Mae'r ymateb yma hefyd ar gael yn Gymraeg.

This response is also available in Welsh.

Ombwdsmon Ombudsman
OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU
PUBLIC SERVICES OMBUDSMAN FOR WALES

Response by the Public Services Ombudsman for Wales
to the Health, Social Care and Sport Committee's consultation
'The Welsh Government's plan for transforming and modernising planned care and reducing waiting lists'

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.

Our cases related to Referral to Treatment Times (RTT)

In January this year, we submitted a response to the Committee's inquiry 'Impact of the waiting times backlog on people in Wales who are waiting for diagnosis or treatment'. It would be useful to reiterate our approach to cases related to RTT, as well as update the Committee on the volume of our relevant casework.

Our approach

We understand that the NHS has finite resources and, unfortunately, this means that there will be waiting lists for treatment. The pandemic has placed unprecedented pressures on the NHS which we are also acutely aware of.

We consider each case involving RTT on its own merits. Whether a case where the RTT has been breached amounts to service failure or maladministration will depend upon the circumstances of each case. A failure to meet the RTT time is not in itself evidence of service failure or maladministration.

The first important consideration is the clinical need of the individual complainant. Broadly, even where RTT has been breached, we would not normally investigate unless there is evidence of:

- clinical urgency
- imminent need
- waiting list mismanagement.

For us to find service failure, our clinical advice would have to suggest that any failings to monitor, review or treat individual patients in urgent need of care have caused clinical harm. The threshold for finding 'service failure' is therefore a high one in relation to complaints about RTT.

We understand that this may be a source of frustration to people contacting us, particularly as we normally expect our complainants to raise their concerns with the relevant body before contacting us. However, this also means that when we investigate complaints about RTT, it is because they involve potentially serious injustice to complainants.

Our caseload

In January, we stated that we had concerns that we will soon be seeing a significant increase in people contacting us about RTT issues. We were aware of

the growing number of people on waiting lists in Wales and were concerned that that increase would soon translate into many more cases about RTT reaching our office.

We now know that the number of people on waiting lists in Wales has increased again since then. There has also been a lot of media attention on the number of people across the UK who chose to use private healthcare providers due to the NHS not being able to deliver their care within timeframes that they found acceptable.[1]

We categorise complaints according to their main subjects, and we identify a number of complaints as relating primarily to RTT. However, complaints principally about other matters may include RTT concerns. Based on our analysis:

- since 2019, we received 9 complaints with RTT as the central subject – and 7 of those were received since the start of 22 alone.
- during 2019/20, we closed only 11 complaints related to delay in treatment or referral. However, in 2020/21 and 2021/22 we closed 108 such complaints, with 5 further relevant complaints already closed in this financial year.

Overall, the numbers of complaints specifically focused on RTT and delay in treatment remain small. However, we remain concerned that we are likely to see an increase in these complaints.

Our comments on the Welsh Government's plan for transforming and modernising planned care and reducing waiting lists in Wales

Whether the plan will be sufficient to address the backlogs in routine care that have built up during the pandemic, and reduce long waits.

Overall, we think that the plan is comprehensive and far-reaching. Whether it will succeed in its objectives will depend on its resourcing and implementation arrangements.

Whether the plan strikes the right balance between tackling the current backlog, and building a more resilient and sustainable health and social care system for the long term?

[1] See for example The Guardian, 2 March 2022.

The plan presents a suite of measures to address both the current waiting times and increasing the resilience and capacity of the health service. It does not, however, dedicate much attention to the interface between the health and social care system. There is some reference to the role of support in the community and social prescribing on addressing health inequalities to reduce the number of people who will need planned care intervention in the future. There is also a reference to better coordination of arrangements between health and care professionals (p. 14). However, more detail on how the social care system would be used and supported to alleviate the pressure on the NHS would be welcome.

Whether the plan includes sufficient focus on:

- Ensuring that people who have health needs come forward;

We note that the plan does refer to this issue, but mainly in relation to cancer patients. This attention to tackling barriers to prompt diagnosis for cancer patients is of course welcome. However, we would argue that this clear message needs to be extended to other conditions where delay in treatment in areas such as orthopaedics and ophthalmology can lead to significant deterioration. This said, we acknowledge that the plan includes some measures that will tackle the barriers that may stop people with such conditions from coming forward (for example, the proposed steps to train more 'independent prescribing optometrists' to provide community-based care and reduce the need for some patients to travel to hospital).

- Supporting people who are waiting a long time for treatment, managing their expectations, and preparing them for receiving the care for which they are waiting, including supported self-management;

Based on our casework, we particularly welcome the attention in the plan to better communication with patients and better expectation management. One of the main issues that we are seeing is the importance of clear communication by the Health Boards on the demands on the service, expected timescales and support available (e.g. **202002671**; **202104566)**. Even in complaints about delay that we cannot uphold (e.g. **202107132**), we often see that distress over the delay in treatment is compounded by the lack of clarity on when the treatment can be expected.

- Meeting the needs of those with the greatest clinical needs, and those who have been waiting a long time;

There is a welcome emphasis in the plan on the prioritisation of those most in need. There are also references to better provision of information to those waiting the

longest. The plan does refer consistently to support for patients to maintain their health while waiting for treatment (p. 15, 22, 27, 31). On that latter note, we notice the specific commitment to develop and embed a standard prehabilitation approach to improve outcomes and the plans to utilise Patient Reported Outcome Measures to support this.

We welcome these references and commitments because we have seen in our casework examples of some relevant good practice that highlighted the benefits of such support. For example, in case **202107132** the Health Board arranged for a physiotherapist to assess a patient waiting for their hip replacement appointment. This was as part of a broader programme designed to help patients optimise their health before surgery, supported by Orthopaedic Physiotherapists.

- Improving patient outcomes and their experience of NHS services?

Although the plan on the whole clearly emphasises improving patient outcomes, we note that one major aspect that has been omitted relates to patients' complaints about waiting times. It is inevitable that some people will want to complain to the NHS about their experience. We think that taking steps to clarify how such complaints may be considered under Putting Things Right is an essential part of managing patient expectations by the NHS in Wales. More clarity for patients in that respect could arguably also contribute to alleviating the pressure on NHS complaints services at this challenging time.

Whether the plan provides sufficient leadership and national direction to drive collective effort, collaboration and innovation-sharing at local, regional and national levels across the entire health and social care system (including mental health, primary care and community care)?

Whether the plan provides sufficient clarity about who is responsible for driving transformation, especially in the development of new and/or regional treatment and diagnostic services and modernising planned care services?

The Plan does not appear to offer much detail on the leadership arrangements and responsibility for driving the envisaged transformation. We would not want to express an opinion on the appropriate arrangements in that respect. However, we consider that the plan would be a good platform to acknowledge and encourage more proactive and innovative good practice emerging from within the NHS itself.

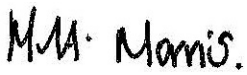
We have talked before of some examples of how the pandemic-related pressures have prompted new ways of thinking and working within the NHS. For example, a report by several NHS bodies in March last year drew attention to examples of good

and innovative practice, from digital mental health provision for Children and Young People at Aneurin Bevan University Health Board, to new ways of delivering cardiology diagnostics services for rural communities in Betsi Cadwaladr University Health Board's area. Another study highlighted innovative practices at Cardiff and Vale University Health Board, which prevented the widespread cancellation of elective surgery.

These examples show what can be achieved when NHS staff are empowered and trusted to work with more discretion, flexibility and with principles of prudent healthcare at the heart of service planning and delivery. Embedding those ways of working is essential if the current waiting lists crisis is to be resolved.

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).



Michelle Morris

Public Services Ombudsman for Wales

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