

Mae'r ymateb yma hefyd ar gael yn Gymraeg.

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Response by the Public Services Ombudsman for Wales to Welsh Government's Draft Children's Rights Scheme 2021

I am pleased to have the opportunity to respond to the Welsh Government's consultation on Welsh Government's Draft Children's Rights Scheme 2021.

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 (PSOW Act 2019) allow me to investigate where evidence suggests there may be systemic failings, even if service users themselves are not raising complaints. The Act also establishes the Complaints Standards Authority (CSA) to drive improvement in public services by supporting effective complaint handling through model procedures, training and collecting and publishing complaints data.

General Comments

Within the scope of the duty placed on Ministers, the Draft Children's Rights Scheme (the Scheme) arrangements appear comprehensive. Following the structure set out in the Children's Commissioner's 'The Right Way' framework seems a sensible and informed way forward. The Scheme by its nature is

particularly compliance driven with outcomes that describe process changes that demonstrate accordance with the Convention. However, the strategic and systemic context is missing. It is not clear how the Scheme will contribute to the Welsh Government's strategic agenda for children and young people in terms of child poverty, child protection and childcare and thus result in improved services and wellbeing outcomes for children and young people. I think the final Children's Rights Scheme would have greater impact if connections with these wider outcomes that affect children's lives were made explicit.

I commend Welsh Government for the introduction of a child-friendly complaints process, especially if children and young people are involved in its development. This pro-active step is in line with the Complaints Standards Authority's Complaints Handling Principles and will provide useful practice that could be emulated elsewhere by public services in Wales. However, in the way it is written in the consultation document, the scope of this intervention appears only to relate to complaints made about the application of the duty by Ministers and the Children's Rights Impact Assessments and not when children or young people would like to make a complaint about other issues that are unrelated to their rights under the Rights of Children and Young Persons (Wales) Measure 2011. This is missing an opportunity to provide a comprehensive complaints service that is fully accessible for children and young people. We would welcome the opportunity work with Welsh Government officials on this.

Themes from my Casework

My regularly published Casebook along with my annual Equality and Human Rights Casebook, public interest and thematic reports have evidence that could be of use in your proposed children's rights evidence strategy and Children's Rights Impact Assessments. This casework contains examples that demonstrate the positive impact a children's rights approach can have on real lives. I would like to highlight to examples where public bodies have and have not given children's rights due regard to illustrate this.

City and County of Swansea: Reference 201704517 [Housing - Anti Social Behaviour]

Miss A complained that the Council had not adequately investigated her complaint relating to young children playing football on Council owned land next to her home.

The Ombudsman recognised that in Miss A's complaint, she had raised issues engaging Article 8 of the European Convention on Human Rights in relation to the enjoyment of her home, and also issues relating to the Equality Act. The Council told the Ombudsman that it had investigated Miss A's concerns and had considered her Article 8 rights. As this was a qualified right, it had also taken into account the children's rights, and the need for their play environment to be safe. The area around Miss A's home and the Council's land was such a safe environment. The Council added that the principles of the United Nations Convention on the Rights of the Child (UNCRC) were embedded in its policies and practices and so, in undertaking the balancing exercise afforded by Article 8, it had favoured the rights

and needs of the whole community - especially the children and their right to play with friends in a safe environment.

The Ombudsman noted that the Council had demonstrated it had explicitly asked itself the relevant questions in considering Miss A's Article 8 rights and had weighed them up against the rights of children (as set out in the UNCRC). It was entitled to reach the conclusion it had and so was entitled to interfere with one person's rights to protect the rights and freedoms of others. This was expressly provided for by Article 8.

Denbighshire County Council: Reference 201701203 [Education SEN]

Mrs X complained that the Council had failed for a year to consider carrying out an assessment of her child B's educational needs and within the relevant timescale, following it conceding her appeal to the Special Educational Needs Tribunal. She also complained that the Council had discriminated against B, who suffered with known mental ill health, by the comments it had made during the assessment process. The Ombudsman found failings in the case and upheld most of the complaint. In doing so he also noted that the United Nations Convention on the Rights of the Child was relevant in this case (Articles 12 & 13 – freedom of expression and of thought and belief). B was entitled to express an opinion and contribute towards the assessment of needs.

The Ombudsman acknowledged that the Council had made a reasonable adjustment (as required by the Equality Act 2010) in visiting B at home to conduct the assessment (not its usual practice) and it had attempted to ascertain B's views. Whilst it was not for him to make findings of discrimination, the Ombudsman, nevertheless, felt that the Council's comments at issue had failed to sufficiently consider B's known mental ill health and that there was a lack of evidence suggesting that it was B's active choice to fail to engage in the assessment process. This was why Mrs X felt the Council had discriminated against B. The Council was asked to reflect on the Ombudsman's findings and comments.

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).



Nick Bennett

Public Services Ombudsman for Wales

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