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For all enquiries relating to this agenda please contact Cath Forbes-Thompson
(Tel: 01443 864279 Email: forbec1@caerphilly.gov.uk)

Date: 19th November 2014

Dear Sir/Madam,

A meeting of the **Scrutiny Leadership Group** will be held in the **Ebbw Room, Penallta House, Tredomen, Ystrad Mynach** on **Thursday, 27th November, 2014** at **5.00 pm** to consider the matters contained in the following agenda.

Yours faithfully,

A handwritten signature in blue ink that reads 'Chris Burns'.

Chris Burns
INTERIM CHIEF EXECUTIVE

A G E N D A

- 1 To receive apologies for absence.
- 2 Declarations of interest
Councillors and Officers are reminded of their personal responsibility to declare any personal and/or prejudicial interest(s) in respect of any item of business on this agenda in accordance with the Local Government Act 2000, the Council's Constitution, and the Code of Conduct for both Councillors and Officers.
- 3 Minutes of meeting held on 29th October 2014.
- 4 CCBC Website redesign - Presentation.
- 5 Publication of Best Practice Guidance for Engagement and Consultation with Older People on Changes to Community Services in Wales.

A greener place Man gwyrdach

A decorative graphic at the bottom of the page featuring a stylized building and trees in green and yellow, set against a curved background.

Correspondence may be in any language or format | Gallwch ohebu mewn unrhyw iaith neu fformat

Circulation:

Councillors L. Ackerman, Mrs E.M. Aldworth, Mrs P. Cook, H.W. David (Chair), W. David, D.T. Davies, D. Havard, C.P. Mann, S. Morgan (Vice Chair), J. Pritchard and D. Rees

For Information:

Councillor Mrs C. Forehead

And Appropriate Officers



SCRUTINY LEADERSHIP GROUP

MINUTES OF THE MEETING HELD AT PENALLTA HOUSE, YSTRAD MYNACH ON WEDNESDAY, 29TH OCTOBER 2014 AT 6.00 P.M.

PRESENT:

Councillor H. David – Chair

Councillors:

Miss L. Ackerman, Mrs E. Aldworth, Mrs P. Cook, D.T. Davies, D. Havard, C. Mann, S. Morgan, and D. Rees.

Together with:

C. Burns (Interim Chief Executive), T. Maher (Assistant Director Planning & Strategy), N. Scammell (Acting Director of Corporate Services and Section 151 Officer), D. Street (Corporate Director of Social Services), A. Price (Interim Deputy Monitoring Officer), J. Jones (Democratic Services Manager) and C. Forbes-Thompson (Scrutiny Research Officer).

1. APOLOGIES

Apologies for absence were received from Councillors, W. David and J. Pritchard.

2. DECLARATIONS OF INTEREST

There were no declarations of interest received at the commencement or during the course of the meeting.

3. MINUTES – 25TH SEPTEMBER 2014

RESOLVED that the minutes of the Scrutiny Leadership Group meeting held on 25th September 2014 (minute nos. 1 - 6) be approved as a correct record and signed by the Chair.

REPORTS OF OFFICERS

Consideration was given to the following reports.

4. DRAFT CABINET BUDGET STRATEGY – VERBAL REPORT

The Chair welcomed CMT to their first meeting of Scrutiny Leadership Group and invited Mr C Burns to outline his report. Mr Burns stated that the reason for their attendance was to explore with SLG the consultation on the draft budget following the report to Cabinet this week.

Members were reminded that the budget cuts discussed by scrutiny to date were unpalatable but would be less painful compared to the anticipated budget settlement for the next few years. There is no indication from Welsh Government as to the likely financial settlements after 2015/16 due to next years general election. Regardless, it was important to plan for future years and the assumption was similar budget cuts would continue in the medium term. Therefore, the MTFP assumed annual cuts of 4.5% for 2016/17 and 2017/18 and in the context of continued protection for schools budgets and increasing demand for social services this could result in a 20% reduction in the Council's total budget. Therefore, it was prudent to start planning for the medium term as some budget cuts and service changes need a long lead in time to be achieved.

The Members seminar planned for Monday 3rd November would be an opportunity for members to consider possible strategies for achieving the required savings before individual scrutiny committees explore these options further. Mr Burns paid credit to the consultation carried out this year and the commitment of scrutiny committees in helping to identify £12.5m of possible cuts with £8m not affecting frontline services. The majority of the proposals have already been discussed at scrutiny but some additional proposals were added when the actual level Welsh Government settlement was known. For some scrutiny committees the consultation on the budget cuts can be considered as part of the normal round of meetings and included on the agendas, however, for others such as Regeneration & Environment additional special meetings would be arranged. It was suggested that Directors meet with Chairs to determine issues for forward work programmes and if there is a requirement for special meetings.

Following consideration by scrutiny committees a second seminar will be arranged in the new year in order to find an estimated £25m of savings for 2016/17 and 2017/18. The aim is to find savings by reducing rather than stopping services, reducing administration and back office costs, working with community organisations, considering social enterprise or community trust service delivery models and collaborations with partners. However, the level of cuts mean that some services will be affected, therefore, scrutiny committees are asked to consider all proposals carefully and where members are reluctant to agree to proposals alternatives are suggested as the only other option is to increase council tax, which has already been proposed at 3.9%.

The Chair stated that he had attended Cabinet meeting to observe the report on the draft budget proposals and noted that although the report included comments from scrutiny he was disappointed that this was not reflected on during the meeting by Cabinet Members. Mr Burns stated that this had been a long process and there had been extensive discussion on the proposals, including the issues raised by scrutiny prior to Cabinet. He would ensure that feedback on the comments received would be passed on.

Members asked what the financial outturn was likely to be for this year. Mrs Scammell stated that all budget monitoring reports will go to scrutiny and indications are showing an under spend for the authority and savings already being made for the financial year 2015/16.

A Member asked if scrutiny could be given more savings options than are required in order to make informed choices. Mrs Scammell stated that the special scrutiny meetings were set up with that in mind, the overall proposals that had been taken through the Special Scrutiny Meetings were a higher total than that required for 15/16. The savings proposals agreed by scrutiny did not come close to the £12.8m savings target hence some partly supported savings were used. When this list was exhausted, savings not supported had to be selected.

Members asked what was proposed in respect of public engagement for the draft budget. Mr Burns stated that the second round of public consultation would be more detailed than the summer consultation. There were 1700 responses to the previous consultation, however, it was not known who had responded. That said, the responses were an indicator of public views and the next consultation round would be include the specific proposals agreed with Cabinet.

Members asked if the public would be informed of scrutiny involvement in the consultation on the draft budget proposals as it is important that the public know where scrutiny can have an impact. Mr Burns stated that the next public consultation round will explain what has happened and how the public can be involved further. He explained that there will be drop in sessions arranged across the county borough to get greater engagement.

Members suggested that the responses from the first round of consultation are categorised into themes and these are publicised. Mr Burns suggested that the results from the surveys could be used at the seminar planned on 3 November. Mrs Scammell stated that public responses would be included as Appendices in the final Cabinet report.

SLG asked that any public engagement be conducted in accordance with the public engagement principles.

Members asked how crosscutting issues would be examined, and suggested that task and finish groups be a way to address this. Mr Burns stated that he felt the existing scrutiny arrangements should be sufficient and the seminar approach should help Members understand cross cutting issues. The Chair asked that Members are reminded that this seminar is crucial in terms of the budget consultation in order to ensure that attendance is as high as possible. Mr Burns agreed to circulate another email and background papers in advance of the seminar.

Members asked that sufficient time is allowed when planning the special scrutiny meetings so that additional follow up meetings can be held if the scrutiny committee wishes to have additional information reported back for further discussion.

Members asked that reports would include community impact assessments; Mr Burns confirmed that all proposals will include impact assessments but it would be difficult to find proposals that don't have some impact.

The Chair thanked CMT for their attendance and summarised the importance of Members understanding the impact of budget cuts and outcome of the public consultation process. He also requested the outcome of the public consultation is published. CMT left the meeting at this point.

5. SCRUTINY IMPROVEMENT ACTION PLAN UPDATE

Mr Jones reminded members of the work undertaken as a result of the Scrutiny Improvement Action Plan in the last 12 months. The SIAP was broken down into three themes, Training and Development, Scrutiny Development and Organisation, Performance Management and Forward Work Programmes.

At the last meeting of SLG Members were asked to consider the legacy of the Gwent Scrutiny Challenge and nominated themselves to take part in the peer evaluation teams. Mrs Forbes-Thompson has since met with Gwent colleagues and Centre for Public Scrutiny to make arrangements and it is planned to carry out the first observations before Christmas.

The majority of the actions are completed, the training for Cabinet Members and the Management Network was carried out as planned and the scrutiny booklet is completed and included with the report for information. Action 14 refers to co-option arrangements and a report has been drafted and will need to be circulated for consultation with stakeholders and CMT. Action 18 refers to performance management scrutiny arrangements and a report has been drafted and will come forward shortly. Finally the final task for action 18 relates to training for Members, which was carried out last week.

The Chair referred to the planned peer review and a recent request by Chair of Audit Committee for an internal observation of his chairing skills by Mrs C Forbes-Thompson. Mr Jones stated that the Chair of Audit had asked for this to help improve his performance and met up afterwards to receive feedback. The Chair of Policy and Resources asked if it would be possible for him to take part as well and Mrs Forbes-Thompson agreed to make arrangements.

A Member referred to the terms of reference for the Regeneration and Environment Scrutiny Committee included in the scrutiny booklet, which does not include Communities First as a responsibility of the scrutiny committee. It was clarified that these were the terms of reference from the Council's constitution, Mrs Price agreed to refer to Gail Williams.

Members asked when the reports that have been drafted will come forward for discussion, Mr Jones stated that the co-opted report will require consultation with stakeholders in order to ensure that co-optees who have given their valuable support over many years are able to comment on any proposals. The report on performance management will come forward, hopefully to the next meeting of SLG.

A Member asked how the accountability of co-opted members is ensured and what voting rights they have. Mr Jones clarified the difference between statutory education co-opted members who have voting rights on education matters and non voting co-opted members, he stated that the accountability issue is part of the reason for reviewing non-voting co-optees.

Members noted the report.

6. SCRUTINY COMMITTEE FORWARD WORK PROGRAMMES

Mrs C Forbes-Thompson updated Members with requested changes to the draft forward work programmes. A Member made reference to a request for a report on school governors and police checks, it was clarified that this was made at Audit committee and the request should be made through the Chair of Education for Life Scrutiny Committee. Members asked for clarity of the role of scrutiny and schools which was raised at the Gwent Scrutiny Challenge, Mrs Price confirmed that a report is being drafted and will come forward giving advice on this issue.

A Member made reference to the Regeneration and Environment Scrutiny committee forward work programme and stated that it is possible that the Gwent Trading Standards report will be deferred.

Mrs Forbes-Thompson updated SLG with outstanding and new requests for reports from Members and the public, as follows:

Education for Life

Members noted the request for a report on school uniforms and advice from officers, SLG agreed that this is a school issue, however in view of the absence of the Chair and Vice Chair asked that this be deferred.

Mrs Forbes-Thompson updated Members with a request from a member of the public to discuss a school inspection outcome; SLG did not think it was appropriate for scrutiny committee to examine an individual school, which is the responsibility of the governing body. Members asked that appropriate advice be given on the complaints process. In addition that the member of the public is invited to attend scrutiny committee when school improvement is on the agenda. Members also asked that the contact with the member of the public should be carried out in person if possible.

Health Social Care & Wellbeing

A report on the Child and Adolescent Mental Health Services (CAMHS) has been requested, SLG noted that the Director will discuss with the Member concerned. SLG also noted a report has been requested on Community Mental Health Teams and Officers will prepare and bring forward in due course.

Regeneration and Environment

SLG noted the comments in respect of the town centre car parking report request and asked that a copy of the reports to Bargoed Town Centre Management Group and Cabinet are forwarded to the Member in order to ascertain if this is sufficient or if further information is required.

In respect of Bargoed Cinema, SLG noted the updated information and that the outcome of the procurement process will be known in May 2012, it was confirmed that the outcome will determine the next steps. SLG agreed to await the outcome of the procurement process.

Members noted the current status of the public conveniences report, which is pending awaiting Welsh Government response to consultation. SLG also noted the full response to the request for a report on wildflower planting and asked that the Member is contacted to determine if they are satisfied with the response to delete the request.

Policy and Resources

Members noted that the request for a report on the surveillance policy would be discussed by the Member concerned and the Director of Corporate Services. It was agreed that this was an important issue that needed to be brought to a conclusion.

Officers have made enquiries in respect of the report requested on compulsory purchase orders for empty properties but have not been able to identify the scheme referred to, officers will contact the Member concerned to clarify the details. SLG noted the action taken.

SLG noted that that officers have contacted the Member in respect of the request on derelict and empty buildings, it was noted however that the Council doesn't hold a register of empty properties and it would therefore be difficult to produce a report.

Members noted that a report had been requested following a complaint from a member of the public on housing benefit advice and information. It was noted that the report requested was in relation to the 'bedroom tax'. SLG were informed that the request had been referred to Officers for a response. The complainant has been kept advised of this and the option to submit a request to scrutiny should the response be inadequate.

The meeting closed at 7.42 p.m.

Approved as a correct record and subject to any amendments or corrections agreed and recorded in the minutes of the meeting held on 29th October 2014 they were signed by the Chair.

CHAIR

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SCRUTINY LEADERSHIP GROUP – 27TH NOVEMBER 2014

SUBJECT: 'BEST PRACTICE GUIDANCE FOR ENGAGEMENT AND CONSULTATION WITH OLDER PEOPLE ON CHANGES TO COMMUNITY SERVICES IN WALES' AND 'COMMUNITY SERVICES TOOLKIT FOR OLDER PEOPLE'

REPORT BY: MANDY SPRAGUE, DEVELOPMENT OFFICER FOR OLDER PEOPLE

1. PURPOSE OF REPORT

- 1.1 To advise the Scrutiny leadership group on the recent publication by the Older People's Commissioner for Wales of the 'Best Practice Guidance for Engagement and Consultation with Older People on Changes to Community Services in Wales' (Appendix 1) and the 'Community Services Toolkit for Older People' (Appendix 2).

2. SUMMARY

- 2.1 With Local Authorities across Wales very likely to face further budgetary challenges during the coming years, new and innovative ways must be explored to ensure that essential community services remain available for older people. However, the Commissioner reports that older people often find it difficult to engage with Local Authorities to influence the decisions that affect them; that they often feel powerless when plans are made to reduce or close down services; that there are insufficient opportunities to express their views, and feel that their concerns are often overlooked and given little attention when they do so.
- 2.2 The Older People's Commissioner for Wales is keen to ensure that the voices of the people who use community services are at the heart of any decisions made and has therefore developed the ['Best Practice Guidance'](#) to support Local Authorities to ensure full and meaningful engagement with older people when key decisions are being made regarding community services. This has been issued under Section 12 of the Commissioner for Older People Guidance.
- 2.3 In addition to the 'Best Practice Guidance' the Commissioner has also published a ['Community Services toolkit for older people'](#) with the aim of providing older people with information about the most effective ways to make their voices heard and influence the decisions that affect them.
- 2.4 CCBC engagement activity is co-ordinated by the Communications Unit and follows the guiding principles and good practice set out in the adopted Citizen Engagement Strategy and Action Plan. The Engagement Officer works with officers in key service areas to ensure that any corporate consultation process adheres to the approved strategy. Effective processes and links already exist to ensure that key audiences (e.g. Older people, young people, hard to reach groups etc) are engaged. This new best practice guidance from the Older People's Commissioner for Wales will become an additional key consideration and will be referred to in any future engagement with older people.

3. LINKS TO STRATEGY

3.1 This report links to the following strategic documents:-

- Section 12 of the Commissioner for Older People (Wales) Act 2006
- Social Services and Well-being (Wales) Act
- Strategy for Older People in Wales
- Caerphilly County Borough Council Single Integrated Plan
- LSB & CCBC Citizen Engagement Strategies
- 50+ Positive Action Plan

4. THE REPORT

4.1 The purpose of the Commissioner's Guidance is to ensure that Local Authorities are paying due regard in law and are fully compliant with their legal commitments when proposals are made for changes to essential community services.

4.2 The Equality Act 2010 included a general duty, the new Public Sector Equality Duty (PSED), which replaced separate duties on race, disability and gender equality. One of the protected characteristics of the duty is 'Age'.

4.3 The aim of the general duty, in the Equality Act 2010, is to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a fairer society through advancing equality and good relations in their day-to-day activities. The duty ensures that equality considerations are built into the design of policies and the delivery of services.

4.4 As a result, all listed bodies in Wales must involve people who it considers representative of one or more of the protected groups and who have an interest in how an authority carries out its functions.

4.5 This engagement must take place in relation to:-

- Identifying how an authority's work and activities may contribute to meeting the general duty.
- Assessing the likely impact on protected groups of any policies or practices being proposed or reviewed.
- Setting equality objectives.
- Preparing and reviewing a Strategic Equality Plan.

4.6 Some essential points to note within the Commissioner's Guidance with reference to changes to Community Services are:-

- Local Authorities should engage with a broad range of older people on an on-going basis.
- Local Authorities should ensure that they include people whose voices are seldom heard.
- Local Authorities should use a variety of methods for engagement. Venues and information should be accessible for all.
- Engagement should take place at a point when older people will be given a genuine opportunity to contribute their thoughts, voice their concerns and influence decision-makers.
- Local Authorities should tell older people how their thoughts and opinions have helped shape proposals for consultation.
- Local Authorities must consult at a time when proposals on community services are still at a formative stage.
- Local Authorities should ensure that as wide a range of older people as possible know that a consultation period is due to take place.

- Any asserted statement of fact made by the Local Authority in the consultation document should be supported by evidence and that evidence should be accessible to older people.
- Adequate time should be given by the Local Authority for older people to consider the information and respond.
- Every response to the consultation by an older person should be given due consideration, regardless of how that response has been submitted.
- Local Authorities should demonstrate to older people that they have conscientiously taken into account the consultation responses when finalising any proposals on community services.
- The scrutiny functions of Local Authorities are crucial to determine the impact of any proposal and to determine whether any proposal has a disproportionate impact on any individuals with protected characteristics, such as older people.
- Local Authorities should keep an adequate record of equality impact assessments so that they can demonstrate actual consideration of their equality duties and honest discussion of relevant questions.
- Local Authorities should take active steps to ensure transparency and openness in respect of the processes adopted and the subsequent decision-making, including clear accountability for decisions taken.
- All Local Authorities should ensure that they proactively place, within the public domain, full documentation leading to decisions made that result in changes to community services.

4.7 The Commissioner expects all Local Authorities to comply with the Guidance to ensure that older people are provided with every opportunity to voice their concerns and are fully informed on the progress of any proposal.

4.8 The Commissioner will use this Guidance as a standard by which to assess the extent to which Local Authorities are safeguarding and promoting the interests of older people in Wales.

5. EQUALITIES IMPLICATIONS

5.1 This report is for information purposes, therefore the Council's Equality Impact Assessment process does not need to be applied.

6. FINANCIAL IMPLICATIONS

6.1 There are no financial implications as a result of this report.

7. PERSONNEL IMPLICATIONS

7.1 There are no personnel implications as a result of this report.

8. CONSULTATIONS

8.1 The 'Best Practice Guidance for Engagement and Consultation with Older People on Changes to Community Services in Wales' and the 'Community Services toolkit for older people' has been distributed to appropriate officers across the local authority for information.

9. RECOMMENDATIONS

9.1 That the Scrutiny leadership group:-

- Note the contents of the report

- Ensure that appropriate and meaningful engagement activities with older people are undertaken when making changes to service delivery.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 To ensure that the Local Authority is aware of and complies with the requirements specified by the Older People's Commissioner for Wales in the 'Best Practice Guidance for Engagement and Consultation with Older People on Changes to Community Services in Wales'.
- 10.2 To ensure that the Local Authority is aware of its engagement responsibilities when proposing changes to community services.

Author: Mandy Sprague, Development Officer for Older People
Consultees: Dave Street, Corporate Director Social Services
David Thomas, Senior Policy Officer (Equalities & Welsh Language)
Elizabeth Sharma, Corporate Consultation & Research Officer

Appendices:
Appendix 1: Best Practice Guidance for Engagement and Consultation with Older People on Changes to Community Services in Wales
Appendix 2: Community Services Toolkit for Older People



Older People's Commissioner for Wales
Comisiynydd Pobl Hŷn Cymru

Best Practice Guidance for Engagement and Consultation with Older People on Changes to Community Services in Wales

July 2014

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Foreword

In February, I published 'The Importance and Impact of Community Services within Wales'¹, a report that made a strong case for protecting essential community services that older people rely on, such as local buses, public toilets, libraries, day and community centres, and lifelong learning. There is great concern among older people that these services, often described as 'a lifeline', are at risk of disappearing as a result of the current budgetary pressures facing Local Authorities across Wales.

I understand that difficult decisions on expenditure and savings must be made, but it is essential that these services are protected or delivered in different ways to ensure that people can continue to access them. The voices of the people who use community services must also be at the heart of any decisions made that will result in changes to services.

Older people tell me, however, that they often find it difficult to engage with Local Authorities to influence the decisions that affect them and that they often feel powerless when plans are made to reduce or close down services. They also tell me that there are insufficient opportunities to express their views and feel that their concerns are often overlooked and given little attention when they do so.

As key users of community services, older people are well placed to measure the effectiveness of these services and require sufficient opportunities to make their views known and understood by the decision-makers.

The purpose of this Guidance is to support Local Authorities to ensure full and meaningful engagement with older people when key decisions are being made regarding community services.

We cannot afford to lose these crucial community services, which provide older people's lives with value, meaning and purpose. With Local Authorities across Wales very likely to face further budgetary challenges during the coming years, new and innovative ways must be explored to ensure that essential community services remain available for older people.

¹ http://www.olderpeoplewales.com/en/Publications/pub-story/14-02-25/The_Importance_and_Impact_of_Community_Services_within_Wales.aspx

Alongside this Guidance, I have also published a Community Services toolkit for older people to provide them with the information they need about the most effective ways to make their voices heard and influence the decisions that affect them.

As Commissioner, my role is to drive the change that older people want and need to see and I look forward to supporting Local Authorities across Wales to use this Guidance to engage more effectively with older people to ensure that the decisions made about essential community services fully consider and reflect older people's needs, concerns and priorities.

A handwritten signature in black ink that reads "Sarah Rochira". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Sarah Rochira
Older People's Commissioner for Wales

Context

The loss of key community services, such as public buses, toilets, community and day centres, libraries and lifelong learning is a matter of great concern for older people and is already having an impact on their lives as a result of decisions already made by a number of Local Authorities across Wales.

Given the financial outlook for local government over the coming years, it is also expected that further difficult decisions will need to be made on the future of community services.

This Guidance complements not only the Commissioner's Community Services report (The Importance and Impact of Community Services within Wales), which was published in February, but also the following priorities within her Framework for Action 2013-17²:

- Embedding the wellbeing of older people at the heart of public services
- Protecting and improving community services, facilities and infrastructure
- Tackling prejudice, inequality and discrimination

Whilst the Commissioner recognises the budgetary pressures placed on Local Authorities, older people must be able to continue to access community services. It is vital that community services are seen not as optional costs, but as the vital community assets that they are.

These community assets are integral to the delivery of emerging policy agendas within Wales, such as prevention, citizen focus and community resilience. These new agendas will be significantly undermined by the loss of these essential services.

As emphasised by the Commissioner in her report, older people have a wealth of knowledge and experience about community services. As frequent users of community services, older people must be partners in decision-making about the future of community services and increasingly involved and consulted in the design, development and delivery of community-based services, facilities and infrastructure.

² http://www.olderpeoplewales.com/Libraries/Uploads/Framework_for_Action.sflb.ashx

Direct engagement with older people and examining a wide and innovative range of partnership processes can lead to positive outcomes for both older people and the public sector. With almost 800,000 people aged 60 and over in Wales, and over a million people in this age group expected in the next twenty years, older people must not be an after-thought when it comes to community planning. We need to plan today for an ageing society. The cost of not doing so will be much greater in the medium to long term.

This Guidance is published under Section 12 of the Commissioner for Older People (Wales) Act 2006³. The purpose of the Guidance is to ensure that Local Authorities are paying due regard in law and are fully compliant with their legal commitments when proposals are made for changes to essential community services.

The Commissioner expects all Local Authorities to comply with the Guidance to ensure that older people are provided with every opportunity to voice their concerns and are fully informed on the progress of any proposal.

Future changes to local community services, facilities and infrastructure must not proceed without a full and robust analysis of the impact that these will have on the wellbeing of older people, with effective plans put in place to mitigate this impact.

³ <http://www.legislation.gov.uk/ukpga/2006/30/section/12>

Guidance issued under S.12 Commissioner for Older People (Wales) Act 2006

July 2014

Best practice Guidance for engagement and consultation with older people on changes to community services in Wales

This Guidance is intended for Local Authorities when proposing changes to community services.

Local Authorities must have regard to this Guidance when discharging their functions. The Commissioner will use this Guidance as a standard by which to assess the extent to which Local Authorities are safeguarding and promoting the interests of older people in Wales.

Legal context

Older People's Commissioner

The Commissioner for Older People (Wales) Act 2006⁴ provides the Commissioner with a range of powers to promote and safeguard the interests of older people, challenge age discrimination, promote best practice in the treatment of older people and review the law as it affects older people. The Commissioner may hold public bodies to account by reviewing their actions or investigating complaints made about them. She may also publish best practice guidance and issue reports to the First Minister of Wales.

Public Sector Equality Duty (PSED)

The Equality Act 2010⁵ included a general duty, the new Public Sector Equality Duty (PSED), which replaced separate duties on race, disability and gender equality. The new general duty covers the following protected characteristics:

4 <http://www.legislation.gov.uk/ukpga/2006/30/contents>

5 http://www.equalityhumanrights.com/sites/default/files/uploads/Wales/PDFs/1._psed_wales_essential_guide.pdf

- Age
- Gender reassignment
- Sex
- Race – including ethnic or national origin, colour or nationality
- Disability
- Pregnancy and maternity
- Sexual orientation
- Religion or belief – including lack of belief

The aim of the general duty is to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a fairer society through advancing equality and good relations in their day-to-day activities. The duty ensures that equality considerations are built into the design of policies and the delivery of services and that they are kept under review. This will achieve better outcomes for all.

Public bodies are required to have due regard to the need to:

1. eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Act
2. advance equality of opportunity between people who share a relevant protected characteristic and those who do not
3. foster good relations between people who share a protected characteristic and those who do not.

To implement the general duty the following principles were drawn from case law on the previous equality duties. In order to meet the general duty, a public authority must ensure:

- Knowledge: those who exercise its functions (its staff and leadership) are aware of the duty's requirements. Meeting the duty involves 'a conscious approach and state of mind'. Decision-makers should therefore be aware of the implications of the duty when making decisions about their policies and practices.
- Timeliness: the duty arises before and at the time that a particular policy is under consideration and a decision is taken. A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- Meaningful consideration: consideration of the three aims of the general duty must form an integral part of the decision-making

process. This is not a 'tick box' exercise – it must be exercised with rigour, with an open mind in such a way that influences the final decision.

- Sufficient information: the decision-maker must consider what information they have as well as what further information might be needed to give proper consideration to the general duty.
- Review: public bodies must have regard to the aims of the general duty not only when a policy is developed and decided upon, but also when it is implemented and reviewed. The general duty is a continuing duty.
- Non-delegation: Anyone exercising public functions on behalf of a public body is required to meet the duty. This is because the duty rests with the public authority even if they have delegated any functions to another organisation.

Specific duties in Wales

The broad purpose of the specific duties in Wales is to help listed bodies in their performance of the general duty and to aid transparency. The specific duties in Wales are set out in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011. The specific duties in Wales cover:

- Objectives
- Strategic Equality Plans
- Engagement
- Assessing impact
- Equality information
- Employment information
- Pay differences
- Staff training
- Procurement
- Annual reporting
- Publishing
- Welsh Ministers' reporting
- Review
- Accessibility

Engagement

A listed body in Wales must involve people who it considers representative of one or more of the protected groups and who have an interest in how an authority carries out its functions.

A listed body may consult and involve other people that it considers appropriate. In reaching the decision as to who is appropriate, an authority must consider the need to involve or consult people from one or more of the protected groups who have an interest in the way the authority carries out its functions, where it is reasonably practicable to do so.

This engagement must take place in relation to:

- setting equality objectives
- preparing and reviewing a Strategic Equality Plan
- identifying how an authority's work and activities may contribute to meeting the general duty
- assessing the likely impact on protected groups of any policies or practices being proposed or reviewed.

Engagement with older people in Wales

Engagement

'The ongoing involvement of older people, their forums/networks and statutory and voluntary sector organisations that represent their interests, through informal consultation or discussion.'

Engagement is a two-way process that involves active listening. It should be meaningful and the Local Authority should be seen to be interacting with older people, encouraging their participation, adopting an inclusive approach and demonstrating a willingness to change as a result of learning through engagement.

Practical Engagement

- Local Authorities should engage with a broad range of older people on an on-going basis. This can be achieved through organisations that represent older people, but Local Authorities should also find ways to engage with individuals who do not attend the immediately obvious groups. Local Authorities should consider where older people are and where they go in the course of their daily lives. Older people should not be thought of as a group apart from the rest of the community. With their knowledge and experience, older people are well placed to gauge the importance and effectiveness of community services.
- Local Authorities should recognise that many older people remain active through continued working, childcare, caring commitments or volunteering and therefore often have little time to voice their concerns and priorities regarding community services. Older people have constraints on their time in the same way that younger people do.
- Local Authorities should also consider those older people who are not so visible in everyday life: it is essential that they are not excluded from engagement on community services.
- Local Authorities should ensure that they include people whose voices are seldom heard. There are also specific requirements under the Equality Act 2010 that Local Authorities must comply with in respect of engagement with people with protected characteristics.
- Local Authorities should use a variety of methods for engagement e.g. public gatherings, face to face meetings, correspondence by letter or email, telephone conversations, intermediaries or advocates where necessary. Venues and information should be accessible for all.
- Invitations to engage should be open and lead to an on-going relationship with older people, rather than be linked to one stand-alone issue. If an older person identifies a barrier to engagement, then Local Authorities should make genuine efforts to eliminate that barrier.

- Engagement should take place at a point when older people will be given a genuine opportunity to contribute their thoughts, voice their concerns and influence decision-makers. Consideration should also be given to how local forums and individuals that represent older people, such as Older People’s Champions, Strategy for Older People Coordinators, and 50+ Forums, can feed into the engagement and consultation process.
- Local Authorities should tell older people how their thoughts and opinions have helped shape proposals for consultation.
- Local Authorities should have particular regard to Principle 7 of the United Nations Principles for Older Persons⁶, which states that older people should remain integrated in society and participate actively in the formulation and implementation of policies that directly affect their wellbeing. The provision of community services, in one form or another, is therefore crucial in this regard.

Consultation with older people in Wales

Consultation

‘A more formal, focused, but open process which is to be used if substantial or controversial changes to policies or practices affecting older people are under consideration.’

Consultation is a two-way process that enables older people to contribute to the process of developing policies and services, which will lead to more realistic and robust policies and procedures that better reflect individual and community needs. The Local Authority should demonstrate a commitment to openness and accountability and a willingness to change as a result of learning through consultation.

- Local Authorities must consult at a time when proposals on community services are still at a formative stage.
- Local Authorities should ensure that as wide a range of older people as possible know that a consultation period is due to take place.

⁶ <http://www.un.org/documents/ga/res/46/a46r091.htm>

- Local Authorities should ensure that consultation documentation is accessible to the widest possible range of older people. They should give sufficient information about any proposal on community services to allow people to understand what is being proposed and the reasons behind it. Plain language should be used and the document should be set out in a logical fashion.
- Any asserted statement of fact made by the Local Authority in the consultation document should be supported by evidence and that evidence should be accessible to older people.
- Local Authorities should ensure that questions asked in consultation documents are open questions – not leading questions - that have a firm basis in the consultation document and any supporting evidence. Questionnaires should not unduly restrict the older person's ability to give a meaningful answer to the questions posed, restricting answers to 'yes' or 'no' only, for example.
- Adequate time should be given by the Local Authority for older people to consider the information and respond.
- Every response to the consultation by an older person should be given due consideration, regardless of how that response has been submitted.
- Local Authorities should demonstrate to older people that they have conscientiously taken into account the consultation responses when finalising any proposals on community services.

Assessment of impact

A listed body in Wales must assess the likely impact of proposed policies and practices on its ability to comply with the general duty and assess the impact of any policy which is being reviewed and of any proposed revision. Bodies must publish reports of the assessments where they show a substantial impact (or likely impact) on an authority's ability to meet the general duty and monitor the impact of policies and practices on its ability to meet that duty.

Reports on assessments must set out in particular the purpose of the policy or practice (or revision) that has been assessed and include a summary of the steps the authority has taken to carry out the assessment (including relevant engagement).

A summary of the information the authority has taken into account in the assessment and the results of the assessment must also be published along with any decisions taken in relation to those results. In addition, when assessing for impact on protected groups, listed authorities must comply with the engagement provisions and have due regard to the relevant information the authority holds.

The role of equality impact assessment in engagement and consultation

Equality impact assessment

‘Assessing impact is a process that should ensure that policies or practices do not unlawfully discriminate against, or have an adverse impact on, groups protected by the Equality Act 2010.’

In assessing impact, Local Authorities should also consider how the policy or practice could better advance equality of opportunity and how it will affect relations between groups. Impact assessment is a continuing duty and not a ‘tick box’ exercise. Due regard must be given to the result of assessments.

- Local Authorities should recognise that successful engagement and consultation is dependent on robust impact assessment, including equality impact assessment. The scrutiny functions of Local Authorities are crucial to determine the impact of any proposal and to determine whether any proposal has a disproportionate impact on any individuals with protected characteristics, such as older people.
- Local Authorities should bear in mind that having ‘due regard’ to the equality duty means that it is a duty of substance that should be exercised with rigour and an open mind. It is not a matter of ‘ticking boxes’.

- Local Authorities should keep an adequate record of equality impact assessments so that they can demonstrate actual consideration of their equality duties and honest discussion of relevant questions.
- When assessing impact, Local Authorities should take into account the fact that discrimination regarding community services may be direct or indirect. Direct discrimination would occur where an older person is treated less favourably because of a protected characteristic. Indirect discrimination occurs where a provision, criterion or practice is applied to everyone but only disadvantages those with a protected characteristic in a way that cannot be justified.
- In proposing changes to community services, Local Authorities should have particular regard to Principle 18 of the United Nations Principles for Older Persons⁷, which states that older people should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution to society.

Further guidance on equality impact assessment is available from the Equality and Human Rights Commission website⁸.

It is the Commissioner's expectation that Local Authorities take active steps to ensure transparency and openness in respect of the processes adopted and the subsequent decision making, including clear accountability for decisions taken.

All Local Authorities should ensure that they proactively place, within the public domain, for example through their websites, full documentation leading to decisions made that result in changes to community services.

⁷ <http://www.un.org/documents/ga/res/46/a46r091.htm>

⁸ <http://www.equalityhumanrights.com/about-us/devolved-authorities/the-commission-in-wales>

The Older People's Commissioner for Wales

The Older People's Commissioner for Wales is an independent voice and champion for older people across Wales. The Commissioner and her team work to ensure that older people have a voice that is heard, that they have choice and control, that they don't feel isolated or discriminated against and that they receive the support and services that they need.

The Commissioner and her team work to ensure that Wales is a good place to grow older, not just for some but for everyone.

How to contact the Commissioner:

The Older People's Commissioner for Wales
Cambrian Buildings
Mount Stuart Square
Cardiff
CF10 5FL

Phone: 08442 640 670

Email: ask@olderpeoplewales.com

Website: www.olderpeoplewales.com

Twitter: [@talkolderpeople](https://twitter.com/talkolderpeople)

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Older People's Commissioner for Wales
Comisiynydd Pobl Hŷn Cymru

Effective Engagement with Local Authorities

Toolkit for Older People



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Foreword

Travelling the length and breadth of Wales as part of my Engagement Roadshow to meet and speak with older people about the things that matter most to them, many have shared with me their concerns that the community services that they rely upon – local buses, public toilets, libraries, day and community centres and lifelong learning – are at risk of disappearing, which will have a devastating impact on their lives.

Many older people tell me that they do not know how to engage with Local Authorities and influence the decisions that affect their lives and often feel powerless when Local Authorities propose to reduce or bring to an end these essential services.

Older people also tell me that there are insufficient opportunities to express their views and feel that their concerns are often overlooked and given little attention when they do so.

As Commissioner, it is my role to stand up and speak out on behalf of older people, to ensure that their voices are heard, listened to and acted upon. That's why, in February, I published my report 'The Importance and Impact of Community Services within Wales', which, with the voices of older people at its heart, makes a strong case for protecting our community services, described by many as 'lifelines'.

But my role as Commissioner is also to empower older people, to support them so that they can make their own voices heard and to be fully involved throughout the decision-making process.

That is why I have developed this Toolkit, which provides a wide range of information about how you can make your voice heard, how you can challenge decisions and the support available to help you to do this.

There will be further budgetary pressures on Local Authorities in the coming years and many difficult decisions will need to be made, but we cannot afford to lose these essential services, which give people's lives value, meaning and purpose. As my report emphasises, making short-term financial savings on community services will lead to increased financial pressures on statutory services in the medium to long term.

Local Authorities need to ensure that new and innovative ways of delivering these services are explored and the voices of older people, who are well placed to consider what approaches will be effective, must be at the heart of this.

Alongside this Toolkit, I have also issued formal Guidance on engagement and consultation to Local Authorities, reminding them of their duties to communicate with you, to work with you and, most importantly, to listen to you. This Guidance may be found in Appendix D and on my website: <http://www.olderpeoplewales.com/en/Home.aspx>

This Toolkit has been published as a practical tool to help older people ensure their views are heard by their Local Authorities, and that their views are fully reflected in any changes taking place to community services across Wales.



Sarah Rochira
Older People's Commissioner for Wales

Context

Across Wales, Local Authorities are making spending decisions in respect of key community services such as public buses, toilets, community and day centres, libraries and lifelong learning. Older people consistently highlight the importance of these community services with the Commissioner, raising concerns about the impact that the loss or reduction of these is having, or will have, on their lives.

Given the financial outlook for local government over the coming years, it is expected that further difficult decisions will need to be made on the future of community services for a number of years to come.

This Toolkit for older people not only complements the Commissioner's Community Services report ('The Importance and Impact of Community Services within Wales'), which was published in February, but also the following priorities within her Framework for Action 2013-17¹ :

- Embedding the wellbeing of older people at the heart of public services
- Protecting and improving community services, facilities and infrastructure
- Tackling prejudice, inequality and discrimination

Whilst the Commissioner recognises the budgetary pressures placed on Local Authorities, older people must be able to continue to access community services. It is vital that community services are seen not as optional costs, but as the vital community assets that they are.

These community assets are integral to the delivery of emerging policy agendas within Wales, such as prevention, citizen focus and community resilience. These new agendas will be significantly undermined by the loss of these key services.

As emphasised by the Commissioner in her report, older people have a wealth of knowledge and experience regarding community services. As frequent users of community services, older people must be partners in decision-making about the future of community services and fully involved and consulted in the design, development and delivery of community-based services, facilities and infrastructure.

Direct engagement with older people and examining a wide and innovative range of partnership processes can lead to positive outcomes for both older

¹ http://www.olderpeoplewales.com/Libraries/Uploads/Framework_for_Action.sflb.ashx

people and the public sector. With almost 800,000 people aged 60 and over in Wales, and over a million people in this age group expected in the next twenty years, older people must not be an after-thought when it comes to community planning.

Future changes to local community services, facilities and infrastructure must not proceed without effective engagement, proper consultation and a full and robust analysis of the impact that these will have on the wellbeing of older people, with effective plans put in place to mitigate this impact. Furthermore, it is a legal requirement under the Equality Act 2010 and the associated Welsh Public Sector Equality Duty.

What Plans Does My Local Authority Have?

Your Local Authority produces a great deal of information that will help you find out what their priorities are, what decisions are in progress and how the authority works^{2 3}. Some of this information is about the overall priorities and plans of the Local Authority, some may be about specific proposed service or funding changes. For example:

- The **constitution** sets out how decisions are made
- **Standing Orders** tell you when meetings will be held
- The **Forward Plan** sets out key decisions that will be taken by officers or councillors over the coming four months. They include information about when the cabinet will meet and when the results of scrutiny committees will be considered
- **Agendas and minutes** of meetings tell you what will or has been discussed at meetings and who said what
- Results of local **consultations** and **scrutiny committees**. You may access information on formal scrutiny and any agreements on a proposal (when and by whom)
- Departmental **reports, strategy** and **policy documents**
- **Single Integrated Plans** are produced by Local Service Boards (including Local Authorities and other key partners) to address the economic, environmental and social wellbeing issues in Local Authority areas

² <http://www.sense.org.uk/content/lobbying-local-authorities>

³ <http://www.ctc.org.uk/local-campaigners/ctc-local-campaigners-information-kit/working-local-government/lobbying-local-coun>

What Information Can I Request?

All of this information is available on request from your Local Authority.

Ask your Local Authority (see Appendix A for contact details) for all information on the community service proposal. Your Local Authority should be able to make the following available to you in respect of a proposed community service change (the format may vary from one Local Authority to another):

- The nature of the proposed change and alternative plans
- The impact of the proposal on citizens, including older people
- The proposed financial savings
- How older people can influence the proposal and timescales

Ask your Local Authority for the **impact assessment** (measuring the impact of the decision on people with protected characteristics) that accompanies the proposal.

If this information is not made available to you, you can request it under the Freedom of Information Act 2000.

Freedom of Information Act 2000

The Freedom of Information Act (Fol)⁴ deals with access to official information and gives individuals or organisations the right to request information from any public authority. The Fol Act requires all public authorities to adopt and maintain a publication scheme that sets out all of the information that the Council holds and routinely publishes. Fol requests can be made to the Freedom of Information Officer in your Local Authority. Fol requests can also be made or viewed on the What Do They Know? website (<https://www.whatdotheyknow.com/>).

⁴ <http://www.legislation.gov.uk/ukpga/2000/36/contents>

What Should My Local Authority Be Doing?

It is crucial that your Local Authority provides sufficient opportunities for full and meaningful consultation with you and others to discuss the proposal and the impact on your life of reducing or closing down this key community service.

Local Authorities may hold special consultation events. If not, you can request that these take place to express your concerns regarding a proposal. Any engagement / consultation should be in line with the National Principles for Engagement in Wales:

National Principles for Engagement in Wales

These principles were developed by Participation Cymru and endorsed by the First Minister on behalf of the Welsh Government in March 2011

1. Engagement is effectively designed to make a difference

Engagement gives a real chance to influence policy, service design and delivery from an early stage.

2. Encourage and enable everyone affected to be involved, if they so choose

The people affected by an issue or change are included in opportunities to engage as an individual or as part of a group or community, with their views both respected and valued.

3. Engagement is planned and delivered in a timely and appropriate way

The engagement process is clear, communicated to everyone in a way that's easy to understand within a reasonable timescale and the most suitable method/s for those involved is used.

4. Work with relevant partner organisations

Organisations should communicate with each other and work together wherever possible to ensure that people's time is used effectively and efficiently.

5. The information provided will be jargon free, appropriate and understandable

People are well placed to take part in the engagement process because they have easy access to relevant information that is tailored to meet their needs.

6. Make it easier for people to take part

People can engage easily because any barriers for different groups of people are identified and addressed.

7. Enable people to take part effectively

Engagement processes should try to develop the skills, knowledge and confidence of all participants.

8. Engagement is given the right resources and support to be effective

Appropriate training, guidance and support are provided to enable all participants to effectively engage, including both community participants and staff.

9. People are told the impact of their contribution

Timely feedback is given to all participants about the views they expressed or decisions or actions taken as a result; methods and form of feedback should take account of participants' preferences.

10. Learn and share lessons to improve the process of engagement

People's experience of the process of engagement should be monitored and evaluated to measure its success in engaging people and the effectiveness of their participation; lessons should be shared and applied in future engagements.

Equality Act 2010

The Equality Act 2010 requires Local Authorities to take steps to ensure that the views of older people and others with protected characteristics are heard.

Local Authorities have duties under the Equality Act⁵ to engage with those with protected characteristics (including age) and to undertake an **Equality Impact Assessment** (EIA) when developing or reviewing policies. Public authorities in Wales have a legal duty to assess all of their proposed functions, policies and procedures to assess their impact on different groups. There is a legal requirement for public bodies to publish the EIA when a substantial impact on a particular group is identified.

The Equality Act is the key piece of legislation through which to challenge the lawfulness of service reductions. The **Public Sector Equality Duty** means that Local Authorities must eliminate discrimination and victimisation, advance equality of opportunity between persons, and foster good relations between persons.

A recent review of EIAs in Wales, however, found that policy-making needs to be more transparent and evidence-based, more EIAs need to be published on public websites, and EIAs should be more outcome focused⁶.

Further information:

- The Equality and Human Rights Commission (Tel: 0808 800 0082 / www.equalityhumanrights.com) provides further information on EIAs and the ban on age discrimination in services, public functions and associations (in force since October 2012).
- An Equality Impact Assessment Toolkit was published by the NHS Centre for Equality and Human Rights in August 2012. Contact 01443 233333 to obtain a copy or visit <https://www.wales.nhs.uk/sites3/page.cfm?orgid=256&pid=4315>.

⁵ <http://www.legislation.gov.uk/ukpga/2010/15/contents>

⁶ <http://www.wlga.gov.uk/equalities-publications/report-l-review-of-the-use-of-equality-impact-assessments-in-the-public-sector>

What Can I Do If I Am Not Satisfied?

There are many ways that you can influence the proposals put forward by your Local Authority.

If you are concerned about a proposal to reduce or close down your local community service, **don't delay**. Prepare a plan and discuss your concerns with friends, families, neighbours and your local community groups. Keep a record of your progress, including correspondence with Local Authorities and contact with other individuals or organisations.

- Contact your **local councillor** and/or your **Older People's Champion** to outline your views and concerns regarding the community services that matter to you (contact details may be found in the Local Authority information database for community services).
- You could write to your councillor and/or the responsible Cabinet member and/or the Council Leader to express your concerns and explain the impact of this decision on your life (a sample letter can be found in Appendix C).
- You could also request a meeting with your councillor. Councillors hold regular, usually monthly, drop-in sessions, known as surgeries. However, as councillors will need to meet with a number of people it is recommended to book a meeting in advance to fully discuss the proposal and your concerns.
- As councillors are often busy people, try to keep letters to them and meetings with them clear, short and concise. Think about what your important points are and try to be specific about what you want them to do.
- You could also contact your **town and community councillor** to explain your position and concerns (contact details are available through One Voice Wales <http://www.onevoicewales.org.uk/>, Tel: 01269 595400).

You could also contact your **local Assembly Member** and/or **Member of Parliament** to raise your concerns regarding community services:

- National Assembly for Wales Members - Telephone 0845 010 5500 for contact information or visit <https://www.assemblywales.org/memhome.htm>
- The National Assembly also has a cross-party group on older people

and ageing, where key issues such as community services are often discussed⁷.

- Members of Parliament – Telephone 020 7219 4272 for contact information or visit <http://www.parliament.uk/mps-lords-and-offices/mps/>
- Write to Them also allows you to contact your local councillor, AM or MP and express your views and concerns regarding community services via the online form (<https://www.writetothem.com/>).
- Contacting your **local/regional newspaper** could be a useful way to highlight your concerns regarding the proposal to close down/reduce your community service and draw support for your efforts to protect the service as much as possible.
- There are charities, pressure/lobby groups, organisations and networks that could help you to influence Local Authority decisions and draw attention to your concerns. There are also other organisations that can highlight alternative ways of providing community service and give you advice and information about the services available where you live (further information and contact details can be found in Appendix B).

⁷ <http://www.senedd.assemblywales.org/mgOutsideBodyDetails.aspx?ID=259>

What Support is Available? Who Can Help Me?

Your Local Authority has an **Older People's Champion**, **Older People's Strategy coordinator**, and a **50+ Forum**. These individuals and groups could help you with your attempts to protect a community service:

Older People's Champions⁸ (a councillor(s) within each Local Authority) can help to ensure that the issues, needs, wishes and preferences of older people are fully taken into account in the planning and implementation of policy and services. These Champions help to ensure the involvement, participation and engagement of older people in the planning and review of all aspects of a Local Authority's work.

The role of the **Strategy coordinators** is to take forward the Welsh Government's Strategy for Older People 2013-2023⁹ and develop new approaches to the development of policy and service development in conjunction with other departments and agencies, including Local Health Boards, NHS Trusts, local voluntary organisations and with older people.

The **50+ Forums** identify key issues for people aged 50 and over within their own areas and work towards tackling them. The Forums help to ensure that the Local Authority is a better place to live for older people.

Please contact your Local Authority to receive contact details and further information (contact details can be found in Appendix A).

⁸ <http://www.wlga.gov.uk/older-peoples-champions/>

⁹ <http://wales.gov.uk/docs/dhss/publications/130521olderpeoplestrategyen.pdf>

The Decision Has Been Made. What Else Can I Do? Are There Any Alternatives?

In her report, the Commissioner suggests a number of alternative and innovative ways to deliver community services that do not place additional financial burdens on Local Authorities or transfer responsibilities away from Local Authorities:

Community Asset Transfer¹⁰

This is the transfer of under-used land and buildings from the public sector to community ownership and management. The shift in ownership gives greater powers to community and voluntary sector organisations, community and social enterprises, and individuals looking to form a not-for-private-profit group to benefit their neighbourhood.

Town and Community Councils

There are 735 community and town councils in Wales, representing the tier of government closest to the people. They cover approximately 94% of the land area and 70% of the population of Wales. One Voice Wales, the body representing town and community councils, has called for the incremental transfer of many community services and facilities, such as libraries, youth services and leisure services, from Local Authorities to town and community councils¹¹.

Social Enterprises¹²

These are businesses with primarily social objectives. Profit is mostly or wholly reinvested in the business or in the community, rather than maximising profit for shareholders and owners. Social enterprises also compete in the marketplace and need to be well run to make money and achieve their social aims. They can vary from small community-owned village shops to large organisations delivering public services.

Legal Options

There are also legal options and other avenues to challenge a decision made by a Local Authority or to ensure that a Local Authority is in full compliance with

¹⁰ <http://mycommunityrights.org.uk/community-asset-transfer/>

¹¹ <http://wales.gov.uk/docs/dpsp/publications/psgd/140120-psgd-full-report-env2.pdf>

¹² <http://business.wales.gov.uk/social-enterprise-support-0>

its legal obligations:

Public Services Ombudsman for Wales¹³

The Ombudsman has legal powers to look into complaints about public services in Wales. The Ombudsman can look into complaints that you have been treated unfairly or received a bad service through some failure on the part of the body providing it. If the Local Authority arrived at its decision properly however, the Ombudsman cannot look into your complaint. The Ombudsman can also look into complaints that councillors have broken their Local Authority's code of conduct (<https://www.ombudsman-wales.org.uk/>, Contact no: 0300 790 0203).

Judicial Review¹⁴

If you have reached the end of this process and are still dissatisfied with the way the decision has been reached, then Judicial Review is the 'remedy of last resort'. A Judicial Review is a type of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. These reviews are a challenge to the way in which a decision has been made, rather than the rights and wrongs of the conclusion reached.

The court will not substitute what it thinks is the 'correct' decision. This may mean that the public body will be able to make the same decision again, as long as it does so in a lawful way. Should you want to argue that a decision was incorrect, Judicial Review may not be suitable for you. There are alternative remedies, such as appealing against the decision in a higher court, for example.

There are examples¹⁵ where a Judicial Review has been issued against a Local Authority on the grounds of:

- A consultation preceding a decision being unlawful: decisions had already been taken before the consultation began;
- A failure by a Local Authority to take due regard of its obligations under the Public Sector Equality Duty, as required by the Equality Act 2010;
- A failure by the Local Authority to prevent the harm caused to those with protected characteristics, including older people, as a result of their plans, despite identifying the potential harm their plans could cause.

¹³ <https://www.ombudsman-wales.org.uk/en.aspx>

¹⁴ <http://www.judiciary.gov.uk/you-and-the-judiciary/judicial-review>

¹⁵ <http://savelincslibraries.org.uk/2014/02/10/high-court-proceedings-begun-challenging-the-decision-by-lincolnshire-county-council-to-cut-library-services/>

Ten Key Questions & Checklist

- Does my Local Authority have a comprehensive strategic framework for older people that acknowledges the need for essential community services, vital to my health, independence and wellbeing?
- Are older people involved in all aspects of the Local Authority's work, including strategic planning, quality monitoring and all stages of the decision-making process on community service proposals?
- Does my Local Authority work effectively with older people's networks, organisations and lobby groups to consider ways of delivering cost-effective community services?
- Does my Local Authority have a comprehensive approach to tackling age discrimination and inequality when making key decisions on community services that matter to me?
- Does my Local Authority provide joined-up, accessible and, comprehensive information on the proposal to close/reduce my community service and do I feel well informed?
- Are the health and wellbeing needs of older people fully considered by the Local Authority when proposing changes to community services?
- Does my Local Authority provide adequate information and support to help me understand the alternatives to the community service being earmarked for closure/reduction, in order to allow me to get on with my day-to-day life?
- Can my Local Authority fully demonstrate that the needs of older people were fully considered and acknowledged when the decision was made to alter this key community service?
- To what extent will my Local Authority support me should a decision be taken to close down/reduce this essential community service? Have older people been disproportionately affected by this decision?
- To what extent do my Local Authority's plans to reduce/close down community service provision affect their commitment to support and look after older people and their commitment to develop age-friendly communities via the Dublin Declaration¹⁶?

Checklist

	Yes / No
Has the Local Authority responded to my letter/call?	
Has the Local Authority provided an adequate explanation for the proposal to reduce/close down the community service?	
Has the Local Authority explained how my views/concerns are taken forward?	
Has the Local Authority advised me on who can help take my views/concerns forward?	
Have I been offered a consultation/face-to-face meeting to express my views/concerns?	
Has the Local Authority carried out an impact assessment to measure the impact of this proposal on older people?	
Regardless of the final decision, am I satisfied that my views/concerns have been fully considered, understood and taken on-board by the Local Authority?	

Appendix A: Contacting your Local Authority

Local Authority	Telephone	Email
Anglesey County Council Council Offices, Llangefni Anglesey LL77 7TW	01248 750057	communications@anglesey.gov.uk
Blaenau Gwent County Borough Council Municipal Offices Civic Centre Ebbw Vale NP23 6XB	01495 311556	info@blaenau-gwent.gov.uk
Bridgend County Borough Council Civic Offices Angel Street Bridgend CF31 4WB	01656 643643	talktous@bridgend.gov.uk
Caerphilly County Borough Council Ty Penallta Ystrad Mynach Hengoed CF82 7SF	01443 815588	info@caerphilly.gov.uk
Cardiff County Council County Hall Atlantic Wharf Cardiff CF10 4UW	02920 872087	C2C@cardiff.gov.uk

Local Authority	Telephone	Email
Carmarthenshire County Council County Hall Carmarthen Carmarthenshire SA31 1JP	01267 234567	direct@carmarthenshire.gov.uk
Ceredigion County Council Penmorfa Aberaeron Ceredigion SA46 0PA	01545 570881	reception@ceredigion.gov.uk
Conwy County Borough Council Bodlondeb Conwy LL32 8DU	01492 574000	information@conwy.gov.uk
Denbighshire County Council County Hall Wynnstay Road Ruthin Denbighshire LL15 1YN	01824 706101	customerservice@denbighshire.gov.uk
Flintshire County Council County Hall Mold Flintshire CH7 6NB	01352 752121	customerservices@flintshire.gov.uk

Local Authority	Telephone	Email
Gwynedd County Council, Council Offices Castle Street Caernarfon Gwynedd LL55 1SH	01766 771000	enquiries@gwynedd.gov.uk
Merthyr Tydfil County Borough Council Castle Street Merthyr Tydfil CF47 8AN	01685 725000	customer.care@merthyr.gov.uk
Monmouthshire County Council PO Box 106 Caldicot Monmouthshire NP26 9AN	01633 644644	contact@monmouthshire.gov.uk
Neath Port Talbot County Borough Council Civic Centre Port Talbot SA13 1PJ	01639 686868	contactus@npt.gov.uk
Newport County Council Civic Centre Newport NP20 4UR	01633 656656	info@newport.gov.uk

Local Authority	Telephone	Email
Pembrokeshire County Council County Hall Haverfordwest Pembrokeshire SA61 1TP	01437 764551	enquiries@pembrokeshire.gov.uk
Powys County Council County Hall Llandrindod Wells Powys LD1 5LG	01597 827460	customer@powys.gov.uk
Rhondda Cynon Taf County Borough Council The Pavilions Cambrian Park Clydach Vale Tonypany CF40 2XX	01443 425005	customerservices@rctcbc.gov.uk
Swansea County Council Civic Centre Oystermouth Road Swansea SA1 3SN	01792 636000	contact@swansea.gov.uk
Torfaen County Borough Council Civic Centre Pontypool Torfaen NP4 6YB	01495 762200	your.call@torfaen.gov.uk

Local Authority	Telephone	Email
Vale of Glamorgan County Council Civic Offices Holton Road Barry Vale of Glamorgan CF63 4RU	01446 700111	C1V@valeofglamorgan.gov.uk
Wrexham County Borough Council The Guildhall Wrexham LL11 1AY	01978 292000	contact-us@wrexham.gov.uk

Appendix B: Community service organisations, networks, charities and lobby/pressure groups

Public Buses

Bus Users Cymru	0300 111 0001	http://bususers.org/cymru-wales/about-us
Community Transport Association	01792 844290 (Swansea) 01745 356751 (Rhyl)	http://www.ctauk.org/in-your-area/wales.aspx
Confederation of Passenger Transport	0207 240 3131	http://www.cpt-uk.org/index.php

Public Toilets

British Toilet Association	02891 477397	http://www.britloos.co.uk/
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Libraries

Welsh Libraries	01978 298861 / 298857	http://welshlibraries.org
Public Libraries News		http://www.publiclibrariesnews.com/
Community Knowledge Hub Libraries		http://libraries.communityknowledgehub.org.uk/

Day / Community Centres

Find Me Good Care		www.scie.org.uk/findmegoodcare
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Lifelong Learning

NIACE Dysgu Cymru	02920 370900	http://www.niacedc.org.uk/
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General

Age Alliance Wales	02920 431554	http://www.agealliancewales.org.uk/
Age Cymru	02920 431555	http://www.ageuk.org.uk/cymru/ Community Calculator: How age-friendly is your community?
Welsh Senate of Older People	02920 431570	http://www.welshsenateofolderpeople.com/index.htm

Appendix C: Community Services Sample Letter

(Amend this letter as appropriate to fit your circumstances)

Address

For Example County Council
Xxxxxx
xxxxx
Wales

Date

Dear Sir/Madam,

I write to you regarding the proposal to reduce the provision of/close down my local key service (**specify the name and nature of this service**). I am very concerned about this proposal. This is a crucial community service which I rely on to get on with my daily life. This service is an indispensable lifeline for me and others. Without this service, I am at further risk of being socially isolated, and I am concerned that the withdrawal of this service will seriously impact on my health, independence and wellbeing.

In order to influence the decision regarding this service as much as possible, could you please inform me on the following:

- The consultation process for this decision; how I can influence the decision;
- How my views and concerns will be taken forward;
- Who can take my concerns forward and who can help me;
- The timeline for this process.

I fully understand the budgetary pressures facing local authorities, however this service gives my life value, meaning and purpose, and is vital to reduce physical and mental health problems amongst older people. It is a vital service not only for older people but for others as well.

Should this service be reduced or closed down, I will be isolated from my community and society, unable to access essential services, unable to carry out activities that contribute to the economy, and unable to visit friends or family. Reducing or closing down this service may save the Local Authority costs in the

short term, however it will lead to much larger health and social care costs for authorities in the medium to long term.

I expect my views to be fully considered when the final decision on this vital service is made.

Yours sincerely,

Xxxxxxxxxxxxxx

Appendix D: Guidance for Local Authorities

Guidance issued under S.12 Commissioner for Older People (Wales) Act 2006

July 2014

Best practice Guidance for engagement and consultation with older people on changes to community services in Wales

This Guidance is intended for Local Authorities when proposing changes to community services.

Local Authorities must have regard to this Guidance when discharging their functions. The Commissioner will use this Guidance as a standard by which to assess the extent to which Local Authorities are safeguarding and promoting the interests of older people in Wales.

Legal context

Older People's Commissioner

The Commissioner for Older People (Wales) Act 2006¹ provides the Commissioner with a range of powers to promote and safeguard the interests of older people, challenge age discrimination, promote best practice in the treatment of older people and review the law as it affects older people. The Commissioner may hold public bodies to account by reviewing their actions or investigating complaints made about them. She may also publish best practice guidance and issue reports to the First Minister of Wales.

Public Sector Equality Duty (PSED)

The Equality Act 2010² included a general duty, the new Public Sector Equality Duty (PSED), which replaced separate duties on race, disability and gender equality. The new general duty covers the following protected characteristics:

¹ <http://www.legislation.gov.uk/ukpga/2006/30/contents>

² http://www.equalityhumanrights.com/sites/default/files/uploads/Wales/PDFs/1._psed_wales_essential_guide.pdf

- Age
- Gender reassignment
- Sex
- Race – including ethnic or national origin, colour or nationality
- Disability
- Pregnancy and maternity
- Sexual orientation
- Religion or belief – including lack of belief

The aim of the general duty is to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a fairer society through advancing equality and good relations in their day-to-day activities. The duty ensures that equality considerations are built into the design of policies and the delivery of services and that they are kept under review. This will achieve better outcomes for all.

Public bodies are required to have due regard to the need to:

1. eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Act
2. advance equality of opportunity between people who share a relevant protected characteristic and those who do not
3. foster good relations between people who share a protected characteristic and those who do not.

To implement the general duty the following principles were drawn from case law on the previous equality duties. In order to meet the general duty, a public authority must ensure:

- Knowledge: those who exercise its functions (its staff and leadership) are aware of the duty's requirements. Meeting the duty involves 'a conscious approach and state of mind'. Decision-makers should therefore be aware of the implications of the duty when making decisions about their policies and practices.
- Timeliness: the duty arises before and at the time that a particular policy is under consideration and a decision is taken. A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- Meaningful consideration: consideration of the three aims of the general duty must form an integral part of the decision-making process. This is

not a 'tick box' exercise – it must be exercised with rigour, with an open mind in such a way that influences the final decision.

- Sufficient information: the decision-maker must consider what information they have as well as what further information might be needed to give proper consideration to the general duty.
- Review: public bodies must have regard to the aims of the general duty not only when a policy is developed and decided upon, but also when it is implemented and reviewed. The general duty is a continuing duty.
- Non-delegation: Anyone exercising public functions on behalf of a public body is required to meet the duty. This is because the duty rests with the public authority even if they have delegated any functions to another organisation.

Specific duties in Wales

The broad purpose of the specific duties in Wales is to help listed bodies in their performance of the general duty and to aid transparency. The specific duties in Wales are set out in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011. The specific duties in Wales cover:

- Objectives
- Strategic Equality Plans
- Engagement
- Assessing impact
- Equality information
- Employment information
- Pay differences
- Staff training
- Procurement
- Annual reporting
- Publishing
- Welsh Ministers' reporting
- Review
- Accessibility

Engagement

A listed body in Wales must involve people who it considers representative of one or more of the protected groups and who have an interest in how an authority carries out its functions.

A listed body may consult and involve other people that it considers appropriate. In reaching the decision as to who is appropriate, an authority must consider the need to involve or consult people from one or more of the protected groups who have an interest in the way the authority carries out its functions, where it is reasonably practicable to do so.

This engagement must take place in relation to:

- setting equality objectives
- preparing and reviewing a Strategic Equality Plan
- identifying how an authority's work and activities may contribute to meeting the general duty
- assessing the likely impact on protected groups of any policies or practices being proposed or reviewed.

Engagement with older people in Wales

Engagement

'The ongoing involvement of older people, their forums/networks and statutory and voluntary sector organisations that represent their interests, through informal consultation or discussion.'

Engagement is a two-way process that involves active listening. It should be meaningful and the Local Authority should be seen to be interacting with older people, encouraging their participation, adopting an inclusive approach and demonstrating a willingness to change as a result of learning through engagement.

Practical Engagement

- Local Authorities should engage with a broad range of older people on an on-going basis. This can be achieved through organisations that represent older people, but Local Authorities should also find ways to engage with individuals who do not attend the immediately obvious groups. Local Authorities should consider where older people are and where they go in the course of their daily lives. Older people should not be thought of as a group apart from the rest of the community. With their knowledge and experience, older people are well placed to gauge the importance and effectiveness of community services.
- Local Authorities should recognise that many older people remain active through continued working, childcare, caring commitments or volunteering and therefore often have little time to voice their concerns and priorities regarding community services. Older people have constraints on their time in the same way that younger people do.
- Local Authorities should also consider those older people who are not so visible in everyday life: it is essential that they are not excluded from engagement on community services.
- Local Authorities should ensure that they include people whose voices are seldom heard. There are also specific requirements under the Equality Act 2010 that Local Authorities must comply with in respect of engagement with people with protected characteristics.
- Local Authorities should use a variety of methods for engagement e.g. public gatherings, face to face meetings, correspondence by letter or email, telephone conversations, intermediaries or advocates where necessary. Venues and information should be accessible for all.
- Invitations to engage should be open and lead to an on-going relationship with older people, rather than be linked to one stand-alone issue. If an older person identifies a barrier to engagement, then Local Authorities should make genuine efforts to eliminate that barrier.
- Engagement should take place at a point when older people will be given a genuine opportunity to contribute their thoughts, voice their concerns and influence decision-makers. Consideration should also be given to how local forums and individuals that represent older people, such as Older People's Champions, Strategy for Older People Coordinators, and

50+ Forums, can feed into the engagement and consultation process.

- Local Authorities should tell older people how their thoughts and opinions have helped shape proposals for consultation.
- Local Authorities should have particular regard to Principle 7 of the United Nations Principles for Older Persons³, which states that older people should remain integrated in society and participate actively in the formulation and implementation of policies that directly affect their wellbeing. The provision of community services, in one form or another, is therefore crucial in this regard.

Consultation with older people in Wales

Consulation

‘A more formal, focused, but open process which is to be used if substantial or controversial changes to policies or practices affecting older people are under consideration.’

Consultation is a two-way process that enables older people to contribute to the process of developing policies and services, which will lead to more realistic and robust policies and procedures that better reflect individual and community needs. The Local Authority should demonstrate a commitment to openness and accountability and a willingness to change as a result of learning through consultation.

- Local Authorities must consult at a time when proposals on community services are still at a formative stage.
- Local Authorities should ensure that as wide a range of older people as possible know that a consultation period is due to take place.
- Local Authorities should ensure that consultation documentation is accessible to the widest possible range of older people. They should give sufficient information about any proposal on community services to allow people to understand what is being proposed and the reasons behind it. Plain language should be used and the document should be set out in a logical fashion.

³ <http://www.un.org/documents/ga/res/46/a46r091.htm>

- Any asserted statement of fact made by the Local Authority in the consultation document should be supported by evidence and that evidence should be accessible to older people.
- Local Authorities should ensure that questions asked in consultation documents are open questions – not leading questions - that have a firm basis in the consultation document and any supporting evidence. Questionnaires should not unduly restrict the older person’s ability to give a meaningful answer to the questions posed, restricting answers to ‘yes’ or ‘no’ only, for example.
- Adequate time should be given by the Local Authority for older people to consider the information and respond.
- Every response to the consultation by an older person should be given due consideration, regardless of how that response has been submitted.
- Local Authorities should demonstrate to older people that they have conscientiously taken into account the consultation responses when finalising any proposals on community services.

Assessment of impact

A listed body in Wales must assess the likely impact of proposed policies and practices on its ability to comply with the general duty and assess the impact of any policy which is being reviewed and of any proposed revision. Bodies must publish reports of the assessments where they show a substantial impact (or likely impact) on an authority’s ability to meet the general duty and monitor the impact of policies and practices on its ability to meet that duty.

Reports on assessments must set out in particular the purpose of the policy or practice (or revision) that has been assessed and include a summary of the steps the authority has taken to carry out the assessment (including relevant engagement).

A summary of the information the authority has taken into account in the assessment and the results of the assessment must also be published along with any decisions taken in relation to those results. In addition, when assessing for impact on protected groups, listed authorities must comply with the engagement provisions and have due regard to the relevant information the authority holds.

The role of equality impact assessment in engagement and consultation

Equality impact assessment

‘Assessing impact is a process that should ensure that policies or practices do not unlawfully discriminate against, or have an adverse impact on, groups protected by the Equality Act 2010.’

In assessing impact, Local Authorities should also consider how the policy or practice could better advance equality of opportunity and how it will affect relations between groups. Impact assessment is a continuing duty and not a ‘tick box’ exercise. Due regard must be given to the result of assessments.

- Local Authorities should recognise that successful engagement and consultation is dependent on robust impact assessment, including equality impact assessment. The scrutiny functions of Local Authorities are crucial to determine the impact of any proposal and to determine whether any proposal has a disproportionate impact on any individuals with protected characteristics, such as older people.
- Local Authorities should bear in mind that having ‘due regard’ to the equality duty means that it is a duty of substance that should be exercised with rigour and an open mind. It is not a matter of ‘ticking boxes’.
- Local Authorities should keep an adequate record of equality impact assessments so that they can demonstrate actual consideration of their equality duties and honest discussion of relevant questions.
- When assessing impact, Local Authorities should take into account the fact that discrimination regarding community services may be direct or indirect. Direct discrimination would occur where an older person is treated less favourably because of a protected characteristic. Indirect discrimination occurs where a provision, criterion or practice is applied to everyone but only disadvantages those with a protected characteristic in a way that cannot be justified.
- In proposing changes to community services, Local Authorities should have particular regard to Principle 18 of the United Nations Principles for

Older Persons⁴, which states that older people should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution to society.

Further guidance on equality impact assessment is available from the Equality and Human Rights Commission website⁵.

It is the Commissioner's expectation that Local Authorities take active steps to ensure transparency and openness in respect of the processes adopted and the subsequent decision making, including clear accountability for decisions taken.

All Local Authorities should ensure that they proactively place, within the public domain, for example through their websites, full documentation leading to decisions made that result in changes to community services.

4 <http://www.un.org/documents/ga/res/46/a46r091.htm>

5 <http://www.equalityhumanrights.com/about-us/devolved-authorities/the-commission-in-wales>

The Older People's Commissioner for Wales

The Older People's Commissioner for Wales is an independent voice and champion for older people across Wales. The Commissioner and her team work to ensure that older people have a voice that is heard, that they have choice and control, that they don't feel isolated or discriminated against and that they receive the support and services that they need.

The Commissioner and her team work to ensure that Wales is a good place to grow older, not just for some but for everyone.

How to contact the Commissioner:

The Older People's Commissioner for Wales
Cambrian Buildings
Mount Stuart Square
Cardiff
CF10 5FL

Phone: 08442 640 670

Email: ask@olderpeoplewales.com

Website: www.olderpeoplewales.com

Twitter: [@talkolderpeople](https://twitter.com/talkolderpeople)



SCRUTINY LEADERSHIP GROUP – 27TH NOVEMBER 2014

SUBJECT: EDUCATION SCRUTINY

REPORT BY: INTERIM DEPUTY MONITORING OFFICER/INTERIM HEAD OF DEMOCRATIC SERVICES

1. PURPOSE OF REPORT

1.1 To clarify the role of scrutiny in relation legal functions of Schools and the Council.

2. SUMMARY

2.1 This report gives a clarification of the roles and functions of Schools and the Council with regards to the scrutiny of Education functions.

3. LINKS TO STRATEGY

3.1 The operation of scrutiny is required by the Local Government Act 2000 and the Local Government (Wales) Measures 2009 and 2011.

4. THE REPORT

4.1 Section 21 (2) of the Local Government Act 2000 gives overview and scrutiny functions the following powers;

- (a) to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the executive,
- (b) to make reports or recommendations to the authority or the executive with respect to the discharge of any functions which are the responsibility of the executive,
- (c) to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are not the responsibility of the executive,
- (d) to make reports or recommendations to the authority or the executive with respect to the discharge of any functions which are not the responsibility of the executive,
- (e) to make reports or recommendations to the authority or the executive on matters which affect the authority's area or the inhabitants of that area,
- (f) in the case of the overview and scrutiny committee or committees of an authority to which section 7 of the Health and Social Care Act 2001 applies, to review and scrutinise, in accordance with regulations under that section, matters relating to the health service (within the meaning of that section) in the authority's area, and to make reports and recommendations on such matters in accordance with the regulations.

4.2 However, as with all other functions of the Council, overview and scrutiny committees have to act within the powers of the Council and in line with the Council's Constitution, which includes the terms of reference of the respective Scrutiny Committees.

- 4.3 The Education for Life Scrutiny Committee's terms of reference includes; scrutiny of the discharge of the Council's obligations as Local Education Authority under statute and regulation, the details set out below provide a clarification about the Council's obligations.
- 4.4 The Welsh Assembly Government has devolved powers over education policy in Wales. Local Authorities have a duty to provide education to pupils of statutory school age in their area in accordance with section 13 of the Education Act 1996. In addition to this, section 13A of the Education Act 1996 places a duty upon local authorities to promote high standards in the provision of Education.
- 4.5 The Council provides support and strategic direction for schools, however schools are legally autonomous and under the Government of Maintained Schools (Wales) Regulations 2005, Governing Bodies have to be established for each school to control the school. Recently these regulations have been amended to include mandatory training for school governors.
- 4.6 The Policy and Resource Scrutiny Committee (P&R Committee) has financial planning and budget control within its terms of reference. However, most of the Council's budget for education is delegated to schools in line with the funding formula. Schools then provide education to pupils in accordance with the School Standards and Framework Act 1998. The P&R Committee also consider corporate policies and the corporate functions, including human resources. The Council contractually employs staff, including headteachers in schools (except in foundation and voluntary aided schools), however under the Staffing of Maintained Schools (Wales) Regulations 2006, Governing Bodies are also their employer and they have full control about their performance and conduct.
- 4.7 The P&R Committee also have corporate property within their terms of reference, this includes school buildings (except for foundation and voluntary aided schools), however under the Control of School Premises (Wales) Regulations 2008, Governing Bodies are given full control over the School, including the buildings. The P&R Committee also consider health and safety, equalities and legal functions of the Council, again schools are autonomous in this regard, however the Council provides advice and support through service level agreement in these areas.
- 4.8 The Audit Committee has within their terms of reference scrutiny of the Council's financial affairs and risk management. Once the Council has set Schools budgets, Governing Bodies are responsible for their own financial affairs and risk management. Additionally, schools have their own complaint's policies, however the Council again advises them and has provided a model procedure which includes 3 stages with the last being a hearing in front of a panel of Governors who have not been previously involved.
- 4.9 In summary, the Council's function with regards to education covers:
- Strategic management: includes making grants and internal audits and provision of school advisory services
 - Special Educational Needs and
 - Additional Learning Needs: including funding for pupils and Pupil Referral Units
 - School Improvement: particularly supporting underperforming schools
 - Access to Education: admissions policy and process, home to school transport and assessing eligibility for free school meals
- 4.10 School Governing Body functions include all the main policy decisions within schools including:
- Strategic Management of the school
 - Setting and monitoring the Budget.
 - Academic matters;
 - School discipline;
 - The appointment and dismissal of staff;
 - Repair and maintenance of school buildings.

- 4.11 The Estyn inspector's presentation to the Gwent Scrutiny Challenge stated that Estyn inspectors judge the effectiveness of scrutiny by elected members and other supervisory boards in challenging underperformance and in informing the continuous improvement of service delivery and policy development.
- 4.12 The Estyn Inspector confirmed that scrutiny is good where: The scrutiny process is well organised and effectively supports improvement;
- Elected members across the council and senior officers share a consistent and coherent vision for education services, which is free from political bias;
 - Leaders and managers are willing to take difficult decisions for the benefit of learners;
 - Communication and engagement with all stakeholders is good. Elected members hold all managers to account for the outcomes they are responsible for including managers within schools.
 - Sharply focused task and finish groups are able to drill effectively into specific issues;
 - Information, intelligence and data is clear, concise and informative enough to enable scrutiny members to understand where there is good performance and where there is poor performance, and through this to focus on specific pieces of underperforming provision; and
 - Scrutiny committee work programmes lead to clear and challenging recommendations for cabinet, officers and providers of education services.
- 4.13 The WLGA guide on the Scrutiny of School and Education Issues confirms that the local authority and schools are subject to a range of regulatory activity including external regulation, inspection and audit, as well as internal auditing. Schools are also accountable to their Governing Bodies. For scrutiny to add value it must complement rather than duplicate the work of these bodies, for example, if a scrutiny committee seeks to investigate a service area that is due to be inspected or has recently been inspected it may be duplicating effort.
- 4.14 The Council is not responsible for the performance of individual Schools; that is the role of the Governing Body. However, as stated above, scrutiny has a valid role in testing the robustness of the Council's education function as well as the effectiveness of the Education Achievement Service. In terms of school performance this includes considering the robustness of the procedures that are in place to improve school performance such as the intervention planning process, which involves not only Council Officers but also Cabinet Members and Challenge Cymru.
- 4.15 Scrutiny committees should ask council officers to present details of poor performance to the committee so that good performance is recognised and poor performance challenged and that external inspections of the Council do not reveal significant failings or areas of underperformance that the Council is not already trying to improve. Where poor performance is identified by Council Officers or EAS, there is an opportunity for scrutiny committees to challenge Council officers on the failings or areas of underperformance. Scrutiny committees may decide to undertake a more detailed investigation into the underlying causes of the poor performance and can review any action the authority intends to take to improve performance. This cannot focus on single school issues but can consider the Council's relationship with schools and strategic planning to improve education.
- 4.16 Cabinet Members from any relevant departments and council officers can be called to account in respect of any areas of responsibility, including education. Representatives of schools can also be involved in the scrutiny process, for example, when reviewing the Council's Improvement Objectives, it may be useful to involve head teachers and governors as expert witnesses when council officers consider it appropriate. This can help to ensure that a 'schools' perspective is given when education issues are considered by scrutiny. Again members should note that this should be undertaken on a strategic basis and should not focus on single school issues.
- 4.17 Although scrutiny committees may invite anyone to attend, inviting a headteacher to attend a committee must be very carefully considered. Members would need to be particularly careful to keep to the purpose of inviting the headteacher and could not use it as an opportunity to

question the performance of an individual head teacher. As the Council is the contractual employer of headteachers, the Council owes a duty of care to them but the Governing Body are directly responsible for headteachers performance.

- 4.18 The Council also has additional powers to intervene and responsibilities under the School Standards and Framework Act 2013 and the School Organisation Code. The current challenges relating to rationalisation of school places and budgetary constraints mean that the strategic planning and direction in education is vital and scrutiny committees have a significant role to play in ensuring the best education for pupils in Caerphilly County Borough.

5. EQUALITIES IMPLICATIONS

- 5.1 This report is for information purposes, so the Council's EqIA process does not need to be applied.

6. FINANCIAL IMPLICATIONS

- 6.1 There are no financial implications not contained in the report.

7. PERSONNEL IMPLICATIONS

- 7.1 There are no personnel implications not contained in the report.

8. CONSULTATIONS

- 8.1 There are no consultation responses not contained in the report.

9. RECOMMENDATIONS

- 9.1 Scrutiny Leadership note and comment on the explanation in this report.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 For Scrutiny Leadership Group to clarify arrangements for Education Scrutiny.

11. STATUTORY POWER

- 11.1 Section 21 of the Local Government Act 2000.

Author: Angharad Price, Interim Deputy Monitoring Officer/Interim Head of Democratic Services

Consultees: Sandra Aspinall, Acting Deputy Chief Executive/Director of Education
Gail Williams, Interim Head of Legal Services/Monitoring Officer
Jonathan Jones, Democratic Services Manager
Catherine Forbes-Thompson, Scrutiny Research Officer
Keri Cole, Learning Education and Inclusion Manager
Cllr Rhiannon Passmore, Cabinet Member for Education