

PSOW 10

Bil Ombwdsmon Gwasanaethau Cyhoeddus (Cymru)

Public Services Ombudsman (Wales) Bill

Ymateb gan: Ombwdsmon Gwasanaethau Cyhoeddus Gogledd Iwerddon

Response from: Northern Ireland Public Services Ombudsman

1.0 Introduction

- 1.1 I am pleased to have the opportunity to contribute to the Committee's scrutiny of the Public Services Ombudsman (Wales) Bill and to share with the Committee my experiences as Northern Ireland Public Services Ombudsman (NIPSO). I was appointed as the first ever NIPSO on 1 April 2016. As Ombudsman, my role is to investigate complaints about a wide range of public service providers in Northern Ireland. My jurisdiction extends to complaints about education, housing, health and social care. In health and social care I investigate not only complaints of maladministration but also complaints relating to professional judgment.
- 1.2 As NIPSO I investigate complaints from members of the public about maladministration in public services in Northern Ireland. The Office of Northern Ireland Public Services Ombudsman (NIPSO) was established in April 2016 by the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). It replaces and expands the functions of the former offices of Assembly Ombudsman for Northern Ireland and Northern Ireland Commissioner for Complaints, bringing them together into a single statutory office. This creation of a 'one stop' shop for complaints about devolved public services builds on similar reforms introduced in Scotland by the Public Services Ombudsman (Scotland) Act 2002 and in Wales by the Public Services Ombudsman (Wales) Act 2005.
- 1.3 I also hold the office of Northern Ireland Local Government Commissioner for Standards, investigating and adjudicating on complaints about alleged breaches of the Local Government Code of Conduct for Councillors (the Code). I can impose sanction where I find a breach of the Code, unlike the Welsh Ombudsman who has an investigative role only in relation to Code of Conduct complaints.
- 1.4 From 1 April 2016 the functions of the Northern Ireland Judicial Appointments Ombudsman also transferred to my Office in respect of complaints of maladministration in the judicial appointments process.

2.0 The Draft Public Services Ombudsman (Wales) Bill

- 2.1 I have reviewed the Draft Public Services Ombudsman (Wales) Bill 2017 (the Bill) under consideration. I fully support and welcome the approach it takes to the modernisation of the Welsh Ombudsman's powers and remit. I have outlined

detailed views below on some of the areas where we consider our experience in Northern Ireland may provide a helpful perspective given the recent introduction of similar legislation in the 2016 Act.

- 2.2 Ombudsmen in the devolved nations of the United Kingdom have historically developed models of working on the basis of national and international developments elsewhere. In initiating reviews of the legislative framework in Northern Ireland, the Northern Ireland Assembly considered the provisions of the Public Services Ombudsman (Wales) Act 2005 in relation to investigations, reporting and information sharing with other bodies to be appropriate for the NIPSO legislation. In due course consideration was also taken of reforms undertaken in Scotland to add to and increase the remit of the Scottish Ombudsman, most notably in relation to its role as a Complaints Standards Authority. The Northern Ireland Assembly, through the vehicle of the 2016 Act, went beyond the reforms in Scotland and Wales to introduce powers to undertake systemic Own Initiative investigations, reflecting common practice across European and International ombudsmen.
- 2.3 I commend the Committee for its innovative approach to ensure that the reform of the proposed Ombudsman legislation in Wales should mirror similar reforms that have already been implemented in Northern Ireland and Scotland. This is important given our broad remits and the challenges which we face but also to ensure commonality in access to justice for Welsh citizens when compared with Scotland and Northern Ireland. The proposed Bill is welcome and I believe will deliver benefit in delivering a modern Ombudsman service that fairly and independently investigates citizen's complaints.

3.0 Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act)

- 3.1 The 2016 Act, in addition to bringing together the full range of roles into one office, introduced a range of initiatives to modernise my Office and provide greater access for the public to redress injustice. These measures included a broader remit and enhanced investigation and reporting powers, as well as clearer accountability arrangements. The new powers in the 2016 Act for me as Ombudsman to consult, co-operate and share information with other ombudsmen and oversight bodies had its genesis in the 2005 Welsh legislation.
- 3.2 Again in mirroring the Welsh legislation, the 2016 Act was intended to increase accessibility to the Ombudsman for members of the public; extend the Ombudsman investigation powers to cover previously excluded jurisdictions such as FE and HE bodies and schools. The 2016 Act established new reporting arrangements for public interest reports and an accountability mechanism for the Northern Ireland Assembly to scrutinise my budget and use of resources.

3.3 There are a number of new provisions in the 2016 Act that have been particularly beneficial to me in my role. In this submission, I highlight and comment on below those elements which may be most relevant to your consideration of the Bill.

4.0 Accessibility to the Public

4.1 A key aim of the 2016 Act was to increase accessibility to the Ombudsman and to make it easier for the public to complain. The legislative provisions underpinning this aim include:

- members of the public are no longer required to obtain MLA sponsorship in order to make a complaint about a Government Department; although MLAs and other public representatives can act 'on behalf' of a constituent in bringing a complaint to my Office where appropriate.
- public service providers are required to signpost complainants to NIPSO at the conclusion of their complaints process
- an oral complaint can be accepted by NIPSO where previously only a written complaint was investigated.

4.2 These changes allow the office to accept complaints from members of the public. They support individuals with vulnerabilities such as learning difficulties, to make their complaints. The 2016 Act removed a significant barrier to individuals who wish to complain by removing the requirement for a complaint to be made in writing. The 2016 Act was (like the Bill) a Committee-led piece of primary legislation developed by the former OFMdfM Committee of the Assembly. That Committee was keen to ensure that all citizens in Northern Ireland were directed as a matter of law to the Ombudsman at the end of internal complaints process. As a result, my office has, in 2016/17 and the year to date, experienced a significant increase in enquiries and complaints.

5.0 Alternative resolution

5.1 The 2016 Act provides explicit authority to take any action which the Ombudsman considers appropriate with a view to resolution of a complaint. This is an important provision in ensuring an increase in the proportion of complaints that can be resolved without the need to pursue a full investigation. This is often in the interests of all parties and certainly in the public interest in terms of public resource efficiency. The alternative resolution provision was introduced in Northern Ireland based on the equivalent Welsh provision in the 2005 Act. It has been used to deal proportionately with complaints to my office where a practical solution can be achieved. For instance, in one case involving a housing authority

it was agreed with that body that providing a support worker to a tenant with mental health issues helped focus her concerns about housing repairs and neighbour issues.

6.0 Consultation, Co-operation and Information Sharing

- 6.1 The 2016 Act provides new powers for me, as Ombudsman, to consult, co-operate and share information with other Ombudsmen and oversight bodies. This facilitates information sharing with bodies whose role is to ensure public service improvement. Consultation on and awareness of issues about public service delivery arising in the course of investigations enhances our respective roles. It also helps us ensure there is no duplication of investigative resource in areas where my jurisdiction overlaps with bodies such as the Northern Ireland Audit Office (NIAO) and the Northern Ireland Human Rights Commission (NIHRC). For example, in relation to nursing home complaints the RQIA has powers to inspect without notice where serious failings are identified.
- 6.2 In December 2016 I signed a Protocol for data sharing and consultation with the Regulation and Quality Improvement Authority (RQIA) to ensure that where I recommend improvements in the health and social care sector these can be monitored by that body. Work is continuing with similar protocols with the NIAO and NIHRC as well as the Northern Ireland Commissioner for Children and Young Persons (NICCY).

7.0 Own Initiative Investigations

- 7.1 The 2016 Act also provided the authority for me as Ombudsman to undertake own initiative investigations where there is evidence of systemic maladministration or systemic injustice. These powers commence from 1 April 2018. The authority to undertake own initiative/own motion investigations was a key part of Assembly reforms to NIPSO powers under the 2016 Act.
- 7.2 The provisions of the 2016 Act provide discretion in terms of the criteria decision and the investigation methodology. A number of conditions to the exercise of that discretion are provided as follows:
- (i) a requirement for the NIPSO to have a 'reasonable suspicion' of 'systemic maladministration', or 'systemic injustice'.
 - (ii) a proposal must be developed that meets investigation criteria, which must be published.

- (iii) the listed authority which is the subject of the own initiative investigation should have the opportunity to comment on an investigation proposal. The proposal sets out the reasons for the proposed investigation and how the Ombudsman's criteria for an own initiative investigation have been met.
- (iv) there is a requirement that the relevant listed authority should have the opportunity to comment on evidence presented in the proposal.

7.3 An important element of the own initiative power is that a report must be published. This is, in my view, important in ensuring full transparency and holding to account where failures in public services are identified. As an officer of the Assembly, my role is to highlight systemic maladministration or injustice to that body and to support the statutory Committees of the Assembly in their scrutiny role. For instance, an own initiative investigation report on education or health can be presented to the subject committee.

7.4 In terms of resource, I have already established that the operation of the Own Initiative power will require an additional staff complement of two Senior Investigating Officers. This reflects my thinking that the own initiative function should relate to a relatively smaller number of high impact investigations. The Office is currently preparing for the commencement of these powers from April 2018 with a project established to take forward the following activities:

- (i) Development of selection criteria through which the potential own initiative investigations will be identified;
- (ii) Methodology for investigation, including an initial investigation to ensure the robustness of the issue and that it warrants a full investigation using this power;
- (iii) Development of reporting templates and framework for publication and liaison with the Assembly and its Committees (where appropriate);
- (iv) Engagement strategies designed to ensure that key stakeholders across the public sector in Northern Ireland understand the own initiative power and how investigations will proceed.

Our engagement to date has included discussions with key regulators and scrutiny bodies on this new role. These discussions have proved useful in developing an understanding of how the Ombudsman's own initiative role could complement the role of key regulators and scrutiny bodies rather than overlap with their powers. Discussion with bodies such as the Northern Ireland Audit Office, the Regulation and Quality Improvement Authority (regulating the quality of health and social care services) and Northern Ireland Human Rights Commission will continue to focus on their planned programmes of inspection, investigation or audit activity in light of my plans for Own Initiative investigations.

- 7.5 The traditional Ombudsman model in the UK has developed in a way which requires an individual to pursue a complaint of injustice. This is not the model which has developed internationally where Ombudsmen commonly have the power to commence an investigation without first receiving a complaint from a citizen. In the Republic of Ireland, the Ombudsman's office has since its inception in 1980 a discretion to commence such an investigation and this has been used to significant effect in areas such as health complaints. I am aware that the Welsh Ombudsman (Nick Bennett) has previously highlighted the use of own initiative powers in other countries to this Committee in May 2015¹. I have found this paper useful in developing my approach to own initiative powers.
- 7.6 The provision for own initiative powers in the Bill is a key vehicle for addressing injustice and delivering systemic improvements for a greater number of Welsh citizens and not just the complainant in a particular case. The power will address a range of different situations where the traditional UK Ombudsman model does not enable the Ombudsman to address system wide failings and injustice. It is a powerful tool where the Ombudsman has received no complaints, because vulnerable individuals fear retribution and are disinclined to make complaints. These are the 'voiceless' for whom the own initiative provision in sections 5 and 45 of the Bill addresses this access to justice issue. The Bill ensures that failures in public service experienced by one person in relation to one public body would very likely apply to other public service users in other public bodies without this new power. The Welsh Ombudsman may not have received complaints from other individuals and may require a new complaint to be made to him. This is inefficient and overly burdensome on the citizen.
- 7.7 Own Initiative powers will allow the Ombudsman to achieve justice for the maximum number of citizens who experience failures in public services. It is for this reason that I welcome my new powers. I commend to the Committee the introduction of these provisions to the Bill under consideration in Wales.

8.0 Complaints Standards Authority

- 8.1 Part 3 of the 2016 Act outlines the statutory powers which would allow me to undertake the role of Complaints Standards Authority (CSA), similar to that which has been operating in Scotland since 2010. The 2016 Act in Northern Ireland has similar provisions to the Bill under consideration, enabling me to set standards of complaints handling across public services in Northern Ireland and simplify and improve the way complaints are handled across the public sector. I

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<http://www.senedd.assembly.wales/documents/s37196/Additional%20Information%20from%20PSOW%20from%20evidence%20session%2021%20January%202015.pdf>

also will have a role in the sharing and promotion of best practice on complaints handling.

- 8.2 This is an important new role which I regard as essential to my strategic aims of achieving a greater culture of learning lessons from complaints. The Welsh Ombudsman in his thematic report 'Ending Groundhog Day'² highlighted repeat failings in terms of complaints handling by public bodies. I also see these failings in the cases that my office investigates. There are significant barriers to people complaining about public services with confusing, unclear and lengthy complaints procedures and poor complaints handling in individual cases which is a clear access to justice issue. The CSA powers will allow me to work with public service providers on a sectoral basis to help address these issues.

The other significant benefit the Complaints Standards Authority role will bring will be the ability to ensure better quality information is available on complaints made to public bodies. There is also very little, if any, robust publicly available information on complaints handling by public bodies. The Complaints Standards Authority role will allow us to address this and help encourage public bodies to benchmark and improve their performance and ensure better opportunities for cross sector learning from complaints.

- 8.3 My CSA powers are unlikely to be commenced until restoration of the Northern Ireland Executive and Assembly and is subject to confirmation on resource. Initial planning work has commenced to allow us to move quickly to implement this role once the Assembly is re-established and ready to consider commencement. Currently the Office is researching complaints handling across Northern Ireland and preparing for consultation with stakeholders. As with the provisions in the Bill, consultation is an important part of the process for developing complaints handling principles to be approved by the Assembly as a first step. The requirement to consult is also required as part of the process of developing model complaints handling procedures. It is important to develop an approach which works in partnership with public services to successfully implement and embed the necessary changes and improvements. It is also important, in my view, that regulators are involved from the outset and that monitoring of compliance with the CSA is built into their own existing regulation, to ensure that monitoring is as light touch as possible.

² https://www.ombudsman-wales.org.uk/~media/Files/Thematic%20Reports/22624%20Thematic%20report_GroundhogDay_ENGLISH_Final%20FOR%20ISSUE.ashx

9.0 Conclusion

- 9.1 I welcome the opportunity to provide evidence to the Committee in person in December and would be happy to explore these areas further. I am also willing to answer questions about these or other areas arising from the Northern Ireland experience.
- 9.2 Finally, I commend the important changes and timely Ombudsman reforms brought forward in the Bill by this Committee. In developing new Ombudsman legislation in Northern Ireland, the Welsh model created by the 2005 Act was highly innovative at the time and now is in need of future proofing to ensure the concerns of citizens who are 'voiceless' can be heard.

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22 November 2017