

## Consultation Questions

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

The Act is generally fit for purpose

## 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.

There is no objection in principle to this provision. There is logic in the Ombudsman being able to extend an existing investigation to cover other fields without a separate referral. An example would be where a complaint is received about Social Services whereas the responsibility lay with the Health Service. It makes sense for the Ombudsman to then investigate the Health Service without a separate complaint being made.

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?

This is a danger and there would need to be guidelines so that in the event of a complaint being extended to an organisation which already had an independent complaints system, that organisation's system should either take preference or should work in conjunction with the Ombudsman in any investigation

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

The Ombudsman's office does not respond to complaints in a timely manner in all cases. A recent Code of Conduct investigation took 12 months to complete. The own-initiative provisions should be a last resort where the public interest strongly suggests that such an investigation should take place otherwise these investigations would take place at the expense of its existing workload

## 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.

This is a good idea in terms of inclusivity. Our own internal complaints policy allows for complainants to submit oral complaints. Not everyone is confident enough to submit something in writing and by allowing oral complaints it ensures that no part of society is disadvantaged

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

All should be accepted but with safeguards around identity checks so that malicious complaints are not made in another's name

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

This should not have a financial cost and could lead to increased efficiency. Some complaints may reach the Ombudsman's office at present in an incomprehensible form and this would be eliminated/reduced

## 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.

Most Local Authorities in Wales have already adopted the model complaints policy in principle. There is no objection to it being rolled out further

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

There should not be a great cost

## Ombudsman's jurisdiction

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

It seems to work

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?

Agree

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.)

No strong views on this

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

No strong views on this

#### 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.)

Totally opposed to this. The current bar is a safeguard for Local Authorities. A situation could arise where a complainant chose the Ombudsman route and then afterwards proceeded with litigation, using the Ombudsman's ruling as evidence when the same level of scrutiny would not be applied in the two processes. It is also difficult to see how the Ombudsman could be resourced to undertake the inevitable increase in workload which this provision would bring.

Whilst there is an argument that some people do not get justice because of the costs of going to Court, there is a strong counter-argument that a free service such as this would encourage litigious and vexatious complainants to pursue issues of no merit

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

No great objection

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

There would of course be a cost and presumably this would not be something which would be done lightly or often

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 – the consultation seems to be around “nice to haves” rather than essentials. Personally I would prefer to see the Ombudsman’s office focussing on increasing the speed of their current investigations. Taking on further work without added resources can only put greater strain on those services and in these times of austerity I cannot see the justification in expanding the Ombudsman’s remit

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?

None

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?

Once implemented it is difficult to see the merits of any evaluation

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?

A strain on resources

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

An analysis of the impact of these proposals on existing procedures and investigations particularly in terms of timetable

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;

This should be an ongoing review as further powers are devolved

- 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;

Provided that the body had had an opportunity to consider the draft findings as at present then this is supported

- 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;

No views on this

- 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 procedure exists and has been adopted by 22 local authorities, variance exists in practice.

There should be tougher responses to “tit for tat” complaints particularly in Town and Community Councils. Monitoring Officers should not become involved in Town and Community Councillors’ disputes other than in their present role following a referral to Standards Committee from the Ombudsman

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?

No

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

I have concerns around persistent and vexatious complainants. They can and do refer Members to the Ombudsman on more than one occasion and totally without merit. There seems to be no filter in terms of complaints in the Ombudsman’s office where a holding letter will be sent out to inform the Member that the complaint has been received and that a decision will be made as to whether to investigate. Invariably, no investigation follows. When the complaints are so obviously without merit (and these vexatious persons must be known to the Ombudsman), why can’t the Ombudsman dismiss the claims at the outset rather than have this two stage process.