarfod rhwng 10:51 ac 11:07.
The meeting adjourned between 10:51 and 11:07.*

**Y Bil Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru):
Sesiwn Dystiolaeth 8
Regulation and Inspection of Social Care (Wales) Bill: Evidence Session 8**

[200] **David Rees:** Can I welcome members of the public back to this morning's evidence session? We move into our next evidence session on the Regulation and Inspection of Social Care (Wales) Bill. Can I welcome Mike Payne, regional secretary of the GMB, Kelly Andrews of the GMB, and Ruth Crowder, who is representing Unison and the College of Occupational Therapists this morning? A warm welcome to all of you. I thank you all for your written evidence, but obviously we have some questions that we would like to follow up with. We will start with Gwyn Price.

[201] **Gwyn R. Price:** Good morning. If I could just ask the GMB for your views on the alternative modelling of licences for the workforce. Do you support Unison in the way that they say that they want to register all social workers?

[202] **Ms Andrews:** Yes. The GMB's preferred option would be to have everybody regulated. But what we see as, I suppose, a second-best option would be that—and we were discussing this just now—if we can't have everybody regulated. The GMB supports Unison in the fact that we believe that every member of the public would believe that social care workers are regulated and would probably question why they are not. So, for us it was, I suppose, an alternative—that if everybody was not regulated in social care, an alternative was found.

[203] **Gwyn R. Price:** So, your first preference would be to support Unison—

[204] **Ms Andrews:** Yes, it would.

[205] **Gwyn R. Price:** —and the second one would be that you've seen alternatives and you might go down that road if—. Ruth, I know that you've got your other hat on now, because you came in earlier, but did you want to expand on the registration of all social workers?

[206] **Ms Crowder:** Yes. I think what Kelly says is absolutely right. I think the public tends to assume that we have a regulation system. We do need to think very carefully about the responsibility of managers and staff who delegate and, hopefully, the Bill will capture that through the 'responsible individual' and the 'registered manager'. It is a large process—we recognise that—but it would probably be the safest and most coherent to register absolutely everybody. We do need to think about the costs of that obviously and if you have staff who

are on zero-hours contracts and low pay, then you do have to think about who pays for that registration process.

[207] **Gwyn R. Price:** And, obviously, you support that, Mike.

[208] **Mr Payne:** I just support our colleagues, Gwyn. I think the members of the public looking for open and transparent registration already believe that social care workers are registered, and it's our preferred option that they should be.

[209] **Gwyn R. Price:** Thank you, Chair.

[210] **David Rees:** Okay. Darren, on this point.

[211] **Darren Millar:** The care council gave evidence last week, and they suggested that a slightly lighter regime, I suppose, should be adopted, with a licensing approach and a small fee for registration. What's your assessment of their plan? Do you think that's the sort of arrangement that might work well for some social care workers?

[212] **Ms Andrews:** I have to say as well, wearing a second hat, I also sit on the Care Council for Wales as a trading member, hence the reason why I'm aware of this licensing. And, yes, from our point of view, again, it's something that we could look at for, as Ruth has stated, people on zero-hour contracts, people who are in and out of the social care community. The social care workforce is growing, and how do we keep a handle on the people who are coming in and out, because it is quite easy now that you can come into social care, and, basically, dip in and out, and who keeps control of that workforce? So, yes, perhaps licensing would help with that in terms of the future.

[213] **Darren Millar:** And, in terms of their assessment of the costs of that regime, they were suggesting—I think it was between £25 and £30 per person. Do you think that that's about the right price?

[214] **Ms Andrews:** I think any more than that would cause people not to want to register or be licensed, or go into that area of work. Given the fact that most care workers are on minimum wage, and most care providers struggle to pay any more than that, yes, I think anything more than that would be too costly.

[215] **Ms Crowder:** There is, of course, the potential for making that tax-deductible, as other professional fees are. But that is quite complicated if you're only doing a few hours and on a very low level of salary.

[216] I think the other issue we would want to raise is that we are seeing many more services integrating across the entire sector, and quite a lot of staff—. Well, we have members who are employed in health and social care; they get two pay packets. So, we need to think very carefully about what our process is for looking at staff across the sector, rather than just separating out social care staff and trying to define them as being something very different.

[217] **Darren Millar:** Thank you.

[218] **David Rees:** Lindsay.

[219] **Lindsay Whittle:** Thank you, Chair. I notice that the Bill makes no reference to inspection, joint working or integration of services. I think, at the moment, that local authorities, CSSIW, and Healthcare Inspectorate Wales can inspect—you'll have death by inspection in the social care workforce soon. Do you think this Bill is an opportunity to integrate these services a lot more, and what pressure can we put on the Minister?

[220] **Ms Crowder:** Yes, I think there is an opportunity here. When you look at Part 9, it identifies the regulatory bodies as being the Welsh Ministers and Social Care Wales. We think it would help if that also identified in some explicit way in the Bill that there are other regulators, but also, thinking about how you make sensible—. You can either require everything to be integrated and merged in a very structural way, or you can put the power on to allow people to do it, and that allows you some flexibility further down the line for being sensible. Because I would agree that there are some issues to think about in terms of, when one is inspecting a very acute hospital, are there some issues that you would want to keep separate, but that is something that you can think about. A lot of our services are much more fluid. If you look at continuing care, and if you look at some of our care homes, where they've got people who are nursing-funded, social care-funded or privately-funded—all of those things—we need to make sure that our structures don't actually start segregating people out.

11:15

[221] I think one of the elements that really struck me was that, when you look at the strategic improvement group reports, there are three very clear separate functions identified for Social Care Wales. And each of those have a parallel resource within the healthcare sector that you could integrate, so it's looking at how you integrate in terms of regulation, so in terms of your workforce within Wales, your service regulation and your inspections, but then you've also got that improvement function as well, so improvement within social care. You've also got a parallel body within the NHS doing improvement, and yet, as our services become more integrated, it will make sense to have that function considered. Then, of course, you come to the workforce development and the workforce planning—the career development, the post-registration education and all those qualification issues, which, if we're going to allow flexible movement of staff around the sector, we need to have a system that understands the whole sector rather than separate elements of it. So, we think there is great potential within the Bill for doing that. I think if section 74 actually identified all the regulatory bodies, that would allow the sections that follow it to function in a more integrated way. So, you have the option to say, 'Yes, there's a duty, you must do it' or, if we are going to have a conversation around the Green Paper, there is potential for just putting a power in that would allow it to happen, with a decision at a future date after a more in-depth conversation.

[222] **Ms Andrews:** I have nothing further to add to that.

[223] **David Rees:** Lindsay?

[224] **Lindsay Whittle:** Okay. Thank you very much.

[225] **David Rees:** Okay. Can I ask, then? You were just talking about the regulatory side, and clearly, the Bill changes the Care Council for Wales into Social Care Wales, which will have a dual role, as you've just identified, both of a regulator and also of developing and improving. How do you believe the Bill manages to ensure that the separation of those roles is clear and that the service would benefit by having that clear delineation between the two roles of the one body?

[226] **Ms Crowder:** I think it's really important that you do separate out those functions, and, obviously, that strategic improvement group identifies that as a governance process. I know the Minister has talked about the need to look at improvement, support and development, and that's really, really important. If we're going to have a good culture for staff, it has to be about learning from mistakes and making sure that we improve. So, we do want to support and see an improvement culture, but, if you have a regulatory function, there

has to be a point at which you say, ‘This is not good enough’ and it’s very hard to do that if you are both the prosecution and the defence. So, we think there needs to be a very strong separation between when you’re being a regulator and when you’re being an improvement, development and research, education and all of those other elements in the function.

[227] I think—. I’m really sorry, my brain’s just gone completely. One of the things that really strikes us is that the language isn’t separated. So, we have a lovely definition of the meaning of ‘social care worker’ which is all-inclusive, and that would really cover the functions of improvement and development, and including all staff in the processes that you want, but you need then to be very clear when we’re talking about the functions of the regulator. So, ‘social care worker’ is what’s used under the codes. So, how does Social Care Wales as a regulator apply codes to staff who are not regulated? What are your sanctions? How are you going to actually be very clear whether those are the right codes? The language of the Bill doesn’t identify, for example, nurses, occupational therapists and other healthcare professionals who are registered with the Health and Care Professionals Council, and who will have a code of conduct that they need to be adhering to, but the Bill requires that local authorities must use Social Care Wales’s codes of conduct in a discipline issue. So, we just need it to be explicit about when it’s relating to staff who are under the jurisdiction of them as a regulator, and when we are talking about staff who are regulated elsewhere, so that we don’t get any double jeopardy, and when we are talking about staff who are not regulated in any other process.

[228] **David Rees:** Kelly, do you want to add to that?

[229] **Ms Andrews:** I will say that, again, I agree that that can—the fact about having staff who are not regulated can—cause confusion within the workforce about who is covered by what regulation, especially when it comes to disciplinaries, et cetera. And that is something that we have seen throughout. So, to move from that would be beneficial, but, if we stay, that will continue to cause difficulties for the workforce.

[230] **David Rees:** Okay. Thank you.

[231] **Mr Payne:** Chair, could I also say that there is a need for a clear definition between the different roles that the new body will have, both regulation and improvement? And there has to be a clear recognition of the different roles that staff have in the industry. There are examples that Welsh Government have looked at recently with the education workforce council, for example, where registration is now being expected for school support staff. I only use this as an example because there are different groups of staff within education that have to be treated slightly differently because of the different roles that they have and play within that industry, and our opinion is that the regulation and the improvement need to be looked at potentially in that way.

[232] **David Rees:** Okay, thank you. I’ve got questions from John and then Elin.

[233] **John Griffiths:** One important way in which malpractice in service provision has come to light, to the attention of the regulator and, indeed, the public, has been through whistleblowing, and I know that you feel that it’s important that there is clarity—clarity for staff in terms of how they bring matters to the attention of those that need to know what’s going on—and, also, it’s a matter of confidence for service users and families to know that there is clarity and a clear system and process in place. I know that one way that’s been suggested to achieve the appropriate whistleblowing system is through procurement policy and Welsh Government having a requirement of a clear whistleblowing policy in order for contracts to be given, as it were. We’ve heard from previous witnesses, though, that that might be useful, but wouldn’t be sufficient in terms of making sure that whistleblowing does take place where appropriate. Could you tell us whether you think that they were right in

believing that, although procurement might be useful, it wouldn't be sufficient?

[234] **Ms Crowder:** I think it's a really useful starting point. If the quality of commissioning is such that we are not requiring contractors or external providers to be really thinking about whether this is a justifiable claim, when somebody is saying that they can deliver the quality of service that you want for the cost that's been selected, it's a really good starting point to be very explicit that we want to see these policies, that we want to see living wage—whatever it is that you're expecting, that should be very clear in there. And one of the things that we are saying is that you need to be commissioning for outcomes, and it is clear that, if you are looking at the outcome for the person, then that has to require an expectation that the quality of services delivered is one that is dignified, is respectful and is co-productive and enabling for the individual. I think, broader than that, though, it has to be about the culture of improvement and a learning culture within the organisations, and those are all things that are really hard to deliver if you have staff who only ever come in to do the job and are very busy for the time that they're there—they have no training, they have no support, supervision, good management processes, they don't even get to staff meetings, because you're doing those in the time they're not being paid for. All of those are management and organisational processes that will militate against you having a really good, open, quality relationship within the team that allows you to say, 'I'm not quite sure that was really good practice', and, 'I could have done differently; I was a bit worried about what I saw'. That confidence to just say things informally is absolutely critical as a starting point for alerting people. The ability to say to someone, 'Hang on, let's not talk about her like that', is really key, but if all you've got are people rushing around doing things to people without having the time to stop, think, look at the values of the service that they are delivering, think about the person they're working with as an individual—. Those things get lost really quickly in everybody's daily pressure, so I think it has to be twofold.

[235] **Ms Andrews:** My view in this with regard to procurement is, yes, I do actually agree that there should be some form of policy that is across the board regarding whistleblowing. One of the problems I've found with concerns of whistleblowing from the workforce in issues of malpractice is that the confidence that they have to whistleblow, and then, if they choose to whistleblow—which is a very difficult decision to make, because, quite often, they're going against their colleagues that they've worked with for many years—whistleblowing on issues of abuse and neglect, they have to be able to feel that, when they whistleblow, action will be taken, and not only that action will be taken, but they will be protected from any actions taken against them later on, and that, when they whistleblow, they do it in good faith, but there is a policy there that explains the whole process. And I believe that can be wheeled out to all service providers, which makes it clear to all service providers and to all social care workers that there is a clear way to report issues, report instances of malpractice and abuse and neglect, so that the service user knows that they can feel safe, whether they are in their own home, or in a care home or a hospital. They know that, whether it is family, friends or working colleagues, they can report any issues and have faith in the system, going forward, that action is taken without having action against them themselves.

[236] **Mr Payne:** Can I also add, Chair, that procurement is a good start? Pre-contract questionnaires for companies that are looking to undertake the services are also something that can be used in a far more robust way than they are currently being used. If you have a policy that companies are going to be expected to sign up to on whistleblowing, then that could be put into the pre-contract system. Sadly, we've got many examples where individuals have been treated detrimentally when raising concerns under whistleblowing. And, if there is a clear definition—or a clear direction—within the legislation that encourages staff to raise bad practice or concerns, with protection from being treated detrimentally, I think that social care staff across Wales will feel far more protected and more able to raise their concerns in the future.

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

[238] **Janet Finch-Saunders:** Yes, I've been involved with more than one issue with regard to this, where somebody working within the—a qualified care worker and, in one instance, a manager, and although they didn't—. When it went to discipline and everything—. Because they actually raised concerns to do with the ownership of where they were working—. Then, when they moved on to another home, they were okay working there for two or three weeks, till references were sought. And then, the references—. It was almost as though, because they'd whistleblown previously—. And these people are now not working because they physically cannot get another job, because it's their past that's catching up with them, when they just did what they felt was right by whistleblowing. I mentioned earlier about care in isolation in people's homes. Will this Bill address any of those concerns, because these are real live issues? Is it wide enough—the remit within this Bill—to deal with the whistleblowing and also to deal with the earlier concerns I raised?

[239] **Ms Crowder:** We understand why it isn't proposing that everybody is registered. Unison very strongly thinks that that is the route that should be taken. I think, as I said before, though, what we do have are routes around the quality of commissioning and the management. So, you have a responsible individual. The way in which the regulations identify what the responsible individual should do and what the registered manager should be responsible and held to account for can incorporate all those things that are around making sure that there is supervision, that there is good training, that there is support, and that there is oversight of what is actually happening. If you have a good team and you are very clear—. Sorry, this is the danger of coming in twice, isn't it? As an occupational therapist, I am accountable if I delegate down. So, I need to be making sure that the quality of what that person does is what I am expecting to happen. That needs to be built into the regulations. So, if you're a registered practitioner, you're a registered manager, you're a responsible individual, whatever the process is, that has to be part of the system. Then you become part of a culture of working in a team. So, even though the person may be working in isolation and is not registered, there is still an expectation from the organisation and from the people that they are working with that a certain quality will be adhered to. That can be built into the regulations, I think, given the way the Bill is drafted.

[240] **David Rees:** On the question of legislation, your previous answer indicated that you didn't think that the Bill was strong enough on this aspect.

[241] **Mr Payne:** We believe that this is a missed opportunity. We believe that all staff should be registered and licensed in the same way to make it transparent, especially when you consider that people are living longer, so there are more and more people needing care in their own home. This is an expanding part of the workforce, and they are outside of the licensing arrangements that we are expecting for other staff. So, we believe that it is a missed opportunity.

[242] **Ms Andrews:** To answer your question, I don't believe that it's going to make much of a difference to stop—. Actually, when people whistleblow, you will never stop the phone call to the new employer, advising that, 'Well, this person has caused trouble'. How do you regulate against that? I don't think you can.

11:30

[243] **Mr Payne:** It's very much along the same lines that we've uncovered in the past with the blacklisting of trade unionists, where they've made similar concerns available on that register. It's very difficult. If somebody can come up with a way of stopping that, we have very open ears.

[244] **Janet Finch-Saunders:** Oh, great, because I'm working on a case at the moment that's really difficult. Okay.

[245] My final point is that I chaired a session for the Policy Forum for Wales on end-of-life palliative care. We had care workers in the audience asking for registration and regulation because they felt at times that they were quite vulnerable going into somebody's home who may be disabled but they may be presenting with a diagnosis of cancer and other complications, such as arthritis and several medical conditions at any one time. Sometimes, they were saying that they feel unprepared because every individual is different and every complaint presents differently. I was actually quite astounded. We are talking now about end-of-life palliative care and the quality, when somebody's at their end of life and needing all that support. We had care workers and agencies in the audience saying, 'We want the Minister to regulate the industry more; we want more registration; we want more support and training'. Again, I was just hoping that this Bill would be that vehicle, given Sarah Rochira's reports as well. Everybody's telling us, and I'm just wondering, as we're sitting here scrutinising it: is it strong enough? Is it going to address those kinds of really serious, fundamental issues?

[246] **Ms Andrews:** In my view, unless the whole workforce is regulated, then obviously not. The care workers that I speak to—

[247] **Janet Finch-Saunders:** It's protection for them.

[248] **Ms Andrews:** Yes, it's very much protection, but it's also about the professionalism of the workforce. Gone are the days when anybody could go into a care home, and because they looked after an elderly aunt they could get a care job. Those days are long gone, thankfully. You now have to be qualified. You now have to take training in your own time, in most cases. Staff are working long hours and they're expected to do the qualifications in their own time, at their own cost.

[249] **Janet Finch-Saunders:** It's very unrewarding financially.

[250] **Ms Andrews:** They want to be professionalised. They want to stand up. There's a recent study in one of the care homes that I'm responsible for regarding CCTV within the homes. It was the care staff who said, 'Absolutely. Bring CCTV to the homes. We've got nothing to hide. We are good care workers. We do our job hard. We have absolutely no problem'. I think that turned things on their heads.

[251] **Ms Crowder:** We have significant complexity. People who are going into care homes nowadays are so much more complex than the people who were going in 10 or 15 years ago. The people who are surviving at home in their own homes, independently, have huge needs, and their carers and care workers are having to deal with really complex needs. So, the separation between health, what is a health activity and what is a social care activity is difficult.

[252] **David Rees:** We'll move on now. We won't go back. Elin.

[253] **Elin Jones:** Yes. I want to ask about the workforce and the integration of the work. Increasingly, the workforce is involved both in social care and healthcare, yet this Bill is entrenching regulation and inspection again in just social care. I think you've all made comments in your representations to us that you want to see legislation that allows for the way that care is now delivered in a more integrated way to be reflected in the regulation and inspection. Do you have any ideas as to how this could be changed in the context of this Bill?

[254] **Ms Crowder:** I think one of the issues for us is making sure—regulation activity

aside for the group of staff who are regulated—that the new Social Care Wales is clearly working for the entire workforce, whether they’re regulated somewhere else or not, and making good links, if not fully integrated, with what’s happening in other parts of the sector. We have a situation, certainly with members of the British Association of Occupational Therapists, who have years and years and years of experience managing and running services as employees of the NHS, who find that, when they are transferred because of integration and changes in service or when they apply for a promotion, that experience and those qualifications are not recognised in the social care sector. So, we pay public money to support them to achieve qualifications in the health service and then they need to do something else. So, for example, there are people with diplomas in management studies or Master’s degrees in business administration who then have to do NVQ level 5. So, I think one of the things that we need to see is a really good integration of how people are able to move across the sector, and a recognition of what the competence should be to do the job, maybe rather than a named qualification. But that requires good linking with the workforce and education development service in the department of health and social services in Welsh Government with Social Care Wales. So, that level of integration, we think needs to be clear.

[255] Part 9 only talks about co-operation and joint working in relation to the regulatory work. I can’t see anywhere in the Bill that identifies the potential for or requires the integration of working in the improvement and service development. I may have misread it, but that section in Part 9 only talks about regulation and information sharing with the regulated workforce. For us, as occupational therapists, and for nurses and for any of the other professions, there is still a risk of a kind of dual-jeopardy, if you are a registered manager and a registered professional somewhere else. We need to make sure that we are not duplicating that as well, and that we’re very clear which codes apply and where the disciplinary process would sit. So, I think that those things could be made clearer.

[256] **David Rees:** Kelly, do you want to add anything to that?

[257] **Ms Andrews:** I suppose the only thing to add to that with regard to the integration between health and social care is that, generally, what we’re finding with this now is that, where we’re integrating health and social care, there is also disparity between the wages and terms and conditions, which is causing concerns for us—because, generally, social care will be a lot lower than health—along with how that is managed going forward because, otherwise, you’ve got a two-tier workforce providing the same service with very different terms and conditions. That is a major concern for the unions at the moment.

[258] **Ms Crowder:** There is also the process of postgraduate or post-registration education as well for professional registered groups. Obviously, we have the continuing professional education and learning, CPEL, framework for social workers. We have a very clear career framework and advance practice frameworks within the NHS. So, what happens to health professionals employed in social care? At the moment, we’ve got a gap there. So, we want to see that equity for all the staff—the career opportunities for the complete staff, so that everybody can make a really good career choice to work in health and social care and that we’re not sort of saying, ‘If you’re on that path, that’s it, that’s as far as you go, you can’t move around’. Otherwise, that’s going to limit the flexibility of services that we want to see developed.

[259] **David Rees:** Can I ask on that point, then, whether you believe that, under the Bill as it’s currently drafted, with regard to the Social Care Wales element, the focus on the improvement aspects is only based towards those who would be registered with Social Care Wales and not the whole sector?

[260] **Ms Crowder:** The requirement for joint working is only on the regulated sector. There’s no detail on the improvement and workforce development role. It’s all about the

processes within Social Care Wales for dealing with the regulated staff.

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

[262] **Darren Millar:** Just to pick up on this integration thing, it's not just NHS is it, though? You've got housing support staff, for example, who might be going into people's homes and providing some support. There doesn't seem to be any mention of the need for better integration there either, but you haven't commented on that in your papers in any way.

[263] **Mr Payne:** I think it flags up again that Welsh Government's direction is to have a public services ethos for the public sector across Wales. What this seems to do is to concentrate on one part of that. In our opinion, it should be potentially wider than that, taking into account, like you've just said, sheltered housing wardens, who actually undertake care as some part of their role. It is maybe something that would need to be looked at by the Minister.

[264] **Darren Millar:** Okay. Can I just ask you, very quickly, about some parts of the Bill that talk about undertaking financial assessments regarding the sustainability of a care provider? Do you think there's a potential risk to jobs, frankly, if it became public knowledge that some financial scrutiny was taking place, some due diligence work was taking place, of an organisation because there were concerns about its viability? Do you think that could lead to a downward spiral?

[265] **Ms Andrews:** No. I think what it potentially can do is actually highlight the fact that, where we have—. Unfortunately, we've all seen what's happened previously. I believe that what it does do is give the workforce, on the other side of the coin, the confidence to know that their employer is potentially in a good financial position. You know, quite often, my members are facing job losses because not enough scrutiny has been done—it might have been previously—to ensure that, actually, these companies are fit for purpose financially to enable the service users to live a comfortable life within the homes. You know, I was unfortunate enough to be looking after Southern Cross Healthcare through the demise and having to stand in a care home while a lady was being escorted to an ambulance to go to another home, after she'd lived in that home for 20 years and believed that's where she would stay, was heartbreaking. Now, if doing more due diligence on the care providers prevents that, then, absolutely, that should be done.

[266] Now, there will be job losses in the care sector. We're seeing them now. So, do we ignore the financial aspects of the company? No, we shouldn't. We should actually say, 'This company is financially viable. It can continue to provide care for the service. It will provide the service for the service users.'

[267] **Darren Millar:** No-one wants to see a repeat of the Southern Cross episode, I agree with you. But, do you think that the provisions in this Bill would have prevented a Southern Cross collapse?

[268] **Ms Andrews:** I don't think—

[269] **Darren Millar:** And in addition to that, do you not see the potential unintended consequence of people being concerned about the financial viability of a home and, therefore, perhaps, not making a placement, or choosing to use another care home, perhaps, or another domiciliary care provider?

[270] **Ms Andrews:** I think an unintended consequence may be that providers no longer provide that service, because they're not financially viable. I think they may decide to no longer look at providing that service within the community. So, they may no longer keep that home open and provide that service because they cannot stand up to scrutiny. But, you

know—

[271] **Darren Millar:** I mean, the problem is, we've been told that the larger chain care home providers, if you like—and there are very few of them in Wales—can sometimes have very complex accounting arrangements. Individual establishments could well be very healthy financially, as was the case with a number of them in Wales, and yet further up the tree somewhere there's a big black hole that causes the collapse of the organisation.

[272] **Ms Andrews:** The difference with Southern Cross as well was that Southern Cross provided the service, whereas another provide actually owned the properties that were there.

[273] **Darren Millar:** Which was the problem.

[274] **Ms Andrews:** Which was the problem. Yes, it was pretty much a hornet's nest.

[275] **Mr Payne:** Personally, I think one of the consequences of this, with more robust financial scrutiny, will mean that service users will have more confidence that, if they do take up a placement with that provider, it's likely to be long-term. You know, we've all seen examples that Kelly's just mentioned with people having to move because a home has had to close. The other potential consequence is that—. I don't see any difference between these types of service providers being scrutinised and any other contractor that would apply for work in different industries. So, I think that would give better confidence to both the staff and to the service users, and to the general public.

[276] The other thing it might stop is the collapse of services then having to be picked up by either Welsh Government or local authorities or the public sector, because those services have failed. So, I think that, again going back to the pre-contract questionnaire element of this, Chair, that might well be one of the unintended consequences. It might well lead to far more financial security within the sector and it might lead to some transparency in their accounting. Within the UK as a whole, there are too many of them that have got offshore accounts that we don't have access to. That might well lead to better transparency within the sector.

[277] **Darren Millar:** Can I just ask—? You've made a very good point there about the work that's often done to be able to ask companies to demonstrate their financial viability, if they're going through the procurement process for a significant piece of work. But, of course, that's done to all companies. This is a test that should just apply to those that are deemed to be at risk. That's a very different proposition, isn't it? Do you think, therefore, that this ought to apply much more widely, rather than just be focused on those larger providers that, perhaps, have the complex arrangements that are difficult to fathom, and therefore it can't give you much confidence in any case?

11:45

[278] **Mr Payne:** I think there should be a consistent approach to financial scrutiny prior to contracts being awarded, whether they be large or small employers, so that that leads to better confidence among the public, service users and the workforce that a company has the ability to provide those services long term, that they're not coming into this on a loss-leader situation that they will attempt to pick up at a later stage, but they will give better transparency so that people can actually scrutinise, so that we've got more understanding of how those services are provided in the future.

[279] **Darren Millar:** Now, obviously, that is done at the point of registration for organisations. They have to demonstrate, you know, as part of their registration process, that they're going to be able to deliver services, and their financial arrangements are part of that.

Do you think there ought to be periodic checks, then, on all care providers, not just those that are deemed to be at risk, because, of course, very often, these things are hidden in any case and don't come to light until it's too late?

[280] **Mr Payne:** Absolutely.

[281] **David Rees:** Thank you for that. A couple of points I've got to ask: prohibition Orders have been mentioned in the Bill, and the Minister has indicated that he doesn't intend to use the prohibition orders, but he wishes to actually include them, because of the advice that he received from the Law Commission. What are your views on the prohibition Orders, because, in a sense, if you're talking about a licensing model, it's about removing the licence to practise, effectively, if you're not fit to practise? So, any views on the prohibition Orders?

[282] **Mr Payne:** Prohibition Orders are a tool that a Minister can use if there is sufficient evidence to suggest that a provider is no longer fit for purpose. I think that that gives an opportunity to intervene, as Darren Millar said, before the crisis arises. It gives the Minister the opportunity to intervene and to stop that crisis happening.

[283] **David Rees:** Do any other Members have any questions? Then I'll wrap up with one final question. Ruth, in your Unison evidence, you actually mentioned that some staff tend to be excluded from the care council's role as a sector skills council. Do you want to expand upon that a little bit? I think it's about the improvement side of things, isn't it—the development?

[284] **Ms Crowder:** I think that comes back to what I was saying before: unless we are explicit about when the role is incorporating everybody, if you're focused on your regulated workforce, it can be easy to just think about those staff when you're looking at your improvement and service development roles, so I think we would want to see that that is very explicit and separate. That's where the definition for the meaning of 'social care worker' is really useful, when you're talking about everybody and then using, maybe, a different term when you're talking about the people who are regulated with Social Care Wales. So, you can get excluded. You know, an occupational therapy example is, if the continuing professional education and learning framework—and this is hypothetical—results in senior team manager or leader posts becoming available to people who've done the CPEL framework, then, clearly, that's a social work programme at the moment, so you need to have something that is an equivalent for everybody else that allows everyone else to move up. So, if you have a CPEL or continuous professional development framework for occupational therapists, speech and language therapists, nurses or whoever else is working there, then you can have a job being advertised for equivalence. If you've got a clear understanding that the staff you're working with for the whole sector should have access to training and support, if you're putting on conferences or training schemes, then that is clearly about everyone, and that's why we think there needs to be that separation of role, because you have to function with different groups of staff and be clear which groups of staff are covered by your regulatory activity and when you're working for the entire sector. Did that make sense?

[285] **David Rees:** I'm not going to apologise for the sun—

[286] **Ms Crowder:** We love the sun.

[287] **David Rees:** But I do apologise for putting you in a position where you can't see because of the sun. Thank you very much. Any other questions, Members? Can I thank you all for coming this morning and thank you for the evidence? It's been very helpful and gave us a perspective of the workforce side of things. Thank you very much for that. You'll receive a copy of the transcript for any factual inaccuracies you may identify; if there are, please let us know. Thank you very much. That was the last evidence session this morning.

11:49

Papurau i'w Nodi Papers to Note

[288] **David Rees:** We'd better go on to the next item on the agenda. Can we note the following papers? We've received correspondence from the Home Office regarding the inquiry we undertook into the new psychoactive substances. You have to note that.

[289] **Gwyn R. Price:** Note.

[290] **David Rees:** I just remind Members there's a scheduled debate on 13 May on that report. Can I also note the correspondence from the Petitions Committee regarding the proposed ban on the use of e-cigarettes in public places? But because that may well appear in the public health Bill, and it was in the White Paper, are you happy to note that and we may well deal with that as the Bill comes forward to committee later this year?

[291] **Alun Davies:** Is it possible for us to see the correspondence that's referred to in the letter?

[292] **David Rees:** Yes. We'll circulate that to Members. Okay.

11:50

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:

Motion:

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

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

*Cynigiwyd y cynnig.
Motion moved.*

[293] **David Rees:** In that case, I propose now, in accordance with Standing Order 17.42(vi), that the committee resolves to meet in private for the remainder of this meeting. Are Members content with that? Then we'll move into private session.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 11:50.
The public part of the meeting ended at 11:50.*