

**Evidence of the Public Services Ombudsman for Wales
to the National Assembly for Wales’s Health and Social Care Committee
on the Social Services and Well-being (Wales) Bill**

1. Introduction

- 1.1 I am pleased to have the opportunity to provide evidence in respect of the Health and Social Services Committee’s scrutiny of the Social Services and Well-being (Wales) Bill.
- 1.2 As Public Services Ombudsman for Wales, I have a role to 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. This includes complaints about the delivery of social care and it is in this context that I present my comments on the Bill.

2. Complaints Handling Arrangements in Wales

- 2.1 Over the past couple of years, arrangements for complaint handling in respect of health and other public services devolved to Wales have been modernised and streamlined. The former through the NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011, and the latter through the Model Complaints Policy and Guidance issued by the Welsh Government. Both these complaint handling processes now contain only two stages (informal resolution by frontline staff and one formal investigation). Those then remaining dissatisfied after the formal investigation stage can put their complaint to me as the Public Services Ombudsman for Wales for independent consideration.
- 2.2 Discussions that I have recently had with complaint handling staff of those public service providers who have adopted the two stage approach tell me that this is proving to be working well, is more effective and that no disadvantages have as yet been identified.
- 2.3 The complaint handling procedure in respect of Social Care is now therefore out of step with the rest of the public service in Wales and I have made a case that the existing statutory procedure should also be modernised to bring it in line with the other complaint processes.
- 2.4 I have engaged in discussions with the Welsh Government on this matter and I understand that it is intended to introduce a streamlined two stage approach for social care by regulation rather than through the Social Services and Well-being (Wales) Bill.

- 2.5 I believe that it is essential that the social care complaints procedure should mirror that for the health service, particularly since many of the complaints that I see involve both social care and health aspects to the complaint. For example:

A public interest report that I issued concerned a gentleman with MS, who was bed-ridden and was being cared for at home by his wife and carers, with District Nurses managing his pressure sores. The sores were allowed to develop to the most severe grade of pressure sore. In upholding the complaint I made recommendations to both the Council and to the Local Health Board.

The procedures for handling health complaints and those of the other public services devolved to Wales make provision for a single lead arrangement for dealing with multiple agency involvement. However, with the current Social Services procedure being out of kilter with the other procedures, doing so in practice currently presents difficulties. The Welsh Government's policy of a joined up approach to service delivery also needs to extend to the consideration of complaints.

- 2.6 I welcome the Welsh Government's intention to introduce a two stage process for the social care complaints procedure but stress that there is now an urgent need for this to be delivered.

3. The Social Services and Well-being (Wales) Bill – Ombudsman's Jurisdiction

- 3.1 As Public Services Ombudsman for Wales I can consider complaints relating to palliative care services that are commissioned by the health service. However, I welcome the provision in the Bill to bring hospices and those charitable bodies undertaking palliative care which is not commissioned but often in receipt of public funding within my jurisdiction. The work that these organisations carry out is greatly valued by those who are terminally ill and their families. However, in circumstances where the relationship between those people receiving the service and the service provider break down there needs to be an independent person that the service users can turn to in seeking redress.

- 3.2 I similarly welcome the provision in the Bill that will allow those people paying for their own care within social care homes and domiciliary care organisations to complain to the Public Services Ombudsman for Wales. Currently, a resident in a care home who has his or her care paid for by the State can complain to me about poor care, whilst a resident who pays for their own stay at the care home cannot. It seems to me unjust that residents in the same care home receiving the same services do not have the same rights in relation to seeking redress when things have gone wrong. In addition to enhancing the rights of those people paying for their own care, there is also evidence from elsewhere that people who always did have the right to complain (i.e. in circumstances where their care was paid for by the State but provided by a private care provider) did not do so because they did not realise they could complain as residents in a private care home. Arrangements where people can complain regardless of whether the State pays for their care or whether they pay for their own care means that there will be clarity about the right to complain to the Ombudsman.

- 3.3 However, it is my view that where private sector organisations are within the Ombudsman's jurisdiction, then the Ombudsman should have the power to make recommendations enforceable. The reason for this is that the democratic accountability that sits behind public sector organisations does not apply in relation to those in the private sector.
- 3.4 It is also my view that where Government determines that certain services need to be regulated people using those services should also have access to independent redress. Currently, there is a lack of consistency in this regard.
- 3.5 I would also add that in relation to child protection and vulnerable adults, I wish to engage in discussions with the Welsh Assembly with a view to amending the Public Services Ombudsman (Wales) Act 2005 to provide me with powers to make my reports confidential and 'not public'. Whilst I would use these powers sparingly so that issues of public interest are not unnecessarily 'buried' I have been concerned that I do not have the necessary powers available to me to protect certain vulnerable people, particularly those such as children and people with mental health problems, from intrusive and inappropriate media interest.

4. The Social Services and Well-being (Wales) Bill – Other Provisions

- 4.1 I welcome the provision in the Bill which places a duty on local authorities, in co-operation with LHBs, to provide information, advice and assistance to help people understand how the care and support system works. The cases that I see in my office show that this is indeed lacking and is an area of growing concern. The reduction in funding for legal advice and advice helplines generally is having a damaging effect in this area.
- 4.2 I welcome too the proposals in relation to carrying out a needs assessment . These will provide clarity on a person's eligibility and the local authority's duty. I will look forward to the Welsh Government's consultation on this.
- 4.3 The proposals in respect of a right to a care and support plan are also to be welcomed. I have seen cases where plans have been poorly prepared and not monitored. The proposals will also, from my perspective, provide a better basis against which I can take a view as to whether complaints about care received are valid or not. I also support the provisions in relation to integrated, portable arrangements in relation to assessment and care and support plans. I would suggest that the work currently being undertaken by the Welsh Government on Special Educational Needs also needs to be included in the assessment of eligibility for services and not conducted as a separate exercise.
- 4.4 I also support the proposed duty for local authorities to undertake a carer's assessment. From my experience this is also an area needing to be addressed.
- 4.5 With regard to 'Safeguarding', the current Protection of Vulnerable Adults (POVA) arrangements are a consistent source of concern to me. The complaint cases that I see have led me firmly to the view that this system needs to be improved.

4.6 I also support the provisions in relation to 'Co-operation'. All too often I see examples of non-collaboration. Complex care packages are not joined up and far from seamless. There is a particular issue in relation to 'gaps' where a young person makes the transition from child to adult care. As mentioned above, I am aware of Welsh Government discussions on future arrangements for Special Educational Needs which have lacked the collaborative approach; these developments should be taken in a proper context and there is a need for joined up policy making.

Public Services Ombudsman for Wales
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