

Mark Drakeford AM  
Minister for Health and Social Services

18 February 2016

Dear Mark,

**Scrutiny session with the Older People's Commissioner for Wales: residential care for older people**

As you will be aware the [Health and Social Care Committee](#) invited Sarah Rochira, the Older People's Commissioner for Wales, to its meeting on [20 January 2016](#). The primary aim of the meeting was to hear the Commissioner's views on actions taken to date to implement the recommendations of the [Committee's report on residential care for older people](#) and the [Commissioner's care home review](#).

Since the Committee was established in 2011 it has undertaken a significant amount of policy and legislative scrutiny in relation to the social care system in Wales. One of the Committee's first policy inquiries was into residential care for older people and it acknowledges the [progress you have identified](#) in relation to the specific recommendations made in its report on the issue.

The Committee notes that many of the recommendations arising from its residential care for older people inquiry have been reflected in subsequent legislation, primarily the [Social Services and Well-being \(Wales\) Act 2014](#) and the [Regulation and Inspection of Social Care \(Wales\) Act 2016](#). The Committee has also scrutinised the [Care and Support \(Eligibility\) \(Wales\) Regulations 2015](#) and

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the associated Codes of Practice emanating from the Social Services and Well-being (Wales) Act 2014. As the Committee nears the end of the Fourth Assembly, it is proud of the impact it has had in seeking to improve the legislative landscape in this important field.

In both her written and oral evidence to the Committee, the Commissioner noted that she is now sufficiently assured that the Welsh Government and the Care and Social Services Inspectorate Wales (CSSIW) are making sufficient progress to improve standards in residential care. However, the Committee is yet to be persuaded that all developments are taking place at the pace required. As a result the Committee would welcome further assurances and clarification on a number of issues, details of which are annexed below.

I am copying this letter to the Commissioner and CSSIW given its direct relevance to their work.

Given his overall responsibility within Cabinet for public appointments, I am also copying the First Minister given the discussions relating to the need for consideration to be given to achieving parity between the terms of office of different statutory Commissioners in Wales.

The Committee would welcome a response from you on the issues identified in the annex before the end of this Assembly. It would also welcome a response from the First Minister on the issue raised in relation to the appointment process for Commissioners.

Yours sincerely,

A handwritten signature in black ink that reads "David F. Rees." The signature is written in a cursive style with a large initial 'D'.

**David Rees AM**

Chair, Health and Social Care Committee



cc Sarah Rochira, Older People's Commissioner for Wales

Imelda Richardson, Chief Inspector, CSSIW

Rt. Hon Carwyn Jones AM, First Minister



## Annex A

### Evidence of progress in relation to residential care for older people

01. The quality of residential care for older people has been an area of focus for the Committee during the Fourth Assembly. As such the Committee was keen to seek a progress update from the Older People's Commissioner and the Welsh Government before the election in relation to:

- recommendations in the Committee's report on [residential care for older people](#); and
- the Commissioner's [care home review](#).

02. The [Commissioner's progress report](#) was received by the Committee on 18 December 2015 and contained a number of progress reports from CSSIW and the Welsh Government. Based on these progress reports and her own field work, the Commissioner highlighted the areas in which she believed positive changes in residential care had been made, including:

- the Welsh Government's intention to extend registration of the social care workforce in 2020 and 2022;
- the Welsh Government agreeing to develop a 'National statement of entitlement' to set out care home residents' rights and entitlements; and
- health boards agreeing to publish information on the use of antipsychotic medication in Welsh care homes.<sup>1</sup>

She also noted the areas that still caused her concern in care homes, including:

- human rights;
- access to independent advocacy;
- dementia support;
- staff training; and
- commissioning of services.<sup>2</sup>

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<sup>1</sup> [Written evidence from the Older People's Commissioner for Wales](#)



03. In August<sup>3</sup> and November<sup>4</sup> 2015 the Commissioner highlighted her concerns that the Welsh Government and CSSIW had not provided her with the overall level of assurances that they were meeting her requirements for action and delivering the changes required. However, on 23 December 2015 the Commissioner wrote to you, CSSIW, and the Committee to say she had now received sufficient assurances from the Welsh Government and CSSIW.<sup>5</sup>
04. When asked about the contrast between the concerns raised in August and November 2015 and her more recent feeling of assurance, the Commissioner explained that this development had occurred following a number of meetings and challenging conversations with CSSIW and the Welsh Government during autumn 2015.<sup>6</sup> The Commissioner noted that as a result of these discussions, she had received ‘sufficient assurance’ that the Government was committed to meeting the majority of her requirements for action and delivering the outcomes she and the Committee have identified as necessary.<sup>7</sup>
05. The Committee welcomes the progress reported by the Commissioner and her feeling of assurance that improvements have and will continue to be made to residential care in Wales. Nevertheless, the Committee believes that more robust evidence of progress is needed to substantiate the significant change of opinion that has occurred in recent months.

The Committee recommends that the Welsh Government, the Commissioner and others ensure that future assessments of progress and statements of assurance are evidenced in a more transparent manner. This will enable the Committee’s successor and the public alike to identify more clearly the basis upon which assurances are being given.

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<sup>2</sup> [Written evidence from the Older People’s Commissioner for Wales](#)

<sup>3</sup> [Ibid](#), annex A

<sup>4</sup> [Ibid](#), annex B

<sup>5</sup> [Ibid](#), annexes E – G

<sup>6</sup> National Assembly for Wales, Health and Social Care Committee, [RoP \[paras 15 – 16\]](#), 20 January 2016 (NB: unless otherwise stated, subsequent references in this report to “RoP” refer to the proceedings of the Health and Social Care Committee).

<sup>7</sup> [Written evidence from the Older People’s Commissioner for Wales](#), annex G



## Access to independent advocacy

06. The importance the Committee ascribes to independent advocacy services has been clear from its early inquiry into residential care for older people, through to its more recent scrutiny of social care legislation. It has highlighted repeatedly the importance of ensuring that the people who need it are able to access independent advocacy to enable them to have their views and wishes heard, and make informed decisions about their care.<sup>8</sup> The Commissioner has also emphasised that ‘independent advocacy is critical in improving the quality of life and care of older people by ensuring that their voices are heard and that their rights are upheld’.<sup>9</sup>
07. The Committee welcomed the extended provision for statutory advocacy within the [Social Services and Well-being \(Wales\) Act 2014](#) and the requirement it created for the consideration of people’s needs for advocacy to be embedded through regulations. However, in oral evidence, the Commissioner noted she is yet to be convinced that that the Act’s provisions are strong enough, explaining that the Code of Practice appears to place a number of hurdles in the way for individuals seeking to access such services.<sup>10</sup>
08. During the oral evidence session on 20 January the Commissioner raised concerns about the long-term sustainability of high quality independent advocacy services. She told the Committee that funding from AdvantAGE, the Big Lottery Fund, had ‘run out’ and emphasised the importance for ‘local authorities and health boards to step up’ and ‘develop their own longer term sustainable relationships’ with independent advocacy services in accordance with the duties placed on them by the Social Services and Well-being (Wales) Act 2014. The Commissioner went on to raise concerns that should this fail to happen there was a risk independent advocacy could be lost. She explained that this would be detrimental not only to the individuals directly affected but

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<sup>8</sup> National Assembly for Wales, Health and Social Care Committee, [Residential care for older people in Wales](#), December 2012

<sup>9</sup> Older People’s Commissioner for Wales, [‘A Place to Call Home?’ – A Review into the Quality of Life and Care of Older People living in Care Homes in Wales](#), November 2014

<sup>10</sup> [Written evidence from the Older People's Commissioner for Wales](#)



also the Welsh Government's policy objectives in this field and the public purse.<sup>11</sup>

The Committee reiterates the importance of access to independent advocacy services. It recommends that the Welsh Government, local authorities, and health boards work together to secure appropriate and sustainable funding for independent advocacy services across Wales. It requests a view from the Minister on the Commissioner's concerns about the Code of Practice relating to advocacy emanating from the Social Services and Well-being (Wales) Act 2014.

## Lay assessors

09. During its 2011 [inquiry into residential care for older people](#) the Committee was informed that lay assessors would be recruited to undertake inspections. It subsequently called upon the Welsh Government and CSSIW to ensure that lay assessors were adequately trained and equipped to undertake their work. The Committee concluded there would be a need for on-going monitoring and evaluation to ensure that the required changes were made and desired outcomes achieved.<sup>12</sup>
10. The Commissioner has also noted repeatedly her view that lay assessors play a significant part in the inspection process. Her December 2016 update report to the Committee stated that Section 41 of the [Regulation and Inspection of Social Care \(Wales\) Act 2016](#) could go further in placing a 'real and meaningful citizen role in the inspection process'.<sup>13</sup>
11. During its scrutiny of the [Regulation and Inspection of Social Care \(Wales\) Bill](#) the Committee noted the importance of using lay assessors to enrich the information available about service users' quality of life and experience of care. While acknowledging the cost involved in recruiting, training and supporting lay assessors the Committee recommended that the Bill should be amended to place a requirement on CSSIW to include the use of lay assessors

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<sup>11</sup> [RoP \[para 100\]](#), 20 January 2016

<sup>12</sup> National Assembly for Wales, Health and Social Care Committee, [Residential care for older people in Wales](#), December 2012

<sup>13</sup> [Written evidence from the Older People's Commissioner for Wales](#)



as an integral part of its approach to regulation and inspection.<sup>14</sup> Responding to the Committee's Stage 1 report you explained that you 'remain unconvinced about the need to specify the requirement for CSSIW to engage lay inspectors' but agreed that the public should play an active role in the inspection process.<sup>15</sup>

12. The Committee acknowledges that the [Regulation and Inspection of Social Care \(Wales\) Act 2016](#) will require that the 'statement of policy (or revised statement) about engaging with the public must address the involvement of the public in service inspections and the involvement of carers (as defined in the [Social Services and Well-being \(Wales\) Act 2014](#)) in the exercise of regulatory functions'.<sup>16</sup> Nevertheless, it notes the continued difference of opinion between the Welsh Government and the Commissioner regarding the use of lay assessors.<sup>17</sup>

The Committee recommends that the Welsh Government ensure that the voices of residents in care home settings are heard. It believes that all mechanisms available – including the use of lay assessors – should be utilised to ensure that those running, regulating and inspecting residential care services have a clear understanding of daily life in a care home. The Committee requests further clarification from the Welsh Government on the means by which it envisages the voice of residents being heard in the regulation, inspection and running of residential care services.

### A rights based approach

13. The need for a rights based approach in social care was a theme during the Committee's scrutiny of the [Regulation and Inspection of Social Care \(Wales\) Bill](#). The Committee concluded that 'people's rights, and the holding to account of service providers' enabling and respecting of those rights, would

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<sup>14</sup> National Assembly for Wales, Health and Social Care Committee, [Regulation and Inspection of Social Care \(Wales\) Bill: Stage 1 Committee Report](#), July 2015

<sup>15</sup> Welsh Government, [Response by the Minister for Health and Social Services to the Health and Social Care Committee's Stage 1 report on the Regulation and Inspection of Social Care \(Wales\) Bill](#), 8 September 2015

<sup>16</sup> Welsh Government, [Purpose and effect table for the Stage 2 amendments tabled on 23 September 2015](#), September 2015

<sup>17</sup> [RoP \[para 106\]](#), 20 January 2016





be strengthened by placing a due regard duty on the face of the Bill'.<sup>18</sup> In your response to the Committee's Stage 1 report you noted the legislation would protect the interests of vulnerable individuals and did not require all those who exercised functions under its provisions to have due regard to the United Nations Convention on the Rights of the Child, the United Nations Convention on the Rights of Disabled People, and the United Nations Principles for Older Persons.<sup>19</sup>

14. During the session on 20 January the Commissioner explained that she welcomed the [Declaration of Rights for Older People in Wales](#), launched by the Welsh Government in 2014, but believed more could be done 'on the ground' to embed a rights based approach. She explained that, in order to achieve her goal of ensuring that a rights based approach has a demonstrable impact on the lives of individuals, and was understood by the public, she was working with an expert panel with a view to working with the next Welsh Government to introduce a single piece of legislation. She told the Committee that the aim of the legislation would be to bring together a 'number of internationally recognised instruments designed to protect older people's rights and address any identified gaps'.<sup>20</sup>

The Committee notes the potential benefits a future piece of legislation of this kind could provide in terms of empowering older people. The Committee agrees with the Commissioner that ensuring legislation is meaningful to those it affects, both older people and the duty bearers, is important. It further agrees that wide consultation with relevant groups should be undertaken when progressing this piece of work.

### Mandatory staff training

15. The importance of ensuring care home staff are adequately trained was raised in the Committee's 2012 [report on residential care for older people](#). The

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<sup>18</sup> National Assembly for Wales, Health and Social Care Committee, [Regulation and Inspection of Social Care \(Wales\) Bill: Stage 1 Committee Report](#), July 2015

<sup>19</sup> Welsh Government, [Response by the Minister for Health and Social Services to the Health and Social Care Committee's Stage 1 report on the Regulation and Inspection of Social Care \(Wales\) Bill](#), 8 September 2015

<sup>20</sup> [RoP \[paras 50 – 55\]](#), 20 January 2016



Committee recommended the Welsh Government should devote a greater proportion of funding to enhance levels of skills and awareness of specialist conditions.<sup>21</sup> During her [care home review](#), the Commissioner was told that the current, basic mandatory training which individuals had to complete before providing care in a care home setting for care staff consisted only of manual handling, fire safety and health and safety training.<sup>22</sup> She also noted that a significant number of care staff (estimated to be 40 per cent of the workforce) were delivering care without even this most basic of training. Concerns were raised that this would not prepare individuals sufficiently to understand the needs of older people and provide the appropriate support.<sup>23</sup>

16. In light of the evidence received, the Commissioner made recommendations in her review to ensure adequate training was provided to care home workers by means of a national mandatory induction to be supplemented by an on-going training programme for care staff. The Committee recognises that, in your progress report to the Commissioner, you noted the Welsh Government would be mapping the training provisions available and considering the existing research in the field in place of developing new provisions to ensure a consistent base level of training.<sup>24</sup>

The Committee welcomes the work that will be undertaken to map the existing training provision and the consideration of existing research to address variations. The Committee notes this will be an evolving process and time will be needed to identify the most appropriate form of training to meet all needs. Nevertheless it believes that this work needs to be undertaken with pace. To ensure the training addresses the identified issues, continual evaluation from the perspective of those providing – and those in receipt of – care will be required. The Committee recommends that the Welsh Government ensure that mandatory dementia training is included within the wider package of training.

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<sup>21</sup> National Assembly for Wales, Health and Social Care Committee, [Residential care for older people in Wales](#), December 2012

<sup>22</sup> Older People's Commissioner for Wales, ['A Place to Call Home?' – A Review into the Quality of Life and Care of Older People living in Care Homes in Wales](#), November 2014

<sup>23</sup> [Written evidence from the Older People's Commissioner for Wales](#)

<sup>24</sup> [Ibid](#)



## Fundamentals of care

17. The [Fundamentals of Care programme](#), launched by the then Minister for Health and Social Services in 2003, aimed to improve the quality of aspects of health and social care for adults.
18. The Commissioner noted that as a result of treatments which would have previously been provided in hospitals now being provided in care homes the fundamentals of care agenda needed to be strengthened in the care home setting. She explained that there is no systematic or standardised approach to the fundamental of care guidance in care home settings as its monitoring is not a key role of CSSIW or Healthcare Inspectorate Wales.<sup>25</sup>
19. You stated in your update to the Commissioner that the Fundamentals of Care audit was piloted in community settings in 2014, which differed from previous years in which audits were only undertaken in hospital settings.<sup>26</sup> Whilst noting this development, the Commissioner remained concerned that the Welsh Government had yet to demonstrate how it would achieve her requirement for action on the 'reporting on fundamentals of care in nursing homes'.<sup>27</sup>

The Committee recommends that the Welsh Government drives with vigour and pace the changes needed to ensure the fundamentals of care agenda is embedded in care home settings. The Committee requests further information about how the Welsh Government will work with the Commissioner to achieve her requirement for action in relation reporting on fundamentals of care in nursing care homes.

## Commissioning services

20. The importance of strategic commissioning was raised in the Committee's initial [inquiry into residential care](#) and subsequent scrutiny of the [Regulation and Inspection of Social Care \(Wales\) Bill](#). During the scrutiny of this Bill the

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<sup>25</sup> [RoP \[paras 23 – 24\]](#), 20 January 2016

<sup>26</sup> [Written evidence from the Older People's Commissioner for Wales](#), annex D

<sup>27</sup> [Ibid](#), annex F



Committee concluded that a duty should be placed on CSSIW to review local authority and health board commissioning against quality of life outcomes.<sup>28</sup>

21. The Commissioner has noted repeatedly the importance of quality commissioning practices for care home services.<sup>29</sup> She has highlighted the importance of placing quality of life considerations at the heart of commissioning as opposed to cost of services.<sup>30</sup> During the session on 20 January the Commissioner also emphasised the importance of commissioning at a strategic, national level:

‘One of the big issues why poor care can exist is because there aren’t alternatives available locally. The more we get on top of the market at a strategic level, long term, the more we crowd out that poor care. We should be investing in long-term, sustainable, quality-based relationships through our commissioning with providers who know they’re in it for the long game and can invest.’<sup>31</sup>

22. The Committee notes that the [Regulation and Inspection of Social Care \(Wales\) Act](#) was amended during scrutiny to ensure that local authorities report on commissioning functions in their local market stability reports.<sup>32</sup> The Committee believes that more effective, longer term relationships between commissioners and providers can enable those providers to plan for their business, recruit sufficient staff and provide sufficient training and wages to retain the workforce.

The Committee recommends that strategic commissioning take place at a scale and pace which will take the sector to the next level of service provision. The Committee requests further information on how the Welsh Government intends to drive progress in this area and the time it anticipates will be needed to deliver this change.

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<sup>28</sup> National Assembly for Wales, Health and Social Care Committee, [Regulation and Inspection of Social Care \(Wales\) Bill: Stage 1 Committee Report](#), July 2015

<sup>29</sup> [Written evidence from the Older People's Commissioner for Wales](#)

<sup>30</sup> [RoP \[para 67\]](#), 20 January 2016

<sup>31</sup> [RoP \[para 45\]](#), 20 January 2016

<sup>32</sup> Welsh Government, [Purpose and effect table for the Stage 2 amendments tabled on 23 September 2015](#), September 2015



## The appointment of Commissioners

23. During the session on 20 January the Commissioner noted that it was difficult from a business perspective to plan adequately and complete pieces of work within a four year term of office. The Committee asked whether the impending results from the [Welsh Government's consultation to extend her term of office](#) had impacted on the Commissioner's programme of work. She noted that uncertainty regarding the extension of her term made it difficult for her to finalise her work programme. She went on to say that a longer term would address the lack of parity that existed in her length of office compared with that of other Commissioners.<sup>33</sup>
24. While the Committee notes that the appointment of a new Commissioner may bring with it new priorities which are of equal value to that of the current Commissioner, it would be disappointed if the progress made by the current Commissioner, in particular in the field of residential care for older people, were to be lost.
25. The Committee welcomes the important roles of the Older People's Commissioner, the Commissioner for Sustainable Futures, the Welsh Language Commissioner and the Children's Commissioner for Wales and values their offices' independence from the Welsh Government. However, the Committee is concerned about the lack of parity and equity in how the Welsh Government appoints each Commissioner, particularly the length of their term. The Committee notes the Minister for Communities and Tackling Poverty's written statement responding to the independent review of the role and functions of the Children's Commissioner for Wales, published 9 February 2016, in which she states:

'Whilst we see the rationale in having greater consistency and coherence between Commissioners, we are also not yet persuaded of the need for a single piece of legislation defining all Commissioners' roles and purposes, or amending existing legislation in order to bring greater consistency. It is worth bearing in mind many of the differences between the Commissioners reflect their respective roles and functions, which are specific to their remits and therefore should be maintained. [...]

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<sup>33</sup> [RoP \[paras 117 – 119\]](#), 20 January 2016



We have committed to undertake exploratory work on the requisite and practicalities of further legislation. Legislation would not be possible until the next Assembly term and timing would then have to be considered in the light of the Welsh Government's overall legislative priorities.'<sup>34</sup>

The Committee recommends that the Welsh Government consider carefully, as part of its work to scope future legislation, the case for ensuring parity for the Older People's Commissioner's appointment and term of office with other Commissioners in Wales.

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<sup>34</sup> Welsh Government, [Written Statement – Final response to the Independent Review of the Role and Functions of the Children's Commissioner for Wales](#), 9 February 2016

