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Ms Jocelyn Davies AM
Chair, Finance Committee
National Assembly for Wales
Cardiff Bay
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Page: 1 of 2

Dear Jocelyn

INQUIRY INTO THE CONSIDERATION OF POWERS: PUBLIC SERVICES OMBUDSMAN FOR WALES

Thank you for your letter of 26 January 2015.

My views on the particular issues you raise are as follows. My answers to your general (Annex A) consultation questions are attached in the Annex.

- (i) *Whether given my role in overseeing the Welsh Consolidated Fund there would be any significant financial issues arising from the Ombudsman's proposals should a Bill be introduced, particularly in relation to Standing Order 26.6 (viii)?*

In terms of Standing Order 26.6 (viii), I do not think it should be necessary or likely for the proposals put forward by the Ombudsman to require provision to be made for charging directly on the Fund. As you know, direct charge provisions enable funds to be paid without further Assembly approval (in the form of budget motions), and are appropriate for enabling certainty of payment, such as for indemnities and salaries of constitutionally significant offices (such as that of the Presiding Officer). The Ombudsman's proposals do not seem to relate to that kind of matter. One of the five areas put forward is termed "Complaints Standards Authority", but I understand that this is intended to be a brand for the proposed model complaints policy work, rather than a proposal for a new public body that might require provision for direct charges.

My further views on the wider financial implications of the Ombudsman's proposals are in my answers to your Annex A consultation questions (please see Annex to this letter).

- (ii) *Whether I have any concerns that 'own-initiative' investigations by the Ombudsman could conflict with the Auditor General's value for money investigations. How could this risk be managed?*

I think that there is a possibility of overlap with my value for money studies, but I do not think it would be a great risk. Furthermore, I think that risk could be managed effectively fairly easily. I am sure that both the Ombudsman and I would in any case continue to confer with one another regarding our respective forward programmes. To put the matter

beyond doubt, however, it would be appropriate to include provision in legislation requiring the Ombudsman and the Auditor General each to take account of the other's views before exercising the relevant functions and to co-operate with one another in so far as they consider is necessary for the effective exercise of those functions.

(iii) *Is there a need for a co-ordination role between the Auditor General for Wales, the Ombudsman and independent commissioners to help their investigations and recommendations to improve public services?*

I think the requirements that I suggest in response to question (ii) would provide appropriate co-ordination. I do not think that further co-ordination provision, such as specific co-ordination role to be held by any particular person should be necessary.

(iv) *Would the proposed reforms of the Ombudsman's role be better carried out in advance of wider public sector reforms, or after?*

For the most part, I do not think that there are strong timing issues either way. However, I do think that it would be somewhat more economical and efficient to introduce a requirement on public bodies to adopt model complaints policies at the same time as establishing complaints policies for merged bodies than either introducing such requirements before or after mergers. Such timing should help bodies to avoid having to make two sets of changes to their complaints procedures.

I should be happy to provide further explanation if the Committee would find that helpful.

Yours sincerely



HUW VAUGHAN THOMAS
AUDITOR GENERAL FOR WALES

Enc: Annex A: Responses to Annex Consultation Questions

RESPONSES TO ANNEX CONSULTATION QUESTIONS

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

On the basis of our monitoring of issues arising from the audit of accounts and wider monitoring for the purposes of planning value for money studies, I have no particular concerns regarding lack of effectiveness of the current legislation.

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.*

I consider that own initiative investigations would enable wider systemic problems to be addressed coherently. I also think that such a power should enable evidently problematic matters to be investigated despite the absence of complaints, which might, for example, be the case with systemic problems that affect particular groups who tend to be reluctant or unable to raise complaints.

I consider that such a power to undertake such investigations should be used sparingly, but I think it is very likely that resource constraints and oversight of resourcing by the Assembly will ensure that the power is not used excessively.

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?*

I think that there is a possibility of overlap with my value for money studies, and perhaps with inspections by the Welsh Ministers (HIW and CSSIW) and Estyn. But I think the risk could be managed effectively fairly easily. As I say in my covering letter, I am sure that both the Ombudsman and I would in any case continue to confer with one another regarding our respective forward programmes. To put the matter beyond doubt, however, it would be appropriate to include provision in legislation requiring the Ombudsman and the Auditor General each to take account of the other's views before exercising the relevant functions and to co-operate with one another in so far as they consider is necessary for the effective exercise of those functions.

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

The cost estimate provided in the Ombudsman's proposal paper are realistic in respect of sparing use of own-initiative investigation powers—say one or two investigations each year. In terms of benefits, it is not possible to predict the likely monetary benefits of such powers. I would hope that good use of such powers would lead to reduced levels of

maladministration leading to efficiency savings as well as increased public satisfaction (and reduced harm and distress to individuals), but such benefits are very difficult to quantify, let alone predict.

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.*

As I understand it, it is not actually the case that the Ombudsman can only accept complaints in writing. Section 2(4) of the Public Services Ombudsman (Wales) Act 2005 provides the Ombudsman with discretion to investigate oral complaints, and I gather that the Ombudsman does indeed investigate such complaints. I do, however, also understand that Ombudsman's office time is taken up in writing up oral complaints and seeking confirmation that the complainant wishes the Ombudsman to proceed with investigation. I am not sure what the most appropriate solution to that problem is; I am not sure that removing the requirement in section 5 of the 2005 Act for complaints to be made in writing would, on its own, make much difference, given the discretion to investigate complaints that do not meet section 5. I do suspect, however, that new provision for own-initiative investigations should help the Ombudsman address serious issues that have been raised orally but not confirmed.

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

As I understand it, email, webform and text message submissions would be held by the courts to be written submissions. I do not see it should necessary for a submission to be made by letter on paper.

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

As I not sure how specific provision for oral complaints would operate, I cannot give a view on financial costs and benefits. If a solution can be found to the problem of staff time being spent on recording oral complaints that are not confirmed, then there may be some financial saving in the sense of avoiding what can be regarded as nugatory work. But I think any solution that makes it easier to submit complaints orally will also lead to more complaints, which will increase costs. I do, however, see that there may be real benefit to vulnerable people in making the submission and investigation of oral complaints easier.

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.*

I think this proposed development would be likely to be beneficial overall. I think there is a strong parallel with the Information Commissioner providing clear guidance to

public bodies on review procedures for FOI, which helped eliminate some very unhelpful practices in some bodies. The required adoption of model policies should enable good and efficient complaints handling practice to be embedded across public bodies. This should be conducive to improved effectiveness (better handling).

It may helpful to provide for the Ombudsman to be able to approve deviation from a model policy, such as where the requirements of a body's operations do not fit well with the model policy. There may also be a need to exempt certain matters from the model policy, such as FOI review procedures, as those are subject to other regulation.

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

While the overall net savings are not likely to be great and will be hard to quantify, particularly where complaint handling staff do not work with a time recording system, I think the required adoption of model policies should be conducive to improved economy by, among other things, saving bodies spending time and money on devising their own policies. Similarly some savings might be achieved where public bodies are operating poorly designed policies.

Ombudsman's jurisdiction

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

Generally, I think the Ombudsman's current jurisdiction is appropriate.

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?*

I can see merit in a "follow the citizen" approach, where private healthcare is received in conjunction with public healthcare. I do, however, see defining linkages in care histories as possibly quite challenging in some cases. And there may be other issues in defining the scope of healthcare to be covered by the Ombudsman's jurisdiction. There are, however, also wider public policy issues on which I do not think it is appropriate for me to comment.

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.)*

These are public policy issues on which it is probably not appropriate for me to comment.

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

Again, I am not in a position to comment.

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.)*

Given the potential additional cost to the public purse, I would be concerned if the removal of the statutory bar meant that complainants had not just a choice of remedy (ie one or the other) but two remedies to pursue. Furthermore, as the statutory bar does not apply if the Ombudsman is satisfied that in the particular circumstances it is not reasonable to expect the person to resort to the right remedy, I am not sure that there is a pressing case for the removal of the statutory bar in terms of removing impediments to remedy for vulnerable people.

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

In principle, referral of cases to the Courts for the determination of points of law seems sensible, but there is need for consideration of who should bear the cost of such referrals.

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

My answers to questions 14 and 15 indicate my concerns as to the costs of such changes.

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?*

No, but that is not to say that I do not see an own initiative investigation and model complaints policy functions as not having benefits.

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?*

I am not aware of any significant omissions from the 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?*

A baseline review before commencement would be helpful. Thereafter, given the timescales for undertaking and allowing the effects of own-initiative investigations and model complaints policy work, evaluation at least three to five years after commencement would be appropriate if the evaluation is to address effectiveness. However, if the evaluation were confined to assessing whether the provisions were fit for purpose in terms of enabling the processes to commence (which is quite a narrow focus), then it could be undertaken one to two years after commencement.

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?*

While mentioned above, I would say again that there may be unintended cost consequences of specific provision for oral complaints. Similarly, there may be unintended cost consequences of removal of the statutory bar on matters that could be considered by the Courts.

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

I would need to undertake some extended research in order to answer this properly.

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

- *areas coming into jurisdiction over time, should consideration be given to other bodies being included in the Ombudsman's jurisdiction;*

Such consideration would be appropriate for any new service-delivery organisations, but probably not for new review bodies (eg the forthcoming Future Generations Commissioner).

- *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;*

In my view, binding recommendations could be problematic. They may confuse or reduce the accountability of the executives of public bodies. The existing provisions in the Act for reporting and certifying non-action seem appropriate.

- *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;*

This seems to me to be a sensible precaution against misuse. Regulations already exist to provide such protection for titles such as "government" and "auditor general" (it may be appropriate to ask for an insertion into Schedule 4 of the *Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015*).

- *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.*

I can see the merits of that preference, but I consider that there is a need for investigation of serious code of conduct complaints.

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?*

I think it is likely that the proposed public sector reforms and continuing austerity will increase the volume of the Ombudsman's casework, at least in the short to medium term—separating the effect of the proposed reforms and the effect of austerity may be difficult. Similarly, the proposed public sector reforms and continuing austerity will increase the volume of complaints to public bodies. This latter point may reinforce the case for Ombudsman having model complaints policy functions.

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

Not at present.

19 February 2015