The Chartered Institute of
Public Finance & Accountancy

Health and Social Care (Wales) Bill

Consultation issued by the Welsh Parliament's Health and Social Care Committee

A Submission by:
The Chartered Institute of Public Finance and Accountancy

28 June 2024

CIPFA, the Chartered Institute of Public Finance and Accountancy, is the professional body for people in public finance. CIPFA shows the way in public finance globally, standing up for sound public financial management and good governance around the world as the leading commentator on managing and accounting for public money.

Further information about CIPFA can be obtained at www.cipfa.org

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1. Views on the general principles of the Health and Social Care (Wales) Bill

1.1 The Chartered Institute of Public Finance and Accountancy (CIPFA) welcomes the opportunity to respond to the Welsh Parliament's consultation on the Health and Social Care (Wales) Bill. CIPFA is the only accountancy body in the world dedicated exclusively to public finance. We advocate for excellent public financial management and strong public services. Given that children's social care comprises a significant portion of local authority expenditure, we have a keen interest in ensuring that money spent on children's social care is spent effectively and achieves intended outcomes.

1.2 CIPFA Cymru (Wales) is CIPFA's devolved nation branch. The branch has over 750 members who work across public services and local and central government in Wales. To inform this consultation response, CIPFA sought views from the representative CIPFA Cymru (Wales) branch executive.

1.3 Our consultation response focuses on the proposed elimination of profit from children's social care in Wales. We do not respond to questions regarding Continuing Health Care or other proposed legislative changes. Since we are focused in our response, some of our answers go beyond five hundred words.

1.4 CIPFA understands that there are broad ethical questions around whether private companies and individuals should profit from the care of looked after children, but we do not enter that discussion in our response. It is important that looked after children receive the care that they need and that local authorities achieve value for money in securing placements for looked after children in their area. It should not matter who is providing care for looked after children so long as it leads to positive outcomes for those children and represents value for money for the public pound.

1.5 Overall, CIPFA agrees that the Welsh children's social care market is not functioning as well as it should, and that the cost of residential children's care is a driver in budgetary overspends. Numerous reports, including the Competition and Markets Authority's Children's social care market study, have found a lack of suitable placements for looked-after children. Gross expenditure by Welsh local authorities on children's residential care has increased dramatically in recent years, rising from £85 million in 2017/18 to £210 million in 2022/23. This represents an increase of 146%. This is clearly an unsustainable position and demands action.

1.6 According to evidence from the Competition and Markets Authority, providing care for looked after children in local authority placements is "no less" expensive than providing care for looked after children in private placements. Whether the proposed action outlined in this bill is correct is uncertain. It comes with significant short- and medium-term risk and cost. We explore these risks and costs in our response.

2. Unintended consequences likely to arise from the Bill

2.1 While we acknowledge that there are issues in the Welsh children's social care residential market, there is the risk that eliminating the profits of providers will lead to a series of significant, unintended consequences. These consequences include the handing back of contracts, the closure of services, market failure, workforce leaving the market during a time when there is a workforce crisis, loss of skills, disruption to placements, negative impacts on looked after children's outcomes, the investment required being more than estimated, and more. The risks outlined in paragraphs 7.120-7.125 speak for themselves, and the Welsh Government must ask if they are willing to take these risks in the short- and medium-term. If they are willing to take these risks, the government must have a clear and thorough plan of how it will manage these risks, and their management of the risks must be well-executed and sufficiently funded.

2.2 On the new duty to submit and publish annual returns, CIPFA understands the reasoning behind this amendment and the importance of data protection and GDPR. Our concern is around small providers who do not currently have a website. The creation and maintenance of a website could be challenging in terms of financial and human resource for a small care provider and risks additional providers exiting the market. Small providers should be supported in this duty.

2.3 Legacy private providers will still be able to make profit through the transition period. It is possible that some legacy providers will seek to maximise their profits in this time, which could impact on the quality of care currently provided. Some providers may choose to withdraw providing placements altogether thus impacting on current and future provision. Some smaller for-profit providers may struggle with the transition to becoming not-for-profit organisations and may also withdraw from the market altogether, again impacting on current and future provision. The level of this disruption is not certain but could be significant in an already-fragile market. Local authorities could be forced to place children with for-profit providers due to this disruption, and the policy could end up driving up the profits of these providers, meaning that the bill would achieve the opposite of its intention.

2.4 The RIA states that 83% of children's care home provision is privately operated. This means that there is the risk that a significant proportion of placements are at risk of disruption due to the proposed policy of eliminating profit.

2.5 We urge the Welsh Government to carry out robust risk management to consider further possible unintended outcomes.

3. Views on the Welsh Government's assessment of the financial and other impacts of the Bill

3.1 CIPFA believes that the short-term impact of the policy is likely to be greater than the estimate in the Regulatory Impact Assessment (RIA) but agrees that there are likely to be long-term benefits to the policy.

3.2 The RIA states that between £107 million and £143 million is allocated for the purchase and refurbishment of properties to replace lost capacity from for-profit providers exiting the market. The impact assessment expects some of the cost to be partially offset by a reduction in outturn costs as a result of the policy. The impact assessment estimates a benefit of between £184 - £254 million in lower outturn costs. However, these estimated lower outturn costs do not align with the CMA's evidence that private placements cost no less than local authority placements.

3.3 CIPFA also recommends that the Senedd consider more than two options in their pursuit of improving the children's residential social care market in Wales. Currently there is a sense of an all or nothing approach. To reduce the risk of serious market disruption, alternative options should be explored. Exploring alternative options is a key principle in good decision making. For example, introducing a cap on profits, national price banding depending on the type of care provided, or a more phased approach.

3.4 Paragraph 7.43 of the RIA states that other options were considered but that these were discounted due to "their inability to affect the profit element/motive itself, administrative complexity, limited success in controlling costs and significant uncertainty." This raises the question of whether the policy is steered by the motivation to "affect the profit element/motive itself". If so, this seems misguided. The principle motivation should be to ensure sufficient, quality, and sustainable placements for looked after children. Furthermore, there is significant uncertainty and administrative complexity involved in the policy to eliminate profit. The section on quality of care concedes that there is no evidence of for-profit children's residential social care providers offering lower quality care in Wales than local authority placements.

3.5 For services that are brought in-house, local authorities will have to bring in additional staff to establish and run the children's homes. The RIA states that workforce costs are higher in local authorities compared with private provision, and this could drive costs up. Furthermore, the RIA admits some for-profit providers have specialized skills and that their exit from the market could result in a "significant loss of high-quality care and support for children". This is a significant risk to the stability and quality of care looked after children in Wales need.

3.6 The RIA states that private providers have the option of purchasing properties in areas where set-up and running costs are lower. Local authorities would not have this option. While placing children out of county can sometimes have a negative impact on outcomes, securing in-house provision is likely to come with a higher cost and would require additional funding, particularly in more expensive areas in Wales.

3.7 Table 7.5 includes no uplifts for inflation and zero growth in the number of looked after children. Nor do the estimates account for any uplift in National Minimum Wages. This is unusual and we would expect some assumptions to be made in this area based on historic trends and future forecasts. While we understand that this is not an exact science, assumptions should be used. Not including these assumptions means that the figures are likely underestimated.

3.8 Paragraph 7.84 suggests that small numbers of for-profit providers will convert to not-for-profit models. This demonstrates the scale of the challenge for local authorities. In 2023, according to Table 7.8, 87% of children in care in Wales are in a private placement. In the most optimistic scenario, local authorities will have to secure provision for 50% of the 87% of looked after children in Wales, which equates to 233 children. If for-profit providers leave the market quickly, this will cause significant disruption to the care of a large proportion of looked after children in Wales.

3.9 The information on current placement distribution in Tables 7.8, 7.9, 7.10, and 7.11 do not correlate.

3.10 The timelines are very optimistic and underestimate the scale of the challenge in implementing the policy. Table 7.18 forecasts that there will be a saving of c. £12.6 million per annum from 2028/29. It is optimistic to assume that the work on this policy can begin in full at the start of 2025/26. Even if it were to, this assumes that in only three years the Welsh Government will have worked through the challenge of implementing this policy. Establishing local authority children’s homes is not something that can be done quickly, and we are concerned that this timeline is marked by optimism bias.

4. Conclusion

4.1 The Health and Social Care (Wales) Bill begs the question: will eliminating profit from children’s residential social care in Wales be a panacea to the challenges facing this market? The answer to this question is no. The elimination of profit will not resolve the challenges facing the Welsh market in terms of sufficiency and quality.

4.2 While understanding the principles behind the proposals contained in the bill, CIPFA maintains that eliminating profit from children’s social care will require substantial investment in terms of time and resources at a time when local government in Wales faces a significant financial challenge. There are also significant risks that could lead to negative outcomes for looked after children if the proposed transition from the current to the proposed model is not effectively managed.