

Mark Drakeford AM/AC
Ysgrifennydd y Cabinet dros Gyllid
Cabinet Secretary for Finance



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref:

John Griffiths AM
Chair
Equality and Local Government Committee
National Assembly for Wales
Cardiff Bay
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15 January 2018

Dear John

During my evidence session on the scrutiny of the Finance Committee's Public Services Ombudsman (Wales) Bill on 11 January 2018 I undertook to write regarding two matters. The first concerns whether sections 40 and 41 of the Bill provide adequate protection for the statutory framework underpinning *Putting Things Right* and social care complaints. The second matter concerns technical issues with section 8 of the Bill (oral complaints).

Sections 40 and 41

Section 40 of the Bill requires the PSOW to monitor complaints practice among listed authorities.

'*Putting Things Right*' is the Welsh NHS-wide complaints procedure, made under the NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011; which, in turn, are made under s113 of the Health and Social Care (Community Health and Standards) Act 2003 ("the 2003 Act"). There is also a statutory complaints procedures for social care made under the Social Services Complaints Procedure (Wales) Regulations 2014; which, in turn, are made under s114 of the 2003 Act (repealed in relation to Wales, but the Regulations made under it continue to apply to Wales by virtue of s17(2)(b) of the Interpretation Act 1978).

Those procedures set out parameters on how complaints in those sectors are to be handled, and remedies awarded etc. The Legislature (originally Parliament, now the National Assembly for Wales as these matters are devolved) has entrusted the Welsh

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Ministers with responsibility for setting those parameters; but it is for the health bodies and local authorities themselves to establish the complaints procedures. In the social care sector, each local authority can make its own scheme, but it must comply with the Regulations.

As currently drafted the Bill puts the onus on the listed authority to ensure it does not act incompatibly with any other enactment (see section 41). Our view is it would be more appropriate for the onus to be on the Public Services Ombudsman for Wales (the Ombudsman) to ensure guidance given by that Office doesn't conflict either with the legislation setting the parameters of statutory schemes, nor with statutory schemes made under them.

Section 8

There are some technical issues with the drafting of section 8(5).

Subsection (5) prohibits the Ombudsman from using the powers under section 3 to investigate an oral complaint which meets the requirement in subsection (1), i.e. a "duly made" complaint, if the complainant does not wish him to do so. There doesn't appear to be anything to prohibit the Ombudsman from using powers under section 4 to investigate the complaint, however, and this appears to render the prohibition worthless.

This is one of a number of concerns Government officials have identified, and on which a number of amendments may be needed at stages 2 and 3. Welsh Government officials will continue to work closely with their National Assembly colleagues to ensure those concerns are dealt with appropriately.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark', written in a cursive style.

Mark Drakeford AM/AC

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