

Pwyllgor Cymunedau, Cydraddoldeb a  
Llywodraeth Leol

Communities, Equality and Local Government  
Committee

Cynulliad  
Cenedlaethol  
Cymru  
National  
Assembly for  
Wales



Lesley Griffiths AM  
Minister for Local Government and  
Government Business

Bae Caerdydd / Cardiff Bay  
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Dear Minister

### **Public Services Ombudsman for Wales**

As you may be aware, the Public Services Ombudsman for Wales recently attended a meeting of the Committee to discuss his Annual Report 2012-13.

During the session, he raised a number of points that I would like to draw to your attention. Whilst most of these relate to matters of local government, a number of examples cited by the Ombudsman relate to the health service in Wales. On this basis, a copy of this letter goes to the Minister for Health and Social Services, as well as the Chair of the Health and Social Care Committee.

In general, the Ombudsman noted that 2015 will be the tenth anniversary of the Public Services Ombudsman (Wales) Act 2005. He told us that, although it had been “at the cutting edge” when introduced, the experience of operating the office over the last seven years had shown that there would be merit in reviewing the legislation. Further to this, he identified several areas where the legislation could be strengthened. He also drew our attention to a number of other issues that he believed should be addressed.

**The Committee would be interested to hear your views on each of the matters set out below, and to have details of any work already undertaken by you in respect of these.**

## **1. Own-initiative Powers**

1.1 In his annual report, the Ombudsman noted that most public services ombudsmen throughout Europe and more widely, have the power to undertake investigations on their own initiative. He goes on to state that such a power already exists for the Ombudsman in the Republic of Ireland, and a similar power has been proposed in respect of Northern Ireland.

1.2 During the evidence session, he told us that, in his view, the power to undertake own-initiative investigations, where appropriate, was “fundamental” in order to enable future holders of his office to pursue issues that arise in the course of investigations.

## **2. Jurisdiction of the Ombudsman**

2.1 In both his Annual Report and his oral evidence, the Ombudsman highlighted the issue of individuals’ access to redress in cases where public services are delivered by private sector organisations. He noted that, in England, consideration is being given to extending the jurisdiction of the Health Service Ombudsman to include private healthcare.

2.2 He told us that, in his view, the taxpayer should not bear the cost of redress arrangements for private sector complaints, and he proposed a number of options for addressing this, including the introduction of a levy, similar to that operated by some private sector ombudsman schemes.

2.3 Related to this, the Ombudsman told us there was a need for public sector bodies to ensure that, when contracting services out to private contractors, those contractors were aware they were delivering services *on behalf of* a public body and the implications/obligations associated with that. Further to this, he talked of the need for an awareness raising campaign to ensure that individuals receiving services delivered by private contractors on behalf of public sector bodies were aware of their rights to complain to the Public Services Ombudsman for Wales. He said the focus of his concern here was in relation to the delivery of health related services, rather than local authority services.

## **3. ‘Statutory bars’: the relationship between the Ombudsman and other institutions for administrative justice**

3.1 In his evidence, the Ombudsman told us there were some issues around the relationship between his office and the courts. He said that, in his opinion, there were many cases that had been referred to the administrative courts which could have been better dealt with by an Ombudsman, but that he was unable to investigate complaints where the complainant had, or could have, recourse to the courts.

3.2 This ‘statutory bar’ is referred to in the 2011 [report of the Law Commission](#), which states that there is now “considerable overlap between the word of the ombudsman and judicial review. The effect of the statutory bars is that where there is an overlap, so a court or an ombudsman could deal with the matter, there is a preference in favour of the court.” The report concludes that such preference

“removes choices from citizens” and recommends repealing the statutory bars in order to enable citizens to choose the mechanism that is most appropriate for their particular complaint.

#### **4. Binding remedies**

4.1 In relation to private sector bodies, the Ombudsman highlighted the need for binding remedies so that such bodies would be required to comply with the recommendations of the Ombudsman. On this point, he said “with a public body, you can hold them to account if they do not do what I have asked them to do; with a private body, there is not the same responsiveness.” He cited the example of the Financial Ombudsman Service, which can require compliance with its recommendations.

In addition to his suggestions for areas in which the legislation could be reviewed, the Ombudsman also raised a number of more general points, which will be of particular interest to the Minister for Health and Social Services, as well as our colleagues on the Health and Social Care Committee.

#### **5. Complaint handling, particularly within the health service**

5.1 In both his annual report and his evidence to us, the Ombudsman expressed “considerable concern” with the continuing rise in health complaints. He noted that since the establishment of his office in 2006/07, complaints about health bodies have increased by 257%. Whilst noting that this rise could have been the result of a number of factors, including an increase in awareness of the role of his office, in his view, “this continued significant increase has to lead to the conclusion that there is greater dissatisfaction with health service delivery.”

5.2 He told us that, whilst mistakes were inevitable in any organisation, particularly complex organisations such as a local health boards, leadership within those organisations was critical in terms of effective complaint management. He went on to say that “the measure of difference is what you do when something has gone wrong” and that the officers within an organisation who are responsible for handling complaints must have sufficient authority or seniority to enable them to do so effectively. He told us there was “huge scope for improved leadership” by Chief Executives and Chairs in order to address this.

5.3 The Ombudsman acknowledged the “tremendous pressure” imposed on the health service as a result of an increasingly aging population but suggested there were two main problems facing the health service in managing complaints. He told us that the first problem related to resources; that there were insufficient numbers of staff dealing with complaints locally, thereby causing an increase in the number of complaints to his office. The second problem related specifically to more serious complaints, where health boards were not taking independent advice in order to resolve a complaint, despite being able to do so.

## 6. Oversight of complaints

6.1 In his evidence, the Ombudsman told us “the oversight of the complaints function across the public sector in Wales is very limited. If you want to see comparable statistics about how local authorities or health boards deal with complaints in the last year, you will not be able to find them.”

6.2 He said there was a need for proper statistical analysis of the complaints being made by individuals to public sector organisations in respect of the services they deliver; the stage at which such complaints were being deal with; and the decisions taken in respect of each complaint. Further to this, he told us he had proposed a standardised mechanism for collecting and reporting data about such complaints across the public sector in Wales.

6.3 He suggested that the collection and publication of such data would enable the relevant Assembly committees to hold public sector organisations, including local authorities and local health boards, to account for their performance on complaints. It would also enable the relevant individuals within an organisation to judge how well that organisation was performing, in comparison with others, in relation to managing complaints.

For convenience, I have included a link to the transcript of the evidence session with the Ombudsman below—

<http://www.senedd.assemblywales.org/documents/s21529/6%20November%202013.pdf>

I look forward to hearing from you in due course.

Yours sincerely



**Christine Chapman AC / AM**  
**Cadeirydd / Chair**

Cc. Mark Drakeford AM, Minister for Health and Social Services  
David Rees AM, Chair, Health and Social Care Committee