

Our ref: NB/ag

Ask for: Nick Bennett

Your ref:



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Simon Thomas AM
Chair
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Dear Chair

Draft Public Services Ombudsman (Wales) Bill

Thank you for your letter dated 24th May. I have read the additional questions officials have raised in Annex B, these seem very straight forward and I will try to organise a face to face meeting with relevant officials as soon as possible to hopefully provide the required clarity. Turning to the further two questions emanating from the committee that you referred to, my view would be:

I would personally favour criteria established that was sufficiently general to ensure future Ombudsmen's independence but sufficiently specific to ensure relevance to contemporary public policy. For example to justify an own initiative investigation I would expect to find evidence to suggest:

1/ Own Initiative criteria

Service failures that impact on social injustice and on vulnerable or disadvantaged groups that find it hard to complain (inc the ageing society/ those affected by sensory loss) , potential systemic failures identified from individual complaints and potential service failures causing public policy concern (please see attached draft working paper on criteria).

2/ Discretion 16(2)

I would only want to exercise discretion and not prepare a full investigation proposal for an "A" type investigation (i.e. extending an investigation to include another public body without needing a new complaint). For all other B, C & D type own initiative investigations we would submit an investigation proposal. Our

rationale on this is that an "investigation proposal" submission on an "A" type would be disproportionate - taking longer than our current procedure i.e. asking the complainant to submit a further complaint.

I am also very pleased to enclose a note on the supplementary budget whereby we seek to return £250,000 cash with nil effect on resource.

If you would like to discuss any of these points further please do not hesitate in contacting me.

With best wishes

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nick Bennett', with a stylized flourish at the end.

Nick Bennett
Ombudsman

Procedure for 'Own Initiative' Investigations

Foreword

Many public services Ombudsmen throughout the world have the power to undertake investigations on their own initiative.

It is a power, used sparingly, either to investigate an obvious problem when no complaint has been received or, more usually, to extend an investigation of a complaint to other bodies.

The power is only used where appropriate - complaints could be referred to other regulators, if they were considered to be more suitable bodies to pursue them.

The 'own initiative' power is likely to become more important in our ageing society, where vulnerable people are either unable, or afraid to complain.

The Public Services Ombudsman for Wales is pleased that this power has now been incorporated into legislation governing his jurisdiction in Wales.

The procedure for undertaking investigations on the Ombudsman's own initiative is as follows.

1. Jurisdiction and Delegation

The Ombudsman may start an own initiative investigation against any bodies within his jurisdiction.

The Ombudsman has delegated authority under paragraph 13 of Schedule 1 to the PSOW Act xx to his Director of Investigations, Assistant Director and Investigation Managers to start an own initiative investigation which falls within the definition of an "extended investigation" in paragraph 2 below. The Ombudsman has delegated authority to determine the outcome of such an investigation to all of his investigative staff.

A decision to start an own initiative investigation which falls within the definition of a "wider investigation" in paragraph 2 below, must be taken by the Ombudsman. The Ombudsman must also determine the outcome of such an investigation.

2. Types of Investigation the Ombudsman can initiate

a) Extended Investigation

The Ombudsman may wish to take a live investigation in another, associated direction. For example, an ongoing investigation of a complaint against a GP could reveal information of concern about a related matter involving the local Health Board. There may be evidence of a systemic problem at the Health Board which is beyond the control of the GP complained about. The Ombudsman may therefore consider extending the current investigation into a larger investigation, to include the Health Board.

b) Wider Investigation

There are a number of instances when the Ombudsman may wish to broaden a current investigation into a consideration of related issues. He may exercise his discretion to initiate a wide range of investigations. For example, he may wish to look into:

- other bodies in the same sector of public service as the body originally complained against
- concerns about a part of or a whole sector of public service
- an anonymous complaint
- a complaint from a 'whistleblower'
- concerns brought to his attention by regulatory bodies, patients' groups, service user groups, MPs/AMs, the media etc.
- concerns arising from PSOW's own investigations or from intelligence gleaned by his officers

3. Criteria for Investigation

Sufficient evidence should be available to demonstrate the need for an 'own initiative' investigation to commence.

Evidence may:

- suggest that maladministration/service failure has occurred
- indicate that maladministration/service failure exists
- indicate that there is potential for maladministration/service failure

Evidence may be from:

- the complainant and/or the body complained about
- witness/es
- third parties/other sectors of public service

The evidence is assessed to establish if the criteria to initiate an investigation are met, including:

- the weight of the evidence
- the persuasiveness of the evidence
- whether the concerns identified are so significant that they impact upon a wide group of citizens
- whether the matter is in the public interest

If the above criteria are met, the Ombudsman will embark on a consultation exercise to seek others' views on the merits of investigating.

4. Consultation

Before an investigation is initiated and before a decision is taken either to continue or discontinue it, the Ombudsman must consult, as appropriate:

a) Extended Investigation

When planning to extend an investigation into a related area, consult with the body subject to the new, related investigation. The complainant and body originally complained against may be informed of the intention to extend the investigation.

b) Wider Investigation

When planning a wider investigation, it will be prudent to consult with one or more of the Welsh Commissioners, regulatory bodies or the Auditor General. It may be possible to collaborate with one of these bodies, to undertake a joint investigation and produce a joint report. In addition, the Auditor General may be able to advise on the most effective method of investigation. In certain cases, consultation with the public may also be appropriate.

5. Proposal for Investigation

Following the consultation process, the Ombudsman must prepare and share a proposal to detail the scope of the investigation, if he wishes to proceed. The proposal must state the reasons for the investigation and outline how it meets the criteria to investigate.

NB: Only in very limited circumstances can the need for a proposal be waived, such as in cases where the need to investigate is urgent and the process of sharing the proposal would create an undue delay. The proposal may be set out in a standard format:

Example

Title:	Waiting Times for Hip Replacement Surgery at X Health Board
Reason for Investigation:	Average waiting time in excess of 12 months following GP referral
Evidential Criteria:	• evidence from complainants • evidence from GPs • information collated from 6 PSOW investigations • intelligence from PSOW's Lead Improvement Officer for X Health Board • media reports

The proposal must be sent to the body complained about, with an invitation to comment. Anyone named in the proposal and referred to negatively, should also be given the opportunity to comment.

The Ombudsman will consider all comments on the proposal and will assess the availability of office resources, before determining whether to proceed to initiate an investigation.

6. Investigation

When the Ombudsman has initiated an investigation, it will be managed in accordance with his existing processes for complaint handling at PSOW.

Public Services Ombudsman for Wales (PSOW)

1st Supplementary Budget 2017-18

Note to the Chair of the Finance Committee

Pension Deficit Funding

The approved budget for 2017-18 included £292k to cover the long standing deficit in the Cardiff and Vale Pension Scheme. Following a tri-annual review and discussions with the scheme actuary and pensions manager it was agreed that the PSOW element of the scheme is no longer in deficit. The cash funding of £292k is no longer required and is returned via this supplementary budget.

Legal Costs

A provision of £42k has been made in the 2016/17 Annual Report and Accounts in relation to a current and ongoing legal case. There is no cash funding contained within the 2017/18 budget to cover the costs of this case.

Income

Additional income of £16k has been agreed with the Ombudsman Association in respect of seconded staff. There is nil net effect on resource and cash.

Summary

Net cash funding of £250k to be returned to the Welsh Consolidated Fund with nil effect on resource.

Revised budget for 2017-18

Public Services Ombudsman for Wales

Supplementary Budget 2017/18	Revised Budget 2017/18	Original Budget 2017/18	Change
	£'000	£'000	
Capital DEL	25	25	0
Fiscal Revenue DEL			
Salaries and related costs	2,950	2,934	16
LGPS related costs	0	292	-292
	2,950	3,226	-276
Premises	416	416	0
Computer systems and support	191	191	0
Office costs	130	130	0
Advisory and legal fees	294	294	0
Communications	78	78	0
Training and recruitment	30	30	0
Travel and subsistence	31	31	0
Audit fee	20	20	0
Sub total	4,140	4,416	-276
Income	-17	-1	-16
Total Fiscal Revenue DEL	4,123	4,415	-292
Non cash DEL			
Depreciation	80	80	0
Revenue DEL (B+C)	4,203	4,495	-292
Total DEL (A+B+C)	4,228	4,520	-292
Annually Managed Expenditure (AME)			
Movement on LGPS	0	-292	292
Provisions movement	20	20	0
Total AME	20	-272	292
Total Managed Expenditure			
A+B+C+D	4,248	4,248	0
Resources Required	4,248	4,248	0
Depreciation	-80	-80	0
Change in Provisions	-20	-20	0
Utilisation of Provisions - LGPS	0	292	-292
Utilisation of Provisions - legal costs	42	0	42
Other movements in Working Capital	20	20	0
Net Cash Requirement	4,210	4,460	-250