



Older People's Commissioner for Wales
Comisiynydd Pobl Hŷn Cymru

Best Practice Guidance for Engagement and Consultation with Older People on Changes to Community Services in Wales

July 2014

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Foreword

In February, I published 'The Importance and Impact of Community Services within Wales'¹, a report that made a strong case for protecting essential community services that older people rely on, such as local buses, public toilets, libraries, day and community centres, and lifelong learning. There is great concern among older people that these services, often described as 'a lifeline', are at risk of disappearing as a result of the current budgetary pressures facing Local Authorities across Wales.

I understand that difficult decisions on expenditure and savings must be made, but it is essential that these services are protected or delivered in different ways to ensure that people can continue to access them. The voices of the people who use community services must also be at the heart of any decisions made that will result in changes to services.

Older people tell me, however, that they often find it difficult to engage with Local Authorities to influence the decisions that affect them and that they often feel powerless when plans are made to reduce or close down services. They also tell me that there are insufficient opportunities to express their views and feel that their concerns are often overlooked and given little attention when they do so.

As key users of community services, older people are well placed to measure the effectiveness of these services and require sufficient opportunities to make their views known and understood by the decision-makers.

The purpose of this Guidance is to support Local Authorities to ensure full and meaningful engagement with older people when key decisions are being made regarding community services.

We cannot afford to lose these crucial community services, which provide older people's lives with value, meaning and purpose. With Local Authorities across Wales very likely to face further budgetary challenges during the coming years, new and innovative ways must be explored to ensure that essential community services remain available for older people.

¹ http://www.olderpeoplewales.com/en/Publications/pub-story/14-02-25/The_Importance_and_Impact_of_Community_Services_within_Wales.aspx

Alongside this Guidance, I have also published a Community Services toolkit for older people to provide them with the information they need about the most effective ways to make their voices heard and influence the decisions that affect them.

As Commissioner, my role is to drive the change that older people want and need to see and I look forward to supporting Local Authorities across Wales to use this Guidance to engage more effectively with older people to ensure that the decisions made about essential community services fully consider and reflect older people's needs, concerns and priorities.



Sarah Rochira
Older People's Commissioner for Wales

Context

The loss of key community services, such as public buses, toilets, community and day centres, libraries and lifelong learning is a matter of great concern for older people and is already having an impact on their lives as a result of decisions already made by a number of Local Authorities across Wales.

Given the financial outlook for local government over the coming years, it is also expected that further difficult decisions will need to be made on the future of community services.

This Guidance complements not only the Commissioner's Community Services report (The Importance and Impact of Community Services within Wales), which was published in February, but also the following priorities within her Framework for Action 2013-17²:

- Embedding the wellbeing of older people at the heart of public services
- Protecting and improving community services, facilities and infrastructure
- Tackling prejudice, inequality and discrimination

Whilst the Commissioner recognises the budgetary pressures placed on Local Authorities, older people must be able to continue to access community services. It is vital that community services are seen not as optional costs, but as the vital community assets that they are.

These community assets are integral to the delivery of emerging policy agendas within Wales, such as prevention, citizen focus and community resilience. These new agendas will be significantly undermined by the loss of these essential services.

As emphasised by the Commissioner in her report, older people have a wealth of knowledge and experience about community services. As frequent users of community services, older people must be partners in decision-making about the future of community services and increasingly involved and consulted in the design, development and delivery of community-based services, facilities and infrastructure.

² http://www.olderpeoplewales.com/Libraries/Uploads/Framework_for_Action.sflb.ashx

Direct engagement with older people and examining a wide and innovative range of partnership processes can lead to positive outcomes for both older people and the public sector. With almost 800,000 people aged 60 and over in Wales, and over a million people in this age group expected in the next twenty years, older people must not be an after-thought when it comes to community planning. We need to plan today for an ageing society. The cost of not doing so will be much greater in the medium to long term.

This Guidance is published under Section 12 of the Commissioner for Older People (Wales) Act 2006³. The purpose of the Guidance is to ensure that Local Authorities are paying due regard in law and are fully compliant with their legal commitments when proposals are made for changes to essential community services.

The Commissioner expects all Local Authorities to comply with the Guidance to ensure that older people are provided with every opportunity to voice their concerns and are fully informed on the progress of any proposal.

Future changes to local community services, facilities and infrastructure must not proceed without a full and robust analysis of the impact that these will have on the wellbeing of older people, with effective plans put in place to mitigate this impact.

³ <http://www.legislation.gov.uk/ukpga/2006/30/section/12>

Guidance issued under S.12 Commissioner for Older People (Wales) Act 2006

July 2014

Best practice Guidance for engagement and consultation with older people on changes to community services in Wales

This Guidance is intended for Local Authorities when proposing changes to community services.

Local Authorities must have regard to this Guidance when discharging their functions. The Commissioner will use this Guidance as a standard by which to assess the extent to which Local Authorities are safeguarding and promoting the interests of older people in Wales.

Legal context

Older People's Commissioner

The Commissioner for Older People (Wales) Act 2006⁴ provides the Commissioner with a range of powers to promote and safeguard the interests of older people, challenge age discrimination, promote best practice in the treatment of older people and review the law as it affects older people. The Commissioner may hold public bodies to account by reviewing their actions or investigating complaints made about them. She may also publish best practice guidance and issue reports to the First Minister of Wales.

Public Sector Equality Duty (PSED)

The Equality Act 2010⁵ included a general duty, the new Public Sector Equality Duty (PSED), which replaced separate duties on race, disability and gender equality. The new general duty covers the following protected characteristics:

4 <http://www.legislation.gov.uk/ukpga/2006/30/contents>

5 http://www.equalityhumanrights.com/sites/default/files/uploads/Wales/PDFs/1._psed_wales_essential_guide.pdf

- Age
- Gender reassignment
- Sex
- Race – including ethnic or national origin, colour or nationality
- Disability
- Pregnancy and maternity
- Sexual orientation
- Religion or belief – including lack of belief

The aim of the general duty is to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a fairer society through advancing equality and good relations in their day-to-day activities. The duty ensures that equality considerations are built into the design of policies and the delivery of services and that they are kept under review. This will achieve better outcomes for all.

Public bodies are required to have due regard to the need 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.

To implement the general duty the following principles were drawn from case law on the previous equality duties. In order to meet the general duty, a public authority must ensure:

- Knowledge: those who exercise its functions (its staff and leadership) are aware of the duty's requirements. Meeting the duty involves 'a conscious approach and state of mind'. Decision-makers should therefore be aware of the implications of the duty when making decisions about their policies and practices.
- Timeliness: the duty arises before and at the time that a particular policy is under consideration and a decision is taken. A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- Meaningful consideration: consideration of the three aims of the general duty must form an integral part of the decision-making

process. This is not a 'tick box' exercise – it must be exercised with rigour, with an open mind in such a way that influences the final decision.

- Sufficient information: the decision-maker must consider what information they have as well as what further information might be needed to give proper consideration to the general duty.
- Review: public bodies must have regard to the aims of the general duty not only when a policy is developed and decided upon, but also when it is implemented and reviewed. The general duty is a continuing duty.
- Non-delegation: Anyone exercising public functions on behalf of a public body is required to meet the duty. This is because the duty rests with the public authority even if they have delegated any functions to another organisation.

Specific duties in Wales

The broad purpose of the specific duties in Wales is to help listed bodies in their performance of the general duty and to aid transparency. The specific duties in Wales are set out in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011. The specific duties in Wales cover:

- Objectives
- Strategic Equality Plans
- Engagement
- Assessing impact
- Equality information
- Employment information
- Pay differences
- Staff training
- Procurement
- Annual reporting
- Publishing
- Welsh Ministers' reporting
- Review
- Accessibility

Engagement

A listed body in Wales must involve people who it considers representative of one or more of the protected groups and who have an interest in how an authority carries out its functions.

A listed body may consult and involve other people that it considers appropriate. In reaching the decision as to who is appropriate, an authority must consider the need to involve or consult people from one or more of the protected groups who have an interest in the way the authority carries out its functions, where it is reasonably practicable to do so.

This engagement must take place in relation to:

- setting equality objectives
- preparing and reviewing a Strategic Equality Plan
- identifying how an authority's work and activities may contribute to meeting the general duty
- assessing the likely impact on protected groups of any policies or practices being proposed or reviewed.

Engagement with older people in Wales

Engagement

'The ongoing involvement of older people, their forums/networks and statutory and voluntary sector organisations that represent their interests, through informal consultation or discussion.'

Engagement is a two-way process that involves active listening. It should be meaningful and the Local Authority should be seen to be interacting with older people, encouraging their participation, adopting an inclusive approach and demonstrating a willingness to change as a result of learning through engagement.

Practical Engagement

- Local Authorities should engage with a broad range of older people on an on-going basis. This can be achieved through organisations that represent older people, but Local Authorities should also find ways to engage with individuals who do not attend the immediately obvious groups. Local Authorities should consider where older people are and where they go in the course of their daily lives. Older people should not be thought of as a group apart from the rest of the community. With their knowledge and experience, older people are well placed to gauge the importance and effectiveness of community services.
- Local Authorities should recognise that many older people remain active through continued working, childcare, caring commitments or volunteering and therefore often have little time to voice their concerns and priorities regarding community services. Older people have constraints on their time in the same way that younger people do.
- Local Authorities should also consider those older people who are not so visible in everyday life: it is essential that they are not excluded from engagement on community services.
- Local Authorities should ensure that they include people whose voices are seldom heard. There are also specific requirements under the Equality Act 2010 that Local Authorities must comply with in respect of engagement with people with protected characteristics.
- Local Authorities should use a variety of methods for engagement e.g. public gatherings, face to face meetings, correspondence by letter or email, telephone conversations, intermediaries or advocates where necessary. Venues and information should be accessible for all.
- Invitations to engage should be open and lead to an on-going relationship with older people, rather than be linked to one stand-alone issue. If an older person identifies a barrier to engagement, then Local Authorities should make genuine efforts to eliminate that barrier.

- Engagement should take place at a point when older people will be given a genuine opportunity to contribute their thoughts, voice their concerns and influence decision-makers. Consideration should also be given to how local forums and individuals that represent older people, such as Older People’s Champions, Strategy for Older People Coordinators, and 50+ Forums, can feed into the engagement and consultation process.
- Local Authorities should tell older people how their thoughts and opinions have helped shape proposals for consultation.
- Local Authorities should have particular regard to Principle 7 of the United Nations Principles for Older Persons⁶, which states that older people should remain integrated in society and participate actively in the formulation and implementation of policies that directly affect their wellbeing. The provision of community services, in one form or another, is therefore crucial in this regard.

Consultation with older people in Wales

Consultation

‘A more formal, focused, but open process which is to be used if substantial or controversial changes to policies or practices affecting older people are under consideration.’

Consultation is a two-way process that enables older people to contribute to the process of developing policies and services, which will lead to more realistic and robust policies and procedures that better reflect individual and community needs. The Local Authority should demonstrate a commitment to openness and accountability and a willingness to change as a result of learning through consultation.

- Local Authorities must consult at a time when proposals on community services are still at a formative stage.
- Local Authorities should ensure that as wide a range of older people as possible know that a consultation period is due to take place.

⁶ <http://www.un.org/documents/ga/res/46/a46r091.htm>

- Local Authorities should ensure that consultation documentation is accessible to the widest possible range of older people. They should give sufficient information about any proposal on community services to allow people to understand what is being proposed and the reasons behind it. Plain language should be used and the document should be set out in a logical fashion.
- Any asserted statement of fact made by the Local Authority in the consultation document should be supported by evidence and that evidence should be accessible to older people.
- Local Authorities should ensure that questions asked in consultation documents are open questions – not leading questions - that have a firm basis in the consultation document and any supporting evidence. Questionnaires should not unduly restrict the older person's ability to give a meaningful answer to the questions posed, restricting answers to 'yes' or 'no' only, for example.
- Adequate time should be given by the Local Authority for older people to consider the information and respond.
- Every response to the consultation by an older person should be given due consideration, regardless of how that response has been submitted.
- Local Authorities should demonstrate to older people that they have conscientiously taken into account the consultation responses when finalising any proposals on community services.

Assessment of impact

A listed body in Wales must assess the likely impact of proposed policies and practices on its ability to comply with the general duty and assess the impact of any policy which is being reviewed and of any proposed revision. Bodies must publish reports of the assessments where they show a substantial impact (or likely impact) on an authority's ability to meet the general duty and monitor the impact of policies and practices on its ability to meet that duty.

Reports on assessments must set out in particular the purpose of the policy or practice (or revision) that has been assessed and include a summary of the steps the authority has taken to carry out the assessment (including relevant engagement).

A summary of the information the authority has taken into account in the assessment and the results of the assessment must also be published along with any decisions taken in relation to those results. In addition, when assessing for impact on protected groups, listed authorities must comply with the engagement provisions and have due regard to the relevant information the authority holds.

The role of equality impact assessment in engagement and consultation

Equality impact assessment

‘Assessing impact is a process that should ensure that policies or practices do not unlawfully discriminate against, or have an adverse impact on, groups protected by the Equality Act 2010.’

In assessing impact, Local Authorities should also consider how the policy or practice could better advance equality of opportunity and how it will affect relations between groups. Impact assessment is a continuing duty and not a ‘tick box’ exercise. Due regard must be given to the result of assessments.

- Local Authorities should recognise that successful engagement and consultation is dependent on robust impact assessment, including equality impact assessment. The scrutiny functions of Local Authorities are crucial to determine the impact of any proposal and to determine whether any proposal has a disproportionate impact on any individuals with protected characteristics, such as older people.
- Local Authorities should bear in mind that having ‘due regard’ to the equality duty means that it is a duty of substance that should be exercised with rigour and an open mind. It is not a matter of ‘ticking boxes’.

- Local Authorities should keep an adequate record of equality impact assessments so that they can demonstrate actual consideration of their equality duties and honest discussion of relevant questions.
- When assessing impact, Local Authorities should take into account the fact that discrimination regarding community services may be direct or indirect. Direct discrimination would occur where an older person is treated less favourably because of a protected characteristic. Indirect discrimination occurs where a provision, criterion or practice is applied to everyone but only disadvantages those with a protected characteristic in a way that cannot be justified.
- In proposing changes to community services, Local Authorities should have particular regard to Principle 18 of the United Nations Principles for Older Persons⁷, which states that older people should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution to society.

Further guidance on equality impact assessment is available from the Equality and Human Rights Commission website⁸.

It is the Commissioner's expectation that Local Authorities take active steps to ensure transparency and openness in respect of the processes adopted and the subsequent decision making, including clear accountability for decisions taken.

All Local Authorities should ensure that they proactively place, within the public domain, for example through their websites, full documentation leading to decisions made that result in changes to community services.

⁷ <http://www.un.org/documents/ga/res/46/a46r091.htm>

⁸ <http://www.equalityhumanrights.com/about-us/devolved-authorities/the-commission-in-wales>

The Older People's Commissioner for Wales

The Older People's Commissioner for Wales is an independent voice and champion for older people across Wales. The Commissioner and her team work to ensure that older people have a voice that is heard, that they have choice and control, that they don't feel isolated or discriminated against and that they receive the support and services that they need.

The Commissioner and her team work to ensure that Wales is a good place to grow older, not just for some but for everyone.

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