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Comisiynydd y Gymraeg
[Welsh Language Commissioner](#)

01/06



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Gymraeg
Welsh Language
Commissioner

Health, Social Care and Sport Committee
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29/07/2019

Dear Health, Social Care and Sport Committee

Health and Social Care (Quality and Engagement) (Wales) Bill

1. Thank you for the opportunity to respond to the consultation on the above Bill. My comments are limited to the effect of the Bill's provisions on health and social care provided to Welsh speakers. In particular, I would like to draw your attention to the following points:
 - I am of the view that the explanatory memorandum does not adequately acknowledge the importance of providing Welsh medium health services to Welsh speakers as a quality issue in terms of health services. I ask you as a Committee to ensure that it is fully acknowledged that failing to provide healthcare services through the medium of Welsh can be a lack of quality issue within health services and that this is reflected in this Bill (section 2.6 of this letter).
 - With a view to the future I believe that there is a need to begin a serious discussion on the position of the Welsh language within the Welsh Government's long term vision of a 'whole system approach to health and social care' as set out in *A Healthier Wales: our Plan for Health and Social Care*¹ (Section 2.7 of this letter) as legal provisions for the provision of health and social care services through the medium of Welsh vary.
 - I ask you as a Committee to seek to ensure that the Welsh language is placed at the centre of the duty of candour on NHS bodies (Section 3.1).

¹ <https://gov.wales/sites/default/files/publications/2019-04/a-healthier-wales-our-plan-for-health-and-social-care.pdf>

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- In order to ensure that the new Citizen Voice Body for Health and Social Care will be required to comply with Welsh language standards as soon as possible and in order to facilitate the smooth transfer of these duties from the Board of Community Health Councils in Wales and the Community Health Councils, I suggest that the best approach would be to amend the references to these bodies in the Welsh Language Standards (No. 7) Regulations 2018 and that this is reflected in Schedule 3 of this Bill (section 5.1).

2. Part 2 of the Bill – Improvement in Health Services

2.1 Despite policy directives on the importance of providing Welsh language health and care services, such as *More just than words: Action Plan 2019-20*²³ I am not aware of health legislation that gives assurance to patients that they will receive clinical healthcare services in Welsh if they so wish and that places a duty on health bodies to plan for this. As this proposed legislation relates to improvement in health services and focuses in part 2 on the quality of health services, this lack of pertinent legislation means that the way in which the quality of health services through the medium of Welsh may be measured is limited. This is in contrast to the situation in social care as I explain below.

2.2 The Social Services and Well-being Act (Wales) 2014

The Social Services and Well-being (Wales) Act 2014 contains specific requirements relating to the Welsh language including the language of assessment, considering the Welsh language when commissioning and delivering care and in individual care plans prepared in accordance with the Act. Section 14(1) states that local authorities and each Health Board must jointly assess the range and level of services required to meet the care and support needs of people in the local authority area as well as the range and level of preventative services required. They must also jointly assess the actions required to provide the range and level of services identified through the medium of Welsh. The Act and Regulations and the Part 2 Code of Practice include details on preparing care and support plans and specifically the rights and responsibilities of people who need care and support to achieve their personal outcomes. The Code states that when people use social services and their partners to implement their care and support plan, 'people can expect to achieve personal outcomes which reflect the following national well-being outcome statements: I get care and support through the Welsh language if I need it.'⁴

2.3 The Welsh Language Standards and local authorities

Since 2016 local authorities are required to comply with Welsh language standards⁵. The standards that apply to local authorities relate to service delivery, policy making,

²<https://gov.wales/sites/default/files/publications/2019-07/more-than-just-words-action-plan-2019-2020.pdf>

³ See for example the Government Ministers' introduction on page 2, 'for many families and individuals, high quality care means the ability to use services through the medium of Welsh, because they feel more at ease in their own language. <https://gov.wales/sites/default/files/publications/2019-07/more-than-just-words-action-plan-2019-2020.pdf>

⁴ Welsh Government, Social Services and Well-being (Wales) Act 2014 Part 2 Code of Practice (General Functions) p.9

⁵ Please see the relevant standards in compliance notices for each local authority on the Welsh Language Commissioner's website.



promotion of the Welsh language, operational (i.e. the internal activities of an organisation) and record keeping. As well as requiring local authorities to provide written services in Welsh, standards relating to meetings to discuss the well-being of individuals place a responsibility on local authorities to provide simultaneous translation if individuals so wish and it is not possible for those meetings to be held in Welsh without translation. Therefore, the standards that apply to local authorities effectively mean that people receiving social services should be able to receive those services in Welsh. In placing these standards alongside the provisions of the Social Services and Well-being (Wales) Act 2014, it would be fair to say that the law in principle is able to give individuals some assurance that they should be able to receive social services in Welsh if they so wish.

- 2.4 Since 30 May 2019 health bodies are required to comply with Welsh language standards⁶. These standards relate to service delivery, policy making, operational (i.e. the internal activities of an organisation) and record keeping. In this case there are no standards relating to the well-being of individuals. However, there is a standard that requires health boards to publish a plan for each 5-year period indicating the extent to which they can offer clinical consultations in Welsh. They are also required to outline the steps they intend to take to increase their capacity to offer clinical consultations in Welsh and a timetable for doing so.
- 2.5 I acknowledge that there are difficulties at present that would make it difficult to ensure that clinical services are offered entirely through the medium of Welsh for everyone. This includes a lack of Welsh speakers within the health workforce as well as a lack of diagnostic tools such as cognitive testing. There is need for the Government and others such as Health Education and Improvement Wales as well as the health boards to respond to these issues. I very much hope however that the standards that the health bodies are required to meet will go some way towards at least raising awareness of the need to provide care in Welsh. However, not receiving Welsh-medium healthcare for many, particularly older patients, young people and people with mental health problems, means that there are shortcomings in the efficiency and safety of those services. This can adversely affect the experience of people who are provided with health services and they may suffer adverse consequences. Consider, for example, the findings of a report published by my predecessor as Commissioner together with Alzheimer's Society Cymru⁷ examining the experience of Welsh speakers in dementia services. The report highlights a situation where a care worker had to translate for non-Welsh speaking psychiatrists undertaking a dementia test with individuals. Such tests are used to determine people's care, and research shows the importance of ensuring that suitable dementia tests for bilingual people are available in Welsh in order to achieve accurate

⁶ The relevant regulations for health organisations are seen here
<http://www.legislation.gov.uk/wsi/2018/441/made/english?view=plain>

⁷ <http://www.comisiynyddygydraeg.cymru/Cymraeg/Rhestr%20Cyhoeddiadau/Adroddiad%20dementia%20a%27r%20Gymraeg.pdf>



results⁸. I would be surprised if this was an isolated example of a person receiving poorer quality healthcare because it was unavailable in Welsh⁹.

2.6 I am of the view that the explanatory memorandum does not adequately acknowledge the importance of providing Welsh medium health services to Welsh speakers as a quality issue in terms of health services. I am therefore concerned that the Welsh language would not be at the heart of health service quality considerations. As a result, I am concerned that any annual reports that the Welsh Ministers, local health boards, NHS trusts and Specialist Health Authorities would be required to produce in accordance with Section 2 of the Bill in relation to improving the quality of healthcare services would not address the importance of providing clinical services through the medium of Welsh. I ask you as a scrutiny Committee to ensure that it is fully acknowledged that failing to provide healthcare services through the medium of Welsh can be an issue of a lack of quality within health services and that this is reflected in this Bill and its related provisions.

2.7 With a view to the future of the Welsh Government's long term vision of a 'whole system approach to health and social care' as set out in *A Healthier Wales: our Plan for Health and Social Care*¹⁰, I believe that there is a need to begin a serious discussion about what that means in practice from the perspective of Welsh-speaking patients. This is particularly the case with the move that is already underway to 'co-ordinate health and social care services seamlessly, wrapped around the needs and preferences of the individual so that it makes no difference who is providing individual services'¹¹.

3. Part 3 – Duty of Candour

3.1 In line with what I set out above in section 2.5 I ask you as a Committee to seek to ensure that the Welsh language is placed at the heart of the duty of candour that will apply to an NHS body as it is possible that not offering a Welsh language service to an individual may lead to adverse consequences in some cases. If the Government issues

⁸ The research of Tracey Morgan, Ruth Crowder. 'Mini Mental State Examinations in English: Are they suitable for people with dementia who are Welsh speaking?', 2003.

<http://journals.sagepub.com/doi/abs/10.1177/1471301203002002009> the response of bilingual people with Welsh as a first language to an MMSE cognitive test (Mini Mental State Examination). It has been shown that people score differently when completing the test in Welsh and English. As noted in the research:

'It is felt that misleading results are being achieved for Welsh speaking patients. In the context that decisions about the allocation of health and social care services are increasingly made on the basis of people's scores on a screening instrument this may have potentially significant consequences, both for those concerned whose ability to live independently may be questioned and also for the health and social care services where resources may be inappropriately targeted.'

⁹ See for example comments in a report by the Board of Community Health Councils in Wales looking at patients' experiences of communicating with the NHS, for example: "I would like to see more GPs speaking Welsh – I had an experience where the GP struggled to diagnose, because of communication problems with the patient." And "nursing care for the elderly – they don't think about what the patient can do – he is a Welsh speaker and is hard of hearing, and it has been taken for granted that he has dementia."

¹⁰ <https://gov.wales/sites/default/files/publications/2019-04/a-healthier-wales-our-plan-for-health-and-social-care.pdf>

¹¹ Ibid. Page 5.



guidance in accordance with Section 10, Part 3, it should ensure that it fully recognises the importance of providing healthcare services in Welsh and that not offering a Welsh language service to individuals may have adverse consequences in some cases.

4. Part 4 – The Citizen Voice Body for Health and Social Care

4.1 In relation to Part 4, section 16 of the proposed Bill I should note that as the Welsh Language Commissioner, in accordance with Part 5 of the Welsh Language (Wales) Measure 2011, I have powers to investigate the failure of health bodies and local authorities alike to comply with Welsh language standards. Section 20 of the Welsh Language (Wales) Measure 2011 also makes provisions enabling the Welsh Language Commissioner to work jointly with the Public Services Ombudsman for Wales if it appears to the Commissioner that the subject matter of a particular investigation into the enforcement of standards ("the Commissioner's investigation") may also be the subject of investigation by the Public Services Ombudsman for Wales. Section 67 of the Public Services Ombudsman (Wales) Bill 2019 also makes provisions with regards to complaints or matters the Ombudsman is considering investigating which could be the subject of an investigation by the Welsh Language Commissioner¹². I am not suggesting that powers should be given or not given to the Citizen Voice Body in relation to complaints about services in accordance with Welsh language standards. Rather, as you consider the legislation my intention is to make you aware of these provisions and that a 'person' (or persons acting on their behalf) has the procedural right to make a complaint to the Welsh Language Commissioner about failure to comply with a standard or standards.

5. Part 5 – Miscellaneous and General and Schedule 3

5.1 It is important that this organisation's services are provided in Welsh consistently throughout Wales. I therefore welcome the intention to ensure that the Citizen Voice Body for Health and Social Care complies with Welsh language standards. I note the intention to do so in Schedule 3 of the Bill by amending Schedule 6 to the Welsh Language (Wales) Measure 2011. To ensure that the new Citizen Voice Body is in compliance with Welsh language standards as soon as possible and in order to facilitate the smooth transfer of these duties from the Board of Community Health Councils in Wales and the Community Health Councils, I suggest that the best approach would be to amend references to these bodies in the Welsh Language Standards (No. 7) Regulations 2018 and that this is reflected in Schedule 3 of this Bill. This is the case with the Public Services Ombudsman (Wales) Bill 2019 as is seen in Part 7, 72 of the Bill. Please do not hesitate to contact me if you wish to discuss this particular issue further.

I trust these comments will be useful to you in considering the Bill.

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Yours faithfully,

Aled Roberts
Welsh Language Commissioner

Cc: Welsh Language Division, Welsh Government