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6 February 2013

Dear

NHS Reconfiguration Plans and older people

As you know, as a result of significant representation from older people about the proposed changes to NHS services in Wales, I wrote to you on 25 September 2012 outlining my expectations, as Older People's Commissioner for Wales, in relation to current and future reconfiguration of healthcare in Wales. I set out three areas in which I take a particular interest:

1. the extent to which Local Health Boards are involving older people in discussions about decisions being made and taking their views seriously;
2. whether they are taking proper account of the impact of proposed changes upon older people, ensuring that alternative provision is appropriate and effective and being used by the older people affected by the changes; and
3. whether they are ensuring that older people will not be disproportionately affected by the changes.

I have received responses to my letter of 25 September from several Health Boards and these have been helpful to me. Having given the responses much consideration, I have come to the conclusion that Health Boards would benefit from best practice guidance that builds on the Welsh Government's guidance on engagement and consultation about changes to health services and which includes guidance on the legal

requirement for equality impact assessment and the need for broader impact assessment. The guidance reflects the current position in policy, law and case law and can be found at Appendices 1 and 2.

The guidance is formal guidance issued to Local Health Boards under s.12 of the Commissioner for Older People (Wales) Act 2006. It sets out the standards by which I will assess Local Health Boards' actions regarding reconfiguration, and Health Boards must have regard to it when discharging their functions.

I am also taking this opportunity to request from you further evidence to assure me that the interests of older people in Wales are being sufficiently safeguarded and protected by your Health Board during these times of change in the NHS. The list of documentary evidence required is at Appendix 3 and should be provided to me no later than Friday 8 March 2013.

I recognise the challenges facing Health Boards and their aspirations to deliver better quality care. My intention is to be helpful to Local Health Boards so that they can work in a way that gives older people confidence that their interests have been thoughtfully considered, have been taken into account and have affected decision-making.

If you have any questions, please contact Anna Buchanan on 08442 640670.

Yours sincerely

A handwritten signature in black ink that reads "Sarah Rochira". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Sarah Rochira
Older People's Commissioner for Wales

This letter is issued under s.3 Commissioner for Older People (Wales) Act 2006.

Appendix 1

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

February 2013

Best practice guidance for engagement and consultation with older people on changes to health services in Wales

This guidance is intended to complement guidance published by the Welsh Government on engagement and consultation about changes to health services in Wales which can be found [here](#).

Local Health Boards 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 Health Boards are safeguarding and promoting the interests of older people in Wales.

Legal context

- **Local Health Boards**

Local Health Boards in Wales have a duty under the National Health Services Act 2006 s.242 to consult and involve users and carers in the planning and provision of services, as well as in the development and consideration of proposals to reconfigure such services.

The Equality Act 2010 (Statutory Duties)(Wales) Regulations 2011 require LHBs to assess the likely impact of their proposed policies and practices (and also existing policies when they are reviewed) on their ability to comply with the general equality duty. LHBs are required to publish reports of impact assessments where they show a substantial impact (or likely impact) and to monitor the impact of policies and practices on their ability to meet the general equality duty under s.149 Equality Act 2010, which is to:

- (a) eliminate unlawful discrimination, harassment and victimisation;
- (b) advance equality of opportunity between different groups; and
- (c) foster good relations between different groups.

- **Community Health Councils**

Under the Community Health Councils (Constitution, Membership and Procedures) (Wales) Regulations 2010, CHCs have a particular role in planning and consultation processes and may refer proposals it believes are not in the interests of health service in the LHB area to the Minister for Health for a final decision on the matter.

- **Older People's Commissioner**

The Commissioner for Older People (Wales) Act 2006 gives the Commissioner power 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.

Engagement with older people in Wales

'Engagement'

The ongoing involvement of older people, their carers, 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 LHB 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:

- LHBs should engage with a broad range of older people and carers on an ongoing basis – this can be done through organisations that represent them, but LHBs should also find ways to engage individuals who do not attend the immediately obvious groups. LHBs should consider where older people are and where they go in the course of daily life – essentially, the same places as everyone else. They should not be thought of as a group apart from the rest of the community.
- LHBs should recognise that many older people and carers work and have substantial caring responsibilities. They have constraints on their time in the same way that younger people do.
- LHBs should also consider those older people and carers who are not so visible in everyday life; it is important that they are not excluded from engagement. LHBs should include those who may be disabled, who face language barriers, who may live in a relatively closed culture for whatever reason or who are in a hospital or care home.
- LHBs should use a variety of methods for engagement – public gatherings, face to face meetings, correspondence by letter or email, telephone conversations, intermediaries or advocates where necessary. Venues and information should be accessible.
- Invitations to engage should be open and lead to an ongoing relationship with older people and carers in the community rather than be linked to one stand-alone project. If an older person identifies a barrier to engagement, LHBs should make genuine efforts to eliminate that barrier.

- Engagement should take place at a point when older people and carers will be given a genuine opportunity to contribute their thoughts and influence decision makers.
- LHBs should tell older people and carers how their thoughts and opinions have helped shape proposals for consultation.
- LHBs should have particular regard to Principle 7 of the United Nations Principles for Older Persons, which states that older people should remain integrated in society and participate actively in the formulation and implementation of policies that directly affect their well-being.

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 LHB should demonstrate a commitment to openness and accountability and a willingness to change as a result of learning through consultation.

- LHBs must consult at a time when proposals are still at a formative stage.
- LHBs should ensure that as wide a range of older people and carers as possible know that a consultation period is going to take place.

- LHBs should ensure that consultation documentation is accessible to the widest possible range of older people and carers. They should give sufficient information about any proposal so as 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 LHB in the consultation document should be supported by evidence and that evidence should be accessible to older people and carers.
- LHBs should ensure that questions asked in consultation documents are open questions – not leading questions - which 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, for example, by restricting answers to 'yes' or 'no' only.
- Adequate time should be given by the LHB for older people and carers to consider the information and respond.
- Every response to the consultation by an older person or carer should be given due consideration, regardless of how that response has been submitted.
- LHBs should demonstrate to older people and carers that they have conscientiously taken into account the consultation responses when finalising any proposals.

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, LHBs 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.

- LHBs should recognise that successful engagement and consultation is dependent on robust impact assessment, including equality impact assessment.
- LHBs 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'.
- LHBs 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, LHBs should take into account the fact that discrimination may be direct or indirect. Direct discrimination would occur where an older person or carer is treated less favourably because of a protected characteristic. Indirect discrimination would occur where a provision, criterion or practice puts one person or group

of people with a protected characteristic at a disadvantage when compared to another person or group of people.

- LHBs should have particular regard to Principle 18 of the United Nations Principles for Older Persons, 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 website.

Appendix 2

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

February 2013

Best practice guidance on assessing the impact on older people in Wales of changes by Local Health Boards to policy and provision of services

This guidance is intended to provide guidance on assessing the impact on older people in Wales of changes to health services.

Local Health Boards must have regard to this guidance when discharging their functions. The Commissioner will use it as a standard by which to assess the extent to which Local Health Boards (LHBs) are safeguarding and promoting the interests of older people in Wales as they reconfigure NHS services.

What is meant by 'assessing impact'?

- Assessing impact is not a new phenomenon and has been used by public bodies for many years, for example, to assess environmental impact or economic impact.
- In the context of this document, 'assessing impact' means identifying the potential or actual impact on older people of proposed changes to health services in Wales in order that adverse or disproportionate impact on older people can be avoided or, where unavoidable, mitigated.
- LHBs should see impact assessment as a continuous activity that considers, as a matter of course, the potential and actual consequences of proposed and actual changes to policy and the provision of services to older people.

- LHBs should see impact assessment as providing them with the opportunity to think through the reasoning and evidence base for its proposed changes to services and, where adverse or disproportionate impact is identified, they should consider whether there are alternative means by which to achieve their objectives or mitigate negative impact on older people.
- LHBs should also see impact assessment as a useful tool in helping them better understand the impact and consequences of their proposed changes so they can make decisions that best serve the community with the resources available.
- Impact assessment is a necessary element of robust public administration.
- Impact can be experienced directly or indirectly. The withdrawal of a service could have direct impact on an older person because they no longer have access to that service, but they could also be affected indirectly if, for example, the service is available elsewhere but it now costs the older person a prohibitive sum of money to travel to use the service.

Evidence of impact assessment

- LHBs should be able to provide documentary evidence that shows an audit trail of impact assessment from the point when a new or revised policy or change to a service is first under consideration to the point when the new or revised policy is put in place or the change to a service is made.

LHBs should also be able to provide documentary evidence that shows an audit trail of impact assessment once new or revised policies or changes to services are implemented to ensure that they have been assessed for unintended or unexpected consequences.

The audit trail should demonstrate that:

- a) meaningful engagement and, where appropriate, consultation has taken place with older people in order to obtain their perspective on how a proposed policy or a change of service will impact or is impacting them;
 - b) due consideration has been given by the LHB to what older people have said about how a proposed policy or change to a service might affect them or is affecting them;
 - c) due consideration by the LHB has been given to whether and to what extent the proposed policy or change to a service might impact on older people or is impacting them;
 - d) due consideration has been given by the LHB to whether and to what extent the proposed policy or change to a service might impact disproportionately on older people or is impacting them disproportionately;
 - e) there has been due consideration by the LHB of the action that can be taken to mitigate negative or disproportionate direct or indirect impact on older people.
- The audit trail should include a chronology and narrative that explains the documents provided.

Impact on other providers of services

- LHBs should assess the impact of their proposed changes to health services on others who provide services to older people, for example local authorities or voluntary organisations, for example, where a change in service provision means that another organisation or public body will have to provide services to meet needs previously met by the LHB.

Appendix 3

Documentary evidence to be provided no later than 8 March 2013

In relation to recent engagement, consultation and decision-making about changes to the provision of NHS services in your area, please provide the Older People's Commissioner with:

Engagement and consultation

1. A full audit trail of your engagement and consultation with older people and carers. The audit trail must include:
 - a) A **summary of** dates and venues of engagement/consultation events, numbers in attendance, a **summary of** what was discussed and what feedback was given after the event to those who attended;
 - b) A **summary of** the means by which older people and carers were given the opportunity to engage and give consultation feedback;
 - c) A **summary of** any barriers to engagement and consultation highlighted to the LHB by older people and how these barriers were removed.

Action taken in response to feedback

2. Documentary evidence of how feedback and comments from older people and carers have been discussed at Board level and have shaped and/or changed the plans for reconfiguration, including, where relevant, Board papers and minutes of discussions.

Equality Duties and impact assessment

3. Documentary evidence of how the LHB has fulfilled its duties under the Equality Act 2010 (Statutory Duties)(Wales) Regulations 2011 to assess the likely impact of proposed changes to policies and practices on their ability to comply with the general equality duty.
4. Documentary evidence of how equality impact assessment has altered or changed the plans for:

- a) engagement and consultation;
 - b) reconfiguration of services.
5. Documentary evidence that demonstrates due consideration at Board level of any identified negative impact on those with protected characteristics, including Board papers and minutes that evidence due consideration of what might be done to mitigate negative impact.

Broader impact assessment

6. Documentary evidence that demonstrates due consideration at Board level of whether older people will be disproportionately affected by the proposed reconfiguration of services, and, where disproportionate impact has been identified, Board papers and minutes that evidence due consideration of what might be done to mitigate disproportionate impact.
7. Documentary evidence, including Board papers and minutes, that demonstrates due consideration at Board level of the extent to which the proposed reconfiguration of services will impact communities, local authorities and the voluntary sector.
8. Documentary evidence of discussions with local authorities and the voluntary sector about the impact on them – both financial and in terms of service provision - of the proposed reconfiguration of services including, where they exist, evidence of agreements made in relation to resource sharing or joint use of resources.

Alternative services

9. Documentary evidence of discussions about alternative support that will be put in place for older people and carers where a service has been changed or withdrawn, and which demonstrates that the long-term sustainability of such support has been considered and is viable.

'Documentary evidence'

Documentary evidence means minutes, records of meetings, emails, letters, consultation documents, engagement documents and anything else (paper, electronic or otherwise) that might demonstrate active consideration of the matters outlined above.

All evidence must be dated and presented in a chronological order, clearly indicating the area to which it relates (e.g. engagement, impact assessment, etc).

This evidence may be made available to the public.