

# Policy Response



## Consideration of powers: Public Services Ombudsman for Wales

*A response from WCVA*

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# Wales Council for Voluntary Action

## A response to the consultation: Consideration of powers: Public Services Ombudsman for Wales

### Background

Wales Council for Voluntary Action (WCVA) is a registered charity and umbrella body working to support, develop and represent Wales' third sector at UK and national level. We have over 3,350 organisations in direct membership, and are in touch with many more organisations through a wide range of national and local networks. WCVA's mission is to provide excellent support, leadership and an influential voice for the third sector and volunteering in Wales.

WCVA is committed to a strong and active third sector building resilient, cohesive and inclusive communities, giving people a stake in their future through their own actions and services, creating a strong, healthy and fair society and demonstrating the value of volunteering and community engagement.

We believe that there is an urgent need to transform public services in Wales by treating people and communities as assets and equals in design and delivery; building services around the person and community; unlocking potential resources of time, money and expertise to combine with state funding; using existing state resources to enable and maximise citizen and community action, capital and care. We are calling for a different public service: one which places the citizen and community at the centre, with the state as the enabler and facilitator. Our policy position statement [Putting People at the Centre](#), is available via this link and on our website.

We welcome the opportunity to respond to the Finance Committee's inquiry into the Consideration of Powers of the Public Services Ombudsman for Wales.

### Introduction

The Welsh Government and public bodies take decisions on a daily basis which affect important aspects of people's lives such as family incomes, employment and training, health and social care, housing, and education.

So, it is vital that people know what they are entitled to when officials make decisions, and where they can turn to when things go wrong. The Public Services Ombudsman for Wales (PSOW) provides access to justice, standing between the relatively weak individual citizen and powerful state organisations, giving them the right to have their complaints investigated and putting things right when they have received a poor service by finding an appropriate remedy. In addition, the PSOW seeks to prevent further harm or injustice to other citizens or service users by identifying lessons learned through the course of investigations and recommending improvements in service delivery.

We believe granting the Ombudsman additional powers will better protect and promote the interests of all citizens.

1. *Own-initiative powers - this would enable the Ombudsman to initiate his own investigations without having first received a complaint about an issue*

In recent decades Ombudsman schemes throughout the world have been evolving in order to provide better services to their citizens. One of the most important innovations is the acquisition of own initiative powers and there is considerable evidence from Australia, New Zealand, Canada and the majority of European countries that they are highly beneficial to the work of Ombudsmen. Recently, these

powers have been acquired by the Ombudsman in Northern Ireland and the Parliamentary and Health Service Ombudsman in England is in the process of seeking them. The direction of travel for modern Ombudsmen is to move away from being largely reactive to individual complaints to being much more proactive, seeking to influence stakeholders including public services, regulators and government as all share a common goal of wanting to deliver the best possible public services.

Ann Abraham suggests that Ombudsmen should have their own initiative powers in order to extend their "reach to all citizens and to adopt a genuinely inquisitorial approach and be able to respond to public outcry on behalf of the most vulnerable"; "in the absence of a specific individual complaint, the Ombudsman should not stand idly by." They should have the ability "to seize the initiative, to catch the whiff of scandal and run with it, especially if social justice is to reach some of the most vulnerable and marginalised people in society". (Ann Abraham, the Parliamentary Ombudsman and Administrative Justice: shaping the next 50 years, Tom Sargent Annual Memorial lecture 2011, Justice).

At present, the limitation of only having the power to investigate and remedy an individual complaint about the service of a sole public service provider prevents the PSOW from playing a preventative role: the PSOW is not able to investigate suspected widespread, systemic maladministration or service failure across Wales. The PSOW cannot carry out a thematic review to prevent all citizens from suffering the same poor service wherever they live. Own initiative powers would allow the PSOW to investigate the area of concern as a whole and recommend actions to be taken by all relevant public providers across Wales in order to improve the quality of services.

For example, the PSOW could undertake a thematic review of a specific service where information or intelligence suggests a worrying theme in terms of inadequate service or failure. Importantly, it would give the Ombudsman the ability to carry out an investigation in the early stages of suspected serious systemic failure. In the absence of a specific complaint, the PSOW could respond to public concerns about the treatment of the most vulnerable in our society: information or intelligence could be obtained from the media, the Complaints Wales Signposting Service, Citizens Advice Cymru, Age Cymru, Wales Audit Office, Healthcare Inspectorate Wales, CSSIW and Estyn amongst others.

It is possible that if the Parliamentary and Health Service Ombudsman in England had been able to use own initiative powers, action could have been taken at an early stage to tackle the serious shortcomings at Mid Staffordshire Hospital and many avoidable deaths prevented.

Both the Ombudsmen in Wales and in England are constrained in protecting the public as they can only investigate an individual complaint once the patient or service user has exhausted the internal complaints procedures of the public body - where their complaints are handled poorly this may take several years. In the meantime other service users remain at risk.

Andre Marin the Ombudsman for Ontario has a long track record of using own initiative powers and undertaking thematic reviews of services and suggest that the "primary function of an Ombudsman is to make robust enquiries designed to improve organisations and institutions so that future mishaps can be avoided."

They should do much more than only focusing their efforts on obtaining reparation case-by-case, carrying out thematic investigations can raise the quality of services for everyone who uses them. By conducting robust and deeper investigations into complaints to unearth the root causes of the problem, identifying national and

international benchmarks of good practice and making recommendations in special reports, the Ombudsman can become "the architect of better governance arrangements capable of eradicating the causes of the difficulties"; and systemic investigations are the "jewel in the crown of Ombudsman annual reports". (Marin, address to the IXth International Ombudsman Institute World Conference, Swedish Parliamentary Ombudsman Bicentennial, Stockholm, Sweden, 10th June 2009).

The possession of own initiative powers would enable the PSOW to contribute to the transformation and innovation of public services which is one of the primary recommendations of the Williams Commission. And by not only helping individual complainant's achieve redress, but also helping public agencies improve services, the PSOW can play a vital role in increasing trust in public services and government.

## *2. Oral complaints - at present, the Ombudsman can only accept complaints in writing*

Ombudsmen across the UK want to increase access to services for underrepresented groups such as BME communities, children and young people, the unemployed and people with mental health problems. The power which limits the PSOW to only accept complaints in writing is a barrier for people who are socially excluded and marginalised. These barriers include limited literacy skills, English not being the citizen's first language, lack of experience of dealing with bureaucratic processes, and a lack of capacity to think and express oneself logically and clearly - for example, caused by dementia or mental health problems.

Also, although complainants have had their issues explored through the internal complaints processes of public providers, if their complaint has been handled inadequately through a failure to share information, a lack of support and poor decision-making they may be confused and lack sufficient clarity about the exact nature of their complaint. And they may be angry and distressed suffering from "complaints exhaustion", therefore they would greatly benefit from receiving support from PSOW staff to make an oral complaint to the office: it is vital that the complainant and complaints handler have a full understanding and are able to agree precisely the nature of the complaint. The provision of advocacy and communication support for example sign language is fundamental.

The ability to receive complaints orally, either face-to-face or by telephone, by smart phone or online as well as in writing promotes equal access for all citizens and should cover all public services not just the PSOW.

In order to further embed equality and diversity it would be helpful if all organisations gathered data and analysed their complaints to identify which social groups are underrepresented and then developed an access strategy and action plan.

## *3. Complaints handling across public services - this would enable the Ombudsman to have a role in advising on complaints handling across public services*

The PSOW's Model Complaints Policy applies to all public services in Wales (the complaints policy for the NHS, Putting Things Right follows the same principles).

This policy sets an excellent standard for the way complaints should be handled, how they can be resolved and contribute to improving service quality. Currently public agencies adopt the policy on a voluntary basis, however, if it became statutory guidance, the results would include quicker implementation across the public sector as well as normalising a positive complaints culture across Wales. It would transform negative attitudes where they exist and promote a learning culture where complaints are seen as a gift and an opportunity to deliver better services. So

citizens, and people who use services could expect more responsive and higher quality services from the various public organisations they come into contact with.

Also, the PSOW should be given powers which would allow the PSOW to consider and adapt the Scottish Ombudsman's approach to complaints handling for Wales.

There is a similar Model Complaints Policy in Scotland and there the Ombudsman has created a specialist unit within the office (the Complaints Handling Authority) whose role is to develop excellent complaints handling across the whole of the public sector.

Key aims include:

- To simplify and standardise the design and operation of complaints handling procedures across the public sector in line with the overarching model complaints policy.
- To promote good complaints handling by providing tailored advice for each public provider on how they can improve their complaints handling processes and culture.
- To facilitate the sharing of best practice between public providers.
- To monitor the complaints handling performance of public providers.

The Ombudsman has used their powers to bring together key institutions and lead the creation of sector specific complaints handling processes for the NHS, local government, the Scottish Government, and Registered Social Landlords.

Also, the Ombudsman has created a Training Unit, which provides training courses on model complaints handling for each sector and classroom training is supported by e-learning courses.

The model followed in the NHS has been replicated in all sectors. The Ombudsman has established and coordinates a nationwide network of complaints handlers working in the NHS, a website has been created, and there is a programme of face-to-face training events as well as the availability of online training tools.

Of particular interest are online training tools which can be accessed by frontline staff in the NHS, focused on enhancing their abilities to deliver customer-centred care *ie*, listening to patients and responding positively to their concerns and complaints.

The benefits of this approach include raising the status and skills of internal complaint handlers enabling them to deliver a better service to patients and service users. In Wales, a network of complaints handlers exists, but to date it has not progressed as far as the Scottish model.

Also in Scotland, each sector has developed a standardised performance reporting framework, identifying key data and information which must be gathered and these are benchmarked against indicators set by the Ombudsman.

With adequate powers and resources the Scottish approach adapted for Wales suggests a range of possibilities for the PSOW:

- The Model Complaints Policy to become statutory guidance and implemented at the earliest opportunity by all public services and authorities.
- The Ombudsman to work in partnership with service providers, regulators and other stakeholders to develop sector specific complaints handling processes in line with the Model Complaints Policy. This would result in the creation of learning exchanges or networks of complaints handlers in the NHS, local government, Registered Social Landlords, further and higher education, the Welsh Government and other public authorities.

- Standardised performance management frameworks enabling each public organisation's complaints activities to be evaluated against benchmarked standards. Each public body to produce an annual report summarising all complaints received, what lessons have been learned, and how services have been improved as a result.
- The establishment of a training unit to offer face-to-face and online training courses.
- The PSOW to provide a dedicated website for complaint handlers across Wales. It would be a central information point for complaint handlers and allow them to share best practice. The website could provide information on the model complaints handling process for each sector; stipulation of the requirement to implement the model; good practice guidance on complaints handling; links to sources of information and best practice in complaints handling; an online community forum enabling the sharing of best practice in the complaints handling community, both within and between sectors; the Ombudsman's e-learning resources on complaints handling; and information on training courses offered by the training unit.

It is worth outlining the Scottish Ombudsman's generic e-learning training course which is the starting point for all public sector staff as it is a quick and cost-effective way of disseminating good practice information. Particularly useful is that it is interactive, allowing learners to practice new skills or knowledge in a complaints scenario and they are given feedback on their performance and areas for improvement are identified. It includes eight modules:

1. Understanding the model complaints procedure.
2. What is a complaint?
3. What customers want when they complain.
4. Getting it right from the start.
5. Active listening.
6. Finding the right solution.
7. Learning from complaints.
8. Managing difficult behaviour.

In Wales, this generic course could be made available and built upon for each sector - in the first instance, top priority could be given to the development of an e-learning module on complaints handling for NHS staff.

In conclusion, giving the PSOW new powers to improve complaints handling across public services could help address existing problems and result in a significant reduction in the number of unnecessary complaints the PSOW has to deal with.

Since the Ombudsman's service became available, the number of complaints has increased year on year.

For example, health service complaints have increased by 257% since 2006 and now comprise 37% of the caseload.

The Ombudsman's casebook and special investigation reports show that for many years that resources could have been used elsewhere if public service organisations had handled complaints better. When they fail to resolve complaints at the local level, they have escalated to the Ombudsman.

As suggested, the new powers would enable the Ombudsman to develop a range of initiatives to help public service providers to "get it right first time" *i.e.*, deliver excellent services, better customer care, accept complaints as a gift resolving them quickly at the local level and using them to drive the improvement and innovation of services.

4. *The Ombudsman's jurisdiction (to include private health services) - this would extend the Ombudsman's jurisdiction to include private health services where patients had accessed public and private health care*

The PSOW should be given the powers and the responsibility to investigate complaints where patients have access to public and private healthcare. The foundation principle is that the Ombudsman should be able to follow the public sector pound: private sector or third sector organisations commissioned to deliver services by state bodies, the NHS or local government should fall within the PSOW's jurisdiction. People should have access to independent redress or remedy of their complaint across all sectors. Therefore, when services are outsourced to a private provider complaint handling processes should be specified in the contract and the provider should be required to follow either the Ombudsman's Model Complaints Policy or NHS arrangements as appropriate.

However there may be an issue of proportionality for local voluntary and community groups. Consideration should be given to where the line should be drawn regarding the inclusion and exclusion of organisations subject to investigation. It would be sensible to include organisations which are substantially funded by public bodies and in formal contract relationships, but it may be inappropriate to include some voluntary and community groups which receive only small revenue grants from local authorities. Our view is that this could place an undue burden on relatively small organisations.

Complaints processes should be citizen centred rather than sector centred. Contracts to deliver public services should require providers to have an appropriate complaints handling processes in place, in line with the PSOW Model Complaints Policy.

At present, the PSOW cannot deal with matters or complaints which are the responsibility of UK Government Departments *eg*, benefits, pensions, child support and immigration matters. Currently, they are the responsibility of the UK Parliamentary and Health Services Ombudsman who recently identified concerns that complaints about these services from Wales, Scotland and Northern Ireland are very low (*Public Administration Committee, House of Commons, 16 December 2013*).

There is much consensus amongst Ombudsmen that the administrative justice landscape is complex and too fragmented and many people find it confusing when they wish to make a complaint. They hold that the ideal complaints system should be simple and accessible. The previous PSOW and the Scottish Ombudsman recently suggested that they should be able to provide a "one-stop shop" being responsible for complaints about all public services, both devolved and non-devolved. (House of Commons, Public Administration Committee 10 December 2013). It would be useful to explore the possible benefits of this approach with the non-statutory advisory body, namely the Committee for Administrative Justice and Tribunals Wales. For example, there is the potential to agree Memoranda of Understanding between the UK and Welsh Governments.

And in the light of the possible devolution of more powers to Wales it will be important for the PSOW and the Committee to look at how administrative justice processes should be adapted to ensure that citizens have a right to complain and achieve proper redress when things go wrong.

5. *Links with the courts - the removal of the statutory bar to allow the Ombudsman to consider a case which has or had the possibility of recourse to a court, tribunal or other mechanism for review (this would give complainants the opportunity to decide which route is most appropriate for them)*

At times, the Ombudsman can be an effective alternative to the court system, offering an easier and cheaper means of resolving disputes between citizens and public service providers. The majority of complainants, especially people who are vulnerable and marginalised do not have the financial resources to take their grievances to court, therefore there should more opportunities to take advantage of the free services provided by the PSOW.

It is often inappropriate for courts to expend scarce and expensive resources on resolving disputes which can be better dealt with by the PSOW. Unlike the judiciary which must strictly apply objective legal standards and disputes, the Ombudsman is guided by a set of principles, not rules, for example the Principles of Good Administration, Principles for Remedy and Model Complaints Policy. Therefore, the PSOW's judgements are based on what is fair and reasonable rather than a strict test of legality.

Another aspect relating to the removal of the statutory bar is that it should increase choice and access for complainants. Provided that good information and advice is available to the public, including independent advocacy, WCVA supports this as a useful development.

## **Conclusion**

This submission provides evidence supporting all of the new powers requested by the Public Services Ombudsman for Wales as it will enable the PSOW to deliver a better service for all citizens: not just individual complainants, but also where necessary, making a significant contribution to the improvement and transformation of public services.

Without own initiative powers the strategic role and impact of the PSOW is weakened.

Allowing a wider means of submitting complaints including oral complaints will increase access.

Advising across public services improves consistency and quality.

The public have a right to independent redress regardless of the service provider.

WCVA is keen to further develop its links and work with the PSOW in the spirit of putting people at the centre of the design, development and delivery of public services. WCVA can not only bring access to the expertise of the third sector in Wales regarding working with particular groups of people, and notes in particular, the expertise of [Participation Cymru](#) on best practice in engagement and scrutiny.

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