

Y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau
Equality, Local Government and Communities Committee
ELGC(5)–01–18 Papur 3/ Paper 3

20th December 2017

1. The Welsh Local Government Association (WLGA) welcomes the opportunity to respond to the Equality, Local Government and Communities inquiry into the general principles of the Public Services Ombudsman (Wales) Bill.
2. The WLGA represents the 22 local authorities in Wales, and the three national park authorities, the three fire and rescue authorities, and four police authorities are associate members.
3. The WLGA is a politically led cross-party organisation, with the leaders from all local authorities determining policy through the Executive Board and the wider WLGA Council. The WLGA also appoints senior members as Spokespersons and Deputy Spokespersons to provide a national lead on policy matters on behalf of local government.
4. The WLGA works closely with and is often advised by professional advisors and professional associations from local government, however, the WLGA is the representative body for local government and provides the collective, political voice of local government in Wales.
5. The WLGA response has been informed by discussions and feedback from local government's Welsh Corporates Complaints Group.

The general principles of the Public Services Ombudsman (Wales) Bill and the need for legislation to deliver the stated policy intention

6. The WLGA is supportive of the general principles of the Bill. The policy and legislative proposals contained within the Bill have been widely consulted upon and have been the subject of previous Assembly scrutiny.
7. The WLGA provided evidence to both the Finance Committee's initial inquiry into the powers of the Public Services Ombudsman (January 2015)¹ and the Committee's consultation on Draft Public Services Ombudsman (Wales) Bill (October 2015)².

¹ <http://www.senedd.assembly.wales/mgConsultationDisplay.aspx?id=166&RPID=1509837406&cp=yes>

² <http://www.senedd.assembly.wales/documents/s48145/DB%20PSOW%2032%20Welsh%20Local%20Government%20Association%20WLGA.pdf>

8. The WLGA was broadly supportive of the Draft Bill and welcomes the amendments which have since been made and incorporated into this Bill; several comments put forward by the WLGA and other consultees have been reflected in the drafting.
9. The Ombudsman has recently established a Local Government 'Sounding Board' with a range of professional representatives to consider and discuss emerging issues and promote good practice exchange. The Ombudsman's office also meets regularly with the local authorities' Welsh Corporate Complaints Group, who were also consulted on the methodology for some aspects of the Regulatory Impact Assessment.
10. Local authorities have worked with the Ombudsman's office to improve the handling of both complaints about councillors' code of conduct and complaints about local authority services. The WLGA and local authorities worked with the Ombudsman's office in developing 'Local Resolution Protocols', whereby 'low level' complaints about councillors' conduct could be dealt with more speedily and proportionately at a local level rather than escalating matters to the Ombudsman's office. This has resulted in more responsive resolution and reduced workload for the Ombudsman.
11. Similarly, the WLGA and local authorities worked with the previous Ombudsman and the Welsh Government in developing the Model Concerns and Complaints Policy and Guidance, published in 2011³. 21 of the 22 local authorities operate the two-stage model complaints process and the remaining authority operates a one stage 'investigate once, investigate well' approach.
12. As a result of the model policy, local authority complaints handling has generally improved during the past decade, and the Ombudsman recently noted the reduced number of local authority complaints received by his office in his most recent Annual Report. Local authorities have increasingly been responsive to voluntary complaints resolution or 'quick fixes', which reduces the burden on the Ombudsman's office and results in a more speedy and satisfactory resolution for the complainant.
13. In 2010-11, the year prior to the introduction of the Model Policy, 61 complaints (or 6.3% of all local authority complaints received by the Ombudsman) were settled voluntarily or were 'fixed quickly', in 2016-17, this figure was 110 complaints (or 12.4% of all local authority complaints). Given the majority of local authority complaints made to the Ombudsman are either not investigated or are discontinued for various reasons; quick fixes therefore accounted for 83% of all the potentially investigable complaints made to the Ombudsman's office in 2016-17, compared to 38% in 2010-11.
14. The WLGA recognises however that improvements can always be made in terms of complaints handling and the 'Sounding Board' and Welsh Corporate Complaints Group are two key forums to share practice and encourage improvement. It should be noted

³ <http://www.ombudsman-wales.org.uk/en/Information%20for%20Public%20Bodies/Polisi-pryderon-a-chwynion-enghreifftiol-a-chanllawiau.aspx>

however that local authorities face increasing challenges in terms of meeting the public's expectations regarding council services during a period of ongoing austerity.

The provisions of the Bill which set out the new powers for the Ombudsman to:

- **accept oral complaints;**
 15. The WLGA supports the principles and the provisions regarding accepting oral complaints. Local authorities already accept oral complaints and the Bill would improve accessibility to the Ombudsman's office.
- **undertake own initiative investigations;**
 16. The WLGA is supportive of the proposed new powers; such powers are available to Ombudsman in other countries and the proposals have been subject to scrutiny during the Fourth Assembly term. The WLGA did outline concerns during previous consultation that the powers, as then drafted, risked confusion and scope for duplication and additional burdens on listed authorities.
 17. The WLGA notes therefore that the Bill now includes more detailed sections regarding consultation with other 'specified bodies' or regulatory bodies prior to using such powers (S65). Following consultation with other 'specified bodies', the Ombudsman might decide that an 'own initiative investigation' may either not be warranted (if for example, he had received assurances from another regulatory body or that the matter was already under consideration by another body) or that the investigation would be better undertaken by another regulatory body.
 18. Section 5 is also an improvement on the Draft Bill, as criteria for the initiation of own investigations is included on the face of the Bill rather than at the discretion of the Ombudsman. The Bill also includes a duty on the Ombudsman (S16) to consult with and 'submit the investigation proposal' to the relevant body before commencing an own initiative investigation, which is a further safeguard.
 19. The WLGA has observed earlier Committee meetings where the potential for the/a future Ombudsman to exercise own investigation powers disproportionately or even inappropriately; however, the Assembly's oversight of the Ombudsman's annual budget provides a further safeguard.
 20. There remains a risk however that the power will have an impact on public bodies in terms of an additional regulatory burden, the power therefore should be used proportionately and in line with agreed criteria and overwhelmingly where there is public interest and clear indication of wider systematic failures.
- **investigate private medical treatment including nursing care in a public/private health pathway;**
 21. Although not a local government matter, this proposal appears appropriate.
- **undertake a role in relation to complaints handling standards and procedures.**

22. The WLGA is broadly supportive of this proposal. As noted above, local authorities have already voluntarily implemented much of the 'model complaints policy and guidance'. It is also noted that the Ombudsman must consult with 'listed authorities and other persons as the Ombudsman thinks appropriate' in advance.
23. Whilst the wider proposal around standards and data collection is a reasonable development, the WLGA and authorities would need to work closely with the Ombudsman in developing and agreeing appropriate data to be collected and reported. Local flexibility around service standards (in terms of availability, accessibility, quality and timeliness) is an essential role of local democracy and accountability and councils should be able to invest in and set standards for local services according to local needs or priorities. A clear distinction between any national complaints standards and local service standards therefore will remain critical.
24. There is inevitably likely to be some initial disruption and administrative burden should a nationally prescribed data recording and reporting framework be introduced as not all councils currently categorise the same types of complaints data and there are different approaches to analysing complaints trends. There are likely to be financial implications as a result either of additional administrative requirements or possible software changes (see financial implications below).
25. It is important however that any public complaints data or information collected and reported in future is used appropriately; the comparison of trends across service areas or approaches between organisations could lead to service improvements, however, there is a risk that simple and superficial interpretation of data by the media or other stakeholders could lead to ill-informed criticism or unnecessary concern about public services.

Any potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them

26. The Explanatory Memorandum outlines the potential administrative burdens and potential additional costs of the Bill on public bodies. Whilst the Bill seeks to improve public services, such changes may be challenging for some organisations both culturally and financially in a climate of continued financial and service pressures.

The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 6 of Part 1 of the Explanatory Memorandum)

27. These appear appropriate, given the majority are subject to affirmative resolution procedure which would allow Assembly oversight.

Whether there are any unintended consequences arising from the Bill

28. See potential barriers and financial implications below.

The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum)

29. The Regulatory Impact Assessment includes a financial impact assessment, which has been partially informed by joint work with the local government Welsh Corporate Complaints Group.
30. The Explanatory Memorandum suggests that some of the additional costs will be offset through cost-avoidance as a result of improved complaints handling by public bodies. It is inevitably difficult however to forecast the impact of legislative reform on behaviour change, both the behaviour of the public and public services; it is therefore difficult to accurately estimate the anticipated financial implications of such proposals. The WLGA notes that the Auditor General, in his response to Committee, also suggests that the Explanatory Memorandum should be 'more explicit about the 'level of uncertainty in relation to savings'.
31. The figure of £2.6m cost avoidance over 5 years therefore could be viewed as ambitious as it is not immediately apparent across which public services this cost avoidance will be achieved, whether it will be across all 66 specified bodies equally or whether it is anticipated to be within particular bodies, where the biggest improvements and therefore 'cost avoidance' could be made? Cost avoidance for the Ombudsman's office necessitates a shift of burden and costs to other public bodies (although the premise is that this would lead to speedier and more efficient complaints resolution for the public). As noted above, local authorities are already resolving an increasing proportion of all upheld complaints to the Ombudsman's office.
32. The financial impact assessment assumes a reduced workload for the Ombudsman in dealing with some complaints, however, the proposed reforms to make a more accessible complaints service, including oral complaints, could see workload further increase.
33. The Explanatory Memorandum also probably underestimates the financial impact of any changes relating the establishment of a 'Complaints Standards Authority' and in particular the anticipated changes to ensure consistency of complaints processes and/or data capture and reporting. The estimated transition cost of between only £10k and £31k across the 66 specified public bodies, is only £157 - £470 per organisation.
34. Local authorities currently use a variety of software solutions for complaint data management from spreadsheets, to bespoke internally developed applications, through to dedicated Customer Relationship Management packages; any significant changes to data collection, collation and reporting may therefore have an impact in terms of IT investment and workforce training, dependent on what reforms are introduced.