

17 May 2025

Dear Senedd Finance Committee,

Post-legislative review of the Public Services Ombudsman (Wales) Act 2019

Thank you for inviting me to submit written evidence as part of your post-legislative review of the Public Services Ombudsman (Wales) Act 2019 (the 2019 Act). I have used the questions in your call for evidence as a guide in this response.

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?

The provisions in Part 4 of the 2019 Act, which provide the basis for the PSOW's "Complaints Standards Authority", are a welcome development. The provisions reflect best practice developments in Scotland (Public Bodies Act Scotland 2010) and Northern Ireland (Northern Ireland Public Services Ombudsman Act 2016).

The PSOW has made effective use of these powers and has developed a statement of complaint handling principles, a model complaints policy, and associated guidance for public service providers.¹ Interestingly, the PSOW's approach departs from that used in Scotland where separate Model Complaint Handling Procedures have been developed for discrete areas of public services.²

The principles, model policy and guidance are clear and helpful. There is, however, limited evidence with regard to the impact that these changes have had.

The PSOW's submission to the Finance Committee dated 28 March 2025 (PSOW's submission)³ notes that all local councils, health boards, Welsh Ambulance, and most housing associations have adopted the model complaints policy. It is not entirely clear in what timescale the PSOW hopes to achieve its vision of "one complaints journey" across all Welsh public services.

The Wales Omnibus Survey conducted in 2020 asked a number of questions in relation to experiences of complaint handling in Welsh public services.⁴ This survey found that 35% of people who complained found it very difficult or fairly difficult to complain, 57% were not happy with how their complaint was resolved, and 43% of the people who were unhappy with how their complaint was resolved did not do anything else and none complained to PSOW.

These findings indicate that more than 1 in 3 people find complaint processes difficult to access and more than 1 in 2 are dissatisfied with how their complaint was dealt with. There is a need for further research to identify whether the changes delivered under Part of the PSOW Act 2019 have shifted the dial in relation to people's experiences of public service complaint procedures.

¹ <https://www.ombudsman.wales/complaints-standards-authority/>

² <https://www.spsso.org.uk/the-model-complaints-handling-procedures>

³ <https://business.senedd.wales/documents/s160513/PPSOWA1%20Public%20Services%20Ombudsman%20for%20Wales.pdf>

⁴ <https://www.ombudsman.wales/research-and-surveys/national-awareness-survey/>

School of Law

Stair Building, 5-8 The Square, University of Glasgow G12 8QQ
Email: chris.gill@glasgow.ac.uk

PSOW's submission contains references to stakeholder research based on a small sample of eight stakeholders. This research found positive views of the Complaints Standards Authority role and that complaint handling in public services had improved as a result. The research found that issues impacting good complaint handling relate to resources and workload pressure. While this research is helpful, it is rather limited in scope, and provides the views of a small number of stakeholders, all of whom are public bodies and all of whom are in very senior roles (e.g. Chief Executives or Senior Leaders). There is a need for broader research examining a range of stakeholder views (including members of the public and complainants) in order to evaluate the extent to which improvements in public service complaint handling are occurring.

One aspect of the Complaint Standards Authority role relates to data collection. Data is now being published in relation to complaints received by councils, health boards and housing associations.⁵ However, the data being collected is fairly minimal and includes only the raw number of complaints received and closed, and whether closure was within 30 days. While this is better than having no data at all, there is relatively limited value in the data as it stands.

Generally, there would be benefit in ombudsman offices across the UK coming together to consider issues around complaint categorisation, data collection, and how the aggregation of complaint data can be used as a source of data for learning and improving public administration.

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

Both of the own initiative investigations published to date are very thorough and high quality pieces of work which, in my view, fully demonstrate the added value that an ombudsman can deliver through the own initiative power.⁶ In work I have published on the own initiative power,⁷ I have argued that own initiative powers are needed for three reasons:

- As a result of what we know about people's propensity to complain. Research suggests that only 1 in 2 people are likely to complain when dissatisfied with a public service, and only 27% of those who complain to a public body will go on to take a complaint to an ombudsman. In light of this, only relying on people making complaints is unlikely to ensure that instances of poor administration are identified and remedied.
- Vulnerable groups are particularly unlikely to complain and without the power of own initiative investigation, there is a danger that ombudsman offices may focus in a reactive way only on those who reach their offices. This will generally be those members of the public who already have more social resources.
- The ombudsman is in a position to add significant value as a result of its focus on good administration, which is not the focus of audit, inspection, and regulatory bodies. The concern with fair treatment and good administrative practice marks out the ombudsman's work and allows its investigations to add significant value within the overall scrutiny and accountability landscape.

In my view, both of the investigations published by the PSOW show the value of own initiative powers, addressing the needs of vulnerable groups who are less likely to complain and highlighting

⁵ <https://www.ombudsman.wales/published-statistics/>

⁶ <https://www.ombudsman.wales/own-initiative-reports/>

⁷ https://link.springer.com/chapter/10.1007/978-3-030-40612-7_5

issues that are unlikely to have come to light or been dealt with as part of alternative scrutiny and accountability processes. Small scale research involving 10 third sector organisations commissioned by PSOW shows that third sector organisations in Wales have generally responded positively to the PSOW's own initiative investigation work (subject to some helpful recommendations around future improvements, including engaging more with the third sector, involving people with lived experience, and publicising the own initiative power).⁸

The limitation in both the 2019 Act and the Northern Ireland Public Services Ombudsman Act 2016, which restricts the ombudsman's own initiative power to use where there is a "reasonable suspicion" of "systemic maladministration", could be subject to further thought. The International Ombudsman Institute previously criticised this provision during the passage of the NIPSO Act 2016, noting that it was unduly restrictive and not in keeping with the broad discretion offered to other ombudsman offices, such as the Irish Ombudsman and the European Ombudsman.

It is unclear whether the emphasis on "systemic maladministration" has caused mischief in practice since the passing of the 2019 Act. However, in my view, the purpose of own initiative investigations should be broader than simply consideration of "systemic" issues. There would also be benefit in being able to investigate matters that affect a small groups of vulnerable individuals, which may not result from "systemic" issues, but where there appears to be acute injustice resulting from maladministration. This is important given that we know that people (in general) find it hard to reach ombudsman offices, and that certain marginalised groups are particularly unlikely to make use of the office.

While there is mixed practice internationally in relation to the framing of own initiative powers there is generally broad discretion afforded to the ombudsman:

"The criteria for launching own-initiative investigations are variable across jurisdictions, although "as a rule, the ombudsman is provided with wide scope of discretion to conduct investigations ex officio" (Kucsko-Stadlmayer 2008: 21)... Most commonly, however, investigation criteria only require the suspicion or assumption that there has been maladministration."⁹

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?

The 2019 Act is an example of good practice in modernising ombudsman legislation within the UK. The Act has given the PSOW the powers it needs to be more effective in improving complaint handling in Wales and in tackling systemic issues.

I agree with the points made in the PSOW's submission with regard to areas where the legislation could be enhanced. The statutory bar in s. 13(1)(c) of the 2019 Act on investigating complaints where a person has or had a remedy by way of proceedings in a court of law (subject to the discretion to waive this requirement in s.13(2)) should be removed. Recent judicial reviews in Scotland, involving considering of the equivalent provision in the SPSO Act 2002, highlight the potential for confusion and complexity in this area.¹⁰

⁸<https://business.senedd.wales/documents/s160513/PPSOWA1%20Public%20Services%20Ombudsman%20for%20Wales.pdf>

⁹ https://link.springer.com/chapter/10.1007/978-3-030-40612-7_5 (p. 86).

¹⁰ *McCue v. Glasgow City Council* [2020] CSIH 51; *Petition of CA for Judicial Review* [2024] CSOH 103.

I also agree that the PSOW's jurisdiction should be extended to include schools. This would involve removing the exclusion in Schedule 2, Paragraph 6 of the 2019 Act. The Local Government and Social Care Ombudsman in England is also subject to this jurisdictional landscape and has long argued for its removal. Its effect is that schools currently lack suitable accountability.

I hope that this response is helpful and look forward to discussing it in more detail at the oral evidence session on 4 June.

Yours sincerely,



Chris Gill
Professor of Socio-Legal Studies