

## Agenda Supplement – Finance Committee

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Meeting Venue:

**Committee Room 2 – Senedd**

Meeting date: 3 February 2016

Meeting time: 09.00

For further information contact:

**Bethan Davies**

Committee Clerk

0300 200 6565

[SeneddFinance@Assembly.Wales](mailto:SeneddFinance@Assembly.Wales)

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

### Consultation Responses: Draft Public Services

### Ombudsman (Wales) Bill

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#### **7 Draft Public Services Ombudsman (Wales) Bill: Consideration of consultation responses**

(10.50 – 11.30)

(Pages 1 – 152)

Attached Documents:

Cover Sheet

DB PSOW 01 Welsh St Donats Community Council

DB PSOW 02 National Clinical Assessment Service (NCAS)

DB PSOW 03 Henllanfallteg Community Council

DB PSOW 04 Care Council for Wales

DB PSOW 05 Local Democracy and Boundary Commission for Wales

DB PSOW 06 Cardiff and Vale University Health Board

DB PSOW 07 Welsh Language Commissioner

DB PSOW 08 Barry Town Council

DB PSOW 09 One Voice Wales

DB PSOW 10 Pembrokeshire Coast National Park Authority and Brecon Beacons National Park Authority

DB PSOW 11 Janet Treharne Oakley

DB PSOW 12 Scottish Public Services Ombudsman

DB PSOW 13 Public Services Ombudsman for Wales

DB PSOW 14 Auditor General for Wales



DB PSOW 15 Vale of Glamorgan Council

DB PSOW 16 Betsi Cadwaladr University Health Board

DB PSOW 17 University of Liverpool

DB PSOW 18 Marshfield Community Council

DB PSOW 19 Older People's Commissioner for Wales

DB PSOW 20 Welsh Independent Healthcare Association

DB PSOW 21 Ceredigion County Council

DB PSOW 22 Caerphilly County Borough Council

DB PSOW 23 City of Cardiff Council

DB PSOW 24 Penarth Town Council

DB PSOW 25 Velindre NHS Trust

DB PSOW 26 Gwynedd Council (English Translation by Assembly Commission)

DB PSOW 26 Gwynedd Council (Only Available in Welsh)

DB PSOW 27 Northern Ireland Ombudsman

DB PSOW 28 Committee for Administrative Justice and Tribunals Wales

DB PSOW 29 Welsh Government

DB PSOW 30 University of Sheffield

DB PSOW 31 Healthcare Inspectorate Wales

DB PSOW 32 Welsh Local Government Association (WLGA)

DB PSOW 33 Independent Sector Complaints Adjudication Service (ISCAS)

## **Y Pwyllgor Cyllid**

**Bil Ombwdsmon Gwasanaethau  
Cyhoeddus (Cymru) drafft**

**Ymatebion i'r Ymgynghoriad  
Ionawr 2016**

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## **Finance Committee**

**Draft Public Services Ombudsman (Wales) Bill**

**Consultation Responses  
January 2016**

\*Ar gael yn Gymraeg / Available in Welsh

DB PSOW 01	Cyngor Cymuned Llanddunwydd	Welsh St Donats Community Council
DB PSOW 02	Gwasanaeth Asesu Clinigol Cenedlaethol (NCAS)	National Clinical Assessment Service (NCAS)
DB PSOW 03	Cyngor Cymuned Henllanfallteg	Henllanfallteg Community Council
DB PSOW 04	Cyngor Gofal Cymru	Care Council for Wales
DB PSOW 05	Comisiwn Ffiniau a Democratiaeth Leol Cymru	Local Democracy and Boundary Commission for Wales
DB PSOW 06	Bwrdd Iechyd Prifysgol Caerdydd a'r Fro	Cardiff and Vale University Health Board
*DB PSOW 07	Comisiynydd y Gymraeg	Welsh Language Commissioner
DB PSOW 08	Cyngor Tref Y Barri	Barry Town Council
DB PSOW 09	Un Llais Cymru	One Voice Wales
DB PSOW 10	Awdurdod Parc Cenedlaethol Arfordir Penfro a Pharc Cenedlaethol Bannau Brycheiniog	Pembrokeshire Coast National Park Authority and Brecon Beacons National Park Authority
DB PSOW 11	Janet Treharne Oakley	Janet Treharne Oakley
DB PSOW 12	Ombwdsmon Gwasanaethau Cyhoeddus yr Alban	Scottish Public Services Ombudsman
DB PSOW 13	Ombwdsmon Gwasanaethau Cyhoeddus Cymru	Public Services Ombudsman for Wales
*DB PSOW 14	Archwilydd Cyffredinol Cymru	Auditor General for Wales
DB PSOW 15	Cyngor Bro Morgannwg	Vale of Glamorgan Council
DB PSOW 16	Bwrdd Iechyd Prifysgol Betsi Cadwaladr	Betsi Cadwaladr University Health Board
DB PSOW 17	Prifysgol Lerpwl	University of Liverpool

DB PSOW 18	Cyngor Cymuned Maerun	Marshfield Community Council
*DB PSOW 19	Comisiynydd Pobl Hŷn Cymru	Older People's Commissioner for Wales
DB PSOW 20	Cymdeithas Gofal Iechyd Annibynnol Cymru	Welsh Independent Healthcare Association
DB PSOW 21	Cyngor Sir Ceredigion	Ceredigion County Council
DB PSOW 22	Cyngor Bwrdeistref Sirol Caerffili	Caerphilly County Borough Council
DB PSOW 23	Cyngor Dinas Caerdydd	City of Cardiff Council
DB PSOW 24	Cyngor Tref Penarth	Penarth Town Council
DB PSOW 25	Ymddiriedolaeth GIG Felindre	Velindre NHS Trust
*DB PSOW 26	Cyngor Gwynedd	Gwynedd Council
DB PSOW 27	Ombwdsmon Gogledd Iwerddon	Northern Ireland Ombudsman
DB PSOW 28	Pwyllgor Cymru'r Cyngor Cyfiawnder Gweinyddol a Thribiwnlysoedd	Committee for Administrative Justice and Tribunals Wales
*DB PSOW 29	Llywodraeth Cymru	Welsh Government
DB PSOW 30	Prifysgol Sheffield	University of Sheffield
DB PSOW 31	Arolygiaeth Gofal Iechyd Cymru	Healthcare Inspectorate Wales
DB PSOW 32	Cymdeithas Llywodraeth Leol Cymru	Welsh Local Government Association
DB PSOW 33	Gwasanaeth Dyfarnu Cwynion y Sector Annibynnol (ISCAS)	Independent Sector Complaints Adjudication Service (ISCAS)

Finance Committee  
Draft Public Services Ombudsman (Wales) Bill  
DB PSOW 01 Welsh St Donats Community Council

It was agreed at our last meeting that these proposals would not affect a Community Council as small as Welsh St Donats.

Victoria Pearce

Clerk

Finance Committee  
Draft Public Services Ombudsman (Wales) Bill  
DB PSOW 02 National Clinical Assessment Service (NCAS)

Dear Sir/Madam

Please find below a response from the National Clinical Assessment Service ( NCAS)

**Consultation on the draft Public Services Ombudsman (Wales) Bill**

NCAS contributes to patient safety by helping to resolve concerns about the professional practice of doctors, dentists and pharmacists. We provide expert advice and support, clinical assessment and training to the NHS in Wales and other healthcare partners.

In general we would welcome the proposals in the draft Bill to improve the effectiveness of the role of the Ombudsman. In particular the proposal to extend powers to investigate on its own initiative, investigate complaints to cover those receiving a combination of public and private treatment and the proposal to extend the definition of “family health service provider in Wales” to include a GP practice rather than an individual GP.

NCAS is aware of the increasing complexity of the patient journey through public and private providers and that in almost all scenarios health care is delivered through a whole team approach. The measures will encourage wider public protection and assist with the resolving of professional practice concerns.

**Dr. Steve Boyle**  
**Senior Adviser /Uwch Ymgynghorydd**

**Tel:** [REDACTED]  
**Mobile:** [REDACTED]  
**Other:** [REDACTED]

Finance Committee  
Draft Public Services Ombudsman (Wales) Bill  
DB PSOW 03 Henllanfallteg Community Council

**Henllanfallteg Community Council**

c/o Bwthyn yr Afon  
Llanfallteg  
Whitland  
Carmarthenshire  
SA34 0UN  
Tel: 01437 563149  
email: henllanfallteg@gmail.com

22 November 2015

Committee Clerk  
Finance Committee  
National Assembly for Wales  
Cardiff Bay,  
CF99 1NA.

Dear Sir

**Re: DRAFT PUBLIC SERVICES OMBUDSMAN (WALES) BILL**

Henllanfallteg Community Council has considered this draft Bill and is supportive of the proposed additional powers for the Public Services Ombudsman.

Yours faithfully

Ella Beattie  
Clerk  
Henllanfallteg Community Council



## **Care Council for Wales response to the consultation on the draft Public Services Ombudsman (Wales) Bill**

### **Consultation questions**

#### **General**

**01. Would the draft Bill improve the effectiveness of the role of the Ombudsman? If so how?**

1.1 Yes.

**02. What, if any, are the potential barriers to implementing the provisions of the draft Bill? Does the draft Bill take sufficient account of them?**

**03. Are there any unintended consequences arising from the draft Bill?**

**04. At what point should the impact of this legislation be evaluated?**

#### **Power to investigate on own initiative**

**05. Do you have any comments on the new power in section 4?**

5.1 We welcome and support the new power enabling the Ombudsman to initiate his own investigations since we believe this will enhance the protection offered by the Ombudsman's office particularly to those more vulnerable members of society who may be more reluctant to initiate a complaint against public services.

**06. Does the inclusion of this power raise any unintended consequences in the rest of the draft Bill?**

**07. With whom should the Ombudsman consult under section 4(2)?**

7.1 We consider that it would be appropriate for the Ombudsman to consult with bodies such as ourselves (in relation to social care workers and managers) when beginning, continuing or discontinuing an investigation. We would suggest, as we did in our response to the inquiry into the consideration of powers of the Public Services Ombudsman for Wales, that if this were to happen, consideration should be made to the establishment of information-sharing protocols which would set out each organisation's responsibilities and which organisation should lead during an investigation, even though we are a listed authority in the draft Bill. There is a good precedent for this as we have an information sharing protocol in place with the Older People's Commissioner for Wales, even though we are a body reviewable under section 3 of the Commissioner for Older People (Wales) Act 2006.

**08. Should the Ombudsman have the power to initiate an investigation based on action that took place prior to the draft Bill/Act receiving Royal Assent (see section 4(4))? If so, should there be a cut-off point, beyond which the Ombudsman should not carry out an own initiative investigation?**

**09. What kind of issues should be included in the criteria for own initiative investigations under section 5?**

**10. What kind of evidence should be available to the Ombudsman to justify an own initiative investigation (see section 5(2))?**

### **Who can complain**

**11. Do you have any comments on the new definition of “member of the public” in section 7(2)?**

11.1 No.

### **Requirements for complaints made and referred to the Ombudsman**

**12. Do you have any comments on the new requirements for complaints made to the Ombudsman in section 8?**

12.1 We welcome and support the ability for complaints to be made orally.

**13. How should the proposed guidance for making a complaint to the Ombudsman be published and what formats should be available?**

13.1 It should be available both electronically and in hard copy. It should be available bilingually and in a variety of different formats to ensure accessibility to all.

### **Matters which may be investigated**

**14. Do you have any comments on the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received by public and private health services providers (see sections 10(1)(d) and 10(2))?**

14.1 We support this new provision as it will achieve greater equality of opportunity for investigation and possible redress for the range of mechanisms by which healthcare may be funded.

**15. Does section 10(2) adequately cover anyone who has received a combination of public and private treatment?**

**16. Does the broadening of the matters which may be investigated in section 10(2) raise any unintended consequences in the rest of the draft Bill?**

**17. Is the definition of “private health services” in section 71 broad enough to cover anyone who has received a combination of public and private treatment?**

**18. Should the Ombudsman have powers to recover costs incurred in investigating private health services?**

**19. Do you have any comments on the new definition of “family health service provider in Wales” in section 71, which is intended to capture, for example, a GP practice as a whole rather than just an individual GP?**

## **Investigation procedure and evidence**

**20. Do you have any comments on the procedure set out in section 16, in so far as it relates to the procedure for conducting an own initiative investigation?**

20.1 No.

**21. Should the Ombudsman's power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations and investigations into private health services (see section 17)?**

## **Listed Authorities**

**22. Do you have any comments on the restrictions on power to amend Schedule 3 (see section 30(2) in particular), which are significantly narrower than the restrictions found in the 2005 Act?**

**23. Are there any other bodies that should be included in the list in Schedule 3 'Listed Authorities'?**

## **Complaints-Handling**

**24. Do you have any comments on sections 33 – 39 (which mirror sections 16A to 16G of the Scottish Public Services Ombudsman Act 2002)?**

24.1 No.

**25. Is section 38(b) adequate to allow listed authorities to comply with their duties under other enactments, such as Freedom of Information duties?**

24.1 Our reply to this question is based upon the possible effect of these sections on the body that the Care Council will become from April 2017 – Social Care Wales.

24.2 This section would be applicable Social Care Wales' two complaints-handling procedures: one in relation to complaints received about social care workers registered with it, and the other in relation to complaints received about the administration of its functions. In relation to the latter, Social Care Wales would be able to comply with the duty under section 33(2) to ensure its complaint-handling procedure complies with the statement of principles concerning complaints-handling procedures published by the Ombudsman and would be able to amend its procedures to ensure it complies with any model complaints-handling procedure issued by the Ombudsman under section 35(2). However, in relation to the complaints procedure regarding social care workers, there may be difficulty in ensuring it complies with the principles and with any model that is issued, as a significant part of the process will be set out in primary legislation – the Regulation and Inspection of Social Care (Wales) Act. Section 38(b) would therefore help in this regard.

#### **Part 4: Investigation of complaints relating to other persons: social care and palliative care**

**26. Should Part 4 remain a standalone Part? Or should such investigations be brought within the Part 3 investigations process?**

**27. If Part 4 should be brought within Part 3, are there any specific elements of Part 4 that should survive? Or can a blanket approach be applied?**

#### **Part 5: Investigations: supplementary**

**28. Do you have any comments on sections 62, 63 and 64, which provide for joint and collaborative working with specified Commissioners and the Auditor General for Wales?**

**29. Should sections 62 and 63 cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales?**

29.1 It would appear sensible to 'future proof' the Bill as far as possible.

**30. Are there any further technical changes required in Part 5 of the draft Bill, to reflect the broadening of matters which may be investigated?**

#### **Appointment etc**

**31. The provisions of paragraphs 5 to 8 of Schedule 1 (disqualification) reflect largely the current provisions in the 2005 Act. Do these provisions require updating?**

**32. Paragraph 7 of Schedule 1 provides that a person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified from a list of roles (listed in paragraph 7(1)) for a period of two years. Is the two year period appropriate?**

**33. Do you have any comments on the matters which are included within "paid office" in paragraph 8 of Schedule 1?**

#### **Financial implications**

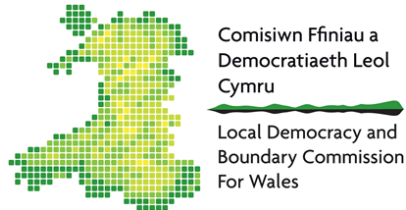
**34. Do you have a view on the financial implications of the new provisions set out in the draft Bill?**

#### **Other comments**

**35. Do you have any other comments you wish to make about the draft Bill or any specific provision within it?**

Finance Committee  
Draft Public Services Ombudsman (Wales) Bill  
DB PSOW 05 Local Democracy and Boundary Commission for Wales

Tŷ Hastings  
Llys Fitzalan  
Caerdydd  
CF24 0BL



Hastings House  
Fitzalan Court  
Cardiff  
CF24 0BL

E-bost:  
cfdl.cymru@cymru.gsi.gov.uk  
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Committee Clerk  
Finance Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

21 December 2015

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The Local Democracy and Boundary Commission for Wales (the Commission) welcomes the opportunity to contribute to the Finance Committee's call for evidence regarding the draft Public Services Ombudsman (Wales) Bill.

The Commission considered the draft Bill at its December 2015 meeting. The Commission decided that there was only one provision that it wished to comment on and that was in respect of the provision to accept oral complaints. We, therefore, reiterate our response of March 2015 to the Finance Committee's inquiry into the consideration of powers of the PSO for Wales.

Whilst the Commission considers it appropriate to expand the category of written evidence to include e-mails and online forms, we are of the view that there are difficulties when it comes to oral evidence. We consider that in order to ensure oral evidence accurately reflects the views of the complainant there needs to be some form of transcription or recording of the conversation. This will require additional resources. A complaint made orally by telephone or face to face may lack structure and accuracy and may lead to a misunderstanding of the nature of the complaint. In order to mitigate against this risk it will always require the additional step of setting the complaint out in writing and going back to the complainant to read this out for them to agree it. We consider that for those wishing to make a complaint, but are not confident in making it in writing, there is assistance available for them in the wider community.

Yours faithfully



Steve Halsall  
Chief Executive

## **Annex A**

### **Consultation questions**

**Please comment on as many of the questions as relevant to you/your organisation, providing an explanation of each answer given:**

#### **General**

##### **01. Would the draft Bill improve the effectiveness of the role of the Ombudsman?**

**If so how?**

There are limitations to the **current Public Services Ombudsman (Wales) Act 2005** Act and it would seem reasonable to amend the act to reflect the changes in Society and to reflect the Putting Things Right regulations

The draft Bill could improve some of the functions of the Ombudsman's office.

##### **02. What, if any, are the potential barriers to implementing the provisions of the draft Bill? Does the draft Bill take sufficient account of them?**

There is minimal reference to the potential impact in organisations of an increased number of cases being reviewed by the Ombudsman's office—there may be potential resource issues within organisations.

##### **03. Are there any unintended consequences arising from the draft Bill?**

See point 2

##### **04. At what point should the impact of this legislation be evaluated?**

There should be an interim evaluation after a year but a more comprehensive evaluation would take place after 2019 and implementation of the three year strategic plan.

#### **Power to investigate on own initiative**

##### **05. Do you have any comments on the new power in section 4?**

There would need to be further explanation of this power- I note that in the republic of Ireland between 2001 and 2010 only 5 such reviews have been undertaken. What would the triggers be for this power? There would need to be careful consideration of the role of other regulatory/ inspectorate bodies such as Health Inspectorate Wales and consideration of sharing of intelligence to ensure that the most appropriate body undertakes a review. In section 4 there is little discussion of the criteria to be applied.

**06. Does the inclusion of this power raise any unintended consequences in the rest of the draft Bill?**

The issue of consent from the complainant or Next of kin needs to be more fully considered.

Service users, e.g. patients, Public, Health Boards and Trusts, Elected representatives and Community Health Councils.

**07. With whom should the Ombudsman consult under section 4(2)?**

As above –each investigation will need to be assessed on a case by case basis

**08. Should the Ombudsman have the power to initiate an investigation based on action that took place prior to the draft Bill/Act receiving Royal Assent (see section 4(4))? If so, should there be a cut-off point, beyond which the Ombudsman should not carry out an own initiative investigation?**

No the power if agreed should be from Royal Assent of the draft bill. It may be useful to apply criteria of within 6 months of completion of the local resolution process.

**09. What kind of issues should be included in the criteria for own initiative investigations under section 5?**

Review of the appropriateness of who should investigate –e.g. is it more appropriate to be reviewed by Health inspectorate Wales or the Information Commissioner.

What is to be investigated and Why

**10. What kind of evidence should be available to the Ombudsman to justify an own initiative investigation (see section 5(2))?**

Thematic analysis or the seriousness of a concern—the potential for harm to be caused if an issue is not investigated and addressed.

It is a matter potentially in the public interest.

**Who can complain?**

**11. Do you have any comments on the new definition of “member of the public” in section 7(2)?**

There should be a reference to consent under this point—the person or the representative must have legal consent to request an investigation.

**Requirements for complaints made and referred to the Ombudsman**  
**12. Do you have any comments on the new requirements for complaints made to the Ombudsman in section 8?**

As point 9 –the timescale should be within 6 months of completion of local resolution except in exceptional circumstances.

Voluntary settlement could also be discussed with the complainant in this section.

**13. How should the proposed guidance for making a complaint to the Ombudsman be published and what formats should be available?**

On the website, leaflets, posters and in other media formats e.g. twitter etc. Local newspapers and CHC information.

**Matters which may be investigated**

**14. Do you have any comments on the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received by public and private health services providers (see sections 10(1) (d) and 10(2))?**



It would not seem unreasonable; however would a private care provider be compelled to act accordance with the advice offered in an expert report. What would the sanctions be for failing to comply with a report and its recommendations?

**15. Does section 10(2) adequately cover anyone who has received a combination of public and private treatment?**

As above to point 14

**16. Does the broadening of the matters which may be investigated in section 10(2) raise any unintended consequences in the rest of the draft Bill?**

The issue regarding payments and the adherence to improvement actions would need to be considered in relation to private health care providers e.g. if a section 16 report was issued will the ombudsman's office take legal action if a private provider fails to comply with the request for publicity or refuses to issue a payment etc.

**17. Is the definition of “private health services” in section 71 broad enough to cover anyone who has received a combination of public and private treatment?**

Yes-however it may be prudent to reference relevant legislation rather than specific acts.

**18. Should the Ombudsman have powers to recover costs incurred in investigating private health services?**

The private health care provider has not requested an investigation and therefore it would not seem reasonable for them to be charged. However there may need to be provision if organisations are consistently failing to undertake their own comprehensive investigations.

**19. Do you have any comments on the new definition of “family health service provider in Wales” in section 71, which is intended to capture, for example, a GP practice as a whole rather than just an individual GP?**

This needs to be more explicit.

## Investigation procedure and evidence

**20. Do you have any comments on the procedure set out in section 16, in so far as it relates to the procedure for conducting an own initiative investigation?**

There should be timescales included regarding the duration of an investigation.

**21. Should the Ombudsman's power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations and investigations into private health services (see section 17)?**

Yes

## Listed Authorities

**22. Do you have any comments on the restrictions on power to amend Schedule 3 (see section 30(2) in particular), which are significantly narrower than the restrictions found in the 2005 Act?**

It seems reasonable.

**23. Are there any other bodies that should be included in the list in Schedule 3**

**'Listed Authorities'?**

Welsh Health Specialised services

Health Inspectorate Wales

## Complaints-Handling

**24. Do you have any comments on sections 33 – 39 (which mirror sections 16A to 16G of the Scottish Public Services Ombudsman Act 2002)?**

The Health Boards in Wales follow the Putting Things Right regulations. They are reviewed by Welsh Risk Pool who adopts a formalised and consistent approach to monitoring compliance with the regulations and

importantly the implementation of lessons learned from Concerns. The model complaints policy is embedded within the legislative framework of the regulations and should continue to be monitored via the Welsh Risk pool.

**25. Is section 38(b) adequate to allow listed authorities to comply with their duties under other enactments, such as Freedom of Information duties?**

This section is adequate and references the expectations of organisations to comply with other acts. It needs to be read in conjunction with sections 33(2) and (3) and 35(2) and a reasoned decision made regarding which act is most relevant to the issues raised.

**Part 4: Investigation of complaints relating to other persons: social care and palliative care**

**26. Should Part 4 remain a standalone Part? Or should such investigations be brought within the Part 3 investigations process?**

They should be brought within the Part 3 investigations process

**27. If Part 4 should be brought within Part 3, are there any specific elements of Part 4 that should survive? Or can a blanket approach be applied?**

A blanket approach should be applied for consistency and equity.

**Part 5: Investigations: supplementary**

**28. Do you have any comments on sections 62, 63 and 64, which provide for joint and collaborative working with specified Commissioners and the Auditor**

The time scales for joint investigations should be clarified and whether a joint report will be issued.

**General for Wales?**

**29. Should sections 62 and 63 cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales?**

Yes

**30. Are there any further technical changes required in Part 5 of the draft Bill, to reflect the broadening of matters which may be investigated?**

**Appointment etc**

**31. The provisions of paragraphs 5 to 8 of Schedule 1 (disqualification) reflect largely the current provisions in the 2005 Act. Do these provisions require updating?**

No they do not require updating.

**32. Paragraph 7 of Schedule 1 provides that a person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified from a list of roles (listed in paragraph 7(1)) for a period of two years. Is the two year period appropriate?**

Yes

**33. Do you have any comments on the matters which are included within “paid office” in paragraph 8 of Schedule 1?**

Should there be a reference to remuneration in relation to appraisal within the 7 year period of office?

**Financial implications**

**34. Do you have a view on the financial implications of the new provisions set out in the draft Bill?**

It would be assumed that increasing the methods by which one is able to raise a concern will increase the number of concerns raised. This would need to be considered from the perspective of other bodies as well the Ombudsman’s office.

The Evans report has been clear in the recommendations that concerns teams need to be resourced. Whilst the Ombudsman’s office would have additional resource these proposed changes will have a domino effect upon these teams.

## Other comments

### **35. Do you have any other comments you wish to make about the draft Bill or any specific provision within it?**

The removal of the statutory bar to allow the Ombudsman to consider a case which has or had the possibility of recourse to a court, tribunal or other mechanism for review? (I.e. this would give complainants the opportunity to decide which route is most appropriate for them.)

There is a fundamental point in this change if the Ombudsman wishes to consider cases that would previously have been pursued via litigation and in essence the Ombudsman is requesting a stay of limitation then all expert reports should be Bolam compatible. This in fact should be implemented and embedded in the revision to the Ombudsman act. Care must be measured on what is reasonable and breaches in the duty of care should be clearly outlined in the report. If breaches are identified the aspect of causation should be considered.

**The Ombudsman being able to refer cases to the Courts for a determination on a point of law** -It would need to be identified as to who funds any legal requests. There should also be consideration of the role of counsel advice to clarify a point of law rather than proceeding directly to the courts.

There is a need to ensure that the experts used are appropriate to provide a view on the reasonableness of care provided. The expert reports need to be presented as reports that the clinicians would present in court because they are based upon the test of reasonableness.

There needs to be a transparent strategy to challenge the recommendation when they are unreasonable.

Finance Committee  
Draft Public Services Ombudsman (Wales) Bill  
DB PSOW 07 Welsh Language Commissioner

Meri Huws  
Comisiynydd y Gymraeg  
Welsh Language Commissioner

01/04



Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

Clerk to the Committee  
Finance Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

06/01/2016

Dear Clerk,

**Consultation on the Draft Public Services Ombudsman (Wales) Bill**

The Welsh Language Commissioner (the Commissioner) welcomes the opportunity to provide written evidence to the Finance Committee as part of its consultation on the Draft Public Services Ombudsman (Wales) Bill.

**Context**

The principal aim of the Commissioner is to promote and facilitate the use of the Welsh language. This entails raising awareness of the official status of the Welsh language in Wales and imposing standards on organizations. This, in turn, will lead to the establishment of rights for Welsh speakers.

Two principles underpin the Commissioner's work:

- In Wales, the Welsh language should be treated no less favourably than the English language;
- Persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so.

In due course, secondary legislation will introduce new powers allowing the setting and imposing of standards on organizations. Until then, the Commissioner will continue to inspect statutory language schemes through the powers inherited under the Welsh Language Act 1993.

Comisiynydd y Gymraeg  
Siambrau'r Farchnad  
5-7 Heol Eglwys Fair  
Caerdydd CF10 1AT

0845 6033 221  
post@comisiynyddygybraeg.org  
Croesewir gohebiaeth yn y Gymraeg a'r Saesneg

comisiynyddygybraeg.org

Welsh Language Commissioner  
Market Chambers  
5-7 St Mary Street  
Cardiff CF10 1AT

0845 6033 221  
post@welshlanguagecommissioner.org  
Correspondence welcomed in Welsh and English

welshlanguagecommissioner.org



Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

The post of Welsh Language Commissioner was created by the Welsh Language (Wales) Measure 2011 (Welsh Language Measure). The Commissioner may investigate failure to implement a language scheme, allegations of interference with individuals' freedom to use Welsh in Wales and, in future, complaints regarding the failure of organizations to meet standards.

One of the Commissioner's priorities is to scrutinize policy developments in terms of the Welsh language. Therefore the Commissioner's main role is to provide comments in accordance with this remit and to act as an independent advocate on behalf of Welsh speakers. This approach is used to avoid any possible compromise of the Commissioner's regulatory functions.

### **The Ombudsman's use of the Welsh Language**

The Commissioner notes that the draft Bill does not place a duty on the Ombudsman to use the Welsh language in Wales, despite the fact that the Welsh language has official status in Wales. Although the Ombudsman is not subject to the Standards based on the Ombudsman's constitutional status, the Ombudsman does have a role in providing services to the public. Rather than reserving it as a matter of discretion, there should be an expectation that a public post holder uses the Welsh language in exercise of their functions.

The Commissioner wishes to see specific reference to the use of Welsh by the Ombudsman in the draft Bill. At present, it is not clear what the Ombudsman's duties are in terms of providing services through the medium of Welsh. The Commissioner would welcome it if the Committee were to place specific duties on the Ombudsman in the draft Bill in relation to the use of Welsh. Another possible way of achieving the same aim would be to make the Ombudsman subject to the standards as in the case of the Auditor General, e.g. one of the requirements of Section 8 of the draft Bill is to provide guidance for persons wishing to make a complaint. If the Bill is approved, it is likely that the Ombudsman will allow complaints made orally in the future. In light of this change, the Bill should ensure a duty to give full consideration to the Welsh language in relation to drawing up this guidance.

The Commissioner is of the view therefore, that it is vital that the draft Bill includes, and is clear with regard to, the Ombudsman's duties in using the Welsh language in the administration and exercise of the Ombudsman's functions.

### **Matters which may be investigated**

Investigating matters relating to the Welsh language fall under the functions of the Welsh Language Commissioner. At present, section 11, and specifically section 11(3), do not make it clear what powers the Ombudsman has in terms of matters relating to the Welsh language. Therefore, there is a risk of misunderstanding and conflict between the functions of the Commissioner and the Ombudsman.



Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

Consideration must also be given to ensuring clarity and understanding for members of the public with regard to any differences between the role of the Ombudsman and Commissioner in dealing with complaints relating to the Welsh language. Regarding this point, one could question the purpose of including a Welsh language remit within the Ombudsman's remit at all.

The Commissioner would also like to draw attention to inconsistencies in the wording of Section 11 (3) of the Bill between the Welsh and English versions. The Welsh version states “..., mae i'w hystyried at ddibenion isadran (1)(a) yn swyddogaeth a gyflawnir...” whilst the English version states “..., it is to be regarded for the purposes of subsection (1)(a) as discharged...” It appears therefore that a word is missing in the English version.

### **Working jointly and collaboratively**

The Welsh Language Measure and the draft Bill allows the Commissioner and the Ombudsman to work collaboratively or jointly if a "matter" or "subject of investigation" is relevant to the functions of both organizations. The Commissioner and the Ombudsman signed a memorandum of understanding in 2013 stating the way in which both organisations would work together to ensure there is no discord in terms of functions.

In relation to the Public Services Ombudsman for Wales, it is useful to note that the Welsh Language Measure states that “*investigation*” (“*ymchwiliad*”)...*includes examination and inquiry, and cognate expressions are to be construed accordingly;*”<sup>1</sup> ,

However, it appears that the wording used to explain the joint working arrangements of the Ombudsman and the Commissioner varies between the draft Bill<sup>2</sup> and the Welsh Language Measure<sup>3</sup>. Also, there is much more detail in section 20 of the Welsh Language Measure relating to joint working between the Ombudsman and the Commissioner. The Commissioner is keen to ensure a clear and consistent context for joint working between the Ombudsman and Commissioner, and therefore would ask you to ensure consistency between the two so that no unintended difficulties arise in terms of working jointly once the draft Bill is passed.

The Commissioner does not foresee any problem with the new definition of "member of the public". Although the definition in the context of complaints varies slightly to that set out in the Measure, it appears that both definitions are broad enough not to cause any difficulties were the Ombudsman and Commissioner to decide to work jointly together.

### **Other comments**

<sup>1</sup> Section 21 Welsh Language (Wales) Measure 2011

<sup>2</sup> Section 62, 63 and 64, Draft Public Services Ombudsman (Wales) Bill

<sup>3</sup> Section 20-22 Welsh Language (Wales) Measure 2011



Finance Committee  
Draft Public Services Ombudsman (Wales) Bill  
DB PSOW 07 Welsh Language Commissioner

04/04



Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

Section 4 of the Welsh Language Measure lists the Commissioner's general powers including the power to carry out an investigation. The Commissioner may investigate in one of two ways: by conducting an inquiry<sup>4</sup> or by conducting an investigation.

The Commissioner has a number of documents e.g. an Enforcement Policy and criteria for conducting investigations and inquiries that may be useful to the Ombudsman. The Committee may find a number of these documents and procedures on the Commissioner's website.<sup>5</sup> Furthermore, the Commissioner would be prepared and willing to share experiences with the Ombudsman in relation to conducting investigations and inquiries.

Thank you for the opportunity to provide comments on the Committee's consultation on the draft Bill. I would also like to note that I am prepared to give oral evidence to the Committee if it so wishes.

Yours faithfully,

**Meri Huws**

**Welsh Language Commissioner**

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<sup>4</sup> Section 7 Welsh Language (Wales) Measure 2011

<sup>5</sup> <http://www.comisiynyddygybraeg.cymru/english/Pages/Home.aspx>

**Draft Public Services Ombudsman (Wales) Bill**

Barry Town Council have consulted with One Voice Wales on this consultation and would concur with their responses. However, Barry Town Council would also make the following comments:-

General

Question 4 – The impact of this legislation should, in the opinion of Barry Town Council, be evaluated after 1 year.

Question 5 – Barry Town Council are happy for the Ombudsman to have more powers

Question 9 – Barry Town Council believe that as this is such an important issue a separate draft on the criteria should be prepared for comment.

Question 10 – Barry Town Council agree that the Ombudsman should have powers to investigate but it is difficult to state the criteria for this. Also Barry Town Council believe that if a case is withdrawn the Ombudsman should have the power to continue with the investigation if they believe it is warranted.

Question 11 – Barry Town Council believe that every member of the public should be able to make a complaint to the Ombudsman.

Question 14 – Barry Town Council consider that this should be integrated in the future and therefore would agree with this new provision.

Question 18 – Yes the Ombudsman should have the power to recover costs incurred when investigating private health services, as they felt as they are in the business of charging and making money why should it fall to the public purse to pay for their mistakes.

8 January 2016

Finance Committee  
Draft Public Services Ombudsman (Wales) Bill  
DB PSOW 09 One Voice Wales  
Draft Public Services Ombudsman (Wales) Bill

General

**01.** Would the draft Bill improve the effectiveness of the role of the Ombudsman?  
If so how?

One Voice Wales does not wish to make any specific comment in relation to this question, but it is felt that the Bill will present more positive than negative outcomes in relation to the way in which the Public Services Ombudsman's role is defined.

**02.** What, if any, are the potential barriers to implementing the provisions of the draft Bill? Does the draft Bill take sufficient account of them?

One Voice Wales does not wish to make any specific comment in relation to this question.

**03.** Are there any unintended consequences arising from the draft Bill?

One Voice Wales does not wish to make any specific comment in relation to this question.

**04.** At what point should the impact of this legislation be evaluated?

One Voice Wales does not wish to make any specific comment in relation to this question.

Power to investigate on own initiative

**05.** Do you have any comments on the new power in section 4?

One Voice Wales does not wish to make any specific comment in relation to this question, but it is considered that this inclusion is a valid addition to the powers held by the Public Services Ombudsman.

**06.** Does the inclusion of this power raise any unintended consequences in the rest of the draft Bill?

One Voice Wales does not wish to make any specific comment in relation to this question.

**07.** With whom should the Ombudsman consult under section 4(2)?

One Voice Wales does not wish to make any specific comment in relation to this question.

**08.** Should the Ombudsman have the power to initiate an investigation based on action that took place prior to the draft Bill/Act receiving Royal Assent (see section 4(4))? If so, should there be a cut-off point, beyond which the Ombudsman should not carry out an own initiative investigation?

One Voice Wales does not wish to make any specific comment in relation to this question.

**09.** What kind of issues should be included in the criteria for own initiative investigations under section 5?

One Voice Wales does not wish to make any specific comment in relation to this question.

**10.** What kind of evidence should be available to the Ombudsman to justify an own initiative investigation (see section 5(2))?

One Voice Wales does not wish to make any specific comment in relation to this question.

Who can complain

**11.** Do you have any comments on the new definition of “member of the public” in section 7(2)?

One Voice Wales does not wish to make any specific comment in relation to this question.

Requirements for complaints made and referred to the Ombudsman

**12.** Do you have any comments on the new requirements for complaints made to the Ombudsman in section 8?

One Voice Wales does not wish to make any specific comment in relation to this question.

**13.** How should the proposed guidance for making a complaint to the Ombudsman be published and what formats should be available?

One Voice Wales does not wish to make any specific comment in relation to this question, but it is assumed that a wide and flexible variety of channels of publication will be used.

Matters which may be investigated

**14.** Do you have any comments on the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received by public and private health services providers (see sections 10(1)(d) and 10(2))?

One Voice Wales does not wish to make any specific comment in relation to this question.

**15.** Does section 10(2) adequately cover anyone who has received a combination of public and private treatment?

One Voice Wales does not wish to make any specific comment in relation to this question.

**16.** Does the broadening of the matters which may be investigated in section 10(2) raise any unintended consequences in the rest of the draft Bill?

One Voice Wales does not wish to make any specific comment in relation to this question.

**17.** Is the definition of “private health services” in section 71 broad enough to cover anyone who has received a combination of public and private treatment?

One Voice Wales does not wish to make any specific comment in relation to this question.

**18.** Should the Ombudsman have powers to recover costs incurred in investigating private health services?

One Voice Wales does not wish to make any specific comment in relation to this question.

**19.** Do you have any comments on the new definition of “family health service provider in Wales” in section 71, which is intended to capture, for example, a GP practice as a whole rather than just an individual GP?

One Voice Wales does not wish to make any specific comment in relation to this question.

Investigation procedure and evidence

**20.** Do you have any comments on the procedure set out in section 16, in so far as it relates to the procedure for conducting an own initiative investigation?

One Voice Wales does not wish to make any specific comment in relation to this question.

**21.** Should the Ombudsman’s power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations and investigations into private health services (see section 17)?

One Voice Wales does not wish to make any specific comment in relation to this question.

## Listed Authorities

**22.** Do you have any comments on the restrictions on power to amend Schedule 3 (see section 30(2) in particular), which are significantly narrower than the restrictions found in the 2005 Act?

One Voice Wales does not wish to make any specific comment in relation to this question, although it should be made clear that local authorities refer to both unitary and local (community and town) councils.

**23.** Are there any other bodies that should be included in the list in Schedule 3 'Listed Authorities'?

One Voice Wales does not wish to make any specific comment in relation to this question.

## Complaints-Handling

**24.** Do you have any comments on sections 33 – 39 (which mirror sections 16A to 16G of the Scottish Public Services Ombudsman Act 2002)?

One Voice Wales does not wish to make any specific comment in relation to this question.

**25.** Is section 38(b) adequate to allow listed authorities to comply with their duties under other enactments, such as Freedom of Information duties?

One Voice Wales does not wish to make any specific comment in relation to this question.

## Part 4: Investigation of complaints relating to other persons: social care and palliative care

**26.** Should Part 4 remain a standalone Part? Or should such investigations be brought within the Part 3 investigations process?

One Voice Wales does not wish to make any specific comment in relation to this question.

**27.** If Part 4 should be brought within Part 3, are there any specific elements of Part 4 that should survive? Or can a blanket approach be applied?

One Voice Wales does not wish to make any specific comment in relation to this question.

## Part 5: Investigations: supplementary

**28.** Do you have any comments on sections 62, 63 and 64, which provide for joint and collaborative working with specified Commissioners and the Auditor General for Wales?

One Voice Wales does not wish to make any specific comment in relation to this question.

**29.** Should sections 62 and 63 cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales?

One Voice Wales does not wish to make any specific comment in relation to this question.

**30.** Are there any further technical changes required in Part 5 of the draft Bill, to reflect the broadening of matters which may be investigated?

One Voice Wales does not wish to make any specific comment in relation to this question.

Appointment etc

**31.** The provisions of paragraphs 5 to 8 of Schedule 1 (disqualification) reflect largely the current provisions in the 2005 Act. Do these provisions require updating?

One Voice Wales does not wish to make any specific comment in relation to this question.

**32.** Paragraph 7 of Schedule 1 provides that a person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified from a list of roles (listed in paragraph 7(1)) for a period of two years. Is the two year period appropriate?

One Voice Wales does not wish to make any specific comment in relation to this question.

**33.** Do you have any comments on the matters which are included within "paid office" in paragraph 8 of Schedule 1?

One Voice Wales does not wish to make any specific comment in relation to this question.

Financial implications

**34.** Do you have a view on the financial implications of the new provisions set out in the draft Bill?

One Voice Wales does not wish to make any specific comment in relation to this question.

Other comments

**35.** Do you have any other comments you wish to make about the draft Bill or any specific provision within it?

One Voice Wales is recognised by the Welsh Government as the national representative body for community and town councils in Wales. It represents the sector on the Local Government Partnership Council and over three-quarters of the 735 community and town councils are already in membership, with numbers growing year on year. As well as our representative role, we also provide support and advice to councils on an individual basis and have previously launched, with Welsh Government support, a modular training programme for councillors, which continues to deliver effectively. We believe strongly that community councils are well-placed to develop the economic, social and environmental well-being of the areas they serve and, as such, are active and proactive in debating key issues such as energy policies, environmental issues and strategic planning. Our sector will continue to support and wish to increase its participation in the drive to sustain and enhance the various strands of community life across Wales, and as such will wish to co-operate and engage with all aspects of the work relating to the Public Services Ombudsman for Wales, as appropriate. A number of our members have expressed their concerns in relation to the limited resources that might be available to deal with community and town council issues in respect of this bill, so therefore some reassurance in this regard would be appreciated.



Finance Committee

Draft Public Services Ombudsman (Wales) Bill

DB PSOW 10 Pembrokeshire Coast National Park Authority and Brecon

Beacons National Park Authority

## Annex A

### Consultation questions

Please comment on as many of the questions as relevant to you/your organisation, providing an explanation of each answer given:

#### General

**01.** Would the draft Bill improve the effectiveness of the role of the Ombudsman?

If so how?

Response: *The previous PSOW highlighted the need for “own initiative” investigations. The proposed powers would facilitate this. On balance the case has been made out in the Committee Report for “own initiative” investigations.*

**02.** What, if any, are the potential barriers to implementing the provisions of the draft Bill? Does the draft Bill take sufficient account of them?

Response: *the need for clarity between the jurisdictions of the PSOW and other regulatory and investigatory bodies e.g. Wales Audit Office. The bill also does not recognise the obligations that will be placed on public service bodies that are, already, under a period of unprecedented financial restraints.*

**03.** Are there any unintended consequences arising from the draft Bill?

Response: *There is a real risk of duplication. Also there is an accountability issue that does not seem to be clearly delineated following “own initiative” investigations. Under section 4 “own initiative” investigations, there is no reference to when such a power may be exercised. As planning authorities we are frequently faced with challenges that the process of determining a planning application gives rise to maladministration and this could trigger an “own initiative “ investigation i.e. an officer’s report and recommendations are criticised to the extent that an “own investigation “ commences before the formal determination of the planning application while section 12 refers to the traditional exclusions which normally preclude such a step being taken .This should be referred to in section 4 for greater clarity..*

**04.** At what point should the impact of this legislation be evaluated?

Response: it is suggested that the period two years is appropriate

Power to investigate on own initiative

**05.** Do you have any comments on the new power in section 4?

Response:

*The boundaries of the powers need to be documented and delineated more clearly. There must be a time limit on the publication of criteria in clause 5 (3). I suggest that a period of one month is sufficient.*

**06.** Does the inclusion of this power raise any unintended consequences in the rest of the draft Bill?

Response:

*It raises the possibility of conflict with other regulatory and investigatory bodies with similar powers. No mention is made of potential conflict with criminal allegations of malfeasance /misconduct in public office cases,, which would be a matter for the Crown Prosecution Service and the police to investigate.*

**07.** With whom should the Ombudsman consult under section 4(2)?

Response:

*Any party whom he believes may have suffered, any relevant regulatory or investigatory body. He should publish a note for guidance on those parties who he/she considers as likely to be involved in such consultations.*

**08.** Should the Ombudsman have the power to initiate an investigation based on action that took place prior to the draft Bill/Act receiving Royal Assent (see section 4(4))? If so, should there be a cut-off point, beyond which the Ombudsman should not carry out an own initiative investigation?

Response:

*No-the Act should not be retrospective No exceptional reason has been given to vary the general rule that legislation is not retrospective in effect. If the case is to be made out for retrospective powers this must be specifically argued in greater detail*

**09.** What kind of issues should be included in the criteria for own initiative investigations under section 5?

Response:

*Areas of likely or potential injury to individuals or organisations; matters of widespread local or national interest; potential precedents and cases of a clear wider interest to other regulatory bodies and when it is apparent that there are clear opportunities for policy management and enforcement actions to be undertaken in key areas of perceived public maladministration. Another area could well be the failure to deliver key public services on a case-by-case basis and breaches of the Principles of Good Public Administration and the local authorities Members Code of Conduct..*

**10.** What kind of evidence should be available to the Ombudsman to justify an own initiative investigation (see section 5(2))?

Response: *Personal statements, corroborated where possible, evidence from video conferences, local authority and other public bodies' electronic and paper records. These should be subject of a basic threshold test as to demonstrate a prima facie case does actually exist.*

## Who can complain

11. Do you have any comments on the new definition of “member of the public” in section 7(2)?

Response:

*No-it is essential that the employees of listed authorities and public bodies are not deterred from making complaints provided they do so in their personal capacity. The integrity of the “Whistle Blowing” policies must not be prejudiced.*

## Requirements for complaints made and referred to the Ombudsman

12. Do you have any comments on the new requirements for complaints made to the Ombudsman in section 8?

Response:

*No-there needs to be consistency and time limit i.e. a limitation period. On balance the period suggested appears to be appropriate and proportionate in all the circumstances that there should be a proviso /caveat aimed at providing for an extension of time where exceptional cases create exceptional circumstances. This should overcome the usual problems associated with the rigid limitation policy which can create unintended hardship. One clearly defined waiver of the time limitation policy should be in cases of fraud, dishonesty or where physical and mental injury has occurred to the complainant*

**13.** How should the proposed guidance for making a complaint to the Ombudsman be published and what formats should be available?

Response:

*E lectronically and on paper . It can be deposited in every CAB office, public library, and other advice centres in Wales.*

Matters which may be investigated

**14.** Do you have any comments on the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received by public and private health services providers (see sections 10(1)(d) and 10(2))?

Response:

No

**15.** Does section 10(2) adequately cover anyone who has received a combination of public and private treatment?

Response:

*As the responses from two of the National Parks of of Wales which do not provide the services, it is not appropriate for any further comment from these organisations*

**16.** Does the broadening of the matters which may be investigated in section 10(2) raise any unintended consequences in the rest of the draft Bill?

Response:

*It may lead to potential difficulties with any police or regulatory investigations taking place where it appears that criminal offences may have been committed. In particular in those cases, potential defendants have a right to silence and to protection from self-incrimination. These can severely inhibit a Police and CPS investigation and constrain it. These concerns really relate to the detail of how an investigation is conducted and may well be capable of being resolved by appropriate protocols being drafted, consulted upon, and published.*

**17.** Is the definition of “private health services” in section 71 broad enough to cover anyone who has received a combination of public and private treatment?

Response:

*Yes.*

**18.** Should the Ombudsman have powers to recover costs incurred in investigating private health services?

Response:

*Yes, but who will judge what is the appropriate level of costs and what will happen if the body or person investigated refuses to pay? As this could involve a significant financial penalty, this function needs to be the subject of clear guidance. I believe that much more thought needs to be given to the precise mechanics of how cost recovery will work. An alternative model would be to insert a power that where there is a dispute over both liability to pay and the amount to be paid, the PSOW has power to refer this to a Costs Judge to determine and to make any debt and any declaration so made by him shall as a judgement and thus capable of being enforced as such, by any of the methods in force by the courts .So in this way the PSOW is appearing not to be judge, jury and executioner’.*

**19.** Do you have any comments on the new definition of “family health service provider in Wales” in section 71, which is intended to capture, for example, a GP practice as a whole rather than just an individual GP?

Response:

*No*

Investigation procedure and evidence

**20.** Do you have any comments on the procedure set out in section 16, in so far as it relates to the procedure for conducting an own initiative investigation?

Response:



*There is no time limit referred to in section 16 (4). It is essential that the limits are published. Again section 16 (2)) gives no time for the linkage. I suggest one calendar month. Also, the compensation for loss and expenses in section 16 (10) is to be welcomed but is far too vague in the present draft should be a maximum limit and suggested table guidelines published the current wording is “weak”. It should also not reward the overzealous and/or inefficient complainant.*

**21.** Should the Ombudsman’s power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations and investigations into private health services (see section 17)?

Response:

*Yes*

Listed Authorities

**22.** Do you have any comments on the restrictions on power to amend Schedule 3 (see section 30(2) in particular), which are significantly narrower than the restrictions found in the 2005 Act?

Response:

*No, it seems proportionate in all the circumstances*

**23.** Are there any other bodies that should be included in the list in Schedule 3

‘Listed Authorities’?

Response:

*Any statutory Harbour authorities or port authorities that are ,in effect in public control.*

*They have a significant effect on the marine environment. I also notice*

*ere is not an express reference to the Wales Audit Office.*

### Complaints-Handling

**24.** Do you have any comments on sections 33 – 39 (which mirror sections 16A to 16G of the Scottish Public Services Ombudsman Act 2002)?

Response:

*No*

**25.** Is section 38(b) adequate to allow listed authorities to comply with their duties under other enactments, such as Freedom of Information duties?

Response:

*Yes-it has the qualities of brevity and clarity*

Part 4: Investigation of complaints relating to other persons: social care and palliative care

26. Should Part 4 remain a standalone Part? Or should such investigations be brought within the Part 3 investigations process?

Response:

*It should remain a stand-alone part due to its specific subject matter*

27. If Part 4 should be brought within Part 3, are there any specific elements of Part 4 that should survive? Or can a blanket approach be applied?

Response:

*Part 4 should survive as a stand-alone Part of the Act*

Part 5: Investigations: supplementary

28. Do you have any comments on sections 62, 63 and 64, which provide for joint and collaborative working with specified Commissioners and the Auditor

General for Wales?

Response:

*There needs to be clear, published protocols in existence that set out in detail how such collaborations with other bodies are to be conducted. There is no fixed view as to whether it should be left to a private ad hoc arrangement, or will be done on a case-by-case basis. Care has to be taken to ensure that this does not lead to inconsistencies and prejudice anybody or*

*person under investigation as they have a right to know the rules as to how such investigations be conducted, before such an investigation commences in order to defend themselves fairly.*

**29.** Should sections 62 and 63 cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales?

Response:

*Yes*

**30.** Are there any further technical changes required in Part 5 of the draft Bill, to reflect the broadening of matters which may be investigated?

Response:

*Not apparent*

Appointment etc

**31.** The provisions of paragraphs 5 to 8 of Schedule 1 (disqualification) reflect largely the current provisions in the 2005 Act. Do these provisions require updating?

Response:

*No*

**32.** Paragraph 7 of Schedule 1 provides that a person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified from a list of roles (listed in paragraph 7(1)) for a period of two years. Is the two year period appropriate?

Response:

Yes-it should be longer. I suggest four years

**33.** Do you have any comments on the matters which are included within “paid office” in paragraph 8 of Schedule 1?

Response

:No

Financial implications

**34.** Do you have a view on the financial implications of the new provisions set out in the draft Bill?

Response:

*The cost of having adequate resources to properly investigate matters within the new wider jurisdiction is not apparent*

## Other comments

35. Do you have any other comments you wish to make about the draft Bill or any specific provision within it?

Response:

*Whilst there are good legal reasons why a reference to Schedule 4 of the 2005 “Conduct of local Government Members and Employees” Is omitted, a general explanation given for the wider audience to be reached by the consultation process would have helped. It would be very easy for a lay person as opposed to a trained lawyer to assume that they are, in fact, excluded when they are actually not.*

Finance Committee

Draft Public Services Ombudsman (Wales) Bill

DB PSOW 11 Janet Treharne Oakley

Public Services Ombudsman for Wales – extended powers of investigation.

Evidence

To cut a long story short, I've struggled along in the Ombudsman complaints system for six years – with two Ombudsmen – Wales and the Parliamentary Health & Services Ombudsman, after my father's sad death.

In this time I've had two complaints upheld, as well as a supplementary court case. So I feel qualified to give evidence as a user of the service.

I have recently given evidence to PACAC (both by invitation to attend Parliament and written online).

The Committee might be interested in the comparative statistics of some UK Ombudsmen, including Wales in the written submission.

The last section states what happened after the Welsh Ombudsman had upheld my complaint – How effective in practice, its Decision was in the long run.

This is a link to my written evidence, printed to PACAC on January 12, 2016.

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidence/document/public-administration-and-constitutional-affairs-committee/phso-annual-review/written/25501.html>

The committee will be pleased to know that I found the Welsh Ombudsman to be generally superior in its communications with the public to the PHSO and I feel that this accounts to a lower rate of service complaints – even though the Welsh Ombudsman upholds fewer cases than other Ombudsmen.

I'm therefore not just disgruntled by Wales' contribution to this prolonged complaint and I have nothing to gain by being opposed to extra wide-ranging investigations.

The committee will know that the Cabinet Office has just turned down the same plea for extended investigations from the PHSO.

Loth has I am to agree with the Cabinet Office, it's right.

The reasoning is that they are basically a waste of time and money.

The PHSO has carried out three investigations.

1 Sepsis – too many people are dying of it.

2 The NHS complaints system – it's not very good.

3 The elderly – find it difficult to complain.

1. The PHSO cannot state that the sepsis death stats have reduced due to the pronouncements. Apparently they haven't.

2. Neither will it be able to state that the NHS complaints system has suddenly improved after its report.

3. ...Or elderly patients somehow been freed from the worry about complaining.

There is no measurable outcome with any of these reports – other than the PHSO gleaning extra press coverage column inches and a few Nanny-sounding sound bites.

Therefore my argument is that any ombudsman should put its own complaint system in order first, rather than wasting public money by making obvious statements such as ...'Care for the elderly should be better' ....to no appreciable effect.

There is now a whole 'reports industry', paid for by the public, saying exactly the same things.

With the same conclusions, interlaced with the same rent-a-phrase homilies.



It doesn't need to be duplicated. It doesn't even need to be shored up.

The second reason is that nobody listens to the Ombudsman any more.

There is no shame in being criticised by one.

No one – shown to be negligent – resigns after a critical Ombudsman decision.

And, from my perspective – and others, nothing much seems to be done.

So, sadly, it appears that the Ombudsman has no real impact.... or even much respect any more.

Extended investigations will cost money and time that should be invested in individual complaints.

That is the prime concern of the ombudsman.

These complaints are from people who are badly affected by NHS deaths and injustices.

And how will the Ombudsman explain to bereaved complaints that they will have to wait even longer (my complaint took around a year) as staff have been diverted from their cases ....to make reports on 'wide ranging' investigations?

And how will AM's explain to their constituents that their specific cases are just not as important as the production of amorphous reports?

When investigations are carried out in other Ombudsman in countries round the world they are normally done by teams of lawyers.

Wales doesn't have this structure.

No doubt about it – External investigations are a nice thing to do ...but to be even slightly effective they need to be undertaken by specialists.

So how will the Assembly measure the effectiveness of how the taxpayers money spent?

Because the effectiveness of the work will be also unaccountable to the public, via a solid statistical outcome.

In an economic downturn, after having spent the public pound, it's just not enough that:

'Tut- it's not good enough'

has been said.

Conclusion:

The Welsh Ombudsman needs to concentrate on it's bread-and -butter business before diverting money from it and adding to the pile of reports which already comprise the professional grumblers public reports output.

....Unless the Assembly is prepared to substantially increase its budget.

Is it willing to do so?

Janet Treharne Oakley

Raglan

Finance Committee

Draft Public Services Ombudsman (Wales) Bill

DB PSOW 12 Scottish Public Services Ombudsman

## **Scottish Public Services Ombudsman (SPSO) on the Draft Public Services Ombudsman (Wales) Bill**

### **About the SPSO**

1. The Scottish Public Services Ombudsman (SPSO) is the independent body that investigates complaints from members of the public about devolved public services in Scotland. Under our statutory duties to lead the development and implementation of standardised complaints handling procedures and promote best practice we can also, in the absence of any other statutory provision, set standards for the way these organisations handle complaints.

### **The Draft Public Services Ombudsman (Wales) Bill**

2. We welcome the Bill and the approach it takes to the modernisation of complaints handling in Wales. In this response to the consultation we have not answered all of the questions asked by the Committee but have concentrated on areas where we consider our experience in Scotland may provide a helpful perspective.

### **Complaints Standards sections**

3. In 2010, section 119 of the Public Services Reform (Scotland) Act 2010 introduced a small number of new sections to my legislation. These are replicated in their entirety in the proposed legislation.

4. These sections led directly to the setting up of the Complaints Standards Authority<sup>1</sup>. In 2011, the Scottish Parliament approved a set of complaints handling principles, making it clear that this work had public and significant endorsement. Since then, standard models of complaint handling have been put in place across the majority of the public sector. Thousands of public sector staff have been trained to respond better to complaints. And, for the first time, we are beginning to see regular, reliable and comparable data on complaints being published.

5. The Committee has specifically asked for comments on section 38 (b). Our experience of the equivalent Scottish provision is that it has not been problematic. There have been some issues with organisations who have had to operate more than one complaints procedure because of other legislative requirements and would have preferred to have one<sup>2</sup>. However, nothing has prevented them from fulfilling these duties and they have done so. To date, we are not aware of any problems meeting other duties, in particular non-complaint handling duties, such as those under Freedom of Information legislation.

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<sup>1</sup> More details about this role can be found at [www.valuingcomplaints.org.uk](http://www.valuingcomplaints.org.uk)

<sup>2</sup> For example, there are specific complaints procedures for individual areas of service such as social work which are subject to a separate legislative scheme. Over time we are finding this is being resolved by moves to change those other legislative schemes to our standard model.

6. It is worth noting that this part of the role of the SPSO has never been heavily resourced. At present, we have 1 ½ members of staff and in the early days when more resource was needed it was no more than 3. This small team, working collaboratively with many others across the public services in Scotland have arguably had greater impact on the day to day relationship between the public and public services than any other initiative undertaken by this office. It should though be noted that the resource levels is reflected in the fact that we have taken a phased approach to implementation and could only target sectors when we had the resources to do so. Also it is important to note that our approach to the monitoring role has always been “light-touch” and we have worked with the relevant regulators to include complaints monitoring as part of their regular audit. We also rely on organisations to self-assess. If it is envisaged that the Welsh Ombudsman would undertake a stronger monitoring role or move to implement the new procedures more quickly, that would require additional resource.

### **Disqualification provisions**

7. The Committee has also asked whether the disqualification provisions should be reviewed. The provisions in our own legislation and those of all the Scottish Parliamentary Supported organisations were reviewed by a Committee of the Scottish Parliament in 2009. This led to changes to similar provisions in our legislation and, notably, the restriction on future employment was reduced to one year and the Parliament given the ability to exercise discretion to reduce this further in particular circumstances. The debate about this is set out in the report<sup>3</sup>. The reasons given for the change were the significant impact the restrictions could have on individuals who held the post of Ombudsman in terms of future employment and the need to balance that against perceived or actual conflicts of interest.

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<sup>3</sup> Available in full here: <http://archive.scottish.parliament.uk/s3/committees/rssb/reports-09/rssb09-01.htm>.

**Response of the Public Services Ombudsman for Wales  
to the Assembly Finance Committee's consultation on the  
Draft Public Services Ombudsman (Wales) Bill**

1. As Public Services Ombudsman for Wales, I have two roles. The first is to 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. The second is to consider complaints alleging that members of local authorities have broken their Code of Conduct. The legislation to which I currently operate is the Public Services Ombudsman (Wales) Act 2005 and the Local Government Act 2000, Part III, and relevant Orders made by the Assembly under that Act.
2. The content of the proposed new Draft Public Services Ombudsman (Wales) Bill is therefore, of course, of key importance for the future work of the Ombudsman's office. It is against this background that I am responding to the Assembly Finance Committee's consultation. [Note: whilst I am responding to the majority of questions, there are some I have not addressed where I have no particular comment to offer.]

## **General**

**Questions 1 to 4:** I would confirm that in general terms I very much welcome the proposals within the draft Bill. It is my view that they will enhance the effectiveness of the role of the Ombudsman. This is particularly so looking to the future and the picture of an ageing society, whether there will be the likelihood of greater levels of physical and emotional vulnerability amongst the population in Wales than is currently the case. The draft Bill is one that is citizen centred, will provide greater social justice and allow further scope for the Ombudsman to contribute to public service improvement through strengthening powers in relation to complaint handling standards among bodies within jurisdiction.

There are, however, some areas where I would suggest some amendments and I address these at various points in my response to other questions posed by the Committee in this consultation.

## **Powers to investigate own initiative**

### **Question 5: Do you have any comments on the new power in section 4?**

I strongly welcome the proposals to give the Ombudsman own initiative powers of investigation.

However, I would like to propose some amendments in respect of some of the own initiative investigation provisions. These revolve around the fact that there are various types of own initiative investigations that could be undertaken. I will address these in detail in my responses to the questions that follow this one. But for ease of reference, I restate here the various scenarios I outlined at a previous Assembly Finance Committee evidence session:

- (a) Extend the investigation of a complaint where during the course of an investigation issues have come to light where it is desirable, to extend the investigation to look into the actions of another body within jurisdiction. For example, an investigation into a health board may bring to light questions about the actions of a General Practitioner. It is currently unwieldy to have to ask a complainant then to make another complaint about the GP.
- (b) An issue may be brought to light where systemic failings have been identified whereby the Ombudsman may have concerns that those same systemic failing may exist in other bodies within that sector of the public service. Currently, the Ombudsman has to rely on publication of his recommendations under Section 16 of the PSOW Act and the 'voluntary self-examination' by public bodies as regards ensuring that the same system failings do not exist in their own authority. This new power would enable the Ombudsman to proactively look to see if this is the case or not.
- (c) The Ombudsman receives an anonymous complaint, providing evidence of likely maladministration/service failure on behalf of an authority. Under this new power the Ombudsman would be able to pursue the complaint, where at present he currently cannot.
- (d) The Ombudsman may be made aware of concerns about service delivery across the whole, or part, of a sector of the public service in Wales, but is not receiving direct complaints on this. The reason behind this could be because the recipients of the service were vulnerable people, who may be wary of making a complaint due to being worried about possible repercussions for them of doing so as regards the service provider. There would need to be a sound basis and rationale set out for undertaking any wide ranging own initiative investigation of this type. Reputational risk is a fundamental factor in the mind of any ombudsman; no ombudsman would want to put that reputation at risk by pursuing such a high profile investigation without some form of evidence that there were matters of concern that needed investigating.

**Question 6. Does the inclusion of this power raise any unintended consequences in the rest of the draft Bill?**

I cannot see that there are any unintended consequences arising from the power, in relation to any other of the elements of the draft Bill.

**Question 7. With whom should the Ombudsman consult under section 4(2)?**

I believe that it would be unhelpful for the legislation to be prescriptive as regards with whom the Ombudsman should consult. I believe there should be a general provision requiring the Ombudsman to give consideration as to whether there is a need consult anyone (and be able to demonstrate that they have done so), but then have discretion to decide with whom that should be (if anyone).

I would suggest that it would be inappropriate for the Ombudsman to consult in a scenario such as in scenario (c) at Question 5 above. I would envisage an anonymous complaint being conducted in the same way as a complaint made by an identified person as currently under the PSOW Act 2005. For example, I do not consider it appropriate for an Ombudsman to have to consult with the Auditor General for Wales if they intended to conduct an investigation into an anonymous complaint received about the nature of care being provided to an individual at a day care centre.

**Question 8. Should the Ombudsman have the power to initiate an investigation based on action that took place prior to the draft Bill/Act receiving Royal Assent (see section 4(4))? If so, should there be a cut-off point, beyond which the Ombudsman should not carry out an own initiative investigation?**

As currently drafted, the above provision would mean that it would be unlikely that the Ombudsman could instigate an investigation in a number of scenarios for some time after the proposed legislation received Royal Assent. In particular in relation to scenario (d) at question 5 above, the office would need a period of time to review office casework to identify if there were areas of concern. I would suggest that a better time frame would be to enable the Ombudsman to initiate an investigation based on action/lack of action that occurred two years prior to the date of Royal Assent. Such a time restriction would serve to ensure that any concerns about service delivery which are apparent from complaints to my office when the Act receives Royal Assent can be investigated whilst also recognising that the investigating of historical matters can be problematic for those who are the subject of an investigation.

**Questions 9 and 10: What kind of issues should be included in the criteria for own initiative investigations under section 5? What kind of evidence should be available to the Ombudsman to justify an own initiative investigation (see section 5(2))?**

I confirm that I am of the view that the way section 5 is currently drafted is appropriate.

## **Requirements for complaints made and referred to the Ombudsman**

**Question 13. How should the proposed guidance for making a complaint to the Ombudsman be published and what formats should be available?**

In relation to the proposed guidance, I confirm that I believe that the provisions as drafted are suitable.

## **Matters which may be investigated**

**Question 14. Do you have any comments on the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received by public and private health services providers (see sections 10(1)(d) and 10(2))?**

In relation to the provision in relation to private health service providers, I confirm that I believe that this is suitable as currently drafted.

**Question 15. Does section 10(2) adequately cover anyone who has received a combination of public and private treatment?**

I confirm that I believe that section 10(2) does adequately cover anyone who has received a combination of public and private treatment.

**Question 16. Does the broadening of the matters which may be investigated in section 10(2) raise any unintended consequences in the rest of the draft Bill?**

I am unable to identify any unintended consequences in the rest of the draft Bill



**Question 17. Is the definition of “private health services” in section 71 broad enough to cover anyone who has received a combination of public and private treatment?**

Yes, I believe that the definition of “private health services” in section 71 is broad enough to cover anyone who has received a combination of public and private treatment.

**Question 19. Do you have any comments on the new definition of “family health service provider in Wales” in section 71, which is intended to capture, for example, a GP practice as a whole rather than just an individual GP?**

I welcome any amendment which would resolve some of the problems that the office has had to deal with in the past under the existing arrangements.

## **Investigation procedure and evidence**

**Question 20. Do you have any comments on the procedure set out in section 16, in so far as it relates to the procedure for conducting an own initiative investigation?**

I refer to my response to Question 5 of this consultation. Whilst I am content with the procedure in relation to the ‘systemic investigation’ outlined in my example at (d) above, I believe this to be somewhat onerous for the other types of own initiative investigations. It is my view that in instances such as (a) to (c) the Ombudsman should only need to notify the bodies concerned of his intention to commence an investigation (in a similar way as is currently the case under the PSOW Act).

**Question 21. Should the Ombudsman’s power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations and investigations into private health services (see section 17)?**

Yes, this will be important to ensure the co-operation of bodies within jurisdiction, and to ensure that the Ombudsman has all the information necessary to arrive at sound and fair conclusions and findings.

The Ombudsman has strong powers to obtain information, but these are balanced by the requirement in section 16(6) that investigations must be conducted in private and the restrictions in section 65 that information obtained by the Ombudsman must not be disclosed except for the particular purposes which are outlined.

## **Part 4: Investigation of complaints relating to other persons: social care and palliative care**

**Questions 26 and 27. Should Part 4 remain a standalone Part? Or should such investigations be brought within the Part 3 investigations process? If Part 4 should be brought within Part 3, are there any specific elements of Part 4 that should survive? Or can a blanket approach be applied?**

To ensure consistency in relation to the conduct of investigations, and that all of the proposed new powers apply equally in relation to health care and social care, I believe that Part 4 should be brought in to Part 3, with a blanket approach adopted.

## **Part 5: Investigations: supplementary**

Whilst there is no question in the consultation on this part of the draft Bill in relation to **section 61**, I would like to draw attention to the fact that the Northern Ireland Ombudsman is omitted from those specified at section 61(7). For completeness, I believe that the Northern Ireland Ombudsman should be included. [Note: there is currently provision in the Northern Ireland Public Services Ombudsman Bill (NIPSO Bill) enabling the Ombudsman to co-operate with the Public Services Ombudsman for Wales.]

**Question 29. Should sections 62 and 63 cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales?**

Yes, it is my view that the legislation should provide for future Commissioners to be covered by sections 62 and 63.

## **Appointment etc**

**Question 32. Paragraph 7 of Schedule 1 provides that a person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified from a list of roles (listed in paragraph 7(1)) for a period of two years. Is the two year period appropriate?**

Paragraph 7 provides for two years disqualification from holding office once the office holder ceases to be Ombudsman. This is out of kilter with other ombudsmen schemes in the United Kingdom – for example, the Scottish Public Services Ombudsman and the provisions proposed for the Northern Ireland Ombudsman.

The position in the Northern Ireland Public Services Ombudsman Bill is the same as is currently in force in Scotland: that is that former ombudsmen are restricted from taking up certain employment without the consent of the Assembly Commissioner/Parliamentary Commission. This restriction expires at the end of the financial year following the financial year in which the person ceased to hold office.

I would suggest that Paragraph 7 of Schedule 1 be amended to reflect a similar position as that in Scotland and Northern Ireland. I believe that the current situation under the PSOW Act 2005 in respect of disqualification from roles is disproportionate, and particularly so for those taking on an acting Ombudsman role for a short period of time. It is my view that anything longer than the time restriction and arrangement as applied in Scotland and Northern Ireland has a de facto age discrimination impact. Thinking of future recruitment to the role of Ombudsman, I am sure this would deter a number of potential first class candidates from applying for the position.

**Question 33. Do you have any comments on the matters which are included within “paid office” in paragraph 8 of Schedule 1?**

I believe that in relation to both Ombudsmen and acting Ombudsmen, this is overly restrictive. In particular, to be unable to undertake a voluntary role when travelling and subsistence is offered (even if not accepted) is, I believe, too stringent a restriction.

**Public Services Ombudsman for Wales  
January 2016**

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Archwilydd Cyffredinol Cymru  
Auditor General for Wales

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Ms Jocelyn Davies AM  
Chair of the Finance Committee  
National Assembly for Wales  
Cardiff Bay CF99 1NA

Date: 14 January 2016  
Our ref: HVT/2469/fgb  
Page: 1 of 1

Dear Jocelyn

**CONSULTATION RESPONSE ON THE DRAFT PUBLIC SERVICES OMBUDSMAN (WALES) BILL**

Thank you for your invitation to provide evidence to the Finance Committee on the draft Public Services Ombudsman (Wales) Bill.

My responses to your questions are set out in the attached Annex. Some of my responses repeat views that I have previously expressed during the Committee's inquiry into the consideration of the powers of the Ombudsman, but I think it is appropriate that I include them in this response for completeness.

I should be happy to provide further explanation if the Committee would find that helpful.

Yours sincerely



**HUW VAUGHAN THOMAS**  
**AUDITOR GENERAL FOR WALES**

*Enc: Responses to Annex Consultation Questions*

## RESPONSES TO ANNEX CONSULTATION QUESTIONS

### General

1. *Would the draft Bill improve the effectiveness of the role of the Ombudsman? If so how?*

I think the draft Bill is conducive to improving the effectiveness of the role of the Ombudsman. The provision for own initiative investigations should enable improvement in the effectiveness of the Ombudsman's role by allowing wider systemic problems to be addressed coherently. Removing the requirement for investigations into particular issues to be tied to specific complaints should allow for the Ombudsman to take a more logical and unified approach to investigations. It should also allow for matters that are evidently problematic to be investigated despite the absence of specific complaints, which could potentially benefit particular groups who tend to be reluctant or unable to raise complaints.

The extension of the Ombudsman's jurisdiction into the private healthcare sector in cases where people have received care from both the NHS and private sectors should be helpful in allowing investigations to build a more comprehensive and accurate picture of such a situation.

2. *What, if any, are the potential barriers to implementing the provisions of the draft Bill? Does the draft Bill take sufficient account of them?*

I have not identified any specific barriers to implementing the draft Bill's provisions.

3. *Are there any unintended consequences arising from the draft Bill?*

As I understand it, section 4(4) is drafted in such a way that it requires own initiative investigations to relate to "action taken". This might have the unintended consequence of preventing the Ombudsman from conducting own initiative investigations in relation to relevant omissions, such as those set out in section 10(1)(b) and (c), even if such omissions occurred after the Bill received Royal Assent.

4. *At what point should the impact of this legislation be evaluated?*

A baseline review before commencement should be helpful. Thereafter, given the timescales for undertaking and allowing the effects of own-initiative investigations and model complaints policy work, evaluation at least three to five years after commencement should be appropriate if the evaluation is to address effectiveness. However, if the evaluation were confined to assessing whether the provisions were fit for purpose in terms of enabling the processes to commence (which is quite a narrow focus), then it could be undertaken one to two years after commencement.

## Power to investigate on own initiative

5. *Do you have any comments on the new power in section 4?*

The new power should improve the effectiveness of the role of the Ombudsman as indicated in my answer to question 1.

6. *Does the inclusion of this power raise any unintended consequences in the rest of the draft Bill?*

I am not aware of any unintended consequences for the rest of the Bill, but section 4(4) seems to be drafted in a way that limits own initiative investigations to acts (as opposed to omissions), which may be unduly restrictive (see my answer to question 3 above).

7. *With whom should the Ombudsman consult under section 4(2)?*

It would be appropriate for the Ombudsman to consider consultation with the Commissioner for Older People in Wales, the Welsh Language Commissioner, the Children's Commissioner for Wales and the Auditor General for Wales in relation to investigations into matters that could be subject to investigation by those offices.

8. *Should the Ombudsman have the power to initiate an investigation based on action that took place prior to the draft Bill/Act receiving Royal Assent (see section 4(4))? If so, should there be a cut-off point, beyond which the Ombudsman should not carry out an own initiative investigation?*

It is not clear to me that the usual concern related to legislation with retrospective effect (ie that in relation to some act or omission a person becomes unfairly subject to legal obligations that were not law at the time of the act or omission) applies in respect of section 4(4), as it does not alter legal obligations. Indeed it may be unhelpful to place an artificial cut-off point on the power to conduct own initiative investigations.

9. *What kind of issues should be included in the criteria for own initiative investigations under section 5?*

I think issues that may appropriately be covered in the criteria for own initiate investigations may include:

- a) The possibility that maladministration or failure to provide service would cause significant distress or hardship;
- b) Services that by their nature are important to and chiefly used by service users who are generally not disposed towards raising complaints;
- c) Services and other areas of administration that are qualitatively important in terms of issues such as fairness, but for which low financial resource requirements mean examinations of economy, efficiency and effectiveness by the Auditor General would generally be regarded as not appropriate.

I am not sure that it would be helpful to have an approach in which each and every criterion must be met in order to justify an investigation.

10. *What kind of evidence should be available to the Ombudsman to justify an own initiative investigation (see section 5(2))?*

I think it could prove quite problematic if the criteria were too restrictive in setting what kind of evidence would be needed to justify an investigation. I would suggest that any information that reasonably indicated that one or more of the criteria mentioned above are met (plus any others that are identified) should be sufficient.

### **Who can complain**

11. *Do you have any comments on the new definition of “member of the public” in section 7(2)?*

Given the extension by the Bill of the Ombudsman’s jurisdiction to private health service providers, it appears to be appropriate to similarly extend the definition of “member of the public” to exclude private health service providers acting in their capacity as such.

### **Requirements for complaints made and referred to the Ombudsman**

12. *Do you have any comments on the new requirements for complaints made to the Ombudsman in section 8?*

Requiring complaints to be in the form and contain information specified by the Ombudsman in guidance should enable the Ombudsman to ensure that complaints are received in a form that can be dealt with efficiently and effectively. In theory perhaps there is a danger that the guidance specified by the Ombudsman might impose requirements on making complaints that are excessively onerous, which might have the effect of deterring those with valid complaints from making them. I imagine, however, that the Ombudsman would be both mindful of the need to avoid such a problem and well-placed to avoid it. On that basis, I do not think the provisions of section 8 are problematic.

Subsection 5 of section 8 prevents the Ombudsman using the power in section 3 to investigate the subject matter of an oral complaint if the person making it does not wish the complaint to be treated as duly made. The Ombudsman would however still be open to use the power in section 4 to conduct an own initiative investigation into the matter (provided it arose after the Bill received Royal Assent), which could perhaps be used to negate the effect of subsection 5.

13. *How should the proposed guidance for making a complaint to the Ombudsman be published and what formats should be available?*

Given the importance of the Ombudsman’s role and the right of all members of the public to make a complaint, the guidance should be published in such forms so that all members of the public, including those with impairments, can access it easily. It seems to me that the guidance should be available online and in hard copy by request. Given the existing duties under the Equality Act 2010 and related



regulations, I am not sure, however, that it is necessary to reflect this in the text of section 8.

### **Matters which may be investigated**

14. *Do you have any comments on the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received by public and private health services providers (see sections 10(1)(d) and 10(2))?*

The extension of the Ombudsman's jurisdiction should allow for investigations to build a more accurate and comprehensive picture of a particular matter where a patient has received private healthcare as well as NHS care.

15. *Does section 10(2) adequately cover anyone who has received a combination of public and private treatment?*

It would appear to, yes.

16. *Does the broadening of the matters which may be investigated in section 10(2) raise any unintended consequences in the rest of the draft Bill?*

Not that I am aware of.

17. *Is the definition of "private health services" in section 71 broad enough to cover anyone who has received a combination of public and private treatment?*

It would appear so, yes.

18. *Should the ombudsman have powers to recover costs incurred in investigating private health services?*

I am not sure that it would be appropriate for me to answer the heart of this question, which is a matter of policy, ie whether a public sector entity should have a power to charge private sector entities so as to provide cost recovery. I do, however, think that the following issues need to be considered:

- a) any process of cost recovery should itself be economical and efficient—if a high proportion of the charges were accounted for by the administration of the charges, the system would come into disrepute;
- b) it would be undesirable if cost recovery were to act as a disincentive to private sector health provision in Wales;
- c) there is merit in charges reflecting any additional expense incurred because of unwarranted or unlawful obstruction of statutory access rights—such charges should help prevent wastage of public resources and be conducive to efficient and timely investigation;
- d) the Ombudsman's investigations should be of benefit to private health providers (as whole, if not as individual operators), as well as individuals and society as a whole.



19. *Do you have any comments on the new definition of “family health service provider in Wales” in section 71, which is intended to capture, for example, a GP practice as a whole rather than just an individual GP?*

I am not sure that the drafting has the intended effect. The drafting of the definition in terms of “person” and “individual” would seem to place the focus on individual GPs rather than the GP practice as a whole—particularly so for practices that operate under a partnership agreement where the practice does not have a distinct legal identity from that of the partner GPs.

### **Investigation procedure and evidence**

20. *Do you have any comments on the procedure set out in section 16, in so far as it relates to the procedure for conducting an own initiative investigation?*

The requirements to prepare an investigation proposal and to share it with the body to be investigated appear to me to be reasonable, as does the requirement to allow those affected by the proposal an opportunity to comment. These requirements should ensure that investigations are planned effectively with the appropriate level of involvement from those affected. It is, however, not clear to me why section 16(5)(b) grants only those persons identified in a proposal “in a negative way” an opportunity to comment. This may be because the provision is intended to reflect a principle of natural justice, but there would appear to be scope for legal argument over whether a person is identified “in a negative way”, which may unhelpfully consume the Ombudsman’s resources. Persons identified in a positive or neutral way in a proposal may also be able to provide useful comments relating to the investigation, so it may be desirable to extend the requirement to cover all persons identified in the proposal.

21. *Should the Ombudsman’s power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations and investigations into private health services (see section 17)?*

The effective exercise of own initiative investigations would be significantly curtailed if the Ombudsman’s powers in relation to obtaining documents and information do not apply to such investigations. If an authority chose not to co-operate with an investigation, it would probably often not be possible to conduct it effectively. The same reasoning applies to investigations into private health services.

### **Listed Authorities**

22. *Do you have any comments on the restrictions on power to amend Schedule 3 (see section 30(2) in particular), which are significantly narrower than the restrictions found in the 2005 Act?*

It is not clear to me why the additional requirements of the 2005 Act have not been reproduced in the Bill, as they work to ensure that only public authorities can be added to Schedule 3. Removal of these requirements seems undesirable as it would allow for the extension of the Ombudsman’s jurisdiction further into the private sector without the need for primary legislation.

23. *Are there any other bodies that should be included in the list in Schedule 3 'Listed Authorities'?*

I am not aware of any omissions from the list in Schedule 3.

### **Complaints Handling**

24. *Do you have any comments on sections 33 – 39 (which mirror sections 16A to 16G of the Scottish Public Services Ombudsman Act 2002)?*

Overall, the provisions appear to me to be appropriate to grant the Ombudsman sufficient powers to ensure that complaints are dealt with consistently and fairly across the Welsh public sector.

25. *Is section 38(b) adequate to allow listed authorities to comply with their duties under other enactments, such as Freedom of Information duties?*

It would appear to be adequate, yes.

### **Part 4: Investigation of complaints relating to other persons: social care and palliative care**

26. *Should Part 4 remain a standalone Part? Or should such investigations be brought within the Part 3 investigations process?*

It may be beneficial in value for money terms for all investigations to be conducted under processes and legal framework that are as consistent as possible, so there may be merit in bringing the current Part 4 into the Part 3 general investigations provisions.

27. *If Part 4 should be brought within Part 3, are there any specific elements of Part 4 that should survive? Or can a blanket approach be applied?*

It would appear that a blanket approach would be effective, though I have not conducted a full review into the precise legal effects of bringing Part 4 within Part 3.

### **Part 5: Investigations: supplementary**

28. *Do you have any comments on sections 62, 63 and 64, which provide for joint and collaborative working with specified Commissioners and the Auditor General for Wales?*

I welcome these sections, which make clear that joint working is permitted in appropriate situations.

29. *Should sections 62 and 63 cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales?*

It seems to me that it would be helpful if the sections 62 and 63 covered future Commissioners created by the Assembly; it seems likely that it would be unhelpful and inconsistent for the Ombudsman to be able to work jointly with some Commissioners but not others.

30. *Are there any further technical changes required in Part 5 of the draft Bill, to reflect the broadening of matters which may be investigated?*

Not that I am aware of.

### **Appointment etc**

31. *The provisions of paragraphs 5 to 8 of Schedule 1 (disqualification) reflect largely the current provisions in the 2005 Act. Do these provisions require updating?*

These provisions seem appropriate. The addition of private health service provider seems consistent.

32. *Paragraph 7 of Schedule 1 provides that a person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified from a list of roles (listed in paragraph 7(1)) for a period of two years. Is the two year period appropriate?*

Yes. It seems to be appropriate and is consistent with the provisions relating to former Auditors General.

33. *Do you have any comments on the matters which are included within "paid office" in paragraph 8 of Schedule 1?*

No.

### **Financial implications**

34. *Do you have a view on the financial implications of the new provisions set out in the draft Bill?*

If the draft Bill's provisions make it easier to submit complaints orally it is quite likely that more complaints will be submitted, which will increase costs. It is not clear, however, that the draft Bill's provisions will change the current practice in relation to oral complaints to a noticeable degree.

The provisions of the draft Bill relating to promoting consistent complaints handling across the Welsh public sector should be conducive to improved economy by, among other things, saving bodies spending time and money on devising their policies.

The effective use of own initiative investigations could lead to reduced levels of maladministration in public services, which could lead to efficiency savings, but such benefits are very difficult to quantify, let alone predict.

### **Other Comments**

35. *Do you have any other comments you wish to make about the draft Bill or any specific provision within it?*

The audit provisions paragraph 17 of Schedule 1 reflect the provisions in the existing Public Services Ombudsman (Wales) Act 2005 and are standard for

entities of this type. It would, however, be helpful if the audit provisions followed those of local government and NHS entities (see section 17(2)(d) and section 61 of the Public Audit (Wales) Act 2004) by also providing a duty on the Auditor General to satisfy himself as to whether proper arrangements have been made for securing economy, efficiency and effectiveness in the use of resources. This would be a helpful move towards greater consistency in audit provisions across Welsh public bodies. It would also facilitate a better standard of annual audit in terms of assurance in respect of value for money.

Finance Committee

Draft Public Services Ombudsman (Wales) Bill

DB PSOW 15 Vale of Glamorgan Council

**VALE OF GLAMORGAN COUNCIL STANDARDS COMMITTEE**

**CONSULTATION RESPONSE ON THE DRAFT PUBLIC SERVICES  
OMBUDSMAN (WALES) BILL**

1. The Vale of Glamorgan Council's Standards Committee, on 23<sup>rd</sup> November, 2015, considered the draft Public Services Ombudsman (Wales) Bill ("the Bill").
  
2. Having considered the contents of the draft Bill, the Committee was agreed that there were issues that should be raised, namely:
  - The impact on resources
  - The provisions of the draft Bill would entail a great deal of co-operation involving the Ombudsman, the Auditor General and the Future Generations Commissioner.

The Committee's main concern centred on the impact on resources.

3. In noting that the provisions of the Bill would widen the powers of the Ombudsman by:
  - Granting powers to commence his / her own investigations without first having received a complaint about an issue
  - Enabling him / her to investigate issues when a patient had received private health care in conjunction with public health care.

The Committee was concerned that should the above extensions to the Ombudsman's powers be granted, and as available resources may decline, there could be pressure on the Ombudsman to:

- Widen the Local Dispute Resolution Process to include Town / Community Councillors. This would result in capacity issues within Principal Councils.
- Reduce the emphasis to investigate complaints concerning Members' Code of Conduct issues with a potential indirect impact on lowering of standards of the conduct of Members.

**Response to the Draft Public Ombudsman (Wales) Bill**  
**Corporate Services - Betsi Cadwaladr University Health Board**

Thank you for the opportunity to respond to the draft Public Ombudsman (Wales) Bill.

**General**

**01. Would the draft Bill improve the effectiveness of the role of the Ombudsman? If so how?**

Whilst the benefit of wider investigation powers can be recognised, it should be considered carefully alongside the powers of the regulatory bodies of the NHS such as Welsh Government and Health Inspection Wales.

Where the Ombudsman becomes aware of a trend emerging or a number of concerns regarding the same issue close liaison would be required with the relevant regulator to prevent potential duplication of investigations and potentially to glean wider intelligence relating to the issue.

In relation to the development of model complaints handling the NHS already has Putting things Right regulations in place which would require amendment.

In light of the above it is not felt that the changes to the bill will improve the effectiveness of the Ombudsman and may introduce some confusion in relation to responsibilities between his office and the NHS Regulator.

**02. What, if any, are the potential barriers to implementing the provisions of the draft Bill? Does the draft Bill take sufficient account of them?**

The relationship with the NHS regulators would need to be carefully considered. There is a risk of the PSOW duplicating the regulators role under the proposed Bill. Should the additional power of investigation without complaint be instigated the criteria governing when section 4 can be utilised would need to be developed in agreement with the service and regulators to avoid confusion or duplication.

Development of any CHPs for the NHS would need to ensure that the Putting Things Right regulations were not compromised (or alternatively amended).

**03. Are there any unintended consequences arising from the draft Bill?**

It is possible that there would be duplication of investigations with the NHS regulators and also that the Ombudsman may deal with issues of concern in isolation from related issue his office may be unaware of.

**04. At what point should the impact of this legislation be evaluated?**

Within 6 months

**05. Do you have any comments on the new power in section 4?**

As stated above there is a danger of there being duplication with inspection and investigations by other regulators. The service could be faced with differing recommendations for the same issue as well as duplication of work to support investigations.

The right of the individual to not take a complaint forward should be respected. Should the ombudsman feel the matter raised by the complaint is significantly concerning they should raise this with the relevant regulating body to be investigated. The need for extending powers to investigate issues where a formal complaint has not been made is felt to be in danger of crossing into the responsibilities of the regulators.

**06. Does the inclusion of this power raise any unintended consequences in the rest of the draft Bill?**

See above

**07. With whom should the Ombudsman consult under section 4(2)?**

Should section 4 be agreed the Ombudsman should consult with the relevant statutory regulators as a minimum. The organisation to be investigated should also be given the opportunity to respond prior to the decision to proceed.

**08. Should the Ombudsman have the power to initiate an investigation based on action that took place prior to the draft Bill/Act receiving Royal Assent (see section 4(4))? If so, should there be a cut-off point, beyond which the Ombudsman should not carry out an own initiative investigation?**

It is strongly felt that the powers, if agreed, should not be implemented retrospectively.

**09. What kind of issues should be included in the criteria for own initiative investigations under section 5?**

Should section 4 be agreed the criteria governing when an investigation can be instigated must be robust and clear and should include certain exclusions:

- The exclusion of issues currently under investigation by other regulatory bodies
- The exclusion of issues relating to ongoing POVA/ Safeguarding investigations or police investigations.
- The exclusion of issues that are being managed through the 'Putting things Right' regulations until such time as that process is complete.

**10. What kind of evidence should be available to the Ombudsman to justify an own initiative investigation (see section 5(2))?**

Evidence of serious process failure

**Who can complain**

**11. Do you have any comments on the new definition of “member of the public” in section 7(2)?**

It is felt that the definition should be explicit that staff of listed authorities should not use this route unless acting as individual citizens – this would cut across the whistleblowing and regulatory arrangements.

**Requirements for complaints made and referred to the Ombudsman**

**12. Do you have any comments on the new requirements for complaints made to the Ombudsman in section 8?**

No

**13. How should the proposed guidance for making a complaint to the Ombudsman be published and what formats should be available?**

It is felt that this needs to be considered against equality legislation. However, as a minimum, in plain English and Welsh and other main languages in use in Wales as well as “easy read” format, BSL, visual (eg film clips on the internet). It is also recommended that any guidance should be checked against the “Plain English” guidance.

**Matters which may be investigated**

**14. Do you have any comments on the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received by public and private health services providers (see sections 10(1)(d) and 10(2))?**

This would seem to be a sensible addition and is supported

**15. Does section 10(2) adequately cover anyone who has received a combination of public and private treatment?**

Yes

**16. Does the broadening of the matters which may be investigated in section 10(2) raise any unintended consequences in the rest of the draft Bill?**

Nothing apparent



**17. Is the definition of “private health services” in section 71 broad enough to cover anyone who has received a combination of public and private treatment?**

Yes

**18. Should the Ombudsman have powers to recover costs incurred in investigating private health services?**

Assuming this refers to the costs to the Ombudsman in investigating private health services – they should only be recoverable if the investigation is upheld

**19. Do you have any comments on the new definition of “family health service provider in Wales” in section 71, which is intended to capture, for example, a GP practice as a whole rather than just an individual GP?**

The definition is not clear as still refers to 'an individual'

#### **Investigation procedure and evidence**

**20. Do you have any comments on the procedure set out in section 16, in so far as it relates to the procedure for conducting an own initiative investigation?**

It is important that listed authorities have the opportunity to comment on the proposal and this section allows this.

**21. Should the Ombudsman’s power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations and investigations into private health services (see section 17)?**

Yes

#### **Listed Authorities**

**22. Do you have any comments on the restrictions on power to amend Schedule 3 (see section 30(2) in particular), which are significantly narrower than the restrictions found in the 2005 Act?**

No

**23. Are there any other bodies that should be included in the list in Schedule 3 ‘Listed Authorities’?**

No

## Complaints-Handling

**24. Do you have any comments on sections 33 – 39 (which mirror sections 16A to 16G of the Scottish Public Services Ombudsman Act 2002)?**

See Q1-4 above

**25. Is section 38(b) adequate to allow listed authorities to comply with their duties under other enactments, such as Freedom of Information duties?**

All listed authorities must ensure their compliance with other applicable legislation and it is therefore important that the Bill reflects this and not be in a position where they are being asked to give primacy to the regulations within the Bill over other legislation.

### **Part 4: Investigation of complaints relating to other persons: social care and palliative care**

**26. Should Part 4 remain a standalone Part? Or should such investigations be brought within the Part 3 investigations process?**

There would seem little logic to keeping these separate and in fact with NHS funded care and Continuing Health Care keeping them separate could cause confusion.

**27. If Part 4 should be brought within Part 3, are there any specific elements of Part 4 that should survive? Or can a blanket approach be applied?**

Reference to non NHS funded palliative care providers should be clear

### **Part 5: Investigations: supplementary**

**28. Do you have any comments on sections 62, 63 and 64, which provide for joint and collaborative working with specified Commissioners and the Auditor General for Wales?**

It is felt that similar provision needs to be made in relation to NHS Regulators (HIW)

**29. Should sections 62 and 63 cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales?**

Yes

**30. Are there any further technical changes required in Part 5 of the draft Bill, to reflect the broadening of matters which may be investigated?**

Other ombudsman and commissioners should be consulted on any investigation likely to be taken forward under the revised proposed section 4

## **Appointment etc**

**31. The provisions of paragraphs 5 to 8 of Schedule 1 (disqualification) reflect largely the current provisions in the 2005 Act. Do these provisions require updating?**

No

**32. Paragraph 7 of Schedule 1 provides that a person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified from a list of roles (listed in paragraph 7(1)) for a period of two years. Is the two year period appropriate?**

Yes

**33. Do you have any comments on the matters which are included within “paid office” in paragraph 8 of Schedule 1?**

No

## **Financial implications**

**34. Do you have a view on the financial implications of the new provisions set out in the draft Bill?**

Presumably the increased powers of investigation will require the Ombudsman office to increase capacity. As the additional investigation powers under section 4 are deemed to be a potential duplication of other regulatory bodies it would seem hard in the current financial climate to agree to additional capacity within the PSOW

## **Other comments**

**35. Do you have any other comments you wish to make about the draft Bill or any specific provision within it?**

No

Finance Committee  
Draft Public Services Ombudsman (Wales) Bill  
DB PSOW 17 University of Liverpool

Response to consultation on the draft Public Services Ombudsman (Wales) Bill,  
conducted by the Finance Committee of the National Assembly for Wales,  
from Brian Thompson, Liverpool Law School, The University of Liverpool.

Introduction

1. I welcome the opportunity to respond to the Finance Committee's consultation on a draft Public Services Ombudsman (Wales) Bill. I am responding on my own behalf and only to some of the consultation questions. The ombudsman institution is part of administrative justice which is my major field of research. With my colleagues I conducted comparative research on the public services ombudsmen in the UK and Ireland, Australia and New Zealand (*The Ombudsman Enterprise and Administrative Justice*, T. Buck, R. Kirkham and B. Thompson, Ashgate, 2011). In responding to the consultation questions I draw on that research and my experience in advising the Northern Ireland Ombudsman on new legislation. A Bill is currently before the Northern Ireland Assembly.

General

2. I think the Bill is likely to enhance the effectiveness of the Ombudsman, particularly the new powers relating to own initiative investigations and complaint-handling.(Q.1)
3. The committee is to be congratulated for keeping up the momentum on this issue as there is always competition for slots in a legislative programme and no doubt after the Assembly elections, a new administration will have a set of manifesto promises which it will want to implement. All being well, the committee's reports will help secure agreement for an early timetable for the making and implementation of new public services ombudsman legislation. (Q.2)
4. I would suggest that the legislation should not be reviewed sooner than three years, nor later than seven years after its coming into effect. (Q.4)

Power to investigate on own initiative

5. I think the version in the draft Bill is to be preferred to that in the Northern Ireland Public Services Ombudsman (NIPSO) Bill, which is more prescriptive (Q.5)
6. There is some similarity between an Ombudsman own initiative investigation and a value for money (or performance) audit conducted by the Auditor General for Wales. Both it is hoped will result in recommendations for improving performance and it seems sensible that the Auditor General for Wales be consulted. The offices should co-ordinate to try to avoid subjecting a body to simultaneous or very closely scheduled investigations and audits. (Q.7)
7. It is possible that information might come to light about action taken before legislation received Royal Assent, in which the ombudsman could be permitted a

discretionary power to override that cut-off condition, with a new cut-off of, perhaps, 5 years before Royal Assent. (Q.8).

8. In Australia and New Zealand the power to conduct an own initiative investigation (or own motion as they call it) confers a very wide discretion. The debate in the UK has tended to focus on concentrating such a power on matters which it is thought have systemic importance, and that was the thinking of the Northern Ireland Assembly's Committee of the First Minister and Deputy First Minister which is promoting the NIPSO Bill currently before the Northern Ireland Assembly. I would suggest that a worthy candidate for such an investigation might not have systemic issues but, nonetheless, be sufficiently important in terms of its particular impact. A consideration which caused Ann Abraham, a former Parliamentary Ombudsman, to change her mind to seek such a power, was the fact at some people, would be very unlikely to be able to make a complaint. Examples of such people are the elderly, the young, those with disability and those in institutions exercising a high degree of control or supervision. Therefore in producing criteria, they will have to have a broad reach. Thus factors such as public interest, practical outcome, proportionality would be specified. Alongside those points will be consideration of the possible systemic nature of the alleged maladministration or service failure, and the extent of the injustice or hardship caused.
9. In Australia some of the ombudsmen offices in their planning documents will specify a number of own initiative investigations which they expect to conduct, and allocate resources for them. Some of them will seek to ensure that they have the flexibility to react to an event which it is thought merits an own initiative investigation. It is likely that in Northern Ireland and Wales, if such powers were conferred that that they would be used very sparingly, allowing the ombudsmen and others to become accustomed to the new power and the possible benefits. (Q 9)
10. It is likely that the material which would trigger such an investigation would be derived from ordinary reports, analysis of a range of reports, contacts made during an investigation, or information passed on by other inspectors, regulators, listed bodies, media reports or 'whistle-blowers. (Q.10)

#### Private Health Care

11. Specialist advice should be sought on this. It is not within my expertise. (Q14-19)

#### Investigation procedure and evidence

12. It looks as if the drafter has considered the equivalent provisions in the NISPO Bill currently before the Northern Ireland Assembly. (Q.20)
13. So far as own initiative investigations are concerned, reference might be made to the NIPSO Bill and specialist advice should be sought in relation to private health services. (Q 21)

### Complaints-Handling

14. The Scottish legislation is also the source for the NIPSO Bill. The Scottish experience looks promising but the test will be the extent to which the public services in Wales eschew a 'box ticking' compliance attitude and embrace the arrangements positively, using them to develop a culture of developing and sharing good practice in handling, resolving and learning from complaints. (Q.24)

### Part 4: Investigation of complaints relating to other persons: social care and palliative care

15. I am not sure I see any compelling reason to separate the complaints in Part 4 from those in Part 3 of the draft Bill.

### Part 5: Investigations: supplementary

16. The Ombudsman should be given the power to consult and work with other Commissioners in Wales and particularly the Auditor General for Wales. (Q.28)
17. It would be essential for newly created commissioners in Wales to be added to the list of those with whom the Ombudsman can consult and co-operate. (Q.29)
18. It is interesting that clause 51 of the NIPSO Bill extends the power to co-operate beyond other officers and bodies in Northern Ireland to ombudsmen outside Northern Ireland including the Parliamentary Ombudsman, and the Public Services Ombudsmen in Scotland and Wales, and the Ombudsman for the Republic of Ireland. In the Scottish Public Services Ombudsman Act 2002, section 21 provides for consultation and co-operation between the Scottish Ombudsman and the Welsh, and English Local, Housing and Health Service Ombudsmen as well as the Parliamentary Ombudsman, but not any of the Ombudsmen in any part of Ireland. Reciprocity would seem to be a matter to consider in relation to any issues in which the Ombudsman in Wales has the right to investigate and so does one ( or possibly more) of these other Ombudsmen. (Q. 30)

### Other comments

19. Given that it is proposed to give the Ombudsman a wider remit and powers, the arrangements for accountability should be considered. There must be an appropriate balance struck between accountability and independence. It is not often that Parliamentary committees will be specified in legislation, as it is generally accepted that parliamentary bodies should be able to decide for themselves their committees and their responsibilities. The issue with the Ombudsman and the Auditor is that these officers should be working with parliamentary bodies as partners in holding executive bodies to account but must also they be subject to an accountability framework. At Westminster, the House of Commons the committee to which the Parliamentary Ombudsman reports, has expressed concern about mixing the roles of working with the Ombudsman and holding the office-holder to account. It noted that its sister committee the Public Accounts Committee works with the Comptroller and Auditor General but another body the Public Accounts Commission is part of the

accountability arrangements. The Assembly, it is suggested, will want to consider this issue not only in relation to the Ombudsman, but also with respect to the other Commissioners. While it might be useful to have common arrangements, there may be particular points which are such that special separate provisions should apply.

Finance Committee  
Draft Public Services Ombudsman (Wales) Bill  
DB PSOW 18 Marshfield Community Council

Annex A – Consultation Questions

General.

- 01) Yes by increasing accessibility.
- 02) Not Known.
- 03) Unsure
- 04) 1 year on.

Power to investigate on own initiative.

- 05) In support of the new powers.
- 06) Not Known.
- 07) A matter for the Ombudsman to decide.
- 08) Yes. Cut-off point 1 year prior.
- 09) Flexibility required at the outset.
- 10) Evidence that the Ombudsman deems sufficient.

Who can complain.

- 11) In favour.

Requirements for complaints made and referred to the Ombudsman.

- 12) No.
- 13) Public service information/guide and on the Internet.

Matters which may be investigated.

- 14) Supportive of the ability to investigate.
- 15) Yes, broadly speaking. Although a review would possibly be required.
- 16) I don't think so.
- 17) Yes.
- 18) Yes.
- 19) No adverse comment, the definition is sensible given that patients may be seen by many GP's within the same practice.

Investigation procedure and evidence.

- 20) No comment other than that it is early days and possibly warrants review.
- 21) Yes without any doubt whatsoever otherwise any investigation will effectively be hamstrung.



Listed Authorities.

- 22) The restrictions should not deliberately narrowed.
- 23) Schedule 3 "Listed Authorities" should anyway be kept under review to reflect evolving circumstance.

Complaints Handling.

- 24) No adverse comment.
- 25) I think so.

Part 4. Investigation of complaint relating to other persons, social care and palliative care.

- 26) No comment.
- 27) No comment.

Part 5. Investigations, supplementary.

- 28) No comment.
- 29) Yes
- 30) Uncertain.

Appointment etc.,

- 31) Yes.
- 32) Yes.
- 33) No.

Financial implications.

- 34) Any new obligations etc., will have a cost implication what would be the point of enacting powers that you are unable or unwilling to fund?

Other comments.

- 35) None.



**Older People's Commissioner for Wales**  
**Comisiynydd Pobl Hŷn Cymru**

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18<sup>th</sup> January 2016

Dear Committee Clerk,

### **Consultation on the draft Public Services Ombudsman (Wales) Bill**

Thank you for the opportunity to comment as part of your call for evidence on the Bill<sup>1</sup>. I provide some brief comments below in relation to the questions set out in Annex A:

#### **Power to investigate on own initiative**

As I outlined in my response to your inquiry into the consideration of powers of the Ombudsman in February 2015, I believe there is an opportunity for the Ombudsman to be allowed to act in a more proactive role through, for example, own initiative investigations. This would especially be the case where there is evidence to suggest from individual cases that there could be a wider public interest issue.

I would fully expect that I would be consulted about any own initiative investigations which impact upon older people and be able to contribute towards the investigation and that any changes to legislation places on the Ombudsman a requirement to consult.

As previously outlined, I already meet with the Auditor General for Wales to share our intended work programmes, identify areas of common

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<sup>1</sup> <http://www.senedd.assembly.wales/documents/s45205/Consultation%20letter.pdf>

interest, minimise duplication of effort and resource and discuss how our two organisations can work to support each other to achieve shared outcomes for older people in Wales. This has been achieved without conflict and could work along similar lines with the Ombudsman.

## **Part 5: Investigations: supplementary**

### **Question 28: Do you have any comments on sections 62, 63 and 64, which provide for joint and collaborative working with specified Commissioners and the Auditor General for Wales?**

I welcome the inclusions of sections 62 and 63 (working jointly and collaboratively with other Commissioners), and am fully prepared to work with the Ombudsman on matters of common interest. I do already meet regularly through the year with the Ombudsman to discuss our respective casework and work programmes. There are also strong relationships with officers in both organisations that ensure that information about key investigations is shared. I am committed to working in partnership with the Ombudsman and other relevant bodies to ensure that within Wales our work makes a real difference to the lives of older people<sup>2</sup>.

I agree that the Ombudsman should inform and consult with the relevant Commissioner, and welcome the opportunity to cooperate, conduct a joint investigation and/or prepare and publish a joint report in relation to an investigation.

Furthermore, I welcome the reference to disclosure of information via sections 62 or 63 of the draft Bill or sections 16 or 17 of the Commissioner for Older People (Wales) Act 2006 i.e. Working with other ombudsmen<sup>3</sup>. This is an effective example of complementarity between the draft Bill and other pieces of legislation. Underpinning the legislation is a Memorandum of Understanding which sets out in more practical terms how we, in partnership with the Children's Commissioner for Wales, would work collaboratively together and extends to joint training, sharing information about trends and pro-active sharing of relevant reports<sup>4</sup>.

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<sup>2</sup> [http://www.olderpeoplewales.com/en/news/news/13-01-04/Sarah\\_Rochira\\_Older\\_People\\_s\\_Commissioner\\_for\\_Wales\\_comments\\_on\\_the\\_recent\\_Public\\_Services\\_Ombudsman\\_report.aspx](http://www.olderpeoplewales.com/en/news/news/13-01-04/Sarah_Rochira_Older_People_s_Commissioner_for_Wales_comments_on_the_recent_Public_Services_Ombudsman_report.aspx)

<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2006/30/contents>

<sup>4</sup> [http://www.olderpeoplewales.com/en/news/news/10-09-01/September\\_2010\\_-\\_Memorandum\\_of\\_Understanding.aspx](http://www.olderpeoplewales.com/en/news/news/10-09-01/September_2010_-_Memorandum_of_Understanding.aspx)

The memorandum states that the overarching aim is to contribute to the development of excellent public services in Wales that respect and promote the human rights of citizens in Wales and are sensitive to the needs of the most disadvantaged and vulnerable members of society and make best use of public resources. I see no reason why this Memorandum could not be extended to cover own initiative investigations.

**Question 29: Should sections 62 and 63 cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales?**

Sections 62 and 63 should cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales. This approach should help ensure clarity and consistency in how the Ombudsman works with Commissioners, and provide new Commissioners with a clear framework on collaboration with the Ombudsman.

Yours sincerely,

A handwritten signature in black ink that reads "Sarah Rochira". The signature is written in a cursive, flowing style.

Sarah Rochira  
**Older People's Commissioner for Wales**



**Consultation on the draft Public Services Ombudsman (Wales) Bill  
WIHA's response to the Finance Committee's call for evidence**

**Introduction**

1. The Welsh Independent Healthcare Association (WIHA) welcomes the opportunity to respond to the Finance Committee's Call for Evidence on this draft Bill. As per the Committee's directive, WIHA has focused its response on those consultation questions of direct relevance to its membership.
2. WIHA is the representative association of the majority of independent acute and mental health hospitals in Wales. Please find attached the latest WIHA Credentials document which provides an overview of the independent healthcare sector in Wales.

**Consultation Questions**

3. *Question 14 - Do you have any comments on the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received by public and private health services providers (see sections 10(1)(d) and 10(2))*
4. WIHA welcomes this provision and believes it would be beneficial for patients in these circumstances.
5. *Question 15 - Does section 10(2) adequately cover anyone who has received a combination of public and private treatment?*
6. All WIHA members would be covered by the definition in section 10(2) and therefore all patients who have received treatment in a WIHA-member hospital.
7. *Question 18 – Should the Ombudsman have powers to recover costs incurred in investigating private health services?*
8. WIHA believes that it would be reasonable for the Ombudsman to recover costs from private health services on a case by case basis, as appropriate.



9. *Should the Ombudsman's power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations and investigations into private health services (see section 17)?*

10. WIHA recognises the value of 'own initiative investigations' undertaken by Ombudsman services to patients and hospital providers and would support their application to private health services. WIHA recognises that necessary checks and balances have been built into the process of any future PSOW 'own initiative investigations' under this draft Bill.

### **Conclusion**

11. In summary, WIHA members support the extension of the PSOW's remit to cover complaints that cross between NHS and private health services, as it would benefit patients. In practice, given the small numbers of complaints about WIHA members that reach an independent review stage, and the even smaller number of complaints that involve combined NHS and private treatment, these proposals will be required in only a tiny proportion of cases.

*18 January 2016*

## **Draft Public Services Ombudsman (Wales) Bill**

### **Ceredigion County Council Response to Consultation Questions**

**18 January 2016**

#### **General**

- 01** It is likely that some of the provisions proposed would improve the effectiveness of the Ombudsman, but it could be argued that allowing the Ombudsman to initiate investigations would ‘muddy the waters’ and create further pressures on Local Authorities, in an already over-regulated sector.
- 02** It is likely that the Ombudsman will request further resources to overcome any barriers he identifies. Whilst it is important to support the Ombudsman in his work, there needs to be a balance between the provision of services and the cost of regulation.
- 03** Confusion may arise as to who’s responsible for investigating standards of provision. There would be a need for strong protocols between the PSOW and other regulators such as Welsh Language Commissioner, Estyn, CSSIW, Equality & Human Rights Commissioner.
- 04** Ideally, the evaluation should take place prior to its commencement. However, it is likely that a period of up to two years will be required to have a full evaluation of the impact of the legislation.

#### **Power to investigate own initiative**

- 05** Please see the answer to question 01 above.
- 06** In taking on more regulatory powers, the Ombudsman may create a greater barrier between himself and those he is responsible for investigating as opposed to a more collaborative approach to address failings.
- 07** The PSOW would need to consult with the regulatory bodies already in place to address the quality of service provision. In addition, the PSOW should be in discussion with the Chief Executive of the ‘responsible body’.

- 08 On balance, it would be best for the powers to initiate an investigation to take effect on the commencement of the Bill.
- 09 None – investigations should commence on account of complaints received from members of the public.
- 10 Not applicable – see Q09 above.

### **Who can complain**

- 11 In general, the Local Authority is supportive of the new definition, providing the correct consent processes are followed.

### **Requirements for complaints made and referred to the Ombudsman**

- 12 The Local Authority is broadly supportive of this and welcomes the proposal the Ombudsman is able to record oral complaints.
- 13 The Ombudsman needs to take account of equality legislation and to make the information widely available to members of the public.

### **Matters which may be investigated**

- 14 Not applicable to the Local Authority
- 15 Not applicable to the Local Authority
- 16 Not applicable to the Local Authority
- 17 Not applicable to the Local Authority
- 18 Not applicable to the Local Authority
- 19 Not applicable to the Local Authority

### **Investigation procedure and evidence**

- 20 The procedures that are set out in section 16 appear to be reasonable and appropriate.



- 21 The Local Authority understands that for the sake of consistency, the powers should be the same.

### **Listed Authorities**

- 22 The Local Authority prefers to make no comment on this issue.
- 23 The list appears to be extensive and complete.

### **Complaints-Handling**

- 24 The Authority already follows the Welsh Government's Model Complaints procedures, which it is understood the PSOW already has input into. The Local Authority supports having similar standards and policies across Wales and therefore supports this proposal.
- 25 The legislation under section 38(b) appears to be appropriate however, it would be useful to include clearer guidance on this matter.

### **Part 4: Investigation of complaints relating to other persons: social care and palliative care**

- 26 Overall, the Authority believes that Part 4 should be brought within Part 3 to ensure consistency and clarity. The Local Authority believes there is no need for different procedures and sections of the Act for different elements of its role and functions.
- 27 In view of the above, a blanket approach should be applied.

### **Part 5: Investigations: supplementary**

- 28 As the Local Authority is not convinced for the need for the PSOW to have own-initiative powers (as explained in question 01) it would follow that the Authority has some reservations about such proposals and its potential outcome.
- 29 See above (question 28).

30 See above (question 28).

### **Appointment etc.**

31 These provisions are appropriate and reasonable.

32 The Authority believes that a period of two to three years seems appropriate.

33 No comment.

### **Financial implications**

34 Additional powers are likely to require additional resources. This should not be at the expense of direct service provision.

35 In summary, the Local Authority has some reservations about the extended powers for the PSOW to investigate on his own initiative – as stated above. However, the Authority fully supports the additional powers to take into account oral complaints and the extended role in collecting data, setting standards and guidance. The Local Authority is also supportive of extending the Ombudsman's jurisdiction to include private health and care services.

## **Consultation response from Caerphilly CBC**

### **General**

*01. Would the draft Bill improve the effectiveness of the role of the Ombudsman? If so how?*

The Public Services Ombudsman (Wales) Act 2005 is generally regarded as effective. The Law Commission put forward a number of proposed amendments to clarify and improve the Ombudsman's role. The draft bill seems to cover these proposed amendments.

*02. What, if any, are the potential barriers to implementing the provisions of the draft Bill? Does the draft Bill take sufficient account of them?*

No comment

*03. Are there any unintended consequences arising from the draft Bill?*

No comment

*04. At what point should the impact of this legislation be evaluated?*

An evaluation should be carried out in 3 years in the first instance to moving to 5 years for future rounds.

### **Power to investigate on own initiative**

*05. Do you have any comments on the new power in section 4?*

We support the WLGA view on this aspect. There is a risk of duplication with regulators and inspectors and so a clear link with this section and sections 61 to 64 should be made, ensuring that the Ombudsman does not initiate an investigation which is already being investigated/considered by auditors, regulators or inspectors.

*06. Does the inclusion of this power raise any unintended consequences in the rest of the draft Bill?*

No comment

*07. With whom should the Ombudsman consult under section 4(2)?*

The authority that the investigation would focus upon should be consulted to avoid duplication if an investigation is already ongoing and to narrow the issues to be investigated. Some consultation with service users or potential complainants (as there would be no actual complainant) may also inform the decision about whether or not to investigate and narrow the issues to be investigated.

*08. Should the Ombudsman have the power to initiate an investigation based on action that took place prior to the draft Bill/Act receiving Royal Assent (see section 4(4))? If so, should there be a cut-off point, beyond which the Ombudsman should not carry out an own initiative investigation?*

No

*09. What kind of issues should be included in the criteria for own initiative investigations under section 5?*

As an investigation would involve resources from both the Ombudsman and the authority subject to the investigation and therefore could result in substantial public funds being used, the criteria needs to insure that only significant issues of public interest are investigated, which would not be investigated by any other means, including consideration about why complaints have not been made.

*10. What kind of evidence should be available to the Ombudsman to justify an Own initiative investigation (see section 5(2))?*

The Ombudsman should have clear evidence to show that an investigation is reasonable and proportionate. The Ombudsman should first answer the question: what is the level of impact if they do not investigate and have evidence which show that a complaint could be made and any reasons that complaints have not been received.

### **Who can complain**

*11. Do you have any comments on the new definition of “member of the public” in section 7(2)?*

There should be reference to the person affected having received a service from the authority.

### **Requirements for complaints made and referred to the Ombudsman**

*12. Do you have any comments on the new requirements for complaints made to the Ombudsman in section 8?*

We welcome the introduction of oral complaints as a methods to complain and this is in keeping with access under the equalities agenda, however the Ombudsman must provide assurance that the processes are in place to check the complainant has gone through the authority's own complaints process.

*13. How should the proposed guidance for making a complaint to the Ombudsman be published and what formats should be available?*

The usually methods of publication should be used, in line with the Welsh Language Measure and Equality Act 2010.

### **Matters which may be investigated**

We have no comments in response to questions 14 to 19.

### **Investigation procedure and evidence**

*20. Do you have any comments on the procedure set out in section 16, in so far as it relates to the procedure for conducting an own initiative investigation?*

There should be an addition which allows the authority to respond prior to the decision to initiate an investigation if an internal complaints procedure has not been followed.

*21. Should the Ombudsman's power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations and investigations into private health services (see section 17)?*

This requirement would need to be proportionate and restricted to a narrower view for own initiative investigations; if there is no complainant then an investigation could be very wide and resource intensive if all documents relating to an area had to be

produced. This needs careful consideration to avoid unnecessary public expenditure and of service users' rights under the Data Protection Act 1998.

### **Listed Authorities**

We have no comments in response to questions 22 and 23.

### **Complaints-Handling**

*24. Do you have any comments on sections 33 – 39 (which mirror sections 16A to 16G of the Scottish Public Services Ombudsman Act 2002)?*

Under section 39, we would suggest that 'good practice' rather than 'best practice' should be used. Best practice suggests something is fixed and there can be no better, it also discourages further improvement as it can be no better. 'Good' practice encourages further evolving and improving.

*25. Is section 38(b) adequate to allow listed authorities to comply with their duties under other enactments, such as Freedom of Information duties?*

No comment

### **Part 4: Investigation of complaints relating to other persons: social care and palliative care**

We have no comment in relation to questions 25 and 26.

### **Part 5: Investigations: supplementary**

*28. Do you have any comments on sections 62, 63 and 64, which provide for joint and collaborative working with specified Commissioners and the Auditor General for Wales?*

As stated above, this should be used to avoid duplication.

*29. Should sections 62 and 63 cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales?*

Yes

*30. Are there any further technical changes required in Part 5 of the draft Bill, to reflect the broadening of matters which may be investigated?*

No comment

### **Appointment etc**

We have no comments in response to questions 31 to 33.

### **Financial implications**

*34. Do you have a view on the financial implications of the new provisions set out in the draft Bill?*

There is some concern about some increased costs for local government in this time of austerity, particularly from investigations initiated by the Ombudsman without a complainant. We would support the WLGA view that a regulatory impact assessment including an estimate on costings.

### **Other comments**

*35. Do you have any other comments you wish to make about the draft Bill or any specific provision within it?*

No further comments, however Caerphilly CBC also supports the WLGA response to the earlier consultation.

## General

**01.** Would the draft Bill improve the effectiveness of the role of the Ombudsman?  
If so how?

*The Council has previously provided comments supporting the extension of the Ombudsman's powers and welcome the introduction of the new bill. Though the bill would strengthen the Ombudsman's role, it is also clearly written with the customer in mind.*

**02.** What, if any, are the potential barriers to implementing the provisions of the draft Bill?  
Does the draft Bill take sufficient account of them?

*No comments*

**03.** Are there any unintended consequences arising from the draft Bill?

*No comments*

**04.** At what point should the impact of this legislation be evaluated?

*As the current act is now being evaluated after 10 years of operation, we would suggest 5 years for the next evaluation.*

**05.** Do you have any comments on the new power in section 4?

*No comments – the Council supports the introduction of this new power.*

**06.** Does the inclusion of this power raise any unintended consequences in the rest of the draft Bill?

*No comments*

**07.** With whom should the Ombudsman consult under section 4(2)?

*Any parties that the Ombudsman feels are relevant*

**08.** Should the Ombudsman have the power to initiate an investigation based on action that took place prior to the draft Bill/Act receiving Royal Assent (see section 4(4))? If so, should there be a cut-off point, beyond which the Ombudsman should not carry out an own initiative investigation?

*No comments*

**09.** What kind of issues should be included in the criteria for own initiative investigations under section 5?

*The Ombudsman will have a great deal of information at his disposal and it is difficult to provide a definitive list of whether these own initiative investigations should take place as a result of being informed by complaints received or by a more general 'public perception'.*

*Some criteria might be*

- *The number of complaints previously received on the subject*

- *Identified trends as a result of the number of complaints*
- *Public interest*
- *Those affected by the service (for example at-risk individuals)*

*Ultimately, the Ombudsman would have to consider his own resources and will need to assess whether an investigation will have a long-term positive impact on the performance of the local authority.*

**10.** What kind of evidence should be available to the Ombudsman to justify an own initiative investigation (see section 5(2))?

*No comments*

### **Who can complain**

**11.** Do you have any comments on the new definition of “member of the public” in section 7(2)?

*No comments*

### **Requirements for complaints made and referred to the Ombudsman**

**12.** Do you have any comments on the new requirements for complaints made to the Ombudsman in section 8?

*The Council’s current complaints policy states we will generally only consider complaints if we are told about them within six months of the date the complainant first became aware of the problem. We may still consider complaints that happened between six – twelve months ago. However, we would not consider complaints more than a year old. This is slightly different to the Ombudsman’s requirements in 8 (1) (c ) though we would not anticipate any issues to this regard.*

**13.** How should the proposed guidance for making a complaint to the Ombudsman be published and what formats should be available?

*English and Welsh, other formats and languages available by request.*

### **Matters which may be investigated**

**14.** Do you have any comments on the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received by public and private health services providers (see sections 10(1)(d) and 10(2))?

*We agree that complainants should be given the opportunity to decide which route is most appropriate for them*

**15.** Does section 10(2) adequately cover anyone who has received a combination of public and private treatment?

Yes

**16.** Does the broadening of the matters which may be investigated in section 10(2) raise any unintended consequences in the rest of the draft Bill?



*No comments*

17. Is the definition of “private health services” in section 71 broad enough to cover anyone who has received a combination of public and private treatment?

Yes

18. Should the Ombudsman have powers to recover costs incurred in investigating private health services?

*No comments*

19. Do you have any comments on the new definition of “family health service provider in Wales” in section 71, which is intended to capture, for example, a GP practice as a whole rather than just an individual GP?

*No comments*

### **Investigation procedure and evidence**

20. Do you have any comments on the procedure set out in section 16, in so far as it relates to the procedure for conducting an own initiative investigation?

*The Ombudsman’s proposed own initiative investigation procedure would seem comprehensive.*

21. Should the Ombudsman’s power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations and investigations into private health services (see section 17)?

Yes

### **Listed Authorities**

22. Do you have any comments on the restrictions on power to amend Schedule 3 (see section 30(2) in particular), which are significantly narrower than the restrictions found in the 2005 Act?

*No comments*

23. Are there any other bodies that should be included in the list in Schedule 3 ‘Listed Authorities’?

*No comments*

### **Complaints-Handling**

24. Do you have any comments on sections 33 – 39 (which mirror sections 16A to 16G of the Scottish Public Services Ombudsman Act 2002)?

*We note the Ombudsman’s wish for complaints handling procedures to comply with the Ombudsman’s proposed ‘statement of principles’. This would potentially allow further benchmarking between local authorities which the Council would welcome.*

25. Is section 38(b) adequate to allow listed authorities to comply with their duties

under other enactments, such as Freedom of Information duties?

Yes

**Part 4: Investigation of complaints relating to other persons: social care and palliative care**

**26.** Should Part 4 remain a standalone Part? Or should such investigations be brought within the Part 3 investigations process?

*No comments*

**27.** If Part 4 should be brought within Part 3, are there any specific elements of Part 4 that should survive? Or can a blanket approach be applied?

*No comments*

**Part 5: Investigations: supplementary**

**28.** Do you have any comments on sections 62, 63 and 64, which provide for joint and collaborative working with specified Commissioners and the Auditor

*No comments*

**General for Wales?**

**29.** Should sections 62 and 63 cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales?

Yes

**30.** Are there any further technical changes required in Part 5 of the draft Bill, to reflect the broadening of matters which may be investigated?

*No comments*

**Appointment etc**

**31.** The provisions of paragraphs 5 to 8 of Schedule 1 (disqualification) reflect largely the current provisions in the 2005 Act. Do these provisions require updating?

*No comments*

**32.** Paragraph 7 of Schedule 1 provides that a person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified from a list of roles (listed in paragraph 7(1)) for a period of two years. Is the two year period appropriate?

Yes

**33.** Do you have any comments on the matters which are included within "paid office" in paragraph 8 of Schedule 1?

*No comments*

**Financial implications**

**34.** Do you have a view on the financial implications of the new provisions set out in the draft Bill?

*No comments*

**Other comments**

**35.** Do you have any other comments you wish to make about the draft Bill or any specific provision within it?

*No comments*

Finance Committee  
Draft Public Services Ombudsman (Wales) Bill  
DB PSOW 24 Penarth Town Council



**Shân E. Bowden**  
Town Clerk/Clerc Y Dref

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Your Ref/Eich Cyf:

Committee Clerk  
Finance Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

18<sup>th</sup> January 2016

Dear Sir/Madam

### **Consultation on the Draft Public Services Ombudsman (Wales) Bill**

I refer to your from the Chair of the Finance Committee dated 21<sup>st</sup> October 2015 and the enclosed consultation question regarding the draft Public Service Ombudsman (Wales) Bill.

Having considered the documents referred to and the consultation the Town Council wishes to submit the following comments:-

#### **Q1 - Q4**

The Council considers that there are resource implications and potential unintended consequences which must be evaluated prior to implementing the provisions. Briefly, these arise from:-

- the potential extent of the investigations in Private Health Care investigations
- the potential duplication of effort where Commissioners already exist
- or in the case of sustainability are going to exist
- the redirection of effort from traditional areas such as the Town and Community Council (T& CC) Sector.

As a Town Council we wish to ensure that good governance is safe guarded through the availability of the Ombudsman there is a danger these new roles will grow at the expense of the Local Authority Sector which includes T&CC's

Although this Council has previously supported the extension of powers it was not at the expense of current responsibilities and we would like to see an assessment of impact in those areas described above.

We also note there is no reference to the T&CC Sector in this Consultation.

Yours sincerely

*SE Bowden*

Town Clerk

[Correspondence is welcomed in Welsh or English/Croesawir Gohebiaeth yn y Gymraeg neu yn Saeneg](#)

Finance Committee  
Draft Public Services Ombudsman (Wales) Bill  
DB PSOW 25 Velindre NHS Trust



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SENT VIA EMAIL TO [SeneddFinance@Assembly.Wales](mailto:SeneddFinance@Assembly.Wales)

18<sup>th</sup> January 2016

Dear Sir/Madam,

**Re: Consultation: Draft Public Services Ombudsman (Wales) Bill**

I write on behalf of Velindre NHS Trust in response to the invitation to offer comment on the above consultation.

This has been distributed widely across Velindre Trust and I am writing to provide you with the specific comments received following the consultation process which is outlined below:

**Section 4 – Power to investigate on own initiative**

This power allows the Ombudsman to investigate a matter whether the Ombudsman has received a complaint or not, so it allows the Ombudsman to initiate an investigation. This power raises the following queries for Velindre NHS Trust:

- If the PSOW has powers to initiate an investigation, how does this support the current Concerns Regulations in NHS Wales whereby a health body can investigate concerns locally before being considered by the PSOW
- How will the PSOW apply the principle of Redress within their investigation
- How will this power work alongside the powers of Healthcare Inspectorate Wales and their ability to initiate an investigation

**Section 5 – Criteria for own initiative investigations**

The Ombudsman must establish and publish criteria that have to be satisfied before the power in section 4 can be used to investigate a matter. When deciding whether to use the power in section 4, the Ombudsman must satisfy the criteria

- Clarity on the appeal process for the authority should the PSOW decide to initiate an investigation

Mae'r Ymddiriedolaeth hon yn croesawu gohebiaeth yn y Gymraeg  
This Trust welcomes correspondence in Welsh



## Section 34 - Model complaints-handling procedure

This section enables the Ombudsman to publish model complaints-handling procedures (“model CHPs”) for listed authorities, and

## Section 36 - Declarations of non-compliance

This section enables the Ombudsman to declare that a complaints-handling procedure of a specified listed authority does not comply with the relevant model CHP, and if not specified, that the procedure does not comply with the statement of principles.

- Clarification or reference as to how the model complaints handling procedure works alongside other Complaints regulations or legislation

Please do not hesitate to contact me should you wish to discuss this response further.

Yours Sincerely

Lisa Heydon-Mann

### Quality & Safety Manager

cc Mr. Steve Ham, Chief Executive

Professor Sue Morgan, Executive Director of Nursing & Service Improvement

Mae'r Ymddiriedolaeth hon yn croesawu gohebiaeth yn y Gymraeg  
This Trust welcomes correspondence in Welsh

This paper has been deemed not suitable for publication in line with the Commission's rules for conduct of business.

Document is Restricted



**Ymgynghoriad ar y Bil Ombwdsmon Gwasanaethau  
Cyhoeddus (Cymru) Drafft**

**Sylwadau Cyngor Gwynedd**

**Cyffredinol**

01. A fyddai'r Bil drafft yn gwella effeithiolrwydd rôl yr Ombwdsmon?  
Os felly, sut?

**Y pŵer i gychwyn ymchwiliadau liwt ei hun a chydweithio gyda  
chomisiynwyr eraill**

02. Os oes rhwystrau posibl i weithredu darpariaethau'r Bil drafft, beth  
ydynt? A yw'r Bil drafft yn eu hystyried yn ddigonol?

**Dim yn ymwybodol o unrhyw beth yn ddarsotyngedig i unrhyw sylwadau  
isod**

03. A oes unrhyw ganlyniadau anfwriadol yn deillio o'r Bil drafft?

**Dim y gallwn eu rhagweld ar hyn o bryd.**

04. Ar ba gam y dylid gwerthuso effaith y ddeddfwriaeth hon?

**Ar ôl y flwyddyn gyntaf.**

**Pŵer i ymchwilio ar ei liwt ei hun**

05. A oes gennych unrhyw sylwadau ar y pŵer newydd yn adran 4?

**Dim gwrthwynebiad sylfaenol i'r hawl yma ond rhaid sicrhau bod yr  
awdurdod dan sylw yn cael cyfle teg i ystyried y mater ei hun (yn  
enwedig o ystyried y gall fod yn fater sydd heb gael ei ddwyn i'w sylw  
o'r blaen).**

06. A yw cynnwys y pŵer hwn yn codi unrhyw ganlyniadau anfwriadol  
yng ngweddill y Bil drafft?

**Dim y gallwn eu rhagweld ar hyn o bryd.**

07. Â phwy y dylai'r Ombwdsmon ymgynghori o dan adran 4(2)?

**Yr awdurdod perthnasol, unrhyw gorff rheoleiddio perthnasol sydd ag  
awdurdod i ymchwilio.**

08. A ddylai'r Ombwdsmon gael pŵer i gychwyn ymchwiliad yn seiliedig ar gamau gweithredu a ddigwyddodd cyn i'r Ddeddf/Bil drafft gael Cydsyniad Brenhinol (gweler adran 4(4))? Os felly, a ddylai fod yna dorbwynt, fel na fydd modd i'r Ombwdsmon, wedi iddo gyrraedd y torbwynt hwnnw, barhau i gynnal ymchwiliad ei liwt eich hun?

**Yn ein barn ni mae angen rhoi sylw o'i oblygiadau posib darpariaeth o'r fath o safbwynt ymchwilio i faterion lle mae'r sefyllfa bellach wedi symud yn ei blaen. Dylid ystyried felly osod prawf yn seiliedig ar sefydlu fod y ffeithiau a'r anghyfiawnder sy'n ysgogi'r ymchwiliad yn parhau mewn bodolaeth. Mae gwerth hefyd mewn rhoi ystyriaeth o osod cyfyngiad amser. Nid oes gwrthwynebiad i alluogi'r Ombwdsmon i fynd yn ôl i edrych ar faterion oedd yn bodoli cyn i'r Ddeddf ddod i rym ond am resymau ymarferol efallai dylid cyfyngu hynny i 12mis cyn i'r dyddiad hynny.**

09. Pa fathau o faterion y dylid eu cynnwys yn y meini prawf ar gyfer ymchwiliadau ar ei liwt ei hun o dan adran 5?

**Budd cyhoeddus mewn ymchwilio, arwydd o fethiannau systemig o fewn yr awdurdod neu ar draws awdurdodau sy'n achosi anghyfiawnder i unigolion.**

10. Pa fath o dystiolaeth ddylai fod ar gael i'r Ombwdsmon i gyfiawnhau ymchwiliad ar ei liwt ei hun (gweler adran 5(2))?

**Ni ellir gweld pam na fyddai defnyddio'r un prawf o dystiolaeth a fyddai'n cyfiawnhau ymchwiliad llawn os gwneir cwyn gan unigolyn i'r Ombwdsmon yn addas.**

### **Pwy sy'n cael cwyno**

11. A oes gennych unrhyw sylwadau am y diffiniad newydd o "aelod o'r cyhoedd" yn adran 7(2)?

**Dim sylw**

## **Y gofynion ar gyfer cwynion a wneir ac a atgyfeirir at yr Ombwdsmon**

12. A oes gennych unrhyw sylwadau am y gofynion newydd ar gyfer cwynion a wneir i'r Ombwdsmon yn adran 8?

**Caniateir cwynion llafar o dan y model cenedlaethol o drefn gwynion sydd wedi ei mabwysiadu gan yr awdurdod, Nid oes gwrthwynebiad i ganiatáu cwynion llafar i'r Ombwdsmon ond dylid sicrhau bod yr Ombwdsmon yn medru darparu gwybodaeth ddigonol i'r awdurdod i'w ganiatáu i ystyried y mater yn iawn.**

13. Sut y dylai'r canllawiau arfaethedig ar gyfer gwneud cwyn i'r Ombwdsmon gael eu cyhoeddi a pha fformatau ddylai fod ar gael? **Cyn belled ag y mae'r awdurdod yn y cwestiwn byddai eu gosod ar wefan yr Ombwdsmon yn ddigonol. Ond yn amlwg dylai cyfryngau amgen fod ar gael sydd yn caniatáu mynediad i eang gan ddarparu gwynwyr yn ole u anghenion.**

## **Materion y caniateir ymchwilio iddynt**

### **Dim sylwadau ar y rhan hon**

14. A oes gennych chi unrhyw sylwadau am y ddarpariaeth newydd sy'n galluogi'r Ombwdsmon i ymchwilio i'r gŵyn gyfan pan fydd y driniaeth yn gyfuniad o ddarparwyr gwasanaethau iechyd cyhoeddus a phreifat (gweler adrannau 10(1)(d) and 10(2))?

15. A yw adran 10(2) yn ymdrin yn ddigonol ag unrhyw un sydd wedi derbyn cyfuniad o driniaeth gyhoeddus a phreifat?

16. A yw ehangu'r materion y caniateir ymchwilio iddynt yn adran 10(2) yn codi unrhyw ganlyniadau anfwriadol yng ngweddill y Bil drafft?

17. A yw'r diffiniad o "gwasanaethau iechyd preifat" yn adran 71 yn ddigon eang i gwmpasu unrhyw un sydd wedi cael cyfuniad o driniaeth gyhoeddus a phreifat?

18. A ddylai'r Ombwdsmon gael pwerau i adennill costau yr aethpwyd iddynt wrth ymchwilio i wasanaethau iechyd preifat?

19. A oes gennych unrhyw sylwadau am y diffiniad newydd o "ddarparwr gwasanaethau iechyd teulu" yn adran 71, a fwriadwyd i

gwmpasu, er enghraifft, bractis cyfan o feddygon teulu yn hytrach na meddyg teulu unigol?

### **Gweithdrefn ymchwilio a thystiolaeth**

20. A oes gennych unrhyw sylwadau ar y weithdrefn a bennir yn adran 16 i'r graddau y mae'n ymwneud â'r weithdrefn ar gyfer cynnal ymchwiliad ar ei liwt ei hun?

**Dylid sicrhau bod yr awdurdod yn cael cyfle teg (gan gynnwys amserlen realistig) i ystyried y mater gan gadw mewn cof y mae'n debyg na fydd cwyn benodol wedi ei chyflwyno i'r awdurdod o'r blaen neu fod angen ystyried materion systemig.**

21. A ddylai pŵer yr Ombwdsmon mewn perthynas â chael gwybodaeth, dogfennau, tystiolaeth a chyfleusterau hefyd fod yn gymwys i ymchwiliadau ar ei liwt ei hun ac ymchwiliadau i wasanaethau iechyd preifat (gweler adran 17)?

**Ni ellir gweld pam y dylai fod yn wahanol.**

### **Awdurdodau Rhestredig**

22. A oes gennych unrhyw sylwadau ar y cyfyngiadau ar y pŵer i ddiwygio Atodlen 3 (gweler adran 30(2) yn benodol), sydd lawer yn gulach na'r cyfyngiadau yn Neddf 2005?

**Dim sylwadau**

23. A oes unrhyw gyrff eraill y dylid eu cynnwys ar y rhestr o 'Awdurdodau Rhestredig' yn Atodlen 3?

**Dim sylwadau**

### **Ymdrin â chwynion**

24. A oes gennych unrhyw sylwadau ar adrannau 33 i 39 (sy'n adlewyrchu adrannau 16A i 16G o Ddeddf Ombwdsmon Gwasanaethau Cyhoeddus yr Alban 2002)?

**Byddai caniatáu i'r Ombwdsmon bennu gweithdrefn enghreifftiol, safonol a'r pwerau cysylltiedig yn fuddiol ond yn ddarostyngedig i sicrhau bod y gofynion hynny yn rhesymol a chymesur, yn ddigon hyblyg i gymryd i ystyriaeth gwahaniaethau mewn strwythurau**

awdurdodau ac yn cymryd i ystyriaeth gyfyngiadau ariannol ac adnoddau.

25. A yw adran 38(b) yn ddigonol i ganiatáu i awdurdodau rhestredig gydymffurfio â'u dyletswyddau o dan ddeddfiadau eraill, fel y dyletswyddau Rhyddid Gwybodaeth?

**Ydy, cyn belled ag y medrwn weld.**

#### **Rhan 4: Ymchwilio i gwynion sy'n ymwneud â phersonau eraill: gofal cymdeithasol a gofal lliniarol**

26. A ddylai Rhan 4 barhau i fod yn annibynnol? Neu a ddylai ymchwiliadau o'r fath gael eu dwyn o fewn y broses ymchwilio yn Rhan 3

**Dim sylwadau.**

27. Os dylai Rhan 4 gael ei dwyn o fewn Rhan 3, a oes unrhyw elfennau penodol o Ran 4 a ddylai barhau? Neu a ellir cymhwyso dull mwy cyffredinol?

**Dim sylwadau.**

#### **Rhan 5: Ymchwiliadau: cwestiynau atodol**

28. A oes gennych unrhyw sylwadau ar adrannau 62, 63 a 64, sy'n darparu ar gyfer cydweithio a chydlafulio â Chomisiynwyr penodol ac Archwilydd Cyffredinol Cymru?

**Mae angen ystyried ail-ddrafftio adrannau 62 a 63. Nid yw'n eglur o gwbl beth yw'r gwahaniaeth rhwng "Chydweithio" a "Chydlafulio" gyda'r Comisiynwyr ac o dan ba amgylchiadau y byddai naill adran yn berthnasol.**

**Mae'r adrannau yn gosod rheidrwydd ar yr Ombwdsmon i gysylltu gyda'r Comisiynwyr ond dim ond os yw o'r farn fod hynny'n briodol. Os yw mater yn debyg o fod yn berthnasol i Gomisiynydd yn ogystal â'r Ombwdsmon byddai'n well fod rhaid ymgynghori. Fel hynny byddai'n rhoi cyfle i'r Comisiynydd ystyried os yw'n fater iddo ef/hi hefyd ac yn medru osgoi mwy nag un ymchwiliad i'r un mater petai'r Comisiynydd eisoes yn delio a'r mater.**

29. A ddylai adrannau 62 a 63 gynnwys unrhyw gomisiynwyr y gallai'r Cynulliad eu sefydlu

**Mae hyn yn ymddangos yn rhesymol**

30. A oes unrhyw newidiadau technegol pellach sydd eu hangen yn Rhan 5 o'r Bil drafft, er mwyn adlewyrchu'r materion ehangach y gellir ymchwilio iddynt?

**Dim sylwadau**

Penodi etc

31. Mae darpariaethau paragraffau 5 i 8 o Atodlen 1 (anghymhwysu) yn adlewyrchu'n bennaf y darpariaethau presennol yn Neddf 2005. A oes angen diweddarau'r darpariaethau hyn?

**Dim sylwadau**

32. Mae Paragraff 1 o Atodlen 1 yn darparu bod person sydd wedi peidio â dal swydd Ombwdsmon neu swydd Ombwdsmon dros dro wedi'i anghymhwysu o restr o rolau (a restrir ym mharagraff 7(1)) am gyfnod o ddwy flynedd. A yw'r cyfnod o ddwy flynedd yn briodol?

**Dim sylwadau**

33. A oes gennych sylwadau am y materion a gynhwysir yn y "swydd â thâl" ym mharagraff 8 o Atodlen 1?

**Dim sylwadau**

Goblygiadau ariannol

34. A oes gennych farn am oblygiadau ariannol y darpariaethau newydd yn y Bil drafft?

**Dim heblaw am sylwadau sydd eisoes wedi eu cynnig uchod.**

Sylwadau eraill

35. A oes gennych unrhyw sylwadau eraill yr hoffech eu gwneud am y Bil drafft neu unrhyw ddarpariaeth benodol ynddo?

15/01/16



Committee Clerk  
Finance Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

18 January 2016

Dear Sir/Madam

## **RESPONSE TO CONSULTATION ON THE DRAFT PUBLIC SERVICES OMBUDSMAN (WALES) BILL**

Thank you for the invitation to provide comments on the draft public services Ombudsman (Wales) Bill.

As you are aware, the Northern Ireland Assembly is currently reforming and modernising the Office of the Northern Ireland Ombudsman through the Northern Ireland Public Services Ombudsman Bill (the Bill). The Bill proposes the merger of the two existing statutory offices of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints. The Bill will modernise the legislation that underpins the work of the Northern Ireland Ombudsman; it also extends the jurisdiction of the Office to include schools, colleges of further education; it removes the bar on investigating commercial and contractual matters, introduces an own initiative power and includes universal access to the Ombudsman to legal advice held by bodies in jurisdiction; and includes a number of other reforms such as that of a complaints standards authority for Northern Ireland.

The consultation on the draft public services Ombudsman (Wales) Bill therefore, from a Northern Ireland perspective, is timely given my Office's recent experience with the reform of our own legislation.

Please find attached my response to the consultation questions. If I can be of any further assistance please do not hesitate to contact me.

Yours faithfully

**TOM FRAWLEY**  
Ombudsman



NORTHERN IRELAND OMBUDSMAN'S  
RESPONSE TO A CONSULTATION ON  
THE DRAFT PUBLIC SERVICES  
OMBUDSMAN (WALES) BILL

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January 2016

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## **Introduction**

### **THE ROLE OF THE NORTHERN IRELAND OMBUDSMAN**

In my role as Northern Ireland Ombudsman, I hold two statutory offices; Assembly Ombudsman for Northern Ireland and Northern Ireland Commissioner for Complaints. In the former role, I investigate complaints of maladministration about Northern Ireland Departments and their statutory agencies. In the latter role I can investigate complaints of maladministration about local government, health and social care, housing and education. My remit in health permits me to investigate complaints relating to the clinical judgement of health professionals in health and social care trusts, general health service and independent health services providers. In May 2014, I was given powers to investigate complaints about alleged breaches of the Local Government Code of Conduct for Councillors (the Code); and I have power to adjudicate or sanction where the Code has been breached. I have a statutory bar in both pieces of legislation underpinning my Office Article 10(3) of the Ombudsman (NI) Order 1996 and article 9(3) of the Commissioner for Complaints (NI) Act 1996. Currently, I can only investigate a complaint made to me in writing and I currently have no power to commence an own initiative investigation.

However, under new legislation proposed for Northern Ireland and sponsored by the OFMdFM committee of the Northern Ireland Assembly, the offices of Assembly Ombudsman and Commissioner for complaints will be merged in a single new office of Northern Ireland Public Services Ombudsman (NIPSO) with extended powers and remit. The legislative process for the NIPSO Bill is at an advanced stage and I attach a link to the Bill for the Welsh Assembly's consideration. Of significance to the proposals for the PSOW draft Bill is the NI Assembly's proposal for own initiative powers for the NIPSO and the role of complaints standards authority as well as increased access to information and information sharing powers with other ombudsmen, commissioners and oversight bodies.

I will be happy to provide further information or evidence to the Welsh Assembly in addition to my written submissions as this important piece of Welsh Assembly legislation progresses.

## **Response to Questions 1-4**

1. I consider it important that proper structures are put in place so that the Office of the Public Services Ombudsman for Wales (PSOW) can deliver its work effectively and in a co-ordinated way, and provide a strong focus on improving public services for the people of Wales going forward. In order to do so, it is therefore necessary to update and renew the legislation which provides the legal framework within which the Ombudsman can address the complaints he receives.
2. Complaints to the Office of the PSOW relate to events that impacts the quality of the lives of the people of Wales and to refresh this important legislation would enhance the Office's ability to provide redress and remedy for individuals when that is appropriate as a result of failures in administration and professional judgment in health and social care.
3. As you are aware, the legislation under which my Office operates is also currently undergoing significant reform. This process has raised issues of potential barriers to redress for injustice experienced by the citizen in relation to their experiences of public services, which I would be happy to provide further information on if required.

## **Response to Question 5**

4. I welcome the power of the Ombudsman to investigate on his own initiative. The provision in the draft Bill mirrors the equivalent provision in the Northern Ireland Public Services Ombudsman (NIPSO) Bill, which I believe provides an effective framework for the NIPSO to introduce this new investigative tool.
5. The power to investigate on own initiative is not an authority that has been available to date to UK ombudsmen. However, it has nevertheless traditionally been part of the toolkit available to what has come to be known as the 'classic' model of ombudsman with most International ombudsmen having this authority. For instance, ombudsmen in Austria, Malta and the Republic of Ireland have

own initiative powers which enable issues of systemic maladministration to be addressed.

6. Historically Public Services Ombudsmen within the UK have been constrained, by underpinning legislation, to respond only where a complaint is received from an aggrieved individual. I envisage that the authority to initiate an own initiative investigation would be used sparingly, as has been the experience in other jurisdictions, and anticipate that I and any other ombudsman with this authority would be circumspect in invoking this authority. In particular the use of the authority could be judged appropriate where concerns of unfairness arise across a number of individual complaints even though the public authorities involved have been adhering to the prescribed policies and procedures. The own 'motion' power for PSOW will also address a particular gap in the current recourse available to an ombudsman where he/she is required to receive a complaint before initiating investigation. This presents real problems for the most vulnerable in our society, the frail elderly, the mentally ill and people with learning difficulties, who are unable or inhibited from properly framing their concerns or experience in a complaint; or indeed who's families fear reprisal on foot of a complaint if they are cared for in an institutional setting. These groups often experience systemic failure and therefore crucially an own initiative authority will enable the Ombudsman to much more effectively examine these potential failures when they present.
7. There is the potential for the authority to investigate on own initiative to be used to investigate issues across a broader spectrum of Departments or Public Service bodies delivering the same or a comparable service. In this respect I would envisage prior discussion and consultation with the Comptroller and Auditor General and relevant sectoral regulators to ensure that a duplicate use of resources was avoided.

### **Response to Question 6**

8. I do not consider that the power to investigate on own initiative has any unintended consequences for the other matters included in the draft Bill.

### **Response to Question 7**

9. It is for the Ombudsman to decide who to consult in relation to own initiative investigations. This will depend on the 'listed authority' under investigation and the sector in which that listed authority is located. For example, if the Ombudsman considers investigating on own initiative in relation to a health complaint, it would seem appropriate that he consults with the relevant health regulator in the first instance.
10. As outlined at question 5 above, the power to investigate on own initiative can be used to investigate the issues across a broad spectrum of Departments or Public Bodies delivering the same or a comparable service. In this respect the Ombudsman would envisage prior discussion with the Comptroller and Auditor General to ensure that a duplication of effort and resources was avoided.

### **Response to Question 8**

11. Yes, the Ombudsman should have the power to initiate an investigation based on action that took place prior to the draft Bill/Act receiving Royal Assent. I do not consider that there should be a cut off point beyond which the Ombudsman should not carry out an own initiative investigation. A similar provision for retrospective applications is included in the NIPSO Bill at section 8(6).

### **Response to Question 9**

12. I can confirm that in Northern Ireland the NIPSO will produce his/her own criteria for conducting own initiative investigations and I consider it important that a similar approach is adopted in Wales. This discretion to set his/her own criteria for investigation is an important facet of the ombudsman model, underscoring their independence from the bodies they investigate.

## Response to Question 10

13. It is for the Welsh Ombudsman to decide whether or not to conduct an own initiative investigation and it is for him to determine whether the evidential requirements have been satisfied. There is a danger in being prescriptive in terms of the evidential requirements and every investigation must be decided on its own merits.
14. In Northern Ireland the Assembly has provided that the new NIPSO, where he/she chooses to initiate a systemic investigation, would be subject to the usual provisions relating to investigations of individual complaints. Thus, the provisions relating to bodies within jurisdiction, matters within jurisdiction, purposes of an investigation, procedure in respect of investigations, evidence, obstruction and contempt, reports on investigations etc would all still apply. Potentially, there are many sources which could prompt an 'own initiative' investigation by the Ombudsman. These include evidence gathered through their own casework/research, evidence gathered by another agency or regulator, by the legislature, or prompted by a specific public concern. Despite the limitless discretion implied by the term 'Own Initiative' in reality the decision to initiate an investigation, on this basis, would require to be evidence based, adequately reasoned and constitute a proportionate and prudent use of public resources. Ultimately, it is a matter for the Welsh Ombudsman to decide but my research has identified a number of potential triggers for an own initiative investigation. These include:
- (i) A complaint or series of complaints on an issue having been received
  - (ii) The Ombudsman's perception of public concern about an issue
  - (iii) A result of the Ombudsman's research on the issue
  - (iv) An organisation's own internal governance arrangements and external audit
  - (v) Political oversight and commentary
  - (vi) Regulation and oversight of a body within jurisdiction by another organisation
  - (vii) Evidence brought to the Ombudsman by advocacy groups identifying patterns and trends of systemic maladministration

(viii) Research provided by the relevant listed authority

15. A draft 'Decision Framework' is currently being developed for the NIPSO to provide guidance in relation to the relevant evidential considerations. I would be happy to share this framework with the Committee in due course.

### **Response to Question 11**

16. The definition of 'member of the public' is as defined in section 5(5) of the NIPSO Bill which is a provision similar to that provided in the draft PSOW Bill. I do consider it appropriate to include section 7(3) which also provides for the Welsh Ombudsman to determine any question of whether a person is entitled to bring a complaint. It is important that the Welsh Ombudsman retains discretion to decide who can complain to him. This broad discretion is an important aspect of the ombudsman model.

### **Response to Questions 12 and 13**

17. It is, in my view, a matter for the discretion of the Welsh Ombudsman to determine in any case whether the requirements are met in respect of complaints made to his Office. It is important to ensure that the Welsh Ombudsman, like all other Public Services Ombudsmen, is the 'master' of his own procedures.
18. I should point out that currently the time limit for bringing complaints to my office is twelve months. In the NIPSO Bill, the time limit for submitting a complaint to the NIPSO has been reduced from twelve months to six months. In that legislation, where the procedure for the administration of complaints handling by the listed authority has been exhausted, the authority must within two weeks of the complaints handling procedure being exhausted, give the person aggrieved a written notice stating that the complaints handling procedure is exhausted and that the person aggrieved if dissatisfied, can refer the complaint to the Ombudsman. The complaint must be made to the NIPSO within six months of that notice being sent. It is important that members of the

public are aware of the route to redress from an ombudsman as an office of last resort and a statutory duty to signpost to an ombudsman is significant progress.

### **Response to Questions 14-19**

19. I currently have no remit over private healthcare and this extension of jurisdiction is not envisaged for NIPSO. In our experience to date, the public/private health care overlap has not been an issue and I have no views on this matter. As a result, I am not in a position to offer an informed comment on these questions.

### **Response to Question 20**

20. The investigation procedure set out in section 16, insofar as it relates to the procedure for conducting own initiative investigations, is broadly similar to the procedure in the NIPSO Bill and I welcome this.

### **Response to Question 21**

21. I do consider it essential for the effective operation of an own motion investigation that the Ombudsman has the same wide information gathering powers in relation to own initiative investigations as in his role relating to complaint led investigation. The role of an ombudsman is inquisitorial in nature, it is not adversarial, therefore the Ombudsman must have access to all relevant information to properly establish the facts. I should point out that in the NIPSO Bill the NIPSO has the power to seek access to all legal advice in relation to all listed authorities that are the subject of the investigation. This can be important as in my experience many bodies rely on legal advice as an explanation for their actions and the ombudsman should therefore be in a position to test this issue.

### **Response Question 22**

22. I have no comment to make on the issues raised by this question.

### **Response to Question 23**

23. From my experience, it is important that any public service provider that is funded by public money from the Welsh Assembly should be included within the Welsh Ombudsman's jurisdiction.

### **Response to Question 24**

24. I welcome these provisions which are similar to those in the draft NIPSO Bill.
25. I note and welcome that the proposed amendments to the PSOW Act reflect the Scottish model which has been followed in the proposed NIPSO Bill. The relevant provisions of the Scottish Public Services Ombudsman Act 2002 gave the Scottish Ombudsman enforcement powers to compel bodies to adopt the model complaints handling policy. This mandatory element has been an important power to ensure uniformity of complaints handling process across the public sector in Scotland. This uniformity of approach to complaints handling across all public service providers is important as the public are aware of this simple and streamlined approach and their right to complain to the Welsh Ombudsman if having exhausted the internal process, of the listed authority, they remain dissatisfied. I fully support these provisions and consider the complaints standards authority role will be an important tool for the Welsh Ombudsman to improve complaints handling across the public sector which will, in my view, benefit the bodies complained of, the citizen; and the Welsh government in its oversight of that sector.

### **Response to Question 25**

26. Please note that in Northern Ireland the NIPSO Bill has a similar provision. I do consider section 38(b) to be adequate to allow Welsh listed authorities to comply with their duties under other enactments, such as Freedom of Information duties.



### **Response to Questions 26 and 27**

27. Having considered the proposed amendments, I concur that Part 4 of the draft Bill should be brought within Part 3 in its entirety.

### **Response to Question 28**

28. There are similar information sharing provisions proposed in the NIPSO Bill and I welcome the inclusion of the Welsh Ombudsman's ability to work collaboratively with Commissioners and the Auditor General for Wales. This will be important as stated previously in relation to own initiative investigations. I note however that the proposed provisions do not include the new NIPSO and I suggest that consideration is given to extending this provision to include the NIPSO which would enable the Welsh and Northern Irish Ombudsmen to share information and operate more effectively in relation to systemic maladministration that may impact on both Northern Irish and Welsh citizens.

### **Response to Question 29**

29. If there is the potential for duplication of roles between the Ombudsman and future Commissioners, then in my view sections 62 and 63 in the draft Bill should be extended to apply to those new Commissioners.

### **Response to Question 30**

30. I do not consider there to be a need for any further technical changes in Part 5 of the draft Bill to reflect the broadening of matters which may be investigated.

### **Response to Question 31**

31. I have no comment to make in response to this question.

### **Response to Question 32**

32. I am strongly of the view that the two year period of disqualification for both the Ombudsman and Acting Ombudsman is excessive, disproportionate and unnecessary. This limitation is outwith other jurisdictions. In the NIPSO Bill, it is proposed that the restriction on subsequent employment of the outgoing NIPSO ends on the expiry of the financial year following the financial year in which the person ceased to be the Ombudsman. I consider this time period to be more appropriate and proportionate to the Ombudsman and Acting Ombudsman. This is particularly relevant when, as is provided for by in both the NIPSO Bill and PSOW, the Ombudsman's appointment is for a single term of seven years. I accept that if the Assembly Commission consents to the former Ombudsman or former Acting Ombudsman taking up one of the roles specified in the Bill and there is no conflict of interest, there should be no reason why the time limit of two years disqualification should remain. I am of the view that fairness requires that such decisions are considered on a case by case basis.

### **Response to Question 33**

33. As above, I consider this proposed provision to be excessive and disproportionate. References to a 'paid office' should not include an office holder who is entitled only to the reimbursement of expenses.

### **Response to Question 34**

34. I have no comment to make in response to this question.

### **Response to Question 35**

35. I have no further comments other than to record my welcoming the opportunity to provide my insights on the proposed draft Bill and am happy to provide clarification or any further information that the Committee would consider helpful in order to allow for the adoption of this significant legislation.

Finance Committee  
Draft Public Services Ombudsman (Wales) Bill  
DB PSOW 28 Committee for Administrative Justice and Tribunals Wales

*Pwyllgor Cyfiawnder Gweinyddol a Thribiwnlysoedd Cymru*  
*Committee for Administrative Justice & Tribunals Wales*

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18 January 2016

Committee Clerk  
Finance Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff CF99 1NA.

**By email**

**Draft Public Services Ombudsman (Wales) Bill - consultation**

1. This is the response of the CAJTW to this Finance Committee consultation. The CAJTW was set up by Welsh Ministers on 1 November 2013 as the non-statutory successor body to the Welsh Committee of the Administrative Justice and Tribunals Council. The overarching aim of the CAJTW is to act as a guardian of the public interest with regard to administrative justice in Wales. It has a remit to:
  - Advise on tribunal reform in Wales;
  - Identify to Welsh Ministers any issues affecting the administrative justice system in Wales which may require Government attention;
  - Ensure the users of the system are listened to and their interests are represented; and
  - Encourage networks and the sharing of good practice amongst practitioners.
2. The CAJTW wishes to respond to Questions 1 and 18 in the consultation letter:

*“01. Would the draft Bill improve the effectiveness of the role of the Ombudsman? If so how?”*

The CAJTW believes that the draft Bill will improve the role of the Public Services Ombudsman for Wales [PSOW] insofar as the Bill will develop the role by the four new powers: (i) discretion to accept complaints made other than in writing; (ii) discretion to investigate privately provided health care when such provision is the subject of a complaint involving health care provided by both private providers and the NHS; (iii) discretion to investigate on PSOW's initiative irrespective of

whether a complaint has been made; and (iv) further enabling PSOW to develop standards for Wales for the handling of complaints about public services.

The Consultation asks, for example in questions 07 and 09, about whom PSOW should consult when beginning an investigation on PSOW's own initiative, and what kind of issues should be included in the criteria for deciding whether to investigate. The CAJTW is confident that, when the PSOW devises his policy on those and similar matters, the PSOW will act in accordance with the spirit of the *Principles for Administrative Justice*<sup>1</sup> published by the Administrative Justice and Tribunals Council in November 2010.

*“18. Should the Ombudsman have powers to recover costs incurred in investigating private health services?”*

The CAJTW believes that, for the purposes of the Bill, private and public health providers should be treated equally, and that PSOW should not have powers to recover costs incurred in its investigations.

3. Generally, subject to the foregoing, the CAJTW believes that the Bill will improve the effectiveness of PSOW.

**Ray Burningham**  
**Secretary to CAJTW**

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<sup>1</sup> [http://ajtc.justice.gov.uk/docs/principles\\_web.pdf](http://ajtc.justice.gov.uk/docs/principles_web.pdf)

**Welsh Government's response to the National Assembly's Finance Committee's consultation on the draft Public Services Ombudsman for Wales Bill.**

**Introduction**

The Government welcomes the opportunity to respond to the Finance Committee's Draft Public Services Ombudsman for Wales Bill consultation. We have responded to individual questions we consider it is appropriate and helpful for us to answer.

**2. What, if any, are the potential barriers to implementing the provisions of the draft Bill? Does the draft Bill take sufficient account of them?**

The main barriers will be financial resources, organisational cultures, and a changing landscape. There is a need for a clear financial assessment and a case to demonstrate that the benefits outweigh the costs.

**3. Are there any unintended consequences arising from the draft Bill?**

The draft Bill proposes to repeal the entire Public Services Ombudsman (Wales) Act 2005. Section 35 and schedule 4 amend parts of the Local Government Act 2000 to give functions to the Public Services Ombudsman for Wales around the conduct of local government members, which were previously held by the Local Commissioner and Commission for Local Administration for Wales. It would be useful to make provisions in your draft Bill to clarify this issue.

**4. At what point should the impact of this legislation be evaluated?**

The Assembly Committees receive reports and hold the Ombudsman to account, and can provide a forum, where the Ombudsman can relay any fears if he feels that his work is being hindered and needs reviewing. It is how this process began. In addition, the introduction of a complaint standards authority should provide the legislature with hard evidence of how complaints are being handled, and whether or not there is dissatisfaction from Welsh citizens.

**Power to investigate on own initiative**

**5. Do you have any comments on the new power in section 4? (this answer also covers questions 9 and 10)**

As we have stated before, we believe that the criteria for deciding what and when to investigate, should be written into legislation and include:

- a) Anomalies, such as illegal or corrupt practice, a wrong doing or a practice that is manifestly unfair, or evidence of arbitrariness or inconsistency in administering a public service becomes evident during an investigation, could trigger an Ombudsman inquiry:

- b) If there are a number (e.g. more than 10) of investigations indicating a pattern that points to a more widespread national or regional problem, and where this is not best taken forward by another body (subject to consultation with the appropriate listed bodies in (d) below ) this could trigger an Ombudsman inquiry.
- c) Where citizens are vulnerable, and there is a concern they are afraid to complain for fear of reprisals, evidence either by a series of anonymous letters sent to the Ombudsman, a commissioner or a Minister or where matters are brought to the attention of the Ombudsman by a responsible body (such as those listed in (d) below), this could trigger an Ombudsman inquiry.
- d) Prior to any inquiry being commenced, the Ombudsman must satisfy himself that neither the Police, Health and Safety Executive, Coroners, professional regulators and non-devolved bodies, commissioners, regulators, the Auditor General for Wales, inspectorates and or the Welsh Ministers have plans, or have initiated their own work or are reviewing the subject content of the own initiative inquiry.
- e) In any event, the Ombudsman must first seek to allow for a local resolution prior to initiating an own initiative investigation, as is the practice now. The remit and terms of reference of any own initiative investigations needs to be clear and unambiguous.
- f) In cases where the Ombudsman is to conduct an own initiative investigation where the body complained of has a statutory complaint handling procedure, the Ombudsman will need to apply the appropriate test used by the body's statutory complaint handling procedures, for example the NHS uses the Bolan test; and the Ombudsman will need to specify the use of tariffs that are in line with the statutory provisions of the body concerned.

In addition, a key test for initiating own initiative investigations should be for the PSOW to set out the potential benefits to the public services people receive and to demonstrate that the costs are outweighed by the value added.

In the current draft, there is a significant delegated power for the Ombudsman to establish and publish the criteria to be used in determining whether to commence an investigation.

Taking this together with Section 16 and Section 6 of the Draft Bill, by which the Ombudsman can take action to resolve a matter through alternative means in private, this potentially gives the Ombudsman significant new scope. This is also true to some extent of Section 16, subsection 4 of the draft Bill, where the Ombudsman is given a duty to specify and publish procedural requirements for conducting an investigation, with only two of these requirements set out at subsection 5.

**6. Does the inclusion of this power raise any unintended consequences in the rest of the draft Bill?**

Yes. It could lead to a conflict between the Ombudsman and the role of other regulators, especially those that have been established by statute, such as Health Inspectorate Wales, the Care and Social Services Inspectorate, or the Housing regulator, all of whom have powers to conduct investigations. We might see duplicate investigations with different conclusions.

**7. With whom should the Ombudsman consult under section 4(2)?**

Prior to any inquiry, the Ombudsman should satisfy himself that no other body, Police, Health and Safety Executive, Coroners, professional regulators and non-devolved bodies, commissioners, regulators, the Auditor General for Wales, inspectorates and or the Welsh Ministers has work planned or underway on the same subject. There needs to be an appropriate duty to consult placed on the Ombudsman before an own initiative investigation is undertaken.

**8. Should the Ombudsman have the power to initiate an investigation based on action that took place prior to the draft Bill/Act receiving Royal Assent (see section 4(4))? If so, should there be a cut-off point, beyond which the Ombudsman should not carry out an own initiative investigation?**

No. It is unusual to introduce legislation that seeks to address concerns retrospectively and we do not believe a case has been made for powers to be extended to this extent.

**Requirements for complaints made and referred to the Ombudsman**

**12. Do you have any comments on the new requirements for complaints made to the Ombudsman in section 8?**

In respect of Section 8 (1) ( c ) the local resolution process can, experience has shown, take up to one year to resolve. Whilst this is not indicative of the Welsh public sector, there are cases in health and social care where accessing relevant experts to independently review complaints can stretch complaint close to a year. This also applies to Section 9 (1) (b). The Committee may want to review this provision.

The same section also mentions electronic media and the Committee should consider if this included social media.

**13. How should the proposed guidance for making a complaint to the Ombudsman be published and what formats should be available?**

The Ombudsman should ensure that the guidance is accessible, by taking advice from relevant bodies, for example RNIB, Disability Wales, and the Equality and Human Rights Commission. The Ombudsman is subject to the Welsh Equality

measure and can rely on its provisions to ensure it is providing a service that is compatible with the responsibility the measure confers.

**Matters which may be investigated**

**14. Do you have any comments on the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received by public and private health services providers (see sections 10(1)(d) and 10(2))?**

We have previously stated that we support this as long as there is no additional cost to the public purse.

**15. Does section 10(2) adequately cover anyone who has received a combination of public and private treatment?**

Section 10 (2) needs to be make clear whether it covers Welsh patients receiving services in England and whether these were commissioned services or private treatment. It also needs to clarify whether / how it would apply to Welsh patients who undergo treatment across the border.

There should be an integrated report on all aspects of care and not a separate report on public and private aspects of the treatment. Sections 22 and 23 should be reviewed and it would be preferable to engage both parties to a report so that issues can be taken forward together.

**17. Is the definition of “private health services” in section 71 broad enough to cover anyone who has received a combination of public and private treatment?**

The definition is narrow and should be broadened to encompass both medical treatment and nursing care.

**19. Do you have any comments on the new definition of “family health service provider in Wales” in section 71, which is intended to capture, for example, a GP practice as a whole rather than just an individual GP?**

We note the intention to capture the whole practice rather than an individual GP, but would suggest the Committee seeks legal clarification if this also includes commissioned services, especially those that may have a cross border impact.



## **Investigation procedure and evidence**

### **20. Do you have any comments on the procedure set out in section 16, in so far as it relates to the procedure for conducting an own initiative investigation?**

As a consequence of our answer to question 4, the provision allowing the Ombudsman to amend the criteria would need to be removed from the draft Bill.

### **21. Should the Ombudsman's power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations and investigations into private health services (see section 17)?**

Yes

## **Listed Authorities**

### **22. Do you have any comments on the restrictions on power to amend Schedule 3 (see section 30(2) in particular), which are significantly narrower than the restrictions found in the 2005 Act?**

We would prefer to stay with the original power from the 2005 act, as they provide more flexibility to the Ombudsman in exercising his powers.

### **23. Are there any other bodies that should be included in the list in Schedule 3**

It is noted that the list in schedule 3 is consistent with the list in the Public Services Ombudsman (Wales) Act 2005. As such, the list of bodies will need updating to include

- Qualifications Wales which was inserted into the schedule by the Qualifications (Wales) Act 2015.
- The two Boards of Conservators in Wales, the Coity Walia and Towyn Trewan Boards for Conservators.

Similarly, a number of bodies will need to be removed or changed, including;

- The Climate Change Commission for Wales, will end in its current format on 31 March 2016 and should be removed. Given the role of the Future Generations Commissioner outlined in the Well-being of Future Generations Act, our view is that the Future Generations Commissioner should be included under sections 62 (1b) and 63 (1).
- The Internal Drainage Boards should be removed as they are now part of Natural Resources Wales.
- The reference to 'A Community Health Council' should read 'individual Community Health Councils'.
- The Wales Centre for Health should be removed as it no longer exists.

- The Care Council for Wales are due to be renamed from April 2017 as Social Care Wales as part of the Regulation and Inspection of Social Care (Wales) Bill. Depending on the proposed timeline for the PSOW Bill, Social Care Wales may need to replace CCfW in the 'listed authorities' section in Schedule 3.
- The Regional Flood and Coastal Committee under the Flood and Water Management Act 2010 would become the Flood and Coastal Erosion Committee under the Environment Bill. Therefore depending on the timing of the Public Services Ombudsman (Wales) Bill that reference may have to change if the Environment (Wales) Bill becomes an Act.
- The Tax Collection and Management (Wales) Bill currently before the Assembly seeks to establish the Welsh Revenue Authority. Section 34 of the Bill provides for Schedule 3 to the Public Services Ombudsman (Wales) Act 2005 (c.10) (listed authorities), to include, after the entry relating to the National Assembly for Wales Commission to have inserted "Welsh Revenue Authority." The Committee will need to have regard to this when the Draft Ombudsman Bill is introduced.

Other bodies should be retained on the list including;

- The Natural Resources Body for Wales, as this is the legal name given to Natural Resources Wales (NRW) in the Establishment order. The Environment Agency as, although in Wales this is now a part of NRW, the actions of the English Environment Agency in a cross border situation i.e. in or on the rivers Dee, Wye and Severn could impact in Wales. We would like the Public Service Ombudsman to have the power to investigate these actions.
- The Forestry Commissioners, as again, there is potential cross-border activity and the Commissioners retain some function in relation to Wales.

Building Regulations Advisory Committee, as this was added to the current act via the Statutory Instrument that transferred building regulations functions to Welsh Ministers.

## Complaints-Handling

### **24. Do you have any comments on sections 33 – 39 (which mirror sections 16A to 16G of the Scottish Public Services Ombudsman Act 2002)?**

The draft Bill is unclear on how the statement of principles would differ from the model complaints-handling procedure. If the intention is for the statement of principles to be akin to the current ombudsman publications, Principles of Good Administration and the Principles of Good Remedy; and the model complaint handling procedure to be akin to the current Model Complaints Policy, this should be clarified.

The Government welcomes the provisions around model complaints-handling procedures (“model CHP”) for listed authorities. But we are concerned about the publication of different model CHPs for different purposes as this may lead to confusion. We believe that the scope of model CHP’s should be limited to listed authorities who are not required by statute to have a Complaint Handling Procedure. Where listed authorities are required to have statutory complaints handling procedures, the Ombudsman’s role should be to ensure that they are complying with their statutory role.

The draft Bill requires a relevant authority to provide a description of the CHP to the Ombudsman within 6 months of being specified. But, section 37 provides that, if the Ombudsman gives a direction under (1), the listed authority would have to submit a description of its procedure within 3 months (instead of 6). The committee needs to clarify its intention in this regard. There should also be a requirement for a listed body to publish and publicise its CHP.

The Bill provides the Ombudsman with discretion to determine who to consult on the principles and the model CHP, but it is silent on compliance and the sanction available to the Ombudsman were a listed authority fail to comply with a model CHP or a statutory CHP.

During the Finance Committee’s inquiry, reference was made to the PSOW collecting complaints data across the public sector in Wales, and learning from it. The Bill is silent on this issue.

**25. Is section 38(b) adequate to allow listed authorities to comply with their duties under other enactments, such as Freedom of Information duties?**

Yes, but it should also include an exemption for those public bodies that have a statutory requirement to have complaint handling procedures from sections 32, 33, 34 and 35.

**Part 4: Investigation of complaints relating to other persons: social care and palliative care**

**26. Should Part 4 remain a standalone Part? Or should such investigations be brought within the Part 3 investigations process?**

We should have one investigating process.

**Part 5: Investigations: supplementary**

**28. Do you have any comments on sections 62, 63 and 64, which provide for joint and collaborative working with specified Commissioners and the Auditor General for Wales?**

The reference to only the Commissioners and subsequently to the Auditor General for Wales needs to be extended to other bodies with whom the Ombudsman must consult as stated previously.

**29. Should sections 62 and 63 cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales?**

Yes. All Commissioners have an interest in promoting and improving public services. Each commissioner will bring their own specialism, knowledge and expertise to the table, and together with their insight in their areas, they will add real value to joined up working.

**30. Are there any further technical changes required in Part 5 of the draft Bill, to reflect the broadening of matters which may be investigated?**

No

**Appointment etc.**

**31. The provisions of paragraphs 5 to 8 of Schedule 1 (disqualification) reflect largely the current provisions in the 2005 Act. Do these provisions require updating?**

No

**32. Paragraph 7 of Schedule 1 provides that a person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified from a list of roles (listed in paragraph 7(1)) for a period of two years. Is the two year period appropriate?**

Yes

**Financial implications**

**34. Do you have a view on the financial implications of the new provisions set out in the draft Bill?**

An important element of our evidence to date has been the pressure on public spending and the need to ensure that proposals do not impose new costs on the public purse. We note the explanatory material did not provide an assessment of costs and impacts of the draft legislation; especially in regard to costs that may be incurred by Health and Local Government.

Similarly there is no assessment of impacts either in terms of equalities and human rights, the Welsh language, the United Nations Convention on the Rights of the Child (UNCRC), or EU law.

These are all important considerations for Assembly legislation and we encourage the committee to ensure these issues are fully considered.

In addition, the Committee may wish to consider whether there are impacts in terms of tackling poverty and the well-being of future generations.

### **Other comments**

#### **35. Do you have any other comments you wish to make about the draft Bill or any specific provision within it?**

Given that this Bill repeals and replaces the PSOW Act 2005, there will need to be equivalence between the English and Welsh texts of a Bill.

The recent consultation on the Quality Green Paper, Our Health, Our Health Service, included proposals to review, streamline and strengthen the roles of inspectorates. The committee should be prepared to take into consideration the responses to that consultation and any Government proposals that may arise from it in respect of HIW and CSSIW.

The draft Bill being consulted on refers to the Care Standards Act 2000 (CSA). We anticipate the Regulation and Inspection of Social Care (Wales) Bill will shortly receive Royal Assent. References to the CSA will need to be amended and further amendments will be needed to take account of the changes that will be enacted by the Regulation and Inspection of Social Care (Wales) Bill.

**Response to Consultation on the Draft Public Services Ombudsman (Wales) Bill**

*Richard Kirkham*<sup>1</sup>

**Introduction**

I am an academic who has researched and written on the ombudsman institution for over ten years. In the past I have acted as a consultant for the Parliamentary Ombudsman in the drafting of the Parliamentary Paper *Withstanding the Test of Time*, HC421 (2006/07) and as a member of the team that wrote *An External Evaluation of the Local Government Ombudsman* (2013: LGO Website).

**General**

*Does the Bill improve the effectiveness of the role of the Ombudsman?*

1.1 Yes. The draft Bill: (i) smooths out the process for submitting complaints and (ii) upgrades the ombudsman scheme by creating some new powers (eg own-initiative investigation, standards authority, and limited jurisdiction over private health care providers).

1.2 This upgrade is the direction of travel that all ombudsman schemes need to take if they are to become an accountability institution more capable of contributing proactively towards the improvement of public service delivery for the benefit of the user. Complaint-handling requires a multi-layered initiative, with the ombudsman at the top of the system dealing with the most intransigent and complex disputes, testing to see that complaints intelligence is properly recorded and assimilated, and providing expert advice as and where appropriate.

1.3 Without more intelligent tools to work with, an ombudsman scheme's broader contribution will likely be sporadic and reactive, with the associated risk that gaps are left in the oversight of good complaint handling and systemic learning from complaints.

*What, if any, are the potential barriers to implementing the provisions of the draft Bill? Does the draft Bill take sufficient account of them?*

2. In terms of risk, the major barrier to success are that (a) an ombudsman uses the new powers unwisely; (b) the proposed new system does not create strong enough incentives to encourage investigated authorities to comply with directions of the Ombudsman; and (c) the process for calling the ombudsman to account is not robust enough. I believe that the draft Bill does take account of these risks but I have some comments at Q.35 below.

*Are there any unintended consequences arising from the draft Bill?*

3. Under the Bill, in the Health sector there will be a disparity in complaints provision between users whose care is solely self-funded and care which is partly publically funded. Unless the existing complaints system in the private healthcare sector is capable of raising its standards, then this disparity will lead to pressure for a new body (or possibly the Public Services Ombudsman for Wales) to take on responsibility for complaint-handling in this sector.

*At what point should the impact of this legislation be evaluated?*

4. I have argued elsewhere that most ombudsman schemes are not subject to sufficient/appropriate scrutiny. All ombudsman schemes should be fully evaluated (in addition to the standard annual Assembly cycle) on a cycle that matches the term of office of the office-holder. Therefore, presuming that the legislation was passed and then came into force within the next 18 months, an appropriate moment in time would be towards the end of the period of office of the current office-holder (ie 3-4 years after the new legislation came into force).

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## **Power to investigate on own initiative**

*Do you have any comments on the new power in section 4?*

5. See Q1 above. I see this as an important evolution of the ombudsman office which is in line with many schemes around the world. We need ombudsman schemes to be capable of raising the alarm early where systemic malpractice is occurring in the delivery of public services. Ombudsman schemes currently can do this, and sometimes with tremendous impact, but experience has shown that in the UK the reports of the ombudsman tend to have this impact only sporadically. Two major reasons for this are that: (a) they are required to wait for a complaint before they can investigate; and (b) they are not sufficiently geared up to assimilate the intelligence that can be obtained from complaints in the sector as a whole. The own-initiative power should operate to make it easier for the ombudsman to intervene early and to create added incentives for the ombudsman to ensure that complaints data is being properly mined for clues as to public service failings.

*Does the inclusion of this power raise any unintended consequences in the rest of the draft Bill?*

6. There are risks that an ombudsman might: embark on empire building, add to the regulatory burden on public service providers, undertake work which overlaps with other accountability institutions, add cost to its own operation, or reduce its focus on its core role of complaint-handling. Further, these are all concerns that come with no guarantee that an ombudsman can make a difference if it were given a broader role. I believe that the answer to these risks lies in accountability mechanisms to focus the mind of the ombudsman to ensure that the powers are used appropriately.

*With whom should the Ombudsman consult under section 4(2)?*

7. The approach contained in the Bill is a clever one. Rather than trying to work out all questions in advance, the onus is placed on the ombudsman to describe how the power will be exercised and the processes taken in decision-making. Once the decision is made the ombudsman will be politically and legally accountable for the exercise of this power. If the parties that should be consulted were to be named it should include: the investigated body, relevant user interest groups, the relevant regulator and the Assembly. I am not convinced this is necessary however.

*Should the Ombudsman have the power to initiate an investigation based on action that took place prior to the draft Bill/Act receiving Royal Assent (see section 4(4))? If so, ...*

8. Probably not. The office will have much to do to assimilate its new powers under the draft Bill and it would be appropriate to have a first phase of assimilating those new powers (in particular the powers of Standards Authority). However, consideration should be given to including a provision to deal with scenarios in which the ombudsman is investigating a 'post-new Act' matter but upon which elements of that investigation originate from the 'pre-new Act' period. This should be written as a discretionary power to be exercised by the ombudsman. Eg 'The Ombudsman may investigate matters that arise before [implementation date] where it is necessary to complete an investigation into an ongoing matter post [implementation date] that the Ombudsman has decided to commence under s.4.'

*What kind of issues should be included in the criteria for own initiative investigations?*

9. As with Q7 above, I think that the approach contained in the Bill is the appropriate one. Rather than trying to work out all questions in advance, the onus should be placed on the ombudsman to describe how the power will be exercised and the processes taken. It is difficult to comprehend a short list of criteria for own initiative investigations, other than to require the ombudsman to exercise the power in the 'public interest'.

*What kind of evidence should be available to the Ombudsman to justify an own initiative investigation (see section 5(2))?*

10. The evidence required should be restricted to ‘reasons’. The emphasis should then be on the new legislation to put in place suitable accountability arrangements.

### **Who can complain**

*Do you have any comments on the new definition of “member of the public”?*

11. No.

### **Requirements for complaints made and referred to the Ombudsman**

*Do you have any comments on the new requirements for complaints made to the Ombudsman in section 8?*

12. As with Q7 above, I think that the approach contained in the Bill is an appropriate one. Rather than trying to work out all questions in advance, the onus is placed on the ombudsman to issue guidance on how the power will be exercised and the processes taken. Once done the ombudsman will be politically and legally accountable for the exercise of this power. The minimum requirements of this new power are appropriate and leave sufficient flexibility for the ombudsman to adapt the process for receiving complaints as new technologies and means of communication evolve.

*How should the proposed guidance for making a complaint to the Ombudsman be published and what formats should be available?*

13. Apart from requiring that the guidance is published that sort of detail should not be in the Bill. The Ombudsman should be free to make that decision, subject to scrutiny by the Assembly.

### **Matters which may be investigated**

*Do you have any comments on the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received?*

14. This is a sensible expansion of the ombudsman’s jurisdiction. There is an overlap between the public and private sector, and a number of possible solutions for dealing with those overlaps. There is no axiomatic reason why a public services ombudsman scheme should not investigate private sector matters and some equivalent schemes elsewhere already investigate private sector matters precisely because of the greyness of the overlap between the public and private sectors. If there are unintended consequences of the new jurisdiction these should be dealt with through a fuller consideration of the generic issues which relate to complaint-handling in the private healthcare sector.

*Does section 10(2) adequately cover anyone who has received combined treatment?*

15. Yes.

*Does the broadening of the matters which may be investigated in section 10(2) raise any unintended consequences in the rest of the draft Bill?*

16. In the future there will be a disparity in complaints provision between users whose care is solely self-funded and care which is partly a result of public sector healthcare/funding. Unless the existing complaints system in the private healthcare sector is capable of raising its standards, then this disparity will lead to pressure for a new body (possibly the Public Services Ombudsman for Wales) to take on responsibility for complaint-handling in this sector as well.

*Is the definition of “private health services” in section 71 broad enough to cover anyone who has received a combination of public and private treatment?*

17. Yes.

*Should the Ombudsman have powers to recover costs from private health services?*



18. My understanding from the previous round of consultation on these proposals is that, in the short term at least, the scale of this new jurisdiction will be small. If correct, then introducing a new process for recovering costs will probably be disproportionate and antagonise private healthcare providers, who the Ombudsman will be working with in introducing this new complaint-handling jurisdiction. Therefore, at this stage I would propose not charging for complaint-handling. However, the Ombudsman and the Assembly will want to keep this issue under review and two scenarios might lead to the Assembly introducing amendments in the future. (i) If the turnover of complaints is significantly higher than anticipated and (ii) if the Ombudsman experiences problems in persuading private healthcare providers to implement the office's recommendations.

*Do you have any comments on the new definition of "family health service provider"?*

19. No.

### **Investigation procedure and evidence**

*Do you have any comments on the procedure set out in section 16?*

20. No.

*Should the Ombudsman's power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations?*

21. Yes.

### **Listed Authorities**

*Do you have any comments on the restrictions on power to amend Schedule 3?*

22. No.

*Are there any other bodies that should be included in the list in Schedule 3?*

23. Not that I am aware of.

### **Complaints-Handling**

*Do you have any comments on sections 33 – 39 (which mirror sections 16A to 16G of the Scottish Public Services Ombudsman Act 2002)?*

24. No. See Q1 above, I am in favour of this expansion of the Ombudsman's powers as experience has shown us that there is a shortfall in the overall system in terms of driving forward quality complaint-handling and data collection at the service provider level.

*Is section 38(b) adequate to allow listed authorities to comply with their duties under other enactments, such as Freedom of Information duties?*

25. No comment.

### **Part 4: Investigation of complaints relating to other persons**

*Should Part 4 remain a standalone Part?*

26. It is unclear to me what the remaining justification is for retaining the separate Part. For the purposes of simplicity and clarity Part 4 should be brought within Part 3 otherwise users of care homes may be disadvantaged, albeit only in minor respects. There would also be room for unnecessary subsequent legal wrangling should a complaint overlap the two Parts of the Act.

*If Part 4 should be brought within Part 3, are there any specific elements of Part 4 that should survive? Or can a blanket approach be applied?*

27. A blanket approach should be applied.

### **Part 5: Investigations: supplementary**

*Do you have any comments on sections 62, 63 and 64?*

28. No.

*Should sections 62 and 63 cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales?*

29. Yes, although presumably an amendment could easily be made as and when a future Commissioner is introduced.

*Are there any further technical changes required in Part 5 of the draft Bill, to reflect the broadening of matters which may be investigated?*

30. No.

### **Appointment etc**

As an aside, it is very unclear to me what para.3(4) means. I would recommend redrafting.

*Do the provisions of paragraphs 5 to 8 of Schedule 1 require updating?*

31. No.

*Paragraph 7 of Schedule 1 provides that a person who has ceased to hold office is disqualified from a list of roles for a period of two years. Is the two year period appropriate?*

32. Yes.

*Do you have any comments on the matters which are included within "paid office" in paragraph 8 of Schedule 1?*

33. No.

### **Financial implications**

*Do you have a view on the financial implications of the new provisions set out in the Bill?*

34. The new provisions will increase the costs of operating the Ombudsman office, but not substantially. Moreover, the potential benefits in financial terms, as well as service delivery terms, could be significant and should outweigh the upfront costs. Further, the extra work conducted by the upgraded Ombudsman should ease the existing burden on regulators operating across the public sector.

### **Other comments**

*Do you have any other comments you wish to make about the draft Bill?*

35. Two areas that are not touched upon in the draft Bill to a great extent are networking and governance/accountability. Part 5 of the Bill refers to situations where an investigation is being conducted which requires shared working with another accountability agent. These are important provisions, but might there also be a requirement for the ombudsman to report on ongoing endeavours to liaise with other accountability agents to identify areas of mutual concern? The detail as to how this should be achieved need not be specified, but in order to reduce the potential for matters of concern falling between two accountability agents the Ombudsman should be required to provide evidence that they have combined their intelligence in some way.

36. Similarly, although the draft Bill provides for various reporting requirements for the Ombudsman, there is little in the Bill to detail how the scrutiny should take place. This may not be problematic so long as the Finance Committee retains its current commitment to scrutinising the Ombudsman, but can this be guaranteed into the future? Other schemes provide for embedded Boards to scrutinise the Ombudsman's work on a more regular basis. Some schemes operate user panels, publish all their decisions and have established review processes to deal with complaints against the ombudsman. The EU Directive on Alternative Dispute Resolution requires all ADR providers to comply with certain performance standards. Might the Bill provide further detail on the processes of scrutiny that the Ombudsman should be exposed to and the minimum level of information that they should provide about the scheme within the scrutiny process?

**18 January 2016**

## **Response to the consultation on the draft Public Services Ombudsman (Wales) Bill**

1. Healthcare Inspectorate Wales (HIW) welcomes the opportunity to contribute evidence to the consultation.
2. The role of HIW is set out at Annex 1.

### **General**

3. There are a number of principles that will underpin the ability to implement this Bill effectively
  - a. It should be clear throughout the Bill how the role of the PSOW fits in to the broader landscape of bodies involved in advocacy, complaints management and independent review. This includes commissioners, auditors, regulators, inspectors and representative bodies such as the Community Health Councils. This landscape needs to be articulated in a way which makes sense to the public.
  - b. The legislation needs to be tested throughout from the perspective of the citizen. This means that if the PSOW is investigating an episode of care which cuts across boundaries, that legislation should not put in place unintended barriers. For example: the public/private interface should not restrict private care to medical care in hospital settings; it should be clear whether the remit relates to 'care provided in Wales' or to 'care provided to Welsh residents in relation to a Welsh listed authority';
  - c. It needs to be clear how the PSOW will maintain an openness and transparency of operation in order to demonstrate his independence. Specifically, consideration needs to be given throughout to the requirement to consult and report on matters relating to published guidance, criteria, and decisions to investigate or not to investigate.

### **Power to investigate on own initiative**

4. It is difficult to form a view on the appropriate scope of this power without sight of the criteria and it is unclear how these criteria would be arrived at. As currently drafted the Bill is not clear what consultation or scrutiny would be

required of the Ombudsman before the final specification and publication of such criteria.

5. It will be important to ensure that those consulted under section 4(2) include all those with a remit to undertake independent and objective reviews and investigations in the relevant listed authorities. This should include all relevant inspectorates, regulators and audit bodies. In order to minimise burden on listed authorities, own initiative investigations should only be undertaken where they will add value and provide specific benefit which should be determined at the outset of the investigation.
6. Since own initiative investigations are not triggered by a complaint it is not clear where the impetus for such an investigation would come from. This places the PSOW at risk of accusations of undue influence as it is not clear how the transparency of decision-making implicit in section 15 could be achieved.

### **Who can complain**

7. No specific comments

### **Requirements for complaints made and referred to the Ombudsman**

8. It is important that information on the role of the Ombudsman and how to complain is made as accessible and easy to understand as possible. A wide variety of formats should be used.
9. It is important the complainants are first encouraged to make their complaint to the listed authority and to seek resolution at this local level. However, information on the role of the Ombudsman should also be readily available from all listed authorities so that it is clear that there is a mechanism for escalation if the complainant is not satisfied with the local response.
10. The PSOW should be proactive in preparing and providing their guidance in a range of formats for use by others and should be proactive in working with others such as advocacy services and citizens advice services to ensure that those who may otherwise have difficulty accessing the service have adequate support.

### **Matters which may be investigated**

11. Where it is necessary to investigate the provision of public and private services in order to effectively understand the complete episode of care then it is sensible that the PSOW should have the powers to do so.
12. It is not clear whether such a combined investigation can only be triggered by an alleged failure or maladministration by a listed authority or whether alleged

problems with the private component of the care could be sufficient to trigger an investigation.

13. It is not clear whether the phrase “otherwise in relation to Wales” section 11(1)b refers to services “not provided to Welsh residents” or “not provided within Wales”.
14. The definition of “private health services” appears based on an establishment based definition around a hospital. It also limits applicability to medical treatment. It is therefore too narrow and should consider moving to a definition based around services rather than establishments. Consideration should also be given to extending the definition to aspects of care other than medical care.

### **Investigation procedure and evidence**

15. Given the potential burden of responding to own initiative investigations it is important that the investigation proposal referred to in section 16(3)a also sets out who has been consulted during the drafting of the proposal, how the proposed investigation relates to other review activity undertaken, in progress, or planned, and what specific additional purpose will be served by the own initiative investigation.

### **Listed authorities**

16. It will be important to ensure that the bodies listed under Schedule 3 remain accurate and current. For example the Care Council for Wales who are currently listed will shortly be reconstituted as Social Care Wales as a result of the Regulation and Inspection of Social Care (Wales) Bill.

### **Complaints - handling**

17. There are some listed authorities which operate under statutory complaints handling arrangements such as “Putting Things Right” in the NHS. It is unclear how the Ombudsman guidance would relate to such statutory arrangements and which would be expected to take precedence. It is unclear whether these and future arrangements would have to have regard to the PSOW guidance during drafting. It is important that any new arrangements do not introduce confusion of expectations for the public.

### **Part 4: investigation of complaints relating to other persons: social care and palliative care**

18. No specific comments

## **Part 5: investigations: supplementary**

19. This section makes reference to consultation, co-operation and working jointly with other ombudsman, other Commissioners, and the Auditor General for Wales. It makes no reference to the requirement or ability to co-operate and work with other regulators and inspectorates.
20. Given that many of the investigations are likely to relate to health or social care it will be important that due consideration is given to how this might be enabled. The regulatory landscape is changing as a result of the Regulation and Inspection of Social Care (Wales) Bill and may change further following the recent consultation on healthcare quality, “Our health, our health service”. The role played by the PSOW in this landscape needs to be carefully managed in order to avoid duplication and confusion for both the public and the service.
21. In this context it will be important to be clear about the requirement on, and powers of, the Ombudsman in working with other regulators and inspectorates in relation to:
  - Sharing information about risks, concerns and issues with a service in order to agree who is best placed to act
  - Establishing what investigations may be underway or planned in order to avoid duplication and confusion
  - Addressing the matters set out in sections 64(1) and 64(2).
22. The lead inspectorates in Wales (Healthcare Inspectorate Wales, Care and Social Services Inspectorate Wales, and the Office of Her Majesty’s Chief Inspector of Education and Training in Wales) are also listed authorities under Schedule 3 and are therefore potentially subject themselves to investigation by the PSOW. It will therefore be important to think carefully how these relationships can be effectively managed in the best interests of the public and to avoid any potential conflicts of interest.

### **Appointment etc**

23. No specific comments.

### **Financial implications**

24. No specific comments.

### **Other comments**

25. No specific comments.

***Healthcare Inspectorate Wales (HIW) is the independent inspectorate and regulator of healthcare in Wales.***

**Purpose**

*To provide the public with independent and objective assurance of the quality, safety and effectiveness of healthcare services, making recommendations to healthcare organisations to promote improvements.*

**Values**

- **Patient-centred:** we place patients, service users and public experience at the heart of what we do
- **Openness and honesty:** in the way we report and in all our dealings with stakeholders
- **Collaboration:** building effective partnerships internally and externally
- **Professionalism:** maintaining high standards of delivery and constantly seeking to improve
- **Proportionality:** ensuring efficiency, effectiveness and proportionality in our approach.

**Outcomes**

**Provide assurance:**

Provide independent assurance on the safety, quality and availability of healthcare by effective regulation and reporting openly and clearly on our inspections and investigations.

**Promote improvement:**

Encourage and support improvements in care through reporting and sharing good practice and areas where action is required.

**Strengthen the voice of patients:**

Place patient experience at the heart of our inspection and investigation processes.

**Influence policy and standards:**

Use our experience of service delivery to influence policy, standards and practice.

## **Consultation on the draft Public Services Ombudsman (Wales) Bill**

### **Finance Committee, National Assembly for Wales**

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## **Consultation questions**

Please comment on as many of the questions as relevant to you/your organisation, providing an explanation of each answer given:

### **General**

#### **01. Would the draft Bill improve the effectiveness of the role of the Ombudsman? If so how?**

The draft Bill would allow for own-initiative investigations as well as other improvements, such as allowing oral complaints from the public.

#### **02. What, if any, are the potential barriers to implementing the provisions of the draft Bill? Does the draft Bill take sufficient account of them?**

#### **03. Are there any unintended consequences arising from the draft Bill?**

The most significant 'barriers' and 'unintended consequences' of the draft Bill is the risk of duplication or complication around the use of the Public Service Ombudsman's proposed new own-initiative power and the existing powers and responsibilities of other commissioners, regulatory or inspection bodies or regimes. The draft Bill however outlines consultative arrangements that seek to mitigate the likelihood or impact of any such incidences.

Depending on how frequently and to what extent the Ombudsman's proposed new powers are exercised, there is likely to be an additional regulatory burden on authorities as well as resource implications in terms of developing, introducing, monitoring and reporting of any new complaints handling procedures introduced following such legislation.



#### **04. At what point should the impact of this legislation be evaluated?**

A post-legislative review may be appropriate five years following commencement. Although the impact of some parts of the draft Bill (e.g. impact of oral complaints) may be immediate, other parts such as complaints handling procedures (S33-39) will take some time to develop and/or embed (e.g. comparable complaints data over a relevant time period will take some years to generate) and others, such as own-initiative powers may not be exercised immediately or would, if exercised, likely take a significant period of time to conclude an investigation.

### **Power to investigate on own initiative**

#### **05. Do you have any comments on the new power in section 4?**

#### **06. Does the inclusion of this power raise any unintended consequences in the rest of the draft Bill?**

The WLGA was broadly supportive in principle of the proposal to introduce own initiative powers, subject to appropriate 'safeguards' to avoid complication or duplication.

As noted above, the draft Bill seeks to mitigate the likelihood of such occurrences, however, there is no reference to potential conflict with criminal allegations of malfeasance/misconduct in public office cases, which would be a matter for the Crown Prosecution Service and the police to investigate.

#### **07. With whom should the Ombudsman consult under section 4(2)?**

The Ombudsman should consult with the complainant or any other party whom he believes may have suffered, the listed authority subject to the complaint and any other relevant commissioner/regulatory body.

The Ombudsman should prepare a guidance note stating how own-initiative investigations may be instigated and commenced, which would include reference to appropriate consultation arrangements.

#### **08. Should the Ombudsman have the power to initiate an investigation based on action that took place prior to the draft Bill/Act receiving Royal Assent (see section 4(4))? If so, should there be a cut-off point, beyond which the Ombudsman should not carry out an own initiative investigation?**

No, the powers should not be retrospective. No exceptional reason has been given to vary the general rule that legislation is not retrospective in effect.

#### **09. What kind of issues should be included in the criteria for own initiative investigations under section 5?**

Section 5 should specify that the Ombudsman should consult with public bodies prior to publication of criteria.

Criteria is likely to focus on issues of risk of serious injury or personal harm to individuals and matters of public interest, particularly where it might lead to opportunities for organisational and/or public service-wide learning and improvement.

**10. What kind of evidence should be available to the Ombudsman to justify an own initiative investigation (see section 5(2))?**

Evidence may include: original complaint (corroborated where possible), correspondence between complainant and listed authority, the listed authority and other public bodies' publications and public records.

## **Who can complain?**

**11. Do you have any comments on the new definition of "member of the public" in section 7(2)?**

The definitions appear appropriate.

## **Requirements for complaints made and referred to the Ombudsman**

**12. Do you have any comments on the new requirements for complaints made to the Ombudsman in section 8?**

The requirements in Section 8 appear appropriate.

**13. How should the proposed guidance for making a complaint to the Ombudsman be published and what formats should be available?**

The guidance should be available online and in hard-copy. The material should be in Plain English/Cymraeg Clir and the Ombudsman's website (linked via listed authorities' websites) might include a brief video outlining the complaint process.

## **Matters which may be investigated**

**14. Do you have any comments on the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received by public and private health services providers (see sections 10(1)(d) and 10(2))?**

**15. Does section 10(2) adequately cover anyone who has received a combination of public and private treatment?**

**16. Does the broadening of the matters which may be investigated in section 10(2) raise any unintended consequences in the rest of the draft Bill?**

**17. Is the definition of "private health services" in section 71 broad enough to cover anyone who has received a combination of public and private treatment?**

**18. Should the Ombudsman have powers to recover costs incurred in investigating private health services?**

**19. Do you have any comments on the new definition of “family health service provider in Wales” in section 71, which is intended to capture, for example, a GP practice as a whole rather than just an individual GP?**

The WLGA does not have specific views on requirements of the draft Bill relating to private health care, but is supportive in principle of the proposal for jurisdiction to be extended to cover both public and private health care providers.

## **Investigation procedure and evidence**

**20. Do you have any comments on the procedure set out in section 16, in so far as it relates to the procedure for conducting an own initiative investigation?**

No.

**21. Should the Ombudsman’s power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations and investigations into private health services (see section 17)?**

Yes.

## **Listed Authorities**

**22. Do you have any comments on the restrictions on power to amend Schedule 3 (see section 30(2) in particular), which are significantly narrower than the restrictions found in the 2005 Act?**

No, the restrictions as drafted appear clear and proportionate compared to the 2005 Act.

**23. Are there any other bodies that should be included in the list in Schedule 3 ‘Listed Authorities’?**

The listed authorities are largely consistent with those of the 2005 Act. It is not clear however, why certain bodies are listed but other, similar bodies are not, for example, the Welsh Language Commissioner is included as a listed authority but other Commissioners are not and Estyn is included as a listed authority other regulatory and inspectorate bodies are not included. It may be appropriate to include harbour or port authorities in the list.

## **Complaints-Handling**

**24. Do you have any comments on sections 33 – 39 (which mirror sections 16A to 16G of the Scottish Public Services Ombudsman Act 2002)?**

The provisions appear appropriate. The WLGA welcomes the requirements on the Ombudsman to consult with listed authorities when determining complaints principles or model complaints handling procedures (S33(7)(b) and 34(4)).

**25. Is section 38(b) adequate to allow listed authorities to comply with their duties under other enactments, such as Freedom of Information duties?**

Yes.

## **Part 4: Investigation of complaints relating to other persons: social care and palliative care**

**26. Should Part 4 remain a standalone Part? Or should such investigations be brought within the Part 3 investigations process?**

Part 4 should remain a standalone Part as it provides clarity regarding the specific complaints requirements as they apply only to relevant 'Other Bodies' rather than the broader 'Listed Authorities' in Part 3.

**27. If Part 4 should be brought within Part 3, are there any specific elements of Part 4 that should survive? Or can a blanket approach be applied?**

See above.

## **Part 5: Investigations: supplementary**

**28. Do you have any comments on sections 62, 63 and 64, which provide for joint and collaborative working with specified Commissioners and the Auditor General for Wales?**

The provisions for joint working appear appropriate.

**29. Should sections 62 and 63 cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales?**

Yes

**30. Are there any further technical changes required in Part 5 of the draft Bill, to reflect the broadening of matters which may be investigated?**

None that are apparent.

## **Appointment etc**

**31. The provisions of paragraphs 5 to 8 of Schedule 1 (disqualification) reflect largely the current provisions in the 2005 Act. Do these provisions require updating?**

No.

**32. Paragraph 7 of Schedule 1 provides that a person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified from a list of roles (listed in paragraph 7(1)) for a period of two years. Is the two year period appropriate?**

The WLGA does not have strong views on this proposal, but the policy intent or rationale of proposing a change from three years (as per the 2005 Act) to two years in the draft Bill has not been included in the Explanatory Notes.

**33. Do you have any comments on the matters which are included within “paid office” in paragraph 8 of Schedule 1?**

No

## **Financial implications**

**34. Do you have a view on the financial implications of the new provisions set out in the draft Bill?**

There are likely additional financial implications of the draft Bill, both upon the office of the Ombudsman itself and potentially on listed authorities, depending on the implications of any reforms to, and monitoring and reporting of proposed model complaints-handling procedures. Although it would be difficult to determine estimated cost implications, the likelihood of financial and regulatory impact should be explored in a Regulatory Impact Assessment that would be introduced alongside the Bill should it be formally introduced in the next Assembly term.

## **Other comments**

**35. Do you have any other comments you wish to make about the draft Bill or any specific provision within it?**

The vast majority of the Ombudsman’s powers and responsibilities will be set out in a single Ombudsman’s Act (assuming the draft Bill leads to legislation and Royal Assent, repealing the Public Services Ombudsman (Wales) Act 2005. However, the Ombudsman will retain a key role in terms of the ‘Conduct of local Government Members and Employees’ which was originally included in Schedule 4 of the 2005 Act, which amended sections of the Local Government Act 2000. As this Schedule does not feature in the draft Bill, it would be appropriate to include savings provisions to put the status of the Local Government Act 2000 amendments made by Schedule 4 beyond doubt, to provide clarity and also to ensure a ‘complete’ and consolidated legislative basis for the Ombudsman’s powers and responsibilities set out in the new Public Service Ombudsman (Wales) Act.

**Consultation on the draft Public Services Ombudsman (Wales) Bill  
WIHA's response to the Finance Committee's call for evidence  
Introduction**

**Introduction**

1. The Independent Sector Complaints Adjudication Service (ISCAS) welcomes the opportunity to respond to the Finance Committee's Call for Evidence on this draft Bill. As per the Committee's directive, ISCAS has focused its response on those consultation questions of direct relevance to its membership.
2. ISCAS has operated the Complaints Code of Practice across the UK Independent healthcare sector for fifteen years.

**Consultation Questions**

*Question 14 - Do you have any comments on the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received by public and private health services providers (see sections 10(1)(d) and 10(2))*

ISCAS welcomes this provision and believes it would be beneficial for patients in these circumstances.

*Question 15 - Does section 10(2) adequately cover anyone who has received a combination of public and private treatment?*

All ISCAS members would be covered by the definition in section 10(2) and therefore all patients who have received treatment in Welsh Independent Hospitals would be covered.

*Question 18 – Should the Ombudsman have powers to recover costs incurred in investigating private health services?*

ISCAS members already pay an annual subscription to cover the management resource of ISCAS.

*Question 21 Should the Ombudsman's power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations and investigations into private health services (see section 17)?*

ISCAS does not support this proposal on the basis that a mechanism for independent review of complaints already exists at no cost to the taxpayer. Furthermore, ISCAS would welcome the opportunity to enter into an information sharing agreement with the PSO for complaints that cross between the NHS and the independent sector.

**Conclusion**

ISCAS submitted evidence to the National Assembly for Wales Finance Committee on the Consideration of Powers Public Services Ombudsman (PSO) for Wales – January 2015. The content of this evidence remains current. ISCAS does not support the Ombudsman's proposal to extend his jurisdiction to include private healthcare services in Wales.

18 January 2016