

# CONSULTATION RESPONSE



Comisiynydd  
Pobl Hŷn  
Cymru  
Older People's  
Commissioner  
for Wales

## Welsh Government consultation: Draft Code of Practice on Quality Assurance and Performance Management, Escalating Concerns, and Closure of Regulated Care and Support Services

### KEY MESSAGES:

The Commissioner broadly welcomes the Code of Practice

Services need to evolve to meet modern needs and preferences

Commissioners' due diligence should include top-up fees for NHS Continuing Health Care

The Code of Practice should be used to ensure that older people do not have to travel far into England for care, especially if their preferred language is Welsh

### Introduction

The Older People's Commissioner for Wales welcomes the opportunity to respond to the Welsh Government's consultation on the draft Code of Practice on Quality Assurance and Performance Management, Escalating Concerns, and Closure of Regulated Care and Support Services.

The Commissioner welcomes the scope and approach of the draft Code of Practice and supports its provisions. She also appreciates the opportunities which her team have had to comment on earlier drafts.

During her engagement with older people across Wales in her first eight months in post, the Commissioner has heard of a number of serious and sometimes long-standing concerns which

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she believes the Code of Practice should require and enable local authority and NHS commissioners to address. In particular, she has heard about family members being charged top-up fees for NHS Continuing Health Care (NHS CHC) and lack of appropriate service provision leading to inappropriate, harmful and distressing situations for people needing care and their loved ones. Further details are below.

## **Scope and approach of the draft Code of Practice**

The Commissioner welcomes the extension of the scope of the draft Code of Practice from the statutory guidance on 'Escalating concerns with, and closures of care homes providing services for adults' issued in 2009, to cover all regulated care and support services commissioned by the NHS, Local Authorities or both.

She also welcomes the system-wide way of working in the draft Code of Practice, focussing on outcomes for people when assuring the quality of commissioned services. The Commissioner's office has previously highlighted the need to ensure that local intelligence on service quality is fed back to the national level, to ensure any region-wide or national-level issues can be identified and addressed.

Finally, she is pleased to see that the draft Code of Practice encourages commissioners to work proactively to assure the quality of commissioned regulated services to prevent the unnecessary instigation of escalating concerns.

## **Decommissioning**

The provision in the Code of Practice for strategic decommissioning of care and support services which may no longer be appropriate, while ensuring continuity of service to meet people's needs, is a positive development. The needs and preferences of older people are changing as demography, society and technology change, and services should evolve to meet them. As the first set of Market Stability Reports published under Section 144B of the Social Services and Well-being (Wales) Act 2014 has shown, service provision does not always match 21<sup>st</sup> century needs and preferences and appropriate services are not always located where they are needed.

During her engagement with older people, the Commissioner has encountered the disturbing case of a man living with dementia who was kept in distressing circumstances in hospital for two months because no local care service could meet his needs, and whose functioning and wellbeing deteriorated dramatically during this time. It is essential that strategic decommissioning is supported in order to enable investment in other services that better meet local needs. It is also essential that the wellbeing of older people receiving services is protected during this process.

## **Due diligence and NHS Continuing Health Care (NHS CHC)**

The Commissioner is concerned to hear from older people that some care homes appear to be asking for top-up fees for NHS Continuing Health Care, contrary to the Welsh Government's [Continuing NHS Healthcare: The National Framework for Implementation in Wales](#). The fees are considerable – the Commissioner has heard of an older person being charged £300 per week - and do not appear to be charged as part of a private arrangement to which the older person or their family has consented, as allowed by the National Framework. The previous Commissioner also raised this issue, both with providers and with the Welsh Government, between 2020 and 2023. It is very concerning that, despite action promised by the Welsh Government to address the issue, the practice does not seem to have stopped. The Commissioner's office would be happy to provide further details on request.

The Commissioner believes it is right that the draft Code of Practice stresses that commissioners should carry out due diligence on potential providers before contracts are in place. Part of this due diligence should be ensuring that providers are not breaching the terms of the National Framework and causing financial harm to older people. Compliance with the National Framework should be part of contract management and monitoring.

## **Welsh language**

During her engagement with older people, the Commissioner has heard from the relatives of older people who have been discharged from hospital in Wales and have been expected to travel to receive care, including end of life care, in facilities a considerable distance away in England, including Staffordshire and Northamptonshire. This has sometimes been at very short notice and without consultation with next of kin or other family members. This makes it extremely difficult for their families to visit them and they are highly unlikely to be able to access services in Welsh. Being able to communicate in Welsh is essential for older people who prefer or need to communicate in their first language, especially if they are living with dementia. The Commissioner expects commissioners to use the Code of Practice to help keep services closer to home and to ensure that older people are able to access services in Welsh if this is their preferred language.

## **Conclusion**

The Commissioner welcomes the draft Code of Practice and hopes that it will be used proactively to address a number of serious and sometimes long-standing concerns which older people have raised with her.

# The Older People's Commissioner for Wales

The Older People's Commissioner for Wales is an independent voice and champion for older people throughout Wales.

**The Commissioner is working for a Wales that leads the way in empowering older people, tackling inequality and enabling everyone to live and age well.**

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