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Consultation response

Consultation on proposed changes to the Putting Things Right process

Welsh Government: Quality and Nursing Division

Submitted: 7 May 2024

- We investigate complaints about public services.
- We consider complaints about councillors breaching the Code of Conduct.
- We drive systemic improvement of public services and standards of conduct in local government in Wales.

We are independent, impartial, fair and open to all who need us. Our service is free of charge.

General comments

Thank you for the opportunity to respond to this consultation.

We see The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 and the 'Putting Things Right' Guidance as key principles of good administration. If something goes wrong, people should be told about it, receive an apology, offered support and be assured that their issue will be investigated properly. We know from our complaints that this does not always happen and believe that changes are required to the Putting Things Right scheme so that people in Wales are able to readily access a fair system that can respond to their complaints quickly and thoroughly. It is also critical that the scheme allows for learning and improvement in our public services.

I respond in more detail to several of the consultation questions below.

Question 1

If you would like to tell us about a concern or complaint you have raised about care received from NHS Wales, please do so below.

We continue to see increases in complaints about poor complaint handling by Health Boards, which constitute the significant part of my case load. They make up 81% of the cases we take forward to investigate and our intervention rate on these ranges from 22% and 41%, between different Health Boards. These upheld complaints reflect a pattern of failings we see in local investigations undertaken in Health Boards under the Putting Things Right (PTR) scheme.

As part of our work under the Complaints Standards Authority, we have published a 'Statement of Principles' setting out our expectations on what an effective complaints handling process should be, produced guidance on complaint handling, and provided over 120 training sessions for Health Boards on complaint handling, investigation skills and communication skills.

In addition, we have published two public interest reports regarding poor complaint handling, 'Ending Groundhog Day: Lessons in Poor Complaint Handling' and 'Groundhog Day 2: An opportunity for cultural change in complaint handling?'. The second focuses specifically on complaint handling by Health Boards. Both reports contain several examples of poor complaint handling that have resulted in undue harm and injustice.

We found a lack of openness and candour even when, following an investigation, the facts show mistakes have been made. Complaints are often not assessed

objectively or failings identified, and we recommended that Health Boards should consider providing staff investigating complaints with independent advice, on a case by case basis.

Where the complaint involves a death, we would like to see regulation 23 of the PTR Regulations strengthened to include:

- Health Boards must consider whether they need to obtain independent clinical advice to assist the person investigating the matters raised in the concern involving a death of a patient. If they decide not to do so, they should document their reasons for the decision

13% of the complaints received by Health Boards in the first half of 2023/24 were about communications. Good communication is essential to maintain trust and confidence. We see delayed, incomplete or inaccurate responses to complaints and defensive attitudes. These indicate that any amendments to the PTR Regulations will not only need to amend procedures and policies, but support a change of culture within NHS complaints services as well.

As you will appreciate, the Ombudsman's powers are such that we have wide discretion to determine cases and to make recommendations. This may include financial redress or other action which we consider appropriate to put things right for the aggrieved person. In relation to casework decisions, the Ombudsman is not therefore bound in any way by the terms of the PTR Regulations or any of the financial limits within the scheme. In cases where the Ombudsman finds serious injustice has arisen, recommendations for appropriate financial redress may be made within the terms of my remit under the PSOW Act 2019 and in accordance with relevant case law on this issue.

Question 2

Do you agree that there should be a review of the procedure NHS bodies follow before the formal investigation commences?

We would agree that the procedure should be reviewed.

Question 3

Do you agree that there should be clear regulatory requirements regarding the actions to be taken during the early resolution stage (stage one)? If so, please give your suggestions in the text box below.

We agree that there should be clear regulatory requirements during the early resolution stage. Such requirements should align with those set out in the Complaints Standards Authority guidance such as:

- Complainants should be given an explanation or other appropriate remedial action by frontline staff to remedy the complaint where possible.
- Staff should be empowered and trained to deal with complaints as they arise.
- Staff should be able to receive complaints that do not involve their own service or department and refer such complaints to the central complaints team.
- Staff must advise complainants how to progress their complaint to the formal investigation stage.
- Complainants should be given appropriate information and advice on advocacy support at this stage.

Question 4

Do you agree that the two-day deadline for stage one of the Putting Things Right concerns and complaints process should be extended?

Question 5

If you think the early resolution phase should be extended, do you think 10 working days, or 15 working days is a more appropriate time frame?

Response to questions 4 and 5:

The two-day timescale is confusing and poorly defined, and provides no real opportunity for anything other than superficial consideration of complaints, forcing such concerns to become formal when often there is little need for them to.

The CSA guidance states that stage one should be completed as quickly as possible and no longer than 10 working days. We do not believe that this stage should extend beyond this to 15 working days.

We believe that short-cutting to the formal stage 2 should be discouraged unless the complaint stems from a breakdown in the relationship between the complainant and the service staff subject to the complaint, or there are serious allegations made.

Question 6

Do you agree that it should be compulsory for NHS bodies to offer a listening meeting? (The complainant may accept or reject this offer.)

We agree that it should be compulsory for NHS bodies to offer a listening meeting and we welcome the emphasis being placed on compassionate communication. Offering different ways for such meetings to take place is also appreciated but which option to use should be decided by the complainant, not the NHS body. How

discussions at the meeting will be recorded, such as the use of notes, transcriptions, or sound or video recordings should be agreed beforehand, and shared with the complainant, and retained for use should the complaint become a subject for further investigation by us.

Some groups of people may face structural or societal barriers that limit their ability to fully participate in a listening meeting such as children and young people, those whose first language is not English or Welsh, disabled people or people with neurodiverse conditions. Such meetings may also amplify the power relations between staff and complainants who may be more vulnerable and less clinically knowledgeable. The amended regulations should state that NHS bodies must actively work to remove such barriers, and permit advocates and other ways of support, such as translation services, to allow complainants to participate fully.

Question 7

When patients receive letters from the NHS body responding to concerns or complaints, would it be helpful to also include a factsheet explaining legal and/or technical terms in the letter?

We would welcome the inclusion of a factsheet, which should be available in a range of formats and languages, whilst signposting complainants to advocacy and advice services. However, NHS bodies should also be required to issue letters that are in plain English or Welsh, where the use of technical and legal language is minimised as far as possible.

Question 8

Do you think the regulatory requirements for the content of response letters from the NHS body, as outlined above, should be reviewed, with the aim of reducing legalistic language and improving clarity?

We agree that the response letters should be made as accessible and clear as possible. We also agree to the additional revisions proposed.

Question 9

Should anything else be included in these letters from the NHS body?

Final stage 2 response letters should include clear details about next steps, especially if the complainant should remain dissatisfied, utilising the standard paragraph provided by the PSOW.

Question 10

After an investigation report is concluded, would it be helpful to have a meeting with the NHS body where complainants can discuss the outcome of the investigation and the NHS body's response?

As per our response to question 6, we believe the offer for a meeting should be made, but it should be clear that the meeting is to discuss the outcome of the investigation, and not to reopen the complaint, which may result in unnecessarily elongating the process and delaying complainants' opportunity to approach the PSOW.

Question 11

Do you agree that the Putting Things Right regulations should reflect the national incident reporting policy and include a range of response times of 30, 60, 90 or 120 days depending on the complexity of the investigation?

The CSA Guidance states that stage 2 complaints should normally concluded within 20 days, and up to a maximum of six months. We do not see a reason why this should be extended. Welsh Government may wish to consider the use of average time targets as an alternative. Where the complexity of a case requires a longer investigation period, the complainant should be kept informed of the reasons behind such a decision and be provided with regular updates

Question 12

Do you agree that independent healthcare providers who are funded by NHS Wales to provide care should be covered under Putting Things Right redress arrangements?

We agree that independent providers should come within the PTR procedures as outlined, where they deliver health care on behalf of the NHS.

Question 13

Do you agree that primary care providers such as GPs, optometrists, pharmacists, and dentists should be covered under the Putting Things Right redress arrangements?

We agree that on the premise that primary care providers should be covered by the PTR redress arrangements.

Question 14

What do you feel needs to be done to make the Putting Things Right process more inclusive for children and young people?

Our data shows that children and young people are less likely to make a complaint. This can be for a range of reasons such as a lack of awareness of the complaints system, or concerns that they will get into more trouble.

NHS bodies should publicise their complaints mechanism to children and young people, as well as their parents, guardians and people who work and support them as our awareness survey suggests that young people find out about complaints services mainly through word of mouth. NHS bodies should also raise awareness that children and young people can complain directly and do not need a parent or adult to do it for them.

Children and young people should have their complaints considered quickly, and the procedures should be clear and easy to use. The process should be fair and fully participative, with formalities kept to a minimum. Children and young people should be provided with easy access to appropriate advocates and support. Child-friendly information about the process, the status and the outcome of the complaint should be used.

Staff handling complaints should receive training on children's rights and working on cases involving children and young people. There should be focus on possible unconscious bias towards some groups of children such as those from some minority groups, disabled children and migrant and refugee children.

Question 15

Do you agree that the upper limit of damages for cases in the Putting Things Right redress process should be raised from £25,000 to £50,000?

Whilst we welcome any change which makes justice more accessible to service users, we consider the levels of redress under the PTR scheme in relation to financial compensation to be a matter for Welsh Government. As outlined in our answer to question 1, the Ombudsman determines cases independently and as such, I will make any recommendations I think are appropriate within my remit.

Question 16

Do you agree that the Putting Things Right guidance should be reviewed and updated to include the rapid escalation and reporting pathway to local safeguarding hubs and other relevant authorities such as the police for cases where imminent harm or abuse to a patient is alleged?

Yes

Question 18

In the event of a patient's death and where their loved ones had concerns about their care, do you agree that the NHS body should use the listening meeting offered in the early resolution phase (stage one) in order to try and resolve the bereaved person's concerns quickly?

In principle, we agree to this proposal. However, these meetings will need to be handled with extreme sensitivity to those who are bereaved and in mourning. Consideration should be given as to whether attempting to 'quickly' resolve complaints where a death is involved is the right thing to do, or would be accepted by the families.

Closing remarks

We trust that you will find these comments useful. Should you wish to discuss any of our points further, please do not hesitate to contact Tanya Nash, our acting Head of Policy (tanya.nash@ombudsman.wales).

Michelle Morris

Public Services Ombudsman for Wales

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