



Llywodraeth Cymru  
Welsh Government

PUBLICATION

# Social care market stability reports: summary of responses

Summary of responses for the market stability consultation.

First published: 27 January 2021

Last updated: 1 February 2021

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# Contents

## Background

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## The consultation process

---

## Responses

---

## Annex A

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## Background

This consultation sought views on draft regulations, a code of practice and statutory guidance on the preparation of market stability reports.

Welsh Government was proposing to commence section 144B of the 2014 Act, which requires local authorities to prepare and publish a market stability reports (MSRs), and to bring into force regulations which would:

- require local authorities and Local Health Boards to work in partnership to prepare and publish MSRs for each of the seven regional partnership board (RPB) areas across Wales
- specify that the following matters must be considered with respect to regulated services providing care and support:
  - the sufficiency of regulated services providing care and support
  - overall quality of regulated care and support services
  - current or developing trends in regulated services providing care and support
  - significant challenges to current or future provision of regulated care and support services
  - impact of commissioning and funding of care and support
- specify that the period of assessment will be the period since the latest

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population needs assessment was published

- require MSRs reports to be published in an electronic form on their websites by 1 June 2022, and subsequent reports every five years.

Welsh Government was also consulting on a draft code of practice under section 145 of the 2014 Act, on the exercise of local authority functions in relation to MSRs, and draft statutory guidance for local authorities and Local Health Boards under section 169 of the 2014, on working in partnership to prepare and publish these reports on a regional basis. The code and guidance would include additional requirements, including:

- engaging with providers or potential providers of care and support services across the public, private and third sectors
- taking reasonable steps to engage with citizens, particularly adults and children who need care and support, and carers who need support
- appointing a lead co-ordinating body to carry out the assessment and prepare and publish the MSR
- keeping MSRs under regular review and produce revised reports or an addendum as necessary

## The consultation process

The consultation ran from 16 September to 25 November 2020. Due to COVID-19 restrictions, no face to face public engagement was possible, but two regional partnerships invited Welsh Government officials to make a presentation at a RPB meeting (North Wales) and a consultation event (West Wales).

## Responses

19 responses were received. One individual wished to remain anonymous. 16 were from organisations, including regional partnership boards (6 out of the 7 RPBs), other local government or public bodies (4), third sector or social value organisations (2), private sector provider organisations (2) and trades unions. Responses were also received from the Children's Commissioner for Wales and the Welsh Language Commissioner. A full list of those who responded can be

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found at Annex A.

## Question 1

**Do you agree that MSRs should be prepared on a regional basis, by local authorities and local health boards through the regional partnership boards? If not, please give your reasons.**

There was broad agreement with taking a regional approach to producing MSRs, and an acknowledgement that this fitted well with the role of RPBs, allowing for identification of common trends, challenges and opportunities. The link with population needs assessments and joint area plans, which are also produced on a regional basis, was also noted. However, many responses also expressed a concern about losing local authority level information in a joint regional report, and stressed the need for the reports to assess sufficiency and market stability at an individual local authority level as well as giving a regional overview. It was pointed out that most commissioning of care and support is still done by individual local authorities, even where services are co-commissioned with the Local Health Board, and therefore MSRs should be a resource to support local decision-making and risk mitigation, as well as a tool to support the development of regional approaches to planning and commissioning.

Several responses noted that each RPB area is different, and that regions are themselves diverse. The North Wales RPB reported that this was particularly the case with North Wales, which covers six local authority areas with different demographic and other factors, and different approaches to commissioning. It was suggested that it might be preferable for local authorities to produce MSRs at local or sub-regional level, then for common issues to be drawn into a regional summary focusing on common issues. Other responses suggested that the code of practice should emphasise that local authority level reporting must not be lost within the regional report, so that the needs of each local authority is not diluted.

The balance between regional and local provision was discussed in several responses. This was likely to vary by type of service. High cost, low volume placements (e.g. for children with complex needs, or learning disability services)

were more likely to be arranged regionally, whereas childcare and older people's provision was generally more localised. The Children's Commissioner suggested that a mixed approach would be appropriate for children's services. For example, fostering, residential care and 'When I am Ready' arrangements are commissioned locally, reflecting that the local authority is the corporate parent for children who are looked after; but some services such as adoption, advocacy, and residential or respite care for complex needs, might be better arranged regionally.

It was noted that taking a regional approach had the potential for better linking up with the NHS, which also commissions domiciliary care and nursing home placements, as well as co-commissioning with individual local authorities.

Concerns were expressed in the trade union and third sector responses that placing responsibility for MSRs on RPBs might unintentionally exclude key stakeholders who are not represented or under-represented on the boards (e.g. professional bodies, trades unions). It was stressed that RPBs needed to conduct extensive stakeholder engagement.

Another concern was around governance arrangements, and the role of the RPB in agreeing the regional reports. It was pointed out that providers and local authorities will often have differing views about the adequacy of fees and commissioning approaches. There might also be an issue with different approaches to data, and a need to understand how data is handled and interpreted in different local authorities. It was suggested that the code should stress the need to represent alternative views in the reports, and for an appropriate assurance mechanism.

## **Welsh Government response**

Our intention, in devising and implementing the partnership provisions within the 2014 Act, has always been to strike an appropriate balance between what is undertaken by individual statutory bodies (local authorities and health boards) and what is undertaken collaboratively at the regional level through RPBs. Local authorities retain their statutory responsibilities for meeting the care and support needs of their local population and as corporate parents for looked after children.

Although MSRs will be a useful tool for strategic planning at a regional level, linking with the regional population needs assessments and area plans, they must also be useful to local authority commissioners, helping them to understand their local markets for regulated services and supporting local decision-making.

We will revise the code of practice to stress the need for MSRs to include local-level information and analysis as well as a regional overview. We will also clarify that the purpose of MSRs is to support regional and local decision-making around planning and commissioning care and support.

We will also strengthen the sections on stakeholder engagement and the role of all RPB partners, including citizen, third sector and provider representatives, in preparing the MSRs. In particular, we will look again at the governance arrangements for agreeing and signing off MSRs, so that it is clear what is required of the statutory partners (local authorities and health boards, upon whom the statutory requirements in the legislation, code and guidance are placed) and what is expected of the other partners. This will include how differences of opinion or areas of dispute are presented in the reports.

## Question 2

**Do you agree that MSRs reports should be produced on a five yearly cycle alongside the population needs assessments? If not, what alternative arrangements would you propose, and why?**

Although the responses, on the whole, recognised that it makes sense to align MSRs with the five year cycle for population needs assessments and area plans, there were many concerns expressed about keeping these documents up to date and 'live' so that they remain current working documents. Markets for social care can change on a regular basis (particularly local markets) and there needs to be continual monitoring of the potential of potential impacts such as provider failure. There were a number of calls for at least an annual review of the market stability assessment (this links with Question 4 below).

## Welsh Government response

The five year cycle links to the local government electoral cycle and was put in place for population needs assessments (first produced in 2017) and joint area plans (2018). The code makes clear the links between MSRs and population assessments, the one looking at the supply side and the other at demand, and both feeding into the area plan. The current requirement is for population needs assessments to be reviewed and updated as necessary, and at least once at the mid-term point, and it was our intention to replicate this for MSRs. However, we recognise that to be useful MSRs must be kept up to date to reflect changes in the social care market, so we have decided to revise the review requirements in the code of practice (see response to Question 4 below).

## Question 3

**Have we specified all the key matters that need to be included in MSRs? If there are other matters you think should be included, please specify.**

This question concerned the list of matters that were included in the Schedule to the draft regulations – i.e. matters to be taken into account when considering the stability of the market for regulated services. However, most responses also used this question to make suggestions about matters that should be included or strengthened within the code of practice and guidance, and about matters that needed further clarification.

Two additional matters were suggested for the Schedule: a call to consider adding workforce development policy to the list of matters; and a specific call from the Welsh Language Commissioner that the Schedule should include a requirement to consider Welsh language needs in relation to each of the other matters.

There were many suggestions as to where the code and guidance could be clarified, strengthened or expanded. Some of the main themes and suggestions were:

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- align the code more closely with the overarching themes of the 2014 Act
- clarify throughout the documents which requirements apply to regulated services and which to wider care and support
- ensure consistency in the use of the terms 'sufficiency' and 'stability' especially in relation to regulated services
- clarify what is meant by 'sufficiency' and how it is expected that this will be measured
- strengthen the emphasis on quality, to make it clear that sufficiency includes access to quality services, and that stability is not just about volume but also about quality
- place more emphasis on co-production
- place more emphasis on preventative and broader well-being services, and encourage RPBs to take a wider approach to considering the sustainability of all care and support services not just those that are regulated
- ensure the reports have a greater focus on integrated health and social care provision, and explain how the reports will contribute to the NHS planning framework
- include opportunities to rebalance social care markets, including whether care services should be brought back in-house, and specifically address the issue of profit making in relation to children's care services
- ensure RPBs set out clearly how they have involved citizens in producing the reports
- include the need to consider the full range of market activity in the safeguarding of children and adults
- place more emphasis on the impact of workforce factors on cost and quality. Reports should consider the factors affecting a stable workforce and include a true cost analysis of these
- use reports to monitor the placing of children and young people in unregulated or unregistered provision, which are often a result of a lack of unmet need and placement insufficiency.
- ensure that supported lodgings and semi-independent living arrangements for care leavers are also taken into account, as well as 'When I am Ready' arrangements
- acknowledge that local authorities will have limited intelligence about self-funders, but also consider the issue of cross-funding, i.e. where the private pay market may be subsidising public sector rates



- consider how intelligence about the potential failure of large providers is fed to local and regional commissioners
- ensure that reports list the services available in Welsh, to allow for a market analysis of what is missing
- promote take-up of recommended best practice on setting fees, such as the 'Let's Agree to Agree' toolkit on fee setting for residential care for older people. Reports should include information about the methodology and frameworks used by partners to set fees, and explain any difference between the fees identified and the fees actually paid
- add the point that local authorities bordering England also need to engage with health and other partners in England

Several responses stressed the importance of MSRs focusing not just on regulated services but also on the sufficiency and sustainability of preventative services, services for carers, and support for children and young people leaving and entering care, as these are fundamental to reducing the need for more intensive care and support services. There were calls for the reports to take an informed view of the true scale of preventative support available across a region and within communities, much of which exists beyond the traditional boundary of social care. MSRs are an important opportunity to further support integrated working in pursuit of a shift towards preventive action.

There were various suggestions of other partners who have a contribution to make to MSRs. These included housing associations and registered social landlords, professional associations and trades unions, and providers of preventative services.

Responses from provider organisations particularly asked for the code to be strengthened to make it clear that engagement with providers had to be meaningful and go beyond merely seeking their views or requesting data. Providers in all sectors have knowledge and experience that can contribute to the assessment of overall market stability, including an understanding of the risks and mitigating factors. Discussions with providers should include both the operating environment and true cost of providing high-quality care and support.

Some concerns were expressed about the interpretation of the term 'social value', and it was suggested that this is clarified and expanded in the code. It

was noted in a couple of responses that social value cuts across all sectors, and that private sector providers also have a role to play in the evolution of new models of care.

Finally, the appropriateness of requiring local authorities to use the same core themes as for population needs assessments was questioned. Themes and population groups do not match up with regulated services – there may be a number of different markets within individual themes, and some that cross over themes. It was suggested that the code should be flexible in terms of how the reports are presented.

## **Welsh Government response**

Two suggestions were made for additional ‘matters’ to be added to the Schedule to the draft Regulations, in respect of regulated services providing care and support. These concerned workforce development policy, and a proposed requirement to consider the Welsh language in respect of each of the other matters.

It was our intention to keep the matters listed in the Schedule at a very high level, with more detailed requirements and considerations specified in the code of practice. The matters are therefore broad concepts such as sufficiency, overall quality, trends, challenges and risks, and the overall impact of commissioning on such matters. We do not consider it appropriate to add a more specific subject area like workforce to this list of matters in the Regulations, although we acknowledge that the sufficiency of the workforce is a key factor in determining both the overall sufficiency of care and support provision and the stability of the market for regulated services. We will look to strengthen the references to the workforce in the code, particularly in relation to challenges, risks and mitigating actions.

With regard to the Welsh language, we do not consider that it would be appropriate to specify this in the Schedule as this is also not a ‘matter’ of the same order as those the Schedule is designed to specify. We will, however, place a requirement in the code for local authorities, when considering the matters listed in the Schedule, to also consider the state of the market for

regulated services provided through the medium of Welsh.

We are very grateful to those who responded for the extensive list of suggestions as to what additional material might be added to the code of practice to make it more comprehensive and useful for local authorities and their RPB partners. All of these have been carefully considered, and many have been incorporated into the code which has been thoroughly revised and rewritten following the consultation. Almost all of the points listed above have been accepted and included in the form we thought most appropriate in the final version.

## Question 4

**Do you agree that MSRs should be kept under regular review and revised as necessary, but at least at the mid-way point of the five year cycle? If not, what other monitoring and review arrangements would you propose, and why?**

Although some responses felt that this was a sensible and proportionate approach, several others suggested that there should be a requirement for at least an annual review of MSRs. It was pointed out that markets can change rapidly and factors such as the Covid-19 pandemic can lead to pressing and immediate supply issues in areas such as domiciliary care. It is essential that MSRs are live documents that reflect the rapidly changing environment that social care operates in, and therefore there needs to be more frequent monitoring and review. For example, in North Wales more frequent review would support the management of the regional frameworks for particular regulated services and link to how often these should be opened up to new providers. Annual reviews could also help local independent providers respond more flexibly to developments in the market.

It was noted in a couple of responses how little was said in the code about how these reviews should be undertaken, and what was meant by 'as necessary'. There was a suggestion that Welsh Government develops a screening tool that could be used to assess whether a review is needed.

Some other approaches were suggested, including a requirement that RPBs report on actions taken in relation to market stability in their annual reports. Other ideas were that we explore alternative and effective ways of staying up to date – e.g. setting key indicators of market stability which could be monitored more frequently and responded to (specific suggestions included rate of provider failure, rate at which contracts are handed back, waiting times, staff turnover, vacancy rates or lack of availability).

It was pointed out that frequent reviews would be resource-intensive.

Social Care Wales expressed a wish to work with local authorities and RPBs to ensure that its national social care data portal provides them with the relevant data and useful analysis and reporting of key themes and trends across social services supply and demand in Wales.

There was also a call for the code to clarify the role of Welsh Ministers in monitoring and reviewing the MSRs submitted.

## **Welsh Government response**

The requirement for a formal review at the mid-cycle point was chosen to mirror that currently in place for population needs assessments, which are produced on the same five year cycle and which provide the demand-side data to match the supply-side data contained in the MSRs. However, we accept the need for these documents to be kept up-to-date and ‘live’ if they are to be useful tools for regional and local planners and commissioners. This is particularly true of the MSRs, given the way the social care market can change and fluctuate in a short space of time. We have decided, therefore, to change the requirement so that local authorities / RPBs will have to undertake reviews of their MSRs at least annually. We will also consider an annual review requirement for population needs assessments when we revise the guidance on those for the next round.

We have decided not to add any further detail as to how these reviews must be carried out, as we believe this should be for RPBs to determine. We have, however, added to the code an explanation of how the Welsh Government will use the material contained in the reports (and any revised reports / addendums) when they are submitted to the Welsh Ministers. This includes informing Welsh

Government policy on commissioning, resourcing and reshaping care and support, assisting Welsh Government and Care Inspectorate Wales develop a proportionate and appropriate approach to market oversight, and contributing to informed discussions between Welsh Government and RPBs about their strategic area plans.

## Question 5

**In your opinion, does the draft code of practice strike the right balance between what is required of local authorities and what is left to their discretion? Are there further requirements or guidelines you would like to see added, or other ways in which the document might be improved?**

On the whole the balance was felt to be about right, although one region pointed out that the document contained a lot of ‘musts’.

However, there were a number of specific areas where it was thought the document could be improved to achieve a better balance between direction and discretion. It should be noted that there was considerable overlap between the answers to this Question and those to Question 3 (on key matters to be included) and Question 11 (any other related issues), so not all of the points are duplicated here. Some key suggestions as to how the document could be improved were:

- it would be useful to have an outline of the specific data required from all parties, and a shared understanding of how this data will be used in the MSRs. This would enable consistency of data across Wales
- the need for greater consideration and transparency around reporting on the cost of delivery
- the strategic importance of the workforce to assessing sufficiency and market stability
- strengthen the guidance on how self-funders should be considered when developing the reports
- further detail on the wider care and support services to be considered.

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- more on how this information should be used for regional and local planning, and on how the reports will be used by the Welsh Government
- it was pointed out that there may be an issue with sufficient data. The code should acknowledge the balance between making the most effective use of available data and exploring the data development agenda to address gaps. The first round of MSRs would provide an opportunity to explore some of these data issues
- the code should contain guidance on the mechanisms that must be in place to involve people and to embed co-productive principles. There needs to be a clearer focus on choice, quality and meeting personal outcomes
- ethical procurement practices should be included as a requirement

Local government responses asked for more explanation of how the different documents – population needs assessments, MSRs, area plans, and more detailed market position statements and commissioning strategies – would fit together and interact with each other, and for a clearer explanation of the rationale for the flow between the different parts of the commissioning cycle. It was felt, for example, that if MSRs focused on desired future outcomes, particularly around sufficiency, then this would move the document into the space typically occupied by market position statement and commissioning intent documents for particular services or segments of the market.

## Welsh Government response

We are pleased that the balance was thought to be about right, and have considered and broadly accepted the points that were made for strengthening and clarifying the code. The code is a statutory document the purpose of which is to place clear requirements upon local authorities, and the term ‘must’ is used (and highlighted in bold throughout) to specify these. We have attempted, in the revised code, to clarify the section on how MSRs contribute to the strategic planning and commissioning process, and how they fit with other relevant documents.

We have noted the comments about data. Although we have not sought to specify relevant data sources in the code, we will continue to have discussions with relevant bodies such as the National Commissioning Board, the Children’s

Commissioning Consortium Cymru, Care Inspectorate Wales and Data Cymru about the broader data development agenda, and will also discuss these issues with RPB chairs and leads in the run up to the MSR exercise. As was noted in the responses, this first round of MSRs will help explore some of these issues in the light of experience and lessons learnt.

## Question 6

**In your opinion, does the draft statutory guidance set out clearly the partnership approach that local authorities and local health boards should take in preparing their MSRs? Are there further requirements or guidelines you would like to see added, or other ways in which the document might be improved?**

The main concern expressed in answer to this question was around the role of partners other than local authorities and local health boards in preparing MSRs, with several responses calling for an enhanced partnership approach and for further guidance on how a wide range of stakeholders could engage with the process. Some of the responses from non-statutory organisations expressed the view that RPB membership is too limited for effective engagement, and that the guidance needed to set out more clearly how citizens (service users and unpaid carers particularly) could be involved, in accordance with the emphasis in the 2014 Act on co-production. A similar view was expressed by care providers, in terms of their own involvement. The views of the social care workforce were also highlighted as an area for greater emphasis.

Several responses suggested that Care Inspectorate Wales should be listed as a partner and its contribution to the process of preparing these reports should be explained. Social Care Wales and other organisations which hold relevant data and information need to be referenced.

There was a feeling that although the guidance gives the principles of partnership working, it did not deal enough with the practicalities of this, including what exactly the local health board input should be.



It was suggested that the guidance should clarify the role of RPB representatives other than local authorities and the local health board, and also make it clear that the full RPB has a valuable contribution to make in discussion and analysis of the MSRs. The guidance should also clarify the expected role of the RPB where the combined analysis of the population needs assessment and MSR shows that action is required to respond effectively to local need.

The Welsh Language Commissioner asked that the guidance explicitly state that local authorities and local health boards, when acting as regional partners, must comply with the Welsh language standards.

## **Welsh Government response**

The aim of the statutory guidance on partnership arrangements is to place requirements on local authorities and health boards, as the statutory partners on RPBs, to work collaboratively to produce regional MSRs. As RPBs are not corporate bodies we are unable to place requirements directly upon them, and are unable to direct the other non-statutory RPB partners. Also, the code of practice can only be used to place requirements on local authorities. We have tried, in the statutory guidance and in the code, to make it clear that production of MSRs should be something that engages and is owned by the whole RPB. The statutory guidance chapter has been kept relatively short, so as not to replicate the more detailed material in the code. The focus of the guidance is therefore very much on partnership and governance arrangements. We have, in the light of the consultation feedback, tried to clarify what is expected of the RPB as a whole, and have added a reference to other partners such as Care Inspectorate Wales who were missing from the consultation draft.

## **Question 7**

**What impacts do you think our proposals will have on the duties of public bodies under the Equality Act 2010, or upon a local authority's duty under the 2014 Act to have due regard to the United Nations Convention on the Rights of the Child, the United Nations Convention on the Rights of People with Disabilities, or the United Nations**



## Principles for Older People?

The following specific points were made concerning potential impacts or ways in which the code and guidance could be strengthened in relation to equality and rights:

- the code should also include a requirement to take account of the UN Convention on the Elimination of All Forms of Discrimination against Women, especially given the disproportionate role women play in the social care workforce and as informal carers
- the code should report to socio-economic disadvantage, and reference the new socio-economic duty
- the reports should examine the extent to which the supply of care supports people to reside at home for as long as possible (Article 6, UN Principles for Older People) and disabled people's right to live in the community and choose place of residence (Article 19 Convention on the Rights of People with Disabilities)
- taken together, the population needs assessments and MSRs will help increase understanding of the needs of the population who require services in other languages outside English and Welsh
- add advice and guidance on what support is available to support RPBs undertake equality impacts assessments
- the code makes little reference to encouraging children and young people to engage and share their experiences in monitoring the sufficiency element of market stability assessments. Local authorities, the Children's Commissioning Consortium Cymru, Care Inspectorate Wales and advocacy providers all have strong participatory systems which can be utilised. RPBs should consider using the children's rights impact assessment tools on the Children's Commissioner's website.
- as well as requiring local authorities / RPBs to undertake an equality impact assessment, the code should also refer to the need for them to monitor and take appropriate action in response
- in a sector that is a major employer of people with protected characteristics, the equality impact assessment should address the impacts on the workforce, not just individuals receiving services

## Welsh Government response

We have made several changes to the code in the light of these comments, including:

- adding references to the UN Convention on the Elimination of All Forms of Discrimination against Women and to the new socio-economic duty
- putting the requirement to take into account relevant rights and duties at the front of the section on carrying out sufficiency and market stability assessments
- strengthening what the code and guidance says about participation and co-production including engagement with citizens
- adding a requirement that the equality impact assessment also considers impacts on the care and support workforce

## Questions 8 and 9

We would like to know your views on the effects that our proposals with regard to MSRs would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Please also explain how you believe the proposed policy around market stability reports could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

These questions both concern the Welsh language and, in the context of this particular consultation, arrangements to assess sufficiency of care and support services and the market for regulated services in meeting the needs of Welsh speakers who need care and support, or of Welsh speaking carers who need support. The responses tended to combine their answers to these two

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questions, so they are dealt with together here.

The responses generally expressed a hope that the MSRs would help build up picture of the care and support services available in Welsh, and a better understanding of where the provision of care and support provided through the medium of Welsh might need to be increased to meet need and demand. Identifying where supply is below need may present opportunities to increase the Welsh-speaking workforce, recruitment opportunities, and even business start-up and expansion opportunities. There were some calls to strengthen this element of the code and guidance, perhaps putting clear and firm expectations about the availability of Welsh language care and support services. However, there was also concern that it was not clear how RPBs would address the gaps in provision that were identified, and calls for the MSRs to include active steps to remedy the shortfall.

It was suggested (in North Wales) that this element of the reports would feed directly into the work of the regional workforce board and also of the national “WeCare” Wales recruitment campaign, allowing resources to be targeted at areas of need.

Reflecting upon how little consideration had been given to Welsh language services in the population needs assessments published in 2017, the Welsh Language Commissioner expressed a concern as to whether MSRs could be of any value in planning and providing services for Welsh speakers unless the population needs assessments contained sufficient and appropriate information about the need for these services and the range and level of provision that was necessary. The Commissioner referred to the Care Inspectorate Wales report on care homes and dementia (2020), which found that many homes do not identify people who are Welsh speaking, and that homes where there are Welsh speakers do not have Welsh speaking staff or activities. This is both harmful in terms of people’s well-being, and also an infringement of their rights. If local authorities do not have sufficient information about the Welsh language care needs of their populations, how can they recruit and retain sufficient Welsh speakers in the health and social care workforce, and commission quality services?

The Welsh Language Commissioner recommended that the Welsh Government

should:

- review Welsh language considerations in population needs assessments and area plans from 2017 / 2018, and strengthen the new population needs assessment and area plan guidance
- strengthen this code of practice and statutory guidance on MSRs
- strengthen its approach to monitoring these Welsh language requirements
- undertake a review of all three by the end of 2013

## **Welsh Government response**

We agree with the view that MSRs, in the context of a wider approach to strategic planning and commissioning which includes population needs assessments and area plans, have huge potential to identify the need and demand for care and support provided to the Welsh speaking community through the medium of Welsh, and the sufficiency, stability and sustainability of the services provided. Crucially this includes any gaps in provision, and opportunities to better match supply with demand, including bringing new suppliers into the market. We have tried to strengthen this message in the code of practice, but acknowledge that these are wider issues than can be accommodated in the code on MSRs alone. We will consider, as we work with RPBs and other key bodies including the National Commissioning Board and Social Care Wales in the run up to the next round of population needs assessments, MSRs and area plans, how we can best support local authorities and RPBs in meeting their obligations under the Welsh language standards in respect of care and support provision.

## Question 10

**Under the Well-being of Future Generations (Wales) Act 2015, public bodies have a duty to consider the long-term impact of their decisions. We would like to know to what extent you think our proposals will support the principle of sustainable development set out in that Act.**

Further information on the [Well-being of Future Generations \(Wales\) Act 2015](#)

Responses to this question agreed that producing MSRs which focus on the sustainability of care and support and feed into the five year cycle of area plans will contribute to the goals of the Well-being of Future Generations (Wales) Act 2015, although the Act is not explicitly referred to in the code. The reports should help RPBs make decisions which create more sustainable services, and will help them track the longer-term impact of commissioning activities and work with providers. It was suggested that the establishment of appropriate governance structures to monitor and review MSRs would enable a holistic approach to strategic planning by PPBs. Also that a suitable data and planning infrastructure should be put in place to allow for long-term modelling and continuity in planning.

It was pointed out, however, that MSRs can only be a part of the wider picture, and what is needed is a long-term strategy and a sustainable funding and delivery model for social care which will meet needs of future population. MSRs can contribute to this, but need to be part of a broader picture of change. There is also a link to work on longer term approaches to paying for care and workforce development, as paying for the true cost of care and providing fair and equitable terms and conditions are a key aspect of sustainability. The code should set out more clearly how stable and sustainable social care services can be achieved, especially through regional approaches to commissioning, use of other funding and pooling budgets in a realistic and attainable way.

It was also pointed out that MSRs must also be mindful of the short to medium term, especially in the light of how the sector has been affected by Covid-19,

and how plans may have to change to plan for recovery.

There was a suggestion that if the MSRs included recommendations around future sustainability this would support the 'make recommendations' goal of the Well-being of Future Generations (Wales) Act 2015.

## **Welsh Government response**

We agree with the assessment that MSRs will contribute to the goals of the Well-being of Future Generations (Wales) 2015 in that they will take a forward look over a five year period at issues such as sufficiency and sustainability of care and support, and aim to future proof the market for regulated services so far as this is possible. We acknowledge, however, that there are much wider issues around shaping and rebalancing social care which go far beyond the scope of these regulations, code and guidance on MSRs. That is why we published, on 12 January 2021, our White Paper on 'Rebalancing care and support: a consultation on improving social care arrangements and strengthening partnership working to better support people's well-being' (<https://gov.wales/improving-social-care-arrangements-and-partnership-working>). The consultation seeks views on proposals to introduce new legislation to improve arrangements for care and support and strengthen partnership working to achieve the vision set out in the 2014 Act. The proposals include setting out a clear national framework to support services to be planned regionally and delivered locally, and for the strengthening of partnership arrangements. Welsh Government analysis of the next round of population needs assessments and MSRs will help feed into this wider national framework approach during the next Senedd term.

## **Question 11**

**We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.**

There various other issues raised in the responses, although some repeated

points made in answer to earlier questions.

The Association of Directors of Social Services Cymru and the Welsh Local Government Association, and some of the regional responses, put in a plea not to underestimate pressures on local government resources and the capacity required to undertake detailed assessments, including engagement with citizens and providers. Some questioned the timing of this exercise, given the pressures of the Covid-19 pandemic and the time and resource needed to complete it.

Provider organisations suggested that there might also be additional costs for providers, and stressed the need to ensure that there was no unnecessary duplication of data accessible elsewhere. It was suggested that standard templates be developed for gathering information for the reports.

There was some concern about potential inconsistencies in recording and reporting data across the region. Also, some of the market data would be commercially sensitive, and any data drawn from the assessment of individuals' needs would also need to be handled confidentially.

It was suggested that the code should contain a definition or description of what is meant by the term 'social care market' which also recognises that commissioners may not have access to some aspects of the market (e.g. services purchased by self-funders). There are many markets within health and social care, some more amenable to commissioner influence than others. Market stability can be contingent upon a whole range of potential business decisions, which may be made without any reference to the commissioning bodies.

It was suggested by a key provider organisation that providers are eager for the introduction of market stability reports as a tool that will enable them to play a meaningful role in meeting needs and outcomes. The reports should help maintain the Choice of Accommodation directive and promote care closer to home, influence stronger partnerships and progress the relationship between commissioners and service provider. However, to achieve these potential outcomes, the reports need to be underpinned by accountability and transparency.



One of the trade union responses saw MSRs as potentially part of a wider exercise to rebuild public sector capacity which had been hollowed out by marketisation and austerity. It was suggested that, in the interim, commissioners should only purchase care from providers that are transparent about their operations, pay their taxes, recognise trade unions, and can demonstrate compliance with fair and reasonable workforce requirements.

## **Welsh Government response**

We have made some amendments to the code of practice in this light of these comments, in particular attempting to define or describe what we mean by ‘the social care market’.

We understand the concerns that have been expressed about the timing of MSRs (and the next round of population needs assessments), especially in the light of the pressures of the Covid-19 pandemic. However, the MSRs will not be due until 1 June 2022 when current pressures will hopefully have eased considerably, and the purpose of producing these reports is precisely to ensure that social care markets remain stable and sustainable, and are future-proofed against further challenges and risks.

The issue of costs has been considered in the Regulatory Impact Assessment, which forms part of the Explanatory Memorandum which will be published together with the regulations and code. The RIA considers, in particular, how the benefits of producing MSRs outweigh any potential costs. Although there will be some direct costs to local authorities, particularly in relation to staff time and engagement with citizens and providers, the statutory guidance makes it clear that these must be shared by the statutory partners across the region, and it should be noted that local authorities and RPBs should already have mechanisms in place to assess the sufficiency of provision and the state of local markets for social care. The aim of MSRs is to help them make more strategic and cost-effective commissioning decisions, which more closely matches supply with demand, as well as helping them to shape the market for social care so that it better meets local needs and circumstances.

In conclusion, Welsh Government is very grateful for the high quality and



detailed responses received to this consultation. As a result, although no changes were made to the draft regulations, the code of practice has been substantially revised and rewritten and significant changes have also been made to the statutory guidance on partnership arrangements. The result is hopefully a document which places clear and practical requirements upon local authorities and health boards, enabling them to prepare, with their RPB partners, robust and meaningful MSRs which can be used to shape the social care market across the RPB area, feed into area plans, and support local and regional decision-making.

## **Annex A**

### **List of responses**

#### **Regional Partnership Boards:**

West Glamorgan Regional Partnership  
Cardiff and Vale Integrated Health and Social Care Partnership  
West Wales Care Partnership  
North Wales Commissioning Board  
Gwent Regional Partnership Team  
Cwm Taf Morgannwg Region

#### **Other local government bodies:**

WLGA and ADSS Cymru  
Flintshire County Council Social Services: Contracts & Commissioning and Direct Payments Team

#### **Third sector / Social value sector**

Wales Council for Voluntary Action  
Community Housing Cymru

## **Provider organisations:**

UK Home Care Association  
Care Forum Wales

## **Trades unions:**

Royal College of Nursing  
Unison Cymru Wales

## **Commissioners:**

Children's Commissioner for Wales  
Welsh Language Commissioner  
Other public bodies:  
Social Care Wales  
Care Inspectorate Wales

## **Individuals:**

Anonymous

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