

## **Finance Committee Inquiry: Consideration of powers: Public Services Ombudsman for Wales**

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

#### **Ymateb i'r Ymgynghori**

Ystyrir yn gyffredinol ei fod yn effeithiol. Dim sylwadau anffafriol gan ein cyfranwyr.

#### **Consultation Response**

Generally regarded as effective. No adverse views expressed by our contributors.

#### **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?**

#### **Ymateb i'r Ymgynghori**

Mae hyn yn debyg i'r cysyniad o'r awdurdodaeth gynhenid sydd gan yr Ombwdsman o ran delio gyda chwynion yn ymwneud â'r Côd Ymddygiad ar gyfer Aelodau Etholedig. Fodd bynnag, yn y cyd-destun hwnnw, mae gan yr Ombwdsman awdurdodaeth unigryw. Nid felly yn yr achos hwn efallai ac mae'n creu sgôp ar gyfer dyblygu ac ansicrwydd ynghylch pwy ddylai fod yn ymchwilio i beth. Yn ein barn ni, mae hyn yn creu'r risg o ganlyniadau anghyson na fyddai'n fanteisiol i'r rheiny sy'n derbyn y gwasanaeth na'r rhai sy'n ei ddarparu. Wedi pwysu a mesur, byddem yn gwrthwynebu'r newid hwn yng nghyd-destun y strwythur cyfredol ar gyfer delio gyda chwynion ynghylch gwasanaeth.

#### **Consultation Response**

This is similar to the concept of the inherent jurisdiction which the Ombudsman has in relation to dealing with complaints relating to the Code of Conduct for Elected Members. However, in that context, the Ombudsman has an exclusive jurisdiction. That may not be the case here and creates scope for duplication and uncertainty as

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to who would be looking into what. We think this creates a risk of contradictory outcomes that would not be to the benefit of either those receiving the service or those providing it. On balance we would oppose this change in the context of the current structure for dealing with service complaints.

## 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**

## Ymateb i'r Ymgynghori

Hyd yn oed os yw cwynion cychwynnol yn cael eu cyflwyno ar lafar, rydym o'r farn y dylid cael cofnod ysgrifenedig y cytunwyd arno er mwyn osgoi dryswch a chamddehongli a allai arwain at wastraffu adnoddau ymchwiliol. Yn ein barn ni, mae treulio amser ar y gwaith rhagarweiniol o sicrhau dealltwriaeth glir a chyffredin o'r materion dan sylw yn fuddiol iawn ac yn y pen draw, mae'n arbed amser a chostau.

Rydym yn cytuno, fodd bynnag, fod unrhyw gŵyn a gyflwynir "ar ffurf ysgrifenedig" yn dderbyniol gan gynnwys ebost, ffurflen ar wefan, negeseuon testun ac ati.

## Consultation Response

Even if initial complaints are made orally we think there should be an agreed written record to avoid confusion and misinterpretation which might result in a waste of investigative resources. In our experience, time spent "front loading" to get a clear and common understanding of what the issues are, is time well spent and ultimately saves time and costs.

We agree, though, that any complaint "in written form" is acceptable including email, website form, text messages etc.

## 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?**

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### **Ymateb i'r Ymgynghori**

Byddai'n well gennym ni fod wedi cael model statudol o'r cychwyn cyntaf, ond, erbyn hyn, mae 21 allan o'r 22 Awdurdod Lleol yng Nghymru wedi mabwysiadu Model yr Ombwdsman. Oherwydd lefel uchel iawn y gydymffurfiaeth, nid ydym yn gweld y deuai unrhyw fudd o'i wneud yn fandadol.

### **Consultation Response**

We would have preferred a statutory model in the first place but, by now, 21 of the 22 Local Authorities in Wales have adopted the Ombudsman's Model. Given this very high level of compliance we cannot see the benefit of making it mandatory.

### **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?**

### **Ymateb i'r Ymgynghori**

Nid oes gennym unrhyw sylwadau ar y cynnig hwn.

### **Consultation Response**

We have no views on this proposal.

### **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?**

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### Ymateb i'r Ymgynghori

Nid ydym o blaid gwneud i ffwrdd â'r bar statudol. I bob pwrpas, byddai darpar ymgyfreithwyr yn cael y cyfle i ymarfer a mireinio eu hachos drwy broses yr Ombwdsman cyn ymgyfreithiad. Byddai'r broses yn mynd y tu draw i ddatgeliad cyn-gweithredu a byddai'n rhoi darpar ddiffinyddion dan anfantais oherwydd byddai'r Ombwdsman wedi gwneud canfyddiadau heb eu croesholi.

Mae'r hyn a gynigir yn debygol o achosi dyblygu, oedi, costau ychwanegol a byddai'n tanseilio'r rhagolygon ar gyfer cyflafareddu mewn rhai achosion priodol.

### Consultation Response

We do not favour the removal of the statutory bar. Prospective litigants would effectively be given an opportunity to rehearse and refine their case through the Ombudsman's process prior to litigation. The process would go beyond pre-action disclosure and would place prospective defendants at a disadvantage as the Ombudsman would have made findings but without the benefit of cross-examination.

What is proposed is likely to cause duplication, delay, additional costs and to undermine the prospects for arbitration in some appropriate cases.

### **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?**

### Ymateb i'r Ymgynghori

Nac Oes.

### Consultation Response

No

**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?**

### Ymateb i'r Ymgynghori

Dim sylwadau.

### Consultation Response

No comments.

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**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?**

**Ymateb i'r Ymgynghori**

Dim llai na 5 mlynedd wedi i'r ddeddfwriaeth ddod i rym.

**Consultation Response**

No less than 5 years after the legislation comes into force.

**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?**

**Ymateb i'r Ymgynghori**

Gweler os gwelwch yn dda ein hymatebion i “ymchwiliadau ar ei liwt ei hun” (own initiative investigations), “cwynion ar lafar”, “cysylltiadau gyda'r llysoedd” ac “argymhellion a chanfyddiadau”

**Consultation Response**

Please see our responses to “own initiative investigations”, “oral complaints”, “links with the courts” and “recommendations and findings”

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

**Ymateb i'r Ymgynghori**

Dim digon o wybodaeth wedi ei darparu i ni gynnig sylwadau.

**Consultation Response**

Insufficient information provided to enable comment.

**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;**

**Ymateb i'r Ymgynghori**

Dylid ystyried creu un corff i ddelio gyda'r holl gwynion ynghylch gwasanaethau ar draws y sector cyhoeddus datganoledig yng Nghymru – dim yr Ombwdsman o angenrheidrwydd.

### Consultation Response

Consideration should be given to creating a single body to deal with all service complaints across the devolved public sector in Wales. This need not be the Ombudsman.

- **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;**

### Ymateb i'r Ymgynghori

Na. Mae gwneud i ffwrdd â'r disgresiwn lleol yn creu'r risg o adolygiad barnwrol yn erbyn yr Ombwdsman.

### Consultation Response

No. Removing the local discretion creates the risk of judicial review against the Ombudsman.

- **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;**

### Ymateb i'r Ymgynghori

Rydym yn cytuno. Fel mae'n sefyll, mae'n dibrisio'r teitl ac yn creu risg i'r cyhoedd.

### Consultation Response

Yes we agree. As it stands it devalues the currency and creates a risk for the public.

- **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.**

### Ymateb i'r Ymgynghori

Cyfarfu Pwyllgor Safonau'r Cyngor i drafod y mater hwn ac mae o'r farn y dylai'r Còd Ymddygiad barhau i fod yn orfodol ac y dylai'r Ombwdsman barhau i weithredu ei bwerau i gynnal yr "hidliad cyntaf"; er mwyn atal cwynion

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blinderus a rhai sy'n gwastraffu amser rhag llyncu adnoddau'r Ombwdsman a'r Cyngor.

Fodd bynnag, mae'r Pwyllgor Safonau'n cefnogi cynnig yr Ombwdsman i gyflwyno trydedd gangen i'w brawf trothwy; sef yr elfen budd y cyhoedd. Os yw'r Ombwdsman o'r farn nad yw cwyn yn cyrraedd y trothwy, yna dylid ei gwrthod waeth pwy yw'r achwynydd a waeth beth fo ei statws.

Byddid yn croesawu model o Brotocol ar gyfer Datrys Anghydfodau'n Lleol oherwydd mae trefniadau lleol yn amrywio. Mae'r isod ymysg y gwendidau y mae angen rhoi sylw iddynt:-

- y ffaith bod cydweithredu gyda chwyn a wneir dan y Protocol ar gyfer Datrys Anghydfodau'n Lleol yn gwbl wirfoddol sy'n golygu na fedrir gorfodi Aelod i gymryd rhan yn y broses os nad yw'n barod i wneud hynny.
- mae Protocolau ar gyfer Datrys Anghydfodau'n Lleol, yn yr amgylchiadau y maent yn berthnasol iddynt (sef cwynion mewnol ac agweddau cyfyngedig o'r Côt) yn creu gwrthdaro posibl ar gyfer aelodau'r Pwyllgor Safonau sydd wedi delio gyda'r mater dan y drefn leol, os bydd y mater wedyn yn cael ei uwch-gyfeirio i'r Pwyllgor Safonau yn dilyn cwyn i'r Ombwdsman.

### **Consultation Response**

The Council's Standards Committee met to discuss this matter and is of the view that the Code of Conduct should remain compulsory, and that the Ombudsman should continue to exercise "first sift" powers; to avoid vexatious and time wasting complaints swallowing up Ombudsman and Council resources.

However, the Standards Committee does support the Ombudsman's proposal to introduce a third limb to his threshold test; namely the public interest element. If it is the view of the Ombudsman that a complaint does not reach the threshold then it should be rejected regardless of the identity or status of the complainant.

A model Local Resolution Protocol would be welcome as local arrangements vary. Among the weaknesses that need to be addressed are:-

- the fact that cooperation with a complaint made under the LRP is entirely voluntary and that if a Member is not prepared to participate then they cannot be compelled.
- LRPs, in the circumstances in which they apply (i.e. in-house complaints and limited aspects of the Code) create potential conflicts for members of the Standards Committee who have dealt with a local resolution, should the matter escalate to the Standards Committee following a complaint to the Ombudsman.

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**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?**

**Ymateb i'r Ymgynghori**

Eglurder ynghylch swyddogaeth ac awdurdodaeth yr Ombwdsman o ran delio gyda gwasanaethau sydd wedi eu hallanoli i fodolau darparu eraill megis mentrau cymdeithasol neu ymddiriedolaethau cymunedol ac ati.

**Consultation Response**

Clarity on the role and jurisdiction of the Ombudsman in dealing with services outsourced to alternative delivery models like social enterprises or community trusts etc

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

**Ymateb i'r Ymgynghori**

Na

**Consultation Response**

No