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17 April 2015

Dear Imelda

Formal written notice issued under the Commissioner for Older People (Wales) Act 2006: Additional Information Required

I would like to take this opportunity to thank you again for providing a timely response to my Requirements for Action, which were published alongside the findings of my Care Home Review.

I have now had an opportunity to review all of the responses from the bodies subject to my Review and I enclose my evaluation of your response.

If you raised specific questions with me about my Requirements for Action, please find attached my response to these.

In analysing the responses received, I was looking for assurance, through the information provided and action in hand or planned, that my Requirements for Action will be implemented and the intended outcome will be delivered.

As you will see from my analysis, I have clearly set out whether each element of your response is 'acceptable', 'partial' (further information needed) or 'unacceptable'. Acceptable means that my assurance levels based in the information provided are sufficient, partial and unacceptable means that I require further information to be assured that the

Requirement for Action will be implemented and its intended outcome delivered.

Where I have concluded that an element of your response is either partial or unacceptable, I require further information or a revised approach in order to be satisfied that your organisation is already complying with the Requirement for Action or is committed to taking the action necessary to deliver the required change. This information should be provided to me by **Friday 15 May 2015**, in line with the timescales specified in the Commissioner for Older People (Wales) Act 2006. If you are unclear about any aspect of your response, in particular what would provide the level of assurance that I am looking for, or have any detailed questions regarding the Requirements for Action, you are welcome to contact me.

I am obliged by the Commissioner for Older People (Wales) Act 2006 to keep a register of responses to my Requirements for Action and therefore all of the responses from the bodies subject to my Review will be published on my website together with the analysis of each response. I will also be publishing an overall commentary on whether I consider, based on the further information I receive, that the change I expect to see on behalf of older people will be delivered. In addition to this information being published on my website, I will also be making a formal public statement, both in respect of an overview of action underway and action intended by individual bodies subject to the Review.

If you require any further information, please contact my Director of Wellbeing and Empowerment, Daisy Cole, on 08442 640670.

Yours sincerely,

A handwritten signature in black ink that reads "Sarah Rochira". The signature is written in a cursive, flowing style.

Sarah Rochira

Older People's Commissioner for Wales

Care and Social Services Inspectorate Wales (CSSIW)

Requirement for Action 1.5

Initial Conclusion - Partially Acceptable

1.5 An explicit list of 'never events' should be developed and published that clearly outlines practice that must stop immediately. The list should include use of language, personal care and hygiene, and breaches of human rights.

Care and Social Services Inspectorate Wales' response to this Requirement for Action acknowledges that "in practice there are clear "never events" that trigger immediate enforcement action" However, with the exception of one reference to POVA referrals, it is not clear from this response what those 'never events', or their equivalent, would be and it does not provide clarity regarding whether they are currently in the public domain. It is the Commissioner's view that they should be in the public domain and that they should be consistent both across CSSIW and commissioners, as well as providers. There should be a clear explanation of the purpose of defining events as 'never events' and the impact that such events have on individuals.

The response is also supportive of including the equivalent of 'never events' as 'tipping points' within the Quality Judgement Framework for care homes for older people, which is currently under development. This is to be welcomed. The integration of explicit never events into CSSIW's planned Quality Judgement Framework has the potential to place on a statutory footing the provision of publicly accessible information regarding unacceptable care and quality of life factors in care homes on a consistent basis across Wales.

CSSIW's acknowledgment of the role of never events, in particular in the development of the Quality Judgement Framework, presents an opportunity to send a strong message to care providers about the expected standards of care in Wales. Through their leadership and in conjunction with Care Council for Wales, Care Forum Wales and

commissioners, CSSIW should make clear that all such never events should be reported to them.

CSSIW's response falls short of describing what these future never events should be, instead assigning this responsibility to the Older People's Commissioner for Wales. Whilst 'A Place to Call Home' clearly signals how these should be pitched, CSSIW's response negates the sector leadership the Commissioner expects to see from CSSIW, who should, through its own offices consult on and develop these never events. The Commissioner would expect direct engagement with older people and family members alongside a process of cross-referencing potential similarities to ongoing work such as the standards of care for older people developed by Abertawe Bro Morgannwg University Health Board.

In terms of reporting and acting upon never events, CSSIW's response emphasises the importance of the inspector's professional judgement when 'assessing the risks to service users, the potential impacts and the capability of the provider to make improvements'. It is questionable whether the latter factor here can be considered acceptable in respect of public reporting of never events and requiring of action to immediately halt their occurrence.

Reference to how CSSIW inspectors balance their assessment of risks against their legal duty to respect and protect older people's rights under the Human Rights Act should be made explicit. Further assurances should also be provided regarding the vital role of professional judgement described by CSSIW specifically in relation to never events.

The response also demonstrates a willingness to involve the Care Council for Wales and commissioners in their discussions. However without a timetable or evidence of a clear plan for proactive collaboration it is difficult to make an assessment of whether CSSIW will achieve this Requirement for Action in reality.

Requirement for Action 6.2

Initial Conclusion - Unacceptable

6.2 Care home providers, commissioners and CSSIW should develop informal and systematic ways in which to ensure they better understand the quality of life of older people through listening to them directly (outside of formal complaints) and ensuring issues they raise are acted upon

Annual reporting should be undertaken of how ongoing feedback from older people has been used to drive continuous improvement

CSSIW's response to this Requirement for Action presents their current and future actions, such as: quality of life inspections, the development of the Quality Judgement Framework, and a new ICT system as if they are in direct alignment with the Commissioner's Requirement for Action.

It is welcome that CSSIW will utilise ICT improvements to align data across regulators and commissioners. However this response would have been strengthened further if CSSIW had referred to plans for local engagement with commissioners, and other professionals.

Furthermore, there is a lack of detail about how the strategic drivers for change such as, new inspection frameworks, the national participation board and regional equivalents will ensure that CSSIW are able to better understand the experiences of older people in care homes and ensure the issues they raise are acted upon.

The response would be improved if CSSIW addressed the specific details of the Requirement for Action in terms of how these actions will impact on CSSIW's understanding and improve older people's quality of life, and care in care homes in Wales. For example it is unclear how, or if, ongoing feedback from older people is currently collected, and, if so how this is used to drive continuous improvements. It is unclear whether information will be better utilised within a new model for annual reporting in line with the expectations of the Regulation and Inspection of Social Care (Wales) Bill which is to be implemented in 2017.

It is notable that CSSIW has been unable to evidence any informal or systematic ways of working with care home providers when they are responsible for providing independent assurance about the quality of care homes for older people in Wales. The response could be improved through assessing the current ways in which CSSIW engages with care home providers and the sector, to make sure that CSSIW supports independent providers to better understand older people's quality of life, and deliver on their declared aims to ensure that older people's rights are protected, and promote improvements in the quality of life and care of older people in care homes in Wales.

Requirement for Action 6.3

Initial Conclusion – Unacceptable

6.3 Lay assessors are used on an ongoing basis, as a formal and significant part of the inspection process
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CSSIW's response to this Requirement for Action refers to an evaluation of the benefits of lay assessors, based on a number of small scale pilots. The response highlights how this would need significant investment to be scaled up to all adult settings. The Commissioner's experience in undertaking 'A Place to Call Home' would support CSSIW's proposition that additional resource would be needed to make this a reality, and the Commissioner is willing to raise this directly with the Minister. However it is disappointing that the potential to use Community Health Council members as lay assessors, to monitor healthcare and wider quality of life issues within care homes, has not been referenced.

The response refers to a Participation Plan, which sets out CSSIW's strategy to involve a wide range of people in their work, and the involvement of lay assessors in thematic inspections of local authorities which is to be welcomed. However, this is not the same as understanding the quality of life, and care in individual homes through the eyes of a lay person. These actions could be strengthened further by making a commitment to proactively engage with CHC's to achieve greater

effectiveness in the use of lay assessors in care homes, and to deliver the Commissioner's desired outcomes for older people.

It is welcome that the Chief Inspector of CSSIW has made a commitment to provide a more detailed response to this Requirement for Action as there is no evidence to indicate that CSSIW will be able to achieve the Requirement for Action in reality; or that alternatives to lay assessors have yet been sufficiently scoped or explored.

Requirement for Action 6.9

Initial Conclusion - Unacceptable

6.9 The Chief Inspector of Social Services publishes, as part of her Annual Report, information about the quality of life and care of older people in care homes, which includes the following:

- The quality of life of older people in care homes who are bed bound
- The quality of life of older people in care homes living with dementia
- The quality of life of older people in care homes living with sensory loss
- The implementation of care plans in older people's care homes
- The accuracy of external statements from independent providers
- How the human rights of older people are upheld in care homes across Wales

CSSIW's response to this Requirement for Action provides a brief description of how data could be collected, and potential thematic areas of study and census data. However, it falls short of committing to a full qualitative overview about the quality of life, and care of older people in care homes within the Chief Inspector's Annual Report. The need to validate all required information is welcome and understandable; however, CSSIW's response would be significantly strengthened through the use of timelines outlining the predicted progress of data collection across all areas.

It is accepted that future action regarding commentary on the accuracy of external provider statements will need to be examined in the context of

the Regulation and Inspection of Social Care Bill, in order that clarification around CSSIW's powers can be sought. The Commissioner will be seeking further information about this as the Bill progresses.

It is strongly welcomed that CSSIW will be connecting human rights standards to the Quality Judgement Framework as while Human Rights are not explicitly stated within the national minimum standards and CSSIW regulations, upholding the legal duties articulated in the Human Rights Act is a function that all public authorities, including CSSIW must implement.

It is clear that CSSIW have processes in place and fulfil their procedural responsibilities in specific work streams such as Deprivation of Liberty Safeguards and when safeguarding concerns are raised, to ensure that older people are respected and protected under the Human Rights Act.

However recent changes to the Care Act 2014, place human rights responsibilities onto providers when exercising a "function of a public nature" therefore it is essential that the quality judgement framework reflects on how care provided in care homes upholds the duties within the Human Rights Act. This would then provide robust intelligence that could enable CSSIW to report on how the human rights of older people are upheld in care homes across Wales.

Further evidence is required in order to understand whether CSSIW will be able to achieve the Required Action in reality, and further information is needed on when CSSIW will be able to report on the above.