

Mae'r ymateb yma hefyd ar gael yn Gymraeg.

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**Response by the Public Services Ombudsman for Wales  
to the Law Commission on Devolved tribunals in Wales**

I am pleased to have the opportunity to respond to the Welsh Government's consultation on the Law Commission's consultation on Devolved Tribunals in Wales.

**Our role**

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)
- 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.

The 'own initiative' powers I have been granted under the Public Services Ombudsman (Wales) Act 2019 (PSOW Act 2019) allow me to investigate where evidence suggests there may be systemic failings, even if service users themselves are not raising complaints. The Act also establishes the Complaints Standards Authority (CSA) to drive improvement in public services by supporting effective complaint handling through model procedures, training and collecting and publishing complaints data.

Under the Local Government Act 2000, it is also my role to investigate complaints of a breach of the Code of Conduct for local authority members in Wales. Where I find evidence of a breach of the Code and that the further action should be taken, depending on the seriousness of the case, I may refer cases to the Adjudication Panel for Wales (a devolved tribunal) or to the relevant local authority's standards committee.

### **The proposal to unify the approach to tribunals in Wales**

I welcome the proposal to unify the approach of tribunals in Wales. A uniform system and approach would result in the tribunal system being less complicated for citizens to use and improve accessibility of the administrative justice system in Wales. Greater uniformity may also raise the public profile of the tribunals and the rights citizens have to use the tribunal system.

### **Devolved tribunals**

I agree that the bodies listed in the Consultation document (the tribunals listed in Section 59 of the Wales Act 2017; the Valuation Tribunal for Wales; school admission appeal panels; and school exclusion appeal panels) are devolved tribunals. They perform the role of adjudicating upon disputes by making binding decisions and as such are, in my view, devolved tribunals:

### **School exclusion and admission appeal panels**

As outlined in the Consultation paper, my office may only review decisions for maladministration or service failure, and has no general power to review the merits of a decision. My office receives approximately 30 complaints every year relating to school admission appeal panels. Of these, 80 to 90% are not investigated, mostly because they do not relate to maladministration. The PSOW receives far fewer complaints arising from school exclusions. In recent years these have amounted to only one a year.

### **School exclusion panels**

I believe that bringing such appeals under the remit of the Special Educational Needs Tribunal for Wales (SENTW) would improve transparency and uniformity of the process. A decision to exclude a child from school could have significant consequences for the individual. Public confidence in the appeal panel process is vital.

I also agree that appeals from school appeal panels should lie with the SENTW. I consider that this would provide a consistent approach and oversight to the decision-making process.

Any such appeal right should in my view be sufficiently broad to allow SENTW to consider the individual circumstances of the child and the impact a refusal of a school place may have on the individual child, whilst balancing the rights of others in the school. As there is a need for timely decisions, it is essential that, if any such appeal process is introduced, that decisions are taken in a timely manner so as not to adversely impact upon the child's position.

### **School admission panels**

The volume and seasonal nature of these appeal decisions requires quick and timely decisions at a local level. I agree therefore that these appeals would not sit well within the SENTW system as a first tier of appeal decision making. However, there is a need for uniformity of approach and transparency in appeal processes for all school admissions to maintain confidence in the process in relation to all local authority and independently run admission decisions.

I also agree therefore that appeals from school appeal panels should lie with the SENTW. I consider that this would provide a consistent approach and appropriate oversight to the appeal process.

### **PSOW's role in relation to school exclusion and appeal panels**

Should school exclusions and admission appeals be brought within the devolved tribunal system, I consider that such a change would align my role with the system in relation to complaints concerning Special Educational Needs matters, where I may consider complaints which fall outside matters which are appropriate for consideration by SENTW. (For example, complaints of delays in the assessment process of a local authority or a failure of a local authority to implement the decision of a SENTW appeal tribunal).

### **PSOW**

I agree that my office is not a devolved tribunal in Wales.

My statutory powers are contained within the PSOW Act 2019. This newly enacted Senedd legislation is regarded as "best practice" both in the UK and internationally in terms of the appointment process for the ombudsman by the Senedd and the legislative powers in the Act.

Where I find evidence of maladministration which has caused injustice to an individual then I have the power to make recommendations to public bodies. Such recommendations are generally designed to:

- remedy that injustice to put the individual affected back into the position they would have been in had the failure not occurred, and
- to effect change in the public body's service delivery where any systemic failures have been found.

My recommendations are not binding and if a public body does not accept any of my recommendations, the PSOW Act provides a mechanism for a further reporting procedure to be instigated. This mechanism provides a system for democratic accountability if a public body does not comply with my recommendations.

My office provides citizens in Wales with an alternative to the Court and Tribunals system. I may not generally investigate complaints where a complainant has a remedy available to them in the courts or tribunal system. Also, the PSOW Act 2019 gives me wide discretion on how I consider complaints and what outcomes are appropriate when a person has suffered injustice as a consequence of maladministration or service failure by a public body.

My office does not adopt a legalistic approach in its handling of complaints. The processes and procedures I adopt are designed to be accessible to citizens in Wales, for example, the PSOW Act 2019 provides that I may take oral complaints from citizens who approach my office.

For these reasons and, as I do not make binding decisions on the public bodies which fall within my jurisdiction, I do not believe that my office's role and remit as set out in the PSOW Act 2019 performs the role of a devolved tribunal in Wales.

**Closing 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 Tanya Nash, my acting Head of Policy ([tanya.nash@ombudsman.wales](mailto:tanya.nash@ombudsman.wales)).



**Nick Bennett**

**Public Services Ombudsman for Wales**

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