

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

Overview



The Public Services Ombudsman for Wales (“PSOW”) has the power 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. It is also proposed that this investigation will consider any improvements and good practice in service delivery that have arisen during the COVID-19 pandemic that can be taken forward to drive change in homelessness assessments and reviews in the longer term. 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 30 October 2020

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](#).

Further Information & Related Documents

Foreword

Homelessness affects every member of society, from the person who does not have a place to call 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 believed 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. They may also be vulnerable based on adverse or detrimental life experiences. These vulnerabilities may be aggravated further by the person being homeless as it may restrict or impede their ability to access or seek the support and assistance they require, where this is available.

Despite the introduction of new legislation, the [Housing \(Wales\) Act 2014](#) (HWA¹), [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 8%, to over 31,000. 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 were recognised and reported on widely by bodies in Wales including the Welsh Government, who formulated the Ministerial Homelessness Action Group, and third sector organisations before the COVID-19 pandemic started.

However, the pandemic has significantly and radically changed the approach taken by most public bodies in Wales to the issue of homelessness. In the early weeks of the pandemic, the Welsh Government introduced emergency measures aimed at ensuring that people who were, or were at risk of, sleeping rough, and those in inadequate temporary accommodation, had support and a means of protection. This included an initial allocation of up to £10 million to Local Authorities to enable them to move rough sleepers off the streets and into hotel/B&B accommodation, resulting in more than 800 people being temporarily housed.

However, it has not just been about ensuring homeless people have a roof over their heads. There has also been, and continues to be, a willingness to combine multi-disciplinary efforts to ensure that anyone who is, or who presents as, homeless has access to a safe and suitable home going forward. There is also an ambition to provide person-centred support, to include the additional help and support services required by these people to maintain accommodation and prevent future loss.

The [Welsh Government's phased plan](#) to end homelessness in Wales together with the commitment shown by Local Authorities to resolve the issues associated with homelessness represents a real opportunity to create a more equal Wales for future generations.

1 Section 4 the 2019 Act

2 Sections 62 HWA

3 Section 85 HWA

It is encouraging to hear about the greater emphasis on collaborative working between Welsh Government, the housing partners, third sector organisations and other public services during the pandemic and to learn that they have, in some cases, been able to reach and help people who haven't engaged with services of this nature in the past and possibly would not have done, but for the pandemic. It is also refreshing that this is no longer being seen as just [a housing issue](#) but as an issue for all [public services in Wales](#).

Local Authorities still have a critical role in preventing homelessness as well as supporting people who have found themselves to be 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 and possibly more widely. The pandemic has shown that Local Authorities have, and are willing to change, approaches and practices to help vulnerable people and those with complex needs. It is important to ensure that any changes, improvements and good practice in service delivery that have arisen during the pandemic can be taken forward to drive change in homelessness assessments and reviews in the longer term.

Whilst the immediate priority of someone who is homeless is likely to 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 administration.

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 this part of the HWA. Specifically, this investigation would consider whether Local Authorities are administering the homelessness assessment² and review process,³ properly, fairly and openly, and whether they are adequately making people aware of their right to request 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, used as opportunities to inform and build on the assessment process and local practice.

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 and consider what actions and learning from good administrative practice during the pandemic can be taken forward to drive change or wider learning.

Purpose of Consultation

Information shared by regulators and third sector organisations and reported more widely is suggestive of the existence of systemic maladministration in the administration of these processes causing injustice to a group of vulnerable members of our society. 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.

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

⁴ Section 62 HWA

⁵ Section 85 HWA

What are the issues to consider?

The Welsh Ministers issued a [Code of Guidance to Local Authorities in Wales in March 2016](#) (“the Guidance”). Local authorities must have regard to this Guidance when exercising their functions in connection with allocations and homelessness. More recently and in response to the pandemic additional guidance was issued to Local Authorities relating to [Local Authority support for rough sleepers](#) and its role in developing an effective local response to ensure that people can access sanitation, be effectively isolated and have access to medical and other support as necessary. Additionally, guidance was also issued in relation to sections 70 & 71 of the HWA and its role in consideration of vulnerability and priority need of those seeking accommodation. The [‘Priority need for accommodation – people sleeping rough during the COVID 19 pandemic Guidance’](#) expressly refers to the COVID 19 pandemic and the need to self-isolate and socially distance as a special reason giving rise to a priority need for accommodation.

Earlier this year, Shelter Cymru published a [report](#) considering the implementation of the HWA in the context of homelessness reviews. As part of its research, Shelter Cymru sought information from all 22 local authorities in Wales about the number of review requests they had received under section 85 of the HWA, the reasons for the reviews and how many of those decisions were overturned. They were also asked to provide the reasons for the review requests. Information was provided by 20 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

The remaining local authorities had 16 or fewer review requests. These figures were largely consistent with the number of reviews received and upheld in the previous two years.

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

- Denbighshire 100% overturned – 1 review request
- Neath Port Talbot 75% overturned – 6 of 8 review requests
- Cardiff 50% overturned – 93 of 185 review requests
- Powys 50% overturned – 2 of 4 review requests
- Gwynedd 46% overturned – 6 of 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 complaint processes, should they remain unhappy with a decision, which include issues such as awareness and capacity to engage and the availability of public funding.

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 or recorded more widely within Local Authorities, raising concerns that opportunities for learning arising from the day to day application of the HWA, or positive action taken informally by way of early resolution, may be being lost

A review of our enquiry and complaint 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 face barriers to seeking help, 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, being lost. The experiences and good work undertaken during the pandemic provides a significant opportunity to reflect and improve public services.

⁶ Section 5 the 2019 Act

The Investigation Proposal

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 a reasonable suspicion that there is systemic maladministration or that service failure has occurred, or may occur, that may cause any person to sustain injustice or hardship
- The matter impacts upon a wide group of citizens, to such an extent that they appear likely to 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.

It is proposed that this investigation would consider:

- Whether Local Authorities in Wales are meeting their statutory duties under the HWA and the Guidance to ensure that homelessness assessments are carried out appropriately
- Whether those who may be entitled to seek to challenge the outcome of an assessment, or the decision that a Local Authority's duty has ended, are aware and understand their right to request a review under section 85 HWA
- Whether reviews undertaken in accordance with section 85 HWA are properly administered
- The reasons given for overturning assessment decisions and, if appropriate, whether lessons are learned and shared within those Local Authorities or more widely, as appropriate
- In cases where decisions have not been overturned, whether those affected are aware of the remaining remedies available to them
- The range of administrative actions and approaches taken during the pandemic to assess, address and review the needs of homeless people or those presenting as homeless by Local Authorities to identify opportunities for longer term or wider improvements

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

The matter is in the public interest

- Public interest is generally accepted to be “something which is of serious concern and benefit to the public”. We consider it to be something that impacts the public, rather than a matter the public finds of interest, or a matter that impacts a sole individual (even though it can affect an individual more directly than the wider public). Public in this context can refer to a distinct section of the public or the entire population of Wales.

- The issue of homelessness is capable of affecting a wide group of individuals across Wales and has the potential to impact on wider public services and communities. The pandemic has confirmed that homelessness extends beyond those visibly rough sleeping on the streets, to include those who are also in inadequate temporary accommodation. During the pandemic, [more than 800 people](#) have been helped by Local Authorities and their various partner agencies.

There is a reasonable suspicion that there is systemic maladministration or that service failure has occurred, or may occur, that may cause any person to sustain injustice or hardship

- The evidence considered shows a high proportion of assessment decisions being overturned on review by some local authorities year on year. This is suggestive there may be evidence of systemic maladministration in the handling of assessments and review requests and/or a failing to learn from these reviews by these local authorities.
- Additionally, there is some concern surrounding data capture of such information by some authorities, suggesting that opportunities for service improvement may be being lost.
- Further, the low level of reviews in some local authorities may indicate that awareness or promotion of the right of review is low, which is suggestive of poor communication amounting to systemic maladministration.

The matter impacts upon a wide group of citizens, to such an extent that they appear likely to sustain injustice or hardship in consequence of the matter being considered for investigation

- In 2017-2018 over 11,000 households in Wales were assessed as homeless.
- The absence of complaints to the PSOW about this matter suggests that vulnerable individuals affected may be unaware, do not understand or are unable to exercise their right to escalate their complaint to the PSOW.
- 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.

There is sufficient weight of evidence to support the investigation

There is considerable evidence relating to the proposal and the specific issues identified. Evidence from numerous sources has been considered. These include:

- Welsh Government policy, statutory guidance and legislation
- Homelessness strategies, action plans and policies of all Local Authorities in Wales
- Other relevant research and guidance documentation from Audit Wales and third sector organisations, such as Shelter Cymru and Llamau
- Information published by StatsWales and the Office of National Statistics;
- Media Reports

The evidence is persuasive

The evidence detailed above is, in our view, credible, reliable and suggestive of potential systemic maladministration in the administration of the homelessness assessment⁴ and review process⁵ by local authorities in Wales. The recent efforts by Welsh Government and local authorities in response to the pandemic has been widely reported, making it relevant for us to consider how the actions and learning from good administrative practice during the pandemic can be taken forward to drive change or wider learning.

In accordance with section 4(2)(c) of the 2019 Act, the PSOW is seeking views on the proposed investigation, its 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.

The Consultation

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 (where applicable), your experiences 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 given relevant information and told of their right to request a review of the decision made on either the assessment of their homelessness application, or their disagreement 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 informal resolutions and 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. In your experience, what has been the impact of COVID-19 on the homelessness assessment process?
7. In your experience, what has been the impact of COVID-19 on the review process?
8. In relation to questions 6 and 7 above and in your experience, what has and has not worked?
9. Is it in the public interest for the PSOW to conduct an own initiative investigation on the matters outlined above?
10. Is the Public Services Ombudsman for Wales an appropriate organisation to conduct such an investigation?
11. Would a decision to proceed with the investigation affect opportunities to use the Welsh language or the treatment of the Welsh language?

We welcome responses in Welsh and English

Thank you for your co-operation