



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Local Government and Public Services Committee



Report on the Public Services
Ombudsman (Wales) Bill

February 2005

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Conclusions and summary of recommendations

The Local Government and Public Services Committee warmly welcomes the Public Services Ombudsman (Wales) Bill and fully supports the creation of a single ombudsman's post in Wales.

We also welcome the opportunity to scrutinise the Bill with the Welsh Affairs Committee of the House of Commons. We have made various recommendations in this report which are set out below:

General Comments

We recommend that guidance is issued to clarify:

- the handling of cross border issues – it should be made clear whether, in the case of a complaint concerning a cross border service, the complainants home address or the address of where they received the service should determine which Ombudsman they approach;
- the Ombudsman's relationship with the Welsh Language Board and the Partnership Council;
- raising the profile of the Ombudsman. There should be clarification of the role of the Ombudsman and the type of investigations they can carry out; and
- the Ombudsman's role in multi-agency investigations.

Schedule 1 – Public Services Ombudsman for Wales: Appointment etc.

Clause 1

We recommend that the Bill be amended to include a requirement for the Secretary of State to recommend the appointment of the Ombudsman only after consulting the Assembly.

Clause 3

We recommend that the Bill be amended to make the Welsh Ombudsman's term of office 5 years with the ability for them to be re-appointed for a further 5 years.

Schedule 3 – Listed Authorities

We recommend that the Bill be amended to include the Board of Community Health Councils as a listed authority in Schedule 3.

Schedule 6 – Consequential amendments

We recommend that the Bill be amended to restore the ability of the English Local Government Ombudsman to transfer cases to the Public Services Ombudsman for Wales.

1. Introduction

1.1 Publication of the bill

The *Public Services Ombudsman (Wales) Bill* was published on 24 November 2004 following the Queen's Speech setting out the UK Government's legislative programme for the new parliamentary session. It was introduced into the House of Lords on the same day and received its Second Reading on 16 December 2004.

The Bill was remitted to the National Assembly for Wales' Local Government and Public Services Committee for scrutiny by the Welsh Assembly on 1 December 2004¹.

1.2 Joint working arrangements

It is now standard practice for Departmental Select Committees at Westminster to examine and report on draft legislation. They do this by seeking the views of stakeholders through oral and written evidence.

The Welsh Affairs Committee recently recommended that the House of Commons should grant powers for Select Committees to hold joint formal meetings with committees of the National Assembly for Wales. In doing so it was particularly keen to avoid duplication in pre-legislative scrutiny of draft bills relating to Wales by enabling committees of both the House of Commons and the National Assembly for Wales to conduct such scrutiny jointly.

The House of Commons formally passed the required amendment to its Standing Orders on 7 June 2004 to allow joint working and a similar motion to amend the Assembly's Standing Orders was passed by Plenary on 15 June 2004.

The Welsh Affairs Committee and the Assembly's Local Government and Public Services Committee held joint sessions on 13 January 2005 in Cardiff and 17 January 2005 in London to receive oral evidence on the Public Services Ombudsman (Wales) Bill².

1.3 Background

A recommendation for streamlining ombudsman services in Wales was made by the National Assembly Advisory Group in its Report in 1998. In November 2002 the Welsh Assembly Government published a consultation paper, *Ombudsman's Services in Wales: Time for Change*, on a proposal to bring together the separate Offices of Welsh Administration Ombudsman, Health Service Commission Wales and the Commission for Local Administration in Wales to create a unified Ombudsman's jurisdiction for Wales, led by a single individual. A further consultation paper, *A Public Services Ombudsman for*

¹ National Assembly for Wales Record of Proceedings December 12004, p97.

² A list of those who gave oral evidence is at Annex 1.

Wales, Powers and Jurisdiction, was published in October 2003 was aimed at shaping a precise remit of the new office.

In the March 2004 annual plenary debate in the National Assembly for Wales on bids for primary legislation, a bill creating a Public Services Ombudsman for Wales was approved for proposal and the First Minister undertook to request that the Secretary of State for Wales make representations for its inclusion in the Queen's Speech.

Adam Peat, formerly Director of the Local Government and Culture Department in the Welsh Assembly Government, had been appointed Commissioner for Local Administration in Wales on 1 October 2003 and Health Service Commissioner for Wales on 4 November 2003 and designated as the non-statutory Public Services Ombudsman for Wales by the First Minister and the Secretary of State for Wales, the Rt. Hon. Peter Hain MP.

The intention to appoint Adam Peat Welsh Administration Ombudsman was also announced but he could not take up the post in 2003 because statute precluded one person from holding all three offices simultaneously. However, the *Regulatory Reform (Local Commissioner for Wales) Order 2004: Ombudsman Appointments in Wales* made by Parliament and which came into force on 24 September 2004, removed that restriction and Mr Peat was appointed Welsh Administration Ombudsman on 4 November 2004.

The House of Commons Regulatory and Reform Committee considered the *Regulatory Reform (Local Commissioner for Wales) Order 2004: Ombudsman Appointments in Wales in July 2004*. The Committee was of the view that a proper 'statutory footing' was needed and recommended that 'the Government should include a Public Services Ombudsman (Wales) Bill in its legislative programme for the 2004-05 Session.'

The *Scottish Public Services Ombudsman Act 2002* created a similar post in Scotland, combining the roles of the Scottish Parliamentary and Health Service Ombudsman, the Local Government Ombudsman for Scotland and the Housing Association Ombudsman for Scotland. Professor Alice Brown has been the Public Services Ombudsman for Scotland since September 2002.

2. The Public Services Ombudsman (Wales) Bill

The aim of the Bill is to create a single office of Public Services Ombudsman for Wales to replace the current ombudsmen for Welsh Administration and Social Housing and the office of Health Service Commissioner for Wales. The UK Parliamentary Ombudsman will retain responsibility for investigating non-devolved functions such as Social Security and Pensions, Income Tax and Immigration.

2.1 General Comments

In their written evidence to us, Don Touhig, the Parliamentary Under Secretary for State for Wales and Sue Essex, the Minister for Finance, Local Government and Public Services stated that the Bill:

Will provide a modern flexible and accessible service for members of the public who wish to complain about a wide range of public service providers operating in relation to Wales.

All the organisations and individuals who submitted evidence to us were fully supportive of the Bill's aims and welcomed the establishment of a single Public Services Ombudsman for Wales.

We fully support and warmly welcome the Bill and the establishment of the single office of Public Services Ombudsman for Wales. We received little evidence to support any major amendments to the Bill. We do have a few minor concerns, which are outlined below but are in full agreement that the vast majority of the Bill has been thoroughly and well drafted.

A concern raised by several witnesses and endorsed by the Committee is the lack of clarity in some clauses of the Bill. While there is no perceived need for amendments to the Bill to improve its clarity, several witnesses expressed the hope that any guidance produced on the Bill would clarify areas such as:

- The handling of cross border issues. It is not clear which Ombudsman NHS patients who live and are treated on different sides of the border should approach;
- The Ombudsman's relationship with the Welsh Language Board and the Partnership Council;
- How the profile of the Ombudsman can be raised. It is not always clear to people who use the service what the role of the Ombudsman is and the limitations to their powers of investigation;
- The Ombudsman's role in multi-agency investigations.

We recommend that guidance is issued to clarify:

- **the handling of cross border issues – it should be made clear whether, in the case of a complaint concerning a cross border service, the complainants home address or the address of where they received the service should determine which Ombudsman they approach;**
- **the Ombudsman’s relationship with the Welsh Language Board and the Partnership Council;**
- **raising the profile of the Ombudsman. There should be clarification of the role of the Ombudsman and the type of investigations they can carry out; and**
- **the Ombudsman’s role in multi-agency investigations.**

2.2 Comments about specific clauses in the Bill

2.2.1 Schedule 1 – Public Services Ombudsman for Wales: Appointment etc.

Clause 1

Clause 1 of Schedule 1 of the Bill refers to the appointment of the Ombudsman. There was support from witnesses for the Ombudsman’s post to be a Crown appointment. The Welsh Language Board was particularly supportive as it enables them to ask the Ombudsman’s office to produce a Welsh Language Scheme. We support the Ombudsman’s post being a Crown appointment.

We note, however, that although the Secretary of State can recommend that a person be relieved of the office only after consulting the Assembly, (Schedule 1, Clause 3(5)) there is no such provision for the Assembly to be consulted on the Ombudsman’s appointment.

Although, in their oral evidence to us, the Parliamentary Under Secretary for State for Wales and the Minister for Finance, Local Government and Public Services stated that, in practice, there would be consultation with the Assembly before the appointment is recommended, we feel that this requirement needs to be made explicit in the Bill.

We recommend that the Bill be amended to include a requirement for the Secretary of State to recommend the appointment of the Ombudsman only after consulting the Assembly.

Clause 3

Clause 3 of Schedule 1 states that the term of office of the Ombudsman is 10 years. In his evidence to the Committee, the Scottish Deputy Ombudsman stated that the Scottish Ombudsman's term of office was for five years with the ability to be re-appointed for a further five years. He said, however, that it was expected that the term would *de facto* be the same as the proposals in the Bill as the Scottish Ombudsman was expected to be re-appointed at the end of their five year term.

In her evidence to the Committee, the Minister for Finance, Local Government and Public Services stated that the 10 year term of office would create stability in the post and allow for a long term perspective to be taken.

We consider, however, that a review of the post after 5 years would allow for more accountability and transparency in assessing the effectiveness of the Ombudsman.

We recommend that the Bill be amended to make the Welsh Ombudsman's term of office 5 years with the ability for them to be re-appointed for a further 5 years.

2.2.2 Schedule 3 - Listed Authorities

Schedule 3 of the Bill lists the authorities that the Ombudsman may investigate. In their evidence to us, the Board of Community Health Councils (BCHC) requested that, as a body established under the *Health (Wales) Act 2003*, they are included as a listed authority.

We recommend that the Bill be amended to include the Board of Community Health Councils as a listed authority in Schedule 3.

2.2.3 Schedule 6 – Consequential Amendments

Clause 8(8) of Schedule 6, amends Section 23(10) of the *Local Government Act 1974* which enables the Ombudsman in England to transfer cases to the Ombudsman in Wales. Under this schedule of the Bill, this right is removed.

Several of those giving evidence have highlighted this change and stated that they are not in favour of it. The UK Parliamentary Ombudsman and Health Ombudsman for England agreed in her evidence to us that this section of the Bill needed to be looked at again. The Commission for Local Administration in England states in their evidence:

Under these provisions (*in the Local Government Act 1974*) there have been well established arrangements for the English Local Government Ombudsman to transfer individual cases for investigation to the Welsh Local Government Ombudsman.....The ability of the ombudsman in the other country to investigate ...enhanced the public perception of the independence of the ombudsman institutions in both countries.

They argued strongly for the transfer arrangements to be restored.

We see no reason why the ability to transfer cases from England to Wales should not exist.

We recommend that the Bill be amended to restore the ability of the English Local Government Ombudsman to transfer cases to the Public Services Ombudsman for Wales.

Annex 1

Oral evidence

National Assembly for Wales – 13 January 2005

Ms Vivienne Sugar, Chair - Welsh Consumer Council

Mr Peter Johns, Director and Mr Tommy Morgan, Chair - Board of Community Health Councils in Wales

Mr Steve Thomas, Director - Welsh Local Government Association

House of Commons (Portculis House) – 17 January 2005

Mr Adam Peat - Local Government, Health Service and Welsh Administration Ombudsman and Mr Eric Drake - Deputy Scottish Public Services Ombudsman

Sue Essex AM - Minister for Finance, Local Government and Public Services, Don Touhig MP - Parliamentary Under Secretary of State for Wales and Ann Abraham - UK Parliamentary Ombudsman and Health Service Ombudsman for England

The full transcript of the oral evidence sessions can be found in the Welsh Affairs Committee's report on the scrutiny of the Public Services Ombudsman (Wales) Bill.

The report can be found on the Committee's website at:

http://www.parliament.uk/parliamentary_committees/welsh_affairs_committee.cfm

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e-mail: book.orders@tso.co.uk

online ordering: www.tso.co.uk/bookshop

Annex 2

Written evidence

Board of Community Health Councils in Wales - Mr Peter Johns, Director

British and Irish Ombudsman Association – Mr Gordon Adams, Secretary

Mr Mal Bowen

Citizens Advice Cymru

Commission for Local Administration in England – Mr Tony Redmond,
Chairman

Conwy County Council – Standards Committee

Mr Chris Drew, Member of Conwy County Council Standards Committee

Sue Essex AM, Minister for Finance, Local Government and Public Services
and Don Touhig, Parliamentary Under Secretary of State for Wales

Health Professions Wales – Mr Mick Fisher, Professional Adviser

Mr John Hooson, Member of Conwy County Council Standards Committee

Local Government, Health Service and Welsh Administration Ombudsman -
Mr Adam Peat

Newport City Council - Mr J G Ashurst, Head of Law and Standards

Scottish Public Services Ombudsman

Dr A H Stamp

UK Parliamentary Ombudsman and Health Service Ombudsman for England
- Ms Ann Abraham

Welsh Consumer Council – Ms Vivienne Sugar, Chair

Welsh Language Board – Mr Prys Davies, Strategic Operations Director

Welsh Local Government Association – Mr Steve Thomas, Director

The full text of the written evidence can be found in the Welsh Affairs
Committee's report on the scrutiny of the Public Services Ombudsman
(Wales) Bill.