



Welsh Government consultation: Proposed changes to the Putting Things Right process

April 2024

Introduction

The Older People's Commissioner for Wales (OPCW) welcomes the opportunity to respond to the Welsh Government's consultation on Proposed changes to the Putting Things Right process.

The Commissioner's Advice and Assistance Service

Under Section 8 of The Commissioner for Older People (Wales) Act 2006 the Commissioner can provide direct assistance to people aged 60 and over, helping connect older people and their families with support and services throughout Wales and helping to ensure that their rights are upheld. In 2023-24 the Commissioner received 381 enquiries to her Advice and Assistance service and over 17% of all cases (65 cases) related to NHS healthcare. Almost 40% of these cases (26 cases) included an element involving a complaint about healthcare.

The Commissioner's Advice & Assistance service provides assistance to older people and their families, informing them of their rights, explaining the relevant processes by which to progress their complaint, and signposting to relevant organisations that may further assist them, such as Llais.

Barriers to making a complaint for older people

Poor communication

Poor communication during the complaints process is a common factor in the cases brought to the Commissioner regarding a healthcare complaint. People want to feel listened to and instances of poor communication between the complaints team, other bodies involved in the complaint and the individual often undermines this. In many cases, people are unclear on what stage their complaint is at.

As an example, in a case brought to the Commissioner, the enquirer received a Stage 1 response directly from the service provider (a nursing home) and they had assumed that this was separate from the ongoing complaint as part of the Putting Things Right complaints process. This response did not include any information as to the next steps and, subsequently, the enquirer did not proceed to Stage 2. The enquirer was also prevented from taking their complaint to the Public Service Ombudsman for Wales as the timeframe for doing so had been exceeded.

Delays in the complaint process

The Commissioner's Advice and Assistance service often deals with issues of delays within the Putting Things Right complaints process. Often, multiple agencies are involved, such as safeguarding or the Medical Examiners Service (MES), and as a result of delays, the enquirer often runs out of time to proceed with their complaint.

As an example, in another case brought to the Commissioner, the enquirer had been trying to make a complaint about her late mother's care in a care home. The death was referred to the MES who informed her that they would send an email on her behalf to the health board's Complaints Department. The enquirer waited some time but after not hearing anything, they contacted MES again who agreed to contact the Complaints Department. Following a year of waiting, the enquirer was told by the Complaints Department that they would look into their complaint, but nothing followed. After making contact again, the enquirer was incorrectly informed that no action could be taken as it was outside of the remit of the health board as the concerns related to a care home, despite the placement being part-funded by Nursing Funded care. When the enquirer questioned the delay and the decision not to investigate, they were informed that they had advised the MES of their position. This later was found to be a mistake and no email to the MES had been sent. However, the health board's position remained, stating that they were not able to investigate as the complaint timeframe had expired.

Lack of oversight of complaints spanning multiple bodies

The Commissioner has received many cases involving complaints that span multiple agencies where there appears to be little oversight of the case as a whole. Often, enquirers feel that the bodies involved are only concerned with their area of responsibility and they feel that the entirety of their experience is overlooked.

As an example, a case was brought to the Commissioner where the enquirer expressed concern about the way in which her late father was accommodated in a care home against the family's wishes and was prescribed anti-psychotic medication to manage his behaviour as a result of his dementia. The enquirer, despite holding Lasting Power of Attorney for their father, was not informed about the administration of the medication and the family's concerns about the effect of the medication on

their father were not listened to. The enquirer's father was later admitted to hospital with an overdose. The enquirer had many questions about the way in which the medication was prescribed. Following their complaint, the enquirer had to navigate multiple agencies, including the care home, the GP practice, safeguarding, social services and the health board in an attempt to gain answers. They felt that, whilst recommendations had been made in relation to specific issues within their father's case, there was no one to look at the case as a whole and to evaluate the cumulative impact on their father of the actions that were taken by each body.

Proposals for change

Amending the early resolution stage (Stage 1)

Many enquirers to the Older People's Commissioner for Wales's Advice and Assistance service regarding a healthcare complaint are often unsure which stage their complaint is at. When they receive a response, they are not always clear whether the response relates to Stage 1 or Stage 2.

Therefore, the Commissioner supports a review of Stage 1 and for there to be greater clarity on the actions that must be taken during the early resolution stage. Additionally, the Commissioner would welcome moving from the current two-day deadline for Stage 1 resolution in favour of a 10-working day deadline. Currently, Stage 1 responses are very commonly delayed. Allowing more time to undertake an early resolution will help allow for a quicker resolution and for older people and their loved ones to have a better understanding of the issues involved in their complaint.

The compulsory offer of a listening meeting where emphasis is placed on compassionate communication and listening to the patient's concerns would be welcomed by many of the enquirers who approach the Commissioner's Advice and Assistance service. It is important that people are enabled to tell the organisation about their concerns in their own words and to be able to outline the redress that they wish to achieve. Listening meetings must be available in a variety of formats appropriate to the needs and preferences of the individual. The Commissioner supports amending the Putting Things Right Regulations to ensure there is a clear focus on listening to the person who raised the concern or complaint.

The Commissioner also supports including an action within the revised Stage 1 progress to ensure that bodies check with the person who has raised the concern to understand if the concern has been satisfactorily resolved. This additional communication is welcome and would aid in the person's understanding of the next steps and help them feel listened to.

Improved communication in complaint handling

Improvements are needed in the language used in letters sent to people raising concerns and making complaints. People want to know that their complaint has been listened to and considered and clear language is required to explain the process. People often do not want to know the legal basis for every action that has been taken and using overly legalistic responses can act as a barrier.

Written responses should be concise and clear and, if a standardised response template is to be developed, it should be tested with a range of people, including older people, to ensure that it is easy to understand. Similarly, whilst the Commissioner welcomes the addition of a factsheet to further assist people, response letters should be written in such a way that the information is clear and understandable without the aid of a factsheet.

The Commissioner supports amending the Putting Things Right Regulations to provide the offer of an in-person meeting to discuss the findings of an investigation. Further clarity is needed on whether this offer applies to all complaints and whether the meeting will take place following the issuing of the investigation report to allow people to fully digest the report. This meeting should also allow people to raise issues of accuracy within the investigation report and for there to be a clear process for the steps that must be taken to deal with factual inaccuracies and how these may affect the final outcome of the investigation.

It is important for there to be clearly defined timescales for each investigation and for there to be ongoing communication with the person making a complaint regarding its progress.

Reflecting changes in NHS Wales

Many people contact the Commissioner regarding the quality of service provided by their GP, dentist and local pharmacy. Navigating complaints processes for different services can act as a barrier for many older people in making a complaint. The Commissioner supports widening the scope of the Putting Things Right redress arrangements to include primary care providers.

Urgent concerns and deliberate harm

Ensuring that the all-Wales safeguarding procedures are clearly referenced and explained in the Putting Things Right guidance and supporting materials is to be welcomed. However, it is important to ensure that individuals are informed when there is a departure from usual procedures, resulting in delays in reporting an investigation outcome. Allowing an exemption to the existing timeframes for concerns or complaints where a criminal or safeguarding investigation needs to take

precedence should not lead to unnecessary delays or result in the individual running out of time to proceed with a complaint.

Bereavement

The Commissioner welcomes the offer of a meeting for family members to discuss concerns or complaints about the death of a loved one. These meetings must be dealt with sensitively and with compassion, ensuring that staff are adequately trained to respond appropriately. When clinical staff involved in a person's healthcare are involved in these meetings, it must be ensured that families are listened to and their concerns respected. The Commissioner's Advice and Assistance service often supports enquirers where professional staff have been defensive and dismissive of their concerns, which can further add to the stress of losing a loved one and can undermine trust in the healthcare provider.

People who have concerns about their loved one's death certificate often do not know where to go to discuss this, and do not necessarily want to make a complaint. Information should be provided to bereaved families on the role of the Medical Examiners Services (MES) and how they can contact their local MES.

Provision of free legal advice

The Commissioner would welcome further information to be provided to complainants on their right to free legal advice. This right and what it includes should be clearly explained to people early in the complaints process. The benefits of legal advice and how it may be applied in relation to their case should be made clear and people should be supported to instruct an appropriate lawyer.

The provision of free legal advice should not prevent access to later routes of redress, such as the ability of a local authority or the Public Services Ombudsman for Wales (PSOW) to conduct an investigation. The Commissioner is aware of instances where a local authority has refused to investigate a complaint because the person had stated that they were considering obtaining legal advice, and similarly with the PSOW.

Conclusion

The Commissioner welcomes action to improve older people's experience of making a complaint through the Putting Things Right process, in particular, to improve communication regarding the progression of a complaint and to ensure that people's concerns are listened to at an early stage.

The Commissioner supports the proposed action to:

- Provide greater clarity on the actions that must be taken during the early resolution stage (Stage 1)
- Extend the Stage 1 deadline for resolution to 10 working days
- Include a mandatory offer of a listening meeting where emphasis is placed on listening to the person's concerns
- Contact the individual to ensure that their complaint has been satisfactorily resolved
- Include a factsheet to help people understand legal terms. These should be written in clear language so that they are easy to understand
- Offer an in-person meeting to discuss the findings of an investigation. This meeting must provide people with the ability to challenge any factual inaccuracies within the investigation report
- Extend the scope of the Putting Things Right redress arrangements to include primary care providers
- Ensure that the all-Wales safeguarding procedures are clearly referenced and explained in the Putting Things Right guidance,
- Allow an exemption to the existing timeframes for concerns or complaints where a criminal or safeguarding investigation takes place. Any deviation from the normal process should be clearly explained to the person making the complaint and they must be kept updated and not be subject to substantial delays
- Provide further information on a person's right to free legal advice. However this should not impact their ability to escalate their case to the Public Services Ombudsman for Wales or progress a complaint with other public bodies

The Commissioner would also like to see further work undertaken to ensure that:

- Staff are trained to engage with people in a supportive manner without being defensive or dismissive of people's concerns,
- People are supported in finding an appropriate legal advisor,
- People are made aware of the role of the Medical Examiners Service and how they can discuss concerns they may have about their loved one's death certificate,
- A person's experience is seen in its entirety, rather than as multiple separate complaints with no overarching outcome.

The Older People's Commissioner for Wales

The Older People's Commissioner for Wales is an independent voice and champion for older people throughout Wales.

The Commissioner is taking action to protect older people's rights, end ageism and age discrimination, stop the abuse of older people and enable everyone to age well.

The Commissioner is working for a Wales where older people are valued, rights are upheld, and no-one is left behind.

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