

REPORT OF MONITORING OFFICER

SUBJECT: CONSULTATION ON EXTENSION OF POWERS OF OMBUDSMAN

A rather unusual form of consultation was undertaken at short notice by the Assembly Finance Committee. The initial correspondence and the response from the PSOW are attached.

I submitted a response which is set out below. I have not heard any more except for an acknowledgement from the Finance Committee. Please see the following joint response of the Brecon Beacons and Pembrokeshire Coast National Park Authorities to the consultation on an inquiry into the consideration of powers of the Public Services Ombudsman for Wales.

Consultation Questions

1. What are your views on the effectiveness of the current Public Services Ombudsman (Wales) Act 2005?

Reply

1.1 In general terms, the Act works well, but I do have concerns that the increase in the extent and workload of the Ombudsman has not been met with a commensurate increase in funding and that in order to ensure that the very high quality work that is currently undertaken in such a broad jurisdiction can be maintained in the future

Own initiative investigations

2. Currently, the Ombudsman may only investigate a matter that is the subject of a complaint made to him/her. What are your views on „own initiative“ investigations powers, which would enable the Ombudsman to initiate his/her own investigations without having first received a complaint about an issue. Please explain your answer.

Reply

2.1 As was set out in the Ombudsman's evidence to the Finance Committee there is a case made out for this. I considered it to be appropriate, as it is clearly accepted practice in many countries in Europe and beyond and so I support the view of the Ombudsman being able to extend the area of his investigations into associated or related bodies, as these emerge during the course of an investigation. There will need to be serious thought given to the drafting of appropriate safeguards and caution will need to be exercised to avoid the potential for duplication of work by other statutory bodies such as the Wales Audit Office.

3. Do you have any concerns that own-initiative investigation powers could result in the Ombudsman's responsibilities overlapping with the responsibilities of other bodies? How could this be managed?

Reply

3.1 Yes, please see below. There needs to be clear safeguards to avoid duplication.

4. Do you have a view on the likely financial costs and benefits of the Ombudsman having own-initiative powers?

Reply

4.1 In dealing firstly with the proposed financial costs I do not consider these to be excessive when bearing in mind the nature of the investigations that are likely to be undertaken. As I have already referred to in the reply above, there will need to be clear safeguards and caution exercised with regard to potential duplication. I believe these can be overcome with clear protocols and guidance given both to the Ombudsman and other relevant public bodies. This should be a matter of concise, drafting and clear boundaries being established and agreed. This should not be insurmountable.

Oral Complaints

5. At present, the Ombudsman can only accept complaints in writing. What are your views on the Ombudsman being able to accept complaints made orally? Please explain your answer.

Reply

5.1 There is a difference between complaints from those who are unable to read and write in either English or Welsh, where the Ombudsman should be able to accept complaints orally, in contrast to those who can but simply do not choose to put their complaint to the Ombudsman in writing. It should not be too difficult to establish a procedure whereby any oral complaint, which is made by a person who may have literacy challenges, is properly and accurately set out.

5.2 A simple template could be used and complaints could also be received in electronic form quite easily.

5.3 I believe it is important that the body that is the subject of the complaint should know exactly what the complaint is about so it can deal with it in an appropriate fashion as promptly as possible. The danger with all complaints being made orally, is that there can be confusion at the outset as to what exactly the complaint is about. Provided that the oral complaints and the electronic recording of the complaints received can be managed effectively, I do not see any reason why the current system should not be adapted to the receipt of oral and other forms of electronic media complaints. What is the important issue, is that the complaint is clear so all parties concerned know what it is.

6. What other type/form of submission should be acceptable (e.g. email, website form, text messages)

Reply

6.1 Email, text messages and website form should all be acceptable.

7. Do you have a view on the financial costs and benefits of this provision?

Reply

7.1 As it is envisaged that there will be no cost implications. I have no comment.

Complaints handling across public services

8. At present there is no consistency in the way public bodies deal with complaints. Adoption of the model complaints policy issued by the Welsh government is voluntary. What are your views on the Ombudsman preparing a model complaints policy which public bodies would be obliged to adopt. Please explain your answer.

Reply

8.1 As is clear from the evidence from the Ombudsman, considerable progress has been made with regard to establishing a consistent standard for public service providers across Wales with regard to complaints. I agree with his analysis that the problem lies with the enforcement and that is why the Scottish Ombudsman's arrangement which is tried and tested, should be adopted in Wales.

9. Do you have a view on the financial costs and benefits of this provision?

Reply

9.1 The financial costs seem relatively modest to ensure that all the citizens across Wales receive the same sort of treatment when making complaints and public bodies. There is clearly both an educational role and the regulatory role which has been recognised the fact that into the costs. This is to be supported.

Ombudsman's jurisdiction

10. What are your general views on the Ombudsman's current jurisdiction?

Reply

10.1 Clearly, after 10 years, it is appropriate for a review to taken place and some current anomalies and "wrinkles" ironed out. In the current jurisdiction, it has become apparent that there are one or two gaps which need to be plugged. But in the widest analysis the current jurisdiction appears to be covering most the relevant areas, that can be covered within the limited budget available. Health and housing are key components , when looked at from a Welsh demographic.

11. At present the Ombudsman can investigate private health care that has been commissioned by the NHS. The Ombudsman would like the jurisdiction to be extended to enable him/her to investigate when a patient has received private healthcare (self-funded not commissioned by the NHS) in conjunction with public healthcare. This would enable the complaints process to follow the citizen rather than the sector. What are your views on extending the Ombudsman's jurisdiction in this way?

Reply

11.1 This is beyond the remit of the National Park Authorities at present, so any comment is passed in relation to the general concept of "Well-being " which is in its widest sense, part of the remit for the inhabitants, and users of the National Parks. This extension is to be welcomed and should be supported for the reasons given by the Ombudsman in his evidence to the Committee.

12. How do you think the investigation of private health care complaints should be funded? (Possibilities include a levy, charging on a case by case basis or no charge.)

Reply

12.1 I do not think it should be the subject of a levy or a charge upon any individual who makes a complaint. If it transpires that the complaint is well founded then consideration may be given to how the costs of the enquiry can be recovered from the private healthcare company or provider concerned. This is a principle that is often adopted in the case of the enforcement of environmental breaches by regulatory authorities against organisations and individuals whose conduct has led to a significant investigation having to be undertaken by a public body, when it is established that they have been at fault. Much more thought will need to be given as to the detail of this however, the principle should be supported.

13. Do you have a view on the financial costs and benefits of this provision?

Reply

13.1 The financial provisions for this somewhat sparse and again will require much greater thought has been provided at the moment.

Links with the courts

14. What are your views on 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? (i.e this would give complainants the opportunity to decide which route is most appropriate for them.)

Reply

14.1 Notwithstanding the views of the Law Commission, I believe there are significant legal hurdles would have to be overcome for this to be effective.

14.2 I believe is a significant issue with regard to the Welsh Government's own competence in this area, which only need to be resolved before the matter can be taken any further.

14.3 If it is decided to take this matter further, then again further consideration will need to be given to this proposal, as there are quite clearly different procedures which are used in courts from those used by the Ombudsman, specifically in relation to evidence, the right to cross-examine witnesses and disclosure of relevant documents to all parties. This does not appear to have been as well thought out on a practical level as other aspects of this consultation.

14.4 As presently drafted the proposal does not seem to show any real evidence to support it, other than a reliance on the Law Commission's view. The adoption of such a proposal would also need detailed rules, protocols and in all probability a Practice Direction to be adopted by the Civil Procedure Rules Committee of the Ministry of Justice before any implementation. There is no evidence that any consideration has been given to this. There is also little evidence to support the view that there is an actual prejudice that has become clear and obvious to parties, as things stand now.

14.5 There is no evidence the Courts would accept the premise that a shadow body will be dealing with the same case, under different procedures.

15. What are your views on the Ombudsman being able to refer cases to the Courts for a determination on a point of law?

Reply

15.1 This may be useful in a limited number of cases and could be relatively easily introduced. I believe. The number of cases is likely to be small and would not require a major jurisdictional change , unlike the broader earlier proposal.

16. Do you have a view on the financial costs and benefits of this provision?

Reply

16.1 From drawing on my experience as a practising lawyer for 40 years, and sitting as a part-time judge deals with legal costs cases (amongst others), in my opinion this is likely to be a significant underestimate and reflects probably the costs that would be incurred in perhaps just one case per year. The scheme should be very carefully costed out, based upon analysis from the Supreme Court, Costs Office as to the average running cost of cases heard in the Administrative Court. No such evidence has been provided.

16.2 With regard to this particular proposal. I consider that much greater care, thought and evidence is required before it is adopted.

Other issues

17. Do you have any specific examples where the Ombudsman having the additional powers proposed could have been useful in securing a successful conclusion to an issue?

Reply

17.1 Not personally

18. Schedule 3 of the current 2005 Act, provides a list of authorities that are within the Ombudsman's jurisdiction to investigate complaints. Please provide details of any other bodies/organisations that should be included in this list?

Reply

18.1 None come readily to mind, who are not already on it.

19. If extended powers were given to the Ombudsman in a new Bill/Act, at what point should the impact of this legislation be evaluated?

Reply

19.1 Two years should be sufficient period

20. What unintended consequences could arise as a result of these provisions becoming legislation and what steps could be taken to deal with these consequences?

Reply

20.1 The principal problem that I foresee is that the proposed removal of the statutory bar which prevents the Ombudsman, from considering a complaint with the case could or has been considered by the courts, needs far greater consideration. This will require far more detailed evidence to be submitted, as to the need for a

change in practical terms, the cost and resolving what appears to be significant jurisdictional matters. This could ultimately lead to expensive and somewhat pointless litigation, this could be avoided by not hastily incorporating this provision into legislation.

21. What factors should be measured to determine the cost-benefit analysis of this legislation being brought forward?

Reply

21.1 The number of complaints that have been resolved, the confidence of citizen's in a system that is integrated and able resolve complex interrelated complaint involving a number of different public bodies. There is also a potential for cost saving in avoiding duplicate enquiries and investigations, particularly in the health field.

22. Do you have any comments on the following issues :

- **jurisdiction – changes to the devolution settlement have led to new areas coming into jurisdiction over time, should consideration be given to other bodies being included in the Ombudsman's jurisdiction;**

Reply

22.1 This will depend upon what changes are actually implemented. But in general, great care should be avoided in proliferating organisations and bodies which may duplicate the role of the Ombudsman.

- **recommendations and findings - should the recommendations of the Ombudsman to public bodies be binding. This would mean that bodies cannot decide to reject the findings;**

Reply

22.2 The public bodies concerned do need to have the right to challenge any findings made by the Ombudsman, although in practice, there does seem any appetite for this. Nevertheless, there may be such cases which do arise in the future and that does need for there to be a safeguard or check and balance in place, and so it should be retained. To remove this is effectively removing any right of appeal and the perception of being both judge and jury. It should nevertheless, be reviewed so that any challenge or decision to reject any findings, by the public body concerned, has to be made on clearly set out guidelines, which have been drafted after widespread consultation.

- **protecting the title - there has been a proliferation of schemes calling themselves ombudsmen, often without satisfying the key criteria of the concept such as independence from those in jurisdiction and being free to the complainant. Should anyone intending to use the title ombudsman gain approval from the Ombudsman;**

Reply

22.3 Yes. The reputation of the Ombudsman has been built up very carefully and appears to generally enjoy weightlifting support from both complainants and public bodies. This should be no scope for confusion in the minds of citizens, and accordingly the protection of the title is essential.

- **code of conduct complaints – the Ombudsman would prefer to focus on the element of his work that deals with service users and service delivery, rather than local authority and town and community councils' resolutions. Whilst a**

local resolution procedure exists and has been adopted by 22 local authorities, variance exists in practice.

Reply

22.4 The retention by the Ombudsman of Code of Conduct complaints, in my experience too, plays an important part in the credibility of the scheme. I do recognise that it may be beneficial for the future to ensure that fewer complaints remain actually with the Ombudsman and more can be referred back to the Monitoring Officers for investigation and disposal through the relevant Standards Committees.

22.5 The introduction of the local resolution procedure in the two National Park Authorities which I am concerned , has been a beneficial development, although neither has actually been called upon to do anything, I am satisfied that Members are aware now, that the complaints of the type that used to be quite common will now be dealt with more locally, more quickly and more robustly .I am satisfied that some in the past were politically motivated and created a real danger of bringing the system into disrepute.

23. Do you have any views on any aspects of future planned or proposed public sector reforms that would impact on the role of the Ombudsman?

Reply

23.1 None at the moment

24. Do you have any other issues or concerns about the current Act and are there any other areas that need reform or updating?

Reply

24.1 I would like to see the rules for the Adjudication Panel revisited so that it can be able to discharge its duties, without some of the limitations that exist upon it at the moment. In particular, is a danger I believe that this body is being over used by lawyers in a way that was not envisaged at its inception and that its original purposes have become inextricably entwined with overly complicated legal submissions and disproportionate legal costs causing a real prejudice to the Ombudsman in particular. The costs limitation is one step towards restoring a level playing field but more needs to be done.

John Parsons
Monitoring Officer (BBNPA/PCNPA)

National Assembly for Wales – Finance Committee – 21 January 2015

**Amendments to the
Public Services Ombudsman (Wales) Act 2005**

1. Introduction

- 1.1 The legislation governing the Ombudsman's office is the Public Services Ombudsman (Wales) Act 2005. At the time it was enacted, it was considered to be at the cutting edge of ombudsman legislation and is still highly regarded in the UK and internationally¹.
- 1.2 In 2015 the Act will be ten years old. New legislation has been introduced in the Republic of Ireland and elsewhere since 2005, while new legislation, drawing on the Welsh experience but designed to further develop it, is being introduced in Northern Ireland.
- 1.3 In addition, the Law Commission reviewed the legislation governing public services ombudsmen in England and Wales.² It commented favourably on the existing Public Services Ombudsman (Wales) Act but did make a number of recommendations for change one of which is referred to in section 2.5.
- 1.4 I have been in post since August 2014; during that time I have now had the opportunity to discuss legislative issues with my peers in all jurisdictions of the UK.
- 1.5 This paper sets out five key areas for change which have been informed from the experience of the office, developments of best practice elsewhere as well as the recommendations of the Law Commission.
- 1.6 The paper focuses on these five discrete parts in the hope that the suggested changes will be uncontroversial and can enjoy broad support for review and enactment by the Assembly in 2015. The suggested changes reflect four underlying priorities:
- **Future proofing:** the proposals are intended to ensure that the legislation continues to be fit for purpose, but that it also addresses future challenges which will affect service users in an ageing society where there are greater levels of physical and emotional vulnerability.

¹ Ombudsman Legislation – time for a review? Peter Tyndall March 2013

² Law Com No 329 14 July 2011 <http://lawcommission.justice.gov.uk/areas/public-services-ombudsmen.htm>

- **Social justice:** the proposals ensure that citizens from more deprived backgrounds, who may be more reliant on public services, will find it easier to make a complaint.
- **Citizen Centred:** proposals will strengthen the citizen's voice and ensure that wherever possible processes will follow the citizen rather than the sector or the silo.
- **Drive complaint handling and public service improvement:** these proposals will make a real contribution to public service improvement and reform whilst offering excellent value for money. The changes can be achieved whilst maintaining the Public Services Ombudsman for Wales (PSOW) budget at no more than 0.03% of the Welsh Budget block.

2. Five Areas for Change

2.1 Own initiative investigations

- (a) Virtually without exception, public services ombudsmen throughout Europe, and indeed, internationally, have the power to undertake investigations on their own initiative. The Ombudsman in the Republic of Ireland already has such a power and it will shortly be introduced in Northern Ireland also. Outside of the UK, only five members of the Council of Europe have ombudsmen who do not have own initiative powers: Belgium, Luxembourg, Azerbaijan, Kyrgyzstan and Liechtenstein.
- (b) This is a power normally used sparingly to investigate where there is an obvious problem but no complaint has come forward or, more usually, to extend an investigation into a complaint to other bodies where it appears that the maladministration or service failure identified is likely to be systemic and affecting people other than the complainant.
- (c) The Ombudsman in the Republic of Ireland undertook five own initiative reviews between 2001 and 2010 on issues ranging from subventions in nursing home care, tax refunds to widows, refuse collection charges and the rights to nursing home care for elderly people.³
- (d) It would be important to frame any changes in such a way as to ensure that the power would be used only where appropriate and cases could be referred to regulators or commissioners where this was a more suitable alternative.
- (e) This power is likely to become more important as we see the impact of an ageing society with citizens in vulnerable positions either unable or afraid to complain.

³ A Paper Prepared by the Office of the Northern Ireland Ombudsman on a Power to Commence and Own Initiative Investigation

2.2 Access – oral complaints

- (a) The current legislation is generally helpful in providing access to the office. The Ombudsman's service is free of charge and the requirement for bodies in jurisdiction to tell people about their right to complain has ensured that people can access the office as they need to. There is a requirement that all complaints should be in writing. Whilst the Ombudsman has discretion to accept a complaint in another form if appropriate, this has to be considered on a case by case basis.
- (b) However, in view of the changing nature of electronic communication, and the considerable equalities issues about potentially excluding people who cannot write, including, for example, people with learning disabilities, there is a case to be made for modernising this area of the legislation so that it is explicit in the legislation that complaints may be made orally with the Ombudsman being obliged to justify to a body being investigated why he has decided to set aside the requirement for a complaint to be made in writing in individual cases. At UK level 94% of the population attain literacy level 1 or above, in Wales it is only 87%. Access for people who cannot write should not be discretionary. They should have the same access as any other service user in Wales. In England legislation has recently been reformed for the Local Government Ombudsman. There is a danger that in Wales we have a greater need but are lagging behind in this regard.

2.3 Complaint Standards Authority

- (a) In Wales, we have developed the model complaints policy to help to achieve consistency across public service providers. Take up has been patchy, but is improving. Adoption is voluntary, but strongly encouraged. In theory, with the recent changes to the social services statutory complaints procedure, all public services devolved to Wales should be operating a streamline two stage complaints procedure. However, the problem lies with enforcement. I am conscious of the arrangement in Scotland where a few years ago, the Scottish Ombudsman was given the role of Complaints Standards Authority. I know that the Scottish Ombudsman has found this arrangement to be particularly effective in enabling him to tackle problems in the standards of complaint handling within the bodies in his jurisdiction. I believe that there is a case for adopting such an approach in Wales so that any guidance I give to bodies on complaints handling has statutory force so that I can help support improvement in public sector complaints handling.

2.4 Extension and reform of jurisdiction- Healthcare

- (a) With an ever ageing society the integration of health and social care is an important part of public policy. Recently my jurisdiction was extended to include self-funded social care and hospice care; however I cannot investigate private healthcare, unless it was commissioned by the NHS.

- (b) Recently there was a case that I could not resolve where a patient had been treated by the NHS, then privately (self funded) and then again in the NHS. The patient sadly died. I was unable to investigate the private funded healthcare. Clearly there is a need to reform legislation where a patient chooses to be treated in both public and private sectors that the complaints process follows the citizen not the sector⁴. It has been recommended that the remit of the Parliamentary Health Service Ombudsman should be extended to cover the whole private healthcare sector.⁵
- (c) The inclusion of private sector providers raises issues around funding of complaints handling and also compliance. Whilst the investigation of private social care complaints is currently resourced from the public funding that I receive through the National Assembly, there might be a view that a different arrangement should be considered if private healthcare providers also came into jurisdiction.
- (d) Private sector ombudsman schemes are normally funded by the bodies in their jurisdiction. This is usually underpinned by statute. The funding mechanism may be an annual levy, or based on case by case charging, or often on a combination of both.
- (e) This has the dual function of ensuring that the cost does not fall to the public purse while also engaging the “polluter pays” principle, giving providers an incentive to avoid error and resolve complaints as a means of not incurring the costs. There is again a strong case for ensuring this is the case for any private provider in the office’s jurisdiction. This hybrid funding model is already in place at the New South Wales Ombudsman’s office, for example.⁶ However, as Lesley Griffiths noted as Local Government Minister: “The suggestion of a levy, for example, would be very challenging to put into practice”.⁷ The introduction of such a system is clearly a policy choice for the Committee.
- (f) Where the bodies in jurisdiction are public bodies, the existing powers of recommendation work well and there is no evident need for change. Thus far, no public service provider has refused to implement a recommendation. However, where private bodies are in jurisdiction, as is now the case with social care providers, the democratic process cannot be engaged in the same way and compliance may be harder to secure. Private sector ombudsman schemes normally have binding powers and it would be helpful to consider including this provision in respect of private providers only in the future.

⁴ With the Wales Act 2014 having received Royal Assent I am also aware that an amendment may be required to Schedule 3 of the PSOW (Wales) Act 2005 to give me jurisdiction to consider complaints against the new Welsh Revenue Authority

⁵ DoH Review of the Regulation of Cosmetic Interventions

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/192028/Review_of_the_Regulation_of_Cosmetic_Interventions.pdf

⁶ Ombudsman Legislation – time for a review? Peter Tyndall March 2013

⁷ Letter from Lesley Griffiths AM to Christine Chapman Chair of Communities, Equalities and Local Government Committee

- (g) There is also an anomaly in the existing legislation whereby individual family health service providers (e.g. GPs or dentists, rather than surgeries or practices) are in jurisdiction. This has the unfortunate effect of personalising complaints in this sector whereas elsewhere, it is the public service provider, rather than an individual, who is in jurisdiction. Any change would have the effect of my naming the relevant practice or surgery in any report rather than an individual practitioner. This may also be unfair if the practitioner responsible for any service failure has since moved from the particular practice or surgery. However, I already have the power to name any person (other than the listed authority being investigated) if, having taken into account the interests of person aggrieved in any complaint or any other person I think it is appropriate and I consider it is in the public interest to do so.

2.5 Links with the courts

- (a) The Law Commission identified a number of areas where changes to legislation would be desirable. There is currently a statutory bar which prevents the PSOW from considering a complaint where the case could be considered by the courts. However, there is discretion to set this requirement aside. The Law Commission take the view that this bar should be set aside entirely, so that complainants can choose which is the more appropriate route for them.
- (b) In addition, there is currently no provision to allow the PSOW to consider a complaint when a judge determines that it would be the better means of resolution. Changing the law to allow the Administrative Court to “stay” cases and to refer them to the Ombudsman would address this issue, but the Law Commission recommend that the discretion as to whether to investigate or not should remain with the Ombudsman as at present.
- (c) Finally, the Law Commission have suggested that the PSOW should be able to refer a case to the court for determination of a point of law. They suggest that this will enable the PSOW to seek clarity on a legal point which might otherwise hinder or prevent an investigation as well as seeking clarity where there is doubt as to whether a matter is in jurisdiction.
- (d) This latter point clearly impact on the English and Welsh court system and advice is sought as to whether this latter change could fall within the purview of an amended PSOW Act.

3. The Cost of Change

3.1 Own initiative investigations

- Two full time investigation officers £80k-£100k, including on-costs.

3.2 Access – oral complaints

- No cost.

3.3 **Complaint Standards Authority**

- Two full time investigation officers – £80k-£100k, including on-costs.

3.4 **Extension and reform of Jurisdiction- Healthcare**

- Dependent on public or private funding method – £0k-£40k-£50k provision (dependent on policy choice re levy).

3.5 **Links with the courts**

- £20k Referrals from/to courts.

3.6 **Total costs:** £180k- £270k per annum.

4. The Case for Change

4.1 In considering the case of change, I have been keen to focus on:

- the need to future-proof the legislation and organisation
- improving social justice and making sure that voices of complainants from more disadvantaged backgrounds are heard
- making sure the Ombudsman’s work is Citizen Centred, rather than constrained to individual sectors or silos.
- driving improvement in public services and in complaint handling
- affordability and value for money.

4.2 I believe the suggested changes address these priorities, and hope that they will enjoy broad support.

Nick Bennett
Public Services Ombudsman for Wales
January 2015

Y Pwyllgor Cyllid
Finance Committee

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

26 January 2015

Dear Sir/Madam

Consultation on an inquiry into the consideration of powers of the Public Services Ombudsman for Wales

The National Assembly for Wales' [Finance Committee](#) is undertaking an inquiry to consider extending the powers of the Public Services Ombudsman for Wales ("the Ombudsman"), should the evidence support the extension of the Ombudsman's powers the Committee may consider the introduction of a Committee Bill. The terms of reference for the inquiry are available on the [Committee's webpage](#).

Background

The role of the Ombudsman was established by the [Public Services Ombudsman \(Wales\) Act 2005](#).

The current Ombudsman, Nick Bennett and his predecessor, Peter Tyndall have both called for changes to the Act during their role. Five main areas have been highlighted for potential legislative changes to strengthen the Ombudsman's role, including:

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

- **oral complaints** – at present, the Ombudsman can only accept complaints in writing;
- **complaints handling across public services** – this would enable the Ombudsman to have a role in advising on complaints handling across public services;
- **the Ombudsman’s jurisdiction** (to include private health services) –this would extend the Ombudsman’s jurisdiction to enable him/her to investigate when a patient has received private healthcare (self-funded, rather than being commissioned by the NHS) in conjunction with public healthcare; and
- **links with the courts** – the removal of the statutory bar to allow the Ombudsman to consider a case that 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).

The Ombudsman has submitted a [paper](#) to the Finance Committee which provides further background information and details of these proposals. To assist with its inquiry, the Committee would welcome your views on the questions attached at **Annexe A**.

Invitation to contribute to the inquiry

The Committee welcomes responses in Welsh or English from both individuals and organisations and will hold oral evidence sessions in due course.

Submissions should be no longer than five sides of A4, with numbered paragraphs, and should focus on matters set out above. Please see [guidance for those providing evidence for committees](#).

If you wish to submit evidence, please send an electronic copy (preferably **not** in PDF) of your submission to SeneddFinance@Assembly.Wales

Alternatively, you can write to:

Committee Clerk
Finance Committee
National Assembly for Wales
Cardiff Bay, CF99 1NA.

Submissions should arrive by **20 March 2015**. It may not be possible to take into account responses received after this date.

The Committee would be grateful if you could forward a copy of this letter to any individuals or organisations that might like to contribute to the review. A copy of this letter will be placed on the National Assembly's website with an open invitation to submit views.

Disclosure of Information

The Assembly's [policy on disclosure of information](#) is available, please ensure that you have considered these details carefully before submitting information to the Committee. Alternatively a hard copy of this policy can be requested by contacting the Clerk (Leanne Hatcher 0300 200 6343).

Yours faithfully,

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

Jocelyn Davies AC / AM
Cadeirydd / Chair

Consultation Questions

1. What are your views on the effectiveness of the current [Public Services Ombudsman \(Wales\) Act 2005](#)?

Own initiative investigations

2. Currently, the Ombudsman may only investigate a matter that is the subject of a complaint made to him/her. What are your views on 'own initiative' investigations powers, which would enable the Ombudsman to initiate his/her own investigations without having first received a complaint about an issue. Please explain your answer.

3. Do you have any concerns that own-initiative investigation powers could result in the Ombudsman's responsibilities overlapping with the responsibilities of other bodies? How could this be managed?

4. Do you have a view on the likely financial costs and benefits of the Ombudsman having own-initiative powers?

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8. At present there is no consistency in the way public bodies deal with complaints. Adoption of the model complaints policy issued by the Welsh government is

voluntary. What are your views on the Ombudsman preparing a model complaints policy which public bodies would be obliged to adopt. Please explain your answer.

9. Do you have a view on the financial costs and benefits of this provision?

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10. What are your general views on the Ombudsman's current jurisdiction?

11. At present the Ombudsman can investigate private health care that has been commissioned by the NHS. The Ombudsman would like the jurisdiction to be extended to enable him/her to investigate when a patient has received private healthcare (self-funded not commissioned by the NHS) in conjunction with public healthcare. This would enable the complaints process to follow the citizen rather than the sector. What are your views on extending the Ombudsman's jurisdiction in this way?

12. How do you think the investigation of private health care complaints should be funded? (Possibilities include a levy, charging on a case by case basis or no charge.)

13. Do you have a view on the financial costs and benefits of this provision?

Links with the courts

14. What are your views on 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? (ie this would give complainants the opportunity to decide which route is most appropriate for them.)

15. What are your views on the Ombudsman being able to refer cases to the Courts for a determination on a point of law?

16. Do you have a view on the financial costs and benefits of this provision?

Other issues

17. Do you have any specific examples where the Ombudsman having the additional powers proposed could have been useful in securing a successful conclusion to an issue?

18. [Schedule 3](#) of the current 2005 Act, provides a list of authorities that are within the Ombudsman's jurisdiction to investigate complaints. Please provide details of any other bodies/organisations that should be included in this list?

19. If extended powers were given to the Ombudsman in a new Bill/Act, at what point should the impact of this legislation be evaluated?

20. What unintended consequences could arise as a result of these provisions becoming legislation and what steps could be taken to deal with these consequences?

21. What factors should be measured to determine the cost-benefit analysis of this legislation being brought forward?

22. Do you have any comments on the following issues:

- **jurisdiction** – changes to the devolution settlement have led to new areas coming into jurisdiction over time, should consideration be given to other bodies being included in the Ombudsman's jurisdiction;
- **recommendations and findings** – should the recommendations of the Ombudsman to public bodies be binding. This would mean that bodies cannot decide to reject the findings;
- **protecting the title** – there has been a proliferation of schemes calling themselves ombudsmen, often without satisfying the key criteria of the concept such as independence from those in jurisdiction and being free to the complainant. Should anyone intending to use the title ombudsman gain approval from the Ombudsman;
- **code of conduct complaints** – the Ombudsman would prefer to focus on the element of his work that deals with service users and service delivery, rather than local authority and town and community councils' resolutions. Whilst a

local resolution procedures exists and has been adopted by 22 local authorities, variance exists in practice.

23. Do you have any views on any aspects of future planned or proposed public sector reforms that would impact on the role of the Ombudsman?

24. Do you have any other issues or concerns about the current Act and are there any other areas that need reform or updating?