

Cafodd yr ymateb hwn ei gyflwyno i ymgynghoriad y [Pwyllgor Iechyd a Gofal Cymdeithasol](#) ar [Flaenoriaethau'r Chweched Senedd](#)

This response was submitted to the [Health and Social Care Committee](#) consultation on [Sixth Senedd Priorities](#)

HSC PSS 23

**Ymateb gan: | Response from: Comisiwn Cydraddoldeb a Hawliau Dynol |
Equality and Human Rights Commission**

Blaenoriaethau cychwynnol a nodwyd gan y Pwyllgor Initial priorities identified by the Committee

Mae'r Pwyllgor wedi nodi nifer o flaenoriaethau posibl ar gyfer ei waith yn ystod y Chweched Senedd, gan gynnwys: iechyd y cyhoedd a gwaith ataliol; y gweithlu iechyd a gofal cymdeithasol, gan gynnwys diwylliant sefydliadol a lles staff; mynediad at wasanaethau iechyd meddwl; arloesi ar sail tystiolaeth ym maes iechyd a gofal cymdeithasol; cymorth a gwasanaethau i ofalwyr di-dâl; mynediad at wasanaethau adsefydlu i'r rhai sydd wedi cael COVID ac i eraill; a mynediad at wasanaethau ar gyfer cyflyrau cronig tymor hir, gan gynnwys cyflyrau cyhyrsgerbydol.

The Committee has identified several potential priorities for work during the Sixth Senedd, including: public health and prevention; the health and social care workforce, including organisational culture and staff wellbeing; access to mental health services; evidence-based innovation in health and social care; support and services for unpaid carers; access to COVID and non-COVID rehabilitation services; and access to services for long-term chronic conditions, including musculoskeletal conditions.

C1. Pa rai o'r materion uchod ydych chi'n credu y dylai'r Pwyllgor roi blaenoriaeth iddynt, a pham?

Q1. Which of the issues listed above do you think should be a priority, and why?

We welcome the opportunity to contribute to the Health and Social Care Committee's consultation. The following should be priority areas in the Sixth Senedd.

The health and social care workforce, including organisational culture and staff wellbeing

In the autumn, the Equality and Human Rights Commission will be publishing our inquiry report into racial inequality in health and social care workplaces. The terms of reference can be accessed [here](#).

The report will include recommendations for the Welsh Government and other key stakeholders in Wales and will help inform the Welsh Government's Race Equality Action Plan.



The inquiry focusses on the experiences of ethnic minority people working on the frontline in lower-paid roles particularly during the pandemic. Recommendations will reflect issues ranging from different treatment, awareness of rights, employee voice, low paid insecure employment, lack of data and oversight and structural issues which exist within the health and social care workforces and contribute to the poorer outcomes experienced by ethnic minority workers.

In order to protect and improve employment rights for ethnic minorities in Wales who are over-represented in low paid, precarious and insecure work, the Health and Social Care Committee may wish to examine the Welsh Government and other's response to the report findings and recommendations and action taken to address the issues identified or conduct its own work in this area.

Access to mental health services

Earlier this year we submitted evidence to the United Nations (UN) as part of our work on monitoring the Convention on the Rights of the Child (CRC). [Our submission](#) expressed significant concerns about how the pandemic is affecting children's rights, their mental wellbeing and access to services. We are concerned by the impact of significant waiting times and increasingly stringent eligibility criteria for CAMHS referrals. There exists significant geographic disparity in access to this service, as exemplified by the proportion of CAMHS referrals in Wales being less than half the rate in England and less than one third of that in Scotland, based on 2020 figures.¹

In our submission, we recommended that the Welsh Government should commit to introduce increased, ring-fenced and long-term funding for CAMHS alongside a range of children's mental health support services and interventions to match demand, together a new strategy to resolve geographic disparities, waiting times and concerns about eligibility criteria.

We also called for the urgent development of a robust, cross-departmental child mental health strategy, to tackle the growing need for support, with clear and distinct plans to reduce disproportionate rates of mental health disorders in certain at-risk groups.

It is vital that any decisions about the provision and prioritisation of mental healthcare for children – during the pandemic and in the longer term – comply with the Public Sector Equality Duty by ensuring adequate data on the need for, access to and outcomes from mental health services for people sharing different protected characteristics is gathered and analysed, and take action to deal with any disproportionate impacts.

The Committee may wish to explore this increasingly prevalent health issue and we would be pleased to contribute evidence and recommendations to support this work.

Evidence based innovation in health and social care

Our 'Is Wales Fairer? 2018' report found a severe lack of disaggregated data across all areas of health, which means we do not truly know the health (and mental health) outcomes and the potential barriers in access to health for specific protected characteristics groups. We have reminded the new Welsh Government of their legal obligations under the Equality Act and Public Sector Equality Duty (PSED) and for applying the principles that sit within these to all decision making. Under the requirements of the PSED, a public body must make appropriate arrangements to ensure that it periodically identifies relevant information it holds, and identifies and collects

information that it does not have. Compliance with the PSED in relation to the duty to have due regard of relevant information, data and evidence to inform equality-related decisions may be an area the Committee may wish to include in its programme of scrutiny.

To more effectively address inequalities in Wales, NHS Trusts and Local Health Boards should collect, monitor and analyse comprehensive data on health outcomes and use of health services disaggregated by protected characteristic and for at-risk groups, including refugees and asylum seekers, trans people, and socio-economically disadvantaged and older people, and by impairment type, including users of British Sign Language.

Support and services for unpaid carers

In July, we launched an inquiry into how older and disabled adults and unpaid carers can challenge local council decisions about social care and support. This includes whether they are entitled to care or support and, if so, how much and what kind of care or support they can access.

We want to understand people's experiences of challenging, or trying to challenge, local council decisions about adult social care or support.

We want to know whether:

- the existing ways of challenging decisions are effective and accessible
- people are given enough information about their rights to care and support, and how they can challenge decisions
- people can access high quality advocacy support to help them challenge decisions
- local councils and other bodies learn from challenges to improve decision-making in future
- there are effective systems in place to check that decisions are made well the first time round.

The terms of reference can be accessed [here](#). We are currently in the process of gathering evidence for the inquiry and hope to publish our findings and recommendations in the first quarter of 2022.

This inquiry intends to strengthen key safeguards around decisions made about adult social care and support, by ensuring that there are appropriate and accessible systems to challenge decisions, that advocacy support for challenging decisions is available for those who need it, and that there are systems in place to monitor key decisions that affect people's rights. Ultimately to drive up standards in decision-making through a more accessible and transparent system to challenge decisions that fall short. We believe that our inquiry will add value and complement the independent evaluation the Social Services and Wellbeing Act, providing new insights, learning and solutions to improve the experience of social care users in Wales.

The Health and Social Care Committee may wish to examine the Welsh Government and other's response to the report findings and action taken to address the issues identified or conduct its own work in this area.

Access to COVID and non-COVID rehabilitation services

Evidence suggests that different protected characteristic groups face a range of barriers to good quality social care. In setting out the Case for change the Welsh Government's White paper – Rebalancing Care and Support notes a perception in the social care sector of the reluctance of Black, Asian and Minority Ethnic communities to engage with the sector. The First Ministers Black Asian Minority Ethnic Covid-19 Advisory Group reported that health and social care is seen as difficult to access, with cultural and language barriers.

The Senedd's Health, Social Care and Sport inquiry into isolation and loneliness cited Stonewall Cymru written evidence that stated "lesbian, gay, bi and trans (LGBT) people are more likely to grow old with less robust support networks. They are also less likely to access support services due to fears of discrimination, lack of understanding and poor-quality care. This combination of factors means that LGBT people (especially older LGBT people) are often highly vulnerable to isolation and loneliness".

For disabled people, evidence suggests that insufficiencies the social care workforce create barriers to access. The social Services and Well-being (Wales) Act 2014 places a statutory duty on local authorities to take a preventative approach to meeting support needs. A report entitled "Rehabilitation for people with sight loss in Wales" produced by the Wales Council of the Blind in partnership with the Welsh Rehabilitation Officers Forum, the professional body representing Rehabilitation Officers for Vision Impairment found that, while rehabilitation services provided by Rehabilitation Officers are intended to meet this requirement for visually impaired adults, to enable independence and wellbeing, currently only 8 out of 22 local authorities meet the minimum standards for the number of qualified Rehabilitation Officers per head of population. This means that, in some parts of Wales, people with a vision impairment are waiting longer than twelve months for rehabilitation support.

The "Locked Out" report produced by Welsh Government's Disability Equality Forum, called for the Welsh Government to require all local authorities to develop a work force plan to address the increasing shortage of rehabilitation services and specialists, which has yet to be actioned.

Intersectionality, the distinct forms of harm, abuse, discrimination and disadvantage experienced by people when multiple categories of social identity or protected characteristic interact with each other, must be a key consideration in examining whether current rehabilitation services are fit for purpose and when planning for the future. Committee may wish to examine this issue in more detail and we would be pleased to provide evidence and expert advice.

Blaenoriaethau allweddol ar gyfer y Chweched Senedd

Key priorities for the Sixth Senedd

C2. Yn eich barn chi, pa flaenoriaethau allweddol eraill y dylai'r Pwyllgor eu hystyried yn ystod y Chweched Senedd mewn perthynas â:

- a) **gwasanaethau iechyd;**
- b) **gofal cymdeithasol a gofalwyr;**
- c) **adfer yn dilyn COVID?**

Q2. In your view, what other key priorities should the Committee consider during the Sixth Senedd in relation to:

- a) **health services;**
 - b) **social care and carers;**
 - c) **COVID recovery?**
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Gwasanaethau iechyd

Health services

The Welsh Government's Programme for Government makes three distinct pledges related to mental health: to prioritise investment; to prioritise service redesign to improve prevention, tackle stigma and promote a no wrong door approach to accessing support; and, to roll out child and adolescent mental health services 'in-reach' in schools across Wales.

As noted earlier in our response, our submission to the UN as part of our CRC monitoring found deficiencies in the provision of mental health services for children and young people. In part, caused by significant waiting times and stringent eligibility criteria for CAMHS referrals.

We recommend that the Welsh Government should urgently develop a robust, cross-departmental child mental health strategy, to tackle the growing need for support, with clear and distinct plans to reduce disproportionate rates of mental health disorders in certain at-risk groups. Alongside this strategy, long term funding for a range of children's mental health support services and interventions should be increased and ring-fenced to match demand.

We recommend that the Committee closely monitor the actions taken by the Welsh Government to fulfil on their commitment to improve mental health provision; or to conduct their own work in this area to inform their approach.

Gofal Cymdeithasol a gofalwyr

Social care and carers

Our ['Equality and human rights in residential care during coronavirus'](#) briefing demonstrates the profound impact the pandemic has had on those living in residential care and raised serious questions about the value we place on older and disabled people's lives. There is evidence that that equality and human rights standards were not upheld, including in key decisions about care

home admissions, visits, do not resuscitate notices, access to critical care and independent advocacy. Our briefing sets clear recommendations for Welsh Government to ensure that decisions made by Ministers put the fulfilment of care homes residents' fundamental human rights at the centre and provides advice on complying with equality legislation.

As we move into pandemic recovery, it is vital that we examine how these decisions were made and what more needs to be done to safeguard older and disabled people's rights. The Committee will need to focus on the Welsh Government's ongoing response to the pandemic and ensure that when developing policy and recommendations relating to social care, older people and disabled people that they are complying with both the Human Rights Act 1998 and Equality Act 2010, in particular the Public Sector Equality Duty, Wales specific duties.

It is vital that the lessons of the pandemic are learnt and embedded into practice so that the fundamental rights of older and disabled people in care homes are upheld and their voices are placed at the centre of decision-making.

We welcomed recommendation 8 made by the previous Health and Social Care Committee in their [inquiry into the impact of the COVID-19 outbreak, and its management, on health and social care in Wales: report 3 – Impact on the social care sector and unpaid carers](#), that The Welsh Government must, as a matter of urgency, work with the Equality and Human Rights Commission and Older People's Commissioner for Wales to ensure the human rights of older people are protected and upheld. The previous Committee also recommended that the Welsh Government writes to the Sixth Senedd committee with responsibility for older people at the start of the new Parliamentary term to provide an explanation of what has been done to resolve the concerns raised by the EHRC and Older People's Commissioner. We would be pleased to receive an update on the progress of this recommendation and to support the Committee to continue to take forward this important work.

EHRC inquiry into challenging decisions about adult social care

As previously stated, we are currently undertaking a formal inquiry under Section 16 of the Equality Act 2006 that will examine the ways in which individuals can challenge decisions relating to the care and support they can access through their local authority, the adequacy and accessibility of means of challenge along with advocacy support, and the broader systems in place to monitor quality and consistency of decision-making.

Local authorities make a number of decisions about disabled and older adults and unpaid adult carers' entitlement to adult social care or support, including whether they are entitled to support, what kind of support they can access, and how much.

These decisions have significant equality and human rights implications. They affect the ability of older and disabled people and unpaid carers to have choice, control and dignity in their day-to-day lives, maintain relationships, live independently and participate in their communities.

It is important that people can easily challenge a decision if they feel it leaves them without the right care or support. It is also important that there are ways to check that decisions are being made well first time.

The social care system is under pressure and COVID-19 has made many of the existing problems worse.

It has led to numerous reports of reduced care packages and people's needs not being met. With important decisions being made in a system under pressure, it is all the more vital that there are effective ways for people to challenge decisions that may be wrong, and to check that good decisions are being made the first time round.

The terms of reference can be accessed [here](#). We hope that the Health and Social Care Committee will examine the Welsh Government and other's response to the report findings and action taken to address the issues identified or may wish to conduct its own work in this area.

White paper on Rebalancing Care and Support

We provided advice to the Welsh Government on its proposed reforms to the social care system in Wales, sharing our views on the Welsh Government's White Paper on Rebalancing Care and Support. The proposals provide a platform to ensure that equality and human rights are central to social care practice in Wales.

We recommended the legislation creates national equality and human rights outcomes in the new national commissioning framework to address the greatest inequalities faced by groups receiving social care and embed fair work principles for the social care workforce. Setting outcomes for human rights within the national framework would provide the opportunity for commissioners to develop services that meet people fundamental human rights, ensure people are treated with dignity and respect and realise people's right to independent living.

This would ensure that commissioners are focussed on developing care services that achieve social value and tackle barriers and inequalities faced by some groups.

Progress to achieve the national equality and human rights outcomes should be reviewed and monitored. Our [measurement framework](#), which includes indicators such as access to social care; quality of social care; dignity and respect in social care; choice and control over support to independent living, and independent advocacy; social care funding; impact of caring on carers provides assistance for this process. Using these indicators of progress could support Welsh Government, public bodies and commissioners to identify and address the greatest inequalities in social care. It would also ensure greater transparency and accountability which would assist the Committee with its scrutiny work.

It is also vital that any new commissioning practices are underpinned by strong compliance with the PSED in that they aim to eliminate discrimination, advance equality of opportunity and seek to foster good relations between groups with protected characteristics as well as complying with the Welsh specific duties at each stage. For example, assessing the equality impact of proposals and engaging with groups with protected characteristics throughout the process.

We also recommend that the Welsh Government should provide support and guidance to commissioners so that they can achieve the aims of the PSED and tackle the greatest inequalities through the commissioning and procurement processes.

We hope that the Committee will support these recommendations when considering any legislation to give effect to social care reform.

Incorporation of UN Convention on the Rights of Persons with Disabilities (CRPD)

We welcome the commitment made to incorporate UN treaties into Welsh legislation. In the context of social care, the incorporation of the UNCRPD has significant potential to address inequalities faced by disabled people. The Commission, along with stakeholders, has developed a legal model for incorporating Article 19 the Right to Independent Living into domestic law. Strengthening legal protections for the right to independent living would help ensure the protection and fulfilment of disabled people's human rights more broadly and we would be pleased to share our advice with the Committee to assist your consideration of any new legislation.

Adfer yn dilyn COVID COVID recovery

Our report '[How coronavirus has affected equality and human rights](#)' report highlights the disproportionate impact the pandemic has had on certain groups of people including older people, disabled people and ethnic minorities. Inevitably, the focus of the early part of this Senedd term will need to be on recovery and when making policy and funding decisions, equality and human rights must be a central consideration.

As we move into recovery and start to rebuild, it will be important for the Health and Social Care Committee to scrutinise the Welsh Government to ensure priority and focus is placed on delivering key equality outcomes. It will be important for the Committee to ensure that equality and human rights considerations are at the heart of plans for recovery, including the [Social Care Recovery Framework](#) and [Economic Resilience & Reconstruction Mission](#), given the health and social care sectors' key contribution to economic recovery. Whilst we welcome Welsh Government's commitment to equality and human rights within these plans, it is vital that they are supported by meaningful action and compliant Welsh Government's obligations under the Equality Act, the Socio Economic Duty and Public Sector Equality Duty are met. For example to ensure that in developing and implementing both the social care framework and reconstruction strategy Welsh Government is giving due regard to:

1. eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Act
2. advance equality of opportunity between people who share a relevant protected characteristic and those who do not
3. foster good relations between people who share a protected characteristic and those who do not.

In doing so, Welsh Government will need to carry out and publish timely equality impact assessments in taking this work forward. This might be an area the Committee may wish to include in its programme of scrutiny.

The Health and Social Care Committee may also wish to scrutinise whether there is a robust cross-government accountability structure and resources for delivery to ensure successful implementation and whether there is an ambitious action plan on equality and human rights to address the very real risk of inequalities deepening and further entrenching the discrimination and disadvantage experienced by many in Wales.

Unrhyw faterion eraill

Any other issues

C3. A oes unrhyw faterion eraill yr hoffech dynnu sylw'r Pwyllgor atynt?

Q3. Are there any other issues you wish to draw to the Committee's attention?

Other sources of evidence the Committee may wish to consider

Human Rights Tracker

Our [human rights tracker](#) is one of the world's first online tools for monitoring human rights compliance. It is a searchable online tool to track how well the Welsh and UK Governments are putting its human rights duties into practice and contains all of the most recent recommendations made to the UK by the UN treaty bodies and the Universal Periodic Review (UPR). We want the human rights tracker to raise awareness of the UK's human rights duties, to help you monitor how well they are being put into practice, and to support you in holding government to account.

You can use the tracker to:

- Review the progress the Welsh & UK governments have made towards fulfilling their international human rights obligations.
- Search by [Wales](#) and [UK](#) so you can see which government is responsible for implementing the recommendations.
- Find out what the UN has said about a particular human rights issue (such as education, living standards or work) or population group (such as disabled people or children) in the UK.
- Find dedicated pages on each of the UN human rights treaties the UK has agreed to follow, and on the UPR process.

Is Wales Fairer?

[Is Wales Fairer?](#) is the most comprehensive review of how Wales is performing on equality and human rights across all areas of life, including; education, work, living standards, health, justice and security and participation in society.

This is the Welsh supplement to our report on equality and human rights progress in England, Scotland and Wales, [Is Britain Fairer?](#)