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Iechyd Cyhoeddus
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Public Health
Wales

Name of Meeting
Board
Date of Meeting
28 November 2019
Agenda item:
8.3.281119

Welsh Language Standards

Executive lead:	Phil Bushby, Director of People and OD
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Approval/Scrutiny route:	Business Executive meeting – 16 November 2019
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Purpose

Further to the Board paper in May 2019, this paper seeks approval for Public Health Wales to challenge three further Standards that are due to be imposed on 30 November 2019.

Recommendation: (note - to mark an x in the grey box below right click on the mouse, then select "properties", and then select "checked")

APPROVE <input checked="" type="checkbox"/>	CONSIDER <input type="checkbox"/>	RECOMMEND <input type="checkbox"/>	ADOPT <input type="checkbox"/>	ASSURANCE <input type="checkbox"/>
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The Board is asked to:

- **To approve** the challenge of Standards 17, 106A and 107a.

Link to Public Health Wales Strategic Plan

Public Health Wales has an agreed strategic plan, which has identified seven strategic priorities and well-being objectives.

This report contributes to the following:

Strategic Priority/Well-being Objective	All Strategic Priorities/Well-being Objectives
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Summary impact analysis

Equality and Health Impact Assessment	Not Completed
Risk and Assurance	Risk 472 on the Corporate Risk Register states "PHW will fail to meet the new Welsh Language Standards by the required deadlines". This paper therefore, relates directly to this risk and the mitigation of it.
Health and Care Standards	This report supports and/or takes into account the <u>Health and Care Standards for NHS Wales Quality Themes</u> Theme 7 - Staff and Resources Theme 3 - Effective Care Theme 5 - Timely Care
Financial implications	There are some additional costs centrally and throughout the organisation. These are an investment in central roles and through directorates balancing the challenge of the Standards with other business priorities.
People implications	This is a significant change of mind-set for the whole organisation and requires all of us to think and act differently.

1. Purpose/ Background

On 30 November 2018 Public Health Wales received a Welsh Language Standards (No.7) Regulations Compliance Notice from the Welsh Language Commissioner ('the Commissioner') that sets out the Standards with which we must comply. We are required to be compliant with 80% of the Standards by 30 May 2019, 19% by 30 November 2019, and 1% by 30 November 2020.

2. Welsh Language Standards

2.1 Action plans to support the implementation of the Standards were distributed to all directors by the Director of People and Organisational Development on 4 February 2019. As part of the implementation and governance approach, Directors are asked to self-assess their compliance with each standard and to submit exceptions reports highlighting areas of concern.

Monitoring progress against the Standards imposed in May 2019 and November 2019 is considered by the People and Organisational Development Committee on a regular and ongoing basis. Progress was last reported in October with a further update scheduled for January 2020. It was reported to the committee in October that whilst good progress was being made in respect of most standards, challenges remained in certain divisions in respect of recording language preference, recruitment to certain key roles and answering telephones.

2.2 The areas causing the most concern in regards to the standards with an imposition date of November 2019, relate to answering the phones and elements of recruitment. The three Standards that are seeking authorisation to challenge are:

Standard 17: This standard deals with how calls to staff direct line numbers are answered. The Commissioner's interpretation and advice on a similar standard (standard 10) is that the implementation of the standard must satisfy the requirement to establish the purpose of the call in Welsh. It is not sufficient to have a process where a non Welsh-speaking member of staff answers a call then explains in Welsh, having learned some pre-prepared phrases, that they do not speak Welsh and that the call will be transferred to a Welsh-speaking member of staff. This means that a staff member answering the call must have sufficient Welsh language skills to be able to listen to the caller and understand their reason for calling and the service they

want, ask appropriate questions, understand the caller's response and respond appropriately. The current data on ESR shows that 208 (11%) of our 1852 staff have recorded Welsh language speaking skills of level 3, 4 or 5, it would therefore be reasonable to estimate that approximately 90% of staff (best estimate 1350 staff) do not have the necessary Welsh language skills. Public Health Wales is, and will be, unable to comply fully with standard 17 if all staff with direct dial phones continue to answer external calls.

The alternative is to identify a telephony solution that enables the language choice of callers to be met. A number of potential telephony solutions have been identified and their viability, implications and impact on the organisation will be considered by the Executive Team. However, since identifying these potential options, the Commissioner has informed Public Health Wales that it has sought legal advice on the interpretation of standard 17. The Commissioner will discuss the legal advice with his staff on 22 November and, therefore, we do not expect to receive his interpretation advice until after the imposition date for this standard. The Commissioner's advice may result in opportunities to identify additional solutions to meet this standard.

Standards 106A(b), 107A(ch): Our former Welsh Language Scheme required all job advertisements and job descriptions to be bilingual. However, to date, only job descriptions, person specifications and advertisements for 'Welsh language skills are essential' posts have been published bilingually. In 2018-19, Public Health Wales had 440 vacancies of which 12 posts (2.8%) were published bilingually. During the first 6 months of the current financial year, there were 305 vacancies of which 13 (4.2%) were published bilingually. We estimate that the cost of translating job advertisements and job descriptions for the period 30 November 2019 to 20 November 2020 will be £50,000 (based on translating 70% of job descriptions). The annual spend on translation thereafter will be less every year as the bank of translated documents increases. No additional budget provision has been made to meet these costs.

3. Challenging the imposition of Welsh Language Standards

Public Health Wales has the right to challenge and appeal the Compliance Notice if it is of the opinion that one or more of the Standards imposed is unreasonable or disproportionate. Should Public Health Wales determine that it wishes to challenge Standards with an imposition date of 30 November 2019, it must follow procedures published by the Welsh Language Commissioner,

'Challenges and Appeals Procedure: Compliance Notices' and submit the challenge by 29 November 2019.

As outlined in section 2, Public Health Wales proposes to challenge the imposition dates of Standards 17, 106A(b) and 107A(ch).

- 3.1 **Standard 17:** Public Health Wales proposes to appeal this standard on the basis that the absence of formal interpretation advice from the Welsh Language Commissioner means that we are not in a position to identify all possible solutions for ensuring compliance. The Commissioner's advice could inform other options. The potential solutions identified to date for complying with this standard may require significant budget provision and additional time to implement them.
- 3.2 **Standard 106A(b) and 107A(ch):** With the Exception of Betsi Cadwaladr University Health Board and Hywel Dda University Health Board, all other NHS organisations will be challenging these Standards.

The intention is to request an additional three years to implement standard 107A (ch). This will allow time for Shared Services to establish a central library of bilingual job descriptions for NHS Wales organisations. Job descriptions common to all NHS Wales bodies would be standardised and translated on a 'once for Wales' approach. Should a vacancy arise relating to a new job description before the new imposition date, and the job description is available in Welsh and English in the central library, the job description will be published bilingually. If it is not yet available in Welsh, the job description will be published in English only. Should a vacancy arise relating to a post whose job description has not yet been standardised or translated, the job description will be published in English only (unless it is a Welsh essential post). With regard to a job description that is specific to an organisation, it will be the responsibility of that organisation to translate the job description and upload it to the central library via its Job Evaluation leads.

There is also an intention to request an additional three years to implement standard 106A(b) on the grounds that it is linked with standard 107A(ch). Should the challenge for standard 107A(ch) be successful, some job descriptions will not be available bilingually for up to three years. The collective view is that a bilingual job advertisement should be published only when a bilingual job description is available.

Public Health Wales has established its own Project Group that ensures that local action synchronises with the national effort. The

group is working on reviewing Public Health Wales job descriptions beginning with the top 10 from each Directorate and feeding these into a Public Health Wales library. It makes sense, in terms of organisational efficiency, to build translation into that process. No budget provision has been made to departments to support translation of job descriptions. The possibility of creating a central translation budget for recruitment translation is being explored but, if this cannot be secured, then translation costs will be met by directorates. The group anticipates that 60-80% of PHW jobs will have been put into the new job description template and translated by March 2020. After that date, as jobs arise they will need to be put into the new template and translated on a job-by-job basis. During the process of creating the database some jobs might still go out under the old template, and these will only be translated if they are Welsh essential. This means that job descriptions for some jobs will be available to candidates in English only.

Should Public Health Wales challenge the imposition date of standard 107A, it is likely that the Welsh Language Commissioner will respond to the challenge by March 2020. Should the Commissioner propose to reject our challenge, Public Health Wales would have a basis for responding to the WLC with an alternative imposition date and /or with a request to exempt translation of old format job descriptions for a specific period of time.

4. Well-being of Future Generations (Wales) Act 2015

The Welsh language is a cross-cutting issue and is relevant to all seven well-being objectives of the Well-being of Future Generations Act. It is of particular relevance to Theme 7: A Wales of vibrant culture and thriving Welsh language.

5. Recommendations

The **Board** is asked to:

- Agree to challenge the imposition dates for Standards 17, 106A(b) and 107A(ch).

Appendix 1

Standards with a 30 November 2019 imposition day

Standard	Standard	Imposition Day	RAG Status	Comment
17	If a person contacts one of your departments on a direct line telephone number (including on staff members' direct line numbers), and that person wishes to receive a service in Welsh, you must deal with the call in Welsh until such point as— (a) it is necessary to transfer the call to a member of staff who does not speak Welsh who can provide a service on a specific subject matter; and (b) no Welsh speaking member of staff is available to provide a service on that specific subject matter.	30/11/19		See commentary in paper
106A	If you have categorised a post as one where Welsh language skills are essential, desirable or need to be learnt you must - (a) specify that when advertising the post, and (b) advertise the post in Welsh	30/11/19		See commentary in paper
107A	If you publish - (a) application forms for posts; (b) material that explains your procedure for applying for posts; (c) information about your interview process, or about other assessment methods when applying for posts; or (ch) job descriptions; you must publish them in Welsh; and you must ensure that the Welsh language versions of the documents are treated no less favourably than any English language versions of those documents.	30/11/19		See commentary in paper

80	When you offer a new post to an individual, you must ask that individual whether he or she wishes for the contract of employment or contract for services to be provided in Welsh; and if that is the individual's wish you must provide the contract in Welsh.	30/11/19		A Welsh contract is available which is currently provided for Welsh essential posts and if asked, Shared Services is able to provide these for non Welsh essential posts.
97	You must provide opportunities for training in Welsh in the following areas, if you provide such training in English - (a) recruitment and interviewing; (b) performance management; (c) complaints and disciplinary procedures; (ch) induction; (d) dealing with the public; and (dd) health and safety.	30/11/19		A Task and Finish Group led by P&OD is identifying relevant training and establishing criteria to be applied consistently across the organisation. A survey is being undertaken to ascertain demand for training in Welsh.
110	You must publish a plan for each 5 year period setting out - (a) the extent to which you are able to offer to carry out a clinical consultation in Welsh; (b) the actions you intend to take to increase your ability to offer to carry out a clinical consultation in Welsh; (c) a timetable for the actions that you have detailed in (b).	30/11/19		This standard affects Public Health Services and Help Me Quit only. An overarching plan has been drafted. The plan will be submitted for approval in due course. Although we do not intend to challenge this Standard Welsh Language Officers are working together with Welsh Government to respond consistently in respect of these plans.
81	You must ask each employee ("A") whether A wishes to receive any of the following in Welsh, and if A wishes to receive one or more in 30/11/2019 Welsh you must provide it (or them) to A in Welsh - (a) any paper correspondence that relates to A's employment, and which is addressed to A; (b) any documents that outline A's training needs or requirements; (c) any documents that outline A's performance objectives; (ch) any documents that outline or record A's career plan; (d)	30/11/19		

	<p>any forms that record and authorise annual leave; (dd) any forms that record and authorise absences from work; (e) any forms that record and authorise flexible working hours.</p> <p>You must comply with standard 81 in every circumstance by 30 November 2019, except: when the activity is carried out through the use of the Electronic Staff Record (ESR). You must comply with standard 81 in every circumstance by 30 November 2020.</p>			
84	<p>If you receive a complaint from a member of staff or a complaint about a member of staff, and a meeting is required with that member of staff, you must - (a) offer to conduct the meeting in Welsh or, if necessary, provide a translation service from Welsh to English for that purpose; and (b) if the member of staff wishes for the meeting to be conducted in Welsh, conduct the meeting in Welsh or, if necessary, with the assistance of a simultaneous or consecutive translation service from Welsh to English.</p>	30/11/19		
90	<p>You must ensure that - (a) the text of each page of your intranet is available in Welsh, (b) every Welsh language page on your intranet is fully functional, and (c) the Welsh language is treated no less favourably than the English language on your intranet.</p> <p>You must comply with standard 90 in relation to pages on your intranet that relate to the matters within the following operational Standards:</p> <ul style="list-style-type: none"> • the use of the Welsh language within your internal administration • complaints made by staff • disciplining staff • developing skills through planning and training the workforce; and • recruiting and appointing 	30/11/19		

95	<p>You must provide the interface and menus on your intranet pages in Welsh.</p> <p>You must comply with standard 95 in relation to the following:</p> <ul style="list-style-type: none"> any page or homepage on your intranet that is available in Welsh in accordance with Standards 90 and/or 91; any page you designate and maintain on your intranet in accordance with standard 94 	30/11/19		
98	<p>You must provide opportunities for training in Welsh on using Welsh effectively in - (a) meetings; (b) interviews; and (c) complaints and disciplinary procedures.</p>	30/11/19		
110A	<p>Three years after publishing a plan in accordance with standard 110, and at the end of a plan's 5 year period you must - (a) assess the extent to which you have complied with the plan; and (b) publish that assessment within 6 months.</p>	30/11/19		