

**HEALTH AND SOCIAL CARE (QUALITY AND ENGAGEMENT) (WALES) ACT
2020
STATUTORY GUIDANCE ON REPRESENTATIONS MADE BY THE CITIZEN
VOICE BODY**

Introduction

1. The Citizen Voice Body for Health and Social Care, Wales ('the Citizen Voice Body' or 'CVB') has been established under the Health and Social Care (Quality and Engagement) (Wales) Act 2020 to seek the views and represent the interests of the public in respect of health and social services. It replaces Community Health Councils which previously operated in relation to health services only.
2. Part 4 and Schedule 1 of the Health and Social Care (Quality and Engagement) (Wales) Act 2020 ('the Act') set out provisions on the establishment of the Citizen Voice Body, its functions, general objective and powers.
3. The main aims of the body are to:
 - listen to and represent the interests of the public, in all parts of Wales, in matters related to health and social services;
 - support individuals throughout Wales with advice and assistance when making a complaint in relation to their care; and
 - provide an effective mechanism to raise people's experiences to drive improvement in services – influencing local, regional and national policy.
4. Strengthening the citizen voice in health and social care supports key wellbeing principles and helps deliver on Welsh Ministers' vision for 'A Healthier Wales', where the voices of citizens are continuously engaged and listened to in public services. Listening and responding is the key to improving and developing services, as services will be better designed and more acceptable to citizens if their views are understood and taken into account.
5. Welsh Ministers intend that these activities of the CVB will contribute to the goal of improving the health and well-being of the population and will help ensure those outcomes which are most important to people are brought to the attention of local authorities and our NHS, as the public bodies with statutory responsibility for the planning and delivery of our health and social care services. As organisations that provide or commission the vast majority of health and social care in Wales, they are best placed to take an overview of services in their area, and will be most effective in compelling changes on the ground, including in response to the matters raised in representations.
6. To support this, the Act places duties on NHS bodies¹ and local authorities to:

¹ Local Health Boards, NHS Trusts and Special Health Authorities

- make arrangements to support the Citizen Voice Body in seeking the views of the public;
 - promote awareness of its activities amongst people who are receiving, or may receive, health or social services; and
 - supply the body with such information as it reasonably requests for the purposes of carrying out its functions.
7. Section 15 of the Act enables the Citizen Voice Body to make representations to NHS bodies and local authorities in Wales about anything it considers relevant to the provision of health or social services. This enables it to make known any views it has sought from the public and represent those views, or make representations on matters which have come to its attention via any other route, to the bodies responsible for providing and arranging health and social services, whether in response to a consultation by one of the bodies or at its own instigation. The overall purpose of these representations is to support the process of co-development of health and social care services by amplifying and reinforcing the voice of the citizen. Sitting alongside existing mechanisms for gathering and representing the voice of citizens, representations should help ensure that the voice of citizens and service users is heard alongside that of professionals when making decisions about the development, improvement, change or cessation of health and social care services.
8. NHS bodies and local authorities **must** have regard to representations from the CVB in **exercising any function to which the representations relate**. Generally speaking, this means that, when exercising any function to which the representations relate, they must take the representations into account and be able to demonstrate how they have done so. This will entail, for example, all representations being conscientiously taken into account by the responsible officers and, where they are relevant to decisions made by relevant decisionmakers, used to inform advice to those decisionmakers. It does not mean that the body receiving the representation must necessarily agree with or action the substance of the representation if it considers there are good reasons not to do so.
9. This statutory guidance is issued by the Welsh Ministers under section 15(4) of the Act in relation to representations made under Section 15 of the Act. Under section 15(5), NHS bodies and local authorities **must have regard** to this guidance when **considering, dealing with and responding to representations made by the Citizen Voice Body**².
10. The approach set out in this guidance is consistent with the nature of the constructive, ongoing relationships expected to develop between the Citizen Voice Body and public authorities. It is intended to supplement, rather than

² The term to “have regard” to published guidance has been subject to considerable discussion in case law and relevant bodies should seek independent legal advice about how they comply with the duty in the particular circumstances. Generally speaking, to ‘have regard’ means that those to whom the statutory guidance applies will have to be familiar with it and demonstrably take its principles into account. Departure from the guidance set out in this document may be appropriate in some circumstances but any such departure should be reasoned and rational.

replace, reciprocal open dialogue, including the making of verbal representations in partnership boards and working groups, between the Citizen Voice Body and these bodies over health and social services. As such, although the guidance focuses on written representations formally tracked through local authority and NHS bodies' systems, it is not intended to constrain the methods used by the Citizen Voice Body to make representations, or, to restrict, for example, dialogue between the Body and relevant partners not directly in scope, such as commissioned providers, Regional Partnership Boards, etc.

11. Knowing what difference a representation has made will be key to the Citizen Voice Body's ability to demonstrate to the public that engaging with the Body and providing their views is meaningful, adds value and can be impactful, as well as to the general ability of the health and social care system to illustrate the effect of the citizen voice in what it does. This guidance emphasises the importance of informing the CVB of the outcome of representations accordingly.

Summary of policy objectives for the provisions relating to representations

12. Section 15(3) of the Act requires that NHS bodies and local authorities must have regard to representations made to them by the Citizen Voice Body in exercising any function to which the representations relate. As indicated above, in practice, this means ensuring the views and experiences of the public, as represented by the CVB, are demonstrably taken into account in the design, delivery and improvement of health and social care services.
13. Whilst health and social services do of course have engagement mechanisms in place to encourage and ensure the citizen voice is heard, the Citizen Voice Body will complement these and play a key role in informing the design of future health and care systems. The CVB is able to represent the views of the public along pathways of care, spanning health and social care, and also across boundaries – operating at local, regional and national levels – to support learning and embed good practice.
14. Having regard to this statutory guidance, as required by section 15(5) of the Act, will help ensure that NHS bodies and local authorities have proportionate, operational procedures in place for considering and responding to formal representations.

Aim of the guidance

15. The intention of this statutory guidance is to set out expectations as to how NHS bodies and local authorities may deal with a representation made to them by the Citizen Voice Body.
16. This guidance aims to set out how this can take place in a proportionate way which reflects the different types of representations that may be made and encourages an outcome-focussed approach. It also recognises the need to develop flexible, operational processes, as representations could relate to any matter relevant to the provision of health or social services.

17. To enable NHS bodies and local authorities to carry out their duty to have regard to these representations, they should:

- have a clear system in place for dealing with representations, that is proportionate to the issues raised;
- keep the Citizen Voice Body apprised of progress in dealing with the representations; and
- ensure that the Citizen Voice Body is advised of the outcome of its representations.

CVB power to make representations

18. Section 15(1) of the Act enables the Citizen Voice Body, having sought the views of the public, to make representations to NHS bodies and local authorities in Wales about anything it considers relevant to the provision of a health service or the provision of social services (for definitions, see para.20 below).

Representations should primarily be made about matters in the course of exercising the CVB's function to represent the interests of the public and seek the views of the public about their experience of health and social care services. The Citizen Voice Body can make known themes arising from any views it has sought from the public and represent them to the bodies responsible for providing and arranging health and social services, whether in response to a consultation conducted by one of the bodies or at its own instigation.

19. Generally, representations should be put forward in a format which has some degree of permanency about it and lends itself to being recorded and followed through the relevant Citizen Voice Body, local authority and NHS body systems. It should be stated at the time of making that the representation is a representation pursuant to s.15(1) of the 2020 Act, so that both parties understand a representation has been made. Sometimes it may be appropriate for responses to be made other than in writing, for example where—within the context of the particular circumstances of the kind of representation being made—the matter can be dealt with as part of an outcome-focused discussion. This should be agreed between the bodies concerned and appropriately recorded.

20. Section 21 of the Act gives the following meaning of “health services” and of “social services”:

(1) References ... to health services are to services provided (whether in Wales or elsewhere) under or by virtue of the NHS (Wales) Act 2006 (“the 2006 Act”) , for or in connection with—

- (a) the prevention, diagnosis or treatment of illness;
- (b) the promotion and protection of public health.

(2) In subsection (1), “illness” has the meaning given in section 206 of the 2006 Act.

(3) References ... to social services are to services provided in the exercise of a local authority's social services functions.

(4) In subsection (3), “social services functions”, in relation to a local authority, has the same meaning as it has for the purposes of the Social Services and Well-being (Wales) Act 2014 (anaw 4) (see, in particular, section 143 of that Act).

21. The power in section 15(1) which enables the CVB to make representations is broad, however the representations must of course be “relevant to the provision

of a health service or the provision of social services". For a matter to be "relevant" would normally entail there being a degree of demonstrable connection with the health and/or social services function the representations are being made about. Examples of matters relevant to the provision of a health service or social services might include:

Representations relating to planning processes, draft plans and service changes, including if the CVB considers an NHS body or a local authority has not consulted adequately with the public

Representations may be made to NHS bodies about matters relating to planning processes, to draft plans and to changes in NHS services. (Further information in relation to service change within NHS services can be found in Guidance for Engagement and Consultation on Changes to Health Services (Welsh Assembly Government, n.d.); this guidance is currently being updated to reflect changes to the statutory framework consequent on the establishment of the Citizen Voice Body, as discussed below. Once revised, it will be reissued.)

In relation to service change in the NHS, representations from the CVB would be a critical piece of information in the consultation on changes and NHS bodies would be required to respond in their summary and consultation response[s] on the matters raised and action taken to resolve concerns.

Similarly, the Body may make representations about an LHB or Trust's consultation (or the lack of) under the NHS (Wales) Act 2006 to the LHB or Trust, with the intention that they will take action as a result of any representations made.

Where representations are made by the Citizen Voice Body in relation to service change matters, they should be (as with any other representation made) formally and fully considered by the NHS body and, given the potential significance of service change matters, an NHS body may wish to attribute considerable weight to such a representation.

The CVB may likewise make representations to local authorities in relation to proposed change in social services, and these should be given similar weight and consideration in response.

As discussed further at paragraphs 35 and 36 below (Representations spanning health and social care services), representations may also be made in relation to joint planning processes and service changes managed jointly between bodies, or by partnership bodies such as Regional Partnership Boards, or by commissioned services. NHS bodies and local authorities will have a role in considering these representations in line with their responsibilities for the process(es) or service(s) concerned.

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Representations relating to people's experience of health or social services, such as quality of, or access to, services

Representations can also be used to provide local intelligence on the public's concerns and suggestions about existing services, including those which are positive. These could range from immediate or local concerns such as access to car parking in a hospital or health care/day care setting, upwards. If during the course of seeking patient/user views about given services provided by a local authority or NHS body, a pattern of dissatisfaction with quality and access to services emerges, the CVB could make representations to the relevant authority/body about these matters. (The CVB may, for example, decide to make representations to a Local Health Board after ascertaining that a number of persons in their area were unable to access certain health services. Similarly, the CVB may provide a local authority with a pattern of dissatisfaction about a particular social care service in their area.)

22. It is important to note that representations may not always be negative; they might also include constructive feedback, ideas or observations that the Citizen Voice Body feels should be shared with NHS bodies or local authorities.

Representations covering commissioned services, and in relation to individuals

23. Representations to NHS bodies and local authorities may also cover health services and social services commissioned by them from third parties. This can be combined, where appropriate, with direct engagement with the service providers themselves.
24. The expectation is that normally concerns about care or treatment of individuals will be taken forward through the relevant complaints procedure, rather than in the form of s.15 representations about matters relating to identifiable individuals. This is in line with the purpose of the CVB's complaints advocacy and assistance function, which enables it to support service users to raise matters or concerns about their care or treatment directly with their service provider (or health board/trust), potentially via their relevant complaints process or procedure. Using the relevant complaints procedure will mean that the individual is able to receive support from the CVB, will receive a direct response from the provider (or health board/trust) concerned, and, should they not be happy with the response, have the option of taking their case to the health board/trust (if not already engaged), and ultimately to the Public Services Ombudsman for Wales. Similar would apply in relation to complaints about social care. Consideration may also be given to sharing concerns about the quality and safety of services with the service commissioner (as appropriate) or service or professional regulators, in line with any memorandum of understanding between the bodies.
25. NHS bodies and local authorities should follow their relevant procedures to ensure that any individual subject to allegations contained within representations from the CVB has their right of due process protected.

Expectations of NHS bodies and local authorities

26. The Act provides that NHS bodies and local authorities must have regard to any representations in relation to the provision of a health service or the provision of social services made to them by the Citizen Voice Body, in exercising any function to which the representations relate (s.15(3)). Furthermore, as set out in s.15(5) they must have regard to this guidance.
27. Therefore, NHS bodies and local authorities must be able to demonstrate they have had regard to any such representations made and have considered this guidance in doing so.
28. To achieve this NHS bodies and local authorities should develop and have in place robust operational procedures for dealing with representations. These procedures can build upon or utilise existing procedures for dealing with, for example, responses to formal consultation exercises or from current strategic partners such as Commissioners. Practical actions may include nomination of a responsible officer; adapting/updating relevant policy/procedures; and staff training/awareness.
29. The resultant procedures should:
- provide an effective system for dealing with representations, that is proportionate to the issues raised. This system should:
 - have a clear process for determining who is best placed to consider the representation and ensure any appropriate action is taken;
 - ensure that due regard has been had to the substance of the representation, thus ensuring that the voice of the citizen is built in to the relevant decision-making processes;
 - support determinations on whether or not the representation needs to be shared with relevant committees within the organisation³ or appropriately shared with partners or stakeholders⁴; and
 - support the effective management of representations which relate to services which the body has commissioned from external providers.
 - keep the Citizen Voice Body apprised of progress in dealing with the representations. In particular the NHS body or local authority should:
 - provide, early on in the process of consideration, an indicative timescale for response/resolution;
 - ensure that the Citizen Voice Body is kept apprised of progress in dealing with the representation; and

³ For example, NHS Quality and Safety Committees, or local government scrutiny committees

⁴ including partnership bodies of which the body is a member, such as RPBs and PSBs

- provide a timely response which sets out how the representation is being used to inform the improvement of services, where this is applicable, or explains why the body will not be taking action.
 - ensure that the Citizen Voice Body is advised of the outcome of its representations and that both representations and outcomes are recorded appropriately for accountability purposes. The system should:
 - record the representation, response and any related outcomes appropriately; and
 - support consideration of whether responses can/should be published, depending upon the nature of the representation and response.
30. For learning purposes, it is important that representations are captured, reported on and analysed in an open and transparent way. This monitoring could include a regular report to an NHS body's Quality and Safety Committee or to relevant committees in the local authority structure, to enable trends or recurring themes in relation to service delivery to be identified and any longer-term responses to be tracked, as well as to consider how well the procedures themselves are operating.
31. Any procedures applied to or adopted for dealing with representations should be effective and proportionate and support a response to the Citizen Voice Body within a reasonable time, and actions and responses will likewise need to be proportionate to the issues raised. What is a reasonable time and a proportionate response is likely to vary depending upon the nature of the representation and the subject to which it relates, and their complexity.
32. Representations in relation to substantial service change, for example, would call for a formal response, in more depth and over a longer timescale than other representations, reflecting that these are likely to be complex matters calling for detailed consideration and may have formal timescales attached to them as part of the relevant bodies' consultation planning. Similarly, representations in relation to multiple service areas are likely to require more extended consideration, and therefore potentially response time, than a representation in relation to one service area.
33. In all cases, a response should be provided, and in a timely way. Where a representation is made in order to contribute to a formal consultation exercise, a timely response would generally coincide with the planned published consultation response for that particular exercise.

The place of representations within the overall culture of cooperation between the CVB and NHS bodies and local authorities

34. Section 20 of the Act (Co-operation between the Body, local authorities and NHS bodies) sets out a duty of co-operation in relation to the exercise of their relevant functions. This provides a legal underpinning for the expectation that the Citizen Voice Body, NHS bodies and local authorities will engage well together and develop constructive relationships to ensure there remains a focus on improving services and outcomes. S.20 will be supplemented by co-operation agreements between the Citizen Voice Body and NHS and local authority partners to support constructive joint working. The Welsh Government expects that the process of making and having regard to representations, based on the views of the public, will form part of this ongoing and continuous engagement.

Representations spanning health and social care services

35. The Citizen Voice Body may wish to make representations regarding planning processes, plans or services which span social care and health care, to both NHS bodies and local authorities. In this case, these bodies should make appropriate arrangements to consider and respond to joint representations jointly, where this is sensible and appropriate, taking into account the guidance above. It will be important to confirm to the CVB at an early stage which body will be leading or coordinating the response.

36. Similarly, if needed, the Citizen Voice Body will be able to make representations to NHS bodies and local authorities with a view to influencing the work of Regional Partnership Boards on which those bodies are statutory members, thus potentially supporting the boards in assessing the health and social care needs of the population and shaping effective delivery within their boundaries. This is not to prevent the Body having a direct relationship with Regional Partnership Boards, but would be in addition to such arrangements. In such cases, individual NHS bodies and local authorities will still have the responsibility of having regard to the representation and should consider the best way of responding, according to the nature and span of the matter. If appropriate, an NHS body and local authorities may collaborate in dealing with a representation, with an agreed body providing a response to the representation on behalf of all, taking into account the guidance above. It will be important to confirm at an early stage which body will be leading or coordinating the response.

Reviewing this guidance

37. Feedback will be sought through various mechanisms on the implementation of the statutory guidance and how the process is working in practice. The statutory guidance will be kept under review during the first year of operation, with a view to revising as necessary.

Potential consequences of failure to have regard to Representations and/or the Statutory Guidance

38. As noted above, NHS bodies and local authorities must have regard to representations from the CVB in exercising any function to which the representations relate. They must also have regard to this statutory guidance when considering, dealing with, and responding to representations made by the Citizen Voice Body. If NHS bodies and/or local authorities fail to have regard to representations and/or the guidance, this may give rise to the following:

- i. As public authorities, NHS bodies and local authorities may, in certain circumstances, be subject to a claim by way of judicial review. This may occur where the NHS body or local authority makes a decision which relates to a representation, but the relevant body has failed to have regard to that representation in making that decision. Whether such a claim is successful will depend upon whether it satisfies one or more of the grounds for judicial review which will fundamentally be a matter for the courts.
- ii. In the event that NHS bodies or local authorities are not engaging with the process of representations, the Citizen Voice Body may choose to draw this to the attention of the relevant regulators, or to the attention of the Welsh Ministers.
- iii. Sharing this information with the inspectorates under partnership agreements would provide additional intelligence to form part of the risk-based approach adopted by the inspectorates when deciding their programme of inspection and related activities.
- iv. Sharing this information with Welsh Ministers can inform discussions between Welsh Ministers and NHS bodies and local authorities in relation to the discharge of their duties around the provision of health and social care. The Welsh Ministers have powers to direct NHS bodies and to intervene under the National Health Service (Wales) Act 2006, which may be appropriate in certain circumstances.