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Annwyl Gadeirydd

## **Bil Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) Drafft**

Diolch i chi am eich llythyr dyddiedig 24<sup>ain</sup> Mai. Rwyf wedi darllen y cwestiynau ychwanegol y mae swyddogion wedi'u codi yn Atodiad B. Mae'r rhain yn ymddangos yn syml iawn a byddaf yn ceisio trefnu cyfarfod wyneb yn wyneb â'r swyddogion perthnasol cyn gynted â phosibl er mwyn cynnig yr eglurder angenrheidiol gobeithio. Gan droi at y ddau gwestiwn arall a oedd yn deillio o gyfarfod y pwyllgor yr oeddech chi'n cyfeirio ato, dyma fy marn i:

Fe fyddwn i'n bersonol yn ffafrio pennu meini prawf a fyddai'n ddigon cyffredinol i sicrhau annibyniaeth Ombwdsmon y dyfodol ond a fyddai'n ddigon penodol hefyd i sicrhau perthnasedd â chorff cyhoeddus cyfoes. Er enghraifft, er mwyn cyfiawnhau cynnal ymchwiliad ar eich liwt eich hun byddwn yn disgwyl dod o hyd i dystiolaeth yn awgrymu:

1/ Meini prawf ar gyfer ymchwiliad ar eich liwt eich hun

Methiannau mewn gwasanaethau sy'n effeithio ar anghyfiawnder cymdeithasol ac ar grwpiau agored i niwed neu dan anfantais sy'n ei chael hi'n anodd cwyno (gan gynnwys y gymdeithas sy'n heneiddio/y rheini yr effeithir arnynt gan nam ar y synhwyrâu), methiannau systematig posibl sy'n codi yn sgil cwynion unigol a methiannau posibl i wasanaeth sy'n peri pryder o ran polisi cyhoeddus (gweler y papur gwaith drafft sydd wedi'i atodi i weld y meini prawf).

Tudalen 1 o 2

## 2/ Disgresiwn 16(2)

Dim ond ar gyfer ymchwiliad math "A" y byddwn yn awyddus i arfer disgresiwn a pheidio â pharatoi ar gyfer cynnig ymchwiliad llawn (h.y. ymestyn ymchwiliad i gynnwys corff cyhoeddus arall heb fod angen cwyn newydd). Ar gyfer pob math arall B, C a D o ymchwiliadau ar eich liwt eich hun fe fyddem yn cyflwyno cynnig ar gyfer ymchwiliad. Ein rhesymeg dros wneud hyn yw y byddai cyflwyno "cynnig am ymchwiliad" ar gyfer math "A" yn anghymesur - byddai'r broses yn cymryd mwy o amser na'n trefn bresennol h.y. gofyn i'r achwynydd gyflwyno cwyn bellach.

Mae'n bleser gennyf hefyd amgáu nodyn ynghylch y gyllideb atodol lle rydym yn ceisio dychwelyd £250,000 mewn arian parod heb effeithio dim ar adnoddau.

Os hoffech drafod unrhyw rai o'r pwyntiau hyn ymhellach, mae croeso i chi gysylltu â mi.

Pob dymuniad da i chi

Yn gywir



**Nick Bennett**  
Ombwdsmon

# Procedure for 'Own Initiative' Investigations

## Foreword

Many public services Ombudsmen throughout the world have the power to undertake investigations on their own initiative.

It is a power, used sparingly, either to investigate an obvious problem when no complaint has been received or, more usually, to extend an investigation of a complaint to other bodies.

The power is only used where appropriate - complaints could be referred to other regulators, if they were considered to be more suitable bodies to pursue them.

The 'own initiative' power is likely to become more important in our ageing society, where vulnerable people are either unable, or afraid to complain.

The Public Services Ombudsman for Wales is pleased that this power has now been incorporated into legislation governing his jurisdiction in Wales.

The procedure for undertaking investigations on the Ombudsman's own initiative is as follows.

## 1. Jurisdiction and Delegation

The Ombudsman may start an own initiative investigation against any bodies within his jurisdiction.

The Ombudsman has delegated authority under paragraph 13 of Schedule 1 to the PSOW Act xx to his Director of Investigations, Assistant Director and Investigation Managers to start an own initiative investigation which falls within the definition of an "extended investigation" in paragraph 2 below. The Ombudsman has delegated authority to determine the outcome of such an investigation to all of his investigative staff.

A decision to start an own initiative investigation which falls within the definition of a "wider investigation" in paragraph 2 below, must be taken by the Ombudsman. The Ombudsman must also determine the outcome of such an investigation.

## **2. Types of Investigation the Ombudsman can initiate**

### **a) Extended Investigation**

The Ombudsman may wish to take a live investigation in another, associated direction. For example, an ongoing investigation of a complaint against a GP could reveal information of concern about a related matter involving the local Health Board. There may be evidence of a systemic problem at the Health Board which is beyond the control of the GP complained about. The Ombudsman may therefore consider extending the current investigation into a larger investigation, to include the Health Board.

### **b) Wider Investigation**

There are a number of instances when the Ombudsman may wish to broaden a current investigation into a consideration of related issues. He may exercise his discretion to initiate a wide range of investigations. For example, he may wish to look into:

- other bodies in the same sector of public service as the body originally complained against
- concerns about a part of or a whole sector of public service
- an anonymous complaint
- a complaint from a 'whistleblower'
- concerns brought to his attention by regulatory bodies, patients' groups, service user groups, MPs/AMs, the media etc.
- concerns arising from PSOW's own investigations or from intelligence gleaned by his officers

## **3. Criteria for Investigation**

Sufficient evidence should be available to demonstrate the need for an 'own initiative' investigation to commence.

Evidence may:

- suggest that maladministration/service failure has occurred
- indicate that maladministration/service failure exists
- indicate that there is potential for maladministration/service failure

Evidence may be from:

- the complainant and/or the body complained about
- witness/es
- third parties/other sectors of public service

The evidence is assessed to establish if the criteria to initiate an investigation are met, including:

- the weight of the evidence
- the persuasiveness of the evidence
- whether the concerns identified are so significant that they impact upon a wide group of citizens
- whether the matter is in the public interest

If the above criteria are met, the Ombudsman will embark on a consultation exercise to seek others' views on the merits of investigating.

#### **4. Consultation**

Before an investigation is initiated and before a decision is taken either to continue or discontinue it, the Ombudsman must consult, as appropriate:

##### **a) Extended Investigation**

When planning to extend an investigation into a related area, consult with the body subject to the new, related investigation. The complainant and body originally complained against may be informed of the intention to extend the investigation.

##### **b) Wider Investigation**

When planning a wider investigation, it will be prudent to consult with one or more of the Welsh Commissioners, regulatory bodies or the Auditor General. It may be possible to collaborate with one of these bodies, to undertake a joint investigation and produce a joint report. In addition, the Auditor General may be able to advise on the most effective method of investigation. In certain cases, consultation with the public may also be appropriate.

## 5. Proposal for Investigation

Following the consultation process, the Ombudsman must prepare and share a proposal to detail the scope of the investigation, if he wishes to proceed. The proposal must state the reasons for the investigation and outline how it meets the criteria to investigate.

NB: Only in very limited circumstances can the need for a proposal be waived, such as in cases where the need to investigate is urgent and the process of sharing the proposal would create an undue delay. The proposal may be set out in a standard format:

### Example

<b>Title:</b>	Waiting Times for Hip Replacement Surgery at X Health Board
<b>Reason for Investigation:</b>	Average waiting time in excess of 12 months following GP referral
<b>Evidential Criteria:</b>	<ul style="list-style-type: none"><li>• evidence from complainants</li><li>• evidence from GPs</li><li>• information collated from 6 PSOW investigations</li><li>• intelligence from PSOW's Lead Improvement Officer for X Health Board</li><li>• media reports</li></ul>

The proposal must be sent to the body complained about, with an invitation to comment. Anyone named in the proposal and referred to negatively, should also be given the opportunity to comment.

The Ombudsman will consider all comments on the proposal and will assess the availability of office resources, before determining whether to proceed to initiate an investigation.

## **6. Investigation**

When the Ombudsman has initiated an investigation, it will be managed in accordance with his existing processes for complaint handling at PSOW.

## **Public Services Ombudsman for Wales (PSOW)**

### **1<sup>st</sup> Supplementary Budget 2017-18**

#### **Note to the Chair of the Finance Committee**

##### **Pension Deficit Funding**

The approved budget for 2017-18 included £292k to cover the long standing deficit in the Cardiff and Vale Pension Scheme. Following a tri-annual review and discussions with the scheme actuary and pensions manager it was agreed that the PSOW element of the scheme is no longer in deficit. The cash funding of £292k is no longer required and is returned via this supplementary budget.

##### **Legal Costs**

A provision of £42k has been made in the 2016/17 Annual Report and Accounts in relation to a current and ongoing legal case. There is no cash funding contained within the 2017/18 budget to cover the costs of this case.

##### **Income**

Additional income of £16k has been agreed with the Ombudsman Association in respect of seconded staff. There is nil net effect on resource and cash.

##### **Summary**

Net cash funding of £250k to be returned to the Welsh Consolidated Fund with nil effect on resource.



## Revised budget for 2017-18

### Public Services Ombudsman for Wales

<b>Supplementary Budget 2017/18</b>	<b>Revised Budget 2017/18</b>	<b>Original Budget 2017/18</b>	<b>Change</b>
	£'000	£'000	
<b>Capital DEL</b>	25	25	0
<b>Fiscal Revenue DEL</b>			
Salaries and related costs	2,950	2,934	16
LGPS related costs	0	292	-292
	<b>2,950</b>	<b>3,226</b>	<b>-276</b>
Premises	416	416	0
Computer systems and support	191	191	0
Office costs	130	130	0
Advisory and legal fees	294	294	0
Communications	78	78	0
Training and recruitment	30	30	0
Travel and subsistence	31	31	0
Audit fee	20	20	0
<b>Sub total</b>	<b>4,140</b>	<b>4,416</b>	<b>-276</b>
Income	-17	-1	-16
<b>Total Fiscal Revenue DEL</b>	<b>4,123</b>	<b>4,415</b>	<b>-292</b>
<b>Non cash DEL</b>			
Depreciation	80	80	0
<b>Revenue DEL (B+C)</b>	<b>4,203</b>	<b>4,495</b>	<b>-292</b>
<b>Total DEL (A+B+C)</b>	<b>4,228</b>	<b>4,520</b>	<b>-292</b>
<b>Annually Managed Expenditure (AME)</b>			
Movement on LGPS	0	-292	292
Provisions movement	20	20	0
<b>Total AME</b>	<b>20</b>	<b>-272</b>	<b>292</b>
<b>Total Managed Expenditure</b>			
A+B+C+D	<b>4,248</b>	<b>4,248</b>	<b>0</b>
<b>Resources Required</b>	<b>4,248</b>	<b>4,248</b>	<b>0</b>
Depreciation	-80	-80	0
Change in Provisions	-20	-20	0
Utilisation of Provisions - LGPS	0	292	-292
Utilisation of Provisions - legal costs	42	0	42
Other movements in Working Capital	20	20	0
<b>Net Cash Requirement</b>	<b>4,210</b>	<b>4,460</b>	<b>-250</b>