

Our ref: NB/SMH

Ask for: Susan Hudson

Your ref:

 01656 641153

Date: 26 May 2015

 susan.hudson@ombudsman-wales.org.uk

Ms Claire McCanny
Senior Assistant Assembly Clerk
NIPSO Ad Hoc Committee
Northern Ireland Assembly
Room 276
Parliament Buildings
Stormont Estate
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Dear Ms McCanny

Northern Ireland Ombudsperson Bill

I welcome the opportunity to be able to present evidence on the Northern Ireland Ombudsperson Bill (attached).

If you or your colleagues would like to discuss any of the points raised, I would be grateful if you could in the first instance contact Susan Hudson (Policy & Communications Manager) on 01656 641153.

Yours sincerely



Nick Bennett
Ombudsman

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**Public Services Ombudsman for Wales's response to
the Northern Ireland Assembly's NIPSO Ad Hoc Committee's
call for evidence on the
Northern Ireland Public Services Ombudsperson Bill**

1. Introduction

- 1.1 As Public Services Ombudsman for Wales (PSOW), I investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction. I also consider complaints that members of local authorities in Wales have breached their Code of Conduct.
- 1.2 Peter Tyndall, my predecessor as Public Services Ombudsman for Wales, has previously provided evidence to the Northern Ireland Assembly on proposals for revised/new legislation for the office of the Northern Ireland Ombudsman. In turn, as the current Public Services Ombudsman for Wales, I now welcome the opportunity to provide evidence on the Bill issued by the Northern Ireland Assembly. I offer these comments against the background of recent developments in Wales, where during this past year I have been seeking the modernisation of the current Public Service Ombudsman for Wales Act. I hope that the Committee will find my comments below useful to its considerations.

2. Power to investigate on own initiative

- 2.1 I consider the ability for an Ombudsman to be able to undertake own initiative investigations to be an important one and this is a power that I am currently seeking for the Public Services Ombudsman for Wales. There are clearly great benefits from being able to undertake own initiative investigations, particularly in respect of those service areas where people in vulnerable circumstances may be reluctant to make a complaint (perhaps because of fears of reprisals from the service provider).
- 2.2 My research into own initiative investigations conducted elsewhere (being common in European and Commonwealth countries) has shown that these can be very effective. This has convinced me that it would be desirable for ombudsmen within the countries of the United Kingdom to have similar powers.

2.3 I have recognised that it would of course only be right for the Ombudsman to consider whether it would be more efficient or effective to either co-operate with, or refer a matter to, another relevant public body before undertaking a large scale own initiative investigation. Nevertheless, there are a number of scenarios in which own initiative powers could be applied. Below is an extract from a paper I submitted to the Welsh Assembly's Committee, setting out a number of examples in relation to the Welsh context:

- “(a) It would enable the Ombudsman to extend the investigation of a complaint made to him where during the course of an investigation issues have come to light where it is desirable, to extend the investigation to look into the actions of another body within jurisdiction. For example, an investigation into a health board may bring to light questions about the actions of a General Practitioner (GP). It is currently unwieldy to have to ask a complainant then to make another complaint about the GP.
- (b) An issue may be brought to light where systemic failings have been identified whereby the Ombudsman may have concerns that those same systemic failings may exist in other bodies within that sector of the public service. Currently, the Ombudsman has to rely on publication of his recommendations under Section 16 of the PSOW Act and the ‘voluntary self-examination’ by public bodies as regards ensuring that the same system failings do not exist in their own authority. This new power would enable the Ombudsman to proactively look to see if this is the case or not.
- (c) The Ombudsman receives an anonymous complaint, providing evidence of likely maladministration/service failure on behalf of an authority. Under this new power the Ombudsman would be able have discretion to pursue the complaint, where at present he currently cannot.
- (d) The Ombudsman may be made aware of concerns about service delivery across the whole, or part, of a sector of the public service in Wales, but that he was not receiving direct complaints on this. The reason behind this could be because the recipients of the service were vulnerable people, who may be wary of making a complaint due to being worried about possible repercussions for them of doing so as regards the service provider. There would need to be a sound basis and rationale set out for undertaking any wide ranging own initiative investigation of this type. Reputational risk is a fundamental factor in the mind of any ombudsman; no ombudsman would want to put that reputation at risk by pursuing such a high profile investigation without firm evidence that there were matters of concern that needed investigating. “ [PSOW paper to Welsh Assembly Finance Committee, 25 March 2015]

2.4 I am pleased that the report of the National Assembly for Wales's Finance Committee at the end of its inquiry has recommended that the Public Services Ombudsman for Wales should have such a power.¹ Naturally, I am also pleased to see the Northern Ireland Assembly's intentions in this regard.

¹ National Assembly for Wales Finance Committee – Consideration of Powers of the Public Services Ombudsman for Wales – May 2015 <http://www.assembly.wales/laid documents/cr-ld10200/cr-ld10200-e.pdf>

3. Complaints Standards Authority

- 3.1 Another area where I have been seeking additional powers for the Public Service Ombudsman for Wales is a role similar to that of the Complaints Standards Authority as currently undertaken by the Scottish Public Services Ombudsman (SPSO). I see great merit in the SPSO's statutory role as regards establishing common complaints handling practices for the various public service sectors in Scotland, with the ability to improve complaints handling to ensure that complaints are handled more effectively by public service providers.
- 3.2 In particular, I believe that the knowledge that can be gained from a common data gathering approach can be particularly helpful in comparing complaint handling performance amongst similar types of organisations, but beyond this it can also help highlight areas of concern in relation to public service delivery.
- 3.3 I am pleased to say that the Welsh Assembly's Finance Committee has also responded positively to this proposal in its report (cited above). The Northern Ireland Assembly may wish to give further consideration as to whether providing the Northern Ireland Ombudsman with a similar power would be beneficial with a view to improving complaints handling within the province.

4. Protecting the title of 'Ombudsman'

- 4.1 Another issue currently being considered in Wales is the position on protecting the title of 'Ombudsman'. This has been a matter in which members of the National Assembly for Wales's Finance Committee have shown interest and consider an important issue. As their report (cited above) states:

“individuals should have confidence in a person appointed to investigate their case and be assured that it will be dealt with fairly and impartially”.
(Welsh Assembly Finance Committee Report, May 2015, p75)

- 4.2 However, the issue of the Welsh Assembly's legislative competence in this matter was raised and it has been suggested that this might be something that needed consideration at a UK level. The Northern Ireland Assembly may also wish to give consideration to supporting the development of an approach towards protecting the title of 'Ombudsman'.
- 4.3 Following on from the above point, concerns have been expressed to me that the term "Ombudsman" is gender specific. In assessing this risk I am reassured that the title 'ombudsman' is becoming more recognised and trusted, not least by a significant cohort of female title holders - including Emily O Reilly who is current European Ombudsman and previously Irish Ombudsman. I would therefore encourage the Assembly to ensure that its legislation remains within the European mainstream and that the title of the proposed body is amended to 'the Northern Ireland Public Services Ombudsman'.

I hope that the Northern Ireland Assembly's Committee will find the above comments of assistance during its consideration of the NIPSO Bill.

Nick Bennett
Public Services Ombudsman for Wales
May 2015
