



Jocelyn Davies AM
Finance Committee Chair
National Assembly for Wales

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Dear Jocelyn

Thank you for the opportunity to submit comments to the Finance Committee's inquiry into the consideration of powers of the Public Services Ombudsman for Wales (the Ombudsman). You have specifically asked me to provide comment on the following:

1. Could own initiative investigations by the Ombudsman conflict with the role of independent commissioners?

I believe there is an opportunity for the Ombudsman to be allowed to act in a more proactive role through for example own initiative investigations, especially where there is evidence to suggest from individual cases that there could be a wider public interest issue. Many older people tell me that they complain not just to resolve their own concerns but also to ensure that there is not a repeat occurrence of the same mistakes and to prevent the same thing happening to someone else or to someone else's family.

I would fully expect that I would be consulted about any own initiative investigations which impact upon older people and be able to contribute towards the investigation and that any changes to legislation places on the Ombudsman a requirement to consult.

I already meet with the Auditor General for Wales to share our intended work programmes, identify areas of common interest, minimise duplication of effort and resource and discuss how our two organisations can work to support each other to achieve shared outcomes for older people in Wales. This has been achieved without conflict and could work along similar lines with the Ombudsman.

2. Is there a need for a co-ordination role between the independent commissioners, the Ombudsman and the Auditor General for Wales to help their investigations and recommendations to improve public services?

I do already meet regularly through the year with the Ombudsman to discuss our respective casework and work programmes. There are also strong relationships with officers in both organisations that ensure that information about key investigations is shared.

Section 16 of the Commissioner for Older People (Wales) Act 2006 (the Act) covers 'Working jointly with the Public Services Ombudsman for Wales'. Section 17 covers 'working collaboratively with other ombudsmen' e.g. the Children's Commissioner for Wales and Welsh Language Commissioner for Wales.

The requirements of the Act address:

- Informing the Ombudsman about a case
- Consulting the Ombudsman about a case
- Co-operating with each other in relation to the case
- Conduct a joint examination of a case
- Prepare and publish a joint report

Underpinning the legislation we have developed a Memorandum of Understanding which sets out in more practical terms how we would work collaboratively together and extends to joint training, sharing information about trends and pro-active sharing of relevant reports.

The memorandum states that the overarching aim is to contribute to the development of excellent public services in Wales that respect and promote the human rights of citizens in Wales and are sensitive to the needs of the most disadvantaged and vulnerable members of society and make best use of public resources. I see no reason why this Memorandum could not be extended to cover own initiative investigations.

3. Would the proposed reforms of the Ombudsman's role be better carried out in advance of wide public sector reforms, or after?

I would favour any reforms of the Ombudsman's role to be carried out in advance of wide public sector reforms so there is no delay in investigating concerns raised by individuals.

Additionally I have also considered some of the other questions listed in Annex A to your request:

- **Oral complaints**

Whilst I acknowledge the importance of a written record to support a complaint; insisting that a complaint is in writing before any action can be taken can create a barrier to some older people and others with protected characteristics that may need assistance in documenting a complaint.

I would hope that in accordance with the principles and requirements of the Equality Act 2010, that reasonable adjustments could be made to allow people to make complaints by email, in person or by telephone that could later be confirmed in writing or through alternative means e.g. with support from an advocate or where relevant an interpreter.

- **Complaints handling across the public services**

I would welcome a model complaints policy which all public bodies would be obliged to adopt, provided that the language used is accessible, there is a named individual appointed to investigate the complaint and that timelines for investigation and response are prompt.

Whilst I would always encourage older people to trust in the complaints processes of public bodies, as this is a proven way that public bodies can learn from mistakes and strengthen their own processes, there can however be some cynicism and a model complaints policy would go some way to alleviate this concern.

Any model complaints policy would however need to be supported by training and promotional materials for staff in public bodies and for people who use services. There would also be an impact on other organisations that provide support in making a complaint such as Community Health Councils and Citizen Advice Bureaux. I would be supportive of any move to improve the way in which complaints are investigated across public bodies in Wales.

- **Ombudsman's jurisdiction**

My preference would be for the pathway followed by the individual to form the basis of the pathway of the complaint investigation and not be limited to just the public bodies along that pathway; individuals do not live their lives in such linear patterns.

As the future model of public service delivery is likely to become more diverse and extend to social enterprises and other innovative public/private partnership arrangements then this pathway approach needs further consideration.

- **Links with the Courts**

Many of the people that contact me are looking for restorative justice and an assurance that no-one has to go through what they have been through. Making a complaint can be a very emotional experience as can the pursuit of remedy through a legal challenge.

Careful consideration must therefore be given to the best interests of the individual as to which are the most effective paths to follow. There needs to be honesty at the outset in what can and cannot be achieved. Support must be available to individuals during the complaints and legal process.

It would be helpful to know the numbers of cases and examples of cases where the Ombudsman would have acted differently had the possibility of recourse been available.

I can see merit in allowing the Ombudsman being able to refer cases to the Court for a determination on a point of law if it brings about a swifter resolution for an individual rather than having to go through a separate legal process to seek resolution.

- **Other issues**

As highlighted in the evidence session I gave to the Silk Commission, alongside the then Ombudsman, there is a frustration that changes to the devolution settlement can mean an individual finds themselves having to follow more than one complaint process. It is important therefore that the jurisdiction of the Ombudsman be reviewed as the settlement changes to ensure wherever possible

the impact on the individual does not get lost between systems and processes.

I would lend my support to the recommendations of the Ombudsman being binding so that the impact of failure by public bodies is felt by those bodies and not just by individuals who have been failed by them.

Yours sincerely

A handwritten signature in black ink that reads "Sarah Rochira". The signature is written in a cursive style with a trailing flourish at the end.

Sarah Rochira
Older People's Commissioner for Wales