



Response to Finance Committee Inquiry: Consideration of powers: Public Services Ombudsman for Wales

March 2015

4th Floor, Trafalgar House | 5 Fitzalan Place | Cardiff | CF24 0ED | Tel: 03000 231 011 | Fax: 03000 231060

www.citizensadvice.org.uk

About Citizens Advice Cymru

- 1.1. Citizens Advice is an independent charity covering England and Wales operating as Citizens Advice Cymru in Wales with offices in Cardiff and Rhyl. There are 20 member Citizen Advice Bureaux in Wales, all of whom are members of Citizens Advice Cymru, delivering services from over 375 locations.
The twin aims of the Citizens Advice service are:
 - to provide the advice people need for the problems they face
 - to improve the policies and practices that affect people's lives.
- 1.2. The advice provided by the Citizens Advice service is free, independent, confidential and impartial, and available to everyone regardless of race, gender, disability, sexual orientation, religion, age or nationality.
- 1.3. The majority of Citizens Advice services staff are trained volunteers. All advice staff, whether paid or volunteer, are trained in advice giving skills and have regular updates on topic-specific training and access to topic-based specialist support.
- 1.4. Local Bureaux, under the terms of membership of Citizens Advice provide core advice based on a certificate of quality standards on welfare benefits/tax credits, debt, housing, financial products and services, consumer issues, employment, health, immigration and asylum, legal issues, and relationships and family matters.
- 1.5. The Citizens Advice Service now has responsibilities for consumer representation in Wales as a result of the UK Government's changes to the consumer landscape¹. From 1st April 2014 this includes statutory functions and responsibilities to represent post and energy consumers.

Our response

- 2.1 From April to December 2014, in Wales, Citizens Advice Cymru helped 89,858 clients with 274,090 problems. A significant proportion of these related in some form to the administration of public services, both those that are under the jurisdiction of the Public Services Ombudsman (PSOW) and those that are non-devolved.
- 2.2 The PSOW plays a vital role in supporting people to have their concerns heard by an independent body. We strongly support the principles behind why the PSOW has made these suggested changes. In particular, we believe that it is key that any proposals strengthen the voice of people in Wales, their ability for redress and are based around how people access and use services. We believe it is important that public authorities value complaints and use them to make improvements to public services.

¹ On 1st April 2013 responsibility for consumer representation was transferred from Consumer Focus to the Citizens Advice Service (including Citizens Advice Cymru) following the UK Government's review of the consumer landscape.

Own initiative powers

- 3.1 Citizens Advice Cymru strongly support this proposal. Whilst the PSOW has seen an increase in the numbers of cases being referred over recent years, we know for every person that decides to make a complaint, there are many more that do not. Whilst the PSOW's role in individual cases is vital to support the principles of citizen redress, we believe it would be of substantial benefit for the PSOW to have the power to undertake investigations on their own initiative. This would be of particular value when looking across cases and seeing the connections between a range of issues and being able to undertake a strategic review of a whole service or sector.
- 3.2 From our own experience, we are often able to draw comparisons and trends from the cases which clients seek advice from us about. We use these to inform change to policies and practices. Therefore there is potential for the PSOW to drive service improvements in this way.
- 3.3 We believe that there is potential for much greater engagement with the PSOW if his powers were extended to enable own initiative investigations. Citizens Advice Cymru could play a role in sharing relevant strategic information with the PSOW about the types of issues that clients are facing, as well as raising specific issues within and across sectors that would benefit from investigation². We would be in a position to do so, given our ability to not only look across our client evidence for Wales, but also draw insight from individual bureaux in terms of the trends they are seeing. We would also welcome the opportunity to be able to refer issues to the PSOW for review where we think there are/have been systematic failures, or have the potential to be.
- 3.4 In order to do so, it will be important, if the PSOW is given this power, that there are clear eligibility criteria and referral routes to do so, for ourselves and other stakeholders. We would also note that it is important that decision making about how investigations are chosen is open and transparent in order that advice agencies and others who may wish to make referrals have confidence in, and understanding of the parameters to engage in this process. Likewise it may be of value to consider where calls for evidence around such investigations would be useful to help inform these.
- 3.5 We also believe that it is vital that any investigations include an element of gathering views from the user perspective to ensure that this is central to any consideration of the issues and what might need to change.
- 3.6 This is would also be of benefit when considering areas of public services that people might not complain about.
- 3.7 We do feel consideration needs to be given to what the outcome of such an investigation would be and whether the PSOW's current powers go far enough in terms of enforcement of any decision. The aim should be tangible service improvements for both citizens and public services themselves. Therefore we would suggest that providers should have an action plan which includes time specific activities they must undertake and outcomes to achieve. The PSOW should also monitor and return to review whether the expected activities and outcomes have been

² Whilst of course retaining client confidentiality

achieved within the timescales agreed. As part of any further review, the user perspective will be important in terms of improvement in service and also user experience.

- 3.8 Raising awareness of sector failures may also raise greater awareness amongst the wider public of the ability to make individual complaints to the PSOW on such issues. Whilst we feel this is a positive, it is also worth being aware of the potential for an increase in caseload relating to this.

Oral complaints

- 4.1 Whilst the PSOW currently has discretion to accept a complaint in a form other than writing, if appropriate, considered on a case by case basis, we support the proposal that the PSOW be able to receive complaints orally as a matter of course. A discussion document commissioned by Consumer Focus looking at effective complaint handling³ notes that evidence about how consumers contact companies and external redress schemes is that, at the moment, the vast majority of them use the phone, rather than email or post. This can also allow people to ask questions and explore options. Extending the ability to make a complaint would therefore extend access to people and may encourage them to explore the option of the PSOW, before making a formal complaint. We would note however that if this proposal is accepted that consideration should be given to the cost of calling, in particular for people on a mobile phone.
- 4.2 We also think that as part of the extension of the scope of how the PSOW receives complaints there should be specific consideration given to how people's communication preferences are changing in a digital age and that the PSOW can effectively respond to this. For instance, we know from our own research that more BSL users are now using Skype to communicate instead of typetalk.
- 4.3 In addition, we believe that it would be helpful to make clear in legislation that where people may be vulnerable, or do not feel confident to make a complaint themselves, that trusted intermediaries such as an advice agency are able to support people to bring a complaint to the PSOW on their behalf. We believe that individuals should have absolute discretion over who represents them.

Complaints handling across public services

- 5.1 We note that the PSOW has outlined in his written paper that take up of the Model Concerns and Complaints policy (the Policy) to date has been patchy. Without detailed analysis of which agencies have adopted the policy and extent to which the two stage complaints procedure has been implemented by all authorities, it is difficult to talk in detail about the specifics around the action public authorities need to undertake to improve their individual complaints procedures. However Citizens Advice Cymru does believe that a consistent complaints policy across public authorities in Wales would help people have a clear understanding about what to expect when making a complaint about a service or seeking redress.

³ Consumer Focus (2013) Effective Complaint Handling- a discussion document: Written for Consumer Focus by Cosmo Graham, Professor of Law at the School of Law, University of Leicester and Director of the Centre for Consumers and Essential Services

- 5.2 In our view, the aim should be for public services to resolve any complaints quickly, effectively and in a satisfactory way for the citizen, first time. A part of this, is the authority recognising and acknowledging where there has been an error and making an apology as appropriate. It is fundamental however that the authority concerned is able to learn from the complaint to inform and improve service delivery and design. The Policy sets a comprehensive and clear template for public authorities to deliver against these expectations.
- 5.3 We would want to see all public authorities in Wales working along the lines of the principles outlined in the Policy. However as part of a move towards making the Policy mandatory, we feel it would be helpful to gather evidence as to why some authorities are not using this, as well as how those authorities who have adopted the Policy are finding this to date. This would enable any amendments to be made to the Policy based on feedback received and also specifically if any sector specific approaches need to be put in place to make it as practically applicable as possible and ensure that it can be used across sectors. As part of this, we also believe it is vital that feedback is sought from citizens who have complained to public authorities using the Policy to understand how the process worked from their perspective and if anything should be changed. This review process should also be repeated at regular intervals to ensure that the Policy remains current and responsive to the needs of both citizens and public authorities. Evaluation of the Policy will be essential to identify areas that require improvement and to learn from public services who demonstrate best practice in complaints handling.
- 5.4 One area that could be emphasized more strongly within the Policy would be the publication of outcomes of complaints. We believe that public services should demonstrate how complaints made to them resulted in improvements to the services being provided to users. We know from research by Consumer Focus Scotland that people want to know that other users did not have to experience similar problems and this would provide greater transparency on this issue⁴.

A Complaints Handling Authority?

- 6.1 We also believe that the PSOW should be given powers to consider and adapt the Scottish PSOW's approach to complaints handling.
- 6.2 We believe that the establishment of a unit within the PSOW would enable a focus on driving up standards on complaints within public authorities and address the points made above regarding on mandatory Policy for all public authorities in Wales.
- 6.3 We believe as part of this the PSOW could also work in partnership with service providers, regulators and other stakeholders to develop sector specific complaints handling processes as appropriate (and identified through the above review).
- 6.4 Analysis and monitoring of complaints data across the public sector will also be important. We would like to see the PSOW taking a lead on the publication of complaints data by individual authorities, as noted above. We also believe that public service providers should be required to report, for instance through their annual

⁴ Consumer Focus Scotland (2010) response to the Scottish Public Services PSOW consultation on "a statement of Complaints Handling Procedures and Guidance on a Model Complaints Handling Procedure"., page 5

reports and online, how many complaints were resolved at frontline stage, investigation stage and by the PSOW. This would provide citizens with greater transparency in terms of complaint handling and provide opportunities to explore where the balance may need to be changed. For instance, if it was found that very few complaints were resolved at the first level, understanding why this might be the case. By undertaking this work in Scotland, the Scottish Public Services PSOW has been able to develop a 'performance culture' in complaints handling⁵.

- 6.5 To inform the development of the Model Complaints Handling procedure in Scotland, Consumer Focus Scotland worked with the Scottish Public Services PSOW to explore consumers' views of complaints handling procedures in public services. This informed the resulting procedure and provides useful insight into the benefits to the public of adopting such a procedure in Wales.
- 6.6 We would also argue that similar research should be undertaken with citizens in Wales as this model is rolled out.
- 6.7 It would also be useful to undertake research with the public to better understand complainant's experiences and the extent to which they are aware of the PSOW service. This should include seeking feedback from complainants, both those who have had their complaints accepted for consideration and those who have not, about what could have been done differently.
- 6.8 In the private sector, research conducted by Consumer Focus found that 65% of consumers were not told they could take their complaint to an independent body. We are not aware of any similar research to understand consumer experiences in the public sector in Wales but we suggest gathering such evidence directly from citizens would be beneficial to highlight any issues from a citizen perspective to inform any new responsibilities the PSOW receives in this area.
- 6.9 Complaints handling will vary across sectors so being more informed about citizens views and experiences would be helpful in helping to shape what the service looks like in future and ensure that those who have cause to access an independent body to investigate their complaint are aware of the PSOW and can easily access it.

The PSOW's jurisdiction

- 7.1 We support the proposal to extend the PSOW's remit to cover the private health sector. We believe people should have access to complaints and redress no matter what the service they access is. People's journeys through the health system can involve a range of funders and suppliers therefore their access to redress should be as joined up as possible. On the issue of funding, Citizens Advice Cymru receives funding to discharge its functions to represent energy and postal consumers from levies on those industries. This does not prevent us from providing challenge and also working alongside operators within those industries to raise issues and improve services for consumers.
- 7.2 We note that the PSOW written evidence suggests that it would be helpful in respect of private healthcare, to give him binding powers to implement a recommendation. We

⁵ Scottish Public Services PSOW Annual Report (2013- 2014) Transforming Scotland's Complaints Culture, page 8.

would support this, but we believe that as outlined in the Law Commission's review⁶ such binding powers should also be extended across his remit. We believe this will be key to go alongside new powers (if taken forward) to allow own initiative investigations as these may be more challenging in nature, given the potential for systematic review. We believe enabling binding powers across the PSOW's remit at this stage links with the principle of future proofing.

Links with the Courts

- 8.1 Citizens Advice Cymru agree with the proposal to remove the statutory bar to allow the PSOW to consider a case that has or had the possibility of recourse to a court, tribunal or other mechanism for review. We support the perspective that this would give complainants the opportunity to decide which route is most appropriate for them. In fact we believe given the financial and other barriers of access to the courts, this would give people greater access to redress. This would also have the benefit of enabling people to more easily access advice and advocacy to support them with their complaint.
- 8.2 We would support the Law Commission's recommendation around the issue that 'the Public Services PSOW publish guidance detailing where it is appropriate to make a complaint to them and where it would be more appropriate to make sure of a court of other mechanism of administrative justice'⁷.
- 8.3 We also note the related issue of where the courts may consider the PSOW as a more appropriate route for claimants, namely stay provisions. We feel that it is therefore appropriate to mention this issue in our response. We believe that if the court believes that the PSOW is a more appropriate channel then it should have the power to stay an action before it, in order for the PSOW to choose to investigate the matter. Whilst the PSOW should not have an obligation to investigate, if he does not, we believe the complainant should be able to go back to the court for a decision on their initial complaint and further action by the court relating to this, as discussed by the Law Commission in their 2011 report⁸.

Other

- 9.1 We believe that consideration should be given to including the Residential Property Tribunal within the scope of the PSOW.

Collaboration across and between Ombudsmen

- 10.1 We know from our own experiences that people do not live their lives in silos. Whilst they often come to bureaux about a specific issue, when discussing the problem with them we often find that they will have on average two or three different problems that might interrelate. This is also likely to be the case in respect of complaints, where more than one public sector agency may be involved. It is also possible therefore that there may be involvement from both devolved bodies e.g. local authorities and those who are not devolved, for instance the Department for Work and Pensions. Therefore there might also be value in giving specific consideration, given some of the discussions about closer working between Ombudsmen within the Law Commission

⁶ The Law Commission (2011) Public Services Ombudsmen, LAW COM No 329, page 68

⁷ Ibid, page 25

⁸ Ibid, 30

review, to how the PSOW could collaborate or undertake joint investigations or reviews with other Ombudsmen and regulators in the future.

Time restrictions on making a complaint the PSOW

11.1 We would also highlight the issue of time restrictions within which someone can refer an issue to the PSOW, currently one year. We would suggest that particularly within the health service, this may make it difficult for people to make a complaint to the PSOW if they are not satisfied with the outcome through the internal complaints procedure of the health body in question. This is because whilst an individual has 12 months within which to make a complaint to a Local Health Board for instance, if an in-depth investigation has to be undertaken, it can take up to six months to complete this. This may mean (where an individual has waited some time before choosing to complain) by the time an in-depth investigation has been completed, they will be outside of the time limits to take a complaint to the PSOW. We would argue that it can take people time to make a decision to complain, particularly thinking about people who may have experienced an issue with their health and may be coming to terms with this. An individual in this situation may also have needed to take some time to focus on improving their condition. We would suggest therefore that consideration is given to extending the time limit within which a complaint may be made to the PSOW about health services, to a year from the date of the outcome of the internal decision on their initial complaint to the health authority (such as a Local Health Board), in question.

For further information please contact:

Liz Withers
Head of Policy and Campaigns
Citizens Advice Cymru
Direct line: 03000 231 322
Email: Liz.Withers@citizensadvice.org.uk