

Mae'r ymateb yma hefyd ar gael yn Gymraeg.

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**Response by the Public Services Ombudsman for Wales
to the UK Parliament's Joint Committee on Human Rights consultation
'Human Rights Ombudsperson'**

We are 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.

Should there be a Human Rights Ombudsperson? If so, what powers and resources would the ombudsperson need to address the challenges people face in enforcing their rights out of court?

We agree with the Committee's concerns that more needs to be done to improve how Human Rights can be enforced without the need to take legal action. However, we do not believe that it is necessary nor beneficial to establish a separate ombudsman office for that purpose.

Concerns

Firstly, as well as considering this issue from the perspective of the UK as a whole, we think that it is important that the Committee considers the devolved context within Wales, as well as other devolved arrangements elsewhere within the UK.

Our office deals with complaints about all devolved public bodies in Wales. The Public Services Ombudsman (Wales) Act 2019 (and prior to this, the 2005 Act) provides for one uniform ombudsman service for all devolved public body complaints. Any further ombudsman scheme to deal purely with Human Rights issues has the potential to blur the landscape and the clear access to administrative justice in Wales. On that note, we would add that the ombudsman sector in the UK as a whole is already grappling with low public awareness and understanding of different routes to redress. In our view, little can be gained from adding further complexity to the sector.

We would also like to draw the Committee's attention to the recent research commissioned by the Welsh Government on [Strengthening and advancing Equalities and Human Rights in Wales](#). The report on this research makes recommendations on improving access to justice in Wales in relation to Human Rights. It also recommends that the Welsh Government and our office should agree a set of principles to be applied by Welsh ministers and public bodies when dealing with complaints which engage equality and Human Rights issues. In response to this research and recommendation, we have already indicated to the Welsh Government that we are happy to discuss these solutions further. We note this to emphasise that there is already work ongoing in Wales to improve how Human Rights – and equality duties – are enforced through the existing structures and schemes.

Secondly, and relatedly, our concern is that the Human Rights mandate envisaged for the suggested office is already realized at least to some extent by the existing ombudsman schemes.

Our office, and many of our sister schemes in the UK and across the world, take the view that Human Rights and equality issues are inseparable from good administration. This is why we take active steps to identify and call out instances in our casework which we think indicate that the bodies in our jurisdiction have either not considered their Human Rights and equality duties, or may have breached them. For instance,

- we have in place processes that prompt our casework staff to identify cases which raise equality and Human Rights considerations;
- we operate an internal Equality and Human Rights Advice Group which meets every two weeks to advise colleagues on such cases;
- we publish a sample of the relevant cases in our annual Equality and Human Rights casebook to promote wider learning across the public sector in Wales (see [here](#)). For instance, we investigated a case of misdiagnosis of a physical condition as a mental health condition (202000661). The patient in that case suffered symptoms of abdominal pain, gastro-intestinal upset and weight loss which she developed following bowel surgery. However, her condition was not correctly diagnosed and clinicians attributed her pain, aversion to eating and weight loss to a 'food phobia'. We found that the Health Board's failings in this case impacted upon the patient's Human Rights in terms of her dignity and quality of life.
- we embed attention to Human Rights and equality duties in our proactive work. Our first investigation on our own initiative into how local authorities in Wales conducted homelessness assessments [found](#) that Human Rights and Equality Act 2010 duties were not explicitly taken into account in assessments and reviews.
- we work with colleagues across the ombudsman sector and at the Equality and Human Rights Commission to develop and improve how we pursue this work. Among many examples, we have worked closely in the past with colleagues in Northern Ireland who developed a Human Rights Manual for Ombudsmen.

Thus, our second concern is that introducing a stand-alone Human Rights ombudsman would likely result in a significant duplication of efforts across our sector.

Alternative proposal

That said, we agree with the Committee's view that more needs to be done to secure effective redress for members of the public for breaches of Human Rights or, indeed, equality duties. This can be achieved by clarifying and, if needed, strengthening the remits of existing bodies, as well as by raising public awareness of their roles and powers.

We have noted in the past that there remains a blank spot in the Welsh accountability system regarding the escalation of complaints about equality and Human Rights.

As explained above, if we think that Human Rights or equality duties have been engaged, we make that clear in our findings. However, when doing so, we make it clear that it is not our role to definitively find that someone's Human Rights have been breached, or that they have been discriminated against. There is no body that is perfectly positioned to receive *specific* referrals about breaches of equality or Human Rights duties. The EHRC does not handle individual complaints unless they are pursued to address systemic issues. In terms of our remit, we could only look at those complaints if they involved maladministration and service failure *and* personal injustice - though, as we want to underline, we have broad discretion to decide what amounts to maladministration.

Overall, we believe that there is scope to more explicitly empower the existing ombudsman offices to call out those breaches.

It is also urgently needed to raise public awareness of the different pathways to justice available to individuals and their Human Rights and equality entitlements.

What powers would the ombudsperson need to ensure they provide an effective remedy, as required by Article 13 of the European Convention on Human Rights, for individuals trying to enforce their rights?

As we stated above, we believe that effective enforcement of individual Human Rights and equality entitlements can be realized through existing schemes.

Specifically in terms of enforcement, in line with most public sector ombudsman schemes across the world, our recommendations are non-binding. The PSOW Act provides a framework for public accountability when a public body may refuse to accept a recommendation. Instances when a body in our jurisdiction does not accept or follow up on our recommendations are extremely rare. In those instances,

we have effective tools to enforce compliance by issuing a Special Interest Report, which, in some circumstances, must be laid before the Senedd. Over the last 5 years, we had to issue only four such Special reports and in all instances this mechanism of accountability was effective in ensuring that the public body did ultimately comply with our recommendations.

Paired with the fact that our service is free of charge, we believe that it represents an effective pathway to justice for individuals without the need to take legal action.

However, we would like to underline that our office – commonly with our sister ombudsman schemes in the UK – is currently unable to investigate complaints where an ‘alternative legal remedy’ is reasonably available to a complainant. If our powers to provide remedies in respect of Human Rights and equality duties breaches were to be extended, that ‘alternative legal remedy’ bar would likely have to be revisited. This obviously would be a matter for the Senedd to consider in relation to our legislation.

How would the Human Rights Ombudsperson interact with existing mechanisms such as ombudspersons and Commissioners, including in the devolved nations?

How would the Human Rights Ombudsperson interact with other bodies tasked with upholding human rights, including the Equality and Human Rights Commission?

For the reasons outlined above, we think that if the new scheme is introduced, a lot of its valuable resources would have to be committed to negotiating the significant overlaps of efforts with the Equality and Human Rights Commission as well as the existing public services ombudsman offices, including our own.

Are there other steps that should be taken alongside introducing a Human Rights Ombudsperson to ensure people can effectively enforce their rights out of court?

To reiterate, we believe that it will be more beneficial and effective to seek to strengthen the current enforcement of Human Rights and equality duties by clarifying, strengthening and raising public awareness of the remits and work of existing bodies, including our office.

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).

MM. Morris.

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