



## **STANDARDS COMMITTEE - 18TH JUNE 2015**

**SUBJECT: CONSIDERATION OF POWERS: PUBLIC SERVICES OMBUDSMAN FOR WALES - REPORT OF NATIONAL ASSEMBLY FOR WALES FINANCE COMMITTEE**

**REPORT BY: INTERIM HEAD OF LEGAL SERVICES AND MONITORING OFFICER**

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### **1. PURPOSE OF REPORT**

- 1.1 To provide members of the Standards Committee with an overview of a report published by the National Assembly for Wales Finance Committee in May 2015 entitled "Consideration of Powers: Public Services Ombudsman for Wales".
- 1.2 The Finance Committee report sets out recommendations to strengthen the role of the Public Services Ombudsman for Wales. It recommends the following areas be extended to the Ombudsman through legislative change: own initiative investigation powers; oral complaints; complaints handling across public services; and jurisdiction over private healthcare providers (in certain circumstances).

### **2. SUMMARY**

- 2.1 To receive an overview of the National Assembly for Wales Finance Committee report which sets out recommendations to strengthen the role of the Public Services Ombudsman for Wales.

### **3. LINKS TO STRATEGY**

- 3.1 The Authority is under a statutory duty to consider reports from the Ombudsman and to give effect to their recommendations. The duty to oversee this is within the terms of reference of this Committee.

### **4. THE REPORT**

Background

- 4.1 The role of the Public Services Ombudsman for Wales was established by the Public Services Ombudsman (Wales) Act 2005, which brought together the previous functions of the Local Government Ombudsman.
- 4.2 The Ombudsman's role is split into two distinct parts:  
  
To consider complaints by members of the public about maladministration or failure by public bodies in the provision of services; and  
  
To consider complaints that local authority members or employees may have breached a relevant code of conduct.

- 4.3 Since 2013 there have been calls to extend the powers of the Ombudsman's role, by the previous Ombudsman Peter Tyndall and the current Ombudsman Nick Bennett. More recently, on 6<sup>th</sup> November 2014 as part of the Finance Committee's consideration of the Ombudsman's Estimate for 2015-16 they heard from the Ombudsman (Nick Bennett) that he believed there was an appetite to update the 2005 Act. The Committee's report recommended the Ombudsman and Welsh Government work together on a timetable for amending this.
- 4.4 In response the Minister for Finance and Government Business noted that as Welsh Government is a public body subject to scrutiny by the Ombudsman it would be more appropriate for the Assembly to lead on any legislative changes given the Assembly's responsibility for appointing and funding the Ombudsman. The Minister said that Welsh Government would feed their views into any considerations of the Ombudsman's powers but those views should be considered alongside those other bodies subject to the Ombudsman's scrutiny.
- 4.5 On 11<sup>th</sup> December 2014 as part of discussion of the Annual Report, the Communities Equality and Local Government Committee (CELG Committee) heard from the Ombudsman who highlighted areas where a difference could be made with a revising Act.
- 4.6 All five changes the Ombudsman proposed had been suggested by his predecessor including:
- Own initiative powers
  - Oral complaints
  - Complaints handling
  - Inclusion of private health within his jurisdiction and
  - Links with the Courts.
- 4.7 The CELG Committee wrote to the Finance Committee suggesting that it may be something that Committee would wish to pursue. As a result on 21<sup>st</sup> January 2015 the Ombudsman attended the Finance Committee to discuss his five proposals and submitted a background paper. Following which the Finance Committee agreed to undertake an Inquiry into the additional powers suggested and other potential areas of change that had been suggested by the previous Ombudsman as set out in paragraph 4.6 above.
- 4.8 In addition the Committee agreed to consider the following:
- Extending the Ombudsman's jurisdiction
  - Whether recommendations of the Ombudsman to public bodies should be binding
  - Protecting the title "Ombudsman"
  - The Ombudsman's role in dealing with Code of Conduct Complaints
  - Any aspects of future planned or proposed public sector reforms that would impact on the role of the Ombudsman and the 2005 Act.
- 4.9 Between 26<sup>th</sup> January 2015 and 20<sup>th</sup> March 2015 the Committee undertook a public consultation to inform its work and also wrote to Welsh Ministers seeking their views on how the Ombudsman's proposals would impact on specific sectors within the Welsh Government's remit. In addition the Committee held oral evidence sessions. Full details of the report can be viewed by following the link set out as a background paper below.
- 4.10 The Committee made eighteen recommendations, which are set out below although the report does not indicate specific timescales for the introduction of a bill into the Assembly.

**Recommendation 1.** The Committee is persuaded by the evidence that there should be a revision to the powers of the Ombudsman. The Committee recommends that a bill is introduced into the Assembly to extend the role of the Ombudsman. (Page 20)

**Recommendation 2.** The Committee recommends that if a bill is introduced, consultation on a draft bill should be undertaken to ensure engagement with public bodies and the general public affected by the legislation and policy intentions. (Page 20)

**Recommendation 3.** The Committee recommends that should a bill be introduced, provisions should be included which provide the Ombudsman with powers to initiate own investigations. (Page 31)

**Recommendation 4.** The Committee recommends that when the Ombudsman exercises this power there must be:

- sufficient evidence to support an investigation; and
- consultation with Commissioners, relevant stakeholders and any other person the Ombudsman considers appropriate. (Page 31)

**Recommendation 5.** The Committee recommends that should a bill be introduced, it should include a provision requiring the Ombudsman and the Auditor General to take account of each other's views before exercising the relevant functions and to co-operate with one another in so far as they consider is necessary for the effective exercise of those functions. (page 31)

**Recommendation 6.** The Committee recommends that should a bill should include provision for joint and collaborative working with the Children's Commissioner (along similar lines to those currently applicable to the Older People's Commissioner for Wales and the Welsh Language Commissioner).

**Recommendation 7.** The Committee recommends that should a bill be introduced, the Ombudsman should have full discretion to decide how complaints can be made and must issue guidance specifying the accepted methods. This should allow the Ombudsman flexibility to react to changing methods of communication in future. (Page 38)

**Recommendation 8.** The Committee recommends there should be a mechanism to ensure that if a complaint is made orally, the complainant is made fully aware that a formal complaint has been instigated and understands the implications of this. (Page 39)

**Recommendation 9.** The Committee recommends should a bill be introduced, the Ombudsman should have a statutory complaints handling role. This complaints role should include provisions to:

- publish a model complaints handling policy for listed authorities;
- require regular consultation with relevant stakeholders;
- require public bodies to collect and analyse data on complaints; and
- ensure a standardised language is used by public bodies when collecting data to ensure comparisons can be made. (Page 47)

**Recommendation 10.** The Committee recommends that any model complaints handling policy should be supported by a training programme and promotional materials for staff in public bodies. (Page 47)

**Recommendation 11.** The Committee recommends that should a bill be introduced, the Ombudsman's jurisdiction should be extended to enable him/her to investigate the whole complaint when a combination of treatment has been received by public and private healthcare providers and when that treatment has been initiated in the NHS. (Page 57)

**Recommendation 12.** The Committee is concerned that patients using services provided in Private Patient Units have no ability to complain to any external body about their treatment. The Committee recommends that the Welsh Government work with the Health Inspectorate Wales to resolve this apparent anomaly and report back to the Committee. (Page 57)

**Recommendation 13.** The Committee recommends that the Welsh Government liaises with the UK Government on the European Directive on Alternative Dispute Resolution and how it will affect the Ombudsman's role. (Page 57)

**Recommendation 14.** The Committee recommends the Welsh Government should respond to the Law Commission's 2011 Report. (Page 68)

**Recommendation 15.** Due to the legal complexities and the issue of the competence of the Assembly, the Committee concludes that changes should not be made in relation to the statutory bar, stay provisions and referral of a point of law at this time. However, the Committee recommends the Welsh Government explore these issues with the UK Government as part of future devolution discussions. (Page 68)

**Recommendation 16.** In relation to jurisdiction the Committee recommends should a bill be introduced, it should encompass all public authorities that provide services within Wales and that the inclusion of non-devolved bodies providing public services in Wales should be explored (including Boards of Conservators in Wales). (Page 71)

**Recommendation 17.** The Committee acknowledges the Ombudsman's commitment to raise the issue of protecting the title 'Ombudsman' with his counterparts when he meets with the Ombudsman Association and the Committee would be interested to hear the outcome of this discussion. The Committee suggests the Ombudsman liaises with the Welsh Government on this issue. (Page 75)

**Recommendation 18.** The Committee recommends the Welsh Government considers mandatory training for elected members as part of their consideration of forthcoming legislation on Local Government reform. (Page 77)

## **5. EQUALITIES IMPLICATIONS**

5.1 This report is for information only. There are no equalities implications arising from this report.

## **6. FINANCIAL IMPLICATIONS**

6.1 This report is for information only. There are no financial implications arising from this report.

## **7. PERSONNEL IMPLICATIONS**

7.1 This report is for information only. There are no personnel implications arising from this report.

## **8. CONSULTATIONS**

8.1 This is an information item only.

## **9. RECOMMENDATIONS**

9.1 Members are asked to note the report.

## **10. REASONS FOR THE RECOMMENDATIONS**

10.1 To make members aware of recommendations to strengthen the role of the Public Services Ombudsman for Wales.

## **11. STATUTORY POWER**

11.1 Public Services Ombudsman (Wales) Act 2005.

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Background Papers:

URL: <http://www.assembly.wales/laid%20documents/cr-ld10200/cr-ld10200-e.pdf>