

Social Services and Well-being (Wales) Act 2014

*The National Framework for the
Commissioning of Care and Support in
Wales*

*Part 2 Code of Practice (General Functions)
Part 4 Code of Practice (Meeting Needs)*

Pre-amble

- 1.1. This Code of Practice is issued under Section 145 of the [Social Services and Well-being \(Wales\) Act 2014](#) (“the Act”¹).
- 1.2. It also constitutes guidance under section 169 of the Act and guidance under section 2 of the [NHS \(Wales\) Act 2006](#) (“the 2006 Act”²).
- 1.3. Local authorities **must** act in accordance with the requirements contained in this Code. Section 147 of the Act (departure from requirements in codes) does not apply to any requirements contained.
- 1.4. In order to ensure that the Code has comparable force in relation to local authorities, local health boards and NHS trusts, the Welsh Ministers will direct local health boards and NHS Trusts under the NHS (Wales) Act 2006 to exercise their functions in accordance with the requirements contained within this Code when exercising their respective function.
- 1.5. Local health boards and NHS trusts are directed to exercise their relevant functions in accordance with the requirements contained in the Code (which constitutes guidance to relevant health bodies under section 2 of the NHS (Wales) Act 2006 by ‘The Directions to Local Health Boards and NHS Trusts in Wales on the Commissioning of Care and Support in Wales 2023’³).
- 1.6. Local Authorities, Local health boards and NHS Trusts **must** exercise their relevant functions in accordance with the requirements contained in this Code.
- 1.7. In addition, local authorities, local health boards and NHS trusts must have regard to any guidelines set out within the Code.
- 1.8. In this code a requirement is expressed as a “**must**” or “**must not**”. Guidelines are expressed as “may” or “**should**” or “**should not**”.
- 1.9. This Code **should** be read in conjunction with all codes of practices and guidance issued under the Act but particularly:
 - a) Part 8 Code on the Role of the Director of Social Services (Social Services Functions)
 - b) Part 2 Code of Practice (General Functions)
 - c) Codes and guidance: Part 9 Statutory Guidance (Partnership Arrangements)
- 1.10. Central to the co-production of this Code was the establishment of a National Technical Group made up of representatives with the relevant expertise, technical knowledge and practical experience to work with officials on the

¹ <https://www.legislation.gov.uk/anaw/2014/4/contents>

² <https://www.legislation.gov.uk/ukpga/2006/42/contents?lang=en>

³ Holding title under this statutory instrument has been finalised.

detailed policy necessary to develop the Code of Practice which in turn will deliver the policy aspirations underpinning the Act.

- 1.11. The Code applies to the commissioning of care and support services by Local Authorities and Local Health Boards and NHS Trusts in Wales. This Code lays out principles and standards for commissioning practices therefore in order to ensure compliance with this Code, it may be necessary for commissioners to make provisions within their contracting arrangements to ensure that their statutory responsibilities in the Code are met. Commissioners will need to have appropriate monitoring and evaluation mechanisms in place to assure themselves of compliance.
- 1.12. Welsh Government will put in place and keep up to date a ‘toolkit’ of resources such as notable practice examples, case studies and evidence, commissioning tools, template clauses, to support commissioners in the delivery of this Code. This toolkit will be managed and kept up to date by dedicated staff within the National Office for Care and Support.

National Office for Care and Support

- 1.13. A National Office for Care and Support (“the National Office”) will be established within the Health and Social Services Group in Welsh Government. It will play an important role in:
 - a) overseeing and supporting the implementation and management of this first and future iterations of the Code;
 - b) supporting commissioners to adhere to the requirements within this Code and in driving standards (consistency and improvement);
 - c) serve as a central resource of best practice for commissioning to support delivery of the Code;
 - d) supporting local and regional commissioners with regard to any significant challenges relating to market oversight; and
 - e) supporting Welsh Minister’s to revise the Code⁴ every 2 years to ensure that it remains current and aligned to the aspirations of commissioning practices (this will include changes to support the transition to not-for-profit models of care for looked after children).
- 1.14. Further non-statutory commissioning guidance may be published in between the formal 2-year Code review periods, where specific commissioning and operational practices are to be promoted, in order to expedite good practice and improved outcomes.
- 1.15. The National Office will put in place and keep up to date a comprehensive toolkit of resources to support commissioners to meet the requirements of this Code and to reflect changes to commissioning practices. This includes adding a range of resources to support the transition to not-for-profit models of care for looked after children.

⁴ The power to revise and issue the Code under Section 145 of the Act remains with Welsh Ministers.

Definition of Care and Support

- 1.16. For the purposes of this Code the term 'care and support' has the same meaning as in section 4 of the Act. Therefore any references to care and support in this Code are to be construed as a reference to care, support and both care and support.
- 1.17. Sections 35 to 45 of the Act contain the duties placed on local authorities to meet the care and support needs of adults and children and the support needs of carers including an adult and child carer. Section 34(1) of the Act provides examples of the ways in which a local authority may meet needs under sections 35 to 45 and section 34(2) sets out examples of what may be provided to meet a person's needs for 'care and support.'
- 1.18. This Code applies to the commissioning of care and support services, including early intervention and prevention services within the context of the Social Services and Well-Being (Wales) Act 2014 to meet the care and support needs of local populations (adults, children, families and carers) by:
- a) a local authority – whether these are internally provided or externally commissioned services, whether these are regulated under Regulation and Inspection of Social Care (Wales) Act 2016 or non-regulated services, including services provided on behalf of the Local Authority by third sector, private organisations or co-operatives.
 - b) The National Health Service (NHS) including Local Health Boards and NHS Trusts whether these are internally provided or externally commissioned services, whether these are regulated under RISCA 2016 or non-regulated including services provided by non-NHS organisations, third sector, private organisations or co-operatives where they are care and support services in the context of the Social Services and Well-Being (Wales) Act e.g domiciliary care, care homes in the context of Continuing Healthcare and/or Funded Nursing Care. This Code will also apply where the NHS is managing care homes with nursing.
- 1.19. Collaborative, joint or integrated (Local Authorities and the NHS) commissioning arrangements for the commissioning of care and support services including any formal partnership arrangements including arrangements between NHS bodies and local authorities under Section 33 of the National Health Service (Wales) Act 2006 and regional services developed through formal arrangements under Regional Partnership Boards.
- 1.20. This Code does not apply to:
- a) services provided or arranged by a local authority that are not care and support or prevention and early intervention services under the SSWBA;
 - b) health services, as defined in para 1.22, provided directly by or commissioned by the NHS to provide hospital placements and primary care services (GP, Dentistry, Optometry, Pharmacy)
 - c) care and support provided to an individual via direct payments (i.e. the arrangements between service user and person providing the service).

Health care and health services

- 1.21. This Code does not apply to health care. For the purposes of this Code, health care has the same meaning as in Section 17(9) of the National Health Service (Wales) Act 2006 which provides that “health care” means:
- (a) services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
 - (b) the promotion and protection of public health.

National Framework for Commissioning of Care and Support

- 1.22. The Social Services and Well-being Act seeks the transformation of social care in Wales so that it achieves two principal objectives:
- a) Services that achieve the well-being of citizens: “what matters” to them as they define it.
 - b) Services that are sustainable despite demographic trends.
- 1.23. This Code sets out a national framework for the commissioning of care and support services.
- 1.24. For the purpose of this Code commissioning involves making decisions about what services are required to respond to the care and support needs of children and young people, families, and adults, including unpaid carers, in Wales. It also involves making decisions about the capacity, location, cost and quality of services together with how and who will deliver them.
- 1.25. Commissioning encompasses both the planning, procurement and evaluation or review of services. It is about fulfilling the statutory responsibilities of the Local Authority, and the NHS in shaping services to both prevent or delay, where possible, a need for care and support and to respond to the care and support needs of people both now and in the future.
- 1.26. Commissioning **should** be underpinned by the core values of the Social Services and Well-Being (Wales) Act: voice and control, prevention and early intervention, well-being, co-production and multi-agency.
- 1.27. The Part 8 Code of Practice on the Role of the Director of Social Services (Social Services Functions) sets out the main themes of Social Services and Well-being (Wales) Act 2014. They are:
- **Focus on people** – ensuring people have voice and control over their care and support to support them to achieve the outcomes important to them and also ensuring services are designed and developed around people.
 - **Well-being** – measuring success in relation to outcomes for people rather than process.

- **Prevention and early intervention** – delivering a preventative and early intervention approach to minimise the escalation of need and dependency on statutory services.
- **Partnership and integration** – effective cooperation and partnership working between all agencies and organisations, including health, to best meet the needs of people.
- **Accessibility** – improving the information and advice available to people and ensuring that everyone, irrespective of their needs, is able to access that information.
- **New service models** – the development of new and innovative models of service delivery, particularly those that involve service users themselves.

1.28. This Code requires local authorities and Health Boards to ensure that commissioning activities and practices really do achieve the aspirations of the SSWBA for all the people of Wales.

1.29. Commissioning has become established as an important process in helping to drive improvements in services and securing better outcomes for people in need of care and support. Across Wales there are already many examples of good commissioning and procurement practices but there is inconsistency in the way that care and support services are commissioned..

The Commissioning Cycle

1.30. The commissioning cycle in Fig X⁵ demonstrates a set of inter-dependent transformational activities across the functions of commissioning, procurement and social value with the aim of securing good outcomes for people. There is a symbiotic relationship between the three elements, and they are not separate stand-alone functions.

⁵ Adapted from 'The Institute of Public Care Commissioning Cycle (IPC, 2008)'



Commissioning

- 1.31. Commissioning is undertaken to ensure that care and support is assessed for, planned, and organised to best meet people's care and support needs and this includes early intervention and prevention services.
- 1.32. It involves understanding individual and population need, stability and sufficiency of care markets and providers, and availability of local resources (including funding, workforce and the range of community assets) thus enabling commissioners to understand local communities and these may well differ depending on need and local assets. It also involves a knowledge of evidence-based models of care that offer public value. Using this combined knowledge and understanding, commissioners develop relationships and arrangements across a whole system, to plan, implement and review interventions that meet people's need for care and support.

- 1.33. Commissioning requires a whole system perspective and the ability to nurture and facilitate a range of collaborative and co-productive relationships. The shared outcome is to secure people's rights to be able to express their views, wishes and feelings, to participate in decisions and to be supported through advocacy to enable them to do so.

Procurement

- 1.34. Procurement is a set of transactional activities by which services are secured. It involves specifying requirements through specifications, securing public value through purchasing goods through the most appropriate route e.g. tendering, and monitoring service effectiveness.

Social Value

- 1.35. Social Value can be delivered by public sector, private and third sector organisations. Enabling people to achieve their well-being by providing care and support that meets their needs and provides an element of social value within their communities.
- 1.36. Care and support services can engage with local communities to bring about reciprocal benefits and to support community resilience and resourcefulness.
- 1.37. Care and support services are also important for the promotion and fulfilment of equality and human right. Done effectively they promote dignity, support independent living and enable people to sustain relationships and connections with the wider community.
- 1.38. Commissioning services locally to meet local population needs can also reduce waste and minimise carbon footprint and enable participation in local environmental projects.
- 1.39. Economic value is achieved when remuneration for social care workforce is equitable across the sector.
- 1.40. Social value delivery models are defined by their ability to deliver against the four principles of the Act (well-being outcomes; coproduction, voice and control; collaboration and partnership; prevention and early intervention) and to add social, economic and environmental value and commissioners **should** take this into account within their commissioning processes.

Principles of consistent, ethical effective and transformative commissioning

- 1.41. Central to the principles of commissioning is what matters to people who need care and support services as set out in Part 9 Statutory Guidance (Partnership Arrangements).

"My care is planned by me, with people working together, to understand me, my family and carers (and our needs), with my best interests central, giving

me voice, influence & control, bringing together services and support networks that will achieve the outcomes important to me".

- 1.42. This part of the Code sets out a set of principles, outcomes, values and quality standards for commissioning care and support. This Code is underpinned by **seven principles of effective and ethical commissioning** which commissioners **must** embed within their commissioning practices.
1. **Relationships Matter:** Caring, compassionate, and equitable relationships come from inclusive co-production, between care and support providers, citizens, commissioners, people in need of care and support and unpaid carers in need of support and representative bodies as appropriate.
 2. **Effective leadership is inclusive transparent & honest:** The rebalancing of the health and social care system requires leaders and commissioners to be accountable for creating positive, learning focussed cultures. Decisions **should** be evidence informed and leaders **should** seek to continuously improve and develop digital, technological and human learning systems required to collect, share and understand evidence including impact and any unintended consequences (positive, negative and neutral), including data; with the aim of minimising data duplication (collect once, use many times).
 3. **Collaboration: share risks, resources and assets:** Leaders and commissioners **must** foster a shared understanding of risk, and positive risk enablement, involving communities and all available assets in mitigating risks to population well-being.
 4. **Value is “what matters”:** Value is *more than* cost; it is good quality, safe, care and support that delivers outcomes that matter to people and enhances social value. Public value is derived from meeting all legal, procurement and regulatory responsibilities including, equalities, human rights, economic, social, technical and environmental considerations.
 5. **Sustainable care and support is built on fair work and fair pricing:** Commissioning practices **must** support employers to improve the status, well-being and working conditions of health and social care workers with the aim of parity of esteem and terms and conditions across (statutory, private & third) sectors.
 6. **Plan for current need and future generations:** Commissioning for better outcomes is a medium to long term activity; planning requires forecasting, and delivery **should** focus on prevention (see section 15 of the Act) and sustainability (including carbon commitments).
 7. **Evidence what works through stories and numbers:** Commissioners **should** collect evidence from people in need of care and support and carers in need of support, about what helps them to

achieve a good life and use this to inform service outcome frameworks. The performance of services **should** be measured by experience *and* outcomes and commissioners **should** promote a culture of continuous learning and improvement, building on and embedding good practice.

Commissioning Standards

- 1.43. The commissioning standards set out below apply to all parts of the commissioning cycle including service redesign and decommissioning. The standards are relevant to all those involved with commissioning and complement more detailed resources and guidance on effective commissioning and procurement for particular populations and particular service models, which will be included in the toolkit.
- 1.44. The standards are intended to:
- a) support the rebalancing of care and support, that is:
 - i. Away from (process) complexity. Towards simplification.
 - ii. Away from price. Towards quality and social value.
 - iii. Away from reactive commissioning. Towards managing the market.
 - iv. Away from task-based practice. Towards an outcome-based practice.
 - v. Away from an organisational focus. Towards more effective partnership ...
to co-produce better outcomes with people;
 - b) set national benchmarks to stimulate the continuous improvement of commissioning and delivery of care and support in Wales;
 - c) catalyse the transformation of commissioning and delivery of care and support in Wales, working closely with the National Office to affect positive changes;
 - d) improve consistency of commissioning practices;
 - e) promote local and hyper-local integration, joint commissioning and shared decision-making;
 - f) tackle inequalities and fulfilling human rights and complementing legislation and guidance including:
 - i. [the Equality Act 2010](#)⁶
 - ii. [United Nations Convention on the Rights of the Child \(UNCRC\)](#)⁷
 - iii. [United Nations Convention on the Rights of Persons with Disabilities \(UNCRPD\)](#)⁸
 - iv. [The Human Rights Act 1998](#)⁹
 - v. [The Wellbeing of Future Generations \(Wales\) Act 2015](#)¹⁰
- 1.45. Statutory partners **must** be able to demonstrate that their commissioning practices are undertaken in line with this Code . Local authorities **must** include evidence in the Director of Social Services annual report about how

⁶ <https://www.legislation.gov.uk/ukpga/2010/15/contents>

⁷ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

⁸ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

⁹ <https://www.legislation.gov.uk/ukpga/1998/42/contents>

¹⁰ <https://www.legislation.gov.uk/anaw/2015/2/contents/enacted>

- the standards and principles in this Code are being followed within their commissioning practices.
- 1.46. The principles and standards within this Code align to the whole system values described in 'A Healthier Wales', focussed on co-ordinating seamless health and social care services and having evidence-based models of care implemented locally, making best use of local assets, to meet population need.
 - 1.47. Whilst recognising the benefits of national standards of quality and consistency, this Code also seeks to balance national standardisation with regional and local flexibility and decision-making, to ensure care and support is responsive to local needs and conditions.
 - 1.48. There is recognition that the principles and standards are stretching and aspirational in some areas and will require whole system changes over time including policy development in order for statutory partners to achieve all ambition within this Code. This will be taken into account during the biennial review of this Code and if necessary, actioned through the periodic introduction of additional non-statutory interim commissioning guidance.
 - 1.49. Adherence to these standards ensure commissioning of care and support services across Wales is:
 - a) consistent;
 - b) ethical;
 - c) transformative, and
 - d) based on the sustainability principles and well-being goals of Welsh legislation.

Standard 1:

Local Authorities and Local Health Boards must demonstrate the values and principles of the Social Services & Well-being (Wales) Act 2014 and the Well-being of Future Generations (Wales) Act 2016, through:

- a) Achieving well-being outcomes
- b) Coproduction with the individual's voice and control central to commissioning for 'person' or 'patient' centred wellbeing outcomes
- c) Collaboration
- d) Early intervention and prevention
- e) Long-term planning, adding value (social, economic and environmental).

Local Authorities and Local Health Boards **must** evidence that the commissioning of care and support services is coproduced [co-designed, co-delivered and co-evaluated] with individuals in need of care and support whether living in own homes or other residential/shared settings, or their advocates and their carers.

Local Authorities and Local Health Boards **must**, where it is appropriate to do so, collaborate and jointly commission care and support services to meet local population needs.

Standard 2:

Local Authorities and Local Health Boards must balance all elements of the commissioning cycle and ensure they have sufficient skills and capacity to:

- a) Co-design, plan, deliver/secure, monitor and co-evaluate services with care and support providers, people in need of care and support and carers in need of support.
- b) Support continuous improvement and problem solving in collaboration with care and support providers and other relevant partners.

Local Authorities and Local Health Boards in undertaking their commissioning activity **must** ensure that sufficient resources are in place to nurture community resilience, investing in community led groups, activities and services through:

- a) Preventative support – third sector support services often delivered by paid staff with particular specialisms, supporting a range of information and advice services.
- b) Care and Support services – public, private and third sector services that meet care and support needs of a medium to high levels.

Local Authorities and Local Health Boards **should** balance the need to support innovation and implement the learning from others about services that achieve good outcomes.

Standard 3:

Collate relevant and accurate data to ensure that commissioning is based on meaningful data and ensure there is sufficient analytical capacity and capability to inform robust commissioning planning.

Commissioning and resourcing decisions **must** be based on evidence of:

- a) population need, including projected future demand and demographics including by protected characteristics;
- b) required service level outcomes, including timely and equitable access;
- c) required sufficiency and quality of future health, care & support supply / provision (market stability reports);
- d) assessment of what services will best deliver the outcomes that matter to individuals, over time (evidence of what is valued and what works).

Local Health Boards and Local Authorities **should** share local population needs assessments used to develop and produce regional population needs assessments and local market stability reports with current and potential future providers (including those outside of care & support services) to optimise potential contributors, generating investment into areas where there are identified gaps.

Local Authorities and Local Health Boards **must** collect and report on data relating to national outcomes, and performance in line with current reporting requirements.

Local Health Boards and Local Authorities **must** regularly review local and regional market risk assessments and implement risk mitigation plans

Standard 4:

Demonstrate that commissioning and / or procurement plans are based on evidence informed decisions regarding the reason/s for selecting:

- a) direct provision
- b) single or collaborative commissioning
- c) tendering / re-tendering
- d) other options for nurturing and securing care and support services in communities

Local Authorities and Local Health Boards **should** consider all options for securing care and support services, including:

- a) Grant aid (grants)
- b) Alliance contracting (agreements where parties agreed to act in good faith to collaborate to achieve a common goal)
- c) Innovation partnerships (procurement of innovative solutions that are not yet available or do not exist in the market)

Standard 5:

Measure 'value' by people's experience of and outcomes from care & support in addition to:

- a) standards of quality and safety;
- b) environmental impact;
- c) additional social value; and
- d) cost.

The procurement and quality and performance management of (contracted and directly delivered) care & support services, **must** be:

- a) focussed on (wellbeing) outcomes / results, safety and sustainability (most advantageous / value).
- b) evaluated (measured) by their economic, social and environmental impact (purpose).

Standard 6:

Ensure that all care and support services are commissioned ethically and are underpinned by Fair Work principles.

Local Health Boards & Local Authorities **should** support employers to improve status, well-being and working conditions in social care to achieve parity across (statutory, private & third) sectors.

To support the social care workforce statutory partners **should**:

- a) take ownership and accountability for Public Sector Equality Duty considerations when making decisions on commissioning and outsourcing that affect the workforce;
- b) undertake and publish evidence-based Equality Impact Assessments which assess the impact that commissioning and outsourcing decisions will have on groups with protected characteristics, including ethnic minority workers;
- c) monitor providers ~~contractors~~ to ensure the required workforce data is provided;

Standard 7:

Demonstrate that they understand the full costs of directly provided and contracted care in their area.

Local Authority and Local Health Board commissioners of care and support **must** collaborate with Providers to determine fair and sustainable fees for all contracted services.

Local Health Boards and Local Authorities (Councils) **should** where appropriate, align and / or pool resources (including funds and human resources) to enable effective delivery of shared plans.

Local Authorities and Local Health Boards, through Regional Partnership Board or joint/integrated local mechanisms **should**, where appropriate, explore the benefits of:

- a) sharing resources across any / all partners to implement plans to improve population well-being and / or the quality and availability of care and support.
- b) wider partnerships e.g. with housing, leisure, libraries and education, primary care and well-being hubs to promote whole population well-being, minimising demand for care and support and maximising early support.

Local Health Boards and Local Authorities **must** jointly assess the maturity of their integrated and collaborative commissioning arrangements and relationships and **should** identify scope for improvements in key areas.

Standard 8:

Make use of regional and /or national cost methodologies or benchmarks included in but not limited to those in the Toolkit in determining a fair and sustainable price for quality care and support.

Commissioners **must** be transparent and consistent when setting fee rates ensuring that they are assessing fair and sustainable costs of care and support and ensuring public value.

Commissioners **must** confirm their fee rates to Providers in a timely manner before the start of each financial year.

Common methodologies are available to assist in analysis of costs and developing business cases for trialling and testing novel approaches to delivering services through the likes of prototyping and iterative scaling of services.

Methodologies **should** take account of factors such as geography, organisational context, care and labour market conditions and fair work policy (pay, terms and conditions and progression frameworks). Contractual uplift mechanisms **must** include appropriate inflation mechanisms to keep pace with rising costs.

Establishing consistent methodologies and benchmarks, **should** not detract from local democracy and local decision-making on price determination. Commissioners **should** take account of the impact of their commissioning and procurement activity on the sufficiency of care and support and on market stability.

Standard 9:

Keep Financial and Contract Standing Orders under review to ensure that they are fit for purpose to secure care and support services of the quality required.

Local Authorities and Local Health Boards **should** ensure that their financial regulations are flexible enough to meet the specific needs of commissioning and procuring care and support services.

Standard 10:

Evidence pro-active working to address inequalities and promotion and fulfilment of human rights.

Local Authorities and Local Health Boards **must** demonstrate how they are meeting the requirements of the Public Sector Equality Duty to promote equality of opportunity; tackle discrimination and foster good relations and ensure that all commissioned services comply with human rights obligations.

Procurement

- 1.50. Statutory partners **must** comply with and adhere to the current procurement legislation that is in force and any associated guidance when undertaking the procurement of services.

Brokerage

- 1.51. Brokerage is a term often used for the process of arranging care and support for individuals. Brokerage **should** always have the needs and wishes of the person in need of care and support at the heart of the process.
- 1.52. Although roles and activities differ at local level, the role, in Wales, is mainly associated with establishing arrangements with domiciliary care and support agencies.
- 1.53. The need for a separate brokerage role could be minimised or in some cases eradicated through the development of multi-professional working; particularly when domiciliary care teams (statutory and/or independent) are included as a key element of place-based community resource teams (infrastructure). The community infrastructure programme in Wales is focussed on enabling people to live well, closer to home through prevention, choice, well-being, and independence.

Using data to support commissioning of services

Providing workforce data to Social Care Wales

- 1.54. Commissioners **should** actively encourage their providers to complete and return the annual Social Care Wales workforce data collection undertaken by Social Care Wales. Having an accurate and up to date national dataset relating to the social care workforce supports robust workforce planning at national, regional and local levels.

The Care and Support Capacity Tracker

- 1.55. The Capacity Tracker is an online data facility within Dewis Cymru health and well-being directory and care homes can self report information relating to bed capacity and vacancies. This information is used to inform national datasets therefore, commissioners **should** encourage providers to use and keep up to date their information on the Capacity Tracker.

Digital Inclusion and Access

- 1.56. Local Authorities and Local Health Board **must** work with Providers to encourage and support their use of digital solutions and to ensure that those using services have access to the internet and digital devices as required. Providers **should** ensure that their staff have basic digital skills to support service users.

Social Care Workforce

- 1.57. Commissioners **should** encourage providers to make use of the WeCare Wales portal to advertise vacancies within their organisations.

Supporting the Real Living Wage

- 1.58. When commissioning care and support services, commissioners **must** have regard to all relevant Welsh Government guidance relating to the implementation of the Real Living Wage including Fair Work principles. This **should** be measured within the procurement process and through contract monitoring processes.

Welsh Language

- 1.59. The importance of providing care and support services in the language choice of people is well documented. Language is an integral element for people in achieving their care and support needs, securing rights and entitlements and being able to use their own language to communicate and participate in their care as equal partners.

- 1.60. The provision of care and support services through the medium of Welsh **must** be a right and is a matter of need and necessity, not choice. This is crucial across all age groups and demographics and is even more important for the most vulnerable, particularly in areas where there is a high proportion of people whose first language is Welsh.
- 1.61. Statutory partners **must** treat the Welsh language no less favourably than English and **must** seek to provide opportunities for people to fully use Welsh Language in their everyday life. Statutory partners **must** as far as possible, seek to provide local/community based Welsh Language care and support services and the sufficiency of care and support in the medium of Welsh **must** be reflected in the local market stability reports.
- 1.62. Statutory partners **must** also comply with all Welsh language duties and obligations contained within legislation, codes of practice and statutory guidance issued, and have regard to any other relevant guidance.

Mwy Na Geiriau

- 1.63. 'More than just words / Mwy Na Geiriau¹¹' is the Welsh Government's strategic framework to strengthen Welsh language provision in health and social care. Its aim is to embed the Welsh language in health and social care so that people can access the care that they deserve and require and support Welsh-speakers to receive services in their first language. Adoption and delivery of More than just words will help improve the quality of care for individuals living in Wales.
- 1.64. The 'Active Offer' is a core element of the framework and simply means providing a service in Welsh without someone having to ask for it. It means creating a culture that places the responsibility on health and social care providers to provide a proactive language offer so that people can access care, as equal partners, through the medium of Welsh. All workers in health and social care services including commissioners of care and support services have a part to play in realising the strategic vision of More than Just Words.
- 1.65. The Welsh Language (Wales) Measure 2011 gives the Welsh language official status in Wales and More than just words **should** effectively complement the implementation of the standards the Welsh language standards introduced for social care and health.
- 1.66. Local Authorities and the NHS **must** adhere to the requirements within Mwy Na Geiriau and the Welsh Language (Wales) Measure 2011 when planning and delivering care and support services and that they exercise the 'active offer', offering services through the medium of Welsh rather than people having to request it.

¹¹ [More than just words \(gov.wales\)](http://gov.wales)

- 1.67. It is recognised that it can be challenging for some providers to meet the active offer however, commissioners and service providers **must** encourage the workforce to communicate in Welsh whatever their level of Welsh may be, and encourage the workforce to develop their Welsh language skills.
- 1.68. Commissioners **should** use the national contract clauses available in the Toolkit within their contracts with Providers of care and support services which are designed to bring about national consistency.

Equalities and human rights

- 1.69. Wales and its people are diverse in nature, commissioning of care and support services **must** therefore take into account and embrace equality so as to improve outcomes for the population of Wales.
- 1.70. Commissioners **must** have due regard to the principles of equality and diversity in carrying out their functions in all stages of the commissioning cycle to ensure that the diversity and equality are central to the provision of care and support services. As a minimum therefore, commissioners **must** ensure that they have taken into account the following and their implications and findings when commissioning care and support services:
- a) [Welsh Government Anti-Racist Wales Action Plan](https://www.gov.wales/anti-racist-wales-action-plan)¹²;
 - b) the [Equality and Human Rights Commissions report into Experiences from health and social care: the treatment of lower-paid ethnic minority workers](https://equalityhumanrights.com/en/publication-download/experiences-health-and-social-care-treatment-lower-paid-ethnic-minority-workers)¹³;
 - c) the EYST report: [Evaluation of the Social Services and Well-being \(Wales\) Act 2014: expectations and experiences of Black, Asian and Minority Ethnic service users and carers](https://www.gov.wales/evaluation-social-services-and-well-being-wales-act-2014-expectations-and-experiences-black-asian)¹⁴;
 - d) [United Nations Convention on the Rights of the Child \(UNCRC\)](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child)¹⁵
 - e) [United Nations Convention on the Rights of Persons with Disabilities \(UNCRPD\)](https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities)¹⁶
 - f) [United Nations Principles for Older Persons](https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-principles-older-persons)¹⁷
- 1.71. To bring about national consistency proposed contract clauses have been developed which commissioners **should** use within their contracts with Providers of care and support services. These can be accessed in the toolkit.

¹² <https://www.gov.wales/anti-racist-wales-action-plan>

¹³ <https://equalityhumanrights.com/en/publication-download/experiences-health-and-social-care-treatment-lower-paid-ethnic-minority-workers>

¹⁴ <https://www.gov.wales/evaluation-social-services-and-well-being-wales-act-2014-expectations-and-experiences-black-asian>

¹⁵ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

¹⁶ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

¹⁷ <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-principles-older-persons>

Supporting the environment and sustainability considerations

As part of the **Decarbonising Social Care in Wales** strategy and the NHS Wales decarbonisation strategic delivery plan, statutory social care partners and external providers of care and support services are committed to:

- a) Understanding the current magnitude of carbon emissions
- b) Identifying how Carbon emissions can be reduced
- c) Outlining what measures are necessary to deliver a high-quality and affordable service without Carbon emissions
- d) And most importantly, taking immediate decarbonisation action.

1.72. Within that commitment are the two following actions:

- a) Welsh Government and local authorities will develop the approach to the procurement of independent social care providers to appraise their sustainability credentials and exert greater influence in the supply chain.
- b) The carbon impact will be appraised in planning, commissioning and the delivery of social care. The reduction of carbon emissions will be mandated within new procurement contracts for social care providers and the social care-related supply chain.

1.73. Local Authorities **must** monitor, record and seek reductions in the carbon emissions associated with the care they are commissioning and ensure that they are making wider environmental (such as biodiversity, adaptation) considerations as part of their commissioning processes.

1.74. In accordance with the [Second All Wales Low Carbon Delivery Plan \(2021-2025\)](#) all local authorities are required to undertake an annual carbon emission assessment and appraisal and make use of the principles for carbon accounting and reporting set out in the [Welsh Public Sector Net Zero Reporting Guide](#).. This guide looks to establish a definitive carbon footprint for the sector, however, this is only possible once the carbon emissions associated with commissioned social care is known.

1.75. A tool has been created, and is available in the Toolkit, for service providers to complete to submit their carbon emissions data to local authorities.

Carers

1.76. To support commissioners when commissioning activities or services to support carers in line with the duties under the Act, a number of tools are available in the toolkit which commissioners **should** take into consideration.

1.77. The 'Good practice approaches to supporting carers in Wales', produced by Carers Trust Wales is intended to be used by statutory partners and Regional Partnership Boards, to support the identification of need, planning and commissioning of services for carers.

- 1.78. The Toolkit also contains the Welsh Government’s ‘[Charter for Unpaid Carers](#)^[1] (“the Charter”)’ which sets out the legal rights under the Act of “unpaid” carers in Wales. The Charter uses practical examples to show what good practice looks like and **should** be read by carers and any professional involved in designing, delivering services or supporting carers. In line with the “Charter” statutory partners when commissioning care and support services **must**:
- a) have due regard to the legal rights afforded to carers in Wales under the Act,
 - b) give equal consideration to the provision of support services to carers in all parts of the commissioning cycle;
 - c) seek to establish accurate evidence in relation to carers including data on the numbers of carers in their area to inform the commissioning process; and
 - d) take all reasonable steps, to empower carers to take control and recognise when their rights are being compromised, by raising awareness of the legal rights of carers in Wales with carers, individuals in receipt of care and support and professionals.

Services for Children

- 1.79. The Welsh Government has committed to transform children’s social care and remove profit from the care of looked after children in Wales.
- 1.80. A range of innovative new practices and resources are to be added to the Toolkit to support the transition to not-for-profit models of care for looked after children and improve outcomes for children.
- 1.81. Prior to the revising of the Code at the first formal 2-year review (which will include changes necessary to align with the finalised not for profit policy) statutory partners **must** stay informed about the range of resources included in the Toolkit for these purposes and use all such resources to:
- a) commission care and support services for looked after children in line with the evolving guidance and statutory requirements set by the Welsh Government on and to achieve the not-for-profit policy agenda; and
 - b) ensure that the best interests, rights and entitlements of children are considered in every part of the commissioning process.
- 1.82. Children and young people need care and support services that enable them to grow and develop, flourish and thrive. It is widely recognised that this usually means they need to be close to their families and communities and this will be a key feature of the not-for-profit policy.
- 1.83. To support this policy development, statutory partners **must** consider as part of the commissioning process, ways in which children and young people can be accommodated and cared for closer to home more often, so they can continue to be part of their community and maintain their support networks,

^[1] <https://www.gov.wales/charter-unpaid-carers>

in living arrangements which are locally based, locally designed and locally accountable.

Safeguarding

- 1.84. Statutory partners **must** take all reasonable steps to ensure that the commissioning of care and support services promotes and protects the well-being of children and adults at risk.
- 1.85. Statutory partners have a **duty** under Section 28 of the Children Act 2004 to ensure that any services provided on their behalf, in the discharge of their functions, have regard to the need to safeguard and promote the welfare of children. Whilst there is currently no corresponding legal duty for adults at risk, there is an unambiguous expectation of equity, irrespective of age, in the provision of care and support for people. Therefore, those providing care and support services for adults, on behalf of a statutory partner, **should** always do so in ways that protect adults who may be experiencing, or be at risk of, abuse or neglect.
- 1.86. When commissioning care and support, statutory partners **must** refer to the following statutory guidance to ensure safeguarding matters are sufficiently considered:
- a) Working Together to Safeguard People - Volume 1 - Introduction and Overview (2016)¹⁸
 - b) Working Together to Safeguard People - Volume 5 - Children at risk (2018)¹⁹
 - c) Working Together to Safeguard People - Volume 6 - Adults at risk (2018)²⁰
- 1.87. Statutory partners **must** consider and incorporate the following resources within the Toolkit, into all commissioning activities:
- a) [The Wales Safeguarding Procedures](#)²¹;
 - b) [The National safeguarding training, learning and development standards](#)²²;

Nyth/Nest Framework

- 1.88. The Nyth/Nest Framework aims to ensure a 'whole system' approach for developing mental health, well-being and support services for babies,

¹⁸ <https://www.gov.wales/sites/default/files/publications/2019-05/working-together-to-safeguard-people-volume-1-introduction-and-overview.pdf>

¹⁹ <https://www.gov.wales/sites/default/files/publications/2019-05/working-together-to-safeguard-people-volume-5-handling-individual-cases-to-protect-children-at-risk.pdf>

²⁰ <https://www.gov.wales/sites/default/files/publications/2019-06/volume-6-handling-individual-cases-to-protect-adults-at-risk.pdf>

²¹ <https://safeguarding.wales/en/>

²² <https://socialcare.wales/resources-guidance/safeguarding-list/national-safeguarding-training-learning-and-development-standards>

children, young people, parents, carers and their wider families across Wales. It also aims to broaden the conversation away from thinking that only specialist services can provide help.

- 1.89. NEST/NYTH has been co-produced by the Together for Children and Young People (T4CYP2) network and a wide range of stakeholders before it was taken to Welsh Government in October 2022. It is the result of extensive work with young people, parents, carers and staff who work in schools and children's services all across Wales, including teachers, social workers, nurses, doctors, therapists and youth workers.
- 1.90. As Nyth/Nest has significant importance when commissioning mental health services relating to babies, children and young people commissioners **should** use the NYTH/NEST framework approach in their commissioning practices and ensure a No Wrong Door Approach. Service providers **should** also have a good understanding of the Nyth/Nest principles when undertaking services commissioned for these groups of people.
- 1.91. Commissioners **must** also ensure that they have due regard to the ['UN Convention on the Rights of the Child'](#). When commissioning care and support services, Statutory partners **must** ensure including through the use of contract specifications, that children's rights are upheld in their entirety.
- 1.92. Commissioners **should** also ensure that specifications for services reflect the evidence from co-production with service users and stakeholders in accordance with the 'collective duty to promote and facilitate j and young people's participation'²³ Well-being of Future Generations (Wales) Act 2015

Commissioning undertaken by Regional Partnership Boards and/or local joint commissioning

Strengthening regional partnerships

- 1.93. This Code is explicitly linked and integrated with the Part 2 Code on General Functions and Part 9 guidance on partnership arrangements which have both been updated to strengthen regional partnerships arrangements.
- 1.94. The principles of co-operation, partnership and integration embedded in Part 9 are directly applicable to the National Framework and are designed to:
 - improve care and support, ensuring people have more say and control;
 - improve outcomes and health and wellbeing;
 - provide co-ordinated, person centred care and support; ad
 - make more effective use of resources, skills and expertise; and
 - improve the efficiency and effectiveness of service delivery.

Glossary of terms

| Term | Definition |
|-------------------------|---|
| Care and Support | <p>Has the same meaning as in section 4 of the Social Services and Well-being (Wales) Act 2014 (the Act);</p> <p>“4. Meaning of “care and support”</p> <p>Any references to care and support in this Act is to be construed as a reference to-</p> <p>(a) care (b) support (c) both care and support</p> <p>Section 34 of the Act (‘How to meet needs’) sets out examples of what may be provided to meet a person’s needs for ‘care and support.’</p> |
| Carer | <p>In this Code, a person is a carer if they come within the definition of ‘carer’ in section 3 of the 2014 Act.</p> <p>A carer is typically a family member or friend who provides unpaid care for an adult or disabled child usually in their own home. For policy purposes the Welsh Government prefers the term ‘unpaid carer’, to distinguish them from paid care workers.</p> <p>It is important to note that, for the purposes of the 2014 Act, a person is not a carer if they provide care under or by virtue of a contract, or as voluntary work.</p> <p>It should also be noted, however, that under section 3(8) of the 2014 Act, a local authority has the discretion to treat a person as a carer for the purposes of any of its functions under the Act if the authority considers that the relationship between the person providing (or intending to provide) care and the person for whom that care is (or is to be) provided is such that it would be appropriate for the former to be treated as a carer for the purposes of that function or those functions.</p> |
| Commissioner | <p>The person or individual undertaking commissioning functions within an organisation</p> |
| Grant aid | <p>Grant aid is non-procured payments to external bodies or individuals for activities which are linked to delivering the grant making bodies’ policy objectives and statutory obligations. WG Grants Centre of Excellence Minimum Standards for Grant Funding</p> |
| Leaders | <p>Director of Social Services (“DSS”) in a local authority and the equivalent Director in the NHS that has responsibilities for the commissioning of care and support services.</p> |

| Term | Definition |
|----------------------------------|--|
| Provider/Service provider | A company/organisation/person that provides services to Local Authorities or Local Health Boards. |
| Statutory partners | <p>Local authorities and Local Health Boards as defined in section 197 of the Social Services and Well-being (Wales) Act 2014 (“the Act”) i.e.</p> <p>a) local authority means the council of a county or county borough in Wales; and</p> <p>b) Local Health board means a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006.</p> |
| Innovation partnerships | <p>Where “innovation” means the implementation of a new or significantly improved product, service or process, including but not limited to new organisational method in business practices, workplace organisation or external relations, including with the purpose of helping to solve societal challenges or to support sustainable and inclusive growth; innovation partnerships are a procurement mechanism with the aim of developing an innovative product, service or works and the subsequent purchase of the resulting supplies, services or works, provided that they correspond to the performance levels and maximum costs agreed between the contracting authority and the participants.</p> <p>Contracting authorities may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities.</p> <p>public contract regulations 2015</p> |