

Response to the Draft Public Ombudsman (Wales) Bill
Corporate Services - Betsi Cadwaladr University Health Board

Thank you for the opportunity to respond to the draft Public Ombudsman (Wales) Bill.

General

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

Whilst the benefit of wider investigation powers can be recognised, it should be considered carefully alongside the powers of the regulatory bodies of the NHS such as Welsh Government and Health Inspection Wales.

Where the Ombudsman becomes aware of a trend emerging or a number of concerns regarding the same issue close liaison would be required with the relevant regulator to prevent potential duplication of investigations and potentially to glean wider intelligence relating to the issue.

In relation to the development of model complaints handling the NHS already has Putting things Right regulations in place which would require amendment.

In light of the above it is not felt that the changes to the bill will improve the effectiveness of the Ombudsman and may introduce some confusion in relation to responsibilities between his office and the NHS Regulator.

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?

The relationship with the NHS regulators would need to be carefully considered. There is a risk of the PSOW duplicating the regulators role under the proposed Bill. Should the additional power of investigation without complaint be instigated the criteria governing when section 4 can be utilised would need to be developed in agreement with the service and regulators to avoid confusion or duplication.

Development of any CHPs for the NHS would need to ensure that the Putting Things Right regulations were not compromised (or alternatively amended).

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

It is possible that there would be duplication of investigations with the NHS regulators and also that the Ombudsman may deal with issues of concern in isolation from related issue his office may be unaware of.

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

Within 6 months

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

As stated above there is a danger of there being duplication with inspection and investigations by other regulators. The service could be faced with differing recommendations for the same issue as well as duplication of work to support investigations.

The right of the individual to not take a complaint forward should be respected. Should the ombudsman feel the matter raised by the complaint is significantly concerning they should raise this with the relevant regulating body to be investigated. The need for extending powers to investigate issues where a formal complaint has not been made is felt to be in danger of crossing into the responsibilities of the regulators.

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

See above

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

Should section 4 be agreed the Ombudsman should consult with the relevant statutory regulators as a minimum. The organisation to be investigated should also be given the opportunity to respond prior to the decision to proceed.

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?

It is strongly felt that the powers, if agreed, should not be implemented retrospectively.

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

Should section 4 be agreed the criteria governing when an investigation can be instigated must be robust and clear and should include certain exclusions:

- The exclusion of issues currently under investigation by other regulatory bodies
- The exclusion of issues relating to ongoing POVA/ Safeguarding investigations or police investigations.
- The exclusion of issues that are being managed through the 'Putting things Right' regulations until such time as that process is complete.

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

Evidence of serious process failure

Who can complain

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

It is felt that the definition should be explicit that staff of listed authorities should not use this route unless acting as individual citizens – this would cut across the whistleblowing and regulatory arrangements.

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?

No

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

It is felt that this needs to be considered against equality legislation. However, as a minimum, in plain English and Welsh and other main languages in use in Wales as well as “easy read” format, BSL, visual (eg film clips on the internet). It is also recommended that any guidance should be checked against the “Plain English” guidance.

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))?

This would seem to be a sensible addition and is supported

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

Yes

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?

Nothing apparent

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?

Yes

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

Assuming this refers to the costs to the Ombudsman in investigating private health services – they should only be recoverable if the investigation is upheld

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?

The definition is not clear as still refers to 'an individual'

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?

It is important that listed authorities have the opportunity to comment on the proposal and this section allows this.

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)?

Yes

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?

No

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

No

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)?

See Q1-4 above

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

All listed authorities must ensure their compliance with other applicable legislation and it is therefore important that the Bill reflects this and not be in a position where they are being asked to give primacy to the regulations within the Bill over other legislation.

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?

There would seem little logic to keeping these separate and in fact with NHS funded care and Continuing Health Care keeping them separate could cause confusion.

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?

Reference to non NHS funded palliative care providers should be clear

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?

It is felt that similar provision needs to be made in relation to NHS Regulators (HIW)

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

Yes

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?

Other ombudsman and commissioners should be consulted on any investigation likely to be taken forward under the revised proposed section 4

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?

No

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?

Yes

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

No

Financial implications

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

Presumably the increased powers of investigation will require the Ombudsman office to increase capacity. As the additional investigation powers under section 4 are deemed to be a potential duplication of other regulatory bodies it would seem hard in the current financial climate to agree to additional capacity within the PSOW

Other comments

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

No