

**Social Services and Well-being
(Wales) Act 2014**

***The National Framework
for the Commissioning of
Care and Support in
Wales: Code of Practice***

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Pre-amble

- 1.1. This Code of Practice is issued under section 145 of the [Social Services and Well-being \(Wales\) Act 2014](#) (“the Act”¹).
- 1.2. It also constitutes guidance under section 169 of the Act and guidance under section 2 of the [National Health Service \(Wales\) Act 2006](#) (“the 2006 Act”²).
- 1.3. This Code comes into force on 1st September 2024, this being the date appointed within the [appointed day order](#)³.
- 1.4. This Code makes provision relating to Part 2 (General Functions) of the Act in so far as it applies to the commissioning of preventative services provided to meet a local authorities duty under section 15 of the Act. It is also intended to support local authorities in carrying out their duties under Part 4 of the Act to meet a person’s ‘care and support’ needs. Section 34(1)(c) of the Act is of particular relevance to the commissioning of ‘care and support’ as it provides that a local authority may meet a person’s ‘care and support’ needs by providing the service themselves or arranging for the service to be provided by someone else.
- 1.5. This Code applies to the provision of ‘care and support’ by a local health board or NHS trust provided as part of a package of care arranged and funded by them to meet a person’s primary health care or nursing needs, which may or must be provided under section 2(1) and section 3 of the 2006 Act, and which the local authority are prohibited from providing by virtue of sections 47(1), (4) or (5) of the Act.
- 1.6. For the purposes of this Code, local authorities, local health boards and NHS trusts in Wales have the same meaning as in section 197 of the Act and are referred to collectively throughout as ‘statutory partners’. When referring to individual bodies the specific term will be used accordingly. When referring to individuals or teams that undertake the commissioning functions on behalf of statutory partners these are referred to as ‘commissioners’.
- 1.7. Statutory partners **must** act in accordance with the requirements contained in this Code. Section 147 of the Act (departure from requirements in codes) does not apply to any requirements contained in this Code.
- 1.8. In order to ensure that this Code has comparable force in relation to statutory partners, the Welsh Ministers will [direct](#)⁴ local health boards and NHS trusts under the 2006 Act to exercise their relevant functions in accordance with the requirements contained in this Code.
- 1.9. Statutory partners **must**:

¹ <https://www.legislation.gov.uk/anaw/2014/4/contents>

² <https://www.legislation.gov.uk/ukpga/2006/42/contents>

³ Hyperlink to order and footnote to be added once made

⁴ Hyperlink to direction and footnote to be added once made

- a) exercise their relevant functions in accordance with the requirements contained in this Code; and
 - b) have regard to any guidance set out within this Code.
- 1.10. In this code a requirement is expressed as a “**must**” and guidance is expressed as a “should” or “should not”.
- 1.11. This Code should be read in conjunction with all codes of practices and guidance issued under the Act but particularly the:
- a) [Part 2 Code of Practice \(General Functions\)](#)⁵
 - b) [Part 4 Code of Practice \(Meeting Needs\)](#)⁶
 - c) [Part 8 Code of Practice on the Role of the Director of Social Services \(Social Services Functions\)](#)⁷
 - d) [Part 9 Statutory Guidance \(Partnership Arrangements\)](#)⁸
 - e) [Market Stability Reports Code of Practice](#)⁹
- 1.12. This Code applies principles and standards to the commissioning of care and support services by local authorities, local health boards and NHS trusts in Wales. Where provisions within contracting arrangements are required to be made to ensure compliance with their statutory responsibilities in this Code, statutory partners **must** make such provisions and **must** have appropriate monitoring and evaluation mechanisms in place to assure themselves of compliance.

References and footnotes

- 1.13. To aid the practical use of this Code, where available, hyperlinks are embedded in the titles of documents and resources referred to in this Code and the full web address of the link has been provided in an accompanying footnote. In addition to this, please note that primary and secondary legislation can be found at: <https://www.legislation.gov.uk/> and the Codes of Practice and Statutory Guidance issued under the Act can be found at: [Social services codes of practice | GOV.WALES](#)¹⁰.
- 1.14. All hyperlinks and web addresses in the footnotes were live, functional and accurate at the time this Code was issued. Whilst, the Welsh Government cannot ensure or control the functioning of external links, if a link does stop working during the period in which this version of the Code is in force, we will attempt to publish on [Social services codes of practice | GOV.WALES](#)¹¹ an updated version of the Code with a new functioning link. Where this is not possible, the hyperlink and footnote will be removed and that section of the

⁵ <https://www.gov.wales/general-social-care-functions-local-authorities-code-practice>

⁶ <https://www.gov.wales/meeting-peoples-care-and-support-needs-code-practice>

⁷ <https://www.gov.wales/role-director-social-services-code-practice>

⁸ <https://www.gov.wales/partnership-arrangements-care-and-support-guidance>

⁹ <https://www.gov.wales/market-stability-reports-code-practice>

¹⁰ <https://www.gov.wales/social-services-codes-practice>

¹¹ <https://www.gov.wales/social-services-codes-practice>

Code will be reviewed and amended accordingly at the next 2 year formal review of the Code.

Definition of care and support

- 1.15. For the purposes of this Code the term 'care and support' has the same meaning as in section 4 of the Act. Therefore any references to care and support in this Code are to be construed as a reference to care, support and both care and support.
- 1.16. Sections 35 to 45 of the Act contain the duties placed on local authorities to meet the care and support needs of adults and children and the support needs of carers including adult or child carers. Section 34(1) of the Act provides examples of the ways in which a local authority may meet needs under sections 35 to 45 and section 34(2) sets out examples of what may be provided to meet a person's needs for 'care and support.'

Services to which this Code applies

- 1.17. This Code applies to the commissioning of 'care and support' services, including early intervention and prevention services by:
- a) a local authority – including services provided by a local authority, and/or where a local authority has arranged for them to be provided by someone other than the local authority (i.e. externally commissioned services), for example by a third sector or private organisation or co-operative;
 - b) local health boards or NHS trusts –this Code applies to the 'care and support' element of a package of care arranged and funded by a local health board or NHS trust where the individual has been assessed as having a 'primary health need' (as opposed to a need for local authority care and support) or in need of nursing care. Examples may include the provision of a care home service in the context of Continuing Health Care or the provision of any 'care and support' by local health boards or NHS trusts within the context of funded nursing care. For the avoidance of doubt this Code will apply where a local health board or NHS trust is managing a care home service with nursing. This Code applies to services provided directly by a local health board or NHS trust, or where they have arranged for services to be provided by someone on their behalf (i.e. externally commissioned services) for example by a third sector or private organisation or a co-operative;
 - c) collaborative, joint or integrated (local authorities, local health boards and NHS trusts) commissioning arrangements for the commissioning of care and support services including any formal partnership arrangements including arrangements between NHS bodies and local authorities under section 33 of the 2006 Act and regional services developed through formal arrangements under Regional Partnership Boards or Corporate Joint Committees.
- 1.18. This Code does not apply to:

- a) services provided or arranged by a local authority that are not care and support services or preventative services¹² under the Act;
- b) health care/services provided directly by or commissioned by the NHS including services providing hospital placements and primary care services (GP, Dentistry, Optometry, Pharmacy); and
- c) care and support provided to an individual via direct payments (i.e. the arrangements between a service user and person providing the service).

1.19. Local health boards and NHS trusts should be aware that the Health Services (Provider Selection Regime) (Wales) Regulations and accompanying statutory guidance (The Provider Selection Regime Wales - Statutory Guidance), which are due to come into force in autumn 2024, will also apply to the procurement of health services. The Regulations will apply to any collaborative or joint procurement by a local authority, local health board, NHS trust, or special health authority where the contract may include social care services or goods, but health services are the main subject-matter of the contract.

National Office for Care and Support

- 1.20. A National Office for Care and Support (“the National Office”) has been established within Welsh Government. It will play an important role in:
- a) overseeing and supporting the implementation and management of this first and future iterations of this Code;
 - b) supporting statutory partners to adhere to the requirements within this Code and in driving standards (consistency and improvement);
 - c) serve as a central resource of best practice for commissioning to support delivery of this Code;
 - d) supporting local and regional commissioners with regard to any significant challenges relating to market oversight; and
 - e) supporting Welsh Ministers to revise this Code¹³ every 2 years to ensure that it remains current and aligned to the aspirations of commissioning practices (this will include changes to support the transition to not-for-profit models of care for looked after children).
- 1.21. Further non-statutory commissioning guidance may be published in between the formal 2-year Code review periods, where specific commissioning and operational practices are to be promoted, in order to expedite good practice and improved outcomes.
- 1.22. The National Office has put in place and will keep up to date a comprehensive toolkit to support statutory partners to meet the requirements of this Code and to reflect changes to commissioning practices. It will include guidance documents, templates, notable and good practice examples and national template contract clauses. The publicly available toolkit is hosted on ‘Social Care Wales communities’ and will enable community members to be

¹² <https://www.legislation.gov.uk/anaw/2014/4/section/15>

¹³ The power to revise and issue the Code under section 145 of the Act remains with Welsh Ministers.

notified when new tools or resources are added to the toolkit. To access the toolkit users need to first register a ‘Social Care Wales communities’ account [here](#)¹⁴ after which registered users will be able to access the toolkit directly [here](#)¹⁵.

Commissioning of Care and Support

- 1.23. The Act seeks to transform social care in Wales so that it achieves two principal objectives:
- a) Services that achieve the well-being of citizens: “what matters” to them as they define it.
 - b) Services that are sustainable despite demographic trends.
- 1.24. This Code sets out a national framework for the commissioning of care and support services.
- 1.25. For the purpose of this Code commissioning involves making decisions about what services are required to respond to the care and support needs of children and young people, families, and adults, including carers, in Wales. It also involves making decisions about the capacity, location, cost and quality of services together with how and who will deliver them.
- 1.26. Commissioning encompasses both the planning, procurement and evaluation or review of services. It is about fulfilling the statutory responsibilities of the local authority, and the NHS in shaping services to both prevent or delay, where possible, a need for care and support and to respond to the care and support needs of people both now and in the future.
- 1.27. Commissioning should be underpinned by the core values of the Act: voice and control, prevention and early intervention, well-being, co-production, multi-agency working and having due regard to duties relating to the [United Nations Convention on the Rights of the Child](#)¹⁶ (UNCRC), [United Nations Convention on the Rights of Persons with Disabilities](#)¹⁷ (UNCRPD) and [United Nations Principles for Older Persons](#)¹⁸
- 1.28. The [Part 8 Code of Practice on the Role of the Director of Social Services \(Social Services Functions\)](#)¹⁹ sets out the main themes of the Act. They are:
- **Focus on people** – ensuring people have voice and control over their care and support to support them to achieve the outcomes important to

¹⁴ <https://communities.socialcare.wales/>

¹⁵ <https://communities.socialcare.wales/web/national-framework-commissioning-toolkit>

¹⁶ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

¹⁷ <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

¹⁸ <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-principles-older-persons>

¹⁹ <https://www.gov.wales/role-director-social-services-code-practice>

them and also ensuring services are designed and developed around people.

- **Well-being** – measuring success in relation to outcomes for people rather than process.
- **Prevention and early intervention** – delivering a preventative and early intervention approach to minimise the escalation of need and dependency on statutory services.
- **Partnership and integration** – effective cooperation and partnership working between all agencies and organisations, including health, to best meet the needs of people.
- **Accessibility** – improving the information and advice available to people and ensuring that everyone, irrespective of their needs, is able to access that information.
- **New service models** – the development of new and innovative models of service delivery, particularly those that involve service users themselves.

1.29. Statutory partners **must** ensure that commissioning activities and practices achieve the aspirations of the Act for all the people of Wales.

Commissioning

1.30. Commissioning has become established as an important process in helping to drive improvements in services and securing better outcomes for people in need of care and support. Across Wales there are already many examples of good commissioning and procurement practices but there is inconsistency in the way that care and support services are commissioned.

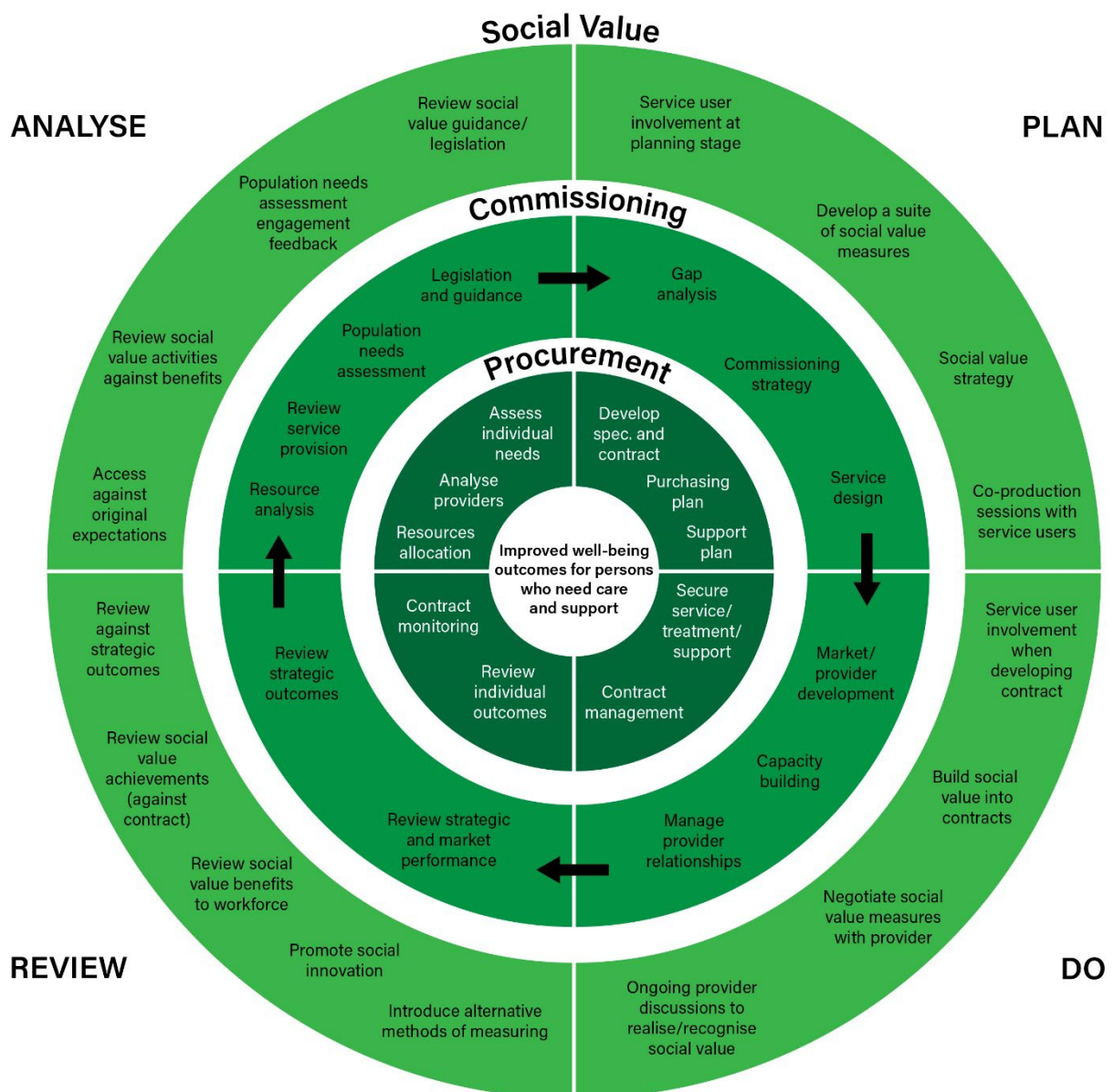
1.31. Commissioning is undertaken to ensure that care and support is assessed for, planned, and organised to best meet people's care and support needs and this includes early intervention and prevention services.

1.32. Commissioning involves a range of activity including understanding individual and population needs, stability and sufficiency of care provision and markets, and availability of local resources (including funding, workforce and a range of community assets) thus enabling commissioners to understand local communities and how these may well differ depending on need and local assets. It also involves a knowledge of evidence-based models of care that offer public value. Using this combined knowledge and understanding, commissioners develop relationships and arrangements across a whole system, to plan, implement and review interventions that meet people's need for care and support including early intervention and prevention services.

1.33. Commissioning requires a whole system perspective and the ability to nurture and facilitate a range of collaborative and co-productive relationships. The shared outcome is to secure people's rights to be able to express their views, wishes and feelings, to participate in decisions and to be supported through advocacy to enable them to do so.

The Commissioning Cycle

- 1.34. The commissioning cycle below demonstrates a set of inter-dependent transformational activities across the functions of commissioning, procurement and social value with the aim of securing good outcomes for people. There is a symbiotic relationship between the three elements, and they are not separate stand-alone functions. The cycle does not have a fixed length or starting point and statutory partners will be working through the stages at different times. All stages and activities within the commissioning cycle are important and necessary for effective commissioning and to deliver well-being outcomes for people based on 'what matters' to them.



Procurement

- 1.35. Procurement is a set of transactional activities by which services are secured. It involves specifying requirements through specifications, securing

public value through purchasing goods through the most appropriate route e.g. tendering, and monitoring service effectiveness. Statutory partners **must** comply with current procurement legislation including the [Social Partnership and Public Procurement \(Wales\) Act 2023](#)²⁰ and any associated guidance when undertaking the procurement of care and support services.

Contract monitoring

- 1.36. Contract monitoring enables the gathering of data and evidence, which indicates to what extent commissioning intentions, quality and outcomes are being delivered, including monitoring that services are being delivered ethically and are sustainable. Analysis of this information should be used to inform the next commissioning cycle.

Social value

- 1.37. Social value can be delivered by public sector, private and third sector organisations. Enabling people to achieve their well-being by providing care and support that meets their needs and provides an element of social value within their communities.
- 1.38. Care and support services can engage with local communities to bring about reciprocal benefits and to support community resilience and resourcefulness.
- 1.39. Care and support services are also important for the promotion and fulfilment of equality and human rights. Done effectively they promote dignity, support independent living and enable people to sustain relationships and connections with the wider community.
- 1.40. Commissioning services locally to meet local population needs can also reduce waste and minimise carbon footprint and enable participation in local environmental projects.
- 1.41. Economic value is achieved when remuneration for social care workforce is equitable across the sector.
- 1.42. Social value delivery models are defined by their ability to deliver against the four principles of the Act (well-being outcomes; coproduction, voice and control; collaboration and partnership; prevention and early intervention) and to add social, economic and environmental value and commissioners should take this into account within their commissioning processes.

Principles of consistent, ethical, effective and transformative commissioning

- 1.43. Central to the principles of commissioning is the principle of “what matters” to people who need care and support services as set out in paragraph 4 of the [Part 9 Statutory Guidance \(Partnership Arrangements\)](#)²¹.

²⁰ <https://www.legislation.gov.uk/asc/2023/1/contents>

²¹ <https://www.gov.wales/partnership-arrangements-care-and-support-guidance>

"My care is planned by me, with people working together, to understand me, my family and carers (and our needs), with my best interests central, giving me voice, influence and control, bringing together services and support networks that will achieve the outcomes important to me".

- 1.44. This part of this Code sets out a set of principles, outcomes, values and quality standards for commissioning care and support. This Code is underpinned by **seven principles of effective and ethical commissioning** which commissioners **must** embed within their commissioning practices and proactively encourage providers to embed them into service delivery.

Principles for Commissioning Care and Support

1. **Relationships Matter:** Caring, compassionate, and equitable relationships come from inclusive co-production, between care and support providers, citizens, commissioners, people in need of care and support and carers in need of support and representative bodies as appropriate.
2. **Effective leadership is inclusive, transparent and honest:** The rebalancing of the health and social care system requires leaders and commissioners to be accountable for creating positive, learning focussed cultures. Decisions should be evidence informed and leaders should seek to continuously improve and develop digital, technological and human learning systems required to collect, share and understand evidence including impact and any unintended consequences (positive, negative and neutral), including data; with the aim of minimising data duplication (collect once, use many times).
3. **Collaboration: share risks, resources and assets:** Leaders and commissioners **must** foster a shared understanding of risk, and positive risk enablement, involving communities and all available assets in mitigating risks to population well-being.
4. **Value is “what matters”:** Value is more than cost; it is good quality, safe, care and support that delivers outcomes that matter to people and enhances social value. Public value is derived from meeting all legal, procurement and regulatory responsibilities including, equalities, human rights, fair work principles, economic, social, technical and environmental considerations.
5. **Sustainable care and support is built on fair work and fair pricing:** Commissioning practices **must** support employers to improve the status, well-being and working conditions of health and social care workers with the aim of parity of esteem and terms and conditions across (statutory, private and third) sectors.

6. **Plan for current need and future generations:** Commissioning for better outcomes is a medium to long term activity; planning requires forecasting, and delivery should focus on prevention (see section 15 of the Act) and sustainability (including carbon commitments).
7. **Evidence what works through stories and numbers:** Commissioners should collect evidence from people in need of care and support and carers in need of support about what matters to them and what helps them to achieve a good life and use this to inform service outcomes. The performance of services should be measured by experience and outcomes and commissioners should promote a culture of continuous learning and improvement, building on and embedding good practice.

Standards for Commissioning Care and Support

- 1.45. The commissioning standards set out below apply to all parts of the commissioning cycle including service redesign and decommissioning. The standards are relevant to all those involved with commissioning and complement more detailed resources and guidance on effective commissioning and procurement for particular populations and particular service models, which will be included in the toolkit.
- 1.46. The standards are intended to facilitate the intended rebalancing of care and support by moving current commissioning practices:
 - a) Away from (process) complexity. Towards simplification.
 - b) Away from price. Towards quality and social value.
 - c) Away from reactive commissioning. Towards managing the market.
 - d) Away from task-based practice. Towards an outcome-based practice.
 - e) Away from an organisational focus. Towards more effective partnership working.
- 1.47. The aim is to ensure that commissioning practices are standardised by:
 - a) setting national benchmarks to stimulate the continuous improvement of commissioning and delivery of care and support in Wales;
 - b) catalysing the transformation of commissioning and delivery of care and support in Wales, working closely with the National Office to affect positive changes;
 - c) improve consistency of commissioning practices;
 - d) promote local and hyper-local integration, joint commissioning and shared decision-making; and
 - e) tackling inequalities and fulfilling human rights and complementing legislation and guidance including:
 - i. [the Equality Act 2010](#)²²
 - ii. [UNCRC](#)

²² <https://www.legislation.gov.uk/ukpga/2010/15/contents>

- iii. [UNCRPD](#)
 - iv. [The Human Rights Act 1998](#)²³
 - v. [A More Equal Wales - The Socio-economic Duty - Equality Act 2010 - Statutory Guidance](#)²⁴
 - vi. [The Equality Act 2010 \(Authorities subject to a duty regarding Socio-economic Inequalities\) \(Wales\) Regulations 2021](#)²⁵
 - vii. [Public Sector Equality Duty \(PSED\) under section 149 of the Equality Act 2010](#)²⁶
 - viii. [The Well-being of Future Generations \(Wales\) Act 2015](#)²⁷
- 1.48. Statutory partners should be able to demonstrate that their commissioning practices are undertaken in line with this Code.
- 1.49. Whilst there are clear benefits to be gained from the setting of national principles and standards for quality and consistency purposes it is recognised that statutory partners need to be able to operate flexibly in order to be able to effectively commission care and support services that respond to local population needs and conditions. Therefore whilst this Code imposes national standards and principles they have been designed to provide and maintain that flexibility. Further, the toolkit is designed to enhance and support the ways in which commissioners can respond to local needs.
- 1.50. The principles and standards within this Code align to the whole system values described in '[A Healthier Wales: our Plan for Health and Social Care](#)'²⁸ focussed on co-ordinating seamless health and social care services and having evidence-based models of care implemented locally, making best use of local assets, to meet population need. They also align to the aims of the Well-Being of Future Generations Act (Wales) 2015 to improve the economic, environmental and cultural well-being of Wales by requiring public bodies in Wales to consider the long-term impact of their decisions, to work better with people, communities and each other and to prevent persistent problems such as poverty, health inequalities and climate change through embedding the five ways of working.
- 1.51. There is recognition that the principles and standards are stretching and aspirational in some areas and will require whole system changes over time including policy development in order for statutory partners to achieve all ambition within this Code. This will be taken into account during the biennial review of this Code and if necessary, actioned through the periodic introduction of additional non-statutory interim commissioning guidance.
- 1.52. Adherence to these standards ensure commissioning of care and support services across Wales is:

²³ <https://www.legislation.gov.uk/ukpga/1998/42/contents>

²⁴ <https://www.gov.wales/sites/default/files/publications/2021-03/a-more-equal-wales.pdf>

²⁵ <https://www.legislation.gov.uk/wsi/2021/295/contents/made>

²⁶ <https://www.legislation.gov.uk/ukpga/2010/15/section/149>

²⁷ <https://www.legislation.gov.uk/anaw/2015/2/contents>

²⁸ <https://www.gov.wales/healthier-wales-long-term-plan-health-and-social-care>

- a) consistent;
- b) ethical;
- c) transformative; and
- d) based on the sustainability principles and well-being goals of Welsh legislation.

Standard 1: Embed the values and principles of the Act into all commissioning activities

Statutory partners **must** demonstrate the values and principles of the Act and the Well-being of Future Generations (Wales) Act 2015, through:

- a) achieving well-being outcomes;
- b) coproduction with the individual's voice and control central to commissioning for 'person' or 'patient' centred well-being outcomes;
- c) collaboration;
- d) early intervention and prevention; and
- e) long-term planning, adding value (social, economic and environmental).

Statutory partners **must** evidence that the commissioning of care and support services is coproduced [co-designed, co-delivered and co-evaluated] with individuals in need of care and support whether living in their own homes or other residential/shared settings, or their advocates and their carers.

Statutory partners **must**, where it is appropriate to do so, collaborate and jointly commission care and support services to meet local population needs.

Commissioning should therefore take account of the short, medium and long-term needs through the use of population needs assessments, joint area plans and commissioning plans/strategies.

Standard 2: Secure sufficient skills, resources and capacity

Statutory partners **must** balance all elements of the commissioning cycle and ensure they have sufficient skills and capacity to:

- a) Co-design, plan, deliver/secure, monitor and co-evaluate services with care and support providers, people in need of care and support and carers in need of support.
- b) Support continuous improvement and problem solving in collaboration with care and support providers and other relevant partners.

Statutory partners in undertaking their commissioning activity **must** ensure that sufficient resources are in place to nurture community resilience, investing in community led groups, activities and services through:

- a) Preventative support – support services often delivered by third sector organisations with particular specialisms, supporting a range of information and advice services.

- b) Care and Support services – public, private and third sector services that meet care and support needs of a medium to high level.

Statutory partners should work collaboratively and in partnership including where appropriate use pooled budget arrangements.

Statutory partners should balance the need to support innovation and implement the learning from others about services that achieve good outcomes.

Standard 3: Using data to deliver outcomes

Statutory partners **must** collate relevant and accurate quantitative and qualitative data including current and future trends to ensure that commissioning is based on meaningful data and ensure there is sufficient analytical capacity and capability to inform robust commissioning planning. This should also take into account the characteristics of people using services and who may need services in the future including cultural and language needs.

Commissioning and resourcing decisions **must** be based on evidence of:

- a) population need, including projected future demand and demographics including by protected characteristics;
- b) required service level outcomes, including timely and equitable access;
- c) required sufficiency and quality of future health, care and support supply / provision (market stability reports); and
- d) assessment of what services will best deliver the outcomes that matter to individuals, over time (evidence of what is valued and what works)

Statutory partners **must** share local population needs assessments used to develop and produce regional population needs assessments and local market stability reports with current and potential future providers (including those outside of care and support services) to optimise potential contributors, generating investment into areas where there are identified gaps.

Statutory partners **must** collect and report on data relating to national outcomes, and performance in line with current reporting requirements.

Statutory partners **must** regularly review local and regional market risk assessments and implement risk mitigation plans.

Statutory partners should explore how commissioning and analyst resources could be pooled by working through Regional Partnership Boards and should seek to ensure that data collection reduces duplication and complies with data protection law:

Statutory partners **must** make evidence-based decisions about the types and levels of services needed to meet local population needs.

Standard 4: Selecting services

Statutory partners **must** demonstrate that commissioning and / or procurement plans are based on evidence informed decisions regarding the reason/s for selecting:

- a) direct provision
- b) single or collaborative commissioning
- c) tendering / re-tendering
- d) other options for nurturing and securing care and support services in communities

Statutory partners should consider all options for securing care and support services, this may include but is not limited to:

- a) Grant aid (grants)
- b) Alliance contracting (agreements where parties agree to act in good faith to collaborate to achieve a common goal)
- c) Innovation partnerships (procurement of innovative solutions that are not yet available or do not exist in the market)

In line with the Well-Being of Future Generations (Wales) Act 2015 statutory partners **must** be transparent with providers about their decisions. Statutory partners should engage and involve providers and service users throughout their commissioning activities.

Standard 5: Measuring Value

Statutory partners **must** consistently measure 'value' based on quality and people's experiences and outcomes from services in addition to:

- a) exercising of rights;
- b) standards of quality and safety;
- c) analysis of complaints and compliments data, including protected characteristics;
- d) environmental impact;
- e) social value; and
- f) cost.

The procurement and quality and performance management of (contracted and directly delivered) care and support services, **must** be:

- a) focussed on (well-being) outcomes / results, safety and sustainability (most advantageous / value);
- b) evaluated (measured) by their economic, social and environmental impact (purpose) including fair work principles; and
- c) take into account sustainability in the context of contract value.

Standard 6: Supporting ethical and fair work practices

Statutory partners **must** ensure that all care and support services are commissioned ethically and are underpinned by fair work principles.

Statutory partners should support employers to improve status, well-being and working conditions in social care to achieve parity across (statutory, private and third) sectors.

To support the social care workforce statutory partners should:

- a) take ownership and accountability for Public Sector Equality Duty considerations when making decisions on commissioning and outsourcing that affect the workforce;
- b) undertake and publish evidence-based Equality Impact Assessments which assess the impact that commissioning and outsourcing decisions will have on groups with protected characteristics, including ethnic minority workers;
- c) monitor providers to ensure the required workforce data is available;
- d) consider ways in which the existing procurement processes and duties can be used to improve compliance with their Public Sector Equality Duties for example by considering how equalities are incorporated into the tendering and contract management processes; and
- e) develop an Equalities Impact Assessment for proposed procurement exercises which considers the impact on the social care workforce including workers with protected characteristics.

Standard 7: Understanding the costs of care

Statutory partners **must** demonstrate that they understand the full costs of directly provided and contracted care in their area.

Statutory partners and providers **must** work collaboratively to understand fair and sustainable costs of delivering care to inform decisions relating to fee setting and there **must** be a consistent and transparent approach to fee setting processes.

Statutory partners should where appropriate, align and / or pool resources (including funds and human resources) to enable effective delivery of shared commissioning plans.

Statutory partners through Regional Partnership Board or joint/integrated local mechanisms should, where appropriate, explore the benefits of:

- a) sharing resources across any / all partners to implement plans to improve population well-being and / or the quality and availability of care and support.
- b) wider partnerships e.g. with housing, leisure, libraries and education, primary care and well-being hubs to promote whole population well-being, minimising demand for care and support and maximising early support.

Statutory partners **must** jointly assess the maturity of their integrated and collaborative commissioning arrangements and relationships and should identify scope for improvements in key areas.

Standard 8: Setting fair and sustainable fees

Statutory partners should use local, regional and/or national cost methodologies or benchmarks to determine a fair and sustainable price for quality care and support. Common methodologies assist in analysis of costs and developing business cases for trialling and testing novel approaches to delivering services through the likes of prototyping and iterative scaling of services.

Statutory partners **must** be transparent and consistent when setting fee rates ensuring that they are assessing fair and sustainable costs of care and support and ensuring public value.

Statutory partners **must** confirm their fee rates to providers in a timely manner before the start of each financial year.

Methodologies should take account of factors such as geography, organisational context, care and labour market conditions and fair work policy (pay, terms and conditions and progression frameworks). Contractual uplift mechanisms **must** include appropriate inflation mechanisms to keep pace with rising costs.

Establishing consistent methodologies and benchmarks, should not detract from local democracy and local decision-making on price determination. Commissioners should take account of the impact of their commissioning and procurement activity on the sufficiency of care and support and on market stability.

Standard 9: Financial and Contract Standing Orders

Statutory partners **must** keep Financial and Contract Standing Orders under review to ensure that they are fit for purpose to secure care and support services of the quality and range required.

Statutory partners **must** ensure that their financial regulations are flexible enough to meet the specific needs of commissioning and procuring care and support services.

Standard 10: Equalities and human rights

Statutory partners **must** work proactively to address inequalities and promotion and fulfilment of human rights.

Statutory partners **must** demonstrate how they are meeting the requirements of the Public Sector Equality Duty and regulation 18 of [The Equality Act 2010 \(Statutory Duties\) \(Wales\) Regulations 2011](#)²⁹.

Statutory partners **must** ensure when commissioning services relating to children, young people and families that they have regard to the UNCRC and UNCRPD and have regard to '[THE RIGHT WAY - A Children's Rights Approach for Social Care in Wales – A Children's Rights Approach is a principled and practical framework for](#)

²⁹ <https://www.legislation.gov.uk/wsi/2011/1064>

[working with children, grounded in the UN Convention on the Rights of the Child](#)³⁰ as well as the '[Corporate Parenting Charter - A Promise from Wales](#)'³¹ so that children and young people fulfil their potential.

Statutory partners should seek to find ways in which their statutory duties relating to equalities and human rights can be extended to providers through contracts and service specifications.

Statutory partners **must** undertake Equalities Impact Assessments for commissioning and procurement exercises.

Brokerage

- 1.53. Brokerage is a term often used for the process of arranging care and support for individuals. Brokerage should always have the needs and wishes of the person in need of care and support at the heart of the process.
- 1.54. Although roles and activities differ at local level, the role, in Wales, is mainly associated with establishing arrangements with domiciliary care and support agencies.
- 1.55. The need for a separate brokerage role could be minimised or in some cases eradicated through the development of multi-professional working; particularly when domiciliary care teams (statutory and/or independent) are included as a key element of place-based community resource teams (infrastructure). The community infrastructure programme in Wales is focussed on enabling people to live well, closer to home through prevention, choice, well-being, and independence.

Using data to support commissioning of services

Providing workforce data to Social Care Wales

- 1.56. Commissioners **must** proactively encourage their providers to complete and return the annual Social Care Wales workforce data collection undertaken by Social Care Wales. Having an accurate and up to date national dataset relating to the social care workforce supports robust workforce planning at national, regional and local levels.

The Care Homes Wales Project

- 1.57. The Care Homes Wales Project is a multi-faceted system which links to the Dewis Cymru health and well-being directory. Adult care home providers can self-report information relating to bed capacity and vacancies, which then automatically contributes to dashboards and the public facing website - www.CareHomes.Wales. This information is used to inform national, regional and local datasets therefore, commissioners **must** encourage

³⁰ <https://www.childcomwales.org.uk/wp-content/uploads/2024/02/202402-Childrens-Commissioner-for-Wales-Right-Way-Social-Care-English.pdf>

³¹ <https://www.gov.wales/corporate-parenting-charter>

providers to use and keep up to date their information on the Care Homes Wales Project.

Digital Inclusion and Access

- 1.58. Statutory partners **must** work with providers to encourage and support their use of digital solutions and to ensure that those using services have access to the internet and digital devices as required. Providers should ensure that their staff have basic digital skills to support service users and **must** work with statutory partners in increasing the use of digital solutions.

Social Care Workforce

- 1.59. Commissioners should encourage providers to make use of the [WeCare Wales portal](#)³² to advertise vacancies within their organisations.

Supporting the Real Living Wage

- 1.60. When commissioning care and support services, commissioners **must** have regard to all [relevant Welsh Government guidance](#)³³ relating to the implementation of the Real Living Wage including fair work principles. This should be measured within the procurement process and through contract monitoring processes. Commissioners should ensure that providers are paying at least the Real Living Wage to their social care workers.

Welsh Language

- 1.61. The importance of providing care and support services in the language choice of people is well documented. Language is an integral element for people in achieving their care and support needs, securing rights and entitlements and being able to use their own language to communicate and participate in their care as equal partners.
- 1.62. The provision of care and support services through the medium of Welsh **must** be a right and is a matter of need and necessity, not choice.
- 1.63. Statutory partners **must** treat the Welsh language no less favourably than English and **must** seek to provide opportunities for people to fully use Welsh Language in their everyday life. Statutory partners **must** take all reasonable steps, to provide local/community based Welsh Language care and support services and the sufficiency of care and support in the medium of Welsh **must** be reflected in the local market stability reports.
- 1.64. Statutory partners **must** also comply with all Welsh language duties and obligations contained within legislation, codes of practice and statutory guidance issued, and have regard to any other relevant guidance.

³² <https://wecare.wales/submit-a-job>

³³ <https://www.gov.wales/implementing-real-living-wage-social-care-workers-wales>

- 1.65. Statutory partners should ensure that their population needs assessment establishes the range and level of services that will be required through the medium of Welsh including identifying where there are currently gaps in provision and the action that will be taken to increase the range and level of services that are required through the medium of Welsh.

More than just words

- 1.66. [More than just words](#)³⁴ is the Welsh Government's strategic framework to strengthen Welsh language provision in health and social care. Its aim is to embed the Welsh language in health and social care so that people can access the care that they deserve and require and support Welsh-speakers to receive services in their first language. Adoption and delivery of More than just words will help improve the quality of care for individuals living in Wales.
- 1.67. The 'Active Offer' is a core element of the framework and simply means providing a service in Welsh without someone having to ask for it. It means creating a culture that places the responsibility on health and social care providers to provide a proactive language offer so that people can access care, as equal partners, through the medium of Welsh. All workers in health and social care services including commissioners of care and support services have a part to play in realising the strategic vision of More than just words.
- 1.68. Statutory partners **must** have regard to More than just words and ensure compliance with the Welsh Language (Wales) Measure 2011 when planning and delivering care and support services and that they exercise the 'Active Offer', offering services through the medium of Welsh rather than people having to request it.
- 1.69. It is recognised that it can be challenging for some providers to meet the Active Offer however, commissioners and service providers **must** proactively support the workforce to communicate in Welsh whatever their level of Welsh may be and encourage the workforce to develop their Welsh language skills.
- 1.70. Commissioners should use the national contract clauses available in the toolkit within their contracts with providers of care and support services which are designed to bring about national consistency.

Equalities and human rights

- 1.71. Wales and its people are diverse in nature, commissioning of care and support services **must** therefore take into account and embrace equality so as to improve outcomes for the population of Wales.

³⁴ <https://www.gov.wales/sites/default/files/publications/2022-07/more-than-just-words-action-plan-2022-2027.pdf>

- 1.72. Statutory partners **must** have due regard to the principles of equality and diversity in carrying out their functions at all stages of the commissioning cycle to ensure that diversity and equality are central to the provision of care and support services. As a minimum therefore, commissioners **must** ensure that they have taken into account the following and their implications and findings when commissioning care and support services:
- a) [Welsh Government Anti-Racist Wales Action Plan](#)³⁵;
 - b) the [Equality and Human Rights Commissions report into Experiences from health and social care: the treatment of lower-paid ethnic minority workers](#)³⁶;
 - c) the Ethnic Minorities and Youth Support Team report: [Evaluation of the Social Services and Well-being \(Wales\) Act 2014: expectations and experiences of Black, Asian and Minority Ethnic service users and carers](#)³⁷;
 - d) [UNCRC](#);
 - e) [UNCRPD](#);
 - f) [United Nations Principles for Older Persons](#).
- 1.73. To bring about national consistency proposed contract clauses have been developed which commissioners should use within their contracts with providers of care and support services. These can be accessed in the toolkit.

Supporting the environment and sustainability considerations

- 1.74. The [Environment \(Wales\) Act 2016](#)³⁸ states that “*The Welsh Ministers must ensure that the net Welsh emissions account for the year 2050 is at least 100% lower than the baseline.*”³⁹ This means that by 2050, Wales must be effectively producing net zero carbon emissions.
- 1.75. In October 2021 the Welsh Government set out its second carbon budget, [Net Zero Wales Carbon Budget 2 \(2021-2025\)](#)⁴⁰. It includes the ambition of achieving a collective carbon neutral public sector by 2030, in recognition of the size and reach of the public sector and the critical leadership role it has to embed net zero across all that we do. Local authority social services are included in that ambition.
- 1.76. As part of the [Decarbonising Social Care in Wales](#)⁴¹ strategy and the [NHS Wales decarbonisation strategic delivery plan](#)⁴², statutory social care

³⁵ <https://www.gov.wales/anti-racist-wales-action-plan>

³⁶ <https://www.equalityhumanrights.com/our-work/inquiries-and-investigations/experiences-health-and-social-care-treatment-lower-paid>

³⁷ <https://www.gov.wales/evaluation-social-services-and-well-being-wales-act-2014-expectations-and-experiences-black-asian>

³⁸ <https://www.legislation.gov.uk/anaw/2016/3/contents>

³⁹ <https://www.legislation.gov.uk/anaw/2016/3/section/29>

⁴⁰ <https://www.gov.wales/net-zero-wales-carbon-budget-2-2021-2025>

⁴¹ <https://www.gov.wales/decarbonising-social-care-wales>

⁴² <https://www.gov.wales/sites/default/files/publications/2021-03/nhs-wales-decarbonisation-strategic-delivery-plan.pdf>

partners and external providers of care and support services are committed to:

- a) understanding the current magnitude of carbon emissions;
- b) identifying how carbon emissions can be reduced;
- c) outlining what measures are necessary to deliver a high-quality and affordable service without carbon emissions; and most importantly
- d) taking immediate decarbonisation action.

- 1.77. Within these commitments, Welsh Government and local authorities **must** appraise their carbon impact in the planning, commissioning and the delivery of social care and develop their approach to the procurement of independent social care providers to appraise their sustainability credentials and exert greater influence in the supply chain. The appraisal of carbon emissions through new procurement contracts for social care providers and the social care-related supply chain will help to achieve carbon reductions for local authorities.
- 1.78. Local authorities should monitor, record and seek reductions in the carbon emissions associated with the care they are commissioning and should move towards ensuring that they are making wider environmental (such as biodiversity, adaptation) considerations as part of their commissioning processes.
- 1.79. In accordance with the [Net Zero Wales Carbon Budget 2 \(2021-2025\)](#)⁴³ all local authorities should undertake an annual carbon emission assessment and appraisal and make use of the principles for carbon accounting and reporting set out in the [Welsh Public Sector Net Zero Carbon Reporting Guide](#)⁴⁴. This guide looks to establish a definitive carbon footprint for the sector; however, this is only possible once the carbon emissions associated with commissioned social care is known.
- 1.80. Local authorities should collect carbon emissions data from service providers to include in and inform their carbon accounting and reporting in accordance with the [Welsh Public Sector Net Zero Carbon Reporting Guide](#).

Carers

- 1.81. To support commissioners when commissioning activities or services to support carers in line with the duties under the Act, a number of tools are available in the toolkit which commissioners should take into consideration.
- 1.82. The '[Good practice approaches to supporting carers in Wales](#)⁴⁵', produced by Carers Trust Wales is intended to be used by statutory partners and Regional Partnership Boards, to support the identification of need, planning and commissioning of services for carers.

⁴³ <https://www.gov.wales/net-zero-wales-carbon-budget-2-2021-2025>

⁴⁴ <https://www.gov.wales/public-sector-net-zero-reporting-guide>

⁴⁵ <https://carers.org/downloads/resources-pdfs/good-practice-approaches-wales/good-practice-approaches-to-supporting-carers-in-wales.pdf>

- 1.83. The toolkit also contains the Welsh Government’s [‘Charter for Unpaid Carers’](#)⁴⁶ (“the Charter”) which sets out the legal rights of “unpaid” carers in Wales under the Act. The Charter uses practical examples to show what good practice looks like and should be read by carers and any professional involved in designing, delivering services or supporting carers. In line with the Charter statutory partners when commissioning care and support services **must**:
- a) have due regard to the legal rights afforded to carers in Wales under the Act;
 - b) give equal consideration to the provision of support services to carers in all parts of the commissioning cycle;
 - c) seek to establish accurate evidence in relation to carers including data on the numbers of carers in their area to inform the commissioning process; and
 - d) take all reasonable steps, to empower carers to take control and recognise when their rights are being compromised, by raising awareness of the legal rights of carers in Wales with carers, individuals in receipt of care and support and professionals.

Services for Children

- 1.84. The Welsh Government has committed to transform children’s social care and remove profit from the care of looked after children in Wales.
- 1.85. Children and young people need care and support services that enable them to grow and develop, flourish and thrive. It is widely recognised that this usually means they need to be close to their families and communities and this will be a key feature of the not-for-profit policy.
- 1.86. To support this policy development, statutory partners **must** consider as part of the commissioning process, ways in which children and young people can be accommodated and cared for closer to home more often, so they can continue to be part of their community and maintain their support networks, in living arrangements which are locally based, locally designed and locally accountable.

Safeguarding

- 1.87. Statutory partners **must** take all reasonable steps to ensure that the commissioning of care and support services promotes and protects the well-being of children and adults at risk.
- 1.88. Statutory partners have a **duty** under [section 28 of the Children Act 2004](#)⁴⁷ to ensure that any services provided on their behalf, in the discharge of their functions, have regard to the need to safeguard and promote the welfare of children. Whilst there is currently no corresponding legal duty for adults at

⁴⁶ <https://www.gov.wales/charter-unpaid-carers>

⁴⁷ <https://www.legislation.gov.uk/ukpga/2004/31/section/28>

risk, there is an expectation of equity, irrespective of age, in the provision of care and support for people. Therefore, those providing care and support services for adults, on behalf of a statutory partner, should always do so in ways that protect adults who may be experiencing, or be at risk of, abuse or neglect.

- 1.89. When commissioning care and support, statutory partners **must** refer to the following statutory guidance to ensure safeguarding matters are sufficiently considered:
- a) [Working Together to Safeguard People Volume 1 - Introduction and Overview](#)⁴⁸
 - b) [Working Together to Safeguard People Volume 5 – Handling Individual Cases to Protect Children at Risk](#)⁴⁹
 - c) [Working Together to Safeguard People: Volume 6 – Handling Individual Cases to Protect Adults at Risk](#)⁵⁰
- 1.90. Statutory partners **must** consider and incorporate the following resources which are included in the toolkit, into all commissioning activities:
- a) [The Wales Safeguarding Procedures](#)⁵¹; and
 - b) [The national safeguarding training, learning and development standards](#)⁵².

NEST Framework

- 1.91. The [NEST Framework](#)⁵³ aims to ensure a 'whole system' approach for developing mental health, well-being and support services for babies, children, young people, parents, carers and their wider families across Wales. It also aims to broaden the conversation away from thinking that only specialist services can provide help.
- 1.92. The NEST framework was co-produced by a wide range of stakeholders, it is the result of extensive work with young people, parents, carers and staff working in schools and children's services across Wales. The Framework is a key part of delivering for babies, children and young people on the Mental Health and Well-being Strategy for Wales.
- 1.93. As NEST has significant importance when commissioning mental health services relating to babies, children and young people commissioners should use the NEST framework approach in their commissioning practices and

⁴⁸ <https://www.gov.wales/sites/default/files/publications/2019-05/working-together-to-safeguard-people-volume-1-introduction-and-overview.pdf>

⁴⁹ <https://www.gov.wales/sites/default/files/publications/2019-05/working-together-to-safeguard-people-volume-5-handling-individual-cases-to-protect-children-at-risk.pdf>

⁵⁰ <https://www.gov.wales/sites/default/files/publications/2019-06/volume-6-handling-individual-cases-to-protect-adults-at-risk.pdf>

⁵¹ <https://safeguarding.wales/en/>

⁵² <https://socialcare.wales/resources-guidance/safeguarding-list/national-safeguarding-training-learning-and-development-standards>

⁵³ <https://www.gov.wales/nest-framework-mental-health-and-wellbeing-introduction>

ensure a “no wrong door approach”. Service providers should also have a good understanding of the NEST principles when undertaking services commissioned for these groups of people.

- 1.94. To support commissioners to implement the NEST framework Welsh Government has produced a self-assessment tool and introductory training. Commissioners should make themselves aware of these tools and ensure commissioning bodies use the tools available.
- 1.95. Commissioners should also ensure that service specifications in contracts for services reflect the evidence from co-production with service users and stakeholders.

Commissioning undertaken by Regional Partnership Boards and/or local joint commissioning

Strengthening regional partnerships

- 1.96. This Code is explicitly linked and integrated with the [Part 2 Code of Practice \(General Functions\)](#)⁵⁴ and [Part 9 Statutory Guidance \(Partnership Arrangements\)](#)⁵⁵ which have both been updated to strengthen regional partnerships arrangements.
- 1.97. The principles of co-operation, partnership and integration embedded in the [Part 9 Statutory Guidance \(Partnership Arrangements\)](#) are directly applicable to the National Framework and are designed to:
 - improve care and support, ensuring people have more say and control;
 - improve outcomes and health and well-being;
 - provide co-ordinated, person-centred care and support;
 - make more effective use of resources, skills and expertise; and
 - improve the efficiency and effectiveness of service delivery.

⁵⁴ <https://www.gov.wales/general-social-care-functions-local-authorities-code-practice>

⁵⁵ <https://www.gov.wales/partnership-arrangements-care-and-support-guidance>

Glossary of terms

Term	Definition
Care and Support	<p>Has the same meaning as in section 4 of the Act:</p> <p>“4. Meaning of “care and support”</p> <p>Any references to care and support in this Act is to be construed as a reference to-</p> <p>(a) care; (b) support; (c) both care and support.”</p> <p>Section 34 of the Act (‘How to meet needs) sets out examples of what may be provided to meet a person’s needs for ‘care and support.’</p>
Carer	<p>In this Code, a person is a carer if they come within the definition of ‘carer’ in section 3 of the Act.</p> <p>A carer is typically a family member or friend who provides unpaid care for an adult or disabled child usually in their own home. For policy purposes the Welsh Government prefers the term ‘unpaid carer’, to distinguish them from paid care workers.</p> <p>It is important to note that, for the purposes of the Act, a person is not a carer if they provide care under or by virtue of a contract, or as voluntary work.</p> <p>It should also be noted, however, that under section 3(8) of the 2014 Act, a local authority has the discretion to treat a person as a carer for the purposes of any of its functions under the Act if the authority considers that the relationship between the person providing (or intending to provide) care and the person for whom that care is (or is to be) provided is such that it would be appropriate for the former to be treated as a carer for the purposes of that function or those functions.</p>
Commissioner	<p>The person, individual or team undertaking commissioning functions on behalf of the statutory partner.</p>
Health care/services	<p>Health care has the same meaning as in section 17(9) of the 2006 Act which provides that ‘health care’ means:</p> <p>a) services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and b) promotion and protection of public health.</p>
Leaders	<p>Director of Social Services (“DSS”) in a local authority and the equivalent Director in the NHS that has responsibilities for the commissioning of care and support services.</p>
Provider/Service provider	<p>A company/organisation/person that provides services to local authorities or local health boards.</p>