

**X. DYFAL DONC A DYRR Y GARREG: THE WELSH LANGUAGE COMMISSIONER’S WORK IN ENSURING THE RIGHTS OF WELSH SPEAKERS IN THE FIELD OF HEALTH AND SOCIAL CARE 2012–19**

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**About the Author**

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Coal and slate have been instrumental in creating the modern Wales in which we live. The experiences and actions of people living in these communities that depended on slate and coal mining contributed greatly to the establishment of the National Health Service (NHS). As Minister of Health in the British Government between 1945 and 1951, Aneurin Bevan, the former miner and then Labour Party MP for Ebbw Vale in the South Wales coalfield, was instrumental in the establishment of the National Health Service. He had direct experience with how a community medical aid society which was locally funded by individual contributions provided healthcare to thousands of local people. To describe the NHS as a rock that supports people today, much as slate and coal have supported Welsh communities, is a bold statement, but when the National Health Service celebrated 70 years of existence in 2018, much was made of its fundamental importance in everyday life in Britain. *Dyfal donc a dyrr y garreg*, an old Welsh proverb, literally translates as ‘persistent blows will shatter the stone’. It tells us that perseverance pays in the end, and could well be used as an analogy for the process of ensuring the rights of Welsh speakers to receive services in Welsh from the National Health Service.

## **THE NHS IN WALES**

The power to legislate and set policy in health and social care, as well as the Welsh language, are matters that were devolved to Wales following the establishment of the National Assembly for Wales in 1999. The devolution of powers to Wales is an ongoing process<sup>1</sup> and as such is the subject of great discussion, not least as a result of the Brexit referendum vote in 2016.<sup>2</sup> When it was launched the NHS was based on three core principles which continue

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1. At the time of writing Assembly Members had voted to allow the Assembly Commission to introduce the *Welsh Parliament and Elections (Wales) Bill* in early 2019. Among the changes proposed are changing the name of the Assembly to Senedd and lowering the voting age for Assembly elections to 16. The powers to legislate on these matters come as a result of the *Wales Act 2017* which provides a new reserved powers model and which gives responsibility for the first Welsh taxes in 800 years, including income tax-varying powers.
  2. For further reading on Welsh Devolution please refer to the ‘About the Assembly’ pages on the National Assembly for Wales website: <[www.assembly.wales](http://www.assembly.wales)> (accessed 22 February 2019).

to guide it. Firstly, that it meets the needs of everyone; secondly, that it is free at the point of delivery; and, lastly, that it is based on clinical need and not the ability to pay. In Wales, the NHS is funded by the Welsh Government. Its services are delivered through seven health boards and three NHS trusts. Primary care services are provided by general practitioners and other health-care professionals in health centres and surgeries across Wales. Secondary care is delivered through hospitals and ambulance services. Patients do not normally have direct access to hospital consultants as general practitioners control access to secondary care. Tertiary care is provided by hospitals which treat particular types of illness such as cancer. Community care services are usually provided in partnership with local social services which are mainly delivered by local authorities, of which there are 22. These cover child, adult and mental health services. They provide care either directly or by means of contracted third party organizations. Despite being provided by different organizations, strategies for the health and social services in Wales seek to ensure that both are delivered as one joined-up seamless package of services. The most recent government strategy *A Healthier Wales: our Plan for Health and Social Care*, for example, sets out the Welsh Government's long-term future vision of a 'whole system approach to health and social care'.<sup>3</sup>

### **LEGISLATION IN FAVOUR OF THE WELSH LANGUAGE**

When the National Assembly for Wales was established, public organizations in Wales were subject to the *Welsh Language Act 1993*. An Act of the Westminster Parliament, it had given effect to the principle that in the conduct of public business and the administration of justice in Wales, the English and Welsh languages should be treated 'on the basis of equality'. It had also established the Welsh Language Board which had the task of promoting and facilitating the Welsh language. The Board was also able to prepare and approve Welsh language schemes with relevant statutory organizations in Wales which included the Welsh Government, health boards and local authorities. These schemes set out how each organization would provide services to the public in accordance with the principle of equality of the Welsh and English languages. Although a set of guidelines was available for their preparation, each Welsh language scheme was individual to each organization. Despite operating in the same field of work or in the same geographical area, the level of provision available in Welsh varied between each organization. This meant that there was a lack of consistency in the services that the public knew to expect from each organization. The Welsh Language Board also

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3. Welsh Government, 2018, *A Healthier Wales: our Plan for Health and Social Care*, p. 6: <<https://gov.wales/topics/health/publications/healthier-wales/?lang=en>> (accessed 5 December 2018).

lacked enforcement, monitoring or regulating powers. It couldn't effectively deal with failings in relation to language schemes, so if they did exist, and there was lack of compliance with those language schemes, then it was very difficult for the Board to intervene in any way that would generate change. Its only option was to refer matters to the Secretary of State for Wales, or after devolution to Welsh Ministers.

There is no doubt that the *Welsh Language Act* of 1993 was an important step on the journey to ensuring the rights of Welsh speakers as it placed the responsibility on public bodies to provide services rather than on individuals to ask for those services. However, its weaknesses became increasingly apparent with time. The 2007–11 coalition government of Plaid Cymru and Labour, known as the One Wales Government, pledged to 'seek enhanced legislative competence on Welsh language' in its *One Wales Delivery Plan*.<sup>4</sup> This step was eventually found to be fraught with difficulties, not least as a result of the Legislative Competence Orders procedure.<sup>5</sup> The *Welsh Language (Wales) Measure 2011*<sup>6</sup> was passed on 10 December 2010 and enacted on 9 February 2011, just three months before the next Assembly elections were held on 5 May 2011.

#### **WELSH LANGUAGE (WALES) MEASURE 2011**

This legislation was the first piece of legislation created in Wales by a Welsh government to protect the Welsh language. Most importantly it gave the Welsh language official status in Wales, thereby rectifying the injustice made by the *Act of Union of England and Wales* of 1536 which stated that an individual had to be able to speak English in order to hold public office in Wales. The Measure also created the post of Welsh Language Commissioner. The Commissioner was tasked with promoting and facilitating the use of the Welsh language, and the Measure details actions that the Commissioner must or may undertake in the function of his or her duties.

Section 4 of the Measure states that the Commissioner has the power to do anything that the Commissioner deems appropriate to promote and to

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4. *One Wales Delivery Plan 2007-2011*, p. 73.

5. Legislative Competence Orders (LCOs) came about as a result of the *Government of Wales Act 2006*. They allowed for the transfer of legislative authority from the Parliament of the United Kingdom to the National Assembly for Wales. An LCO, however, had to be approved by the Assembly, the Secretary of State for Wales, both Houses of Parliament, and then the Queen in Council. In effect, the National Assembly for Wales had to ask for permission from the Westminster Parliaments to introduce primary legislation in fields that had already been devolved to it.

6. <<http://www.legislation.gov.uk/mwa/2011/1/contents/enacted>> (accessed 30 October 2018).

facilitate the use of the Welsh language, or to work towards ensuring that the Welsh language is treated no less favourably than the English language. The Measure sets out a procedure by which the Commissioner places a duty on a number of public bodies in Wales specified in the Measure to comply with Welsh language standards. Standards aim to make it clear to organizations what their duties are in relation to the Welsh language and to make it clearer to Welsh speakers what services they can expect to receive in Welsh. They also aim to make the Welsh language services available to the public more consistent and to improve their quality. The Measure also gives the Commissioner the power to investigate complaints regarding the freedom to communicate in Welsh with other people. The Welsh Language Tribunal is also established by the Measure with the purpose of dealing with appeals against decisions by the Commissioner in relation to Welsh language standards.

#### **THE FIRST WELSH LANGUAGE COMMISSIONER AND HER INQUIRY INTO THE WELSH LANGUAGE IN PRIMARY CARE**

Meri Huws was appointed as first Welsh Language Commissioner at the end of 2011 and her office opened on 1 April 2012.<sup>7</sup> With a background in social work, it became apparent from the outset that the Welsh language in the field of health and social care was to become an important theme during her time as Commissioner. Indeed, by the end of 2012 plans were afoot to conduct an inquiry<sup>8</sup> into the Welsh language in primary care. The aim of the inquiry was to offer a clear analysis, based on firm qualitative and quantitative evidence, of the extent of patient experience of Welsh language provision within primary care services.

The inquiry has proved to be an important piece of evidence about the experiences of Welsh speakers with health and social care, especially as the breadth of material that was collected was so vast. Public and stakeholder events were held to share information and seek opinions; various meetings between the Commissioner and her officers and relevant organizations also took place

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7. The *Welsh Language (Wales) Measure 2011* specifies that a Commissioner's term can be no longer than 7 years. Consequently Meri Huws' term as Commissioner will come to an end on 31 March 2019. At the time of writing, Aled Roberts has been appointed as Welsh Language Commissioner for a period of seven years from 1 April 2019.

8. Section 7 of the *Welsh Language (Wales) Measure 2011* states that the Commissioner may conduct an inquiry into any matter relating to any of the Commissioner's functions. Schedule 2 makes supplemental provision about conducting inquiries including the requirement for the Commissioner to prepare a published terms of reference in consultation with specified relevant persons; that the Commissioner must make arrangements for giving persons an opportunity to make representations in relation to inquiries; and that the Commissioner must prepare a report of his or her findings on any inquiry as well as the process involved with doing so.

and there was coverage in the local and national press and media and on social media. Altogether 170 pieces of evidence were received from members of the public who contacted the Commissioner; 26 stakeholder organizations provided formal written evidence and 16 stakeholders gave evidence in person to the Inquiry Panel convened by the Commissioner. In addition, in order to ensure that the voice of the patient was central to the work, an independent market research company was commissioned to conduct a survey of 1000 fluent Welsh speakers about their experiences of receiving or failing to receive primary care services through the medium of Welsh.

The inquiry, however, was not welcomed by all parties involved in primary care, as the Commissioner alludes to in her introduction to the final report. Some, but not all, of the professional bodies involved in the field, for example, objected to the remit of the inquiry. As Gwerfyl Wyn Roberts, who at the time lectured at Bangor University's School of Healthcare Sciences, explains, 'it was a challenging task considering the complexity and vastness of the field, but a timely one as it underlined the priority that the Commissioner gave to the field'.<sup>9</sup>

The subsequent report, known as *My Language, My Health: The Welsh Language Commissioner's Inquiry into the Welsh Language in Primary Care*,<sup>10</sup> was published in June of 2014 and included 33 recommendations to Welsh Ministers and others as to ways of improving primary care services for Welsh speakers. The first recommendation was the requirement for Welsh Ministers to provide the Welsh Language Commissioner with a report within six months of the publication of the inquiry, responding to its conclusions and recommendations. The report firmly established the principle that for some patients, receiving services in Welsh was a *clinical* need, and that failing to provide them jeopardized the quality of the service offered and, as a result, the dignity and respect afforded to those individuals. The report found that Welsh speakers received the majority of their primary care experiences through the medium of English and that there was no evidence that the primary care sector made any systematic effort to establish the language needs of patients. It also highlighted the low expectations of Welsh speakers and that a number of people made do with primary care services in English even though they would prefer to speak Welsh. In so doing it highlighted the lack of active offer in the sector and the need to look at the factors that form the

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9. Author's translation of comments received by e-mail from Gwerfyl Wyn Roberts on 28 November 2018.

10. Welsh Language Commissioner, *My Language, My Health: The Welsh Language Commissioner's Inquiry into the Welsh Language in Primary Care* (2014): <<http://www.comisiynyddygydraeg.cymru/English/Publications%20List/Health%20inquiry%20full%20report.pdf>> (accessed 5 December 2018).

basis of the need for providers to offer Welsh language services proactively. A key aspect of the discussion of the active offer was the comparison made with its implementation in Canada as a result of its *Official Languages Act*. The report also considered service and workforce planning and the need for education and strategic planning, as well as the importance of leadership and accountability therein. It also considered the testimony offered regarding legislation and policy and concluded ‘whether there is agreement that legislation and policy are adequate or not, the clear message is that there is a gap between legislation and policy and implementing those requirements on the ground’.<sup>11</sup> The gaps in technology infrastructure was also an issue highlighted by the report which noted that IT systems were a barrier, as they did not facilitate the flow of information between providers meaning that it was not possible to arrange language-appropriate care beforehand in places such as hospitals and clinics.

#### **THE WELSH GOVERNMENT’S RESPONSE TO THE COMMISSIONER’S REPORT ON THE WELSH LANGUAGE IN PRIMARY CARE**

On 10 December 2014, Mark Drakeford AM, the then-Minister for Health and Social Services,<sup>12</sup> published the Welsh Government’s response to the Welsh Language Commissioner’s inquiry.<sup>13</sup> The response stated the Government’s commitment to responding positively to the recommendations and the intention to monitor their implementation through a detailed internal action plan. This response was considered by the Commissioner to be a positive step by the Government and a sign that it had understood and appreciated the findings of the report. Taken hand in hand with other positive steps that were taken during Mark Drakeford’s time as Minister for Health and Social Services that will be discussed below, it is also testament to the importance of political leadership in changing attitudes towards language policy. The report was also sent to stakeholders who were invited to comment on the report’s findings. Of the eleven organizations that responded, which included six health boards, one health trust, one local health committee, two royal colleges of health and the Older People’s Commissioner for Wales, all bar one were positive and agreed that there was a need to improve primary care services in Welsh, and saw that there were opportunities to do so in accordance with the findings of the report.

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11. *Ibid.*, p. 112.

12. Rt Hon Mark Drakeford became First Minister of the Welsh Government in December 2018.

13. <<https://gov.wales/about/cabinet/cabinetstatements/previous-administration/2014/58099648/?skip=1&lang=en>> (accessed 5 December 2018).



Although *My Language, My Health* specifically reflected the situation of the language in primary care services, its findings have shaped and fed into the Commissioner's subsequent policy work in the field of health and social care. It allowed the Commissioner to provide evidence in related fields of inquiry which could be based on research and the testimony of Welsh speakers as to the services provided to them. This included work scrutinizing legislation and responding to consultations and policy reviews such as the 2017 Parliamentary Review of Health and Social Care in Wales.<sup>14</sup> A general problem which has affected the Commissioner's ability to promote the use of the Welsh language is the general lack of research and data on the use of the Welsh language in all fields, an issue that became increasingly apparent as the Commissioner prepared the first 5-year report, published in 2016.<sup>15</sup> The fact that the inquiry was so thorough and that the report's recommendations were based on such comprehensive research lent it a great deal of credibility. As Gwerfyl Wyn Roberts summarized, it provided:

comprehensive research testimony that built on previous findings, which exposed significant deficiencies in the provision of Welsh language services, and which has subsequently been quoted often in reports, policies and training programmes.<sup>16</sup>

The relationships developed during the inquiry and subsequently nurtured through regular meetings with organizations and individuals within the health sector, both as part of the policy and regulatory functions of the Commissioner, have also contributed to the Commissioner's work in the field. One can also venture to say that these relationships, as well as the findings of the inquiry, have contributed to creating some change in attitudes and understanding of the need for health services through the medium of Welsh. Professor Ceri Phillips, Professor of Health Economics and Head of the College of Human and Health Sciences at Swansea University, who was a member of the inquiry's panel of experts, summarized the implications of the report as follows:

*My Language, my Health* brought to attention the need to ensure that the language was a factor that contributed greatly to the quality of the care that patients receive, with evidence that underlines that point. The commitment of

14. All of the Commissioner's representations in various fields can be found on the Commissioner's website: <[www.cyg-wlc.wales](http://www.cyg-wlc.wales)> (accessed 5 December 2018).

15. Welsh Language Commissioner, *The Position of the Welsh Language 2012–2015 Welsh Language Commissioner's 5-year Report*: <<http://www.comisiynyddygydraeg.cymru/Cymraeg/Rhestr%20Cyhoeddiadau/Adroddiad%205-mlynedd%20-%205-year%20Report.pdf>> (accessed 18 December 2018).

16. Author's translation of comments received from Gwerfyl Wyn Roberts by e-mail on 28 November 2018.

all the stakeholders who contributed their testimony and opinion to the Panel to ensure that greater importance was given to the Welsh language in services was clear.<sup>17</sup>

### **MORE THAN JUST WORDS AND LEGISLATION**

In his response to the report, Mark Drakeford made reference to *More than just words*, the Welsh Government's strategic framework for Welsh language services in health, social services and social care, published in 2012. This framework has been superseded by a follow-on strategic framework also known as *More than just words 2016–19*<sup>18</sup> which was developed with the aim of building on the original strategy and of reflecting changes in the political and legislative context. The *More than just words* framework is the guiding strategy that drives the use of the Welsh language in the health and social care sector in Wales. Its implementation is overseen by a partnership board of stakeholders of which the Welsh Language Commissioner is a member. The framework sets out actions relating to seven objectives and assigns lead responsibilities to NHS Chief Executives and Social Services Directors and the Welsh Government as well as other leading bodies in the field, thus emphasizing the importance of ensuring leadership and ownership in order to create improvement and change. These objectives cover matters such as the need for leadership at all levels and the importance of national policy to drive change. Importantly, they also cover steps to improve the knowledge base in the field through mapping the workforce and the language needs of service users in order to drive improvement in service and workforce planning. Welsh in the workplace and professional education are also emphasized in the framework, as are promotional and engagement activities. Finally, there are targets regarding the regulation and inspection of health and social care.

The framework states that it is important to recognize the concept of language need as part of people's quality of care and as a clinical necessity for many. In addition, it is stated that health and social care and support services should be available in Welsh in order to maintain professional standards and meet the language needs of people as well as to comply with legal and statutory requirements. Reference is also made to the European Charter for Regional or Minority Languages<sup>19</sup> which establishes the principal that the

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17. Author's translation of comments received from Professor Ceri Phillips by e-mail on 22 November 2018.
  18. Welsh Government, *More than just words: Follow-on Strategic Framework for Welsh Language Services in Health, Social Services and Social Care 2016–2019*: <<https://gov.wales/docs/dhss/publications/160317morethanjustwordsen.pdf>> (Accessed 19 July 2018).
  19. <<https://www.coe.int/en/web/european-charter-regional-or-minority-languages/text-of-the-charter>> (accessed 22 February 2019).

right to use a regional or minority language in private and public life is an inalienable right.

The legislative context within which the new *More than just words* framework was developed includes two important pieces of legislation that were introduced by Mark Drakeford during his time as Minister for Health and Social Care between 2013 and 2016, which include specific provision relating to providing services through the medium of Welsh. The *Social Services and Well-being (Wales) Act 2014*<sup>20</sup> contains specific requirements relating to the Welsh language including the language of assessment, and considering the Welsh language when commissioning and delivering care and in individual care plans prepared in accordance with the Act. Section 14(1) states that local authorities and each health board must jointly assess the range and level of services required to meet the care and support needs of people in the local authority area as well as the range and level of preventative services required. They must also jointly assess the actions required to provide the range and level of services identified through the medium of Welsh. The Act and Regulations and Part 2 of the Code of Practice include details on preparing care and support plans and specifically the rights and responsibilities of people who need care and support to achieve their personal outcomes. The Code states that when people use social services and their partners to implement their care and support plan, ‘people can expect to achieve personal outcomes which reflect the following national well-being outcome statements: I get care and support through the Welsh language if I need it.’<sup>21</sup> The actions outlined in the Act of assessing the linguistic needs of individuals and planning services based on the identified needs reflect the actions that the Commissioner has called for in relation to subsequent legislation. It also reflects the findings of the *My Language, My Health* inquiry with regards to the need to plan services based on reliable data and information about the needs of Welsh speakers. It is also a positive step that measures in relation to the Welsh language are included on the face of the legislation, as, in many spheres, provision relating to the Welsh language has often seemed to be an afterthought and not an integral part of the development of legislation.

The aim of the *Regulation and Inspection of Social Care (Wales) Act 2016*, also introduced by Mark Drakeford AM, is to put quality and service improvement at the heart of regulation of social care. It ensures that services deliver

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20. *Social Services and Well-being (Wales) Act 2014*: <[https://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw\\_20140004\\_en.pdf](https://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf)> (accessed 18 July 2018).

21. Welsh Government, *Social Services and Well-being (Wales) Act 2014 Part 2 Code of Practice (General Functions)*: <<https://gov.wales/docs/dhss/publications/151218part2en.pdf>> (accessed 18 July 2018).

high-quality care and support. Regulations arising from the Act place requirements on service providers in relation to the standard of care and support that they deliver.<sup>22</sup> In terms of the Welsh language, it is stated in section 24 of the regulations that ‘the service provider must take reasonable steps to meet the language needs of individuals and the service provider must ensure that individuals are provided with access to such aids and equipment as may be necessary to facilitate the individual’s communication with others’. The Statutory Guidance resulting from these regulations outlines methods that could be adopted by service providers to help people with language and communication needs.<sup>23</sup>

### COMPLAINTS HANDLING

In January 2014, as the *My Language, My Health* inquiry was being undertaken, the Commissioner received a complaint about the right to use Welsh on a written prescription in Wales.<sup>24</sup> A child had faced considerable delay in receiving medicine from a pharmacist. The GP had written the prescription in Welsh as a natural part of being responsive to the linguistic needs of the family. The pharmacist who did not speak Welsh had refused to give the prescribed medicine as he did not understand the instructions written on the prescription, so the family had to face considerable delay before a translation was obtained in order to process the prescription. The Commissioner investigated the complaint and sought the view of the profession. Although the relevant legislation did not impose the use of English only or ban the use of the Welsh language on prescriptions, NHS Wales had issued Guidelines, the All Wales Prescription Writing Standards, which stated that ‘directions should be in English’. These guidelines were based on guidance issued by the British National Formulary and NICE<sup>25</sup> that stated that prescriptions ‘should preferably be in English’. The *Welsh Language Measure (Wales) 2011* of course stated that the Welsh language should not be treated less favourably than English.

In February 2014, the Commissioner corresponded and met with the First Minister for Wales who at the time had responsibility for the Welsh language

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22. *Regulated Services (Service Providers and Responsible Individuals) (Wales) Regulations 2017*: <<https://www.legislation.gov.uk/wsi/2017/1264/contents/made>> (accessed 5 December 2018).
  23. Welsh Government, *Statutory guidance for service providers and responsible individuals on meeting service Standard regulations*, p. 36: <<https://beta.llyw.cymru/sites/default/files/consultations/2018-02/170502statutoryguidanceen.pdf>> (accessed 9 October 2018).
  24. Appendix 4 to *My Language, My Health* sets out the extent of the complaint in more detail and how the complaint was dealt with.
  25. The National Institute for Health and Care Excellence: <<https://www.nice.org.uk/>> (accessed 22 February 2018).

within the Government. Eventually the Welsh Government agreed to a set of resolutions, namely that it would look at creating a lexicon for Welsh language instructions on prescriptions for dispensing systems and identify and promote Welsh language pharmacy provision. The Government also agreed to map the Welsh language skills of the current workforce and agree on a system to look at the number of Welsh-speaking students who are training to be pharmacists.

Another complaint to the Commissioner also received media coverage during 2014, namely that a doctor in the employment of a health board had interfered with an individual's freedom to use Welsh with another individual, in this case a child. Part 6 of the *Welsh Language Measure* allows for applications to the Commissioner to investigate whether a person has interfered with the freedom of one individual to communicate in Welsh with another individual. In this case it was alleged that a doctor had told a parent and child that they should not speak Welsh with each other.<sup>26</sup> The Commissioner investigated the case and in doing so considered the evidence received by the complainant and by the health board. The Commissioner ruled: 'that the doctor interfered with the parent and child's freedom to undertake a Welsh communication with one another'.<sup>27</sup> The Commissioner gave her views on the intervention and concluded that there was no legal basis to justify the interference with the parent and child's freedom to use the Welsh language with each other in order to protect the health of the child, and that what happened was disproportionate. The Commissioner also provided advice to the Health Board in accordance with section 117(7) of the Measure. This was done in the hope that such complaints could be avoided in future.

Other complaints and concerns received in the health and social care sector have been in fields such as assessment and diagnostic tools as well as the lack of Welsh medium provision in child, mental health and dementia care. Information about the Commissioner's statutory investigations into

26. Under section 111 of the Measure:

An individual (P) may apply to the Commissioner for the Commissioner to investigate whether a person (D) has interfered with P's freedom to undertake a Welsh communication with another individual (R) (the "alleged interference").

In this context, Welsh communication means a communication in Welsh between two individuals in Wales who wish to use the Welsh language with one another in undertaking that communication.

27. *The Welsh Language Commissioner's determination and report on an investigation into an application under section 111 of the Welsh Language (Wales) Measure 2011* (14 October 2014): <[http://www.comisiynyddygydraeg.cymru/English/Publications%20List/20141014%20DG%20S%20Dyfarniad%20ac%20adroddiad%20-%20Ymchwiliad%2032%20\(2\).pdf](http://www.comisiynyddygydraeg.cymru/English/Publications%20List/20141014%20DG%20S%20Dyfarniad%20ac%20adroddiad%20-%20Ymchwiliad%2032%20(2).pdf)> (accessed 5 December 2018).

the failure of organizations to implement their Welsh language scheme or comply with standards can be found on the Commissioner's website.

### **THE WELSH LANGUAGE COMMISSIONER'S REGULATORY FRAMEWORK**

The Commissioner's Regulatory Framework<sup>28</sup> outlines how the Commissioner will implement the work programme for regulating Welsh language standards and Welsh language schemes. This includes conducting thematic studies on groups of standards in order to aid good compliance by organizations and work on dealing with systematic problems that hinder the implementation of standards and the use of the language. Through regular meetings with health organizations currently subject to Welsh language schemes it has been possible to gather information about matters that hinder their provision of services in Welsh and share examples of good practice. There can be no doubt that some health boards have taken steps forwards in terms of their provision over the years. Many, for example, have developed units dedicated to working with staff to develop provision in Welsh and to provide translation services. The lack of consideration given to the Welsh language in the development of information technology systems has certainly been one issue that has hindered the recording of information about the language skills of the workforce and the language choice of patients in the health and care sectors. This has held back both the work of health boards and local authorities in planning and providing services and the ability to fully meet the *More than just words* framework. Work led by the Commissioner in conjunction with relevant stakeholders to find solutions to systemic problems involved with recording language choice is currently underway. This is certainly a problem which is a cause for considerable concern in both the health and social care sector and, in conjunction with work that the sector itself is undertaking as a result of *More than just words*, will hopefully lead to change and improvement.

### **WELSH LANGUAGE STANDARDS**

This contribution is written at a point where the Commissioner's remit in the field of health is changing as a result of the imposition of Welsh language standards<sup>29</sup> on health bodies which are due to come into force in the spring

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28. *The Welsh Language Commissioner's Regulatory Framework* (April 2014): <<http://www.comisiynyddygydraeg.cymru/English/Publications%20List/Regulatory%20Framework.pdf>> (accessed 28 November 2018).

29. For information regarding the process of implementing standards, please see: <<http://www.comisiynyddygydraeg.cymru/English/Organisations/Imposing%20standards/Pages/Imposing-standards.aspx>> (accessed 5 December 2018).

of 2019 following an extensive process which is detailed in the *Welsh Language (Wales) Measure 2011*. This follows on from the standards that came into force for local authorities and, therefore, for social services, in March 2016. The standards which are set out in regulations<sup>30</sup> relate to health organizations' activities in four fields of activity.<sup>31</sup> For the health sector they include service delivery standards for activities such as correspondence, telephone calls, meetings, websites and social media. Service delivery standards deal with ensuring that consideration is given, when formulating new policies or reviewing or revising policies, to their effect on opportunities for persons to use the Welsh language, and treating the Welsh language no less favourably than the English language. Operational standards relate to the use of the Welsh language within a body's internal administration such as in human resources and training activities. Record-keeping standards concern keeping records about other specified standards and complaints concerning compliance and other complaints regarding the Welsh language. It should be emphasized that the standards do not relate to the clinical activities of health organizations.

The Commissioner's annual assurance reports<sup>32</sup> gather and analyze quantitative and qualitative data from various sources to provide a picture of the extent that public organizations provide services for Welsh speakers and the quality of those services. Their intention is to draw the attention of organizations to successful practice, and where compliance arrangements need to be strengthened, in order to enable them to comply and improve users' experiences. The reports also provide evidence to politicians, and other policy-makers, regarding to what extent public organizations provide services of good quality in Welsh, and to what extent the standards regime is successful. There is clear evidence from the assurance reports that the standards regime has improved services to Welsh speakers provided by those organizations already adhering to standards. There is therefore much anticipation as to the changes that will come about in the health sector as a result of the imposition of standards on health organizations. During the period running

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30. Please see: <<http://www.comisiynyddygyrmaeg.cymru/English/Organisations/Pages/What-are-standards.aspx>> for more information about standards and also links to the regulations. The standards that are relevant to health bodies are found in the Welsh Language Standards (No. 7) Regulations 2018: <[http://www.legislation.gov.uk/wsi/2018/441/pdfs/wsi\\_20180441\\_mi.pdf](http://www.legislation.gov.uk/wsi/2018/441/pdfs/wsi_20180441_mi.pdf)> (accessed 5 December 2018).
  31. Promotional standards regarding how organizations propose to promote the Welsh language and to facilitate the use of the language more widely in their area are also relevant to local authorities and national parks that fall within the remit of the Welsh Language Standards (No. 1) Regulations 2015.
  32. <<http://www.comisiynyddygyrmaeg.cymru/English/Organisations/Compliance/assurancereports/Pages/The-Welsh-Language-Commissioner%E2%80%99s-Assurance-Reports.aspx>> (accessed 5 December 2018).

up to and after spring 2019 when the standards become enforceable, the Commissioner will hold a targeted campaign raising awareness of the rights resulting from the standards. Previous targeted campaigns have included adverts in television, print and social media<sup>33</sup> as well as presence in relevant prearranged gatherings such as conferences and, in the case of college and university, students' activities such as music festivals.

As significant as the imposition of health standards will be is the fact that when they come into force in 2019, primary healthcare providers will *also* be required to comply with non-enforceable duties that have been agreed between them and the Welsh Government.<sup>34</sup> The idea that professional bodies would accept such duties, although they are not enforceable, is a great step forwards from the narrative that surrounded the work on the *My Language, My Health* inquiry in 2014.

#### **DYFAL DONC**

It is somewhat disquieting, however, to consider the findings of the report at a distance of some years, as many of its findings seem to be as relevant today as they were then. This point is highlighted in the Commissioner's latest and largest piece of research into the health and social care since the publication of *My Language, My Health*. In November 2018, in cooperation with Alzheimer's Society Cymru the Commissioner published a report looking at the care offered to Welsh speakers with dementia. As in the case of the inquiry, the report gave great importance to the voice of service users and took an inclusive approach. The Commissioner worked in partnership with a third sector organization that specialized in the field and also consulted with a round table of experts in drawing up recommendations for the Welsh Government and other stakeholders. Gwerfyl Wyn Roberts called it a 'good example of strong leadership by the Commissioner to promote and facilitate the use of the Welsh language for the frailest users of health and social care'.<sup>35</sup> The *Welsh Speakers' Dementia Care*<sup>36</sup> report found that together legislation and policy which are in place to enable the use of the Welsh language provide a powerful framework to ensure services are provided in Welsh. However, the

33. See, for example, the YouTube campaign targeted at college and university students when standards came into force for universities and colleges in 2018: <<https://www.youtube.com/watch?v=8fpMF4yDUbU>> (accessed 5 December 2018).

34. Please see: <<http://record.assembly.wales/WrittenQuestion/76361>> (accessed 5 December 2018) for more information about the primary care contracts.

35. Author's translation of comments received by e-mail from Gwerfyl Wyn Roberts on 28 November 2018.

36. <<http://www.comisiynyddygydraeg.cymru/Cymraeg/Rhestr%20Cyhoeddiadau/Adroddiad%20dementia%20a%27r%20Gymraeg.pdf>> (accessed 10 November 2018).



report revealed gaps in the grass roots implementation of these policies and legislation, leading to gaps in the care currently delivered to individuals living with dementia. It concluded that these policies and legislation need to be fully implemented, reviewed and inspected more effectively, and action should be taken in response to the findings of these reviews and recommendations made and implemented accordingly. These findings reflect those of the *My Language, My Health* inquiry in 2014.

The dementia care report also highlights a need that was identified in *My Language, My Health* and in the *More than just words* framework that remains central to the ability to provide services in Welsh, which is the need to develop the health and social care workforce and promote their awareness of the importance of the active offer. Relevant actions in *More than just words* include the need for the Government to work with education providers to develop training courses that reflect the needs of the workforce. Much work has been done to enhance the educational provision and resources in Welsh in the health and social care fields by the Coleg Cymraeg Cenedlaethol in conjunction with Welsh universities.<sup>37</sup> However, despite this commitment in *More than just words* recent data about general practitioners<sup>38</sup> for example shows that over the past four years there has been little change in the number of GPs who have any ability to speak Welsh per 10,000 population and indeed that there were fewer GPs in 2017 with any ability in Welsh than in 2016. In 2017 the average was 1.1 Welsh speaking GPs per 10,000 of the population, this in comparison with the Wales average of 6.2 GPs per 10,000 of the whole population in 2017. A similar picture can be seen in the health and social care field where at 31 March 2017, 16% of local authority social services staff had skills in Welsh, this despite the fact that 19% of the population speaks Welsh. The establishment of Health Education and Improvement Wales in October 2018 offers some hope that more will be done to ensure more Welsh speakers follow healthcare courses and that more is done to develop the language skills of the healthcare workforce already in place. The organization is tasked with leading the education, training, development, and shaping of the healthcare workforce in Wales. Equally, new care qualifications specific to Wales, and plans by Social Care Wales and the National

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37. The Coleg works in partnership with Welsh universities to enhance study opportunities through the medium of Welsh through, for example, funding undergraduate and post-graduate scholarships and developing and funding new Welsh medium lecturers for the future. For more information about the Coleg's work in the health and social care field please see: <<http://www.colegcymraeg.ac.uk/en/study/mediumofwelsh/subjectpages/health/>> (accessed 5 December 2018).

38. GPs in Wales, as at 30 September 2017 <https://gov.wales/docs/statistics/2018/180426-general-medical-practitioners-2006-2017-en.pdf> (accessed 5 December 2018).

Centre for Learning Welsh to offer free Welsh courses to care workers, offer some hope for improvement in the social care field as well.

As was stated at the beginning of this chapter, ensuring the rights of Welsh speakers in the field of health and social care has been – and continues to be – a process rather than an event. As the dementia report concluded, the framework is there through legislation and policies to ensure the rights of Welsh speakers to access services in Welsh but the need for greater implementation at a more grass roots and strategic level remains. Steps have been taken by the Commissioner through the provisions of the *Welsh Language (Wales) Measure 2011*, and by others as a result of their remit of work and the *More than just words* framework, to develop practical solutions to facilitating the provision of services and ensuring language rights. Although it is currently difficult to quantify the improvements made in the field there is a sense that there has been a change in attitudes and a subsequent increased appreciation and awareness of the importance of the language in the provision of care. As Dr. Llinos Roberts, a GP working in the west of Wales, writes:

There is no doubt that there has been a change in the attitudes and expectations of Welsh speakers as to what they expect from the Health Service. Traditionally we have been conditioned to be grateful for whatever services we can get, especially services in Welsh, and we have been reluctant to challenge this. But attitudes are beginning to change, and this is as a result of the efforts of a number of organisations including the Commissioner who have succeeded in raising awareness of the importance of receiving health care in the patient's language of choice [...] As someone who works in the Service, it has become obvious that this work is beginning to filter into the patient's awareness. I've seen more people asking for services in Welsh and willing to complain if that is not available. This attitude was not common in the past, and I'm convinced that the work that has been done in the field has influenced this.<sup>39</sup>

Meri Huws' term as Commissioner comes to an end in March 2019, just a few months before health organizations will be required to comply with the language standards. As the next chapter in the process of ensuring the language rights of Welsh speakers in the health and social care opens, the hope is that we will be able to proceed beyond attitudinal change, created in no small part through the Commissioner's work, into creating real and lasting changes through the provisions of the *Welsh Language (Wales) Measure 2011* and the full political, administrative and practical support of the health and social care sector in Wales. *Dyfal donc a dyrr y garreg.*

39. Author's translation of correspondence received from Dr. Llinos Roberts by e-mail on 29 November 2018.