

**Follow up paper subsequent to evidence provided
by the Public Services Ombudsman for Wales to
the National Assembly for Wales's Finance Committee
at its meeting on 21 January 2015**

1. Introduction

1.1 At its meeting on 21 January 2015, the Finance Committee took evidence from me in relation to proposals for amendments to the Public Services Ombudsman (Wales) Act 2005. At that meeting the Committee asked that I provide further information as follows:

- examples of where own-initiative powers have been used well in other countries;
- details of the relationship between the Scottish Complaints Standards Authority and the rest of the Scottish Ombudsman's office.

1.2 The further information requested on these matters is provided below.

2. Own Initiative Powers in Other Countries

2.1 Following the Committee's request, I contacted colleague ombudsmen in other countries asking them for their experiences in relation to the use of own initiative powers. A number of ombudsmen during their responses commented that they have always had own initiative powers; this included the Swedish Ombudsman, the first ever ombudsman institution, saying that they have had this power since 1809.

2.2 Also from the responses I received, comments were made as to how they may identify an area which warrants an own initiative investigation by the ombudsman. These include:

- during the investigation of a complaint made to the ombudsman, other anomalies are identified whereby the ombudsman finds reason to extend an investigation;
- from a number of investigations indicating that there could be a more widespread national problem;
- in areas where citizens are vulnerable and there is a little tradition of them lodging complaints;
- anonymous letters are received providing information;
- matters are brought to the ombudsman's attention from other authorities;
- concerns come to the ombudsman's attention via the media.

Equally, responses I have received have made the point that the ombudsman does not initiate such an investigation without good reason.

- 2.3 Whilst own initiative powers are common internationally, the jurisdictions of ombudsmen schemes differ and it is not always possible to make direct comparisons with my jurisdiction as Public Services Ombudsman for Wales. However, some examples of own initiative investigations and their outcomes can be found below:

Malta – The Ombudsman conducted an own investigation into the waiting times at the Accident and Emergency Department at the General Main Hospital. The outcome was an improvement in the patient registration and screening procedures, resulting in a reduction in waiting times.

Latvia - Attention was given to a matter arising from a number of concerns about access to universal free education for children. Following his own initiative investigation, the ombudsman found that the right to education without charge was not being fully complied with and that what was happening in reality did not ensure equal rights and access to education, as provided for by the laws and regulations in Latvia. Following the Ombudsman's investigation into this area, the Education Law was changed in 2013 to clarify the position concerning the acquisition of teaching materials and aids. Subsequently, the Ombudsman asked schools to inform parents of pupils before the beginning of the school year for 2013/14 that the school would provide them with all learning materials (including workbooks) necessary for their child's education programme and that parents did not need to buy them.

Greece – The Ombudsman conducted an investigation concerning four Roma settlements and problems of social friction. The particular aim of the Ombudsman was to resolve issues concerning cases of social exclusion, addressing them in relation to the implementation of Greece's national plan for the integration of the Roma community.

Ontario, Canada – The Ombudsman decided to undertake an investigation concerning parents having to 'abandon' their disabled children. This arose from six initial complaints. At the time the Ombudsman announced the investigation he invited the public to come forward with any information that might assist him. The response from parents and professionals who had experienced this situation first hand was overwhelming. Approximately 90 families, all of whom had at least one special needs child, were among those who contacted the office. Many had either given up their child to a children's aid society or were contemplating doing so. The Ombudsman concluded that the Ministry of Children and Youth Services had failed to ensure that parents of children with severe disabilities were not forced to relinquish custody to Children's Aid Societies in order to receive necessary residential placements and that this was unjust. He made a number of recommendations to address this. As a result of the investigation, custody was returned to 68 families who had surrendered disabled children to Children's Aid Societies because they could not afford to care for them.

Ontario, Canada - Child care arrangements came to the Ombudsman's attention when, over a seven-month period in 2013/14, four young children died in unlicensed child care settings in the greater Toronto area. The Ombudsman launched an investigation. Following the Ombudsman's public announcement of his intention to conduct the investigation, 22 people contacted his office to comment about unlicensed daycares. Two were parents who expressed concerns about unlicensed operations where they had placed their children.

The investigation resulted in an unprecedented 113 recommendations. Some were addressed to the Government of Ontario, whose co-operation was necessary if modernisation of the legislative framework for monitoring unlicensed child care was to move forward. Many were focused on improvements in the Ministry of Education's administration of the system for responding to complaints about illegal caregivers. The Ministry accepted all of the Ombudsman's recommendations and provided a detailed response to them. It has already worked to implement them and has committed to providing the Ombudsman with half-yearly updates on its progress. It is hoped that implementation of the Ombudsman's recommendations will lead to a more rigorous, proactive, and risk-based system for monitoring unlicensed child care in Ontario that will better protect the interests of children and their families.

Finland – It had come to the Ombudsman's attention from a complaint made to him that a round-the-clock on-call dental service was not available in the Helsinki Metropolitan Area. He pointed out that under the law, a patient in need of urgent treatment, including oral health care, had to receive treatment at once. The Ombudsman was concerned that there may be similar problems in the rest of country and, in this instance, asked the National Supervisory Authority for Welfare and Health to examine how the right of patients to urgent oral health care was being safeguarded in various parts of Finland. As a result of the Ombudsman widening out the attention to this area of concern (beyond the individual complaint that he had received) a Government Decree resulted, which stipulates the details of what must be done in relation to organising on-call dental care.

Finland - The Ombudsman decided to look into a matter concerning circumstances where basic education had not been provided for all school-age children, because they were not domiciled in a municipality in Finland. In addition to so-called 'paperless children', the children of people who, for example, were in Finland to work or study or were asylum-seekers may have no municipality of domicile. This lack of basic education provision was in violation of the Constitution and the Convention on the Rights of the Child. The obligation to provide basic education that the Basic Education Act imposed on municipalities was broad. The Act did not require that a child be permanently resident in a municipality or that the municipality should, under the Municipality of Residence Act, determine the child's municipality of domicile. The Ombudsman emphasised that everyone had a right under the Constitution to cost-free basic education and pointed out in addition obligations enshrined in the UN Universal Declaration of Human Rights and the UN Convention on the Rights of the Child.

The relevant Government Ministry expressed the view that the problems had been caused by an erroneous interpretation of the Act and decided to issue guidelines to municipalities and regional administrative authorities to ensure that they interpreted the legislation correctly. In addition, the Ministry reported that it would arrange a round of training in various parts of the country in the early part of 2014.

3. The Scottish Ombudsman and the Complaints Standards Authority

- 3.1 In relation to details of the relationship between the Scottish Complaints Standards Authority and the rest of the Scottish Ombudsman's office, the Public Services Reform (Scotland) Act 2010 ('the PSR Act') gave the Scottish Public Services Ombudsman (SPSO) new responsibilities and powers in relation to complaints handling. Specifically, it amended the Scottish Public Services Ombudsman Act 2002 to give the SPSO a new role to oversee the development of standardised model complaints handling procedures for listed authorities (including local authorities, the NHS, Registered Social Landlords, colleges and universities, Scottish Government, Scottish Parliament and associated bodies). The PSR Act also requires the SPSO to monitor and promote best practice in complaints handling.
- 3.2 The SPSO established the Complaints Standards Authority (CSA) in October 2010 to work closely with public bodies to standardise and simplify complaints handling procedures and to help drive improvement. The overall aim of the CSA is to improve complaints handling to ensure that complaints are handled more simply, more effectively and more consistently, and are resolved at the first point of contact, wherever possible.
- 3.3 The CSA is part of the Scottish Ombudsman's office and the staff are employed directly by the Ombudsman. Effectively, the CSA is a team within the Scottish Ombudsman's office and the SPSO and is responsible to Parliament for its activities, budgets etc. The CSA forms one element of the SPSO's overall budget.

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6 February 2015
