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Date: 29 November 2017

Ein cyf / Our ref:

Dear Chloe

**RE: Consultation Response on the Public Services Ombudsman (Wales) Bill**

Please find attached, as requested, a letter providing written submission on the Public Services Ombudsman (Wales) Bill.

Yours sincerely



Dr Kate Chamberlain  
Chief Executive  
**Healthcare Inspectorate Wales**

Gwirio bod pobl yng Nghymru  
yn derbyn gofal da

Checking people in Wales are  
receiving good care

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**November 2017**

**Consultation on the Public Services Ombudsman  
(Wales) Bill**

## Contextual issues

1. Healthcare Inspectorate Wales (HIW) welcomes the opportunity to contribute to scrutiny of the Public Services Ombudsman (Wales) Bill. We have framed our response primarily in the context of the Ombudsman's responsibilities with regard to providers of health and social care, although we recognise that his powers extend more widely. Our role is set out at Annex 1.
2. The interim report of the Parliamentary Review of Health and Social Care in Wales states  
*"There is a strong consensus amongst the stakeholders that we spoke to on the broad direction of travel towards the provision of seamless health and social care, focused on outcomes that matter to the individual."*
3. This direction of travel lends weight to a number of the new powers.  
**Oral complaints.** The flexibility to accept complaints in a form which is most accessible and appropriate to the complainant is welcomed.  
**Public/ private pathway.** The ability to fully investigate the circumstances of an individual's care where that care crosses the boundary between listed bodies and private healthcare is to be welcomed.  
**Complaints-handling standards:** the introduction of consistent and joined up complaint-handling processes across service boundaries should provide simplification and clarity for the public.
4. It will be important to ensure that implementation of the powers in this Bill is cognisant of, and aligned to, related legislative developments such as potential legislation following the White Paper 'Services Fit for the Future' which also addresses the need for alignment of standards and complaints processes across health and social care.

## Provision for the Ombudsman to accept oral complaints

5. We support the flexibility in the Bill which allows the Ombudsman to set out in guidance the form and content of complaints. This will ensure that, as people use technology in different ways (e.g. e-mail, text messaging, twitter), the Ombudsman is able to specify clearly what will be treated as a formal complaint.
6. We support provision that the Ombudsman should be able to receive oral complaints. Some people may find it difficult to express themselves adequately in writing and it would therefore assist with access to allow complaints to be submitted in a variety of formats.

7. It will, however, be important that the Ombudsman does capture for the record the information in a written format and does confirm with the complainant that the record accurately reflects the issues that they wished to raise. This should be done orally at the time of complaint regardless of whether the complainant wishes a written confirmation to be sent to them.
8. Clause 8 (9) is arguably too specific and does not go far enough for the purposes of monitoring access and outcome. It could possibly be re-phrased along the lines of “The Ombudsman must maintain a register of all complaints, the manner in which they are received and the outcome”. This may help to monitor and evaluate whether oral complaints are more or less likely to proceed to formal investigation.

### **Provision to extend the Ombudsman’s jurisdiction to allow investigation of complaints in a public/private health service pathway**

9. The Social Care and Well-being (Wales) Act 2014 extended the jurisdiction of the Ombudsman to include care homes, domiciliary care and palliative care. In general we welcome provisions that, where appropriate, bring the arrangements around health and social care into alignment and avoid arbitrary sectoral distinctions.
10. We support the provision for the Ombudsman to look into care and treatment provided by a private health care provider where that care/ treatment has stemmed from the NHS, or has been a part of a person’s health care pathway which has also involved the NHS. This appears reasonable and supports the principle of joined-up person-centred care.

### **Power to undertake a role in relation to complaints handling standards and procedures**

11. The Bill allows for the Ombudsman to publish a statement of principles concerning complaints-handling, and publish model procedures for complaints- handling. It allows for the Ombudsman to declare a listed body non-compliant. It also requires the Ombudsman to take a role in oversight of the implementation of complaints-handling procedures including the promotion of best practice.
12. We consider that the standardisation of complaints procedures would be helpful to the public. This issue relates directly to the proposal for alignment of processes, and joint investigation of complaints, across health and social care as set out in the White Paper “Services Fit for the Future”. We believe that where a citizen is receiving integrated care they should be able to complain only once, not separately to each of health

and social care. In these circumstances it will be important that there is a clear lead body for the investigation of the complaint which has the authority to lead on behalf of both bodies.

13. Further thought will be needed regarding how this will appear to citizens who may be receiving care from a combination of health services, social services and independent care providers, particularly given the extension of the Ombudsman's jurisdiction to investigation of a public/private health service pathway.
14. Overall we consider that it will be in the best interests of the public to have a body with explicit responsibility for ensuring that complaints processes are operating consistently and seamlessly in the best interests of the public. We would also welcome the opportunity that this presents to ensure the gathering and reporting of consistent and comparable data across public services

### **Provision for the Ombudsman to undertake own initiative investigations**

15. The Bill recognises that there are already a number of bodies that undertake this type of review and it will be important to ensure that there is no overlap with the roles of inspectorates and regulators, the Auditor General for Wales, and Commissioners.
16. Relationships between HIW and the Ombudsman have developed well in recent years and a Memorandum of Understanding has been agreed setting out how the two organisations will work together on matters of common interest.  
<http://hiw.org.uk/docs/hiw/publications/160728psowmouen.pdf> .
17. Although the Bill refers to “any person exercising regulatory functions in Wales” as a “specified person” for the purposes of consultation with the Ombudsman, it does not include the powers to co-operate, conduct joint investigations, and prepare joint reports with regulators in the same way that it does for Commissioners and the Auditor General for Wales. It would be disappointing if the legislation were to limit the ability of HIW and PSOW to work together in the interests of the public, efficiency and effectiveness.

### **Wider landscape**

18. The new powers to act as a Complaint Standards Authority and to undertake own initiative investigations represent a significant development in the role of the Ombudsman. The current role is focussed at an individual level on looking into individual complaints about public services & independent care providers in Wales. The new powers will

mean that the Ombudsman will also be operating at a systems level ensuring that complaints systems overall are working effectively and examining patterns and trends to identify potential systemic issues for further investigation.

19. At an individual level there is no other body responsible for investigating complaints about services from listed bodies when a member of the public is unhappy with their response from the original service provider. This means that the role of the Ombudsman is relatively easy to communicate.
20. At a system level there are a wide variety of different bodies who also have responsibility for identifying and investigating systemic problems in the delivery of public services. These include the Auditor General for Wales, the Commissioners and a number of regulation and inspection bodies. Although this is recognised to a degree in the legislation it will pose challenges with implementation which will need to be carefully managed.
21. Wales is a small country with a relatively complex and crowded landscape of regulatory, scrutiny and oversight bodies. It is essential that all parties understand their part in the system and work collaboratively and effectively with others, if the system is to work effectively in the best interests of the public.

## **Healthcare Inspectorate Wales (HIW) is the independent inspectorate and regulator of healthcare in Wales**

### **Our purpose**

To check that people in Wales are receiving good care.

### **Our Priorities**

Through our work we aim to:

#### ***Provide assurance:***

Provide an independent view on the quality of care.

#### ***Promote improvement:***

Encourage improvement through reporting and sharing of good practice.

#### ***Influence policy and standards:***

Use what we find to influence policy, standards and practice.

### **Our Responsibilities**

Our work delivers activities in three key areas:

- regulation of independent healthcare
- inspecting the NHS
- mental health.

#### **Regulation of independent healthcare**

Registration, inspection and enforcement action are the methods through which HIW regulates the independent health sector in Wales in accordance with the Care Standards Act 2000, the Independent Health Care (Wales) Regulations 2011; the Independent Health Care (Fees) (Wales) Regulations 2011 and other legislation (see Annex B).

We regulate and inspect a broad range of independent healthcare providers ranging from those who use lasers to full private hospitals. Our core activities are listed below.

- Registration and inspection of independent clinics, hospitals and medical agencies.

- Registration of independent mental health and learning disability establishments.
- Registration and inspection of premises using class 3B or 4 laser or intense pulse light machines.
- Pursuit of enforcement action when regulatory breaches are identified in a registered setting.
- Identifying and dealing with potential unregistered providers.

### **Inspecting the NHS**

HIW inspects services provided by the NHS across Wales to test whether care is provided in accordance with the Health & Care Standards. Many of HIW inspections are unannounced although for practical reasons this is not always possible. We have published a statement setting out the rationale for whether our inspections are unannounced or announced. We also undertake a proportion of our visits outside of office hours.

Inspections test care against three specific domains:

- quality of patient experience.
- delivery of safe and effective care.
- quality of leadership and management.

### **Mental Health**

The focus of this work area is to ensure the most vulnerable individuals in society are protected, cared for and treated appropriately in environments conducive to their recovery. HIW visits hospitals in both the NHS and the independent sector as part of our work programme. We also visit services provided in the community to review Community Treatment Orders.

Our core activities are listed below.

- Inspection of NHS and independent mental health and learning disability establishments with appropriate follow-up activity.
- Provision of the Mental Health Review Service and processing requests for Second Opinion Appointed Doctors (SOADs).
- Monitoring the implementation of the Mental Health Measure.
- Monitoring the implementation of the Deprivation of Liberty Safeguards (DOLS).
- Monitoring the use of the Mental Health Act.