

Health and Social Care (Quality and Engagement) (Wales) Bill

**Additional information from the
Board of Community Health Councils
and the 7 CHCs in Wales**

October 2019



CYNGOR IECHYD CYMUNED
COMMUNITY HEALTH COUNCIL

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BACKGROUND

The Board of Community Health Councils in Wales (the Board of CHCs) and CHCs valued the opportunity to provide evidence to the Health, Social Care and Sport Committee on the provisions of the Health and Social Care (Quality and Engagement)(Wales) Bill in September 2019.

This document provides further information to the committee on two important areas of discussion at our evidence session:

- Board and CHC arrangements for making representations
- Ensuring independence for the new body.

MAKING REPRESENTATIONS

How CHCs currently make representations

CHCs in Wales currently make representations to local health boards and NHS trusts in a combination of ways:

- **Attendance and involvement in the public board meetings of NHS bodies**

CHC representatives routinely attend and contribute at the public board meetings of their local health boards. They are usually active participants in the board's discussions, including scrutiny of the health board's plans and performance. They do this from a lay perspective, reflecting the views and representing the interests of people and communities.

They do not participate in health board decision making. Their representations inform health board decisions.

- **Attendance and involvement in health board/NHS trust committees and other groups**

CHC representatives regularly attend a range of standing committees of their local health boards, notably the committee established to consider quality, safety & patient experience matters.

Their role on these committees is similar to that of their role at public board meetings.

CHC representatives also participate in a range of working groups and task and finish groups set up to focus on specific tasks or projects relating to the design and delivery of services. This may include developments by English NHS bodies who are commissioned to provide services for people who live in Wales.

- **NHS attendance and involvement at a range of CHC committees**

CHCs have a range of statutory committees. This includes an executive committee, services planning committee (which must have a health board's director for planning as a member) and a local committee for each local authority area within the CHCs area.

Representatives from the relevant health board and the Welsh Ambulance Services Trust (WAST) routinely attend these meetings to respond to the representations of the relevant CHC members. This may be about NHS plans or the performance of NHS services for people living within a particular local authority area/s.

English NHS bodies who are commissioned to provide services for people who live in Wales may also attend these meetings to discuss specific services.

- **Joint CHC-health board joint meetings**

CHCs and their local health board meet together at least once every 3 months (in line with statutory requirements) to discuss current issues affecting health services across the health board area and other agreed matters.

- **One to one meetings**

CHC chief officers and chairs regularly meet with health board chairs and chief executives to discuss current developments and issues.

One to one meetings take place on a frequent basis between CHC representatives and health board managers to discuss local developments, plans issues and concerns.

- **CHC reports on its engagement activities (including visiting)**

CHCs produce written reports of the results of their engagement activities. This includes reports of their visits to hear from people whilst they are accessing NHS services and to see for themselves how services are being delivered.

These reports include details of what people think works well and what needs to be improved.

- **CHC formal reports on service change proposals**

As well as making representations at committees and other meetings, CHCs also make formal written representations to NHS bodies about service change proposals - in line with existing guidance on engagement and consultation on NHS service changes.

- **Written letters on specific issues or concerns**

CHCs may make representations in writing to health board leaders and managers about specific issues or matters, seeking assurance or information.

Being responded to

CHCs receive responses from NHS bodies to their representations in a range of ways. This includes:

- Immediate responses (or a commitment to provide such responses) to CHC representations at meetings
- Written responses to CHC reports on its engagement activities (including visiting). These responses include actions to make improvements where needed
- Written responses to CHC reports/letters on service change proposals

- Written response to letters about specific issues or concerns.

In most cases responses from NHS bodies are either made in public or available publically. However, in some circumstances, e.g., in relation to representations made on behalf of complaints advocacy clients, responses are kept confidential.

Escalating matters

In most cases CHCs do not need to escalate matters to receive responses to their representations. Occasionally, responses take too long, eg., in providing action plans in response to engagement reports. Some CHCs have agreed with their health boards maximum timescales for responses.

CHCs may escalate matters where it has not received a response or where the response is inadequate in a variety of ways, depending on the particular circumstances.

These include:

- Raising the matter at a more senior level within the NHS body in person or in writing, including directly with the chair and/or chief executive
- Referring concerns to the Minister (when agreement cannot be reached on service change proposals).

The Board of CHCs role in representing the collective views of CHCs

The Board of CHCs has a specific, statutory role in representing the collective views of CHCs to Welsh Ministers. It also represents the collective views of CHCs to NHS bodies and representatives operating on a regional or national basis.

It does this in a variety of ways. These are largely consistent with those of CHCs, including, e.g.:

- Attendance and involvement in a range of Welsh Government and NHS planning and policy fora/working groups, eg., National Primary Care Board

- Attendance and involvement in standing committees of national NHS bodies, e.g., Welsh Health Specialised Services Quality & Patient Safety Committee
- National reports on Wales wide CHC activities (including visiting), e.g., Non-emergency patient transport services, Communication in the NHS
- Representation of collective views on the approach taken to regional service change proposals, and (where appropriate) summarising CHC views on those proposals
- Written letters on specific issues or concerns, e.g., long waiting times for screening services

Arrangements for receiving responses mirror the approaches taken by individual CHCs, with responses received from regional/national NHS groups and bodies. Escalation arrangements would be directly to the Minister, where needed.

We would be happy to provide examples if the committee would find this helpful.

ENSURING INDEPENDENCE FOR THE NEW BODY

So that people in Wales trust that the new citizen voice body can effectively reflect their views and represent their interests in health and care services across Wales, it's important that it is perceived to be, and is in reality, as independent as it is possible to be.

Its ability to decide upon its priorities in response to what matters to people, to carry out its work without undue influence, and to represent people's interests in an unfettered way must be enabled and maintained through the way in which it is established and the way in which it operates.

CHCs have looked at the different ways independence has been sought for other citizen voice bodies in the UK, as well as for other independent public roles and bodies operating in Wales. Details of these bodies are set out in the **Appendix**. They show a variety of approaches have been taken:

Creating independence in the way a body is established

There are a number of public roles and bodies in Wales that have been created in a way that has been designed to enable them to carry out their specific functions in an independent way. There has been no single or consistent approach, and the range of approaches includes:

- **Crown appointments**

This approach has been used in Wales to appoint individuals to roles where the legal powers and responsibilities to deliver a range of functions sit with an individual.

This includes the Auditor General for Wales (AGW), supported by the Wales Audit Office, Her Majesty's Chief Inspector of Education and Training (HMCI), supported by Estyn, and the Public Services Ombudsman for Wales (PSOW), supported by the office of the PSOW.

In all these 3 cases the recommendation to the Crown for appointment to these roles is made by the National Assembly for Wales. The funding arrangements differ, with the funding for the AGW and PSOW set by the National Assembly, and the funding for Estyn set by Welsh Ministers.

The funding arrangements for Estyn are set out within an annual remit letter from the Welsh Government that also places a requirement on Estyn to carry out specific activities.

- **Appointments by Welsh Ministers**

This approach has been used in Wales to appoint individuals to roles where the legal powers and responsibilities to deliver a range of functions may sit with an individual or with a governing board.

This includes the Commissioners for Children, Older People, Future Generations and the Welsh Language, as well as a range of Welsh Sponsored Public Bodies, including, eg, Social Care Wales.

Appointments to all these leadership and governing roles have been overseen by the Commissioner for Public Appointments - through an open competition within the framework of a governance code and principles for public appointments.

Within this framework, a range of additional safeguards has also been established in statute for particular appointments. For example:

- the First Minister must take into account the views of older people when appointing the Commissioner for Older People
- before appointing the Future Generations Commissioner, Welsh Ministers must consult with the National Assembly through its responsible committee
- the selection panel for the appointment of the Welsh Language Commissioner must include a member of the National Assembly for Wales nominated by a relevant committee (unless the committee declines to make a nomination or fails to do so within a reasonable time).

CHCs note that the level of independence enshrined through the appointment arrangements for particular roles or bodies is not the only factor that determines whether the public perceive that a particular role or body is independent of government.

For example, there is a clear perception of independence amongst the public for the Commissioner roles and CHCs in Wales. This is despite the current ministerial appointment and funding arrangements.

Protecting independence through a body's operating framework and arrangements

Whatever the model for establishing the new citizen voice body and appointing its governing board, CHCs think it is vital that its operating framework not only protects its operational independence (from government and health and care bodies) but also requires it to organise itself and carry out its activities in a way that is responsive to and representative of the people and communities it serves across Wales.

CHCs think that some of the key elements set out in our earlier submission will contribute to this. This includes, for example, the introduction of an independent mechanism to look into concerns that bodies are not meeting their statutory obligations or delivering the expectations set out in the bill and explanatory memorandum.

It also includes the fundamental principle that the new body should be required to operate locally, regionally and nationally in a way that:

- enshrines the principle of decisions being taken as close as possible to the people impacted
- provides for local determination of priorities according to evidence of local needs
- provides the agility to take decisions that impact locally, regionally and nationally
- has a strong mix of local volunteer members who are representative of the communities they serve.

CHCs have for over 40 years worked hard to represent the interests of people living in Wales in their NHS. They have done so despite a governance and operating framework that is sometimes unclear, complicated, too prescriptive and with an enduring risk that its independence may be compromised.

It is vital that the new citizen voice body is established in a way that avoids any of this, whilst also allowing for the body to develop its arrangements and ways of working in response to changing requirements.

Its governing board should be representative of the people it serves across Wales.

It is clear from our brief look at other bodies that there is no single way of establishing an independent and representative body. So, care should be taken to learn from earlier approaches in determining the best way of doing this for the new citizen voice body through its statutory and supporting provisions.

Finally, whilst the importance of establishing independence for the new body cannot be underestimated, there is little point in doing so without also making sure it is equipped with the right tools to do the job.

CHCs believe that establishing the key principles set out in its earlier submission through **specific legal powers and duties** (supported by guidance) and **adequate resourcing** is essential to achieve this.

Without these, Wales will have a new citizen voice body with a wider remit across health and social care - but without the legal powers and duties needed so it can deliver its role.

Public body	Establishment arrangements
UK statutory citizen voice bodies¹	
The Board of CHCs and CHCs in Wales	First established in 1974, CHCs operate in Wales under the provisions of the National Health Service (Wales) Act 2006. The Community Health Councils (Constitution, Membership and Procedures) Regulations 2010 (2010/288 (W.37)), as amended by The Community Health Councils (Constitution, Membership and Procedures) (Amendment) Regulations 2015 (2015/509 (W.43)) defines the constitution and membership arrangements of the Board of CHCs and CHCs. The Board of CHCs and CHCs are funded by the Welsh Government. The Welsh Ministers have appointed Powys Teaching Health Board (Powys THB) to act as a host organisation for the Board of CHCs and CHCs. The host organisation provides financial and human resources support to the Board of CHCs and CHCs, but the Board of CHCs and CHCs are accountable to the Welsh Ministers and their functions must be carried out in accordance with the regulations and any guidance issued by the Welsh Ministers. The Board and CHC staff are employed by Powys THB.

¹ Information sourced from the websites of individual bodies and the government website legislation.gov.uk

Public body	Establishment arrangements
	The Board of CHCs and CHCs have no legal standing to enter into contracts in their own name. The host organisation contracts on behalf of the Board of CHCs and CHCs to ensure the provision of officers and facilities. The CHC Board has 12 members, made up of: ▪ An independent Chair and 2 independent members appointed by Welsh Ministers through the public appointments process ▪ 7 CHC chairs (from each of the 7 CHCs) ▪ An officer member ▪ The Chief Executive Each of the 7 CHCs (aligned to local health boards) has a governing executive committee and a local committee for each local authority area within the health board footprint. Each local committee has 12 full members, made up of: ▪ 6 members appointed by Welsh Ministers through the public appointments process ▪ 3 nominated by the third sector

Public body	Establishment arrangements
	▪ 3 nominated by the local authority. Individual CHCs membership therefore ranges from 72 (North Wales CHC which has 6 local authority areas within the health board footprint) to 24 (eg., Swansea Bay CHC which has 2 local authority areas within the health board footprint).
Healthwatch England	Healthwatch England was established under the provisions of the Health and Social Care Act 2012 as a statutory committee of the Care Quality Commission. The Care Quality Commission Health Watch England Committee Regulations 2012 makes provision for the appointment of the committee: ▪ The appointment of the chair is made by the Secretary of State ▪ The Chair appoints all other committee members (not less than 6 and not more than 12) within the following framework: - a majority of members are not members of the Commission; - people appointed should (so far as reasonably practicable) include people with knowledge of experience relevant to the functions exercised by Healthwatch England);

Public body	Establishment arrangements
	- arrangements for the selection and appointment of persons as members take into account the principle that the selection and appointment of members should be open and transparent, and in accordance with the principles laid down in the Commissioner for Public Appointments' Code of Practice for Ministerial Appointments - they must have regard to the need to encourage diversity in the range of persons who may be appointed - they may appoint up to 4 members who are directors of Local Healthwatch organisations providing that they are not members of the Commission and no more than one member is appointed from each region of England. Funding is from the Secretary of State for Health, via CQC. Accountability is to the CQC.
Local Healthwatch	Each local Healthwatch body in England (aligned to local authority areas) is commissioned, funded and accountable to local authorities within a regulatory and contracting framework established in the NHS Bodies and Local Authorities (Partnership Arrangements, Care Trusts, Public Health and Local Healthwatch) Regulations 2012.

Public body	Establishment arrangements
	Local Healthwatch bodies receive leadership, guidance, support and advice to local Healthwatch organisations. Bodies such as social enterprises may bid to deliver the local Healthwatch function. The criterion for this is that “the governance arrangements of the body must include provision for the involvement of lay persons and volunteers in the governance of the body”. In general, local Healthwatch bodies do this through lay membership of an advisory board and volunteer membership to carry out visits and engagement, etc.
Patient and Client Council (N Ireland)	Established through the Health and Social Care (Reform) Act (Northern Ireland) 2009, the Patient and Client Council (Membership and Procedure) Regulations (Northern Ireland) 2009 makes provision for the governance of the body. The Department for Health appoints the governing council, made up of 16 members, including ▪ 5 members of district councils; ▪ 5 representatives of voluntary organisations with an interest in

Public body	Establishment arrangements
	health and social care; and ▪ 1 representative of a trade union. The Council shall appoint committees for specified areas, and may also appoint other committees.
Scottish Health Council	Established through powers within the National Health Service (Scotland) Act 1978 the NHS Quality Improvement Scotland (Establishment of the Scottish Health Council) Regulations 2005 requires Quality Improvement Scotland (now known as Healthcare Improvement Scotland - the health and social care regulator) to establish a committee known as the Scottish Health Council. The governing committee is appointed by, funded, reports and is accountable to Healthcare Improvement Scotland (which is a special health authority). It has a network of 14 <u>local offices</u> across Scotland – one in each NHS Board area – and a <u>national office</u> in Glasgow.

Public body	Establishment arrangements
Welsh public roles & bodies: appointments made by the Crown	
Auditor General for Wales & the Wales Audit Office (WAO)	Further to an Act of Parliament, the Auditor General for Wales is appointed by the Crown on the recommendation of the National Assembly for Wales. The Public Audit (Wales) Act 2013 establishes the Wales Audit Office as a body corporate to assist the Auditor General in delivering his/her responsibilities. The Wales Audit Office has a statutory Board, with 9 members. The National Assembly for Wales appoints a Chair and 4 other non-executive members to the Board. The other members are the Auditor General and 3 employees. The Auditor General and the Wales Audit Office receives its funding from the National Assembly for Wales.
Her Majesty's Chief Inspector of Education and Training in Wales (HMCI) and Estyn	The appointment, functions and powers of Her Majesty's Chief Inspector of Education and Training in Wales (HMCI) are determined by legislation: in the Education Act 2005, the Learning and Skills Act 2000 and the Children Act 2004. Their statutory position is set out in the Government of Wales Act 2006.

Public body	Establishment arrangements
	Estyn itself is a Crown body, established under the Education Act 1992. Its functions and powers are drawn from those of the HMCI. Estyn is independent of the Welsh Government but receives its funding from the Welsh Government under Section 104 of the Government of Wales Act 1998. HMCI has established a Strategy Board and an Executive Board. The Strategy Board includes non-executive members appointed by HMCI through open competition. Welsh Government issues Estyn with an annual remit letter. This letter sets out the specific advice required by the Welsh Government in a given year. It defines a specific work programme additional to Estyn's core inspections and includes, eg., thematic reviews.
Public Services Ombudsman for Wales	The Public Services Ombudsman for Wales (PSOW) is appointed by the Crown on the recommendation of the National Assembly for Wales. The appointment is for a maximum of 8 years. The PSOW is a corporation sole. The PSOW has established a non-statutory advisory panel to provide him with support and advice in providing leadership and good governance of his office.

Public body	Establishment arrangements
	The PSOW receives funding from the National Assembly for Wales. The PSOW is the Accounting Officer and is accountable to the National Assembly for Wales.
A selection of welsh public roles & bodies: appointments made by Welsh Ministers	
Care Inspectorate Wales	Care Inspectorate Wales is part of the Welsh Government. The Chief Inspector and its staff are civil servants appointed by the Welsh Government. Its operational independence is defined through a formal written agreement.
Children's Commissioner for Wales	The post of Children's Commissioner for Wales was established under the Care Standards Act 2000, and the post's remit was extended by 'The Children's Commissioner for Wales Act (2001)'. Appointments to the role of Children's commissioner are made by the Welsh Ministers (in this case the First Minister) through a public appointments process. The commissioner is a 'Corporation Sole'. The Children's Commissioner's funding is provided by the Welsh Government. The Commissioner is the appointed Accounting Officer and is accountable to the Welsh Government.

Public body	Establishment arrangements
	The Children's Commissioner has established 2 advisory panels with members appointed by the Commissioner.
Healthcare Inspectorate Wales	Healthcare Inspectorate Wales is part of the Welsh Government. The Chief Executive and its staff are civil servants appointed by the Welsh Government. Its operational independence is defined through a formal written agreement.
Future Generations Commissioner for Wales	The post of Future Generations Commissioner for Wales was established under the Well-being of Future Generations Act (2015)'. Appointments to the role of Future Generations Commissioner are made by the Welsh Ministers through a public appointments process. Before making the appointment the Welsh Ministers must consult with the National Assembly through its responsible committee. In practice, the appointment of the current commissioner was made using the guidance set out within the Code of Practice for Ministerial Appointments to Public Bodies. The appointment panel included a representative of each political party of the National Assembly for Wales. The Future Generations Commissioner's funding is provided by the Welsh Government. The Commissioner is the appointed Accounting Officer and

Public body	Establishment arrangements
	is accountable to the Welsh Government. The Commissioner is provided with advice on the exercise of their functions through the appointment of a statutory Advisory panel. The members of the Advisory Panel are (a) the Children’s Commissioner for Wales; (b) the Welsh Language Commissioner; (c) the Commissioner for Older People in Wales; (d) the member of staff of the Welsh Government designated by the Welsh Ministers as the Chief Medical Officer for Wales; (e) the chairperson of the Natural Resources Body for Wales or another non-executive member of that body selected by the chairperson; (f) an officer of the body representing trade unions in Wales known as Wales TUC Cymru nominated by that body; (g) the chairperson, director or similar officer as the Welsh Ministers may appoint of a body representing persons carrying on business in Wales; (h) such other person as the Welsh Ministers may appoint.

Public body	Establishment arrangements
Commissioner for Older People in Wales	The post of Commissioner for Older People in Wales was established under the Commissioner for Older People (Wales) Act 2006. The Commissioner for Older People in Wales (Appointment) (Amendment) Regulations 2007 (amended by the Commissioner for Older People in Wales (Appointment) (Amendment) Regulations 2016 makes provision for the appointment of the Commissioner. The Commissioner is appointed by Welsh Ministers (the First Minister), and may only be made after taking account of: (a) the views of such older people resident in Wales as selected by the First Minister as to any candidates interviewed for the appointment; and (b) the advice of any selection panel, established for the purpose of interviewing candidates, as to their suitability for appointment. The Commissioner for Older People is a corporation sole. Funding is provided by the Welsh Government. The Commissioner is the appointed Accounting Officer and is accountable to the Welsh Government.

Public body	Establishment arrangements
Social Care Wales	Social Care Wales was renamed under section 67 of the Regulation and Inspection of Social Care (Wales) Act 2016, having initially been established as the Care Council for Wales under section 54 of the Care Standards Act 2000. Social Care Wales is a Welsh Sponsored Public Body. The Chair and board members are appointed by Welsh Ministers, in accordance with the Commissioner of public appointments' code of practice. The Chief Executive is appointed by the Board with the approval of Welsh Ministers, and is the Body's Accounting Officer. The Welsh Government agrees and allocates funding to Social Care Wales in accordance with a grant remit.
Welsh Language Commissioner	Established through powers within the Welsh Language (Wales) Measure 2011, the Welsh Language Commissioner (Appointment) Regulations 2011 define the appointment arrangements for the Commissioner. These are that on the request of the First Minister (who makes the final appointment decision), Welsh Ministers must convene a selection panel

Public body	Establishment arrangements
	to appoint a Commissioner in accordance with the principles of the Commissioner for Public Appointments' Code of Practice for Ministerial Appointments to Public Bodies. The selection panel must comprise: ▪ A member of staff of the Welsh Government ▪ A person accredited by the Office of the Commissioner for Public Appointments to act as an independent appointments assessor ▪ A person who appears to the Welsh Ministers to have relevant experience ▪ A member of the National Assembly for Wales nominated by a relevant committee (unless the committee declines to make a nomination or fails to do so within a reasonable time). The Commissioner is a corporation sole. Funding is provided by the Welsh Government. The Commissioner is the appointed Accounting Officer and is accountable to the Welsh Government. When exercising functions in relation to the Commissioner, the Welsh Ministers must have regard to the fact that it is desirable to ensure that the Commissioner is under as few constraints as reasonably possible in

Public body	Establishment arrangements
	determining his or her— (a) activities, (b) timetables, and (c) priorities. Welsh Ministers must appoint an Advisory Panel to the Commissioner.