

Health & Social Care Committee

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Health board reconfiguration plans - Letter from the Older People's Commissioner for Wales



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By email

25 September 2012

Dear

NHS Reconfiguration Plans

I write this letter with a strong understanding of the challenges that Local Health Boards face in the current financial climate. There are decisions that are required to be taken about service delivery and prioritisation of spending, and I know that each Health Board faces its own particular challenges. I also recognise the desire of Health Boards to develop new models of care that meet the needs of Welsh people.

Health services and their delivery are often sensitive and emotive subjects. This means it is especially important that decision making is seen to be - and experienced as being – fair, transparent and carried out with due consideration of the rights and needs of those who are directly affected.

People, and older people in particular because they are the majority users of health services in Wales, must be at the heart of the decision-making process. Older people have raised with me concerns about some of the changes proposed by some Health Boards. As a result, I am writing to



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outline my expectations of Health Boards when they are considering changes to services or the possible closure of medical facilities or care homes.

As Commissioner I have three particular issues in which I take a close interest. These are:

1. The extent to which older people are involved in discussion about decisions being made. I expect their involvement to be at an early stage, and will look for evidence that their views are taken seriously. I want to know that they have been listened to and that their views have been taken into account when making changes to services.
2. Where changes to services are proposed, I will look to see what the impact of the change will be upon the older person. Where the change is necessary, I will want to be assured that appropriate and effective alternative support is not only made available but that there is evidence of it being used by the older people affected.
3. Where services have been changed or withdrawn as a result of wider financial pressures, I want to see evidence that older people have not been disproportionately affected.

Securing the human rights of older people and compliance with the Equality Act 2010

Health Boards must act in a way that protects the human rights of those they serve. Older people have a legal right to be treated fairly and to have their voices heard. Their dignity, beliefs, needs and privacy should be respected, as well as their right to make informed and effective decisions about their care, treatment and wellbeing.

The specific duties under the Equality Act general public sector equality duty require Health Boards to assess the impact of policies and proposed policies on those with protected characteristics. When considering changes to services or the possible closure of medical facilities or care homes, Health Boards should – with Local Authorities where appropriate - assess the impact of the options it proposes in the consultation document and should publish the findings as part of that document. The impact assessment process should not be carried out just once – it should be

repeated wherever there is a proposed change of direction or a change of circumstances.

Boards should consider the findings thoroughly and act upon them to ensure that no-one with a protected characteristic is treated unfairly as a result of a policy or decision.

As Commissioner, I am able to support and assist older people to make complaints or take legal action in respect of services provided by Local Health Boards, for example to challenge age discrimination or to secure their human rights. I will also, at a future date, be reviewing the equality objectives of all Health Boards in respect of older people.

Meaningful consultation and engagement

I specifically draw your attention to the NHS Wales 'Guidance on Engagement and Consultation on Changes to Health Services' and also to s.183 of the National Health Services (Wales) Act 2006, which requires Health Boards to involve and consult citizens with regard to services they provide or procure.

Older people and their families should be consulted with in a meaningful way at a time when proposals for change are still at a formative stage. The consultation should give enough information, in plain language and in various formats, to allow people to be fully informed. There should be sufficient time to weigh up the information and respond to it. The responses that older people and their families give should be carefully and open-mindedly analysed by the Local Health Board, and the results should be made widely available. The Board should publish the views expressed and the reasons for the decisions it has finally taken. The responses should also be fed into an ongoing impact assessment process (see above).

The various stages of the consultation process must be made clear to older people and their families and there must be a key point of contact available who can be contacted to answer any questions about the consultation.

Provision of advocacy when facilities are closing

Older people must be able to express their own wishes or concerns when facing a transfer of care as a result of a service closure. Some will not be able to do this without the help of an independent advocate. Where an older person facing a change of residence lacks capacity and there is no relative or friend to represent them, an Independent Mental Capacity Advocate *must* be appointed since it is a legal requirement to appoint one when such decisions are being made.

At the earliest stage, older people should be made aware of advocacy services available to them; even though a person has capacity, he or she may feel they need the support of an independent person to represent their wishes or concerns. The voluntary sector can play a key role in providing such support and should be used to do so.

Whilst they may have a vital role in assisting and informing older people, nurses, care home managers and social workers are not independent advocates.

Yesterday I published wider recommendations on independent advocacy and would very much welcome your engagement in the debate which will now take place. Next year I will be publishing formal guidance, under s.12 of the Commissioner for Older People (Wales) Act 2006, on the provision of independent advocacy for older people.

I would be grateful if you could send a copy of your consultation plan and engagement strategy in respect of current reconfiguration and/or closure plans. I will be taking a close interest in the way that Health Boards make decisions so that older people's rights are upheld and will, where appropriate, correspond with you further.

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