



11 March 2015

Response to the consultation on an inquiry into the consideration of powers of the Public Services Ombudsman for Wales.

Healthcare Inspectorate Wales (HIW) welcomes the opportunity to contribute evidence to the consideration of powers of the Public Services Ombudsman for Wales.

The role of HIW is set out at Annex 1.

1. What are your views on the effectiveness of the current Public Services Ombudsman (Wales) Act 2005?

The current Act seems to be regarded as a broadly effective framework for the Public Services Ombudsman in carrying out his core role of investigating complaints from the public where they feel that public service providers have let them down and ensuring that public bodies learn from this..

Own initiative investigations

2. Currently, the Ombudsman may only investigate a matter that is the subject of a complaint made to him/her. What are your views on 'own initiative' investigations powers, which would enable the Ombudsman to initiate his/her own investigations without having first received a complaint about an issue. Please explain your answer.
3. Do you have any concerns that own-initiative investigation powers could result in the Ombudsman's responsibilities overlapping with the responsibilities of other bodies? How could this be managed?
4. Do you have a view on the likely financial costs and benefits of the Ombudsman having own-initiative powers?

There are already a number of bodies that undertake this type of review and it would be important to ensure that there is no overlap with the roles of inspectorates and regulators, the Auditor General for Wales, and Commissioners.

It would be helpful to see an articulation of where the PSOW would have liked to exercise such powers in previous years and has not been able to do so. A number of

the example reviews that the PSOW gives in his supplementary evidence from other countries could have been undertaken by other bodies in Wales and there exists an opportunity for the PSOW to raise such matters with others as part of existing collaborative arrangements in Wales. I am not aware that this has been done previously.

It is therefore difficult to comment on the proposed costs and potential benefits as it is not clear how the Ombudsman has arrived at the estimate of 1–2 own initiative investigations per year without understanding where he may have wished to investigate in previous years and why such investigations could not have appropriately been undertaken by other existing organisations.

Oral complaints

5. At present, the Ombudsman can only accept complaints in writing. What are your views on the Ombudsman being able to accept complaints made orally? Please explain your answer.
6. What other type/form of submission should be acceptable (e.g. email, website form, text messages)
7. Do you have a view on the financial costs and benefits of this provision?

We would support this proposal. The PSOW points out that some people may find it difficult to express themselves adequately in writing and it would therefore assist with access to allow complaints to be submitted in a variety of formats.

It will, however, be important that the Ombudsman does capture for the record the information in a written format and does confirm with the complainant that the record accurately reflects the issues that they wished to raise.

As before it is difficult to comment on the potential costs without an estimate of the volume of complaints that are likely to be submitted in alternative formats and the potential additional administrative effort required.

Complaints handling across public services

8. At present there is no consistency in the way public bodies deal with complaints. Adoption of the model complaints policy issued by the Welsh government is voluntary. What are your views on the Ombudsman preparing a model complaints policy which public bodies would be obliged to adopt. Please explain your answer.
9. Do you have a view on the financial costs and benefits of this provision?

The submission from the PSOW highlights that take up of the model complaints policy has been patchy, but is improving. It also identifies recent changes to the social services statutory complaints procedure. Given the improving picture that has

been identified I am not clear what case the Ombudsman is making for the need for the establishment of a Complaints Standards Authority and for enforcement powers.

Since the potential additional activity and workload associated with this has not been quantified it is difficult to comment on costs and benefits.

Ombudsman's jurisdiction

10. What are your general views on the Ombudsman's current jurisdiction?
11. At present the Ombudsman can investigate private health care that has been commissioned by the NHS. The Ombudsman would like the jurisdiction to be extended to enable him/her to investigate when a patient has received private healthcare (self-funded not commissioned by the NHS) in conjunction with public healthcare. This would enable the complaints process to follow the citizen rather than the sector. What are your views on extending the Ombudsman's jurisdiction in this way?
12. How do you think the investigation of private health care complaints should be funded? (Possibilities include a levy, charging on a case by case basis or no charge.)
13. Do you have a view on the financial costs and benefits of this provision?

The Social Care and Well-being (Wales) Act 2014 extended the jurisdiction of the Ombudsman to include care homes, domiciliary care and palliative care. In general I support provisions that, where appropriate, bring the arrangements around health and social care into alignment and avoid arbitrary sectoral distinctions.

The Ombudsman's supplementary evidence is clear that he is specifically seeking powers to be able to look into care and treatment provided by a private health care provider where that care/ treatment has stemmed from the NHS, or has been a part of a person's health care pathway which has also involved the NHS. This appears reasonable.

I would anticipate that the Ombudsman's role would be to intervene where existing mechanisms have failed to reach a satisfactory conclusion. It would therefore be important to map how the existing complaints processes for NHS and private healthcare worked in relation to the Ombudsman in order to provide clear and simple guidance for complainants as to the route they should follow.

The potential costs of such an extended role would need to be monitored, but the Ombudsman is clear that he would expect cases of this type to be very small in number.

Links with the courts

14. What are your views on 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? (ie this would give complainants the opportunity to decide which route is most appropriate for them.)

15. What are your views on the Ombudsman being able to refer cases to the Courts for a determination on a point of law?
16. Do you have a view on the financial costs and benefits of this provision?

HIW does not have a view on this.

Other issues

17. Do you have any specific examples where the Ombudsman having the additional powers proposed could have been useful in securing a successful conclusion to an issue?

HIW does not.

18. Schedule 3 of the current 2005 Act, provides a list of authorities that are within the Ombudsman's jurisdiction to investigate complaints. Please provide details of any other bodies/organisations that should be included in this list?

We are not aware of any other bodies or organisations that should be included at present.

19. If extended powers were given to the Ombudsman in a new Bill/Act, at what point should the impact of this legislation be evaluated?

Given the uncertainty surrounding the potential workload and costs associated with new powers these should be monitored annually and evaluated after a maximum of five years.

20. What unintended consequences could arise as a result of these provisions becoming legislation and what steps could be taken to deal with these consequences?

There is the potential for confusion and duplication around the role of the Ombudsman in relation to the role of other audit, inspection, regulatory bodies and in relation to Commissioners, particularly with regard to own initiative investigations.

There is the potential for public confusion around the route they should take to pursue complaints and seek redress should the Ombudsman's jurisdiction change. At present the Community Health Councils can provide advocacy and support for patients complaining about NHS care and it may be appropriate to consider a similar extension to the scope of support they can provide to patients receiving a combination of NHS and private health care.

21. What factors should be measured to determine the cost-benefit analysis of this legislation being brought forward?

For a number of these proposals the Ombudsman has not set out clearly the scale of the problems that he is trying to address. In the absence of this information we lack a robust basis on which to quantify the likely additional workload and the resources likely to be required to implement the proposed new powers.

22. Do you have any comments on the following issues:

- jurisdiction – changes to the devolution settlement have led to new areas coming into jurisdiction over time, should consideration be given to other bodies being included in the Ombudsman’s jurisdiction;

The bodies under the Ombudsman’s jurisdiction should be subject to regular review

- recommendations and findings - should the recommendations of the Ombudsman to public bodies be binding. This would mean that bodies cannot decide to reject the findings;

It is difficult to comment without understanding on how many occasions, and on what basis, public bodies have previously rejected the findings.

- protecting the title - there has been a proliferation of schemes calling themselves ombudsmen, often without satisfying the key criteria of the concept such as independence from those in jurisdiction and being free to the complainant. Should anyone intending to use the title ombudsman gain approval from the Ombudsman;

HIW does not have a view on this.

- code of conduct complaints – the Ombudsman would prefer to focus on the element of his work that deals with service users and service delivery, rather than local authority and town and community councils’ resolutions. Whilst local resolution procedures exists and has been adopted by 22 local authorities, variance exists in practice.

HIW does not have a view on this.

23. Do you have any views on any aspects of future planned or proposed public sector reforms that would impact on the role of the Ombudsman?

A broad range of proposed legislation and reform is likely to impact upon the environment in which the PSOW operates. The response to own initiative investigations highlights the landscape in which the PSOW operates and this

landscape continues to evolve. A key requirement is to be able to communicate clearly to the public the role of each organisation and their specific purpose. It is important that changes to the role of one body are not considered in isolation from the changes being proposed to others.

24. Do you have any other issues or concerns about the current Act and are there any other areas that need reform or updating?

No.

Annex 1

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.