

Finance Committee

Draft Public Services Ombudsman (Wales) Bill

DB PSOW 22 Caerphilly County Borough Council

Consultation response from Caerphilly CBC

General

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

The Public Services Ombudsman (Wales) Act 2005 is generally regarded as effective. The Law Commission put forward a number of proposed amendments to clarify and improve the Ombudsman's role. The draft bill seems to cover these proposed amendments.

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?

No comment

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

No comment

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

An evaluation should be carried out in 3 years in the first instance to moving to 5 years for future rounds.

Power to investigate on own initiative

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

We support the WLGA view on this aspect. There is a risk of duplication with regulators and inspectors and so a clear link with this section and sections 61 to 64 should be made, ensuring that the Ombudsman does not initiate an investigation which is already being investigated/considered by auditors, regulators or inspectors.

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

No comment

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

The authority that the investigation would focus upon should be consulted to avoid duplication if an investigation is already ongoing and to narrow the issues to be investigated. Some consultation with service users or potential complainants (as there would be no actual complainant) may also inform the decision about whether or not to investigate and narrow the issues to be investigated.

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

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

As an investigation would involve resources from both the Ombudsman and the authority subject to the investigation and therefore could result in substantial public funds being used, the criteria needs to insure that only significant issues of public interest are investigated, which would not be investigated by any other means, including consideration about why complaints have not been made.

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

The Ombudsman should have clear evidence to show that an investigation is reasonable and proportionate. The Ombudsman should first answer the question: what is the level of impact if they do not investigate and have evidence which show that a complaint could be made and any reasons that complaints have not been received.

Who can complain

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

There should be reference to the person affected having received a service from the authority.

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?

We welcome the introduction of oral complaints as a methods to complain and this is in keeping with access under the equalities agenda, however the Ombudsman must provide assurance that the processes are in place to check the complainant has gone through the authority's own complaints process.

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

The usually methods of publication should be used, in line with the Welsh Language Measure and Equality Act 2010.

Matters which may be investigated

We have no comments in response to questions 14 to 19.

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?

There should be an addition which allows the authority to respond prior to the decision to initiate an investigation if an internal complaints procedure has not been followed.

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)?

This requirement would need to be proportionate and restricted to a narrower view for own initiative investigations; if there is no complainant then an investigation could be very wide and resource intensive if all documents relating to an area had to be

produced. This needs careful consideration to avoid unnecessary public expenditure and of service users' rights under the Data Protection Act 1998.

Listed Authorities

We have no comments in response to questions 22 and 23.

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)?

Under section 39, we would suggest that 'good practice' rather than 'best practice' should be used. Best practice suggests something is fixed and there can be no better, it also discourages further improvement as it can be no better. 'Good' practice encourages further evolving and improving.

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

No comment

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

We have no comment in relation to questions 25 and 26.

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?

As stated above, this should be used to avoid duplication.

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?

No comment

Appointment etc

We have no comments in response to questions 31 to 33.

Financial implications

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

There is some concern about some increased costs for local government in this time of austerity, particularly from investigations initiated by the Ombudsman without a complainant. We would support the WLGA view that a regulatory impact assessment including an estimate on costings.

Other comments

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

No further comments, however Caerphilly CBC also supports the WLGA response to the earlier consultation.