Mae'r ymateb yma hefyd ar gael yn Gymraeg.

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Ombwdsmon Ombudsman
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PUBLIC SERVICES OMBUDSMAN FOR WALES

Response by the Public Services Ombudsman for Wales
to the Health, Social Care and Sport Committee's consultation
'Impact of the waiting times backlog on people in Wales who are waiting for diagnosis or treatment'

I am pleased to have the opportunity to respond to this consultation.

Our role

As Public Services Ombudsman for Wales (PSOW), we 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.

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

We 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 we have been granted under the Public Services Ombudsman (Wales) Act 2019 (PSOW Act 2019) allow us to investigate where evidence suggests there may be systemic failings, even if service users themselves are not raising complaints. The Act also established 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.

How we consider cases related to Referral to Treatment Times (RTT)

We understand that the NHS has finite resources and, unfortunately, this means that there will be waiting lists for treatment. The pandemic has placed unprecedented pressures on the NHS which we are also acutely aware of.

We consider each case involving RTT on its own merits. Whether a case where the RTT has been breached amounts to service failure or maladministration will depend upon the circumstances of each case. A failure to meet the RTT time is not in itself evidence of service failure or maladministration.

The first important consideration is the clinical need of the individual complainant. Broadly, even where RTT has been breached, we would not normally investigate unless there is evidence of:

- clinical urgency
- imminent need
- waiting list mismanagement.

Sadly, evidence of pain and suffering is also not in itself evidence of service failure. For us to find service failure, our clinical advice would have to suggest that a health board's failings caused unnecessary pain and suffering – for example, that the complainant has not received a reasonable standard of care and their condition has deteriorated.

In conclusion, we have a high bar for consideration of complaints about RTT. We understand that this may a source of frustration to people contacting us, particularly as we normally expect our complainants to raise their concerns with the relevant body before contacting us. However, this also means that when we do investigate complaints about RTT, it is because they involve potentially serious injustice to the complainants.

Specific cases

We would like to draw attention to two relevant cases which illustrate one of the themes of interest to the Committee (the effectiveness of messaging and engagement with the public about the demands on the service).

- In case **202002671**, closed by us at investigation in December 2021, Mr B complained, that, following his diagnosis of polyps in his colon in January 2020, Cwm Taf Morgannwg University Health Board failed to take appropriate action to provide him with treatment within a reasonable timeframe. He also complained that the Health Board did not keep him informed about the impact of the COVID-19 pandemic on the Health Board's ability to provide care to him.

We found that Mr B waited 3 months from his GP referral until a referral for definitive treatment was made and a further 6 months to start treatment, which was inappropriate and unreasonable. It found that earlier treatment could have precluded the need for Mr B to undergo significant and invasive surgery. We also upheld Mr B complaint about poor communication from the Health Board.

In addition to other recommendations, we asked the Health Board to review the tracking process and record keeping for urgent suspected cancer patients. We also asked them to review all urgent suspected cancer cases in the Endoscopy Service waiting during the same time period, to address any similar shortcomings in care and ensure that all patients are appropriately clinically prioritised.

- In case **202103967**, closed by us at assessment, Mr Y complained that following 2 urgent referrals to Betsi Cadwaladr University Health Board's Urology Department from his GP in March 2021, the Health Board did not grade his referrals as Urgent Suspected Cancer ("USC"). He said that he contacted the Health Board's appointments line and was told that he would face about a year's wait for an appointment with a urologist. Mr Y felt he had no choice but to seek a private appointment as he was concerned about the waiting time he was quoted for an appointment. Mr Y was subsequently diagnosed with prostate cancer in August 2021 and was referred back to the NHS for treatment.

  In terms of the information provided to Mr Y about the waiting time for an appointment with a urologist, the Health Board had identified that a timeframe for appointments should be documented on triage forms to highlight this information to the patient booking team. Had this been done when Mr Y's GP referrals were triaged, he may have been reassured, when contacting the appointment line that there was a specific timescale for when he would receive an appointment.

We think these cases demonstrate that effective communication about waiting times and management of expectations can alleviate at least some concern and anxiety experienced by patients on waiting lists in these very challenging times.

Our future casework related to RTT

We have concerns that we will soon be seeing a very significant increase in people contacting us about RTT issues.

At the start of the pandemic, we did not see a major increase in our caseload. We believe that that reflected the broader public sentiment and support for the NHS, with members of the public refraining from complaining about the service

already under strain. Our communications with the health bodies in our jurisdiction supports that interpretation.

However, since April 2021 our caseload has increased significantly. Compared to the same period last year, we are currently seeing a 30% increase in the volume of complaints reaching the office.

Whilst due to the nature of our case management system it is often difficult to pin down the exact number of cases involving RTT, we want to point out that:

- during 2019/20, we closed only 11 complaints related to delay in treatment or referral. However, in 2020/21 we closed 54 such complaints, and 42 further such complaints in this financial so far.
- over the last three months, we received 3 complaints designated specifically as related to RTT. Two of those complaints are still currently open.

These volumes may not seem significant. However, we are concerned that contacts with our office will increasingly involve RTT issues. According to the most recent Welsh Government data,

- there were 682,279 people on waiting lists in November 2021 - a 47% increase compared to November 2019.

- the number of those waiting the longest - for more than nine months – was reduced only slightly to 241,667 (from 242,101 in October). Still, this number is staggering, considering that in November 2019 it equalled just under 23,000 people.

- waiting times are increasing for types of treatment which in the past featured in our complaints about patient condition deteriorating significantly due to delays in referrals, for example ophthalmology.

A significant increase in complaints about RTT reaching our office would have several implications. As explained above, we have a high bar for considering complaints related to RTT. Therefore, we'd anticipate that a significant proportion of such complaints would either be rejected or referred to the relevant body for consideration. This would understandably do little to help the individual complainants, while also compounding the existing pressures on the health service. Furthermore, inevitably, the rising number of people waiting for treatment would also result in more cases where the delay led to significant injustice.

Such an increase would represent a very significant challenge for our office. We can seek to manage that challenge by working closely with the NHS bodies to improve their complaint handling processes as well as making the public more

aware about our approach to RTT complaints. Ultimately, however, the solution to this approaching crisis must lie within the NHS itself. Individual distress and injustice caused by the current management of waiting lists can only be averted if the NHS is allowed to be more creative and flexible in developing and applying good practice.

Closing remarks

We trust that you will find these comments useful. Should you wish to discuss any of my points further, please do not hesitate to contact Ania Rolewska, our Head of Policy (ania.rolewska@ombudsman.wales).

Nick Bennett

Public Services Ombudsman for Wales

January 2022