

**Response by the Public Services Ombudsman for Wales in response to the
Consultation on the Health and Social Care (Quality and Engagement) (Wales) Bill**

I am pleased to have the opportunity to respond to the Welsh Government's consultation on the Health and Social Care (Quality and Engagement) (Wales) Bill.

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); and
- 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.

Health services account for nearly half the complaints made to my office (46% in 2018/19) but I currently receive only a small number of complaints about social care, despite the introduction of the Social Services and Well-being (Wales) Act 2014. The own initiative powers I have been granted under the Public Services Ombudsman (Wales) Act 2019 will allow me to investigate systemic failings in the social care sector, even if service users themselves are not raising complaints.

My response to this consultation reflects evidence from my office's casework, and it is in this context that I am responding to the consultation. My comments on various aspects of the Bill are set out below.

Opening remarks

I welcome the Bill and its aspirations to drive improvements in the quality of the care the NHS delivers to patients. I am also pleased at the evident desire to improve transparency and accountability of the NHS and to strengthen the voice of Welsh citizens who receive health and social care services. The proposal for an advocacy body that can support citizens through, often closely entwined, health and social care issues is one I very much support.

I am disappointed, however, that the Welsh Government has decided not to proceed with the proposals in its white paper for an alignment of the NHS and Social Services complaints procedures in Wales which would require joint investigation of complaints which involve the provision of both of these elements of public service provision. It is regrettable, in my view that "Putting Things Right" does not contain the same requirement in this respect as does the social services complaints procedure. As I have outlined previously, I consider that it is vital that the complaints process for the citizen is as seamless as possible, particularly when services are jointly delivered by different public bodies.

One final general point, it appears that the Bill as drafted at Section 16 (5) identifies that the Citizen Voice Body may provide assistance (by way of representation or otherwise) to any individual making, or intending to make a complaint to me in relation to the functions of a local authority's social services department and in relation to actions taken by care home or domiciliary care providers. However, I see no reference in the Bill as drafted, to the Citizen Voice Body providing assistance to individuals wishing to complain to me in relation to the functions of the NHS in Wales. I consider this to be a critical omission.

Part 2: Duties to Promote Cultural Change

2.1. Duty of Quality for the Population of Wales

Health boards working together or working collaboratively with local authorities could create additional complexity for the citizen/complainant in terms of who has ownership of a complaint when it is received by my office. It is my view that a public service must be accountable for all of the services it offers, whether it delivers that service itself or contracts it to another public body or external party, and the process for complaining about that service should be clear for the service user.

The new Public Services Ombudsman (Wales) Act 2019 gives me the power to establish a Complaints Standards Authority which would facilitate standardisation of public bodies' complaints procedures and put the service user at the heart of the complaints process.

I welcome any initiatives to promote a sustainable improvement in the delivery of healthcare in Wales. I would also ensure that the clinical standards I apply in my work are reflective of such improvements in quality.

Part 3: Duty of Candour

In my thematic report 'Ending Groundhog Day: Lessons from Poor Complaint Handling' I highlighted effective governance as key to transforming the fear and blame culture that is innate in public bodies, which will consequently end the cycle of poor complaint handling and poor service delivery. A statutory duty of candour, introduced for whole organisations, would make a substantial contribution to addressing the issues I identified. Whilst I recognise that there already exists the GMC/NMC/CQC professional statutory duty of candour for individual practitioners, which is applicable across the UK, a statutory duty for health and social care bodies in Wales as corporate entities would reinforce this.

I note the Explanatory Memorandum accompanying this Bill refers to a well-publicised case which involved failures to address injustice and which demonstrated a need for candour and transparency. I see the introduction of a duty of candour on public bodies in Wales to be a positive step towards addressing some of the shortcomings highlighted by that case.

Part 4: Citizen Voice Body (CVB)

4.1. Representing the Citizen in Health and Social Care

Advocacy is extremely important from my office's perspective, as our impartiality prevents us playing an advocacy role in assisting complainants when making a complaint. Currently there is no consistent provision of advocacy services for social care or joint social care/health and I would welcome the introduction of a body that offers advocacy for social care.

I note the white paper published in 2017 made specific reference to the new body having an independence to represent the citizen. It proposed "... the creation of a new, independent, arrangement to replace CHCs". The consultation also stated the new Citizen Voice Body:

"... would have considerable operational autonomy and be free to decide its own work programme and recruit volunteers locally in line with a number of refreshed functions."

Furthermore, the white paper consultation proposed a "new independent body picking up on Ruth Mark's review".

However, the Bill indicates that members of the Citizen Voice Body would be directly appointed by the Welsh Government, with Welsh Ministers having an effective veto on the appointment of the Chief Executive and controlling remuneration and terms and conditions of staff. This, coupled with control of funding of the new body, calls into question not only the independent status of the Citizen Voice Body but also, as importantly, the perception of its independence. It would appear to be more appropriate for a wholly independent body, such as the National Assembly for Wales, to make or oversee appointments and decisions.

Turning to other aspects of the proposal for the new Citizen Voice Body I would suggest that, in order for the proposed Body to be effective in voicing the concerns of Welsh citizens, it must retain a local presence which can articulate the concerns of local citizens. There will be different issues arising in different areas reflecting, for example, the local service model, rurality, GP provision, demographics and healthcare capacity. I consider that freedom to operate locally, whilst retaining the benefits of a clear strategic direction, national standards and consistent approaches across Wales, is important.

It is noted that the Bill proposes to grant the Citizen Voice Body the power to make representations. However, I would suggest that any power to make representations is compromised if such representations fall on deaf ears. I would therefore suggest that those persons identified in paragraph 15 (2) should be required to have due regard to formal representations from the Citizen Voice Body and that failure to do so may be referred to an independent body for consideration.



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