

Care Council for Wales response to the consultation on the draft Public Services Ombudsman (Wales) Bill

Consultation questions

General

**01. Would the draft Bill improve the effectiveness of the role of the Ombudsman?
If so how?**

1.1 Yes.

**02. What, if any, are the potential barriers to implementing the provisions of the
draft Bill? Does the draft Bill take sufficient account of them?**

03. Are there any unintended consequences arising from the draft Bill?

04. At what point should the impact of this legislation be evaluated?

Power to investigate on own initiative

05. Do you have any comments on the new power in section 4?

5.1 We welcome and support the new power enabling the Ombudsman to initiate his own investigations since we believe this will enhance the protection offered by the Ombudsman's office particularly to those more vulnerable members of society who may be more reluctant to initiate a complaint against public services.

**06. Does the inclusion of this power raise any unintended consequences in the
rest of the draft Bill?**

07. With whom should the Ombudsman consult under section 4(2)?

7.1 We consider that it would be appropriate for the Ombudsman to consult with bodies such as ourselves (in relation to social care workers and managers) when beginning, continuing or discontinuing an investigation. We would suggest, as we did in our response to the inquiry into the consideration of powers of the Public Services Ombudsman for Wales, that if this were to happen, consideration should be made to the establishment of information-sharing protocols which would set out each organisation's responsibilities and which organisation should lead during an investigation, even though we are a listed authority in the draft Bill. There is a good precedent for this as we have an information sharing protocol in place with the Older People's Commissioner for Wales, even though we are a body reviewable under section 3 of the Commissioner for Older People (Wales) Act 2006.

**08. Should the Ombudsman have the power to initiate an investigation based on
action that took place prior to the draft Bill/Act receiving Royal Assent (see
section 4(4))? If so, should there be a cut-off point, beyond which the
Ombudsman should not carry out an own initiative investigation?**

**09. What kind of issues should be included in the criteria for own initiative
investigations under section 5?**

10. What kind of evidence should be available to the Ombudsman to justify an own initiative investigation (see section 5(2))?

Who can complain

11. Do you have any comments on the new definition of “member of the public” in section 7(2)?

11.1 No.

Requirements for complaints made and referred to the Ombudsman

12. Do you have any comments on the new requirements for complaints made to the Ombudsman in section 8?

12.1 We welcome and support the ability for complaints to be made orally.

13. How should the proposed guidance for making a complaint to the Ombudsman be published and what formats should be available?

13.1 It should be available both electronically and in hard copy. It should be available bilingually and in a variety of different formats to ensure accessibility to all.

Matters which may be investigated

14. Do you have any comments on the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received by public and private health services providers (see sections 10(1)(d) and 10(2))?

14.1 We support this new provision as it will achieve greater equality of opportunity for investigation and possible redress for the range of mechanisms by which healthcare may be funded.

15. Does section 10(2) adequately cover anyone who has received a combination of public and private treatment?

16. Does the broadening of the matters which may be investigated in section 10(2) raise any unintended consequences in the rest of the draft Bill?

17. Is the definition of “private health services” in section 71 broad enough to cover anyone who has received a combination of public and private treatment?

18. Should the Ombudsman have powers to recover costs incurred in investigating private health services?

19. Do you have any comments on the new definition of “family health service provider in Wales” in section 71, which is intended to capture, for example, a GP practice as a whole rather than just an individual GP?

Investigation procedure and evidence

20. Do you have any comments on the procedure set out in section 16, in so far as it relates to the procedure for conducting an own initiative investigation?

20.1 No.

21. Should the Ombudsman's power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations and investigations into private health services (see section 17)?

Listed Authorities

22. Do you have any comments on the restrictions on power to amend Schedule 3 (see section 30(2) in particular), which are significantly narrower than the restrictions found in the 2005 Act?

23. Are there any other bodies that should be included in the list in Schedule 3 'Listed Authorities'?

Complaints-Handling

24. Do you have any comments on sections 33 – 39 (which mirror sections 16A to 16G of the Scottish Public Services Ombudsman Act 2002)?

24.1 No.

25. Is section 38(b) adequate to allow listed authorities to comply with their duties under other enactments, such as Freedom of Information duties?

24.1 Our reply to this question is based upon the possible effect of these sections on the body that the Care Council will become from April 2017 – Social Care Wales.

24.2 This section would be applicable Social Care Wales' two complaints-handling procedures: one in relation to complaints received about social care workers registered with it, and the other in relation to complaints received about the administration of its functions. In relation to the latter, Social Care Wales would be able to comply with the duty under section 33(2) to ensure its complaint-handling procedure complies with the statement of principles concerning complaints-handling procedures published by the Ombudsman and would be able to amend its procedures to ensure it complies with any model complaints-handling procedure issued by the Ombudsman under section 35(2). However, in relation to the complaints procedure regarding social care workers, there may be difficulty in ensuring it complies with the principles and with any model that is issued, as a significant part of the process will be set out in primary legislation – the Regulation and Inspection of Social Care (Wales) Act. Section 38(b) would therefore help in this regard.

Part 4: Investigation of complaints relating to other persons: social care and palliative care

26. Should Part 4 remain a standalone Part? Or should such investigations be brought within the Part 3 investigations process?

27. If Part 4 should be brought within Part 3, are there any specific elements of Part 4 that should survive? Or can a blanket approach be applied?

Part 5: Investigations: supplementary

28. Do you have any comments on sections 62, 63 and 64, which provide for joint and collaborative working with specified Commissioners and the Auditor General for Wales?

29. Should sections 62 and 63 cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales?

29.1 It would appear sensible to ‘future proof’ the Bill as far as possible.

30. Are there any further technical changes required in Part 5 of the draft Bill, to reflect the broadening of matters which may be investigated?

Appointment etc

31. The provisions of paragraphs 5 to 8 of Schedule 1 (disqualification) reflect largely the current provisions in the 2005 Act. Do these provisions require updating?

32. Paragraph 7 of Schedule 1 provides that a person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified from a list of roles (listed in paragraph 7(1)) for a period of two years. Is the two year period appropriate?

33. Do you have any comments on the matters which are included within “paid office” in paragraph 8 of Schedule 1?

Financial implications

34. Do you have a view on the financial implications of the new provisions set out in the draft Bill?

Other comments

35. Do you have any other comments you wish to make about the draft Bill or any specific provision within it?