

PSOW 27

Bil Ombwdsmon Gwasanaethau Cyhoeddus (Cymru)

Public Services Ombudsman (Wales) Bill

Ymateb gan: Cymdeithas Feddygol Prydain (BMA)

Response from: British Medical Association (BMA)

1 December 2017

INTRODUCTION

BMA Cymru Wales is pleased to provide a response to the Stage 1 consultation by the Equality, Local Government and Communities Committee into the general principles of the Public Services Ombudsman (Wales) Bill.

The British Medical Association (BMA) is an independent professional association and trade union representing doctors and medical students from all branches of medicine all over the UK and supporting them to deliver the highest standards of patient care. We have a membership of approximately 160,000. BMA Cymru Wales represents over 7,100 members in Wales from every branch of the medical profession.

RESPONSE

BMA Cymru Wales is grateful for the opportunity to comment on the proposals put forward in the Public Services Ombudsman (Wales) Bill.

Although we do not seek to provide a detailed commentary on the Bill, we would nonetheless wish to highlight a few areas of concern we have with some aspects of the Bill, as well as with some aspects of the way in which the Ombudsman currently operates which we feel might also be addressed through this Bill.

In particular, we would point out that there are aspects of the way the Ombudsman's processes currently operate with relation to complaints made against GPs that are often of considerable concern to our GP members.

- *Naming of individual GPs and GP practices in reports of investigations*

One concern is that individual GPs, who are providing services under the General Medical Services (GMS) contract, are often personally named in reports when findings are made against them.

Cyfarwyddwr cenedlaethol (Cymru)/National director (Wales):

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Registered office: BMA House, Tavistock Square, London, WC1H 9JP.
Listed as a Trade Union under the Trade Union and Labour Relations Act 1974.

This contrasts with findings regarding complaints that are upheld in secondary care, or in other public bodies, where it is the organisations (such as local health boards) that are named rather than individual employees.

It seems unfair to our GP members that they may face being publicly named due to the reputational damage this can then cause, particularly when other public sector workers would not be personally affected in such a way.

We feel this is a matter which could be addressed through amendments to the proposed Bill.

- *Lack of opportunity for those complained about to be consulted on investigation findings prior to publication*

We also feel that the process by which judgements may be reached can be unfair to individual GPs, or GP practices. Whilst the GP, or practice, may initially be given an opportunity to give a response to the complaint as part of the investigation, we feel it is quite unfair that there is no opportunity for the GP or practice to subsequently see and comment on the draft findings by the Ombudsman before they are published. Many of our members feel that the lack of such a step in the process goes against the laws of natural justice.

We would also note that this practice differs from the process followed by the Wales Audit Office (WAO) in similar circumstances when it is undertaking investigations in relation to complaints within its remit. Before publishing the findings of such investigations, we understand that the WAO will consult with those complained about on the draft findings reached, and then provide an opportunity for those findings to be commented upon before they are finalised and published.

We would therefore suggest that the Bill is amended to include such a step in the process which the Ombudsman's office must follow in dealing with complaints within its remit. Just to be clear, what we are calling for is for this step in the process to require the Ombudsman to consult with those whom a complaint has been made against on any draft findings that may have been reached in order to give those individuals or organisations a chance to comment on those draft findings before they are finalised and published.

- *New power to undertake a role in relation to complaints handling standards and procedures*

We note that the Bill provides a new power for the Ombudsman to undertake a role in relation to complaints handling standards and procedures. We do not have an issue with this, per se, provided this new role takes on board the need we have outlined above for those who are complained about to have an opportunity to be consulted on investigation findings prior to those findings being finalised and published.

We feel this should be applied to all complaints handling procedures, and therefore believe it is important for this issue to be rectified within the Ombudsman's procedures before the Ombudsman is given this new role in the setting of complaints handling standards and procedures by other organisations.

- *Compensation payments asked to be paid by GPs and GP practices*

This is another issue which specifically impacts on GPs providing services under the GMS contract that we believe is currently unfair to such doctors. Our members report that when the Ombudsman makes a recommendation in a report that an individual GP or practice pay a compensation payment to a complainant, this constitutes a loss which cannot be insured against and is not therefore covered by indemnity arrangements.

As such, GPs are effectively having to bear the costs of any such compensation payments from their own pockets. This contrasts with other situations in which the Ombudsman may recommend compensation payments are made, e.g. in a complaint related to secondary care, or in relation to a finding of maladministration by a local authority. In such circumstances compensation payments are picked up by public bodies, such as local health boards or councils, and not by individual employees.

Our members understandably feel that the way GPs effectively become personally liable when it comes to recommendations being issued by the Ombudsman that compensation payments be made is unfair. We therefore believe this issue should be addressed through amendments being agreed to the proposed Bill.

- *New power to undertake own initiative complaints*

Given the concerns we have already listed, it is perhaps not surprising that some of our members have expressed a degree of unhappiness with this proposed new power.

We therefore feel it is necessary for this new power to be subject to quite clear criteria, so that it could not be used in a way that some might see as being over-zealous.

We note, however, that the provisions in the Bill do provide limitations on how this new power could be applied and we would welcome the committee's careful consideration of these criteria to satisfy themselves that they provide sufficient safeguards to prevent what might be perceived as an unreasonable use of the power.