

---

## **Health and Care Professions Council response to Welsh Government consultation ‘Striking the right balance: proposals for a Welsh Language Bill’**

26 October 2017

### **1. Introduction**

The Health and Care Professions Council (“HCPC”) welcomes the opportunity to respond to this consultation.

The HCPC is a UK-wide statutory regulator of 16 health and care professions, set up to protect the public. To do this we maintain a register of professionals (“registrants”); set standards for entry to our register; approve education and training programmes for registration; and process concerns where a professional may not be fit to practise.

Our role and functions as a statutory regulator are set out in the Health and Social Work Professions Order 2001 and we are accountable to the UK Parliament. We are regulated by the Professional Standards Authority (PSA).

We regulate 15 professions on a UK-wide basis and social workers in England. We currently have over 357,000 registrants, of which about 13,500 (less than 4%) list their home address as in Wales. The vast majority of registrants are based in England. We have one office in Kennington, London and all our full-time permanent staff are based at this office.

We are funded entirely through the registration fees of our registrants and do not receive any public money.

We are committed to fulfilling our obligations under the Welsh Language Act 1993, and published our first Welsh language scheme in 2011. This sets out our commitment to the principle that, in the conduct of public business in Wales, we will treat the Welsh and English languages on the basis of equality. The scheme has since been amended and approved by the Welsh Language Commissioner in February 2013. In 2015, we prepared a comprehensive evaluation report of the scheme alongside an implementation plan of key priorities for the period 2015-17.

We are currently awaiting the outcome of the Welsh Government consultation on Welsh language Standards for the health sector. We responded to this consultation in October 2016, where we expressed our concerns that the Standards in their consulted-upon form could have significant implications for us, which were neither proportionate nor reasonable. In addition, the PSA are currently reviewing the standards of good regulation, which we must adhere to. They have proposed including standards covering accessibility of information, governance and equality. Should they include these in the future, there is the potential for duplication with Welsh language standards, which we would wish to avoid. We have framed our response to this consultation with these concerns in mind.

We welcome the Welsh Government's active engagement with us and other regulators throughout the process of developing new Standards and are keen to continue to be a part of the on-going dialogue as this White Paper progresses.

## **2. Response to the consultation questions**

We have considered all the consultation questions presented in the paper, but have focused our response on the proposals presented in Part 3.

**Question 17 – We propose that a reformed model of the Standards (Option 2) should be adopted as the best way to ensure people's rights to receive Welsh language services. Do you agree with this proposal?**

Agree.

We are supportive of this proposal. However, we would want to ensure that the HCPC continues to be informed of any progress regarding its implementation. We would expect this to include further information on how Standards will be assessed as being of "little public benefit", and how bodies subject to Welsh language Standards will be given greater opportunity to exercise reasonable judgement.

We would also like to note that we believe the intention, set out in para 152 of the paper, that "over time, all bodies should converge towards the same Standards", is unlikely to be realistic. Whilst this may be possible for bodies based in Wales who report to Welsh Government, for organisations such as ourselves (with a UK wide remit, physically located in England and with accountability to the UK Parliament) our ability to extend the scope of our Welsh language services is likely to be far more limited. Welsh registrants continue to remain a very low proportion of our total number of registrants (less than 4%), as does the up-take of our existing Welsh language services, and this is unlikely to increase in the future. We are entirely funded by our registrants' fees, and therefore any addition to our services has to be funded through a raise in registration fees. Currently significant improvements to our Welsh language ability are therefore cost prohibitive. Instead, we propose that Welsh Government aim for all bodies to reach an acceptable Welsh language standard; one which reflects the different organisations' ability to improve their Welsh language capacity. We also believe that the impact assessment for these proposals needs to better consider the potential impact on our registrants.

**Question 18 – We have based our preferred proposal for reformed Standards (Option 2) on the grounds of the clarity, capacity for improvement and the costs of change associated with each option (paragraphs 163–165). Do you agree with our analysis?**

Agree.

We believe that Option 2 is the best option, both on these grounds and the increased flexibility afforded to bodies subject to Welsh language Standards. We believe the other

options presented are more onerous and less flexible, as they propose placing some Standards in primary legislation. As Welsh language Standards need to be implemented across a wide range of sectors and organisations – each with their own resources and remits regarding Welsh language – scope for flexibility in implementation is an important consideration when proposing any reform.

**Question 19 – Do you agree with the proposal to abolish the current classes of Standards and differentiate between ‘Standards’ (which would relate to services) and ‘language planning duties’ (which would relate to corporate duties)?**

We support the intention of the proposal (to provide a coherent framework and support improvements) but we are unclear what the benefits are of dividing the five classes of language Standards in to Standards and language planning duties. It is our view that the current Standards are intrinsically linked, and it may be challenging to separate them.

**Question 20 – Are you of the opinion that provisions relating to the Welsh in Education Strategic Plans should be included within the new legislation as language planning duties?**

No view.

**Question 21 – Are there any other matters which you believe should be included in the new legislation as language planning duties?**

No.

**Question 22 – Do you agree that the proposed Commission should have general powers to conduct examinations into how bodies meet their Welsh language duties, which would include both the Standards and the language planning duties?**

Unsure.

Whilst we are supportive of the proposed Commission having a role in conducting examinations of how bodies meet their Welsh language duties, we are unclear what the resulting change would be in separating enforcement of Standards and language planning duties. We are concerned that this may lead to examinations becoming unduly onerous and a duplication of work, without clear benefits.

**Question 23 – Do you agree with our proposal that the proposed Commission should monitor and support bodies in relation to their language planning duties, rather than enforce them?**

See our response to Question 22.

**Question 24 – Do you agree with our proposal for the Welsh Government to be responsible for imposing Standards on bodies either through a compliance notice or other mechanism?**

Agree.

**Question 25 – Do you agree with our proposal that all regulations to make Standards should be subject to a full public consultation before seeking the approval of the Assembly?**

Agree.

**Question 26 – Do you agree with our proposal to abolish Standards Investigations?**

Agree (in principle).

We support streamlining the process. However, if Standards Investigations are removed then it is unclear how the Welsh Government will get information about bodies prior to proposing Standards. We are concerned that without a clear process in place, Standards may be proposed that are not realistic or relevant to a particular body and therefore greater work will be generated at the consultation period at a cost to the Welsh Government and those responding to the consultation.

**Question 27 – Do you agree with our proposal that the Welsh Government should be given powers to issue codes of practice or guidance relating to the Standards?**

Agree.

**Question 28 – Do you agree with our proposal that the Welsh Government should have a power to impose Standards on all the bodies in a sector directly through regulations without the need for a compliance notice or other such mechanism?**

Agree (in principle).

We would support this proposal on the condition that assurances are made that bodies will be appropriately kept up-to-date and, if not, then there will not be any negative consequences for the body as a result. We support the inclusion of an enhanced consultation process and the right to challenge the imposition of a standard if this proposal is taken forward as means of mitigating any such risk.

**Question 29 – What factors should we take into account or what procedure should we follow in order to ensure the process for imposing Standards on the Welsh Government is fair and transparent?**

No view.

**Question 30 – Do you agree with our proposal that complaints should have to be dealt with through the relevant body’s complaints procedure first before the proposed Welsh Language Commission can investigate an alleged failure?**

Agree.

**Question 31 – Do you agree with our proposal that bodies must adhere to an approved complaints procedure, such as the Model Concerns and Complaints Policy?**

Disagree.

We are concerned that any proposal to create one approved complaints procedure that all bodies subject to Welsh language Standards must adhere to will not be sufficiently flexible to reflect the full range of organisations and any variation in how complaints are handled.

The HCPC is not regulated by the Public Services Ombudsman for Wales, but is overseen by the PSA. We are also certified to the ISO 10002 Customer Satisfaction Complaints Handling standard, and therefore any proposed complaints procedure we follow would need to be compatible with this certification.

We are concerned that any requirement for us to adhere to an approved complaints procedure would result in us having to change our complaints process, or having to create a specific Welsh language complaints process. We do not consider either of these outcomes to be proportionate. We are particularly concerned about the potential requirement to publish individual Welsh language complaints, which we do not feel is proportionate. Whilst we do not receive a high volume of Welsh language complaints, we currently do not publish such information on our website. Instead, we publish an annual review of feedback and complaints, which reflects on the nature of complaints and their outcome.

**Question 32 – Do you agree with our proposal that the proposed Commission should only take further action regarding a complaint if it believes the alleged breach of a Standard or complaints procedure is serious?**

Agree (in principle).

We support all of these, with the exception of c. We are concerned that without realistic timescales to put a remedy in place, this may generate more referrals than intended. As an organisation with limited capacity for implementing cross-organisation changes at short notice, we may be unable to remedy a breach in time and therefore be referred to the Commission as a result of ‘repeated breaches’. We consider that clear timescales which have been agreed by both parties to be reasonable and proportionate should be required, and a failure to remedy not considered a serious breach unless that timescale has been breached.

**Question 33 – Do you agree with our proposal to allow the proposed Commission to conduct an investigation of its own initiative?**

Agree (in principle).

We consider this proposal less onerous than the existing model, however we would want further guidance on when the proposed Commission can conduct an investigation of its own initiative. We would also want assurances that there is an open dialogue about the process should this happen.

**Question 34 – Do you agree that the actions set out in paragraph 225 provide an effective range of enforcement action?**

Agree.

**Question 35 – Currently, the Commissioner has powers to impose a civil fine of up to £5,000 and in some circumstances to request a court order to require a body to comply. Do you agree with our proposal that these powers should be retained?**

Agree.

**Question 36 – Do you agree with our proposal to retain the Tribunal’s role in relation to the proposed Commission’s decisions regarding enforcing bodies’ compliance with Standards?**

Agree.

**Question 37 – Do you agree with our proposal that the Tribunal should also deal with appeals against a decision of the Welsh Government to impose Standards on a body?**

Agree.

**Question 38 – We propose to introduce a mandatory first stage for the Tribunal in relation to appeals against the proposed Commission’s decisions concerning enforcing Standards. The first stage would require the Tribunal to give permission on the grounds that an application has a reasonable chance of success or another compelling reason why the application should be heard. Do you agree with our proposal?**

Agree.

**Question 39 – Do you believe that the proposed mandatory first stage should apply to appeals against a decision of the Welsh Government to impose Standards on a body?**

Yes.

We would like to thank the Welsh Government for inviting us to respond to this consultation. As work continues on the Welsh language Bill, we hope to be included in the dialogue to further this conversation. We would be happy to meet to discuss our response in further detail if so required.