



Older People's Commissioner for Wales
Comisiynydd Pobl Hŷn Cymru

Effective Engagement with Local Authorities

Toolkit for Older People



July 2014

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Foreword

Travelling the length and breadth of Wales as part of my Engagement Roadshow to meet and speak with older people about the things that matter most to them, many have shared with me their concerns that the community services that they rely upon – local buses, public toilets, libraries, day and community centres and lifelong learning – are at risk of disappearing, which will have a devastating impact on their lives.

Many older people tell me that they do not know how to engage with Local Authorities and influence the decisions that affect their lives and often feel powerless when Local Authorities propose to reduce or bring to an end these essential services.

Older people 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 Commissioner, it is my role to stand up and speak out on behalf of older people, to ensure that their voices are heard, listened to and acted upon. That's why, in February, I published my report 'The Importance and Impact of Community Services within Wales', which, with the voices of older people at its heart, makes a strong case for protecting our community services, described by many as 'lifelines'.

But my role as Commissioner is also to empower older people, to support them so that they can make their own voices heard and to be fully involved throughout the decision-making process.

That is why I have developed this Toolkit, which provides a wide range of information about how you can make your voice heard, how you can challenge decisions and the support available to help you to do this.

There will be further budgetary pressures on Local Authorities in the coming years and many difficult decisions will need to be made, but we cannot afford to lose these essential services, which give people's lives value, meaning and purpose. As my report emphasises, making short-term financial savings on community services will lead to increased financial pressures on statutory services in the medium to long term.

Local Authorities need to ensure that new and innovative ways of delivering these services are explored and the voices of older people, who are well placed to consider what approaches will be effective, must be at the heart of this.

Alongside this Toolkit, I have also issued formal Guidance on engagement and consultation to Local Authorities, reminding them of their duties to communicate with you, to work with you and, most importantly, to listen to you. This Guidance may be found in Appendix D and on my website: <http://www.olderpeoplewales.com/en/Home.aspx>

This Toolkit has been published as a practical tool to help older people ensure their views are heard by their Local Authorities, and that their views are fully reflected in any changes taking place to community services across Wales.



Sarah Rochira
Older People's Commissioner for Wales

Context

Across Wales, Local Authorities are making spending decisions in respect of key community services such as public buses, toilets, community and day centres, libraries and lifelong learning. Older people consistently highlight the importance of these community services with the Commissioner, raising concerns about the impact that the loss or reduction of these is having, or will have, on their lives.

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

This Toolkit for older people not only complements 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 2013-17¹ :

- 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 key services.

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

Direct engagement with older people and examining a wide and innovative range of partnership processes can lead to positive outcomes for both older

¹ http://www.olderpeoplewales.com/Libraries/Uploads/Framework_for_Action.sflb.ashx

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.

Future changes to local community services, facilities and infrastructure must not proceed without effective engagement, proper consultation and 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. Furthermore, it is a legal requirement under the Equality Act 2010 and the associated Welsh Public Sector Equality Duty.

What Plans Does My Local Authority Have?

Your Local Authority produces a great deal of information that will help you find out what their priorities are, what decisions are in progress and how the authority works^{2 3}. Some of this information is about the overall priorities and plans of the Local Authority, some may be about specific proposed service or funding changes. For example:

- The **constitution** sets out how decisions are made
- **Standing Orders** tell you when meetings will be held
- The **Forward Plan** sets out key decisions that will be taken by officers or councillors over the coming four months. They include information about when the cabinet will meet and when the results of scrutiny committees will be considered
- **Agendas and minutes** of meetings tell you what will or has been discussed at meetings and who said what
- Results of local **consultations** and **scrutiny committees**. You may access information on formal scrutiny and any agreements on a proposal (when and by whom)
- Departmental **reports, strategy** and **policy documents**
- **Single Integrated Plans** are produced by Local Service Boards (including Local Authorities and other key partners) to address the economic, environmental and social wellbeing issues in Local Authority areas

² <http://www.sense.org.uk/content/lobbying-local-authorities>

³ <http://www.ctc.org.uk/local-campaigners/ctc-local-campaigners-information-kit/working-local-government/lobbying-local-coun>

What Information Can I Request?

All of this information is available on request from your Local Authority.

Ask your Local Authority (see Appendix A for contact details) for all information on the community service proposal. Your Local Authority should be able to make the following available to you in respect of a proposed community service change (the format may vary from one Local Authority to another):

- The nature of the proposed change and alternative plans
- The impact of the proposal on citizens, including older people
- The proposed financial savings
- How older people can influence the proposal and timescales

Ask your Local Authority for the **impact assessment** (measuring the impact of the decision on people with protected characteristics) that accompanies the proposal.

If this information is not made available to you, you can request it under the Freedom of Information Act 2000.

Freedom of Information Act 2000

The Freedom of Information Act (Fol)⁴ deals with access to official information and gives individuals or organisations the right to request information from any public authority. The Fol Act requires all public authorities to adopt and maintain a publication scheme that sets out all of the information that the Council holds and routinely publishes. Fol requests can be made to the Freedom of Information Officer in your Local Authority. Fol requests can also be made or viewed on the What Do They Know? website (<https://www.whatdotheyknow.com/>).

⁴ <http://www.legislation.gov.uk/ukpga/2000/36/contents>

What Should My Local Authority Be Doing?

It is crucial that your Local Authority provides sufficient opportunities for full and meaningful consultation with you and others to discuss the proposal and the impact on your life of reducing or closing down this key community service.

Local Authorities may hold special consultation events. If not, you can request that these take place to express your concerns regarding a proposal. Any engagement / consultation should be in line with the National Principles for Engagement in Wales:

National Principles for Engagement in Wales

These principles were developed by Participation Cymru and endorsed by the First Minister on behalf of the Welsh Government in March 2011

1. Engagement is effectively designed to make a difference

Engagement gives a real chance to influence policy, service design and delivery from an early stage.

2. Encourage and enable everyone affected to be involved, if they so choose

The people affected by an issue or change are included in opportunities to engage as an individual or as part of a group or community, with their views both respected and valued.

3. Engagement is planned and delivered in a timely and appropriate way

The engagement process is clear, communicated to everyone in a way that's easy to understand within a reasonable timescale and the most suitable method/s for those involved is used.

4. Work with relevant partner organisations

Organisations should communicate with each other and work together wherever possible to ensure that people's time is used effectively and efficiently.

5. The information provided will be jargon free, appropriate and understandable

People are well placed to take part in the engagement process because they have easy access to relevant information that is tailored to meet their needs.

6. Make it easier for people to take part

People can engage easily because any barriers for different groups of people are identified and addressed.

7. Enable people to take part effectively

Engagement processes should try to develop the skills, knowledge and confidence of all participants.

8. Engagement is given the right resources and support to be effective

Appropriate training, guidance and support are provided to enable all participants to effectively engage, including both community participants and staff.

9. People are told the impact of their contribution

Timely feedback is given to all participants about the views they expressed or decisions or actions taken as a result; methods and form of feedback should take account of participants' preferences.

10. Learn and share lessons to improve the process of engagement

People's experience of the process of engagement should be monitored and evaluated to measure its success in engaging people and the effectiveness of their participation; lessons should be shared and applied in future engagements.

Equality Act 2010

The Equality Act 2010 requires Local Authorities to take steps to ensure that the views of older people and others with protected characteristics are heard.

Local Authorities have duties under the Equality Act⁵ to engage with those with protected characteristics (including age) and to undertake an **Equality Impact Assessment** (EIA) when developing or reviewing policies. Public authorities in Wales have a legal duty to assess all of their proposed functions, policies and procedures to assess their impact on different groups. There is a legal requirement for public bodies to publish the EIA when a substantial impact on a particular group is identified.

The Equality Act is the key piece of legislation through which to challenge the lawfulness of service reductions. The **Public Sector Equality Duty** means that Local Authorities must eliminate discrimination and victimisation, advance equality of opportunity between persons, and foster good relations between persons.

A recent review of EIAs in Wales, however, found that policy-making needs to be more transparent and evidence-based, more EIAs need to be published on public websites, and EIAs should be more outcome focused⁶.

Further information:

- The Equality and Human Rights Commission (Tel: 0808 800 0082 / www.equalityhumanrights.com) provides further information on EIAs and the ban on age discrimination in services, public functions and associations (in force since October 2012).
- An Equality Impact Assessment Toolkit was published by the NHS Centre for Equality and Human Rights in August 2012. Contact 01443 233333 to obtain a copy or visit <https://www.wales.nhs.uk/sites3/page.cfm?orgid=256&pid=4315>.

⁵ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

⁶ <http://www.wlga.gov.uk/equalities-publications/report-l-review-of-the-use-of-equality-impact-assessments-in-the-public-sector>

What Can I Do If I Am Not Satisfied?

There are many ways that you can influence the proposals put forward by your Local Authority.

If you are concerned about a proposal to reduce or close down your local community service, **don't delay**. Prepare a plan and discuss your concerns with friends, families, neighbours and your local community groups. Keep a record of your progress, including correspondence with Local Authorities and contact with other individuals or organisations.

- Contact your **local councillor** and/or your **Older People's Champion** to outline your views and concerns regarding the community services that matter to you (contact details may be found in the Local Authority information database for community services).
- You could write to your councillor and/or the responsible Cabinet member and/or the Council Leader to express your concerns and explain the impact of this decision on your life (a sample letter can be found in Appendix C).
- You could also request a meeting with your councillor. Councillors hold regular, usually monthly, drop-in sessions, known as surgeries. However, as councillors will need to meet with a number of people it is recommended to book a meeting in advance to fully discuss the proposal and your concerns.
- As councillors are often busy people, try to keep letters to them and meetings with them clear, short and concise. Think about what your important points are and try to be specific about what you want them to do.
- You could also contact your **town and community councillor** to explain your position and concerns (contact details are available through One Voice Wales <http://www.onevoicewales.org/>, Tel: 01269 595400).

You could also contact your **local Assembly Member** and/or **Member of Parliament** to raise your concerns regarding community services:

- National Assembly for Wales Members - Telephone 0845 010 5500 for contact information or visit <https://www.assemblywales.org/memhome.htm>
- The National Assembly also has a cross-party group on older people

and ageing, where key issues such as community services are often discussed⁷.

- Members of Parliament – Telephone 020 7219 4272 for contact information or visit <http://www.parliament.uk/mps-lords-and-offices/mps/>
- Write to Them also allows you to contact your local councillor, AM or MP and express your views and concerns regarding community services via the online form (<https://www.writetothem.com/>).
- Contacting your **local/regional newspaper** could be a useful way to highlight your concerns regarding the proposal to close down/reduce your community service and draw support for your efforts to protect the service as much as possible.
- There are charities, pressure/lobby groups, organisations and networks that could help you to influence Local Authority decisions and draw attention to your concerns. There are also other organisations that can highlight alternative ways of providing community service and give you advice and information about the services available where you live (further information and contact details can be found in Appendix B).

⁷ <http://www.senedd.assemblywales.org/mgOutsideBodyDetails.aspx?ID=259>

What Support is Available? Who Can Help Me?

Your Local Authority has an **Older People's Champion**, **Older People's Strategy coordinator**, and a **50+ Forum**. These individuals and groups could help you with your attempts to protect a community service:

Older People's Champions⁸ (a councillor(s) within each Local Authority) can help to ensure that the issues, needs, wishes and preferences of older people are fully taken into account in the planning and implementation of policy and services. These Champions help to ensure the involvement, participation and engagement of older people in the planning and review of all aspects of a Local Authority's work.

The role of the **Strategy coordinators** is to take forward the Welsh Government's Strategy for Older People 2013-2023⁹ and develop new approaches to the development of policy and service development in conjunction with other departments and agencies, including Local Health Boards, NHS Trusts, local voluntary organisations and with older people.

The **50+ Forums** identify key issues for people aged 50 and over within their own areas and work towards tackling them. The Forums help to ensure that the Local Authority is a better place to live for older people.

Please contact your Local Authority to receive contact details and further information (contact details can be found in Appendix A).

⁸ <http://www.wlga.gov.uk/older-peoples-champions/>

⁹ <http://wales.gov.uk/docs/dhss/publications/130521olderpeoplestrategyen.pdf>

The Decision Has Been Made. What Else Can I Do? Are There Any Alternatives?

In her report, the Commissioner suggests a number of alternative and innovative ways to deliver community services that do not place additional financial burdens on Local Authorities or transfer responsibilities away from Local Authorities:

Community Asset Transfer¹⁰

This is the transfer of under-used land and buildings from the public sector to community ownership and management. The shift in ownership gives greater powers to community and voluntary sector organisations, community and social enterprises, and individuals looking to form a not-for-private-profit group to benefit their neighbourhood.

Town and Community Councils

There are 735 community and town councils in Wales, representing the tier of government closest to the people. They cover approximately 94% of the land area and 70% of the population of Wales. One Voice Wales, the body representing town and community councils, has called for the incremental transfer of many community services and facilities, such as libraries, youth services and leisure services, from Local Authorities to town and community councils¹¹.

Social Enterprises¹²

These are businesses with primarily social objectives. Profit is mostly or wholly reinvested in the business or in the community, rather than maximising profit for shareholders and owners. Social enterprises also compete in the marketplace and need to be well run to make money and achieve their social aims. They can vary from small community-owned village shops to large organisations delivering public services.

Legal Options

There are also legal options and other avenues to challenge a decision made by a Local Authority or to ensure that a Local Authority is in full compliance with

10 <http://mycommunityrights.org.uk/community-asset-transfer/>

11 <http://wales.gov.uk/docs/dpsp/publications/psgd/140120-psgd-full-report-env2.pdf>

12 <http://business.wales.gov.uk/social-enterprise-support-0>

its legal obligations:

Public Services Ombudsman for Wales¹³

The Ombudsman has legal powers to look into complaints about public services in Wales. The Ombudsman can look into complaints that you have been treated unfairly or received a bad service through some failure on the part of the body providing it. If the Local Authority arrived at its decision properly however, the Ombudsman cannot look into your complaint. The Ombudsman can also look into complaints that councillors have broken their Local Authority's code of conduct (<https://www.ombudsman-wales.org.uk/>, Contact no: 0300 790 0203).

Judicial Review¹⁴

If you have reached the end of this process and are still dissatisfied with the way the decision has been reached, then Judicial Review is the 'remedy of last resort'. A Judicial Review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. These reviews are a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached.

The court will not substitute what it thinks is the 'correct' decision. This may mean that the public body will be able to make the same decision again, as long as it does so in a lawful way. Should you want to argue that a decision was incorrect, Judicial Review may not be suitable for you. There are alternative remedies, such as appealing against the decision in a higher court, for example.

There are examples¹⁵ where a Judicial Review has been issued against a Local Authority on the grounds of:

- A consultation preceding a decision being unlawful: decisions had already been taken before the consultation began;
- A failure by a Local Authority to take due regard of its obligations under the Public Sector Equality Duty, as required by the Equality Act 2010;
- A failure by the Local Authority to prevent the harm caused to those with protected characteristics, including older people, as a result of their plans, despite identifying the potential harm their plans could cause.

¹³ <https://www.ombudsman-wales.org.uk/en.aspx>

¹⁴ <http://www.judiciary.gov.uk/you-and-the-judiciary/judicial-review>

¹⁵ <http://savelincslibraries.org.uk/2014/02/10/high-court-proceedings-begun-challenging-the-decision-by-lincolnshire-county-council-to-cut-library-services/>

Ten Key Questions & Checklist

- Does my Local Authority have a comprehensive strategic framework for older people that acknowledges the need for essential community services, vital to my health, independence and wellbeing?
- Are older people involved in all aspects of the Local Authority's work, including strategic planning, quality monitoring and all stages of the decision-making process on community service proposals?
- Does my Local Authority work effectively with older people's networks, organisations and lobby groups to consider ways of delivering cost-effective community services?
- Does my Local Authority have a comprehensive approach to tackling age discrimination and inequality when making key decisions on community services that matter to me?
- Does my Local Authority provide joined-up, accessible and, comprehensive information on the proposal to close/reduce my community service and do I feel well informed?
- Are the health and wellbeing needs of older people fully considered by the Local Authority when proposing changes to community services?
- Does my Local Authority provide adequate information and support to help me understand the alternatives to the community service being earmarked for closure/reduction, in order to allow me to get on with my day-to-day life?
- Can my Local Authority fully demonstrate that the needs of older people were fully considered and acknowledged when the decision was made to alter this key community service?
- To what extent will my Local Authority support me should a decision be taken to close down/reduce this essential community service? Have older people been disproportionately affected by this decision?
- To what extent do my Local Authority's plans to reduce/close down community service provision affect their commitment to support and look after older people and their commitment to develop age-friendly communities via the Dublin Declaration¹⁶?

16 http://agefriendlycounties.com/images/uploads/downloads/Dublin_Declaration_2013.pdf

Checklist

	Yes / No
Has the Local Authority responded to my letter/call?	
Has the Local Authority provided an adequate explanation for the proposal to reduce/close down the community service?	
Has the Local Authority explained how my views/concerns are taken forward?	
Has the Local Authority advised me on who can help take my views/concerns forward?	
Have I been offered a consultation/face-to-face meeting to express my views/concerns?	
Has the Local Authority carried out an impact assessment to measure the impact of this proposal on older people?	
Regardless of the final decision, am I satisfied that my views/concerns have been fully considered, understood and taken on-board by the Local Authority?	

Appendix A: Contacting your Local Authority

Local Authority	Telephone	Email
Anglesey County Council Council Offices, Llangefni Anglesey LL77 7TW	01248 750057	communications@anglesey.gov.uk
Blaenau Gwent County Borough Council Municipal Offices Civic Centre Ebbw Vale NP23 6XB	01495 311556	info@blaenau-gwent.gov.uk
Bridgend County Borough Council Civic Offices Angel Street Bridgend CF31 4WB	01656 643643	talktous@bridgend.gov.uk
Caerphilly County Borough Council Ty Penallta Ystrad Mynach Hengoed CF82 7SF	01443 815588	info@caerphilly.gov.uk
Cardiff County Council County Hall Atlantic Wharf Cardiff CF10 4UW	02920 872087	C2C@cardiff.gov.uk

Local Authority	Telephone	Email
Carmarthenshire County Council County Hall Carmarthen Carmarthenshire SA31 1JP	01267 234567	direct@carmarthenshire.gov.uk
Ceredigion County Council Penmorfa Aberaeron Ceredigion SA46 0PA	01545 570881	reception@ceredigion.gov.uk
Conwy County Borough Council Bodlondeb Conwy LL32 8DU	01492 574000	information@conwy.gov.uk
Denbighshire County Council County Hall Wynnstay Road Ruthin Denbighshire LL15 1YN	01824 706101	customerservice@denbighshire.gov.uk
Flintshire County Council County Hall Mold Flintshire CH7 6NB	01352 752121	customerservices@flintshire.gov.uk

Local Authority	Telephone	Email
Gwynedd County Council, Council Offices Castle Street Caernarfon Gwynedd LL55 1SH	01766 771000	enquiries@gwynedd.gov.uk
Merthyr Tydfil County Borough Council Castle Street Merthyr Tydfil CF47 8AN	01685 725000	customer.care@merthyr.gov.uk
Monmouthshire County Council PO Box 106 Caldicot Monmouthshire NP26 9AN	01633 644644	contact@monmouthshire.gov.uk
Neath Port Talbot County Borough Council Civic Centre Port Talbot SA13 1PJ	01639 686868	contactus@npt.gov.uk
Newport County Council Civic Centre Newport NP20 4UR	01633 656656	info@newport.gov.uk

Local Authority	Telephone	Email
Pembrokeshire County Council County Hall Haverfordwest Pembrokeshire SA61 1TP	01437 764551	enquiries@pembrokeshire.gov.uk
Powys County Council County Hall Llandrindod Wells Powys LD1 5LG	01597 827460	customer@powys.gov.uk
Rhondda Cynon Taf County Borough Council The Pavilions Cambrian Park Clydach Vale Tonypany CF40 2XX	01443 425005	customerservices@rctcbc.gov.uk
Swansea County Council Civic Centre Oystermouth Road Swansea SA1 3SN	01792 636000	contact@swansea.gov.uk
Torfaen County Borough Council Civic Centre Pontypool Torfaen NP4 6YB	01495 762200	your.call@torfaen.gov.uk

Local Authority	Telephone	Email
Vale of Glamorgan County Council Civic Offices Holton Road Barry Vale of Glamorgan CF63 4RU	01446 700111	C1V@valeofglamorgan.gov.uk
Wrexham County Borough Council The Guildhall Wrexham LL11 1AY	01978 292000	contact-us@wrexham.gov.uk

Appendix B: Community service organisations, networks, charities and lobby/pressure groups

Public Buses

Bus Users Cymru	0300 111 0001	http://bususers.org/cymru-wales/about-us
Community Transport Association	01792 844290 (Swansea) 01745 356751 (Rhyl)	http://www.ctauk.org/in-your-area/wales.aspx
Confederation of Passenger Transport	0207 240 3131	http://www.cpt-uk.org/index.php

Public Toilets

British Toilet Association	02891 477397	http://www.britloos.co.uk/
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Libraries

Welsh Libraries	01978 298861 / 298857	http://welshlibraries.org
Public Libraries News		http://www.publiclibrariesnews.com/
Community Knowledge Hub Libraries		http://libraries.communityknowledgehub.org.uk/

Day / Community Centres

Find Me Good Care		www.scie.org.uk/findmegoodcare
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Lifelong Learning

NIACE Dysgu Cymru	02920 370900	http://www.niacedc.org.uk/
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General

Age Alliance Wales	02920 431554	http://www.agealliancewales.org.uk/
Age Cymru	02920 431555	http://www.ageuk.org.uk/cymru/ Community Calculator: How age-friendly is your community?
Welsh Senate of Older People	02920 431570	http://www.welshsenateofolderpeople.com/index.htm

Appendix C: Community Services Sample Letter

(Amend this letter as appropriate to fit your circumstances)

Address

For Example County Council
Xxxxxx
xxxxx
Wales

Date

Dear Sir/Madam,

I write to you regarding the proposal to reduce the provision of/close down my local key service (**specify the name and nature of this service**). I am very concerned about this proposal. This is a crucial community service which I rely on to get on with my daily life. This service is an indispensable lifeline for me and others. Without this service, I am at further risk of being socially isolated, and I am concerned that the withdrawal of this service will seriously impact on my health, independence and wellbeing.

In order to influence the decision regarding this service as much as possible, could you please inform me on the following:

- The consultation process for this decision; how I can influence the decision;
- How my views and concerns will be taken forward;
- Who can take my concerns forward and who can help me;
- The timeline for this process.

I fully understand the budgetary pressures facing local authorities, however this service gives my life value, meaning and purpose, and is vital to reduce physical and mental health problems amongst older people. It is a vital service not only for older people but for others as well.

Should this service be reduced or closed down, I will be isolated from my community and society, unable to access essential services, unable to carry out activities that contribute to the economy, and unable to visit friends or family. Reducing or closing down this service may save the Local Authority costs in the

short term, however it will lead to much larger health and social care costs for authorities in the medium to long term.

I expect my views to be fully considered when the final decision on this vital service is made.

Yours sincerely,

Xxxxxxxxxxxxxx

Appendix D: Guidance for Local Authorities

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 2006¹ 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 2010² 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:

¹ <http://www.legislation.gov.uk/ukpga/2006/30/contents>

² 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 Persons³, 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

Consulation

‘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.
- 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.

³ <http://www.un.org/documents/ga/res/46/a46r091.htm>

- 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 Persons⁴, 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 website⁵.

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.

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

5 <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.

How to contact the Commissioner:

The Older People's Commissioner for Wales
Cambrian Buildings
Mount Stuart Square
Cardiff
CF10 5FL

Phone: 08442 640 670

Email: ask@olderpeoplewales.com

Website: www.olderpeoplewales.com

Twitter: [@talkolderpeople](https://twitter.com/talkolderpeople)

