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Senedd Cymru | Welsh Parliament

Y Pwyllgor Cyllid | Finance Committee

Adolygiad ôl-ddeddfwriaethol o Ddeddf Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) 2019 | Post-legislative review of the Public Services Ombudsman (Wales) Act 2019

Ymateb gan: Naomi Creutzfeldt, Athro yn y Gyfraith a Chymdeithas, Ysgol y Gyfraith Caint, Prifysgol Caint | Evidence from: Naomi Creutzfeldt, Professor of Law and Society, Kent Law School, University of Kent

1. Have you used the Ombudsman’s service to make a complaint?

1a. What did your complaint(s) relate to?

(We would be grateful if you could keep your answer to around 500 words).

1b. If your complaint was about health which included a private health related element, do you have any comments about the process of making that complaint?

(We would be grateful if you could keep your answer to around 500 words).

1c. Was your complaint(s) made on or after 23 July 2019?

1d. How did you make your complaint(s)?

1e. Do you have any comments about the process of submitting an oral complaint to the Ombudsman?

(We would be grateful if you could keep your answer to around 500 words).

2. Have you made a complaint to a public body since 23 July 2019?

2a. Do you have any comments on the standard of complaints handling at public bodies, and whether they have improved since the Act came into force in 2019?

(We would be grateful if you could keep your answer to around 500 words).

3. If you are a public body, have you engaged with the Ombudsman or used resources and/or guidance produced by the Ombudsman to change or improve your complaints handling policies and processes?

3a. Do you have any comments in this area?

(We would be grateful if you could keep your answer to around 500 words).

4. Are you aware that the Ombudsman can investigate on their own initiative where evidence suggests that there may be systemic service failure or maladministration?

5. Are you aware that the Ombudsman can extend an investigation of a complaint into matters that have a substantial connection with a matter already being investigated?

6. Have you been involved in an own initiative investigation conducted by the Ombudsman and/or read or used an own initiative report, such as the report about homelessness in Wales (<https://www.ombudsman.wales/own-initiative-wider-investigations-reports/>)?

7. Do you have any comments about the Ombudsman's own initiative powers?

(We would be grateful if you could keep your answer to around 500 words).

The ombudsman's own initiative powers are a welcome development. They have been used, for example, investigating the carer's need assessments (2024) and shows shortcomings of the service. If these recommendations are translated into improving the current system, then this is a very useful step to prevent further complaints. It is also very good for earning public trust and visibility of the office of the ombudsman. Own initiative powers are a very good mechanism for the ombudsman to make use of their proximity to identifying systemic problems, early identification of gaps, training needs, collaboration deficits and - of course - maladministration. These powers can also identify barriers for people to complain and this can be partly overcome by starting an investigation to then change the system.

8. Do you have any views on how the changes implemented by the 2019 Act compares with current best practice, both within the UK and internationally?

(We would be grateful if you could keep your answer to around 500 words).

Own initiative powers: The Public Services Ombudsman (Wales) Act 2019 brings Wales closer in line with international best practice in several ways. However, there are still areas where Wales could improve or learn from others.

International ombudsman institutions (e.g. Scandinavia, NZ, Canada) use own-initiative powers. Further, the Venice Principles (CoE 2019) state that own initiative powers are essential for effective oversight and accountability. The Wales Act is in line with these principles, safeguarding proportionality, public interest requirements, and consultation.

A recommendation is to be more transparent as to how topics / areas for investigation are selected.

Oral complaints: complaints in writing can be barriers to access the ombudsman, all ombudsmen in the UK accept complaints in multiple formats and the Wales Act has improved accessibility for vulnerable people and those with disabilities or low literacy – by also introducing oral complaints.

Complaints handling standards: like the SPSO, the PSOW can develop model complaint handling procedures for public bodies (in line with ombuds in Australia, Ireland and the NL). This ensures more consistency, transparency, and fairness in how complaints are dealt with.

A recommendation here would be to strengthen the enforcement and monitoring.

Investigative scope and sanctions: as most other ombuds, the PSOW issues non-binding recommendations. It relies on public pressure and good will for the enforcement. Some international counterparts can enforce their recommendations (mainly in matters regarding breached of human rights).

The **2019 Act** significantly modernized the role of the PSOW and moved it closer to international standards. Wales now has one of the more progressive ombudsman frameworks in the UK. That said, the use of own-initiative investigations could be used more.

9. Do you have any other comments regarding the 2019 Act which are relevant to the Committee's Terms of Reference for this inquiry?

(We would be grateful if you could keep your answer to around 500 words).

- is there a follow up on the implementation of the recommendations?
- how does the ombudsman measure success in own-initiative investigations?

- is the process reviewed regularly?

- would it be favourable for the PHSO in England to also have own-initiative powers to enhance a UK-wide collaboration of ombudsmen?
