

Consultation on the draft Public Services Ombudsman (Wales) Bill

Finance Committee, National Assembly for Wales

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Consultation questions

Please comment on as many of the questions as relevant to you/your organisation, providing an explanation of each answer given:

General

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

The draft Bill would allow for own-initiative investigations as well as other improvements, such as allowing oral complaints from the public.

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?

The most significant 'barriers' and 'unintended consequences' of the draft Bill is the risk of duplication or complication around the use of the Public Service Ombudsman's proposed new own-initiative power and the existing powers and responsibilities of other commissioners, regulatory or inspection bodies or regimes. The draft Bill however outlines consultative arrangements that seek to mitigate the likelihood or impact of any such incidences.

Depending on how frequently and to what extent the Ombudsman's proposed new powers are exercised, there is likely to be an additional regulatory burden on authorities as well as resource implications in terms of developing, introducing, monitoring and reporting of any new complaints handling procedures introduced following such legislation.

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

A post-legislative review may be appropriate five years following commencement. Although the impact of some parts of the draft Bill (e.g. impact of oral complaints) may be immediate, other parts such as complaints handling procedures (S33-39) will take some time to develop and/or embed (e.g. comparable complaints data over a relevant time period will take some years to generate) and others, such as own-initiative powers may not be exercised immediately or would, if exercised, likely take a significant period of time to conclude an investigation.

Power to investigate on own initiative

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

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

The WLGA was broadly supportive in principle of the proposal to introduce own initiative powers, subject to appropriate 'safeguards' to avoid complication or duplication.

As noted above, the draft Bill seeks to mitigate the likelihood of such occurrences, however, there is no reference to potential conflict with criminal allegations of malfeasance/misconduct in public office cases, which would be a matter for the Crown Prosecution Service and the police to investigate.

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

The Ombudsman should consult with the complainant or any other party whom he believes may have suffered, the listed authority subject to the complaint and any other relevant commissioner/regulatory body.

The Ombudsman should prepare a guidance note stating how own-initiative investigations may be instigated and commenced, which would include reference to appropriate consultation arrangements.

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?

No, the powers should not be retrospective. No exceptional reason has been given to vary the general rule that legislation is not retrospective in effect.

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

Section 5 should specify that the Ombudsman should consult with public bodies prior to publication of criteria.

Criteria is likely to focus on issues of risk of serious injury or personal harm to individuals and matters of public interest, particularly where it might lead to opportunities for organisational and/or public service-wide learning and improvement.

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

Evidence may include: original complaint (corroborated where possible), correspondence between complainant and listed authority, the listed authority and other public bodies' publications and public records.

Who can complain?

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

The definitions appear appropriate.

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?

The requirements in Section 8 appear appropriate.

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

The guidance should be available online and in hard-copy. The material should be in Plain English/Cymraeg Clir and the Ombudsman's website (linked via listed authorities' websites) might include a brief video outlining the complaint process.

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))?

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?

The WLGA does not have specific views on requirements of the draft Bill relating to private health care, but is supportive in principle of the proposal for jurisdiction to be extended to cover both public and private health care providers.

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?

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)?

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, the restrictions as drafted appear clear and proportionate compared to the 2005 Act.

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

The listed authorities are largely consistent with those of the 2005 Act. It is not clear however, why certain bodies are listed but other, similar bodies are not, for example, the Welsh Language Commissioner is included as a listed authority but other Commissioners are not and Estyn is included as a listed authority other regulatory and inspectorate bodies are not included. It may be appropriate to include harbour or port authorities in the list.

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)?

The provisions appear appropriate. The WLGA welcomes the requirements on the Ombudsman to consult with listed authorities when determining complaints principles or model complaints handling procedures (S33(7)(b) and 34(4)).

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

Yes.

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?

Part 4 should remain a standalone Part as it provides clarity regarding the specific complaints requirements as they apply only to relevant 'Other Bodies' rather than the broader 'Listed Authorities' in Part 3.

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?

See above.

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?

The provisions for joint working appear appropriate.

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?

None that are apparent.

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?

The WLGA does not have strong views on this proposal, but the policy intent or rationale of proposing a change from three years (as per the 2005 Act) to two years in the draft Bill has not been included in the Explanatory Notes.

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?

There are likely additional financial implications of the draft Bill, both upon the office of the Ombudsman itself and potentially on listed authorities, depending on the implications of any reforms to, and monitoring and reporting of proposed model complaints-handling procedures. Although it would be difficult to determine estimated cost implications, the likelihood of financial and regulatory impact should be explored in a Regulatory Impact Assessment that would be introduced alongside the Bill should it be formally introduced in the next Assembly term.

Other comments

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

The vast majority of the Ombudsman’s powers and responsibilities will be set out in a single Ombudsman’s Act (assuming the draft Bill leads to legislation and Royal Assent, repealing the Public Services Ombudsman (Wales) Act 2005. However, the Ombudsman will retain a key role in terms of the ‘Conduct of local Government Members and Employees’ which was originally included in Schedule 4 of the 2005 Act, which amended sections of the Local Government Act 2000. As this Schedule does not feature in the draft Bill, it would be appropriate to include savings provisions to put the status of the Local Government Act 2000 amendments made by Schedule 4 beyond doubt, to provide clarity and also to ensure a ‘complete’ and consolidated legislative basis for the Ombudsman’s powers and responsibilities set out in the new Public Service Ombudsman (Wales) Act.