



GIG
CYMRU
NHS
WALES

Bwrdd Iechyd Prifysgol
Bae Abertawe
Swansea Bay University
Health Board



Meeting Date	24 September 2020	Agenda Item	3.3
Report Title	Framework for Engagement and Consultation		
Report Author	Joanne Abbott-Davies, Assistant Director of Strategy, Engagement & Partnerships		
Report Sponsor	Siân Harrop-Griffiths, Director of Strategy		
Presented by	Siân Harrop-Griffiths, Director of Strategy		
Freedom of Information	Open		
Purpose of the Report	This report outlines the process undertaken to review and revise the Swansea Bay Framework for Engagement and Consultation and contains the Framework for approval. This reflects the process which has been in operation within the Health Board for the past 3 years but has been strengthened to reflect changes in legislation / guidance, practical issues which have arisen such as lack of clarity over approval processes, and strives to ensure that any proposed service changes can be progressed within the statutory guidance, legislation and legal frameworks in the most timely manner possible while ensuring that our public are able to influence these service changes and minimising the risk of judicial review to the Health Board.		
Key Issues	The NHS is constantly changing as are the needs of patients and their families and as a result services need to change. There is clear Welsh Government guidance about how this should be achieved with the involvement of communities, patients and the Community Health Council and with due regard to relevant statutory guidance, legislation and legal frameworks. Furthermore there is substantial evidence that services where changes have been planned with people receiving these services are more effective and better utilised. The attached revised Framework for Engagement and Consultation aims to make the process for achieving service change clear and transparent, making sure that people who receive services can be involved in the planning of these service changes by being clear how and when proposed service changes will be engaged and consulted on and so minimising the risk to the Health Board of challenges to decisions they may make as a result.		
Specific Action Required	Information	Discussion	Assurance
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

<i>(please choose one only)</i>				
Recommendations	<p>Members are asked to:</p> <ul style="list-style-type: none"> • NOTE the work undertaken in co-developing and coproducing the revised framework for engagement and consultation between the health board and the community health council • CONSIDER the proposed framework for engagement and consultation and agree any changes to be made to the document • APPROVE the framework for engagement and consultation • APPROVE the covid-19 agreement with the CHC 			

FRAMEWORK FOR ENGAGEMENT AND CONSULTATION

1. INTRODUCTION

This report outlines the process undertaken to review and revise the Swansea Bay Framework for Engagement and Consultation and contains the Framework for approval. This reflects the process which has been in operation within the Health Board for the past 3 years but has been strengthened to reflect changes in legislation / guidance, practical issues which have arisen such as lack of clarity over approval processes, and strives to ensure that any proposed service changes can be progressed within the statutory guidance, legislation and legal frameworks in the most timely manner possible, allowing the public to influence these service changes and minimising the risk of judicial review to the Health Board.

2. BACKGROUND

Swansea Bay Community Health Council and Swansea Bay University Health Board, and their predecessor organisations, have a long history of working closely together to ensure there is appropriate involvement, engagement and consultation with the public and stakeholders over health services and proposed changes to these services. Welsh Government guidance on public engagement and consultation requires the Health Board to have in place arrangements for continuous engagement with the public and stakeholders. In addition there are specific additional requirements relating to proposed service changes.

There is a requirement on the Community Health Council to determine whether proposed service changes are substantial and to work with the Health Board to design and agree appropriate and proportionate engagement and / or consultation processes for the proposed changes.

In 2013 the then Abertawe Bro Morgannwg CHC and ABMU Health Board agreed an Engagement and Communication Framework outlining the principles of how they would work together. In 2017 this was reviewed and a Framework for Engagement and Consultation developed and implemented which outlined how the Health Board would develop continuous engagement mechanisms and how the organisations would work together on engagement and consultation and replaced the previous approach of considering each service change separately with no standardised method for their consideration. This paper outlines an updated process which has been co-developed between Swansea Bay CHC and the Swansea Bay University Health Board to reflect how approaches to engagement have developed over the past 3 years, changes to the organisations themselves and the learning from applying the previous process.

As will be seen below, there is a Welsh Government requirement for CHCs and Health Boards to have in place a local protocol for how these matters will be handled, and this framework fulfils this obligation.

The Framework has been revised to include further information on the following areas:

- Welsh Government *Guidance for Engagement and Consultation on Changes to Health Services*;
- Well-being of Future Generations Act (Wales) 2015
- Equality Act 2010
- Public Sector Equality Duty in Wales
- Welsh Language Act

- Community Health Councils (Constitution, Membership and Procedures) (Wales) Regulations 2010
- National Principles for Public Participation
- Gunning Principles
- Ongoing engagement mechanisms used by the Health Board
- Approvals mechanisms within the Health Board for different levels of engagement / consultation so that the approvals process is commensurate with the scale of service change being proposed
- Timescales for different levels of service change clarified so that these can be built into planning timeframes to ensure that realistic timescales
- Explicit reference to the need to identify impacts on staff of any proposed service changes to ensure that necessary processes for staff / staffside engagement / consultation can be carried out alongside any public engagement / consultation
- Revision of the Proposed Service Change proforma to reflect the above

The updated Framework and associated Proposed Service Change proforma is attached as **Appendix A**.

It should be recognised that while the Framework and process within it can seem onerous, it has proved effective over recent years in getting service changes agreed, even when relating to controversial issues, and has resulted in major service changes being implemented such as the closure of a number of community hospitals and the reduction in over 200 acute beds. By clarifying the process to be followed and the likely issues the CHC will raise in relation to proposed service changes this further streamlines the process and should reduce the need for issues to be taken to the CHC repeatedly prior to getting agreement on a way forward.

In relation to the current Covid-19 pandemic, the CHC and Health Board agreed prior to lockdown the pragmatic approach they would take jointly to service changes required as part of the pandemic response. This has subsequently been developed into an agreement which is attached as **Appendix B**. The Health Board is asked to consider and agree this.

3. GOVERNANCE AND RISK ISSUES

Engagement and consultation on service changes is always an area which carries some risk for the Health Board, particularly in relation to Judicial Review of decisions. It should be noted that a Judicial Review considers whether the process followed by the organisation is fair and consistent with other similar processes / issues, not whether the decision the Health Board makes is right or wrong. Therefore having a clear process which the Health Board and CHC adhere to consistently minimises the risk of such challenges.

4. FINANCIAL IMPLICATIONS

There are no direct financial implications from the framework although it should be noted that the production of engagement and consultation documents, associated printing and production of accessible versions has a cost which there is currently no budget for within the Health Board.

5. RECOMMENDATION

Members are asked to:

- **NOTE** the work undertaken in co-developing and coproducing the revised framework for engagement and consultation between the health board and the community health council
- **CONSIDER** the proposed framework for engagement and consultation and agree any changes to be made to the document
- **APPROVE** the framework for engagement and consultation
- **APPROVE** the covid-19 agreement with the CHC

Governance and Assurance		
Link to Enabling Objectives (please choose)	Supporting better health and wellbeing by actively promoting and empowering people to live well in resilient communities	
	Partnerships for Improving Health and Wellbeing	<input checked="" type="checkbox"/>
	Co-Production and Health Literacy	<input checked="" type="checkbox"/>
	Digitally Enabled Health and Wellbeing	<input checked="" type="checkbox"/>
	Deliver better care through excellent health and care services achieving the outcomes that matter most to people	
	Best Value Outcomes and High Quality Care	<input checked="" type="checkbox"/>
	Partnerships for Care	<input checked="" type="checkbox"/>
	Excellent Staff	<input checked="" type="checkbox"/>
	Digitally Enabled Care	<input checked="" type="checkbox"/>
	Outstanding Research, Innovation, Education and Learning	<input type="checkbox"/>
Health and Care Standards		
(please choose)	Staying Healthy	<input checked="" type="checkbox"/>
	Safe Care	<input checked="" type="checkbox"/>
	Effective Care	<input checked="" type="checkbox"/>
	Dignified Care	<input checked="" type="checkbox"/>
	Timely Care	<input checked="" type="checkbox"/>
	Individual Care	<input checked="" type="checkbox"/>
	Staff and Resources	<input checked="" type="checkbox"/>
Quality, Safety and Patient Experience		
<p>Involving patients and their families in planning service changes will ensure that any proposals take account of their concerns and issues with current services.</p> <p>Furthermore working with the CHC consistently on service changes and engaging and consulting on service changes prior to implementation ensures that patient experience, quality and safety issues can be incorporated.</p>		
Financial Implications		
<p>There are no direct financial implications from the framework although it should be noted that the production of engagement and consultation documents, associated printing and production of accessible versions has a cost which there is currently no budget for within the Health Board.</p>		
Legal Implications (including equality and diversity assessment)		
<p>Engagement and consultation on service changes is always an area which carries some risk for the Health Board, particularly in relation to Judicial Review of decisions. It should be noted that a Judicial Review considers whether the process followed by the organisation is fair and consistent with other similar processes / issues, not whether the decision the Health Board made is right or wrong. Therefore having a clear process which the Health Board and CHC adhere to consistently minimises the risk of such challenges.</p>		
Staffing Implications		
None		
Long Term Implications (including the impact of the Well-being of Future Generations (Wales) Act 2015)		
<p>All proposed service changes will be considered specifically with how they are impacting the “The Well-being of Future Generations (Wales) Act 2015, 5 ways of working.</p> <ul style="list-style-type: none"> ○ Long Term - The importance of balancing short-term needs with the need to safeguard the ability to also meet long-term needs. 		

- **Prevention** - How acting to prevent problems occurring or getting worse may help public bodies meet their objectives.
- **Integration** - Considering how the public body's well-being objectives may impact upon each of the well-being goals, on their other objectives, or on the objectives of other public bodies.
- **Collaboration** - Acting in collaboration with any other person (or different parts of the body itself) that could help the body to meet its well-being objectives.
- **Involvement** - The importance of involving people with an interest in achieving the well-being goals, and ensuring that those people reflect the diversity of the area which the body serves.

This will ensure that service changes take into account these ways of working.

Report History	
Appendices	Appendix A – Framework for Engagement and Consultation Appendix B – Agreement between CHC / HB on Covid-19 service changes



FRAMEWORK FOR ENGAGEMENT & CONSULTATION

Draft 4 – 16.8.20



Bae Abertawe
Swansea Bay



1. Introduction

Swansea Bay Community Health Council and Swansea Bay University Health Board, and their predecessor organisations, have a long history of working closely together to ensure there is appropriate involvement, engagement and consultation with the public and stakeholders over health services and proposed changes to these services. Welsh Government guidance on public engagement and consultation requires the Health Board to have in place arrangements for continuous engagement with the public and stakeholders. In addition there are specific additional requirements relating to proposed service changes.

There is a requirement on the Community Health Council to determine whether proposed service changes are substantial and to work with the Health Board to design and agree appropriate and proportionate engagement and / or consultation processes for the proposed changes.

In 2013 the then Abertawe Bro Morgannwg CHC and ABMU Health Board agreed an Engagement and Communication Framework outlining the principles of how they would work together. In 2017 this was reviewed and a Framework for Engagement and Consultation developed and implemented which outlined how the Health Board would develop continuous engagement mechanisms and how the organisations would work together on engagement and consultation and replaced the previous approach of considering each service change separately with no standardised method for their consideration. This paper outlines an updated process which has been co-developed between Swansea Bay CHC and the Swansea Bay University Health Board to reflect how approaches to engagement have developed over the past 3 years, changes to the organisations themselves and the learning from applying the previous process.

As will be seen below, there is a Welsh Government requirement for CHCs and Health Boards to have in place a local protocol for how these matters will be handled, and this framework fulfils this obligation.

2. Background

The extant Welsh Government *Guidance for Engagement and Consultation on Changes to Health Services (issued under Ministerial letter ML/016/11)* states that:

Section 183 of the National Health Services (Wales) Act 2006 requires LHBs, with regard to services they provide or procure, to involve and consult citizens in:

- *planning to provide services for which they are responsible*
- *developing and considering proposals for changes in the way those services are provided; and*
- *making decisions that affect how those services operate.*

In cases where substantial change or an issue requiring consultation is identified, the NHS should use a two-stage process where extensive discussion with citizens, staff, staff representative and professional bodies, stakeholders, third sector and partner organisations is followed by a focused formal consultation on any fully evaluated proposals emerging from the extensive discussion phase.

Not all changes will automatically proceed to formal consultation. As indicated above, most issues should be dealt with through the process of continuous and effective engagement and every effort should be made to reach agreement resulting from that process.

There may be some cases where, exceptionally, the view is that a more formal consultation is required. A key issue to be determined as to whether formal consultation is required is whether the change is substantial or not. In general substantial change should be the subject of formal consultation though it may not be appropriate where the proposal is not controversial. It may also be appropriate that a change, although not substantial, ought to be the subject of formal consultation. LHBs, with their CHCs, should develop a local protocol for dealing with this.

Where it appears likely that a formal consultation could take place, it is proposed in future that this should be conducted on a two stage basis.

The first stage is for NHS organisations to undertake extensive discussion with all the key stakeholders, to include:

- *the Stakeholder Reference Group*
- *the Professional Forum*
- *the Partnership Forum*
- *the Community Health Council*
- *the Local Service Board*
- *staff and their representative bodies*

- *other key partners as appropriate*

The purpose of these discussions will be to explore all the issues, to refine the options and to decide and agree on which questions will be set out in the consultation. Only when it is satisfied that this first stage has been properly conducted, should the NHS organisation proceed to formal consultation.

Following the first stage described above, a formal consultation period of a minimum of 6 weeks should be sufficient in most cases if the issues have already been fully explored during the first stage and if the CHC agrees.

3. Welsh Government Guidance

Effective service user, carer and public engagement is vital in helping develop more effective services that better meet local needs, with higher quality and user experience, greater community support, improved staff morale, and higher levels of productivity and efficiency.

Appropriate and meaningful consultation with relevant service user, carer and public bodies should be integral to all planning and service developments. An open, two-way engagement between organisations, service users and their carers and other stakeholders should be developed and maintained to enable the identification of opportunities, challenges and options for change.

There are also some key statutory and mandatory requirements that underpin the need for good communication and engagement, and that provide safeguards on behalf of service users, carers and the public.

The *Well-being of Future Generations Act (Wales) 2015*, states: ‘Public bodies need to make sure that when making their decisions they take into account the impact they could have on people living their lives in Wales in the future. The Act puts in place a ‘sustainable development principle’ that describes how organisations can meet their duty under the Act. This reinforces the importance of “involving people with an interest in achieving the well-being goals, and ensuring that those people reflect the diversity of the area which the body serves”. The Act sets out five ways of working:

- Long-term: The importance of balancing short-term needs with the needs to safeguard the ability to also meet long-term needs
- Integration: Considering how the public body's well-being objectives may impact upon each of the well-being goals, on their objectives, or on the objectives of other public bodies
- Involvement: The importance of involving people with an interest in achieving the well-being goals, and ensuring that those people reflect the diversity of the area which the body serves
- Collaboration: Acting in collaboration with any other person (or different parts of the body itself) that could help the body to meet its well-being objectives
- Prevention: How acting to prevent problems occurring or getting worse may help public bodies meet their objectives

The *Equality Act 2010*, the *Public Sector Equality Duty in Wales* and the *Welsh Language Act* set out a range of duties for public services, including the requirement to consider the impact of decisions on people with equality protected characteristics (age, gender reassignment, sex, race, disability, pregnancy & maternity, sexual orientation, religion or belief) and on Welsh Language.

In addition, under the *Community Health Councils (Constitution, Membership and Procedures) (Wales) Regulations 2010*, Community Health Councils have important powers with regard to NHS planning, in essence comprising the right to:

- Be involved by the relevant LHB in the planning of services, the development and consideration of proposals for service changes, and decisions affecting the operation of services and be consulted at the inception of and throughout any planning, development, consideration or decision-making process in accordance with government guidance (Reg. 27(1))
- Be consulted at inception and through the process on any proposal for a substantial development of the health service or for a substantial variation in service (except in creating a new body or where delay might cause harm; in the latter case this must be explained – see section 6 below) (Reg. 27(3,4,5))
- Comment on any proposal consulted on (Reg. 27(6))
- Report to the Welsh Ministers if dissatisfied about the content or time allowed in a consultation, about not being consulted at the inception, about the frequency of involvement throughout the proposal and decision-making process, or about the adequacy of the explanation for not being involved (Reg. 27(7))

- Refer a proposal it believes not be in the interests of the health service in its district to the Welsh Ministers for a final decision (Reg. 27(9))
- Receive information on planning matters from NHS bodies (Reg. 28).

There is an expectation from Welsh Government that all plans for service change are grounded in evidence and are informed and shaped by effective ongoing engagement with patients, carers, clinicians, staff, Community Health Councils, local communities and other partners. When considering significant service change the NHS must take account of the Guidance for Engagement and Consultation on Changes to Health Services 2011. Health Boards should have appropriate and robust approaches in place to involve everyone in the conversation about the case for change and the options for providing the best solution that will meet the needs of the population. Evidence has shown that early and continuous engagement is more effective in helping to ensure that plans are successfully informed, developed and implemented.

4. Swansea Bay Principles for Involvement, Engagement & Consultation

The National Principles for Public Participation were signed up to by all Health Boards in Wales in 2011 and must underpin any engagement, involvement or consultation activity:

Principle 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.

Principle 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.

Principle 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.

Principle 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.

Principle 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.

Principle 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.

Principle 7 Enable people to take part effectively.

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

Principle 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.

Principle 9 People are told the impact of their contribution.

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

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

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

In addition, case law has resulted in a set of principles known as the Gunning Principles which outlines the legal expectations of what is

appropriate consultation. The emphasis of the Gunning Principles is on fairness. The process should be substantively fair and have the appearance of fairness. The Gunning Principles state that:

Consultation must take place when the proposal is still at a formative stage: Decision-makers cannot consult on a decision that has already been made. If the outcome has been predetermined, the consultation is not only unfair, but it is also pointless. This principle does not mean that the decision-maker has to consult on all possible options of achieving a particular objective. A decision-maker can consult on a “preferred option” and even a “decision in principle”, so long as its mind is genuinely open. If a decision-maker has formed a provisional view as to the course to be adopted, or is “minded” to take a particular course subject to the outcome of consultations, those being consulted should be informed of this “so as to better focus their response”.

Sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response: Consultees should be made aware of the basis on which a proposal for consultation has been considered and will thereafter be considered. Those consulted should be aware of the criteria that will be applied when considering proposals and what factors will be considered “decisive” or “of substantial importance” at the end of the process.

Adequate time must be given for consideration and response: Unless statutory time requirements are prescribed, there is no necessary time frame within which the consultation must take place. The decision-maker may adopt a policy as to the necessary time-frame and if it wishes to depart from that policy it should have a good reason for doing so. Otherwise, it may be guilty of a breach of a legitimate expectation that the policy will be adhered to.

The product of consultation must be conscientiously taken into account: If the decision-maker does not properly consider the material produced by the consultation, then it can be accused of having made up its mind; or of failing to take into account a relevant consideration.

5. Equality Impacts

The Equality Act 2010 offers legal protection across nine protected characteristics:

- Race (including ethnic or national origin, colour or nationality)
- Disability
- Gender
- Age
- Gender reassignment
- Marriage and Civil Partnership
- Pregnancy and maternity
- Religion or belief
- Sexual orientation

The Equality Act 2010 places a general duty on public bodies. In carrying out their public functions public bodies are required to give due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Act.
- Advance equality of opportunity between people who share a relevant protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

In effect the Act requires that public bodies should try to:

- Remove or minimise disadvantages experienced by people due to their protected characteristics
- Take steps to meet the needs of people from protected groups where these are different from the needs of other people
- Encourage people with protected characteristics to participate in public life or in other activities where their participation is disproportionately low

Plans must demonstrate that they meet the statutory requirements as set out under the Equality Act 2010 to ensure that reasonable adjustments are made to deliver equity of access to healthcare services for all individuals. This duty is anticipatory and requires public bodies to be proactive in making adjustments to ensure all access and communication needs are met. NHS organisations must have a

Strategic Equality Plan in place, which should be monitored, to demonstrate they have met the diverse needs of patients and staff when planning and delivering health services, and promote learning, collaborative working and best practice on equality and human rights across the NHS. Likewise, the Board of CHC's has an Equality Plan which sets out equality objectives for CHCs.

6. Ongoing Engagement

Over recent years the Health Board, in partnership with the CHC, have developed a wide-ranging process for ongoing engagement including the following mechanisms as standard as well as a range of other targeted activities to reflect the particular issues under discussion at any particular time:

- Swansea Bay Stakeholder Reference Group
- Swansea Bay Professional Advisory mechanisms
- Swansea Bay Partnership Forum
- Swansea Bay Accessibility Reference Group
- Swansea Bay Health Professionals Forum
- Regional Third Sector Health, Social Care & Wellbeing Network
- BaYouth
- Swansea Bay Community Health Council
- West Glamorgan Coproduction Network
- West Glamorgan Carers Partnership
- Equality Groups

The Health Board also utilises engagement mechanisms established and supported by other partner agencies to access specific and difficult to reach groups.

In addition where issues are identified through these ongoing engagement mechanisms or because they relate to service change, the Health Board works with the CHC to agree and implement a more wide-ranging engagement process and if required, public consultation process. In addition the Health Board and CHC will work together to identify further processes and/ or mechanisms for ongoing engagement to include others who are hard to reach.

Where service change impacts more than one health board area, the CHC movement has constituted a Joint Service Change Committee with delegated authority from each Executive Committee to:

- a. Receive notification from NHS bodies on proposed service change spanning more than 1 health board area.
- b. Consider proposals for service change spanning more than 1 health board area.
- c. Oversee and agree on behalf of CHCs all activities in relation to service change spanning more than 1 health board area in accordance with all relevant regulations and guidance including any standards or guidance set by the Board of CHCs.
- d. Recommend to relevant CHCs agreement or referral for any service change spanning more than 1 health board area.

In all other respects the principles described in this guidance applies but a different engagement process may need to be followed where the change affects more than one health board area. Advice should be sought from the Health Board Service Change Lead early, where service change fall within the category described above.

7. Planned Service Changes

Building on the previous Health Board / CHC Engagement and Consultation Framework the two organisations will continue to work together to ensure a consistent approach is taken to engagement, involvement and consultation on proposed service changes. This framework applies to **all** service changes. Specifically this includes all hospital, community, mental health, learning disability and any other services provided by the Health Board but also those contracted by the Health Board to provide services for Swansea Bay residents.

It is considered that there are five overall criteria which will be taken into account in judging the need for engagement / consultation and the likely extent of engagement / consultation required:

- Whether a service is being stopped / reduced / moved to a significantly different location or a facility closed
- Number of people / proportion of population / area impacted by proposed service change
- How significant the service change will be for those affected

- How politically / locally sensitive the service change / facility affected is
- The extent to which a service change is likely to disproportionately affect people with protected characteristics under the Equality Act 2010

Applying these considerations the following three categories of engagement / consultation have been defined:

Level 1 – Extensive Engagement and potential Public Consultation – up to 12 weeks for engagement and potentially 6 weeks for public consultation

Major service change which exhibits one or more of the following characteristics:

- Closure of premises
- Complete service withdrawal
- Significant cross-border issues
- Large numbers of patients affected, or small number with large impact
- Centralisation of a significant service within Swansea Bay
- Highly politically sensitive issue locally
- Significant differential impact on people with protected characteristics under the Equality Act 2010

The engagement document and engagement process for a Level 1 scheme will be developed between the Health Board and CHC to ensure it is proportionate and meets the principles for engagement / consultation outlined in section 4 above. The engagement document will be reviewed and amended by the Health Board's Senior Leadership Team / Executive Board, and then signed off by the full Board prior to consultation commencing. The outcome of the engagement will be considered conscientiously by the Health Board and reported to its Senior Leadership Team / Executive Board and full Health Board.

The CHC's Executive Committee will consider the outcome and the Health Board's response to the engagement and will report its views to the Health Board including whether formal public consultation is required. In some circumstances public consultation may not be

required if the public has been convinced by the Health Board's rationale for the changes and if any concerns raised through the engagement can be mitigated through the implementation process. If the CHC decides that public consultation is required because substantive issues have been raised which need further work to address then this will be agreed by the full Health Board who will sign off the associated public consultation document and public consultation process. Public consultation would be for a minimum of 6 weeks, as agreed with the CHC's Executive Committee, and the outcome of the consultation will again be reported to the full Health Board, following conscientious consideration. The CHC will consider the outcome and the Health Board's response to the consultation and will report its views to the Health Board. The full Health Board will take account of the views expressed through the consultation and engagement and the CHC's views in making a decision about the proposed service change. The Health Board will then agree whether the proposed service change should go ahead, and if so any mitigations it will implement as part of this to allay concerns raised by the CHC and through the consultation process. If the CHC are unhappy with the decision made by the Health Board, or feel that issues they have raised or which have been raised through the consultation process have not been taken sufficiently into account they have the right to refer the decision to the Welsh Government Minister for Health and Social Services with their concerns, as outlined in Welsh Government guidance.

Level 2 - Engagement for up to 8 weeks and potential public consultation

Moderate service change which exhibits one or more of the following characteristics:

- Significant change of service delivery location within Swansea Bay
- Partial service withdrawal / reduction
- Service being changed to cover a different geographical area which is likely to cause issues for the population affected
- Anticipated moderate number of people affected or small change with moderate impact
- Moderately politically sensitive issue locally

- Closure of small facility with limited facilities (such as branch surgery or small community clinic)
- Some differential impact on people with protected characteristics under the Equality Act 2010

The engagement document will need to be approved by the Health Board's Senior Leadership Team / Executive Board prior to engagement commencement, with the full Board being informed of the issues, process and timescale at the earliest possible meeting. The outcome will receive conscientious consideration and then be reported to a full Board meeting. The CHC's Executive Committee will consider the outcome and the Health Board's response to the engagement and will report its views to the Health Board. If there is significant concern raised during the engagement the CHC may require the Health Board to undertake subsequent public consultation, which is likely to be for a 6 week period, as required by Welsh Government guidance. If the CHC does not decide that public consultation is required, the Health Board will take account of the consultation outcomes and the CHC's views in making a decision about the proposed service change. The Health Board will then agree whether the proposed service change should go ahead, and if so any mitigations it will implement as part of this to allay concerns raised by the CHC and through the consultation process. If the CHC are unhappy with the decision made by the Health Board, or feel that issues they have raised or which have been raised through the consultation process have not been taken sufficiently into account they have the right to refer the decision to the Welsh Government Minister for Health and Social Services with their concerns, as outlined in Welsh Government guidance.

Should public consultation be required then the same process for this will be followed for this as outlined in the above section for a Level 1 change.

Level 3 - Engagement – up to 6 weeks

Small service change which exhibits one of more of the following characteristics:

- Premises move within same community area, unlikely to cause significant transport issues for the population affected

- Service being changed to cover a different geographical area but unlikely to cause significant transport issues for the population affected
- Same level of service being delivered by different staff / in a different way but in same location / community
- Little differential impact on people with protected characteristics under the Equality Act 2010
- Issue not politically sensitive

This engagement will be achieved through communication with our ongoing engagement mechanisms and groups, as well as other groups likely to be directly affected by the proposed change. The engagement document and associated engagement process will be developed between the Health Board and the CHC and agreed by the Health Board's Senior Leadership Team / Executive Board prior to the engagement starting. The outcome of the engagement will be given conscientious consideration by the Health Board and a report on this taken to the Health Board's Senior Leadership Team / Executive Board. The views of the CHC and outcomes of engagement will be reported to the Senior Leadership Team / Executive Board who will decide if the proposed service change should go ahead, and any mitigations which will be implemented to address issues raised through engagement or by the CHC. If the CHC are unhappy with the decision made by the Health Board, or feel that issues they have raised or which have been raised through the consultation process have not been taken sufficiently into account they have the right to refer the decision to the Welsh Government Minister for Health and Social Services with their concerns, as outlined in Welsh Government guidance.

Clearly some proposed service changes may not fit neatly into these three categories, and judgements will be need to be made about the extent to which a service change meets these various descriptors. The CHC will advise the Health Board on the appropriate level of engagement / consultation required for each proposed service change utilising this framework. However having this framework will ensure that more appropriate timescales for planning and implementing service change can be embedded throughout the Health Board.

8. Temporary Emergency / Urgent service changes

There is specific additional guidance relating to temporary emergency / urgent service changes, as detailed below.

Special arrangements apply where an NHS body believes that a decision has to be taken on an issue immediately in the interests of the health service or because of a risk to the safety or welfare of patients or staff. In such a case, the relevant NHS body may not be able either to engage or consult but has to notify the CHC immediately of the decision taken and the reason why no consultation has taken place.

If this occurs, good practice is that:

- The NHS body must make every attempt to inform all relevant interests of the new arrangements prior to the change;*
- The NHS body must provide information to the CHC about how patients and carers have been informed about the change to the service, and what alternative arrangements have been put in place to meet their needs as part of good practice; and*
- The service provider must initially lead all discussion and action.*

If dissatisfied with the reason for not undertaking a formal consultation, a CHC may report in writing to the Welsh Government which may require the NHS body to carry out a consultation, or further consultation with the CHC, as it considers appropriate. These arrangements apply whether the case is one of substantial change or not. Only CHCs have this right to refer matters to Welsh Government.

To avoid difficulties arising over such emergency decisions, NHS bodies should take precautionary action as follows:

- Contingency plans should be prepared for services viewed as at high risk and shared at an early date with relevant NHS organisations, the CHC, the County Voluntary Council (for the third sector), the local Partnership Forum and the local authority where relevant; all contingency plans should have risk assessment undertaken for options; and*
- Information that services may be at “high risk” should be shared with the relevant CHC(s), Health Board(s), County Voluntary Council(s), the local Partnership Forum and the local authority where relevant at the earliest possible stage; risk analysis should be comprehensive and weighted appropriately.*

In responding to unforeseen service change the Health Board should take urgent steps to bring the change process in line with the requirements that normally apply and put in place a comprehensive consultation process. The expectation would be that service changes should be dealt with as public business on the Board agenda of the relevant NHS body where a report on the change and its impact should be given and on any actions planned to mitigate any potential adverse impact.

Where the Health Board believes that a decision has to be taken on an issue immediately in the interests of the health service or because of a risk to the safety or welfare of patients or staff the Health Board's Senior Leadership Team / Executive Board will consider this. If the proposed urgent / emergency service change is agreed the Health Board will inform the CHC immediately of the decision taken and the reason why no consultation has taken place. This will be reported at the earliest opportunity to the full Health Board meeting.

Where the CHC is convinced that the Health Board had no option but to implement an urgent or emergency change to services in the interests of the health service or because of a risk to the safety or welfare of patients or staff, as outlined above, the Health Board will implement the required change but keep the CHC updated on the position. The Health Board will also formally notify its established engagement mechanisms of the change and the reasons for this. Once the need for temporary arrangements has passed, the Health Board will engage and consult through the usual mechanisms outlined above should it wish to make the temporary arrangement permanent.

Even where emergency / urgent service changes have to be made for safety reasons, it is good practice that whilst the urgent / emergency service change is in place the following should occur:

- Strong communication on the reasons for the change and any agreed review point
- Feedback should be sought from stakeholders on the impact of the service change
- Work undertaken to understand the impact on the vulnerable and protected characteristic groups of the service change
- Work undertaken to understand the clinical impact of the service change.

Should the CHC consider that the Health Board did have other alternatives to the temporary emergency / urgent service change, and could have undertaken engagement / consultation, it has the right to refer the issue to Welsh Government. The Government may then require the Health Board to carry out consultation or undertake further discussions with the CHC as it considers appropriate. This right applies irrespective of the scale of the service change and whether it is a substantial change or not.

9. Service Change Process

At the earliest possible stage in considering a service change, the Health Board will discuss the case for change with the CHC. To ensure a consistent approach and that the key issues for the CHC are addressed a standardised proforma has been developed (attached as **Appendix A**) which should be completed for all service changes being considered for services directly provided by the Health Board and for services it contracts for its population. This proforma will need to be completed by the Delivery Group providing the service, or in the case of contracted Primary Care Services, by the Primary & Community Services Delivery Group and for other services commissioned for Swansea Bay, by the person responsible for commissioning that service within the Health Board. It should be sent to the Health Board's Engagement Manager who will check to ensure that the information included is likely to be sufficient for the CHC to form a view about the service change and therefore about the required engagement / consultation likely to be required. Once complete the proforma will be submitted to the CHC for consideration at their Executive Committee. If there is an urgency about the change please raise these with the Engagement Manager so that advice can be given on the appropriate process and timescales to follow.

Discussion about the proposed service change may be held at one of the subcommittees of the CHC, and this can be helpful for CHC members to gain a greater understanding of the proposals. However it should be noted that these are not decision making committees and so any views expressed there should not be considered indicative of the decision which will be reached by the CHC Executive when it formally considers the issue.

The Delivery Group will usually be invited to attend the relevant CHC Executive to present the service change and answer any questions, depending on the scale of the change proposed.

Once this discussion has been held the CHC will form a view about the service change proposed and the engagement / consultation issues relating to it. The Assistant Director of Strategy, Partnerships & Engagement will then work with the CHC to develop the associated engagement / consultation plan and documents, with support from the Communications Department, prior to them being considered within the Health Board and by the CHC in line with the process outlined above.

10. Conclusion

This framework solidifies the significant progress which has been made with regard to engagement and consultation in Swansea Bay over the past decade. It builds on the previous two frameworks and the learning from both the Health Board and CHC in applying these processes, and reflects the maturity of relationships between the two organisations where discussing proposed service issues at the earliest stage and working collectively to develop proposals for change is the norm.

Appendix A



Guidance & Proforma for Proposed Service Changes

Title of Proposed Service Change:

Submitted by:

Name of Delivery Group Director / Executive Director who has signed off this proforma:

Date:

Date Received by Strategy Department:

Date Submitted to CHC:

1. Introduction

The Health Board needs to ensure it is making the best use of its resources, be they staff, facilities or monies. Given this, there will certainly be a need to change the way some of our current services are provided to ensure services for our patients are safe and sustainable.

The purpose of this document is therefore to increase the understanding of the issues around the need for a service change, which will assist in the process of planning the next steps in engaging with the public and hopefully obtaining public acceptance for the change.

Swansea Bay University Health Board and the Swansea Bay Community Health Council (CHC) have agreed a Framework for Consultation and Engagement which outlines a consistent approach to engagement and / or consultation on service change. This guidance and proforma is included within the Framework and aims to ensure a consistent approach is taken across the Health Board to the development and explanation of proposed service changes to the CHC. Therefore the following proforma **MUST** be completed for **ALL** proposed changes to services within your Unit, or to services you contract or commission for people in the Swansea Bay area. In order to provide a balanced argument, each proforma **MUST** highlight the implications for and against the change suggested.

2. Process

Once completed the proforma should be sent to the Health Board's Engagement Manager who will ensure it has all the information included which will be needed for the CHC to form a view about the proposed service change. The proforma, once checked and completed with any additional information will then be sent to the CHC for consideration at their next available Executive. The Engagement Manager will notify the person who has submitted the proforma of the date and venue of the CHC Executive so that appropriate attendance can be organised to present the proposal, depending on the scale of the change proposed.

As part of this process the Delivery Group will have identified any impacts on staff. These should be discussed with the relevant Workforce Business Partner so that any required process for consultation with staff / staff side can be carried out alongside public engagement / consultation and views considered as part of the overall outcome of engagement consultation.

The Framework for Engagement and Consultation should be used as guidance for the likely timescales required for the relevant engagement / consultation process and approvals processes and these should be reflected in any project plans / timescales developed for proposed service change. The Engagement Manager or Assistant Director of Strategy, Engagement & Partnerships can advise on these issues as appropriate.

Following consideration by the CHC Executive the Engagement Manager will inform you of next steps or any further information required.

PROPOSED SERVICE CHANGE

- 1. Summary of the proposed service change**
- 2. Describe the patients who use the current service**
(Your response should include details of area/patient's age/service need/condition)
- 3. What is the current service provision and how is it delivered?**
- 4. Why does the service need to change?**
(Please provide evidence to support your response)
- 5. What comments have you received from patients/carers about the current service?**
(Your answer should be factual and not be about what you want them to say!)
- 6. How do the following equality groups receive current services and how will this change if the proposed service change is implemented?**
 - Age**
 - Disability**
 - Ethnicity**
 - Gender reassignment**
 - Pregnancy & Maternity**
 - Religion and belief**
 - Sex**
 - Sexual Orientation**

Gender Reassignment

- 7. What options have you considered in terms of changing these services to meet (4 -6) above?**
- 8. What are the changes that you propose to make to the service?**
 - a. What are the advantages of these changes?**
 - b. What are the disadvantages of these changes?**
 - c. How will the change be managed?**
- 9. How does this proposed service change demonstrate that we are taking on board the 5 ways of working outlined in the Well-being of Future Generations Act?**
 - a. Long-term: The importance of balancing short-term needs with the needs to safeguard the ability to also meet long-term needs**
 - b. Integration: Considering how the public body's well-being objectives may impact upon each of the well-being goals, on their objectives, or on the objectives of other public bodies**
 - c. Involvement: The importance of involving people with an interest in achieving the well-being goals, and ensuring that those people reflect the diversity of the area which the body serves**
 - d. Collaboration: Acting in collaboration with any other person (or different parts of the body itself) that could help the body to meet its well-being objectives**
 - e. Prevention: How acting to prevent problems occurring or getting worse may help public bodies meet their objectives**

10. Have discussions taken place with any Stakeholders, including Local Authority?

YES / NO

If YES, what process was followed and what were the outcome of the discussions?

11. WORKFORCE

Are there implications for staff? If so, what are they?

(Are these positive or negative? Please provide information to support your response).

12. FINANCE

Are there any financial implications for changing the service?

(Are these positive or negative? Please provide information to support your response).

13. DIGITAL

Are there opportunities to adopt digital approaches in changing the service?

How will you ensure the digitally excluded can access the same level of services?

14. TRANSPORT

Do you envisage any transport/parking issues?

(Are these positive or negative? Please provide information to support your response).

15. TIMESCALE

What is the timescale for implementing the service change?

(Is it urgent? If so why? Please provide a timeline to support your response).

16. URGENCY

Is the service change urgent? (Urgent is defined as when a decision has to be taken on an issue immediately in the interests of the health service or because of a risk to the safety or welfare of patients or staff. This rationale has to be evidenced to the CHC and they have to accept this. This does not mean that engagement / consultation is not required, it just means that urgent action can be taken to stop / restrict a service while this process is underway. However the agreement of a temporary change pending engagement / consultation on safety grounds is no guarantee that the proposed change will then be supported once engagement / consultation has taken place. Any proposal for a temporary urgent service change on safety grounds can only be taken if the Health Board's Senior Leadership Team / Executive Board have agreed that they support this approach prior to consideration by the CHC.)

17. ADDITIONAL INFORMATION

NB When completing this proforma please ensure you refer to the Framework for Engagement and Consultation to ensure that you understand the approvals process and timelines associated with proposed service changes.



Service Change during Covid-19 Pandemic

Agreement between Swansea Bay Community Health Council and Swansea Bay University Health Board

July 2020

At the outset of the pandemic the Swansea Bay Community Health Council at its Executive Committee meeting on 17th March discussed the likelihood of NHS service changes being required as a result of the emergency response to Covid-19. These changes were likely to be urgent service changes of varying scale across primary and secondary care services so that the Health Board was prepared for the increase in Covid-19 cases anticipated.

Therefore it was agreed by the CHC that to support the Health Board through these challenging times it would agree to these changes provided it was clear that they were temporary changes and that the CHC was kept informed of these on an ongoing basis, accepting that it would not always be possible to provide this information prior to changes being implemented.

The Health Board agreed to share information on a regular basis on urgent service changes. As result weekly briefings were held with the CHC to keep officers updated on these and to resolve any queries the CHC had about services. To support this process the CHC and Health Board agreed that an issues log would be established to keep a record of all these discussions so that there was a clear record of these which could be used as a reference point going forward.

The Health Board agreed that discussions would be held with the CHC about these changes in services at an appropriate point, as agreed by both organisations, depending on the pandemic's progress. The Health Board will collate the range of service changes implemented as a result of Covid-19 and submit these to the CHC. This would cover the range of urgent service changes made and also different ways of working introduced as part of the organisation's response to Covid-19 and allow discussions on the impacts of these changes for patients and staff. The Health Board undertook to make clear to the CHC at an appropriate point any urgent changes in services and / or ways of working which it would wish to make permanent going forward so that the CHC could consider the appropriate level of engagement and consultation required for changes in services / ways of working which the Health Board wished to make permanent.

Both organisations will work together to make sure that the public are aware of any changes made that affect them, and that the way these changes are made meet both clinical needs and reflect what matters to people most.

The Chief Officer / Deputy Chief Officer of the CHC will be responsible for informing Executive Committee members and other relevant members and CHC staff of service changes.

Signed by:

**Chair
Swansea Bay UHB**

**Chief Executive
Swansea Bay UHB**

**Chair
Swansea Bay CHC**

**Chief Officer
Swansea Bay CHC**