Llywodraeth Cymru
Welsh Government

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Welsh Government

Consultation – summary of responses

Health Service Procurement Reform Wales

This consultation covered proposed changes to the way that health services, provided as part of the NHS, are procured in Wales.

Date of issue: **April 2024**

Mae'r ddogfen hon ar gael yn Gymraeg hefyd / This document is also available in Welsh
Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg / We welcome correspondence and telephone calls in Welsh

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Overview

This document provides a summary of the responses received by the Welsh Government to our consultation:

WG48585 - Health Service Procurement Reform Wales

The consultation paper was published on 27 November 2023 and closed on 23 February 2024.

Action Required

This document is for information only.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

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Additional copies

This document is published in electronic form only and can be accessed on the Welsh Government's website at the following link:

https://www.gov.wales/health-service-procurement-wales

This document is also available in Welsh

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PART 1 - BACKGROUND

Introduction

1.The UK Government's Procurement Act 2023 will reform the way that public bodies in England, Wales and Northern Ireland procure goods and services under the current procurement regulations[1]. Separately, the way health care services are procured in England has also changed as a result of the introduction of the Provider Selection Regime (PSR) by the UK Government's Department of Health and Social Care (DHSC).

2.The Health Service Procurement (Wales) Act 2024[2] ('the Act'), responds to the changes brought about by the PSR in England and provides the legislative platform to create a new health service procurement regime in Wales.

3.In November 2023, we consulted on proposals to change the way that health services, provided on behalf of the NHS in Wales, are procured by the NHS and local authorities in Wales. We consulted stakeholders to gather opinions on whether we should seek to align or diverge from the approach taken by DHSC's PSR. Feedback from the consultation will inform the policy development and shape the operational principles for a proposed new health service procurement regime in Wales.

Consultation, audience and engagement

4.The consultation asked a number of questions on the operational aspects of the proposed new health service procurement regime in Wales; broadly asking if respondents agreed or disagreed with the indicative approach proposed by Ministers. The consultation consisted of a number of multiple choice questions and a number of open questions to provide stakeholders an opportunity to provide additional information. Specific questions were included on the impact of the proposals on the Welsh Language.

5.The consultation opened on the 27 November 2023 and closed on the 23 February 2024. Respondents were invited to submit their views using an online questionnaire and via email or post using a proforma questionnaire.

6. The consultation document was published on our website[3] and promoted via a number of channels including the Welsh Government's weekly Health and Social Service email newsletter[4] and the Welsh Government's Commercial Procurement Directorate email newsletter. A link to the consultation was also directly emailed to circa 440 individuals and organisations to raise awareness of the consultation and encourage responses.

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[1] The Public Contracts Regulations 2015 S.I. 2015/102, The Utilities Contracts Regulations 2016 S.I. 2016/274, The Concession Contracts Regulations 2015 S.I. 2016/273, and the Defence and Security Public Contracts Regulations 2011 S.I 2011/1848.
[2] Health Service Procurement (Wales) Act 2024
[3] Health service procurement in Wales | GOV.WALES
[4] A Healthier Wales - Health and Social Services News 29/11/2023 (govdelivery.com)

7. During the consultation period, the Welsh Government and NHS Wales officials undertook a series of targeted engagement activities with a range of stakeholders from NHS Wales, local authorities in Wales and third sector organisations; providing an overview of the proposed changes and giving stakeholders the opportunity to pose questions and clarify aspects of the consultation ahead of submitting their formal responses.

8. Amongst other groups and individuals, specific engagement took place with the following groups:

   i. NHS Wales procurement, primary care, finance and planning leads;
   ii. Local authority procurement leads;
   iii. Welsh Local Government Association (WLGA);
   iv. Wales Council for Voluntary Action (WCVA);
   v. Wales Trade Union Congress (Wales TUC);
   vi. Social services' commissioning network;
   vii. Disability Wales;
   viii. Fair Treatment for the Women of Wales;
   ix. Substance misuse area planning board; and
   x. Llais (the 'Citizens Voice Body' Wales).

Consultation responses

9. In total, we received 34 consultation responses from a range of stakeholders. Feedback included views on:

   i. the application and breadth of the proposed list of Common Procurement Vocabulary (CPV) codes included in the proposed procurement regime;
   ii. the enhancement of, or reduction of, the 'basic criteria' and 'key criteria' that need to be considered when 'relevant authorities'[5] select independent health service providers;
   iii. 'mixed procurement' definitions, including the application of the 'main subject-matter' and 'reasonably separable' threshold;
   iv. thresholds for 'modification of contracts' and 'considerable change'
   v. the role, remit and operation of the 'independent review panel' for the procurement regime;
   vi. transparency, monitoring and publication of information under the proposed regime;
   vii. framework periods and duration;
   viii. transitional arrangements and roll out, timing, training etc, of the proposed new procurement regime;
   ix. the application of the proposed new procurement regime and impact on NHS to NHS 'contracts'; and,
   x. integration of health services and social care services.

[5] As defined under the Health Service Procurement (Wales) Act 2024

10. A full list of respondents is included in Part 3 of this document. Some respondents requested that their responses remain anonymous and not all consultees responded to all questions in the consultation document. All responses were treated equally regardless of how they were submitted.

11. All responses have been analysed, broken down per section and a summary of responses received for questions within each section. Where multiple choice questions were posed, a breakdown of responses has been included to show numbers of respondents who strongly agreed, agreed, neither agreed or disagreed, or disagreed.

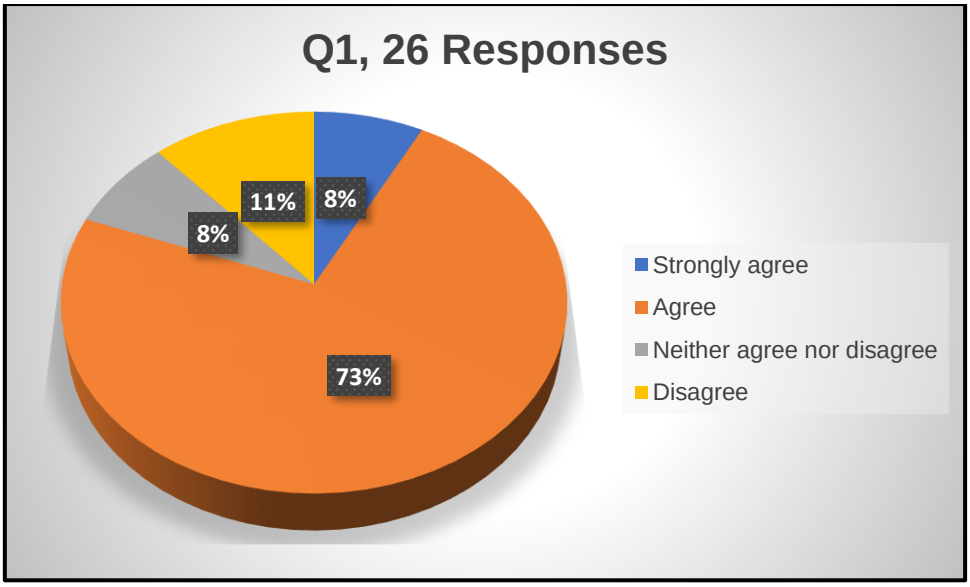
Next steps

12. Responses to this consultation exercise and resultant analysis will inform development of our policy and the forthcoming regulations that will underpin the proposed new health service procurement regime for Wales. We will continue to engage with partners and stakeholders as we take forward this work. It is proposed that the regulations for the new health service procurement regime for Wales will be laid in the Senedd later this year.

PART 2 - SUMMARY OF RESPONSES

SECTION A - APPLICATION AND GENERAL SCOPE OF HEALTH CARE SERVICES (Q1 - Q6)

13. **Question 1: To what extent do you agree or disagree that the proposed new health service procurement regime in Wales should include a list of health services as defined by Common Procurement Vocabulary (CPV) codes?**



14. Overall, 81% of respondents agreed or strongly agreed with our proposal to include CPV codes in the regulations and 11% neither agreed nor disagreed. Respondents that agreed stated that including CPV codes would "*ensure there is sufficient certainty on what is caught by the new arrangements and what will be procured via some other means*".

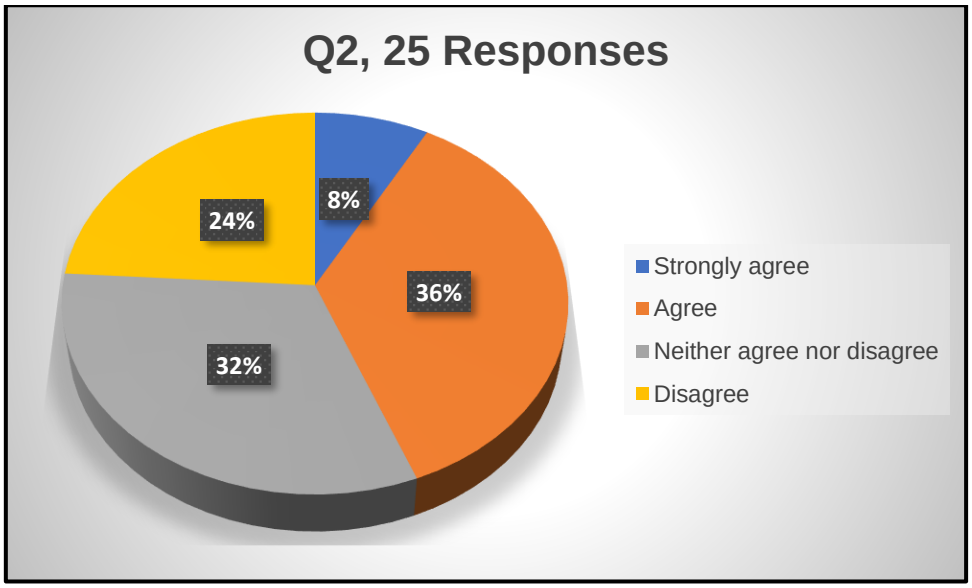
15. Respondents also commented that:
    - *"Clarity for commissioners and providers and assist to determine whether services are 'in scope' ".*
    - "*The list of CPV codes will support Wales in the roll out of the new health service procurement regime as it will provide guidance as to the relevant areas that can be procured under PSR to ensure the most appropriate route is followed*."

16. Though in agreement with the principle of CPV codes in the regulations, respondents considered that there *"needs to be clarity on what is covered by the legislation"* and that *"the final list of codes and the main subject matter / health services to which they apply needs come out of robust engagement with stakeholders".*

17. Overall, 8% of respondents disagreed with the proposal stating the need for *"a clear definition of exactly which services are to be procured using the Health Service Procurement regime. A list of CPV codes will partly help to define those*

services. However, we are concerned that the CPV codes alone are insufficient to define Healthcare Services for the purposes of the Act. We need clarity about exactly what is captured by the Act and there are several real-world applications where the current definitions are not clear at all." Another respondent stated *"we disagree with the use of CPV codes, in the context of procurement for health services, especially with the development of more flexible, community-based, preventative approaches in Wales. The risk of CPV codes is that they silo and therefore limit, innovation and new approaches, in an already risk-averse commissioning environment."*

18. **Question 2. To what extent do you agree or disagree that the list of codes presented in DHSC's draft PSR regulations accurately represent the breadth and scope of defining health services currently delivered, or may be procured in the future in Wales?**



19. Overall, 44% of respondents agreed or strongly agreed with our proposed list of CPV codes. 32% neither agreed nor disagreed. Respondents that agreed stated that the list "*Appears clear as shown in Annex A*", "*the inclusion of broad terminology covers all areas in which we will wish to conduct procurement activity" and "the inclusion of broad terminology such as "health services", "surgical hospital services" and "medical practice and related services".*

20. Though in agreement with the principle of proposed list of CPV codes in the regulations, respondents considered *"there may be instances where there are more detailed code available then this would be out of scope i.e. counselling services if it does fall under specific mental health or rehabilitation services, therefore it is not clear if PSR could be followed."*

21. Other respondents stated:
    - *"Agree, however, feel that there should be a substance misuse service code created".*
    - *"The codes proposed are broad and therefore may be interpreted differently and lead to inconsistent application."*

- *"Agree – the inclusion of broad terminology covers all areas in which we will wish to conduct procurement activity subject to additional clarity being provided on: The application of codes across both elective and emergency care services (including emergency department activity); Do the codes cover OOH services e.g. GP out of hours?"*

22. Respondents that neither agreed nor disagreed considered that codes should be added that include *"Mental health and well-being services; Frailty/Elderly and Prevention services*".

23. Respondents also stated:
    - *"a more developed list that includes non-provider services would be helpful that includes commissioning of research and innovation studies, university assessments and or local authority delivered packages".*

24. Overall, 24% of respondents disagreed with the proposal stating:
    - *"We note that some clinical specialties are specifically listed in the codes whilst others are not (and would likely fall under more general codes like 'hospital services'). We wonder what the logic is for this distinction and would suggest that there needs to be a focused discussion with stakeholders about the nature and extent of the codes as they stand."*
    - *"Welsh government may want to consider including social prescribing and preventative health services if they are within scope."*
    - *"Disagree, there should be a substance misuse service code created". "Concerned that these codes could be reductive, and restrict the future development of innovative, silo-breaking, community-based services commissioned by a range of bodies in Wales"*

25. **Question 3. Are there any health services that are not included in the list of codes presented in DHSC's draft PSR regulations, where health services are the main subject-matter, that are currently being delivered or will be delivered in the future in Wales that you consider should be within scope of a proposed new health service procurement regime in Wales? If so, please provide details (and if applicable, the relevant CPV codes)?**

26. Several respondents requested clarification as to codes that specific treatment and support would fall under. Respondents also suggested consideration of including other codes that would cover:
    - "Social prescribing and preventative health services"
    - "Substance misuse service"
    - "Community and/or relating to public health (for example, substance misuse services; health visiting; school nurses; sexual health clinics, FGM advice clinics)"
    - "Palliative Care/oncology services"
    - "Supported accommodation; Temporary accommodation; Floating support; and other relevant housing support services and community health services (community wellbeing, and potentially social prescribing)".

27. One respondent noted that *"there does not appear to be any mention in regard to health care buildings, maintenance and capital spend. This would suggest that*

this type of health service procurement would need to be carried out under the alterative procurement regime. With the move to create health and social care hubs this could be further complicated".

28. **Question 4. Are there any CPV codes that are included in DHSC's list that are not applicable to the health service procurement and delivery of health service in Wales and therefore should not be replicated in a proposed new health service procurement regime in Wales? If so, please provide details.**

29. Responses did not detail a need for any of the listed codes to be removed. Respondents did however reiterate areas that they considered the need for additional codes to be added to cover areas such as *"innovation opportunities and Value-Based procurement projects".* Advising that *"the CPV codes do not capture the full extent of how healthcare is provided in the UK".*

30. **Question 5. Are there examples of health services currently procured in Wales that are not defined by a CPV code? If so, please state these services.**

31. Several responses reiterated an earlier response calling for consideration of CPV codes being added to cover *"social prescribing and preventative health services" "Substance misuse services" "oncology/palliative care service and substance use/addictions services".* A respondent called for the addition of *"forensic services…. [stating that] … this would fall under the remit of Sexual Assault Referral Centres where they provide a variety of health services".* One respondent requested the opportunity for *"new codes can be added and several code descriptions can also be amended to reflect market developments and the needs of CPV users."*

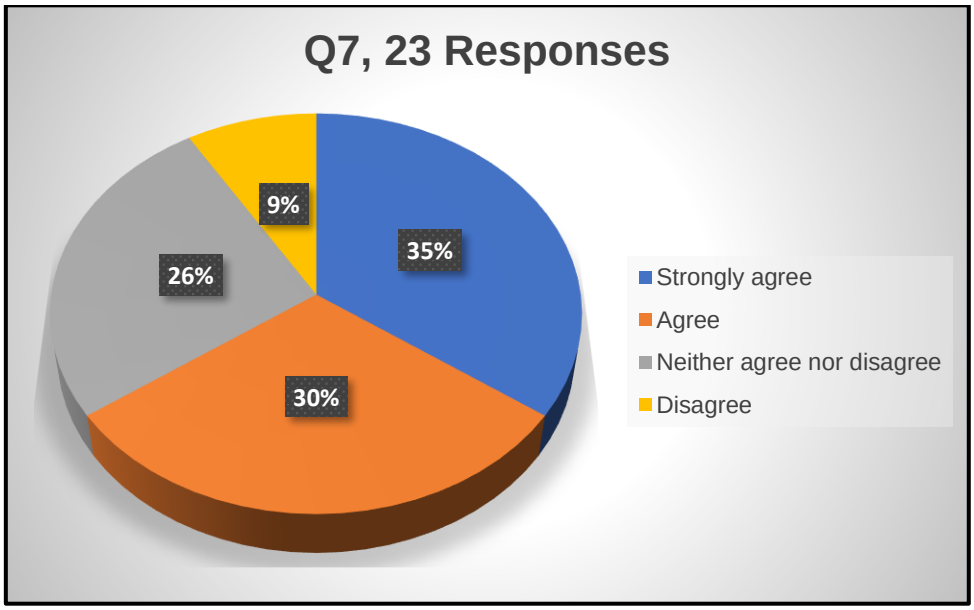
32. **Question 6. DHSC's PSR CPV code list include some primary care services and are therefore captured under the PSR regime. Are there any CPV codes that are included in DHSC's list that are not applicable to the primary care services in Wales? Are there examples of primary care services currently procured in Wales that are not defined by a CPV code within the DHSC's list?**

33. Most respondents did not consider that specific CPV codes should be removed; moreover, they provided information on non-listed primary care services such as *"Childcare services, Day nurseries, domicile care, residency homes care", "Eating Disorder services"* and advised that *"Welsh government may want to consider including social prescribing and preventative health services if they are within scope."*

SECTION B - KEY CRITERIA AND BASIC SELECTION CRITERIA (Q7 - Q11)

34. **Question 7. To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach in Schedule 16 to DHSC's PSR regarding the basic selection criteria (i.e., A relevant authority may proportionately impose requirements to be met by**

providers which only relate to the basic selection criteria: (a) suitability to pursue a particular activity; (b) economic and financial standing; and (c) technical and professional ability?



35. Overall, 65% of respondents agreed or strongly agreed with the proposed basic selection criteria. Respondents that agreed stating they "*Agree, this flexibility and proportionality will help when contracting with the third sector and SMEs and the ability to link into the WG policy strategy of supporting A Healthier Wales and Well Being and Future Generations Act"* and "*We agree that a future new regime for Wales should align with the basic selection criteria set out in DHSC's PSR Regulations, as integration with the English system is important and to avoid unfair competition, but we also agree that the Welsh system should also include additional criteria around meeting wider Welsh Government policy aims and objectives (e.g. socially responsible procurement) and help maximise contribution to all national well-being goals."*

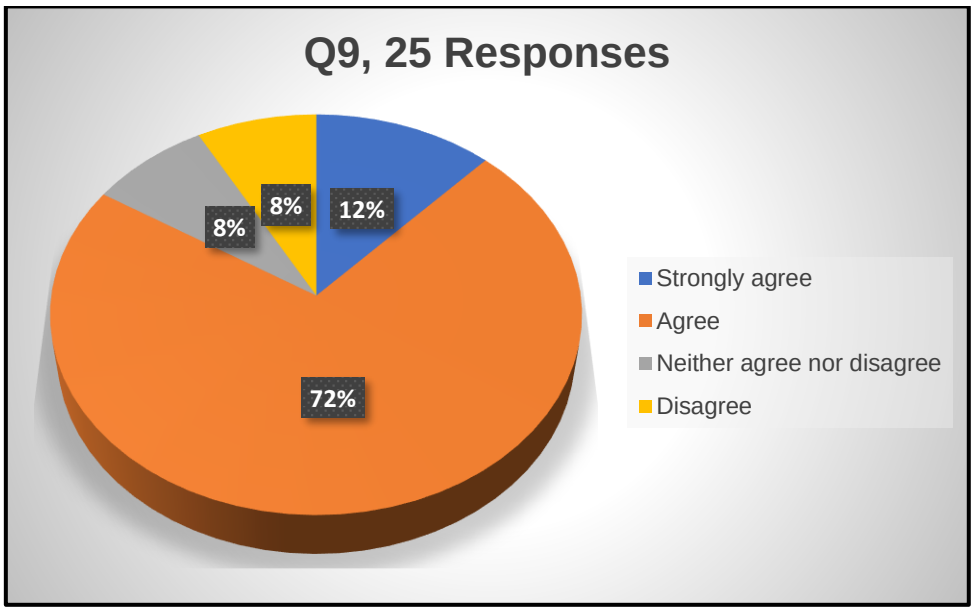
36. Overall, 26% neither agreed nor disagreed stating, *"concerns over the potential confusion that could be caused by having two new procurement processes in place, one for health, one for everything else and how they will work together and the ease of movement between them".* A further response considered that the proposed criteria *"seems reasonable"* however shared concerns with regards to *"proportionality" "that 'economic and financial standing' may disadvantage smaller, often Wales-based organisations and enterprise, as they may not be as well-established or be unable to offer the same economies of scale as a larger provider based elsewhere."*

37. Overall, 9% of respondents disagreed with the proposal stating *"criteria, need to be enhanced to reflect Welsh policy and legislation to ensure basic requirements to select providers responsibly."*

38. **Question 8. Are there additional basic criteria you feel should be included in a new future health service procurement regime for Wales? If so, please provide details?**

39. Respondents suggested: *"Insurance levels i.e., liability, professional indemnity", "include compatibility with the objectives of 'A Healthier Wales' under the Future Generations Act", "Wellbeing for future generations, social partnership and procurement act", "adherence to the Public Sector Equality Duty", "Safeguarding, Co-production", "expectation that any commissioning authority that pays their own staff the Real Living Wage", "additional criteria aimed at meeting Welsh Government policy aims and objectives such as Value-Based Health Care (VBHC) and prudent healthcare principles", and "an alignment of values".*

40. **Question 9. To what extent do you agree or disagree with the key criteria proposed to be included in the new regime for the procurement of health services in Wales?**



41. Overall, 84% of respondents agreed or strongly agreed with the proposed key criteria.

42. Though in agreement with the principle of proposed key criteria in the regulations, respondents considered that "*there may be an opportunity to reduce the number proposed for Wales as there could be alignment across the proposed areas,", "there may still be a gap in regard to co-production and specifically highlighting safeguarding with the quality and innovation criteria".* One response called for greater clarification on the appropriate application of the additional key criteria and how they would be *"measured and evidenced".* A further respondent put forward *"an argument for proportionality"* in the application of the key criteria.

43. Overall, 8% neither agreed nor disagreed and 8% of respondents disagreed with the proposal stating the difficulty in assessing "'*value for money' once competition is removed from the process*", and *"The key criteria will need to contribute to the aims and objectives of 'A Healthier Wales' strategy and the Welsh Government's overarching Programme for Government commitments, the Well-being of Future Generations (Wales) Act 2015 as well as the Social Partnership and Public Procurement (Wales) Act 2023".*

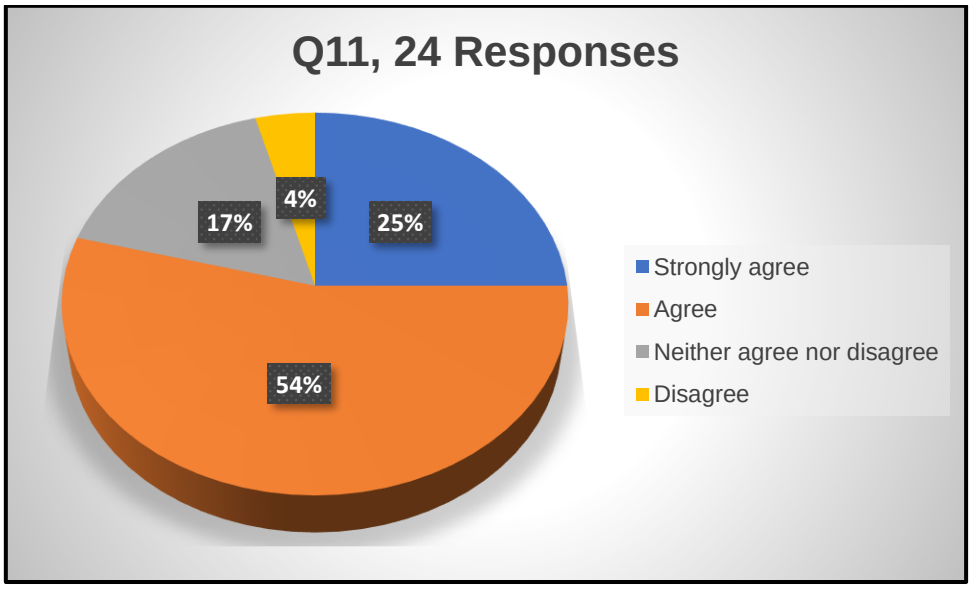
44. **Question 10. Are there any other key criteria you think a 'relevant authority' needs to consider when making procurement decisions for the procurement of health services in Wales to reflect wider policy objectives for Wales? Please provide details.**

45. A number of respondents reiterated points raised under previous questions; these have not been duplicated again for the purpose of recapturing unless of relevance to this question.

46. Respondents considered the criteria that relevant authorities need to consider were as follows:

- *"Community cohesion – how a service already engages in or plans to engage with the wider community as part of provision and to enable a person to be part of the community thereby potentially preventing loneliness."*
- *"Registration for certain facilities i.e., HIW / CIW registered to ensure that the hospitals, care homes, etc are regularly monitored by a supervisory body."*
- *"Cyber security"*
- *"Social, economic, environmental and cultural"*
- *"Alignment of values"*
- *"Aspirational aim of 'person-centred care'"*
- *"Community and poverty-informed services"*
- *"Outcomes based agreements and partnerships for value".*
- *"Development of an inclusive culture across health and wellbeing services."*

47. **Question 11. To what extent do you agree or disagree that key criteria should be defined in the future regulations for a proposed new health service regime for Wales?**



48. Overall, 79% of respondents agreed or strongly agreed with the proposed definition of key criteria. Respondents that agreed stated the importance of having the key criteria defined in future regulations to avoid *"local difference and interpretation and potentially more legal challenges*", "*to avoid inconsistency and lack of understanding*", "*helps to clarify the process and facilitates transparency of decision-making*", "*this allows clarity for providers, commissioners and the wider stakeholder group".*

49. Overall, 17% neither agreed nor disagreed stating if the key criteria are defined "*there needs to be a degree of flexibility to amend / add to in the future*".

50. Overall, 4% of respondents disagreed with the proposal but did not provide further detail with regards their disagreement with defining the key criteria within future regulations.

SECTION C - MIXED PROCUREMENT (Q12 - Q17)

51. **Question 12. Apart from social care services, what other types of goods or services are currently procured, or may in the future be procured within the scope of health services by a 'relevant authority' for the delivery of health services in Wales – i.e., mixed procurement? Please provide examples (and if possible, CPV codes).**

52. Respondents provided the following examples:

- *85121270-6 Psychiatrist or psychologist services – assessment to place a looked after child.*
- *85121271-3 Home for the psychologically disturbed services – care home with nursing or care home for people with mental health needs, dementia etc. We are also concerned that this could include provision for people with learning disabilities and people whose behaviour may challenge, including neurodivergent people which we do not think would be appropriate.*
- *85140000-2 Miscellaneous health services – this may include things like speech and language therapy, diagnosis services for neurodevelopmental disorders and could allow other services to be incorrectly assigned under this which could be open to legal challenge.*
- *85141200-1 Services provided by nurses – care homes with nursing.*
- *85141210-4 Home medical treatment services – administration of medication where there are social care needs and it is part of what is required, but also where the care need is purely the administration of medication.*
- *85141220-7 Advisory services provided by nurses – occupational health, falls prevention and teams to prevent re-admissions and escalation to crisis as well as school nurses.*
- *85142100-7 Physiotherapy services – occupational health and falls prevention.*
- *85144000-0 Residential health facilities services – care home with nursing or care home for people with mental health needs, dementia etc.*

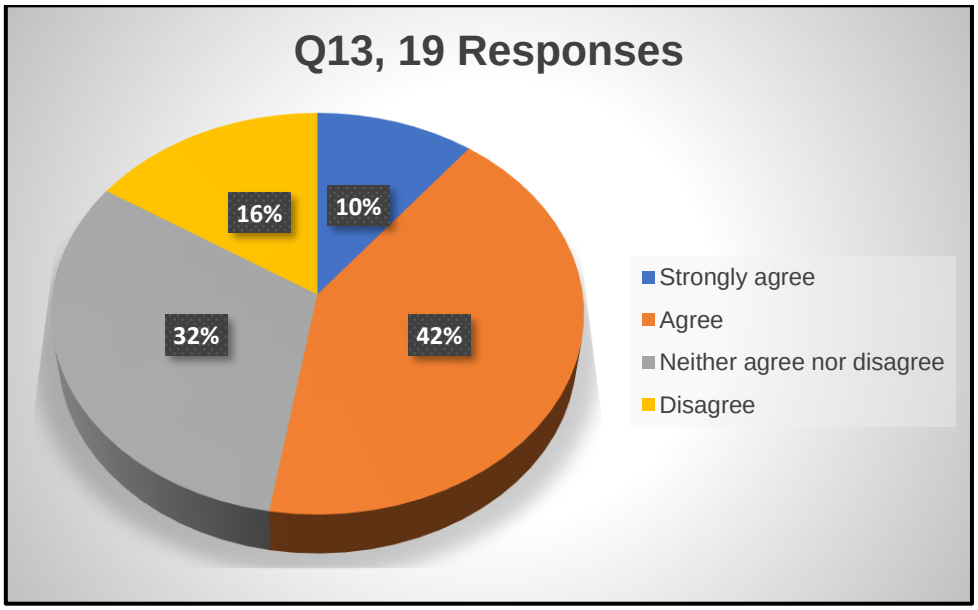
- *85121291-9 Paediatric services – as this does not say health services it could be interpreted that all services for children could fall under this. Also not all paediatric services are health specific, such as speech and language therapy.*
- *85111400-4 Rehabilitation hospital services – in light of focus on discharge these are often carried on into the community to prevent readmission and ensure safe transition.*
- *85111700-7 Oxygen-therapy services – care home and home care can include as well as some paediatric services in the community.*
- *85121240-7 ENT or audiologist services – delivery of ongoing care may be part of care home or social care to prevent deterioration and improve quality of life.*
- *85121251-7 Gastroenterologist services – delivery of ongoing care may be part of care home or social care at home to prevent deterioration and improve quality of life.*
- *85121252-4 Geriatric services – delivery of ongoing care may be part of care home or social care at home to prevent deterioration and improve quality of life. As this term can be all encompassing could be used for all services to older people which could include nail cutting, podiatry, speech and language therapy, occupational health, physiotherapy and falls prevention. The term is somewhat outmoded and would benefit from further definition regarding age and frailty.*
- *85121281-6 Ophthalmologist services – delivery of ongoing care may be part of care home or social care at home to prevent deterioration and improve quality of life.*
- *85121283-0 Orthopaedic services – delivery of ongoing care may be part of care home or social care at home to prevent deterioration and improve quality of life.*
- *85141000-9 Services provided by medical personnel – this could include care home or at home care with nursing, occupational health etc.*
- *85142100-7 Physiotherapy services - delivery of ongoing care may be part of care home or social care at home to prevent deterioration and improve quality of life.*
- *85323000-9 Community health services, but only in respect of community health services which are delivered to individuals – delivery of ongoing care may be part of care home or social care at home to prevent deterioration and improve quality of life and could include therapies, medication support and social care in a person's own home or in specialist accommodation including care homes.*
- *85312330-1 Family-planning services, but only insofar as such services are provided to individuals to support sexual and reproductive health – youth services in councils, school nurses and support for people with learning disabilities may also include these elements.*
- *85312500-4 Rehabilitation services, but only insofar as such services are provided to individuals to tackle substance misuse or for the rehabilitation of the mental or physical health of individuals - delivery of ongoing care may be part of care home or social care at home to prevent deterioration and improve quality of life. Definitions would also benefit from clarity whether this includes 'reablement' and / or discharge to recover and*

assess models of care. Rehabilitation especially for those with substance misuse carries on into services in the community. In addition, rehabilitation for physical health has a lot of overlap with social care provision in the home as well as in extra care and care home provision.

53.Respondents also added that the following should also be considered:

- *Specialist housing related support – this could overlap with a number of the CPV codes depending on the need of the individual or family.*
- *Homelessness services – this could also overlap, with the most obvious overlaps falling with rehabilitation services (85312500-4), community health services (8632300-9) and family planning services (85312330-1) especially where there may be sex work involved as well.*
- *Smoking cessation – this is a public health element that may fall under rehabilitation services but has crossover with community services, education and social care services.*
- *After care support – whilst the English definition specifically mentions mental health we also think that this may apply to some physical health after care as well, which runs beyond rehabilitation.*
- *Veteran services – often include health care services through rehabilitation services, after care services, mental and physical health etc.*
- *Prison services – that include health care services the obvious one would be the provision of prison nurses but could include rehabilitation and a range of therapies including speech and language to improve communication skills and education.*
- *Asylum seeker services – that include health care services, education and other ranges of services and may include those who have no recourse to public funds which can add to the complexity.*
- *Domestic abuse services – that include elements of family planning and may have physical and mental health issues (including substance misuse) which require health care services.*
- *“Sexual Assault Referral Centres “.*
- *“Social prescribing services “.*
- *“Accommodation-based services “.*
- *“Patient transport services “.*
- *“Community-based mental health services, sometimes delivered through the Housing Support Grant “.*
- *“Residential services, harm reduction initiatives, diversionary activities, early intervention and prevention, Alcohol Treatment Unit (ATU), peer-led and co-production activities, out-of-work services, supporting court proceedings, other police and criminal justice activities, public health activities such as needs assessments, psychosocial interventions, family services, professional education and awareness training, workforce development programmes, evaluation of drug markets, pathway reviews”.*

54. **Question 13. To what extent do you agree or disagree with the 'main subject-matter' threshold definition for mixed procurement and its applicability to a new health service procurement regime in Wales?**



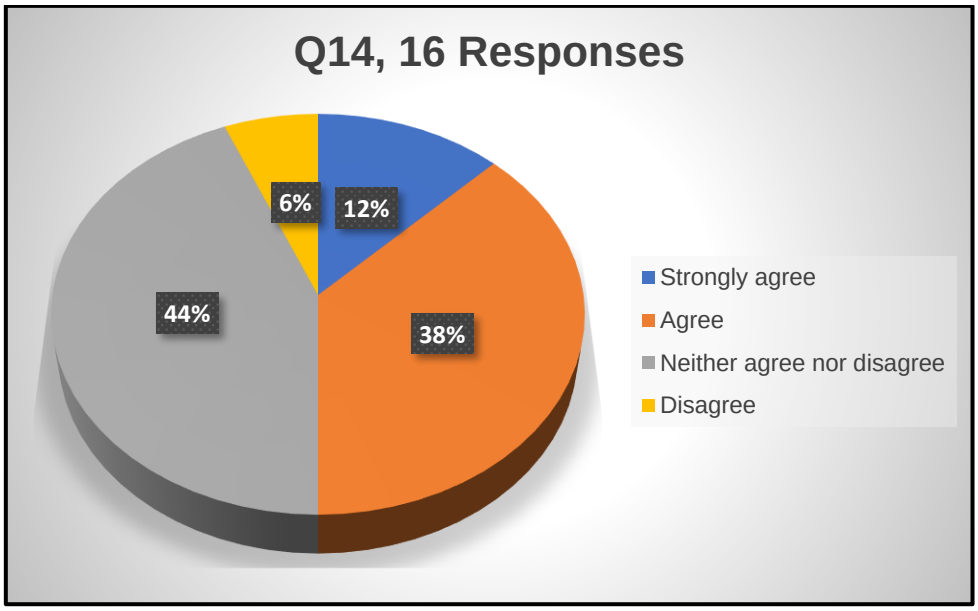
55. Overall, 52% of respondents agreed or strongly agreed with our proposed 'main subject-matter' threshold definition for mixed procurement. Respondents that agreed stating "*where the main service provider is Health then PSR should apply, but PSR will not apply to Social Services*".

56. Though in agreement with the principle of proposed 'main subject-matter' threshold definition for mixed procurement, respondents stated "*We agree that this is a helpful approach. Whilst we would also encourage social care procurement to follow similar flexible procurement processes, we understand that this has been ruled out clearly by the Welsh Government, and so this is a helpful compromise and way forward. Whilst we do strongly agree, we do want to raise a concern about the potential for disagreement, confusion and challenge around what is defined as a "main subject-matter", especially with less specific and more community-based services where the lines are not as easily drawn".*

57. Overall, 32% neither agreed nor disagreed stating *"the main subject-matter threshold definition on the surface appears reasonable. However, its application concerns us as there does not appear to be anything specifically to provide assistance about what to do when changes occur which may mean a service either falls above or below the threshold where it did not before", and "we would like to know more about how this approach fits in with the move towards prevention / early intervention, given that both health and social care are vital in preventing escalating health issues and increasing disability".*

58. Overall, 16% of respondents disagreed with the proposal stating an "*issue when commissioning on behalf of local authorities as Health as a lead organisation*", and "*the threshold definition is too vague if the desired outcome is to achieve better outcomes and better integration and alignment of care pathways".*

59. **Question 14. To what extent do you agree or disagree with the 'reasonably separable' threshold being applied in Wales?**



60. Overall, 50% of respondents agreed or strongly agreed with the proposed 'reasonably separable' threshold. Respondents that agreed stating that, *"this is a helpful, practical, and accessible threshold to understand…It will also help avoid difficulties and duplication of resources where some support might be technically defined as closer to "domiciliary care", as opposed to a health intervention, but where most of the service is focused on health*".

61. Though in agreement with the principle of the proposed 'reasonably separable' threshold, respondents considered that "*the language used "reasonably separable" is quite ambiguous would need further defining, and this is not easy to follow/understand and will likely cause misunderstanding/incorrect process without further definition*".

62. Overall, 44% neither agreed nor disagreed stating "*The risk of this is that the process is taking precedence over the person and could result in two or three differently commissioned services providing services to one individual. This carries a risk of duplication and of gaps where each service thinks something is being delivered by the other. This may cause an opposite position to person-centred holistic care services to be developed and place an additional barrier to integrated commissioning*" and "*there is a clear risk that activity which would benefit from being a part of a single procurement process*".

63. Overall, 6% of respondents disagreed with the proposal stating that *"the threshold is too vague to achieve the desired objectives of the WG through the new procurement framework".*

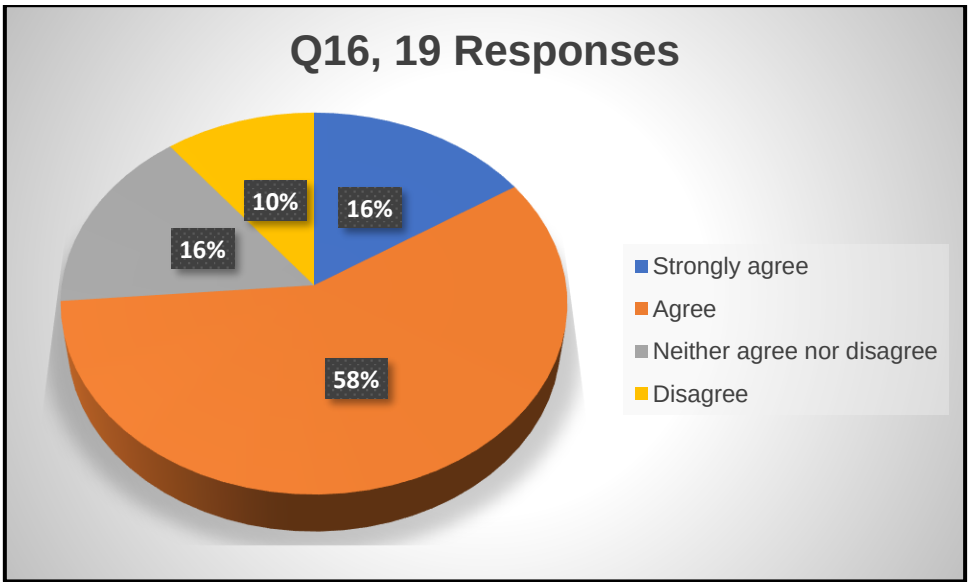
64. **Question 15. When considering how independent health services and social care services are currently procured in Wales, do you foresee any problems or benefits in creating such approaches to mixed procurement in Wales? Please provide details.**

65. Several respondents reiterated previous points raised, these have not been duplicated unless of specific relevance to the question raised.

66. Respondents stated:

- *"There are benefits in Mixed Procurements within the new PSR, as the process will facilitate the improvement of collaboration between Health and Social, to standardise the quality of service to benefit the patient."*
- *"There are likely to be legal implications, particularly with two regimes, there is likely to be a need for councils to seek more external legal advice. There already appears an increases in Social Services Departments seeking 'specialist external advice' where procurement and / or partnership arrangements are complex."*
- *"We feel that this could cause confusion and misunderstanding, and a perception of further widening the gap between Health & Social care and moving away from integration, whilst this is acknowledged within this section, we feel it is an important overarching concern."*
- *"It would provide issues when commissioning national frameworks that are delivered on behalf of both health and social care regardless of funding."*
- *"This proposal may lead to joint procurement between Health Boards and Local Authorities, most likely with one party acting as the lead relevant authority. The need for a joint approach where there is a mixed procurement could potentially prolong the process of securing contracts. Conversely, this could lead to a more aligned approach between the organisations which could make for better relationships and a potential reduction in disputes."*

67. **Question 16. To what extent do you agree or disagree that the 'main subject-matter' being health services.**



68. Overall, 74% of respondents agreed or strongly agreed with the proposed 'main subject-matter' being health services. Respondents that agreed stated, "*we do*

not consider there to be an alternative to the health services being the main subject".

69. Though in agreement with the principle of the proposed 'main subject-matter' being health services, respondents considered "*in principle, the idea would appear appropriate. However, this does not mean that we are not concerned that how this is calculated could become increasingly complicated and there needs to be a clear and transparent process on which the decision is made, as it may be open to legal challenge",* "*for mixed procurement to be successful, there needs to be consistency across both health and social to allow a collaborative approach*" and *"issues are likely to arise where the value of the social care element is not known or becomes greater than originally estimated, tipping the balance from health services being the main subject to social care becoming the main subject as the competitive process continues or due to moderations of the contract".*

70. Overall, 16% neither agreed nor disagreed stating *"as long as the interpretation of mixed procurement remains sufficiently broad to permit a purposive approach, there is room for collaborative innovative procurement to meet Welsh Government objectives*".

71. Overall, 10% of respondents disagreed with the proposal stating:
    - *"It can be hard to quantify and distinguish at times due to ever changing needs of vulnerable patients and so may change throughout the lifetime of a contract. This could lead to a less seamless process when procuring such services, and a less joined up approached."*
    - *"Combined health and social care approach is be preferred the two are so closely entwined".*
    - *"A potential issue will be that further collaboration will require facilitation and buy-in from relevant stakeholders. This may be a barrier in the short term."*

72. **Question 17. To what extent do you believe that these changes will impact on integration of health and social care services and any 'pooled budget' arrangements? Please provide details.**

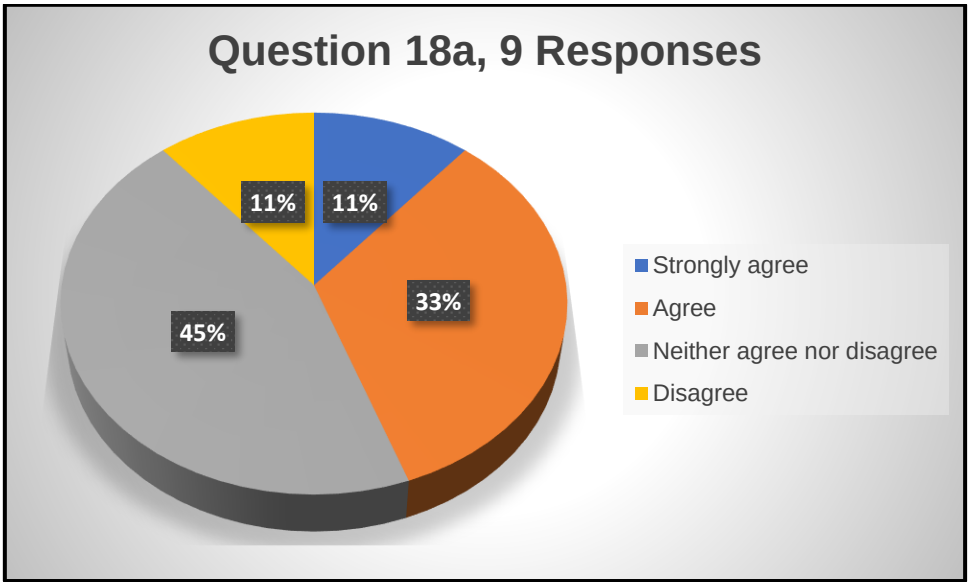
73. Respondents stated:
    - *"The two regimes may lead to further resistance to joint and integrated commissioning (planning and procurement) of 'seamless' health and social care services, contrary to Welsh Governments' policies, plans, strategies, and statutory Codes of Practice. It is likely to have a detrimental impact on pooled budgets especially if the different parts could be subject to different procurement processes. Detailed procurement guidance may be required alongside proposed amendments to the Part 9 Partnership arrangements proposed under Social Services and Wellbeing (Wales) Act 2014."*
    - *"It will impact on integrated services and possibly lead to a number of agreements, for the same services, running alongside each other".*
    - *"This could cause confusion and misunderstanding, and a perception of further widening the gap between Health & Social care and moving away from integration".*

- *"Encourage the adoption of a social care 'deferral' clause, where social care departments can choose to 'defer' to health procurement, particularly as part of a pooled budget arrangement".*
- *"This will impact negatively on integration of services".*
- *"Where health is the main subject matter it should help – but it will not help where social care is the main subject matter, but health is still a key integrated partners in the work – this will impact negatively on integration of services".*

SECTION D – PROCUREMENT PROCESSES (Q18 - Q19)

74. Due to a typographical error that occurred with regards the online response platform, responses were received for two different versions of question 18. To ensure the views and consideration of all respondents are reflected and considered, question 18a refers to all responses received via the online platform and 18b refers to all responses received via completion of the pdf consultation document.

75. **Question 18a. To what extent do you agree or disagree that the 'main subject-matter' being health would cause a significant issue for a mixed procurement in a situation where the patient placement is both jointly funded by health and social care (specifically where an individual's health needs improve during the lifetime of the placement reducing the health need below the 'main subject-matter' threshold definition for mixed procurement)?**

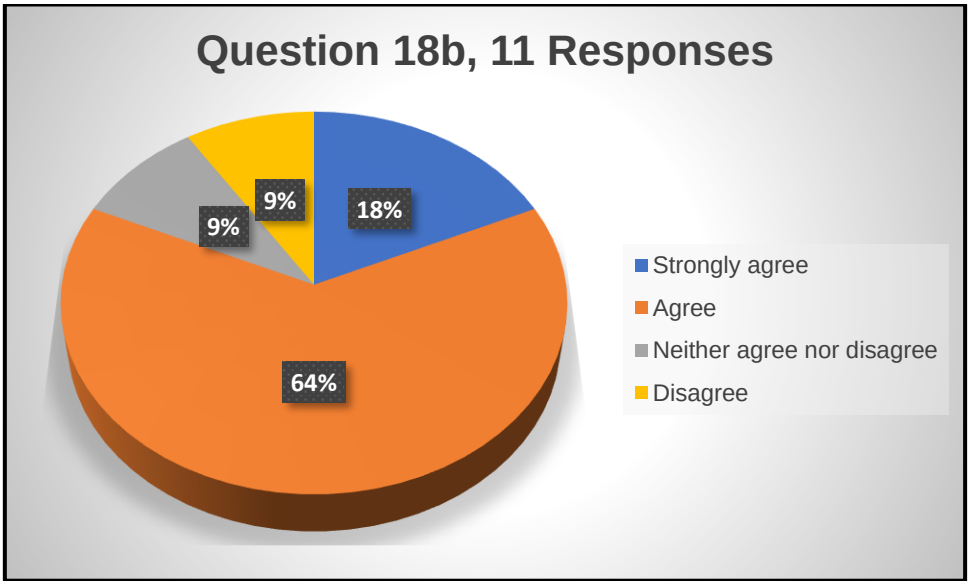


76. Overall, 44% of respondents agreed or strongly agreed with our proposed 'main subject-matter' being health services would cause a significant issue for a mixed procurement. Respondents that agreed stating that *"we may not agree that having two regimes for procurement is a good idea, we do acknowledge that due to the specialisms within health that it would not be appropriate and potentially*

dangerous (putting patients at risk) or increasing the cost putting more pressure on health and social services budgets that are already under severe pressure to not have a similar regime for Wales as in England".

77. Overall, 45% neither agreed nor disagreed and 11% of respondents disagreed with the proposal stating *"The contract main objective would be to improve the health outcome for the patient and if that is achieved then we would know that the contract is working. If the outcome for the patient meant that they were in a position where the health need was not the main component of then the patient could switch to an alternative arrangement whereby it was covered by a normal goods contract. It would require some work to look at the pathway for the patient."*

78. **Question 18b. To what extent do you agree or disagree that a proposed new health service procurement regime for Wales should align 'decision making circumstances' with those set out in DHSC's PSR Regulations (except for Direct Award Process B – 'Patient Choice')? • Strongly agree. • Agree • Neither agree nor disagree • Disagree • Strongly disagree. Please provide further details?**



79. Overall, 82% of respondents agreed or strongly agreed with our proposed align 'decision making circumstances' aligning with DHSC (with the exception of Direct Award Process B). Respondents that agreed stated *"that a proposed new health service procurement regime for Wales should align 'decision-making circumstances' with those set out in DHSC's PSR Regulations (except for Direct Award Process B – 'Patient Choice' to ensure a consistent approach and that service users are being considered throughout the process". "In order to improve/access additional capacity via private providers we would want the option of using Direct Award Process B for any providers on existing frameworks". "we note the purpose of the PSR and the rationale for having a direct award A, there is the risk that relevant authorities seek to rely on this as the basis for direct award and taking an easy option, when actually an alternative approach should be taken. We note that there are certain safeguards in place,*

including the requirement to publish notices following direct award A, which may mitigate this risk".

80. Overall, 9% neither agreed nor disagreed and 9% of respondents disagreed with the proposal stating, *"we would urge regulations in Wales not to completely disregard Direct Award Process B – Patient Choice, given that many organisations and patient representatives in Wales are calling on the new NHS Wales Executive to look more closely at this as a concept following experiences of long-standing postcode lotteries of healthcare in Wales."*

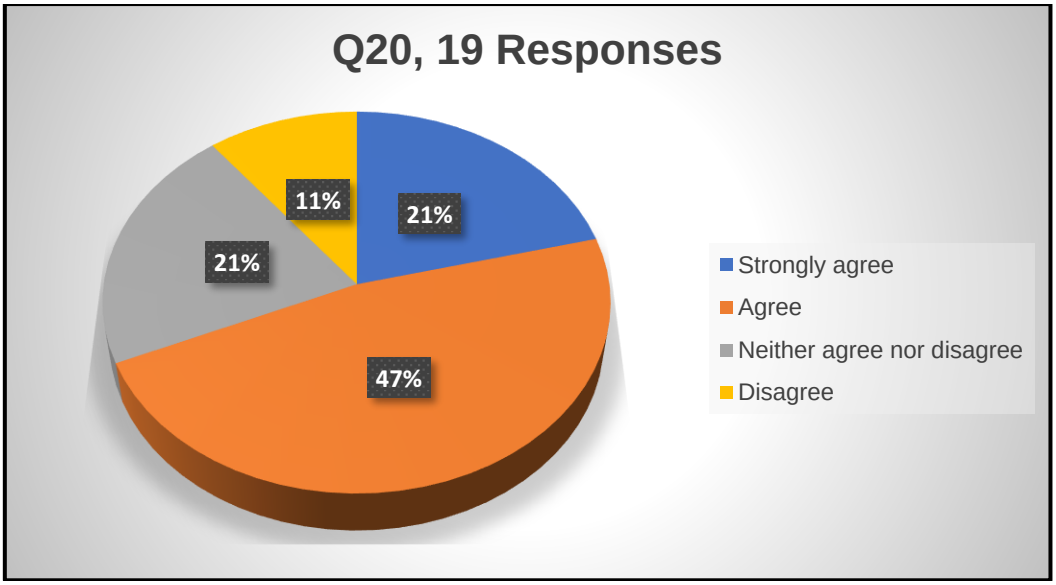
81. **Question 19. In respect of current or future health service procurement in Wales, do you have any views on any other circumstances where a different process should apply to a future new health service procurement regime in Wales? Please provide an explanation.**

82. Respondents stated:

- *"As the cost of precision and personalised medicine grows with the development of new cell and gene therapies, there may be a need to procure these in different ways in the future, dependent on the interrelationship between medicine and technology and the development of a different provider landscape".*
- *"We are not sure if it requires a different process, but we would appreciate more certainty that it is the nature of the service and not the funding, that is paramount, and that it won't affect NHS bodies (part or wholly) funding social care services under Public Contracts Regulations."*
- *"More certainty that it is the nature of the service and not the funding".*
- *"We would want to see relationships considered within future procurement processes."*
- *"Direct award process B - patient choice may be relevant to certain areas of commissioning in Wales, due to patient complexity and geographical location."*
- *"I think we need to be careful about patient choice. In Wales, the National Drug and Alcohol Residential Rehab Framework Commissioned by Welsh Government does contain an element of service user choice".*

SECTION E - MODIFICATION OF CONTRACTS DURING THEIR TERM (Q20 - Q21)

83. **Question 20. Do you agree or disagree that a future new regime for the procurement of health services in Wales should seek to align with the application of DHSC's approach to contract modifications as set out in the PSR Regulations?**



84. Overall, 68% of respondents agreed or strongly agreed with the proposed approach to contract modifications. Respondents that agreed stating that *"this seems sensible",* and *"creates consistency".*

85. Those in agreement with the proposed approach to contract modifications also argued the Welsh Government should *"not mandate a minimum threshold for contract modifications".*

86. Overall, 21% neither agreed nor disagreed and 11% of respondents disagreed with the proposal stating, *"disagree – modifications up to 50% in current regime, in this sector the patient could be in a care setting for many years and could exhaust any proposed modification value".*

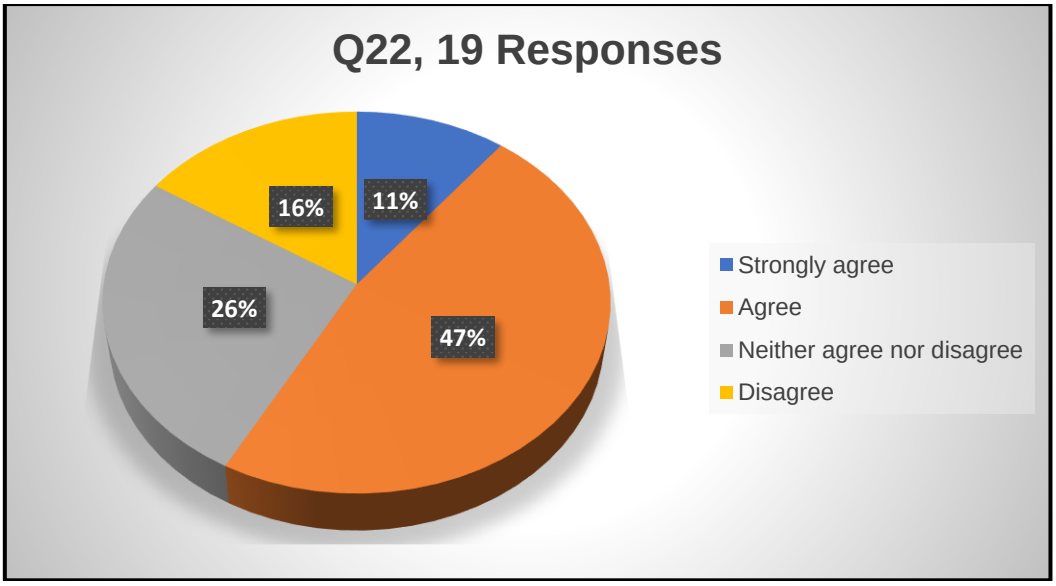
87. **Question 21. Do you have any views as to whether an alternative approach to modification of contracts should be taken in Wales? Please provide details.**

88. Respondents considered:

- *"The threshold values seem low given the nature of these contracts. Would suggest a minimum of £1,000,000 and 50%".*
- *"Modifications up to 50%... currently permissible… do not understand the rationale to reduce the capacity down to 25% from 50%".*
- *"Current material change for modification of contracts stands at 50% as per PCR… see no reason to change this to 25% as is being proposed".*
- *"An alternative is likely to draw on those elements available under Regulation 72 of the PCR 2015 or the new wider provisions in the Procurement Act. We consider this unnecessary".*
- *"We would support an alternative approach to the modification of contracts to retain the current % threshold as apposed 25% as proposed under the PSR".*

SECTION F - 'CONSIDERABLE CHANGE' THRESHOLD (Q22 - Q23)

89. **Question 22. To what extent do you agree or disagree with the proposed threshold of 'considerable change' as set out in DHSC's PSR Regulations and their applicability for the procurement of the delivery of health services in Wales?**



90. Overall, 58% of respondents agreed or strongly agreed with our proposed threshold of 'considerable change'. Those in agreement with the proposed threshold of 'considerable change' further considered that "*the question of 25% as a considerable change, varies from the existing 50% material change with PCR 2015*", *"we consider the definition of considerable change to be suitable but do question whether this would benefit from a provision similar to Regulation 72(1)(e) and (8) so there is clarity on what is considered to be "considerable change" in these circumstances",* and *"further clarification is beneficial to the definition of "considerable change" to cover a decrease in contractual elements which may lead to a "considerable change" i.e. not just an increase".*

91. Overall, 26% neither agreed nor disagreed stating *"we are concerned that [continuing] contracts with providers … without a comprehensive process of engagement or a thorough equality impact assessment, with regular monitoring, can result in ongoing disadvantage and escalating inequity, so it is important that this possibility is addressed in accompanying guidance."*

92. Overall, 16% of respondents disagreed with the proposal stating *"the threshold values seem low given the nature of these contracts. Would suggest a minimum of £1,000,000 and 50%"* and stated they *"disagree - the threshold of considerable change is too low at £500K increase and 25% higher than contract value".*

93. **Question 23. If you consider that the considerable change thresholds should be different in Wales to those specified in DHSC's PSR Regulations, please explain why. Please state what you believe to be a more appropriate**

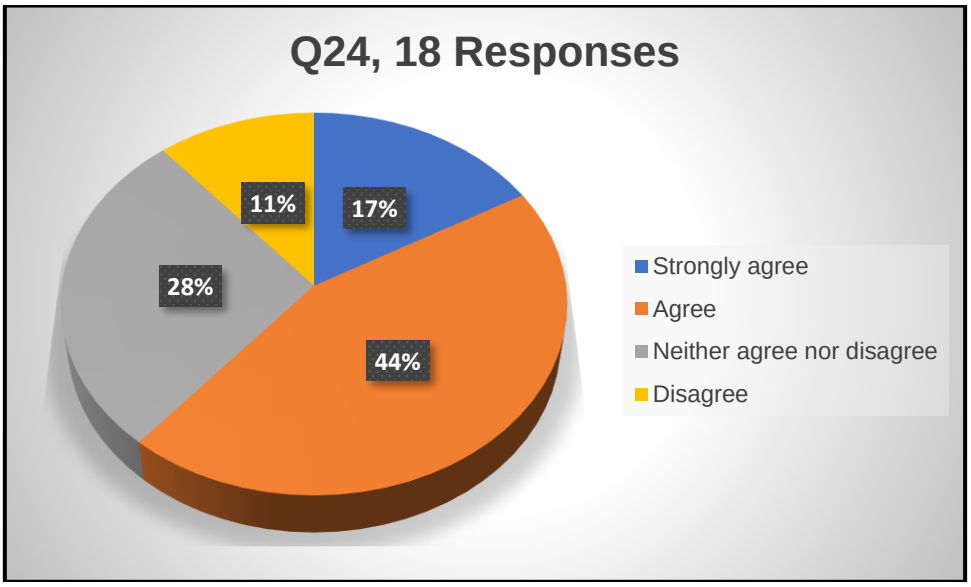
threshold for considerable change in a new regime for the procurement of health services in Wales.

94. Respondents considered:

- *"The threshold values seem low given the nature of these contracts. Would suggest a minimum of £1,000,000 and 50%".*
- *"The £500K cap and 25% is too low and does not provide enough flexibility. The 50% modification rule in the current regs should remain as a parameter. This has proven to be very helpful in a number of contract modifications completed and lowering to 25% would not provide the level of flexibility to warrant the change".*
- *"We feel the thresholds should reflect the current 50% increase as a material change, within the current regulations".*
- *"The £500K cap and 25% is too low and does not provide enough flexibility. The 50% modification rule in the current regs should remain as a parameter. This has proven to be very helpful in a number of contract modifications completed and lowering to 25% would not provide the level of flexibility to warrant the change".*

SECTION G - REVIEW OF DECISIONS UNDER THE PROCUREMENT REGIME (Q24 - Q26)

95. **Question 24. Considering the proposed approach that DHSC have adopted on review of decisions in their proposed PSR, to what extent do you agree or disagree with the establishment of an independent panel to advise on procurement decisions during the operation of a proposed new health service regime in Wales?**



96. Overall, 61% of respondents agreed or strongly agreed with the establishment of an independent panel to advise on procurement decisions during the operation of a proposed new health service regime in Wales. Respondents that agreed stated that the independent panel would "*avoid costly legal hearings*", *"seems prudent",*

will *"help maintain accountability in the system, whilst also maintaining flexibility within the process",* the establishment of an independent panel would be able to *"regime in Wales to ensure transparency but the panel needs to be diverse to ensure diversity of thought and that all groups are represented on the panel as this will help to ensure fairness and equity for all",* and that "*there is greater risk of scrutiny and challenge if no panel existed in Wales".*

97. Some of those in agreement with the establishment of an independent panel indicated they *"would be concerned that this may delay in procurement". "We agree that there needs to be a mechanism in place to provide advice and support on procurement decisions. Establishing an independent panel to advise on procurement decisions would benefit from the input of people and organisations with expertise across all seven well-being goals as well as procurement practitioners".*

98. Overall, 28% neither agreed nor disagreed stating that *"whilst this may appear to be trying to reduce the number that reach legal challenge and reduce the delay, it is more likely to lead to a delay as either the original party awarded or the challenging party may decide based on the panel's decision to take it to the next step", "there is some concern that the panel will not have the teeth to bring about change to rectify a flawed contract award decision by the relevant authority".*

99. Overall, 11% of respondents disagreed with the proposal stating that *"this could potentially create an industry of delay to awards, and necessity to have a period of non-compliance. For smaller contracts for shorter durations, any additional delay built into the process could erode the ability to deliver the outcomes for patients/service users in a timely fashion".* Respondents also requested clarity on *"Who will qualify independent experts as to whether they can advise on health service regimes without the relevant knowledge and understanding of the health services and its procurements".*

100. **Question 25. Please provide details on how you think an independent panel could operate in Wales?**

101. Respondents stated:

- *"We feel it is important that the panel includes a wide range of voices including from councils and Welsh regulators".*
- *"The independent panel could be the first point following a challenge to any contract award this would potentially help to avoid any litigation action if the procurement decision was reviewed by an independent panel who could make recommendations".*
- *"The independent panel could operate in Wales through overseeing the efficacy of the new regime acting as a sounding board for suggestions on improvements to the system and procurement best practice as well as acting as a scrutiny panel to ensure full accountability on decision makers".*
- *"Not sure how an independent panel could work, given that it would require a significant high volume of experts, which would need to be responsive to manage a panel, and account for periods of absence.*

Managing panels and reviews of decisions in other areas within the health board would suggest that this may create a cottage industry to support these new regulations, without delivering any additional value for money or improved outcomes for patients".

- *"Membership of an independent panel needs careful consideration, not least when it comes to ensuring that 'lived experience' of service-users is properly represented…. we are particularly keen to see independent panels of this nature comprise people who have sound, working knowledge of the social model of disability and other intersectional equality considerations".*
- *"We would want to ensure this panel is mixed, along specific lines, and that it is connected to existing networks / bodies in Wales".*

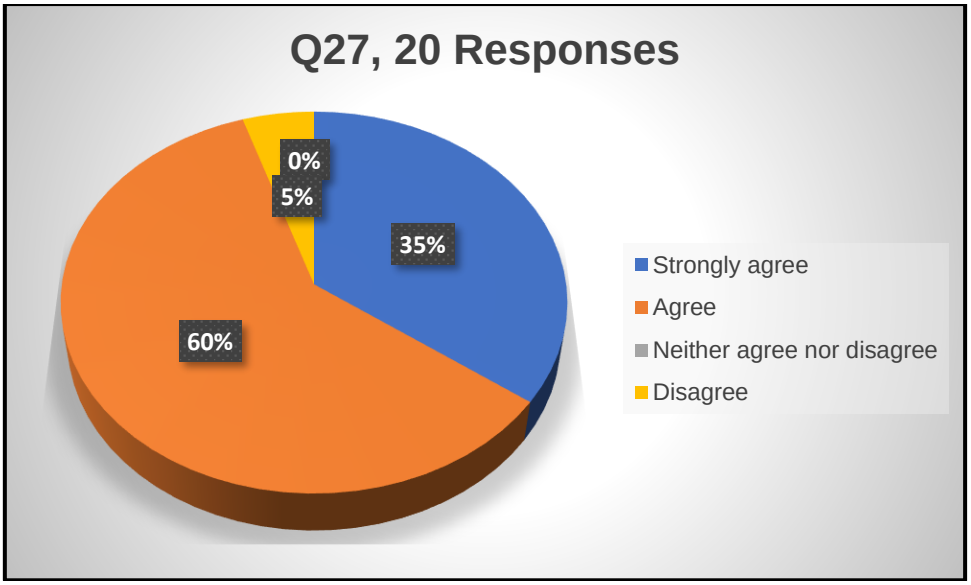
102. **Question 26. Do you think that an alternative approach to that set out by DHSC on independent advice on the operation of a future new health service procurement regime, would be more suitable in Wales? If so, please provide details.**

103. Respondents considered:

- *"More appropriate to have a national procurement panel that has a more fluent membership to allow experts in particular fields to be co-opted for specific meetings to provide additional advice".*
- *"It would be fine to have independent oversight, scrutiny and audit of a new process, but this should be with the aim to assure probity, improve transparency and expedite decision-making, rather than add bureaucracy to already complex processes".*
- *"We have set out above that a panel should connect to existing Welsh networks / boards where possible. We believe that having a set permanent membership of three nominated individuals will allow people to recuse themselves for conflicts of interest. We also believe that having a panel that can draw on relevant expertise based on different contract types is important. For example, a permanent panel that has no mental health expertise should be able to co-opt people with relevant experience to ensure that scrutiny is undertaken from a position of knowledge".*

SECTION H – TRANSPARENCY, MONITORING AND PUBLICATION OF INFORMATION (Q27 - Q31)

104. **Question 27. To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach on transparency, monitoring and publication of information requirements in DHSC's proposed PSR Regulations?**



105. Overall, 95% of respondents agreed or strongly agreed with the proposed transparency, monitoring and publication of information requirements. No respondents selected "neither agree nor disagree". Respondents that agreed stated that the process is *"central to the integrity and accountability of the system and the fight against corruption, ensuring opportunities are accessible, and processes and decisions can be monitored and scrutinised",* and that *"[staff] will be familiar to procurement personnel - It adds transparency to the process".*

106. Those in agreement with the transparency, monitoring and publication of information requirements also raised *"concern regarding the potential impact of Direct Award A in terms of bringing about new providers in the market, developing innovation and also avoiding scrutiny by the relevant authorities not having to issue transparency notice /intention to award notice, before the contract is entered into".*

107. Overall, 5% of respondents disagreed with the proposal stating that it would be *"resource intensive to manage and would open up for considerably more public questions or comments".*

108. Due to a typographical error that occurred with regards the online response platform, responses were received for two different versions of question 28. To ensure the views and consideration of all respondents are reflected question 28a refers to all responses received via the online platform and 28b refers to all responses received via completion of the pdf consultation document.

109. **Question 28a. Do you think that an alternative approach to that set out by DHSC on independent advice on the operation of a future new health service procurement regime, would be required in Wales? If so, please provide details.**

110. Most respondents stated 'no', no other considerations were shared in response to this question.

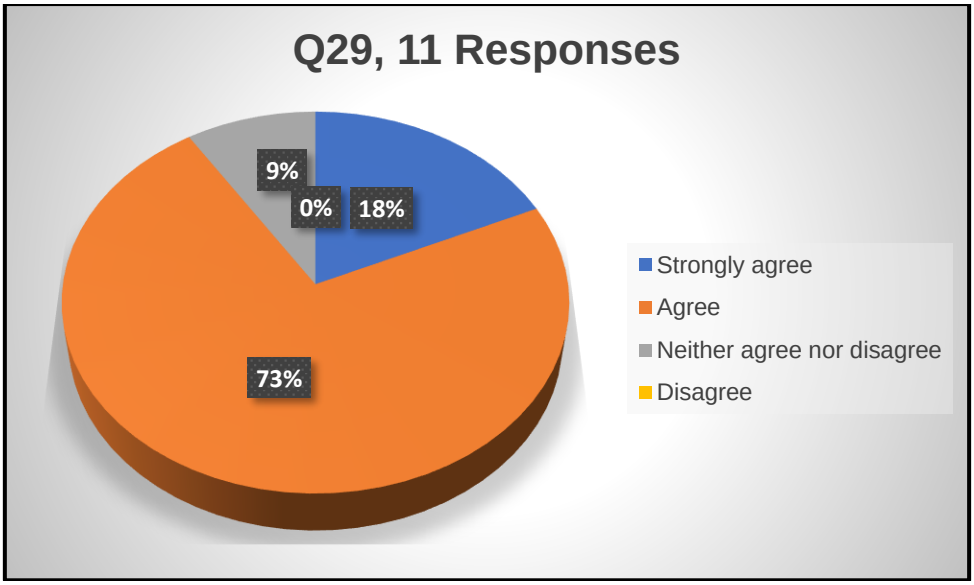
111. **Question 28b. Do you think there is an alternative approach or other types of information that would be helpful to demonstrate transparency and monitoring of the application of a new health service procurement regime for Wales? Please provide details on your thoughts.**

112. Respondents considered:

- *"Data analysis; Focus group sessions; Community engagement via surveys, drop-in sessions etc; Current trends analysis; Research on what has worked for other nations i.e., in Sweden/Switzerland etc".*
- *"No there are sufficient variety of notices to cover all eventualities".*
- *"We would anticipate the use of Sell2Wales for the publication of information and to ensure transparency. This should also enable the information to be made available in Welsh as well as in English, as required under Welsh language legislation for Welsh to be treated equally to English".*
- *"We would like to see all decisions of this nature held in a widely known and accessible portal and made available in easy read / accessible formats (this may form part of the 'Provider Landscape' platform".*
- *"We understand there is a rationale to give relevant authorities the right to direct award via route A. However, there would be greater transparency and scrutiny of decision making in the event an intention to award notice had to be issued prior to the contracting authority entering into the new contract".*

113. Due to a typographical error that occurred with regards the online response platform, responses were received for 2 versions of question 29. To ensure the views and consideration of all respondents are reflected question 27 has been updated with any written responses received via the online platform, and 29 refers to all responses received via completion of the pdf consultation document.

114. **Question 29. To what extent do you agree or disagree that a proposed new health service procurement regime for Wales should align with the timings and frequency of reporting on transparency as outlined above and in DHSC's PSR? Please provide further details?**



115. Overall, 91% of respondents agreed or strongly agreed with the proposed transparency, monitoring and publication of information requirements. No respondents selected "neither agreed nor disagree". Respondents that agreed stated it would *"ensure expectations are managed effectively".* Those in agreement with the transparency, monitoring and publication of information requirements also considered that an alternative *"no obvious reason to deviate from this".*

116. Overall, 9% of respondents disagreed with the proposal stating that an alternative to DHSC "*could add to the confusion and lead to a more complex picture for all procurement".*

117. **Question 30. Do you have any thoughts in relation to the information that needs to be published within the content of a notice specified by DHSC and its applicability to new health service procurement regime for Wales? Please provide details on your thoughts.**

118. Respondents considered the need for:

- *"Full transparency for any direct awards", "information should be made available in Welsh at the same time as the English version is released", "More information needs to be published, such as a brief summary of why it was awarded to the winning provider and listing how many tenders there were".*
- *"I do not think we should be publishing details on decision makers. This information would all be managed within the procurement but don't think it needs to be included on the published documentation, how does this fit with GDPR? We need to ensure the balance is right between adequate transparency and privacy concerns of individuals, particularly where stakeholders may include lay members or individuals with lived/living experience of the services we are commissioning. If we can demonstrate adherence to process, then the accountability lies with the organisation, rather than the individual decision-makers".*

- *"Given Welsh Government's commitment to impact measures including equality, socio-economic, and health inequality, alongside the Public Sector Equality Duty, we would wish to see some reference in the published information to these having been conducted (as part of a rigorous and robust process set out in accompanying guidance), the date on which it / they were conducted, and review dates".*
- *"The information published should provide sufficient details along with the relevant authorities' rationale when awarding the contract, to allow for scrutiny. This is particularly important where the direct award and no prior publication of a notice".*

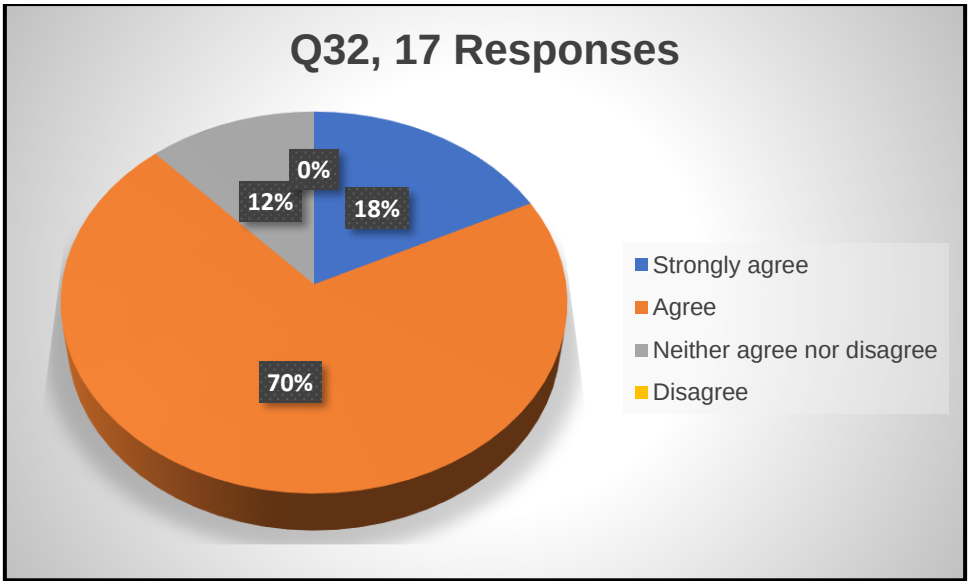
119. **Question 31. Do you have any thoughts in relation to the requirement for 'relevant authorities' in Wales to publish details of the 'decision makers' as part of the information on contract award? Please provide details on your thoughts.**

120. Respondents considered:

- *"Transparency of contact awards is important, including contact details as it allows not only challenges but also opportunities from smaller businesses further down the supply chain".*
- *"I do not agree with this approach - all decisions are taken in the name of the legal body / contracting authority - not the individuals involved".*
- *"This could cause particular issues where service users, unpaid carers and / or members of the public are part of the decision-making process. It would not be appropriate to identify the individuals who took part in the process as it could risk making them more vulnerable".*
- *"Yes, it is good practice for 'relevant authorities' in Wales to publish details of the 'decision makers' as part of the information on contract award to avoid implicit bias and awards being issued to the same decision makers. This will ensure scrutiny of which decision makers are coming through the pipeline to ensure diversity is running through them so that the service is accessible and useful to all".*
- *"I do not think we should be publishing details on decision makers – stakeholders will not want to participate on evaluation panels".*

SECTION I – STANDSTILL PERIODS (Q32 - Q34)

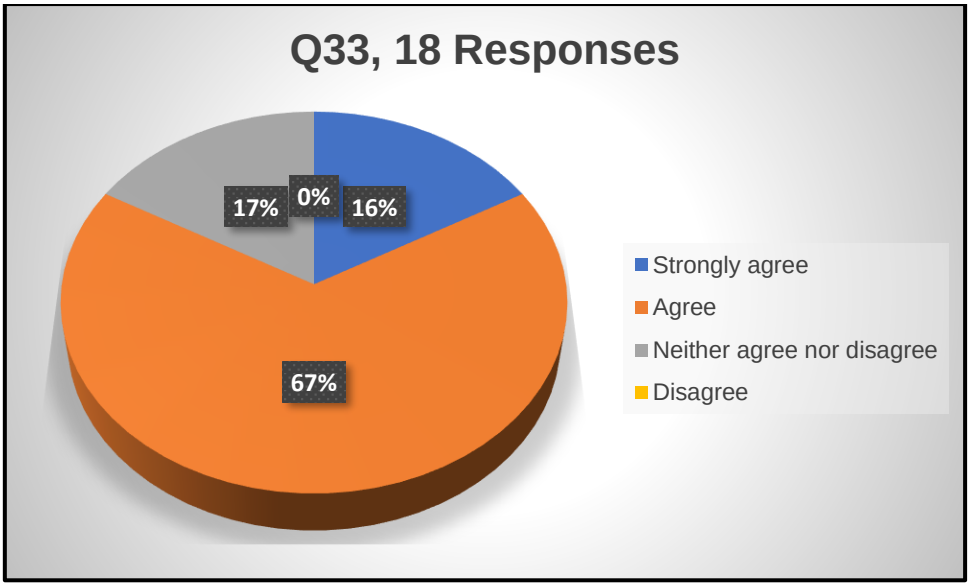
121. **Question 32. To what extent do you agree or disagree that a proposed new health service procurement regime for Wales should align with a standstill period to be followed for 'Direct Award Process' C, 'The Most Suitable Provider Process', and 'The Competitive Process' establishing a framework agreement or intention to award a contract based on a framework agreement following a competitive process and its application for?**



122. Overall, 88% of respondents agreed or strongly agreed with the proposed standstill period. Respondents that agreed stated that *"This is already standard practice for a number of procurement activities in Wales".* Those in agreement with the standstill period considered that they *"understand the rationale for applying the Alcatel period in these circumstances"* however, raised concerns with regard *"delays to service delivery if there is a further panel adjudication process to go through after this", "would seek further clarity on rationale for 8-day standstill period".*

123. Overall, 12% of respondents neither agreed nor disagreed and no respondents disagreed with the proposal.

124. **Question 33. To what extent do you agree or disagree that a proposed new health service procurement regime for Wales should align with the timescale for representations as set out in DHSC's proposed regime should also apply in Wales? Should there be an alternative timescale for the application of the regime within Wales?**



125. Overall, 83% of respondents agreed or strongly agreed with the proposed timescale for representations. Respondents that agreed stated that "*Timescales should align ", "it would appear to be reasonable that the Welsh aligns with the DHSCs approach*", and *"agree, to have a level playing field with England*".

126. Overall, 17% of respondents neither agreed nor disagreed stating *"We understand the logic of aligning with DHSC's timescales but wonder how far the 8-day timescale proposed has taken into account the needs / capacity of smaller and user-led organisations who may wish to tender for certain projects, particularly where information has not been in an accessible format and / or has required translation etc".*

127. **Question 34. Do you have any views on the role of the 'independent panel' in relation to the standstill period in any new future health service regime for Wales? Please provide details.**

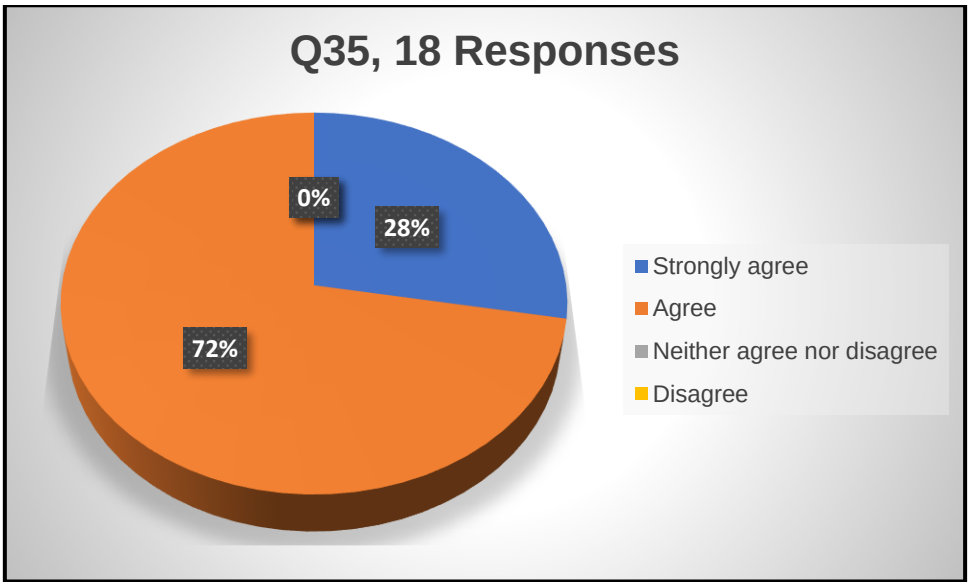
128. Respondents considered that:

- *"The independent panel could act as the first point of escalation in a challenge during the standstill period".*
- *"This is needed to ensure scrutiny and transparency".*
- *"Health Boards will need to plan in additional time in their planning, stages to allow time prior to award for process to be completed if requested".*
- *"We are concerned that this could extend the period before a contract may be awarded potentially leaving those requiring services vulnerable (where existing contracts have been served notice and new awards delayed)".*
- *"The panel will need to have a broad array of experiences and knowledge to fully consider challenges made during the standstill period (and / or subsequently), not least to ensure that decisions are fair, person-centred, and promote equality in Wales".*
- *"What is the definition of independence within the panel. e.g., if a local contract, would a central Procurement/legal view be deemed as independent of the process/organisation and vice versa".*

- *"Would request clarification on proposed composition of the independent panel".*
- *"There is a concern over undue delay of contract award and that the panel has no teeth. Recommendation can be made by the panel but does not need to be followed".*

SECTION J - CONFLICTS OF INTEREST (Q35 - Q36)

129. **Question 35. To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach on conflicts of interest as outlined in DHSC proposed PSR regulations?**



130. 100% of respondents agreed or strongly agreed with the proposed approach on conflicts of interest. Respondents that agreed stated *"Transparency essential", "Agree with alignment".*

131. No respondents disagreed with the proposal.

132. **Question 36. Do you have any views on how any 'conflicts of interest' could be identified, monitored and managed more effectively in a proposed new health service procurement regime in Wales?**

133. Respondents considered:

- *"Mandatory declarations via the supplier suitability process and the evaluation process".*
- *"Keep current declarations of interest".*
- *"We gather declarations of interest as a standard approach in all procurements to ensure that these can be managed as part of the process".*
- *"Agree with the proposed principles of management".*

- *"Officers have to routinely provide and regularly update declaration of interest information… this is reliant on a self-declaration made by individuals participating in procurement processes".*

SECTION K - TERMINATION OF CONTRACTS (Q37)

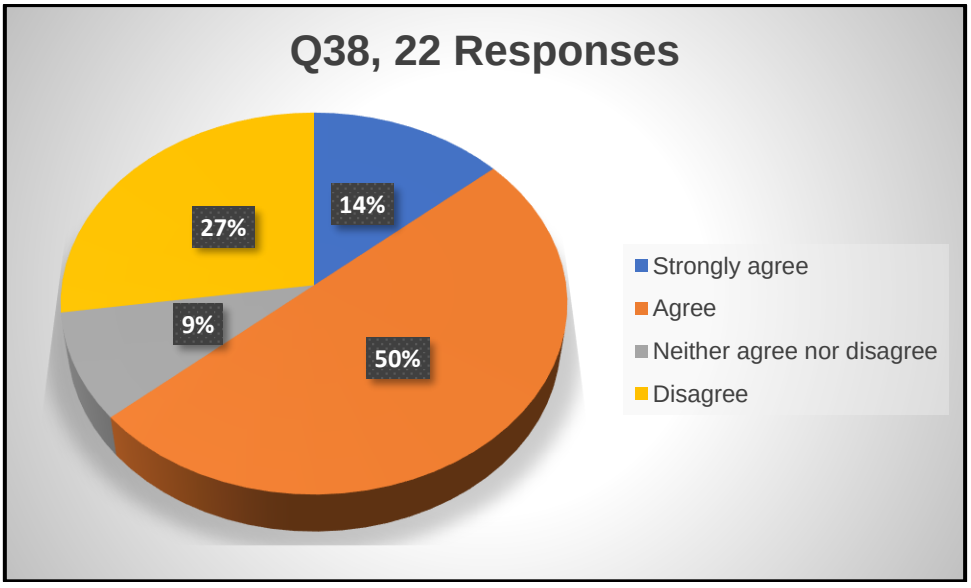
134. **Question 37. To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach on termination of contracts as outlined in DHSC proposed PSR regulations? Please provide details on your thoughts.**

135. Respondents considered:

- *"It would appear to be reasonable that the Welsh aligns with the DHSCs approach, so it is the same in Wales as in England. We think there should be reference made to the regulators in Wales and the need to maintain the appropriate registration. If a provider is removed, then they are no longer able to practice and provide the services and therefore the contract would need to be terminated".*
- *"Poor performance should be a reason to allow termination".*
- *"This may need a different approach for Wales in line with current trends and contract exceptions, reasons for termination and impact this would have on the organisation/users etc".*

SECTION L - FRAMEWORK AGREEMENTS (Q38 - Q40)

136. **Question 38. To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach on framework contracts as outlined in DHSC proposed PSR regulations?**



137. Overall, 64% of respondents agreed or strongly agreed with the proposed approach on framework contracts.

138. Respondents in agreement with the approach on framework contracts also considered that there "*should be flexibility for Frameworks to be modified within reason*", "*there should be further consideration to the maximum length of a framework and concur with comments that there should be flexibility to reopen the framework for new entrants if required*", and supported "*the suggestion around ensuring flexibility in the approach to periodically open up a framework to new providers or have the ability to have a longer timescale for a framework agreement*".

139. Overall, 9% of respondents neither agreed nor disagreed with alignment with the approach to framework agreements stating, "*an approach which doesn't disadvantage Wales is needed*".

140. Overall, 27% respondents disagreed with the proposal stating, *"there should be the opportunity to put in place a framework agreement for a longer term than 4 years", "agree with Welsh proposal to open up annually",* and *"instances where frameworks need to be in place for more than 4 years"*.

141. **Question 39. Do you think that a future new health service procurement regime for Wales should seek to have an alternative maximum timescale for a framework? If so please provide details on what you think would be an appropriate timescale and why?**

142. Respondents stated:

- *"Yes - maximum time. 7 years (all services need periodic review)".*
- *"It would not be helpful to have a different set of timescales for frameworks in Wales. We should consider parity with the Healthcare Procurement Act in England".*
- *"I believe there should be the flexibility to be able to have a framework agreement in place for up to 8 years. Given the timescales it takes to plan, and put in place a framework agreement, it would not seem beneficial to only be in place for a maximum of 4 years".*
- *"Contracts have been commissioned for a longer period to provide stability and reassurance for staff. I think that similar thought could be given to Frameworks".*
- *"5 years would be more appropriate, particularly for third sector organisations, to enhance staff retention and recruitment and allow for better outcomes to be achieved".*
- *"I agree that 4 years in general is an appropriate time frame for a framework with the allowance that in exceptional circumstances and with detailed reasons that these could run for longer".*
- *"Yes, longer term 8-to-10-year frameworks are attractive, to ensure sustainability in the market, and improved business attraction to supply market, with improved terms and commercial offerings for a longer-term contract".*
- *"Standalone interventions such as talking therapies could be a longer Framework, if there's an option for new providers to join and leave as require".*

- *"Longer term needed rather than 4 years, to ensure sustainability in the market, and improved business attraction to supply market, with improved terms and commercial offerings for a longer-term contract".*

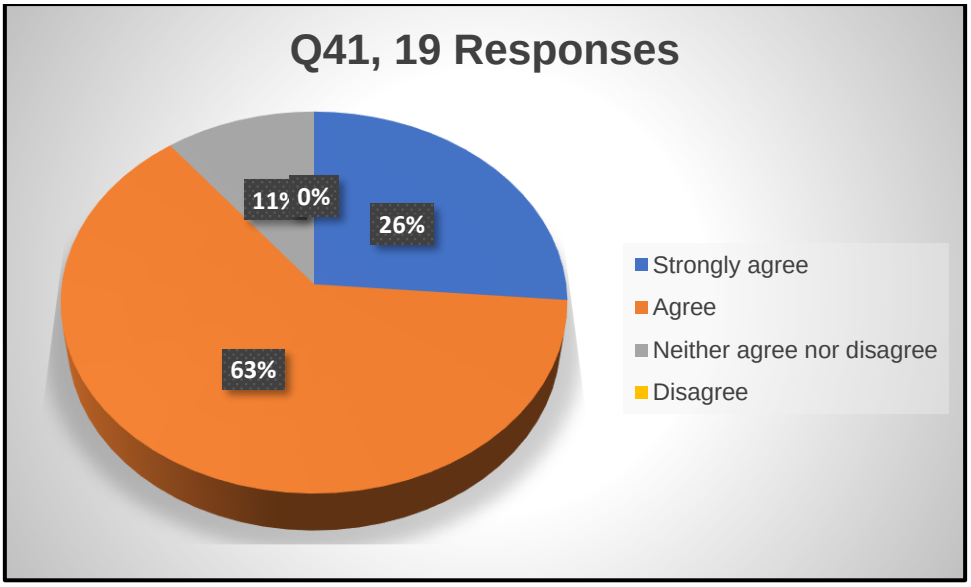
143. **Question 40. Do you think that a future new health service procurement regime for Wales should seek to have the opportunity to open a framework up at certain intervals for new entrants to become party to a framework?**

144. Respondents stated:

- *"Where possible – yes".*
- *"Yes, the opening-up would allow new organisations to enter the framework. It would be an acceptable flexibility, if this were to be stipulated at the time of contract opportunity notice".*
- *"Yes, I think that this should be included where appropriate. Particularly if longer timescales are agreed".*
- *"Yes annually".*
- *"I agree that the flexibility to open up frameworks at regular intervals would provide a potential benefit to bring new providers into the framework where appropriate".*
- *"Yes, this will ensure a fair process for all where there are no barriers to accessing a framework".*
- *"Yes, agree to allow new entrants to market and manage existing provider performance".*
- *"Some flexibility in approach, whether periodically opening up a frameworks to new entrants or, conversely, offering longer timescales for frameworks, would be useful".*
- *"Yes. To open up the framework would allow other providers with innovative solutions developed after the start of the original framework to show their innovation and new entrants into the market therefore increasing competition".*

SECTION M - URGENT AWARDS OR MODIFICATIONS (Q41)

145. **Question 41. To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach in regulations 14, urgent awards or modifications?**



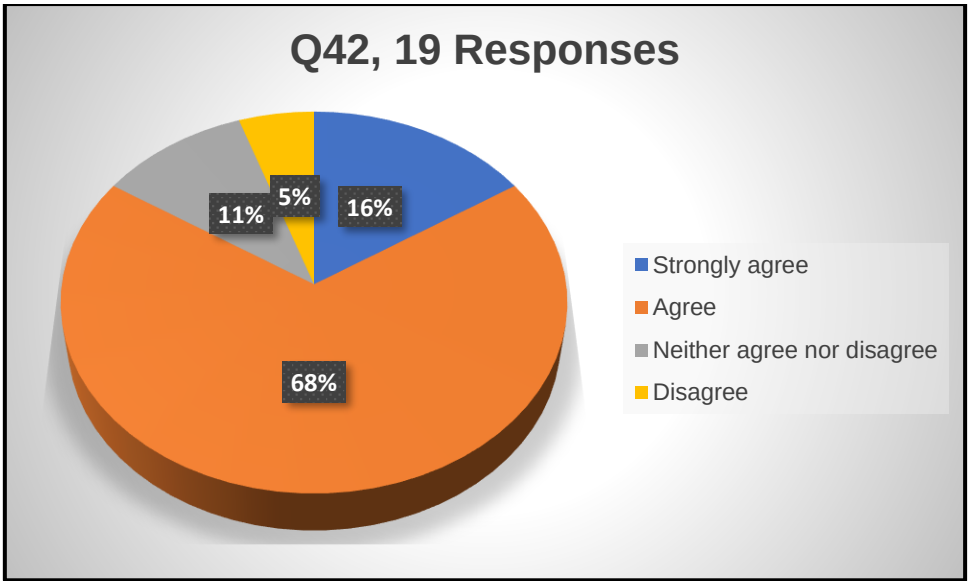
146. Overall, 89% of respondents agreed or strongly agreed with the proposed approach to urgent awards or modifications. Respondents that agreed stated *"agree in principle as the urgent awards or modifications may be required to ensure safe and ongoing services are provided and to not be able to do these could have an impact on all services and lead to an increase in demand and potential deterioration of health and independence which may be difficult for those in receipt of the service to recover from". "A new future health service procurement regime in Wales should align with the approach in Regulation 14, urgent awards or modifications to help mitigate delays and promote a more efficient service". "Flexibility to urgently award or modify a contract is needed, as suggested, where there is a need to protect public safety and wellbeing".*

147. Overall, 11% of respondents neither agreed nor disagreed stating "*so long as transparency and opportunities to challenge are not compromised*".

148. No respondents disagreed with the proposal.

SECTION N - ABANDONMENT OF OR REPETITION OF STEPS IN A PROCUREMENT (Q42)

149. **Question 42. To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach in regulations 15, abandonment of or repetition of steps in a procurement?**



150. Overall, 84% of respondents agreed or strongly agreed with the proposed approach on abandonment of or repetition of steps in a procurement. Respondents stated agreement that "*a new future health service procurement regime in Wales should align with the approach in Regulation 15, repetition of steps in a procurement as this has been proven to not be a barrier in the past so therefore it should be included*".

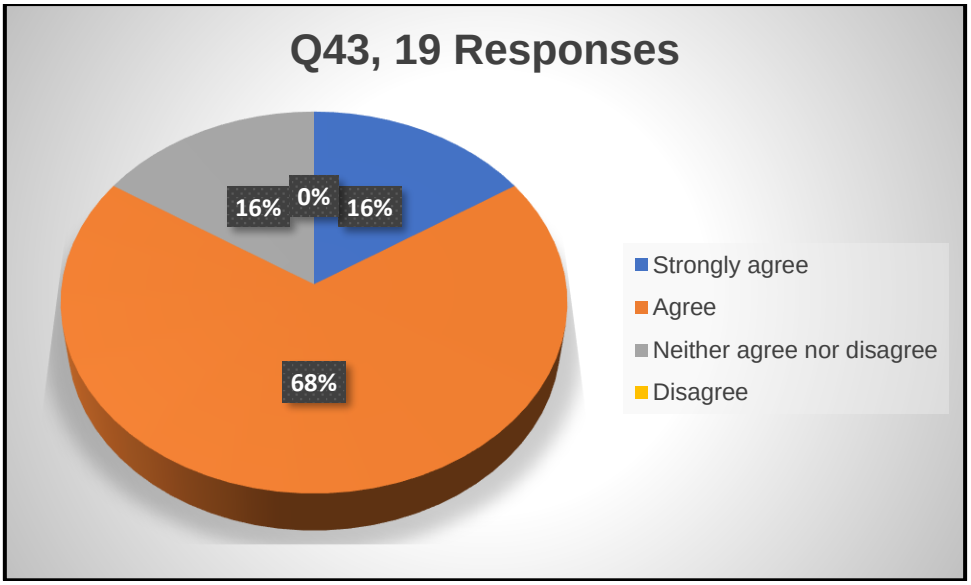
151. Those in agreement with the approach on abandonment of or repetition of steps in a procurement considered "*we would like to see an addition of ensuring decisions to abandon a procurement exercise are made at the earliest opportunity to avoid additional waste of time and resources in preparing submissions*".

152. Overall, 11% of respondents neither agreed nor disagreed recommending "*further engagement with third sector stakeholders about this particular proposal, given that organisations' capacity and resources are likely to be more limited than other types of providers. 'Abandonment / repetition of steps' is therefore more likely to disadvantage providers from the third sector, so measures to ameliorate impact may need to be considered*".

153. Overall, 5% respondents disagreed with the proposal however stated that they considered that Wales should "*keep in alignment with NHS England*".

SECTION O - EXCLUSIONS (Q43)

154. **Question 43. To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach in regulations 20, exclusions?**

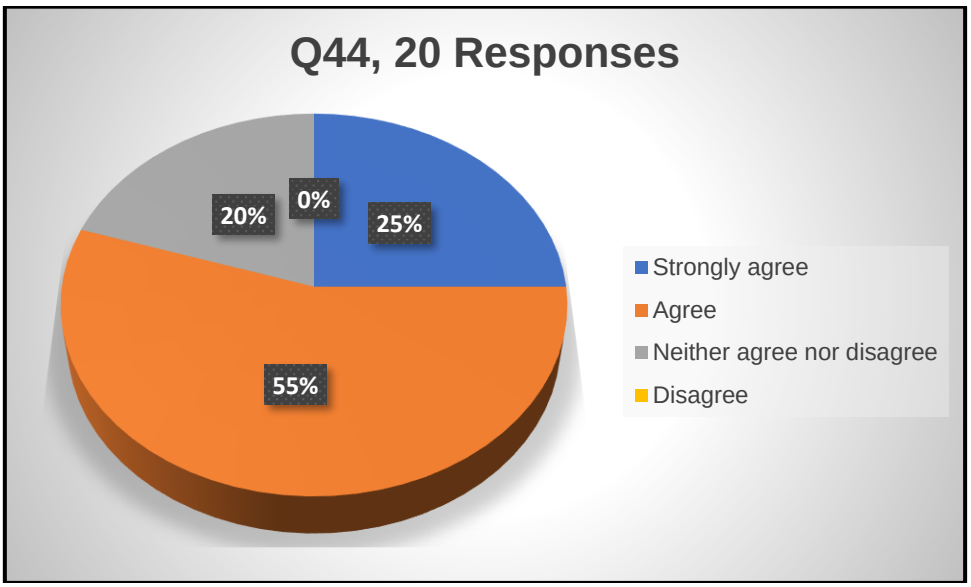


155. Overall, 84% of respondents agreed or strongly agreed with the proposed exclusion regulations. Respondents that agreed stated that *"a new future health service procurement regime in Wales should align with the approach in PSR Regulations 20", "reasonable that the Welsh aligns with the DHSCs approach, so it is the same in Wales".*

156. Overall, 16% of respondents neither agreed nor disagreed and no respondents disagreed with the proposal.

SECTION P - PRIMARY CARE (Q44 - Q46)

157. **Question 44. To what extent do you agree or disagree that a new future health service procurement regime in Wales should align with the approach on primary care contract as outlined in DHSC proposed PSR guidance?**



158. Overall, 80% of respondents agreed or strongly agreed with the proposal on primary care contracts. Respondents that agreed stated that "*a new future health service procurement regime in Wales should align with the approach on primary care contract", and that "divergence on this will be detrimental*".

159. Those in agreement with the proposal on primary care contracts stated they "*Agree, with the expectation that the procurement regime reflects the NHS Contractual regulations and vice versa*" and would "*welcome additional guidance on enhanced services for both GMS and PDS and Prison contracts*".

160. Overall, 20% of respondents neither agreed nor disagreed stating "*there are differences between England and Wales in regard to primary care and we therefore agree with the suggested changes… Primary care providers are key parties to the development of clusters and the community infrastructure required to ensure that people in Wales access seamless health and social care services and are enabled to live well, closer to home through prevention, choice, well-being, and independence*".

161. Overall, no respondents disagreed with the proposal.

162. **Question 45. In respect of current or future health service procurement in Wales, do you have any views or concerns around the omission of GP practice 'Personal Medical Services' (PMS) from a future new health service procurement regime guidance for Wales? Please provide an explanation.**

163. Most respondents did not share a view with regards the omission of GP practice Personal Medical Services' (PMS). Responses were received stating "*not currently, as we do not have any GMS PMS. Should this change, then we would anticipate inclusion at a later date in order to align*".

164. Two respondents shared "*concerns around the omission of GP practice 'Personal Medical Services' (PMS) from a future new health service procurement regime guidance for Wales as this is a service 'term' that majority of the public are familiar with so omission w/o explanation on a replacement service/term may cause confusion and lead to service users being disengaged on the subject matter*", "*PMS are currently managed by the Health Board*".

165. **Question 46. Are there examples of primary care services contracts currently procured in Wales that are not defined within NHS England guidance or captured as known points of divergence above? If so, please state these services.**

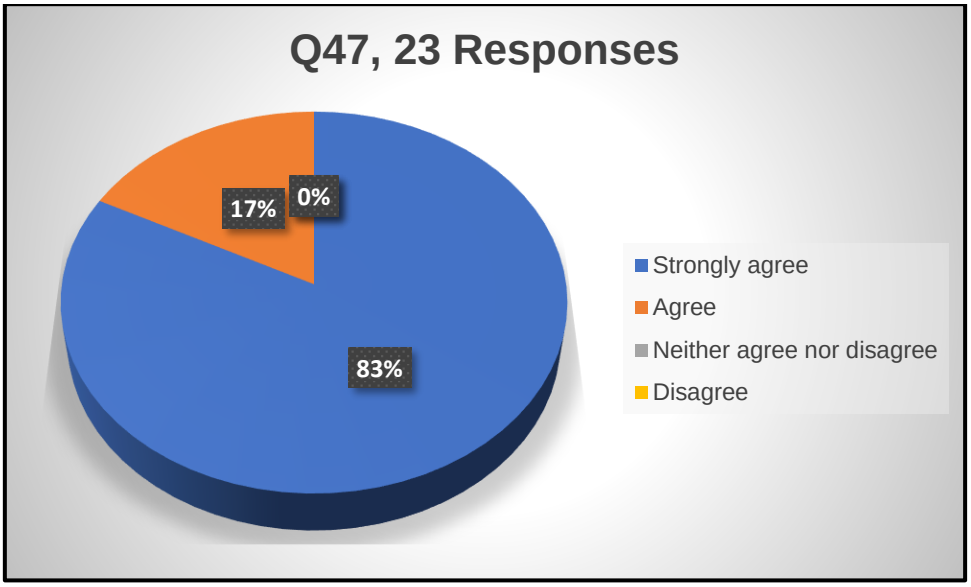
166. Respondents stated:

- *"Welsh government may want to consider including social prescribing and preventative health services if they are within scope".*
- *"Nurseries, land-based horse riding for the disabled, school trips for SEN/ALN, horticultural care".*
- *"Prison services"*

- *"Non-recurrent investments are made to existing providers – how would this be managed if the same provider is awarded NR funds that may take them over the £500k modification rule. Following GDS Terminations/variations - services are re-provided via alternative providers where possible with associated funding on a recurring basis -how would this fit with the £500k modification rule if, for example, a provider is in receipt of additional £300k one year and a further £300k the following year through separate commissioning processes. In year variations/adjustments – the GDS/PDS Regulations allow for variation via mutual agreement, would this still remain?"*

SECTION Q - TRANSITIONAL ARRANGEMENTS, ROLL OUT AND IMPLEMENTATION (Q47 - Q50)

167. **Question 47. To what extent do you agree or disagree that a new future health service procurement regime in Wales transition and implementation should be supported by the establishment of toolkits and awareness raising sessions?**



168. 100% of respondents agreed or strongly agreed with the proposed establishment of toolkits and awareness raising sessions. Respondents stated that toolkits and awareness raising sessions are *"crucial to successful implementation", "definitely required and need to be part of induction and refresher training for all staff on a regular basis".*

169. Respondents considered that "*there will be a wide range of issues to be considered and processes to be put in place and the need for standardised toolkits, significant amounts of awareness raising and training will be important to ensure consistent application, transparency, understanding and delivery". "Welsh government should communicate as much as possible with all stakeholders to avoid confusion and misinformation". "We would absolutely support and advocate for the roll out to include training and toolkits on procurement rules. There is often misunderstanding and confusion among clinical leads overseeing procurement of*

contracts to 3rd Sector partners which can delay or hinder conversations around service development, despite being supported by procurement colleagues in their organisations. Greater understanding by all involved of the rules will enable a more efficient and effective commissioning process from start to end – with more helpful conversations with providers about what's possible and not possible". "Strongly agree, utilising DHSC toolkits, but concerns on Procurement resource capacity to deliver training and awareness sessions with Health Boards/Trusts in Wales".

170. **Question 48. In respect of the implementation of a proposed health service procurement regime in Wales, do you have any views or concerns regarding transitional arrangements, roll out and timing of implementation? Please provide further details on your thoughts.**

171. Respondents stated:

- *"Yes - integration required with the UK Procurement Act".*
- *"We have a wide range of concerns around the timings and the speed of implementation…concerning training and legal frameworks".*
- *"Would have concerns if the changes and what is expected from those procuring services are not made extremely clear".*
- *"No where near financial year end or the winter period when NHS services are the busiest".*
- *"Needs to be sufficient lead in times".*
- *"Yes, this needs to be carried out with sensitivity to the public as it will have an impact of all citizens of Wales".*
- *"Comfortable with the new regime but acutely aware of the impact on training and transition for staff to get on board and be confident/competent".*
- *"A phased approach would be helpful, transitioning to new rules when existing contracts naturally come to an end to avoid uncertainty and confusion for all involved".*
- *"Would request clarity on timescales and support that will be available across multiple teams".*

172. **Question 49. When do you think a future new health service procurement regime for Wales should come into force? Please provide details as to your thoughts.**

173. Respondents stated:

- *"ASAP"*
- *"When ready and fully considered".*
- *"Start of any financial year".*
- *"Needs to be 12 months' notice as we are considering procurement route for some current contracts which end in 6 months' time".*
- *"In the next 2- 4 years if achievable given that most businesses have a 5-year plan".*

- *"April 25 is sensible – start of a new financial year, training packs should all be available, and staff trained during quarters 3 and 4 of 24/25 financial year".*
- *"A start date for new rules to come into force for all new contracts being commissioned should be set, with a minimum 6 months' notice for commissioners and providers to understand its implication and to allow space to build into the planning cycle for upcoming contracts, as well as awareness raising sessions/training".*
- *"Given complexity and number of teams (not just procurement colleagues) that need to be involved, there would need to be sufficient time to allow for time for training and awareness to be implemented. Would suggest at earliest 2026/27 roll out".*

174. **Question 50. Do you have views on whether any new health service procurement regime for Wales should aim to align with the timelines for the introduction of proposed changes being brought forward for wider public procurement under the UK Government Procurement Act, or be introduced at a separate point in time?**

175. Respondents stated:

- *"It would seem sensible".*
- *"Same time".*
- *"Same timeline as England".*
- *"It would make sense if they aligned".*
- *"Yes, this would be a good plan to align timelines with the introduction of proposed changes being brought forward for wider public procurement under the UK Government Procurement Act".*
- *"Ideally, we should align but consultation left too late for training etc so should be introduced at separate point in time as we are deviating".*
- *"It would seem sensible that Wales implement on the same timescale as England…. our main concern is that the reforms are completed effectively and with enough time for all the toolkits and training to be completed and for ICT systems to be set up accordingly".*
- *"In principle we would support this, but an impact assessment would be useful to understand the potential impact of introducing too quickly, i.e. without allowing sufficient time for training etc".*
- *"Aligned and implemented at the same time, but transition period needs to be considered, with clear parameters to manage transition".*
- *"We are not sure that two fundamental changes to the procurement regime being imposed at the same time would give those involved time to adapt to both changes".*

SECTION R - GENERAL QUESTIONS (Q51 - Q57)

176. **Question 51. Please provide details of any anticipated increase/decrease in resources/operational running costs for your organisation associated with the implementation of a new health service provider regime in Wales?**

177. Respondents stated:

- *"Unknown at this time but will certainly take more time / resource to manage yet another procurement related act".*
- *"Any substantial piece of legislative change is accompanied with an equally substantial process which has to be resourced. Simply responding to consultation, reviewing and understanding policy changes, estimating the local implications, takes a lot of resources from councils… Policy and Practitioner training costs will need to be accounted for. …. increase in training on the procurement process… procurement teams but also for all those involved in commissioning …. increase in legal resource to support the procurement processes".*
- *"Not clear what the cost implication would be - whether a BAU issue or not".*
- *"I believe these will be a significant amount of additional work for procurement teams as we look to convert current SLA agreements into contract under the new regime, the additional requirements for the range of transparency notices also increases the workload. a significant amount to time and effort will also need to go into training and awareness sessions".*
- *"Increase in resources to train and implement across NHS Wales. The training impact is going to be intense and needs to be delivered effectively across all Health Boards, I would suggest as well as standard training, workshop style events should be set up so that the staff realise the importance of the change".*
- *"Definitions are clear at high level; but become less clear as we get into the detailed application. As a result at this stage, it is difficult to quantify what the system change costs will be".*
- *"We see the new health service provider regime as a possible opportunity for new entrants from the third sector. However, tendering processes (including the Sell 2 Wales platform) will require potential providers to have sufficient capacity to navigate and complete them effectively".*
- *"Increased flexibility around procurement (e.g., proposed changes around "most suitable provider process") would be advantageous in decreasing resources/operational running costs that are expended during a competitive tender process that is unnecessary. Anything that reduces bureaucracy and complexity and enables organisations and commissioners to work together more effectively to meet people's needs will be more cost effective in the long-run".*
- *"Increase in Procurement resource to implement New Regime, undertake training and awareness and ensure improved contract management, as current NWSSP Procurement resource is stretched, and New Regs and PSR will bring increased activity and expectations".*
- *"There is likely to be an increase in resource required to manage the implementation in terms of policies and standard operating procedures. Further resource will be required for the transitional arrangements".*

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- *"Increase in Procurement resource to implement New Regime, undertake training and awareness and ensure improved contract management, as current NWSSP Procurement resource is stretched, and New Regs and PSR will bring increased activity and expectations".*
- *"There is likely to be an increase in resource required to manage the implementation in terms of policies and standard operating procedures. Further resource will be required for the transitional arrangements".*

180. **Question 52. DHSC's PSR guidance talks about the 'provider landscape' and expectations to develop and maintain sufficiently detailed knowledge of relevant providers. Do you have any views on how this could be achieved in Wales, if we chose to coordinate with DHSC's PSR for this element?**

181. Respondents stated:

- *"Market stability reports should be produced that includes the third sector and social enterprises".*
- *"Developed through planning procurements and market research and also sharing knowledge across Welsh Public sector bodies".*
- *"Key stakeholder map where partners can sign up and add information about their businesses to share knowledge and collaborate on projects easily".*
- *"Centralised provider repository - partnership working with the commissioners and third sector community with an understanding of requirements and provider capacity via a centralised provider repository. Increased intelligence and information on market stimulation and stability and support in developing providers to be able to meet the basic and key requirements".*
- *"Councils in Wales already have a consistent understanding of the provider landscape in Wales, along with the regulators in Wales such as Estyn, HIW and CIW".*
- *"For Wales, we would suggest one national portal, where delineations between local / regional / national providers can be made. This would reduce duplication and omission and streamline the work of overstretched third sector organisations who can lack capacity and resource to respond to separate regional mapping exercises…. We agree with the recommendation that ongoing (and diverse) forms of pre-market engagement be undertaken by relevant authorities to update or maintain their provider landscape knowledge".*
- *"We have existing networks of 3rd sector and independent sector providers that commissioners could make better use of as a vehicle to stay connected and hear directly from organisations".*
- *"As a part of standard procurement practice the teams conduct market research, engage with stakeholders including Welsh Government, Health Board Primary and Secondary care colleagues, the third sector, suppliers and patient interest groups. This allows for a broad overview of the provider landscape".*
- *"A database to be employed to cover the providers currently used. To keep track of all providers over all contracts and scoring on an annual basis would be labour intensive and we would consider that this would be most effective if managed and updated centrally by Welsh Government".*

182. **Question 53. DHSC's PSR guidance sets out expectations in relation to provider selection and good practice in relation to a 'relevant authority's' forward planning and clearly mapping out the expected future commercial**

activity. Please provide details on your thoughts on how that could be achieve as part of any new future health service procurement regime for Wales?

183.Respondents stated:

- *"Ensure that onerous barriers are excluded".*
- *"Publication of a pipeline of proposed activity (as per the UK Procurement Act)"*
- *"The wider procurement reforms provide considerable new scope for transparency and procurement planning. The PSR should complement these transparency and planning ambitions. At minimum it should be able to integrate with the transparency and planning requirements of the Procurement Act".*
- *"The work that has been done to develop the contract pipeline will fed into this as request come into procurement then future commercial activity can be added to the contract pipeline".*
- *"Publishing procurement pipeline similar to current requirements, however, sometimes procurement is more reactionary to new funding streams or availability of slippage so a robust pipeline may be difficult to maintain".*
- *"Publishing procurement pipeline similar to current requirements, however, often for this type of requirement the opportunities come in left wing in response to something specific that is unplanned".*
- *"Forward planning and mapping out expected commercial activity is much needed to ensure organisations are effectively informed and engaged with commissioners plans, so can meaningful contribute to the planning and design of services that will mean they are ultimately more likely to meet people's needs".*

184.**Question 54. There is requirement for Welsh Ministers to review the operation of the proposed new health service procurement regime for Wales on a 5-year basis. Do you have any views on how that should be undertaken?**

185.Respondents stated:

- *"Very complex task - would need significant resource to analyse this matter".*
- *"I believe annual reviews should be undertaken when this is implemented over the first 5 years to share any learning from public sector bodies and to help ensure that the regime is working as intended".*
- *"Via a consultative process with public and private sector organisation as well as through short surveys to the public to ensure diversity of thought and that the country feels part of the decision making".*
- *"Engagement with organisations utilising the new health service procurement regime will be fundamental. Questionnaire style feedback forms to be shared across all stakeholders clinicians / providers / colleagues / finance. It would be helpful to understand the impact of the new regime on the outcomes for patients/service users and residents as well as the impact of the process on stakeholders".*

- *"Developing the proposed new health service procurement regime, as well as any future reviews would need to be done through applying the 5 ways of working (collaboration, involvement, integration, prevention and long-term). There should also be a focus on measuring contribution towards Wales' seven national well-being being goals, for example, what effect has this new regime had on the Welsh language which is an important aspect of the goal A Wales of Vibrant Culture and Thriving Welsh Language. Another important resource when assessing the regime would be the Well-being of Wales report which outlines progress towards the national well-being goals, referring to the national indicators, for example indicator 37 "number of people who can speak Welsh". The Welsh Ministers may want to consider how the operation of the proposes regime contributes towards the national indicators and milestones".*
- *"Make robust engagement with service-users, carers, third sector a priority. We would urge the Welsh Government to recognise that this should be adequately resourced, both so that diverse engagement mechanisms can be deployed (enabling reach extending to people / communities that are seldom heard) and so that respondents' time is properly valued and compensated".*
- *"The proposed independent panel could play a role in this".*
- *"Following the implementation, there should be annual reviews of how the new Regs/PSR are working, and where improvements are required, to potential modify regs".*
- *"The 5 year review should be informed by a follow up consultation on the operation of the regime".*

186. **Question 55: What, in your opinion, would be the likely effects of the proposed new health service procurement regime be on the Welsh language? We are particularly interested in any likely effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English. Do you think that there are opportunities to promote any positive effects? If so, how can this be achieved? Do you think that there are opportunities to mitigate any adverse effects? If so, how can this be achieved?**

187. Respondents stated:

- *"Welsh should be used during the publication and notice periods alongside English".*
- *"All material should be published equally in both".*
- *"In procuring health services in Wales consideration should be given to the extent to which services will be provided through the medium of Welsh".*
- *"The new regime should have a positive effect on the Welsh language".*
- *"The Welsh Language requirements need to be included as standard in all tender documentation as part of the qualification envelope".*
- *"The proposed amendment to continue to promote use of and score organisations' promotion of the Welsh language would mitigate any adverse effects".*

- *"Under the Welsh Language act there is a requirement to offer the service in Welsh, which if excluded in the new PSR, will have a negative impact on patient care. This will have to be included in the PSR for Wales".*
- *"It is important that there are additional scores for the Welsh language within the tendering process. The Welsh language needs to be specified as part of social value. The duties on public sector bodies of fair work and social procurement should contain a commitment to support the development and use of the Welsh language as an explicit part of the legislation. The ability to use the Welsh language in work is not only a way of valuing and developing the skills of the workforce, it improves public services as it increases the ability of the public to access and receive effective services".*

188. **Question 56: In your opinion, could the proposed new health service procurement regime be formulated or changed so as to: have positive effects or more positive effects on using the Welsh language and on not treating the Welsh language less favourably than English; or mitigate any negative effects on using the Welsh language and on not treating the Welsh language less favourably than English? Please provide details on your thoughts.**

189. Respondents stated:
- *"One of the main differences between the Social Value Act (England) and Wellbeing of Future Generations Act (Wales) is the cultural dimension. If culture is being considered as a social value criteria, and contracts awarded as a result of this criteria, it would have positive effects on using the Welsh language".*
- *"The proposed new health service procurement regime should be formulated to have positive effects on using the Welsh language and on not treating the Welsh language less favourably than English; Through ensuring that all tenders are advertised in both English and Welsh and promotion of a million and one Welsh speakers by 2050 aspiration and bolstered with the anti-racist Wales 2030 agenda".*
- *"There could be an element added to the basic criteria around the Welsh language, culture and legislation. Though how this may be more difficult when health services are bought from England – for example the Major Trauma Centre for North Wales is based in England".*
- *"It is an active part of creating an equal and prosperous Wales and should be explicitly recognised as an essential part of the criteria for fair work and social equality… recommend outlining the relationship between various duties including the social partnership duty, the wellbeing duty and Welsh language requirements. The importance of avoiding adverse results on the Welsh language is one reason why providing care services through the publicly is preferable to commissioning or procuring, and why commissioning is preferable to procuring".*

190. **Question 57. Are there any other issues you would like to raise in relation to the operational principles for the implementation of a proposed new health service procurement regime for the delivery of health services in**

Wales that have not been covered in this document? If you have any related issues which we have not specifically addressed, please provide details.

191.Comments from respondents to this free-text question are set out below:

- *"We are concerned that throughout the consultation document reference is made to the Procurement Act 2023, but not how the two regimes will work together and how any crossover will be managed. Bringing in two regimes that health and local authorities will both need to understand and apply given the number of crossover and issues raised earlier in this response needs to be given proper care and attention".*

- *"Providers: As well as ensuring that equality impact measures are applied to services provided, we would like to see a similar expectation applied to their staffing arrangements. Equality and diversity monitoring data should be a requirement and recorded by the relevant authorities who procure their services".*

- *"Consideration of resource requirements across multiple teams to be able to implement, being mindful of existing capacity constraints. Also need to fully understand if all NHS-to-NHS trading relationships would be included in this proposed regime".*

- *"Proportionality: smaller third sector / user-led organisations with less capital and capacity should be supported and enabled to tender for contracts, with reasonable adjustments considered and facilitated in terms of reporting requirements."*

- *"Location: We wonder if priority will be given to Wales-based providers. Typically, economies of scale can exclude smaller / regional organisations and businesses, instead tending to give larger England-based organisations more opportunities. However, this needs to be balanced with wider benefits to the Welsh economy and citizen wellbeing."*

- *"Accessibility: Tendering processes, including Sell 2 Wales, need to be made much more accessible; we would urge the Welsh Government to look at co-designing improvements to existing platforms and when considering development of new ones, including guidance / toolkits associated with them. It is most important that the new regime does not perpetuate the existing status quo, where smaller third sector / user-led organisations who are new to this space and don't necessarily have experience of tendering, are excluded. It may be that some additional resource needs to be allocated to the provision of support and assistance for those new to tendering."*

- *"Transparency: It's important that any reduction of competitive tendering processes does not equate to a similar reduction in transparency,*

particularly where the reasons for a particular choice of provider or service are concerned. Decisions of this nature need to be collated in an accessible format and clearly signposted."

- *"Collaboration & Partnership: We would urge the Welsh Government to stipulate in its accompanying guidance to the regulations that all relevant authorities have visible and accessible mechanisms in place for 'new entrants' to make contact and build relationships with commissioners / existing service providers. We know that existing 'landscape scanning' is inadequate, thereby perpetuating the exclusion of organisations providing vital services and support to their beneficiaries. This means that relevant authorities may not be aware of the 'most suitable' providers for certain services – gaps that can see continuing disadvantage and inequality, particularly where those providers are embedded in marginalised and 'seldom heard' communities. Current grant-funding for the third sector is limited and, as a consequence, highly competitive. It is often larger organisations with more capacity for dedicated fundraising / bid-writing officers who are able to allocate time needed to developing bids, pricing smaller (often Wales-based) organisations out of the market. We would like to see a concerted effort on the part of the Welsh Government and relevant authorities to addressing this disadvantage, by encouraging and prioritising partnership working between providers where appropriate, coproduction of projects, and fair funding for the activities provided by each partner."*

- *"Innovation / Research / Piloting: We would like to see opportunity and value ascribed equally to both innovation (including feasibility and acceptability studies, and piloting of new approaches / new providers), as well as sustaining and rolling out what is already proven to work within established partnerships. Sometimes it can feel as though innovation is prioritised at the expense of sharing good practice and embedding it in everyday activity because piloting new innovations can be of shorter duration and don't require as much funding or infrastructure to roll out. Both innovation and longevity in service delivery are needed in equal measure, if Wales is to serve its citizens in the best ways possible to meet their needs. [We] would like to see better and more uniform mechanisms in place to enable research teams to form collaborative partnerships with health service providers, and for this type of model to be cited in the guidance as one example of mixed procurement, so that Wales-based health and care research translates more easily into evidence-based practice."*

- *"Quality, Co-production: The Social Services & Wellbeing Act (Parts 9 & 16) enshrines the value of citizen voice and community advocacy / representation because these ensure that services provided meet service-users wishes, preferences, and needs which, for the most part, results in their being more effective and efficient. We would like to see these values formally extended to procurement and provision of Health services, in line with commitments to informed choice, shared decision-making, and person-centred care outlined in Welsh Government's 'A Healthier Wales'*

and Quality Statements, and in recognition of the fact that these regulations will pertain to 'mixed procurement' in many instances. Engagement with service-users and their advocates should also form part of quality assurance measures, where their voices can provide qualitative data about the service(s) provided through coproduced PREMs and PROMs."

- *"Prevention & Early Intervention: Typically in healthcare, these concepts will be seen purely in relation to prompt diagnosis and treatment which, whilst absolutely valid, don't encompass wider intersectional disadvantages which can play a huge role in causing or perpetuating health inequity, poverty, a reduced quality of life and healthy life expectancy. Having one or more protected characteristic and / or living in socio-economic hardship can make it more difficult to engage effectively with health & care services, so it is vitally important that procurement processes and services commissioned are considered through the lens of preventing, reducing and / or eliminating these wider health inequalities as much as anything else. The Welsh Government should ensure that both it and relevant authorities sufficiently resource activity in this area, so that guidance and processes are coproduced with equality and rights-based organisations and citizen representatives."*

- *"….general thoughts on the consultation document… The Welsh Government is democratically accountable to the people of Wales, and responsibility over health and public services has remained in Wales since the dawn of devolution; as such, the people of Wales expects that Welsh Government can be held accountable for decisions relating to health and public services. From an accountability perspective therefore, there should limited outsourcing from the public sector in the provision, delivery and running of services, so that accountability can ultimately rest with the relevant Welsh Government Minister. Whenever outsourcing does occur, however, the provisioning of health and care services should be commissioned and not procured. The reasons for this are explained below. And whenever any outsourcing does take place, the process should give due consideration to the Welsh language and equalities…. broadly welcomes the proposals outlined in the consultation that specifically relate to the procurement of goods. However….deeply concerned by the proposals to procure, as opposed to commission, care. There is an important distinction between procuring goods and procuring care services that is not reflected in the consultation document. In order to ensure safe and effective care for patients, it is vital that the quality of services should take precedent over price. To procure care would have negative consequences on the quality, efficacy and safety of care. Social value needs to reference language access, equality and environment and align with the Future Generations Act. The National Commissioning Body, which was set-up by Social Care Reform Wales, established the principle that, when commissioning, it is important to give due consideration to quality as opposed to only price...would like to receive more information….also wants clarity on how the proposed changes would interact with the current commissioning framework and what duties, if any, would be placed on it.*

Furthermore, …. how these proposals align with current Welsh Government policy, specifically in relation to the National Commissioning Body and the Future Generations Act. In addition, the Welsh Government has previously stated that it is against introducing further private sector involvement in the NHS; … how the proposals outlined in the consultation document would align with this Welsh Government commitment. As noted on page 13 of this Welsh Government consultation document, DHSC is proposing that social care services are outside of scope of the PSR unless included as 'mixed procurement; …. very worried if this proposal were to be replicated in Wales, due to the negative impact that this would likely have on the quality of social care services…. supportive of the Welsh Government's proposals regarding mixed procurement …, albeit only if care services are not included here…. 'mixed' procurement that would encompass elements of social care. People with learning disabilities often require support from both health and social care and hence may require such arrangements. Currently, challenges are often experienced in relation to continuing healthcare arrangements and there can be delays in securing packages of care and/ or a lack of appropriate provision. Reference is also made in this section to independent providers of healthcare – there are several independent hospitals in Wales providing care for people with learning disabilities. One of the key principles underpinning the document is stated as being the reduction of health inequalities. There is considerable evidence regarding the health inequalities that people with learning disabilities face. Any changes should be aimed at reducing these and ensuring that changes do not contribute to further inequalities. This will require monitoring and (for example) disability impact assessments. Primary care and prison contracts. …. the Welsh Government proposes: "that the guidance for a future new regime for Wales should seek to align with the application of primary care services provisions as set out in the PSR statutory guidance. We do not propose to align with GP Practice 'Personal Medical Services' (PMS) in respect of GP practice providers under the PSR Regulations, as there is no equivalent provision in Wales." …. welcomes this. However, …. is deeply disturbed at the sentence that immediately follows: "We do, however, propose to add guidance regarding contracts that are specific to Wales, namely: • Community/Standard Contracts • Enhanced Services Contracts • Prison Contracts • Alternative Provider Contracts". …. believes that these services should be kept in-house and should be commissioning on a long-term basis based on quality. Many people in prison come from our most deprived and disadvantaged communities and have very poor health. They are often disengaged from mainstream health services before and after any prison term. For many people detained in prison, their poor health status arises from, and/or has been exacerbated by, early adverse childhood experiences (abuse, neglect and trauma), social circumstances (problems with housing and employment) and higher rates of smoking, alcohol and substance misuse than the general population. Given this, …. believes that caution is needed when proposing changes which would affect prisoners. The responsibility for prison health care in the public sector prisons in Wales currently rests with the Welsh Government. At a local level, prison health partnership boards, jointly chaired by local health

boards and the governors of the prisons, have responsibility for the governance of prison health services. …. believes that this current set-up should continue, and that it is important that prison health and care services are run in-house and by NHS Wales, as this the best way of ensuring sufficient public oversight around decisions affecting some of the most vulnerable people; whenever such services are outsourced, however, ….is strongly of the view that, in order to ensure quality of care, that these services should be commissioned as opposed to procured".

PART 3 - LIST OF RESPONDENTS

Anonymous	Anonymous
Cardiff Council	Welsh Council for Voluntary Action
North Wales Substance Misuse	Anonymous
Community Pharmacy Wales	Flintshire County Council
Anonymous	Anonymous
Optometry Wales	Anonymous
Race Council Cymru	Anonymous
Cardiff and Vale University Health Board (1)	Royal College of General Practitioners Wales Cymru
Welsh Local Government Association	Anonymous
Anonymous	Anonymous
Anonymous	Anonymous
Fair treatment for the Women of Wales	Comisiynydd y Gymraeg – Welsh Language Commissioner
Velindre University NHS Trust	
Anonymous	
Platfform	
Anonymous	
Powys Teaching Health Board	
Value Based Health Academy	
NHS Wales Shared Service Partnership (NWSSP)	
Royal College of Nursing Wales	
Cwm Taf Morgannwg University Health Board	
Cardiff and Vale University Health Board (2)	