

# Financial Implications of the Health and Social Care (Quality and Engagement) (Wales) Bill

November 2019



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# Financial Implications of the Health and Social Care (Quality and Engagement) (Wales) Bill

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# About the Committee

The Committee was established on 22 June 2016. Its remit can be found at:  
[www.assembly.wales/SeneddFinance](http://www.assembly.wales/SeneddFinance)

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## Committee Chair:



**Llyr Gruffydd AM**  
Plaid Cymru

## Current Committee membership:



**Rhun ap Iorwerth AM**  
Plaid Cymru



**Alun Davies AM**  
Welsh Labour



**Mike Hedges AM**  
Welsh Labour



**Rhianon Passmore AM**  
Welsh Labour



**Nick Ramsay AM**  
Welsh Conservatives



**Mark Reckless AM**  
Brexit Party

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The following Member attended as a substitute during this inquiry.



**Mick Antoniw AM**  
Welsh Labour

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## Recommendations

**Recommendation 1.** The Committee recommends the Welsh Government undertakes further work analysing and estimating the benefits of the Bill, which are identified as key drivers for implementing the legislation. This information, which should include a sensitivity analysis to show the potential range of values, should be included in a revised Regulatory Impact Assessment published following Stage 2 proceedings..... Page 11

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**Recommendation 3.** The Committee recommends that further work be undertaken in respect of the likely ongoing costs to arise from the duty of quality, which are not quantified in the Regulatory Impact Assessment. This should include sensitivity analyses to show the potential range of values and be included in a revised Regulatory Impact Assessment at Stage 2..... Page 17

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**Recommendation 8.** The Committee recommends that the Regulatory Impact Assessment should reflect the potential range of ICT costs rather than the low cost estimate. ....Page 26

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# 1. Introduction

**1.** The **Health and Social Care (Quality and Engagement) (Wales) Bill** (the Bill) and **Explanatory Memorandum** (EM), including Regulatory Impact Assessment (RIA), was introduced by Vaughan Gething AM, Minister for Health and Social Services (the Minister) on 17 June 2019.

**2.** The purpose of the Bill is to:

- place quality considerations at the heart of all NHS bodies in Wales and the Welsh Ministers (in relation to their health functions) through a specific duty of quality;
- strengthen the voice of citizens across health and social services, with a new Citizen Voice Body for health and social care (replacing Community Health Councils (CHCs));
- place a duty of candour on all NHS organisations, requiring them to be open and honest when things go wrong; and
- strengthen the governance arrangements for NHS Trusts, by introducing a formal Vice Chair role for each Trust.<sup>1</sup>

**3.** The EM accompanying the Bill states:

“The Health and Social Care (Quality and Engagement) (Wales) Bill (the Bill) uses legislation as a mechanism for improving and protecting the health, care and well-being of the current and future population of Wales. It contains provisions in respect of health and social care policy.”<sup>2</sup>

**4.** The Finance Committee (the Committee) took evidence on the financial implications of the Bill on **3 July 2019**, from:

- Vaughan Gething AM, Minister for Health and Social Services;
- Sioned Rees, Senior Responsible Officer, Health and Social Care (Quality and Engagement) (Wales) Bill, Welsh Government; and
- Rhian Williams, Policy Lead, Health and Social Care (Quality and Engagement) (Wales) Bill, Welsh Government.

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<sup>1</sup> Explanatory Memorandum, paragraph 3

<sup>2</sup> Explanatory Memorandum, paragraph 1

**5.** Policy scrutiny of the Bill was undertaken by the Health, Social Care and Sport Committee (HSCSC).

## 2. Purpose and need for the Bill

### Background

- 6.** The Bill introduces a series of reforms to strengthen health and social care services, facilitate a stronger citizen voice and improve the accountability of services to deliver improved experience and quality of care for people in Wales.
- 7.** The Welsh Government first consulted on proposals between July and November 2015 as part of the Green Paper, “Our Health. Our Health Service”, which had sought views on matters relating to the quality of health services and its governance and functions.
- 8.** The RIA sets out the financial implications of the Bill and is structured around the policy objectives, setting out the financial implication of each option and providing calculations on the cost estimates. Costs are quantified for a period of six years since “the costs and benefits of the Bill are expected to reach a steady state quickly”.<sup>3</sup>
- 9.** The overall net cost of the Bill is estimated at between £11.0 million and £11.5 million. Of this, £7.3 million (or two-thirds of the total cost, low estimate) has been identified as transitional, or “one-off” costs with a further £0.5 million for compliance costs and recurrent or ongoing costs that range from £3.2 million to £3.7 million.
- 10.** The majority of the total cost, £6.1 million, is associated with the establishment and running costs of the new Citizen Voice Body, which will fall to the Welsh Government. Other costs are also expected to fall to the Welsh Government in respect of the duty of quality and duty of candour (£77,300 and £74,100 respectively).
- 11.** There will also be financial implications for NHS bodies. The duties of quality and candour are expected to result in a total cost of £4.6 million for NHS bodies including primary care practices. This will, in the main, be incurred in respect of the transitional costs of raising staff awareness and them undertaking training (£2.9 million), and the cost to NHS bodies for developing implementation plans for duty of candour (£1.2 million).

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<sup>3</sup> Explanatory Memorandum, paragraph 164

**12.** The remaining costs of the Bill will arise from the remuneration for a Vice Chair at each NHS Trust (between £0.2 million and £0.6 million).

**13.** The RIA quantifies cost savings in respect of local authorities and voluntary organisations with an aggregate value of £0.03 million over six years, arising from the proposed abolition of the Community Health Councils (CHCs).<sup>4</sup> This relates to the cost to local authorities and voluntary organisations in recruiting CHC volunteer members.

**14.** The RIA suggests that the Bill is expected to lead to a range of benefits, such as improving the quality of services, facilitating a stronger citizen voice and potentially reducing the number of complaints about services. However, it reports that such benefits “cannot be quantified due to a high degree of variability or a lack of available data”.<sup>5</sup>

**15.** The RIA also identifies some unknown costs, including an estimate of the financial implications of changing working practices of NHS bodies and Welsh Ministers to comply with the duty of quality.

## Evidence from the Minister

**16.** The Minister confirmed the Bill was required to achieve the policy objectives.<sup>6</sup> He said:

“...what we have in the Bill are things we can’t do without primary legislation. So, for example, the most non-controversial element is appointing vice-chairs to NHS trusts. We need to amend primary legislation to do that. To introduce a broader duty of quality, again we need to use primary legislation to do that, and the same thing with introducing a duty of candour...So, those things do require primary legislation.”<sup>7</sup>

**17.** The Minister also told the Committee:

“part of the challenge is that we can only quantify some of the improvement that we want to make, and we can only quantify some of

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<sup>4</sup> Explanatory Memorandum, paragraph 105

<sup>5</sup> Explanatory Memorandum, page 49

<sup>6</sup> RoP, paragraph 13, 3 July 2019

<sup>7</sup> RoP, paragraph 13, 3 July 2019

the cost ... when you talk about what happens if you improve the system of quality and candour, you can't quantify all of that.”<sup>8</sup>

**18.** The Minister said the legislation was about “leading cultural change”<sup>9</sup> and having duties to achieve that. He said it was not possible to “put a monetary value on every single part of the change”.<sup>10</sup> He added:

“I don't think that's a helpful way to look at the conversation about quality and candour, but I'm absolutely convinced it will mean that we have a better health and social care system as a result.”<sup>11</sup>

## Committee view

**19.** The Committee notes the Minister's view that he is “absolutely convinced” the Bill will lead to a better health and social care system. Whilst we accept the benefits may be varied and difficult to quantify, the Committee expects RIAs to contain the best estimate possible for costs and benefits to enable it to fully scrutinise the overall financial implications of a Bill.

**20.** Given the consultation for this Bill took place in 2015, and has been four years in development, the Committee is disappointed that the RIA does not quantify the benefits of the Bill or provide sensitivity analyses to show the potential range of values.

**Recommendation 1.** The Committee recommends the Welsh Government undertakes further work analysing and estimating the benefits of the Bill, which are identified as key drivers for implementing the legislation. This information, which should include a sensitivity analysis to show the potential range of values, should be included in a revised Regulatory Impact Assessment published following Stage 2 proceedings.

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<sup>8</sup> RoP, paragraph 22, 3 July 2019

<sup>9</sup> RoP, paragraph 24, 3 July 2019

<sup>10</sup> RoP, paragraph 24, 3 July 2019

<sup>11</sup> RoP, paragraph 24, 3 July 2019

### 3. Stakeholder engagement

**21.** The RIA states it presents a best estimate of the costs and benefits of the Bill based upon the available evidence and that the analysis has been informed by engagement with key stakeholders including the Local Health Boards (LHBs) and local authorities.<sup>12</sup>

**22.** The Minister said:

“...in terms of understanding the different costs and what that means for different organisations, there has been, obviously, the internal conversation across different parts of Government...there have been regular conversations with the community health councils there currently are and with the Welsh Local Government Association... So, you’ll see figures in there that come from conversations with the health service, with local government and with other partners too, including CHCs and the wider voluntary sector. So, they do help to underpin and inform the cost estimates that we’ve got, and it’s fair to say that those partners, those other stakeholders, agree that the estimates we’ve provided are reasonable assumptions to start from.”<sup>13</sup>

**23.** Part 3 of the Bill “Duty of Candour” creates a statutory duty of candour on providers of NHS services to provide information and support to service users when a patient safety incident occurs resulting in an adverse outcome. The Minister’s official explained:

“I think what’s been really pleasing is that there has been a real positive engagement from the health sector with regard to the duty of candour, and wanting to be involved in the development of the training materials, and be involved in the development of the guidance, so that it’s co-designed with them, and it’s been really positive... And that’s been built into how we’ve looked at the regulatory impact assessment and the cost with regard to that as well, which will aid us, I think, with regard to the culture change that we’re looking at with regard to the duty of candour and quality.”<sup>14</sup>

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<sup>12</sup> Explanatory Memorandum, paragraph 50

<sup>13</sup> RoP, paragraph 31, 3 July 2019

<sup>14</sup> RoP, paragraph 56, 3 July 2019

**24.** While the RIA does not quantify any costs that are likely to fall on local authorities as a result of the Bill, the Minister told the Committee about discussions with the Welsh Local Government Association (WLGA). He said:

“The WLGA, for example, have been really clear on a range of Bills that they’re anxious about how accurate some of the cost estimates are, but on this they agree that this is a fair basis to move forward. Obviously, as we go through an understanding of what’s happened in influencing the system, they’ll I’m sure want to make a case in the future about whether or not there are additional real costs. But at this point in time, they agree that this is a fair basis to estimate the costs for them and others.”<sup>15</sup>

**25.** The RIA notes that a range of sources have been used for the assessment of the financial implications of the Bill. It states:

“where there is uncertainty, a cautious approach has been taken towards the calculation of estimated costs. This is likely to mean that in some areas the actual costs associated with implementing the legislation may be lower. In a number of places, where there is uncertainty, a range of potential costs has been applied or the rationale on why a range of costs would not be meaningful.”<sup>16</sup>

## Opportunity costs

**26.** The overall net cost of the Bill is estimated at between £11.0 and £11.5 million over six years. Of this overall cost, between £4.8 million and £5.2 million will fall to NHS bodies. All but the remuneration of Vice Chairs at NHS Trusts (between £0.2 million and £0.6 million) and the additional legal costs estimated to be payable by NHS Bodies arising from the introduction of the duty of candour (£21,000) are described in the RIA as “opportunity costs” for NHS bodies.

**27.** When asked whether it was realistic to expect LHBs and other NHS bodies to absorb the additional costs the Bill would impose on them, the Minister said:

“Yes, in a word. We’ve gone through, we’ve worked with and we’ve met with NHS bodies as part of coming up to this point in the Bill to understand what we’re trying to do, what we’re trying to achieve in terms of improving the way our health service is delivered, and you’re right—there are real financial challenges in the health service. Without

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<sup>15</sup> RoP, paragraph 32, 3 July 2019

<sup>16</sup> Explanatory Memorandum, page 49

getting into an argument about the impact of austerity, some of those changes and challenges are driven by demographics, they're driven by advances in the way that we understand healthcare can be delivered, and they're also driven by the fact that we're deliberately changing and shifting our system. If we want to have a more integrated health and care system, we need to make sure that the duties around that system are consistent with the way that we are reorganising our system... And so, actually, there is some change that is entirely necessary. The duties, I think, are appropriate and they are proportionate..."<sup>17</sup>

## Committee view

**28.** The Committee is pleased to hear the estimated cost and benefits of the Bill have been informed by engagement by the Welsh Government with key stakeholders including the LHBs and local authorities. The Committee is also pleased to note the health sector has been involved in the development of training materials in regards to the duty of candour and believes this will aid the cultural change the Bill is looking to achieve. However, the Committee notes that further work is to be undertaken, which we believe could have been made clearer in the RIA.

**29.** The Committee notes that the Minister considers it realistic for NHS bodies to absorb the additional costs that will be imposed on them as a result of the Bill. Given the financial challenges faced by NHS bodies, the Committee considers this to be an issue, particularly given that the RIA does not quantify all costs to fall on NHS bodies as a result of the Bill. The Committee would like to see further information set out in the RIA.

**Recommendation 2.** The Regulatory Impact Assessment assumes that a significant proportion of the costs arising from the requirements of the Bill will be absorbed by stakeholders, such as NHS bodies without setting out the likely implications of it. The Committee recommends that further information should be included in the revised Regulatory Impact Assessment.

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<sup>17</sup> RoP, paragraph 49, 3 July 2019



## 4. Costs to other organisations

### 4. 1. Actions to improve quality

#### Background

**30.** Part 2 of the Bill, “Improvement in Health Services”, imposes a duty relating to improvement in the quality of health services on the Welsh Ministers and NHS bodies.

**31.** NHS bodies have been under a duty to make arrangements for the purpose of improving the quality of health care since the introduction of the Health and Social Care (Community Health and Standards) Act 2003 (the 2003 Act).

**32.** The Bill replaces the duty in the 2003 Act with a “broader duty of quality, more in keeping with how we now want NHS bodies to work, which will strengthen actions and decision making to drive improvements in quality”<sup>18</sup>, delivering a “step-change”<sup>19</sup>. It places this duty on the Welsh Ministers in the exercise of their health related functions, which is considered a gap with the current duty. The Bill also requires Welsh Ministers and NHS bodies to report annually on the steps they have taken to comply with the duty.

**33.** The RIA quantifies the financial implications for Welsh Government, Welsh Ministers and NHS bodies for reframing the duty of quality, such as those expected for awareness raising, developing training materials and receiving training, annual reporting and preparing case studies. However, it does not set out information about the expected actions to change the working practices within Welsh Government (acting on behalf of Welsh Ministers) and NHS bodies to deliver the policy objectives and improve quality of NHS services. Nor does it quantify their expected cost. The RIA notes that this is because the cost will:

“...depend upon the strategies they develop to meet the objectives they set in response to the legislation... it is ultimately the responsibility, and indeed choice of the organisations as to what actions to take, but bodies will be expected to justify these actions through their reporting arrangements. Since these decisions have yet to be made ... it is difficult to estimate the operational costs for Welsh Government and NHS bodies at this stage as the range of potential actions and outcomes is simply too broad. It is for the organisations themselves to find the best

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<sup>18</sup> Explanatory Memorandum, paragraph 24

<sup>19</sup> Explanatory Memorandum, paragraph 42

sustainable solutions in the context in which they operate. These costs are therefore unknown at this stage.”<sup>20</sup>

**34.** In a letter to the Chair of the Health, Social Services and Sport Committee, the Minister noted:

“At Finance Committee, it became apparent that, while there is general support for the broad policy intent behind the proposals, there is interest in how the objectives and benefits will be realised specifically in relation to the duties of quality and candour...

It [the Bill] will require NHS bodies and the Welsh Ministers to think and act differently by applying the concept of ‘quality’, not just to services being provided, but to all decisions and arrangements within the context of the health needs of their populations.”<sup>21</sup>

**35.** The letter provided examples of how “all parts of the system can contribute to quality improvement and outcomes”<sup>22</sup>, including how the quality of clinical services can be improved through developments in digital services and by NHS bodies reporting on actions to improve safety, or improving detection rates. The Minister states that these will lead to improved outcomes for patients.

**36.** In response to how the Bill would improve the quality of NHS services, the Minister said it places a “statutory duty on all of our providers, so not just hospital-based providers, but primary care providers too, in the way that they deliver services, and quality being a central consideration and an expanded duty of quality”.<sup>23</sup> He added:

“So, we’re going to require people to turn their minds to quality as a regular part of their decision-making process. In a way, whilst we’ve made improvements on quality, if we just leave it to a quality improvement function, that isn’t going to deliver what we want to see....you’ll find that it isn’t just the Government saying that this will help to deliver improvement , you’ll find the NHS themselves will say that, you’ll find that the third sector and others will say that that’s a useful thing to do, and, again, there’s objective evidence from outside the

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<sup>20</sup> Explanatory Memorandum, paragraph 215

<sup>21</sup> Letter from the Minister for Health and Social Services: Health and Social Care (Quality and Engagement) (Wales) Bill - 8 July 2019

<sup>22</sup> Letter from the Minister for Health and Social Services: Health and Social Care (Quality and Engagement) (Wales) Bill - 8 July 2019

<sup>23</sup> RoP, paragraph 42, 3 July 2019

Government that changing the statutory duties around the duty of quality is something that should deliver a real improvement in the way that our health service functions.”<sup>24</sup>

## Committee view

**37.** The Committee welcomes the duty of quality in the Bill which replaces the duty in the 2003 Act, strengthening actions and decision making which the Committee hopes will drive improvement in the quality of services.

**38.** While recognising that it will be for NHS bodies to decide what actions or strategies are required to meet the new statutory requirements in respect of the duty of quality, the Committee is concerned about the financial impact the Bill may have on them. The Committee notes the Minister’s view that it is difficult to estimate the operational costs for Welsh Government and NHS bodies as the range of potential actions and outcomes is too broad. However, the Committee believes further work should be undertaken to estimate the potential range of costs and this should be included in the RIA.

**39.** Whilst welcoming the additional information provided by the Minister, the Committee notes the RIA does not provide details of how quality will be improved and, a cost estimate of the changes to the working practices to achieve the policy objectives of the Bill.

**Recommendation 3.** The Committee recommends that further work be undertaken in respect of the likely ongoing costs to arise from the duty of quality, which are not quantified in the Regulatory Impact Assessment. This should include sensitivity analyses to show the potential range of values and be included in a revised Regulatory Impact Assessment at Stage 2.

## 4. 2. Awareness and training

### Background

**40.** The RIA notes that, in order to move to a position where the Welsh Government and NHS bodies are more routinely and actively focusing on quality and continuous improvement, awareness campaigns and training will be required at all levels for the duties of quality and candour.

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<sup>24</sup> RoP, paragraph 42, 3 July 2019

**41.** The RIA states that, due to its “specialist nature”<sup>25</sup>, the Welsh Government would seek a secondment from the NHS to develop content for these awareness campaigns, training materials and case studies. The secondee would also be required to deliver the enhanced leadership training for the duty of quality<sup>26</sup> and training for the duty of candour.<sup>27</sup>

**42.** The RIA states that the work for each duty is “anticipated to take no longer than 12 months, and be delivered by a member of staff at an appropriate level”.<sup>28</sup> It estimates that 0.5 Whole Time Equivalent is required and the cost has been quantified as £38,200 for each duty, with additional sums identified for related costs, such as those for the translation and design of the material and the subsequent refresh of guidance. The total of these related costs over the six years for which estimates have been quantified is £39,100 and £35,900 for the duty of quality and duty of candour respectively.

**43.** The Minister told the Committee that the cost estimates for developing course material and the public awareness campaign for the statutory duties of quality and candour were “as accurate as we can possibly make them, based on our previous experience of other legislation” including the Putting Things Right campaign that was used to launch the new NHS complaint procedure back in 2011.<sup>29</sup>

## Committee view

**44.** The Committee acknowledges that training and awareness will be required to successfully implement the duties of quality and candour in the Bill. The Committee notes the cost estimates for developing course material and the public awareness campaign have been based on previous legislation, including the Putting Things Right campaign that was used to launch the new NHS complaints procedure in 2011. However, the Committee believes that the costs could be much higher.

**Recommendation 4.** The Committee recommends the Welsh Government reconsiders the levels of costs for awareness and training for the duties of quality

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<sup>25</sup> Explanatory Memorandum, paragraphs 192 and 282

<sup>26</sup> Explanatory Memorandum, paragraph 192

<sup>27</sup> Explanatory Memorandum, paragraph 282

<sup>28</sup> Explanatory Memorandum, paragraphs 192 and 282

<sup>29</sup> RoP, paragraph 53, 3 July 2019

and candour and these are included in a revised Regulatory Impact Assessment at Stage 2.

#### 4. 3. Cost of providers notifying the service user

**45.** In regard to the duty of candour an “adverse outcome” is described as one which has or could result in more than minimal harm and the provision of health care was or may have been a factor. The duty will apply to NHS bodies.<sup>30</sup>

**46.** The RIA notes it is the intention to set out in statutory guidance information about the interpretation of “more than minimal harm”.<sup>31</sup> The Minister explained why the Bill is not prescriptive in respect of defining “more than minimal harm”:

“we’ve learnt from legislation in other parts of the UK, where a more prescriptive approach on the face of the Bill has actually been unhelpful. And so I’ve committed to the way that we shape the guidance around the duty...So we’re deliberately looking to set a low bar and to actually deliver the detail of that in guidance and in engagement with stakeholders around the service.”<sup>32</sup>

**47.** The RIA notes that the Being Open principles and the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 (SI 2011/704) set the current requirements on NHS bodies in respect of notifying service users of a “concern”.<sup>33</sup> However, the duty of candour will require providers of NHS services to be upfront with the service user or their representative when “more than minimal harm” has or may have occurred and not wait for an initial investigation to determine its appropriateness.<sup>34</sup>

**48.** The RIA assumes that the duty to notify the service user at the start of an investigative process will require providers, following an incident, to record information, including conversations with service users. It is estimated that 30 minutes per incident is required to do this.<sup>35</sup> This assumption has been used to derive the cost estimate, which also reflects the number of cases classified as “moderate” and more severe as reported by NHS bodies in Wales to the National Reporting and Learning System (NRLS) between April 2017 and March 2018.

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<sup>30</sup> Explanatory Memorandum, paragraph 255 and 256

<sup>31</sup> Explanatory Memorandum, paragraph 62

<sup>32</sup> RoP, paragraph 62, 3 July 2019

<sup>33</sup> Explanatory Memorandum, paragraph 310

<sup>34</sup> Explanatory Memorandum, paragraph 315

<sup>35</sup> Explanatory Memorandum, paragraph 318

**49.** The RIA assumes that the number of cases will remain constant over the six years for which costs have been estimated. The cost has been quantified to be £77,300 per year or £463,800 over six years.

**50.** In respect of the definition of “more than minimal harm”, the Minister told Plenary on 18 June 2019:

“So we’re actually looking at a relatively low level and then to understand how you would describe that range of circumstances and deliver some guidance around that.”<sup>36</sup>

**51.** The Committee questioned the NRLS data used for the cost estimates, since the methodology omitted the reported incidents for which there was no harm or the level of harm was assessed as “low”. The Minister’s official said:

“We’ve looked at moderate and severe harm or death in terms of looking at what NRLS reporting standards are, and we’ve taken those numbers. But as we go through the process, when we meet with the stakeholders, and we start to develop the detail of the guidance, if we think that we’ll be bringing in lower levels, that’s something that we can look at, in terms of maybe reframing the RIA as we go forward.”<sup>37</sup>

**52.** Since the Bill is intended to change behaviour, the Committee also questioned whether its provisions might impact on the number of cases classified as causing “more than minimal” harm and hence, the estimated costs. The Minister said:

“There’s always a bit of forecasting about behaviours, but given that it’s a statutory duty that’s going to apply to organisations, a statutory duty that’s going to apply to the way we expect people to do their jobs, there is a price for avoiding that. And if people are deliberately avoiding undertaking their duties that the Bill and then the Act, as we hope it will be, requires, well, that’s part of what you’d see in a range of areas—a citizen voice body helping to pursue issues for people as part of our complaints process. You’d expect to see that in the way that the inspectorate delivers their work, and you’d expect to see that if people end up with the ombudsman. So, I think there’d be pretty significant challenges for organisations who are trying to avoid the duties that are required to report on where harm is done, and that would run wholly

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<sup>36</sup> RoP, Plenary, paragraph 215, 18 June 2019

<sup>37</sup> RoP, paragraph 67, 3 July 2019

contrary to the purpose that we're trying to achieve in introducing the duties of candour and quality.”<sup>38</sup>

## Committee view

**53.** The Committee is concerned that the estimate of ongoing costs for the new duty of candour reflects the number of incidents classified as “moderate” and more severe by NHS bodies to the NRLS. If the definition of “more than minimal harm” is to reflect a low level of harm, the Committee considers that the cost could be significantly higher.

**54.** The Committee notes the Minister’s intention to undertake further work in respect of the definition of “more than minimal harm”. However, the Committee would have expected the Welsh Government to have undertaken this work prior to the Bill being introduced.

**55.** The Committee also notes that the cost estimates are based on the number of incidents reported for the latest year for which data is available, 2017-18 and are assumed to remain constant over the period. As such, the Committee is concerned that the cost estimates would not reflect any trends in the data and the true reflection of costs.

**Recommendation 5.** The Committee recommends the Welsh Government prepares a sensitivity analysis to show the impact of changes in the number of incidents on the ongoing cost arising from the introduction of the duty of candour. This information should be included in a revised Regulatory Impact Assessment at Stage 2.

## 4. 4. Legal Fees

**56.** The NHS Wales Shared Services Partnership (NWSSP) supports NHS Wales by providing support functions and services. These functions include legal advice to NHS bodies in relation to redress and Putting Things Right. The RIA estimates that in the first year following enactment (2020-21) advice requests relating to the duty of candour would increase the current costs in respect of chargeable advice sought in respect of Putting Things Right matters, initially by 20 percent and then 10 percent in subsequent years.<sup>39</sup>

**57.** The RIA quantifies this as £6,000 for the first year following enactment of the Bill and then £3,000 for the subsequent five years to give a total of £21,000 over

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<sup>38</sup> RoP, paragraph 51, 3 July 2019

<sup>39</sup> Explanatory Memorandum, paragraph 322



the six years. This reflects the “current sums billed by Legal & Risk Services to NHS bodies in respect of Putting Things Right matters is £30,000”.<sup>40</sup>

**58.** The Committee questioned whether there was a risk that the actual cost could be higher. The Minister said:

“There’s always a risk that actual costs will be higher, but this comes from a conversation with NHS legal shared services...So, again, it’s an estimate that’s based on engaging with stakeholders in the area, and we’ve actually added a little bit more to try and account for that.”<sup>41</sup>

## Committee view

**59.** The Committee notes that the legal services arising for the duty for candour are based on the existing costs for Putting Things Right, which the RIA quantifies as £30,000 for NHS bodies. The Committee notes that this equates, on average, to an annual cost of £3,000 for each local health board and NHS Trust in Wales.

**60.** The Committee is concerned that the legal costs arising from the new duty of candour could be significantly higher, given the related uncertainty around estimates. The RIA does not set out any further information about the current legal costs, such as the number of complaints in respect of which NHS bodies currently seek advice from NWSSP. Nor does the RIA explain the basis for the assumption for the annual increase in estimated costs.

**61.** The Public Services Ombudsman for Wales has told the Committee on a number of occasions about his concern regarding the volume of health complaints that are made to his office. In his Estimate for 2019-20, the Ombudsman stated “whilst we’ve seen a welcome 2% reduction in the total number of complaints, complaints about health boards increased by 11%”.<sup>42</sup>

**Recommendation 6.** The Committee recommends the Welsh Government undertakes further work on legal costs arising from the Bill and updates the Regulatory Impact Assessment at Stage 2. This should include a sensitivity analysis to demonstrate a range of costs, where appropriate.

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<sup>40</sup> Explanatory Memorandum, paragraph 322

<sup>41</sup> RoP, paragraph 64, 3 July 2019

<sup>42</sup> Scrutiny of the Public Services Ombudsman for Wales’s Estimate for 2019-2020, National Assembly for Wales Finance Committee, Annex



## 4. 5. Citizen Voice Body – running costs

### Background

**62.** Part 4 establishes the Citizen Voice Body for Health and Social Care, Wales (the “Citizen Voice Body”) as a corporate body, a legal entity in its own right, whose general objective will be to represent the interests of the public in health and social care.<sup>43</sup>

**63.** It will also provide complaints advocacy service in respect of health and social care. The Citizen Voice Body will be a national body that will replace the seven CHCs in Wales which operate at local levels and the Board of CHCs which oversees the local Councils.<sup>44</sup>

**64.** The RIA quantifies the cost of the new Citizen Voice Body, which is estimated to be fully operational by October 2021, to be £6.1 million. This reflects transitional costs of £3.1 million for establishing the new organisation, including the cost of the Implementation Board. The remainder is the additional recurrent costs to the Welsh Government of the new Citizen Voice Body, over and above the current funding of the existing CHCs. This is estimated to be some £0.7 million per year. The recurring annual cost of £0.06 million for the ongoing “sponsorship” of the new body will also fall to the Welsh Government.

**65.** The RIA assumes the current CHC staff (73 Whole Time Equivalent, cost 2018-19, £3 million) will transfer to the new Citizen Voice Body. However, the new Body will need to recruit an additional eight staff to provide a complaints advice and assistance service in respect of services not currently covered by CHCs, including complaints about NHS services for children and social services functions of local authorities and regulated providers of social services.

**66.** The RIA notes the Welsh Government has obtained data from some NHS bodies and local authorities on which to base some elements of its cost estimates. However, the RIA notes “there is no data on the number of complaints that are made to providers of regulated services”.<sup>45</sup> The RIA adopts, as a proxy, the number of complaints about the social services functions of local authorities.

**67.** This cost estimate reflects assumptions about the volume of additional complaints that are expected to fall within the scope of the new Body’s

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<sup>43</sup> Explanatory Memorandum

<sup>44</sup> Explanatory Memorandum

<sup>45</sup> Explanatory Memorandum, paragraph 537

complaints functions, and their number is forecast to remain constant over the six years for which the financial implications have been quantified.

**68.** The RIA notes the Review of the work of Healthcare Inspectorate Wales, carried out by Ruth Marks MBE, whose findings suggested that CHCs needed to offer “much more advice and support to people who have concerns and wish to make complaints about their health care”.<sup>46</sup>

**69.** The Minister said that if the Citizen Voice Body is able to “take up complaints” this was a “real value” that could not be quantified in monetary terms. He said it was part of “delivering a better health and care system” that is more responsive and proactive.<sup>47</sup>

**70.** The Minister’s official explained that one area that they “hadn’t been able to cost” was in relation to local authorities of “looking at the representations that the Citizen Voice Body can make to them”.<sup>48</sup> The official added:

“Well, the representations could range from very minor representations that would take a few minutes to consider to something that is far more substantial... we said we’d prefer not to put anything in the RIA to say something that wasn’t really capable of quantification at the moment, but to engage with the WLGA and local authorities once the duty had been in place for a little while to look to see what the actual costs were.”<sup>49</sup>

**71.** The Minister’s official said that local authorities were “comfortable” that these costs could be assessed as part of a post-implementation review and “that would be the right time to do that”.<sup>50</sup>

**72.** In relation to how the estimated running costs of the new Citizen Voice Body reflect the findings of the review of Healthcare Inspectorate Wales, the Minister said:

“...part of what Ruth Marks was saying was about refocusing the mission of CHCs as the voice of the public, and they have a mixed mission at the moment. So actually, the new citizen voice body would have some clarity that it’s not there to replicate the role of the inspectorate.

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<sup>46</sup> Explanatory Memorandum, paragraph 95

<sup>47</sup> RoP, paragraph 26, 3 July 2019

<sup>48</sup> RoP, paragraph 35, 3 July 2019

<sup>49</sup> RoP, paragraph 35, 3 July 2019

<sup>50</sup> RoP, paragraph 38, 3 July 2019

Actually, we think that would help in the way they use some of their resources already. When CHCs were formed back in the 1970s, we didn't have the same regulatory and inspectorate structures that we do now. There is a point of modernising and updating the point and the purpose, and to be the voice with and for the person.”<sup>51</sup>

## Committee view

**73.** The Committee is disappointed that the cost to local authorities of looking at the representations that the Citizen Voice Body can make to them was not accounted for in the RIA. Whilst recognising that the Welsh Government will continue to work with the WLGA and local authorities once the duty has been in place, more work could have been undertaken in advance of the Bill being introduced.

**74.** The Committee notes that the running costs of the new Citizen Voice Body reflects assumptions about the volume of additional complaints that are expected to fall within the scope of the new Body's complaints functions. The number of complaints is forecast to remain constant over the six years for which the financial implications have been quantified. The Committee is concerned that the number of complaints could rise and that the RIA does not present the range of likely costs, particularly those that may arise from a fluctuation in the number of complaints.

**Recommendation 7.** The Committee recommends that a sensitivity analysis is undertaken to show how fluctuations in the assumptions about the volume of additional complaints impacts on the number of staff required for the new Citizen Voice Body and its expected running costs. This information should be included in a revised Regulatory Impact Assessment at Stage 2.

## ICT costs - Citizen Voice Body

**75.** The most significant element of the transitional cost of establishing the Citizen Voice Body relates to capital ICT costs. The cost estimate, as reflected in the net cost of the Bill, is £2.13 million. However, the supporting information, as set out at Table 68 of the RIA, includes costs that range from £2.13 million to £3.12 million.<sup>52</sup>

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<sup>51</sup> RoP, paragraph 79, 3 July 2019

<sup>52</sup> Explanatory Memorandum. Table 68, page 143

**76.** A range of costs from £0.52 million to £0.76 million per year has also been identified for ongoing operating ICT costs. However, as with the capital cost, the RIA assumes the low cost estimate.

**77.** The RIA states that, while the costs have been presented as a range, the “lowest cost point has been used as we feel this is a more accurate estimate”.<sup>53</sup>

**78.** The Minister’s official said when estimating the ICT costs “we have gone for the lower” cost. She said this was based on the full cost around the current CHCs structure, which includes 12 offices “so it’s a full refit of those offices”.<sup>54</sup> The Minister’s official continued:

“...we also have built in ongoing IT costs as well, because we see IT as an enabler for the new body moving forward as well. So, with regard to the ongoing revenue cost for IT, it’s calculated as £520,000 per annum, because we see that as a really important enabler for the organisation in the way it engages and the way it can flexibly work within communities across Wales, and that’s a significantly greater amount than currently the CHCs have on an annual basis for ICT support.”<sup>55</sup>

## Committee View

**79.** The Committee notes that since the most significant element of the transitional costs of establishing the Citizen Voice Body relates to ICT costs, it is disappointing that the “lower cost” for ICT has been used. Whilst the Committee acknowledges the role of ICT as an enabler and facilitator of flexible working practices, the RIA does not set out sufficient evidence to demonstrate this and therefore does not support the use of the low cost estimates in the assessment of the financial implications of the Bill.

**Recommendation 8.** The Committee recommends that the Regulatory Impact Assessment should reflect the potential range of ICT costs rather than the low cost estimate.

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<sup>53</sup> Explanatory Memorandum, paragraph 572

<sup>54</sup> RoP, paragraph 73, 3 July 2019

<sup>55</sup> RoP, paragraph 73, 3 July 2019

## 5. Post-implementation review

### Background

**80.** Chapter 9 of the RIA sets out information in respect of the post implementation review of the Bill. It notes:

“A programme of monitoring and evaluation activity will be developed to correspond with key activities and a range of research and evaluation methods will be considered, depending on the nature of the data required.”<sup>56</sup>

**81.** The RIA notes that the specific evaluation methodology cannot be finalised until the detail of the implementation of the different areas of the Bill has been agreed. However, it states that “a number of the issues addressed in the Bill are also being addressed by other forms of action”.<sup>57</sup> As such, it would be “unrealistic to assume there would be no other factors influencing public/service user satisfaction during post implementation”<sup>58</sup> and “it will therefore be difficult to fully attribute certain population level trends ... to the effects of the Bill”.<sup>59</sup>

**82.** The RIA notes that “activity to monitor the implementation of the Bill will wherever possible be aligned to other relevant work”.<sup>60</sup> These include health data and statistics, as well as administrative data. It reports “further consideration will be given to the specific content of such evaluative activity in the coming months”.<sup>61</sup>

**83.** Based on the corresponding costs for other legislation, the RIA estimates that the cost of the monitoring and evaluation of the Bill will range from £250,000 to £300,000 over five years.<sup>62</sup>

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<sup>56</sup> Explanatory Memorandum, paragraph 616

<sup>57</sup> Explanatory Memorandum, paragraph 617

<sup>58</sup> Explanatory Memorandum, paragraph 617

<sup>59</sup> Explanatory Memorandum, paragraph 617

<sup>60</sup> Explanatory Memorandum, paragraph 618

<sup>61</sup> Explanatory Memorandum, paragraph 622

<sup>62</sup> Explanatory Memorandum, paragraph 624

**84.** The Minister said he was committed to undertaking post-implementation review “to understand the shift that’s been made” in terms of cultural and organisational change.<sup>63</sup> He added:

“...the fact that there’s going to be an annual statement from Welsh Ministers on the duty of quality will be an obvious point where people will take interest....I expect that the first time that that duty is provided there’ll be a demand to have either a debate or a statement in the Chamber, for Members to ask questions about it, and I’m sure there’ll be lots of wider public interest as well. So, every year, we will be providing that statement and there’ll be an opportunity, when we’re doing that post-legislative review, to look back on what those statements have shown and set out, and how we track through any level of improvement. For example, the way in which the duty of candour is engaged, and not just the numbers of time but whether we can actually then point to improvements that have been made, as a result. So, I do think you, and other Members, will be able to see that over time, deliberately set out, in making sure there’s a very obvious opportunity to scrutinise whether the duty of quality has made any difference.”<sup>64</sup>

**85.** In terms of the likely timing of the review of the Bill, the Minister’s official told the Committee:

“Obviously, we would want to see some of the reports coming through before we undertook that evaluation.... So, we’d be looking at it after three years of implementation in order to get some real figures.”<sup>65</sup>

## Committee view

**86.** The Committee believes inclusion of a robust post implementation review is good practice and helps to ensure the objectives of legislation are being delivered in line with expectations and that value for money has been achieved. The Committee is pleased that a post implementation review is included in the RIA and welcomes confirmation that it will be carried out after three years following enactment.

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<sup>63</sup> RoP, paragraph 26, 3 July 2019

<sup>64</sup> RoP, paragraph 95, 3 July 2019

<sup>65</sup> RoP, paragraph 98, 3 July 2019

**87.** The Committee recognises the potential difficulties in monitoring the effects of the Bill given related Welsh Government policies and initiatives, as well as other factors. However, the Committee has previously stated the importance of including, in the RIA, information about the methodology to effectively monitor the outcome of legislation. The Committee notes that further consideration is to be given to its specific content.

**Recommendation 9.** The Committee recommends that in revising the Regulatory Impact Assessment, information is included about the methodologies and specific content of the post implementation review. This should include information about the baseline position against which the impact of the Bill can be measured and assessed.