

**Response of the Public Services Ombudsman for Wales
to the Health, Social Care and Sport Committee's inquiry into the
provision of health and social care in the adult prison estate**

I am pleased to have the opportunity to contribute to the Health, Social Care and Sport Committee's inquiry into the provision of health and social care in the adult prison estate. I would like to thank the Committee for agreeing to consider my evidence at this stage of the inquiry.

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

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

PSOW jurisdiction in relation to healthcare complaints by serving prisoners in Wales

The current division of responsibilities for healthcare complaints by serving prisoners in Wales is complex.

Prisons in Wales fall under the overall stewardship of the Ministry of Justice (MoJ), a Westminster government department. Any prisoner who wishes to complain about services in prison can complain to the Prisons and Probation Ombudsman (PPO). Complaints about a government department (including the MoJ) are under the jurisdiction of the office of the Parliamentary and Health Service Ombudsman (PHSO).

However, responsibility for health services in Welsh public sector prisons was transferred from the MoJ to the Welsh Government in April 2003. From April 2006, this responsibility was devolved to the relevant Local Health Boards. In effect, the

above resulted in Health Boards becoming the “responsible commissioner” for serving prisoners in their locality, with one exception – where a prisoner is transferred under the Mental Health Act. The commissioning responsibility in these cases remains with the prisoner’s area of residence before being imprisoned.

Since 1 April 2006, following devolution and under the PSOW Acts, complaints relating to services provided by the NHS in Wales fall within the remit of my office rather than the PHSO. This applies also to care commissioned by the four public sector prisons in Wales. In principle, my jurisdiction extends to any failure in health care provision/treatment which might have impacted on the individual, including by contributing to their death.

However, deaths in custody fall explicitly within the remit of PPO. Serving prisoners in Wales can also complain to PPO in relation to their general healthcare. This said, unlike my office, PPO cannot question professional and clinical judgement.

Jurisdictions are yet more complex in relation to healthcare complaints against HMP Parc Bridgend, which is operated privately by G4S. Secondary healthcare, in-reach mental health for adults and sessional podiatry services at HMP Parc Bridgend are provided through Swansea Bay UHB and thus can be investigated by my office. However, the commissioning responsibility for primary healthcare provision rests in an overarching contract between the National Offender Management Service (NOMS) and G4S – bodies outside my jurisdiction. Prisoners at HMP Parc wanting to complain about primary healthcare must complain to PPO. However, again, PPO cannot handle complaints about clinical judgement.

While my staff maintain regular contact with PPO and signpost as appropriate, during the reform of my office I argued that PPO should be named among the bodies I can cooperate with in an investigation. However, this suggestion was not taken forward at the time.

I welcome [evidence by PPO to the Committee](#), that following her investigation in 2017 HMP Parc introduced a process whereby complaints about healthcare can be escalated to the Director of Strategic Support, Administration and Assurance. It is welcome that the Director is independent from G4S and can request that an independent healthcare professional reviews the complaint. Nevertheless, the process at HMP Parc puts prisoners at that facility at a disadvantage compared to prisoners in Welsh public sector prisons, since they do not have an equal access to an independent ombudsman service.

Overall, in my view the current arrangements are unclear and complex and do not help prisoners in Wales access administrative justice.

I would suggest that if responsibility for prisons in Wales remains in Westminster, to ensure that all prisoners in Wales have equal access to administrative justice:

- PPO should be named in legislation among the bodies I can cooperate with in an investigation;
- professional/clinical judgement should be included in PPO’s remit for health services in private prison(s) in Wales (HMP Parc);

- prisoners should have access to clear guidance as to how to complain, and who to complain to, for the different aspects of prison services (PHSO, PPO and my office).

However, if the recommendation of [the Commission on Justice in Wales](#) (2019) - that 'matters of governance and inspection of police, prisons and probation, along with other aspects of the justice infrastructure' should be devolved to Wales - is taken forward, I would suggest that:

- my jurisdiction should be extended to include prison complaints, as well as health services for prisoners;
- my jurisdiction should be extended to include private prisons in Wales on the same basis as for other prisons (i.e. including professional/clinical judgement in health service matters).

Healthcare complaints by serving prisoners handled by PSOW

Overall, my office receives few complaints related to healthcare of serving prisoners in Wales. Of complaints received in 2018 and 2019, 5 can be tentatively categorised as related to healthcare of prisoners.¹ However, while this is a small number, in proportion I receive more complaints related to healthcare from prisoners than from the adult Welsh population overall.² This number can be also put into context by the fact, that in 2018/19 PPO handled 10 'medical' complaints for all prisons in England and Wales.³

I note that, of the Welsh prisons, the majority of the complaints to PPO relate to HMP Berwyn. This mirrors my casework – in fact, all five prisoner healthcare complaints handled in 2018 and 2019 related to that prison.

Historically, of the complaints to my office that are raised by serving prisoners in relation to healthcare, most did not progress past the assessment stage.⁴ However, since 2016, I have conducted three investigations of such complaints, though in two instances I did not uphold them.

Overall, the limited number of the relevant cases precludes any generalisations. However, one of the themes raised comparatively consistently is management and withdrawal of prisoners' medication. I include below summaries, extracted from my

¹ The current system for categorising casework used by my office does not generally differentiate between the healthcare of serving prisoners and general healthcare. However, general trends can be identified based on text search of my casework database.

² 5 prisoner healthcare complaints over 2018/19, for prison population of 4,291 = 0.12%
1007 healthcare complaints over 2018/19, for Welsh adult population (over 15) of 2,575,922 = 0,04%

³ [Prisons and Probation Ombudsman Annual Report 2018/19.](#)

⁴ The assessment stage considers issues such as:

- is there evidence of service failure or maladministration;
- is there evidence of injustice;
- has the body complained against had an opportunity to respond;
- was the complaint made within the appropriate time (usually less than 12 months since the event complained about, or since the complainant became aware of the problem);
- is an alternative remedy available;
- is it likely that investigation would achieve anything further.

Casebook, of two investigations which illustrate this theme.

201707353 - Betsi Cadwaladr University Health Board (report issued 9 November 2018)

Mr C complained about changes to his medication introduced since he became a prisoner at HMP Berwyn in September 2017. He also complained about the attitude of Health Board staff at the prison.

The Ombudsman found that the changes made to Mr C's medication – specifically the reduction and stopping of a prescription for pregabalin – were clinically appropriate. The Ombudsman found that there was insufficient evidence to conclude that the attitude of the staff members was inappropriate. He did not uphold the complaints.

201705807 - Betsi Cadwaladr University Health Board (report issued 21 November 2018)

Mr X complained about his GP healthcare in HMP Berwyn (“the Prison”). In particular, Mr X complained that the Health Board failed to assess his level of pain properly and prescribe appropriate medication, following an accident in which he injured his knee.

The Ombudsman found that it was appropriate for the Health Board to review Mr X's condition and medication prescription on his arrival at the prison, and that he was offered appropriate non-sedative pain relief as well as physiotherapy. Appropriate input was requested from the hospital Trauma and Orthopaedic (“T&O”) Department, and an in-house X-ray was arranged. Whilst the Physiotherapists notes were brief and it appeared that the lines of communication between the Prison GPs, the Prison physiotherapists and the hospital T&O Department were not as effective or robust as they could have been, these shortcomings did not result in a significant service failure in the management of Mr X's pain. The physiotherapy Care Plan was appropriate and there was no evidence that Mr X's referral or input from the T&O Department was, materially, delayed.

The Ombudsman did not uphold the complaint. However, he invited the Health Board to remind the Prison Physiotherapists of the following: firstly, the importance of maintaining full and accurate records, to ensure that the referral processes within the Prison are effective and efficient, and secondly, the importance of providing clear feedback to the referring clinician with the option of seeking specialist opinion to strengthen the decision-making process.

Concluding 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, the Head of Policy (ania.rolewska@ombudsman.wales).



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