



NCERCC - independent experts in Residential Child Care and its planning.

NCERCC - independent of governments, local authorities and providers.

**Independent analysis: Health and Social Care (Wales) Bill 2024
introduced to the Senedd on 20 May**

An analysis made having read documents and participated in workstreams

Section 1 – Preamble

The current focus of the Bill and discussion has been on the legal entity of providers. Still to be addressed is the critical issue of the content and delivery of care.

The degree to which the proposed operating systems meet child care principles and theory and practice and provide a secure emotional base and an emotionally holding containing and nurturing environment have not been addressed. There has been no enquiry and therefore no scrutiny on the degree that differing ownerships enhance the creation of a secure emotional base. Until this is provided the committee does not have the fullest evidence upon which to base a decision.

It is necessary to consider legal entity, commercial and financial as an essential aspect of the delivery of residential child care.

Care aspects cannot be considered later after confirming commercial and financial, they are integrated and therefore must be included in the same decision making.

The Bill as current does not provide for ensuring “accommodation, where that is needed and where that is necessary” Dawn Bowden [Health and Social Care Committee 06/06/2024 - Welsh Parliament \(senedd.wales\) 09.55. 26](#). The “development of smaller residential bases in regions closer to where children live” requires a radically different set of actions to be achieved.

It is Specificity that will lead to the achievement of this goal.

The current system has been built on Sufficiency, and the Bill still has this as its goal.

Sufficiency does not lead to care being closer. Specificity leads to care being closer. It also requires different and more provision than is provided currently. It is not a

question solely of transitioning, there is much that is needed that is not provided especially for higher level needs. There must be development of the workforce and provision to be able to meet all needs. There will also need to be further and different forms of residential child care and settings than have been imagined.

Each children's home needs to be understood as unique. Any genericism, that all children's homes can accept all children, needs to be dispelled. Each home needs to have clarity of its uniqueness and its specificity, the model of care, the knowledge, practice, and experience of the staff, determine the children who can be admitted safely.

These different forms are apparent when a needs audit is completed. This is necessary and urgent action that will inform committee and government decision making.

Nor do the proposals remove marketisation or commodification. As commissioning rather than planning is to continue the proposals remove for profit but commodification continues as marketisation is transferred to the not-for-profit sector.

More work is necessary.

The following would form part of the work needed to ensure the Bill meets its aspirations.

- Effective matching of need leads to an efficient spend – identification of needs is required, an assessment is required that can support and audit of needs that will allow local, regional, and national planned responses.
- This would provide the foundation for specificity of provision to meet identified need – not sufficiency (as current), that is about numbers. To adopt Specificity is to identify provision and specialist services needed.
- A national practice model stems from the needs being identified.
- The workforce development delivery for the national practice model can be planned, broad, deep, and targeted rather than narrow and provider focussed. Consistency is required not variability.

Time and transitioning – implications not yet acknowledged by the committee.

The question of a longer time period, 10 to 15-years, was raised in the committee of 06.06.24.

Given that for profit providers of residential child care have repeatedly stated their understanding there is an impossibility of transitioning, this has been repeatedly stated in workstreams and consultations, a longer time period does not resolve issues.

Providers perspectives have been described as not finding the 4 options "attractive".

From analysis of the evidence over time the providers' position is that it is not that there is no 'appetite' or that the 4 models are not 'attractive'. Providers understanding

is that the 4 models do not provide any basis for conversion to NFP. Choice is suggested by the word 'attractive,' whereas the providers' understanding of the legalities is that they cannot convert, actively prevented from doing so in law and that the law requires they close their business and open as a new NFP entity. (see also below).

The unresolved puzzlement of providers is that SME providers have expressed a willingness to convert to a suitable model. They do not see their suggestions have not been brought forwards as options.

Thus the situation is not as depicted by Dawn Bowden [Health and Social Care Committee 06/06/2024 - Welsh Parliament \(senedd.wales\)](#) 09.58.16 "getting as many of them as possible to transfer to one of the not-for-profit models that we propose in this Bill. So, we are not looking, necessarily, to chase every for-profit organisation out of Wales. We know that there are many good providers there who we think we could really work well with by transitioning them to not-for-profit deliverers of children's care."

The situation is that Wales faces a very real possibility of for profit residential child care providers closing. Closure does not occur on the date of implementation. The situation currently is that though there may be continuation of 'legacy' placements there will be no further placements. This makes the home financially unviable. Knowing this any provider will take a financial and commercial decision to close. They will close before this eventuality happens.

This situation then requires the thinking in the Explanatory Memorandum is analysed.

7.92 Using nationally aggregated data provided by local authorities, as of 31 March 2023, the private sector accounted for 542 residential placements, while not-for-profit organisations provided 40 placements, with 110 located outside of Wales. The average children's residential home has 3.2 beds, usually occupied at 83% capacity.

7.93 To meet the demand for residential placements without any conversions, i.e. Scenario C, a total of 653 beds (based on an occupancy level of 83%) across 204 additional homes are required. If, however, 50% of providers convert, only 102 additional homes are required. This is one of the two most significant drivers of transitional costs for local authorities.

- Aggregated thinking does not lead to a needs-led solution. Volume is one aspect, another is capacity (to meet need), and another is diversity.
- It does not account for matching of needs to provision, group dynamics.
- More homes will be needed for effective matching of needs to provision.

7.124 Not-for-profit providers may choose not to develop children's residential services because of reputational and financial risks. If this happens, local authorities

will have to take on additional responsibilities for the development and direct provision of children's homes.

7.125 ... A phased approach to delivery will also be adopted. The £68 million we are investing to manage transition to not-for profit care will be aimed at developing in-house and third sector residential and foster care provision.

- Expert knowledge and experience is needed. At Programme Board local authorities have stated their concern at the lack of planning regarding the proposals.
- £68 million is insufficient to meet the costs to meet the needs of developing homes, leadership, and workforce.

For profit providers have asserted that there is an intractable issue in that for profit providers cannot transition. In her evidence (responding to a question about potential loss of workforce - numbers and experience), the minister stated that she hoped staff would transfer under TUPE. For profit providers have stated that transfer is not possible, and they would have to close their current business and open another business as a separate legal entity. The committee need to be aware of the obstacles for TUPE from for profit to an entity with a charitable status. Publishing legal advice seems an important step for discussions to have clarity.

It is apparent from other countries that are further along with established socialised ownership and distribution that transition is evolutionary and takes many years. Even in countries where there is a high degree of state ownership and distribution there has been a degree of the continuation of a private sector, this working in combination with socialised ownership towards a common goal and within parameters regarding employment and surplus. In European social democratic countries the social contract and compact leads to a sector partnership that governs all aspects of working.

The pragmatic solution at this juncture may be to adopt such a partnership compact whilst developing publicly and socially owned homes. (Advanced copy see NCERCC Social partnership, civil society, and children's care system).

Section 2

The following, in no particular order, need to be addressed in the immediate debates on the Bill, and working groups established asap to provide practical steps necessary.

Overall

- 1. The project develops a methodology and workforce that can identify and respond to needs through establishing planned specified services.**

2. The proposals require enhancing beyond a logistical proposal to ensure a secure emotional base for those children who need Residential Child Care is provided.

The following are necessary to be urgently addressed.

Disinvestment in advance of due date

2026 is the given date, a 2-year transition but in practice will start now as providers take decisions about their future strategy and begin disinvesting. How will an impending shortfall be met?

No recognition of specialist needs and so the range of provision needed.

There is no needs audit methodology that would provide the evidence for a needs-directed local, regional, national provision response.

Wales had need to place in specialist provision in other countries – how will it develop it inside its own borders?

No national assessment method

There is no national assessment method that would provide focus for individual children and providers, and an ability at local, regional, national level to proactively identify trends and have provision ready when necessary.

It is Specificity that is required not Sufficiency.

Sufficiency is not defined and is too often concerned with numbers. It is Specificity, concerned with needs, which is needed. There remains concern that there is a view that all children's homes are the same and can provide for all needs, they cannot and should not. Each home needs to meet specific needs. If you do not know the needs you do not know how many of what and where are needed.

Does it eliminate profit?

Not necessarily, as there may be for profit services that are provided for the NFP entity. The proposals potentially mask profit making. The issues of social capital /finance are unaddressed. There may still be financial extraction. Additionally, such extraction is deleterious to the establishing of the secure emotional base. The financial systems affect the psychological systems. There is a necessity for explanation and exploration.

The proposals do not remove commissioning.

It is now commissioning from only Not For Profit, a reduced pool of expertise and experience. There is potential for reduced responses for young people. Commissioning will still be seeking Value For Money. The change of values does not herald a commercial change. It does not remove competition for places.

The opportunity for a commissioning rather than procurement is not addressed. The role of the commissioner could be redrawn to emphasise the meeting of needs.

A new potential for commissioning matching needs to provision is being missed.

A new role can be designed with a move from procurement to needs-led working.

The proposals do not remove marketisation or commodification.

This occurred as the 'problem' has been presented as ownership rather than child care theory and practice.

Key issue unaddressed - voids

A key practical problem yet to be resolved is how a NFP provider, as their surplus is reduced, can overcome issues related to voids in occupancy, a key factor to stability.

There is no workforce development strategy or delivery agency.

There is no national practice model that would ensure all providers and commissioners are identifying the same needs and provision to match.

Where will leadership and development come from over the 7 years it will take to develop it?

The proposals are based on using the same social care expertise in a different legal and commercial entity. There is limited Residential Child Care expertise in the NFP sector, it represents a small percentage of all provision. The new NFP sector, challenged by many new pressures, would be facing a large and expensive recruitment task in a new sector of operation such that the viability of the new enterprise in its early and vulnerable stages would need close scrutiny by the trustees of the NFP. Additionally, the committee needs to dispel the uncertainty that managers and practitioners currently with For Profit would seek employment in the NFP providers.

No sector partnership organisation as in Europe that leads to a planned response.

There is no sector partnership organisation signalled as in Europe that determines provision needed, and the pay, terms, and conditions (there is potential for a split between LA and NFP providers that needs to be removed). This is omitted. It is an essential mechanism to shape the proposals through the next decade.

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