

Cynulliad Cenedlaethol Cymru | National Assembly for Wales

Y Pwyllgor Plant, Pobl Ifanc ac Addysg | Children, Young People and Education Committee

Bil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru)| Additional Learning Needs and Education Tribunal (Wales) Bill

ALN 22

Ymateb gan: Ombwdsmon Gwasanaethau Cyhoeddus Cymru

Response from: Public Services Ombudsman for Wales

1. Introduction

1.1 I am pleased to have the opportunity to be able to give evidence in relation to the Children, Young People and Education Committee's inquiry into the general principles of the Additional Learning Needs and Education Tribunal (Wales) Bill.

1.2 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. I also investigate complaints that members of local authorities in Wales have broken the code of conduct.

1.3 Whilst in my role as Ombudsman it would be inappropriate for me to comment on the vast majority of the Bill, there are elements that are appropriate for me to provide evidence on. In particular, complaints relating to Special Educational Needs (SEN) are currently within my jurisdiction. My specific comments relevant to the Committee's Terms of Reference and its inquiry into the principles of the Bill are therefore set out below.

2. General Principles

2.1 It is clear from the complaints I see that the current situation in respect of the provision of educational learning needs is complex and confusing for service users. I welcome the notion of the development of individual development plans and the vision for joint working between the various local education authorities, schools or colleges and health bodies. This approach has the potential to be more streamlined and effective. However safeguards should be put in place to allow individuals to seek independent redress (as is currently the position) in the event of any delays or inaction in the process and where no statutory right of appeal to SENTW exists.

3. Unintended Consequences

3.1 I currently have the power to, and do, investigate complaints concerning the assessment and delivery of provision of SEN statements by local education authorities (LEAs).

3.2 However, as a result of the provisions of the Bill, responsibility for the delivery of additional learning needs plans (which replace SEN statements) will largely be removed from local authorities and will rest predominantly with schools and further education (FE) institutions. As these bodies currently do not fall within my jurisdiction (as they are not included as listed authorities under Schedule 3 of the PSOW Act 2005), this means that I would no longer be able to investigate the majority of these types of complaint.

3.3 I would, therefore, ask the Children, Young People and Education Committee to consider what I believe to be the unintended consequence of the removal of an existing avenue of redress to users of additional learning needs services.

3.4 The above could be achieved through:

(a) bringing schools and FE institutions into the PSOW's jurisdiction (that is as listed authorities under Schedule 3 of the PSOW Act 2005) subject to the exclusion contained in Schedule 2 of the Public Services Ombudsman (Wales) Act 2005 which prevents me from considering action taken by an authority relating to the giving of instruction or the conduct, curriculum, internal organisation, management or discipline in a school or educational establishment;

or

(b) bringing schools and FE institutions into the PSOW's jurisdiction for this specific purpose.

4. Lack of Redress for Education Services in Wales

4.1 Associated to the point made at section 2 above, and in the context education being a devolved matter, I would like to take the opportunity to draw to the Committee's attention the lack of redress arrangements in relation to

education services in Wales.

4.2 Schools: Whilst complaints about schools are within the jurisdiction of the Scottish Public Services Ombudsman (SPSO) and the Northern Ireland Public Services Ombudsman (NIPSO), there is no such arrangement in Wales. Those wishing to make a complaint about a school have no avenue of redress beyond

Complaints about:	England	Scotland	N Ireland	Wales
Schools	No current arrangement	SPSO	NIPSO	N/A
FE colleges	Skills Funding Agency	SPSO	NIPSO	N/A
HE institutions/FE colleges offering some higher education provision	OIA	SPSO	NIPSO	OIA

taking their grievance to the school's board of governors.

4.3 Further and Higher Education:

- (a) FE colleges come within the jurisdictions of the relevant public services ombudsman in Scotland and Northern Ireland and the Skills Funding Agency in England. Wales is, therefore, the only nation in the UK where those in receipt of further education in FE colleges have no recourse to seek redress beyond making a complaint to the college itself (a relevant consideration for the education service delivered to those with individual development plans).
- (b) Similarly, higher education institutions come within the jurisdictions of the SPSO and NIPSO. In Wales and England the situation in relation to higher education is that complaints about universities (and those further education institutes who are also providers of higher education) come within the jurisdiction of the office of the Independent Adjudicator for Higher Education (OIA). The OIA is a not-for-profit company operating in England and Wales.

4.4 The above is illustrated by the following table:

4.5 The Children, Young People and Education Committee may wish to consider this wider issue in relation to avenues for those seeking redress in relation to education services in Wales. It may also wish to consider referring the issue to the Finance Committee should that Committee decide to introduce a Public Services Ombudsman (Wales) Bill into the Assembly.

5. Provision for collaboration and multi–agency working

5.1 My office has seen numerous examples over the years of failures in collaboration and co–operation between local authorities and health boards (for example, across the areas of provision of social and health services). The provisions in the Bill in respect of a designated person in a governing body of a school or further education institution and a designated education clinical lead officer in a health board is welcomed.

5.2 However, it will be important that those appointed are of sufficient seniority to be able to not only co–ordinate but also negotiate agreement between all parties on provision of services for those with additional needs, to ensure that instances of ‘passing the buck’ between public bodies witnessed by my office in the past do not occur. Furthermore, whilst joint working and collaboration arrangements are to be welcomed, there also needs to be clarity as regards points of contact and accountability.