

CONSULTATION QUESTIONS

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

There are limitations to the Act and it would seem reasonable to amend the act to reflect the changes in Society and to reflect the Putting Things Right regulations.

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.

It is of course appropriate for the NHS to be open to external scrutiny to provide assurance to the public. However in order to respond fully to this question there would need to be further explanation of this power. I note that in the republic of Ireland between 2001 and 2010 only 5 such reviews have been undertaken. Clarification as to the triggers for these powers to be used is required. Furthermore there is need for careful consideration of the role of other regulatory/ inspectorate bodies such as Healthcare Inspectorate Wales and Community Health Councils and the need for sharing of intelligence to ensure that the most appropriate body undertakes a review.

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?

Addressed in Point 2

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

The costs and benefits are difficult to quantify without full understanding of the powers sought.

ORAL COMPLAINTS

4. 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.

It would seem reasonable to accept oral complaints, however there would need to be clear guidance on the verification of the information. Also clarity is required to reinforce that the process for investigation would remain unchanged. We also believe that consideration of an advocacy type of support/role for individuals to be assisted in formulating their concerns would be useful.

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

Email, FAX, in person, telephone or via a web based programme with appropriate governance processes in place would be acceptable. In order to future proof the act the inclusion of social media should be considered even if it is not actioned at this time.

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

It would be assumed that increasing the methods by which one is able to raise a concern will increase the number of concerns raised. This would need to be considered from the perspective of Health Boards as well the Ombudsman's office.

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.**

The Health Boards in Wales follow the Putting Things Right regulations. They are reviewed by Welsh Risk Pool who adopts a formalised and consistent approach to monitoring the compliance with the regulations and importantly the implementation of lessons learned from Concerns. The model complaints policy is embedded within the legislative framework of the regulations and should continue to be monitored via the Welsh Risk pool. Furthermore the work within Welsh Government following the publication of the Evans report should be considered.

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

NA

OMBUDSMAN'S JURISDICTION

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

There are some obvious limitations in so far as being able to accept concerns in any format.

- 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?**

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It would not seem unreasonable; however would a private care provider be in accordance with the advice offered in an expert report. What would the sanctions be for failing to comply with a report and its recommendations and how would these be enforced?

- 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.)**

This would need to be agreed with the private health care providers. Consideration as to whether they would prefer a case by case basis rather than a subscription however what powers would the Ombudsman hold should they choose not to engage in the process.

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

There would need to be a comprehensive plan agreed with private health care providers

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.)**

There is a fundamental point in this change if the Ombudsman wishes to consider cases that would previously have been pursued via litigation. In essence the Ombudsman is requesting a stay of limitation then all expert reports should be Bolam compatible. This in fact should be implemented and embedded in the revision to the Ombudsman Act. Care must be measured on what is reasonable and breaches in the duty of care should be clearly outlined in the report. If breaches are identified the aspect of causation should be considered.

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

It would need to be identified as to who funds any legal requests. There should also be consideration of the role of counsel advice to clarify a point of law rather than proceeding directly to the courts.

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

See point 15

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?**

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With the new powers counsel advice could have been sought to clarify the law surrounding Continuing Health Care and the evidence required for retrospective payments to the benefit of the public and the NHS. This potentially could have facilitated earlier voluntary settlements.

- 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?**

Private health care providers.

- 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?**

It would require an annual review.

- 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?**

With a likely increased demand upon the Health Boards to review the increased number of concerns without any additional resource. The Evans report has been clear in the recommendations that concerns teams need to have the necessary resources in terms of appropriate staffing levels. Whilst it is proposed that the Ombudsman's office would have additional resource of £270,000 per annum these proposed changes will have a domino effect upon NHS concerns teams and this should also be resourced appropriately.

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

Refer to point 20

- 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;

As outlined in point 14 the expert reports need to be presented as reports that the clinicians would present in court because they are based upon the test of reasonableness.

There needs to be a transparent strategy to challenge the recommendation when they are unreasonable.

- ◆ **protecting the title - there has been a proliferation of schemes calling themselves ombudsmen, often without satisfying the key**

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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?

Yes that seems eminently reasonable and offers clarity to the public.

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?

Amendments to the Putting Things Right regulations, consideration of the Evans report.

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

Refer to point 14 and 22