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**Response by the Public Services Ombudsman for Wales
to the Ministry of Justice's Dispute Resolution in England and Wales Call for
Evidence**

I am pleased to have the opportunity to respond to the Ministry of Justice's consultation on the Dispute Resolution in England and Wales Call for Evidence.

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 can consider complaints about privately arranged or funded social care and palliative care services and, in certain specific circumstances, aspects of privately funded healthcare.

I also investigate complaints that elected members of local authorities have breached their Codes of Conduct, which set out the recognised principles of behaviour that members should follow in public life.

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

For the purpose of this response, I will be drawing on the experience of my work as the Public Services Ombudsman for Wales and the complaints handling service I provide for those receiving public services in Wales.

Engagement and Settlement

Our equality survey suggests that people more likely to make complaints are white, middle-aged, English speaking and educated to a degree level or equivalent. Our recent Own Initiative investigation¹ about homelessness and evidence from our casebook also imply that those characteristics that create barriers for people to participate or have agency when they engage with public services, could also be creating barriers for certain groups of people to engage with ombudsman's services.

The PSOW Act 2019 allows people to now submit their complaints orally. This move helps people who may be facing digital exclusion, or concerns over literacy or language. Whilst we are seeing a rise in the number of complaints we are receiving orally, we as yet do not have the data to see if this method favours people with particular characteristics or not.

Public services ombudsman schemes are part of a wider system of public sector complaints handling. In Wales, complainants need to have taken their complaint to the relevant public body and given the body the chance to respond to it before referring it to my office, or there is exceptional reason why that is not appropriate. In 2020/21, 24% of complaints were closed because they came to us prematurely and a further 18% were closed because they fell outside of our jurisdiction.

An omnibus survey of 1000 people in Wales carried out on our behalf by Beaufort Research in March 2020, showed that of the representative sample, only 13% had made a complaint to either a local government organisation, a health board or a housing association. None of these complaints were then forwarded to my office. Only 48% of those surveyed were aware of the services we provide. Of those that did know about my work, 63% did not know what we did.

This evidence suggests that awareness of ombudsman's scheme and the services that we offer is a factor that might inhibit engagement.

Last year, 8.87% of all complaints closed by local authorities were subsequently referred to my office. In Q1 this year, 6.42% of complaints closed were referred. There is still some uncertainty as to the significance of these figures as there may be sizeable under reporting from local authorities on the complaints they log. As a result, these figures could be a lot lower. Q1 this year has showed health boards having about 4.15% of their closed complaints being referred to us.

Improving the response by bodies on receiving a complaint, thus reducing the need for dispute resolution schemes is another way of getting up stream of this issue. As part of CSA work, we provide training to public bodies that fall under my jurisdiction. The free training is designed to support and enhance complaint handling throughout

¹ <https://www.ombudsman.wales/own-initiative-reports/>

public services by considering best practice from multiple sectors from around the world. The training aims to improve how public bodies communicate and resolve complaints, so a smaller proportion are in turn referred to us.

We continue to use early resolution interventions during the assessment stage where possible as this provides a timely and positive outcome for all parties. This year, early resolutions accounted for approximately 63% of our interventions overall.

My Ombudsman services are free for both complainant and public bodies and there is no requirement for legal fees or the costs of a legal advocate, unlike tribunals and courts. The evidence from my first Own Initiative investigation [Homelessness Reviewed: an Open Door to Positive Change](#) suggests that a lack of financial resources to access legal support can be a barrier for some people when they have a dispute.

Low uptake of dispute resolution for some cases does not necessarily correlate to courts being the most appropriate avenue for resolution. The reasons people may not choose to use ADR avenues are complex and not necessarily clear. As an example, our data tells us we receive very few complaints about care homes, but as shown in the Parliamentary Health Services Ombudsman's report, [Breaking Down Barriers: Older People and Complaints about Health Care](#), there are a variety of reasons that act as barriers to older people accessing complaints services. The focus of future government policy should be on making ADR more accessible.

Quality and Outcomes

It is not clear from the consultation document what is meant by the term 'better outcomes' with regard to different dispute resolution approaches. However, my Ombudsman scheme can provide quicker, earlier resolutions, does not require legal representation on behalf of the parties and is free for all parties involved. The majority of resolutions our complainants seek are for fairer and improved services, an admission of fault and an apology.

Our recommendations aim to put things right, secure justice and improve services for the benefit of the public - not just for those who complain. We monitor compliance of recommendations we make as a result of complaints we have upheld. Last year we received evidence that 85% of recommendations were complied with.

Although we are aware of how important it is that an individual failing or injustice is put right, we are conscious that the greatest impact we can have is through ensuring that there is systemic learning to generate wider public service improvements as a result of our recommendations.

My powers allow me to consider how we can mitigate similar problems occurring again such as training for staff. The proactive powers I have been given allow me to extend investigations where I consider there to be evidence of wider systemic maladministration.

My recently concluded investigation into Betsi Cadwaladr Health Board' prostrate care was extended to include 16 additional patients awaiting prostatectomies as of August 2019. The investigation found that 8 patients on the waiting list were referred to England for treatment. Had these patients been treated in Wales, breaches of the target timescales would have been reported in the cases of all 8 patients as they waited longer for treatment than the 62 and 31-day targets for urgent and non-urgent suspected cancer cases, respectively.

The Health Board failed to monitor the provision of care and treatment for all patients as it should have done under its contracting and commissioning arrangements. This restitution of justice for a group of people, not just for the individual who originally complained, is one of the benefits of the public services ombudsman scheme we have here in Wales.

Our management data is published each year in our [annual performance reports](#) and [annual equality reports](#).

Dispute resolution service providers

All of PSOW's casework staff are expected to undertake at least 28 hours of Continuing Professional Development each year. Training on casework issues, PSOW's role and remit and on specific topics which are relevant to the PSOW's work are provided regularly. Also all of the PSOW's Investigation Officers are supported to gain professional qualifications on best practice in complaint handling and investigations

We apply our Complaint Handling Process rigorously and review it regularly. A [summary](#) is available on our website. We have confidence in our investigation process, however, we recognise that complainants may be unhappy with the outcome of their complaint. We have in place fair and transparent processes for handling review requests on casework-related decisions and for regularly assessing the quality of our casework to ensure it meets our service standards.

Our case review process provides an opportunity for our decisions to be reviewed internally. Case reviews are undertaken by staff who have not been previously involved in the case. To ensure that we are open and accountable, if a service user is unhappy about how we responded to their complaint about our service, they may ask for their case to be considered by an external independent review service. We share any learning points from these reviews with our staff to support organisational learning.

During 2020/21, we redesigned our Quality Assurance (QA) process. These changes were implemented from 1 June 2021 and mean that our QA audit examines, on a monthly basis, a randomly selected sample of our casework dealt with at enquiry, assessment and investigation to ensure that we are operating in line with our service standards. Results from the audit are fed back to staff and managers each month so that we can quickly identify issues of good or poor practice and ensure learning is identified and cascaded throughout PSOW.

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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