

REPORT OF THE MONITORING OFFICER

SUBJECT: CONSULTATIONS RECENTLY UNDERTAKEN BY THE WELSH GOVERNMENT/NATIONAL ASSEMBLY IN RELATION TO GOVERNANCE ISSUES

In the autumn of 2015, the Authority was invited to respond to 2 consultations being undertaken. The first was by a Welsh Government executive branch – the Local Democracy Unit and the other by the National Assembly for Wales Finance committee.

They were -

- 1 A “technical consultation” on Members’ interest under Code of Conduct.
- 2 Amendments to the powers of the Public service ombudsman for Wales powers with a new Wales Ombudsman Bill

A “technical consultation” on Members’ interest under Code of Conduct.

The first of these was what was quaintly termed a “technical consultation”. The idea from the Welsh Government was that they were consulting with Monitoring Officers and others on two draft Statutory Instruments to be made under Part III of the Local Government Act 2000:

- 1 ‘The Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations’; and
- 2 ‘The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order’.
<http://gov.wales/consultations/localgovernment/amendments-to-subordinate-legislation/?lang=en>

There has been some disquiet expressed for quite a long time by Monitoring Officers and indeed the Public Service Ombudsman for Wales about the effect and the interpretation that should be provided, when requested, on the effect of Paragraph 10 (2) (b) of the Members Code of Conduct . This related to the general requirement that Members should not prefer the interest of their own ward/area to that of the interests of the whole authority upon which they sat.

The draft statutory instruments give effect to, or are consequential upon, policy proposals which were set out in the 2012 ‘Promoting Local Democracy’ White Paper, provisions of the Local Government (Democracy) (Wales) Act 2013 and related matters.

This attracted little by way of interest, so far as I have been able to ascertain from any academics, researchers or participants to what might loosely be called the “governance” community.

This was a technical consultation on the drafting of the statutory instruments themselves. Consequently, and to facilitate completion of the legislative process before the 2016 National Assembly elections, the consultation period was limited to 6 weeks, closing on 10 January 2016.

I did circulate members of the Standards Committee and invite any comments. I then prepared a draft response and in the light of the responses received, then submitted it to the Welsh Government Local Democracy Unit.

The response was despatched on 6th January and the only other response that I am aware of came from Neath and Port Talbot County Borough Council, making similar points.

I append the submitted response to the consultation exercise herewith.

I have received a reply from Stephen Phipps of the Welsh Government Local Democracy Unit, who has advised that we have 6 months from the date the amended Order is made by the Minister in which to adopt the amendments to the Model Code of Conduct. He is unable to give a definitive date but it is likely to be on or around 30th March which would enable the matter to be dealt with at our next National Park Authority meeting. The position will be clearer by the time of the next meeting of the All Wales Monitoring Officers Group that I will be attending on the 18th March.

At the moment there is very little that I am able to add at this stage.

Amendments to the powers of the Public Service Ombudsman for Wales powers with a new Wales Ombudsman Bill

The second consultation concerns the extension of the powers of the Public Services Ombudsman for Wales. At present his powers are derived from the Public Services Ombudsman (Wales) Act 2005. The initial correspondence from the Finance Committee of the National Assembly started on 26th January 2015. I responded to the questions raised in that document and reported to Members on 7th May 2015. The Welsh Government published its response at the end of May 2015 in its document "*Consideration of Powers: Public Services Ombudsman for Wales May 2015.*"

The listed authorities that the Ombudsman can investigate are set out in Schedule 3 to the 2005 Act. His jurisdiction extends to most devolved public services in Wales, including the NHS. Since November 2014, this jurisdiction has been extended to include private care services¹, by amendments to the 2005 Act inserted by the Social Services and Well-being Act 2014. However private healthcare² remains outside his jurisdiction.

¹ Defined as Private care services –social care services such as residential care or home care, which are privately arranged and self-funded by the individual for their own care (without involving social services)

² Healthcare services which are not funded by the NHS, but are paid for by the patients themselves or through private healthcare insurance. Such services could be provided on a private basis by an NHS body or by the independent sector.

Members may recall, that I dispatched to them the information, that the Assembly's Finance Committee was now further consulting on a Draft Public Services Ombudsman (Wales) Bill following their inquiry early last year (Appendix 1) and Draft Public Services Ombudsman (Wales) Bill. I attach the hyperlink to the Draft Bill <http://www.senedd.assembly.wales/documents/s45203/Draft%20Public%20Services%20Ombudsman%20Wales%20Bill.pdf>

The consultation closed on Monday, 18th January.

Generally the recommendations in its consultation document are broadly in line with the thrust of the inquiry which did not cause too much consternation at the time, and proposes in its widest terms an extension to his powers in the following main areas:

1. The introduction of what are referred to as “own-initiative powers” – which will enable the Public Service Ombudsman for Wales to initiate own investigations without having first received a complaint about an issue;
2. Acceptance of oral complaints - at present, only written complaints are allowed;
3. Harmonisation of complaints handling procedures across public services – role in collecting data, setting standards and guidance; and
4. The Ombudsman’s jurisdiction being extended to cover private health services.

Below is a summary of the key parts of the Draft Bill.

Section 5 – Criteria for own initiative investigations

- The Ombudsman must establish and publish criteria that have to be satisfied before he/she can use such a power the criteria must set out the evidence that will be required before the using the power
- The Ombudsman should also consult relevant regulators, Commissioners or AGW before undertaking own initiative power.

S33: Complaints-handling: statement of principles

- Ombudsman to publish a statement of principles concerning complaints handling procedures of listed authorities.
- Every authority to have a complaints-handling procedure which must comply with the statement of principles.

S34: Model complaints-handling procedure

- Enables Ombudsman to publish model complaints-handling procedures for authorities.
- Authorities must comply with model.
- Ombudsman can make ‘declarations of non-compliance’ (S36) and authorities must submit their procedures to Ombudsman (S37).

S39 – Complaints-handling procedures: promotion of best practice

- Duties on Ombudsman to:
 - (1) monitor practice – performance standards and reporting
 - (2) promote best practice and
 - (3) encourage co-operation and the sharing of best practice.

- (4) Authorities must co-operate with the Ombudsman in the exercise of these duties.

Although it is clear that much of the proposed extension of powers to the Public Services Ombudsman do not affect National Park Authorities, I did receive some helpful contributions from Members and incorporated them into the response that I drafted and submitted on 13 January. A copy that response document is attached herewith (Appendix 3).

Subsequently, it transpired that we had prepared the response earlier than many other authorities. As a result of this and discussions I had with other Monitoring Officers and the Welsh Local Government Association it was felt that our response would be the lead response with the WLGA and other responses being submitted in similar style and content to our own. This has now been done and the next stage in the process is awaited.

It is unlikely that there will be any significant developments regarding the implementation and enactment of the relevant Statutory Instruments until after the Welsh Government elections in May.

I have provided this report for the purposes of keeping Members up-to-date and recommend that it be duly noted with the intention that there should be appropriate training as when the changes are actually introduced.

Recommendation

That Members note the contents of this report.

Y Pwyllgor Cyllid
Finance Committee
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,
Jocelyn Davies AC / AM
Cadeirydd / Chair*

Annexe A

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?

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.

6. What other type/form of submission should be acceptable (e.g. email, website form, text messages)
7. Do you have a view on the financial costs and benefits of this provision?

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

Ombudsman's jurisdiction

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?

Appendix 2-Local Government Act 2000 – Part III, Conduct of Local Government Members

Amendments to Subordinate Legislation

Consultation Response Form

Title / Name	John Parsons	
Organisation	Pembrokeshire Coast National Park Authority Brecon Beacons National Park Authority	
Address	LLanion Park, Pembroke Dock, SA72 6DY	
Email address	johnp@pembrokeshirecoast.org.uk johnp@beacons-npa.gov.uk	
Type (please tick one of the following)	County / County Borough Council	
	Community or Town Council	
	Fire and Rescue Authority	
	National Park Authority	✓
	Standards Committee	
	Local government representative body	
	Public sector body	
	Voluntary / third sector body	
	Voluntary / third sector representative body	
	Professional body	
	Business	
	Private individual	
	Other (please specify):	
Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:		

Draft Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order

Register of Member's Interests

Q.1	Are any further amendments required to the Model Code to give practical effect to the provisions of the 2013 Act?	Yes	No
			✓
Comments: None, so far as the two National Park Authorities on whose behalf this response is made			

Obligation to Report Potential Breaches

Q.2	Do you agree that whilst the obligation on members to report potential breaches of the Code to the Ombudsman is removed, the obligation to report such breaches to the relevant monitoring officer should be retained?	Yes	No
		✓	
Comments: Yes-paragraphs 2.5 to 2.9 provide a clear and structured rationale for the retention of the obligation to report such breaches yet enables the Local Dispute Resolution procedure to proceed and impaired. A fair and reasonable balance has been achieved here			

Constituency Interests

Q.3	Do you agree that the omission of paragraph 10(2)(b) appropriately addresses the difficulties experienced in applying this aspect of the Code in practice?	Yes	No
		✓	
Comments: This amendment removes what has been a troublesome area which is totally cause difficulties in the past. It's omission is an appropriate and long overdue clarification and reform.			

Draft Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations

Amendments to the Standards Committees (Wales) Regulations 2001

Joint Standards Committees

Q.4	Are any further amendments required to facilitate the establishment and operation of a joint standards committee (if yes, please comment below)?	Yes	No
			✓
Comments:			
The consultation document makes it clear that this proposal does not have any material effect on the operation of the Regulations. Again this is a clear and structured amendment overall. No further amendments are required.			

Q.5	Do you agree that it is unnecessary to increase the maximum permissible number of members of a joint committee?	Yes	No
		✓	
Comments:			
The current regulations are adequate. No evidence has been put forward to suggest there is any need for amendment.			

Local Authority Members of Standards Committees – Term of Office

Q.6	Are there any unanticipated consequences arising from the proposed change to the term of office of local authority members of standards committees (if yes, please comment below)?	Yes	No
			✓
Comments:			
This seems to bring matters into line and is to be welcomed. However an independent member has expressed the view that appropriate thought is to be given to the term and commencement of independent members around elections. It could be a potential issue if the situation arises whereby the first meetings are of all new members. It is felt that a gradual introduction of members ensures continuity and transferring skills. This however may be something that can be resolved by appropriate training and forward planning.			

Publication of Misconduct Reports - Exemption

Q.7	Do the proposed changes appropriately and sufficiently address the problems that have arisen from the publication of misconduct reports prior to standards committee hearings?	Yes	No
		✓	

Comments:

Yes. This is an appropriate way to resolve, what has been a problematic area in the past with some Standards Committees taking a different approach from others. The need for consistency across Standards Committees is very important.

Amendments to the Local Government investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001

Referral of Misconduct Cases

Q.8	Do these proposals make adequate and appropriate provision for the referral of misconduct reports to another authority's standards committee?	Yes	No
		✓	
Comments:			
Yes			

Period of Suspension

Q.9	Do you agree that a period of suspension imposed by a standards committee should not extend beyond the end of a member's term of office?	Yes	No
		✓	
Comments:			
This is a clear clarification and amendment of Regulation 9 . In my view it does provide the clarity required to put the issue beyond doubt			

Appeals to the Adjudication Panel for Wales

Q.10	Do you agree that the proposed procedure for an application for permission to appeal a standards committee determination is appropriate?	Yes	No
		✓	
Comments:			
Yes. This is in line with other legislation and procedures in other jurisdictions. It reduces the likelihood of "tactical" appeals which should result in a cost saving as spurious and frivolous appeals are unlikely to receive the necessary permission to appeal			

Amendments to the Local Authorities (Grant of Dispensations) (Wales) Regulations 2001

Referral of Dispensation Applications

Q.11	Do you agree that the proposed procedure for the referral of a dispensation application to another authority's standards committee is appropriate?	Yes	No
		✓	
Comments:			
There can be a real problem where it is practical for a Member's home Standards Committee to meet a short notice. It does however need to be a clear understanding and guidance that there will be an open, written and transparent policy for referrals			

Criteria for Granting Dispensations - Disability

Q.12	Do you agree that it is appropriate to provide a general dispensation category in the Regulations?	Yes	No
		✓	
Comments:			
Yes, the Standards Committee will need thorough training on how and whether to grant any dispensations and this category			

Dispensations – Other Amendments

Q.13	Do you agree these amendments are appropriate?	Yes	No
		✓	
Comments:			

Other

Q.14	We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to comment upon them.
Comments:	
None	

Appendix 3 –

Response to PSOW extension of powers

Consultation questions

Please comment on as many of the questions as relevant to you/your organisation, providing an explanation of each answer given:

General

01. Would the draft Bill improve the effectiveness of the role of the Ombudsman? If so how?

Response: The previous PSOW highlighted the need for “own initiative” investigations. The proposed powers would facilitate this. On balance the case has been made out in the Committee Report for “own initiative” investigations.

02. What, if any, are the potential barriers to implementing the provisions of the draft Bill? Does the draft Bill take sufficient account of them?

Response: the need for clarity between the jurisdictions of the PSOW and other regulatory an investigatory bodies e.g. Wales Audit Office. The bill also does not recognise the obligations that will be placed on public service bodies that are, already, under a period of unprecedented financial restraints.

03. Are there any unintended consequences arising from the draft Bill?

Response: There is a real risk of duplication. Also there is an accountability issue that does not seem to be clearly delineated following “own initiative” investigations. Under section 4 “own initiative” investigations, there is no reference to when such a power may be exercised. As planning authorities we are frequently faced with challenges that the process of determining a planning application gives rise to maladministration and this could trigger an “own initiative” investigation i.e. an officer’s report and recommendations are criticised to the extent that an “own investigation “ commences before the formal determination of the planning application while section 12 refers to the traditional exclusions which normally preclude such a step being taken . This should be referred to in section 4 for greater clarity..

04. At what point should the impact of this legislation be evaluated?

Response: it is suggested that the period two years is appropriate

Power to investigate on own initiative

05. Do you have any comments on the new power in section 4?

Response: The boundaries of the powers need to be documented and delineated more clearly. There must be a time limit on the publication of criteria in clause 5 (3). I suggest that a period of one month is sufficient.

06. Does the inclusion of this power raise any unintended consequences in the rest of the draft Bill?

Response: It raises the possibility of conflict with other regulatory and investigatory bodies with similar powers. No mention is made of potential conflict with criminal allegations of malfeasance /misconduct in public office cases,, which would be a matter for the Crown Prosecution Service and the police to investigate.

- 07.** With whom should the Ombudsman consult under section 4(2)?
 Response: *Any party whom he believes may have suffered, any relevant regulatory or investigatory body. He should publish a note for guidance on those parties who he/she considers as likely to be involved in such consultations.*
- 08.** Should the Ombudsman have the power to initiate an investigation based on action that took place prior to the draft Bill/Act receiving Royal Assent (see section 4(4))? If so, should there be a cut-off point, beyond which the Ombudsman should not carry out an own initiative investigation?
 Response: *No-the Act should not be retrospective No exceptional reason has been given to vary the general rule that legislation is not retrospective in effect. If the case is to be made out for retrospective powers this must be specifically argued in greater detail*
- 09.** What kind of issues should be included in the criteria for own initiative investigations under section 5?
 Response: *Areas of likely or potential injury to individuals or organisations; matters of widespread local or national interest; potential precedents and cases of a clear wider interest to other regulatory bodies and when it is apparent that there are clear opportunities for policy management and enforcement actions to be undertaken in key areas of perceived public maladministration. Another area could well be the failure to deliver key public services on a case-by-case basis and breaches of the Principles of Good Public Administration and the local authorities Members Code of Conduct..*
- 10.** What kind of evidence should be available to the Ombudsman to justify an own initiative investigation (see section 5(2))?
 Response: *Personal statements, corroborated where possible, evidence from video conferences, local authority and other public bodies' electronic and paper records. These should be subject of a basic threshold test as to demonstrate a prima facie case does actually exist.*

Who can complain

- 11.** Do you have any comments on the new definition of “member of the public” in section 7(2)?
 Response: *No-it is essential that the employees of listed authorities and public bodies are not deterred from making complaints provided they do so in their personal capacity. The integrity of the “Whistle Blowing” policies must not be prejudiced.*

Requirements for complaints made and referred to the Ombudsman

- 12.** Do you have any comments on the new requirements for complaints made to the Ombudsman in section 8?
 Response: *No-there needs to be consistency and time limit i.e. a limitation period. On balance the period suggested appears to be appropriate and proportionate in all the circumstances that there should be a proviso /caveat aimed at providing for an extension of time where exceptional cases create exceptional circumstances. This should overcome the usual problems associated with the rigid limitation policy which can create unintended hardship. One clearly defined waiver of the time limitation policy should be in cases of fraud, dishonesty or where physical and mental injury has occurred to the complainant*

13. How should the proposed guidance for making a complaint to the Ombudsman be published and what formats should be available?

Response: *Electronically and on paper. It can be deposited in every CAB office, public library, and other advice centres in Wales.*

Matters which may be investigated

14. Do you have any comments on the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received by public and private health services providers (see sections 10(1)(d) and 10(2))?

Response: No

15. Does section 10(2) adequately cover anyone who has received a combination of public and private treatment?

Response: *As the responses from two of the National Parks of Wales which do not provide the services, it is not appropriate for any further comment from these organisations*

16. Does the broadening of the matters which may be investigated in section 10(2) raise any unintended consequences in the rest of the draft Bill?

Response: *It may lead to potential difficulties with any police or regulatory investigations taking place where it appears that criminal offences may have been committed. In particular in those cases, potential defendants have a right to silence and to protection from self-incrimination. These can severely inhibit a Police and CPS investigation and constrain it. These concerns really relate to the detail of how an investigation is conducted and may well be capable of being resolved by appropriate protocols being drafted, consulted upon, and published.*

17. Is the definition of “private health services” in section 71 broad enough to cover anyone who has received a combination of public and private treatment?

Response: Yes.

18. Should the Ombudsman have powers to recover costs incurred in investigating private health services?

Response: *Yes, but who will judge what is the appropriate level of costs and what will happen if the body or person investigated refuses to pay? As this could involve a significant financial penalty, this function needs to be the subject of clear guidance. I believe that much more thought needs to be given to the precise mechanics of how cost recovery will work. An alternative model would be to insert a power that where there is a dispute over both liability to pay and the amount to be paid, the PSOW has power to refer this to a Costs Judge to determine and to make any debt and any declaration so made by him shall as a judgement and thus capable of being enforced as such, by any of the methods in force by the courts. So in this way the PSOW is appearing not to be judge, jury and executioner’.*

19. Do you have any comments on the new definition of “family health service provider in Wales” in section 71, which is intended to capture, for example, a GP practice as a whole rather than just an individual GP?

Response: No

Investigation procedure and evidence

20. Do you have any comments on the procedure set out in section 16, in so far as it relates to the procedure for conducting an own initiative investigation?

Response: *There is no time limit referred to in section 16 (4). It is essential that the limits are published. Again section 16 (2)) gives no time for the linkage. I suggest one calendar month. Also, the compensation for loss and expenses in section 16 (10) is to be welcomed but is far too vague in the present draft should be a maximum limit and suggested table guidelines published the current wording is "weak". It should also not reward the overzealous and/or inefficient complainant.*

21. Should the Ombudsman's power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations and investigations into private health services (see section 17)?

Response: Yes

Listed Authorities

22. Do you have any comments on the restrictions on power to amend Schedule 3 (see section 30(2) in particular), which are significantly narrower than the restrictions found in the 2005 Act?

Response: *No, it seems proportionate in all the circumstances*

23. Are there any other bodies that should be included in the list in Schedule 3 'Listed Authorities'?

Response: *Any statutory Harbour authorities or port authorities that are, in effect in public control. They have a significant effect on the marine environment. I also notice there is not an express reference to the Wales Audit Office.*

Complaints-Handling

24. Do you have any comments on sections 33 – 39 (which mirror sections 16A to 16G of the Scottish Public Services Ombudsman Act 2002)?

Response: No

25. Is section 38(b) adequate to allow listed authorities to comply with their duties under other enactments, such as Freedom of Information duties?

Response: *Yes-it has the qualities of brevity and clarity*

Part 4: Investigation of complaints relating to other persons: social care and palliative care

26. Should Part 4 remain a standalone Part? Or should such investigations be brought within the Part 3 investigations process?

Response: *It should remain a stand-alone part due to its specific subject matter*

27. If Part 4 should be brought within Part 3, are there any specific elements of Part 4 that should survive? Or can a blanket approach be applied?

Response: *Part 4 should survive as a stand-alone Part of the Act*

Part 5: Investigations: supplementary

28. Do you have any comments on sections 62, 63 and 64, which provide for joint and collaborative working with specified Commissioners and the Auditor General for Wales?

Response: *There needs to be clear, published protocols in existence that set out in detail how such collaborations with other bodies are to be conducted. There is no fixed view as to whether it should be left to a private ad hoc arrangement, or will be done on a case-by-case basis. Care has to be taken to ensure that this does not lead to inconsistencies and prejudice anybody or person under investigation as they have a right to know the rules as to how such investigations be conducted, before such an investigation commences in order to defend themselves fairly.*

29. Should sections 62 and 63 cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales?

Response: Yes

30. Are there any further technical changes required in Part 5 of the draft Bill, to reflect the broadening of matters which may be investigated?

Response: *Not apparent*

Appointment etc

31. The provisions of paragraphs 5 to 8 of Schedule 1 (disqualification) reflect largely the current provisions in the 2005 Act. Do these provisions require updating?

Response: No

32. Paragraph 7 of Schedule 1 provides that a person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified from a list of roles (listed in paragraph 7(1)) for a period of two years. Is the two year period appropriate?

Response: Yes-it should be longer. I suggest four years

33. Do you have any comments on the matters which are included within "paid office" in paragraph 8 of Schedule 1?

Response: No

Financial implications

34. Do you have a view on the financial implications of the new provisions set out in the draft Bill?

Response: *The cost of having adequate resources to properly investigate matters within the new wider jurisdiction is not apparent*

Other comments

35. Do you have any other comments you wish to make about the draft Bill or any specific provision within it?

Response: *Whilst there are good legal reasons why a reference to Schedule 4 of the 2005 "Conduct of local Government Members and Employees" is omitted, a general explanation given for the wider audience to be reached by the consultation process would have helped. It would be very easy for a lay person as opposed to a trained lawyer to assume that they are, in fact, excluded when they are actually not.*