

Y Pwyllgor Cyllid
Finance Committee

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

26 January 2015

Dear Sir/Madam

Consultation on an inquiry into the consideration of powers of the Public Services Ombudsman for Wales

The National Assembly for Wales' [Finance Committee](#) is undertaking an inquiry to consider extending the powers of the Public Services Ombudsman for Wales ("the Ombudsman"), should the evidence support the extension of the Ombudsman's powers the Committee may consider the introduction of a Committee Bill. The terms of reference for the inquiry are available on the [Committee's webpage](#).

Background

The role of the Ombudsman was established by the [Public Services Ombudsman \(Wales\) Act 2005](#).

The current Ombudsman, Nick Bennett and his predecessor, Peter Tyndall have both called for changes to the Act during their role. Five main areas have been highlighted for potential legislative changes to strengthen the Ombudsman's role, including:

- **own-initiative powers** – this would enable the Ombudsman to initiate his own investigations without having first received a complaint about an issue;

- **oral complaints** – at present, the Ombudsman can only accept complaints in writing;
- **complaints handling across public services** – this would enable the Ombudsman to have a role in advising on complaints handling across public services;
- **the Ombudsman’s jurisdiction** (to include private health services) –this would extend the Ombudsman’s jurisdiction to enable him/her to investigate when a patient has received private healthcare (self-funded, rather than being commissioned by the NHS) in conjunction with public healthcare; and
- **links with the courts** – the removal of the statutory bar to allow the Ombudsman to consider a case that has or had the possibility of recourse to a court, tribunal or other mechanism for review (this would give complainants the opportunity to decide which route is most appropriate for them).

The Ombudsman has submitted a [paper](#) to the Finance Committee which provides further background information and details of these proposals. To assist with its inquiry, the Committee would welcome your views on the questions attached at **Annexe A**.

Invitation to contribute to the inquiry

The Committee welcomes responses in Welsh or English from both individuals and organisations and will hold oral evidence sessions in due course.

Submissions should be no longer than five sides of A4, with numbered paragraphs, and should focus on matters set out above. Please see [guidance for those providing evidence for committees](#).

If you wish to submit evidence, please send an electronic copy (preferably **not** in PDF) of your submission to SeneddFinance@Assembly.Wales

Alternatively, you can write to:

Committee Clerk
Finance Committee
National Assembly for Wales
Cardiff Bay, CF99 1NA.

Submissions should arrive by **20 March 2015**. It may not be possible to take into account responses received after this date.

The Committee would be grateful if you could forward a copy of this letter to any individuals or organisations that might like to contribute to the review. A copy of this letter will be placed on the National Assembly's website with an open invitation to submit views.

Disclosure of Information

The Assembly's [policy on disclosure of information](#) is available, please ensure that you have considered these details carefully before submitting information to the Committee. Alternatively a hard copy of this policy can be requested by contacting the Clerk (Leanne Hatcher 0300 200 6343).

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Jocelyn Davies', written in a cursive style.

Jocelyn Davies AC / AM
Cadeirydd / Chair

Consultation Questions

1. What are your views on the effectiveness of the current [Public Services Ombudsman \(Wales\) Act 2005](#)?

Own initiative investigations

2. Currently, the Ombudsman may only investigate a matter that is the subject of a complaint made to him/her. What are your views on 'own initiative' investigations powers, which would enable the Ombudsman to initiate his/her own investigations without having first received a complaint about an issue. Please explain your answer.

3. Do you have any concerns that own-initiative investigation powers could result in the Ombudsman's responsibilities overlapping with the responsibilities of other bodies? How could this be managed?

4. Do you have a view on the likely financial costs and benefits of the Ombudsman having own-initiative powers?

Oral Complaints

5. At present, the Ombudsman can only accept complaints in writing. What are your views on the Ombudsman being able to accept complaints made orally? Please explain your answer.

6. What other type/form of submission should be acceptable (e.g. email, website form, text messages)

7. Do you have a view on the financial costs and benefits of this provision?

Complaints handling across public services

8. At present there is no consistency in the way public bodies deal with complaints. Adoption of the model complaints policy issued by the Welsh government is

voluntary. What are your views on the Ombudsman preparing a model complaints policy which public bodies would be obliged to adopt. Please explain your answer.

9. Do you have a view on the financial costs and benefits of this provision?

Ombudsman's jurisdiction

10. What are your general views on the Ombudsman's current jurisdiction?

11. At present the Ombudsman can investigate private health care that has been commissioned by the NHS. The Ombudsman would like the jurisdiction to be extended to enable him/her to investigate when a patient has received private healthcare (self-funded not commissioned by the NHS) in conjunction with public healthcare. This would enable the complaints process to follow the citizen rather than the sector. What are your views on extending the Ombudsman's jurisdiction in this way?

12. How do you think the investigation of private health care complaints should be funded? (Possibilities include a levy, charging on a case by case basis or no charge.)

13. Do you have a view on the financial costs and benefits of this provision?

Links with the courts

14. What are your views on the removal of the statutory bar to allow the Ombudsman to consider a case which has or had the possibility of recourse to a court, tribunal or other mechanism for review? (ie this would give complainants the opportunity to decide which route is most appropriate for them.)

15. What are your views on the Ombudsman being able to refer cases to the Courts for a determination on a point of law?

16. Do you have a view on the financial costs and benefits of this provision?

Other issues

17. Do you have any specific examples where the Ombudsman having the additional powers proposed could have been useful in securing a successful conclusion to an issue?

18. [Schedule 3](#) of the current 2005 Act, provides a list of authorities that are within the Ombudsman's jurisdiction to investigate complaints. Please provide details of any other bodies/organisations that should be included in this list?

19. If extended powers were given to the Ombudsman in a new Bill/Act, at what point should the impact of this legislation be evaluated?

20. What unintended consequences could arise as a result of these provisions becoming legislation and what steps could be taken to deal with these consequences?

21. What factors should be measured to determine the cost-benefit analysis of this legislation being brought forward?

22. Do you have any comments on the following issues:

- **jurisdiction** – changes to the devolution settlement have led to new areas coming into jurisdiction over time, should consideration be given to other bodies being included in the Ombudsman's jurisdiction;
- **recommendations and findings** – should the recommendations of the Ombudsman to public bodies be binding. This would mean that bodies cannot decide to reject the findings;
- **protecting the title** – there has been a proliferation of schemes calling themselves ombudsmen, often without satisfying the key criteria of the concept such as independence from those in jurisdiction and being free to the complainant. Should anyone intending to use the title ombudsman gain approval from the Ombudsman;
- **code of conduct complaints** – the Ombudsman would prefer to focus on the element of his work that deals with service users and service delivery, rather than local authority and town and community councils' resolutions. Whilst a

local resolution procedures exists and has been adopted by 22 local authorities, variance exists in practice.

23. Do you have any views on any aspects of future planned or proposed public sector reforms that would impact on the role of the Ombudsman?

24. Do you have any other issues or concerns about the current Act and are there any other areas that need reform or updating?