

Consultation Document: Proposed Own Initiative Investigation on the Homelessness Assessment and Review Process

Overview



The Public Services Ombudsman for Wales (“PSOW”) has powers to undertake ‘own initiative’ investigations where evidence suggests that there may be systemic service failure or maladministration. The Ombudsman is now considering undertaking an investigation into the administration of the homelessness assessment and review process by local authorities in Wales. Comments and responses are invited.

How to Respond

Please respond to the consultation via:



or [Link to Consultation \(English\)](#)

or by post to:

The Improvement Team
Public Services Ombudsman for Wales
1 Old Field Road
Pencoed
CF35 5LJ

Closing Date & Time: 23:59 on 10 April 2020

Further Information & Related Documents

A large print version is available on request.

For any enquiries please contact us by email:
OwnInitiative@ombudsman.wales or by post to the address above.

Please note that we propose to publish full responses to this consultation on our website. If you do not want your name or address published, please let us know when submitting your response.

Please see our full [Privacy Notice here](#)

Foreword

Homelessness affects every member of society, from the person who has lost their home to those who have businesses, or work or live in areas where homelessness is evident. There is also a wider impact on perceptions of public safety, as homelessness is said to impact on tourism, making our Welsh towns and cities less attractive to visitors.

Many homeless people are vulnerable because of their age, race, sexuality or physical or mental health difficulties. These vulnerabilities may be aggravated further by the person being homeless as it may restrict their ability to access the support and assistance they require.

Despite the introduction of new legislation, the [Housing \(Wales\) Act 2014](#) (HWA”), [Welsh Government statistics](#) show that, for the period 2018-2019, the total number of households assessed as homeless in Wales increased from the previous year by 4%, to over 11,700. Of these, over 2,600 households were classed as homeless and in priority need; that is an increase of 18% from the previous year. The challenges of increasing homelessness have been widely recognised by bodies in Wales including the Welsh Government, who formulated the Ministerial Action Group, and third sector organisations, many of which have produced reports on the matter.

Local authorities have a critical role in preventing homelessness as well as supporting people who have found themselves homeless. It is therefore important to ensure that, having determined whether someone is either not homeless or not entitled to support, that person is also aware of the right to request a review of the assessment decision. It is also important to ensure that, when decisions are overturned at review stage, lessons are being learned and shared across the authority.

Whilst the immediate priority of someone who is homeless will, of course, be to find somewhere to sleep or stay, rather than navigate the complaints process, it is perhaps surprising, and concerning, that the PSOW receives very few complaints about homelessness.

The [Public Services Ombudsman \(Wales\) Act 2019](#) (“the 2019 Act”) empowers the Ombudsman to undertake ‘own initiative’ investigations,¹ which do not need to be prompted by an individual complainant. The PSOW now proposes to look into the administration of the HWA. Specifically, this would consider whether local authorities are administering the homelessness assessment² and review process,³ properly, fairly and openly, and whether they are making people aware of their right to a review of the decision. The investigation would also look at how any lessons that are learned from the reviews are shared and, where appropriate, embedded in the assessment process.

1 Section 4 the 2019 Act

2 Sections 62 HWA

3 Section 85 HWA

Purpose of Consultation

This consultation seeks views on whether the PSOW should conduct an investigation into the administration of the homelessness assessment⁴ and review process⁵ by local authorities in Wales.

Further, information received from regulators and third sector organisations suggests the existence of systemic maladministration causing injustice. This consultation also seeks views on whether this matter is in the public interest, and whether PSOW is the appropriate body to undertake such an investigation.

Legal Duties of Local Authorities

Section 62 of the HWA places a duty on the local authority to assess a person who has presented as homeless, to see if the person is eligible for help.

Section 63 of the HWA states that, where the assessment decision (or a review of that decision) is against the applicant's interests, the local authority must provide the applicant with written reasons for the decision. The local authority must also inform the applicant of the right to request a review of that decision.

Section 73 of the HWA places a duty on the local authority to secure suitable accommodation for occupation by a person if the local authority is satisfied the person is homeless and eligible for help.

Section 85 of the HWA provides that, within 21 days of a decision being made, the applicant has the right to request a review of the following:

- a decision of a local housing authority as to the applicant's eligibility for help;
- a decision of a local housing authority that a duty is not owed to the applicant under section 66, 68, 73, or 75 (these sections outline the specific duties to applicants who are homeless);
- a decision of a local housing authority that a duty owed to the applicant under section 66, 68, 73, or 75 has come to an end (including where the authority has referred the applicant's case to another local authority or decided that the conditions for referral to another local authority are met).

The HWA does not give the applicant the right to request a further review of a review decision. Concerns relating to a point of law should be progressed to the Courts. Concerns relating to maladministration should be progressed to the PSOW for investigation.

⁴ Section 62 HWA

⁵ Section 85 HWA

The procedure for reviewing a decision is set out in the [Homelessness \(Review Procedure\)\(Wales\) Regulations 2015](#) (“the Regulations”)

The Welsh Ministers issued a [Code of Guidance to Local Authorities in Wales in March 2016](#) (“the Code”). Local authorities must have regard to this Code when exercising their functions in connection with allocations and homelessness.

What are the issues to consider?

In 2019, Shelter Cymru contacted all 22 local authorities in Wales asking for information about the number of review requests they had received under section 85 of the HWA, and how many of those decisions were overturned. They were also asked to provide the reasons for the review requests. Information was provided by 19 local authorities and showed that, for the period 2017–2018, the majority of review requests were made to:

- Cardiff 185 review requests – 50% overturned
- Wrexham 50 review requests – 14% overturned
- Flintshire 49 review requests – 37% overturned
- Bridgend 26 review requests – 35% overturned
- Blaenau Gwent 25 review requests – 32% overturned.

The remaining local authorities had 16 or fewer review requests.

The authorities that had the highest percentage of assessment decisions overturned on review were:

- Denbighshire 100% overturned – 1 review request
- Neath Port Talbot 75% overturned – 8 review requests
- Cardiff 50% overturned – 185 review requests
- Powys 50% overturned – 4 review requests
- Gwynedd 46% overturned – 13 review requests.

The information also showed that very few decisions were pursued beyond the review stage.

The Code states that applicants can pursue a complaint of maladministration or service failure to the PSOW in some circumstances. However, initial enquiries, made by the PSOW with third sector organisations, identified some of the difficulties that homeless people face when navigating their way through the various processes, should they remain unhappy with a decision.

Whilst recognising the good work of third sector organisations in supporting people who are homeless, it appears that only a very small proportion of homeless people are assisted in the review process or further. It is noted that concerns about administrative practice and process, which are not matters which would fall within the Court's remit, do not appear to be making their way through the complaints system.

A review of records established that, since the commencement of the HWA, the PSOW has not received any complaints specifically relating to the homelessness review process. The absence of these complaints should not be taken as an indication that the review process is working effectively and fairly for all. Rather, it suggests that the people affected by homelessness decisions may not be aware of all the avenues available to them, that they may have more pressing priorities, or that they have lost the confidence to pursue their cases.

Additionally, it is recognised that there will inevitably be people, in vulnerable positions, who, unless supported, will be incapable or unable to pursue matters further, even if they wish to do so. The likely consequences are that many people who would be entitled to seek a review do not or, in cases where the reviews may not have been administered properly, these errors or failings are not identified or corrected. This, in turn, results in opportunities to provide support to those who need it most, and to improve the service, are lost.

In order to undertake an investigation under section 4 of the 2019 Act, the published criteria⁶ must be met. These Criteria require that:

- The matter is in the public interest
- There is evidence suggesting that systemic maladministration or service failure has occurred
- The matter impacts upon a wide group of citizens, to such an extent that they may sustain injustice or hardship in consequence of the matter being considered for investigation
- There is sufficient weight of evidence to support the investigation
- The evidence is persuasive.

The Investigation Proposal

⁶ Section 5 the 2019 Act

It is proposed that this investigation would consider:

- Whether Local Authorities in Wales are meeting their statutory duties to ensure that homelessness assessments are carried out appropriately
- Whether those who may seek to challenge the outcome of an assessment, or the decision that a Local Authority's duty has ended, understand their right to request a review under section 85 HWA
- Whether reviews undertaken in accordance with section 85 HWA were properly administered
- The reasons given for overturning decision, and, if appropriate, whether lessons are learned and shared within those Local Authorities
- In cases where decisions have not been overturned, whether those affected are aware of the remaining remedies available to them.

It is considered that this proposal meets the Criteria for conducting an own initiative investigation for the following reasons:

- The apparent high proportion of assessment decisions being overturned on review by some local authorities suggests there may be evidence of systemic maladministration in the handling of assessments and review requests
- The absence of complaints to the PSOW about this matter suggests that the individuals affected may be vulnerable, disadvantaged or unaware of their right to escalate their complaint to the PSOW
- This is a matter of public interest affecting a wide group of individuals across Wales, potentially having a substantial impact on them
- An own initiative investigation by the PSOW could lead to wider lessons being learned across Wales and the PSOW is well placed to conduct this investigation.

The Consultation

In accordance with section 4(2)(c) of the 2019 Act, the PSOW is seeking views on the proposed investigation, the suggested scope, and whether it would be in the public interest for PSOW to investigate this matter.

Evidence or views would be particularly welcomed from:

- Those who are, or have been, homeless and have experienced the assessment or review processes
- Those who have had experience in undertaking homelessness assessments and reviews
- Those who have had experience in assisting people through this process or have been through the assessment process themselves
- Local authorities and local authority representative bodies
- Advocates
- Third sector organisations
- Elected representatives
- Those with an interest in this subject.

How to Contribute

Responses may be provided online here, or by post to the address on page 2 of this document. If you are responding in writing, please include a brief description of the role of your organisation, your experience in this area and any views on the following:

1. Are local authorities meeting their statutory obligations to ensure assessments are carried out appropriately?
2. Are homelessness applicants being told of their right to request a review of the decision made on the assessment of their homelessness application, or they disagree with the local authority that the duty has ended?
3. Are local authorities complying with the procedure and timeframes as set out in the Regulations when a review request is received?
4. When an assessment decision is overturned on review, are local authorities taking sufficient steps to ensure that the shortcomings identified are not repeated?
5. Are the lessons learned from overturned assessments being relayed to, and considered by, those responsible for delivering or overseeing the service, to inform learning and improve service delivery in compliance with their statutory duties?
6. Is it in the public interest for the PSOW to conduct such an own initiative investigation?
7. Is the Public Services Ombudsman for Wales an appropriate organisation to conduct such an investigation?

Thank you for your co-operation