



**Comisiynydd Pobl Hŷn Cymru
Older People's Commissioner for Wales**

Living in a care home in Wales:

A guide to your rights

**An independent voice and champion
for older people**

Contact the Commissioner

If you have any concerns about your rights, or would like any further information about the help and support available if you are worried that your rights may not have been upheld, please contact the Commissioner's Advice and Assistance Team:

03442 640 670

ask@olderpeople.wales

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Mount Stuart Square
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CF10 5FL**

About this guide

The information included in this guide is correct at the time of printing (October 2022), although some of the information may be subject to change. Please contact the Commissioner's Advice and Assistance team if you have any queries.

The Older People's Commissioner for Wales

The Older People's Commissioner for Wales is an independent voice and champion for older people throughout Wales.

The Commissioner is taking action to protect older people's rights, end ageism and age discrimination, stop the abuse of older people and enable everyone to age well.

The Commissioner is working for a Wales where older people are valued, rights are upheld and no-one is left behind.

Mae'r ddogfen hon ar gael yn Gymraeg // This document is available in Welsh

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Foreword

Many of the issues faced by older people are underpinned by inequality, by a failure to recognise and uphold people's rights. That's why a key part of my role as Older People's Commissioner is protecting and promoting older people's rights, including the rights of older people living in care homes.

Knowing about our rights when living in a care home and what we can do if we feel our rights are not being upheld is crucial, but understanding these rights can be difficult as they are shaped by various pieces of legislation that have been introduced and updated over a period of many years.

That's why I have produced this guide, to provide older people and their families with important information about the rights people have when moving into and living in a care home, and details of key organisations – including my office – that can provide help and support relating to rights.

Upholding people's rights is a vital part of delivering high-quality care, and as Commissioner I will continue to do all I can to promote awareness and understanding of the rights of all older people in Wales.



A handwritten signature in black ink that reads "Heléna Herklots". The signature is fluid and cursive, with a long horizontal stroke at the end.

Heléna Herklots CBE
Older People's Commissioner for Wales

Introduction to your rights

We all have rights. You do not lose your rights when you move into a care home. Your rights are important and understanding them can help you ensure that you are treated fairly and protected if things go wrong. Human rights are designed to help prevent things going wrong as public bodies have a positive duty to prevent breaches of your human rights, as well as provide a remedy if things do go wrong.

Knowing your rights will help you, and anyone assisting you, get the information you need to make informed decisions when choosing and moving into a care home. They can help ensure that you receive the right level of care and support. They can help ensure that you are able to do the things that matter to you and can see the people who are important to you.

If you want to complain about something, knowing your rights can help ensure that you are listened to and that your concerns are dealt with appropriately. If you decide to leave or you are asked to leave your care home, knowing your rights can help ensure that this is done in the most appropriate manner.

This guide gives an overview of your rights when you live in a care home. The rights outlined in this guide come from:

- Human Rights Act 1998
- Social Services and Well-being (Wales) Act 2014
- Regulation and Inspection of Regulated Services (Wales) Act 2016
- Consumer Act 2015

If you believe that you have been treated unfairly and that your rights may not have been upheld, don't put off asking for help. You can contact the Commissioner's Advice and Assistance team for support and you can find details of other organisations that can support you at the end of this guide.

Human Rights

In addition to the specific rights that apply in care homes you also have human rights, which apply to us all. Our human rights include the right to have life protected, a right to respect for private and family life and a right to freedom of expression (a full list of our human rights can be found at the end of this booklet).

A care home must uphold your human rights. It does not matter if your care home is privately owned or owned by a public body (such as the local authority), the duty to uphold your human rights still applies. The way in which your care is funded and has been arranged will, however, make a difference to the way in which human rights can be enforced. If a public body is responsible for funding (either wholly or partially) or is responsible for arranging your care, you have greater protections in law as public bodies must uphold your human rights in all they do.

Your human rights can also be restricted in certain circumstances, but this can only be done in line with limitations set out in law. To restrict your human rights more than is deemed necessary may be unlawful and a breach of your human rights.

Accessing social care

Key rights:

- **Right to information, advice and assistance**
- **Right to an assessment of your needs**
- **Right to ask your local authority to arrange your care home accommodation**

If you are thinking about the social care support you need, including whether to move into a care home, you can approach your local authority (your Council) to ask for help.

Right to information, advice and assistance

Your local authority must ensure that there is easily accessible **information, advice and assistance** about care and support services available to everyone. This includes information, advice and assistance for carers too. You have the **right to access the information you need** in a range of ways (e.g. online, telephone, face-to-face).

Right to an assessment of your needs

If you feel that you may need care and support (i.e. some form of social care) and the local authority agrees, you have a **right to an assessment of your care and support needs from your local authority**. This is not affected by the level of financial resources you have and the local authority cannot unreasonably refuse to assess you. An assessment may be a useful way to understand your needs and identify whether a care home is the best option for you.

You have the **right to be involved in the assessment of your needs** and you have the right to have your views and wishes heard. You also have the **right to receive a copy of your Care and Support Assessment**. More information on your rights as part of the assessment process can be found here: <https://olderpeople.wales/resource/social-services-in-wales/>

Right to ask your local authority to arrange your care home accommodation

Even if you have not been assessed by your local authority or if you will be fully funding living in a care home yourself, you have the **right to ask your local authority to arrange a care home placement for you**. However, they may require an assessment before arranging your care home placement for you. Your local authority may charge for making arrangements on your behalf.

It is the responsibility of your local authority to provide you with a Care and Support Assessment. They can be contacted directly or a support agency can make a request for a Care and Support Assessment on your behalf.

Moving into a care home

Key rights:

- **Right to a Service Agreement**
- **Right to a Written Guide**
- **Right to a Personal Plan**

When you move into your chosen care home, there are a number of important documents that you have the right to receive. They will provide important information on the service that you will receive and how your needs will be accommodated.

Right to the Service Agreement

You have the **right to be given a signed copy of the service agreement** outlining the care and support that is to be provided and any other services that will be provided. This document should set out:

- the amount you must pay (if applicable)
- the other costs covered by your local authority or health board (if applicable)
- the terms and conditions of the service including notice periods for ending the service

To comply with consumer law, care homes must treat you fairly. The terms and conditions set out in your service agreement must be written simply and clearly, avoiding the use of jargon. They must be written and agreed with you in a fair and open way. If a contract term is found to be unfair under Consumer Law, it will not be valid, and the care home cannot hold you to it.

If you pay for your care home accommodation yourself (i.e. you are a self-funder), you will be entering into a contract with the care home provider. If you are fully or partially funded by the local authority or health board, the contract may be between the funding body and the care home provider. You have consumer rights regardless of whether you pay all the costs of your care or whether some or all of the costs are paid for by the local authority or Health Board.

If you feel that your care home is treating you unfairly, then they may be in breach of consumer law. Your local Trading Standards Service will be the appropriate organisation to provide help in relation to consumer issues.

Right to a Written Guide

You have the **right to receive a written guide to the care home and the service provided**. Each care home must produce a written guide in an accessible language which must be given to all individuals who are receiving care and support and made available to others on request. The written guide must provide information on:

- how to raise a concern or make a complaint
- the availability of advocacy services

The written guide should also include information on areas such as:

- how to access the most recent inspection report
- key staff and how to contact the responsible individual
- the opportunities and mechanisms for the involvement of families, carers and the community
- fees and costs, including any additional fees or costs payable by the individual
- terms and conditions
- accessing healthcare
- availability of, and support to access, telephone and the internet
- activities, including support to access community services and activities

It is the responsibility of the care home manager or Responsible Individual to provide you with a copy of your Written Guide to the care home if you have not received one. If you are not provided with a copy, you can make a complaint.

Right to a Personal Plan

When you move into a care home, in order to ensure that the care you receive is specific to your needs and preferences, you have a **right to a Personal Plan**. Your Personal Plan provides information for you (and your family or representatives) about your agreed care and support and the manner in which this will be provided. It provides a clear and constructive guide for staff about you as an individual, your care and support needs and the outcomes you would like to achieve. Your Personal Plan will help you and your family to review the care that you receive and measure your progress against your personal outcomes.

Your care home must work with you to create your Personal Plan to outline how you will be supported on a day-to-day basis. A Personal Plan is separate from a Care and Support Plan undertaken by your Local Authority.

Your Personal Plan must be initially developed by your care home before you move in using existing information, assessments and any care and support plans in place. The Plan is then developed further during your first week of using the service through a full assessment (known as a provider assessment). You have a **right to be involved in the creation of your Personal Plan** and you have a **right to be supported by your family or a representative during the creation of your Plan**.

Your Personal Plan must set out the actions required to meet your well-being needs on a day-to-day basis. It must include:

- details of your care and support needs (including self-medication)
- your personal preferences and routines for how this will be provided
- how you will be supported to achieve the personal outcomes that you want
- how your wishes, aspirations and religious beliefs will be supported

- steps to identify any risks to your well-being and how this will be managed, including steps to support positive risk taking
- steps to maintain, re-able and/or achieve independence
- details of your Care and Support Plan (if you have one)
- any health or other relevant assessments or plans such as such as behavioural support plan

You have the **right to be given a copy of your Personal Plan**. It must be reviewed and amended as and when required (but at least every three months) to reflect any changes needed to your care and support, or changes regarding what you would like to do or achieve.

It is the responsibility of the care home manager or Responsible Individual to provide you with a copy of your Personal Plan if you have not received one. If you are not provided with a copy, you can make a complaint.

Your care and support

Key rights:

- Right to be involved in decisions about your care
- Right to be treated with dignity and respect
- Right to advocacy
- Right to access healthcare
- Right to complain about your care

Any care you receive in a care home must uphold your rights. You should be enabled to live the life you want as independently as possible, and be supported to fulfil your potential and do the things that matter to you. This can include being supported to participate in or complete education or lifelong learning, developing and maintaining hobbies, joining community activities and volunteering.

Right to be involved in decisions about your care

It is important that your views and preferences are catered for to help you feel at home in your chosen care home. To ensure that the care you receive is tailored to your requirements and preferences, you have the **right to be involved in the day-to-day decisions about the way care and support is provided**.

Your care home must ensure that your care is in keeping with your personal plan (and any other assessments) and that it meets your needs and helps you achieve your personal outcomes in relation to:

- Your physical, mental and emotional well being
- Your cultural, religious, social or spiritual preferences
- Your education, training and recreation needs
- Your family and personal relationships
- Your control over everyday life
- Your intellectual, emotional and behavioural development
- Your rights and entitlements

Right to be treated with dignity and respect

You have a **right to be treated with dignity and respect at all times** by your care home and your local authority. Staff at your care home must respect your privacy, dignity and confidentiality, and promote your autonomy and independence. You also have the right to be listened to and communicated with respectfully. Your care and support should be the main focus of staff's attention and you have the right to feel valued.

You have the **right for intimate personal care to be provided in a dignified way** and the **right to respect for your personal preferences**. This should be agreed with you and recorded in your Personal Plan, which should also include information about any use of special aids and/or products. You have the **right to be supported to wash and use the toilet as independently as possible**. You have the **right to access technology and specialist equipment** so you can call for assistance where required and manage your own needs where possible.

You should be encouraged to take part in everyday tasks, and you have the **right to contribute your views** to help with the running of the service if you choose.

You have the **right to access aids and equipment** to ensure that you can communicate in a meaningful way (for example use of British Sign Language (BSL), Picture Exchange Communication System (PECS), Makaton, Braille). Your care home must also work towards offering you a service in the Welsh language if Welsh is your language of choice.

If you are living with dementia or sensory loss, you have the **right to be communicated with and responded to in an appropriate manner** by staff appropriately trained to understand cognitive and sensory impairment. Staff must be trained to understand and respond appropriately to those who have complex needs and must be able to recognise when a person is in pain and know how to manage this. You have the **right for your care to be delivered in a positive and caring way** and staff should take time to get to know you.

You have the **right not to be controlled or restrained, including by the use of physical, mechanical or chemical means**, unless it is necessary to prevent a risk of harm posed to you or others and it is an appropriate and proportionate response to the seriousness of the harm.

You have the **right to be safe and protected from abuse, neglect and improper treatment** and the **right not to be treated in an inhuman or degrading way**. If you feel that you are or your loved one is at risk of abuse or neglect, you can raise your concerns with the care home or contact your local authority Safeguarding Team to report your concerns.

You also have the **right not to be deprived of your liberty** when being provided with care. This means that you cannot be restrained, or your movements restricted unless the proper legal processes have been followed to authorise such actions. Some people who lack mental capacity may be deprived of their liberty if it is deemed in their best interest to do so, and a legal authorisation will be sought through the Deprivation of Liberty Safeguards (DoLS) process (soon to become Liberty Protection Safeguards (LPS)).

Right to advocacy

If you need support to help you have your say in decisions about your care, an advocate can help put forward your views or speak for you in some situations. They can inform you of your rights and help make sure that your views are listened to and taken into account. Advocacy may be provided by a family member, carer or friend, for example.

However, in some circumstances, you may need an advocate that is independent from your family or friends or from the services involved with your care. If you have barriers to communicating your needs and wishes, you **may have the right to an Independent Professional Advocate (IPA)**. If you need help to participate in decisions and express your

views and there is no one to advocate for you, you can ask your care home for information about independent advocacy.

Where a person lacks the mental capacity to make certain decisions, their advocate (such as family, friends, carers or person with legal authority to make decisions on their behalf i.e. Lasting Power of Attorney) has the **right to be involved in the decision-making process** about their care. If no appropriate advocate is available, a person who lacks capacity has the **right to an Independent Mental Capacity Advocate (IMCA)** to ensure that their views and wishes are listened to. In other situations, an Independent Professional Advocate may be appointed to this role.

Right to access healthcare

Living in a care home should not change the way in which you access healthcare. You have the **right to be enabled to access treatment, advice and other services from any health care professional** as necessary and the **right to be supported to access such services**.

Your care home must make arrangements for you to register with a GP and a dentist if you are relocating to a new area. Information provided in your care home's Written Guide must include how the care home supports you to access healthcare services.

Right to complain about your care

If you are unhappy with any aspect of the care you receive, you have the right to make a complaint (please see information on making a complaint).

Visitors and going ‘out and about’

Key rights:

- **Right to respect for your family life**
- **Right to liberty**
- **Right to not be controlled or restrained**

A care home is your home and should be treated as such. You should be able to come and go as often as you please, visit friends, go shopping or attend events/social activities, as long as your health allows this and no legal restrictions are in place.

Right to respect for your family life

Your care home must have space for you to meet visitors privately which is separate from your own room (you can refuse to see visitors if you wish).

Care homes may, at times, limit the extent to which visitors may enter the care home, for example to limit the spread of infection in line with infection control procedures. All restrictions must be proportionate to the risk.

You have the **right to respect for your private and family life**. This means that you have the right to enjoy family relationships without interference from public bodies. It includes the right to live with your family and, where this is not possible, the right to regular contact. However, this right can be limited if it is in the interests of public safety or for the protection of health or the rights and freedoms of others. Any restrictions must be proportionate to the risk

You have the **right to be treated with respect and sensitivity** which includes, but is not limited to, respecting your privacy and dignity, respecting your confidentiality, and promoting your autonomy and independence. You should be enabled to receive visits in private with respect for your confidentiality.

Right to liberty

You have the right to liberty. This means that you cannot be denied free movement, including leaving your care home without lawful authority.

If a person lacks the mental capacity to consent to restrictions to their liberty, any decisions to deprive them of their liberty must be made in line with strict legal procedures called Deprivation of Liberty Safeguards (DoLS), soon to become Liberty Protection Safeguards (LPS). This could include measures that restrict movement both outside of and within a care home. Any deprivation of liberty must be in your best interest and be as least restrictive as possible.

Right to not be controlled or restrained

You have the **right to not be controlled or restrained** unless it is necessary to prevent a risk of harm to yourself or others. This means not being restricted in your movement by the use of physical, mechanical, chemical or psychological means. Where forms of control or restraint are used, it must be as part of a pro-active approach to behavioural support and be a proportionate response to the risk of harm and the seriousness of that harm. Your needs and capacity to consent to any treatment must be assessed and current legislation and guidance must be followed.

Disproportionate restrictions on your ability to see your loved ones or your liberty may be a breach of your human rights. If you feel that your human rights may have been breached, you can contact the Equality Advisory Support Service (EASS) Helpline.

Paying for your care

Key rights:

- **Right to a financial assessment**
- **Right to a written agreement / contract if you are contributing financially**
- **Right to decide whether to purchase 'additional services'**

Your care home must provide you with key information including how much you will pay to stay in the home. Depending on your financial circumstances, you may be asked to pay the full or partial costs of living in a care home or be fully funded by your local authority or health board.

Right to a financial assessment

Your local authority or health board will only contribute to the cost of your care home if it has been assessed that moving to a care home is the best way to meet your needs. To determine your needs, you have the **right to a care and support assessment from your local authority**.

To determine whether you need to pay for your care and, if so, how much you will need to pay, you have the right to a financial assessment. This will be undertaken by your local authority, who must then provide you with a statement setting out the amount you are being asked to pay.

If you own your own home and/or have savings that add up to more than £50,000, and you do not have a dependent or spouse living in your home, then you may need to sell your home or use your savings to fund living in a care home. If and when your resources are reduced to £50,000, you have the **right to request financial assistance** towards care home fees from the local authority.

If you have health needs, you may be eligible for part funding through 'Funded Nursing Care' or full funding through 'Continuing NHS Healthcare'. More information on this funding will be available from your health board.

If you are recovering from illness or injury, you have the **right to receive a free period of reablement** (up to six weeks) before you are charged for a service. Reablement helps people to retain or regain their skills and confidence so they can learn to manage again after a period of illness.

Right to a written agreement / contract if you are contributing financially

You have the **right to receive a written guide** to the care home which must detail how much you will pay to stay in the care home and any additional fees or costs payable by you and the notice period for any increases. If you or your representative are paying for your care in full or partially you **must be given a written contract**.

The written contract should set out:

- terms and conditions
- fees, including top ups or any late payment fees
- arrangements and timescales for notifying individuals of contractual changes
- arrangements for how payments are to be made

Where a Local Authority is contributing fully or partially to the cost of your care home and where you have chosen a care home that is more expensive than the Local Authority would usually expect to pay, a third party 'top up' will need to be paid to meet this extra cost. In such circumstances, you (or the person making the payment), has the **right to receive a written agreement detailing the additional cost** ('top-up' amount).

This written agreement must detail the cost the local authority would usually expect to incur in such circumstances, the frequency of payments, the details of the person to whom the payments are to be made, the provision for review of the agreement and the consequences if the payments are stopped. However, if a more expensive care home is the **only** option available, you have the **right for the extra cost to be met by the Local Authority**.

Right to decide whether to purchase 'additional services'

Individuals can also **choose** to pay for additional services and products that are not considered part of an agreed package of care (e.g. daily newspaper, toiletries, hairdressing). 'Additional services' are services that are over and above those detailed in a person's Care and Support Plan.

You have the **right to decide whether to purchase 'additional services'**. Where there is a charge for specific goods or services, your expressed consent must be obtained in advance of the purchase. You have the **right to not be pressured into the purchase of additional services** as a condition of moving into the care home or continuing to remain in living in the care home.

If you have consented to the purchase of 'additional services', you have the **right to be provided with information on the actual cost of any additional costs** and whether charges vary in accordance with the resident's choices (e.g. hairdressing, toiletries, medical supplies) or where the cost cannot be calculated in advance, information about how it will be calculated.

If you feel that your care home is treating you unfairly regarding the costs of your care, then they may be in breach of consumer law. Your local Trading Standards Service will be the appropriate organisation to provide help in relation to consumer issues.

Raising Concerns

Key rights:

- **Right to raise a concern or a complaint about your care**
- **Right to be provided with information and reasons for the outcome of any investigations**
- **Right not to suffer discrimination, victimisation or any other disadvantage, or the withdrawal or reduction of a service**
- **Right to access justice**

Your care home is required to have suitable arrangements in place to enable you to provide feedback on all aspects of service. It must take account of your views and the views of your representatives. All feedback must be acknowledged, recorded and responded to as appropriate.

Right to raise a concern or a complaint about your care

You have the **right to raise concerns or complaints** about the care you receive and any aspect of the service directly with your care home – details of how to do this must be set out in the care home's written guide.

When making a complaint, you have the **right to receive an appropriate response**. You have a **right to be engaged with in an open and honest manner**.

The way in which a complaint should be made depends on how your care is paid for. You have the **right to complain to the Local Authority if your care is funded by the Local Authority** (either partially or fully) or the Local Authority has been involved in arranging your care.

If you are fully self-funding your care home and the Local Authority has not been involved in arranging your care, you would need to complain to the care home directly. However, you may have the **right to complain to the Local Authority if your care home is owned by the Local Authority**.

Whilst they do not investigate individual complaints, you may also want to share your concerns directly with Care Inspectorate Wales who will use this information to inform their inspection work.

If you have pursued the care home or Local Authority complaints processes and are still unhappy, you have the **right to escalate your complaint to the Public Services Ombudsman for Wales**.

Right to be provided with information and the outcome of any investigations

If you make a complaint, you (or your family with your consent) have the **right to be provided with information about incidents which have happened which are relevant to your complaint**. You also have the **right to information about the outcome of any investigations** that have taken place.

Right not to suffer discrimination, victimisation or any other disadvantage, or the withdrawal or reduction of a service

Providing feedback, raising a concern or making a complaint should not impact upon the care you receive at a care home, or the way that you are treated by your local authority. You have the **right not to suffer discrimination, victimisation or any other disadvantage, or the withdrawal or reduction of a service because of making a complaint**.

Right to access justice

You have the **right to access justice**. You have the right to a fair and public trial or hearing if a public authority is making a decision that has an impact upon your civil rights or obligations. You also have the right to an explanation of how the court or decision-making authority reached its decision. Everybody must have equal access to the courts under the Human Rights Act. This includes a right to bring a civil case (a case between individuals or organisations).

Ending your residence

Key rights:

- **Right to be consulted before being asked to leave**
- **Right to 28 days written notice to leave**
- **Right not to be asked to leave or have your visitors restricted in retaliation for making a complaint**

Right to be consulted before being asked to leave

The circumstances in which a care home can terminate your service must be clearly explained in your contract. They must be limited to valid reasons, for example, where the care home can no longer meet your care needs even after making reasonable adjustments.

You have the right not to be asked to leave without first being consulted (including your representatives where appropriate).

A care home should ensure that their termination policies and procedures are clearly explained, which should include:

- the circumstances in which the contract can be ended
- the evidential basis upon which any decision will be made
- notice requirements
- the arrangements for refunds of deposits and prepayments

Right to 28 days written notice to leave

You have the **right to be given at least 28 days' written notice to leave** (unless you are staying on a trial period).

Right not to have visitors restricted in retaliation for making a complaint

You have the **right not to be asked to leave or have your visitors restricted in retaliation to a complaint.**

If you feel that you have been asked to leave your care home because you have raised concerns or have made a complaint, you can make a further complaint to the care home and/or your local authority or health board if they are involved in the funding of your care.

You may also want to raise a concern directly with Care Inspectorate Wales (CIW) who are responsible for inspecting the quality and safety of care homes in Wales. Whilst CIW do not

investigate individual complaints, the information you provide will help inform their inspection work

If you feel that your care home is treating you unfairly regarding by asking you to leave, then they may be in breach of consumer law. Your local Trading Standards Service will be the appropriate organisation to provide help in relation to consumer issues.

Useful Contacts

Find your local authority: <https://www.gov.uk/find-local-council>

Find your health board: <http://www.wales.nhs.uk/ourservices/directory>

Public Services Ombudsman for Wales

1 Old Field Rd
Pencoed
Bridgend
CF35 5LJ

Tel. 0300 790 0203

<https://www.ombudsman.wales/complaints/>

Care Inspectorate Wales (CIW)

Welsh Government office
Rhydycar Business Park
Merthyr Tydfil
CF48 1UZ

Tel. 0300 7900 126

<https://careinspectorate.wales/contact-us/raise-concern>

Equality Advisory Support Service (EASS)

FREEPOST EASS HELPLINE FPN6521

Tel. 0808 800 0082

<https://www.equalityadvisoryservice.com/app/ask>

Trading Standards

To report to Trading Standards, you need to contact the Citizens Advice consumer service.

Contact the Citizens Advice consumer helpline: 0808 223 1133

Age Cymru

Ground Floor, Mariners House
Trident Court
East Moors Road
Cardiff, CF24 5TD

Tel. 0300 303 44 98

<https://www.ageuk.org.uk/cymru/contact-us/>

Find your local authority or health board

Find your local authority:

<https://www.gov.uk/find-local-council>

Find your health board:

<http://www.wales.nhs.uk/ourservices/directory>

(If you're having trouble finding your local authority / health board, please contact the Commissioner's Advice and Assistance Team)





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