

Senedd Cymru

Welsh Parliament

Y Pwyllgor Cyfrifon Cyhoeddus a  
Gweinyddiaeth Gyhoeddus

Public Accounts and Public Administration  
Committee

Craffu ar weinyddiaeth gyhoeddus

Scrutinising public administration

PAPA(6) SPA03

Ymateb gan Ombwdsmon Gwasanaethau  
Cyhoeddus Cymru

Evidence from Public Services Ombudsman  
for Wales

## ‘Scrutinising Public Administration’

### 1. Summary

- I warmly welcome the establishment of a Senedd committee dedicated to public administration.
- I am hopeful that the Committee will see administrative justice as an integral part of its brief.
- It would be a powerful statement of intent for the Committee to adopt the ‘right to good administration’ as the guiding principle of its work.
- I would like to take this opportunity to invite the Committee to take full advantage of the expertise of my office and the data that we collect in respect of our caseload as well as our work as Complaints Standards Authority.
- I would like to suggest several areas for consideration by the Committee:
  - Impact of Covid-19 on quality and standards of administration and complaint handling
  - Systemic oversight of administrative justice mechanisms in Wales
  - Public Administration and Administrative Justice Code
  - Administrative Procedure Act for Wales.

## 2. Our role

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)
- the Welsh Government, together with its sponsored bodies.

I can consider complaints about privately arranged or funded social care and palliative care services and, in certain specific circumstances, aspects of privately funded healthcare.

I 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 I have been granted under the Public Services Ombudsman (Wales) Act 2019 (PSOW Act 2019) allow me to investigate where evidence suggests there may be systemic failings, even if service users themselves are not raising complaints. The Act also establishes 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.

## 3. General comments

I warmly welcome the establishment of a Senedd committee dedicated to public administration. I am delighted that, in addition to economic and efficient use of resources in the discharge of public functions in Wales, the Committee will focus on the quality and standards of administration. This area is the bread and butter of our work at PSOW, and I believe that it will benefit from a stronger parliamentary oversight.

At the same time, I hope and trust that the Committee’s attention will extend also to administrative justice – the pathways to redress against incorrect or poor-decision making and the mechanisms for learning and systemic improvement. Research by Dr Sarah Nason,<sup>1</sup> to which I will be referring to also further in this response, states that ‘a difficulty for administrative justice has been that in the absence of any Senedd Committee, or Government Minister, with specific responsibility for ‘justice’ there has been no political body to champion the concept’. I am hopeful that the Committee will see administrative justice as an integral part of its brief.

#### 4. Principles and best practice for scrutiny of public administration

Although the roles of the Committee and my office differ in many respects, I think it is useful to draw attention to the Principles of Good Administration adopted by my office and many of my colleagues in the broader ombudsman community. I see these principles as relevant to the operations of the bodies in my jurisdiction: they help me clarify the expectations against which I will judge performance and support a shared understanding of what is meant by good administration. However, these principles are just as central to the operations of my own office, shaping how we undertake our scrutiny work. We are currently reviewing these principles, but in their current form they state:

<p>1 Getting it right</p>	<p>Acting in accordance with the law and with regard for the rights of those concerned.</p> <p>Acting in accordance with the public body’s policy and guidance (published or internal).</p> <p>Taking proper account of established good practice.</p> <p>Providing effective services, using appropriately trained and competent staff.</p> <p>Taking reasonable decisions, based on all relevant considerations.</p>
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<sup>1</sup> Dr Sarah Nason, The Senedd and Administrative Justice (Part 1) Public Administration: Rights, Principles and Administrative Law, Research Briefing (July 2020); and The Senedd and Administrative Justice (Part 2): Constituency Work, Redress Design and Oversight, Research Briefing (July 2020).

2 Being service-user focused	<ul style="list-style-type: none"> <li>• Ensuring people can access services easily.</li> <li>• Informing service users what they can expect and what the public body expects of them.</li> <li>• Keeping to its commitments, including any published service standards.</li> <li>• Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances.</li> <li>• Responding to service users' needs flexibly, including, where appropriate, coordinating a response with other service providers.</li> </ul>
3 Being open and accountable	<ul style="list-style-type: none"> <li>• Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.</li> <li>• Stating its criteria for decision making and giving reasons for decisions.</li> <li>• Handling information properly and appropriately.</li> <li>• Keeping proper and appropriate records.</li> <li>• Taking responsibility for its actions.</li> </ul>
4 Acting fairly and proportionately	<ul style="list-style-type: none"> <li>• Treating people impartially, with respect and courtesy.</li> <li>• Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.</li> <li>• Dealing with people and issues objectively and consistently.</li> <li>• Ensuring that decisions and actions are proportionate, appropriate and fair.</li> </ul>
5 Putting things right	<ul style="list-style-type: none"> <li>• Acknowledging mistakes and apologising where appropriate.</li> <li>• Putting mistakes right quickly and effectively.</li> <li>• Providing clear and timely information on how and when to appeal or complain.</li> <li>• Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.</li> </ul>
6 Seeking continuous improvement	<ul style="list-style-type: none"> <li>• Reviewing policies and procedures regularly to ensure they are effective.</li> <li>• Asking for feedback and using it to improve services and performance.</li> <li>• Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.</li> </ul>

I would also like to draw the Committee's attention to the principles formulated by the [Committee for Administrative Justice and Tribunals, Wales](#) (CAJTW) in 2016. CAJTW argued that the following principles should underpin the distinctive Welsh approach to administrative justice:

<p>A FUNDAMENTAL RIGHT Everyone has the right:</p> <ul style="list-style-type: none"> <li>• to be notified, either specifically or by public notification, of any administrative decision affecting them;</li> <li>• to express views on or voice complaints about any such decision; and</li> <li>• to appeal against or require a review of any administrative decision adversely affecting them.</li> </ul>
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And to that end:

#### Decision Making

- All legislation under which administrative decisions are made should be reasoned, unambiguous and coherent and its implications should be effectively communicated to the public, those who advise them, the legal professions and those whose role it is to administer the decisions
- All administrative decisions should identify the legislation under which they are made and should be lawful, reasoned, unambiguous, coherent, clearly communicated to those whom they affect and should indicate how they may be appealed or reviewed.
- All administrative decisions should be underpinned by integrity and good governance and should be made by those with the expertise and up to date knowledge and experience needed to make fair, accurate and informed decisions.
- All decision making and redress processes should be grounded in continuous improvement and learning, including from the outcomes of complaints and appeal processes.

Systems and Procedures. All appeal and review systems and procedures should:

- include opportunities for reviewing decisions and for informal dispute resolution prior to any formal process of appeal, provided that the citizen's right to a fair and open appeal is not thereby impaired
- be prompt, accessible, independent, impartial and open
- be proportionate, efficient and effective
- demonstrate respect for human rights, equalities, sustainability and the needs of the most vulnerable
- ensure the interests of unrepresented parties are accommodated and that they are not disadvantaged.

#### Values and Behaviours

- Citizens' rights and needs should be treated with respect at all times
- Appellants should be kept informed throughout dispute resolution processes and enabled to seek resolution of their problems as expeditiously as possible

- All decisions, including decisions made on appeal or review, should ensure equal treatment of all citizens regardless of language preference between the English and Welsh languages.

I believe it is important to underline the concept of a right to good administration included in CAJTW's contribution. The right to good administration is provided for by Article 41 of the EU Charter of Fundamental Rights and has been proposed in the past by the Administrative Justice and Tribunals Council (AJTC). I am aware of the debates around enforceability of such a right and do not propose to offer a solution to this complex issue. Nevertheless, I do want to point out that, according to the [Welsh](#)

[Government](#), CAJTW principles 'closely reflect existing values and legislative provisions that inform working practices'. Considering this, I believe that it would be a powerful statement of intent for the Committee to adopt the 'right to good administration' as the guiding principle of its work.

## **5. Information and evidence the Committee will need in order to maintain effective oversight of public administration**

I would like to take this opportunity to invite the Committee to take full advantage of the expertise of my office and the data that we collect.

We publish annually a wide range of information on the complaints we receive against public bodies in Wales. Apart from clinical decisions in healthcare settings, all these complaints involve maladministration. Thus, trends in these complaints offer an important insight into the administrative practices of the bodies in my jurisdiction, including issues such as quality of communication with the public, accessibility, record keeping, and, of course, complaint handling. We would be delighted to provide the Committee with an update on this data on a more regular basis, or to respond to requests for specific data. We will always endeavour to provide it, our case management system and confidentiality duties permitting.

I would like to draw attention also to a new type of data that we collect which may be of particular interest to the Committee. As the Committee members will be aware, the PSOW Act 2019 equipped my office with new powers to drive systemic improvement of public services. These include the power to set model complaint handling procedures

for bodies in my jurisdiction and to monitor complaint handling by these bodies. We have recently published the relevant data received from Local Authorities for the first quarter of 2021/22. I believe that quarterly data publications will drive transparency and consistency, as well as give new context to what complaints performance means. Again, we would be happy to provide the Committee with a digest of this data on a regular basis.

Beyond that, we would be delighted to organise briefing sessions for the Committee members on our work, as well as to invite the members to visit our offices in Pencoed and meet the casework staff (public health advice allowing).

## **6. Priority issues we may wish to consider**

I would like to suggest several areas for consideration:

### **Impact of Covid-19 on quality and standards of administration and complaint handling**

In June 2020, I submitted evidence to the Equality, Local Government and Communities Committee, drawing attention to the impact of Covid-19 on some areas of interest to the Committee, primarily complaint handling practices of Local Authorities. At that point, we were experiencing an overall decrease in the volume of casework reaching the office - the tendency we attributed at least in part to the unwillingness of members of the public to complain at the time of the unprecedented public health crisis. However, we also had grounds to believe that some Local

Authorities had reduced access to their complaint handling processes during the 'lockdown'. As expected, we are now experiencing a surge in complaint numbers. Not only that – we are seeing far more complaints where Covid-19 has been a factor in the alleged maladministration. We'd expect that other complaint handling bodies in Wales would see similar trends. We would therefore welcome attention by the Committee to the effect of Covid-19 on administrative standards and complaint handling.

## **Systemic oversight of administrative justice mechanisms in Wales**

CAJTW recommended in 2016 that the Assembly – now the Senedd - developed a role in effectively scrutinising the operation of existing redress mechanisms in Wales - ensuring that ‘the voice of Welsh citizens is being heard, that services being offered are cost-effective, timely and efficient, and that data from address mechanisms are being used to inform the development of policy’. I echo that recommendation. Whilst aspects of administrative justice sit across the remits of various Senedd Committees, and different mechanisms of administrative justice – my office included – are, of course, scrutinised individually, there is an argument to be made for a single committee taking on the more strategic oversight of the broader administrative justice system, identifying areas for improvement and promoting coherence.

## **Public Administration and Administrative Justice Code**

Dr Sarah Nason called in her research for the creation of a Public Administration and Administrative Justice Code, containing primary and secondary legislation and guidance relating to, for instance, Audit Wales, PSOW, Inquiries, Records & Information and the Welsh tribunals. She argued that ‘A Code bringing together relevant institutions, their procedures, roles, and to whom such integrity bodies are accountable would help improve public awareness and has the potential to establish more consistency in functions and oversight’. I support the calls for more coherence and public awareness of the administrative justice system in Wales and would suggest that the Committee’s brief places it in a convenient position to take such a project forward.

## **Administrative Procedure Act for Wales**

I am also interested in Dr Nason’s suggestion that Welsh Government and the Senedd consider the case for the future drafting of an Administrative Procedure Act for Wales, to include a consolidated set of human rights, well-being and equality based procedural duties. This recommendation stems from the observation that public bodies in Wales currently operate within increasingly complex frameworks of duties and principles guiding their procedures – spanning well-being, equality and socioeconomic considerations. Such an Act should also set in law arrangements for redress for breach of its provisions. Exploring further potential for such an Act and taking forward its development could be a fruitful line of work for the Committee.

## 7. Closing remarks

I trust that you will find my comments useful. Should you wish to discuss any of my points further, please do not hesitate to contact Ania Rolewska, my Head of Policy ([ania.rolewska@ombudsman.wales](mailto:ania.rolewska@ombudsman.wales)).



## 8. Nick Bennett Public Services Ombudsman for Wales December 2021