

Petitions Committee

Meeting Venue:
Committee Room 1 – Senedd

Meeting date:
16 July 2013

Meeting time:
09:00

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

Naomi Stocks
Committee Clerk
029 2089 8421
Petition@wales.gov.uk

Sian Giddins
Deputy Committee Clerk
029 2089 8998
Petition@wales.gov.uk

Agenda

1 Introduction, apologies and substitutions

Discussion of evidence session on 2 July 2013

2 P-04-456 Dementia – This Could Happen to you (09:00 – 09:10) (Pages 1 – 172)

3 New petitions (09:10 – 09:20)

- 3.1 P-04-494 Robotic assisted laparoscopic prostatectomy must be made available to men in Wales now (Page 173)
- 3.2 P-04-495 Stop People Trafficking & Slavery in Wales (Page 174)

4 Updates to previous petitions (09:20 – 10:00)

- 4.1 P-04-483 A plain English /Cymraeg clir policy for all Welsh Assembly and Government communications (Pages 175 – 304)

Health

- 4.2 P-04-362 Ambulance Services in Monmouth (Pages 305 – 308)

Natural Resources and Food

- 4.3 P-04-343 Prevent the destruction of amenities on common land – Anglesey

(Pages 309 – 314)

- 4.4 P-04-385 Petition regarding balloon and lantern releases (Pages 315 – 321)

Economy, Science and Transport

- 4.5 P-03-240 Road safety on the A40 in Llanddewi Velfrey (Pages 322 – 323)
- 4.6 P-04-319 Newtown traffic petition (Pages 324 – 325)
- 4.7 P-04-393 Llanymynech and Pant Bypass Action Group (Pages 326 – 327)

Housing and Regeneration

- 4.8 P-04-365 Protect buildings of note on the Mid Wales Hospital site (Page 328)
- 4.9 P-04-422 Fracking (Pages 329 – 331)
- 4.10 P-04-461 Save Ponty Paddling Pool (Pages 332 – 335)
- 4.11 P-04-480 Address Private Sector Student Housing Standards (Pages 336 – 342)

Finance

- 4.12 P-04-436 Government Expenditure and Revenue Wales (Pages 343 – 345)

Local Government and Government Business

- 4.13 P-04-478 A simple info pack for all the people of Wales explaining how they can stand as candidates (Page 346)
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5 P-04-452 Equal Rights for Tube-fed Youngsters: Evidence Session (10:00 – 10:30) (Pages 351 – 352)

Dr Tymandra Blewett-Silcock, Lead Petitioner

Discussion of evidence session

6 P-04-452 Equal Rights for Tube-fed Youngsters : Discussion of evidence session (10:30 – 10:45)

P-04-456 Dementia - This Could Happen to you

Petition wording:

We, the undersigned, call on the National Assembly for Wales to urge the Welsh Government to:

- i. Bring to an end the discrimination against dementia sufferers in Wales who apply for N.H.S. Continuing Care Funding, by allowing for the cognition category of need (known as the 'domain') to go up to the level 'Severe' in the Welsh version of the Decision Support Tool. This would bring it in line with the English version; and
- ii. Direct Local Health Boards to implement the National Framework for N.H.S., Continuing Care Funding correctly in terms of patient eligibility and without regard to budgetary constraints.

Petition raised by: Helen Jones

Date petition first considered by Committee: 19 February 2013

Number of signatures: 1413



Date: 17 June 2013
Our ref: HVT/1900/fgb
Page: 1 of 2

Mr William Powell AM
Chair
Petitions Committee
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

Dear William,

Thank you for your letter of 12 June 2013 concerning the petition you are considering in relation to Continuing NHS Healthcare (CHC). I enclose a copy of my report on the Implementation of the National Framework for CHC which was published on 13 June 2013.

I would confirm that my report details the differences between the decision support tool that is used to assist decision making on CHC eligibility in Wales and England. Specifically the report deals with the differences in the way cognition needs are treated (paragraphs 1.24 to 1.27). I also recommend that the Welsh Government reviews the differences between Wales and England, particularly in respect of cognition (recommendation 4b, page 15).

My review team did not find any direct evidence that CHC eligibility decisions are being influenced or determined by budgetary constraints. My report did identify a recent reduction in the number of CHC cases and expenditure, but that the extent to which the Framework or the way it has been implemented has contributed to the reduction is not clear (paragraphs 1.18 to 1.41). However, the report did conclude that more needs to be done to ensure all cases are dealt with fairly and consistently (Part 2 of the report). My report includes a number of recommendations for the Welsh Government aimed at improving consistency, including:

- a) reconsidering the use of a screening tool – to help ensure that all people who should be assessed for CHC are indeed assessed (recommendation 4a, page 15); and
- b) establishing peer review arrangements – to help ensure decisions on eligibility are consistent between different health boards (recommendation 5a, page 16).

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I would also confirm that the Alzheimer's Society provided written evidence to my review team on these matters, references to which are included in paragraphs 1.26 and 3.16 of the report.

Finally, should you think that a meeting with my review team about the report would be helpful to the petitions committee, then please do not hesitate to get in touch.



HUW VAUGHAN THOMAS
AUDITOR GENERAL FOR WALES

Enc



13 June 2013
www.wao.gov.uk

WALES **AUDIT** OFFICE
SWYDDFA **ARCHWILIO** CYMRU

Implementation of the National Framework for Continuing NHS Healthcare



Implementation of the National Framework for Continuing NHS Healthcare

I have prepared this report for presentation to the National Assembly under the Government of Wales Act 2006.

The Wales Audit Office study team that assisted me in preparing this report comprised Steve Ashcroft, Anne Beegan and Joy Rees, under the direction of Paul Dimblebee.

Huw Vaughan Thomas
Auditor General for Wales
Wales Audit Office
24 Cathedral Road
Cardiff
CF11 9LJ

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**Report presented by the Auditor General for Wales to the
National Assembly for Wales on 13 June 2013**



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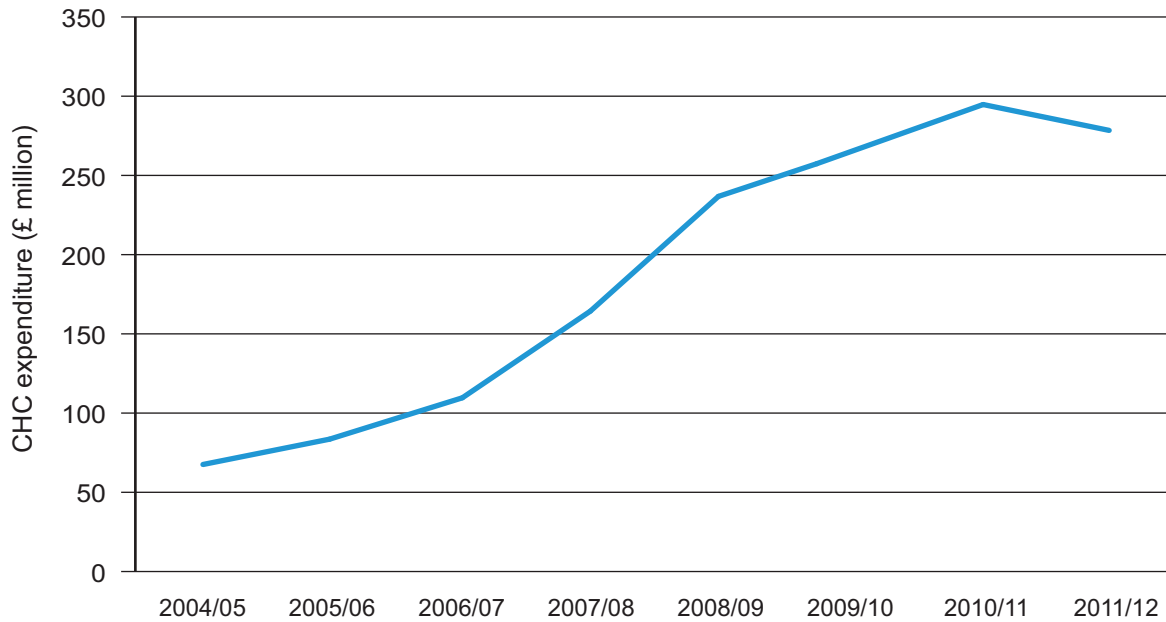
Summary

- 1 Some people need care and support over an extended period of time, as the result of disability, accident or illness. Health services are free to all at the point of delivery, but depending upon a person's needs or financial circumstances they may be charged for services provided or funded by local authorities.
- 2 When assessed as having a primary health need, people are eligible for Continuing NHS Healthcare (CHC), which is a package of care and support that is provided to meet all of the assessed needs of an individual, including physical, mental health and personal care needs. CHC is often long term, although it can be episodic in nature with some people moving in and out of eligibility. Health boards reported to us that 5,447 people across Wales were in receipt of CHC as at 31 March 2012.
- 3 When someone is eligible for CHC, the NHS has responsibility for funding the full package of health and social care. Where the individual is living at home, the NHS will pay for health care and social care, but this does not include the costs of food, accommodation or general household support. Where a person is eligible for CHC and is in a care home, the NHS pays the care home fees, including board and accommodation.
- 4 Where a person is eligible for CHC, local authorities still have continuing responsibilities. These include a role in assessment and review, providing social work services and support for carers, and meeting housing and educational needs.
- 5 If an individual is not eligible for CHC, they can still access a range of health and social care services. This can include the NHS paying for the nursing element of care provided to someone in a care home, known as NHS-funded nursing care. Health boards reported to us that 5,887 people across Wales were in receipt of NHS-funded nursing care as at 31 March 2012. However, for any care provided by social services, such as personal care and accommodation in a care home, a charge may be made depending on the person's income, savings and capital assets. Therefore, for some people a decision that they are ineligible for CHC can have a significant financial impact, with care costs being paid from their savings or from the proceeds from the sale of their home.
- 6 The funding of CHC is a significant pressure on NHS expenditure in Wales. Expenditure increased significantly from £66 million in 2004-05 to £295 million in 2010-11, before reducing for the first time to £278 million in 2011-12¹ (Figure 1). CHC expenditure now accounts for five per cent of health boards' net operating costs. Expenditure on NHS-funded nursing care over the same period has been less volatile, ranging between £32 million a year and £40 million a year. The historic increase in CHC expenditure partly reflects a number of key court judgements which have led to changes in policy guidance and eligibility criteria.

¹ Wales Audit Office analysis of health board final accounts.



Figure 1 - CHC expenditure by health boards 2004-05 to 2011-12



Note

Excludes any in-year adjustments for the potential future liabilities arising from challenges to past cases that were deemed ineligible

Source: Wales Audit Office analysis of health board final accounts 2004-05 to 2011-12

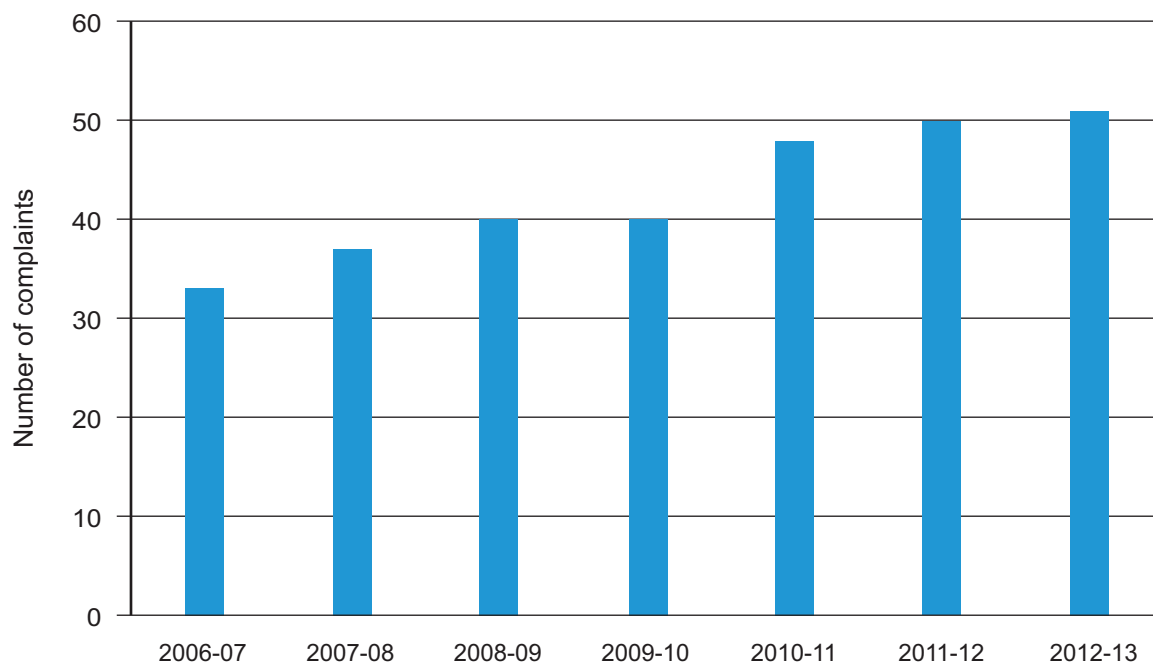
7 An ageing population with improved survival rates is also likely to result in an increase over time in the numbers of people with complex and long-term care needs. The number of people in Wales who are aged over 65 is expected to rise from 558,000 (18.6 per cent of the population) to 864,000 (25.6 per cent) by 2035.² In England, public expenditure on social services and continuing healthcare for those aged over 65 is projected to increase by 37 per cent in real terms between 2010 and 2022³.

8 There have been concerns over the consistency and fairness of decisions on eligibility for CHC, and a large number of backdated claims have been made to health boards challenging earlier decisions on eligibility. The number of complaints received by the Public Services Ombudsman for Wales relating to CHC has increased, from 33 in 2006-07 to around 50 cases in each of the last three years (Figure 2). Whilst the number of complaints has not fluctuated significantly over the last three years, the nature of the complaints has changed. In addition to complaints about eligibility decisions, the ombudsman is now receiving more complaints about the administration of some claims once eligibility has been established.

² Welsh Government Statistical Bulletin, SB 103/2011, 2010-based National Population Projections for Wales

³ Care for older people, Projected expenditure to 2022 on social care and continuing health care for England's older population, Nuffield Trust, December 2012

Figure 2 - CHC complaints received by the Public Services Ombudsman for Wales



Note

Figure for 2012-13 is a projection based on the numbers received to November 2012

Source: Public Services Ombudsman for Wales, November 2012

9 In response to funding pressures and an ageing population, the Welsh Government has taken a number of steps. These included establishing a CHC national programme board to deliver improvements in the management of CHC. The remit of the programme board included identifying opportunities for redesigning services, more cost-effective provision, and developing more robust comparative financial information on CHC. The programme board has now been disbanded and some of its responsibilities have been assumed by a National Complex Care Steering Group.

10 The Welsh Government issued a revised framework for CHC (the Framework) in May 2010, which was to be implemented by 16 August 2010⁴. The Framework covers adults and sets out the Welsh Government's revised policy for eligibility for CHC and the responsibilities of health boards and local authorities. The Framework sets out a process for the NHS, working with local authority partners, to assess health needs, decide on eligibility for CHC and provide appropriate care. The Welsh Government issued separate guidance for children and young people's continuing care in November 2012⁵.

⁴ Continuing NHS Healthcare, The National Framework for Implementation in Wales, May 2010, Welsh Assembly Government circular

⁵ Children and Young People's Continuing Care Guidance, Welsh Government, November 2012



- 11 Our examination focused on the implementation of the Framework for adults. We did not examine in any detail those aspects of the delivery of CHC, such as service redesign, that were being progressed by the programme board. When it launched the Framework in 2010, the Welsh Government made a commitment to review its operation. This report is therefore timely in informing the forthcoming Welsh Government review.
- 12 We set out to answer the question: 'Is the Framework for implementing CHC effective in ensuring individuals are dealt with fairly and consistently?' Our methodology is described in [Appendix 1](#), and we have set out a timeline of key events in [Appendix 2](#).
- 13 Overall, we concluded that the CHC Framework has delivered some improvements, but more still needs to be done to ensure that people are dealt with consistently and fairly. To help health boards better meet the requirements of the Framework, we have developed and published separately to this report a self-assessment and improvement checklist. This is intended to support individual health boards in identifying what is working well and where remedial action should be targeted.

The Welsh Government developed the CHC Framework to help ensure that people are dealt with fairly and consistently, but the Framework could be improved in a number of areas and its impact monitored more closely

- 14 **Welsh Government policy and guidance on CHC has been revised to reflect key legal judgements and to ensure people are dealt with fairly and consistently.** The first national Framework for CHC was issued in 2004, but a significant change in case law in 2006 necessitated the development of an amended Framework. There was a considerable delay in the Welsh Government overhauling the CHC Framework, with a final version issued in May 2010.
- 15 There is clear evidence of inconsistent approaches to CHC eligibility decisions across Wales before the introduction of the revised Framework. Health boards made provisions of £35.1 million in their accounts for 2011-12 for the estimated future costs arising from the challenges to CHC eligibility decisions relating to pre-Framework cases that have yet to be concluded.
- 16 The revised Framework provides detailed guidance and tools for use by health boards, and seeks to ensure fairness and consistency in assessment and decision making. Central to the arrangements is a multidisciplinary assessment of someone's care needs that informs the completion of a Decision Support Tool (DST). The DST is designed to ensure that the full range of factors that have a bearing on an individual's eligibility for CHC are taken into account in making decisions.

- 17 Some aspects of the Framework lack clarity, and there are some key differences with the approach in England.** Specific guidance on how the Framework should be applied for people with a learning disability or a mental health problem is lacking. Clearer guidance is also needed on joint funding arrangements, including for section 117 mental health patients and for people who self-fund their care, and on how health boards should monitor contracts with care homes. The Framework does not specify how performance should be monitored, and a National Complex Care Database that is being rolled out across Wales will not initially produce performance measures for CHC.
- 18** The approach to CHC varies across the UK ([Appendix 3](#)), but there is currently little difference between the approaches in Wales and England, and the frameworks in place in each country are broadly similar.⁶ We have not assessed the relevant merits of the different approaches. However, as the Framework in England has been reviewed recently, we looked to see whether any lessons could be drawn to inform the approach in Wales. In England, a screening tool is used to determine whether someone requires a CHC assessment, and adopting a similar approach in Wales could help ensure consistency in the criteria used to put people forward for a CHC assessment. Because of differences between the DST used in Wales and England, it may be more difficult for some people in Wales, most notably those with dementia, to meet CHC eligibility criteria, whilst for people with some other health conditions it may be easier.
- 19** **The extent to which the Framework or the way it has been implemented has contributed to the recent reduction in the number of CHC cases and expenditure is not clear.** CHC expenditure and the total number of CHC cases have reduced since the Framework was introduced. Across Wales CHC expenditure, having risen every year since 2004-05, fell back in 2011-12 by 5.8 per cent compared with the previous year, with five health boards experiencing a reduction, and another experiencing no substantive change. Across Wales the total number of CHC cases also reduced in both 2011 and 2012. This reduction has not been experienced in England. However, the pattern of change in the numbers of CHC cases and the number of cases per head of population is highly variable across health boards.
- 20** The extent to which the Framework itself has contributed to the recent overall fall in CHC cases and expenditure is unclear. This is because at least part of the fall is likely to reflect the £37.5 million of Welsh Government funding made available from 2008-09 for schemes to modernise complex care services; a concerted push across health boards to identify savings within CHC budgets; and the nature and extent of some hospital and community services which can impact onto the number of CHC cases.
- 21** **There is operational oversight of the Framework but strategic leadership is lacking.** A National CHC Implementation Group was established in 2010 to oversee the implementation and operation of the Framework. Given its composition and role, the group (now called the National CHC Advisory Group) is not an appropriate body to provide strategic leadership for the Framework.

⁶ The funding and charging arrangements for care and support are to change in England and the Welsh Government is considering what reforms would be appropriate for Wales; this may lead to a divergence between the two countries in coming years.



22 National leadership for CHC was previously provided through a CHC national programme. However, the programme did not have an explicit role with regard to the Framework. The lack of clear strategic leadership for the CHC Framework at a national level has been compounded by the slow progress in establishing effective successor arrangements to the national CHC programme. In particular, the National Complex Care Steering Group had had only a limited impact to date.

The Framework has delivered a number of benefits, but it has not been fully implemented across Wales and safeguards are not fully in place to provide assurance that decisions are fair and consistent within and between health boards

23 **Governance within health boards in relation to CHC has been strengthened, but provides only limited assurance that people are being dealt with consistently and fairly.** The central guidance associated with the Framework is not as detailed as the corresponding guidance in England. Over a year on from the launch of the Framework, health boards had made variable progress in developing local CHC policies and procedures. There is scope for greater sharing of policies and procedures by health boards, and for the development of all-Wales protocols and documentation.

24 Responsibilities for CHC are spread across a health board, which can lead to inconsistent approaches within a health board. Standard training on CHC and the Framework's requirements has been rolled out across Wales to mixed effect, and a broader range of training is needed. The number of hospital and community staff requiring expertise in

CHC provides an ongoing challenge to health boards.

25 Health boards cannot provide assurance that the Framework is being applied fully and that they make fair, timely and consistent decisions on eligibility both within and between their organisations. Individual cases that are deemed eligible for CHC are scrutinised, but health boards do not have arrangements in place to routinely monitor or review cases that are not put forward to be assessed for CHC or that are deemed ineligible by their staff. Also, there are no peer review arrangements between health boards.

26 **The Framework has provided a basis for more consistent assessment of care needs and decisions on CHC eligibility, although local arrangements vary across Wales and do not always meet the Framework's requirements.** There is evidence that the Framework has led to more consistent, thorough and detailed assessments of care needs. However, assessments of care needs are not always comprehensive, with input from a range of appropriate professional disciplines, and are not always undertaken at an appropriate time. The lack of engagement of GPs and hospital doctors in CHC assessment processes is a common problem. The DST is also not always being used as intended, with problems in getting the right professionals to attend meetings to discuss and agree the DST; variable standards of completion of the DST and supporting documentation; and concerns that the DST is being used too prescriptively with a lack of professional judgement being exercised.

27 Health boards have put in place scrutiny processes to ratify the conclusions of individual assessments of CHC eligibility, but some are more effective than others. Scrutiny panels are in place in all health boards but their number, scope, size and membership varies.

- 28 The Framework sets a target for the time it should take to complete the CHC assessment and decision-making process. However, there is a lack of clarity over the ‘start’ point against which timescales should be measured, health boards are not routinely measuring timescales, and our analysis of case files indicates that the target times are unlikely to be routinely met.
- 29 Fast-track processes, for the immediate provision of CHC for individuals with a rapidly deteriorating condition who may be entering a terminal phase of their lives, are generally working well. In contrast, the Framework’s requirements for planning the complex transition from children to adult CHC services are generally not being met.
- 30 **Arrangements for reviewing continuing eligibility for CHC have been strengthened, but cases are not always being reviewed as frequently or as robustly as required by the Framework.** There should be periodic review of CHC cases to determine whether an individual’s needs have changed. A change in needs should trigger an appropriate change in the package of care and an assessment of whether the person continues to be eligible for CHC funding.
- 31 Since the introduction of the Framework, health boards have made some progress in dealing with backlogs of reviews. However, CHC cases are not being reviewed in line with the frequency and timescales outlined in the Framework, which are more demanding than the corresponding requirements in England. The robustness of reviews is also highly variable, with a reluctance to move people out of CHC evident in some parts of Wales.
- 32 **The effectiveness of joint working between health and social services is highly variable.** The importance of joint working between the NHS and social services is stressed throughout the Framework, but there are significant variations in joint working arrangements across Wales. Improved joint working and communication were evident when social services attended scrutiny panels, although this is not routine practice in all health boards. Joint protocols have been developed in some parts of Wales, but in others, difficulties have been experienced in agreeing a common approach. Relationships between health and social services across Wales range from ‘positive and constructive’ through to ‘difficult’.
- 33 The number of disputes between health and social services over CHC eligibility decisions varied greatly and, although relevant policies and guidance are mostly in place, the time taken to resolve disputes is significantly longer than the target times set out in the Framework.
- 34 **There is mixed evidence on the extent to which individuals and their families are being involved in the assessment process, and processes for gaining and recording informed consent and assessing mental capacity are very inconsistent.** CHC is a complex topic with its own distinct language, and ensuring people are well informed is a particular challenge. The Welsh Government has developed a public information leaflet on CHC. However, the leaflet is not always made available, and there are gaps in information relating to consent, joint care packages and the availability of local advocacy. The Welsh Government, with Age Concern, has developed a more detailed guide for the public on the CHC process. Although health boards do not hand the guide out routinely, the guide is available online.



35 There is very mixed evidence about how well individuals⁷ are kept informed about CHC assessment and decision-making processes. The Framework confirms the requirement to obtain the informed consent of people being assessed for CHC, but the practice in obtaining consent varies across Wales. Health boards are also inconsistent in the extent to which they routinely assess and record an individual's mental capacity to give their consent and participate in decision-making processes when assessing them for CHC. There is also mixed evidence on the extent to which individuals and their families are being involved in the assessment process and, in some areas, the needs of carers are not being fully assessed.

There is a significant risk that the national project to deal with retrospective claims for CHC will not process all cases by the agreed deadline, and new backlogs of retrospective claims have developed in health boards

36 Many of the challenges around CHC eligibility have not been dealt with promptly, and although there is a longstanding deadline for clearing the cases being dealt with by a national project team, no deadline has been set for the cases that health boards are dealing with. Responsibility for dealing with retrospective claims against CHC decisions is either with a national project team, hosted by Powys Teaching Health Board, or with individual health boards, depending upon the date the claim is made.

37 In 2004, national arrangements were established that allowed people to claim retrospectively that they (or a deceased relative) had been eligible for CHC but were wrongly charged for care between 1996 and 2003. The scope of the national project has been extended over time and now covers any claim received by August 2010, the implementation date of the Framework. The Welsh Government has set a deadline that the national project should clear all these claims by June 2014.

38 Health board responsibilities for retrospective claims have changed over time, but they are now responsible for dealing with any retrospective claims received after August 2010 as well as any requests to reconsider eligibility decisions made under the revised Framework (referred to as 'disputes'). The Welsh Government has not always clearly communicated to health boards changes in their responsibilities, and has not set clear timescales for health boards to deal with retrospective claims and with disputes.

39 The national project for dealing with retrospective claims has made limited progress and, despite additional funding and reassurances from Powys Teaching Health Board that the June 2014 deadline to clear all claims will be met, in our view there remains a significant risk that the deadline will not be achieved. A failure to deal promptly with retrospective claims and disputes is unfair on the individuals concerned. Claims relating to fees dating back up to 17 years are still being dealt with by the national project. Progress by the national project in dealing with retrospective claims has been limited, with 32 per cent of claims being completed 21 months into the national project's planned lifetime of 36 months.

⁷ Throughout this report, we use the term 'individuals' to refer to people who are being, or have been, assessed for CHC as covered in the glossary.

The efficient processing of claims has been constrained by difficulties in accessing clinical records held by individual health boards and by some health boards not now accepting the original proof from a claimant that they have paid the relevant care home fees.

40 The national project has experienced significant recruitment and retention problems, and in May 2012 was projecting to complete all cases two years later than the June 2014 deadline. To ensure that the original deadline could be achieved, the Welsh Government and health boards, on a 50:50 basis, made available an additional £1.6 million to increase staffing levels in the national project team. The Welsh Government has also strengthened its monitoring of progress. However, due to continuing recruitment and retention problems, significant risks in meeting the deadline remain.

41 **Health boards are struggling to deal with the retrospective claims that they are responsible for processing.** Health boards have received large numbers of retrospective claims and further claims are likely to be made in the future. By September 2012, only 13 per cent of the 1,264 retrospective claims and disputes from individuals received by health boards since August 2010 had been concluded. Health boards have made most progress with the disputes that they have received, although these can take a considerable time to conclude. However, the majority of cases are retrospective claims and progress with these has been very slow. There is no common process across health boards for dealing with retrospective claims.

42 It is unclear whether health boards have now allocated sufficient staff resources to deal with the large number of retrospective claims and disputes in a timely way. Some health boards had originally not allocated appropriate staff resources, but as the numbers of retrospective claims and disputes has increased, all health boards have agreed to, or are considering, appointing additional staff. However, it is too soon to tell whether the increased resources are sufficient to ensure all outstanding retrospective claims will be completed in a timely way. Some health boards were also slow to set up the dispute review processes outlined in the Framework, and the independent review panels that consider disputes are not always operating effectively.



Recommendations

Guidance provided by the Framework

- 1 The Framework outlines the requirements to be met by health boards and their local authority partners in considering people for CHC. We have identified a number of areas where the current guidance could be improved, which are summarised in **Appendix 4**. We have identified opportunities for making guidance clearer or more explicit; for addressing gaps in its coverage; and for ensuring that guidance is realistic and deliverable. **We recommend that the Welsh Government, as part of its forthcoming review of the Framework, uses the findings from this report, as summarised in Appendix 4, to improve the guidance to health boards provided by the Framework.**

Leadership

- 2 Operational oversight of the implementation of the Framework is in place in the form of the National CHC Advisory Group. But stronger leadership, nationally and within health boards, is required to ensure that the Framework is implemented consistently and effectively across Wales. The National Complex Care Steering Group has had only a limited impact to date. **We recommend that the Welsh Government:**
 - a **strengthens its strategic oversight of the CHC Framework, with a focus on ensuring increased consistency in the application of the Framework and implementation of the recommendations set out in this report; and**

- b **requires health boards to allocate overall responsibility for CHC at board director level, with specific responsibility for ensuring consistency in the Framework's application across the health board, the adequacy of staff resources allocated to CHC, and effective joint working with social services.**

Fair and consistent application of the Framework

- 3 The Framework aims to ensure that individuals are considered for CHC fairly and consistently. We have identified risks that not all people who should be assessed for CHC are being identified, and that, in considering an individual's eligibility for CHC, there is potential for the inconsistent interpretation and application of the Framework within and between health boards.
- 4 To ensure that national policy and guidance further supports consistency and fairness, and in light of operating the Framework for almost three years, **we recommend that the Welsh Government:**
 - a **reconsiders the benefits of introducing a screening tool to determine whether someone requires a CHC assessment; and**
 - b **reviews the differences between the DST domains in Wales and England, particularly for cognition, to confirm that the Welsh domains are reasonable.**

5 To ensure consistent interpretation and application of the Framework across health boards, **we recommend that the Welsh Government:**

- a requires health boards to establish arrangements for peer review of the processes for reaching CHC eligibility decisions, and of a sample of CHC decisions; and**
- b promotes a means of sharing across Wales the learning from peer reviews.**

Assessment, decision making and review

6 Whilst some strengths and weaknesses are common across Wales, the performance of health boards in meeting the requirements of the Framework is variable. There is also scope for health boards to learn from one another, and for common tools or documentation to be developed. **We recommend that the Welsh Government:**

- a requires health boards to complete and action the self-assessment and improvement checklist developed by the Wales Audit Office in support of this report; and**
- b works with health boards to develop national protocols and documentation, for example for fast-track arrangements and for obtaining consent, and encourages greater sharing of local policies and documentation between health boards.**

Retrospective claims

7 The effective and consistent handling of challenges to CHC eligibility decisions is important to ensure fairness and maintain public confidence in the system. There are significant risks that the national project will not clear all retrospective claims by the agreed deadline. The position with health boards is even more uncertain, with a lack of clarity over how retrospective claims should be processed. **We recommend that the Welsh Government:**

- a sets a deadline for the completion of all retrospective claims that are being processed by health boards;**
- b works with health boards to agree a detailed and common approach to dealing with the retrospective cases being processed by health boards, and ensures the approach is broadly in line with the approach adopted by the Powys project team; and**
- c establishes a task and finish group with executive-level representation from across all health boards and chaired by a health board chief executive, to ensure that all retrospective cases, whether these are being handled by the Powys project or individual health boards, are processed efficiently and to the set deadlines.**



Part 1 - The Welsh Government developed the CHC Framework to help ensure that people are dealt with fairly and consistently, but the Framework could be improved in a number of areas and its impact monitored more closely

Welsh Government policy and guidance on CHC has been revised to reflect key legal judgements and to ensure people are dealt with fairly and consistently

A significant change in case law in 2006 required amended guidance, but there was a considerable delay in overhauling the CHC Framework

1.1 The first national Framework for CHC and associated guidance was issued in 2004. It outlined the key criteria and issues to be taken into consideration when making decisions about eligibility for CHC. The 2004 Framework looked to address a range of issues with the provision of CHC that had been highlighted by a 1999 Court of Appeal judgment, referred to as the Coughlan judgment⁸; the Health and Social Care Act 2001, which introduced NHS-funded nursing care; and a 2003 report by the Health Service Ombudsman⁹.

1.2 A further legal judgement in 2006, referred to as the Grogan judgement, required that, in deciding upon eligibility for CHC, NHS bodies needed to have a clear process in place to assess whether there was a primary health need (Figure 3). In simple terms, an individual has a primary health need if, having taken account of all of their needs, it can be said that the main aspects or majority of the care they require is focused on addressing and/or preventing ill health.

Figure 3 - The Grogan judgement

R v. Bexley NHS Care Trust ex parte Grogan

Maureen Grogan had multiple sclerosis, dependent oedema with the risk of ulcers breaking out, was doubly incontinent, and had some cognitive impairment. After the death of her husband, her health deteriorated and she had a number of falls. Following an admission to hospital with a dislocated shoulder, it was decided that she was unable to live independently and she was transferred to a care home providing nursing care. Assessments indicated that Mrs Grogan's condition was such that she did not qualify for CHC, but did qualify for NHS-funded nursing care.

Mrs Grogan argued that the decision to deny her full NHS funding was unlawful, due in part to the level of her nursing needs indicating a primary need for health care which should be met by the NHS.

The court concluded that in assessing whether Mrs Grogan was entitled to CHC, the care trust did not have in place or apply an approach to test whether her primary need was a health need. The trust's decision that Mrs Grogan did not qualify for CHC was set aside and the question of her entitlement to CHC was remitted to the trust for further consideration.

8 The Coughlan judgement ruled on the limits of nursing care provided by local authorities for a person living in residential accommodation.

9 NHS funding for long term care, Health Service Ombudsman, February 2003

1.3 In 2006, the National Assembly issued initial guidance to NHS bodies and local authorities to help them comply with the Grogan judgement¹⁰. This was followed in December 2007 by a draft revised Framework, which was based on the Framework that had been developed in England. The draft Framework was issued in February 2008 for three months' consultation. However, the final version of the Framework was not issued until May 2010. The substantial delay reflected the need to consider a further legal judgement in August 2008, referred to as the St Helens judgement¹¹; the consequent need to circulate an amended draft of the Framework for further comment; and the limited capacity within the Welsh Government to consider the consultation responses and finalise the Framework.

There is clear evidence of inconsistent approaches to CHC eligibility decisions across Wales before the introduction of the Framework

1.4 The inconsistent application of CHC eligibility criteria was first highlighted by the Health Service Ombudsman in 2003, and subsequently by the Public Services Ombudsman for Wales through various annual reports and investigations of individual complaints.

1.5 Also, before the Framework was introduced in August 2010, there had been a large number of challenges by individuals and their families against health board decisions on CHC eligibility; these are referred to as retrospective claims. In cases where a decision that someone is ineligible for CHC has resulted in the individual funding all or part of their care home fees, there is a clear incentive to challenge the decision. More than four in every five retrospective claims

that have been concluded have been fully or partially successful, either because the application of the eligibility criteria was found to be incorrect or due to a lack of evidence to support the original decision. Health boards made provisions of £35.1 million in their accounts for 2011-12 for the estimated future costs arising from the remaining retrospective claims that had not been concluded.

The revised Framework provides detailed guidance and tools for use by health boards, and seeks to ensure fairness and consistency in assessment and decision making

1.6 The 2010 Framework sets out a process for the NHS, working with local authority partners, to assess health needs and to decide on eligibility for CHC. The Framework makes clear that the sole criterion for determining eligibility for CHC is whether a person's primary need is a health need. The Framework also sets out:

- a** training requirements and governance arrangements;
- b** how health boards should gain informed consent and ensure people have the mental capacity to give consent and make decisions;
- c** the process by which decisions on eligibility should be scrutinised by health boards;
- d** how disputes over eligibility decisions should be resolved between health boards and their partners;
- e** the arrangements to be followed when an individual wants to dispute a decision; and
- f** the arrangements for reviewing individual CHC cases over time.

¹⁰ Welsh Health Circular (2006) 046, *Further advice to the NHS and Local Authorities on Continuing NHS Health Care*, National Assembly for Wales

¹¹ The St Helens judgement confirmed that the NHS is the primary decision maker when deciding whether a person has primary health care needs.



- 1.7** Central to the arrangements is a multidisciplinary assessment process that informs the completion of a DST. The DST is designed to ensure that the full range of factors that have a bearing on an individual's eligibility are taken into account in making decisions. The tool provides practitioners with a framework to bring together and record the needs of an individual in 11 'care domains'. Most domains are subdivided into statements representing low, moderate, high, or severe level of needs; with three domains also including a priority level of need. The result of completing the DST should be an overall picture of the individual's needs, to inform decisions on eligibility.
- 1.8** The Framework is supported by a separate practice guidance document¹² that is based on frequently asked questions, and is intended to provide a practical explanation of how the Framework should operate on a day-to-day basis. As part of the latest revision of CHC policy in England, the Department of Health has now incorporated its practice guidance into the main Framework document¹³. This should help improve clarity and ensure that people using the Framework do not lose sight of the practice guidance.

Some aspects of the Framework lack clarity, and there are some key differences with the approach in England

Specific guidance and training on how the Framework should be applied for people with a learning disability or a mental health problem is lacking

- 1.9** A common view from both NHS and social service practitioners that we interviewed during the review is that the Framework is difficult to apply to people with a learning disability and, to a lesser extent, to those with a mental health problem. Unlike in England, the Framework in Wales does not include specific guidance on how the DST and primary health need eligibility test apply to people with learning disabilities.
- 1.10** At a workshop we ran for health board CHC leads, they identified the difficulties in applying the Framework to people with learning disabilities as one of their top-priority issues. This issue was also highlighted by social services staff, and one local authority commented in their survey response that 'the definition of 'primary healthcare need' is especially problematic in applying the criteria to people with learning disabilities, mental health issues and dementia'.
- 1.11** There are different care needs assessment and care planning requirements for people with a learning disability or mental health problem, which do not fit easily into the domains in the DST. Both nurses and social workers told us that, whilst the domains work well for someone with a physical health problem, they are difficult to use for someone with a learning disability or mental health

¹² *Continuing NHS Healthcare for Adults, Practice Guidance to support the National Framework for Implementation in Wales*, November 2010

¹³ *National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care*, November 2012 (Revised), Department of Health

problem. Nurses and social workers also told us that CHC training and support materials are focused on someone with a physical health problem, and have not been tailored for learning disability or mental health cases.

Clearer guidance on joint funding arrangements is needed, including for section 117 mental health patients and for people who self-fund their care

1.12 The Framework specifies that where a person has been deemed not eligible for CHC but requires an alternative package of care (such as NHS-funded nursing care in a care home, or a joint package of care in the community), the lead role will normally lie with the local authority. The Framework states that, in these circumstances, health boards should work in partnership with the local authority to agree their respective responsibilities in joint care packages.

1.13 Health board CHC leads attending our workshop and four social service departments in their response to our survey raised concerns about a lack of clarity about how joint packages of care should be funded. They considered that the lack of clarity can lead to inconsistent approaches to funding joint packages of care. Some agreements are based on a standard formula, such as 50 per cent of costs picked up by each organisation. Alternatively, joint care packages can be negotiated on a case-by-case basis, which can lead to disputes between organisations. Arrangements can vary within a health board area.

1.14 At our workshop, health board CHC leads also identified a need for greater clarity over joint service provision relating to one group of people with a mental health problem. Under section 117 of the Mental Health Act 1983, health and social services authorities have a duty to provide services in the community for individuals detained under certain provisions of the act following their discharge from hospital. Health and social service authorities jointly have a duty to provide these community services, referred to as after-care services, until they are satisfied that the person is no longer in need of these. At the workshop, health board CHC leads agreed that there is a lack of clarity about which services should be provided as an after-care package under section 117, and which services should be provided through CHC funding; and about how these joint packages of care should be funded.

1.15 Another area where clarity is lacking is whether people who pay for all of their care home fees, referred to as 'self-funders', should be routinely offered an assessment for CHC or NHS-funded nursing care. As a self-funder's needs and circumstances change, they may become eligible to have part or all of the costs of the care home paid by the NHS or local authority. However, there is a lack of clarity over whether people who self-fund should be routinely offered such an assessment. This issue was highlighted by the Health and Social Care Committee's inquiry into residential care services for older people¹⁴, which found that some people who self-fund receive no information or advice from their local authority, nor any assessment of their needs.

¹⁴ Residential care of older people in Wales, National Assembly for Wales, Health and Social Care Committee, December 2012



More explicit guidance about how health boards should monitor contracts with care homes is needed

- 1.16** The Framework provides some high-level guidance on the responsibilities of health boards for arranging and monitoring services, such as care home placements, to meet the needs of those with CHC. However, health board leads for CHC attending our workshop reported that contracting and monitoring arrangements are generally underdeveloped, and that more specific guidance than that currently set out in the Framework would be beneficial.
- 1.17** Such guidance could draw upon good practice examples of where robust arrangements have been put in place. For example, when Aneurin Bevan Health Board reviews cases in nursing homes, it also monitors whether the care home is providing the care package as outlined in the contract. The health board has also reviewed the trends of admissions, discharges and deaths in care homes and investigated any outlying results.

The Framework does not specify how performance should be monitored, and the National Complex Care Database will not initially produce performance measures for CHC

- 1.18** The Framework does not specify any performance indicators for CHC but states that they may be introduced for NHS organisations at some point in the future. In the absence of any national performance indicators for CHC, individual health boards have made little progress in developing local measures of performance. We found little evidence of any routine performance management information relating to CHC in most health boards.
- 1.19** Over recent years, all health boards have put in place one or more CHC databases to hold basic information on CHC cases and related costs. Health boards generally acknowledged that their databases were not fit for purpose. As a result, a task group, consisting of health board representatives supported by NHS Wales Informatics Service, has developed and is now implementing a national database. The database, referred to as the National Complex Care Database, captures CHC-related activity and costs, as well as information on NHS-funded nursing care, retrospective claims, and any joint funding arrangements in place with local authority partners.
- 1.20** NHS Wales Informatics Service rolled out to all health boards the National Complex Care Database, which is based on the version developed and used in Hywel Dda Health Board, between January and March 2013. However, the requirement to generate standardised performance information has not initially been built into the database. The task group and NHS Wales Informatics Service considered that it would be too complex to agree and develop this capability within the timescales set for the initial launch of the database.

In England, a screening tool is used to determine whether someone requires a CHC assessment

1.21 In England, a CHC screening tool is in place (Figure 4), which is designed to ensure clarity and consistency in the criteria used to put people forward for a CHC assessment. Although the screening tool in England is straightforward to complete, a screening tool has not been adopted within Wales. In the past the Welsh Government, in discussion with health boards, has concluded that a CHC screening tool is not required as the Unified Assessment Process, the common assessment process for health boards and local authorities, should identify those people who require a CHC assessment. This argument did not prevail in England, which also has a Single Assessment Process for Older People that is increasingly being used for all people over 18 years of age.

Figure 4 - Screening tool in England

Key features of the CHC checklist

A checklist has been developed in England to help practitioners identify people who need a full assessment for CHC. The checklist is based on the DST. It allows a variety of people, in a variety of settings, to refer individuals for a full assessment for CHC. For example, the tool can form part of the discharge pathway from hospital; a GP or nurse could use it in an individual's home; and social workers could use it when carrying out routine social services assessments. The intention is for the checklist to be completed as part of the wider process of assessing or reviewing an individual's needs. The checklist should also be completed when an individual requests an assessment for CHC.

1.22 The adoption of a screening tool in Wales could lead to a number of benefits. Firstly, both NHS and social services staff raised concerns with us during our fieldwork visits over difficulties they had encountered in getting colleagues to identify when someone needed to be assessed for CHC. We also identified a lack of consensus in some areas between social services and NHS staff about when a CHC assessment is needed. One local authority reported to us that they were moving towards a formal dispute with the health board over continued problems with getting people assessed for CHC. Also, some nurses told us that social services staff can be unclear as to when a CHC assessment should be triggered when there was no NHS involvement with the individual.

1.23 Secondly, health board CHC leads attending our workshop identified that the reasons in support of a decision that a CHC assessment is not warranted often are not fully documented, leaving such decisions open to the risk of challenge. The absence of a common approach to recording the consideration of whether to assess someone for CHC eligibility limits the extent to which health boards are able to monitor, and provide assurance, that people are being considered appropriately and consistently.



Because of differences between the CHC decision support tools used in Wales and England, it may be more difficult for some people in Wales, most notably those with dementia, to meet CHC eligibility criteria, whilst for some other groups it may be easier

- 1.24** The DSTs used in Wales and England are similar, with seven of the 11 care domains having the same levels of need in both countries. However, there are some differences in the highest level of need that can be recorded in Wales compared to England:
- a** the highest level of need in respect of both the mental health and continence domains in Wales is 'severe' (compared with 'high' in England); and
 - b** the highest level of need in Wales in respect of the cognition domain is 'high' (compared with 'severe' in England) and in respect of the altered states of consciousness domain is 'severe' (compared with 'priority' in England).
- 1.25** The Welsh Government told us that these differences reflected the clinical advice it had received in developing the Framework. However, there is the potential for people with similar needs to have different outcomes in terms of eligibility for CHC in Wales compared to England. This may be to the advantage of some groups but to the disadvantage of others.

- 1.26** In their written submissions to us a number of stakeholders, including Age Concern and the Alzheimer's Society, stated that people with dementia living in Wales are being disadvantaged, in terms of their eligibility for CHC, compared to their counterparts in England. The Welsh Government told us that the decision not to make available the 'severe' level of need for cognition reflected clinical advice that people in the late stages of dementia require less clinical input to their care.
- 1.27** Health boards are unable to provide accurate data on the number of CHC dementia cases over time due to the way CHC data has historically been recorded and collated. As a result, we are unable to draw firm conclusions about whether fewer people with dementia are being accepted for CHC as a consequence of the more stringent criteria used in Wales.

The extent to which the Framework or the way it has been implemented has contributed to the recent reduction in the number of CHC cases and expenditure is not clear

CHC expenditure and the total number of CHC cases have reduced since the Framework was introduced

1.28 We analysed the financial accounts of all health boards to generate data on CHC and NHS-funded nursing care expenditure since 2004-05. We also requested from health boards the number of CHC and NHS-funded nursing care cases at the end of each of the last four financial years. However, due to the way its predecessor organisations held this information, Betsi Cadwaladr University Health Board was only able to provide the relevant data for the end of 2010-11 and the end of 2011-12. As a result, our analysis of the number of CHC and NHS-funded nursing care cases before and after the introduction of the Framework focuses upon just six of the seven health boards.

1.29 Our analysis shows that CHC expenditure and the number of CHC cases have fallen since the introduction of the Framework in August 2010. Across Wales CHC expenditure, having risen every year since 2004-05, fell back in 2011-12 by 5.8 per cent compared with the previous year (Figure 1 on page 5). Five health boards experienced a reduction in 2011-12, one (Powys Teaching Health Board) experienced no substantive change, and one health board (Cardiff and Vale) experienced an increase.

1.30 Across the six health boards that were able to provide the relevant data, the number of CHC cases at the year-end reduced in both 2010-11 and 2011-12 (Figure 5). However, the pattern of change in the numbers of CHC cases at year-end varied between the six health boards, and the number of CHC cases at Betsi Cadwaladr University Health Board increased by 5.9 per cent between 31 March 2011 and 31 March 2012.

1.31 The reduction of CHC cases has not been experienced in England, where data is reported on the number of people in receipt of CHC each quarter¹⁵. Overall, this data shows a steady increase of CHC cases between 2009 and 2012; with an increase of 5.6 per cent in the number of cases between the fourth quarters of 2009-10 and 2010-11, and an increase of 4.5 per cent between the fourth quarters of 2010-11 and 2011-12. Seven of the 10 strategic health authority areas experienced an overall increase between March 2009 and March 2012.

Expenditure on NHS-funded nursing care has fallen marginally since the Framework was introduced, but the number of cases at year-end has increased

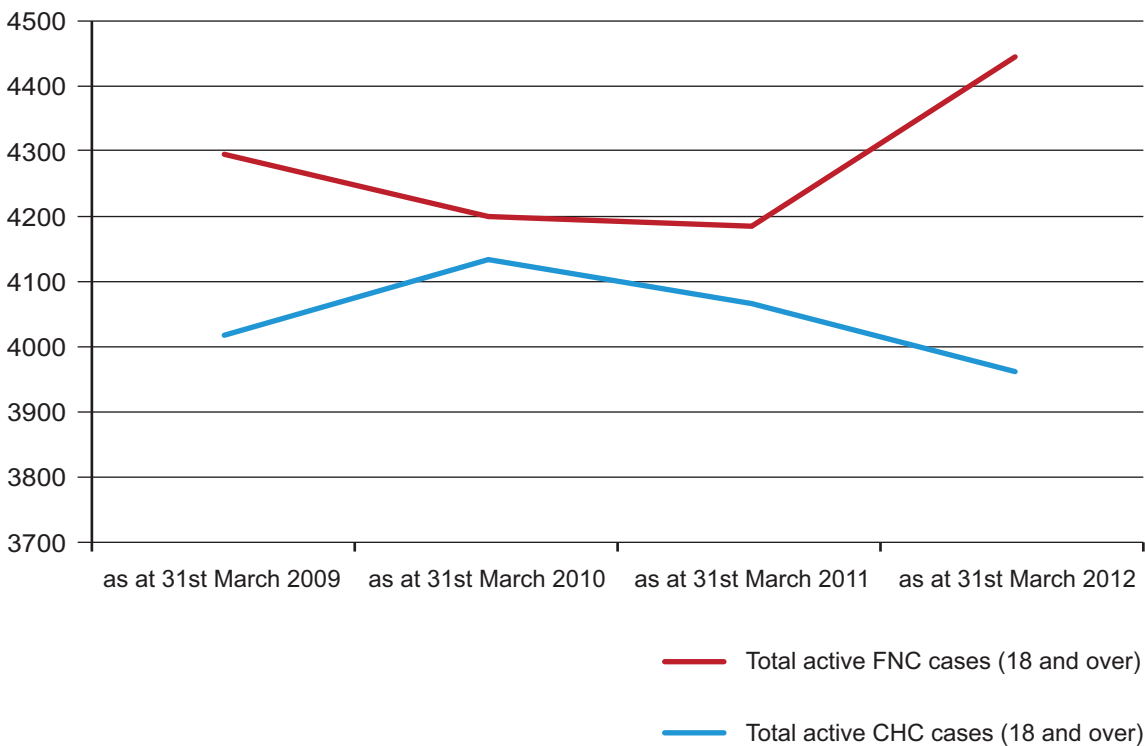
1.32 We also examined patterns of NHS-funded nursing care expenditure and case numbers to compare these to CHC patterns. We found that expenditure on NHS-funded nursing care also reduced in 2011-12, but by only 0.3 per cent, and that between 2009-10 and 2011-12 the increase in expenditure on NHS-funded nursing care (13 per cent) was greater than the increase in expenditure on CHC (7.8 per cent).

¹⁵ The latest data on CHC numbers was released by the Department of Health on 21 January 2012, www.dh.gov.uk/health/2013/01/nhs-continuing-healthcare/



1.33 Across the six health boards that were able to provide the relevant data, the total number of CHC and NHS-funded nursing care cases at year-end increased from 8,355 in 2010 to 8,412 in 2012, an increase of 1.9 per cent (Figure 5). This reflected a reduction of 171 CHC cases (a fall of 4.1 per cent), and an increase of 248 NHS-funded nursing care cases (a rise of 5.9 per cent).

Figure 5 - Number of CHC and NHS-funded nursing care cases between 31 March 2009 and 31 March 2012 across six health boards



Note
Data excludes Betsi Cadwaladr University Health Board as it could not provide the number of CHC and NHS-funded nursing care cases for 31 March 2009 and 31 March 2010.

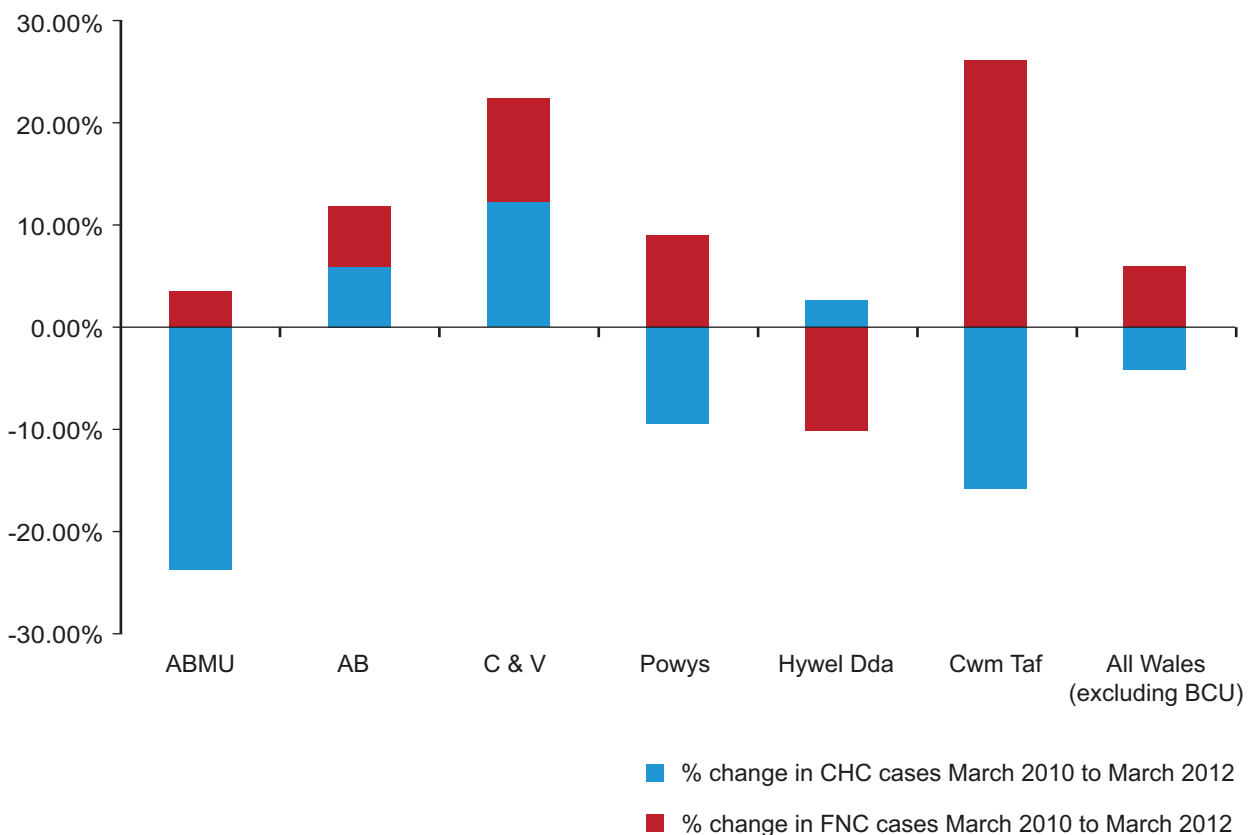
Source: Wales Audit Office survey of health boards, May 2012

The pattern of change in the numbers of CHC and NHS-funded nursing care cases and the number of cases per head of population is highly variable across health boards

1.34 The overall pattern of change in the numbers of CHC and NHS-funded nursing care cases between March 2010 (the year-end before the Framework was introduced) and March 2012 is highly variable between health boards (Figure 6), with:

- a** the number of CHC cases increasing by 12 per cent in Cardiff and Vale University Health Board, but reducing by 24 per cent in Abertawe Bro Morgannwg University Health Board;
- b** NHS-funded nursing care cases increasing in all health boards with the exception of Hywel Dda Health Board which experienced a 10 per cent reduction; and
- c** three health boards experiencing some level of reduction in CHC cases and an increase in NHS-funded nursing care cases.

Figure 6 - Percentage change in CHC and NHS-funded nursing care cases between March 2010 and March 2012 by health board



Note

Data excludes Betsi Cadwaladr University Health Board as it could not provide the number of CHC and NHS-funded nursing care cases for 2010.

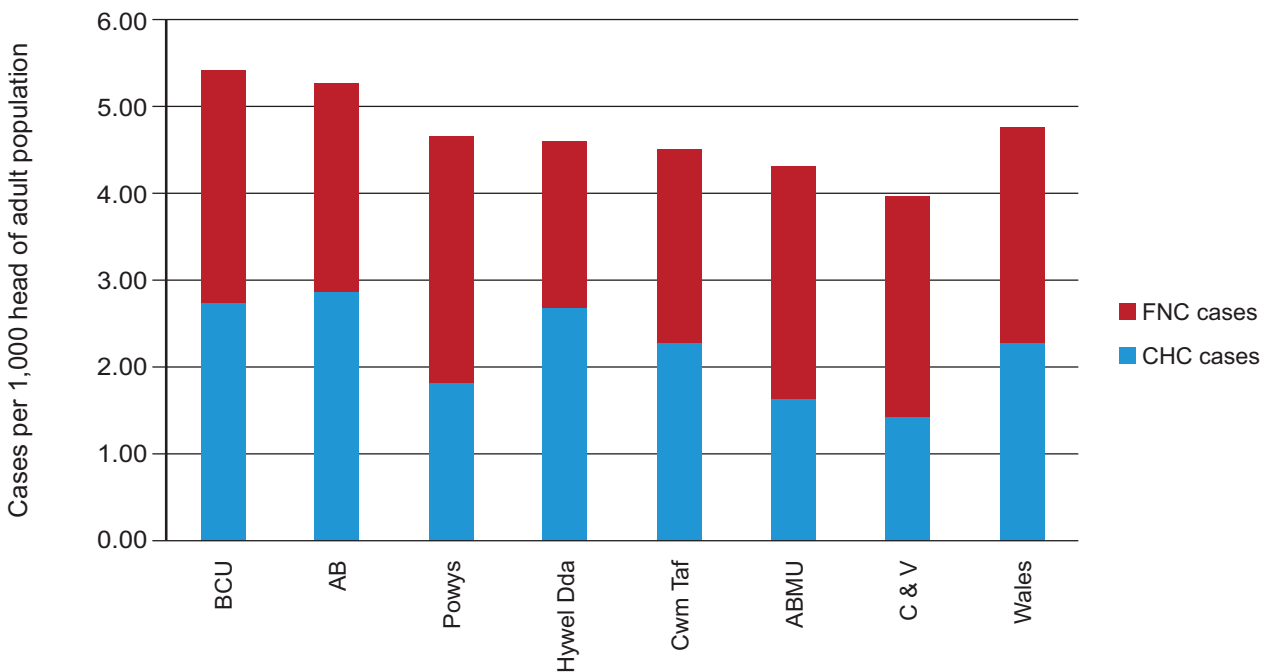
Source: Wales Audit Office survey of health boards, May 2012



1.35 There are also highly variable year-on-year patterns between health boards in the number of CHC and NHS-funded nursing care cases. In some health boards, there has been a consistent year-on-year pattern. Cardiff and Vale University Health Board has experienced a year-on-year increase in CHC cases between March 2009 and March 2012; in Abertawe Bro Morgannwg University Health Board, CHC cases have declined and funded nursing cases increased in each of these years; and in Hywel Dda Health Board, NHS-funded nursing care cases have reduced in each of these years. In other health boards the overall changes between 2009 and 2012 are underpinned by fluctuating year-on-year patterns.

1.36 Finally, the number of CHC and NHS-funded nursing care cases per head of adult population varied across health boards (Figure 7). For example, the Welsh Health Survey¹⁶ identifies Cwm Taf Health Board as having the adult population with the poorest general and mental health, which would suggest that the health board should have relatively high numbers of CHC and NHS-funded nursing care cases. However, Cwm Taf Health Board has only an average proportion of CHC cases and a below-average proportion of NHS-funded nursing care cases per head of adult population.

Figure 7 - Total active CHC and NHS-funded nursing care cases per 1,000 head of population aged 18 and over at 31 March 2012



Source: Wales Audit Office survey of health boards

¹⁶ Welsh Health Survey 2010 and 2011, Local Authority/Local Health Board Results, SB 86/2012, 19 September 2012, Welsh Government

There are a number of reasons that could explain the overall fall in CHC cases and expenditure and the variable patterns across health boards

- 1.37** The patterns of expenditure and case numbers before and after the introduction of the Framework indicate that, if all other things were equal, the Framework might have resulted in the application of more stringent CHC eligibility criteria. However, the extent to which the Framework itself has contributed to the recent overall fall in CHC cases and expenditure is unclear. The Framework was developed to ensure decisions on CHC eligibility were more consistent across Wales and in line with legal judgements, but it was not an expressed aim of the Framework to reduce CHC expenditure by making it harder for people to qualify for CHC. However, the need to achieve greater consistency suggests that some cases that previously would have been deemed ineligible would, post-Framework, be accepted for CHC, and vice versa.
- 1.38** Following NHS reorganisation in October 2009, some health boards had already taken steps to improve the consistency of decisions on eligibility for CHC and NHS-funded nursing care. For example, in our discussions with Abertawe Bro Morgannwg University Health Board, it told us that following the NHS reorganisation it became apparent that there was inconsistent interpretation and application of CHC and NHS-funded nursing care eligibility criteria across the former local health board areas within the new organisation. The health board told us that it had taken steps to address these inconsistencies, which would have had an impact on the numbers of cases now accepted as eligible for CHC. However, there remains the risk of inconsistency between different health boards. The Welsh Government has not established any means of monitoring whether health boards are interpreting and applying the Framework consistently.
- 1.39** From 2008-09, the Welsh Government made available £37.5 million for schemes across Wales that were intended to modernise services and develop and implement new service models. These schemes focused on people with long-term complex health and social needs, and included the development of complex care teams, integrated intermediate community care services, reablement services and community palliative care services. The Welsh Government undertook an internal evaluation of these schemes between October and December 2010. The evaluation highlighted a lack of quantitative data, but concluded that the majority of the schemes reviewed either contributed to reducing the need for CHC or enabled more people to leave CHC.
- 1.40** The reduction in CHC expenditure also followed a concerted push across health boards to identify savings within CHC budgets. Our report on *Health Finances*¹⁷ identified that health boards reported £44 million of savings on CHC expenditure in 2011-12, accounting for the third-largest area of savings. Our follow-up report on adult mental health services¹⁸ illustrated how more cost-effective service provision has been pursued, for example, by moving people out of high-cost, CHC-funded mental health placements in the independent sector into newly developed local services.

¹⁷ *Health Finances*, Wales Audit Office, July 2012

¹⁸ *Adult Mental Health Services Follow up Report*, Wales Audit Office, July 2011



- 1.41** Our discussions with health boards identified a number of other factors that could explain the variable patterns between health boards. Although there is a lack of data to quantify the impact of these factors, it is reasonable to assume that the following will have affected the number of CHC cases to some degree:
- a** the differing levels of need for CHC and NHS-funded nursing care across Wales;
 - b** the nature of NHS hospital-based services, for example having a high number of long-term or rehabilitation beds will reduce the numbers of CHC placements needed in care homes, and thereby reduce the number of CHC cases and expenditure;
 - c** the extent of community-based services provided by the NHS or local authorities, such as those focused on maintaining independence or providing end-of-life care, will reduce the numbers coming into CHC;
 - d** the extent of care home beds available in the independent sector; and
 - e** some health boards also told us that the new Framework was a stimulus to address the previous lack of regular and robust reviews of CHC cases, which resulted in some people moving out of CHC eligibility.

There is operational oversight of the Framework but strategic leadership is lacking

A National CHC Implementation Group has overseen the implementation and operation of the Framework

- 1.42** A National CHC Implementation Group was established in 2010. Its main functions were operational in nature, and included overseeing the implementation of the Framework and the provision of associated training; where appropriate, promoting consistent approaches across health boards; and sharing issues of concern and best practice. The National CHC Implementation Group operated independently from the Continuing NHS Healthcare National Programme, which provided leadership on how to improve the management of CHC.
- 1.43** The group consisted of lead CHC nurses from health boards, the older people's lead from the Welsh Local Government Association, and the Welsh Government policy lead and policy advisor for CHC. The group is now called the National CHC Advisory Group. It continues to be chaired by a lead CHC nurse from a health board, and its focus now includes:
- a** considering issues which health board leads can progress on an all-Wales basis to ensure consistency of approach and process;
 - b** providing a peer review and support function as required;
 - c** supporting and informing the pending Welsh Government review of the 2010 Framework, and to consider the recommendations arising out of this Wales Audit Office report; and

- d providing advice, guidance and local intelligence to the Welsh Government regarding CHC delivery and the implementation and application of national policy.

1.44 The National CHC Advisory Group continues to have representation from health board CHC lead nurses, as well as the Welsh Government's policy lead and policy advisor for CHC. A representative from local government, with corporate responsibility for social services, also attends. However, given its composition and role, the National CHC Advisory Group is not an appropriate body to provide strategic leadership for the Framework. The group also has no explicit role in monitoring the consistent interpretation and application of the Framework across health boards.

There has been a lack of clear strategic leadership for the CHC Framework, and this is compounded by the slow progress in establishing effective successor arrangements to the national CHC programme

1.45 The Continuing NHS Healthcare National Programme was established in July 2010 as one of the delivery mechanisms in support of the Welsh Government's *Five-Year Service, Workforce and Financial Strategic Framework*¹⁹. The CHC national programme board was intended to provide leadership and a nationally co-ordinated approach to CHC. However, the board did not have an explicit leadership role in respect of the Framework, although a number of its initiatives related to or supported elements of the Framework. Nor did it have a role in monitoring the consistent interpretation and application of the Framework across health boards.

1.46 All national programmes in support of the Welsh Government's *Five-Year Service, Workforce and Financial Strategic Framework*, including CHC, were ended during the final quarter of 2011. The CHC national programme was succeeded by a National Complex Care Steering Group which held its inaugural meeting in January 2012. One of the priorities for the National CHC Advisory Group was to clarify its relationship with the National Complex Care Steering Group, which has the potential to provide a strategic leadership role. However, this clarity has not been achieved as the steering group has made little progress and has had little impact to date:

- a it is chaired by a health board director of primary, community and mental health, whereas the CHC national programme board had been chaired by a health board chief executive;
- b whilst a paper outlining the proposed role of the National Complex Care Steering Group has been developed, the group has no formal terms of reference;
- c a detailed project plan has not been developed as had been intended; and
- d following its inaugural meeting, the steering group has not met subsequently, with all four planned meetings being cancelled.

¹⁹ *Delivering a Five-Year Service, Workforce and Financial Strategic Framework for NHS Wales*, Welsh Assembly Government, June 2010



Part 2 - The Framework has delivered a number of benefits, but it has not been fully implemented across Wales and safeguards are not fully in place to provide assurance that decisions are fair and consistent within and between health boards

Governance within health boards in relation to CHC has been strengthened, but provides only limited assurance that people are being dealt with consistently and fairly

Since the launch of the Framework, health boards have made variable progress in developing local CHC policies and procedures

- 2.1** The Framework required health boards and their partners to review their operational processes to ensure they comply, and to have in place relevant policies and guidance. Reference is made in various sections of the Framework to the need to develop specific policies or protocols, such as for handling disputes with local authorities over CHC eligibility decisions. These requirements are intended to help ensure that the Framework is consistently applied across primary, community and hospital services, and to help ensure staff are clear about local arrangements for implementing the Framework. The revised CHC Framework in England²⁰ is more prescriptive than the Welsh Framework, and includes a detailed and comprehensive list of what should be included in local protocols and procedures.
- 2.2** More than one year on from the implementation date of the Framework, health boards had made variable progress against the Framework's requirements to review their policies and processes. In response to our surveys, all health boards and most local authorities stated that they had reviewed their operational processes to ensure they comply with the Framework. However, Powys Teaching Health Board had not reviewed its discharge processes, and two of the 17 local authorities that responded to the survey had not considered the extent to which their existing practices complied with the Framework.
- 2.3** During the last quarter of 2011, we examined a range of documents from health boards. These showed that the progress made in developing local CHC policies and protocols varied substantially between health boards. Aneurin Bevan Health Board had a well-developed range of agreed policies and protocols, but in some other parts of Wales policies were still in draft form, and were not always comprehensive and detailed.
- 2.4** All seven health boards had some form of operating policy or procedure for CHC, typically a version of the Framework document that had been amended to reflect local arrangements. However, in four health boards operational policies were still in draft. The extent to which local arrangements were set out in detail also varied between health boards.

²⁰ National Framework for NHS Continuing Healthcare and NHS-funded Nursing Care, November 2012 (Revised), Department of Health

2.5 Where they had been developed, local CHC policies were not always comprehensive. Our review of health board CHC policies (including those still in draft) identified that they did not prescribe local arrangements for:

- a** the transition from children to adult services in six health boards;
- b** resolving disputes between organisations over CHC eligibility in one health board; and
- c** an independent review panel to consider disputes from individuals against CHC decisions in one health board.

2.6 During our fieldwork visits and at the workshop for health board CHC leads, we were told of a number of reasons why some health boards had made only limited progress in developing policies and procedures. These included limited staff capacity to deal with the CHC agenda, organisational changes following NHS restructuring, and the large number of local authority partners that they needed to consult.

2.7 We found some examples of health boards learning from one another through sharing policies. For example, the fast-track policy (for people who need to be considered for CHC because of a rapidly deteriorating condition) that was developed by Aneurin Bevan Health Board has been adopted by Hywel Dda and Abertawe Bro Morgannwg University Health Boards.

2.8 However, there is further scope for sharing policies and procedures across Wales, not least to help ensure the consistent application of the Framework. Some health boards support the development of standardised all-Wales assessment forms and related documentation, to help reduce the variability of assessment across Wales and to incorporate the best elements of current practice. There is also potential for further development of all-Wales protocols, for example in England there is a national fast-track pathway²¹.

2.9 In the three health board areas we visited, the documentation used to support assessments varied, and each had different strengths and weaknesses. For example, Aneurin Bevan Health Board had useful prompts to record progress with carer assessments; and Betsi Cadwaladr University Health Board had comprehensive consent and capacity forms and prompts for whether the individual and their family have been informed of the potential financial implications of the CHC assessment. The documentation used to support other stages of the CHC process, such as for scrutiny panels and reviews, also varied between the three health boards.

Responsibilities for CHC are spread across a health board, which can lead to inconsistent approaches within a health board

2.10 All health boards have a lead for CHC who is supported by a central or dedicated team of staff. The teams vary in size and their role is to develop and oversee local policy and its implementation, and provide training and support to front-line staff. They have a key role in ensuring a consistent approach to dealing with CHC across the health board. They will also often be involved in the processes for dealing with disputes over CHC eligibility decisions and handle any CHC-related complaints.

²¹ Fast Track Pathway Tool for NHS Continuing Healthcare, November 2012 (Revised), Department of Health



2.11 CHC assessments are undertaken in hospital or community settings by front-line staff, such as nurses and therapists, working within operational teams. Teams can be based, for example, around clinical groupings or geographic localities. Operational teams hold the budgets for CHC and function independently of the dedicated CHC team. Nurse assessors, who undertake CHC and NHS-funded nursing care assessments and reviews of people in care homes, may be part of the front-line operational teams or be part of the dedicated CHC team.

2.12 The dedicated CHC team and the operational teams within a health board need to be clear on their respective responsibilities and to work together effectively. In two of the three health boards we visited, we found inconsistent practices in implementing the Framework within the health board area. For example, at the time of our fieldwork, the dedicated CHC team in Hywel Dda was taking steps to address inconsistencies between the procedures and practices being applied across the three operational areas within the health board.

2.13 In Betsi Cadwaladr University Health Board, operational management of CHC is centred on clinical programme groups. One clinical programme group has developed a CHC procedure in addition to the health board-wide CHC procedure, which has led to staff completing duplicate forms. The operational staff we interviewed as part of our fieldwork were confused as to which procedure to follow and which documents to complete. Also, at that time the dedicated CHC team reported that:

- a** there was an incentive for clinical programme group staff to move any dispute with local authority partners through the informal resolution stage, as the dedicated CHC team would then take over responsibility once the formal dispute stage was reached; and
- b** the dedicated team had responsibility for handling disputes made by individuals against an eligibility decision, but clinical programme group staff could place a low priority on undertaking any review or reassessment that was required.

Standard training has been rolled out across Wales to mixed effect, a broader range of training is needed, and the number of hospital and community staff requiring expertise in CHC provides an ongoing challenge

2.14 The Framework stipulates that all relevant health and social care staff should be made aware of the new guidance and procedures through appropriate training. Training was to be provided to all members of the multidisciplinary team in hospital involved in hospital discharge, as well as community-based professionals involved in assessing the need for, and planning of, long-term care.

2.15 The Welsh Government developed with stakeholders an all-Wales NHS Continuing Healthcare training programme for NHS and social services staff, to be run by health boards across Wales. The one-day training programme generally received positive feedback from the health and social service practitioners we interviewed during our fieldwork visits. Eight of the 18 local authorities that responded to our survey also referred to the benefits of joint training in responding to our question on what they saw as the main successes in implementing the Framework. However, in part of Hywel Dda Health Board area, the training had been reduced to a half-day session.

2.16 An additional half-day follow-up course on the Framework had been run in two of the health boards we visited, and was about to be rolled out in the third. In addition, Aneurin Bevan Health Board has developed specific training on fast-track procedures and on conflict resolution. Training materials on multidisciplinary team working are also available on the all-Wales complex care forum website²².

2.17 Our surveys of health boards and social services departments identified that arrangements for monitoring which staff have received CHC training are highly variable across Wales. Three out of seven health boards and two out of the 16 responding local authorities (two local authorities did not answer this question) reported that they did not have readily available a record of which staff had received training on the new CHC

Framework. The absence of monitoring makes it difficult to identify and target staff who have not received training.

2.18 In our surveys, we also asked health boards and social services departments to estimate the proportion of relevant staff who had received training on the new Framework. Their responses indicate that, across Wales, there are still considerable numbers of staff who have not yet received the relevant training (Figure 8). At our workshop, health board CHC leads told us that attendance at the standard CHC training day has been dominated by nursing and social services staff, with few GPs or medical staff attending. No health board has made training in CHC mandatory for relevant staff, although health board CHC leads told us that they expect it to be taken up by appropriate staff.

Figure 8 - The estimated proportion of different staff groups that have received CHC training

| | Number of health boards estimating the percentage of staff trained | | | | Did not respond |
|---|--|--------|--------|---------|-----------------|
| | 0-25% | 26-50% | 51-75% | 76-100% | |
| Multidisciplinary team members involved in hospital discharge | 0 | 3 | 3 | 0 | 1 |
| Community-based professionals involved in assessing the need for, and planning of, long-term care | 0 | 2 | 3 | 1 | 1 |
| | Number of local authorities estimating the percentage of staff trained | | | | Did not respond |
| | 0-25% | 26-50% | 51-75% | 76-100% | |
| Hospital-based social workers | 0 | 0 | 5 | 11 | 6 |
| Community-based social workers | 0 | 0 | 9 | 8 | 5 |

Source: Wales Audit Office survey of health boards and social services departments, October 2011

²² The Complex Care Forum was developed as part of the national CHC programme and facilitates shared learning and provides a forum for debate around complex care and CHC.



2.19 The need for further training around CHC was widely recognised by the managers and staff involved in CHC who we interviewed.

A common view from health board CHC leads was that, despite the training that has been provided, staff can still be confused about when to assess someone for CHC and how to apply the primary health need approach. In addition, health board CHC leads and the health and social services practitioners we interviewed raised with us some specific areas where further joint training is needed. These included training in the application of the DST to support consistent decision making, chairing skills for those running multidisciplinary meetings (which health board CHC leads identified as one of their top priorities), and conflict resolution and managing difficult situations.

2.20 Ensuring that all relevant staff develop an appropriate level of expertise through initial and ongoing training is a particular challenge for health boards. For example, there were 945 district nurses across Wales in 2011, with Cardiff and Vale University Health Board employing the highest number at 248 district nurses²³. We estimate that for Cardiff and Vale University Health Board to ensure that just this group receives annual training would require around two training sessions per month throughout the year.

2.21 There are alternative ways of developing expertise around CHC that may be more practical than training a large number of staff, many of whom will not be dealing with CHC cases on a regular basis. Some health boards have developed specialist front-line posts for CHC. At one of the district general hospitals

in Hywel Dda, a single nurse completes all CHC DSTs. This person is well trained and experienced in CHC, and CHC and nursing staff told us that the post was resulting in more robust and consistent CHC assessments. Developing and extending this approach across Wales and into other service areas could provide a more efficient and effective way of dealing with the challenges faced in developing a workforce with expertise in CHC. Training up CHC leads within district nursing or mental health services may also be more efficient than seeking to develop expertise across all team members.

Although there is scrutiny of individual cases that are assessed as eligible for CHC, health boards cannot provide assurance that the Framework is being applied fully and that they make fair, timely and consistent decisions both within and between their organisations

2.22 The Framework makes it clear that health boards are responsible for ensuring consistency, in terms of their decisions on eligibility for CHC. But, in the absence of robust monitoring and audit, health boards cannot provide assurance that within their organisation potential cases are being put forward for assessment, and are subsequently assessed, on a consistent basis. The Framework states that health boards:

- a** should use effective auditing to monitor and ensure there is no discrimination on the grounds of race, disability, gender, age, sexual orientation, religion or belief, or type of health need (for example, whether the need is physical, mental or psychological)²⁴; and

²³ StatsWales, 2011

²⁴ This requirement is now embedded in the Equality Act 2010, which came into force after the Framework was published and includes nine 'protected characteristics' – these are the grounds upon which discrimination is unlawful. The characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

b may wish to improve practice and ensure a consistent application of the Framework by reviewing the pattern of recommendations made by the multidisciplinary teams (separately from the approval of recommendations in respect of individual cases).

2.23 All health boards have scrutiny panels which examine individual cases that have been deemed eligible for CHC by multidisciplinary teams. Scrutiny panels also commonly cover NHS-funded nursing care cases. However, we found that scrutiny and monitoring processes, covering all potential CHC cases, are not well developed:

- a** apart from processes invoked as a result of disputes and complaints, health boards do not have arrangements in place to routinely monitor or review cases that are not put forward for CHC assessment or are deemed ineligible by multidisciplinary teams;
- b** only three health boards reported any internal or clinical audit of CHC processes; and
- c** only Abertawe Bro Morgannwg University Health Board reported having reviewed over time the pattern of eligibility recommendations from multidisciplinary teams.

2.24 In the absence of any peer review arrangements between health boards, they also cannot provide assurance that the Framework is being consistently interpreted and applied between health boards. During our review, some health boards told us that they have been addressing inconsistencies in the interpretation and application of CHC criteria across former local health board areas that they now cover. Peer review would help establish whether similar inconsistencies between health boards exist.

2.25 The need to provide assurance about the consistent application of the Framework, both within and between health boards, is particularly important given the risk that financial pressures could impact upon eligibility decisions. In our survey of social services departments, we asked about the issues that had the potential to undermine the effective implementation of the Framework. Four authorities made specific reference to the financial pressures faced by public bodies and the perception that this is influencing decisions on eligibility.



The Framework has provided a basis for more consistent assessment of care needs and decisions on CHC eligibility, although local arrangements vary across Wales and do not always meet the Framework's requirements

The assessment of an individual's care needs is not always undertaken at an appropriate time and is not always comprehensive

2.26 The Framework states that once a decision has been made to consider someone for CHC, the first stage should be to undertake a full assessment of the person's care needs. CHC health board leads at our workshop told us that the Framework has led to more consistent, thorough and detailed assessments of care needs. However, the assessment requirements outlined in the Framework are not being met consistently.

2.27 The Framework states that 'the multi-disciplinary team carrying out an assessment for CHC should always consider whether all available interventions that may impact on health needs have been implemented and whether there is further potential for rehabilitation and regaining independence, and how the outcome of any treatments or medication may affect on going needs'. The Framework goes on to state that: 'Assessments in acute settings can sometimes poorly represent an individual's capacity to maximise their potential. Similarly, assessments conducted in poor quality care environments may also artificially inflate health care needs.'

2.28 In our survey of health boards, we asked whether it was routine practice that at the outset of the CHC assessment process, consideration was given to whether any further steps could be taken to improve the condition and independence of the individual in the immediate term. We found that:

- a** only two health boards stated that this practice was routine 'in all cases';
- b** four health boards stated that the practice occurred 'in most cases'; and
- c** one health board stated that the practice occurred only for 'some cases'.

2.29 At our workshop, some CHC health board leads told us that some patients are being assessed for CHC in acute settings inappropriately, because a focus on reducing the length of hospital stays and delayed transfers of care creates pressure on nurses to undertake assessments at too early a point in their recovery.

2.30 The Framework states that a comprehensive, multidisciplinary assessment of a person's care needs should be carried out and that this should include separate assessments by all relevant specialist and non-specialist staff. Depending upon the individual's circumstances, assessments may be required from nurses, therapists, GPs, consultants and social workers. However, in their survey responses, just three health boards stated that: 'In all cases' a comprehensive assessment of health and social care needs had taken place prior to the completion of the DST. The remaining health boards stated that this was the case 'most of the time.'

- 2.31** In their survey responses, health boards identified a particular problem in obtaining assessments from GPs. Either they were not being regularly completed or, when provided, they contained very limited information.
- 2.32** In two of the three health boards we visited, Betsi Cadwaladr and Hywel Dda, the assessments of care needs we examined as part of our case file reviews were largely restricted to nursing assessments. For example, in Betsi Cadwaladr University Health Board, three out of every four case files we examined included only a nursing assessment, and GP and consultant input was typically limited to signing their agreement to the recommendation arising from the assessment process.
- 2.33** In the third health board, Aneurin Bevan, more thorough multidisciplinary assessments of care needs, with input from nurses, therapists and social workers, were routinely to be found in the case files we examined. Many case files also evidenced input from GPs and consultants, although the time taken to obtain GP and consultant input frequently led to a delay in completing the assessment process. In addition to the nursing assessment, nine out of every 10 case files we examined contained an assessment from at least one other professional.
- 2.34** During our discussions with health board CHC lead nurses, some questioned the need to always seek an input to the assessment process from a GP, for example when an individual has not been in contact with their GP for some time. These health boards would like the Framework to be explicit about when it might be appropriate to exclude certain professionals from the assessment process.

The DST is intended to increase the consistency and transparency of decisions on eligibility for CHC, but some professionals consider it to be too long and repetitive, and it is not always being used as intended

- 2.35** The Framework states that once all assessments of care needs have been undertaken and collated, the multidisciplinary team should meet to complete the DST and determine eligibility for CHC. The CHC leads, nurses and social workers that we interviewed during fieldwork were generally supportive of the DST, which they considered helped to improve the consistency of decision making. At our workshop, CHC health board leads considered the increased transparency of decision making provided by using the DST to be one of the main benefits that the Framework has delivered.
- 2.36** However, health boards, social services departments and providers of advocacy services raised a number of concerns about the DST, and the most frequently reported concerns about the Framework from local authorities were about the DST. Half of local authorities that responded to our survey expressed concerns about the DST, including:
- a** it being too long, complex and repetitive, taking three hours or more to complete;
 - b** it not fitting well alongside the Unified Assessment Process used by health boards and local authorities, because the two processes use different domains or areas of assessment; and
 - c** it not fitting well alongside assessments used by mental health and learning disabilities services, especially in relation to the three psychological domains of the DST (cognition, mental health and behaviour).



- 2.37** Considerable time and resources are needed to assess someone for CHC in accordance with the Framework's requirements, both in completing and documenting assessments of care needs and the DST. Health boards, in their responses to our survey, and some of the staff we met during our visits to three health boards, expressed concern about the capacity of health and social services practitioners to deliver the Framework.
- 2.38** The Framework stresses that the purpose of the DST is to help determine eligibility for CHC, and on its own it is not designed as a tool to assess care needs. Therefore, regardless of eligibility for CHC, a robust multidisciplinary assessment process is required to assess care needs. However, at our workshop, health board CHC leads told us that, contrary to the Framework's requirements, on occasions the DST is being used as a care needs assessment tool.
- 2.39** In their responses to our survey, all health boards stated that they encountered problems in getting the right people involved in the multidisciplinary DST completion process:
- a** all seven health boards referred to problems with getting GPs to attend DST meetings;
 - b** 10 out of the 16 local authorities who responded to our survey referred to difficulties in getting social workers involved, especially if this related to a case that was closed to social services;
 - c** three health boards highlighted a lack of consultant input; and
 - d** two health boards referred to occasional problems with getting therapists to attend DST meetings, due to their heavy workloads.
- 2.40** In each of the three health board areas we visited, social workers attended most multidisciplinary meetings to discuss and complete the DST. However, in some parts of Wales we found evidence of tensions between NHS and social services staff, with:
- a** two local authorities commenting on their survey returns that social workers are often the only non-health professional attending the multidisciplinary meetings, with the result that they can feel like a 'lone voice' and pressurised into agreeing a decision;
 - b** conversely, some NHS staff that we interviewed during fieldwork told us that they felt intimidated by social workers who were better versed in CHC case law; and
 - c** a number of local authorities within Betsi Cadwaladr University Health Board area told us that they are often given short notice of the multidisciplinary meetings and do not always receive copies of completed DSTs.
- 2.41** In two of the three health boards we visited the DSTs we reviewed were generally completed comprehensively, but in Betsi Cadwaladr University Health Board standards at that time were highly variable, and we found examples of:
- a** the DST being sketchily completed, with reference made to attached assessments and care plans that did not always read easily across to the domains of the DST;
 - b** sketchy completion of the local checklist that accompanies the DST, with responses to various prompts on key tasks, such as whether all professional assessments have been completed, not being supported by evidence; and

- c supporting documentation, such as needs assessments and risk assessments being completed after completion of the DST.

2.42 The Framework makes clear that whilst the DST should inform decision making, it should not directly determine eligibility – it should not just be a matter of ‘adding up the scores’ in the DST to see if someone is eligible. Indicative guidelines on eligibility are set out in the tool (for example, if one area of need is at priority level, then this demonstrates a primary health need), but the Framework states that professional judgement should be exercised in all cases to ensure that the individual’s overall level of need is correctly determined.

2.43 However, in their written submissions to us Crossroads, which provides support to carers, stated that in its experience the DST is often used too prescriptively, with an overreliance on ‘the scores’ within a DST and little professional judgement being used on whether the person meets the primary health need requirement. This view was shared by health board CHC leads and a number of health and social service practitioners we interviewed as part of our fieldwork. At our workshop, health board leads identified that multidisciplinary teams can lack confidence in decision making around CHC and, as a result, can place too much reliance on the tool.

Health boards have put in place scrutiny processes around CHC assessment and decision making, but their effectiveness varies

2.44 The multidisciplinary team makes the recommendation about eligibility for CHC, but the Framework makes clear that it is the health board which makes the final decision. All health boards have set up panels (known as scrutiny panels) to confirm the conclusions of multidisciplinary team assessments of eligibility for CHC, and to ensure the quality and consistency of decision making.

2.45 The number and scope of scrutiny panels varies between health boards, but it is common for a health board to have separate scrutiny panels for people with physical health needs, mental health needs and learning disabilities. There might be more than one scrutiny panel within a health board to cover physical health needs; for example, there might be separate panels for each local authority area within a health board. Also, there might be a single scrutiny panel, or separate panels, covering mental health needs and learning disabilities. Scrutiny panels consider recommendations for CHC, NHS-funded nursing care and the proposed care packages.

2.46 Health boards have put in place different arrangements to help ensure consistency between their scrutiny panels. In Aneurin Bevan Health Board, an overarching quality assurance panel ratifies all cases from the five locality-based scrutiny panels and the combined mental health and learning disability panel. In some other health boards, senior members of the dedicated CHC team attend all scrutiny panels.



- 2.47** The size and composition of scrutiny panels varies. Most scrutiny panels have between five and 10 members, including staff from the dedicated CHC team, operational management, and senior nursing staff, with representatives from social services attending in some health boards. Scrutiny panels should not have a financial gatekeeping function and, in line with the Framework's requirements, we found no evidence that finance officers are participating in scrutiny panels, although they can attend in an observer capacity.
- 2.48** Scrutiny panels should not complete or alter DSTs. Nor should they overturn recommendations. However, they can refer cases back to the multidisciplinary team for further work, for example where:
- a** the DST has not been fully completed;
 - b** there are significant gaps in the evidence provided to support the recommendation; or
 - c** there is an obvious 'mismatch' between the evidence provided and the recommendation made.
- 2.49** As part of our survey, we asked health boards to provide information on the proportion of cases being returned by scrutiny panels. The extent to which health boards could provide robust data was highly variable, and most were only able to provide broad estimates. These indicated considerable differences between health boards. The overall rates varied from seven per cent at Aneurin Bevan Health Board to 45 per cent in Abertawe Bro Morgannwg University Health Board. Three health boards were able to provide data by type of case. This showed that:
- a** at Abertawe Bro Morgannwg University Health Board the proportion of mental health cases returned by scrutiny panels at 90 per cent was far higher than for physical health cases (50 per cent) and learning disabilities cases (10 per cent);
 - b** in Betsi Cadwaladr University Health Board the proportion of mental health and learning disability cases returned, at 30 per cent, was also higher than for physical health cases (seven per cent); but
 - c** in Hywel Dda Health Board the proportion of mental health and learning disability cases returned, at six per cent, was below the average for all types of cases (nine per cent).
- 2.50** We explored some of the reasons for these variations during our fieldwork visits. In Aneurin Bevan Health Board, we found that cases are actively screened by members of the dedicated CHC team and returned to multidisciplinary teams prior to them being presented to a scrutiny panel. Although this adds a further step to the process, it allows for further information, if needed, to be requested at an earlier point and will have contributed to the low level of returns from scrutiny panels.
- 2.51** In Betsi Cadwaladr University Health Board, we found that in some mental health teams few nurses had attended the national CHC training course, which had resulted in a lack of understanding of CHC processes by the staff who are required to take a lead role in CHC assessments. In addition, our case file review found that for some mental health cases the DST was very sketchily completed, although there was far more detailed Care Programme Approach documentation. However, there is a poor fit between the domains of the DST and the eight key areas of life on which needs are assessed under the Care Programme

Approach. In these circumstances, it would not be easy for a scrutiny panel to assure itself that the evidence provided in Care Programme Approach documentation adequately supported a CHC eligibility recommendation. Both of these factors are likely to have contributed to the comparatively high rate of return of mental health cases in Betsi Cadwaladr University Health Board.

2.52 In their responses to our survey all health boards stated that, in line with the Framework, scrutiny panels do not reject or overturn multidisciplinary team decisions. We did find some evidence to suggest that health boards might not always be meeting the Framework's requirements in this regard:

- a** NHS and social services staff in Betsi Cadwaladr University Health Board area told us about recommendations on eligibility being changed before panel or overturned at panel; and
- b** three local authorities in their survey responses referred to the scrutiny process overturning decisions made in multidisciplinary team meetings.

2.53 However, in our discussions with health board CHC leads, it was suggested that these concerns most likely relate to cases which were referred back to the multidisciplinary team for further work (as permitted by the Framework), or to cases in which the eligibility decision was accepted but the proposed care package was amended (which is not covered by the Framework). Our case file reviews found no evidence of scrutiny panels rejecting or overturning decisions on eligibility.

2.54 In some parts of Wales, social services are actively involved in scrutiny panels. This was the case in two of the health boards that we visited, Hywel Dda and Aneurin Bevan, and both health and social services staff told us that this encouraged better joint working, clearer communication and an opportunity to resolve any issues in a timely manner. Both these areas experience relatively low numbers of disputes between health and social services over eligibility for CHC.

2.55 In Betsi Cadwaladr, the third health board area we visited, scrutiny panels do not include social services staff. Our fieldwork in Betsi Cadwaladr identified that communication between health and social services over eligibility decisions was often slow, and that some cases were 'bouncing back' between CHC scrutiny panels and social service panels for assessing eligibility for local authority services. This health board area also had a large number of disputes between health and social services over eligibility for CHC.

2.56 We also found that Betsi Cadwaladr University Health Board has separate scrutiny panels for low-cost and high-cost cases. The rationale for the separation was to ensure closer scrutiny of high-cost care packages, but in practice this also results in more senior staff scrutinising the eligibility decisions relating to high-cost cases. The high-cost panel has a broader and more senior membership, and the low-cost panel, which can be attended by as few as three staff, was acknowledged by health board managers at the time to provide less robust scrutiny than the high-cost panel. This practice appears to be contrary to the principles underpinning the Framework, as all cases should be dealt with consistently and financial considerations should not be a factor in the extent of scrutiny of CHC eligibility decisions.



2.57 Hywel Dda Health Board also has different arrangements, whereby for people with physical health needs each of the three localities has a scrutiny panel to ratify eligibility decisions and another panel to confirm the proposed care package or commissioning arrangements. These panels are held on the same day and the health board told us that separating consideration of the two issues was proving beneficial as it gives greater clarity and transparency over the decisions made as part of the scrutiny process.

Health boards do not measure the timescales for assessment and decision making, but the target times set out in the Framework are unlikely to be routinely met

2.58 The Framework stipulates two timescales relating to assessment and decision making:

- a** CHC assessment processes should be completed within six weeks of the ‘referral’; and
- b** it should take six to eight weeks from the date of ‘the initial trigger’ to agreeing a care package.

2.59 The Framework states that people who need an assessment of eligibility for CHC should be identified through the initial assessment undertaken by health and social service practitioners as part of the Unified Assessment Process. This contact assessment should, when appropriate, lead to a referral for full consideration of CHC eligibility. The Framework also refers to the referral being as the initial trigger for the CHC assessment process. However, health boards are unable to monitor performance against assessment time targets because the start point, the initial trigger or referral date, is not routinely recorded.

2.60 The health and social services staff we met as part of our fieldwork also wanted greater clarity over the start point against which timescales should be monitored. A contact assessment is not the only trigger for a CHC assessment, which could also be triggered as part of discharge planning in hospital or as part of a case review of someone in a care home. The use of the term ‘referral’ also causes some confusion, because a formal process for referring a person for a CHC assessment is not routine practice. Nor is it clear whether the start point should be the first time a professional identifies that a person needs to be assessed for CHC, or the point at which a person has regained maximum health and independence and is therefore ready for a CHC assessment. The adoption of a screening tool, which could be used by any relevant professional, would help provide a clearer and more consistent starting point for measuring timescales; in England a CHC eligibility decision is expected to take place within 28 days of the completion of the screening tool.

2.61 In their responses to our survey, only three health boards stated that they seek to monitor exceptions to the timescales prescribed in the Framework. However, in one of these, Aneurin Bevan Health Board, monitoring was on a case-by-case basis as part of the scrutiny process. It did not involve any overall analysis of cases, such as the average timescales being achieved, the proportion of cases meeting the prescribed timescales, or the range of timescales.

2.62 Our case file reviews in the three health boards we visited confirmed the difficulties health boards have in agreeing and recording a start point for monitoring assessment and decision-making timescales, and we were unable to establish the extent to which health boards are meeting the targets. However, based on our case file reviews, we concluded that health boards are unlikely to be routinely meeting target times, because:

- a** the time taken between the first assessment for CHC and confirmation of the multidisciplinary team's decision averaged between five weeks and nine weeks; and
- b** the average time taken to complete assessments across each of the three health boards hid significant variations between individual cases, with some taking four months or more to complete.

2.63 During our fieldwork, health board staff told us that there are a number of reasons why the target timescales may not be met. These included the limited availability of relevant professionals and family members to participate in assessments; the fluctuating condition of some individuals, necessitating additional assessments; and cases being returned to the multidisciplinary team by the scrutiny panel for further consideration or information.

Fast-track arrangements are generally working well

2.64 The Framework states that health boards should put in place a fast-track process for the immediate provision of CHC for individuals with a rapidly deteriorating condition who may be entering a terminal phase of their lives. The fast-track process should reduce the amount of information required, the time taken to gather information and the timescales for making a decision.

2.65 Most health and social services staff we interviewed considered that the arrangements for fast track were working well. At our workshop for health board CHC leads, when we asked about which elements of the Framework were working particularly well, there was a consensus that fast-track arrangements are a particular strength across Wales, and that the arrangements were being used appropriately by staff. An audit undertaken by Aneurin Bevan Health Board confirmed that its fast-track processes were being used appropriately. However, some social services staff we met during our fieldwork in other parts of Wales raised concerns over the timeliness of some fast-track assessments.



- 2.66** In response to our survey, four health boards stated that recommendations for urgent packages of care through the CHC fast-track process are routinely actioned immediately. However, three health boards stated that on occasions immediate action was not taken because, for example:
- a** the proposed urgent package of care was inappropriate for funding through CHC as it solely involved putting a meal in a microwave;
 - b** there was insufficient evidence provided to support the need for a fast track; and
 - c** Hywel Dda Health Board told us that on a few occasions the significant demand for home care packages and lack of capacity by NHS or independent services had led to a short delay in the provision of the care package.
- 2.67** The Framework states that before removing a package of care that was put in place through the fast-track process, the case should be reviewed in accordance with the normal review process. As part of their survey responses, all health boards indicated that they routinely complied with this requirement.

The transition from children services to adult services is highly problematic

- 2.68** The Framework outlines a number of arrangements that are required for planning for the transition from children to adult CHC services. In most health boards, the Framework's requirements in this regard are generally not being met (**Figure 9**), and the transition from children to adult services was seen by health board CHC leads as a significant weakness across Wales.
- 2.69** Our fieldwork visits identified that some children who meet the eligibility requirements for children CHC are, on their transition to adult services, deemed ineligible under the adult framework. It is difficult to see a rationale for someone becoming ineligible for CHC just because they reach a certain age whilst their needs remain the same. The impact of the *Children and Young People's Continuing Care Guidance*, published in November 2012, will need to be closely monitored in this regard.
- 2.70** The transition from children to adult services is a very complex area that can be difficult for professionals to navigate. There are differences between children services and adult services and between NHS and local authorities in terms of policies and processes, eligibility criteria, the age at which transition to adult services takes place, and the types of service available. Health and social service practitioners told us during our fieldwork that the Framework does not reflect the complexities of transition.
- 2.71** All three health boards we visited were taking steps to improve transition arrangements. Aneurin Bevan Health Board had established a transition group to identify problems and develop solutions, and intended to establish a transition panel to deal with individual transition cases. Betsi Cadwaladr University Health Board intended to fund a transition nurse. And, in one part of Hywel Dda Health Board, a pilot transition team was in place.

Figure 9 - Performance against the Framework's requirements for the transition from children to adult services

| Framework requirement | Performance |
|---|---|
| Adult CHC should be appropriately represented at all transition planning meetings to do with individual young people whose needs suggest they may potentially become eligible for adult CHC (Framework paragraph 9.8). | In response to our survey, all health boards stated that they had experienced problems with this 'some of the time'. |
| Local authorities and LHBs should have systems in place to ensure that appropriate referrals are made whenever either organisation is supporting a young person who, on reaching adulthood, may have a need for services from the other organisation (9.8). | In their responses to our surveys, only two health boards and five out of 16 local authorities stated that they always achieved this. |
| Planning should commence when the child is aged 14 (9.10). | No health board stated that this 'always' occurred; one health board stated that this occurred 'most of the time'; four stated this occurred 'some of the time'; and two stated that this does not routinely occur. During our case file reviews, we found little evidence of planning commencing when the child reaches the age of 14. |
| At the age of 17, eligibility for adult CHC should be determined in principle so that, wherever applicable, effective packages of care can be commissioned in time for the individual's 18th birthday (or later, if it is agreed that it is more appropriate for responsibility to be transferred then) (9.10). | No health board stated that this 'always' occurs; four stated that this occurs 'most of the time'; one health board stated this occurs 'some of the time', and one health board stated that this does not happen routinely (one health board did not respond to this question). Our case file reviews showed variable performance, with some well-planned cases but also some cases where decisions had not been made when the person had reached 18 years of age. |
| A consistent package of support should be provided during the years before and after the transition to adulthood. The nature of the package may change because the young person's needs or circumstances change. However, it should not change simply because of the move from children to adult services or because of a switch in the organisation with commissioning or funding responsibilities (9.13). | Only one health board and no local authority stated that it was 'always' normal practice to maintain a consistent package of care during the transition to adulthood. One health board and five local authorities stated that it is not normal practice. The remainder indicated that this was either the case 'most' or 'some of the time'. |

Source: Wales Audit Office surveys of health boards and local authority social services departments October 2011, and case file reviews December 2011 to January 2012



Arrangements for reviewing continuing eligibility for CHC have been strengthened, but cases are not always being reviewed as frequently or as robustly as required by the Framework

CHC cases are not being reviewed in accordance with the requirements of the Framework but, since the introduction of the Framework, health boards have made some progress in dealing with backlogs of reviews

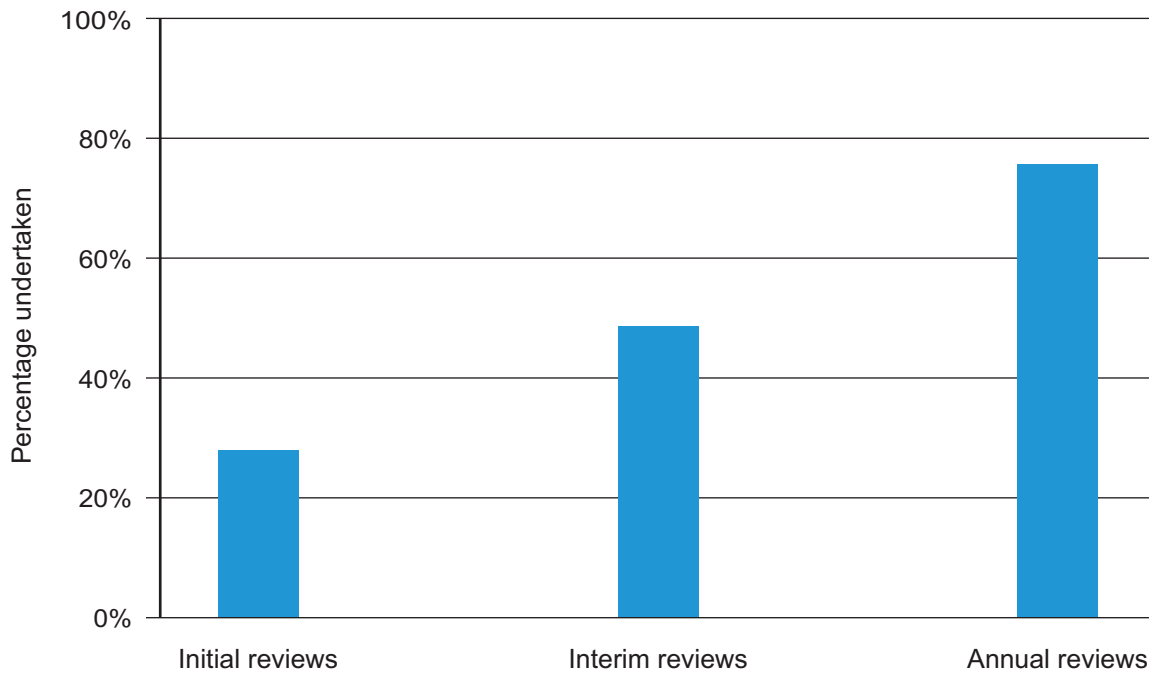
2.72 The Framework anticipates some people moving into and out of CHC eligibility, as their health care needs change over time, and an individual's continuing eligibility for CHC is subject to periodic review. The Framework states that, as a minimum, there should be an initial review of CHC cases within six weeks and an interim review after three months of the services being provided. Thereafter, reviews should be at least annually. The outcome of a review should be a determination of whether an individual's needs have changed, which should then determine whether the package of care needs to be revised and whether the person continues to be eligible for CHC funding.

2.73 Routine and comprehensive information on the extent and frequency of reviews carried out is not currently available across all parts of Wales. However, the roll out of the national CHC database should allow health boards to monitor their performance against the Framework's requirements in the future. As part of our case file reviews in the three health board areas we visited, we examined the extent to which reviews have taken place as specified by the Framework. We looked at whether initial, interim and annual reviews were carried out, and, if so, whether they were carried out at the times prescribed by the Framework.

2.74 In terms of whether reviews are carried out, we found that for a substantial number of cases the Framework's requirements for undertaking initial, interim and annual reviews are not being met (**Figure 10**).

2.75 The percentage of cases with an interim and annual review was similar across all three health boards, although the reviews were not always undertaken within the prescribed timescales. However, the percentage of initial reviews carried out varied from just 16 per cent at Aneurin Bevan Health Board and 17 per cent at Betsi Cadwaladr University Health Board to 40 per cent at Hywel Dda Health Board. The capacity to undertake reviews was an issue raised by staff at all three health boards we visited. Staff at Aneurin Bevan Health Board told us that the Framework's requirements for reviews are impractical given the existing level of resources. As a result, the health board does not seek to undertake initial reviews of all cases, but instead looks to target what it considers to be the most appropriate cases. The requirements for review are less onerous in England, where the first review should take place no later than three months after the initial eligibility decision, and then at least once a year subsequently.

Figure 10 - Percentage of initial, interim and annual reviews undertaken across the three health boards visited



Note

Annual reviews cover both pre- and post-Framework cases

Source: Wales Audit Office case file reviews undertaken between November 2011 and January 2012

2.76 In response to our survey, all health boards confirmed that they were working towards reviewing CHC cases that pre-dated the Framework on an annual basis, but given the volumes concerned, not all cases had yet been reviewed. Our case file analysis across three health boards during December 2011 and January 2012 established that 87 per cent of pre-Framework cases had

been reviewed since August 2010. We also examined whether annual reviews were being undertaken on cases that became eligible for CHC after the Framework had been implemented. Only a small number of the cases we examined had been due an annual review, and just 45 per cent of these cases had been reviewed.



2.77 We found that the timing of initial reviews, when undertaken, varied, but were generally carried out around the six-to-eight-week point, broadly in line with the prescribed timescales. However, where interim reviews were carried out, they often did not take place to the timescales prescribed by the Framework. Although one in two cases across the three health boards had an interim review, the reviews were more likely to occur around the six-month point rather than the prescribed three months. For annual reviews of cases approved before the implementation of the Framework, all three health boards we visited had made efforts to catch up on previous review backlogs, with some cases not having been reviewed previously for a number of years. Insufficient time has elapsed to fully assess the timing of annual reviews for post-Framework cases.

The robustness of reviews is highly variable, with a reluctance to move people out of CHC evident in some parts of Wales

2.78 The Framework states that reviews should follow the format of an assessment, consider all of the services received and be tailored to the individual. The Framework sets out a number of requirements for health boards and their partners to meet in undertaking reviews, but responses to our survey of health boards indicated that the requirements are not being universally met (Figure 11). Our case file reviews and fieldwork interviews at the three health boards we visited also identified that practices vary considerably, with:

- a** the rate of movement of people out of CHC following review being far more frequent in some health boards than in others;
- b** a reluctance by nursing staff to consider moving people out of CHC in one area we visited; and
- c** different approaches to the review of pre-Framework cases that might not have been accepted for CHC under the Framework criteria – some health boards only review eligibility if there is a clear change of need, whilst others will review the original decision even if needs have not changed.

Figure 11 - Performance against the Framework requirements for CHC reviews

| Framework requirement | Performance |
|--|--|
| <p>Reviews should follow the format of an assessment and use the DST (Framework paragraphs 8.1 and 5.25).</p> | <p>In response to our survey, all health boards stated that reviews follow the format of an assessment, but to varying degrees:</p> <ul style="list-style-type: none"> • three health boards stating this is 'always' the case; • three health boards stating that this is the case 'most of the time'; and • one health board stating that this is the case 'some of the time'. <p>Our case file reviews identified differing practices in the use of the DST as part of the review process across the three health boards visited. In Hywel Dda and Betsi Cadwaladr University Health Boards, reviews are based on nursing assessments only, with no evidence that assessments against each of the DST domains were reconsidered. Within mental health services in all three health boards, Care Programme Approach documentation tends to be used with no clear link to the DST domains.</p> |
| <p>It is beneficial for social services to be involved in reviews (8.5).</p> | <p>Two-thirds of responding local authorities said that they had difficulties ensuring that social services staff attend all CHC review meetings, largely due to competing demands upon their time. Two authorities stated that they now only send a social worker to a CHC review meeting if there is a threat of CHC funding being withdrawn. Generally, our case file reviews found little evidence of social worker input to reviews.</p> |
| <p>Prior to the review, individuals should be offered the opportunity to reassess their own needs and be offered appropriate support to do so (8.4).</p> | <p>In their responses to our survey, no health board stated that this was 'always the case'; two health boards stated this occurred 'most of the time'; one stated that this happened 'some of the time'; three stated that this was 'not normal practice'; and one stated that practices varied across the health board area.</p> |
| <p>A joint reassessment of the individual by the health board and local authority should take place prior to a withdrawal of CHC funding (8.15).</p> | <p>All health boards stated that this was always the case, but seven of the responding 17 local authorities reported that they were aware of occasions when CHC funding had been withdrawn without a joint reassessment taking place.</p> |

Source: Wales Audit Office surveys of health boards and Social Services October 2011, and case file reviews December 2011 to January 2012

2.79 The Framework does not explicitly state how health boards should oversee and confirm any change in eligibility following a review. However, across the three health boards we visited, scrutiny panels reviewed all cases in which there had been a proposed change in eligibility.



The effectiveness of joint working between health and social services is highly variable

There are significant variations in joint working arrangements between health and social care

2.80 The importance of joint working between the NHS and social services is stressed throughout the Framework. In our survey, we asked local authorities what they considered to have been the main successes in implementing the Framework and five of the 18 responses highlighted the improvements to joint working that had resulted from the Framework. At our workshop, CHC health board leads confirmed that improved joint working with local authority partners was one of the benefits that the Framework has delivered in some parts of Wales.

2.81 However, the responses to our surveys and discussions at the workshop of CHC health board leads also indicated that the extent and effectiveness of joint working between social services and health is highly variable. We also identified significant differences in the extent and effectiveness of joint working in the CHC assessment and review processes between and within the three health board areas that we visited. We found that:

- a** the extent of engagement of social services in health boards' scrutiny panels varied;
- b** the approaches of health boards in engaging social services in the development of local CHC operational policies varied, from consulting local authorities on policies through to formally agreeing policies with all partners;

- c** all three health boards had developed, or were developing, in conjunction with social services specific joint protocols, most notably in Aneurin Bevan Health Board where joint protocols have been developed for dispute procedures, fast-track processes and care home closures;
- d** Betsi Cadwaladr University Health Board was experiencing difficulties in agreeing a common approach with the six local authorities in its area;
- e** some joint health and social services posts had been established, most notably within the Hywel Dda Health Board area, at county director, heads of service and locality manager level; and
- f** in Betsi Cadwaladr University Health Board area, a lack of permanent staff appointments following reorganisation within the NHS was undermining joint working.

2.82 In two of the three health board areas we visited, Aneurin Bevan and Hywel Dda, senior health board and social services staff told us that they had positive and constructive joint working relationships. Relationships were far more variable across the Betsi Cadwaladr University Health Board area, and health and social services managers described relationships between the health board and Conwy and Denbighshire local authorities at that time as 'difficult'. At an operational level, the quality of working relationships was variable across all the three health boards we visited, and our interviews with health and social services staff revealed varying degrees of tension, conflict and trust.

2.83 The Framework highlights the importance of health boards contracting for services, such as care home placements, jointly with local authority partners. A number of initiatives are supporting the development of joint commissioning and contracting. These include a commitment in Sustainable Social Services²⁵ for local government to work with their NHS partners to develop a single approach across Wales; and the CHC programme board identifying this as a work stream in 2011-12.

2.84 However, there has been limited progress on the ground in developing joint commissioning and contracting arrangements for care home placements. Our fieldwork and our workshop for health board CHC leads identified examples of commissioning initiatives being undertaken within the NHS or within and between local authorities, but we did not find any examples of health boards and local authorities commissioning jointly. As a result, opportunities for improving value for money may have been missed. In addition:

- a** local authorities told us during our fieldwork visits that the differing contracting arrangements between the NHS and social care can undermine the consistency of care – for example, it can be appropriate for people experiencing a change in who funds their care (NHS or local authority) to remain in the same care home, but they may have to move because of the contracts each organisation has in place; and
- b** there can be a disincentive for care homes to provide places for people in receipt of CHC – NHS and local authority staff told us of examples where the combined fees paid to a care home by the local authority and the NHS contribution for NHS-funded

nursing care exceeded the rate being paid for a CHC placement, resulting in the care home providing more intensive or complex care for a CHC placement for a lower fee.

The number of disputes between health and social services varied and, although relevant policies and guidance are mostly in place, the time taken to resolve disputes is significantly longer than the target times set out in the Framework

2.85 The number of disputes between health and social services over CHC eligibility decisions in the health board areas we visited varied. Aneurin Bevan Health Board has had only one dispute since the Framework was introduced and this related to a cross-border issue. Although Hywel Dda Health Board had had just two disputes since the Framework was introduced, one of the local authorities reported that a number of potential disputes were in the pipeline. In Betsi Cadwaladr University Health Board, disputes were common, especially with Conwy County Borough Council where:

- a** an inter-agency dispute procedure had not been formally agreed;
- b** there was a distinct lack of trust between health and social services staff, with a confrontational approach, involving solicitors, evident;
- c** differences at a multidisciplinary team level were quickly escalated to a formal dispute stage;
- d** the local authority told us that communication from the health board was poor, there was a lack of clarity over who to contact within the health board, and response times were slow; and

²⁵ Sustainable Social Services for Wales: A Framework for Action, Welsh Government, 2011



- e the extent of the problems necessitated setting up a joint working task and finish group.

2.86 The Framework outlines a number of requirements in relation to handling disputes between health boards and social services departments. The responses to our surveys indicate that the extent to which the Framework’s requirements are being met varies across Wales (Figure 12).

Figure 12 - Performance against the Framework’s requirements in respect of disputes between organisations about CHC eligibility and funding

| Framework requirement | Performance |
|--|---|
| Health boards and local authorities should have in place locally agreed procedures or protocols for dealing with any disputes about eligibility for CHC (Framework paragraph 11.1). | At the time of our review of documentation from all health boards, Abertawe Bro Morgannwg and Cwm Taf did not have a separate policy or detailed local arrangements in their overarching CHC policy for dealing with disputes between agencies over eligibility for CHC. |
| Health boards and local authorities should have in place locally agreed procedures or protocols for dealing with any disputes about the apportionment of funding in jointly funded care packages (11.1). | In their responses to our survey, two of the seven health boards, Abertawe Bro Morgannwg and Powys, stated that they did not have a protocol with local authorities in place for resolving disputes over the apportionment of funding in jointly funded care packages. |
| Current CHC funding should not be withdrawn prior to the dispute being resolved (11.2). | Three of 17 responding local authorities stated that they were aware of occasions when the current CHC funding had been withdrawn prior to a dispute being resolved. |
| All stages of disputes procedures will normally be completed within two weeks (11.4). | Six of the seven health boards and all 13 responding local authorities stated that all the stages of dispute procedures were not normally completed within two weeks. Survey responses identified that typically it can take a number of months to resolve a dispute, sometimes more than a year. The reasons given by health boards and social services departments as to why the Framework timescales were not being achieved included the complexity of the cases, and the time taken to gather additional information and medical evidence. |

There is mixed evidence on the extent to which individuals and their families are being involved in the assessment process, and processes for gaining and recording informed consent and assessing mental capacity are very inconsistent

There is scope to improve the information on CHC that is made available to the public

2.87 CHC is a complex topic with its own distinct language, and ensuring people are well informed is a particular challenge. The Framework states that the person who is undergoing a CHC assessment and their family and/or carers should understand the process, and receive advice and information in a timely manner to enable them to participate in informed decisions about future care.

2.88 The Welsh Government developed a bilingual information leaflet for health boards to issue to people being assessed for, or in receipt of, CHC and their carers. The Welsh Government, with the support of Age Concern, has developed a more detailed guide on the CHC assessment process for the public. However, our fieldwork and survey responses identified that:

- a** inadequate stocks of the information leaflet have been maintained and some health boards had run out of supplies;

- b** some health staff were not routinely issuing the information leaflet to people being assessed for CHC and their carers;
- c** some health boards did not have the leaflet available in braille, minority languages and audio; and
- d** health boards do not issue copies of the detailed guide, although the guide can be found on their websites.

2.89 In their survey responses, health boards identified some gaps in the standard information that is made available. They considered that more public information is needed with regard to consent and capacity; joint care packages; the national CHC sustainability policy on care planning²⁶; and the availability of local advocacy support. One health board suggested that the use of examples of cases that met CHC eligibility criteria would help improve the public's understanding of CHC.

2.90 In their written submissions to us, some organisations providing support and advocacy to people being assessed for CHC, such as Age Cymru, reported very mixed experiences around how well people are kept informed about CHC assessment and decision-making processes. Experiences ranged from every meeting being 'clear and easy to understand' with things 'always well explained', through to 'the whole process being deliberately designed to be complex and hard for the public to understand' with the effect that 'the family throws the towel in'.

²⁶ A Sustainable Care Planning in Continuing NHS Healthcare operational policy was agreed by all health boards in 2011 which outlines the key factors that will be considered when developing care packages following an eligibility decision; these cover sufficiency, safety, quality, reliability and affordability.



The Framework confirms the requirement to obtain the informed consent of people being assessed for CHC, but the practice in obtaining and recording consent varies across Wales

- 2.91** The Framework states that an individual's informed consent should be obtained and documented before the process of determining eligibility for CHC begins and before any decisions are made. Unlike in England, the Framework does not make explicit the need for consent for sharing information between organisations, as well as for assessments, to be obtained from individuals.
- 2.92** The Framework in Wales stipulates that each professional involved, such as nurses, doctors and social workers, should each seek consent to conduct their individual assessments. The Framework in England is less onerous and does not expect that each professional obtains consent, rather that: 'it should be made explicit to the individual whether their consent is being sought for a specific aspect of the eligibility consideration process (eg, completion of the Checklist) or for the full process'.
- 2.93** Some health board and local authority staff told us during our fieldwork that the Framework has improved clarity over the requirements to obtain consent and the capacity of individuals to provide it. However, we found inconsistent practices relating to consent within and between health boards. For example:
- a** some health boards lack locally agreed protocols on the processes to be followed if there is a refusal of consent to a CHC assessment – in their responses to our survey, only four health boards stated that they had such a protocol, although one health board's protocol had not been agreed with its local authority partners;
 - b** the proportion of health staff involved in assessing patients that health boards estimate to have been trained in the process of obtaining consent was highly variable – with three health boards estimating this to be between 26 per cent and 50 per cent, one estimating this to be between 51 per cent and 75 per cent, and two estimating this to be between 76 per cent and 100 per cent (one health board did not respond to this question);
 - c** consent is not being gained for all individual specialist assessments – the evidence of consent we found in the case files we reviewed related to a single consent form rather than consent for each individual assessment;
 - d** the standard of consent forms varied across Wales – in Aneurin Bevan Health Board area the consent form in use related to sharing information, rather than being assessed for CHC, whereas Betsi Cadwaladr University Health Board had a comprehensive consent for assessment form; and
 - e** we frequently found a lack of evidence on case files that consent had been granted – where documentation included a prompt to indicate consent, it was often not completed and signed by the individual.
- 2.94** Entitlement to social security and other welfare benefits, such as the Independent Living Fund, that are available to support someone's living costs, may be affected by eligibility for CHC. Informed consent cannot properly be given unless an individual understands the potential impact of CHC on his or her benefits or allowances. As a result, the Framework states that the impact of CHC eligibility on benefit entitlements must be discussed with the person being assessed.

2.95 It is the role of social services to ensure that individuals are fully informed of the benefit implications of claiming CHC. However, it is important that NHS staff have a basic understanding of how benefits and allowances could be affected by CHC to allow them to effectively direct the person being assessed to social services. Some basic training on benefits and allowances is included in the initial training day on CHC that is run across Wales. However, from our case file reviews and interviews with nursing staff at the three health boards we visited, we found:

- a** that many nurses did not consider it to be part of their role to provide advice on benefits, and did not feel well equipped to do so; and
- b** little evidence that the potential impact of CHC on benefits or allowances had been discussed with people being assessed by either health or social services staff.

Health boards are inconsistent in the extent to which they routinely assess the mental capacity of people being assessed for CHC to give their consent and participate in decision-making processes

2.96 Most patients who are likely to be offered a CHC assessment have significant health care needs. Their ability to provide their consent to the CHC process can often be impaired by their mental capacity or physical ill health that affects their ability to communicate their consent. The Framework states that:

- a** if there is a concern that an individual may not have the mental capacity to give their consent or to participate effectively in the decision-making process, consent should be determined in accordance with the Mental Capacity Act 2005 and the associated code of practice; and

- b** if an individual lacks the mental capacity either to consent to or refuse an assessment, a 'best interests' decision should be taken, and documented, as to whether or not to proceed with the assessment of eligibility for CHC.

2.97 The evidence from our case file reviews suggests that the extent to which mental capacity is considered as part of the assessment process varied across the three health boards. We looked for evidence that standard documentation prompted the consideration of mental capacity, that mental capacity had been considered and that, where appropriate, copies of 'best interest' forms were placed on the case files. We concluded that robust arrangements for assessing mental capacity operated in Aneurin Bevan Health Board, the effectiveness of the arrangements across Betsi Cadwaladr University Health Board varied, and in Hywel Dda Health Board there was little evidence to suggest that the mental capacity of people being assessed for CHC was being routinely considered by operational staff.

There is mixed evidence on the extent to which individuals and their families are being involved in the assessment process

2.98 The Framework encourages the active involvement of individuals and their families or carers during all stages of their assessment for CHC and the planning of their care. At our workshop, CHC health board leads told us that the Framework had increased the focus on involving individuals and their families or carers in the CHC assessment process. However, responses to our survey of health boards indicated that the Framework's requirements for involving individuals and their families were not always being met (Figure 13).



Figure 13 - Performance against the Framework’s requirements in respect of disputes between organisations about CHC eligibility and funding

| Framework requirement | Performance |
|---|--|
| Individuals should always be given the opportunity to participate in the completion of the DST (Framework paragraph 5.28). | In their responses to our survey, two health boards stated that people being assessed were ‘always’ given the opportunity to participate in the completion of the DST, with the remainder stating this occurred ‘most of the time’. |
| Individuals should always be given the opportunity to be supported or represented by a carer or advocate as part of the completion of the DST (5.28). | Four health boards stated that individuals are always given the opportunity to be supported or represented by a carer or advocate as part of the completion of the DST, with the remainder stating this occurred ‘most of the time’. |
| Review timescales should be communicated in writing to the individual and their relatives (8.3). | One health board stated that it does not communicate review timescales in writing to the individual and their relatives, with a further two stating that this occurred ‘some of the time’. |
| Individuals should be offered the opportunity to reassess their own needs prior to a review (8.4). | Three health boards stated that it was not normal practice to offer patients the opportunity to reassess their own needs prior to a review, with a further health board stating that that it was normal practice ‘some of the time’. |

2.99 From our case file reviews, we found that the files in support of the DST in Aneurin Bevan and Betsi Cadwaladr University Health Boards consistently recorded the views of individuals and/or their families. However, in Hywel Dda Health Board the evidence was less conclusive.

2.100 During our fieldwork visits, some health and social care practitioners told us that the Framework requirement that the individual and his or her family should be invited to the DST meeting was an appropriate way to involve people in the assessment for CHC. However, some practitioners raised concerns about the length of DST meetings, which can often last for longer than three hours, the technical language and jargon used in the meetings, and the stress that attendance at DST

meetings can create for the individual or family member. These practitioners considered that there are better ways to involve people. For example, in some of the case files we examined, we found clearly documented notes of meetings between nurses and the individual and family members that had taken place both before and after the DST meeting.

2.101 In their written submissions to us, organisations that provide advocacy services have stated that individuals and their carers have had very mixed experiences about the extent to which they have been involved in CHC processes. Experiences ranged from ‘always been given an opportunity to speak at any point during a meeting’ through to ‘being ignored, intimidated and made to feel stupid’.

2.102 Both Age Concern and the Older People’s Commissioner for Wales expressed concerns over communications between health board staff and patients and their families. For example, the Older People’s Commissioner for Wales questioned the extent to which older people are well informed about CHC and how proactive professional staff are in helping people understand CHC. She also pointed to a lack of routine communication with patients and their relatives on progress and the next steps in the process.

There is evidence to suggest that in some areas, the needs of carers are not being fully assessed

2.103 The Framework’s requirements relating to carers’ assessments are not being consistently met across Wales (Figure 14). Our case file reviews found that in Aneurin Bevan Health Board, carers’ assessments were regularly offered and recorded within case files. In the other two health board areas we visited, we found little evidence from case files that carers’ assessments were being offered. However, interviews with health and social service practitioners in these health board areas pointed to carers’ assessments being carried out routinely by social services staff.

Figure 14 - Performance against the Framework’s requirements in respect of carers’ assessments

| Framework requirement | Performance |
|---|---|
| Where informal carers are being asked, or are offering, to provide substantial care on a regular basis, they have a right to have their needs as a carer assessed; health boards and local authorities must inform carers of this right (Framework paragraph 6.23). | In their responses to our survey, only one health board stated that carers were ‘always’ informed of their right to a carer’s assessment, with a further health board stating that this occurred ‘most of the time’. Four health boards stated that this occurred ‘some of the time’, and one stated they ‘did not know’ how frequently this was occurring. |
| A further carer’s assessment should be considered at the time of a review (8.4). | Only one health board stated that staff routinely consider whether a further carer’s assessment should be undertaken at the time of a review; two health boards stated this happens ‘most of the time’, with three stating that this happens ‘some of the time’; and one health board stated this was not routine practice. |



Part 3 - There is a significant risk that the national project to deal with retrospective claims for CHC will not process all cases by the agreed deadline, and new backlogs of retrospective claims have developed in health boards

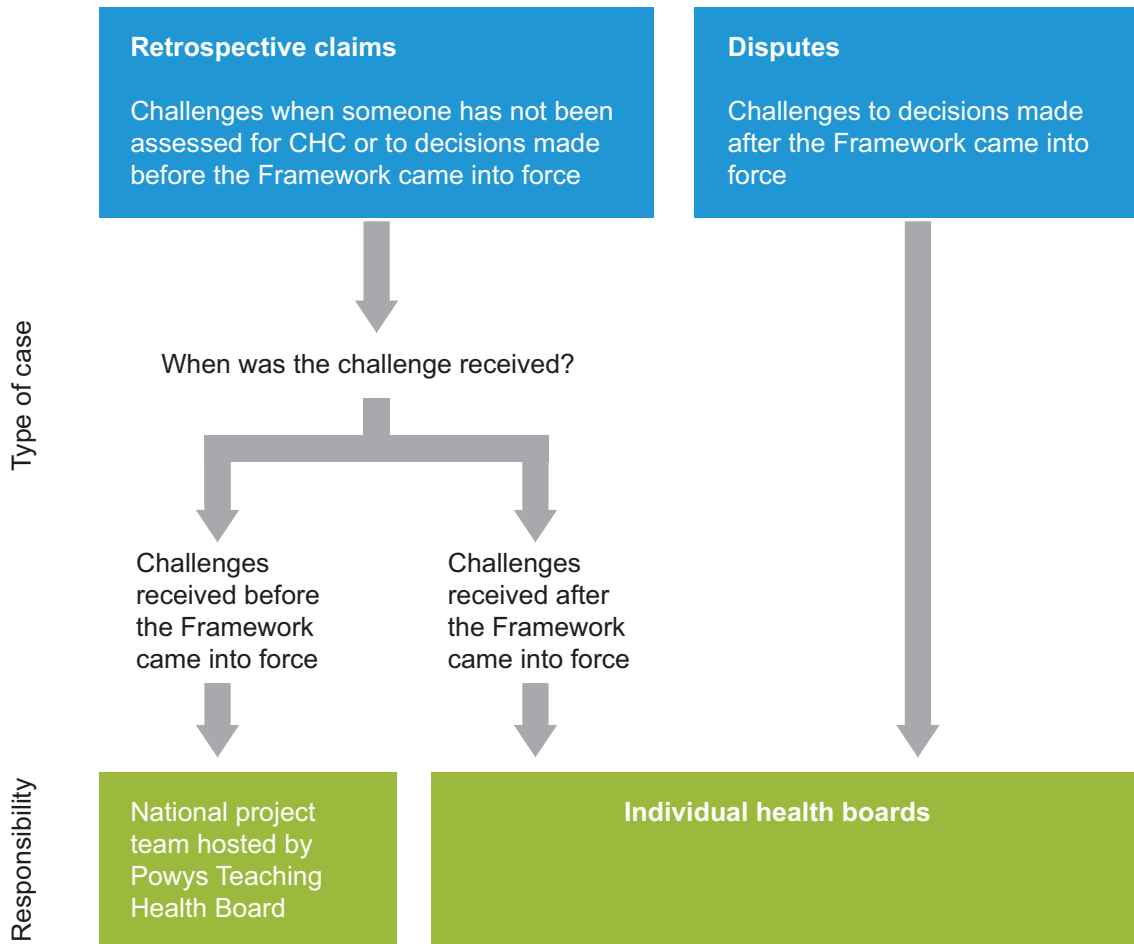
Many of the challenges around CHC eligibility have not been dealt with promptly, and although there is a longstanding deadline for clearing the cases being dealt with by a national project team, no deadline has been set for the cases that health boards are dealing with

Responsibility for dealing with retrospective CHC claims is either with a national project team or with individual health boards depending upon the date of the claim

- 3.1** There are two types of situation in which someone or their family can challenge health boards over their eligibility for CHC:
- a** retrospective claims – these relate to cases where someone was not previously assessed for CHC or where, prior to the introduction of the Framework in August 2010, an assessment resulted in an ineligibility decision; and
 - b** disputes – these relate to cases where an individual or their family request the health board to reconsider an eligibility decision made after August 2010.

- 3.2** Successful challenges result in the reimbursement of the care home fees paid by the individual, plus interest. The responsibility for processing these cases has changed over time, but currently rests either with a national project team hosted by Powys Teaching Health Board or with individual health boards (Figure 15). Responsibility for any financial reimbursement rests with the originating health board.

Figure 15 - Responsibility for handling retrospective claims and disputes





National arrangements were originally set up to deal with retrospective claims relating to cases up to 2003, and the subsequent setting of a deadline for claims to be submitted led to a big increase in the number of cases

- 3.3** In February 2003, the Health Service Ombudsman found that a number of people had been wrongly charged for elements of their care when they should have been treated as eligible for CHC and all their care provided free by the NHS.²⁷ The ombudsman recommended that efforts should be made to remedy any financial injustice to patients where the CHC criteria, or the way they were applied, were not clearly appropriate or fair. The recommendation was accepted in Wales and in England.
- 3.4** In 2004²⁸, arrangements were established with what is now Powys Teaching Health Board, which allowed people to claim retrospectively that they (or their deceased relative) had been eligible for CHC but were wrongly charged for care between 1996 and 2003. Claims for periods subsequent to 2003 were to be processed by the local health board where the claimant lived.
- 3.5** Following an announcement by the Welsh Government in July 2009 that no new retrospective claims relating to the period up to April 2003 would be considered if received after 4 December 2009, there was a considerable influx of new claims. Following the announcement, around 3,500 potential new retrospective claims were received by 4 December 2009. Claimants were given until 17 May 2010 to provide the required legal entitlement to pursue a claim and proof that they had paid care home fees during the claim period. A total of 2,485 claims were validated

to move forward, with a further 418 possible claims pending with mitigation for not meeting the May deadline.

In June 2011, the national arrangements were revised to cover all retrospective claims up to August 2010, and a deadline set to clear all these cases by June 2014

- 3.6** The arrangements for dealing with retrospective claims were amended in June 2011²⁹, and Powys Teaching Health Board's responsibility was extended to cover all retrospective claims relating to periods up to 15 August 2010, the Framework's implementation date. To limit the numbers of cases being dealt with by the Powys project, the arrangements were subsequently changed in September 2011 to include only those cases where a claim had been received before 15 August 2010.
- 3.7** Although the Public Services Ombudsman for Wales was critical that a large number of retrospective cases had been allowed to build up, he accepted that the Welsh Government's proposals to tackle the backlog were reasonable. The Welsh Government subsequently confirmed in 2011 that all claims submitted before 15 August 2010 should be cleared within a three-year timeframe and set a deadline to clear all cases by June 2014.
- 3.8** The arrangements within the Powys project for dealing with individual cases were revised in June 2011, with the aim of having a robust assessment process in place that leads to a decision as quickly as possible. A performance management group was also established to direct and oversee the national project. The group is chaired by the project lead director and includes representatives from health boards and the Welsh Government.

²⁷ NHS funding for long term care, Health Service Ombudsman, February 2003

²⁸ Welsh Health Circular (2004) 54

²⁹ Welsh Government Circular 13/2011

- 3.9** The assessment process has one of three potential outcomes:
- a** matching – eligibility for the full period of the claim is agreed by project staff;
 - b** negotiation – discussions are held between the project staff and the claimant and result in all parties agreeing eligibility for part of the claim period, or agreeing that the case was not eligible for CHC; or
 - c** panel hearings – for complex cases where it is difficult to determine eligibility, or where cases have not been resolved by negotiation, a panel makes a final decision on the case.
- 3.10** The panel consists of an independent chair; a clinician with a background in the claimant's health condition; a senior clinician with knowledge of CHC, who is from a health board in Wales but not associated with the health board who provided care to the claimant; and a representative of a local authority that, where possible, is not associated with providing care to the claimant.

Health boards have been confused about their responsibilities for retrospective claims, and the timescales for dealing with retrospective claims and disputes are unclear

- 3.11** The Welsh Government did not formally communicate to health boards its decision in September 2011 to change the criteria, from the claim period to the date the claim was made, for determining whether the Powys project or individual health boards are responsible for dealing with retrospective claims. The Welsh Government did confirm the change to health board CHC leads who attended the National CHC Implementation Group meeting in September 2011, but the CHC leads for two health boards did not attend this meeting.

- 3.12** Whilst June 2014 has been set as a deadline for the clearing of retrospective claims being processed by the Powys project, the Welsh Government has not set a timetable for clearing the retrospective claims that are being managed by health boards. The Welsh Government told us that it intends to consider the timescales associated with the clearance of claims by health boards as part of its forthcoming review of the Framework.
- 3.13** In addition to dealing with retrospective claims, health boards are also responsible for handling disputes over decisions made after the implementation of the Framework. An individual may apply to the health board for an independent review of a decision on eligibility for CHC if he or she is dissatisfied with the:
- a** procedure followed in reaching a decision on eligibility for CHC; and/or
 - b** application of the primary health need consideration.
- 3.14** The Framework outlines a number of requirements for health boards to meet in dealing with disputes. Health boards should first seek to resolve any disputes informally before they refer the case to an independent review panel. However, other than stating that NHS organisations should deal promptly with any request to reconsider decisions about eligibility for CHC, the Framework does not include standards or guidelines for the maximum time it should take to resolve a dispute.

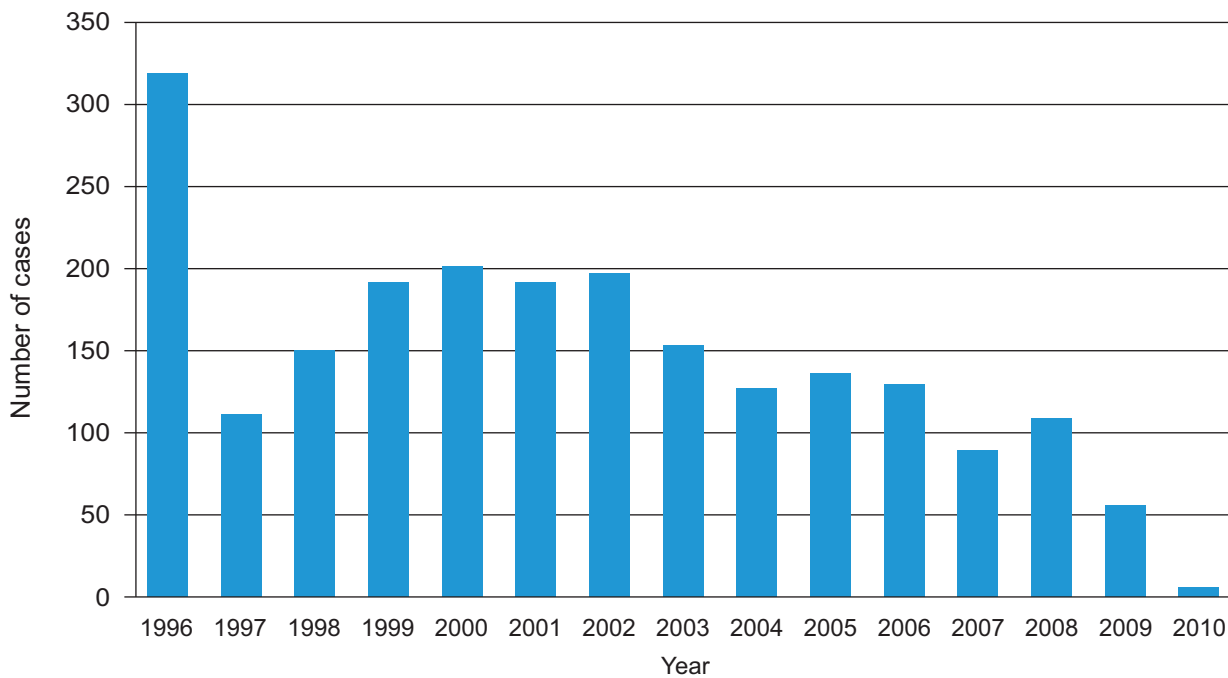


A failure to deal promptly with retrospective claims and disputes is unfair on the individuals concerned

3.15 As at May 2012, the retrospective claims being dealt with by the Powys project, but which had not been resolved, related to periods dating back up to 17 years (Figure 16). The claim periods involved can also cover many years, with the longest claim period at that time being more than 14 years. Given the timescales involved, more than four in every five cases are being pursued by family members on behalf of a relative who has died.

3.16 The claimant bears the cost of any care fees whilst a retrospective claim or dispute is outstanding, but if successful the claimant is reimbursed the relevant fees. As a result, delays can lead to financial hardship and distress for successful claimants up until the time that the claim or dispute is resolved. For example, the Alzheimer’s Society told us of one case where a person with dementia was moved from the care home they were in, away from a familiar environment and to the detriment of their health, as the family could not afford the cost of the care home while the case was being reconsidered.

Figure 16 - Powys project retrospective cases – year in which claim period commences



Source: Wales Audit Office analysis of retrospective claims database as at May 2012

The national project for dealing with retrospective claims has made limited progress and, despite additional funding and reassurances from Powys Teaching Health Board that the June 2014 deadline to clear all claims will be met, in our view there remains a significant risk that the deadline to clear all claims by June 2014 will not be achieved

Progress has been limited and a significant number of cases remain to be processed

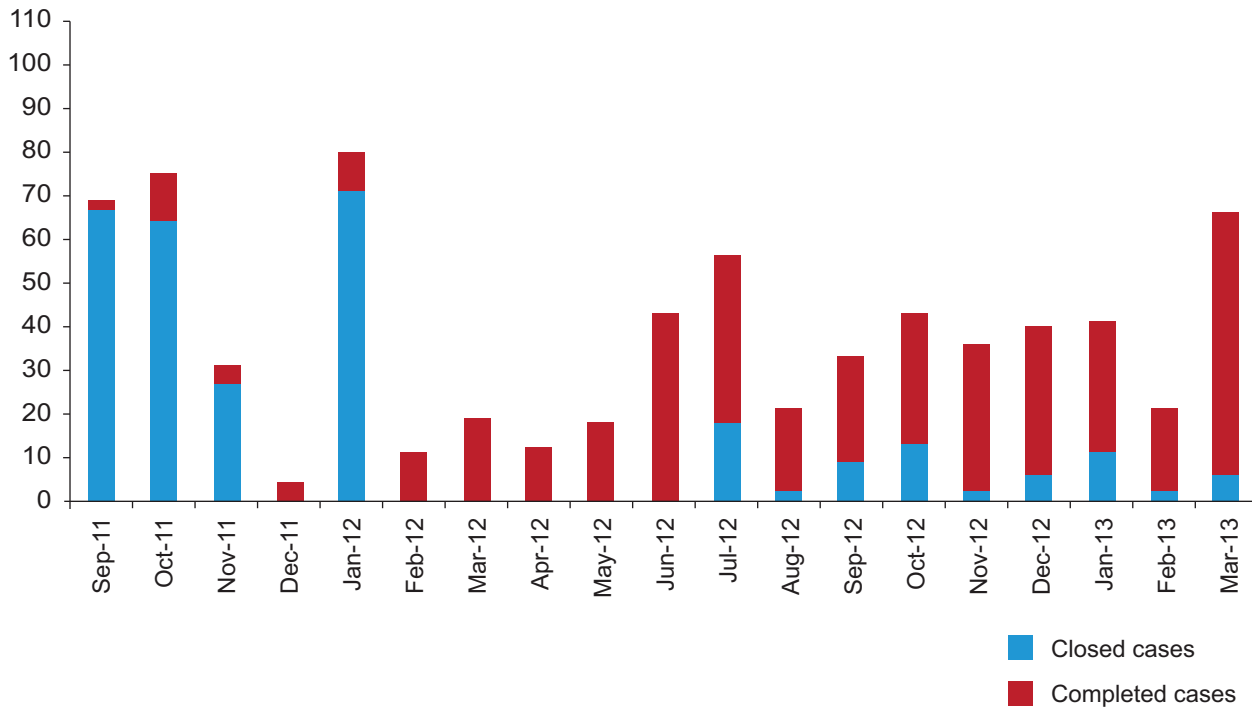
- 3.17** The project team has developed an action plan and a timetable which details the target number of cases that need to be completed in each six-month period. Quarterly reports on progress are also provided by the project director to the performance management group. However, an overarching business plan, including an assessment of key risks and how these could be addressed, was not developed at the outset of the project.
- 3.18** Between September 2011 and March 2013, 421 claims had been completed and a further 289 claims had been closed³⁰. Over the same period, the average number of cases completed or closed was 37 per month (Figure 17). This leaves 1,541 claims to be processed in the remaining 15 months of the initial three-year timescale for clearing all cases.
- 3.19** Of the completed cases, the majority (90 per cent) resulted in a full or partial settlement of the claim. The proportion of claims settled by matching (27 per cent) and in particular by panel (six per cent) is below the Powys project team's original expectations of 40 per cent and 30 per cent respectively. Over double the proportion of cases (67 per cent compared to 30 per cent) have been settled by negotiation than the project team had originally expected. Settling through negotiation, rather than referring to a panel, reduces the time taken to settle and is likely to be less stressful for the people making the claim.
- 3.20** Dealing with all outstanding cases by the deadline of June 2014 will be very challenging because, as at the end of March 2013:
- a** it requires the completion and closure of an average of 103 cases per month, which is far higher than the rates achieved to date (Figure 17);
 - b** review action had not started on 376 (24 per cent) of the 1,541 outstanding cases; and
 - c** a large majority of the 1,165 cases where action had started were cases that involved a solicitor, rather than Powys project staff, undertaking the initial work, whereas the remaining cases are dependent upon project staff, who are already stretched, undertaking the initial work.³¹

³⁰ Closed cases are where claimants are unable to provide proof or payment or proof of legal authority, or where they have decided to withdraw their application.

³¹ Where claimants are represented by a solicitor, the review process commences with the solicitor reviewing the evidence from health and social care records, and preparing a detailed chronology. For people not represented by a solicitor, this stage is carried out by Powys project special investigators.



Figure 17 - Retrospective cases closed and completed September 2011 to March 2013



Source: Powys project

The efficient processing of retrospective claims is constrained by difficulties in accessing clinical records and inconsistent practices relating to proof of payment

3.21 To process retrospective claims for CHC, the Powys project team requires access to the relevant clinical records that are held by individual health boards. The relevant case files, assessments and other documentation are often held in different locations within a health board, and the Powys project team considers that the time taken to obtain the relevant clinical records has contributed to the slow progress in completing retrospective claims. As a result, health boards are now required to provide the necessary records within six months of the case being activated

by the Powys project team. If the records are not provided by the six-month point, the Powys project team will undertake the review with the records that are available, which could favour the claimant.

3.22 A key part of the initial process of dealing with a retrospective claim is ensuring that the person making the claim is able to provide proof that they have paid the relevant care home fees. Many of the retrospective claims were submitted many years ago and had proof of payment requested and checked by NHS organisations at that time. The Powys project director told us that a lack of adequate scrutiny of the evidence provided and the need to adhere to relevant all-Wales financial guidance on proof of payment has led to problems

with some of the cases that the project has subsequently taken over. This had resulted in health boards not now accepting some original proof of payment evidence and decisions. Given the substantial passage of time that will have elapsed in some cases since the original proof of payment was supplied, it could be difficult for some claimants to find and provide the additional evidence now required.

Additional resources have been made available to reduce the risk of the national project overrunning and the Welsh Government has strengthened its monitoring of progress, but significant risks remain

3.23 In May 2012, the Powys project team estimated that, without additional resources, it would take until June 2016 to complete all outstanding cases, and that:

- a** additional direct costs of £1.7 million would be incurred, due to the need to employ staff for longer; and
- b** forecast interest payments on successful claims would be £1.6 million higher than originally estimated, due to the increased time taken to settle cases.

3.24 The projected overrun reflected, most significantly, problems in recruiting appropriately trained clinical advisors and in retaining special investigators. In addition, the project director told us that the timescales taken to clear cases were, in practice, far in excess of those originally estimated.

3.25 In July 2012, the Welsh Government (50 per cent) and health boards (50 per cent) made available an additional £1.6 million to increase the number of special investigators from seven to 16; the number of clinical advisors from 10 to 16; and the number of staff providing administrative support from three to six. The project director is confident that the increased staffing supported by the additional funding will be sufficient to ensure the project meets the June 2014 deadline.

3.26 Bimonthly Powys project group meetings that review the progress made have been held over the last two years. Welsh Government officials have attended these meetings since they commenced. From December 2012, the Welsh Government has prepared quarterly briefings for senior officials and the Minister for Health and Social Services on the progress made in dealing with retrospective claims by the Powys project and health boards. The briefings include data on the number of cases closed, completed and outstanding. The Welsh Government told us that it had also sought and received assurances from Powys Teaching Health Board that the project will meet the June 2014 deadline.

3.27 Despite the increased funding and strengthened monitoring by the Welsh Government, the recruitment and retention of Powys project team members remains a significant risk to the achievement of the June 2014 deadline. This is because, as at the end of April 2013:

- a** three clinical advisors and eight special investigators had left the team since June 2011;



- b** due to staff turnover, the number of special investigators needed to be in post to meet the deadline had increased from 16 to 18 whole-time equivalents;
- c** the full complement of required staff had not been reached – the number of clinical advisors in post had reached 13.4 of the planned 16 whole-time equivalents, and for special investigators this had reached 14 of the 18 whole-time equivalents; and
- d** although 1.8 whole-time equivalent clinical advisors and five whole-time equivalent special investigators had been appointed but had not then started in post, two special investigators were working their notice and a further three were likely to leave the team.

3.28 Once recruited, special investigators, who are often graduates in their first jobs, take time to be trained and become fully operational. Steps have been taken to minimise turnover by moving away from recruiting law graduates into special investigator posts, as they tended to move on quickly. However, as the project moves closer to its completion:

- a** further turnover is likely as staff look for their next job;
- b** notice periods, at four weeks for a special investigator and eight weeks for a clinical advisor, may lead to gaps before any replacement can be in post; and
- c** it may become increasingly difficult to fill what will become short-term posts.

Health boards are struggling to deal with the retrospective claims that they are responsible for processing

Health boards have received large numbers of retrospective claims and there is a risk that further claims may be made in the future

3.29 Health boards are responsible for all retrospective claims relating to claim periods between April 2003 and August 2010 that were received after the Framework came into force. They are also responsible for handling any disputes over decisions made under the Framework. In December 2012, the Welsh Government commenced quarterly monitoring and reporting of the progress with all retrospective cases, including those being dealt with by health boards. However, at the time of our review there was no central monitoring of the number of cases received by health boards, the number outstanding, or of the progress being made in processing them. In December 2012, the Welsh Government commenced quarterly monitoring and reporting of the progress with all retrospective cases, including those being dealt with by health boards.

3.30 In total, between 16 August 2010 and 30 September 2012, health boards received 1,264 retrospective claims and disputes against decisions made after August 2010. Betsi Cadwaladr University Health Board does not differentiate between retrospective claims and disputes, but across the other health boards, 87 per cent were for retrospective claims.

3.31 There was a large increase in the number of cases received during 2012. Across all health boards, 817 new retrospective cases and disputes were received between March 2012 and September 2012. Health board CHC leads told us that this trend continued with, for example, 119 new cases received in Betsi Cadwaladr University Health Board between 30 September 2012 and 9 November 2012. Health board CHC leads told us that the increase in cases related to retrospective cases and reflected:

- a** the handover of cases from the Powys project team following the change in responsibilities for retrospective cases; and
- b** the knock-on effect of the Department of Health in England announcing staged cut-off dates for all retrospective claims – with claimants in Wales not realising that the cut-off dates applied only to England.

3.32 Health board CHC leads were expecting to continue to receive new retrospective claims until the 31 March 2012 cut-off deadline in England was reached. In Wales, the Minister for Health and Social Services announced in November 2012 that the Welsh Government intends to introduce a rolling cut-off date for future claims³². On its introduction, this may result in a large number of claims being submitted as the first cut-off is likely to cover cases going back as far as April 2003. Thereafter, a rolling cut-off for making a claim, based on a maximum elapsed time from the original eligibility decision, should have a smaller impact on the number of claims.

3.33 There is potential for new challenges relating to health board decisions on the start date for funding cases previously assessed as eligible for CHC. One of the issues raised in a report by the Public Services Ombudsman for Wales concerned the point at which funding should commence, and the lack of Welsh Government guidance on this issue.³³ In response, the Welsh Government provided interim guidance on 30 April 2013³⁴ which confirmed that:

- a** a health board's responsibility for funding CHC commences at the point at which the multidisciplinary team met and completed the DST, rather than the date at which the scrutiny panel confirmed the multidisciplinary team's decision; and
- b** if there has been an 'unreasonable delay' in the multidisciplinary assessment process (defined as exceeding 56 days to reach a final decision, unless there are certain 'exceptional circumstances'), then there should be reimbursement of any payments for care made by the individual during the period of the unreasonable delay.

3.34 The guidance does not require health boards to review previous cases to ensure they comply with these requirements. However, individuals or their representatives may challenge health boards if they believe that at least one of these requirements was not met in the past.

³² Written Statement by the Welsh Government, *Progress in managing retrospective Continuing NHS Healthcare (CHC) claims*, 29 November 2012, Lesley Griffiths AM, Minister for Health and Social Services

³³ *The investigation of a complaint on behalf of Mrs S against Cardiff and Vale University Health Board*, A report by the Public Services Ombudsman for Wales, Case: 201101810, 24 April 2013

³⁴ MD/ML/001/11 Supplementary Guidance to Welsh Health Circular 015/2010: *Interim Guidance for National Continuing Healthcare Framework for Implementation in Wales May 2010*, Welsh Government, 30 April 2013



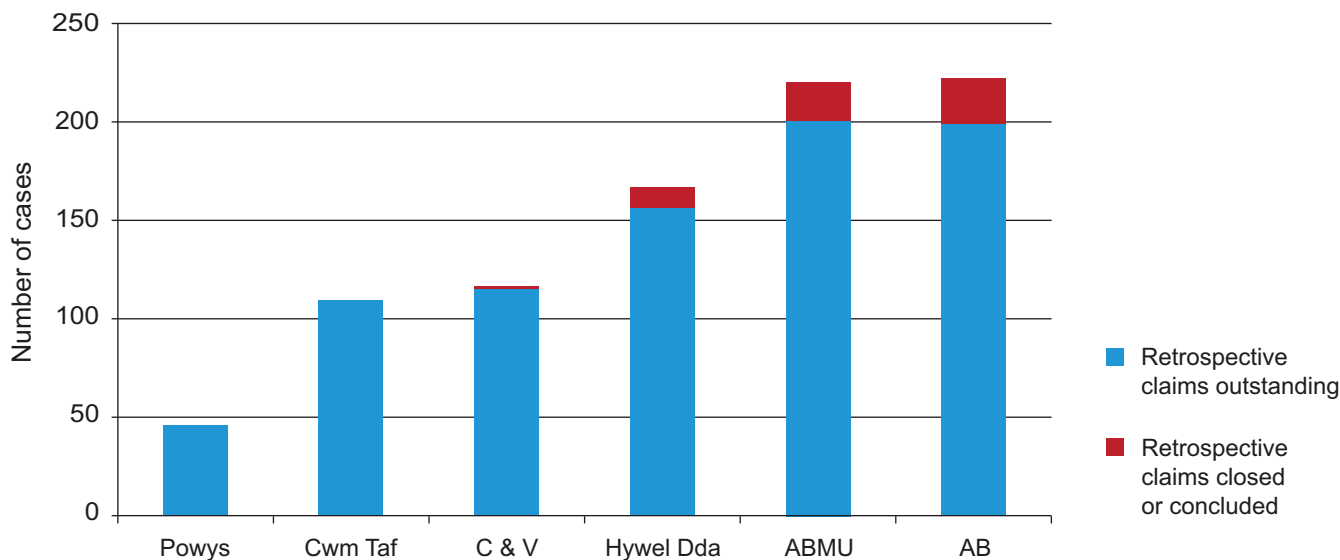
Health boards do not have a common process for dealing with retrospective claims, and have made very limited progress in clearing them

3.35 At the time that the Framework was issued, health boards were not expected to deal with such large numbers of retrospective claims, and they have not agreed a common approach for dealing with cases. The Welsh Government's interim guidance issued in April 2013 states that health boards should 'follow the same principles adopted by the Powys project of timely and efficient processes'. However, the guidance does not expand on this requirement, which is open to interpretation by health boards. Also, health boards have not agreed to adopt, for example, something similar to the matching and negotiating stages used by the Powys project team. The lack of a common approach increases the risk of inconsistent treatment of retrospective cases between health boards and with the Powys project team.

3.36 The Framework requires health boards to deal promptly with any request to reconsider decisions about eligibility for CHC. However, health boards are struggling to deal with the number of retrospective claims and disputes. As at the end of September 2012, only 164 (13 per cent) of the total 1,264 cases received had been cleared. Three out of every five completed retrospective cases had resulted in a full or partial repayment of fees, and two out of every five completed disputes were successful.

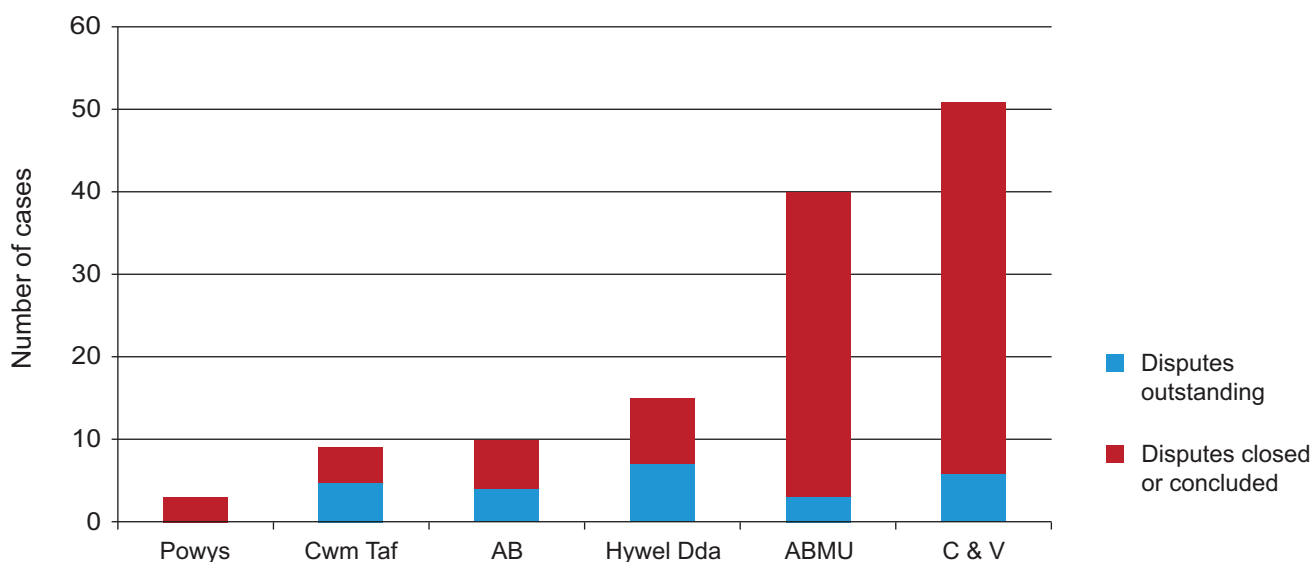
3.37 Health boards have made least progress in clearing retrospective cases. Across the six health boards that could provide disaggregated data, only 53 of the 881 retrospective cases had been concluded by the end of September 2012 (Figure 18). In contrast, 103 of the 129 disputes had been concluded during the same time period (Figure 19). Betsi Cadwaladr University Health Board could not provide disaggregated data, but has received the second-highest number of retrospective cases and disputes, and between August 2010 and September 2012 had cleared only nine out of 252 cases.

Figure 18 - Retrospective cases concluded between August 2010 and September 2012 and outstanding as at September 2012 by health board



Note
 Betsi Cadwaladr University Health Board could not disaggregate data for retrospective cases and disputes
 Source: Wales Audit Office survey of health boards, October 2012

Figure 19 - Disputes concluded between August 2010 and September 2012 and outstanding as at September 2012 by health board



Note
 Betsi Cadwaladr University Health Board could not disaggregate data for retrospective cases and disputes
 Source: Wales Audit Office survey of health boards, October 2012



3.38 The progress made by different health boards in dealing with retrospective claims and disputes is mixed. The total number of retrospective claims and disputes concluded between August 2010 and September 2012 varied from three at Powys Teaching Health Board to 56 at Abertawe Bro Morgannwg University Health Board. The proportion of all cases that have been concluded varies from less than four per cent at each of Cwm Taf and Betsi Cadwaladr Health Boards to 28 per cent in Cardiff and the Vale Health Board.

3.39 The Welsh Government told us that it was made aware of the backlog of work in health boards in autumn 2012. In response, it raised the issue with the relevant health boards and discussed it with the National CHC Advisory Group.

It is unclear whether health boards have now allocated sufficient resources to deal with the large number of retrospective claims and disputes in a timely way

3.40 On the basis of the slow rate at which retrospective claims are being cleared, all health boards had not given sufficient priority, or allocated appropriate staff resources, to deal with retrospective claims and disputes. For example, as at the end of March 2012, three of seven health boards had only concluded four or fewer cases since August 2010. When we visited Betsi Cadwaladr University Health Board in January 2012, staff acknowledged that they had insufficient resources to deal with the volume of cases. This was compounded by operational staff giving little priority to the work needed to support the central team in processing cases. The lack of adequate resources had also resulted in the health board:

- a** struggling to keep on top of related correspondence, and having to react to requests for updates on progress from individuals and their solicitors; and
- b** prioritising cases that are likely to be quicker to conclude, rather than by chronological order.

3.41 An increase in staff resources should increase the rate at which cases are completed. We asked health boards to provide details of the staff resources allocated to retrospective claims and disputes, as at March 2012 and as at September 2012. Establishing the level of staff resources can be difficult because staff can work on retrospective claims and disputes as part of a much wider role. Where this was the case, we asked health boards to estimate the proportion of time spent on dealing with retrospective claims and disputes. We found that:

- a** health boards, such as Cwm Taf and Powys, that had allocated the lowest resources had also concluded the lowest number of cases (four and three respectively, compared to 31 cases on average across the other health boards);
- b** three health boards increased their staff resources between March 2012 and September 2012, including one (Cardiff and Vale University Health Board) that had doubled its resources from three to six whole-time equivalents;
- c** three health boards had maintained their level of allocated resources over the same period; and
- d** one health board (Betsi Cadwaladr) had lost but not replaced three whole-time equivalent staff.

3.42 In January 2013, all health board CHC leads told us that business cases to increase staffing to deal with retrospective claims and disputes had either been agreed or were being considered by their health board. However, it is too soon to tell whether the proposed increase in resources will be sufficient to deal with the volumes of outstanding cases in a timely manner. As at the end of September 2012, more than 1,050 retrospective cases (which includes an estimated figure for Betsi Cadwaladr University Health Board) were outstanding across Wales. The number of outstanding cases may well have increased since September 2012, as it is likely that the number of new cases received since this time will have outstripped the number of completed cases.

Some health boards were slow to set up the dispute processes outlined in the Framework, and independent review panels are not always operating effectively

3.43 The Framework requires health boards to agree local processes for handling and resolving disputes against CHC eligibility decisions, including timescales, and to make these available to the public. Our analysis of relevant health board documents provided to us in the final quarter of 2011 found that three health boards had produced standalone policies for the dispute process, one of which was still at the draft stage. A further three health boards had incorporated local arrangements for disputes into their main CHC policy document, although one of these was also still at the draft stage. The final health board had not detailed any local arrangements, and its CHC policy simply repeated the Framework's requirements relating to disputes.

3.44 Policies and procedures relating to disputes, where they existed, were not always explicit about the target timescales for dealing with individual cases. Betsi Cadwaladr University Health Board told us that target timescales had not been included in its written procedures because of the extended period it was taking to resolve disputes.

3.45 The extent to which local policies relating to disputes have been made available to the public is variable. In their responses to our survey, Powys Teaching Health Board stated that its policy had not been made public as it had not then been ratified by its board; and Cardiff and Vale University Health Board said that it had not made the relevant information widely available to the public, although it does provide this information on request. However, it is difficult to see how some of the other health boards that reported making the information available to the public were achieving this. For example, two health boards where a policy was still in draft stated that the relevant information had been made publicly available.

3.46 The Framework requires each health board to establish an independent review panel to consider disputes from individuals against CHC decisions. Two of the three health boards we visited did not establish independent review panels until November 2011 (Hywel Dda Health Board) and February 2012 (Betsi Cadwaladr University Health Board). Our survey of all health boards and fieldwork visits to three of them identified some other requirements of the Framework relating to the operation of independent review panels that were not being met, including:



- a** Powys Teaching Health Board reported that it had not designated an individual to be responsible for administering the review procedure, for example by collecting information for the independent panel by interviewing appellants, family members and carers;
- b** in Betsi Cadwaladr University Health Board and Powys Teaching Health Board the independent review panel did not routinely have access to independent clinical advice; and
- c** in Betsi Cadwaladr University Health Board there was no facility to properly record the panel's deliberations.

3.47 In investigating complaints, the Public Services Ombudsman for Wales has also raised concerns about the operation of some independent review panels. For example, in one case the ombudsman concluded that a panel's approach had been too restrictive and there was too little consideration and application of CHC guidance; and in another, the ombudsman expressed concern that a panel had failed to identify extensive and significant flaws in the information that had been provided to it.

Appendix 1 - Study methods

In undertaking the work, we gathered evidence from a broad range of sources between November 2011 and October 2012.

Health board and local authority surveys and document reviews

All seven health boards completed a survey in November 2011, providing information on the progress made locally in implementing the Framework. The survey covered governance arrangements; assessment, decision making, review, and dispute processes; and joint working arrangements with social services.

At the same time, we also undertook a survey of local authorities. This covered the requirements the Framework places on social services, including joint working arrangements with health boards. Eighteen of the 22 local authorities replied to the survey. We did not receive a response from Cardiff Council, the Isle of Anglesey County Council, Merthyr Tydfil County Borough Council, and Vale of Glamorgan Council. Powys County Council replied to the survey but only answered two of the 18 questions.

We also requested a range of documents from health boards, including local CHC policies and protocols, performance monitoring reports, and terms of reference and minutes of scrutiny and independent dispute panels. These were provided by all health boards between November and December 2011.

Fieldwork visits

We visited Hywel Dda, Aneurin Bevan and Betsi Cadwaladr University Health Board areas between December 2011 and January 2012. We undertook a case file review in each area to examine the extent to which Framework requirements were being met. In total we examined 212 case files, covering people with a mix of mental health, learning disabilities and general health needs.

We also interviewed a cross-section of staff in each area. Within social services we met with the director of social services and a selection of operational managers and social workers. Within health boards, we interviewed the director with lead responsibility for CHC, CHC managers, and a selection of operational managers, nurse assessors, community and hospital nurses, consultants, and chairs of the independent review panels.

In addition to the three health board areas, we also visited the national CHC project for retrospective claims hosted by Powys Teaching Health Board and interviewed the lead director.



Workshop for health board CHC leads

In April 2012, we ran a workshop for health board CHC leads. All health boards attended the workshop, which was designed to gather views on what elements of the Framework were working well, what issues existed, and what the priorities for action should be. The workshop allowed all health boards to input their views to the review, and a report summarising the output from the day was issued to participants.

Data gathering and analysis

We gathered and analysed a range of data from health boards. In May 2012, all health boards provided data on the number of NHS-funded nursing care and CHC cases at the end of the last four financial years. In October 2012, all health boards provided data on the number of disputes and retrospective cases and the staff resources available to deal with these. We also analysed health board financial accounts to generate data on CHC and NHS-funded nursing care expenditure each year between 2004-05 and 2011-12. To help our understanding of what lay behind the data on the number of cases and expenditure patterns, we met with the CHC management team from Abertawe Bro Morgannwg University Health Board.

We also analysed the database used by the national CHC project for retrospective claims that records the progress and outcome of individual cases.

Stakeholder views

A range of local and national organisations providing support and advocacy to people with complex care needs were given an opportunity to provide a written submission of their experiences and views on CHC. We received written submissions from Age Concern, Alzheimer's Society, Crossroads, and the Older People's Commissioner for Wales. The submissions were received between July and November 2012, with some organisations including case studies or individual experiences.

As part of our fieldwork visits, we examined recent complaints relating to CHC at the three health boards. We reviewed a variety of reports from the Public Services Ombudsman for Wales, and met with his team in November 2012. We also met with Hugh James Solicitors at the start of the review and in May 2012 to gather their views and experiences of CHC.

Welsh Government and national groups

At a national level, we interviewed officials from the Welsh Government who have responsibility for CHC. We attended and reviewed the outputs from the CHC National Programme, the Complex Care Forum, and the National CHC Implementation Group and its successor, the National CHC Advisory Group.

Appendix 2 - Timeline of key events

| Date | Key event |
|---------------|--|
| 1999 | <p>The Coughlan Court of Appeal judgement ruled on the limits of provision of nursing care (in a broad sense ie, not just registered nursing care) by local authorities for a person living in residential accommodation. Key points from the judgement include that:</p> <ul style="list-style-type: none"> • provision would be appropriate if the nursing services are 'merely incidental or ancillary to the provision of the accommodation' and 'of a nature which it can be expected that an authority whose primary responsibility is to provide social services can be expected to provide'; • a local authority is excluded from providing services where the NHS has in fact decided to provide those services; • where a person's primary need is a health need, the responsibility is that of the NHS, even when the individual has been placed in a home by a local authority; and • an assessment of whether a person has a primary health need should involve consideration of not only the nature and quality of the services required but also the quantity or continuity of such services. |
| 2001 | <p>The Health and Social Care Act 2001 stated that care from a registered nurse cannot be provided by the local authority as part of community care services. Such care was now to be provided within NHS-funded nursing care. Persons who have been found not eligible for CHC could be assessed for NHS-funded nursing care.</p> |
| February 2003 | <p>A report by the Health Service Ombudsman on long-term care found that a number of people had been wrongly charged for elements of their care when they should have been treated as eligible for CHC and all their care provided free by the NHS. The ombudsman recommended that efforts should be made to remedy any financial injustice to patients where the CHC criteria, or the way they were applied, were not clearly appropriate or fair. The recommendation was accepted in Wales and England.</p> |
| April 2003 | <p>Health authorities in Wales replaced by 22 Local Health Boards (LHBs).</p> |
| June 2004 | <p>Arrangements were established with what is now Powys Teaching Health Board which allowed people to claim retrospectively that they (or their deceased relative) were eligible for CHC but were wrongly charged for care between 1996 and 2003. Claims for later periods were processed by the relevant LHB where the claimant lived.</p> |
| August 2004 | <p>The first Framework for CHC and associated guidance issued. The Framework and associated guidance outlined the key criteria and other issues to be taken into consideration when making decisions about eligibility for CHC.</p> <p>The Framework stated that eligibility for CHC depends upon the nature and extent of health care needs and of the health care inputs required. Whether an individual is eligible for CHC depends on the nature, complexity, predictability, intensity and amount of their health care needs and of the health care inputs which they require, regardless of diagnosis.</p> <p>The Framework looked to address the issues raised in relation to the provision of CHC by the report of the Health Service Ombudsman on long-term care, and to ensure local processes were compliant with legal requirements and judgements.</p> |



| Date | Key event |
|---------------|---|
| 2004-05 | A 13.8 per cent increase in CHC expenditure within Wales compared with the previous year (excludes provisions for any future liabilities arising from challenges to eligibility decisions). |
| January 2006 | Grogan judgement on the interaction between CHC and NHS-funded nursing care. The court concluded that in assessing whether Mrs Grogan was entitled to CHC, the care trust did not have in place or apply criteria which properly identified the test or approach to be followed in deciding whether her primary need was a health need. |
| 2005-06 | A 26.3 per cent increase in CHC expenditure within Wales compared with the previous year (excluding provisions). |
| October 2006 | The Welsh Government issues revised guidance on CHC. This provided advice and recommended actions to be taken by LHBs following the Grogan judgment. This was an interim step whilst the full guidance on CHC was amended. |
| 2006-07 | A 31 per cent increase in CHC expenditure within Wales compared with the previous year (excluding provisions). |
| October 2007 | Revised CHC Framework, taking account of the Grogan judgement, issued in England. |
| February 2008 | The Welsh Government issues a revised draft CHC Framework for consultation. |
| 2007-08 | A 50.7 per cent increase in CHC expenditure within Wales compared with the previous year (excluding provisions). |
| August 2008 | St Helens judgement on responsibility for decision making around CHC eligibility. The court ruled that the NHS is the primary decision maker when it comes to deciding whether a person has a primary health need. |
| 2008-09 | A 42.2 per cent increase in CHC expenditure within Wales compared with the previous year (excluding provisions). |
| July 2009 | Following a review, the English Framework is revised by adding further clarity and tools, but the revisions do not change principles or eligibility criteria. |
| 2009 | Following an announcement by the Welsh Government that no new applications relating to the period up to April 2003 would be considered if received after 4 December 2009, there was a considerable influx of new claims. Claimants who had registered by 4 December 2009 were then given until 17 May 2010 to provide the required legal proof of title and proof of payments for care to allow the claim to be investigated. |
| 2009-10 | A 13.2 per cent increase in CHC expenditure within Wales compared with the previous year (excluding provisions). A 2.8 per cent increase in the number of CHC cases at 31 March 2010 (excludes Betsi Cadwaladr University Health Board). |
| May 2010 | The Welsh Government's revised Framework for CHC issued, with an implementation date of 16 August 2010. This is based on the English Framework, but with some key differences in the approach and tools. |

| Date | Key event |
|----------------|---|
| 2010-11 | A 10.7 per cent increase in CHC expenditure compared with the previous year (excluding provisions). A 1.6 per cent reduction in the number of CHC cases as at 31 March 2011 (excludes Betsi Cadwaladr University Health Board). |
| June 2011 | The scope of the Powys project is extended to include retrospective claims relating solely to the period between 1996 and April 2003; claims which relate to periods after April 2003 and up to 15 August 2010; and claims which straddle these two periods. Claims which relate solely to the period after 16 August 2010 continue to be dealt with by the relevant LHB. |
| September 2011 | The Welsh Government confirms to those LHBs attending the National CHC Implementation Group a change in the responsibilities for retrospective claims. LHBs were now responsible for any retrospective claim that was received after 16 August 2010. |
| 2011-12 | 5.8 per cent decrease in CHC expenditure on previous year (excluding provisions). 2.6 per cent reduction in cases at 31 March 2012 (excludes Betsi Cadwaladr University Health Board). |
| July 2012 | The Welsh Government makes available an additional £1.6 million to increase staffing levels with the Powys project and to help ensure all retrospective cases are completed by June 2014. |



Appendix 3 - Approaches to CHC and paying for social care across the UK

Post devolution in Scotland, Northern Ireland and Wales, different approaches and charging arrangements for people with complex care needs have developed across the United Kingdom.

Current arrangements

| Issue | Current arrangements across the UK |
|--|--|
| <p>Eligibility for CHC</p> | <p>All parts of the UK have continuing healthcare in which all services are provided free and funded by the NHS. However, there are distinct differences in Scotland compared to the rest of the UK.</p> <p>Wales, England and Northern Ireland use the primary health need approach and CHC funding can cover care costs in a person's own home or in a care home.</p> <p>In Scotland, CHC funding is available for people requiring a very high level of specialist treatment and it is expected that care will be provided in a hospital ward, hospice or a contracted inpatient bed (which may be based in a care home).</p> |
| <p>Guidance on CHC</p> | <p>Wales, England and Scotland have dedicated and detailed guidance on CHC. In Northern Ireland less specific guidance is incorporated into a policy on care management, provision of services and charging policy.</p> |
| <p>NHS-funded nursing care</p> | <p>NHS-funded nursing care refers to the financial contribution paid by the NHS towards the cost of meeting assessed nursing care needs and is provided in all parts of the UK.</p> |
| <p>Personal care and accommodation costs in nursing homes</p> | <p>If someone is eligible for CHC, the costs of personal care and accommodation in care homes are free in Wales, England and Northern Ireland (and in Scotland when this is a contracted inpatient bed). People not eligible for CHC are means tested to see whether they or the local authority pay for the personal care and accommodation element of the care home fee.</p> <p>In Scotland, all people over 65 have free personal care. People under 65 are means tested for personal care costs, and all people are means tested for accommodation costs.</p> |
| <p>Means testing</p> | <p>Means testing is based on a savings and assets threshold which, if exceeded, results in the individual being responsible for care home costs.</p> <p>The upper savings and assets limit at which someone is responsible for all care home costs is the same in Wales, England and Northern Ireland (£23,250) but is higher in Scotland (£24,750).</p> <p>There is no 'tapering' in Wales, but in the rest of the UK there is a lower limit (typically set at around £14,250) at which point people begin to contribute on a sliding scale towards care home costs.</p> |

Future arrangements

The funding and charging arrangements are to change in England. Launched in July 2010, the Commission on Funding of Care and Support was an independent body tasked with reviewing the funding system for care and support in England. It was chaired by Andrew Dilnot, and the report, published in July 2011³⁵, found that the current funding system is in urgent need of reform: it is hard to understand, often unfair, unsustainable, and people are left exposed to potentially 'catastrophic care costs' with no way to protect themselves. The report's recommendations included:

- that an individual's lifetime contributions towards their social care costs – which are currently potentially unlimited – should be capped at £35,000; and
- the means-tested threshold, above which people are liable for their full care costs, should be increased to £100,000.

In February 2013, the UK Government announced that from April 2017 funding arrangements for care and support in England will change with:

- a cap of £75,000 on an individual's lifetime contribution towards his or her social care costs, excluding any 'room and board' accommodation costs; and
- an increase of the means-tested threshold, above which people are liable for their full care costs, to £123,000.

The Welsh Government issued a green paper for consultation on the options for Wales in November 2011³⁶, and are presently considering whether there should be reforms in Wales that build on the Dilnot proposals.

³⁵ *Fairer Care Funding*, The Report of the Commission on Funding of Care and Support, July 2011

³⁶ *Paying for Care in Wales: creating a fair and sustainable system*, Green Paper consultation on options for reform, Welsh Assembly Government, November 2011



Appendix 4 - Improving the Framework

This report identifies a number of areas where the current guidance could be improved. These are summarised below.

Where clearer and more explicit guidance is needed

The quality of the guidance could be improved by combining the Framework and the separate practice guidance into one document. Clearer guidance is also needed in respect of:

- how the Framework should be applied for people with a learning disability or a mental health problem;
- joint funding arrangements;
- the monitoring of care home contracts;
- the local policies and protocols that need to be in place in health boards; and
- scrutiny arrangements in health boards, to encourage consistency between panels, local authority engagement and communication, and consistency of scrutiny regardless of the care costs involved.

Where there are gaps in guidance

There are gaps in the guidance in respect of:

- the CHC performance measures health boards should capture and report;
- the maximum target time within which health boards should resolve disputes with claimants, and how this is measured; and
- whether and how health boards should scrutinise cases that are not put forward to be assessed for CHC or that are deemed ineligible for CHC.

Where the guidance should be reassessed and, if appropriate, revised

In the light of health boards' experiences in implementing the Framework, the Welsh Government should reassess the appropriateness of its guidance in respect of:

- the target time for completing the CHC assessment and decision-making process;
- the frequency of CHC reviews, in the light of its assessment of the less onerous requirements in England;
- the requirement that each specialist gains consent for their individual assessment, as this is clearly not being achieved in Wales and is not a policy requirement in England; and
- alternative ways in which health boards are required to involve individuals and their family/carers in the DST process, in addition or as an alternative to them attending DST meetings.

Glossary of terms

Care home

An establishment registered under the Care Standards Act 2000 to provide accommodation, together with nursing or personal care, for certain categories of persons.

Care package

A combination of support and services designed to meet individual's assessed needs.

Care Programme Approach

The Care Programme Approach is used across Wales for people with a mental health problem. A health or social services professional is appointed to co-ordinate the assessment and care planning for an individual. In consultation with the individual, their needs are assessed and a care plan produced eight key areas of life: accommodation; education and training; finance and money; medical and other forms of treatment; parenting or caring relationships; personal care and physical well-being; social cultural or spiritual; and work and occupation.

Carers

Carers look after family, partners or friends in need of help because they are ill, frail or have a disability. The care they provide is usually unpaid. This excludes paid care workers and volunteers.

Cognition

The higher mental processes of the brain and the mind including memory, thinking, judgement, calculation, visual spatial skills etc.

Cognitive impairment

Cognitive impairment applies to disturbances of any of the higher mental processes, many of which can be measured by suitable psychological tests. Cognitive impairment, especially memory impairment, is the hallmark and often the earliest feature of dementia.

Continuing NHS Healthcare

A complete package of ongoing care arranged and funded solely by the NHS, where it has been assessed that the individual's primary need is a health need. CHC can be provided in any setting. In a person's own home, it means that the NHS funds all the care that is required to meet their assessed health and social care needs to the extent that this is considered appropriate as part of the health service. This does not include the cost of accommodation, food or general household support. In care homes, it means that the NHS also makes a contract with the care home and pays the full fees for the person's accommodation as well as their care.



Disputes between organisations

These refer to disputes between health boards and local authorities about eligibility for CHC.

Disputes from individuals

In this report, we use the term to refer to challenges made by individuals against CHC eligibility decisions made under the revised Framework since August 2010. Individuals may ask that the decision on eligibility for CHC is reconsidered. These requests are dealt with by individual health boards.

Independent Living Fund

The Independent Living Fund provides money to help disabled people live an independent life in the community rather than in residential care. People can use payments to employ a carer or personal assistant to give personal and domestic care or pay a care agency to provide personal care and help with domestic duties. The scheme is now closed to new applicants, and, if stopped, cannot be reinstated.

Individuals

In this report, we use the term 'individuals' to refer to people who are being assessed or have been assessed for CHC.

Long-term care

This is a general term that describes the care which people need over an extended period of time, as the result of disability, accident or illness to address both physical and mental health needs. It may require services from the NHS and/or social care, and can be provided in a range of settings, such as an NHS hospital, a care home (providing either residential or nursing care), hospice, and in people's own homes.

Mental capacity

The ability to make a decision about a particular matter at the time the decision needs to be made. The legal definition of a person who lacks capacity is explained in section 2 of the Mental Capacity Act 2005: 'A person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or disturbance in the functioning of, the mind or brain'.

Multidisciplinary

Multidisciplinary refers to professionals across health and social care and the third sector who work together to address the holistic needs of their patients/clients in order to improve delivery of care and reduce fragmentation.

Multidisciplinary team

A team usually from both health and social care backgrounds. It does not refer only to an existing multidisciplinary team such as on an acute ward. It also includes those who have an up-to-date knowledge of the individual's needs, potential and aspirations.

NHS-funded nursing care

The provision of NHS-funded nursing care derives from section 49 of the Health and Social Care Act 2001, which excludes nursing care by a registered nurse from the services which can be provided by local authorities. Section 49 was partially implemented with effect from December 2001, introducing NHS-funded nursing care for self-funders and those residents who paid the majority of their care costs themselves. The full implementation of section 49 extends the scope of NHS-funded nursing care to cover all those persons currently assessed as requiring care by a registered nurse in care homes who were formerly the responsibility of local authorities.

Retrospective claim

In this report, we use the term to refer to challenges made by individuals against CHC eligibility decisions that were made before the Framework came into force in August 2010, and that resulted in the individual (or their deceased relative) being wrongly charged for care. Retrospective claims received before the Framework are dealt with by a national project team, and those received after the Framework are dealt with by health boards.

Social care

Social care is care provided to support an individual's social needs. It refers to the wide range of services designed to support people to maintain their independence, enable them to play a fuller part in society, protect them in vulnerable situations and manage complex relationships. Social care services are provided for people who need help/assistance to live their lives as independently as possible in the community (either at home or in a care setting), people who are vulnerable and people who may need protection. Local authorities, the voluntary sector and the independent sector can provide social care.

Social services

Primary responsibility for the delivery of community social care services rests with local authorities. Social services are provided by 22 local authorities in Wales. Individually and in partnership with other agencies, they provide a wide range of care and support for people who are deemed to be in need.

Social work

Social work is a professional activity/service provided by a registered social worker. It is an activity that can enable individuals, families and groups to identify personal, social and environmental difficulties adversely affecting them. It is a range of activities that can provide supportive, rehabilitative, protective or corrective action. This can include care management, social care assessment and planning and counselling.

Unified Assessment Process

This describes the common assessment process for health boards and local authorities. It promotes a holistic approach to assessment, with the aim of ensuring more effective joint working and to prevent people being serially assessed and asked for the same information by different agencies.

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-04-456
Ein cyf/Our ref MD/01294/13

William Powell AM
Chair
Petitions Committee

Naomi.Stocks@wales.gov.uk

27 June 2013

Dear William

Thank you for your letter of 12 June on behalf of the Petitions Committee, asking me to consider reviewing the Decision Support Tool (DST) used in considering eligibility for Continuing NHS Healthcare (CHC), so that it might best reflect the possible severity needs created by dementia.

As my predecessor pointed out in her letter to the Committee of 13 March, the DST is used to collect information from various assessments to inform the final decision on a person's eligibility for CHC. It is evident there are areas we can look at to improve the operation and functionality of the DST. The Wales Audit Office (WAO) have now published their findings into the effectiveness and implementation of the National Framework for CHC. Their report highlighted the differing approaches between England and Wales in the use of the DST, which could make it difficult for those in Wales with dementia to be classed as eligible.

There is a clear need to review the differences in the DST domains between Wales and England. I will, therefore, take forward this work as part of my review into the Framework to ensure the guidance it gives to Health Boards is fit for purpose. My review will also take on board the other findings contained within the WAO's report.

Preliminary work to take this forward is underway. My officials are currently working with Health Board leads and representatives from various groups to identify actions that can be taken forward in any new arrangements. Engagement with stakeholders will take place during the summer and autumn and a revised Framework, supported by an Implementation Plan to monitor the effectiveness of CHC, is due to be published next spring.

Best wishes

Mark

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence: Mark.Drakeford@wales.gsi.gov.uk
Printed on 100% recycled paper

P-04-494 Robotic assisted laparoscopic prostatectomy must be made available to men in Wales now

Petition wording:

Robotic assisted laparoscopic prostatectomy is the 21st Century Gold standard. Wales as a nation must be at the forefront in offering this standard. We, the undersigned, are appalled by the fact that men in Wales with prostate cancer cannot be offered robotic surgery in Wales, yet in England ALL men have this choice with at least 40 locations offering this treatment and with men from Wales having to pay thousands of pounds to access this capability in these English NHS facilities (typically between £13-15,000). Clearly, many men in Wales cannot afford this. We call on the National Assembly for Wales to urge the Welsh Government together with the National Health Service of Wales to resolve this totally unfair predicament and serious lack of essential resource within our NHS in Wales without delay. It is vital that this technology, this 21st Century Gold Standard is offered to men in Wales. It simply cannot be right that such technology is available elsewhere and that men from Wales have to pay to avail themselves of it in an NHS facility in England.

Petition raised by: Professor Kevin Davies MBE

Date petition first considered by Committee: 16 July 2013

Number of signatures: 2090

Agenda Item 3.2

P-04-495 Stop People Trafficking & Slavery in Wales

Petition wording:

We call upon the National Assembly for Wales to urge the Welsh Government to do all within its power to make Wales free from the illegal activity of people trafficking and slavery.

Petition raised by: Ignite / Big Ideas

Date petition first considered by Committee: 16 July 2013

Number of signatures: 1523

P-04-483 A plain English /Cymraeg clir policy for all Welsh Assembly and Government communications

Petition wording:

We call on the National Assembly for Wales to develop a plain English/Cymraeg Clir policy for all their communications, and separately call on the National Assembly for Wales to urge the Welsh Government to develop such a policy so that the language used is clear and understandable at all times.

Double speak, unnecessary lawyer speak and the use of acronyms and unintelligible jargon, both in written form and verbally in the Senedd chamber, discourages politics in Wales from being as inclusive and accessible as it should be. A plain language policy would help to encourage more interest and participation in the politics of Wales by all. The policy should also apply to legal documents/bills/acts as long as they remain legally sound. As a good example of clear understandable communication, Canolfan Bedwyr's Cymraeg clir template could be used as the Welsh language equivalent to the plain English template, so that the use of Welsh, whether in original reports or as translated material, is relevant, modern and understandable, and not merely a literal unintelligible slavish dictionary translation of the English version. There is a duty on the Assembly and Government of Wales to make sure all governing decisions affecting Wales are understood by all, whatever language is used.

Petition raised by: Sovereign Wales

Date petition first considered by Committee: 14 May 2013

Number of signatures: 11



Eich cyf/Your ref: P-04-483
Ein cyf/Our ref: FM/00705/13

William Powell AM
Chair Petitions Committee
Naomi.stocks@wales.gov.uk

1 July 2013

Dear William,

I am writing in response to your letter of 24 May to the Welsh Government Permanent Secretary Derek Jones. I am responding as this matter refers to both written communication from the Welsh Government and verbal communication in the Senedd chamber.

I agree whole-heartedly that writing and speaking clearly is essential for any government that seeks to serve properly the people it represents. When I came into office as First Minister, I tasked the Cabinet and civil servants with using plain language, without technical or professional jargon unless strictly necessary.

The importance of clear and concise communication is emphasised in the Welsh Government's civil service competency framework, learning and development programme, and guidance on writing correspondence, speeches, consultation documents and external communications materials. To support people in writing clearly we have a number of resources available that provide guidance on Plain English and Cymraeg Clir. These apply to all Welsh Government civil servants, including its legal and translation services.

When drafting legal documents, Welsh Government lawyers must, where possible, use plain, clear language. Legislative Drafting Guidelines from the Office of the Counsel General contain advice on the use of plain language; the guidelines are attached to this letter. It is crucial that legal documents including legislation are legally accurate. Words are chosen carefully to ensure that changes to the law made by legislation achieve the aims of the Government policy and do not create unintended consequences.

Welsh Government translators are trained to translate into readable text. Translations are assessed for their 'readability' and for use of the appropriate style for the target audience. Translators are also required to reflect accurately the precise content, meaning and style of the original document to ensure consistency across languages.

Lastly, the examples enclosed with your letter include a document on tracking and outcome indicators for the Welsh economy. Measuring and setting out our progress as a Government is essential, and I am committed to doing this. In the second Annual Report on the Programme for Government released in June, I've tried to be as clear as possible about what we have done, what we have achieved, and what we still need to do. The Programme for Government pages on our website explain the terms we are using to measure this. I hope you will agree this is a major step forward in explaining the Welsh Government's work and providing clear information on our progress.

Ensuring that the people of Wales can clearly understand what the Welsh Government is doing for them is a priority for me. Actions are in place and I will continue to emphasise the importance of plain language to the Cabinet and civil service officials.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES



LEGISLATIVE DRAFTING GUIDELINES

JANUARY 2012

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PART 1

INTRODUCTION

1 The purpose of this guidance

- (1) This document sets out the main principles and techniques that the Welsh Government applies to its legislative drafting. It is principally intended to be a guide for members of the Office of the Legislative Counsel who draft Assembly Bills proposed by the Welsh Government, other officials in the Welsh Government who draft Welsh statutory instruments, legislative translators and legislative text editors. It may also be of use to Welsh Government officials drafting subordinate legislation not made by statutory instrument and anyone drafting non-Government Assembly Bills.
- (2) The document will be revised from time to time and the latest version will be made available on the Office of the Legislative Counsel pages of the Welsh Government website [insert link].
- (3) If you have any suggestions for changes or additions to the principles and techniques set out in this document, please send them to:

Dylan Hughes, First Legislative Counsel – Dylan.Hughes@Cymru.gsi.gov.uk

2 The context for this guidance

- (1) Legislation made in Wales is usually made bilingually in Welsh and English. Where legislation is made bilingually, both texts are to be treated for all purposes as being of equal standing¹. This demands care on the part of the Welsh legislative drafter to ensure that both texts say the same thing and in a way that respects the syntax and idiom of each language.
- (2) The Welsh approach to legislative drafting also needs to take account of how the Assembly and the public respond to the drafting of Assembly Acts and subordinate legislation made by the Welsh Government. This guidance takes into account a number of recommendations made in response to feedback, in particular from Assembly Legislation Committees and the Constitutional Affairs Committee of the third Assembly (2007-2011).

3 Acknowledgements

A substantial part of this document is based on the drafting guidance of the UK Office of the Parliamentary Counsel and their contribution to it is gratefully acknowledged. In addition a significant contribution to the text was made by the Legislative Translation Unit of the Welsh Government. Inspiration has also been drawn from other sources, including the conferences and publications of the Commonwealth

¹ Section 156(1), Government of Wales Act 2006.

Association of Legislative Counsel and the manuals of other law drafting offices in common law jurisdictions around the world.

4 Applying the guidance in this document

The principles and techniques in this document must be applied flexibly. The drafting challenges that arise vary according to the particular context and there are often a number of solutions to a particular drafting issue. For these reasons, legislative drafting cannot be carried out by following simple rules rigidly; the task requires the drafter to think creatively and exercise judgement about whether a particular drafting technique achieves the best result in each case. The best result is legislation that gives effect to the policy in the clearest way possible.

PART 2

CLARITY

Clarity, effectiveness, and practicality

5 Clarity: the overarching objective

- (1) The overarching objective for Welsh Government legislative drafters is clarity. Legislation must be effective, but it cannot be effective unless it is sufficiently clear.
- (2) An effective draft is certain in its effect, accurate and achieves the policy objectives behind the legislation. Being clear is about making it as easy as possible for readers to understand what is being said. Even if a draft is clear enough to be effective, it may still be possible to make it easier to understand. The drafter's search for clarity should go beyond the minimum required to be effective.

6 Clear for whom?

- (1) The drafter should be guided by the interests of the reader, bearing in mind that there will usually be a wide range of different kinds of reader. The readers include Assembly Members, lobby groups and members of the general public who take interest in draft legislation under scrutiny and ultimately those using the legislation when enacted or made. The end users include professional advisers and the courts and it is vital that the drafting produces the right result if tested in court. But individuals and bodies affected by the legislation are also end users, and their interests in accessing the law need to be taken into account.
- (2) The requirements of readers may be different depending on who they are. What one set of readers finds easy may be difficult for another and competing interests need to be balanced and given due weight in the drafting.

7 Clarity: simplicity v precision

- (1) Clarity requires both simplicity and precision and the demands of each call for compromise between them. What is simple will often be precise and what is precise will often be simple, but one does not follow from the other. Too much emphasis on simplicity can lead to imprecision and doubt about the effect of the law. While a law drafted in "blind pursuit of precision will inevitably lead to complexity; and complexity is a definite step along the way to obscurity"².
- (2) Drafters need to recognise the tension between simplicity and precision and use their experience and judgement to strike the right balance. It is incumbent on senior

² G.C.Thornton highlights the compromise between simplicity and precision in *Legislative Drafting* (4th edition) p. 52.

drafters to assist junior drafters in developing the necessary skills and judgement. Striking the right balance is not easy.

8 Clear bi-lingual text

It is usually the case (although not always) that the English language text of legislation is produced before the Welsh language text. This means that the initial Welsh text will be produced by the government's legislative translators before being checked for legal equivalence with the final text in English. It is important that the Welsh text should **not** unnaturally follow the syntax of the English, and neither should the English unnaturally follow the Welsh syntax. The texts have equal standing in law and the focus in checking legal equivalence between them should be on whether the same legal effect is achieved. Every effort should be made to ensure that this is done through natural and modern language in both versions.

9 Practical limitations on achieving the clearest result

- (1) Some things that affect the clarity of legislation are not within the ultimate control of the drafter. But in all cases the drafter has a role in being an advocate within government for approaches to legislative projects that better promote clear law.
- (2) If an Act or statutory instrument has been amended on a number of previous occasions, a new proposal for amendment should cause those involved to think seriously about updating the law into a consolidated text to improve its accessibility to the public. Or if the proposal is to amend an Act of Parliament or a statutory instrument made in English only this will mean that the substantive law will remain in the English language only – remaking the law would mean producing a text in Welsh too, improving access to the law through the Welsh language.
- (3) There may well be valid reasons why Ministers or departments do not wish to consolidate provisions at the same time as taking forward a legislative reform: for example, it may require resources that are not easily available, or in the case of a Bill, settled but potentially controversial provisions could be opened up to debate and amendment. The final decision on how to proceed in a case like this is for Ministers collectively, not the drafter; but it is the role of the drafter to ensure that these matters are brought to the attention of decision makers. If drafters are concerned that these issues are not being considered or if approaches are suggested which are liable to impair access to legislation, the issues should be raised through the management chain of the Legal Services Department and, if necessary, with the Counsel General. The drafter's client is the Welsh Government as a whole, rather than individual departments or Ministers, and the policy interest in clear law must be properly taken into account along with the other policy and handling considerations.
- (4) An important practical consideration for drafters is the time available for drafting. Drafts are often produced under tight time constraints and depend on policy input which may need to take a wide range of interests into account. This may impact on drafting at late stages in the preparation of a Bill or a set of regulations. Work on improving clarity takes time, and sometimes this will not be available.

- (5) In summary, the aim of the drafter is to make a draft as easy to understand as it is possible to make it in the time available, within the parameters set by Ministers and the Counsel General.

10 Clarity: drafting techniques

The following parts of the guidance describe the techniques within the control of the drafter which promote clarity.

PART 3

STRUCTURE AND ORGANISATION

11 Telling the story

- (1) The reader of a piece of legislation does not know what the message is until it is delivered. This contrasts with the position of a party to a commercial agreement, who presumably knows, at least in general terms, what the agreement says. So it is especially important to take the reader through the story that needs to be told in the legislation in a logical way.
- (2) Different readers of legislation may be interested in different aspects of the story: for example, Ministers might be interested in how the legislation fits with a general policy, but professional advisers will be more interested in the details of the law. This may influence how the story is told.

12 Organisation and headings

- (1) The clarity of a text is greatly affected by the way it is organised. The reader can be helped by the way in which legislation is divided into Parts, Chapters etc and the words chosen for their headings; and also by the words chosen for section, article and regulation headings. Text is easier to understand if the topic is specified at the beginning. Parts, chapters and headings help the reader to identify topics.
- (2) It helps if the headings of sections, articles and regulations give as full an indication of the contents as possible, consistent with keeping the heading reasonably short (many drafters try to make sure that their headings do not go into a second line). But a section heading may not need to repeat the work done by a Chapter or Part heading.
- (3) Headings have a relationship with each other, not just with the section. In thinking about structure and organisation of the material it is helpful to imagine the section (or article or regulation), Chapter and Part headings as set out in the table of contents. As the draft develops drafters should re-read the table of contents regularly to make sure it still hangs together.
- (4) All sections, articles and regulations should have headings. If there is no obvious way of summarising the contents of a new section, article or regulation, this may be an indication that it needs to be kept together with the subdivisions of the previous section, article or regulation (see paragraph 20 below).

13 Order of material

- (1) It helps the reader if the material in the legislation is set out in a logical order, so that later propositions build upon earlier ones.
- (2) The following techniques may assist this—

- (a) arranging provisions in a time sequence. For example – first provisions dealing with the application for a licence, then the issue of the licence, then the conditions of the licence, then renewal and finally revocation;
- (b) grouping together provisions with a common subject-matter;
- (c) grouping together related concepts;
- (d) expressing similar ideas in provisions with similar structures;
- (e) putting general and important provisions first.

14 Schedules

- (1) It will often be helpful to divide material into main provisions (sections, articles or regulations) and schedules where the detail is in danger of obscuring the main story.
- (2) Examples of where a schedule may be useful include—
 - (a) technical provision that is unlikely to be of interest to many readers;
 - (b) lengthy material that is at something of a tangent to the main story;
 - (c) repeals or revocations;
 - (d) long series of minor textual amendments;
 - (e) large tables and very long lists;
 - (f) the text of treaties.

15 Forward references

- (1) Reference at any point to material which needs to be understood at that point but which does not appear until later is generally not helpful. This may well be an indication that the material would be better re-ordered.
- (2) But a signpost to later (or indeed earlier) material which is relevant but which does not necessarily need to be understood now may well be helpful. It can be included in brackets (eg “see section X”).

16 Overview provisions

- (1) A section at the beginning of a Bill, or of a Part or Chapter, explaining what is to follow may help the reader to navigate round a larger piece of legislation where the table of contents is too long to give a clear picture.
- (2) An example is section 2 of the Income Tax Act 2007, which says that the Act contains 17 Parts, and then sets out briefly what is covered by each Part.
- (3) That Act also has a wider overview provision in section 1, which puts the Act into context with other Acts making provision about income tax.
- (4) An overview provision may be helpful in shorter pieces of legislation; for example, if the substantive provisions are on an obscure topic or potentially difficult for all or part of the likely readership.

- (5) For further provision about the drafting of overview provisions see chapter 6 of Part 6 on drafting techniques.

17 Structure of sections, articles and regulations: connection between subsections

- (1) A subsection (or paragraph in an article or regulation) may usually be read in the light of a previous subsection in the same section (or article or regulation). It is usually unnecessary to repeat material which has been established earlier.

EXAMPLE

- (1) *A person may apply to the council for a permit to play music.*
- (2) *An application under subsection (1) must contain the prescribed information.*
- (3) *On receiving an application made by a person under subsection (1), the council may issue a permit to the person.*
- (4) *A permit issued under subsection (3) must be in the prescribed form.*
- (5) *A permit issued under subsection (3) authorises the holder to play music as indicated in the permit.*

- (1) *Caiff person wneud cais i'r cyngor am drwydded i chwarae cerddoriaeth.*
- (2) *Rhaid i gais o dan is-adran (1) gynnwys yr wybodaeth a ragnodir.*
- (3) *Os bydd y cyngor yn cael cais gan berson o dan is-adran (1), caiff y cyngor ddyroddi trwydded i'r person.*
- (4) *Rhaid i drwydded a ddyroddir o dan is-adran (3) fod ar y ffurf a ragnodir.*
- (5) *Mae trwyddedd a ddyroddir o dan is-adran (3) yn awdurdodi'r deiliad i chwarae cerddoriaeth fel y mae'r drwydded yn ei dangos.*

This could be recast in the following way—

- (1) *A person may apply to the council for a permit to play music.*
- (2) *The application must contain the prescribed information.*
- (3) *The council may issue a permit to the applicant.*
- (4) *The permit must be in the prescribed form.*
- (5) *The permit authorises the holder to play music as indicated in the permit.*

- (1) *Caiff person wneud cais i'r cyngor am drwydded i chwarae cerddoriaeth.*

- (2) *Rhaid i'r cais gynnwys yr wybodaeth a ragnodir.*
- (3) *Caiff y cyngor ddyroddi trwydded i'r ceisydd.*
- (4) *Rhaid i'r drwydded fod ar y ffurf a ragnodir.*
- (5) *Mae'r drwydded yn awdurdodi'r deiliad i chwarae cerddoriaeth fel y mae'r drwydded yn ei dangos.*

- (2) It is helpful if the opening sub-division of a provision gives the reader some idea of what the provision is about, especially if it introduces a new topic. For example, if a section produces a particular legal effect if conditions are met, it may be more helpful to state the effect before listing the conditions.

18 Structure of sections, articles and regulations: second sentences

- (1) Normally each sentence in a section, article or regulation is a separate numbered provision. But there is no rule against having more than one sentence in a numbered provision. The logical connection between sub-divisions is likely to be closer in some cases than others. A second sentence enables the drafter to distinguish two levels of connection between subsections in the same section; or to deal with cases where putting a second thought in a separate provision would place undue emphasis on it.

EXAMPLE (section 108, Housing Grants, Construction and Regeneration Act 1996)

(1) A party to a construction contract has the right to refer a dispute arising under the contract for adjudication under a procedure complying with this section.

For this purpose "dispute" includes any difference.

(2) The contract shall include provision in writing so as to—

- (a) enable a party to give notice at any time of his intention to refer a dispute to adjudication;
- (b) provide a timetable [etc].

- (2) In this example, there are only two main propositions - the right to refer disputes to adjudication and what the contract must say about referrals. The point about the meaning of "dispute" is just an afterthought to the first, and it might be unhelpful to treat it as equal in weight to the other two.

19 Sub-headings

Sometimes information may be more accessible to the reader if it is set out under a series of sub-headings (even within the same subsection). An example is section 836(3) of the Income Tax Act 2007:

"836 Jointly held property

[(1), (2)]

- (3) But this treatment does not apply in relation to any income within any of the following exceptions.

Exception A

Income to which neither of the individuals is beneficially entitled.

Exception B

Income in relation to which a declaration by the individuals under section 837 has effect (unequal beneficial interests).

Exception C

Income to which Part 9 of ITTOIA 2005 applies (partnerships).

Exception D

Income arising from a UK property business which consists of, or so far as it includes, the commercial letting of furnished holiday accommodation (within the meaning of Chapter 6 of Part 3 of ITTOIA 2005).

Exception E

Income consisting of a distribution arising from property consisting of –

- (a) shares in or securities of a close company to which one of the individuals is beneficially entitled to the exclusion of the other, or
- (b) such shares or securities to which the individuals are beneficially entitled in equal or unequal shares.

“Shares” and “securities” have the same meaning as in section 254 of ICTA.

Exception F

Income to which one of the individuals is beneficially entitled so far as it is treated as a result of any other provision of the Income Tax Acts as–

- (a) the income of the other individual, or
- (b) the income of a third party.”

20 Section, article and regulation length

- (1) Drafters should try to avoid sections, articles or regulations containing more than ten subsections or paragraphs.
- (2) However, this is again a matter of judgement: if there is a self-contained story to tell, it may be more convenient for the reader to have it all in one section which is a bit longer, rather than in two or more shorter sections.
- (3) It may also help if the division into sections follows the division of thought. If, for example, you have to make separate provision for three different cases, but one case requires more provision than the other two, it might still be easiest to have only one section for each case, even if that means that one of the sections is longer than you would otherwise wish.

PART 4
LANGUAGE
CHAPTER 1
PLAIN LANGUAGE

21 Plain Language

- (1) Legislation should be in modern standard Welsh and English, reflecting ordinary general usage.
- (2) Drafters should use plain language, so far as possible.
- (3) This means that the drafter should—
 - (a) use simple and familiar words rather than complex expressions and unusual words;
 - (b) avoid using foreign words;
 - (c) avoid using archaic words;
 - (d) avoid using jargon, especially governmental shorthand expressions and unexplained acronyms;
 - (e) avoid including too many different ideas in each sentence or “sense bite” (see paragraph 22).
- (4) Sometimes it is not possible or sensible to express complex concepts in language that is easy for any person to understand. Technical expressions may be appropriate where such terms are well understood by the main audience of the legislation.
- (5) Technical expressions may also be better if any attempt to render their meaning in everyday language would lead to long-winded provisions that are difficult to understand or uncertain in effect.
- (6) But the use of technical language must be fully justified.
- (7) Drafters, translators and text editors need to work together to ensure that plain language is used in both the Welsh language and English language texts.

CHAPTER 2

SENTENCES

22 Sentence structure: short “sense bites”

- (1) Drafters should avoid long blocks of unbroken text, which is the hallmark of traditional forms of legal writing and commonly the subject of caricature and criticism.
- (2) In order to understand the message being conveyed in a sentence, the reader needs to know the structure of the whole sentence. Very long sentences often include a number of ideas; the reader must hold all of these ideas in his or her mind until the end of the sentence before the message can be understood. Sentences become difficult to understand if they contain a number of elements in addition to the subject and the verb; the more additional elements there are, the more difficult it is to understand the sentence.
- (3) This insight commonly leads to the exhortation for drafters to write “short sentences”, but a better recommendation is to write in short “sense-bites”³. The rigid application of short sentence only policy, such as a word limit, would not be appropriate. An example of a situation where it would not be sensible to have a fixed limit on the length of a sentences would be a proposition that an office holder is to have a number of different powers in a particular context; a list of those powers (appropriately sub-divided by paragraphs) with appropriate introductory words may be better than a series of sentences opening with the same words – which would be irritating. Information should be presented to the reader in short bites: each of those short bites may be contained in a separate phrase or paragraph which grammatically amount together to a single (longer) sentence.
- (4) A single sentence with subordinate clauses is often harder to understand than a series of sentences expressing the same substance. So a single sentence should ideally contain one idea only, or be split into sense bites each containing one idea only. For example, qualifications or conditions can be split off, into separate subsections of paragraphs or even separate sections, articles or regulations as appropriate.

23 Sentence structure: unnecessary words

- (1) Unwieldy sentences may be shortened by removing unnecessary words. The following paragraphs contain suggestions for drafters.
- (2) Avoid turning verbs into nouns. These forms result in longer sentences.

EXAMPLES

³ This is the recommendation of Butt and Castle in *Modern Legal Drafting* (2nd edition) p.181.

“a local authority must consider”

“rhaid i awdurdod lleol ystyried”

Not

“a local authority must give consideration”.

“rhaid i awdurdod lleol roi ystyriaeth”

“an eligible student may apply for a grant”

“caiff myfyriwr cymwys geisio am grant”

Not

“an eligible student may make an application for a grant”.

“caiff myfyriwr cymwys wneud cais am grant”.

This is also generally more consistent with the natural sentence structure of the language when drafting in Welsh e.g. “defnyddio’r Gymraeg” as opposed to “y defnydd o’r iaith Gymraeg”.

- (3) Avoid unnecessary cross-references. Think carefully about the need for expressions like “subject to paragraph (x)”.
- (4) Avoid lists of alternatives: consider a generic term, possibly with a definition.
- (5) Avoid the unnecessary use of “such...as” and “y fath ... â” or “y cyfryw ...â”.

EXAMPLE

“provide any information required by the Welsh Ministers”

“darparu unrhyw wybodaeth sy’n ofynnol gan Weinidogion Cymru”

Not

“provide such information as is required by the Welsh Ministers”.

“darparu’r fath wybodaeth (y cyfryw wybodaeth) ag sy’n ofynnol gan Weinidogion Cymru”

- (6) Avoid the unnecessary use of “there is” and “there are” or “yna”.

EXAMPLE

“if any information is available”

“os oes unrhyw wybodaeth ar gael”

Not

“if there is any information available”.

“os oes yna wybodaeth ar gael”

- (7) Avoid superfluous or archaic words like “hereby”, “herein”, “hereafter” (see paragraph 30 (words and phrases)).

24 Sentence structure: arrangement of sentence components

- (1) Overly long or complex sentences can be broken up into the component parts in order to identify the best way of re-arranging the ideas they contain. This can be done by taking the following steps:
- (a) find the subject and the main verb;
 - (b) identify the other elements of the sentence and their relationship to the subject and verb;
 - (c) consider whether the additional elements are conditions, qualifications, exceptions, elaborations, reasons or results;
 - (d) consider whether the additional elements refer more directly to other additional elements than the subject and main verb.
 - (e) identify the elements that are essential to the basic idea being conveyed by the sentence;
 - (f) redraft the provisions by keeping the essential elements together in one sentence or sense bite and place the non-essential elements in separate shorter sentences or sense bites.⁴

25 Sentence structure: multiple sentence clauses and location of clauses

- (1) Sentences that are difficult to understand often have too many clauses or subordinate clauses, or they have groups of words in positions that inhibit comprehension or create ambiguity.
- (2) The classic sentence structure in English is subject-verb-object and in Welsh it is verb-subject-object. If possible avoid inserting words between the subject and the main verb in English and between the subject and the object in Welsh.

EXAMPLE

The Welsh Ministers may issue a licence to the applicant if the required conditions are met.

Caiff Gweinidogion Cymru ddyroddi trwydded i'r ceisydd os bodlonir yr amodau gofynnol.

Not

⁴ This set of recommendations is drawn from a paper presented to the 2007 Conference of the Commonwealth Association of Legislative Counsel by Dr Duncan Berry. For some practical examples of how to address these questions see the paper *Reducing the Complexity of Legislative Sentences* in the January 2009 edition of *the Loophole* published by the Commonwealth Association of Legislative Counsel <http://www.opc.gov.au/cal/loophole.htm> .

The Welsh Ministers may, if the required conditions are met, issue a licence to the applicant.

Caiff Gweinidogion Cymru, os bodlonir yr amodau gofynnol, ddyroddi trwydded i'r ceisydd.

- (3) Drafters should consider the following questions when drafting sentences in English with multiple clauses:
- (a) Is there too much information before the subject of the sentence? (Left branching sentences, in which two or more conditions precede the statement of the legal rule, are more difficult to understand)
 - (b) Is there too much information between the subject and the verb?
 - (c) Is there too much information between the verb and the object or complement?
 - (d) Is there too much information at the end of the sentence?
 - (e) Is there too much information between a relative pronoun and its antecedent?
- (4) Drafters should consider the following questions when drafting sentences in Welsh with multiple clauses:
- (a) Is there too much information before the main verb? (Left branching sentences, in which two or more conditions precede the statement of the legal rule, are more difficult to understand)
 - (b) Is there too much information between the verb and the subject?
 - (c) Is there too much information between the subject and the object?
 - (d) Is there too much information at the end of the sentence?
- (5) It is not suggested that information cannot be inserted at these points in a sentence; but drafters should be wary of placing too much information at these points.

26 Sentence structure: conditional sentences

- (1) The position of conditions in a sentence can affect the clarity of the sentence. The following guidelines may assist the drafter in making sentences clear.
- (2) If there is only one condition precedent, it is usually better to state it first.

EXAMPLE

If a person has attained the age of 18, he or she is entitled to receive the benefit.

Os yw person wedi cyrraedd 18 oed, mae ganddo hawl i gael y budd-dal.

- (3) A single condition subsequent is usually better placed after the main clause.

EXAMPLE

A secure tenant is entitled to a rent rebate, except during any period in which he or she is subject to an anti-social behaviour order.

Mae gan denant diogel hawl i gael ad-daliad rhent, ac eithrio yn ystod unrhyw gyfnod pryd y mae'n ddarostyngedig i orchymyn ymddygiad gwrth-gymdeithasol.

- (4) If there are several conditions or exceptions, it is usually better to state the main proposition first and list the conditions or exceptions afterwards.

EXAMPLE –

“A person is entitled to the grant if the person-
(a) is ordinarily resident in Wales,
(b) is attending an educational institution full-time, and
(c) has attained the age of 18.”

“Mae gan berson hawl i'r grant os yw'r person-
(a) yn preswyllo fel arfer yng Nghymru,
(b) yn mynychu sefydliad addysgiadol yn llawn amser, ac
(c) yn 18 oed neu'n hŷn.

Not

“If a person is ordinarily resident in Wales, is attending an education institution full-time, and has attained the age of 18, that person is entitled to a grant.”

“Os yw person yn preswyllo fel arfer yng Nghymru, yn mynychu sefydliad addysgiadol yn llawn amser, ac yn 18 oed neu'n hŷn, mae gan y person hwnnw hawl i grant.”

27 Sentence structure: compressed sentences

- (1) Drafters should not be too economical with words if a few more words would make their drafts clearer.
- (2) Problems will occur for readers if defined terms are overused.
- (3) Another kind of undesirable compression occurs when drafters try to cover too many cases by a single sentence or formula.
- (4) Drafting by reference to other legislation is yet another example of compressed drafting and the technique should be avoided. It is generally undesirable to draft in a

way that causes the reader to refer to other legislation in order for a provision to be understood.

- (5) But in some cases it may be better to draft by reference to other legislation if the alternative is excessive repetition of provisions on the statute-book, particularly if provisions are lengthy or complex.

28 Sentences: prefer the active to the passive voice

- (1) It is usually clearer to use the active voice than the passive voice.

EXAMPLE

The Welsh Ministers must give a notice
Rhaid i Weinidogion Cymru roi hysbysiad

is more quickly grasped than –

A notice must be given by the Welsh Ministers.
Rhaid i hysbysiad gael ei roi gan Weinidogion Cymru.

- (2) But the passive may be appropriate if the agent is unimportant, universal or unknown.

EXAMPLE

If a notice is given to the Authority
Os rhoddir hysbysiad i'r Awdurdod...

might be appropriate if it did not matter who gave the notice.

- (3) The passive may also be useful as a technique for gender-neutral drafting. (see paragraph 48)
- (4) In Welsh, the passive may be preferred for stylistic reasons: for instance, to avoid the use of less common active verbal forms.

EXAMPLE

Os llofnodwyd yr adroddiad ganddynt yn ystod y cyfnod perthnasol

might be more readily understood than –

- (5) *Os llofnodasant yr adroddiad yn ystod y cyfnod perthnasol*

29 Sentences: prefer the positive to the negative

- (1) The positive is often easier to understand than the negative version of the same thing.
- (2) But this depends on the nature of the proposition and on the overall effect of what is said: it is not a universal rule. A prohibition may well be best expressed in the negative.

EXAMPLE

Speak after the tone

Siaradwch ar ôl y tôn

is easier to understand than –

Do not speak until you hear the tone

Peidiwch â siarad nes i chi glywed y tôn

EXAMPLE

Do not walk on the grass

Peidiwch â cherdded ar y gwair

is probably easier to grasp at once than –

Walk only on the pathways

Cerddwch ar y llwybrau yn unig

- (3) Certain positive constructions in English may be expressed by a negative construction in Welsh.

EXAMPLE

The authority may only grant permission after it has consulted with the public (positive construction)

may be drafted in Welsh as-

Ni chaiff yr awdurdod ond roi caniatâd ar ôl iddo ymgynghori â'r cyhoedd (negative construction)

- (4) Negatives are often better avoided when expressing a quantity.

EXAMPLE

not less than 25%

nid llai na 25%

would often be more clearly expressed as-

at least 25%

o leiaf 25%

or

25% or more.

25% neu fwy.

- (5) It is best to avoid double negatives: but note that it may not always be possible.

EXAMPLE

The Welsh Ministers have not certified that no application was made
Nid yw Gweinidogion Cymru wedi ardystio na wnaed cais

does not mean the same as –

The Welsh Ministers have certified that an application was made.
Mae Gweinidogion Cymru wedi ardystio bod cais wedi ei wneud.

- (6) Apparent double negatives may also be used in certain constructions in Welsh, even if they are avoided in the corresponding construction in English.

EXAMPLES

No person may make an application

Will need to be translated as -

Ni chaiff neb wneud cais

Only an applicant may apply for costs

Will need to be translated as -

Ni chaiff ond ceisydd hawlio costau

CHAPTER 3

WORDS AND PHRASES

30 Words and phrases

Above and below /uchod ac isod

Drafters should not use references to “regulation X above” or “regulation Y below”, or to “rheoliad X uchod” or “rheoliad Y isod”, unless it is necessary in the context to distinguish the provisions of the instrument from the provisions of another instrument, Act or Measure.

Any /unrhyw

Drafters should not use “any” when the indefinite article “a” will do. “Any” and “unrhyw” should only be used where “any and every” is meant. “Any” and “unrhyw” can also be ambiguous—

For example-

The Welsh Ministers must consult any organisation appearing to them to be representative of the agricultural producers in Wales.

Rhaid i Weindogion Cymru ymgynghori ag unrhyw sefydliad y mae'n ymddangos iddynt eu bod yn cynrychioli cynhyrchwyr amaethyddol yng Nghymru.

This is ambiguous because it is not clear whether “any” or “unrhyw” means all such organisations, or any one of them.

But / ond

There is no rule against putting “But” or “Ond” at the beginning of a sentence, and it can on occasion be helpful. But it should not be overused. Unnecessary or over-emphatic words distract the reader.

An initial “but” or “ond” is unnecessary if it is in any event obvious that the second statement qualifies the first. For example, a proposition to the effect that “Nothing in this section applies” / “Nid oes dim yn yr adran hon yn gymwys” or “Subsection (x) does not apply” / “Nid yw is-adran (x) yn gymwys” does not need an initial “but” or “ond”.

Comprise

“Comprise” should not be used where “include” or “contain” is meant.

For example-

The Act comprises of a number of regulation making provisions.

would better drafted as-

The Act includes/contains a number of regulation making provisions.

The primary meaning of “comprise” is “consist of”, “to be made up of”.

For example -

This section comprises regulation making provisions.

The passive use of “comprise” is synonymous.

For example-

This section is comprised of regulation making provisions.

However, “comprise of” in the active voice is non-standard usage.

For example-

This section comprises of regulation making provisions.

would be better drafted as-

This section consists of regulation making provisions.

Hereby, hitherto, hereinafter, hereinbefore etc

“Hereby” and the other “here-” words should not be used because they are archaic and usually unnecessary. The use of “hereby” might serve some useful purpose if there is a need to refer to a provision, but that purpose is likely to be better met by more specific words (e.g. “the board is abolished by this regulation”).

In particular /yn benodol

The expressions “in particular” and “yn benodol” are commonly used in legislation to indicate that a subsequent list of things is not exhaustive:

For example-

This power includes, in particular,-

(a)...

(b)...

Mae’r pŵer hwn yn cynnwys, yn benodol, -

(a)...

(b)...

Or the expressions may be used to indicate that that a single example is not the only thing meant:

For example-

For the purpose of furthering the objectives in section X, the Welsh Ministers may, in particular, do Y.

At ddibenion hyrwyddo'r amcanion yn adran X, caiff Gweinidogion Cymru wneud Y yn benodol.

There have been instances during the third Assembly of this use of “in particular” and “yn benodol” not being understood by Assembly Members scrutinising legislation before the Assembly or by some consultees. It is recommended that drafters deploy alternative ways of indicating that a list is not intended to be exhaustive or that one thing specified is not intended to be the only thing.

For example-

The power includes, but is not limited to,-

(a)...

(b)...

.

Mae'r pŵer yn cynnwys, ond nid yw'n gyfyngedig i'r canlynol,-

(a)...

(b)...

For the purpose of furthering the objectives, the Welsh Ministers may, among other things, do X.

At ddibenion hyrwyddo'r amcanion, caiff Gweinidogion Cymru wneud X ymhlith pethau eraill.

Only/nid...ond, dim ond...,... yn unig

The word “only” and the corresponding Welsh phrases are easily misplaced, so drafters must take care. The sentences in the following example demonstrate the problem. Note that the Welsh examples sometimes allow for the use of emphatic constructions. Also note the ambiguity in (c), which could have the same meaning as (a) or (d), and the ambiguity in (g), which could have the same meaning as (e) or (i).

(a) Only the local authority may give the eligible student the grant.

(a) Ni chaiff ond yr awdurdod lleol roi'r grant i'r myfyriwr cymwys / Dim ond yr awdurdod lleol a gaiff roi'r grant i'r myfyriwr cymwys / Yr awdurdod lleol yn unig a gaiff roi'r grant i'r myfyriwr cymwys.

(b) The only local authority may give the eligible student the grant.

(b) Yr unig awdurdod lleol a gaiff roi'r grant i'r myfyriwr cymwys.

(c) The local authority only may give the eligible student the grant.

(c) Yr awdurdod lleol yn unig a gaiff roi'r grant i'r myfyriwr cymwys.

(d) The local authority may only give the eligible student the grant.

(d) Ni chaiff yr awdurdod lleol ond rhoi'r grant i'r myfyriwr cymwys./ Dim ond rhoi'r grant i'r myfyriwr cymwys y caiff yr awdurdod lleol.

(e) The local authority may give only the eligible student the grant.

(e) Ni chaiff yr awdurdod lleol roi'r grant ond i'r myfyriwr cymwys. / I'r myfyriwr cymwys yn unig y caiff yr awdurdod lleol roi'r grant. / Dim ond i'r myfyriwr cymwys y caiff yr awdurdod lleol roi'r grant.

(f) The local authority may give the only eligible student the grant.

(f) Caiff yr awdurdod lleol roi'r grant i'r unig fyfyriwr cymwys.

(g) The local authority may give the eligible student only the grant.

(g) Ni chaiff yr awdurdod lleol roi'r grant ond i'r myfyriwr cymwys. / Ni chaiff yr awdurdod lleol roi ond y grant i'r myfyriwr cymwys./ Y grant yn unig y caiff yr awdurdod lleol ei roi i'r myfyriwr cymwys. / Dim ond y grant y caiff yr awdurdod lleol ei roi i'r myfyriwr cymwys.

(h) The local authority may give the eligible student the only grant.

(h) Caiff yr awdurdod lleol roi'r unig grant i'r myfyriwr cymwys.

(i) The local authority may give the eligible student the grant only.

(i) Ni chaiff yr awdurdod lleol roi ond y grant i'r myfyriwr cymwys. / Y grant yn unig y caiff yr awdurdod lleol ei roi i'r myfyriwr cymwys. / Dim ond y grant y caiff yr awdurdod lleol ei roi i'r myfyriwr cymwys.

Or /neu/ynteu

“Or” is not always disjunctive in character. In Welsh, “or” is expressed in one of two ways. When “or” is not disjunctive “neu” is generally used. But when “or” is

disjunctive in nature, the written form “ynteu” (usually expressed as “ta” in speech) is used.

A power to impose conditions on grants or loans would normally be read as allowing conditions relating to one or both.

EXAMPLE

The regulator may require the employer to—

- (a) produce any relevant document, or*
- (b) provide any relevant information.*

Caiff y rheoleiddiwr ei gwneud yn ofynnol i’r cyflogwr—

- (a) dangos unrhyw ddogfen berthnasol, neu*
- (b) darparu unrhyw wybodaeth berthnasol.*

In that example, it seems very unlikely that the powers are intended to be mutually exclusive. But in other cases it may be less clear, as perhaps the following example illustrates.

EXAMPLE

The regulator may require the employer to—

- (a) pay a fine, or*
- (b) take action of a description specified by the regulator.*

Caiff y rheoleiddiwr ei gwneud yn ofynnol i’r cyflogwr—

- (a) talu dirwy, neu*
- (b) cymryd camau o ddisgrifiad a bennir gan y rheoleiddiwr.*

The Welsh version using ‘ynteu’ would make it clearer that (a) and (b) are mutually exclusive.

Caiff y rheoleiddiwr ei gwneud yn ofynnol i’r cyflogwr—

- (a) talu dirwy, ynteu*
- (b) cymryd camau o ddisgrifiad a bennir gan y rheoleiddiwr.*

So a degree of caution is in order. It may be possible to make the intention clear by the introductory words spelling out that both of two alternatives are a permissible option; for example, in the case of a penal provision allowing “the imposition of a fine or imprisonment for a period of up to 2 years or both”/ “gosod dirwy neu cyfnod o garchar o hyd at ddwy flynedd, neu’r ddau”.

Provided that...

The use of the lawyer’s proviso to introduce conditions, limitations or exceptions should be avoided. “Provided that...” is an archaic formulation that has been criticised by a number of writers who advocate the use of plain language in legal drafting⁵.

The appearance of these words in a sentence is sometimes a sign that the sentence is too long.

The words “provided that” are ambiguous. The phrase might be used to introduce conditions, limitations, exceptions or simply a new proposition that does not qualify or limit the preceding material.

If the intention is to introduce a limitation or qualification drafters should consider simple words like ‘if’, ‘but’, ‘when’ or ‘however’ instead.

New provision that is not a true limitation or qualification does not need an introduction.

Same

“Same” or “of the same” should not be used as a substitute for “it” or “them”. It can often be dropped altogether; for example “*The notice must be in writing and the local authority must deposit two copies of the same in each public library in its area*”

Save

“Save” should not be used if “but” or “except” is meant.

Shall

“Shall” can be used in English to denote the future, to denote obligation or in a declaratory manner. Welsh Government drafting policy is to minimise the use of the legislative “shall” so as to avoid this ambiguity. There is no equivalent single term in Welsh covering all of the senses in which “shall” is used in English, so the same issue does not arise in the Welsh text. The future in Welsh is expressed either by using the present/future inflected form of the verb or by a periphrastic construction consisting of the future forms of the verb ‘bod’ and the relevant verb-noun. Obligation is expressed by use of the various nouns, adjectives and prepositions (e.g. rhaid,

⁵ E.g. P. Butt. & R. Castle, *Modern Legal Drafting* (2nd edition).

gofynnol, i). Declaratory statements are generally expressed by using the third person imperative form of the verb (e.g. bydded).

There are various alternatives to “shall” which can be used, depending on context—

- “must” / “rhaid” in the context of obligations (although “is to be” and “it is the duty of” may also be appropriate alternatives in certain contexts);
- “there is to be” / “bydded” in the context of the establishment of new statutory bodies etc.;
- use of the present tense in provisions about application, effect, extent or commencement; in Welsh the simple present may be differentiated from the continuous present;
- “is amended as follows” / “wedi ei ddiwygio fel a ganlyn” in provisions introducing a series of amendments;
- “is repealed” / “wedi ei ddiddymu” in the context of free-standing repeals;
- “is to be” / “i’w” in the context of provisions relating to statutory instruments (and, if appropriate, “may not” “ni chaiff” as an alternative to “shall not”).

A reason for not departing from “shall” might be that it would appear in text to be inserted near to existing provisions that use “shall” in the same sense.

Subject to / yn ddarostyngedig i

To say that “This section is subject to section x” / “Mae’r adran hon yn ddarostyngedig i adran x” is not always helpful. It may be better to be more precise about the relationship between the propositions (eg “This section does not apply to... (see section x)” / “Nid yw’r adran hon yn gymwys i ...(gweler adran x)”.

It may also be possible to use another expression: for example, “but see section X” / “ond gweler adran X”. Or it may be possible to state briefly the case to which a different rule applies by saying, for example, “except” “ac eithrio” or “unless” “oni bai” (as in “Unless the person concerned is under 30” / “Oni bai bod y person dan sylw yn iau na 30 oed”).

The relationship between the provisions may be particularly hard to follow if “subject to” / “yn ddarostyngedig i” is at the beginning of the sentence. It may be better to start with the main proposition and then indicate that there is a qualification (perhaps in a second sentence).

Alternatively, it may be possible to dispense with “subject to” / “yn ddarostyngedig i” altogether, especially if the qualifying proposition is close to the proposition it qualifies— in which case the reader may be expected to grasp the relationship between the two without extra help.

“Subject to what follows” and “subject as follows” / “yn ddarostyngedig i’r hyn a ganlyn” are potentially very ambiguous and should be avoided unless it is abundantly obvious from the context exactly which of the following provisions are

being referred to. Where there is any doubt, specify exactly which provisions you mean (or express the relationship in some other way).

Global cross-references such as “Subject to the provisions of the Corporation Tax Acts” / “Yn ddarostyngedig i ddarpariaethau yn Neddfau’r Dreth Gorfforaethau” are sometimes unavoidable but may not be entirely meaningful to non-expert readers. If the reference cannot be avoided, try to include a list of where the relevant other provision is made.

Such / y fath, ...o’r fath, y cyfryw...

“Such” should not be used if “the”, “a” or “that” will do. “Y fath ...”, “...o’r fath”, “y cyfryw” should similarly be avoided in Welsh if the use of the definite article or demonstrative adjectives suffices.

If “such” is being used to refer back to something care must be taken over how much is to be picked up by the previous proposition.

For example, if a draft says “such” period”, does this pick up the period of 12 months mentioned earlier, or that period plus one or more of the qualifications built into the earlier provision that make the period shorter or longer in particular circumstances?

Thereby, thereafter, thereto, therefrom, etc

“There-“ words seem old fashioned to modern readers and they should be avoided. As with “here-“ words, there may be some purpose in using them, in the case of “there-“ words for references back. A reference back that is necessary is usually better achieved with more specific words.

“of this Act”, “of this section”, “of this Schedule” etc / “o’r Ddeddf hon”, “o’r adran hon”, “o’r Atodlen hon”

This relates to the use of “this Act”, “of this section” and “of this Schedule” etc and the corresponding Welsh expressions in connection with references to sections, subsections and paragraphs of a Schedule etc.

As a general rule, use of these expressions should be avoided.

But they may serve a useful purpose:

- (a) in contexts where “above” or “below” might otherwise be used (see above): there may be reasons of symmetry or emphasis that mean that, for example, “of this Act” is to be preferred to “above” or “below”;
- (b) where there is a reference in a Schedule to “this Part” or “Part 2” and both the Schedule and the Act containing it are divided into Parts; it may be desirable to add “of this Act” or “of this Schedule” to make clear which Part of what is being referred to;

- (c) where there is a reference to a Chapter of the Part in which the reference occurs and another Part of the Act is also divided into Chapters; it may be desirable to add “of this Part” to the reference in the interests of clarity.

The same principles apply to the use of the corresponding Welsh expressions.

Where / pan fo

Sometimes “where” is clearly preferable to “if”, and sometimes “if” is clearly preferable to “where”, but sometimes either could be used. The same is true of the corresponding Welsh expressions “pan fo” and “os”.

“Where” (“pan fo”) is useful for stating a case (or a set of circumstances” in which a later proposition applies.

“If” (“os”) is useful for stating a contingency.

But the two overlap, as a case may also be a contingency: in those circumstances “if” (“os”) may often be more instantly comprehensible.

EXAMPLE

Instead of-

Where a person is served with a notice, [then something follows],

Pan fo hysbysiad yn cael ei gyflwyno i berson, [yna mae rhywbeth yn dilyn],

you could say-

If a person is served with a notice, [then something follows]

Os cyflwynir hysbysiad i rywun, [yna mae rhywbeth yn dilyn].

Will / bydd

“Will” / “bydd” has sometimes been used where makers of subordinate legislation are imposing obligations on themselves. It is preferable to impose obligations in legislation in objective terms, imposing the obligation rather than stating an intention.

EXAMPLE

Applications received by the Welsh Ministers must be acknowledged within seven day”

Rhaid cydnabod ceisiadau a ddaw i ddwylo Gweinidogion Cymru cyn pen saith niwrnod

Not

Applications received by the Welsh Ministers will be acknowledged within seven days

Bydd ceisiadau a ddaw i ddwylo Gweinidogion Cymru yn cael eu cydnabod cyn pen saith niwrnod

31 Neologisms

- (1) Neologisms should be avoided in Welsh and English. On certain rare occasions, however, the use of neologisms in Welsh may be necessary: although Welsh has been used as a language of law for many centuries, legislation and many of the technical fields with which it is concerned are relatively new domains for the Welsh language.
- (2) This is sometimes manifested in the appropriation of a word already in existence but which has fallen out of favour in modern Welsh and lending it a new meaning. The word 'mangre' (with the appropriate mutation in context to 'fangre') is used in section 41 of the Children and Families (Wales) Measure 2010 to convey the meaning of 'premises'.
- (3) The word 'premises' was a longstanding problem for legislation in Welsh until the word 'mangre' (a place or location) was appropriated for the drafting of statutory instruments some years ago and given a specific meaning. Similarly, in section 37 of the Welsh Language Measure 2011, the word 'neilltuedig' (already in existence with the meaning 'set apart' or 'reserved') was appropriated for the English 'qualifying' as in 'qualifying person' and 'qualifying service delivery standard'. The word normally used for 'qualifying' is 'cymwys', but the decision was taken to appropriate another word because 'cymwys' also means 'applicable' and 'penodol gymwys' was already in use in the Measure for 'specifically applicable' and 'cymwysadwy' in use for 'potentially applicable'.
- (4) In coining new terms, best terminological practice should be observed. Drafters and translators should follow the Guidelines for the Standardization of Terminology published jointly by the Welsh Government Translation Service and the Welsh Language Board.

32 Regional variations in Welsh words

- (1) The Welsh and English used in legislation needs to be understandable to speakers in all parts of Wales and so the use of dialect and colloquialisms is generally to be avoided. However, there are rare instances in Welsh where there is not an acceptable word in use throughout the whole of Wales and in those cases regional alternatives are used in Welsh legislative drafting; for example, Rheoliadau Gwrychoedd neu Berthi Uchel (Ffioedd) (Cymru) 2004 (The High Hedges (Fees) (Wales) Regulations 2004) where both 'gwrychoedd' and 'perthi' are used for 'hedges'.
- (2) No alternatives have appeared in Assembly Measures, although the issue has arisen. There are two Welsh words for milk: 'llaeth' and 'llefrith'. In section 1(1)(b) of the Red Meat (Wales) Measure 2010 only 'llaeth' is used, the reasoning being that

although there are two words in use, one is dominant and would be understood in all parts of Wales. In this case it was not thought worth disrupting the flow of text, which inevitably follows when mentioning alternative words. This demonstrates need for the flexible application of drafting techniques to produce the best result.

CHAPTER 4

SINGULAR AND PLURAL

33 Bodies corporate: plural or singular

- (1) In English, local authorities and other bodies corporate may be treated as plural or singular nouns; in Welsh, a single noun is always treated as a single noun and a plural as a plural.
- (2) In general a local authority or other body corporate should be treated in English as a singular noun.
- (3) But when textually amending legislation that uses the plural in English, it may be necessary to follow suit in order to avoid confusion.

CHAPTER 5

NUMBERS AND DATES

34 Cardinal Numbers

- (1) Figures should normally be used for all numbers above ten;
- (2) Figures should also normally be used for numbers up to and including ten that relate to sums of money, times or periods of time, ages, dates, units of measurement or in quasi-mathematical contexts;
- (3) In other contexts, numbers up to and including ten should either be spelt out or be expressed as figures depending on what seems more natural or appropriate in the contexts concerned;
- (4) A number that begins a sentence should normally be spelt out;
- (5) Mixing words and figures referring, in a single context, to things of the same kind should be avoided.
- (6) In Welsh texts the following points of house-style have been adopted:
 - (a) the traditional vigesimal rather than the decimal system is to be used;
 - (b) from 11 onwards, the pattern '11 o ddiwrnodau' rather than '11 diwrnod' is to be followed
 - (c) figures will cause mutation as if they were words e.g. '2 bwynt', '6 phwynt', '8 bwynt'.
 - (d) 7 and 8 cause soft mutation (except for words beginning with 'd' or 'm').
 - (e) 'blwydd' 'blynedd' and 'diwrnod' are mutated nasally after every cardinal number except 2, 3 and 4 using the 'deng', 'deuddeng', and 'pymtheng' forms.
 - (f) the 'deng', 'deuddeng', and 'pymtheng' forms are to be used with words beginning with a vowel e.g. 'pymtheng awdurdod' or 'm-' e.g. 'deng mis'.

35 Ordinal numbers

- (1) Ordinal numbers above 10th should not be spelt out;
- (2) The question of whether numbers below 11 should or should not be spelt out should be decided in the light of what seems more natural or appropriate in the contexts concerned.

36 Dates

- (1) Numbers should be used.
- (2) The English endings -st, -rd and -th and the Welsh endings –ydd, -fed, -ed, -ain etc in conjunction with figures for dates should not be used in the body of legislation.

37 Percentages

“%” should be used rather than “per cent” / “y cant”.

PART 5

GENDER NEUTRAL DRAFTING

General

38 What is gender-neutral drafting?

- (1) The Presiding Officer's Determination on Proper form for Public Bills for Acts of the Assembly states that the text of a Bill "must not use gender specific language unless the meaning of the provision cannot be expressed in any other way (e.g. the provision is one that relates only to persons of a particular gender)"⁶. The use of gender specific language is also one of the grounds upon which the Constitutional and Legislative Affairs Committee of the National Assembly for Wales may report to the Assembly on a statutory instrument under standing order 21.2⁷.
- (2) Gender neutral drafting means that, where there are suitable alternatives available, the constructions drafters use should not imply that only men do certain things, such as hold office. Generally, gender-specific language should only be used for references to persons of one gender or the other (for example, in provisions that deal with women taking maternity leave).
- (3) This presents a challenge to drafters in making drafts as clear as possible. The paragraphs that follow explore a number of techniques that may be used to draft in a gender-neutral way without over-complicating the text.
- (4) The techniques will not be suitable in all contexts. The drafter should choose a technique that works best in each context that presents itself.

Gender-specific pronouns

39 Gender-specific pronouns

- (1) The old drafting practice in English only of using gender-specific pronouns relied in part on section 6 of the Interpretation Act 1978, by which a gender-specific pronoun (usually the male pronoun) is used to refer to a person who may be either male or female. This involved using "he" instead of "he or she" or "he, she or it", and so on with "him" and "his".
- (2) In order to draft gender-neutrally in English this practice should not be overused. The following sections set out a number of methods that can be used to help to eliminate gender-specific pronouns. Different considerations apply to drafting in Welsh.

⁶ <http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance.htm>

⁷ <http://www.assemblywales.org/bus-home/bus-assembly-guidance.htm>

- (3) In Welsh, masculine pronouns are used to refer to masculine nouns and feminine pronouns are used to refer to feminine nouns – the sex of the person referred to is immaterial⁸. This means that there is no need in Welsh to avoid the gender-specific pronouns in the same way as in English.
- (4) The Interpretation Act assumes that all UK legislation will be drafted in the English language, and takes no account of Welsh or other languages. As a result, section 6 does not work for Welsh.
- (5) Welsh, in common with many other languages such as French, Spanish and Russian, has a grammatical gender system which means that all nouns in the singular are either masculine or feminine. This is not an indication of sex, but a traditional label that grammarians use.
- (6) The introduction to the Welsh Academy English-Welsh Dictionary states that “it would be just as logical to classify nouns as red nouns and green nouns, or as round nouns and square nouns”. Conversely, English has no grammatical gender, and its pronouns refer only to the sex of the person referred to.
- (7) While there is usually a correlation in Welsh between sex and grammatical gender with regard to nouns denoting persons (e.g. job titles, relations, roles etc.⁹) this is not universally the case. ‘*Plentyn*’ (child) is masculine, and so the masculine pronoun ‘*ef*’ and the possessive ‘*ei*’ followed by a soft mutation (him and his) are used to refer to the word, even if the child in question is a girl.
- (8) Both the feminine and masculine pronoun may be used in Welsh if a pair of nouns, one masculine and one feminine, is used, but using pairs of pronouns (like *ef/hi*, *ganddo ef/ganddi hi*) should be avoided as far as is possible.¹⁰
- (9) In Welsh, the pronoun should always follow the grammatical gender of the noun even if the English draft uses *his/her* (a construction that should also be avoided in English – see below).

EXAMPLE—

If a parent sends his or her child to the school > Os bydd rhiant yn anfon ei blentyn i’r ysgol

⁸ *The Welsh Academy English-Welsh Dictionary (1995), p xii.*

⁹ For example, ‘*mam*’ (mother) is feminine and ‘*tad*’ (father) is masculine

¹⁰ For example, for the English word “teacher”, there are two words in Welsh – ‘*athro*’ for a male teacher, and ‘*athrawes*’ for a female teacher. If both ‘*athro*’ and ‘*athrawes*’ are used, both the masculine and feminine pronouns need to be used. The masculine possessive pronoun ‘*ei*’ causes a soft mutation and the feminine possessive pronoun ‘*ei*’ causes an aspirate mutation, so consequential changes will occur throughout the text.

40 Accumulating pronouns

- (1) The practice of using “he or she” instead of “he” is quite common in current Welsh Government drafting practice in English. Arguably, it is not truly gender-neutral and should be avoided unless there is no better way of achieving gender-neutral drafting.
- (2) Overuse of the “he or she” method leads to inelegant sentences and is distracting. The effect is exacerbated when a non-gender specific pronoun is also needed to cover the eventuality of the person referred to being a body rather than an individual (i.e. "he, she or it").

41 Repeat the noun

- (1) Substituting a noun for the pronoun is the most usual and effective technique for avoiding gender-specific pronouns in English. In Welsh, in the formal register, it is not always essential or desirable to use any pronoun in corresponding constructions.

EXAMPLE—

A person ceases to be the chair or the deputy chair if the person...

Mae person yn peidio â bod yn gadeirydd neu'n ddirprwy gadeirydd os yw'n...

Instead of

*A person ceases to be the chair or the deputy chair if **he or she**...*

Mae person yn peidio â bod yn gadeirydd neu'n ddirprwy gadeirydd os yw ef yn...

A member of the Tribunal may resign the office of member.

Instead of

*A member of the Tribunal may resign **his or her** office.*

(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 39 (3))

- (2) Substituting a noun in this fashion often enhances clarity of the English draft, since the reader does not have to go back and work out what the antecedent of a pronoun is.
- (3) The drawback of repeating the subject is that, in some instances, it can lead to inelegant provisions. The technique should be used with caution where the noun needs to be repeated several times, as it may become too cumbersome.

42 Use a neutral word or phrase such as “person”, “any person”, “every person” or “no person”

- (1) It may be appropriate to substitute a neutral word or phrase in English, such as “person” for the pronoun.

EXAMPLE—

After a person’s term as a member ends, the person may carry out the duties of a member in respect of a matter that was referred to the Commission.

Instead of

*After a member’s term ends, **he or she** may carry out the duties of a member in respect of a matter that was referred to the Commission.*

(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 39(9))

- (2) In this example it would be inappropriate to repeat the noun “member” in each instance because the provision deals with the situation where the person is no longer a member (because the person’s term as member has ended).

43 Use a label

- (1) The adverse effects of repeating a noun can sometimes be mitigated by using a letter as a label for a noun that would otherwise appear repeatedly:

EXAMPLE—

If a person (“C”) makes a claim under this section, C is entitled...

Os yw person (“C”) yn gwneud cais o dan yr adran hon, mae gan C hawl i...

- (2) Constantly repeating titles, for instance “the Chief Inspector of Education and Training in Wales” can also be avoided by using a shorter label e.g. “the Chief Inspector” and adding a definition:

EXAMPLE—

In [this Matter][these regulations], “the Chief Inspector” means the Chief Inspector of Education and Training in Wales.

Yn y [Mater hwn][rheoliadau hyn], ystyr “y Prif Arolygydd” yw Prif Arolygydd Addysg a Hyfforddiant yng Nghymru.

- (3) Note that using a letter as a label for a noun in order to avoid using the pronoun will not have the same effect in Welsh as in English. Although it is possible to use a letter as a label in Welsh (see the example in subsection (1)), letters of the alphabet are treated as feminine nouns (rather than being gender-neutral as in English). However, the fact that the letter is treated as grammatically feminine in Welsh does not imply that the person it represents is a woman.

44 Eliminate references back

Whilst repeating the noun can often be cumbersome when there are a number of references back, sometimes a reference back is unnecessary and the same result can be achieved by changing the structure of the sentence or using a synonym or alternative phrase.

EXAMPLE—

The claimant should as far as possible be put in the position that would have prevailed if the breach had not occurred.

Instead of

*The claimant should as far as possible be put in the position **he** would have been in had the breach not occurred.*

(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 39(9))

45 Omit pronouns

Sometimes a pronoun can be omitted completely, even if that means rewriting the sentence. This is often a compact and clear way of achieving gender-neutral drafting.

EXAMPLE—

If satisfied that all the conditions are fulfilled, the Inspector may...

Instead of

*If **he or she** is satisfied that all the conditions are fulfilled, the Inspector may...*

A member of the Tribunal may resign office...

Instead of

*A member of the Tribunal may resign **his or her** office...*

A fisheries officer may issue and register a licence after determining that the applicant has met the licence requirements.

Instead of

*A fisheries officer may issue a licence and **he or she** may register the licence if **he or she** considers that the applicant has met the licence requirements.*

(No translation is provided for the above examples as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 39(9))

46 Replace the pronoun with “the”, “a”, “that” or “those”

An article such as “the” or “a”, or a determiner such as “that” or “those”, can sometimes be used to replace the pronoun.

EXAMPLE—

In accordance with the terms of employment....

Instead of

*In accordance with **his or her** terms of employment...*

The Minister may not appoint a relative to the position of Deputy Minister.

Instead of

*The Minister may not appoint any of **his or her** relatives to the position of Deputy Minister.*

An applicant must include with the application...

Instead of

*An applicant must include with **his or her** application...*

The Commissioner shall advise the complainant in the report under subsection 2.

Instead of

*The Commissioner shall advise the complainant in **his or her** report under subsection 2.*

(In this case, subsection (2) says that the Commissioner issues the report, so it is not necessary to refer to “his” report).

(No translation is provided for the above examples as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see section 39(9))

47 The “whose” solution

Occasionally, it will be possible to use the gender-free “whose” to resolve a drafting problem and drop the pronoun.

EXAMPLE—

This section confers no immediate authority on the auditor, whose powers remain dormant until the occurrence of the contingency.

Instead of

*This section confers no immediate authority on the auditor. **His** powers remain dormant until the occurrence of the contingency.*

(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 39(9))

48 Use the passive rather than the active voice

- (1) Agentless passive constructions in English may avoid the need for the use of gender-specific pronouns. But those passive constructions may be less clear than their active counterparts and may give rise to ambiguities¹¹ (see paragraph 28).

EXAMPLE—

The Secretary of State must submit a memorandum explaining why the order has not been laid...

Instead of

*The Secretary of State must submit a memorandum explaining why **he** has not laid the order...*

- (2) Personal pronouns are not always used in the same way in Welsh and the conversion of active to passive is a solution specific to a problem arising in English.
- (3) In standard literary Welsh, the pronoun is omitted in any case in a neutral (non-emphatic or non-contrastative) statement, e.g. ‘*ysgrifennodd lythyr*’ – ‘[he/she] wrote a letter’. Auxiliary pronouns are used only for emphasis or contrast: ‘*ysgrifennodd ef lythyr*’ or ‘*ysgrifennodd hi lythyr*’ emphasises that **he** or **she** wrote the letter rather than someone else. For this reason, converting the active to the passive, while useful for English, makes no difference to gender-neutrality in Welsh –

¹¹ In the passive construction given in this example, for instance, it is not clear that it is the Secretary of State’s failure to lay the order which must be explained.

'ysgrifennwyd llythyr' ('a letter was written') is no more gender-neutral than *'ysgrifennodd lythyr* – ('[he/she] wrote a letter').

49 Use the plural rather than the singular

- (1) While the use of the singular is usually preferred, the plural can be used to avoid a gender-specific pronoun in difficult cases so long as its use does not create ambiguity.

EXAMPLE—

Occupiers must notify the Authority of any changes in their address.

Instead of

*An occupier must notify the Authority of any change in **his** address.*

Members of the Tribunal may resign their offices...

Instead of

*A member of the Tribunal may resign **his or her** office...*

Borrowers who are not prompt in making payments under their mortgage risk losing their homes.

Instead of

*A borrower who is not prompt in making payments under **his** mortgage risks losing his home.*

- (2) This is one technique that can be helpful in Welsh as well as in English.
- (3) Using the word *'athro'* (male teacher) as an example; whilst there is no 'neutral' noun that will cover both the male (*'athro'*) and female (*'athrawes'*) singular in Welsh, the plural of the masculine form *'athro'* (*'athrawon'*) is generally accepted to refer to male teachers, male and female teachers, or even female teachers, despite the fact that there is a feminine plural (*'athrawesau'*).
- (4) When dealing with gender-specific nouns like *'athro/athrawes'*, using the plural (teachers) in the English draft can be helpful, and should be considered where that does not lead to ambiguity.

50 Use a participle rather than a verb

EXAMPLE—

A person must record the name of the manufacturer when acquiring any medicinal product.

Instead of

*A person must record the name of the manufacturer when **he or she** acquires any medicinal product.*

(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 39(9))

51 Use a subordinate clause that operates as an adjective – the ‘who’ solution

The word “who” is a gender-free pronoun that can be useful in avoiding the need for a reference back either containing a gender-specific pronoun or a repeated noun.

EXAMPLE—

A person who concludes that exercising a power would assist it to comply with those duties must seek to exercise that power.

Instead of

*If a person concludes that the exercise of a power would assist it to comply with those duties **he or she** must seek to exercise that power.*

A testator who makes a bequest intending that the beneficiary’s own property be disposed in a particular way must make this condition express.

Instead of

*If a testator makes a bequest with the intention that the beneficiary dispose of **his** own property in a particular way, **he** must make this condition express.*

A person who has obtained a licence may keep a dangerous animal.

Instead of

*If a person obtains a licence, **he** may keep a dangerous animal.*

A mortgagee who exercises a power to sell mortgaged property may not...

Instead of

*Where a mortgagee exercises a power to sell mortgaged property **he** may not....*

(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see section 39(9))

52 Use a verb instead of a noun + pronoun

EXAMPLE—

If satisfied that an application meets the relevant criteria, the Secretary of State must consent to it.

Instead of

*If satisfied that an application meets the relevant criteria, the Secretary of state must give **his** consent to it.*

The Commissioner may consent...

Instead of

*The Commissioner may give **his** consent...*

(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 39(9))

53 Mention the offence not the offender

EXAMPLE—

It is an offence to fail to comply with this regulation.

Instead of

*A person commits an offence if **he or she** fails to comply with this regulation.*

(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 16(3))

54 Using plural pronouns for singular nouns

- (1) Using “they” (and its other grammatical forms: “them”, themselves” and “their”) as a gender-neutral pronoun to refer to a singular noun is possible, but this usage in English is controversial.

EXAMPLE—

If a person contravenes this regulation, they commit an offence.

Instead of

*If a person contravenes this regulation, **he or she** commits an offence.*

- (2) There are literary precedents for such usage where there is an implied element of plurality (e.g. “anyone” or “a person”), but such usage is probably best avoided.
- (3) This solution may make it more difficult in future to rely on the number of a pronoun to identify clearly what it is referring to. It may be better in this instance to repeat the noun:

EXAMPLE—

If a person contravenes this regulation, that person commits an offence.

- (4) In Welsh, the corresponding plural pronoun ‘hwy’ can only refer to plural nouns. This means that even if the English text reads ‘if a chairman decides to retire **they** must inform the Assembly’, the Welsh will need to use the singular masculine pronoun to concord with ‘cadeirydd’ (chairman).

55 Dealing with the self-referential “himself”

- (1) The self-referential word “himself” occurs from time to time, and can be dealt with in a variety of ways.
- (2) In some contexts, “personally” is an acceptable alternative for “himself”.

EXAMPLE—

Liability will arise even though the owner is not personally guilty of a wrongful act.

Instead of

*Liability will arise even though the owner is guilty of no wrongful act **himself**.*

- (3) Where “himself” is the object of a verb, it may be necessary to use a different form.

EXAMPLE—

Where there has been a breach the innocent party may be entitled to terminate the contract and be released from further performance of obligations under the contract.

Instead of

*Where there has been a breach the innocent party may be entitled to terminate the contract and release **himself** from further performance of **his** obligations.*

(No translation is provided as the grammatical gender system in Welsh means that no issues arise in relation to gender-neutrality: see paragraph 39(9))

Gender-specific nouns

56 Gender-specific nouns in English

- (1) Some difficult questions arise about which nouns should be regarded as gender-specific and which should be regarded as gender-neutral.
- (2) In English, generally, words ending in “-man” need to be avoided to secure gender-neutral drafting (unless a particular individual of a certain sex is intended).
- (3) An alternative form of words should be used instead of words like “chairman”, “deputy chairman”, “workman”, “policeman” etc. For “chairman” and “deputy chairman”, the Climate Change Act 2008 uses “chair” and “deputy chair”, but other possible alternatives include “president”, “convenor”, “leading member”, and “principal member”. The precise wording may depend on the context of the enactment.
- (4) Drafters will need to form a view on what constitutes acceptable gender-neutral alternatives, as the use of “-person” (instead of “-man”) as a suffix can also be controversial in some instances.
- (5) English words that don’t end in “-man”, but have alternative feminine forms, e.g. “testator”, “actor”, “manager” can be regarded as gender-neutral despite the existence of alternative female forms (e.g. “testatrix”, “actress” and “manageress”).
- (6) The ending “-ess” should be avoided wherever possible as it is often pejorative, or perceived as such (for example, use “actor” not “actress; “author” not “authoress”).

57 Gender-specific nouns in Welsh

- (1) Similar to English, some nouns in Welsh take a form that appears to assume that a man rather than a woman will hold a particular office.
- (2) Whilst some of the most problematic nouns in English often have the suffix ‘-man’, in Welsh the most problematic end in ‘-wr’ (from the word ‘gŵr’, meaning ‘man’), e.g. ‘cyfarwyddwr’ (director), or are compounds of ‘dyn’ (man), e.g. ‘dyn tân’ (fireman).
- (3) In Welsh, many of the nouns referring to jobs, roles, positions etc. have masculine and feminine forms (e.g. ‘athro’ and ‘athrawes’ for ‘teacher’). The noun suffixes (or head noun in compounds) denote which form denotes which sex.
- (4) Although many job titles have masculine and feminine forms, job titles are not usually sex-specific, with the exception of ‘athro’ (male teacher) and ‘athrawes’ (female teacher), as the ‘masculine’ form can be used for both male and female in

most cases. As mentioned above, in the case of *'athro/athrawes'*, using the plural can be useful.

58 Welsh nouns ending in '-wr' (man) and '-wraig' (woman)

- (1) Where a noun in Welsh is formed by adding a suffix to a noun or verb stem, the grammatical gender of the noun is governed by the grammatical gender of the suffix. The most common personal suffixes are *'-wr'* and *'-ydd'* (although there are others, such as *'-yn'*, *'-adur'* and *'-or'*). The ones just quoted are masculine, but it is possible to form corresponding suffixes which have a feminine grammatical gender, being *'-wraig'*, *'-yddes'*, *'-en'*, *'-dures'* and *'-ores'*.
- (2) Nouns ending in *'-wr'* in particular raise questions of gender-neutrality because they often have a corresponding female form ending in *'-wraig'* and may therefore be constructed as referring to males only. A list of some examples is contained in the following table.

| | | |
|---------------|------------------|----------------------------------|
| arbenigwr | arbenigwraig | specialist |
| cyfarwyddwr | cyfarwyddwraig | director (directrix, directress) |
| cyfreithiwr | cyfreithwraig | lawyer |
| cynorthwywr | cynorthwywraig | assistant |
| gweinyddwr | gweinyddwraig | administrator (administratrix) |
| gweithiwr | gweithwraig | worker |
| gofalwr | gofalwraig | carer |
| hyfforddwr | hyfforddwraig | trainer |
| myfyriwr | myfyrwraig | student |
| newyddiadurwr | newyddiadurwraig | journalist, reporter |
| rheolwr | rheolwraig | manager (manageress) |

- (3) This is where the confusion may arise. Although the feminine suffixes mentioned above are invariably used to create nouns which refer specifically to the female sex, it does not follow that the masculine forms refer specifically to those of the male sex. Rather, it is often a case of the masculine forms being the basic forms, and the feminine forms being variations on them.

59 Welsh nouns with ‘-ydd’ suffixes

- (1) Even though nouns ending in ‘-ydd’ are masculine in grammatical gender and a corresponding feminine form may be created by adding ‘-es’, they are generally perceived to be more gender neutral¹².
- (2) This supposition seems to have arisen because while ‘*gŵr*’ corresponds to ‘man’, ‘married man’ or ‘adult male’ (whereas ‘*gwraig*’ corresponds to ‘woman’, ‘married woman’, ‘adult female’), the suffixes ‘-ydd’ and ‘-yddes’ have no related status as independent words, and are therefore considered more neutral. A list of some of the more common forms of ‘-ydd’ nouns are set out in the following table.

| | |
|--------------|-------------------------|
| cydlynnydd | co-ordinator |
| cyfieithydd | translator |
| cyfrifydd | accountant |
| cynhyrnydd | producer |
| derbynnydd | receptionist; receiver |
| dylunydd | designer |
| gohebydd | correspondent; reporter |
| golygydd | editor |
| goruchwylydd | supervisor |
| llyfrgellydd | librarian |
| peiriannydd | engineer |
| rhaglennydd | programmer |
| seicolegydd | psychologist |
| trefnydd | organizer |
| ymchwilydd | researcher |
| ymgyngorydd | consultant |

- (3) Although there is no such thing as a Welsh gender-free noun, the Equal Opportunities Commission has in the past objected to the use of job titles rendered in Welsh with the masculine suffix ‘-wr’ without the corresponding feminine ‘-wraig’ form, suggesting instead the supposedly more neutral ‘-ydd’. This seems to follow the attempt to search for alternatives for ‘-man’ endings in English, but a rule that works for one language can’t necessarily be transposed to another.

¹² See Equal Opportunities Commission, *Advertising Jobs in Welsh*, p. 2.

- (4) There are difficulties surrounding any attempt to prescribe the suffix ‘-ydd’ rather than ‘-wr’ for nouns which are job titles on grounds that ‘-wr’ is ‘more male’ than ‘-ydd’.
- (5) ‘-wr and ‘-ydd’ and their related feminine and plural forms are so closely related that they can form morphologically mixed pairs or sets. For example, the singular ‘ymwelydd’ (visitor) and ‘peiriannydd’ (engineer) give us the plural forms ‘ymwelwyr’ and ‘peirianwyr’, and there are many more similar examples.
- (6) There are also examples where one finds both ‘-wr’ and ‘-ydd’ forms added to the same root word, but where the words are not interchangeable, since they have slightly different meanings.

EXAMPLE—

‘ysgrifennydd’ means ‘secretary’, but ‘ysgrifennwr’ means ‘writer’;

‘cynghorydd’ means ‘councillor’, but ‘cynghorwr’ means ‘counsellor’;

‘rheolwr’ or ‘rheolwraig’ means ‘manager’, but ‘rheolydd’ means ‘control, regulator’, i.e. a device which regulates things.

This emphasises the point that it is not always possible to search for feasible, supposedly gender-neutral alternatives, to ‘-wr’ endings in Welsh.

- (7) Nouns ending in ‘-ydd’ may also have corresponding female forms.

EXAMPLE—

By adding ‘-es’:

| | |
|--------------------|----------------------|
| <i>Cadeirydd</i> | (chairman) |
| <i>Cadeiryddes</i> | (chairwoman) |
| <i>Trysorydd</i> | (treasurer (male)) |
| <i>Trysoryddes</i> | (treasurer (female)) |

- (8) The female form may be irregular, using the suffix ‘-wraig’:

EXAMPLE—

| | |
|----------------------|-----------------------|
| <i>Darlithydd</i> | (lecturer (male)) |
| <i>Darlithwraig</i> | (lecturer (female)) |
| <i>Cyfieithydd</i> | (translator (male)) |
| <i>Cyfieithwraig</i> | (translator (female)) |

- (9) The female ‘-es’ suffix may also be attached to a number of other male noun suffixes to make female alternatives.

EXAMPLE—

| | <u>masculine</u> | <u>feminine</u> |
|-------|----------------------------|-------------------|
| -adur | <i>cofiadur</i> (recorder) | <i>cofiadures</i> |
| -mon | <i>plismon</i> (policeman) | <i>plismones</i> |
| -or | <i>actor</i> (actor) | <i>actores</i> |
| -ych | <i>eurych</i> (goldsmith) | <i>euryches</i> |

60 Welsh nouns: use of pairs

- (1) As should now be clear, Welsh nouns often come in gender-specific pairs.
- (2) Whilst it would appear possible to use pairs of both feminine and masculine nouns to answer the gender-neutral question, this causes problems in itself.
- (3) A noun’s gender in Welsh has other grammatical repercussions apart from classifying it as a “he” or a “she”. Most importantly, it causes mutations to other words in the sentence.
- (4) Mutations vary according to the gender of the noun (rather than the sex of the person alluded to). In Welsh, you would say ‘*mae John yn nyrs dda*’ (John is a good nurse), where the adjective ‘*da*’ (good) is mutated to ‘*dda*’ following the feminine noun ‘*nyrs*’. It makes no difference that the nurse in question is male.
- (5) Using pairs of feminine and masculine nouns would mean that pairs of male and female pronouns (*ef/hi, ganddo ef/ganddi hi*) would be needed, as well as the corresponding mutation alternatives. This would result in unnatural, cumbersome drafting, and should be avoided.
- (6) Another problem with the use of pairs is that it isn’t always possible to do so in a consistent and unambiguous manner because there are sometimes variations in meaning between morphologically related forms.
- (7) For instance ‘*ysgrifennydd*’ means ‘secretary’, is masculine in gender and is used of males and females in official roles with societies or Government departments. The corresponding feminine form ‘*ysgrifenyddes*’ on the other hand is used only of females, and means an office assistant.
- (8) Because ‘*ysgrifenyddes*’ is so obviously gender-specific, it is preferable to use other titles such as ‘personal assistant’ in English so that a more gender-neutral term can be used in Welsh, such as ‘*cynorthwyydd personol*’.
- (9) Even where there are no such precise meanings to the variations in form, the feminine forms often carry connotations of inferiority. For example, ‘*rheolwr*’ means ‘manager’ and may be used for both males and females. The feminine variant

'rheolwraig' (corresponding to 'manageress'), on the other hand, refers exclusively to females and is perceived by some speakers as suggesting lower status.¹³

- (10) This is true of many *'-yddes'* endings, and the development of using *'-wraig/-yddes'* endings in an effort to be gender neutral has been criticised by some as seeming to demote particular professions. The perceived pejorative and sexist connotations of some feminine endings in Welsh bear a similarity to some feminine endings which are criticised in English, such as "authoress", "poetess", "usherette" etc.
- (11) The use of word pairs like *'athro/athrawes'* in Welsh should be avoided if possible. Plural forms can be used where appropriate if that assists (so long as they do not create ambiguity).
- (12) Alternatively, if it is possible to choose another word that does not raise such obvious gender connotations, then that should be substituted. For example, *'pennaeth'* (head) can be used instead of *'prifathro/prifathrawes'* (head teacher).
- (13) As in the Learning and Skills (Wales) Measure 2009, this can be expanded if dealing specifically with a head teacher of a school or principal of an institution: *'pennaeth ysgol'* (head teacher of a school) *'pennaeth sefydliad'* (principal of a higher education institution).

61 Welsh nouns: neologisms

- (1) Linguistic techniques that may work in English cannot be transferred wholesale into Welsh. The answer, it seems, is that rather than devise new supposedly egalitarian female *'-wraig'* endings, or supposedly neutral *'-ydd'* endings, for job titles in Welsh, the message needs to be reinforced that both *'-wr'* and *'-ydd'* endings (and indeed any other job title with a masculine grammatical gender) may apply equally to both men and women. Grammatical gender is not tied to the sex of the person.
- (2) The general policy is to use terms which are well-established rather than to coin new terms to meet the needs of gender-neutrality.
- (3) As a rule, following the line given in the Welsh Academy English-Welsh dictionary, the suffix *'-ydd'* should not be used unless it occurs naturally, and strained constructions such as *cyfarwyddwr/wraig* should also be avoided. Not every case is black and white though, and there may be more than one possibility in Welsh.
- (4) There are occasions when there may be no well-established Welsh term corresponding to an English one, an existing Welsh term may be poorly attested, or a noun ending in *'-ydd'* may be as well established as its *'-wr'* counterpart. In such circumstances an existing term can be set aside in favour of a better one, or a completely new term may be created. In such situations, nouns ending in *'-ydd'* should be favoured over nouns ending in *'-wr'*.

¹³ D. Prys, "Gender and Sex in Welsh Nouns", *Planet* 121, p. 90.

EXAMPLE—

The term ‘adopter’, ‘*mabwysiadwr*’ exists, but is poorly attested historically. The opportunity was therefore taken to use the term ‘*mabwysiadydd*’.

62 Nouns with only one form for both sexes

There are a number of job-titles in Welsh which have only one form for both sexes. These nouns are usually (but not always) masculine in grammatical gender, but may refer to males or females. Generally, they do not raise any gender-neutrality issues, and no new words need be coined.

EXAMPLE—

| | |
|---------------------------------|-----------|
| <i>Mecanic (m)</i> | mechanic |
| <i>Meddyg</i> ¹⁴ (m) | doctor |
| <i>Nyrs (f)</i> | nurse |
| <i>Bydwraig (f)</i> | midwife |
| <i>Pennaeth(m)</i> | head |
| <i>Pensaer (m)</i> | architect |
| <i>Porthor (m)</i> | porter |
| <i>Saer (m)</i> | carpenter |
| <i>Swyddog (m)</i> | officer |
| <i>Tiwtor (m)</i> | tutor |
| <i>Warden (m)</i> | warden |

Exceptions and difficulties

63 Amending existing Acts

- (1) A difficulty occurs when amending Acts or subordinate legislation which is drafted in a way that is not gender neutral.
- (2) Although it may be possible to use gender-neutral techniques to frame textual amendments to provisions that were originally framed in gender-specific terms,

¹⁴ The female form ‘meddyges’ exists, but tends to refer to a female healer or herbalist rather than a doctor of medicine.

there are clearly going to be cases in which that will not be possible. Sometimes it would be necessary to rewrite a provision from scratch in order to make a very minor amendment in gender-neutral terms, and that could create handling problems, as well as obscuring the real purpose of the amendment.

- (3) Careful consideration is needed where amendments are made to instruments that were not drafted in gender-neutral terms. If, for example, the instrument being amended uses “chairman”, the drafter will need to amend the original instrument so that all references to “chairman” are replaced by a gender-neutral alternative). But if it is not practical to make wholesale changes of this kind, drafters should not use “chair” in the amendment and leave “chairman” in the principal instrument without doing something to clarify the position for the reader of the consolidated amended text; for example, by inserting a provision to make clear that the references to “chair” and “chairman” are to be interpreted as meaning the same thing.

64 Gender-specific enactments

There will be some instances where gender-specific drafting will remain appropriate (e.g. in enactments about marriage or divorce).¹⁵

65 The Monarch

Drafters should continue to refer in gender-specific terms to the monarch according to the gender of the current monarch.

66 First Minister, Counsel General, Secretary of State and other office holders

References to the First Minister, Counsel General, Secretary of State and other office holders should not follow the gender of the current office holder.

¹⁵ Although difficult questions may arise where provisions about marriage have been applied to civil partnerships.

PART 6

DRAFTING TECHNIQUES

CHAPTER 1

PARAGRAPHING

67 Introduction

- (1) An obvious way of making a sentence more digestible is to separate the text out into numbered paragraphs. But drafters should be careful not to overdo paragraphing. Just because text can be turned into paragraphs doesn't mean it has to be. In some cases it may be better to have continuous text, and not to separate out the items at all.
- (2) This chapter gives technical guidance about paragraphs¹⁶.

68 Two sets of paragraphs

- (1) Do not put two or more sets of paragraphs in the same sentence (eg in the same subsection).

EXAMPLE (to avoid)—

If the Welsh ministers consider that –

- (a) the authority is not likely to achieve the target, or*
- (b) the authority is not likely to achieve the target in a reasonable time,*
the Welsh minister may after consulting the authority.
- (c) revise the target, or*
- (d) require the authority to explain.*

- (2) Instead, split the proposition into two so that there is one series in each paragraph.

69 “Sandwiches”

- (1) The following structure is a sandwich—
- (2) EXAMPLE—

If an inspector reasonably believes that -

¹⁶ Generally on paragraphs, see G.C. Thornton, *Legislative Drafting* (see chapter 7.1), pp.61-65, 95- 97 and D. Greenberg, *Craies on Legislation* (see chapter 7.1) paras 8.2.11 and 13. Some of the material contained in this chapter reflects material to be found in some of those passages.

(a) *premises falling within this Part are unfit for human occupation,*
(b) *they are nevertheless occupied, and*
(c) *the life or health of the occupants is at risk,*
the inspector may serve a notice under this section.

- (3) This structure can impede understanding, especially if the main proposition is relegated to the end (as in the example above). It is often possible to move the proposition in the full-out words at the end so that it appears in the opening words, and usually the result is easier to understand. Instead of the text above, you could say this—

An inspector may serve a notice under this section if the inspector reasonably believes that—

(a) *premises falling within this Part are unfit for human occupation,*
(b) *they are nevertheless occupied, and*
(c) *the life or health of the occupants is at risk.*

70 Conjunctions

- (1) Ensure that it is clear whether the paragraphs are intended to operate cumulatively or instead as alternatives.
- (2) There should not be a mixture of conjunctions, i.e. different conjunctions at the ends of different paragraphs in the same provision.

Cumulative or alternative paragraphs

- (3) Where a provision is paragraphed, the intention may be that the paragraphs are to operate cumulatively, or instead it may be that they are to operate as alternatives. In either case, it is up to the drafter to ensure that the intention is readily apparent to the reader.
- (4) So far as “or” is concerned, the drafter is confronted with the linguistic problem that “or” can have both an inclusive sense (i.e. a reference to A or B means A or B or both) and an exclusive one (i.e. a reference to A or B means A or B but not both) (the position in Welsh is different - see the entry for “or/neu/ynteu” in section 30). Dickerson¹⁷ suggests that: “Observation of legal usage suggests that in most cases “or” is used in the inclusive rather than the exclusive sense”. This construction may be bolstered, or alternatively excluded, by the context.

¹⁷ F. Reed Dickerson *Fundamentals of Legal Drafting* (see chapter 7.1) p.77.

EXAMPLE

Where an animal is taken into possession, a magistrates' court may order-

- (a) that specified treatment be administered to the animal, or*
- (b) that the animal be sold or destroyed.*

It seems unlikely the court should have to choose between (a) and (b). So the "or" at the end of (a) should probably be read in an inclusive sense.

On the other hand, in (b), it would make no sense for the court to order both sale and destruction, so "or" should no doubt be read in an exclusive sense.

- (5) It may be tempting to omit "or" from provisions in order to avoid any suggestion of exclusivity and perhaps to make it clear from the opening words what is intended. But where it is obvious from the context that the provisions would be read in an inclusive sense, it may be better from the point of view of clarity or consistency across the statute book to follow normal English and use "or".
- (6) Sometimes it will be desirable to spell out that both of two alternatives are a permissible option. For example, a provision allowing the imposition merely of a "fine or a term of imprisonment" might be construed in favour of a defendant so as to exclude the imposition of both. So if both may be wanted, it is probably best to say so.
- (7) Similar issues can arise with "and". If, in the example above, the court were given power to order that treatment be given to the animal *and* that it be sold or destroyed, would it have to do both? Again, though, the context will probably supply the answer.

Use of single conjunction

- (8) Often it will be sufficient to put the appropriate conjunction at the end of the penultimate paragraph and rely on the implication (in the absence of a contrary indication) that each of the preceding paragraphs is separated by the same conjunction.
- (9) However, if the "and" or "or" appears only at the end of the penultimate paragraph, the reader has to wait until then to know whether the paragraphs are cumulative or alternative. This is may be unhelpful with a long list of paragraphs.
- (10) It is of course possible to say "and" or "or" at the end of each paragraph. That can however be cumbersome.

No conjunction

- (11) It is also possible to avoid a single conjunction by making it clear in the opening words whether the paragraphs are cumulative or alternative.

EXAMPLE

A person who applies for a licence must send with the application a copy of [all] [at least one] of the following documents—

- (a) the person's birth certificate;*
- (b) the person's passport;*
- (c) the person's driving licence.*

(12) This can be heavy-handed in simple propositions, when “and” or “or” may be better.

(13) For specific heads of *vires*, the conjunction is often omitted. It is also common practice not to expand the opening words so as to refer to “any or all of the following”, but instead to rely on the context to supply the right answer.

EXAMPLE

The Welsh Ministers may by order make provision about—

- (a) the form of an application;*
- (b) the procedure for making an application;*
- (c) the fee to be paid by an applicant.*

In this example, it seems sufficiently clear that the Welsh Ministers may make provision about any or all of the things mentioned.

71 Punctuation

- (1) In the case of a simple list of paragraphs linked by a conjunction, commas or semi-colons may be used.
- (2) If the paragraphs are followed by full-out text that is effectively a continuation of the proposition contained in the text preceding the paragraphs, commas should be used, not semi-colons (see the example of a “sandwich” above).
- (3) Semi-colons may be more appropriate than commas where there is no conjunction (i.e. where the paragraphs are in effect a list setting out matters that have no particular affinity with each other - see the examples above).

72 Repeals and amendments

- (1) If you are repealing a paragraph which ends with a conjunction, it needs to be clear whether or not you are repealing the conjunction.

- (2) In cases where the conjunction's fate would not otherwise be sufficiently clear, clarify the position by adding words such as "(together with the "and" following it)" or "(but not the "or" following it)".

73 Unnumbered paragraphs (lists)

Paragraphs need not have numbers or letters. A list of things may be sometimes usefully displayed as paragraphs without numbers or letters, especially if the list is not too long and the entries are relatively short. This may also be a good idea if the list is likely to be amended frequently.

EXAMPLE

*In this section "award for bravery" means -
the Victoria Cross,
the George Cross,
the Albert Medal,
the Edward Medal, [etc.]¹⁸*

¹⁸ Income Tax (Earnings and Pensions) Act 2003, section 638(2).

CHAPTER 2

DEFINITIONS

74 Kinds of definition

(1) Definitions are broadly of four kinds—

- (a) Definitions of major concepts without which the reader cannot understand what follows.

EXAMPLE

In the Animal Welfare Act 2006, what is meant by “animal” (section 1) and “protected animal” (section 2).

- (b) Definitions adopted for the sake of drafting convenience.

EXAMPLE

In this Act, “the 2002 Act” means the Enterprise Act 2002.

Definitions of this kind should be kept to a minimum. They are likely to be less convenient to the reader than to the drafter.

- (c) Definitions of words or expressions which will be understood in general terms, but where a degree of certainty or clarification is needed.

EXAMPLES

In this Act, “child” means a person under the age of 18.

In this Act, “enactment” includes an enactment comprised in subordinate legislation.

- (d) Definitions making, for convenience, a minor adjustment of what a word or phrase would otherwise mean.

EXAMPLE

In this Act, “employment” includes self-employment.

This kind of definition should also be used sparingly.

75 Where to put definitions - Bills

(1) Where the defined term is used only once, the definition should appear in the same provision (eg the same section).

(2) Where the defined term is used more than once—

- (a) a definition of the first and second kind referred to above should normally be defined up front, as the reader will not understand what is being said. So it should appear either in the first place where the defined term appears or, if more convenient, in an introductory definitions provision.

- (b) a definition of the third kind referred to above can usually be left to the end;

- (c) a definition of the fourth kind referred to above can also usually be left to the end, unless there is a danger of the reader being seriously misled.
 - (d) Definitions which are given up front should be indexed so that the reader can see in one place whether the term is defined or not. This does not apply if the defined term is used only once.
- (3) A traditional interpretation section therefore includes—
- (a) index entries for definitions that have already been given (eg “In this Part, x has the meaning given in section 1”), and
 - (b) minor definitions of the third and fourth kinds referred to above.
- (4) Avoid prospective definition: “In this section and the next section, x means y”. The reader of the next section may not see the definition. If necessary, repeat the definition.

76 Where to put definitions – statutory instruments

- (1) The long standing practice for statutory instruments is for the general interpretation provision to appear near the beginning of the instrument rather than the end as in the case of Acts.
- (2) It seems that the difference in approach between primary and secondary legislation in the UK has arisen principally because of Parliamentary procedure in the consideration of amendments to bills. Opinion differs as to the relative merits of general interpretations provisions appearing at the start or at the end. Some consider it a distraction to the main story to have every kind of definition no matter how trivial listed at the start. Others argue that this is a more efficient way for readers to locate definitions¹⁹. Whatever the relative merits of the different approaches most users of UK legislation will be familiar with the usual location of general interpretation provisions in primary and secondary legislation, so the practice should continue of placing the general interpretation provisions at the start of statutory instruments.
- (3) Although all defined terms appear in a list near the start, drafters may still find that as a matter of drafting it is easiest to introduce and define a concept in a substantive article or regulation. Regulation Y might introduce and define the concept and if that concept is used elsewhere in the regulations the interpretation provision would say “X has the meaning given in regulation Y” / “mae i X yr ystyr a roddir iddo yn rheoliad Y”. Also where a definition is long or complex the interpretation provision could again cross refer to a later provision e.g. “X has the meaning given in regulation Y” / “mae i X yr ystyr a roddir iddo yn rheoliad Y”.
- (4) Where a defined term is used only once, the definition should appear in the same provision (e.g. the same regulation).

¹⁹ Thornton, *Legislative Drafting*, 4th edition at page 192.

77 Choice of label

- (1) Avoid labels which are misleading (and, conversely, do not give defined terms a meaning the reader would not expect).

EXAMPLE (to avoid)

In this Act, references to fingerprints include footprints.

- (2) A defined term should ideally in itself give the reader some clue as to what it means.

EXAMPLE

“PACE” or “the 1984 Act” would be a better label for the Police and Criminal Evidence Act 1984 than “the principal Act”.

- (3) Equally, colourless terms such as “the relevant person” should where possible be replaced with something more helpful.
- (4) Using the same label to denote different things in the same piece of legislation may confuse.

78 Operative provision in definitions

It is considered bad practice to include operative material in a definition. For example, it may be permissible to say that “regulations” means regulations made by the Welsh Ministers, but it would be going too far to include the Assembly procedure in the definition.

79 Definitions involving cross-references

- (1) If legislation is to use a term which has already been defined in the way desired in other legislation, it may be useful to borrow the definition from that other legislation.
- (2) There are at least two ways of doing this—

EXAMPLES—

In this Act, “health care” has the same meaning as in the Health Act 2006 (see section 98).

In this Act, “health care” has the meaning given by section 98 of the Health Act 2006.

- (3) The first approach may be the only possible one where the meaning of the word or phrase in the earlier Act is not given in a single place but has to be constructed from a number of different provisions. This approach may also be better if the definition has been elaborated on by case law which you want to attract.
- (4) In other cases, the second formulation may be better as more concise. But consider then whether it would not be even better just to copy the definition out.
- (5) If the Welsh text of legislation cross-refers to a definition found in an English-only legislative text, the way to do this is to refer to the English definition in the Welsh text.

EXAMPLE—

Yn y Ddeddf hon, mae i “gofal iechyd” yr un ystyr â “health care” yn Neddf Iechyd 2006 (gweler adran 98).

80 Lists of definitions

- (1) In some cases it may make sense to list definitions in conceptual order (e.g. where each definition builds on the previous one).
- (2) In most cases, though, definitions should be listed alphabetically. The English definitions are ordered according to the English alphabet and the Welsh definitions according to the Welsh alphabet. In the Welsh definitions, the definite article (“y” or “yr”) is ignored but prepositions are counted. Definitions beginning with numbers (e.g. in English “the 2002 Act” means the Enterprise Act 2002”) should appear first in numerical order. The corresponding Welsh definition would be ‘ystyr “Deddf 2002” yw Deddf Menter 2002’ and should therefore listed under ‘d’.
- (3) In a list of definitions, each entry should end with a semi-colon. There should be no conjunction.
- (4) The defined term in the English version of the text should also include the Welsh defined term in italics like this—
“local authority” (*“awdurdod lleol”*) means.....
- (5) Similarly, the defined term in the Welsh version should have the English alongside in italics. The reason for doing this is to facilitate comparison of text between the language versions. The definitions are likely to appear in a different order in each language.
- (6) This should not be done for single definitions or lists of definitions that are not ordered alphabetically.

81 Other technical points

- (1) “Unless the context otherwise requires” / “oni bai bod y cyd-destun yn mynnu fel arall” is not particularly helpful. Do not use it at all if there is no case where the context does otherwise require - and in such a case, it may be better to say what is meant in that context.
- (2) Some writers deplore the use of a definition to use a term which is used only in another definition, unless that is the only way to make the other definition manageable.
- (3) It should be clear to which portion of the resulting legislation the definition will apply: so use “in this Act” / “yn y Ddeddf hon” , “in this section” / “yn yr adran hon” and so on unless there is no possible doubt.
- (4) In most cases it is not obvious that “for the purposes of this Act, x means y” / “at ddibenion y Ddeddf hon, ystyr x yw y” has any particular advantage over “In this Act, x means y” / “Yn y Ddeddf hon, ystyr x yw y”.

82 Indexes

Many Acts now contain an index of defined expressions. These can be helpful if the Act contains a large number of them.

CHAPTER 3

CROSS-REFERENCES

83 Use of cross-references

- (1) Cross-references can prove particularly hard work for the reader, so it is helpful to minimise their use. This can sometimes be done by re-ordering the material.
- (2) Generally, it is helpful to refer to a substantive rule or proposition, rather than the statutory provision containing it (in which readers are unlikely to be interested).

EXAMPLE

Suppose subsection (1) says—

(1) A company must pass a resolution before [doing something].

(1) Rhaid i gwmni basio penderfyniad cyn [gwneud rhywbeth].

An exception is wanted for small companies.

The provision could say—

(2) Subsection (1) does not apply in the case of a small company.

(2) Nid yw is-adran (1) yn gymwys yn achos cwmni bach.

But rather than telling readers about “subsection (1)”, it might be more helpful to say—

(2) No resolution is required in the case of a small company.

(2) Nid oes angen penderfyniad yn achos cwmni bach.

- (3) If a cross-reference is absolutely necessary, it may be possible to make it more user-friendly by adding words describing the effect of the provision referred to.

84 Parenthetical descriptions

- (1) It will generally be helpful to provide a parenthetical description of a provision referred to. But the drafter will need to consider the usefulness of the descriptive words against the disadvantage of interrupting the flow of text. There is usually less need to give a parenthetical description of a cross-reference to a provision of the same Bill.
- (2) The parenthetical description is a description, not a quotation. It will often be the heading of the section or Schedule referred to, but it does not have to be. For example, the heading may have been devised in the context of other headings in the Act in question, but may not be particularly helpful taken in isolation.

- (3) It should be made clear whether the parenthetical description relates to a particular subsection or other portion of text, or whether it relates to the section generally. In the latter case, it may be helpful to use a formulation along the following lines:

EXAMPLE

In section 1 (description of section 1), in subsection (1)...

Yn adran 1 (dsigrifiad o adran 1), yn is-adran (1)...

instead of

In section 1(1) (description of section 1).....

Yn adran 1(1) (dsigrifiad o adran 1)...

85 Cross references

- (1) If something is expressed as being “subject to” / “yn ddarostyngedig i” something else, the relationship between them may not be immediately easy to grasp. In particular, this may be true if “subject to”/ “yn ddarostyngedig i” occurs at the beginning of the sentence. Another arrangement would often be better, for example adding a proposition at the end, such as “but this is subject to section X” / “ond mae hyn yn ddarostyngedig i adran X”.
- (2) It may also be possible to use another expression: for example, “but see section X” “ond gweler adran X” may be sufficient, or it may be possible to state briefly the case to which a different rule applies by saying (for example) “except” “ac eithrio” or “unless” “oni bai” “ (as in “*Unless the person concerned is under 30*” “*Oni bai bod y person dan sylw o dan 30 oed*”).
- (3) Global cross-references such as “Subject to the provisions of the Corporation Tax Acts” “Yn ddarostyngedig i ddarpariaethau Deddfau’r Dreth Gorfforaethau” (s.7(2) ICTA 1988) are meaningless to all but the most expert reader. In such cases, if the reference cannot be avoided, try to include a list of where the relevant other provision is made.

CHAPTER 4

WORDS INTRODUCING SCHEDULES

86 Need for introductory words

- (1) This chapter is about the wording used to introduce a Schedule which consists of freestanding legislative propositions (for example, a Schedule of amendments to other Acts).
- (2) This chapter is therefore not concerned with—
 - cases where the Schedule is a continuation of a legislative proposition in the body of the Bill, such as a list or table (an obvious example is a repeals Schedule, which is just a list of enactments referred to in the section giving effect to the repeals); or
 - cases where the Schedule is not part of a legislative proposition at all and is merely there for information (e.g. an index or the text of a treaty).
- (3) Where a piece of legislation contains a free-standing Schedule, it is the invariable practice to introduce it in one of the sections, articles or regulations of the document (either the section to which it most closely relates or, if it does not relate to any other section, in a new one).
- (4) The function of the words introducing a free-standing Schedule is to provide a signpost to the existence of the Schedule and an indication of its contents.

87 Possible formulations

- (1) A commonly-used formula to introduce a Schedule is to say something along the following lines—

Schedule 3 ([brief description of Schedule contents]) has effect.

Mae Atodlen 3 (disgrifiad cryno o gynnwys yr Atodlenni) yn cael effaith.

- (2) This formula certainly fulfils the functions referred to above. It is not though strictly necessary to say that the Schedule “has effect” “cael effaith”. It has effect whether the provision says so or not.
- (3) There are other ways of introducing a Schedule which equally perform the functions referred to above.

EXAMPLES

Schedule 1 makes further provision about the Senior President of Tribunals....

Mae Atodlen 1 yn gwneud darpariaeth bellach am Uwch Lywydd y Tribiwnlysoedd.

Schedule 1 contains amendments of Schedule 16 to the 1999 Act (the London free travel scheme)

Mae Atodlen 1 yn cynnwys diwygiadau I Atodlen 16 i Ddeddf 1999 (cynllun teithio am ddim yn Llundain)

Schedule 5 amends the Environmental Protection Act 1990 to provide for the making of waste reduction schemes.

Mae Atodlen 5 yn diwygio Deddf Diogelu'r Amgylchedd 1990 i ddarparu am wneud cynlluniau lleihau gwastraff.

- (4) Another recently used technique, which very clearly expresses the function of inducing words as a signpost, is to adopt a “see” formula.

EXAMPLE

For provision about alterations in the Assembly electoral regions and in the allocation of seats to those regions see Schedule 1 (section 2(5) of the Government of Wales Act 2006)

Am ddarpariaeth am newidiadau yn rhanbarthau etholiadol y Cynulliad a dyraniad seddau i'r rhanbarthau hynny gweler Atodlen 1 (adran 2(5) o Ddeddf Llywodraeth Cymru 2006).

- (5) All of these techniques, and other forms of words which fulfil the functions mentioned above, are acceptable.
- (6) It is important to ensure that the description of the Schedule is accurate and covers everything in the Schedule.

CHAPTER 5

ALTERNATIVE STRUCTURES TO CONVEY THE MESSAGE

88 Tables

A table is often a neat and clear way of setting out a number of cases with the rule that applies to each of them: see, for example, section 9 of the Learner Travel (Wales) Measure 2008:

“9 Learner travel arrangements not to favour certain types of education or training

- (1) This section applies if arrangements under section 3, 4, or 6 are made in respect of learners of a description set out in an entry in column 1 of the following table.
- (2) Arrangements must also be made in accordance with those sections in respect of the learners of the description set out in the corresponding entry in column 2 of the table.
- (3) The arrangements referred to in subsection (2) must be no less favourable than the arrangements referred to in subsection (1).

TABLE

| Column 1 | Column 2 |
|---|---|
| <i>Children of compulsory school age receiving education or training at maintained schools.</i> | <i>Children of the same age receiving education or training at other relevant places.</i> |
| <i>Learners over compulsory school age receiving full-time education or training at maintained schools.</i> | <i>Learners of the same age receiving full-time education or training at other relevant places.</i> |
| <i>Learners with learning difficulties receiving education or training at maintained schools.</i> | <i>Learners of the same age with learning difficulties receiving education or training at other relevant places.</i> |
| <i>Learners who have a disability receiving education or training at maintained schools.</i> | <i>Learners of the same age who have a disability receiving education or training at other relevant places.</i> |
| <i>Children looked after by a local authority receiving education or training at maintained schools.</i> | <i>Children of the same age who are looked after by a local authority receiving education or training at other relevant places.</i> |

9 Trefniadau teithio i ddysgwyr a'r rheini'n drefniadau nad ydynt i ffafrio mathau penodol o addysg neu hyfforddiant

- (1) Mae'r adran hon yn gymwys os gwneir trefniadau o dan adran 3, adran 4 neu adran 6 mewn cysylltiad â dysgwyr o fath a ddisgrifir mewn cofnod yng ngholofn 1 y tabl a ganlyn.
- (2) Rhaid gwneud trefniadau hefyd yn unol â'r adrannau hynny mewn cysylltiad â'r dysgwyr o fath a ddisgrifir yn y cofnod cyfatebol yng ngholofn 2 y tabl.
- (3) Rhaid i'r trefniadau y cyfeirir atynt yn is-adran (2) beidio â bod yn llai ffafriol na'r trefniadau y cyfeirir atynt yn is-adran (1).

TABL

| Colofn 1 | Colofn 2 |
|--|---|
| <i>Plant o oedran ysgol gorfodol sy'n cael addysg neu hyfforddiant mewn ysgolion a gynhelir.</i> | <i>Plant yr un oed sy'n cael addysg neu hyfforddiant mewn mannau perthnasol eraill.</i> |
| <i>Dysgwyr sydd dros yr oedran ysgol gorfodol ac sy'n cael addysg llawnamser neu hyfforddiant llawnamser mewn ysgolion a gynhelir.</i> | <i>Dysgwyr yr un oed sy'n cael addysg llawnamser neu hyfforddiant llawnamser mewn mannau perthnasol eraill.</i> |
| <i>Dysgwyr a chanddynt anawsterau dysgu sy'n cael addysg neu hyfforddiant mewn ysgolion a gynhelir.</i> | <i>Dysgwyr yr un oed a chanddynt anawsterau dysgu sy'n cael addysg neu hyfforddiant mewn mannau perthnasol eraill.</i> |
| <i>Dysgwyr a chanddynt anabledd sy'n cael addysg neu hyfforddiant mewn ysgolion a gynhelir.</i> | <i>Dysgwyr yr un oed a chanddynt anabledd sy'n cael addysg neu hyfforddiant mewn mannau perthnasol eraill.</i> |
| <i>Plant sy'n derbyn gofal gan awdurdod lleol ac sy'n cael addysg neu hyfforddiant mewn ysgolion a gynhelir.</i> | <i>Plant yr un oed sy'n derbyn gofal gan awdurdod lleol ac sy'n cael addysg neu hyfforddiant mewn mannau perthnasol eraill. "</i> |

89 Formulae

- (1) These are perfectly acceptable when used appropriately. A formula may be the neatest way to express a relationship between various quantities; spelling the same thing out in words may be the worst way of expressing it.

EXAMPLE

An example of a formula is in section 998(3) of the Income Tax Act 2007 (meaning of “grossing up”)-

“(3) The grossed up amount may also be expressed as-

$$GA = NA + \frac{NA \times R}{100 - R}$$

where

GA is the grossed up amount,

NA is the net amount, and

R is the percentage rate of tax by reference to which the net amount is to be grossed up.”

“(3) Gellir hefyd fynegi’r swm wedi ei grosio fel a ganlyn-

$$GA = NA + \frac{NA \times R}{100 - R}$$

ystyr

GA yw’r swm wedi ei grosio,

NA yw’r swm net, ac

R yw graddfa canran y dreth drwy gyfeirio at y swm net sydd i’w grosio.”

- (2) However, a sequence of written instructions may sometimes be more accessible than a formula: see, for example, the “method statement” in section 90 of the Income Tax Act 2007. And if the proposition is very simple (for example, the sum of two quantities) using a formula may make it look more complicated than saying the same thing in words.
- (3) Sometimes which is more accessible will depend on the reader: an accountant or an actuary dealing with actual figures may find a formula more useful, while a reader who needs only a description of what is happening may find words more useful. The expected readership may influence which approach is adopted.

90 Method statements

A “method statement” may be the neatest way to set out the various steps in a process. An example is s.91 of the Income Tax Act 2007:

“91 How relief works

This section explains how the deductions are to be made.

The amount of the relievable loss to be deducted at any step is limited in accordance with section 25(4) and (5).

Step 1

Deduct the relievable loss from the profits of the trade of the final tax year.

Step 2

Deduct any part of the relievable loss not deducted at Step 1 from the profits of the trade of the previous tax year.

Step 3

Deduct any part of the reliable loss not deducted at Step 1 or 2 from the profits of the trade of the tax year before the previous one.

Step 4

Deduct any part of the relievable loss not deducted at Step 1, 2 or 3 from the profits of the trade of the tax year before that one.

Other claims

If the relievable loss has not been deducted in full at Steps 1 to 4, the person may use the part not so deducted in giving effect to any other relief under this Chapter (depending on the terms of the relief).”

CHAPTER 6

OVERVIEW PROVISIONS

91 Introductory

- (1) An “overview” is, typically, a brief summary of the content of an Act, Part, Chapter, group of sections (or articles or regulations) or Schedule. It may also contain signposts to other relevant provisions. Its purpose is to assist the reader in navigating legislative material.
- (2) An overview will generally have no operative effect of its own. It may be contrasted with a purpose clause intended to affect the interpretation of other provision.

- (3) Overviews have been widely used in Tax Law Rewrite legislation. Their use in other legislation becoming a more common.²⁰

92 Overviews of whole Acts, Orders or Regulations

- (1) Section 1 of the Corporation Tax Act 2009 is an example of an overview for a whole Act. It may be asked what an overview like this adds to the list of contents. There are perhaps three main arguments in its favour.
- (a) In a large Act the arrangement by itself can run to many pages (for example, 63 pages in the Corporation Tax Act 2009). This can make it difficult for a reader to get a clear idea of the overall contents of the Act. An overview can offer the reader a snapshot of the Act more briefly (just over a page of text in the Corporation Tax Act 2009).
 - (b) The list of contents can do no more than create a list of the headings to Parts, Chapters, cross-headings and clause titles. An overview can go further, by drawing out the principal themes behind a group of Parts and the relationship between those Parts.²¹
 - (c) An overview can if necessary explain how the new legislation fits into the legislative landscape (for instance, by including signposts to other relevant provision).
- (2) An overview of an entire piece of legislation is most likely to be of use in very large Acts, orders or regulations where the reader is unable to gain an easy grasp of the scope of the legislation from the arrangement or, in the case of an Act, the long title. But there is no reason in principle why such sections cannot be used in an Act, Order or set of Regulations of any size if the drafter considers that it would be helpful. But an overview that merely repeats the arrangement, or the explanatory note in the case of a Welsh statutory instrument, in a different format is unlikely to be of any great assistance.

93 Overviews of Parts, Chapters and Schedules

- (1) In Tax Law Rewrite Acts, overviews are also commonly used in relation to Parts and Chapters. A typical overview of a Part that is divided into Chapters contains a brief description of those Chapters. If other provision outside the Part is relevant to the operation of the Part, the overview may also contain a signpost to that other provision in order to alert the reader of its relevance.²²
- (2) It is for the drafter to determine how useful an overview is likely to be. If the Part or Chapter is short and contains only a few clauses then an overview is unlikely to be of

²⁰ For example, the Banking Act 2009, the Local Government Bye-laws (Wales) Bill currently before the Assembly and the proposed Food Hygiene Rating (Wales) Bill currently out to consultation.

²¹ For example, section 1(6) of the Corporation Tax Act 2009 tells readers that Parts 15 to 18 all contain special rules for particular cases, a point that may not be readily apparent from the listing of Parts in the arrangement.

²² For example, section 35 of the Corporation Tax Act 2010. Subsections (1) and (2) contain descriptions of the Chapters; and subsections (3) and (4) highlight other relevant provision.

much assistance: the clause headings will suffice. However, an overview may still be of assistance - even for a very short Chapter - if it alerts the reader to the existence of other relevant legislation before the operative provisions of the Chapter.²³

- (3) To use an overview for one Part does not mean that all other Parts of the Act have to have one.²⁴ There is no point in having an overview where there is no benefit to the reader.
- (4) An overview may be useful for a long Schedule.²⁵

94 Sections containing overviews

- (1) Often an “overview” will have a section to itself²⁶. However, sometimes it may be convenient to include interpretative provision, or a provision as to the application of a Part or Chapter, alongside the overview.²⁷
- (2) But be careful not to mislead readers. If a combination of operative and inoperative material is desired, “overview” may not be the most helpful section heading (“introduction”, for example, might be better).

95 Operative and inoperative effect

- (1) The fact that an overview may not be intended by the drafter to have any operative effect does not mean to say that a court would take no account of it in construing the legislation to which the overview relates. So it needs to be drafted with care to ensure that it is an accurate summary of those provisions and could not have an unintended consequence.
- (2) Some overviews go beyond merely outlining the contents of a set of provisions and instead describe or explain how the provisions operate²⁸. This kind of descriptive or explanatory material may on occasion be useful. But particular care is required, as it carries a greater risk of unintended consequences than a more standard type of overview containing a mere outline of subject-matter.

96 Amending overviews

- (1) If a provision amends an enactment that is in a Chapter or Part of an Act that includes an overview, then consideration should be given as to whether the overview should be amended to ensure that it continues to be an accurate description of the Chapter or Part.

²³ For example, section 976 of the Corporation Tax Act 2009.

²⁴ For example, in the Finance Act 2004, Part 4 has an overview but no other Part does.

²⁵ See para. 3 of Schedule 19 to the Finance Act 2011, where the Schedule runs to over 50 pages.

²⁶ For example, section 33 of the Income Tax Act 2007; section 98 of the Corporation Tax Act 2010.

²⁷ For example, section 615 of the Income Tax Act 2007.

²⁸ For example, section 1(2) to (5) of the Banking Act 2009.

PART 7

REPEALS AND AMENDMENTS

CHAPTER 1

TEXTUAL AMENDMENTS

General issues

97 Differences between English and Welsh

- (1) The amendments required to produce a particular legal effect may be quite different in English and in Welsh.
- (2) For instance, the differences between sentence structure in English and in Welsh (see Part 4, Chapter 2) may mean that an amendment needs to be inserted in a different location in each language. An adjective normally precedes a noun in English but follows a noun in Welsh: “new scheme” but “cynllun newydd”. So if the English text is amended to insert an adjective before a noun, the corresponding amendment to the Welsh text will insert the adjective after the noun.

EXAMPLE

“If the Welsh Ministers publish a [new] scheme, they must lay a copy of that scheme before the Assembly.”

“Os yw Gweinidogion Cymru yn cyhoeddi cynllun [newydd], rhaid iddynt osod copi o’r cynllun hwnnw gerbron y Cynulliad.”

- (3) An amendment to the Welsh text may also give rise to a need for further changes to that text. For example, if a masculine noun is substituted for a feminine noun, any pronouns referring to that noun will also need to be altered (see paragraph 39(3)).
- (4) In producing amendments, the focus should be on whether the same legal effect is achieved in the two languages, rather than on whether the two sets of amendments are the same.

Operative words

98 Insertions and substitutions

- (1) The following forms are widely used, and both are acceptable—
 - imperative form: after x insert y / for x substitute y / ar ôl x mewnosoder y
 - declaratory form: after x there is inserted y / for x there is substituted y / ar ôl x mae y wedi ei mewnosod/fewnosod
- (2) In each case the effect of the amendment is clear.
- (3) Where a single section makes provision for a series of amendments (as opposed to a single amendment) to an Act, or to a section, the first subsection is often in a declaratory form, while the remaining propositions are in the imperative:

(1) *The [Act] is amended as follows...*

(2) *In section 1, after subsection (1) insert....*

(1) *Mae'r [Ddeddf] wedi ei diwygio fel a ganlyn...*

(2) *Yn is-adran 1, ar ôl is-adran (1) mewnosoder...*

- (4) Although the effect is clear, there is something to be said for using the same form in both the opening proposition and the amendments.

99 Repeals and revocations

- (1) The following formulations, or variations of them, are often used to make textual amendments to an Act by the repeal of one or more provisions or words within the Act—

omit x / x is omitted

hepgorer x / mae x wedi ei hepgor

x ceases to have effect

mae x yn peidio â chael effaith

x is repealed

mae x wedi ei (d)diddymu

- (2) Here the imperative form is possible only with “omit” / “hepgor”. And in the case of provisions of secondary legislation the appropriate term is “revoked” / “dirymu” not “repealed” / “diddymu”.
- (3) For repeals of less than a whole Act, all of these are acceptable, regardless of the unit of text being repealed. Clearly only “is repealed” / “wedi ei (d)diddymu” or “ceases to have effect” / “yn peidio â chael effaith” would be used for a whole Act. It might then make for consistency to use “is repealed” / “wedi ei (d)diddymu” or “ceases to have effect” / “yn peidio â chael effaith” (rather than “omit” / “hepgorer”) for smaller units of text.
- (4) To use “is repealed” / “wedi ei (d)diddymu” would also be consistent with “repeal Schedules” / “Atodlenni diddymu” and with the fact that provisions introducing repeal Schedules use the words “are repealed” / “wedi eu (d)diddymu”.
- (5) As between “is repealed” / “wedi ei (d)diddymu” and “ceases to have effect” / “yn peidio â chael effaith”, “is repealed” follows the language of sections 15 to 17 of the Interpretation Act 1978. The advantages of this should probably not be overstated: in *Commissioner of Police of the Metropolis v Simeon* [1982] 2 All ER 813 it was held that the fact that a repeal was effected by providing that the repealed provisions “shall cease to have effect” was not sufficient to indicate a “contrary intention” within section 16(1) of the Interpretation Act 1978.
- (6) However, it may be helpful to use the word “repeal” / “diddymu” rather than to require the reader to work out that what has been done is in substance a repeal. The “repeal” form is also the shorter of the two.

Describing where the amendment is to go

100 Replacing, or adding to, words in the first place where they occur

The following (amongst others) are possible—

after “x”, in the first place it occurs, insert “y”

ar ôl “x”, yn y lle cyntaf lle y mae’n digwydd, mewnosoder “y”

after “x”, where first occurring [or appearing], insert “y”,

ar ôl “x”, lle y mae’n digwydd [neu’n ymddangos] gyntaf, mewnosoder “y”

101 Replacing, or adding to, words in all places where they appear

(1) The following (amongst others) are possible—

after “x”, in each place, insert “y”

ar ôl “x”, ym mhob lle, mewnosoder “y”

after “x”, wherever it occurs/appears, insert “y”

ar ôl “x”, lle bynnag y bo’n digwydd/ymddangos, mewnosoder “y”

for “x” (twice) substitute “y”

yn lle “x” (ddwywaith) rhodder “y”.

(2) In principle, a single amendment could be used to change a term used throughout a piece of legislation. In practice, there are probably relatively few cases where this approach will be appropriate. Obviously, a global amendment should only be used if the drafter is certain that it achieves the right result in each place. And it may be difficult to adopt this approach if the legislation being amended includes legislation in the Welsh language, as the global amendment will need to make provision for a range of consequential changes to mutations, pronouns, and so on.

(3) It is relatively common practice to put brackets around the words identifying where in the provision the amendment is to be made—

after “x” (in each place) insert “y”

ar ôl “x” (ym mhob lle) mewnosoder “y”

after “x” (in the first place it occurs) insert “y”

ar ôl “x” (yn y lle cyntaf lle y mae’n digwydd) mewnosoder “y”.

- (4) Presumably, the wording in question will only be used where it would not otherwise be clear whether one amendment, or more than one, is intended. So, strictly speaking, brackets ought not to be used (on the basis that brackets are generally reserved for material that is included to assist the reader but does not have substantive legal effect). However, drafters may find that, in some cases, the use of brackets makes the provision easier to read.

102 Inserting at the beginning of a provision

The usual form is to say—

at the beginning insert x/there is inserted x

ar y dechrau mewnosoder x/ mae x wedi ei fewnosod/mewnosod

rather than to say that x is inserted “before” particular words.

103 Inserting text at the end of a provision

- (1) The usual form is to say—

“at the end”

“ar y diwedd”.

- (2) Sometimes drafters say “add” / “ychwanegu” instead of “insert” / “mewnosod” for text which is to appear at the end of an existing provision. But it is not wrong to use “insert” / “mewnosod” in this context and it may be simpler to use the same word whether the new text is to appear in the middle or at the end of the existing provision.

104 Parts of a subsection

- (1) In the case of a subsection which includes paragraphs, the words before the paragraphs may be identified as “the opening words” / “y geiriau agoriadol” or “the words before paragraph (a)” / “y geiriau o flaen paragraff(a)”.
- (2) The words after the paragraphs (sometimes referred to by drafters as “full-out” words / “geiriau cloi”) may be identified as “the closing words” or “the words after paragraph ()” / “y geiriau ôl paragraff ()”. Of course, it is not always necessary to specify exactly where in a subsection the words in question appear (for example, if the words appear only once).

105 Lists

Where an amendment is made to insert an entry into a list, such as a list of definitions or statutory bodies, it is sometimes framed as an amendment to insert the text “at the appropriate place” / “yn y lle priodol” (instead of “after” / “ar ôl something”). This is appropriate where, for example, a list runs in alphabetical order.

106 Location of a new section

- (1) It is usual to specify that a new section is to be located “after” / “ar ôl “another one.

- (2) However, “before” / “o flaen” can be useful where the new section is to be inserted at the beginning of a Part, Chapter or group of sections (where a reference to “after” / “ar ôl “ the preceding section would tend to suggest that the intention was that the new section should appear at the end of the preceding Part etc).

107 Unnumbered provisions

To add a subsection or sub-paragraph to a section or paragraph which is not already subdivided, the recommended form is—

to say first that

In [section] [paragraph] 1 the existing provision becomes [subsection] [sub-paragraph] (1)

Yn [adran] [paragraff] 1 daw’r ddarpariaeth bresennol yn [is-adran] [is-baragraff] 1

then to insert the new material as subsection or sub-paragraph (2).

108 How much text to substitute

- (1) The starting point when drafting a substitution is that the minimum amount of text should be replaced. In most cases, this will make it easier for the reader of the Bill to identify the substantive change that is being made. It also avoids suggesting that changes are being made to text which is not in fact changing.
- (2) However, in some cases it will be helpful to the reader of the Bill, or the reader of the Act being amended, to substitute more text than is strictly necessary. For example—
- where a number of related changes are being made to a single provision,
 - where the end result of a group of amendments would be to alter the whole basis of an existing provision or to leave very little of the previous text,
 - where the passage to be amended has previously been amended non-textually (so that there may be some doubt about which words remain to be textually amended),
 - where it is otherwise helpful to the reader to substitute a few extra words, and
 - if doing so would enable the drafter to repeal an amending provision.
- (3) The risks of substituting more text than is strictly necessary include—
- the risk of missing a cross-reference, non-textual modification or an old saving, and
 - the risk that it will be more difficult for a reader to work out what substantive changes are being made.
- (4) In some cases a parenthetical description may help instead.

109 Parenthetical description

- (1) Generally, see the discussion of parenthetical descriptions in paragraph 84. In this section, only aspects relevant to textual amendments are discussed.
- (2) It has become fairly standard practice to give a brief description of the section or Schedule that is being amended, to give the context of the amendment and perhaps its significance. The parenthetical description will often be the heading of the section or Schedule, but it does not have to be - it may be better, for readers of the Bill, to describe the section in a different way.
- (3) There may be less utility in maintaining this practice in, say, Schedules of consequential amendments, where there is no important substantive effect to be described (and fewer readers to describe it to). For example, if the provision is simply changing the name of a body in all existing legislation, there may be little point in describing every provision where the change is made.
- (4) It is also unlikely to be worthwhile to give the description of a section after which a new section is inserted, unless there is a very close connection between the two.
- (5) To describe the section or Schedule which is being amended may help to explain the significance and context of the amendment, but is unlikely of itself to tell the reader exactly what the amendment does. To tell the whole story the drafter probably needs to describe the particular portion of text which is being amended, whether a subsection or a smaller subdivision. But it will not be practical, or necessary, to do that in every case.
- (6) For an important substantive amendment, it may be worth taking the reader by the hand and explaining the entire context, so that the meaning of the textual amendment is then readily apparent. But it is difficult to sustain this on a consistent basis in legislation of any length. There is certainly no point in giving a description of a subsection unless it actually helps the reader to understand the amendment. And there seems little point in descending to this level of detail in long Schedules of minor or consequential amendments.
- (7) Explanatory notes may help instead.

110 Schedules of amendments

- (1) This relates to the format to be used in Schedules where amendments to an Act are arranged under an italic cross-heading giving the name of the Act.
- (2) The recommended style is—

“Education Act 2005

1. In the Education Act 2005, after section N...”

“Deddf Addysg 2005

1. Yn Neddf Addysg 2005, ar ôl adran N...”

- (3) Note in particular the short title of the Act needs to be given in the text of the amendment as well as in the heading;

111 Amendment of section headings etc

- (1) It is acceptable to amend the heading to a provision.
- (2) In particular, it may be helpful to do so if the provision is falsified by a textual amendment.
- (3) There is no need to amend a heading merely because the existing heading is not quite what you would have chosen for the amended text. Also, the fact that the amended heading has Assembly authority might lead the courts to attach more weight to it than they would have attached to the original heading.
- (4) There are also examples of cases where a heading needs to be changed without there being a change to the text under the heading. One example is where a parallel set of provisions is added after existing provisions and there need to be headings that distinguish and connect the neighbouring sets of provisions.

112 Punctuation

- (1) Where inserted or substituted words end with a full stop before the closing quotes, there should be no further full stop after the closing quotes.

Numbering conventions

113 Re-using numbers

- (1) When substituting a complete sub-division of text (e.g. a subsection), the numbering of the old provision should generally not be used for the new provision unless (as will frequently be the case) the subject matter of the new provision corresponds to that of the old provision.
- (2) When inserting a complete sub-division of text (e.g. a subsection) in a place where a corresponding sub-division has been repealed, the numbering of the repealed provision should generally not be used for the new provision.
- (3) Occasionally the drafter may decide that there is good reason to depart from the above approaches (e.g. where a repealed provision was repealed many years ago).

114 Adding numbered provisions – use of the English or Welsh alphabet

- (1) The practice for statutory instruments from the establishment of the National Assembly for Wales has been to use the Welsh alphabet for numbering units of text (paragraphs etc) in the Welsh language text and to use the English alphabet for the English text. This means that the equivalent unit of text from each language version is often different, so section 1(1)(d) in the English text would be section 1(1)(ch) in the Welsh text.
- (2) This is fine where the user of the text is referring only to one language text, but there is potential for confusion or difficulty in contexts where both the English and Welsh

language texts are being referred to, for example in a bilingual debate on the floor of the Assembly about the provisions where simultaneous translation is necessary, or indeed bi-lingual proceedings in a court or tribunal. It was decided in the third Assembly that Assembly Measures would use the English alphabet in the Welsh text for numbering purposes and the same practice is applied to Assembly Bills. This was done in order to remove a potential barrier to the use of Welsh in contexts like the floor of the Assembly or a court or tribunal where legislation in both English and Welsh is available ²⁹.

- (3) The practice from 1 April 2012 is that the numbering conventions of Assembly Bills should also be applied to Welsh statutory instruments. So the following recommendations on adding numbered provisions apply to the Welsh text as well as the English text.

115 Adding provisions at the beginning of a series

The following applies when inserting a provision at the beginning of an existing series of provisions (e.g. a subsection at the beginning of a section or a Schedule before the first Schedule).

- New sections inserted before the first section of an Act are preceded by a letter, starting with “A”.

- The same approach is taken in relation to all other divisions of text (other than lettered paragraphs).

Thus the Insolvency Act 2000 inserted a Schedule A1 before Schedule 1 to the Insolvency Act 1986, and the Enterprise Act 2002 inserted a new Schedule B1 after Schedule A1.

- A provision inserted before “A1” (or “ai”) is “ZA1” or (“zai”).

- In the case of lettered paragraphs, new paragraphs inserted before paragraph (a) are (za), (zb) etc.

- And paragraphs inserted before (za) are (zza), (zzb) etc.

²⁹ The same solution has been adopted where the same issue has arisen in other bi-lingual jurisdictions, such as Hong Kong.

116 Adding provisions at the end of a series

Where adding a provision at the end of an existing series of provisions of the same kind (e.g. a subsection at the end of a section or a Schedule at the end of the Schedules), the numbering should continue in sequence.

117 Inserting whole provisions between existing provisions

The following applies when inserting whole provisions between existing provisions.

- New provisions inserted between 1 and 2 are 1A, 1B, 1C etc.
- New provisions inserted between 1A and 1B are 1AA, 1AB, 1AC etc.
- New provisions inserted between 1 and 1A are 1ZA, 1ZB, 1ZC etc. (and not 1AA etc.)
- New provisions inserted between 1A and 1AA are 1AZA, 1AZB, 1AZC etc.

Do not generate a lower level identifier unless you have to.

- A new provision between 1AA and 1B is 1AB not 1AAA.
- But a new provision between 1AA and 1AB is 1AAA.

The above recommendations apply equally to sub-paragraphs with roman numerals and lettered paragraphs.

- New sub-paragraphs between sub-paragraphs (i) and (ii) are (ia), (ib), (ic) etc.
- New paragraphs between paragraphs (a) and (b) are (aa), (ab), (ac) etc.
- New paragraphs between paragraphs (a) and (aa) are (aza), (azb), (azc) etc.

118 Insertions resulting in a series of more than 26 new sections, articles or regulations

This relates to the rare occasions when the insertion of new sections, articles or regulations into a piece of legislation would result in a series of more than 26 new units.

- After Z use Z1, Z2, Z3 etc.

So in the Capital Allowances Act 2001 section 360Z is followed by sections 360Z1 to 360Z4.

119 Insertions resulting in series of more than 26 lettered paragraphs

This relates to the rare occasions when the insertion of new paragraphs into a section would result in a series of more than 26 lettered paragraphs.

- After paragraph (z) insert paragraphs (z1), (z2), (z3) etc.

CHAPTER 2

NON-TEXTUAL MODIFICATIONS

120 Non-textual modifications and textual amendments

- (1) This chapter is about how to distinguish a non-textual modification from a textual amendment.
- (2) By “non-textual modification” is meant a modification of an enactment that is not intended to result in a change to the text of the modified enactment when the enactment is next printed (in contrast to a textual amendment, which is).
- (3) There have been occasions where it has not been clear to departments, or to those who produce and edit statutory text, whether something is a textual amendment or a non-textual modification. Sometimes non-textual modifications have even been printed as textual amendments.
- (4) It is therefore important to be make it clear what is intended.

121 Need to avoid formulations used in textual amendments

- (1) Sometimes non-textual modifications are drafted in essentially the same form as a textual amendment, the only difference being in the opening wording—

EXAMPLE (to avoid)

(1) Section 3 applies to fine defaulters as to offenders but with the following modifications—

(a) in subsection (1) for “offence” substitute “default”; and

(b) in subsection (2) for “6 months” substitute “3 months”.

(1) Mae adran 3 yn gymwys i ddrwgdalwyr dirwyon fel y mae'n gymwys i droseddwyr ond gyda'r amrywiadau a ganlyn-

(a) yn is-adran (1) yn lle “tramgwydd” rhodder “drwg daliad”; a

(b) yn is-adran (2) yn lle “6 mis” rhodder “3 mis”.

- (2) This might readily be mistaken for a textual amendment. The opening words give a clue that something other than a textual amendment is intended, but the rest is exactly the same as a textual amendment. It would be particularly easy to lose sight of the opening words if the list of substitutions and other changes were very long.
- (3) It would be clearer, in the first place, if the subjunctive mood were used to indicate that there is no intention actually to substitute the text—

EXAMPLE

(1) Section 3 applies to fine defaulters as to offenders but as if—

(a) in subsection (1) for “offence” there were substituted “default”, and

(b) in subsection (2) for “6 months” there were substituted “3 months”.

(1) Mae adran 3 yn gymwys i ddrwgdalwyr dirwyon fel y mae’n gymwys i dramgwyddwyr ond fel petai-

(a) “drwgdaliad” yn cael ei roi yn lle “tramgwydd” yn is-adran (1), a

(b) “ 3 mis” yn cael eu rhoi yn lle “6 mis” yn is-adran (2).

(4) Better yet, though, would be to avoid the reference to substitution altogether—

EXAMPLE

(1) Section 3 applies to fine defaulters as to offenders but as if—

(a) in subsection (1) the reference to an offence were to a default; and

(b) in subsection (2) the reference to 6 months were to 3 months.

(1) Mae adran 3 yn gymwys i ddrwgdalwyr fel y mae’n gymwys i dramgwyddwyr ond fel petai-

(a) y cyfeiriad yn is-adran (1) at dramgwydd yn gyfeiriad at ddrwgdaliad; a

(b) y cyfeiriad yn is-adran (2) at 6 mis yn gyfeiriad at 3 mis.

122 “Modification”

Incidentally, the use of the word “modification” (“amrywio”) does not of itself exclude the possibility that what is intended is a textual amendment. The word is sometimes used (rightly) to describe a textual amendment — see for example section 517(6) of the Education Act 1996 and section 26(2) of the Criminal Justice and Court Services Act 2000.

CHAPTER 3

AMENDMENT OF UNCOMMENCED PROVISIONS ETC

123 Amendment of a provision not in force

- (1) A piece of legislation should not ignore relevant enacted material merely because that material is not yet in force. It is prudent to keep uncommenced legislation in a state where it could be brought into force. So if the policy behind a piece of legislation require changes to a provision, or would require changes to it were it in force, the provision should normally be amended accordingly.
- (2) There are sometimes questions about whether an amendment is to be commenced by the commencement powers in an amending Act or those in the amended Act.
- (3) The starting point is that commencement of a provision of an Act depends upon the provision for commencement made in that Act. This includes a provision that amends an uncommenced provision in an earlier Act. Conversely, an Act's commencement provisions apply to the provisions of the Act and are not intended, at the time of enactment, to apply to all text that happens to be added by amendment by later Acts.
- (4) In some cases the drafter can and should rely simply on the commencement provision in the amending Act. For example, if the policy is that the uncommenced provision in an earlier Act should come into force and operate for a while without the amendment made by the amending Act, the later commencement of the amendment can only depend on the provision in the amending Act.
- (5) Or again, an amendment may consist of the insertion of free-standing provision that is capable of having effect without reference to neighbouring uncommenced provisions of the Act. Such added provision could be brought fully into force by or under the amending Act, without any reliance on the amended Act's commencement provisions.
- (6) There may be cases where a drafter would want the text added by a Bill to be subject to the commencement provisions of the Act being amended. The drafter might, for example, want the Act's power to make transitional provision in connection with commencement to apply to provision as amended by the Bill. That is perhaps particularly likely where the amendment has no meaning on its own.
- (7) In some cases it may be obvious that the amendment made by the Bill itself impliedly modifies the Act's commencement provisions so that they apply to the amended text as they would have applied to the unamended text. This approach seems most reasonable where the text added by the amendment cannot operate independently of the provision amended.
- (8) But if in any given case it is not obvious that this is the intention of the amending Act, then specific provision will be needed to apply the commencement provisions of the amended Act.

124 Amendment of a provision subject to an uncommenced repeal

- (1) Similarly, a Bill should not ignore relevant enacted material merely because it is subject to an uncommenced repeal. So a provision in an Act subject to an uncommenced repeal should be amended by a Bill if the policy of the Bill demands the change while the provision remains unrepealed.
- (2) If a provision in an Act is subject to an amendment that operates by way of substitution - that is, a repeal plus the insertion of new text - the policy of the Bill may make it necessary to amend the provision in its original and in its substituted form. In such a case, a Bill should make it clear which version of the Act's provision is being amended.
- (3) In the case of an amendment of provision subject to an uncommenced repeal, there may be a question about whether the repeal, when commenced, would apply to the provision as afterwards amended. An analysis similar to that applying to amendments of uncommenced provisions applies here: the repeal, when enacted, could only have been addressed to provisions that then existed. It could similarly be argued that a Bill's amendment of a provision impliedly modifies the uncommenced repeal of that provision, so that the repeal applies to the provision as modified.
- (4) One possible solution is for the Bill to make transitory provision that has effect only until the repeal is commenced.
- (5) The prudent course for a drafter operating on provision subject to an uncommenced repeal is to check the provisions that relate to the repeal and its commencement in the Act containing the uncommenced repeal.
- (6) If provision is spent, it can be ignored rather than amended - and this would be true even if the provision is subject to an uncommenced repeal. But be sure that the provision is spent - the fact that the repeal has not been commenced might suggest a decision to keep the provision in force.

PART 8

OPERATIVE PROVISIONS

CHAPTER 1

PERIODS OF TIME

125 Introductory

- (1) This Part considers some aspects of expressing periods of time. It assumes that in deciding how to describe a particular period the drafter's objectives are:
 - (a) to ensure that it is certain when the period begins and ends;
 - (b) to ensure that the reader has the greatest chance possible of telling from the words used when the period begins and ends, rather than having to refer to case law;
 - (c) to express the period as simply as possible.

126 Start of period: fractions of days

- (1) An Act often needs to describe a period by reference to some event. An example is a period of 14 days during which an appeal may be made, where the "event" is the decision to which the appeal would relate.
- (2) In this example, it might be supposed that the appeal period should run from the decision. But this would cause problems, because the decision will have been made part-way through a day, and if the appeal period is to be expressed in whole days (or weeks, months or years) it has to begin at the beginning of a day. The question is, which day? Instructions are not always clear on this point.
- (3) It may well be wrong in policy terms for the period to start running from the beginning of the day after the day of the decision, because that would disallow an appeal made on the day of the decision.
- (4) If the period starts with the beginning of the day of the decision, it will technically include the part of that day that precedes the decision (during which an appeal will of course be impossible). This may not in practice cause any problems. But if the appeal period is short (for example, 7 days), it may be worth considering whether as a matter of policy the number of days should be increased by one, to take account of the fact that the period starts to run on the day of the decision and not the next day.
- (5) Appeal periods are of course not the only periods that give rise to this kind of question.
- (6) It may not always produce the right result to begin a period at the beginning of the day on which a particular event occurs: each case needs to be considered on its own merits. And it will be obvious when some periods should start (for example, a year beginning with 1 April), so fractions of a day are not always an issue.

127 “Beginning with”, “from”, “after” “gan ddechrau ar”, “oddi ar”, “ar ôl”

- (1) A clear way of expressing a period of, for example, 14 days so that it starts at the beginning of a particular day is to describe the period as “14 days beginning with” / “14 o ddiwrnodau gan ddechrau ar” the day in question.
- (2) Alternative methods are to refer to a period of 14 days “from” / “oddi ar” or “after” / “ar ôl” a particular event.
- (3) The proper construction of “14 days from [the event]” / “14 o ddiwrnodau oddi ar [y digwyddiad]” will depend on the context. As a general rule, this wording will be taken to exclude the day on which the event takes place. This is something of which the user of the Act may very well be unaware.
- (4) “14 days after [the event]” / “14 o ddiwrnodau ar ôl [y digwyddiad]” will also generally be taken to exclude the day of the event (*Dodds v Walker* [1981] 2 All ER 609) but this will also depend on the context.
- (5) It is suggested that “14 days beginning with” / “14 o ddiwrnodau gan ddechrau ar” the day of an event (or any other day or date) is often the least ambiguous short way of ensuring that the period starts to run from the beginning of that day. The formula “X months beginning with the day on which” / “X mis gan ddechrau ar y diwrnod pan” an Act is passed has long been the preferred way of framing a period of months for which commencement is postponed.
- (6) References to a period “ending with” / “sy’n gorffen ar” a particular day or date are equally unambiguous.
- (7) A reference to a period “beginning on” / “gan ddechrau ar” or “ending on” / “gan orffen ar” a particular date or day would not give the same certainty, because it would leave open the question of the time at which (on the day in question) the period begins or ends.
- (8) A reference to “14 days from” / “14 o ddiwrnodau oddi ar” a point that is bound to occur at midnight (for instance, the end of a year) makes clear exactly when the 14 days are to begin and end: in such a case “from” / “oddi ar” is as unambiguous as “beginning with” / “gan ddechrau ar”.

128 “The period of”

Acts have often referred to (for example) a 14 day period as “the period of 14 days” / “cyfnod o 14 o ddiwrnodau”. In many cases the words “the period of” / “cyfnod o” do not add anything and could be omitted – the reference could simply be to “14 days” / “14 o ddiwrnodau”. If a reference back is needed, it may be possible to refer to “those 14 days” / “y 14 o ddiwrnodau hynny” instead of to “that period” “y cyfnod hwnnw”.

129 “Within” “o fewn”, “before the end of” “cyn pen”

- (1) Statute often requires something to be done “within” / “o fewn” a particular period or “before the end of” / “cyn pen” a particular period.

- (2) A requirement to take an action “before the end of 3 weeks beginning with [a particular date]” / “cyn pen 3 wythnos gan ddechrau ar [ddyddiad penodol]” would apparently allow the action to be taken at any time up to the end of those 3 weeks, including at any time before the 3 weeks began. A requirement to take the action “within” / “o fewn” those 3 weeks would limit the time in which the action may be taken to those 3 weeks.
- (3) In some cases, the effect of either wording will in practice be the same. An example would be where a copy of a document is required to be given within/before the end of 3 weeks beginning with the date when the document comes into existence. But in other cases, the different wordings may produce materially different results.
- (4) A requirement to do something “by the end of” / “erbyn diwedd” a period would seem to amount to the same thing as a requirement to do it “before the end of” / “cyn pen” the period.

130 Units of time

- (1) Periods of time are commonly expressed in days, weeks, months or years. Which unit of time to use will depend sometimes on the policy and sometimes on the drafter’s decision.
- (2) Obviously, the longer the period, the less helpful it will be to use short units of time. For example, it is suggested that all readers will know that 30 days is about a month, but that a period expressed as (for example) 150 days would be much less readily understandable.
- (3) Months are a particular problem because of their varying length. (Schedule 1 to the Interpretation Act 1978 defines a “month” as a calendar month, but this appears to do no more than prevent it from being interpreted as a lunar month.) When a period of “one month” begins other than at the beginning of a month, when does it end?
- (4) According to the rule in *Dodds v Walker* ([1981] 2 All ER 609), where an application had to be made “not more than 4 months after” the giving of a notice on 30 September 1978, the last date for making the application was 30 January 1979. The date of 30 January 1979 is arrived at by treating the 4-month period as:
 - beginning at midnight between 30 September and 1 October 1978 (that is, excluding the rest of the day on which the notice was given), and
 - expiring at the end of the day in January 1979 corresponding to the day in September 1978 at whose end the period began - that is, day 30. (If the period had been expressed to be “4 months beginning with” “4 mis gan ddechrau ar “ the date when the notice was given, the last date for making the application would have been 29 January.)
- (5) The rule in *Dodds v Walker* is known as “the corresponding date rule”. Under it, the length of a period of “1 month” varies according to when the period begins. For example, a period of “1 month” beginning at midnight on 4/5 April, which will end at midnight on 4/5 May, will be shorter than a period of “1 month” beginning at midnight on 4/5 May (because April is shorter than May).

- (6) The corresponding date rule obviously cannot apply unmodified in all cases, because the months of the year do not all have the same number of days. *Dodds v Walker* confirmed that where (for example) a period of 1 month starts at the end of 30 January, it ends at the end of 28 February, or in a leap year 29 February.
- (7) Because the corresponding date rule can be a trap for the user, in some cases it may be worth considering whether a period of (for example) 3 months would be better expressed as 12 weeks or 90 days. The periods expressed in these ways will not be identical, but whether this matters will depend on the context.

131 Non-working days

- (1) Some Acts exclude certain days (for example, Saturdays, Sundays and bank holidays) from specified periods. Others make no distinction between holidays and working days. If a specified period is very short, it may be worth remembering that weekends and bank holidays will not be treated differently from other days unless express provision to this effect is included.
- (2) If any non-working days are to be excluded from a period, consideration needs to be given to exactly which days these should be.
- (3) Schedule 1 to the Banking and Financial Dealings Act 1971 lists some bank holidays, but not all. Bank holidays may be created by royal proclamation - the early May bank holiday is an example.

CHAPTER 2

POWERS TO MAKE SUBORDINATE LEGISLATION

132 Attracting section 1 of the Statutory Instruments Act 1946

- (1) Section 1(1A) of the Statutory Instruments Act 1946 states—

“Where by any Act power to make, confirm or approve orders, rules, regulations or other subordinate legislation is conferred on the Welsh Ministers and the power is expressed to be exercisable by statutory instrument, any document by which that power is exercised shall be known as a “statutory instrument” and the provisions of this Act shall apply to it accordingly.”

- (2) The reference in section 1(1A) to “the Welsh Ministers” includes the First Minister and the Counsel General by virtue of section 11A (8) of the 1946 Act.

- (3) To attract section 1 of the 1946 Act it is sufficient to say –

Orders/regulations [made by the Welsh Ministers] under this section are to be made by statutory instrument.

Mae gorchmynion/rheoliadau [a wneir gan Weinidogion Cymru] o dan yr adran hon i'w gwneud drwy offeryn statudol.

- (4) It may sometimes be neater to roll up the attraction of section 1 with the power itself.

EXAMPLE

The Welsh Ministers may by order made by statutory instrument provide...

Caiff Gweinidogion Cymru drwy orchymyn a wneir drwy offeryn statudol ddarparu...

- (5) This may be neater where there is a simple power and everything can be dealt with in a single subsection. This technique is often used, for example, for commencement powers (“on such day as the Welsh Ministers may by order made by statutory instrument appoint”).
- (6) If there are a number of powers to be exercised by statutory instrument, it may be best to have a single provision at the end, rather than saying the same thing several times over in different places. This is technical provision which is unlikely to be of interest to most readers.

133 Negative resolution procedure

- (1) To be consistent with section 5 of the 1946 Act, the statutory instrument containing the order/regulations - rather than the order/regulations themselves - should be expressed to be subject to annulment.

EXAMPLE

A statutory instrument containing an order or regulations under this Act is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

Mae offeryn statudol sy'n cynnwys gorchymyn neu reoliadau o dan y Ddeddf hon yn agored i gael ei ddirymu yn unol â phenderfyniad gan Gynulliad Cenedlaethol Cymru.

134 Affirmative resolution procedure

- (1) To be consistent with the recommended approach for negative instruments (above) - and with the wording of section 6 of the 1946 Act - the required approval should relate to a draft of the statutory instrument containing the order/regulations, rather than a draft of the order/regulations themselves.

EXAMPLE

A statutory instrument containing an order or regulations under this Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.

Ni chaniateir i offeryn statudol sy'n cynnwys gorchymyn neu reoliadau o dan y Ddeddf hon gael ei wneud oni bai bod drafft o'r offeryn wedi ei gyflwyno gerbron Cynulliad Cenedlaethol Cymru ac wedi ei gymeradwyo ganddo drwy benderfyniad.

135 Combined instruments

- (1) If the intention is expressly to authorise the making of instruments containing provisions subject to negative and affirmative procedure, it may be helpful to use the formulation suggested above for affirmative procedure with the addition of "(whether alone or with other provision)".

EXAMPLE

A statutory instrument containing provision under section X (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the National Assembly for Wales.

Ni chaniateir i offeryn statudol yn cynnwys darpariaeth o dan adran X (p'un ai ar ei phen ei hun ynteu ynghyd â darpariaeth arall) gael ei wneud oni bai bod drafft o'r offeryn wedi ei gyflwyno gerbron Cynulliad Cenedlaethol Cymru ac wedi ei gymeradwyo ganddo drwy benderfyniad.

136 Location of procedural provision

- (1) In some Acts, each provision which confers a power to make subordinate legislation applies any necessary Parliamentary or Assembly procedure.
- (2) But, where an Act confers a number of powers to make subordinate legislation, these matters are more often dealt with in general provisions situated at the back of the Act.
- (3) A “hybrid” approach is adopted in some UK Acts. The provision conferring the power says that it is subject to the “negative resolution procedure” or the “affirmative resolution procedure”. Then, at the end of the Act, there is a definition of “negative resolution procedure” or “affirmative resolution procedure” (or both).

EXAMPLE (from the Companies Act 2006)

Regulations under this section are subject to affirmative resolution procedure. (Section 54(3))

Regulations under this section are subject to negative resolution procedure. (Section 66(5))

Where regulations or orders under this Act are subject to “negative resolution procedure” the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament. (Section 1289)

Where regulations or orders under this Act are subject to “affirmative resolution procedure” the regulations or order must not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament. (Section 1290)

- (4) During the Assembly scrutiny stages of a Bill, the appropriate procedure could be debated together with the contents of a power and it may, therefore, be convenient if the two are located together. But readers of the final Act may find multiple references to the Assembly procedure intrusive. Matters of procedure are technical

matters, and once the Bill is enacted are only likely to be of interest to those making the subordinate legislation and those in the Assembly administering the procedures.

- (5) On that basis, it may be best on the whole to deal with Assembly procedure at the back of the Bill. There may of course cases where it is appropriate to depart from this recommendation (for example, if the Bill contains only a small number of powers to make subordinate legislation).

PART 9

FINAL PROVISIONS IN A BILL

137 Running order

- (1) The following running order should be used as a starting point when it comes to deciding the running order for the final provisions of a Bill—

General provisions about offences (bodies corporate, unincorporated associations)

Orders and regulations (including Assembly procedure)

Directions

Notices/service of documents

Interpretation

Index

Amendments, transitional provisions and savings, repeals

Crown application

Commencement

Short title

- (2) Of course it may be necessary to depart from this in some circumstances.
- (3) The assumptions that underlie the recommended running order are—
 - (a) matters of substance, such as offences by bodies corporate, should come before procedural matters;
 - (b) there is an affinity between provisions relating to subordinate legislation and those relating to other documents;
 - (c) similarly there is an affinity between provisions relating to the application of provisions of the Bill and those relating to extent;
 - (d) the essentially procedural nature of provisions dealing with financial matters means that they can appear relatively low in the running order;
 - (e) commencement should be dealt with as late as possible in the Bill and so should normally be dealt with immediately before the short title section;
 - (f) there is an expectation that the short title will appear in the last section.
- (4) Where there is to be a single section introducing Schedules containing minor and consequential amendments, transitional provisions and savings, and repeals, the section should deal with those topics in that order.

- (5) Although the running order above deals with extent, commencement and short title separately, a Bill may be so short that it would be better to deal with all three topics in a single section.

138 Cross-heading

If a single cross-heading is used to cover all the final provisions of a general nature, it should be “General” (rather than, for example, “Supplementary”).

139 Extent and application

- (1) Extent provisions in Acts of Parliament tell the reader to which jurisdiction of the UK a particular provision applies.
- (2) Wales forms part of the unified jurisdiction of England and Wales. The provisions of an Assembly Act may only extend to the jurisdiction of England and Wales (although provisions will usually apply only in relation to Wales). As a result there is no need to include an extent provision in an Assembly Act telling the reader that it forms part of the law applicable to the England and Wales court system.
- (3) However, the territorial application of provisions should be made clear in the Act.

Commencement

140 Commencement on Royal Assent

- (1) The provisions that are to come into force on Royal Assent should be identified expressly.
- (2) The form of words used to bring such provisions into force should normally be designed to attract section 4(a) of the Interpretation Act 1978.

EXAMPLE

Sections X and Y come into force on the day on which this Act receives Royal Assent.

Daw adrannau X ac Y i rym ar y diwrnod y caiff y Ddeddf hon ei Chydsyniad Brenhinol.

- (3) Very exceptionally the desired policy may involve specifying a particular time of day at which immediate commencement is to occur.

141 Commencement at end of fixed period

The recommended standard form of words is—

[This Act] comes into force at the end of the period of [2 months] beginning with the day on which it receives Royal Assent.

Daw[’r Ddeddf hon] i rym ar ddiwedd y cyfnod o [2 fis] sy’n dechrau ar y diwrnod y caiff ei Chydsyniad Brenhinol

142 Commencement by order

- (1) In general it is clearer to say that provision is to come into force on a day appointed by order by a particular person, than to say that it comes into force “in accordance with” (“yn unol â”) provision made by order. In the latter case it may not be clear whether any further power — for example, a power to make transitional provision — is also being conferred. (If further power is wanted, it should be conferred expressly — see below).
- (2) An “appointed day” (“diwrnod penodedig”) provision should take the form of a positive statement along the lines that provisions “are to come into force on a day appointed by X in an order” / “ i ddod i rym ar ddiwrnod y caiff X ei benodi drwy orchymyn” (rather than that they do not come into force until such day as X may by order appoint).

143 Commencement by order: supplementary provisions

- (1) Where there is a power to commence, consideration should be given to dealing with everything relating to commencement in a separate set of provisions, rather than in a general section relating to other order-making powers under the Bill. It may not be clear how powers conferred generally in relation to orders under the Bill will work in relation to the specific case of commencement.
- (2) So, for example, the separate provision would expressly provide as necessary for—
 - (a) different days to be appointed for different purposes;
 - (b) the making of transitional, transitory or saving provision in relation to
 - (c) commencement;
 - (d) the making of supplemental, incidental or consequential provision in relation to commencement.
- (3) The power to commence would then need to be excluded from any general supplementary provision along these lines attaching to order-making powers under the Bill.
- (4) Note that the last two bullets of paragraph (2) refer to “commencement” (“cychwyn”). It may be necessary to make transitional provision in connection with the commencement of provisions on a date fixed by the Bill (e.g. 2 months after Royal Assent) as well as in connection with the commencement of provision by order. In such a case there would seem to be a strong argument for having a single express power to make transitional provision in connection with commencement, whether by order or on a fixed date.
- (5) Note also—
 - (a) a “transitional” provision (“darpariaeth drosiannol”) is a provision that manages the transition from one regime to another.

EXAMPLE

A provision that spells out how the Bill works in relation to events or matters that

span the end of the old regime and the start of the new regime.

- (b) a “transitory” provision (“darpariaeth ddarfodol”) is a provision that has a limited shelf-life such as a provision that will expire on a particular day.

EXAMPLE

A provision that references in the Dogs Act 1990 to dogs include cats until the coming into force of the Cats Act 2010.

Depending upon the circumstances, a transitory provision may also be a transitional provision but need not be so.

- (c) a “saving” provision (“darpariaeth arbed”) is a provision that saves the operation of an existing piece of legislation or rule of law. It can do this for a temporary period or for ever, and for transitional purposes or for other purposes. It might therefore be a transitional or transitory provision but need not be so.
- (d) there is no obvious difference in meaning between “supplementary” (“atodol”) and “supplemental” (“atodol”). The recommendation is that “supplementary” be preferred (as perhaps the more usual formulation).

144 Short title

For consistency, the following formulation is to be used—

“The short title of this Act is...”

“Enw byr y Ddeddf hon yw...”

ANNEX

FURTHER READING

Listed here are the works referred to in this Guidance together with a small selection of other useful material.

Published material

Asprey M., *Plain Language for Lawyers* (Federation Press, Sydney, 4th ed., 2010)

Butt P. & Castle R., *Modern Legal Drafting - A Guide to Using Clearer Language* (Cambridge

University Press, 2nd ed., 2006)

Dickerson F. Reed, *Fundamentals of Legal Drafting* (Aspen Publishers, 1965)

Equal Opportunities Commission, *Advertising Jobs in Welsh* (Equal Opportunities Commission, 2001)

Greenberg D., *Craies on Legislation* (Sweet and Maxwell, London, 9th ed., 2008)

McLeod I., *Principles of Legislative and Regulatory Drafting* (Hart, Oxford and Portland Oregon, 2009)

Prys D., "Gender and Sex in Welsh Nouns", *Planet* 121.

Thornton G.C., *Legislative Drafting* (Butterworths, London, 4th revised ed 2006)

Salembier P., *Legal and Legislative Drafting* (Lexis Nexis Canada 2009)

Material from other drafting offices etc

Australia

Office of Parliamentary Counsel, Australian Government, *Plain English Manual*, available at www.opc.gov.au/plain/docs.htm

Law Reform Commission of Victoria, *Plain English and the Law*, 1987, Appendix 1 — "Guidelines for Drafting in Plain English: A Manual for Legislative Drafters"

Canada

Department of Justice, *Legistics*, available at

www.justice.gc.ca/eng/dept-min/pub/legis/index.html

European Union

See the guidance prepared by the Legal Revisers of the Commission Legal Service:

http://ec.europa.eu/dgs/legal_service/legal_reviser_en.htm

New Zealand

Parliamentary Counsel Office, NZ

<http://www.pco.parliament.govt.nz/clear-drafting>

United Kingdom

Tax Law Rewrite: The Way Forward: Annex 1 - Guidelines for the Rewrite

www.hmrc.gov.uk/rewrite/wayforward/menu.htm

Plain Language and Legislation (Office of the Scottish Parliamentary Counsel)

www.scotland.gov.uk/Publications/2006/02/17093804/0

Drafting Guidance of the Office of the Parliamentary Counsel (UK Government)

<http://www.cabinetoffice.gov.uk/resource-library/drafting-guidance-office-parliamentary-counsel>

Commonwealth Association of Legislative Counsel

See the Association Journal, *the Loophole*, and separate discussion papers on the Association's website:

<http://www.opc.gov.au/calc/index.htm>



William Powell AC/AM
Chair of Petitions Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

12 June 2013

Dear William

Thank you for your letter dated 24 May about the petition from Sovereign Wales.

Easy access to information about the Assembly's work is at the heart of the Commission's goal of engaging with the people of Wales. I agree with the petitioners that communicating in a style that can be easily understood by everyone is crucial to the successful delivery of this goal.

I am proud of our record in providing clear documents and information. The following examples show how we already deal with the issues raised by the petition:

1. We have produced an Assembly Commission Style Guide for staff to ensure that the language used in our publications, and in all our information, is appropriate and consistent. I am enclosing a copy of the Style Guide for your information. The Style Guide is promoted to all new recruits as part of the induction process and is reviewed periodically based on our experience of using it.
2. We tailor our communications to suit the needs and preferences of particular audiences. This is particularly true for young people. For example, we have produced a version of our vision statement for young people so that the purpose of the organisation is better understood by them.

Bae Caerdydd
Caerdydd
CF99 1NA

Cardiff Bay
Cardiff
CF99 1NA

Ffôn/Tel: 029 2089 8233

E-bost/Email: Claire.Clancy@wales.gov.uk

Croesewir gohebiaeth yn y Gymraeg a'r Saesneg/We welcome correspondence in both English and Welsh



3. The Equalities Team monitor the latest guidance and legislation in relation to accessibility. They ensure that we follow good practice from elsewhere in applying Plain English and Cymraeg Clir guidance within our information and publications.
4. The Assembly Commission's 2012-2016 Equality Plan includes an action to provide plain language training for staff. To date, our HR Learning and Development team have arranged the following courses for staff:
 - a. introductory effective writing courses, open to all staff and a more in-depth writing skills course;
 - b. e-Learning courses in Basic Skills Literacy Entry Levels 1, 2 and 3, Grammar Series and Writing skills;
 - c. additional writing skills courses for dyslexic staff.
5. During their induction period, translators are given training on style, grammar and the use of external resources (including Canolfan Bedwyr's Cymraeg Clir guidelines), with an emphasis on creating documents in Welsh that read naturally, rather than just a verbatim translation of the original. Translators conform to the Assembly's house style. They use various electronic aids such as translation memory software, websites such as the Welsh Government's Term Cymru website, and software applications such as Cysgliad. Each member of the team is a member of the Association of Welsh Translators and Interpreters, or is working towards becoming a member. The team also takes advantage of training sessions and workshops held by the Association. A recent example of such a session was called *Taro'r Cyweiriau* (Striking the Right Key).
6. Our Director of Legal Services is a champion of plain writing principles, and is working with her team to deliver plain English principles/Cymraeg Clir in relation to drafting legislation and other legal work.
7. The guidance provided to Assembly staff is also available to Assembly Members and their support staff, together with training as part of a Continuous Professional Development programme. This includes a number of courses that focus on communication skills, including effective writing, speech writing and delivery, presentation and public speaking.

I hope these examples go some way to reassuring you and the petitioners that we take this issue seriously. I acknowledge that there will always be room for further improvement and we will certainly consider carefully whether to include a formal plain English/Cymraeg Clir policy in our guidance.



I am grateful to you for bringing this matter to my attention and for making me aware of the petitioners' constructive suggestions.

Yours sincerely

A handwritten signature in black ink that reads "Claire". The signature is written in a cursive style and is followed by a horizontal line.

Claire Clancy

**Prif Weithredwr a Chlerc/Chief Executive and Clerk
Cynulliad Cenedlaethol Cymru/National Assembly for Wales**

National Assembly for Wales
Style guide



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

Introduction

This style guide provides all National Assembly staff with mandatory guidelines on style and format for writing reports, publications, copy for the website and general correspondence. It has been developed in conjunction with the Assembly's Equality and Access team, and provides information on ensuring all communications adhere to best practice guidelines.

This is the third iteration of the guide, and has taken on board many of the comments, from Commissioners, other Assembly Members and staff, received after the first version was distributed in early May 2009. We aim to review this regularly as the Assembly evolves. This will be done through meetings between Communications and representatives of service areas.

This online style guide will be accompanied by three other sections:

- the **Accessible information toolkit** (information to help with the production of accessible information)
- information on **Assembly Members** (authorised images and biographies)
- Brand guidelines** (how to use our logo, etc)

If you have any comments or suggestions, please contact Iwan Williams or Geraint Griffiths.

Iwan Williams

June 2012

National Assembly font and spacing

Text

All documents, including emails, should be in **Lucida Sans 12-point**.

Please ensure that you amend default settings for emails (including signatures and out of office replies) and your Word templates so that they conform to these instructions.

Text must not appear over an image, unless the contrast between text and background is significant.

English and Welsh copy should be clearly divided on a page, or publications should be produced in “tilt and turn” format.

Publications should be available in PDF and Word format on the Assembly website.

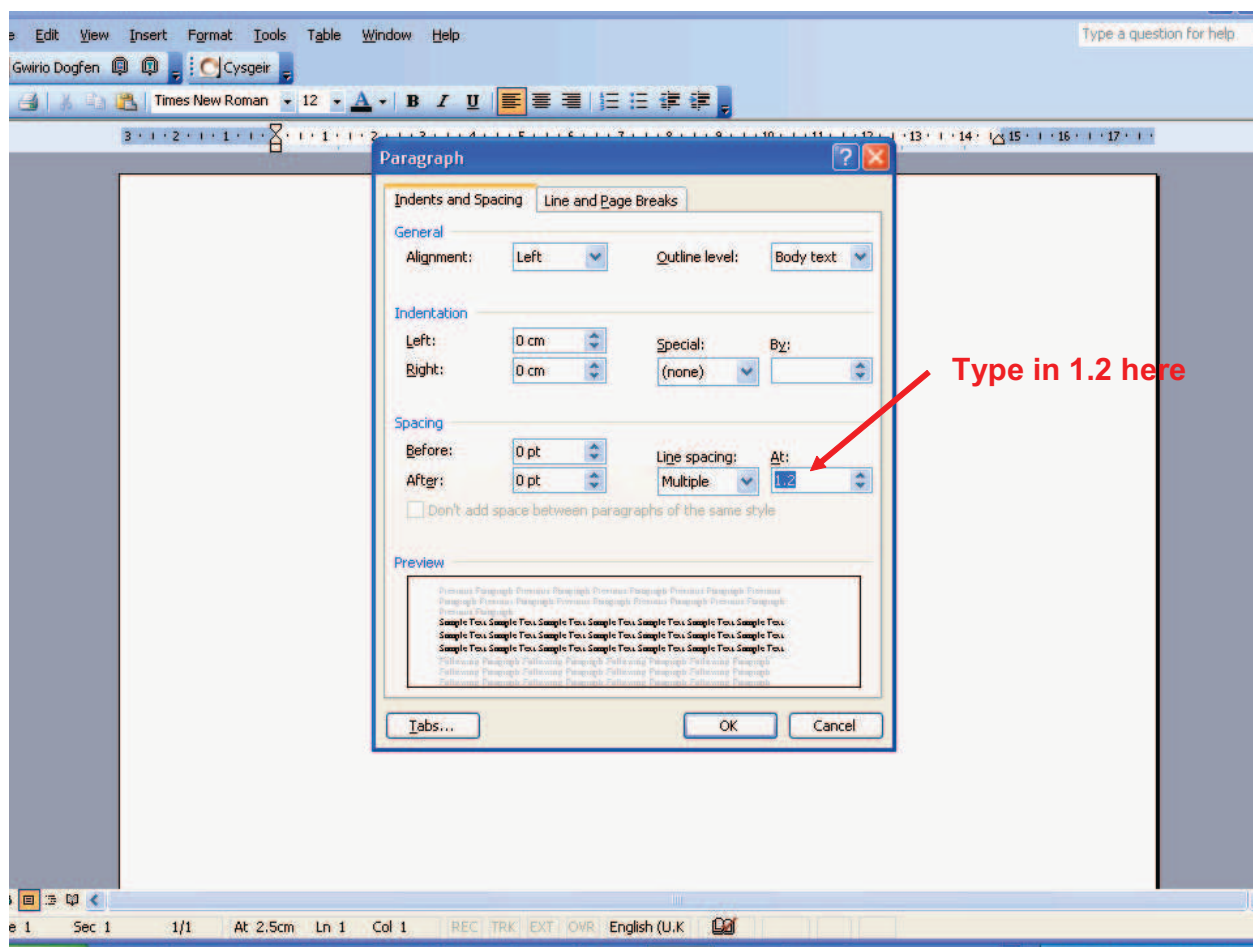
Spacing

In body copy, house style is to use **one** space after a full stop, **not two**.

All documents (**except email**) should have line spacing of 1.2.

Go to **Format**, then **Paragraph**. Under **Spacing** (see below) manually type in 1.2 in the **At** column. Click **OK**.

Please ensure that you amend default settings for Word templates so that they conform to these instructions.



Email signature

External email signatures must adhere to the following format (you can cut and paste the information in the box below). Note that for internal emails, you may use your name and extension number only.

Please note changes have been made (the font, Welsh Government - note the upper case 'G' - and the disclaimer), so you will need to redo your signature if you have already changed it.

Also note that in certain emails where you ARE representing the views of the National Assembly, you may remove the legal disclaimer.

Your name / Eich enw

(font size 12 and bold – you can choose the following colours for your name only: **black**, **brown**, **dark blue**, **dark green** or **dark red**)

Job title (in Welsh) (font size 12 and bold)

Job title (in English) (font size 12 and bold)

Your service area (in Welsh) (font size 12 and bold)

Your service area (in English) (font size 12 and bold)

Cynulliad Cenedlaethol Cymru (font size 12 and bold)

National Assembly for Wales (font size 12 and bold)

T: Your landline number (font size 12 and bold; format: **029 20xx xxxx**)

T: Your mobile number (if applicable) (font size 12 and bold; format: **xxxxx xxx xxx**)

www.cynulliadcymru.org

www.assemblywales.org

Cynulliad Cenedlaethol Cymru yw'r corff sy'n cael ei ethol yn ddemocrataidd i gynrychioli buddiannau Cymru a'i phobl, i ddeddfu ar gyfer Cymru ac i ddwyn Llywodraeth Cymru i gyfrif.

The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

**Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.**

Dylid ystyried unrhyw ddatganiad neu sylw a geir yn y neges hon fel un personol ac nid o reidrwydd yn fynegiant o safbwynt Cynulliad Cenedlaethol Cymru, unrhyw ran ohono neu unrhyw gorff cysylltiedig.

Any of the statements or comments made above should be regarded as personal and not necessarily those of the National Assembly for Wales, any constituent part or connected body.

National Assembly house style

Act

Always upper case. A proposed Act of the Assembly is known as a Bill.

AM

AM should be used as part of a title: **David Melding AM** (note the correct format is **AM** not A.M.).

When referring to an **Assembly Member**, write in full (upper case) in the first instance, thereafter use **Member**; use your discretion and judgement, but try to avoid AM where possible.

Anglesey

See 'Ynys Môn'

APS (Assembly Parliamentary Service)

Do not use. We are the staff of the National Assembly or less formally (primarily for internal audiences) Assembly staff.

Assembly

We are the National Assembly **for** Wales in the first instance, thereafter the **National Assembly** or **the Assembly**.

Assembly committees – upper or lower case?

Use upper case when referring to a specific committee by name or by implication: **The Environment and Sustainability Committee met yesterday afternoon** or: **The Committee agreed to meet in public.**

Use lower case when not referring to a specific committee: **The Assembly has a number of committees**, or, **a piece of legislation is usually scrutinised by a committee.**

All National Assembly committees have a **Chair** – in upper case. (They do not have a chairman or a chairwoman and especially not a chairperson).

The word **member(s)** should be in lower case when referring to the membership of a committee: **the Committee has nine members** or, **he is a member of a committee.**

Assembly Member

When referring to Assembly Members, the word **Member(s)** should be in upper case: **there were noticeably fewer Members in the Siambr** or, **two Members from north Wales sat on the Committee.**

When used in conjunction with a name, use upper case: **Assembly Member Angela Burns**. Use Member when it is clear that you are referring to an Assembly Member. Use **AM** only in a title.

Bill

A Bill is a proposed law. Once a Bill has been passed by the Assembly and given Royal Assent, it becomes an Act of the Assembly.

bullet points

When using bullet points, you should:

- use dashes rather than circular bullet points;
- always start bullet points with lower case letters;
- use a semi-colon at the end of each bullet point; and
- place a full stop at the end of the final bullet point.

Chief Executive and Clerk of the Assembly

Not “to” and always upper case.

Commission

Use the term Assembly Commission, or Commission, when referring to the body of five Members itself: **at a meeting of the Assembly Commission**, or where there is a legal requirement – for example to assert copyright - but use your discretion and try to use **National Assembly** if appropriate: **I work for the National Assembly**.

Commission should always be upper case.

Copyright

The following statement must appear on all publications produced by the National Assembly for Wales:

© National Assembly for Wales Commission Copyright 2011

The text of this document may be reproduced free of charge in any format or medium providing that it is reproduced accurately and not used in a misleading or derogatory context. The material must be acknowledged as copyright of the National Assembly for Wales Commission and the title of the document specified.

Cross-Party Groups

The National Assembly’s style is **Cross-Party Groups** not All-Party Groups. Always use upper case and include a dash.

dates

The National Assembly’s style on dates is: **23 April 2009** (day month year; no commas). Do not use th, st in superscript.

European Union institutions

In the first instance, the **European Council**, **European Parliament**, and **European Commission** are to be referred to in full in upper case. Thereafter, the institutions may be referred to as **the Council**, **the Parliament** or **the Commission** (upper case).

National Assembly for Wales

The first reference should always be the **National Assembly for Wales**; thereafter **the National Assembly** or **the Assembly**.

numbers

In narrative documents (not including tables or formatted numerical documents) spell out from one to nine; numerals from 10 to 999,999, EXCEPT for distances, weights and measures.

Therefore: three years old, four elephants; under-fives; two dumplings **BUT** 3 miles, 1 km, 8 kg, 9sq m.

However, write 8 to 16 **not** eight to 16.

Ordinal numbers follow the same pattern, so first to ninth, secondly, then 10th etc. Note that this does **not** apply to dates.

Any numeral that begins a sentence should be written in full: **Seventy-six** trombones in the big parade.

Million and billion are rendered as words: **four million** unemployed people; **8.7 million** units; **£1.5 billion**.

Hundreds of thousands, tens of millions.

In documents created by the Finance team, 'm' should be used rather than 'million' (as in **£6m** not £6 million).

More detailed guidance on the use and presentation of numbers and statistical information is available from the Research Service.

oblique

An oblique (/) should be preceded by and followed by a space.

petitions

Unless referring to the Petitions Committee, **petitions** should always be lower case

political parties

Political parties should be referred to as follows:

In English copy

Welsh Labour

Welsh Conservatives

Welsh Liberal Democrats

Plaid Cymru

In Welsh copy

Llafur Cymru

Ceidwadwyr Cymreig

Democratiaid Rhyddfrydol Cymru

Plaid Cymru

Pierhead, the

Use the definite article (**the** and **y**) at all times – **The Pierhead** or **Y Pierhead** in Welsh. Never use "the Pierhead building". The Welsh name **Y Lanfa** is incorrect.

Plenary

Upper case.

Presiding Officer

Always refer to **Rosemary Butler AM** as **the Presiding Officer** in English copy and **y Llywydd** in Welsh copy.

quotation marks

When using direct quotes, “use double quotation marks at the beginning and end of a quoted section, with ‘single quotation marks’ for quotes within that section.

“When a quotation spans two paragraphs, there are no quotation marks at the end of the first paragraph, but use at the beginning of subsequent paragraphs to indicate the continuation of the quote. The full stop falls within the quotation marks at the end.”

Senedd

The Senedd is always referred to as **the Senedd** and never as “the Senedd building”. The various spaces within the Senedd are **the Neuadd, the Oriel** and **the Cwrt**.

telephone numbers

Format landline numbers as follows: **029 2089 8039** and mobile numbers: **07825 056 426**.

times

When writing agendas, papers etc, always use the 24-hour clock. Thus: **09.00, 13.00, 17.45**. Use a full stop and not a colon. Do not use am or pm with the 24-hour clock.

titles

Generally speaking, only the first word and official terms should be capped up in document headings and titles.

Tŷ Hywel

Note the circumflex **ŷ** in **Tŷ**. For special Welsh characters, click on **Insert**, followed by **Symbol** and search for the necessary character, or use **Alt** and the relevant letter (for example, Alt+Y=ŷ).

Welsh Government

Note that the Welsh Government is no longer known as the Welsh Assembly Government.

Always use **Welsh Government** or one of the following:

- the Welsh Ministers;
- the Minister;
- the Government.

Ynys Môn

Ieuan Wyn Jones’s constituency should be referred to as **Ynys Môn** not Anglesey.

P-04-483 A plain English / Cymraeg clir policy for all Welsh Assembly and Government communications – Correspondence from the petitioner to the clerking team, 02.07.2013

Dear Sian,

Thank you for informing me of this. My query / addition is: in line with the responses to this enquiry / petition – does the Welsh Government have any plans, therefore, to agree to implement an official national policy that is in line with the policy and campaign / promotion of *Cymraeg Clir* (Plain Welsh) by Canolfan Bedwyr, Bangor and the official campaign of the Plain English group based near Stockport, in the north of England, in order to promote clear language and communication for every person living in Wales?

Agenda Item 4.2

P-04-362 Ambulance Services in Monmouth

Petition wording:

We believe that Monmouth should be granted the appropriate ambulance provision. With its population set to rise, and the Minor Injuries Unit at Monnow Vale recently closed down, demand will increase for the ambulance service.

National Assembly for Wales:

We request the Health and Social Committee of the National Assembly to undertake a scrutiny inquiry into the ambulance service in rural Wales. We would urge the Committee to investigate the particular problems in Monmouth and the impact of the closure of the Monnow Vale Minor Injuries Unit on the ambulance service.

Welsh Government:

We urge the Minister for Health and social Care to use her powers to require the Wales NHS Ambulance Trust to provide a uniformly high standard of ambulance provision throughout Wales and especially rural areas such as Monmouthshire.

Welsh Ambulance NHS Trust:

We urge Welsh Ambulance NHS Trust to increase provision for Monmouth in real terms, with a high dependency unit and/or ambulance based within Monmouth town.

Petition raised by: Mathew Davies

Date petition first considered by Committee: 7 February 2012

Number of signatures: Approximately 450 signatures.

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-04-362
Ein cyf/Our ref MD/01293/13

William Powell AM

Naomi.Stocks@Wales.gov.uk

24 June 2013

Dear William

Thank you for your letter of 12 June on behalf of the Petitions Committee, referring to Petition P-04-362 (ambulance services in Monmouth), and asking for more information on my response to the Strategic Review of Welsh Ambulance Services and the timeframe for implementation.

My officials are currently looking into the different options of the review as a matter of urgency. Some of the options will potentially involve structural, workforce matters, plus other issues which can be complex, and we will need to identify appropriate timescales for any changes. The process will link into the wider unscheduled care work programme, but have a separate work-stream.

I will ensure the NHS is fully engaged and I want Local Health Boards to own the changes in collaboration with the ambulance service. I am very mindful that we need to be sensitive to the organisation and its staff, as I have no doubt the uncertainty will be causing them some anxiety. I can assure you that I want any changes to be made as rapidly as possible.

I expect to make an announcement in July.

Best wishes
Mark

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.Mark.Drakeford@wales.gsi.gov.uk
Printed on 100% recycled paper

P-04-362 Ambulance Services in Monmouth - Correspondence from the petitioner to the Committee, 22.06.2013

The Health and Social Committee sought my opinion on the recent Ambulance Review/in the context of the Ambulance Petition.

I disclosed my analysis on Wales Today the morning the Review was released. Here is my response <http://matdavies.co.uk/?p=755>

Mat Davies

ps: a version of my response is below.

Dear Health Committee,

Paramedics deliver one of the most respectable services in a civilised society. Yet, they can only be as effective as the environment and organisation they operate within allows them to be. There have been systemic failures by the service shown in failing performance targets, and an ocean of case studies taken up by the Public Ombudsman which highlight inadequate management.

In February 2012, I delivered a petition to the Senedd signed by 450 people. It called for an inquiry into the ambulance trust. This was later supported by Monmouth, Abergavenny and Chepstow town councils. However, the only response we witnessed was a review limited in scope. This was launched in January this year. Almost 12 months since the petition was delivered. Not good enough.

The ninth review in six years was released two months ago. Most of the discussion since has concerned performance targets. However, more importantly it exposed the systemic problems within the service. A 'culture of fear' was highlighted during focus groups, and the measure of accountability and transparency was "insufficient". This is not surprising to the people of Monmouthshire.

It is the reason why a scrutiny inquiry at the Health and Social Committee which balances its focus on accountability with performance targets. Abergavenny joined Monmouth and Chepstow town council in supporting this. And one of the key points I

argued to all councils was that there is no democracy without accountability, and there is no trust and improvement without democracy.

The new Chair of the Health and Social Committee has written to me and said that “the legislative business will not allow an inquiry to take place before the autumn”. It is vital that the scrutiny session is used to set out an agenda for an inquiry in the autumn. This inquiry should add value to the review in preparing the decisions for a policy direction which will enable the service to reach its potential.

Kind Regards,

Mat Davies

Agenda Item 4.3

P-04-343 Prevent the destruction of amenities on common land – Anglesey

Petition wording

We call upon the Welsh Government to examine ways to prevent the destruction of amenities on common land, including for example the Marian Common in Llangoed, Ynys Môn.

Petition raised by: JE Futter

Petition first considered by Committee: 15 November 2011

Number of signatures: 156

P-04-343 Prevent the destruction of amenities on common land – Anglesey – Correspondence from Isle of Anglesey County Council

30 May 2013

Petitions Committee

Dear Sir,

Re: Petition relating to Marian common, Llangoed, Anglesey.

I refer to the letter I received from Mr Richard Parry Jones, Chief Executive, Anglesey County Council regarding the above common land in Llangoed. I am very pleased that the Petitions Committee has shown a great interest in events.

Following the events two years ago, when a vast area of the Marian's common land in Llangoed was destroyed by development, I had a number of difficulties. Some people did their best to undermine me because I had stood up for the rights of local people to oppose the force of a landowner, and this affected my work as a county councillor. I thank the county's chief monitoring officer for her assistance, however I feel that not enough has been done on a statutory level to defend the rights of open common land.

The land has been registered in the name of Llangoed Community Council, but there was little that it could do to prevent the destruction. A large piece of land was destroyed in June but North Wales Police's Nature Officer could do nothing about the damage to an important habitat. The developer continues to drive machinery across the land, sometimes.

The Community Council has few powers and there needs to be more compulsory collaboration with the County Council. I believe that improved statutory laws are required to ensure the future of open land for our children and communities. Today, as a result of intense farming, nature is under threat, and common land is important for nature and a number of wild species.

I would be very pleased to receive a written response to my comments.

Yours faithfully,

Lewis Davies

P-04-343 Prevent the destruction of amenities on common land – Anglesey -
Correspondence from the petitioner and associates to the Committee,
08.07.2013

Petitions Committee meeting July 16th 2013

P-04-343 Prevent the destruction of amenities on common land - Anglesey

Petition P-04-343 shows the strength of feeling over the destruction of amenities on common land and augments the preceding paper petition containing over 300 names which called for the protection of Marian Common, Llangoed. We fully support the petitioner and the views of Mr Lewis Davies in his letter to you dated 30th May. We fear that, unless there are stronger statutory laws to prevent the acquisition of common land for private development, Marian Common, and other commons in Wales, will be lost forever to the detriment of local communities and the natural environment.

Dr Karen Pollock & Mr Tom Pollock

Re: Petitions Committee meeting 16th July 2013.

Subject: P.04-343 - Preventing the destruction of amenities on common land on Anglesey.

Dear Sir,

As the owner of a property that gives on to Marian Common, I am quite naturally concerned at the wilful and inconsiderate clearing and destruction of this land by an individual for his own needs.

I wholeheartedly agree with the petitioner's request and support the county councillor, Lewis Davies, who has spent so much time and effort seeking to uphold the rights of the community, not the developer, for whom this land is rightfully intended. My sincere hope is that the Anglesey County Council will show itself to be just as caring as he is when it comes to safeguarding the interests of the general public and protecting the invaluable natural heritage of Wales.

Human nature being what it is, however, I fear that only statutory regulation will settle matters of this kind to ensure that our children and grandchildren still have common land to share and enjoy.

On behalf of all the "common" people who live nearby and who have been so distressed by this situation, may I thank you for your interest and appeal for your intervention.

Yours faithfully,

Janet Latham.

Petitions Committee meeting July 16th 2013

P-04-343 Prevent the destruction of amenities on common land - Anglesey

I wish to endorse the views of the petitioner and those of the County Councillor who wrote to you.

Our neighbourhood in Llangoed, and indeed the whole of Wales, require the strengthening of statute to prevent the wilful destruction of Common land. After all, it is what it says on the tin.....land that is in common use for all to enjoy.

The use of heavy machinery and the unwarranted and unannounced bulldozing of a new road through the Marian Common has resulted in rain water running off the cleared land which now pools at the entrance to our property. Both our local Community Council and the County Council appear not to have the resources to deal with such abuse and I appeal for your help and hope that Anglesey County Council will respond to your very pertinent request for action before the meeting on the 16th July.

Many thanks

Yours sincerely

John Butcher

P-04-385 Petition regarding balloon and lantern releases

Petition wording:

We call upon the National Assembly for Wales to urge the Welsh Government to legislate against the intentional release of balloons and Chinese (or Air) lanterns into the air.

Petition raised by: Bryony Bromley

Date petition first considered by Committee: 1 May 2012

Number of signatures: 564

Supporting information:

The Cardiff Regional Eco-Committee (made up of pupil representatives from Cardiff Green Flag Eco-Schools) recently passed a motion to work towards legislation to prevent mass intentional Balloon and Chinese/ Air Lantern Releases due to the damaging effect that they have on wildlife, both on land and at sea.

Balloon Releases

There have been many cases of wildlife being discovered with latex balloons in their stomachs, blocking their intestinal tract: Marine species, particularly marine turtles and some sea birds, may mistake floating balloons for their jellyfish prey and swallow them, or become entangled and drown. Once swallowed, a balloon may block the digestive tract and eventually lead to death by starvation. The Marine Conservation Society (MCS) have carried out autopsies on a considerable number of marine wildlife that have been found washed up on beaches, confirming the results of balloon litter on the digestive tract.

The NFU has publicised the risk of grazing animals choking on balloons and in balloons contaminating hay, again posing a choking risk

(<http://www.telegraph.co.uk/earth/agriculture/farming/8494881/Farmer-wins-compensation-after-Red-Nose-Day-balloon-kills-cow.html>)

Recent marketing campaigns have suggested that it is possible to carry out an 'eco-friendly' balloon release using biodegradable balloons able to decompose at the same rate as an Oak leaf.

- Oak leaves are very high in tannins and can take two years to fully decompose if not exposed to high levels of sunlight or water.

Following research in 2008, Keep Wales Tidy has stated that intentional balloon releases should be considered a form of littering. Since beginning to

record balloon litter as part of their LEAMS surveys in 2008–09, Keep Wales Tidy has observed balloon litter in each of Wales' 22 local authorities. In one county balloon litter has been observed on 17% of streets.

The Marine Conservation Society has run campaigns to stop balloon releases, since 1996 and there are currently at least 23 authorities in the UK who have upheld a ban on mass balloon releases. Data shows that the amount of balloon litter found on Welsh beaches has unfortunately trebled over the last 15 years as the practice becomes more popular.

Approximately 10% of balloons released into the air fall back to earth intact. This figure is higher when the balloon is tied with plastic ribbons and tags.

<http://www.mcsuk.org/downloads/pollution/dont%20let%20go.pdf>

Chinese/ Air lanterns

The Marine and Coastguard Agency has warned of the dangers of Chinese lanterns, based on them being confused with distress flares.

The RSPCA has warned that the wire structure of lanterns could cause "extreme discomfort" to cattle if ingested.

The National Farmers Union has called for a ban on Chinese lanterns, owing to the danger posed to grazing animals.

<http://www.bbc.co.uk/news/magazine-11265560>

Owing to the fire hazard, the Chief Fire Officers Association (CFOA) recently warned people against releasing the lanterns, saying although they looked spectacular "once airborne they cannot be controlled".

<http://www.bbc.co.uk/news/uk-england-13934378>

The Irish Aviation Association has highlighted the risk lanterns pose to aviation and is now demanding that permission be sought from them for any releases in the Republic of Ireland. They also insist that the nearest Air Traffic Control Unit, the Irish Coastguard and local Garda Station be informed.

(Publication by the Irish Aviation Association, Sky Lanterns and the risk to Aviation.)

Alun Davies AC / AM
Y Gweinidog Cyfoeth Naturiol a Bwyd
Minister for Natural Resources and Food



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-04-385
Ein cyf/Our ref AD-/00827/13
William Powell AM
AM for Mid & West Wales
Chair Petitions committee
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

30 June 2013

Dear Bill,

REPORT ON THE IMPACTS OF SKY LANTERNS AND HELIUM BALLOONS

Thank you for your letter dated 12 June asking what actions will now be taken following the publication of the research report on sky lanterns and helium balloons.

The evidence from this report suggests that any impact on the environment and risk of widespread injury or death to livestock is low. Based on these findings it would be difficult to justify a ban on either sky lanterns or helium balloons, as any action taken must be proportionate to the problem. However, I remain concerned about the issue and will continue to work closely with our partners, in particular Keep Wales Tidy, to ensure that impacts of sky lanterns and helium balloons are minimised. My Chief Veterinary Officer Dr Christianne Glossop has previously issued advice to raise awareness of the possible impacts on livestock welfare and farm buildings and will do so again shortly.

I will be writing to local authorities to encourage them to consider the risks from sky lanterns and helium balloons in their areas. The report provides evidence that two Welsh local authorities have already introduced a voluntary ban on the release of sky lanterns on Council-owned land. This has had a positive impact in terms of preventing large-scale releases and raising public awareness locally; I will encourage other local authorities to follow this approach. I will also raise the issue with charitable organisations to ensure that they consider the wider impacts of releasing balloons or sky lanterns at their events.

I understand that the Chief Fire Officers Association (CFOA) advise Fire and Rescue Services to discourage the use of Chinese lanterns by:

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence: Alun.Davies@wales.gsi.gov.uk

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

Printed on 100% recycled paper

- working with their local trading standards offices to control the use and design of these products;
- working with their local police authority to discourage the approval of events licences for events planning to release lanterns;
- working with local events licensors to discourage the use of these lanterns; and
- scoping out the possibility of litigation with interested parties such as the local police and Civil Aviation Authority.

In Wales the CFOA Community Risk Reduction Committee sets the strategic direction on community safety, education and engagement; updates are provided through their meetings on UK wide issues, local risk assessments are identified and community safety strategies are developed.

The Welsh Government notes that the research report highlights risks to aviation as one of the most significant issues posed by sky lanterns and helium balloons. Aviation safety is non-devolved and action to address these risks is a matter for the Department for Transport and the Civil Aviation Authority. The research report also highlights the issue of red sky lanterns causing false alarms to the Coast Guard and, although matters relating to the Coast Guard are non-devolved, my officials have contacted the Civil Contingencies Manager in the Welsh Coast Guard to ensure they are aware of the report.

The Welsh Government acknowledges that provision of appropriate consumer information has an important role to play in enabling members of the public to make informed choices about whether to release sky lanterns and helium balloons. Although there is specific information that should be communicated in relation to release of these objects near airfields, airports and the coast, we believe that it would make sense for this to be considered as part of comprehensive consumer information on these products. Although not a devolved issue, we support the UK Government in taking forward work to ensure that manufacturers place clear warnings on packaging. I will be closely monitoring the progress of the UK Government in working with retailers, manufacturers and others to improve public awareness of how to use these products responsibly. My officials will also be publishing links to guidance on the safe use of sky lanterns on the Welsh Government website.

A handwritten signature in black ink, appearing to read 'Yours ever Alun', with a small horizontal line under the name 'Alun'.

Alun Davies AC / AM

Y Gweinidog Cyfoeth Naturiol a Bwyd
Minister for Natural Resources and Food

Date: 05/07/2013

William Powell AM

National Assembly for Wales,
Cardiff Bay,
Wales,
CF99 1NA.



KEEP WALES TIDY
33-35 Cathedral Road,
Cardiff
CF11 9HB

Tel: 029 20 726970

Bryony.bromley@keepwalestidy.org
www.keepwalestidy.org

Dear Mr Powell,

Thank you for informing us about the recent report on sky lanterns and helium balloons and for inviting our response.

Keep Wales Tidy was pleased that the Welsh Government and DEFRA acknowledged the potential negative impacts of balloons and lanterns and sought to examine the extent of the problem. From this perspective, we view the National Assembly for Wales' Petitions process as a particularly engaging and practical means to instigate debate. The Eco-Schools' pupils, on whose behalf we submitted the petition, have engaged in our political process and we would advocate this route for others.

The report itself pointed to the risk of fire and risk to aviation and coastal rescue services associated with lanterns. The recent fire at a plastic recycling plant in Smethwick demonstrated the ongoing risk. We would reiterate our concern that, being unregulated, the extent of balloon and lantern releases is unknown. There is also uncertainty as to the extent of livestock and wildlife deaths associated with balloons and lanterns, because of the likely significant under-reporting of deaths and the limited number of post mortems carried out.

We would also like to emphasise our concern that, whilst the majority of the public are aware that throwing litter on the ground is against the law and could result in a fine, there is no such consequence for 'throwing' balloons and lanterns into the air; despite the inevitable litter that will arise. This appears to be a contradiction in the message that both government and ourselves are working so hard to deliver.

We would also make reference to the note about the value of the helium balloon industry being circa £150m in the UK and the potential loss of economic activity linked to a change in legislation. It should be stressed that efforts have been made during current campaigning to work with the balloon industry to promote more environmentally friendly uses of balloons, such as sculptures, mitigating any potential loss of income.

www.keepwalestidy.org www.cadwchgymrundaclus.org

In light of the above, Keep Wales Tidy and our partners remain concerned about the negative impacts of balloons and lanterns. However, in the absence of any legislative change, we support voluntary action and we continue to invite schools and other organisations to pledge not to partake in releases (via our website). A number of local authorities across the UK have banned releases from their property and we understand that the Minister for Natural Resources and Food, Alun Davies, is planning to urge all Welsh local authorities to do so. Keep Wales Tidy would wholly support such action and we would urge that charities and businesses are also included in such an appeal.

Yours sincerely,

Bryony Bromley

(Keep Wales Tidy)

www.keepwalestidy.org www.cadwchgymrundaclus.org

Keep Wales Tidy is a Company Limited by Guarantee. Registered Office: 33-35 Cathedral Road, Cardiff, CF11 9HB.
Company Registration Number: 4011164 Charity Registration Number: 1082058 VAT Registration Number: 850 3958 13

Mae Cadwch Gymru'n Daclus yn gwmni wedi ei gyfyngu trwy wariant. Swyddfa Gofrestredig: 33-35 Heol yr Eglwys Gadeiriol, Caerdydd, CF11 9HB. Rhif Cwmni: 4011164 Rhif Elusen: 1082058 Rhif TAW: 850 3958 13

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P-03-240 Improvements to the A40 in Llanddewi Velfrey

Petition Wording

Due to the increasing levels of traffic, especially heavy goods vehicles, on the A40 and due to the inadequate provision of safe pavements and pedestrian crossings acknowledged by the Trunk Road Agency through research on behalf of the Welsh Assembly Government we, the undersigned, hereby demand the Welsh Assembly Government, as a matter of urgency, improve road safety in the village of Llanddewi Velfrey, Narberth, Pembrokeshire through implementation of the following measures:

1. Improve the inadequate pavement along the southern side of the A40 between Llandaff Row and the far eastern end of the village to ensure that it meets current safety standards, that it is sufficiently wide for the safe use of pedestrians, pushchairs and wheel chair users taking into consideration the proximity of heavy goods traffic passing by at speeds often in excess of the current limit of 40mph.
2. Install speed cameras at the eastern and western ends of the village.
3. Utilise the existing electrical installation for road crossing signs to provide flashing warning lights at times when children will be crossing the A40 to catch their school bus.
4. Install traffic calming measures at each end of the village and at road junctions to emphasise the need to reduce speed.
5. Reduce the speed limit to 30mph.

Petition raised by: Llanddewi Velfrey Community Council

Date petition first considered by Committee: September 2009

Number of signatures: 154

Edwina Hart MBE CStJ AC / AM
Gweinidog yr Economi, Gwyddoniaeth a Thrafnidiaeth
Minister for Economy, Science and Transport



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-04-486
Ein cyf/Our ref EH/01760/13

William Powell AM

William.powell@wales.gov.uk

25 June 2013

Dear William,

Thank you for your 12 June letter asking for further information regarding safety improvements to the A40 trunk road at Llandewi Velfrey.

The gateway enhancements will include yellow backed speed limit signs at either end of the community with the community name plate. Additional road markings will increase the visibility of the gateway and a narrowing of the carriageway. In addition 40mph roundels will be painted on the road throughout the community and the existing speed limit repeater signs replaced with larger ones. All these works will be completed by the end of November 2013.

A review of the speed limit between A40 Narbeth Road, Haverfordwest and Llanddewi Velfrey will be completed by the end of March 2014.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.edwina.Hart@Wales.gsi.gov.uk
Printed on 100% recycled paper

P-04-319 Newtown Traffic Petition

Petition wording

We call upon the National Assembly for Wales to urge the Welsh Government to:

1. Install a roundabout at the Kerry road junction and, if flow improves, reinstate a permanent roundabout.
2. Issue an early start date for construction of a Newtown Bypass and for works to be fast-tracked through to completion.

Petition raised by: Paul Pavia

Petition first considered by Committee: June 2011

Number of signatures: 10 (an additional petition collected approximately 5,000 signatures)

Edwina Hart MBE CStJ AC / AM
Gweinidog yr Economi, Gwyddoniaeth a Thrafnidiaeth
Minister for Economy, Science and Transport



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-04-319
Ein cyf/Our ref EH/1466/13

William Powell AM
Chair of Petitions Committee

Naomi.stocks@Wales.gsi.gov.uk

02 July 2013

Dear William,

Thank you for your letter of 22 May about the current traffic issues in Newtown.

Construction of the bypass is programmed to commence in early 2015 subject to the satisfactory completion of the statutory process and availability of finance.

With regards to the town centre, a study carried out in 2010-11 in response to a petition to re-instate the roundabout at Pool Road/Kerry Road concluded a roundabout would not resolve the congestion problem. In autumn 2012 a stakeholder group including local members and local interest groups was set up to identify further options for improvement. A review of the options is currently underway and we are in the process of arranging a meeting for the stakeholder group shortly.

I will write to you again when the options have been reviewed.

P-04-393 Llanymynech and Pant Bypass Action Group

Petition wording:

We call upon the Welsh Government to reinstate plans for the bypass of the villages of Pant and Llanymynech which straddle the English/Welsh border. 15,000 cars and lorries a day pass through these two villages, and it will only increase once the plans for the wind farms get the go-ahead. We call upon the government now to proceed with their plans, or at least open up talks on the bypass and have a full debate, listening to our needs and the voices from our community on how this road is affecting us and our quality of life. We hope, by doing this, that the English government will then take note and proceed with plans on their side. We would like a full and open debate on the need for a bypass for the villages of Pant and Llanymynech, which then, will develop into the actual construction of the bypass once funds are available.

We are fed up of the noise, the pollution, the fact that we cannot walk our children to school, walk to the shops, or walk our dogs along the road. Road improvements such as widening, will not work here. The road was initially designed as a single track lane for horses and carts. The houses on both sides of the road often touch the edge of the road, and there are many lanes which feed onto the A483, which will again make it unsuitable for improvements. A bypass is the only option we feel, taking the road from Llyncllys (which is absolutely deadly) around the villages of Pant and Llanymynech and joining the new bypass by the edge of Llandysilio. This is the main trunk road between Manchester and Swansea, and it is not fit for purpose. We have many MPs and AMs on our side and we are determined to get this done, and have a full debate in the Assembly on the subject.

Petition raised by: Duncan Borthwick

Date petition first considered by Committee: 29 May 2012

Number of signatures 84

Edwina Hart MBE CStJ AC / AM
Gweinidog yr Economi, Gwyddoniaeth a Thrafnidiaeth
Minister for Economy, Science and Transport



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-04-393
Ein cyf/Our ref EH/01253/13

William Powell AM

committeebusiness@Wales.gsi.gov.uk

18 June 2013

Dear William,

Thank you for your letter of 7 May requesting how the Welsh Government intends to consider options for improving the A483 between Pant and Llanymynech.

This scheme is no longer a priority for the Highways Agency in England. As a result without the agreement of England a cross border bypass cannot be taken forward for these communities at this time.

A handwritten signature in black ink, appearing to read 'Edwina Hart'.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.edwina.Hart@Wales.gsi.gov.uk
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P-04-365 Protect buildings of note on the Mid Wales Hospital site

Petition wording:

We call upon the National Assembly for Wales to urge the Welsh Government to list or otherwise protect buildings of note on the former Mid Wales Hospital site. Unlisted but in the Conservation Area they are an invaluable part of the architectural and social heritage of Talgarth.

Petition raised by: John Tushingham

Date petition first considered by Committee: 28 February 2012

Number of signatures: 206

Supporting information: The Brecon and Radnor County Asylum had a Grand Opening in 1903. The souvenir booklet describes how thousands of people were present and every nook and corner of the huge building was inspected. Altogether the establishment was a wonder of its time. It is now in an appalling state of decay but this important example of an early Edwardian asylum of the compact arrow echelon style, designed by Giles, Gough and Trollope, noted by Pevsner and on SAVE Britain's Heritage, Buildings at Risk register, is thoroughly worthy of conservation. Situated approximately half a mile from Talgarth in outstandingly beautiful countryside within the Brecon Beacons National Park, and Talgarth Conservation Area, it has a special relationship with Talgarth. Loss of any of the original/notable buildings would be an unacceptable loss of Talgarth's heritage assets.

Agenda Item 4.9

P-04-422 : Fracking

Petition wording:

We call upon the National Assembly for Wales to urge the Minister for Environment and Sustainable Development to produce a Ministerial Interim Minerals Planning Policy Statement as well as a new technical advice note to strengthen the precautionary principle with regard to planning applications for onshore oil and gas, including fracking. All reasonable scientific doubt that there is any risk of adverse impacts must be eliminated, and strongest consideration must be given to the urgent need to mitigate climate change.

Petition raised by: Friends of the Earth Cymru

Date petition first considered by Committee: 2 October 2012

Number of signatures: Approximately 1000

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-04-422
Ein cyf/Our ref CS/01113/13

William Powell AM

William.powell@wales.gov.uk

26 June 2013

Dear William

Thank you for your letter of 12 June regarding the petitions committee's consideration of the petition in respect of Fracking, and what research and independent advice the Welsh Government has received.

The Welsh Government has considered the findings of a number of published research papers including the June 2012 review of the scientific and engineering evidence on hydraulic fracturing as a means to extract shale gas in the UK, undertaken by the Royal Academy of Engineering and the Royal Society.

Natural Resources Wales are currently working with the Environment Agency who have commissioned research into unconventional gas, specifically the 'Monitoring and Control of Fugitive Methane from Unconventional Gas Operations' and a 'Review of Assessment Procedures for Shale Gas Well Casing'.

Energy Policy officials continue to engage with geological specialists including the British Geological Survey on unconventional gas matters and are currently considering the commissioning of bespoke research into unconventional gas extraction and development which would include hydraulic fracturing.

As I stated in my previous letter of the 7th May 2013, my officials continue to engage with the UK Government and the respective agencies to ensure robust and consistent evidence is developed, and are also keeping under review the need to produce new planning guidance as this evidence comes forward.

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

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English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence: Carl.Sargeant@wales.gsi.gov.uk
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P-04-422 Fracking - Correspondence from the petitioner to the Committee, 03.07.2013

Dear Petitions Committee,

It would be interesting to find out how many officials in the following organisations:

- a) Natural Resources Wales; and
- b) The Welsh Government

have any expertise* in the field of unconventional gas/fracking.

Yours sincerely

Gareth

*expertise: expert technical knowledge/long-standing experience of working in the field

P-04-461 Save Ponty Paddling Pool

Petition wording:

We call upon the National Assembly for Wales to urge the Welsh Government to designate the paddling pool at Ynysangharad war Memorial Park as a Grade 2 listed building, as is the Lido, on the grounds of its historic importance as part of the Park.

Petition raised by: Karen Roberts

Date petition first considered by Committee: 19 March 2013

Number of signatures: 1212

John Griffiths AC /AM
Y Gweinidog Diwylliant a Chwaraeon
Minister for Culture and Sport



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-04-461
Ein cyf/Our ref JG/00845/13

William Powell AM
Chair Petitions Committee

committeebusiness@Wales.gsi.gov.uk

June 2013

Dear William

Thank you for your letter of 22 May seeking my views on the petition led by Karen Roberts asking the Welsh Government to list the paddling pool at Ynysangharad War Memorial Park as a building of special architectural or historic interest.

To qualify for listing, candidate buildings must be of nationally significant architectural or historic interest and must satisfy published criteria. Where these are met, the Welsh Ministers are under a duty to list a building, but cannot do so otherwise. The criteria explain that for structures built after 1840, greater selection is necessary to identify the best examples of a building type, and only buildings of definite quality and character qualify. For twentieth century buildings, we have to identify only key examples of their type. To qualify for listing on grounds of historic interest, the criteria direct us to identify structures that illustrate important aspects of the nation's social, economic, cultural or military history.

The paddling pool has been considered for listing by my officials in Cadw on two previous occasions but it did not meet the exacting criteria to be listed. Cadw has, however, reviewed the case again and concluded that the structure does not meet the criteria for listing and so cannot be listed.

The paddling pool is judged to have insufficient architectural merit as it does not have any real architectural form. Although the pool is obviously engineered, it cannot be said to have any special qualities of design. In comparison, the architectural interest of the adjacent lido derives strongly from the buildings that surround the pool, and it is these which form the basis of its listing. The paddling pool has no formal association with these buildings since they operated as independent entities with no functional relationship between the two. Cadw is, therefore, of the view that the paddling pool cannot be regarded as a building of definite architectural quality and character as a post 1840 structure, neither can it be considered to be a key example of this twentieth century building type. It is recognised that the pool is representative of the history of leisure and recreation, and has a place in the hearts and memories of those that have used the facility, but it lacks sufficient stand alone value at a national level to justify listing. Although the pool has some group value within the wider park, this is outweighed by the lack of sufficient architectural quality.

I appreciate that my reply will be disappointing but I understand that the Council intends to provide free access for under 12s to the new paddling pool within the adjacent Lido development to ensure that no existing facilities are lost within the park.

A handwritten signature in black ink that reads "John Griffiths". The signature is written in a cursive style with a large initial 'J' and a stylized 'G'.

John Griffiths AC / AM
Y Gweinidog Diwylliant a Chwaraeon
Minister for Culture and Sport

Karen Roberts

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

04/07/13

William Powell AM
Chair, Assembly Petitions Committee
National Assembly for Wales
CF99 1NA

Petition – Save Ponty Paddling Pool

I write in response to your recent letter asking for my views on the correspondence received from the Minister in relation to the above

The content is indeed disappointing, but to be honest was expected, as CADW had already given a similar reply and they would have advised the Minister accordingly. This despite the fact that their original advice was to the contrary, as has been documented in previous correspondence.

The problem seems to stem from the fact that the paddling pool was not regarded as within the curtilage of the Lido when the original listing was placed on that building. It therefore seems that the fact that the paddling pool structure predates the Lido and is an integral part of Ynysangharad Park is regarded as immaterial.

As for the argument that the Council will provide free swimming for under 12s and so there will be no loss of facility, that is a matter of opinion. The current paddling pool is free to use for all. The new pools will be part of the Lido complex. One adult will be allowed free entry with a child, which means there will be a cost for families where there are more adults than children.

Whereas currently any number of large family groups enjoy the free facility and sit and picnic in the Park for hours they will be limited time-wise in the Lido. The new children's pools planned are also much smaller than the current pool.

I am sure I speak for all of the 2077 people who voted in the referendum to keep the paddling pool, and many other residents, when I say that it is little short of vandalism to remove this much used facility that brings thousands of visitors to Pontypridd every year along with the economic benefits that entails.

However, it seems the odds are stacked against the public, and despite the quite overwhelming opposition there is to the Council's plans they will be able to carry on and do just what they want.

I thank the Committee for their consideration of this matter.

Yours sincerely



Karen Roberts

P-04-480 Address Private Sector Student Housing Standards

Petition wording:

We call upon the National Assembly for Wales to urge the Welsh Government to investigate the problems raised in the recent Aberystwyth Housing Survey Report 2012 which has raised concerns about the poor standard of student accommodation and the correspondingly poor treatment of students in the private rented sector. Furthermore, we call on the Welsh Government to engage in a full and frank consultation with the affected communities on this neglected issue while ensuring that current housing legislation and new measures by the relevant authorities are properly observed to help raise standards in the private rental sector.

Student housing has been a constant issue in Aberystwyth for many years. A report published in December 2012 surveyed students on their housing experiences and details the issues that they have been facing.

Petition raised by: Aberystwyth Student's Union

Date petition first considered by Committee: 15 May 2013

Number of signatures: 188



Ein cyf/Our ref CS/01018/13

William Powell AM
Chair Petitions committee
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

26 June 2013

Dear William

Thank you for your letter requesting information surrounding the key issues for action raised in the Aberystwyth Housing Survey Report 2012, produced by Aberystwyth Students' Union.

Firstly, may I just mention that the report is a very strong piece of work, and has been recognised as such in correspondence from both the previous Housing Minister and myself. The findings in the report largely back up the already sound basis by which we are currently taking action through the proposals to introduce a mandatory registration and licensing scheme for all landlords and letting/management agents operating in the private rented sector.

In terms of the specific issues you have raised, I will deal with these in the order in which they were put:

- High rents – I do recognise that there is an issue with the level of rents charged, especially in high-density student areas such as Aberystwyth. The private rented sector is a marketplace, and as such, the Welsh Government does not have the power to govern the level of rents charged to tenants, particularly those who are not in receipt of Local Housing Allowance.
- Summer rent – This is governed by the contract; a legally-binding document between the landlord and the tenant. The charging of rent during the summer, and whether or not tenants can live there for certain periods is something that should be documented in the contract, and this is certainly something that I will be looking at making clear in the code of practice when the registration and licensing scheme is implemented. I know that there is an issue with “double-renting”, but this is an illegal practice which is already legislated for. Landlords working in student housing often have a need for the non-habitation of premises to carry out repairs, decorations and replacements of furnishings. I am, however, aware that not all landlords do charge for the periods of non-habitation, and this is something that can often be negotiated before a contract is signed.

- Administration fees – These fees for the set-up of the tenancy are not illegal, but they must be detailed up-front. The report highlights the large differences between fees charged by agencies. I note with interest that those agencies which charge no fee, or small fees do not seem to fair any better or worse, in terms of customer satisfaction amongst students, than those which charge larger fees. Again, the codes of conduct in the new scheme will re-iterate the need for landlord and agents to make prospective tenants aware of the level of fees which they will be charged. Any fees which seem unfair can always be challenged, and nobody should sign up to any contract with which they are not entirely comfortable.
- Deposit Protection Scheme fees – I would suggest that passing on these fees as an additional charge is unfair. Although they are legally obligated to register the deposit, a landlord or agent has a choice of whether they register the deposit in a “custodial” scheme, for which there is no fee, or an “insurance” scheme, for which there is a fee. Anyone who is faced with being charged such a fee should challenge it before signing their contract.
- Condition of properties – The main driver for bringing in the proposed scheme was to raise the standards of the private rented sector. Whilst the majority of properties are maintained to at least a reasonable standard, it is clear that there are many properties which are simply not. The scheme will ensure that all landlords / agents will maintain their properties to a decent living standard, because failure to adhere to this could ultimately lead to fines and / or the removal of their ability to manage properties in the private rented sector.
- Pressure to sign contracts – Whilst I agree that this is a problem in areas of high-demand, nobody is actually under any obligation to sign up to a tenancy agreement until they are fully satisfied that the agreement is right for them. This is not something that we can actually legislate for, but agree with the findings of the report that this is more of an educational issue.

One major new part of the new scheme will also be the obligation for landlords / agents to provide all tenants with an information pack which spells out their rights, roles and responsibilities. Whilst the exact content of the pack is yet to be finalised, it is clear that many of the issues raised above can be dealt through this avenue. My officials have been working closely with a wide-range of stakeholders in developing the proposals so far, and the National Union of Students has been a valued member of these discussions. I hope that this close working arrangement will continue into the future when we get into the finer details of how best to educate all parties involved in the private rented sector, students included, about the scheme, as well as the currently existing legislation.

The petition calls for the Welsh Government to “engage in a full and frank consultation” on the issues facing the private rented sector. I would argue that this has already been done. Full consultations and discussions involving input from all stakeholders have led us to where we are now in bringing in the registration and licensing scheme. I believe that the new scheme will see a major improvement in the private rented sector.



Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration

P-04-480 Address Private Sector Student Housing Standards – Correspondence from the petitioner to the Committee, 02.07.2013

Hello,

Thank you for sending this through and giving us the chance to add additional comments.

Here are the points we'd like to raise:

1) We'd like to thank the Housing Minister for sending back such a detailed letter addressing the issues in the report.

2) Administration Fees

Whilst we agree that they must be detailed upfront, some are not, and some are high in price. We feel there should be a maximum charge or no charge at all put into place to stop such practises. Shelter England have just launched a campaign to End Agency Fees, Scotland have already ended Agency Fees so we feel Wales should be following suit. This is something that was raised at the Renting Homes Bill consultation we attended in Aberystwyth on July 1st.

3) Tenancy Deposit Schemes

We feel this needs addressing as a lot of the casework we have had over the past few months have centred around people's deposits not being protected, not being put back in in full (but being negotiated with the landlord), receipts of work not being provided – we feel this should be considered in the Bill or separate work as an additional area of concern.

4) Condition Of Properties

- This is a long standing issue in Aberystwyth, and the reason we are being so persistent. Currently category 1 hazards like damp need to be addressed, but in a lot of the cases we see, they simply aren't – and it isn't enforced. The landlord can simply get away with providing poor accommodation as there**

appear to be not deterrents for them not to maintain their properties.

- We are concerned that whilst it's good to have sector standards in the bill, that a one-hat-fits-all-solution will not work for Aberystwyth, as we do not have the enforcement. Key things out of our consultation came about as: who will enforce it, what will the ramifications be if standards are not met, what will happen for the tenants?
- These new proposals will not come into practise until 2016 we're told – this doesn't address the issues that are happening now to students. We do agree they are needed, but we are worried about our students now who are living in these conditions, facing high rents for these and sub-par accommodation. We really feel that more work needs to be done here.
- Enforcement – this is where we feel we are lacking in Aberystwyth. I will give an example of a common case we have:
- Student presents themselves to us. They are living in damp conditions and things that are broken have not been repaired. They have had difficulty communicating with their landlord who has not consulted on when they will address the conditions. We check if the property is on the HMO Register. (Often not with these cases) We phone the council to ask, the house is not on there. They send out an officer to inspect. The landlord applies for a license. The tenants take pictures of the property and the officer issues a schedule of works. Landlord promises to address issues, either does cheaply or addresses a couple. Tenants complain again. Tenants move out and have issues getting their deposits back (which turn out not to be protected) – repeat cycle.
- The sort of practises above should not be in the volume they are. There should not be such poor quality accommodation and treatment of students.

- Aberystwyth is market-led and prices and standards are a major concern. There needs to be more done, and it just isn't happening, and our students feel let down by the systems in place. This is why we are so persistent and want the Welsh Assembly to take a lead on it, be more proactive and come and find out the conditions and practises we are talking about first hand.
- Currently, under licensing regs in Aber, properties are only inspected once every 5 years. Which seems ridiculous considering the conditions and complaints.
- We also wanted to support the idea of the tenant information pack – fantastic idea and much needed and we want to help out (Nus too hopefully as they have a lot of good work on housing) wherever we can.

5) Consultation

- Following on from the condition of properties, we feel the volume of cases we see, the poor experiences students have and the lack of repercussions for landlords (since we are repeatedly reporting some offenders and unlicensed properties are somehow okay once someone has applied for a license (not for the students who are living there)) and they are given a lot of leeway to do work/no real repercussion for not doing the work, and new students move in and seemingly the case is closed. My theory is you wouldn't let someone drive a car if they've just applied for a license, so why let them have tenants if they are unlicensed and haven't been properly checked out.
- There are 3 stakeholder events, lasting 2 hours each for such a serious consultation, so while I thank the minister for putting on these, we found in our event that the time wasn't long enough to start a discussion, especially in a place like Aberystwyth, which (it arose from the consultation) has some of the worst private sector standards in Wales. We would like

to see further consultation to address the practises which are going on here, and provide reassurance to the students that enforcement will be taken and that standards in the private sector will be taken seriously.

- We are currently sending out a new housing survey which goes into far more detail on Housing.
- While housing is in the spotlight, we feel this is the best opportunity for issues to be addressed and support to be given.
- We can't see the number of housing cases (over 100 separate cases) coming through our doors as Aberystwyth is not resourced for it. We worry our local authority is not given enough resourcing to serve the number of cases we have – 2 officers covering Aberystwyth with the volume of cases we see (and then the students who are accepting bad conditions as a norm).

Therefore, to conclude on consultation we would like to see far more work done, due to the number of people affected, the standards of properties decreasing, the lack of enforcement or indeed work on these properties and the repeated perpetrators being able to consistently get away with it.

Many thanks for letting us respond :D

Laura

Agenda Item 4.12

P-04-436 : Government Expenditure and Revenue Wales

Petition wording:

We call on the National Assembly for Wales to urge the Welsh Government to put together a Government Expenditure and Revenue Wales report.

In Scotland they have the GERS report, it aims to enhance public understanding of fiscal issues through detailed analysis of official UK and Scottish Government financial statistics. It's time that the Welsh Government published a similar report so that we can truly see the fiscal position of Wales.

Petition raised by: Stuart Evans

Date petition first considered by Committee: 15 January 2013

Number of signatures: 27

P-04-436 Government Expenditure and Revenue Wales report - Correspondence from the petitioner to the Chair, 01.07.2013

Please find below my response to William Powell AM regarding the letter from Jane Hutt. I attach a copy of the letter with two key pieces highlighted which will help explain my frustration.

Dear William Powell AM

The petition called for a report on "Government expenditure and revenue in Wales" and Jane Hutt's response is simply to say that they already publish how much they spend. This conveniently misses the key point about revenue. The people of Wales need to know just how much revenue is being raised in Wales. And that includes revenue Wales is currently not credited with.

We in Wales are always told that we are not financially viable on our own and people believe this because they have no accurate figures to know one way or another. A GERW report would answer this question and would also be a great way of being able to measure how well the Welsh Government is doing, it would be a good barometer for the financial climate of Wales and act as a target that the Welsh Government's successes and failures could be measured against.

Perhaps those are just a few of the reasons why the point of this petition appears to have been missed so deliberately.

Regards

Stuart Evans

Dear William,

Petitions Committee: analysis of Welsh and UK Government financial statistics

Thank you for your letter of 23 January, about the petition proposing that the Welsh Government issues a report on Government expenditure and **revenue** in Wales.

At this time, I have no plans to produce a further report on financial statistics, as comprehensive **information is already available on public expenditure in Wales** (published by the Welsh Government on devolved issues, and by the UK Government on non-devolved matters).

However, it is possible that this situation could change in the future. In its report to the UK Government, the Commission on Devolution in Wales, chaired by Paul Silk, has recommended a wide range of financial reforms, including the devolution of several taxes and borrowing powers. If those recommendations were implemented by the UK Government, I can see that there could well be a need for further information to be made available, especially in relation to the receipts raised by any devolved taxes.

That decision must, however, await the UK Government's response to its Commission and the discussions that will follow.

Best wishes,
Jane

Jane Hutt AC / AM
Y Gweinidog Cyllid ac Arweinydd y Ty
Minister for Finance and Leader of the House

P-04-478 A simple info pack for all the people of Wales explaining how they can stand as candidates

Petition wording:

We call on the National Assembly for Wales to urge the Welsh Government to send out a clear understandable leaflet to all people of voting age in Wales, explaining how they can stand in local, national or Britain wide elections if they so wish.

Petition raised by: Sovereign Wales

Date petition first considered by Committee: 14 May 2013

Number of signatures : 11

Agenda Item 4.14

P-04-482 Public noticeboards across Wales notifying the public of who all their political representatives are

Petition wording:

We call on the National Assembly for Wales to urge the Welsh Government to develop a national system of placing large public notice boards (of 5x4 foot or so as an example) across all the local authorities and electoral wards of Wales, clearly notifying everyone who their local Councillor/s and AM's are, together with clear information on how, where and when all of these can all be contacted and met and with regular and updated information on when and where all local council meetings are held.

There is a real need for people to be clearly notified of who their political representatives are at all levels, with clear well laid out informative notice boards centrally placed in all the local authorities and electoral wards of Wales. Consideration could also be given for surgery hours and locations, and possibly council meetings, to be standardised around Wales (e.g. 1-3pm of every first Saturday of the month at local community centres all across Wales as a generic example) so that people can interact and connect with their representatives more effectively. This will all encourage the citizens of Wales to have better involvement in the democracy of their country and communities

Petition raised by: Sovereign Wales

Date petition first considered by Committee: 14 May 2013

Number of signatures: 11

Lesley Griffiths AC / AM
Y Gweinidog Llywodraeth Leol a Busnes y Llywodraeth
Minister for Local Government and Government Business



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref P-04-482 & P-04-478
Ein cyf/Our ref LG/01467/13

William Powell AM
Chair Petitions committee
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

30 June 2013

Dear Bill

Thank you for your letters of 24 May regarding two petitions received from Sovereign Wales.

I agree there is a need for the electorate to know who represents them and how they may be contacted. The petition suggests the use of large public notice boards to be placed within all electoral wards in Wales through a national system developed by the Welsh Government. It would be difficult for the Welsh Government to co-ordinate such a scheme. Local authorities, at both principal and community level, have various duties to publish notices in public places. In some cases, where communities have natural centres, this is done through public notice boards.

I am not convinced an obvious site for a public notice board exists in all electoral wards, especially those areas without a community council. Also, it is not obvious who would maintain and publish information on them.

Ensuring the information on notice boards is kept up to date and relevant can only be a local responsibility. I would support the principal of public notices being large and clear enough for most people to understand.

Many people today would expect to be able to obtain information such as this from the internet. All County and County Borough Councils in Wales already have websites which contain relevant information about elected members.

There is a lack of information available electronically about Town and Community Councils. The Local Government (Democracy) (Wales) Bill was passed by the National Assembly for

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.lesley.Griffiths@wales.gsi.gov.uk
Printed on 100% recycled paper

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

Wales on 18 June. The Bill includes a provision requiring Town and Community Councils to have websites and to publish certain information electronically, including the Council's membership, contact information and minutes of meetings.

The timing, location and frequency of Council meetings are a matter for each Council. It is not practical to prescribe the time and frequency of Council meetings. Local Authorities are required to have regard to the Statutory Guidance to support the Local Government (Wales) Measure 2011, which states Local Authorities should review the times at which meetings are held at least once every term.

The second petition calls for the Welsh Government to issue information on how people can stand for election. However, there is already considerable information available for candidates and potential candidates. The Welsh Government, in partnership with the Welsh Local Government Association, produced a leaflet on becoming a Councillor, which is available on the WLGA's website.

The Electoral Commission is responsible for providing information on how to participate in the democratic process. Information is available on their website on the importance of registering to vote, the different voting systems and how to vote. The Electoral Commission also provides guidance for candidates which includes a section on standing for election.

Regards
Lesley

Lesley Griffiths AC / AM

Y Gweinidog Llywodraeth Leol a Busnes y Llywodraeth
Minister for Local Government and Government Business

P-04-478 A simple info pack for all the people of Wales explaining how they can stand as candidates and P-04-482 Public noticeboards across Wales notifying the public of who all their political representatives are - Correspondence from the petitioner to the Minister for Local Government and Government Business, 06.07.2013

Dear Lesley,

Thank you for your response to the Sovereign Wales petition for public notice board signs informing people of their representatives and the petition for citizens to be informed of how they can stand as candidates.

In regard to notice boards. I accept that responsibility lies with local authorities but I believe it's a real duty for them to clearly show who the local councillors, AM's and MP's are and how they can be contacted. I believe there should be at least pressure and strong guidance from the Welsh Government for them to do this effectively and consistently. I don't believe the internet should be solely relied on to give this information: many people just don't have time or the inclination to trawl through countless websites and links and I agree with you that there is a lack of clarity and consistency in this area on local authority websites. It's impossible on some of these local authority websites to even find out who local councillors are. I'm therefore very glad to hear of the Bill you mentioned that was passed on June 18th. However I still believe that this doesn't discount the need for actual physical signs/posters as well. If placing/building new larger signs is going to be too challenging at this point, may I suggest that a well designed and branded template of posters (weather/waterproof if necessary) is rolled out to all Welsh local authorities to be placed on/in existing public notice boards and community centres, so that people can recognise the branded posters (e.g. a red and green outline or similar branded design) which would use the same consistent branded designs in all local authorities. Perhaps costs/work could be shared between the Welsh Government and local authorities. I believe this would be very worthwhile to do as it would improve the engagement and connectiveness of the Welsh public with the democratic process in Wales.

Regarding the second petition for a simple information leaflet issued to all eligible Welsh citizens explaining how they could stand as candidates, the electoral commission does provide this information on their website but it is difficult and cumbersome to understand and people are instantly bamboozled by an over bombardment of links and pdf's. Many people don't even know who or what the Electoral Commission is in the first place. I'm glad to hear a leaflet was produced but I haven't seen any mention of this pamphlet anywhere and I believe most people wouldn't know who or what the WLGA is either, not to mention thinking of contacting them for a leaflet. I believe this information needs to be given/advertised to people directly as well as in public places. I'm sure also that a very simple paragraph outlining the basics of what needs to be done to stand, as well as a direct link to the electoral commission site could be added to literature that's already been sent out by the Welsh Government directly or through existing advertising and publicity.

This basic information of how to stand as electoral candidates could also be inter-linked/merged with the public notices idea contained in the other petition, where all this information could be put on the main branded local authority/community centres public notices together with the

information on existing representatives as suggested in the other petition.

I very much hope this will be of constructive and positive use and I thank you for your time and diligence. I would of course be more than happy to further contribute to any developments,

Kind regards,

Gruffydd Meredith

P-04-452 : Equal Rights for Tube-fed Youngsters.

Petition wording:

We call on the National Assembly for Wales to urge the Welsh Government to ensure that funding is made available to ensure that the vital equipment and services required by tube-fed children and young people are made available to them.

For example, equal rights for tube-fed youngsters in the Caerphilly County Borough Council currently fall between 2 defined categories of need. The Aneurin Bevan Health Board say as they are not Continuing Health Care (CHC) children – 'only tube-fed' – they cannot fund the vital equipment and services we need. Caerphilly Social Services also say they cannot help as these children 'have significant health needs'. These definitions exclude and therefore discriminate against Tube-fed Youngsters and we demand an investigation into this practice in Caerphilly. Whilst our Youngsters do not 'qualify' for help from either Health or Social Services in the Caerphilly Borough we still have a Youngster with 24/7 care needs – the same as a newborn – often with disabilities due to a life-threatening illness.

Additional Information:

Our Youngsters need a 'label' in order to be able to automatically access funding for vital equipment and services. At present inter-departmental financial wrangling takes place on request for anything for a Tube-fed Youngster and this should not involve Parents / Carers. We just need the help for our Youngsters as quickly as possible. We ask that a quick, common-sense, long-term solution be achieved for our Youngsters and for the sake of the health and wellbeing of their Parents / Carers.

Petition raised by: Dr Tymandra Blewett-Silcock

Date petition first considered by Committee: 29 January 2013

Number of signatures: 142



Parents of Partially Sighted and Blind Youngsters
Reg Charity 1104560 www.popsy.org.uk

P-04-452 Equal Rights for Tube-fed Youngsters ePetition Oral Evidence Paper - 16 July 2013

Continuing Health Care

A severely disabled child – blind, in a wheelchair, tube-fed and with a degenerative terminal condition - does not 'qualify' for a Continuing Health Care (CHC) definition in the Caerphilly Borough.

Caerphilly Social Services vs the Aneurin Bevan Health Board

The Aneurin Bevan Health Board say it is not their responsibility to help a family whose child does not have 'health' or 'nursing needs', i.e. is not a CHC child.

Social Services tell us that as our type of child has 'significant health needs' they cannot help either.

When a family then meets with both parties and asks "Well, who will help us then?" there is still no resolution.

We understand budgets are under pressure but so are we.

Joint Funding a '3rd Category Disabled Child'

When an Occupational Therapist assesses your child as urgently needing a Medical Bed or Fully Supported Specialist Chair, or Bath Seat for their health, safety and comfort Parents should not be involved in the financial wrangling over who will pay for this type of equipment or service if their child apparently does not meet either criteria for funding.

There is obviously the need for a 3rd Category of Disabled Child – a '50% 50% Funded Child' – costs automatically being jointly funded to avoid delays in vital equipment or services.

The Children's Commissioner in Wales has also supported this joined-up thinking - questioning the type of wrangling we experience as constituting a breach of a disabled child's Human Rights.

Legislation to help Families at Breaking Point

Families with a severely disabled child find it difficult enough to cope on a daily basis as it is. We are often suffering financially hardship as well as being stressed and depressed due to our caring role – please take away one more worry by making legislation to 'define' our type of child.

Our family is not unique and having set-up the POPSY Charity I have had the privilege of getting to know many other families with disabled children who do not fit either (existing) category and who are also experiencing major equipment and respite problems.

Our Personal 'Battle' and lack of Advocacy

No family wants their child to be disabled - we do not want to have to ask for help but sometimes we have to. When we do we should not be made to feel as if we do not deserve this help or are not entitled to it. As our daughter cannot ask or communicate her wishes we have not been able to get an Advocate to help us in our 2 Year 'battle' for Direct Payments to help us care for her and improve her quality of life.

I had to ask Ms Catherine Lewis, ex-Special Needs School Governor, to help us and she has been good enough to attend our meetings over the past 7 months – witnessing just some of the games played with Parent Carers in the Caerphilly Borough.

We get one life – just like you – PLEASE help us make it better for hundreds out there who do not have the strength to 'battle' – we represent all of these hard-working people and are here to try and influence legislation influencers and makers like you !

Use Us

If you need any advice or an insider's view on disability or being a Parent Carer just ask – I would gladly help with anything if it means just one family's life is improved !

Dr Tymandra Blewett-Silcock
POPSY Charity Director