

Mae'r ymateb yma hefyd ar gael yn Gymraeg.

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**Response by the Public Services Ombudsman for Wales  
to the Code of Practice on Provision of Autism Services**

I am pleased to have the opportunity to respond to the Welsh Government's consultation on the Code of Practice on Provision of Autism Services.

**Our role**

As Public Services Ombudsman for Wales (PSOW), I investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction, which essentially includes all organisations that deliver public services devolved to Wales. These include:

- local government (both county and community councils)
- the National Health Service (including GPs and dentists)
- registered social landlords (housing associations)
- the Welsh Government, together with its sponsored bodies.

I am also able to consider complaints about privately arranged or funded social care and palliative care services and, in certain specific circumstances, aspects of privately funded healthcare. The own initiative powers I have been granted under the Public Services Ombudsman (Wales) Act 2019 will allow me to investigate systemic failings in the social care sector, even if service users themselves are not raising complaints.

I have reflected upon evidence from my office's casework, and it is in this context that I am responding to the consultation. Health services account for nearly half the complaints made to my office but I currently receive only a small number of complaints about social care. Of these cases, some relate directly to autistic spectrum condition, although we also received other complaints from people with the condition where it is not the main focus of their grievance.

My comments on aspects of the Code of Practice and the Supplementary Guidance are set out below.

## **General comments**

Improving public services is a cornerstone of my tenure as the Ombudsman in Wales, so I welcome the Code of Practice's aspirations to drive enhancements in the quality of the care that local authorities and health boards deliver to autistic people. The introduction of the Code and the Supporting Guidance is a positive step towards the provision of a fair and just service for autistic people, their families and carers that affords greater clarity on the responsibilities of local authorities and health boards for assessments and diagnosis, and access to health and social care services. I am pleased that the proposals include a range of measures to support the assessment, diagnosis and treatment of patients and will formalise arrangements of the support that should be available for them and their carers.

I am also pleased at the evident desire to improve inclusion of autistic people in mainstream services and to increase the understanding, knowledge and skills of staff in mainstream as well as specialist services through formalised training.

Complaints provide an opportunity for all public services to learn from service users. I am therefore disappointed in the paucity of guidance regarding complaints and the purpose that drives the need for a robust and coherent complaint handling system that includes all parties including the Public Services Ombudsman for Wales, which I will pick up further on in my response.

## **Themes arising from my casework**

Complainants have a right to have their complaints considered thoroughly, objectively, and in a timely manner which takes account of all the relevant facts and evidence. Unfortunately, several of the complaints I have received tell me that for autistic people this is not always the case, where these have not been appropriately progressed resulting in injustice for the complainants.

The outcomes of many of my investigations identify an underlying theme of inadequate or ill-informed assessment which can be partly attributed to a lack of understanding of public authorities' relevant duties and responsibilities, or a misinterpretation of the current guidance which supports the need for closer joint working and joint planning of services. Some of the cases I have seen suggest that integrated services and pooled funding could support more timely and appropriate care packages.

I wish to draw attention to two of these individual cases, to provide insights into the stories of real people behind the complaint statistics.

### **Gwynedd Council - Children's Social Services - 201801474**

Mr & Mrs A complained about the way in which Gwynedd Council had dealt with, and acted upon, the independent Stage 2 investigation report into their complaint to the Council was about a lack of service provision for their son X, who suffers from a form of Autism. I found there had been an unreasonable delay in the Council formally responding to Mr & Mrs A's complaint. The Council's actions gave at least the perception that it was seeking to influence the outcome of the investigation. When it later declined to accept its recommendations, the Council failed to give any cogent reasons for doing so. I also found communication failings on the part of the

Council, and that a key policy required revision in light of changes in the law.

#### Cwm Taf University Health Board – Case number 201703374

Mrs T complained that Cwm Taf University Health Board (“the Health Board”) delayed in providing her son, Mr S, with appropriate and timely mental health and autism spectrum condition (“ASD”) assessments. She also complained about the Health Board’s failure to provide her with a robust response to her complaints. My investigation found that the Health Board’s practice of referring patients for ASD assessment prior to a referral for a mental health assessment was contrary to guidance and good clinical practice and therefore it was two years before his mental health needs were assessed. During this time, the Health Board failed to take any action to either consider, or provide for, Mr B’s mental ill health. The Health Board’s care fell below expected standards, good clinical practice and guidelines in terms of its lengthy delay in completing Mr B’s ASD assessment, its failure to consider Mr B’s co-existing mental health needs, and its failure to refer Mr B for a mental health assessment at the same time as his ASD referral. It was not possible to determine whether Mr B’s situation would have been different had the Health Board’s failings not occurred, but it caused him uncertainty and distress. His human rights under Article 8 were engaged as a consequence of the Health Board’s identified failings.

It is pleasing to see that aspects of the recommendations I made regarding these and other complaints have been incorporated into the Code of Practice and the Supplementary Guidance. However, health boards working together or working collaboratively with local authorities can create additional complexity for the citizen/complainant in terms of who has ownership of a complaint when it is received by my office. Public services are accountable for all of the services they offer, whether it delivers that service itself or contracts it to another public body or external party, and the process for complaining about that service should be evident for the service user. The Guidance could be clearer on this matter.

#### **Monitoring and Complaints.**

Under the section titled ‘Complaints’ (page 10 in the Supplementary Guidance), I suggest that a distinction should be made between ‘disagreeing’ with the decision and complaining about alleged maladministration or service failure. As per our statutory [guidance for public service providers](#), complaints are not ‘appeals against properly made decisions’ but are a route for individuals to express dissatisfaction or concern about a service providers lack of action or the standard of service provided. It is critical that the wording in this section reflects this perspective.

Complaints systems can make an important contribution to the improvement of public services. As a result of the legislative changes provided by the new Public Services Ombudsman (Wales) Act 2019, I have established a Complaints Standards Authority this year which would facilitate standardisation of public bodies’ complaints procedures and put the service user at the heart of the complaints process.

The legislation requires local authority complaints procedures to align with our guidance and principles, and health boards procedures must align with the Putting Things Right regime. This will govern which type of complaints will be managed

through those procedures. Those complainants will then have recourse to come to my office to have their complaint assessed if they continue to be dissatisfied or concerned about the outcome a local authority or health board investigation. Potential complainants are often unaware of this additional investigative route and as such I believe it would be helpful to highlight explicitly the service that is provided by my Office in the Supporting Guidance.

It would also be helpful to understand how Welsh Government will be made aware of local authority complaints specifically related to autism. Currently the only requirement on local authorities is to publish an annual complaints report, which at present do not provide a consistent or comparable picture of all complaints and there is no information relating specifically to ASC specifically. My new data reporting requirements under my Complaints Standards Authority role will improve this position, ensuring a coherent picture of complaints across all local authorities and should also consolidate this with health board complaints data.

## **Advocacy**

In my thematic report '[Ending Groundhog Day: Lessons from Poor Complaint Handling](#)' I highlighted effective governance as key to transforming the fear and blame culture that is innate in public bodies.

I welcome the allocation of responsibility to advocate for the needs of people living with ASC within the governance structure of Regional Partnership Boards. Advocacy is extremely important from my office's perspective, as our impartiality prevents us playing an advocacy role in acting for complainants when making a complaint. As such the establishment of a champion role on the Regional Partnerships Board is an interesting proposal and is one that in principle, I support, but with some concerns.

Advocacy and scrutiny are terms that have specific functions in local authorities and health boards, that are laid out in legislation and regulations relating to social and health care settings. I am concerned that, as described, the Autism Champion role will only be able to undertake a limited advocacy role and does not retain the independence required to carry out appropriate scrutiny in this formal sense. I am also concerned that the use of these terms in relation to this role may be perceived by some as a way of local authorities and health boards abdicating their own responsibilities in this area.

My remit in relation to partnership boards extends only to the actions or decisions of members of the board who are employees of a local authority or health board. Complainants would not, therefore have recourse to come to my Office, if they felt that as a result of this champion's scrutiny or advocacy actions, they might have suffered injustice.

Clarification of the nature of the 'championing' objective for this role may be helpful to resolve any confusion.

## **Closing remarks**

I trust that you will find my comments useful. Should you wish to discuss any of my

points further, please do not hesitate to contact Tanya Nash, my acting Head of Policy ([tanya.nash@ombudsman.wales](mailto:tanya.nash@ombudsman.wales)).



**Nick Bennett**

**Public Services Ombudsman for Wales**

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