

**Pwyllgor Cymunedau, Cydraddoldeb a
Llywodraeth Leol**

**Communities, Equality and Local Government
Committee**

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

**Jocelyn Davies AM
Chair, Finance Committee**

17 December 2014

Dear Jocelyn

Public Services Ombudsman for Wales

As you will be aware, the Communities, Equality and Local Government Committee recently held an oral evidence session with the Public Services Ombudsman for Wales to discuss his annual report.

As part of that session, we discussed the forthcoming ten-year anniversary of the Public Services Ombudsman (Wales) Act 2005. We heard from the Ombudsman that, whilst the Act had been an effective piece of legislation, there were some areas that needed strengthening, most notably in relation to own-initiative powers, jurisdiction and access to the Ombudsman. We also discussed the links with the courts and the possibility of removing the current statutory bar which prevents the Ombudsman from considering a complaint where the case could be considered by the courts.

Having considered the matter, the Committee agrees that there is merit in reviewing the legislation, and believes that this work should be led by an Assembly committee. Unfortunately, our legislative workload over the coming year is such that it would be very difficult for us to devote the necessary time to this. I understand from informal discussions with you that the Finance Committee's forward work programme would be able to accommodate this work.

If your Committee agrees to take this forward, we would be happy to provide any assistance we can. I would be also grateful if you would keep us informed of your progress.

For information, we wrote to the then Minister for Local Government at the end of last year seeking her views on amending the legislation. A copy of her response is annexed to this letter. We draw your attention particularly to her comments about own-initiative powers for the Ombudsman, and agree that any change to the legislation in this area would need to be framed in such a way as to ensure that the role of the Ombudsman remains as a champion of individual service users and avoids any overlap with the work of the Auditor General for Wales in respect of whole-system reviews of public sector services.

I look forward to hearing from you.

Yours sincerely

A handwritten signature in cursive script that reads "Christine Chapman".

Christine Chapman AC / AM

Cadeirydd / Chair

Cc. Mr Nick Bennett, Public Services Ombudsman for Wales

Lesley Griffiths AC / AM
Y Gweinidog Llywodraeth Leol a Busnes y Llywodraeth
Minister for Local Government and Government Business



Llywodraeth Cymru
Welsh Government

Christine Chapman AM
Chair of Communities, Equalities and Local Government Committee

R February 2014

Dear Christine

Public Services Ombudsman for Wales

Thank you for your letter of 12 December following the meeting your Committee had with the outgoing Public Services Ombudsman to discuss his Annual Report. You sought the views of the Welsh Government on some of the points he put to you and we are grateful to the Committee for giving us the opportunity to respond. However, I must apologise for the delay in responding.

The Welsh Government regards the role of the Public Services Ombudsman as a vital one in the overall context of providing high quality public services to the people of Wales. It is also necessary as a recourse for individuals who have not received the treatment they have a right to expect. The Permanent Secretary takes very seriously indeed, any issues raised with him by the Ombudsman and maintains regular channels of communication to ensure we are responding quickly and appropriately. As we move into consideration of the report on Public Service Governance and Delivery, any future changes to the configuration or delivery of public services which may emerge from its consideration, it is even more vital the Ombudsman is on hand to provide their services for the citizen.

Therefore, we continue to believe the core role of the Ombudsman, as currently constituted, is hugely important to Wales. Whatever decisions may be taken to expand the role in the future, they should not distract from the basic role of acting as a means of appeal and redress for citizens where they feel a public service provider has let them down. Our primary concern is for the Ombudsman to continue to focus on delivering this function.

Of course, as a public body which is itself subject to the scrutiny of the Ombudsman, as with the Auditor General for Wales, we do recognise these are matters which the Assembly itself will decide upon, if and when, there are to be changes and I wish our comments to be viewed in this light.

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We have studied carefully the transcript of the evidence given to you by the outgoing Public Services Ombudsman, where he sets out the arguments to support the points which he put to you. We do recognise Peter Tyndall makes a number of strong points which deserve proper consideration. However, neither the Welsh Government nor, I am sure, the Committee, would wish to rush into an expansion of the role of the Ombudsman without further and more widespread debate and consideration, not least with the new permanent Ombudsman when they are appointed. I hope, therefore, the Committee will recognise these are initial views only and the start of a dialogue which you will wish to have with the new Ombudsman.

Own-Initiative Powers

We recognise circumstances in which this approach may have merit. We can understand the frustration the previous Ombudsman felt, on occasion, when he was aware of a pattern of cases emerging and he was not in a position to look at the pattern on behalf of the wider public service. On the other hand, we are also conscious there may be a risk here of "mission-creep" on the Ombudsman's part and a move from championing the service users towards providing whole-system critiques of sectors is something which is more properly the role of the Auditor General for Wales. Ultimately, it would come down to the personal approach of the Ombudsman and how they decided to use these powers if they were available. So should this issue be pursued, we feel it should be carefully circumscribed and only available in specific and exceptional circumstances.

Jurisdiction of the Ombudsman

We would certainly agree with the principle where those using public services, even where they are delivered by a private sector supplier, should still have the same level of redress where possible. In practice it is more difficult to deliver this. The suggestion of a levy, for example, would be very challenging to put into practice. We would certainly support an awareness-raising campaign to remind individuals of their rights of complaint to the Ombudsman in the context of the delivery of health-related services.

Statutory Bars

At present, we believe it would be sensible to maintain the provision which presumes against the Ombudsman investigating cases where the complainant could have recourse to the courts, although we recognise allowing individuals the right, in effect, to choose which course of action to pursue, could introduce an element of uncertainty as to the most appropriate way forward.

I have commissioned a review of audit, inspection and regulation to look at how these issues link up in more detail. I will ask for this point to be considered further as part of those deliberations.

Binding Remedies

We certainly would not wish to see service-users disadvantaged because a private sector supplier refuses to comply with the recommendation of the Ombudsman. However, before supporting binding remedies as the solution, we believe there should be better scoping of how many cases this might, in fact, encompass and the extent to which other alternative solutions would not provide the answer, for example, making greater use of recourse to existing professional associations who often do have the power to compel their members to make reparation.

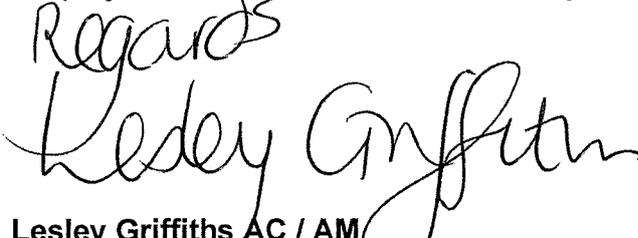
Complaint Handling, particularly within the Health Service

Changes in the levels of complaints in a service area can sometimes come from a number of reasons. However, we do recognise the increased level of complaints within the health service and recognise more needs to be done by health service managers to ensure complainants are treated with appropriate seriousness and complaints resolved promptly and thoroughly. The Minister for Health and Social Services has recently announced his intention to commission a review of Handling of Concerns in the NHS in Wales to address this issue.

Oversight of Complaints

We do agree with the Ombudsman there is more value to be gained from better analysis at an all-Wales level of complaints made in the different sectors of Wales, including the opportunity to make better comparison between public bodies. However, we should not under-estimate the difficulties involved in assimilating reliable data which can properly be used for such purposes. If the Ombudsman were to pursue this exercise, we would certainly support the work, subject to reassurances about the additional burden of data collection and verification, which might be added to the public service in Wales.

I hope your Committee will find these responses helpful in its overall deliberations

Regards


Lesley Griffiths AC / AM

Y Gweinidog Llywodraeth Leol a Busnes y Llywodraeth
Minister for Local Government and Government Business