Our ref: MG/jm
Ask for: James Merrifield

Your ref:
01656 644 200

Date: 15 July 2014
James.Merrifield@ombudsman-wales.org.uk

Mr Bob Hudson
Chief Executive
Powys Teaching LHB
Mansion House
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LD3 0LS

Dear Mr Hudson

Annual Letter 2013/14

Following the recent publication of my Annual Report, I am pleased to provide you with the Annual Letter (2013/14) for Powys Teaching Health Board.

As set out in the Annual Report, the past year has seen a continuation of the upward trend in enquiries and complaints received by my office. Health complaints are again the most numerous type of complaint, with such complaints now having increased by 146% over the past five years. Whilst there are likely to be a number of reasons for such an increase, it has to be concluded that it is also an indication that increasingly health service delivery, and furthermore health complaint handling, is not what it should be.

In reference to the overall performance of health boards in Wales, my office has issued more reports in which the complaint was upheld, and fewer reports in which the complaint was not upheld, compared with 2012/13. The figures show that the largest number of health complaints again relate to clinical treatment in hospital, whilst there have also been noticeable increases in the numbers of complaints about appointments, admissions, discharges and transfer procedures, as well as continuing care.

I issued nine public interest Reports in 2013/14, the majority of which related to health complaints. These reports identified serious failings in respect of the following:

- acting in accordance with national guidelines for the treatment of stroke;
- making reasonable adjustments to accommodate a patient's deafness;
- the implementation of guidelines designed to prevent misdiagnosis of early pregnancy loss;
- treatment in respect of cirrhosis;
- treatment provided by an Out of Hours GP;
- dealing with a patient's condition on arrival at an Accident and Emergency Department;
- incomplete records, leading to a lack of clarity over whether a patient had received medication for Parkinson's disease; and,
- significant maladministration in two continuing care assessments.

Clearly, these failings are diverse in their nature. I would encourage all health boards to consider the lessons from these cases and the recommendations made; look at your own practices and satisfy yourselves that your own arrangements for service delivery in these areas are appropriate and that your staff are suitably trained.

In considering other outcomes, it is worth noting an increase in the levels of 'Quick Fixes' and 'Voluntary Settlements', in comparison to 2012/13. In view of the increasing level of health complaints, the benefits of resolving certain types of complaints quickly, without the need for a full investigation, should not be underestimated. I am encouraged that health boards are co-operating in achieving these types of resolutions.

In reference to the amount of time taken by public bodies in Wales in responding to requests for information from my office during 2013/14, whilst there has been an increase in the percentage of responses received within four weeks, 36% of responses from public bodies have taken more than 6 weeks. I have outlined my concerns in the Annual Report over the way in which complaints are handled, and have also previously referred to 'delay', and the consequences of it, in The Ombudsman's Casebook. Clearly, there remains work to do to ensure that public bodies are providing information promptly and I urge all bodies to consider whether their performance in this area warrants further examination.

In reference to your Health Board, there have been significant increases in the numbers of complaints received and investigated, compared to 2012/13. In view of Powys Health Board's role in relation to continuing healthcare matters, it is not surprising to note that the largest area of complaint is 'continuing care'. I am pleased to note that the number of quick fixes and voluntary settlements is above the health body average. However, it is disappointing to note that just under two-thirds of your Health Board's responses were received more than five weeks after they were requested.

I have copied this correspondence to the Chair of your Health Board with the intention that it be considered by the Board. The new Ombudsman will be taking up his post in August and I am sure he will be in touch at an appropriate time to introduce himself and to discuss some of the above matters. Finally, following the practice of previous years, a copy of the annual letters issued to health boards will be published on the PSOW's website.

Yours sincerely

Professor Margaret Griffiths
Acting Ombudsman

Copy: Chair, Powys Teaching Health Board

Appendix

Explanatory Notes

Section A compares the number of complaints against the Health Board which were received by my office in 2013/14 with the average for health bodies (adjusted for population distribution) during the same period.

Section B provides a breakdown of the number of complaints received by my office, broken down into subject categories.

Section C compares the number of complaints against the Health Board received by my office during 2013/14, with the average for health bodies during this period. The figures are broken down into subject categories.

Section D provides the number of complaints against the Health Board which were taken into investigation by my office in 2013/14.

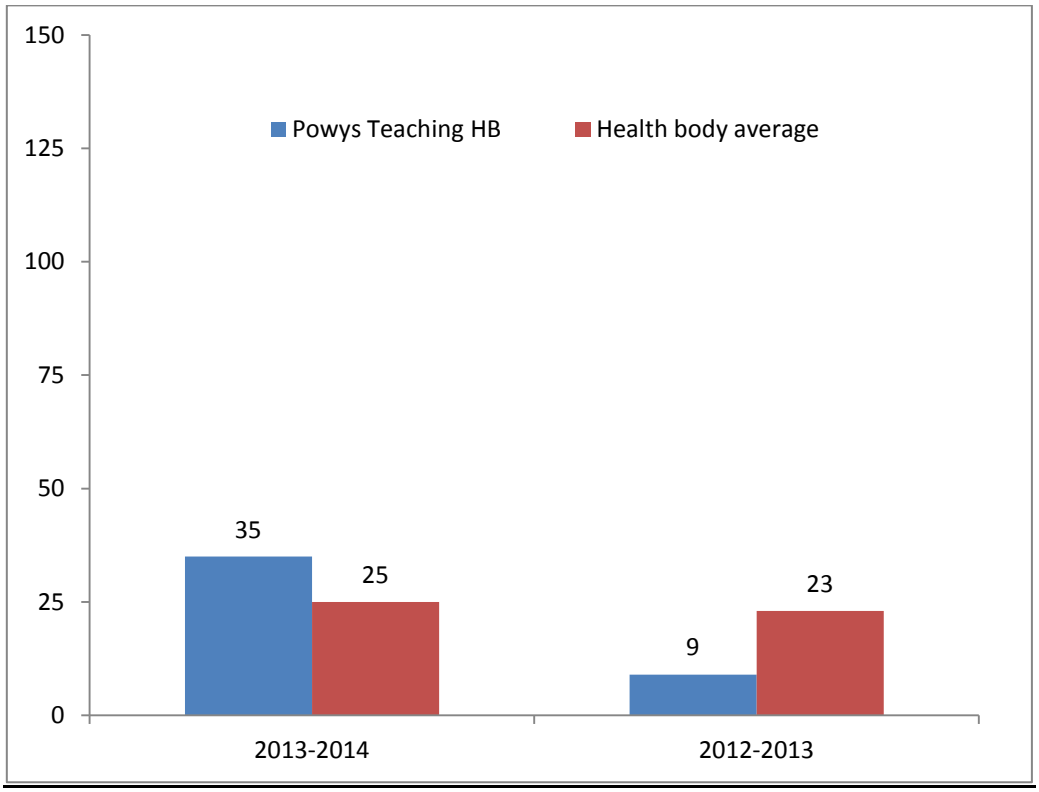
Section E compares the number of complaints against the Health Board which were taken into investigation by my office in 2013/14, with the average for health bodies (adjusted for population distribution) during the same period.

Section F compares the complaint outcomes for the Health Board during 2013/14, with the average outcome for health bodies during the same period. Public Interest reports issued under section 16 of the Public Services Ombudsman (Wales) Act 2005 are recorded as 'Section 16'.

Section G compares the Health Board's response times during 2013/14, with the average response times for health bodies, and the average for all public bodies in Wales during the same period. This graph measures the time between the date my office issued an 'investigation commencement' letter, and the date my office receives a full response to that letter from the public body.

Finally, Section H contains the summaries of all reports issued in relation to the Health Board during 2013/14.

A: Comparison of complaints received by my office with average for health bodies

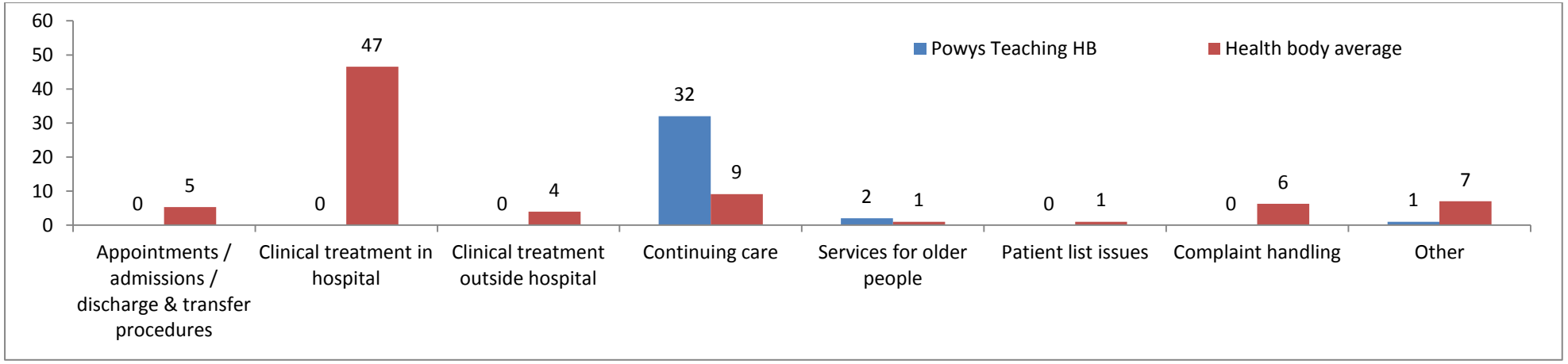


B: Complaints received by my office

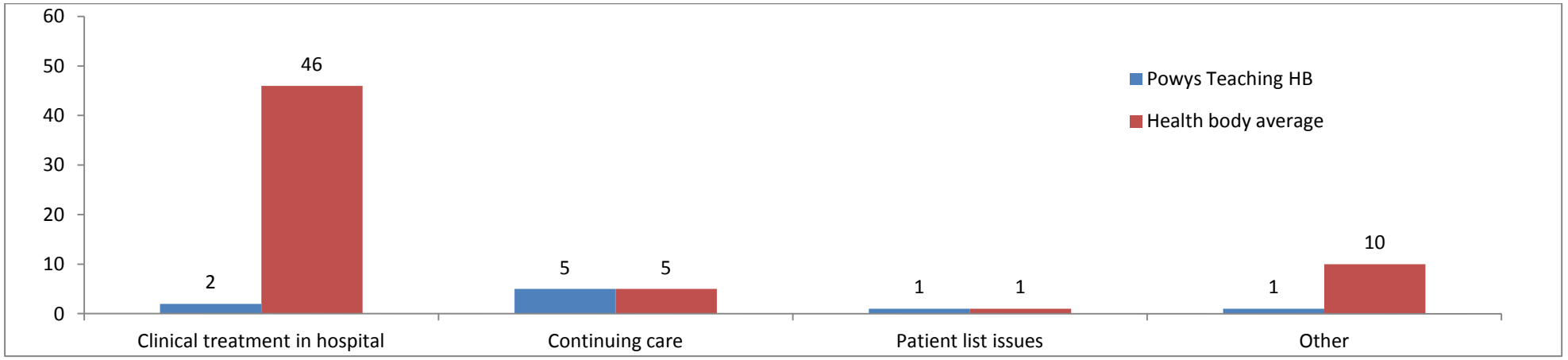
Subject	2013/14	2012/13
Clinical treatment in hospital	0	2
Continuing care	32	5
Patient list issues	0	1
Services for older people	2	0
Other	1	1
TOTAL	**35**	**9**

C: Comparison of complaints by subject category with average for health bodies

2013/14



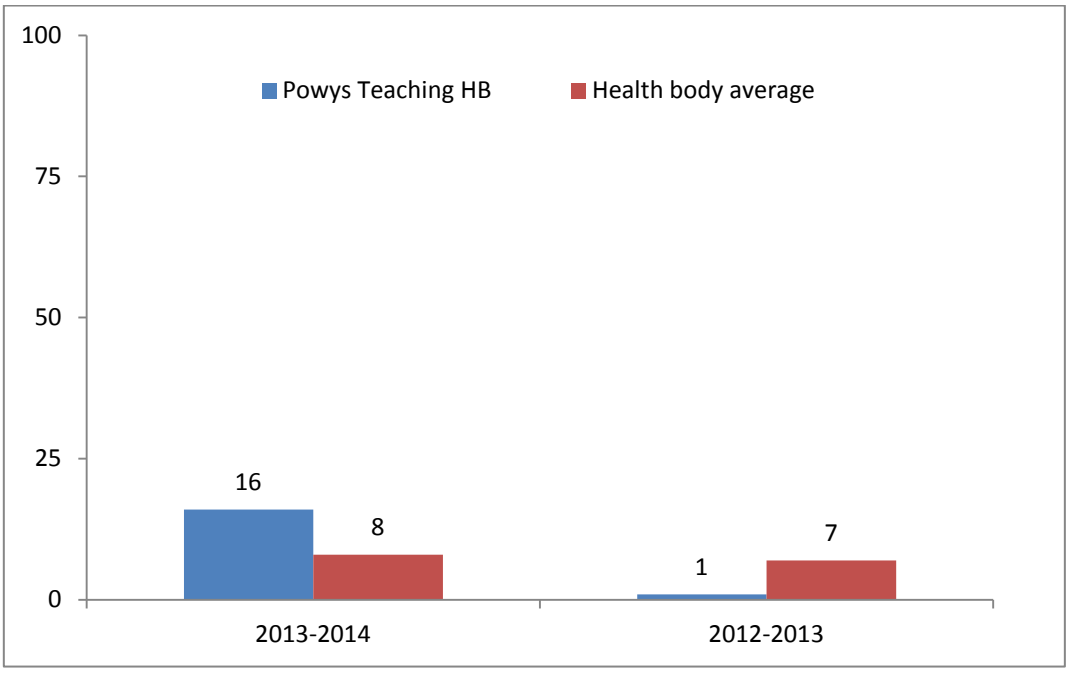
2012/13



D: Complaints taken into investigation by my office

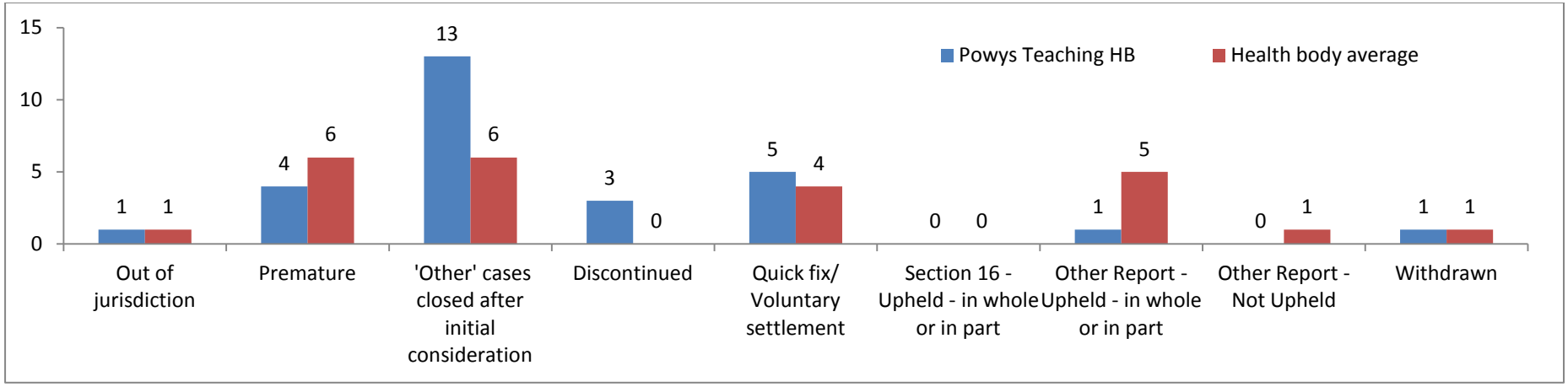
	2013/14	2012/13
Number of complaints taken into investigation	16	1

E: Comparison of complaints taken into investigation by my office with average for health bodies

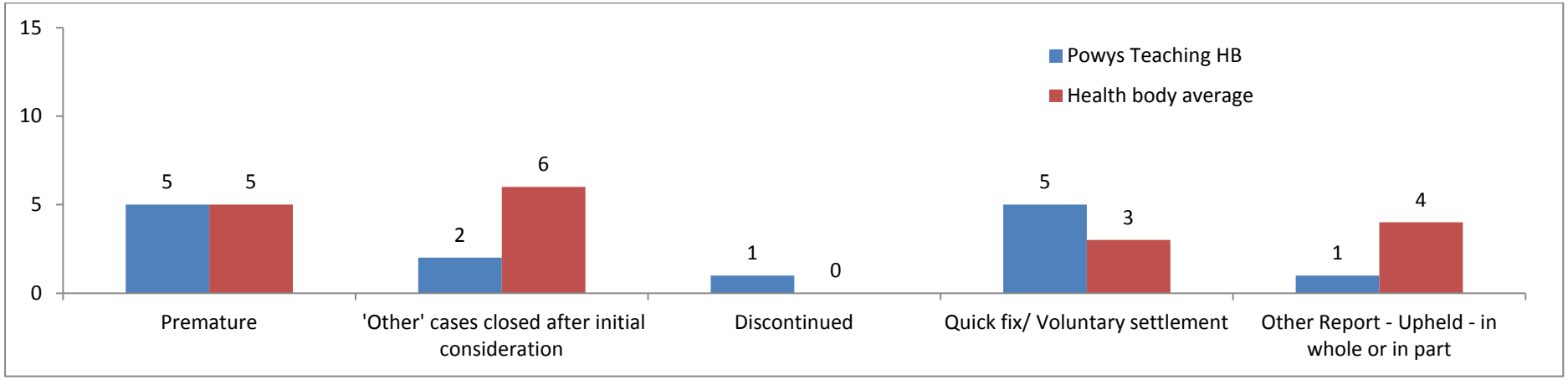


F: Comparison of complaint outcomes with average outcomes for health bodies, adjusted for population distribution

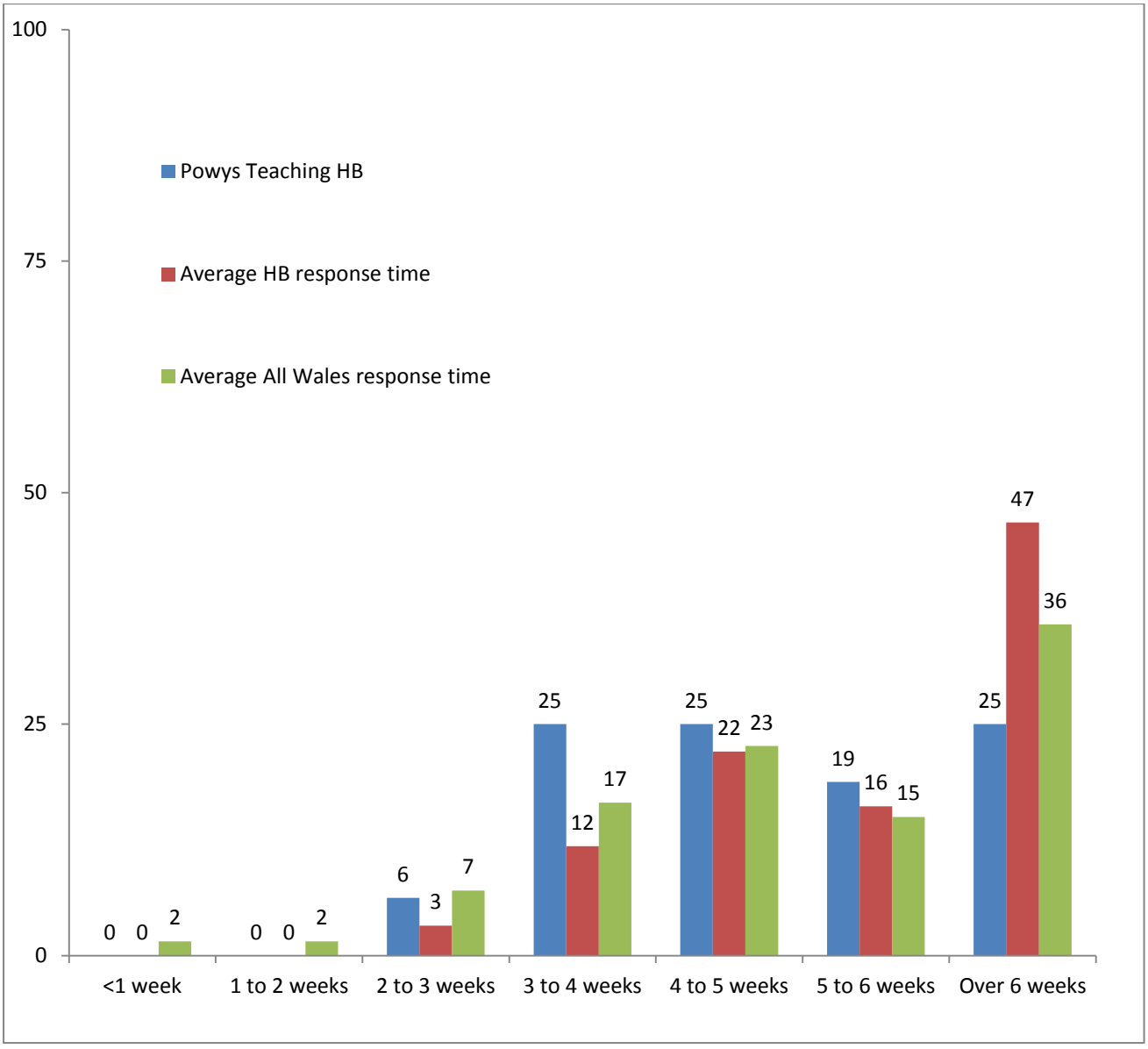
2013/14



2012/13



G: Comparison of Health Board times for responding to requests for information with average for health bodies and All Wales response times, 2013/14 (%)



H: Summaries

Upheld

May 2013 – Continuing Care – Cardiff and Vale University Health Board & Powys Teaching Health Board

Mr E believed that the care home fees for his late wife's care in 1998 should have been met by the NHS under Continuing Healthcare (CHC) funding. He followed the process to claim back such costs and the decision was made that his wife was been eligible for funding in 1998. However, no reimbursement has been made to Mr E because the Health Boards told him that there was insufficient proof that he or his late wife had paid the fees.

The aim of retrospective CHC funding is to rectify previous maladministration where some patients have wrongly had to fund their own nursing home care. Claims have to be seen in this context. For older claims, it is often difficult to provide full documentary evidence (such as bank statements, invoices etc) for all monies paid because these documents may no longer be available. This can put these claimants at a disadvantage.

The Ombudsman found maladministration and upheld Mr E's complaint. It was unreasonable for the Health Board to keep asking for proof of payment which it knew did not exist. Both Health Boards could have highlighted the deficiency in Mr E's proof of payment evidence at a much earlier date (when he would have had an opportunity to get additional evidence). Finally, the evidence from both Health Boards indicated that a coherent and consistent approach to the issue of proof of payment (in retrospective cases) was lacking.

The Ombudsman recommended that the Health Boards should:

- Reimburse Mrs E's care home fees, with appropriate interest,
- Apologise to Mr E for the additional delay and frustration caused by the Health Boards' handling of his case,
- Be involved in discussion to ensure that there was a fair and consistent approach when considering proof of payment, in particular for older retrospective cases.

Case reference 201201957 & 201300028

Quick fixes and Voluntary Settlements

Powys Teaching Health Board – Continuing care
Case reference 201302993 – March 2014

Mr A complained about the way that Powys Teaching LHB ("PTLHB") had considered his claim for retrospective Continuing NHS Healthcare ("CHC") payments. Another Health Board had recommended that Mr A's late father was eligible for retrospective CHC payments to cover the care home fees he had incurred between 14 March 2003 and 6 July 2003. Their recommendation had been considered by the PTLHB at a Panel (in March 2011). This first Panel had concluded however that Mr A's father was not eligible for CHC payments. In response to Mr A's concerns about the decision making process, PTLHB had agreed to reconsider Mr A's claim at a fresh Panel. The second Panel, which met in September 2012, reached the same conclusions as the original Panel. Mr A expressed dissatisfaction with the procedures underpinning the decision.

The Ombudsman's investigation found procedural irregularities. In particular, the same Clinical Adviser had actively participated in the CHC process for both Panels and yet on 15 June 2012, had signed a declaration on a Needs Assessment Document she completed, to say she had had no previous knowledge or involvement with the case prior to carrying out the review. The Needs Assessment Document, which included a recommendation that Mr A's father was not eligible for CHC, had been used at the second Panel.

The PTLHB's agreed to settle the complaint on the following terms:

a) Mr A's case would be reheard by a freshly constituted Panel whose members had not had previous involvement with Mr A's case;
b) that a clinical adviser who had not had any previous involvement in Mr A's case, including a peer review role, would be appointed. The Needs Assessment Document (dated 15 June 2012) would not be used when drawing up another Needs Assessment Document nor would it be presented to the reconstituted Panel. In short, the appointed clinical adviser would look at the matter afresh. Given Mr A's concerns about the process (as outlined in his complaint), consideration would also be given to the feasibility of using a clinical adviser from another health board and in the event this did not occur the reasons would be fully documented on the file;
c) the documentation submitted to the reconstituted Panel would also include the completed Needs Assessment that the previous Health Board's Review Team had submitted to the first Panel on 25 March 2011;
d) in recognition of the distress, inconvenience and time and trouble caused to Mr A as a result of the deficiencies in the process detailed above, PTLHB would, within one month of the final settlement letter, make a payment of £250.00 to Mr A;
e) finally, within one month of the final settlement letter, PTLHB would remind clinical advisers of their obligation to ensure they took reasonable steps to satisfy themselves that they met the requirements of the Declaration in the Needs Assessment Document before signing it.

Betsi Cadwaladr University Health Board & Powys Teaching Health Board – Continuing care
Case reference 201303838 & 201304743 – January 2014
Mr A's solicitors complained on his behalf about the refusal to reimburse care home fees for the late Mrs B. Mrs B was assessed as being eligible for NHS Funded Continuing Care from 1 November 1997 to 30 October 1998 and from 22 December 1999 to 10 January 2000. The refusal to reimburse the fees for the entire eligibility period was on the basis that the proofs of payment were insufficient. Mr A's solicitors said that the request for further proofs of payment was unreasonable as, due to the passage of time, none existed.

After the Ombudsman commenced the investigations, Betsi Cadwaladr University Health Board made an offer of payment to Mr A. This was accepted by Mr A.

Aneurin Bevan Health Board & Powys Teaching Health Board – Continuing care
Case reference 201304079 & 201304744 – January 2014
Mr A's solicitors complained on his behalf about the refusal to reimburse care home fees for the late Mrs B. Mrs B was assessed as being eligible for NHS Funded Continuing Care from 1 April 1999 to 26 December 2002. The refusal to reimburse the fees was on the basis that the proofs of payment were insufficient. Mr A's solicitors said that the request for further proofs of payment was unreasonable as, due to the passage of time, none existed.

The investigation considered the information provided by Mr A's solicitors, Aneurin Bevan Health Board and Powys Teaching Health Board (the Health Boards). During the course of the investigation, the Welsh Government issued "Interim Guidance on Reimbursement for Retrospective Claims processed by the Powys Project" (the guidance, issued in December 2013). The Ombudsman approached Aneurin Bevan Health Board on the basis that its stance appeared unreasonable, particularly in light of the guidance. Aneurin Bevan Health Board agreed to settle the complaint by dealing with the claim in accordance with the guidance.

Powys Teaching Health Board – Continuing care
Case reference 201202609 – October 2013
Mrs A's complained about Powys Teaching Local Health Board's ("PTLHB") refusal to award Continuing NHS Healthcare ("CHC") funding from October 2011 to her mother. She described PTLHB's decision as "illogical, flawed and not based on evidence".

As part of the Ombudsman's investigation, information was sought from Aneurin Bevan Local Health Board ("ABLHB"). In addition, advice was obtained from the Ombudsman's Professional Adviser ("Adviser") who identified shortcomings in PTLHB's CHC decision letter that it had sent to Mrs A.

In response to the Ombudsman's approach, PTLHB agreed to provide Mrs A with a more robust decision letter. Given PTLHB's agreement, the investigation against ABLHB was discontinued.

September 2013 – Continuing care – Powys Teaching Health Board
Ms S's solicitors complained that the decision taken by a panel, convened by the Health Board to consider a retrospective claim for reimbursement of care home fees,

was not properly taken. The complainant said that the Panel had failed to properly apply key indicators in assessing eligibility for NHS Funded Continuing Care and that, consequently, the Panel's decision was not robust.

The Ombudsman took initial advice from one of his professional advisers, which suggested that the rationale set out in the Panel's decision document for not finding the claim to be eligible for funding was not sufficiently detailed to demonstrate that the members of the panel had appropriately considered the claim and reached a robust decision.

Accordingly, the Ombudsman asked the Health Board to consider convening a freshly constituted panel to consider afresh the claim. Any such panel should also be made aware of the concerns expressed by the Ombudsman's adviser. The Health Board agreed to do so and the Ombudsman considered this to represent a fair resolution to the complaint. The Ombudsman therefore discontinued his investigation on the basis of this voluntary settlement.

Case reference 201301739