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23rd January 2018
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CLILC • WLGA

John Griffiths AM
Chair
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Y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau
Equality, Local Government and Communities Committee
ELGC(5)-05-18 Papur 18 / Paper 18

Dear John,

Follow up Note on Public Services Ombudsman (Wales) Bill

Thank you for the recent invitation to give evidence on the Public Services Ombudsman (Wales) Bill. As requested, please find following further information in relation to specific questions raised during Committee.

- **Provisions in the Bill for own-initiative investigations in relation to the implications of whistleblowing;**

As noted in our written evidence, the WLGA is supportive of the proposed powers for own-initiative investigations. The Ombudsman has made the case that this would also allow him to investigate concerns in response to a whistle-blower as well as from a complainant. The Ombudsman is already a 'prescribed person' under the [The Public Interest Disclosure \(Prescribed Persons\) Order 2014](#), although the complaints he is currently able to act upon are limited to code of conduct complaints about members of local authorities.

A broadening of 'matters' that the Ombudsman could consider within the 2014 Order would enable him to use own initiative investigatory powers more widely and to include concerns raised via a whistleblower, which the WLGA would support. The provisions for own initiative investigations in Section 5 are appropriate, but as noted during the Committee session, these could be clarified further if they were set within a clear decision-making framework (similar to the model developed by the Northern Ireland Ombudsman). Furthermore, Sections 65-67 should prevent duplication of whistle-blowing investigations as the Ombudsman must consult with 'specified persons', including other regulators, Commissioners or the

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Auditor General for Wales, many of whom are also ‘prescribed persons’ with regards whistleblowing.

- **Telephone service provided by local authorities for oral complaints, and the proportion of oral complaints made to local authorities, if available;**

Following the Committee session, I have received feedback from most local authorities with regards the above question. All authorities accept oral complaints, as previously noted, however not all authorities record how or in what medium complaints are received, of those that do record how complaints are received, the percentage that are oral complaints varies from 12% to 40%.

Of the authorities that responded to my request, complaints phone numbers are local call rates (which appears to be the case also for the Ombudsman’s office, the National Assembly for Wales and the Local Health Boards). All confirmed that they offer a ring-back option if requested by a complainant. Some authorities confirmed that that provide a free-phone service for children’s complaints.

- **View on the financial implications of and liability for investigations of complaints, in the context of a public/private pathway.**

The WLGA’s written evidence noted that ‘although not a local government matter, this proposal appears appropriate.’ During Committee, the WLGA was asked:

“...where there's a need to investigate a private health service provider—it could apply to local government...—that cost shouldn't be borne by the public sector; it should be borne as a matter of course by the private body. Is that something you'd agree with? Social services might have elements that go over in terms of care packages to the provider.”

Within the context of the Bill itself, the proposed extension of the Ombudsman’s powers over private health services is limited to allow the investigation of complaints in a public/private health service pathway rather than a power to investigate private health providers more broadly.

Section 10(2) therefore provides a check on the power to investigate private health services and the Regulatory Impact Assessment estimates that the anticipated use of the power would be infrequent and therefore costs to the Ombudsman or taxpayer would be limited.

We note that the Explanatory Memorandum estimates the annual cost to the Ombudsman of this new power at only £3,507. In his oral evidence to Committee, Simon Thomas AM, Chair of the Assembly’s Finance Committee previously explained:

“...even the Finance Committee wasn't convinced that this was a big enough sum to have some kind of complex levy system or some other way of raising costs, but that this was a small enough sum to be dealt with in the overall work of the ombudsman's envelope, if you like.”

As this proposed reform (and potential for powers of cost recovery) was narrowly defined to the public/private health service pathway, local government has not considered in detail the scope for broadening this power more widely to private sector providers delivering other public services.

Local authorities commission services from a range of providers, some of whom may be third sector bodies or private sector suppliers. General feedback however suggests that any complaints received about local authority services (delivered by a third party, including the private sector) are generally dealt with by the local authority as a complaint against the authority (just as they would be were those services delivered in house). Local authorities therefore would not normally seek to recharge internal investigation costs to private sector providers where such complaints are upheld. These bodies however may be expected to cover the costs of/provide any redress or remedial action and complaints that led to significant or systemic concerns would be addressed as part of any contract management arrangements.

Notwithstanding the above however, the Bill does propose a new power for the Ombudsman to 'demand or recover costs' from private health service providers in specified circumstances, for example where the private health care provider has obstructed the Ombudsman in carrying out his functions. Section 19 outlines that the Ombudsman could seek recovery of 'costs incurred' as a result of any obstruction. The same methodology could be used to recover costs where private sector complaints are upheld.

In order to provide a further safeguard to public resources and to give the Ombudsman maximum flexibility in future, Section 19 could be amended to provide a permissive power to the Ombudsman to seek to recover costs where private sector complaints are upheld. Although as noted above, private sector investigations are anticipated to be infrequent and relatively low cost, this discretionary power would provide the Ombudsman with a reserve power to seek reimbursement should an investigation involving a private sector provider be particularly complex or lengthy and therefore a significant cost to the public purse.

I trust the above information helps inform the Committee's deliberations.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D Hurford', with a large, sweeping flourish extending to the right.

Daniel Hurford

Head of Policy (Improvement and Governance)