Y Pwyllgor Cyllid
Bil Ombwdsmon Gwasanaethau Cyhoeddus (Cymru) drafft
DB PSOW 31 Arolygiaeth Gofal Iechyd Cymru

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Healthcare Inspectorate Wales

DRIVING IMPROVEMENT THROUGH INDEPENDENT AND OBJECTIVE REVIEW

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Response to the consultation on the draft Public Services Ombudsman (Wales) Bill

1. Healthcare Inspectorate Wales (HIW) welcomes the opportunity to contribute evidence to the consultation.

2. The role of HIW is set out at Annex 1.

General

3. There are a number of principles that will underpin the ability to implement this Bill effectively

    a. It should be clear throughout the Bill how the role of the PSOW fits in to the broader landscape of bodies involved in advocacy, complaints management and independent review. This includes commissioners, auditors, regulators, inspectors and representative bodies such as the Community Health Councils. This landscape needs to be articulated in a way which makes sense to the public.

    b. The legislation needs to be tested throughout from the perspective of the citizen. This means that if the PSOW is investigating an episode of care which cuts across boundaries, that legislation should not put in place unintended barriers. For example: the public/private interface should not restrict private care to medical care in hospital settings; it should be clear whether the remit relates to 'care provided in Wales' or to 'care provided to Welsh residents in relation to a Welsh listed authority';

    c. It needs to be clear how the PSOW will maintain an openness and transparency of operation in order to demonstrate his independence. Specifically, consideration needs be given throughout to the requirement to consult and report on matters relating to published guidance, criteria, and decisions to investigate or not to investigate.

Power to investigate on own initiative

4. It is difficult to form a view on the appropriate scope of this power without sight of the criteria and it is unclear how these criteria would be arrived at. As currently drafted the Bill is not clear what consultation or scrutiny would be required of the Ombudsman before the final specification and publication of such criteria.

5. It will be important to ensure that those consulted under section 4(2) include all those with a remit to undertake independent and objective reviews and investigations in the relevant listed authorities. This should include all relevant inspectorates, regulators and audit bodies. In order to minimise burden on listed authorities, own initiative investigations should only be undertaken where they will add value and provide specific benefit which should be determined at the outset of the investigation.

6. Since own initiative investigations are not triggered by a complaint it is not clear where the impetus for such an investigation would come from. This places the PSOW at risk of accusations of undue influence as it is not clear how the transparency of decision-making implicit in section 15 could be achieved.

Who can complain

7. No specific comments

Requirements for complaints made and referred to the Ombudsman

8. It is important that information on the role of the Ombudsman and how to complain is made as accessible and easy to understand as possible. A wide variety of formats should be used.

9. It is important the complainants are first encouraged to make their complaint to the listed authority and to seek resolution at this local level. However, information on the role of the Ombudsman should also be readily available from all listed authorities so that it is clear that there is a mechanism for escalation if the complainant is not satisfied with the local response.

10. The PSOW should be proactive in preparing and providing their guidance in a range of formats for use by others and should be proactive in working with others such as advocacy services and citizens advice services to ensure that those who may otherwise have difficulty accessing the service have adequate support.

Matters which may be investigated

11. Where it is necessary to investigate the provision of public and private services in order to effectively understand the complete episode of care then it is sensible that the PSOW should have the powers to do so.

12. It is not clear whether such a combined investigation can only be triggered by an alleged failure or maladministration by a listed authority or whether alleged problems with the private component of the care could be sufficient to trigger an investigation.

13. It is not clear whether the phrase "otherwise in relation to Wales" section 11(1)b refers to services "not provided to Welsh residents" or "not provided within Wales".

14. The definition of "private health services" appears based on an establishment based definition around a hospital. It also limits applicability to medical treatment. It is therefore too narrow and should consider moving to a definition based around services rather than establishments. Consideration should also be given to extending the definition to aspects of care other than medical care.

Investigation procedure and evidence

15. Given the potential burden of responding to own initiative investigations it is important that the investigation proposal referred to in section 16(3)a also sets out who has been consulted during the drafting of the proposal, how the proposed investigation relates to other review activity undertaken, in progress, or planned, and what specific additional purpose will be served by the own initiative investigation.

Listed authorities

16. It will be important to ensure that the bodies listed under Schedule 3 remain accurate and current. For example the Care Council for Wales who are currently listed will shortly be reconstituted as Social Care Wales as a result of the Regulation and Inspection of Social Care (Wales) Bill.

Complaints - handling

17. There are some listed authorities which operate under statutory complaints handling arrangements such as "Putting Things Right" in the NHS. It is unclear how the Ombudsman guidance would relate to such statutory arrangements and which would be expected to take precedence. It is unclear whether these and future arrangements would have to have regard to the PSOW guidance during drafting. It is important that any new arrangements do not introduce confusion of expectations for the public.

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

18. No specific comments

Part 5: investigations: supplementary

19. This section makes reference to consultation, co-operation and working jointly with other ombudsman, other Commissioners, and the Auditor General for Wales. It makes no reference to the requirement or ability to co-operate and work with other regulators and inspectorates.

20. Given that many of the investigations are likely to relate to health or social care it will be important that due consideration is given to how this might be enabled. The regulatory landscape is changing as a result of the Regulation and Inspection of Social Care (Wales) Bill and may change further following the recent consultation on healthcare quality, "Our health, our health service". The role played by the PSOW in this landscape needs to be carefully managed in order to avoid duplication and confusion for both the public and the service.

21. In this context it will be important to be clear about the requirement on, and powers of, the Ombudsman in working with other regulators and inspectorates in relation to:

    - Sharing information about risks, concerns and issues with a service in order to agree who is best placed to act
    - Establishing what investigations may be underway or planned in order to avoid duplication and confusion
    - Addressing the matters set out in sections 64(1) and 64(2).

22. The lead inspectorates in Wales (Healthcare Inspectorate Wales, Care and Social Services Inspectorate Wales, and the Office of Her Majesty's Chief Inspector of Education and Training in Wales) are also listed authorities under Schedule 3 and are therefore potentially subject themselves to investigation by the PSOW. It will therefore be important to think carefully how these relationships can be effectively managed in the best interests of the public and to avoid any potential conflicts of interest.

Appointment etc

23. No specific comments.

Financial implications

24. No specific comments.

Other comments

25. No specific comments.

Healthcare Inspectorate Wales (HIW) is the independent inspectorate and regulator of healthcare in Wales.

Purpose

To provide the public with independent and objective assurance of the quality, safety and effectiveness of healthcare services, making recommendations to healthcare organisations to promote improvements.

Values

- **Patient-centred:** we place patients, service users and public experience at the heart of what we do
- **Openness and honesty:** in the way we report and in all our dealings with stakeholders
- **Collaboration**: building effective partnerships internally and externally
- **Professionalism**: maintaining high standards of delivery and constantly seeking to improve
- **Proportionality:** ensuring efficiency, effectiveness and proportionality in our approach.

Outcomes

Provide assurance:

Provide independent assurance on the safety, quality and availability of healthcare by effective regulation and reporting openly and clearly on our inspections and investigations.

Promote improvement:

Encourage and support improvements in care through reporting and sharing good practice and areas where action is required.

Strengthen the voice of patients:

Place patient experience at the heart of our inspection and investigation processes.

Influence policy and standards:

Use our experience of service delivery to influence policy, standards and practice.