

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

Written evidence from the Board of
Community Health Councils and the 7
CHCs in Wales

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EXECUTIVE SUMMARY

Community Health Councils (CHCs) broadly welcome the Welsh Government's aims in introducing its new Health and Social Care (Quality and Engagement) (Wales) Bill ("the bill"). Changes are needed to strengthen the proposals in some fundamental and key aspects.

Duties of quality and candour

The recent shocking and unacceptable failings identified in maternity services delivered by the former Cwm Taf University Health Board are a sad reminder of what can happen when things go wrong in health and care organisations.

The proposals in the Bill to introduce a new duty of candour and to strengthen the duty of quality in the NHS provides a timely opportunity to bring about new requirements that have the potential to help make sure failings like these do not happen again.

The citizen voice body

CHCs have a long and proud history. Over the past 45 years, volunteer members and staff have worked tirelessly to reflect the views and represent the interests of people and communities in their NHS.

The introduction of the bill provides an opportunity to build on this legacy by introducing a 'stand-alone', independent and genuinely stronger citizen voice body working across health and social care in Wales.

CHCs welcome the broad aims for the new body set out in the bill. We consider the bill provisions go some way to reflect what people tell us is important to them.

We were pleased to see, for example, that the proposals intend that the new body will:

- 🕒 engage directly with people in different ways
- 🕒 reflect the views and represent the interests of people in health and social care, by making representations to health and care bodies (including on service changes)
- 🕒 extend the support available to people under 18 years who want to make a complaint about their care
- 🕒 be a stand-alone, independent body outside the NHS that can employ its own staff.

CHCs consider the bill needs to be made stronger in some fundamental and **key** areas so that a new citizen voice body is equipped with the right tools to do the job across Wales.

We consider the proposals should be strengthened so that the following key principles governing the design and operation of a new citizen voice body are protected in law:

- 🕒 the citizen voice body should be able to engage directly with service users whilst they are receiving care through a **right of access** to health and care settings
- 🕒 people should be able to clearly see how their views and experiences have informed and influenced the decisions made by health and care bodies and policy makers through a **duty on health and care bodies to respond** to representations made by the citizen voice body
- 🕒 health and care bodies should have a **duty of co-operation** to help and assist the citizen voice body to effectively deliver its role
- 🕒 the citizen voice body must be **accessible locally** and its activities properly supported by a strong framework of **volunteer**

membership, so that intelligence and knowledge gathered locally informs the priority agenda both locally and nationally

- there is a **clear, independent mechanism** in place to consider any concerns that bodies are not meeting their statutory obligations or delivering the expectations set out in the bill and explanatory memorandum.

Establishing these key principles through **specific legal powers and duties** (supported by guidance) and **adequate resourcing** is essential to achieve this.

Without doing so, we believe that the government's aspiration to create a genuinely stronger citizen voice body across health and social care **will not be delivered**.

Instead, Wales will have a new citizen voice body with a wider remit across health and social care - but without the legal powers and duties needed so it can deliver its role. It must be able to reflect the views and represent the interests of **all** people in relation to health and social care services.

BACKGROUND

The Board of Community Health Councils in Wales (the Board of CHCs) welcomes the opportunity to provide evidence to the Health, Social Care and Sport Committee on the provisions of the Health and Social Care (Quality and Engagement)(Wales) Bill. This response represents the collective views of the Board of CHCs and the 7 Community Health Councils (CHCs) in Wales.

The Board of CHCs in Wales sets standards, provides advice, support and guidance and performance manages CHCs in Wales. CHCs are the independent watch-dog of NHS services within Wales. We encourage and enable members of the public to be actively involved in decisions affecting the design, development and delivery of healthcare for their families and local communities.

CHCs also work with the NHS and inspection and regulatory bodies to provide the crucial link between those who plan and deliver the National Health Service in Wales, those who inspect and regulate it, and those who use it.

Through our strong network of committed volunteer members who are active in our local communities, CHCs hear from the public in lots of different ways.

This includes community networks and events, direct contact with patients, families and carers through our enquiries service, complaints advocacy service, visiting activities and through public and Patient surveys. Each of the 7 CHCs in Wales represents the “Patient and public voice” within their respective geographical areas.

Further information about the recent activities of CHCs in Wales can be found in the Board and individual CHCs annual reports, available on the Board’s website¹

INTRODUCTION

CHCs broadly welcome the Welsh Government’s aims in introducing its new Health and Social Care (Quality and Engagement) (Wales) Bill. However, we believe that changes are needed to strengthen the proposals in some fundamental and key aspects in order to ensure that the aims of Welsh Government and the expectations of the public are delivered.

We set out below our detailed response to each of the proposals.

¹ <http://www.wales.nhs.uk/sitesplus/899/home>

THE GENERAL PRINCIPLES OF THE BILL

Duty of candour and quality

The public rightly expect that those responsible for providing their health and social care (both individuals and organisations) do so effectively, and in a manner that is open, transparent, honest and frank.

The recent failings in maternity services delivered by the former Cwm Taf University Health Board are a sad reminder of what can happen when things go wrong in health and care organisations. In this case there was not only a failure to provide high quality services but also to behave openly and transparently when responding to concerns raised about those services.

The proposals in the bill to introduce a new duty of candour and to strengthen the duty of quality in the NHS have the potential to help make sure failings like those in Cwm Taf do not happen again.

It will be important that the way in which the new requirements are introduced provides the catalyst to deliver real and long lasting cultural change.

This must include recognising the key role organisational leaders have in setting the right tone and acting swiftly and decisively when things go wrong. The Welsh Government will need to give sufficient attention to leadership development and the responsibility and accountability of senior managers in the NHS.

We welcome the commitment to undertake further engagement on the duty of candour so that the detailed arrangements and supporting guidance reflects what is important to people, e.g., what 'minimal harm' means in practice.

The new citizen voice body will be in an ideal position to identify whether and how these new requirements make a positive difference in peoples' experience of the NHS in Wales.

Citizen voice body

The introduction of the bill provides an opportunity to build on the legacy of CHCs in Wales by introducing a stand-alone, independent and genuinely stronger citizen voice body working across health and social care.

CHCs welcome the broad aims for the new body set out by the Welsh Government in its Bill, to:

- strengthen the citizen voice in Wales in matters related to both health and social services, ensuring that citizens have an effective mechanism for ensuring that their views are heard;
- ensure that individuals are supported with advice and assistance when making a complaint in relation to their care; and
- use the service user experience to drive forward improvement.

We think that these broad aims and the provisions within the bill go some way to reflect what people tell us is important to them.

We were pleased to see, for example, that the proposals intend that the new body will:

- 🕒 engage directly with people in different ways;
- 🕒 reflect the views and represent the interests of people in health and social care by making representations to health and care bodies (including on service changes);
- 🕒 extend the support available to people under 18 years who want to make a complaint about health and social care; and
- 🕒 be a stand-alone, independent body outside the NHS that can employ its own staff and recruit its own volunteer members.

CHCs welcome an approach that provides flexibility so that the new body can organise itself, properly carry out its activities and adapt to future developments and needs. This is very important against a landscape of evolving health and social care needs amongst the population of Wales.

But it is also vital that the bill itself enshrines the key principles that will provide a solid foundation for the new body to achieve its aims.

We think the proposals must be made stronger in some fundamental and key areas. This is needed so that the new body is properly equipped with the right tools to do the job expected of it across Wales, and will continue to be fit for purpose long into the future, for generations to come.

These aspects are set out in the next section.

POTENTIAL BARRIERS AND UNINTENDED CONSEQUENCES

Citizen voice body - general points

CHCs consider that as the bill is currently drafted, there are some potential barriers and unintended consequences that could significantly limit the ability of the new citizen voice body to achieve its aims and deliver its functions.

We recognise that there needs to be a careful balance in developing new laws. We agree that the existing statutory framework that governs the way that the Board and CHCs in Wales operate is too prescriptive.

It shows only too well why too much complexity and detail can limit a body's flexibility to adapt and respond to changing environments and different circumstances. We therefore very much welcome the flexibility proposed by the new bill.

In saying that, we feel that there are some fundamental aspects of a body set up to act as a representative voice which should be set out in legislation so that it has the force of law behind it.

We therefore believe that the proposals should be amended so that the following **key principles**, governing the design and operation of the new citizen voice body, are enshrined in law:

1. The citizen voice body must be able to engage directly with service users whilst they are accessing care through a right of access to health and care settings

The Welsh Government's policy objectives demonstrate the importance of engaging with people in difference ways:

"This body will have to use the full suite of engagement tools that will be at its disposal to ensure that it reaches large numbers of people to seek their views about health and social services matters"

"it will be essential the body has a strategy to maximise its engagement with members of the public"

"the body will need to engage not only with current service users, but past users, prospective service users, family members of service users etc. in order to ensure that when they seek views they are as representative as possible".

We agree. We also recognise the value of the broad supplementary power set out in the bill "the citizen voice body may do anything which is calculated to facilitate, or which is conducive or incidental to, the exercise of its functions".

We agree that the citizen voice body needs to be able to develop and have access to a wide range of varied and innovative methods of engagement. This would include tools such as on-line polls, discussion groups and consultations.

However, tools such as these will not be enough to make sure a citizen voice body is able to hear directly from current service users, and particularly people who may be in the most vulnerable situations – at the time they are accessing health and care services.

We think that the decision on whether someone shares their views and experiences with the citizen voice body should rest with the people who use health and care services and **NOT** health and care managers.

So we think it's important that the citizen voice body has a **right of access** to health and care settings - so it can visit to hear directly from people whilst they are accessing care, and without first requiring the permission of health and care bodies to visit their premises.

CHCs understand that there are legal concerns over granting the new body a right of access. In particular, concerns around human rights have been raised.

To be clear, CHC's recognise that many health and care services are already provided in people's private domestic properties, and that this will increase in the future.

CHC's do not think it would be appropriate for a citizen voice body to have a legal right to enter the individual private home of a person receiving care without their permission. That is not what is being proposed.

We think that a duty of co-operation on health and care bodies would be effective in enabling the new body to hear directly from people receiving care in their individual, private homes, e.g., through health and social care bodies asking people when they are delivering care whether they would like to share their views and experiences with the citizen voice body.

However, a right of access should apply where health and care services are directly provided from settings that are owned, managed or leased by health and care bodies or if these services are delivered by other

service providers (in settings they provide) through a commissioned or contracted arrangement. This includes services commissioned from health and care bodies across the border in England.

What is sought is a right of access to the communal areas within health and social care settings and not a right of access to the private rooms of service users.

As these are shared spaces which are commonly visited by others e.g., friends and relatives, the legal advice received by the CHC's is that Human Rights Act considerations would not be engaged.

To the extent that there are remaining concerns, these could be addressed through appropriate safeguards or limits on this power.

This would ensure that providers of health or social care can be visited at a time that presents the service as people would normally experience it, in real time with unfettered feedback.

This right is seen by the public and local community representatives as an essential element of a new, stronger citizen voice body. It provides an ability to act independently and quickly in response to the things that matter most to people about their health and social care services.

Being able to engage directly with people whilst they are accessing services is vital, as part of a wider overall approach to engaging with people about health and social care.

It provides an important way of gathering people's views and experiences so this information can be used to represent their interests to service planners and providers.

The following points are of particular relevance to this issue:

🗣️ A citizen voice body needs to be able to hear directly from people in the most vulnerable situations

Most people accessing health services tell CHCs they feel more vulnerable at times when they are accessing NHS services than they would otherwise, e.g. when they feel well or able to do things for themselves.

People within social care settings are also in particularly vulnerable situations – and may not feel (or be) able to express any concerns independently.

For example they may be constrained by age, frailty or physical or intellectual disabilities. Some may struggle to express themselves in writing or access electronic means of feedback.

For some people, family members or others who care about them are able to help and support them to have their voice heard so that they get the care they need, when they need it, in the way they need it.

However, it is important that we do not rely on this – some people don't have this support, or don't want or feel able to share their concerns with the people who care about them.

People often tell CHCs they don't want to "make a fuss" by raising an issue or a concern about their care themselves whilst they are being cared for - even though this is their best chance of getting the issue or concern addressed immediately.

Sometimes they don't want to be a bother to staff who they see as being very busy. Sometimes it's because they are fearful that if they raise a concern it might affect their on-going care. Whether that perception is a reality is not the issue. What matters is how confident people feel about giving honest feedback about their experience.

Being able to share views and experiences in the 'here and now' with independent lay people who have a good understanding of local matters provides an important means to amplify citizen voices – and address or escalate any key issues of concern immediately.

ċ A citizen voice body needs to have an up-to-date and balanced picture of peoples' experience of health and care services

Unannounced visits provide the opportunity for a range of people to share their views and experiences of a particular service (or a range of services provided in a particular place) whilst they are receiving care and treatment.

It provides a balanced snapshot of how services look and feel at a particular point in time. It removes any suggestion of preparation for a visit by providers of services.

Other forms of engagement, whether targeted at a specific service or range of services within a particular area or location, are frequently used by CHCs when they want to reach a wider audience about service delivery over a longer period of time.

However, by their nature, they are not capable of gaining a 'snapshot' of the here and now in quite the same way.

Nor are they always as successful at gaining a wholly balanced snapshot of a service or services at a particular time or in a particular area or location.

This is because this approach doesn't always attract the broader range of views and experiences that people may have. People are more likely to respond to broader engagement methods if they feel particularly strongly about their experience. For example, if they feel it was exceptionally good or bad.

People who feel their experience was generally good or adequate are less likely to be proactive in giving feedback. This can skew the picture provided of services.

In particular, it is our experience that people in the most vulnerable situations in society, whether that be in terms of their socio-economic

position or otherwise, are less likely to be proactive in making their views heard.

It is therefore vitally important that the new body has a means of accessing everyone.

🕒 **A citizen voice body needs to be able to respond quickly to “early warning” signs about particular services or places that may indicate a more widespread problem**

Having a continued daily presence in local communities across Wales means that a citizen voice body could, by its nature, respond quickly to concerns raised at a local level by arranging a targeted visit or visits to a particular service or place.

Visiting regularly to hear from patients and service users receiving care as well as those providing it, and seeing for itself how care is provided from a lay perspective can provide a powerful indication of whether concerns might be a single, ‘one off’ or limited experience or something that might be more systemic in nature.

🕒 **A citizen voice body needs to use its visiting activity to work as part of a wider system - referring on, responding to or following up on issues raised by other bodies, e.g., inspectorates**

CHCs agree with the Welsh Government’s intention of close working between a citizen voice body and others. We also agree that the information a citizen voice body gathers should be shared with other bodies such as Healthcare Inspectorate Wales and Care Inspectorate Wales.

HIWs report on its inspection of the Assessment Unit in the University Hospital of Wales is a good example of how CHC concerns shared with others can lead to further action.²

² <https://hiw.org.uk/sites/default/files/2019-06/190628uhwen.pdf>

But it is not enough for the new citizen voice body to rely only on referring matters on to others, as the bill's explanatory memorandum identifies:

“the Body may repeatedly hear from service users that there are shortcomings in treatment on a particular ward, this is information that the Body may wish to share with HIW (to inform its programme of inspection) as well as with the organisation concerned”.

The sharing of information, particularly in relation to emerging issues, works best when it goes **both ways** – just as it currently works between CHCs and HIW.

Being able to follow up on previously identified issues raised by other bodies provides a powerful means to ensure a continued, strong focus on making sure things get better in response to areas of concern.

A collective focus and approach can help make sure agreed actions or improvements by service providers are done on time or delays acted upon and escalated where needed.

Agreeing together with other bodies who is best placed to respond to an identified matter is important. In this way we can make the best possible use of finite resources for the people of Wales.

A well-equipped, locally based and responsive volunteer 'workforce' within a citizen voice body would enable responsive visits to be undertaken quickly and effectively.

This is important because the public expects a citizen voice body to be able to respond quickly and effectively to things that are affecting people locally – particularly when such matters may not reach the threshold for inspectorate bodies to include in their forward programme of inspections or if that forward programme means it will be some time before an inspection is possible.

Ċ A citizen voice body needs to be able to independently test the assurances given by service providers about their services by hearing directly from people receiving those services

Those responsible for designing, developing, commissioning and delivering services routinely provide assurance on these services at public boards and committee meetings. This is usually through performance and other reports that incorporate a wide range of metrics, targets and other quantitative information.

Reports containing more qualitative indicators of peoples' real life experience of those services are less well developed. These are often considered separately from other indicators of performance and may not always have parity of esteem.

A strong, locally active and independent citizen voice body can bring much needed balance - testing the assurances given by service providers by hearing directly from people who access services.

Independently assessing service or organisational level performance, from a lay perspective, using the feedback shared by people accessing those services, helps bring a more rounded picture on whether services are meeting the needs of individuals and communities on the things that matter most to them.

Ċ A citizen voice body needs to be able to inform and respond to matters identified through its range of activities

A citizen voice body needs to hear from people in a variety of different ways.

This is so that it fully understands how people and local communities feel about their health and care services, and can respond quickly to help drive improvement where needed.

Hearing from people at a wide range of local events or groups can bring a very important public and service user perspective to local health and care services.

Similarly, directly supporting people raising specific concerns about the care and treatment they have received also provides an important indicator of where things may be going wrong.

However, sometimes the views of the wider public and those of service users (with lived experience of a particular health and care service), differ.

It's important therefore that views and perspectives gathered in one way, e.g., through engagement events, can be tested and followed up in another, e.g., through direct engagement with service users when they are receiving care.

🕒 **A citizen voice body needs to be able to see where services need to be further developed/changed**

People share their views and experiences of health and care services because **they want it to make a difference**. Sometimes that is about thanking people for providing an excellent service. Sometimes it's about sharing what works well with others.

Sometimes it's about sharing what doesn't work so that others don't have the same experience. Sometimes it's about sharing how things can work better.

It's always about valuing that feedback by listening and acting on it. It's not enough for health and care providers to actively seek peoples' views when they think they know what needs to change.

Health and care providers need to respond when people and communities identify what needs to change.

An active, locally based citizen voice body should be able to use the real time feedback it gathers through its visits to health and social care settings to drive changes on a small scale as well as sharing what people think works well or what needs to change on a much wider scale so it benefits everyone.

🕒 **A citizen voice body needs to be able to check whether services that have changed are meeting peoples needs**

Health and care services are often very good at setting out a vision for the future, and identifying what's going to be better for people who use those services when they change the way they are designed and delivered.

Health and care services are not always so good at looking back and checking whether the things they said would improve are better at meeting people's needs – so that they can share what has worked well more widely or so they can make sure they do better next time.

A citizen voice body that has been involved in all stages of service design and development would be well placed to find out whether changes have worked.

Targeting its visits to hear from people when changes are first introduced **and to canvass further views** when changes have bedded in can help measure any gap between the rhetoric and the reality.

The citizen voice bodies in England (Healthwatch³) and Northern Ireland (Patient and Client Council⁴) have a right of access to health and care settings to hear directly from people who are receiving care. They may also do so without giving prior notice where they consider this is necessary.

³ <https://www.healthwatch.co.uk/>

⁴ <https://patientclientcouncil.hscni.net/>

Healthwatch uses its power of unannounced access infrequently. One of Healthwatch's local bodies makes an important point when explaining the approach they take to this power:

“its use is a powerful tool when we have reason to believe that all is not well at a facility. Most of the time our visits are welcomed but, just occasionally, we need to follow up comments or reports where announcing a visit in advance might frustrate the purpose of the visit”.

Of course with rights come responsibilities. It would be important therefore that a right of access for the citizen voice body is framed in a way that ensures it is used responsibly and appropriately. Healthwatch has produced a helpful guide to its use in England so that its purpose and use is understood by everyone⁵.

CHCs consider that all of this shows that using powers of entry responsibly and appropriately will encourage and support people to have a voice when they most need it. It **MUST** be a key tool in the citizen voice body's toolkit if it is to be able to deliver its aims effectively.

As the bill is currently drafted, the citizen voice body could be prevented from having effective access to a sizeable proportion of the people it is supposed to be representing, i.e., people who are receiving care.

We know that most social care provision in Wales is delivered by the private sector. The need for social care in Wales, along with other countries, is expected to increase over time. This issue is therefore likely to become more important and so it is vital that it is addressed at this stage.

⁵https://network.healthwatch.co.uk/sites/network.healthwatch.co.uk/files/20190423%20Enter%20and%20View%20guidance%20final_0.pdf

2. People should be able to clearly see how their views and experiences have informed and influenced the decisions made by health and care bodies

We know that people want the new body to '**have teeth.**' They want it to represent their interests and for health and care bodies to have to consider their views and respond.

A guiding principle of public engagement is that people are told about the impact of their contribution.

The National Principles for Public Engagement in Wales⁶, endorsed by the Welsh Government, provides an overarching set of principles for all public bodies in Wales with a role in engaging with people.

At the heart of this is the power of influence. The citizen voice body needs to be able to demonstrate how it is equipped to reflect people's views and represent their interests.

This is so that people will be confident that sharing their views and experiences with the new body can make a difference, and that people are told of the impact of their contribution (in line with the national principles).

CHCs are pleased that the bill places a duty on the NHS and local authorities to have regard to the representations made by the citizen voice body, and to be able to demonstrate they have done so.

However, under the current proposals there is no requirement that this is done proactively. It is not clear how NHS bodies and local authorities will be required to demonstrate that representations have been taken into account in the course of their decision making. So we consider that these requirements need to go further.

⁶ <https://participation.cymru/en/principles/>

CHCs consider that health and care organisations should be **required to respond** to representations made by the citizen voice body acting in the interests of people and communities – and to do so in public where this is appropriate, e.g. when responding to the body’s engagement reports.

Such a requirement should also include a responsibility on health and care bodies to specifically set out their reasons in circumstances where, having considered representations made by the citizen voice body on a particular matter or matters, a health or care body has disregarded some or all of the representations made.

We think this is the best way of making sure the new body can meet people’s expectations – both in getting their voice heard and understanding the impact of sharing their views and experiences on the decisions made within health and care services.

This is seen in Wales as an important element of the existing CHC arrangements– as identified in the recent independent report into maternity services.⁷

CHCs also welcome the Welsh Government’s intention that the citizen voice body can “**have real influence on national policy**”. The bill gives a clear power to the citizen voice body to make representations to NHS bodies and local authorities.

However, the proposals also need to make clear the right for the citizen voice body to make representations on national issues, i.e., to Welsh Ministers.

The importance of enabling the citizen voice body to hear from more people about their views and experiences than is possible within the existing CHC arrangements should not be underestimated.

⁷ https://gov.wales/sites/default/files/publications/2019-04/listening-to-women-and-families-about-maternity-care-in-cwm-taf_0.pdf
https://gov.wales/sites/default/files/publications/2019-04/review-of-maternity-services-at-cwm-taf-health-board_0.pdf

CHCs also think it is important that a citizen voice body is able to make representations to health and care bodies even where the number of views and experiences shared with it may be limited, but where it is clear from other evidence that action is needed to improve services for people.

This was a factor in the recent maternity services failures, where the number of formal complaints received from patients did not match the real level of concern about the services.

This is essential for the citizen voice body to be able to amplify the voice of those who may be in the most vulnerable situations and who, without the new body, may not otherwise have their voices heard.

As set out elsewhere in this document, it is often people in the most vulnerable situations who struggle to express their views. So concerns and complaints may be disproportionately low amongst these populations.

It is therefore important that the citizen voice body has the power to make representations in these circumstances. It cannot be the intention that the body should be prevented from doing so in circumstances where it has real concerns, just because the number of explicit complaints from service users may be low.

3. Health and care bodies should have a duty to help and assist a citizen voice body meet its aims and deliver its functions

CHCs are pleased that under the proposals health and care bodies must promote the activities of the new body.

We think health and care bodies should be required to do more than this (as they already do now through custom and practice in the NHS).

We think health and care bodies should have a **duty to co-operate** with the new body in carrying out its activities. They should be required to facilitate the engagement process, e.g., by contacting people on its behalf for the purpose of collecting independent feedback about health and care services.

CHCs also welcome the duty on health and care bodies to supply information to the citizen voice body. It's important that such a duty clearly provides for health and care bodies to proactively supply information and tell the citizen voice body key things (as defined by the citizen voice body) without it having to make a specific request each time.

This is because there are times when the citizen voice body may not know what information is available and when they need it, e.g., when a health and care body is thinking about planning new services or developing and revising existing services.

We know from our own experience and that of others across the UK that independent bodies such as ours don't often need to resort to legal rights and duties. This is because in most cases health and care bodies want to work together in partnership to hear what people think about their services and to use this information to decide how best to respond.

But we also know that occasionally bodies may not want to co-operate, and when this happens it can be an indicator of underlying problems. It is therefore important to have these safeguards in place.

4. The citizen voice body needs a local, regional and national focus, supported by a strong framework of volunteer membership

People want a citizen voice body that has a local focus and presence that is accessible to everyone. That means being able to go to hear from people who cannot leave the place where they are receiving care in local communities.

It means responding quickly to what matters most to people and communities about their local services, and discussing these matters directly with health and care bodies.

It means complaints advocates being able to meet with clients in person in their local area.

In practice this means putting in place a local structure underpinned by sufficient resources to maintain a presence in local communities (as well as to engage electronically), so that it is part of the fabric of the communities it serves across Wales.

The complex and inflexible regulatory framework in which the CHC movement currently works means that it doesn't always have the flexibility it needs to meet changing circumstances – despite the efforts of the Board and CHCs to work hard together and with others to make things work.

This makes our arrangements for decision making more complicated than they should be. It affects us on a daily basis, in areas including staffing and funding, and even down to how often we must meet to talk about certain things.

So, CHCs support the intention to provide flexibility so that the citizen voice body can determine the best organisational structure to meet its aims and functions and can adapt and respond over time to the changing needs and expectations of the public.

But we also know that if there are insufficient safeguards built into any new arrangement this can result in a body that does not deliver what people want or need. The introduction of Local Improvement Networks (LiNKS) in England is a good example of this⁸.

As the bill is currently drafted, it would be possible for the citizen voice body to cease to have a local presence and become a wholly centralised

⁸ <https://www.consultationinstitute.org/wales-to-abolish-community-health-councils-can-it-avoid-the-mistakes-made-in-england/>

organisation – with no safeguards in place which preserve the important principle of localism that is so strongly referenced throughout the bill’s supporting documents.

So that the new citizen voice body meets public expectations, it should be free to set its own priorities and programme of activities.

This must reflect what matters locally as well as regionally and nationally. So the new body should be required to:

- enshrine the principle of decisions being taken as close as possible to the people impacted
- provide for local determination of priorities according to evidence of local needs
- provide for the agility to take decisions that impact locally, regionally and nationally.

To successfully deliver on its broad aims, the citizen voice body will need to have a strong mix of local volunteer members who are representative of the communities they serve.

CHCs own experience of recruiting and supporting volunteer members has identified the importance of 2 key elements of a volunteer role:

- to be able to see the impact of their contribution in their own local communities and more widely
- to be able to participate in the body’s activities in a variety of ways, according to their skills and interests.

We recognise that the bill provides a broad, general power that enables the citizen voice body to appoint volunteer members. We also welcome the indication in the bill’s supporting documents of the fundamentally important role volunteer members will need to play in the success of a new organisation.

We think that such an important aspect of the citizen voice body should be enshrined in statute in a way that provides the flexibility and freedom

that enables the new body to design and develop its arrangements to meet existing and future needs.

5. A citizen voice body needs all the tools to do the job

People want a new citizen voice body to have all the tools it needs to be strong, independent and effective in representing the interests of people in health and social care.

As well as the key principles we have described above, we think it is important that a new body has a mechanism for recourse if it is concerned that the duties and expectations placed on health and care bodies are not being met.

This should include, but should not be limited to, concerns about service change proposals.

So we think when the new body has such concerns, there should be a **clear, independent mechanism** in place to look into this and decide what should happen.

We recognise that such a mechanism would be a last resort. It should be used sparingly, and only if all other efforts to overcome areas of concern have been unsuccessful. It is important that such a mechanism is in place to deal with any situation where there are concerns that the principles that underline the bill are not being upheld.

Other matters that may act as a barrier/have unintended consequences

Membership

As drafted, the provisions in the bill specifically prevent members of staff of the citizen voice body being a member of the governing board.

It is not clear why. We recognise that executive and other staff membership on boards vary across the public sector in Wales (including Welsh Sponsored Public Bodies). Under the existing arrangements, for example, the Chief Executive and a staff 'representative' are members of the Board, and play an active role in the Board's decision making.

So we think it limits flexibility to create such a disqualification in law **unless** the benefits of this approach are clear.

The functions of the new citizen voice body

The bill refers to the functions of the new citizen voice body. It does not list the functions. Instead, the functions are set out in the supporting information. We recognise the importance of providing flexibility so that the citizen voice body can adapt over time in response to changing needs and expectations.

However, given its role and purpose, and the importance of making sure everyone is clear about the part the new citizen voice body plays in health and social care, we think these functions would be better described in the bill itself.

The name of the new citizen voice body

The bill refers to the new body as 'The Citizen Voice Body for Health and Social Care, Wales'.

CHCs know that one of the things that has caused confusion amongst the public about their role is the name 'Community Health Council'. Unsurprisingly, many people contact us thinking that we provide health services.

So that everyone is better able to successfully meet their duties to promote awareness of the new citizen voice body, CHCs consider there will be a need to create an operational name. The name would be best agreed upon through engagement with the public.

FINANCIAL IMPLICATIONS OF THE BILL

CHCs know that it is not always easy to accurately identify the likely costs of creating and running a new body.

It's essential that the new citizen voice body is properly equipped to **extend** and **enhance** the citizen voice across health and social care. Its funding must enable it to effectively operate across both health and social care without reducing the citizen voice that already exists in the NHS through CHCs.

There will be opportunities to make savings in some areas where money is currently spent to support the delivery of CHC functions.

The new body will also need to do more things for itself (or contract with others to do so). This includes key areas where CHCs are not currently set up and funded to deliver, such as:

- in areas where CHCs now simply adapt what has already been developed for NHS bodies, e.g., workforce and financial policies and procedures (including procurement, etc.). It would not, for example, have access to functions currently performed by NHS Shared Services; and
- functions to support its activities, e.g., IT strategy, etc.

Using new technology to help reach more people is essential, and we welcome the proposed investment in this area. CHCs are also clear that such technology needs to complement and not replace face to face engagement activities.

The new body's funding arrangements need to reflect all of this. We welcome the opportunity to contribute to the further development of the financial projections. The following areas need further consideration:

Operating climate

The published impact assessment says "it has been assumed no crises or significant changes will occur to the health and social services systems in Wales during the period of costing, and therefore the level of funding granted is likely to remain the same"

Over the past 12 months, the proportion of the resources taken up by CHCs on service developments and changes has increased to reflect the transformational change agenda being pursued by Health Boards. This has been met from within its existing allocation.

CHCs have not received any 'consequential' funding when transformational funding has made available to health boards to take forward significant service change programmes locally and regionally.

This is within a background of decreasing CHC budgets in real terms year on year. The transformational agenda will continue during the period of costing, so it's vital that the body is established to reflect the level of public involvement that will be needed to design and develop health and care services at a pace which is in line with 'A Healthier Wales'.

It is also important that it reflects the broader remit of the new organisation, which will now encompass the expanding area of social care.

Staffing the new body

The assumption made in the regulatory impact assessment is that the only additional staff required for the new body would be to provide an extended complaints service. No additional staffing needs are identified to cover its wider engagement and representation role in social care.

Whilst some savings may be realised through the exercise of the body's functions in new ways, this will not be sufficient to match what will be needed to extend the citizen voice in social care.

There will also be a clear need to establish a new corporate infrastructure to enable the citizen voice body to operate effectively as an independent public body and support the exercise of its functions locally, regionally and nationally.

CHCs recognise that certain back office functions currently provided by the host organisation may be contracted out or collaboratively delivered through wider public sector arrangements.

Even taking this into account, there will be a clear need for a significantly different corporate infrastructure than currently exists within the CHC movement. This will be needed to support the new body's strategic development, leadership and involvement in key areas such as:

- planning, policy and promotion (including advice on policy and research, intelligence, communications and media, etc.),
- workforce (including staff and volunteer recruitment, management, leadership and development, etc.)
- finance, estates and IT (strategy and management).

This will need a staffing model that includes skills that are not currently held within the Board and CHC staffing structure.⁹

Complaints assistance – recognising that the Regulatory Impact Assessment itself identifies the limitations in information to enable it to more accurately project the additional costs of extending the complaints service, the active promotion of the new body should create a much greater awareness of the availability of its complaints service. This should in turn result in an increase in the proportion of complaints made by people with the support of the citizen voice body.

CHCs earlier response to the White Paper 'Services fit for the future'¹⁰, was clear that people who have concerns about their health and social care should only need to raise these concerns once in order for them to be investigated thoroughly and on a timely basis.

We considered then, and still consider now, that there should be a common complaints process across health and social care accessed through a single point.

As the bill does not cover this at all, CHCs see this as a missed opportunity to make it as simple and easy as possible for people to take forward their concerns.

So, in order to be effective in helping people through the different complaint systems, the complaints advocacy service in the new body will

⁹ <http://www.wales.nhs.uk/sitesplus/documents/899/Board%20Office%20Staff%20Structure%202019.pdf>

¹⁰ <https://gov.wales/services-fit-future>

need to become expert in these separate systems so that it can provide the best possible advocacy support.

It is vital that there is a commitment to monitor and where needed increase funding for this service.

Training and organisational development

CHCs welcome the Government's recognition of the need to provide training and organisational development support to make the transition from existing arrangements to the new body, and the recognition that additional funding may be needed for this as requirements emerge.

It's important to recognise that a key element of this will need to focus on making sure the organisations leaders, staff and volunteer members are appropriately equipped with the necessary skills, competence and understanding of the principles and practices of effective engagement and representation – and not just knowledge of the NHS and social care sectors.

POWERS TO MAKE SUBORDINATE LEGISLATION

As far as we can see, the only power to make secondary legislation in connection with the citizen voice body is contained within section 26 of the Bill.

Whilst this section is headed "Power to make transitional etc. provision" it does in fact seem to contain a more general power to make "supplementary, incidental or consequential provision".

Whilst in the strict legal sense this may grant sufficient power to make secondary legislation to supplement any provisions contained in the primary legislation, we would expect (and indeed we understand that it is the convention) a specific power to be granted to Welsh Ministers where there is an intention to make regulations to supplement particular sections of the bill.

As mentioned elsewhere, many of the matters covered in the Explanatory Memorandum do not currently appear in the Bill. Whilst we

welcome the intention to provide more flexibility and to avoid overly prescriptive provisions, we would welcome some clarity on whether there is an intention to make secondary legislation, or issue statutory guidance in relation to particular areas.

Once this is known, then we can consider the issue further.

CONCLUSION

CHCs are grateful for this opportunity to inform the Committee's considerations on this important bill.

We consider the proposals a significant opportunity to establish a new citizen voice body for health and social care that is capable of meeting peoples' needs and expectations long into the future.

We continue to discuss the proposals with policy officials so that they may be further developed to address the areas where CHCs have concerns.

We look forward to discussing the proposals with the Committee at the oral evidence session in September 2019.