

Special Report issued under s22 of the
Public Services Ombudsman (Wales) Act
following a complaint made by Ms A against
Hywel Dda University Health Board

A report by the
Public Services Ombudsman for Wales
Case: 201600223

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Introduction

This report is issued under section 22 of the Public Services Ombudsman (Wales) Act 2005 (“the Act”).

In accordance with the provisions of the Act, the report has been anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted. The report therefore refers to the complainant as Ms A and to any members of staff of Hywel Dda University Health Board by their post designation and/or numerically.

Summary

Ms A had complained to Hywel Dda University Health Board in June 2014 concerning her son's ophthalmic care, but had not received a response to the complaint. She complained to the Ombudsman in January 2016, asking him to investigate the Health Board's handling of her complaint and secure a response. In accordance with his powers, the Ombudsman resolved the complaint (as an alternative to investigation) on the basis of the Health Board's agreement to a number of actions, including an apology, financial redress for the complaint handling delays, and confirmation as to when the written response would be sent. These actions were to be completed by 15 March 2016.

Being dissatisfied that the Health Board had not complied with the earlier recommendations, the Ombudsman invoked his powers to issue a special report. This was critical of the Health Board's actions in the meantime and its failure to implement the recommendations it had previously agreed to. Therefore, the Ombudsman made further recommendations:

- (a) Issue the complaint response to Ms A without further delay.
- (b) Issue an additional written apology to her for the continued delay.
- (c) Offer Ms A further financial redress of £100 for that delay.
- (d) Provide copies of the letters to the Ombudsman.
- (e) The Chief Executive should personally respond to the Ombudsman after undertaking a review of the resources within the Concerns Team and its capacity to deal with the number of complaints received in a timely way.

My jurisdiction

1. Under the provisions of the Act, pursuant to s3, I am able to take any action I consider appropriate to resolve a complaint as an alternative to investigating it. This can include agreeing with a relevant body that it will take certain actions within a stipulated time. Where I am not satisfied that the relevant body has carried out the actions it explicitly agreed to undertake within the time specified, I may issue a special report under s22 (6) of the Act.

The background

2. Ms A complained to me about Hywel Dda University Health Board (“the Health Board”) on **27 January 2016**, through her Community Health Council advocate (“the CHC”). In its letter to me, the CHC explained that it had written to the Health Board on **17 June 2014** on behalf of Ms A to complain about her son’s ophthalmic treatment in accordance with the requirement of the NHS Redress Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 (commonly referred to as “Putting Things Right” – “PTR”).

3. Under PTR, unless it is considered that a qualifying liability exists as a result of possible harm to the patient (which has different rules), all reasonable attempts should be made by the relevant NHS body to provide the response to the complaint within 30 working days of receiving it. If unable to do so, the relevant body should inform the complainant with reasons why it cannot do so and send the response “as soon as reasonably practicable and within six months”. PTR goes on to say that in “exceptional circumstances” where the six month period cannot be adhered to, the body must inform the complainant setting out the reasons for the delay and when the response might be expected.¹

4. The CHC said that since the complaint was made, Ms A had only received two update letters from the Health Board (on 4 September and 16 October 2014) stating that the investigation was continuing. The only other communication was during a telephone conversation, in September 2015, after Ms A contacted the Health Board herself. Since that time, the CHC had sent an email to the Health Board on

¹ PTR Regulation 24 (3) (4) and (5)

11 November 2015, but the only response received was an email acknowledgement advising that the matter had been forwarded to the Service Manager. However, the CHC said it had not received any further information or update since, and that telephone messages left by Ms A had not been responded to either.

5. The CHC asked that my office review the handling of Ms A's complaint and provide such assistance as I could in enabling Ms A to obtain a written response to her original concerns. It concluded:

“[Ms A] is extremely unhappy with the management of her complaint and does not consider it acceptable that after 19 months she is still awaiting a response from the Health Board. Their failure to keep her updated or respond to requests for an update is also not acceptable. She therefore feels she has no other option but to refer her complaint to the Ombudsman.”

6. On **10 February 2016**, a Casework Officer from my Complaints Advice Team (“my CO”) contacted a Health Board officer within its Concerns Team (“Officer 1”) to discuss the complaint. My CO was told that the complaint investigation was still ongoing, and that someone from the Health Board had rung Ms A a few days earlier (on 2 February), but it was acknowledged that the last written correspondence to her was on 16 October 2014. That same day, my CO emailed Officer 1 to put forward a proposal to resolve the complaint made to my office, in accordance with my powers under s3 of the Act. The Health Board was asked to consider it.

7. On **22 February**, Officer 1 emailed my CO to confirm that the Health Board agreed to the proposals put forward. My CO contacted Officer 1 to suggest agreed dates by which the actions could be implemented. That same afternoon, Officer 1 confirmed that the Health Board was “happy to agree to that time period for those actions”.

8. On **23 February**, pursuant to the delegated authority entrusted to him, my CO wrote to the Health Board's Chief Executive, and to Ms A and her CHC advocate, to confirm the following agreed terms as a formal resolution of Ms A's complaint in accordance with s3 of the Act.

The Health Board agreed to undertake the following by **15 March 2016**:

- “(a) Pay Ms A £300 for the extreme delay and lack of updates in dealing with the complaint;
- (b) Send an apology to Ms A;
- (c) Provide Ms A with a meaningful explanation for the delay and lack of updates;
- (d) Provide Ms A with a timescale for when the investigation will be completed and the formal response issued.”

The letter to the Chief Executive also requested that a copy of the letter sent to Ms A be sent to my office.

Implementation of the actions

9. On **16 March**, my CO telephoned the Health Board, but Officer 1 was unavailable. A Manager from the Concerns Team (“Officer 2”) called my CO back advising him that the £300 and apology letter had been sent to Ms A the previous day (15 March). Later that same day, Ms A contacted my CO to confirm that she had received a £300 cheque in an envelope by post that morning with no covering letter, apology, or accompanying note, but that she had concluded it was from the Health Board. That afternoon, my CO emailed Officer 1, relaying his conversations with both Officer 2 and Ms A, and asked that a copy of the apology letter he was told had been sent be forwarded to him.

10. In the absence of any reply, my CO spoke again with Ms A. She confirmed she had still not received an apology letter. My CO therefore telephoned Officer 1 on **22 March** who said he would call back with information. On **23 March**, having heard no further, my CO emailed Officer 1 to ask for an update on the overdue compliance.

Officer 1 replied by email as follows:

“It seems that this letter was regrettably delayed but it will be signed this afternoon. I have asked that it be sent by first class post. I will send you a copy in due course.”

11. On **29 March**, my CO received an electronic copy of the Health Board’s letter to Ms A signed by the Chief Executive. It bore the date of 15 March 2016. The letter apologised for the delay in responding to Ms A’s complaint, which it said was due in part to her having instructed solicitors at one point in 2015, and so the matter had taken a different path (being passed to its Claims Department). The letter said that Ms A’s complaint investigation was then unable to receive full attention until earlier in 2016, owing to staff shortages, but acknowledged that Ms A was not kept fully informed (also due to staffing shortages). The letter went on to say:

“...I am pleased to advise you that our investigations have now concluded and you should receive the awaited response within the next ten working days.”

12. On **12 April**, my CO received a telephone call from Ms A to say that despite receiving the Chief Executive’s letter, she had still not received the full response to her original complaint, as promised. On **19 April**, Ms A confirmed to my CO that this remained the case.

Analysis and conclusions

13. The Health Board explicitly agreed to accept and implement the terms of the resolution proposed by my CO in February 2016, as set out in paragraph 8 above. Whilst it has mostly undertaken them, in issuing the redress, apology and reasons for the delay (actions (a) (b) and (c)), I have grave concerns as to the manner of their implementation. I have even greater concerns about action (d) that sought to deal with the response to Ms A’s actual complaint.

14. From what is set out above, the redress was sent with no accompanying letter, which I consider to be tardy, and the apology and explanation was only provided after the persistent efforts of my CO in chasing

up the letter. Indeed, he was also told conflicting information by Health Board staff. When it finally arrived, on 29 March, two weeks beyond the agreed date, the letter bore the date of 15 March. At best this was another example of tardy delay between composing a letter and actually sending it, for no obvious good reason. At worst, it was an attempt to imply, and influence me to conclude, that the Health Board had fully complied within the agreed deadline. It failed to do so and so I am not satisfied that there was compliance.

15. In considering whether or not to issue this report, I have had regard not only to the fact that the Health Board explicitly agreed to the resolution actions, and timescales for implementing them, then failed to fulfil them, but also the length of time the Health Board, in this instance, has taken to deal with Ms A's complaint. In relation to the final action (d), this was the most important of all for Ms A – a definitive time within which she would receive the actual response to her complaint made, by now, 22 months ago, and then actual receipt of it. It was the main reason she approached my office in the first place. Whilst the letter informing her when the complaint response would be received was sent, as noted above, it was outside the timescale for compliance.

16. Even accepting, as I do, that a complaint response within 30 days would pose a challenge for any NHS body properly investigating many of the complaints it receives, a period of 22 months represents a significant delay given what PTR envisages (paragraph 3 above). It is excessive and unacceptable. It also potentially compromises my office if a complainant is then unhappy with the response. It is more difficult for my staff to meaningfully investigate historic matters. It is one of the reasons for a time restriction within the Act. Worryingly, the Health Board's letter (dated 15 March) itself said the complaint response would be sent to Ms A within ten working days of the letter (i.e. 29 March – see paragraph 11). Ten days from that date of 29 March has by now elapsed, and Ms A is still waiting. The whole point of resolution action (d) was to secure an actual response for Ms A. By its own letter, the Health Board has failed to comply not only with the agreed resolution, but by the timescale which it also set itself. That was misleading information given to Ms A and to my office. I regard this as non compliance.

17. The events giving rise to me issuing this report cause me serious concerns about the Health Board's management of its complaints handling function and also, in light of the above evidence, its candour and governance. It explicitly agreed to undertake actions, as a result of which I did not conduct an investigation into its complaints handling, as I might have and could have done. It then misinformed my CO about the sending of the letter and has further misinformed both the complainant and me about when it would issue the awaited complaint response.

18. A resolution under s3 of the Act is just as important as formal recommendations following a full investigation by my office. The consequences of my failing to be satisfied as to their implementation are exactly the same - the issuing of a report such as this under s22 of the Act. I consider it unacceptable for a major public body to fail to take prompt and effective action to ensure that agreed recommendations are properly implemented and to fail to live up to what are, in effect, binding promises to me as Ombudsman. I would add that this is the first occasion I have had reason to issue a report under s22 of the Act against an NHS body for failing to implement agreed actions. It is not a decision I took lightly.

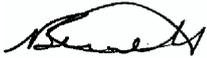
Further recommendations

19. I expect and **recommend** that the Health Board:

- (a) Issues its complaint response to Ms A without further delay.
- (b) Issues an additional apology in writing to Ms A for its continuing delay in responding to her complaint.
- (c) Offers her further redress of £100 for that continued delay and its misinformation.
- (d) Provides a copy of both letters to my office on the day of their despatch.

20. I further require the Health Board's Chief Executive to personally respond to me, within two months of this report, having undertaken a review of the resources within its Concerns Team, and its capacity to deal with the number of complaints received both effectively and in a timely way.

21. Despite my sending the Chief Executive a draft copy of this report, it is disappointing to note that I received no formal acknowledgement of it nor have I received (at the time of my arranging the final text of this report) any formal indication from him that he will implement these further recommendations.



Nick Bennett
Ombudsman

10 May 2016



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