

PSOW 23

Bil Ombwdsmon Gwasanaethau Cyhoeddus (Cymru)

Public Services Ombudsman (Wales) Bill

Ymateb gan: Gwasanaeth Dyfarnu Cwynion y Sector Annibynnol

Response from: Independent Sector Complaints Adjudication Service (ISCAS)

**Consultation on the Public Services Ombudsman (Wales) Bill  
and Explanatory Memorandum**

**ISCAS response to the Welsh Assembly's Equality, Local Government and Communities  
Committee's call for evidence**

**Introduction**

1. The Independent Sector Complaints Adjudication Service (ISCAS) welcomes the opportunity to respond to the Committee's call for evidence on this Bill and Explanatory Memorandum. As per the Committee's request, ISCAS's response addresses the Bill's terms of reference namely:
  - Accept oral complaints
  - Undertake own initiative investigations
  - Investigate private medical treatment including nursing care in a public/private pathway
  - Undertake a role in relation to complaints handling standards and Procedures
2. ISCAS provides a complaints management framework for the independent healthcare sector incorporated in its Code of Practice in the four countries. Compliance with the Code maximises healthcare operators' ownership of complaints using local resolution procedures. The Code's Stage 3 adjudication affords dissatisfied complainants an independent review process with independent adjudication procedures. It gives providers closure of the complaints process, and a learning opportunity, at low cost.
3. ISCAS is managed by the Centre for Effective Dispute Resolution (Cedr) and is independent from the Trade Association AIHO which includes WIHA as part of its membership. WIHA members of AIHO are encouraged to be subscribers of ISCAS where they are treating private patients.
4. An Information Sharing Agreement is in place between ISCAS and Healthcare Inspectorate Wales (HIW). This is currently in the process of being updated.
5. Accompanying this consultation for reference are the suite of ISCAS documents that are available to all WIHA Subscribers. These are the ISCAS Code of Practice for Complaints

Management (2017), the Patients' Guide to the ISCAS Code, ISCAS Position Statements on Complaints Management and Practising Privileges (in draft) , Complaints Management: Fees (in draft) and the Guidance for Managing Unacceptable Behaviour by Complainants. These documents are all displayed on the ISCAS website - [www.iscas.org.uk](http://www.iscas.org.uk)

6. An annual report on ISCAS activities is also produced. The 2016 report is attached. This contains the overall Adjudicator costs from January 2016 to March 2017 together with the Goodwill payments that are afforded to complainants during that period.
7. A copy of the 2016 ISCAS training programme is also attached
8. ISCAS provided evidence for the National Assembly for Wales Finance Committee on the consideration of powers for the Public Services Ombudsman (PSO) for Wales in January 2015 and also on the 18 January 2016. ISCAS also gave evidence to the National Assembly for Wales Finance Committee.

#### **Terms of Reference Comments**

9. *The general principles of the Public Services Ombudsman (Wales) Bill and the need for legislation to deliver the stated policy intention.*  
ISCAS welcomes this Bill and believes it will be beneficial for patients who have a complaint spanning treatment across the NHS and independent healthcare sectors. It is right that the complaints process should follow the patient (citizen). The Ombudsman already has jurisdiction over complaints made about NHS-funded treatment provided by ISCAS subscribers in Wales.
10. *Provisions of the Bill which set out the new powers for the Ombudsman to: accept oral complaints;*  
ISCAS tabulates how complaints can be submitted in both its Code and Patients Guide. Oral complaints would be accepted under the ISCAS Code.
11. *Provisions of the Bill which set out the new powers for the Ombudsman to: undertake own initiative investigations;*  
ISCAS recognises the value of 'own initiative investigations' undertaken by Ombudsmen services to patients and hospital providers. All ISCAS subscribers are encouraged to recognise the Duty of Candour. ISCAS is in possession of leaflets on this subject from avma (Action against Medical Accidents). A session on this was provided during the 2016 ISCAS training session.
12. *Provisions of the Bill which set out the new powers for the Ombudsman to: undertake a role in relation to complaints handling standards and procedures*

This seems a good initiative in reducing variation in effective complaints handling standards and procedures across public services in Wales. ISCAS's understanding is that this does not apply to the independent healthcare sector. ISCAS has liaised with both HIW and the Welsh Government during the process of updating the 2013 ISCAS Code. Excellent comments were received and incorporated into the 2017 ISCAS Code. ISCAS provides annual training for subscribers on complaints handling and will be implementing a more formal monitoring and improvement quality assurance system in March 2018 when ISCAS subscribers are asked to renew their subscription. ISCAS will be introducing a sign off of self-declaration at provider level to support good governance in complaint management.

13. *Provisions of the Bill which set out the new powers for the Ombudsman to: investigate private medical treatment including nursing care in a public/private health pathway;*

As per ISCAS's previous submission, we welcome this provision and believe it will be beneficial to patients in these circumstances. It is noted in the Explanatory memorandum para 3.44 the Ombudsman comments on a case that transgressed both the public and private sectors and the length of time it took for that case to come to Adjudication. In practice, the number of complaints against WIHA subscribers that reach an external review stage is very small. The number of complaints that involve combined NHS and private treatment is even smaller. ISCAS would be happy to establish an information sharing protocol with the Ombudsman as it does with Healthcare Inspectorate Wales in order to take this potential new power forward .

14. *The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum).*

ISCAS recognises that the inclusion of investigations of the private health service element in a public/private health service pathway will have a small, but direct, financial impact on the Ombudsman, costing £17,535 over 5 years (Table 4, page 56). WIHA who are also giving evidence has calculated the cost of including such cases will make up less than 0.1% of the Ombudsman's yearly budget (using figures from 2017-18 found within the Summary Table on Page 45). We also note in Paragraph 11.11 of the Explanatory Memorandum that the Ombudsman could accommodate the additional cost within existing resources.

15. ISCAS recognises the right of the Ombudsman to serve a costs recovery notice on a private health service provider as a means of recovering additional costs incurred by the Ombudsman where the provider **has obstructed** the Ombudsman or done something which would amount to contempt of court if the investigation were proceeding in the High Court.

16. **Sections 21 and 22: Publicising reports and Section 24: Action following receipt of a report: investigation of a private health services provider.** ISCAS management produce quarterly a summary of the Adjudications finalised with the outcome, recommended learning and actions required which is presented to the ISCAS Advisory Governance Board. From this the themes for taking forward learning are recorded and included in the annual report.
17. *Any potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them*  
ISCAS is not aware of any potential barriers to the implementation of the Bill's provision and notes that the Ombudsman is not seeking to extend to all private health service providers.
18. *Whether there are any unintended consequences arising from the Bill*  
ISCAS do not anticipate any unintended consequences for independent healthcare providers arising from the Bill.

## **Conclusion**

In summary, ISCAS subscribers support the extension of the PSOW's remit to investigate complaints that include both an NHS and a private health element of care.

We are also pleased to note that there will be a review of the legislation after five years from the date of the Act receiving Royal Assent and further reviews thereafter as Welsh Ministers deem appropriate.

ISCAS looks forward to providing oral evidence to the committee and responding to any further questions on the terms of reference.

**29 November 2017**

**Annexes:**

[ISCAS annual report 2016](#)

[ISCAS Code of Practice 2017](#)

[ISCAS Patients' Guide to the ISCAS Code](#)

[ISCAS Guidance for Managing Unacceptable Behaviour by Complainants](#)

[ISCAS Annual Training Conference](#)