



County Hall
Rhadyr
Usk
NP15 1GA

27th February 2015

Notice of meeting:

Standards Committee
Monday 9th March 2015 at 10.30am
Council Chamber, County Hall, Rhadyr, Usk, NP15 1GA

Agenda

Item No	Item
1.	Apologies for absence.
2.	Declarations of Interest
3.	To confirm and sign the minutes of the meeting held on 1 st September 2014 (copy attached).
4.	Reports of the Monitoring Officer (copies attached): <ul style="list-style-type: none">i) Customer Feedback and FOIA Statistics – April 2013 to March 2014ii) Welsh Government White Paper – Reforming Local Government: Power to Local Peopleiii) Monitoring Officer's Update

Paul Matthews

Chief Executive

Standards Committee Membership

Independent Representatives: Mrs P Reeves, Mr T.Auld, Mr.G.Powell, Mr. G. Preece, Mr. M. Sutton

Councillors: County Councillor D.J.Evans
County Councillor R. P. Jordan
County Councillor D.L.Edwards

Community Representative: Mrs I. Cameron

Sustainable and Resilient Communities

Outcomes we are working towards

Nobody Is Left Behind

- Older people are able to live their good life
- People have access to appropriate and affordable housing
- People have good access and mobility

People Are Confident, Capable and Involved

- People's lives are not affected by alcohol and drug misuse
- Families are supported
- People feel safe

Our County Thrives

- Business and enterprise
- People have access to practical and flexible learning
- People protect and enhance the environment

Our priorities

- Schools
- Protection of vulnerable people
- Supporting Business and Job Creation

Our Values

- **Openness:** we aspire to be open and honest to develop trusting relationships.
- **Fairness:** we aspire to provide fair choice, opportunities and experiences and become an organisation built on mutual respect.
- **Flexibility:** we aspire to be flexible in our thinking and action to become an effective and efficient organisation.
- **Teamwork:** we aspire to work together to share our successes and failures by building on our strengths and supporting one another to achieve our goals.

MONMOUTHSHIRE COUNTY COUNCIL

**Minutes of a meeting of the Standards Committee held at County Hall, Usk,
on Monday 1st September 2014 at 10.00 a.m.**

PRESENT:

Mrs P Reeves (Chair)
County Councillors D.L. Edwards, D.J. Evans and R.P.Jordan

INDEPENDENT REPRESENTATIVES:

Mr T. Auld and Mr G. Preece

COMMUNITY REPRESENTATIVE:

Mrs I Cameron

OFFICERS IN ATTENDANCE:

Mr R. Tranter – Head of Legal Services
Mr R. Williams - Democratic Services Officer.
Mrs N. Perry – Democratic Services Officer

1 ELECTION OF CHAIRMAN

We resolved that Mrs P. Reeves be elected as Chairman of the Committee.

2 APPOINTMENT OF VICE CHAIRMAN

We resolved that Mr T. Auld be appointed as Vice Chairman of the Committee.

3 APOLOGIES FOR ABSENCE

We received apologies from Mr. G. Powell and Mr. M. Sutton.

4 DECLARATIONS OF INTEREST

There were no declarations of interest.

5 MINUTES

We resolved that the minutes of the meeting of the Committee held on 7th March 2014 be confirmed as correct record, and signed by the Chairman, subject to the following amendments:

- Present: County Councillor R.P. Jordan and Mr. T Auld
- Apologies: Delete County Councillor R.P. Jordan and Mr. T. Auld.

**Minutes of the Standards Committee
Monday 1st September 2014 at 10.00 a.m.**

6i GUIDANCE TO MEMBERS SERVING ON OTHER BODIES

We received a report from the Head of Legal Services on behalf of the Monitoring Officer regarding guidance for Members serving on other bodies.

The report stated that each year the County Council makes over 100 appointments to outside bodies. The Council's Code of Conduct for members requires that a member must observe the Council's Code of Conduct whenever they are acting as a representative of the Authority.

The Code of Conduct requires that:

- Where you are elected, appointed or nominated by your authority to serve
 - on another relevant authority, or any other body, which includes a police authority or Local Health Board you must, when acting for that other authority or body, comply with the code of conduct of that other authority or body; or
 - on any other body which does not have a code relating to the conduct of its members, you must, when acting for that other body, comply with this code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

The officer advised that at any time of potential conflict, Members should contact the Monitoring Officer.

As no formal guidance had been previously been issued to members, the Monitoring Officer has asked that the committee consider and approve the report, and that it should be issued to all Members.

A query was raised as to how this guidance would be disseminated to other members of the council. It was confirmed that this would be distributed electronically should the committee approve the report. It was also agreed that it would be useful to send the report to town / community clerks.

A Member raised a concern that there are no reports back to Council regarding the issues raised at the meetings of outside bodies. It was agreed that representatives on an outside body that the council has appointed, should report back to Council and thought would be given to how best to proceed with this.

A recommendation was put forward that an electronic council library be created where all Members can access the information.

The Chairman agreed that a recommendation be put in place so that Members report back from their respective meetings. The Head of Legal Services agreed to discuss this with the Head of Democratic Services.

We resolved to approve the report.

**Minutes of the Standards Committee
Monday 1st September 2014 at 10.00 a.m.**

6ii OMBUDSMAN ANNUAL REPORT AND LETTER 2013/14

We received an annual report from the Ombudsman covering both maladministration and conduct complaints across Wales, and an annual letter regarding performance.

The Annual letter to the County Council showed that there had been an overall increase in maladministration complaints across Wales but a decrease of 22% in Code of Conduct complaints, attributable, in part to new local resolution procedures.

The penultimate paragraph of the letter commented on Monmouthshire's performance and included a note of a satisfactory response rate to requests for information and a significant reduction in the number of complaints received in respect of Planning and Building Control, compared to the previous year.

Committee was informed that a new permanent Ombudsman has now been appointed.

A Member queried that the one complaint shown on the report for Monmouthshire County Council, was known to be a representative of his ward, but the member was unaware of the detail. We were informed that the report must remain anonymous and that the Ombudsman's investigations must remain confidential. There may, however, be scope to include as exempt items.

We resolved to receive the report.

6iii RECENT CASES AND DECISIONS

We received a report issued by The Public Services Ombudsman for Wales which provided details of casebooks, demonstrating how the Code and its enforcement operate across Wales both at a local (standards committee) and national (adjudication panel) level.

Members were asked to note that one of the cases dealt with by the committee is mentioned on page 11 of the casebook.

We were referred to the recent High Court decision in the case of a Flintshire Councillor, which highlighted a number of issues relevant to all Standards Committees in Wales. Important principles to be taken from this case included that a civil standard of proof should be adopted.

It was pointed out that the casebook was a welcome report. The casebooks would provide helpful information for Monitoring Officers and Standards Committees across Wales, and should help to provide consistency in decision making.

A query was raised as to the rate the Councils indemnity insurance was capped. We were informed that it is set at £30,000. It was stressed that if a member was found to have breached the Code of Conduct, he or she would be liable for costs regardless of the indemnity.

**Minutes of the Standards Committee
Monday 1st September 2014 at 10.00 a.m.**

An update was requested on the Code of Conduct, section 10, 2b. It had previously been discussed that a new code would be issued. It was reported that it was anticipated that this paragraph would be removed but this has not been approved by the Welsh Government yet. Going forward the understanding would be that this relates to Cabinet only.

We resolved to receive the report.

7 DATE AND TIME OF NEXT MEETING.

Monday 8th December at 10.30a.m.

The meeting ended at 10.50 a.m.



SUBJECT: Customer Feedback and FOIA Statistics – April 2013 to March 2014

MEETING: Standards Committee

DATE: 9th March 2015

DIVISION/WARDS AFFECTED: All

1. **PURPOSE:** To receive the latest annual report of the council on customer feedback and Freedom of Information responses from April 2013 to March 2014.

2. **RECOMMENDATIONS:** To note the contents of the report.

3. **KEY ISSUES:**

3.1 The council introduced its Whole Authority Complaints and Compliments policy and procedure in 2011. It follows the model that the Public Services Ombudsman for Wales asked each local authority to adopt.

3.2 The procedure has two stages; the informal stage and the formal stage. The informal stage aims to resolve the complaint locally wherever possible by means of discussion and problem solving between the officer and the complainant. If it is not possible to resolve the concern, the matter is escalated to the formal investigation stage.

3.3 Where initial discussions during the informal stage have not achieved a resolution, complainants have the right to make a formal complaint. Investigations are undertaken by an officer independent of the section or department complained against. The procedure sets timescales for concluding the investigation. The complainant receives a full response detailing findings, conclusions and any recommendations made. This is the end of the internal complaints process.

3.4 Complainants can contact the Public Services Ombudsman for Wales if they still remain dissatisfied. The Ombudsman provides an external independent service to consider complaints against the provision all local authority services. The Ombudsman will expect the complainant to exhaust the council's internal complaints process before considering a complaint. The Ombudsman is concerned with maladministration and looks to see whether people have been treated unfairly or inconsiderately, or have received a bad service through some fault on the part of the council. If a complaint is upheld, the Ombudsman will recommend appropriate address to put the person who has suffered injustice back to the position they would have been in if the maladministration had not occurred.

3.5 The attached annual report summarises the number of complaints, comments and compliments received and dealt with during 2013-2014. The report also summarises the number of Freedom of Information Act (FOIA) requests received by

the Council during this period. A range of compliments about the whole of the Council was received and these are recorded and staff informed of the compliments received about them.

3.6 The annual report was presented to the January meeting of the council's Audit Committee.

4. REASONS: One of the roles and functions of the Standards Committee is to ensure that the council's complaints procedures are operating effectively and the council publishes an annual report on the operation of the system.

5. RESOURCE IMPLICATIONS: None

6. SUSTAINABLE DEVELOPMENT IMPLICATIONS: None

7. CONSULTEES: None

8. BACKGROUND PAPERS: None

9, AUTHOR:

Robert Tranter, Temporary Monitoring Officer.

9. CONTACT DETAILS:

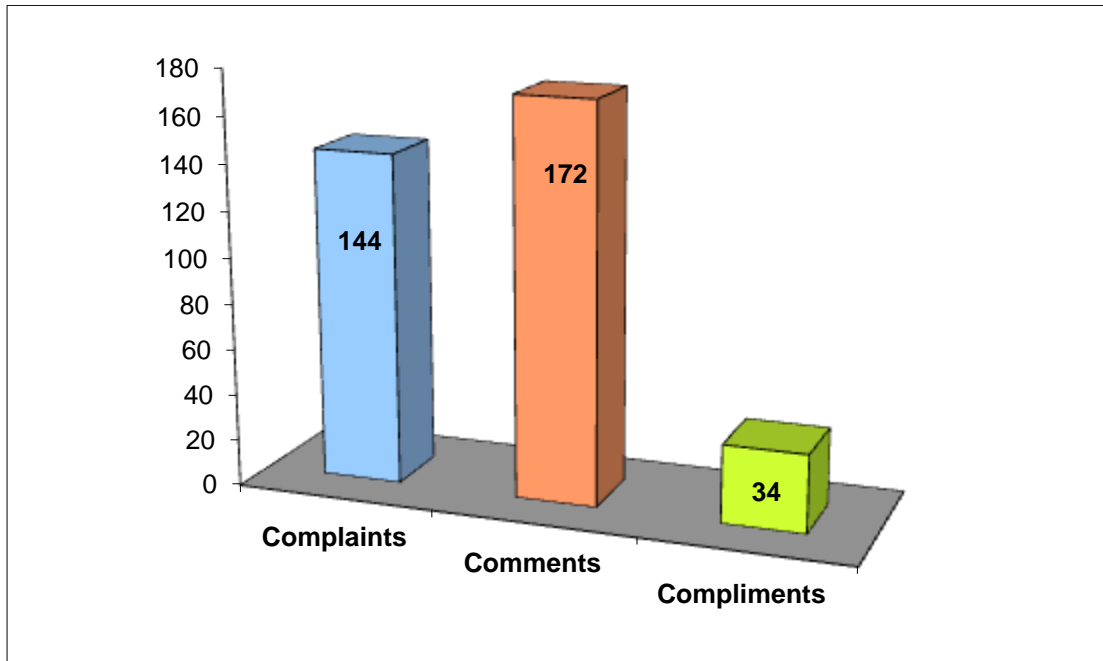
Tel: 01633 644064

E-mail: roberttranter@monmouthshire.gov.uk



Whole Authority Customer Feedback and FOIA Statistics

April 2013 – March 2014



Complaints

- 144 Complaints

Stage 1 - Informal Resolution

- 134 Complaints

Stage 2 – Formal Investigation

- 16 Complaints started
 - 1 complaint escalated from Stage 1 (2012-2013)
 - 1 complaint proceeded straight to stage 2 (2012-2013)
 - 5 escalated to stage 2
 - 9 proceeded straight to Stage 2
 - 13 proceeded to the Public Services Ombudsman Wales but not all these were formally investigated.

Most common aspects of services complained about:

- Highways and Waste operations
- Waste Strategy and Resources
- Development and Building Control

Complaints broken down into teams and categories:

Informal received Year to Date by Department, Section and Category	Total	Access to Service	Communication Issue	Data Protection	Decision Delay	Discrimination	Member Conduct	Quality of Service	Quality of Works	Reduction in Service	Result of Process	Service Delayed	Service not provided	Service Removed	Staff Conduct	Timescales	Compliments	Comments
Children & Young People	15	1	2					7			2				3		0	4
Adult Education	1														1			
Education Welfare	1							1										1
External																		
Governor Support																		
Outdoor Education																		
Schools	2	1						1										3
School Access	3							1			1				1			
School Finance	3							2							1			
School Improvement																		
Special Educational Needs	4		2					1			1							
Youth Service	1							1										
No Specific Team																		
Regeneration & Culture	98	2	8					56	1		12		2		17		24	150
Community Protection	1										1							1
Community Infrastructure																		2
Countryside	4		1					2							1	4		
Development & Building Control	20		1					6			8				5	2		3
Development Plans	2										2							
Economy & Enterprise																		
Estates & Sustainability																		
External	3							1							2			6
Facilities Management	4							3							1			4
Highways & Waste Operations	20		3					15	1				1				8	20

Housing & Regeneration	6	1	1		1		3		2
Infrastructure & Projects	2				2				1
Leisure	4				2	1	1	3	2
Libraries, Museums & Art	1						1	3	5
Licensing									3
No particular section	3				3				
Procurement									
Property Business Services	1				1				1
SWTRA	1				1				1
Trading Standards									2
Traffic & Network	4				3	1		1	8
Transport (PTU & Car Parks)	6		2		3		1	1	3
Waste Strategy & Resources	16	1			13		2	3	86
Deputy Chief Executive	15		4	1	6		4	10	10
Area Services & Engagement	1				1				
Corporate Training									
Customer Relations	1				1			2	
Customer access, web team	1		1					5	8
Elections	1				1				
Emergency Planning								1	
External	1						1		
Health & safety									
Human Resources	1				1				
Job Evaluation									
Media, social media									1
Occupational Health									
Office Services									
One Stop Shops	7		2		2		3		
Performance Frameworks								1	1

Policy & Partnerships											
Reception, Mail & Courier	1			1						1	
Scrutiny											
Telephony	1		1								
Chief Executive	16	2	3	1	7	1	2	0	8		
Accountancy											1
Communications											
Democratic Services											
Exchequer											
Finance											
Insurance											
Internal Audit											
Legal											
Member & Exec Support											
Payroll											
Registrars											
Revenue & Benefits	13		3	1	6			1	2		2
Systems	3	2			1						5
Transition Management											
No Specific Team											
Total	144	5	17	2	76	1	14	3	26	34	172

Note: **Social Services** complaints are dealt with separately under the Social Services complaints procedure. **56** complaints were received; **64** comments and **78** compliments were made about the service.

Comments

- 172 Comments

Total	172
Chief Executive	8
Accountancy	1
Revenue and Benefits	2
Systems	5
Children & Young People	3
Schools	3
Deputy Chief Executive	10
Customer Access, Web Team	8
Media, Social Media	1
Performance Frameworks	1
Regeneration & Culture	144
Community Protection	1
Community Infrastructure	2
Development & Building Control	3
Facilities Management	4
Highways & Waste Operations	20
Housing and Regeneration	2
Infrastructure and Projects	1
Leisure	2
Libraries, Museums & Art	5
Licensing	3
Property Business Services	1
SWTRA	1
Trading Standards	2
Traffic & Network	8
Transport	3
Waste Strategy & Resources	86
External	7

A selection of comments received concerned:

- Proposal to limit all households regardless of size to the same amount of refuse collected. Difficulties in picking up bags / bags out of stock / charges for bags / quality of bags and non-receipt of bags paid for / lack of nappy bags / non collection of waste / rodent infestation / full dog foul bins.
- Parking issues.
- Dissatisfaction with automated payment system re Council tax
- Lack and quality of hedge / grass cutting / cutting of wild flowers
- Loud music playing late at night at events
- Potholes / lack of gritting

Compliments

- 34 Compliments

Total	34
Deputy Chief Executive	10
Customer Access, Web Team	5
Customer Relations	2
Emergency Planning	1
Performance Frameworks	1
Reception, Mail & Courier	1
Regeneration & Culture	24
Countryside	4
Development & Building Control	2
Highways & Waste Operations	8
Leisure	3
Libraries, Museums & Art	2
Traffic & Network	1
Transport	1
Waste Strategy & Resources	3

Types of compliments received:

- Event at Caldicot Castle
- Updates on bad weather conditions
- Speedy response to Highway repairs
- Recycling centre / praise for binmen / praise for dealing with flytipping
- Praise for helpfulness of individual staff

Response Timescales

Our policy for responding to complaints at stage 1 is 10 working days and for stage 2 formal investigation is 20 working days plus a further 10 working days for Heads of Service to respond.

<u>Timescale</u>	<u>Stage 1</u>	<u>Stage 2</u>
Up to 10 working days	98	2
11 – 25 working days	18	3
25+ working days	18	11
Total	134	16

Public Services Ombudsman for Wales

13 complainants contacted the PSOW (but not all these were formally investigated by the PSOW). The PSOW partially upheld two complaints they investigated.

Requests for service

These are recorded and acted upon.

Total	97
Chief Executive	4
Revenue and Benefits	4
Children & Young People	1
School Access	1
Deputy Chief Executive	7
Customer Access, Web Team	4
Elections	2
One Stop Shops	1
Regeneration & Culture	77
Community Infrastructure	1
Community Protection	3
Countryside	2
Development & Building Control	2
Estates & Sustainability	3
Facilities Management	3
Highways & Waste Operations	27
Housing & Regeneration	1
Infrastructure & Projects	2
Libraries, Museums & Art	1
Traffic & Network	3
Waste Strategy & Resources	29
External	8

Analysis of Complaints / Comments

Year	Stage 1 complaints	Stage 2 complaints	Comments	Compliments
2013-14	134	16	172	34
2012-13	106	18	83	50
2011-12	82	25	45	37
2010-11	72	12	11	21
2009-10	102	3	27	28

Service improvements

As with previous years, complaints are resolved on an individual basis. Most formal investigation reports make recommendations for improvements to processes. These are followed up to ensure the recommendations are addressed.

Here are some examples where practices / processes / procedures have changed, improved or amended as a result of people making complaints.

Communication Issues

- Apologies given for lack of communication / more direct telephone numbers given / improved voicemail facilities established when lines busy.

Council Tax

- Upgraded automated payment system.

Potholes

- Temporary measures taken to infill large potholes

Waste

- Non collection – crew asked to be more vigilant for future collections
- Apologies given for delays in non-collections and inconvenience caused
- More Bags made available
- Greater allocation of clear bags given to households with 5 or more occupants, or those struggling to deal with their waste and recycle - subject to conditions.
- Procedure introduced at the recycling centres that accepts the red/purple bags on occasions when a kerbside collection has been missed, or at times of holidays etc. where residents need to dispose of their bags prior to going away.
- Heavy household waste that rip bags easily can now be placed into a strong black bag and place this bag into a grey waste bag

Cardboard

- More advice given explaining process of collecting cardboard

Planning

- More detailed explanations given on planning applications
- Further training opportunities afforded to Community and Town Councils on planning matters so that they better understand the rationale behind the planning and decision making processes.
- Objectors are invited to all site visits to ensure they can ask questions and clearly state the reasons for their objection.

Transport

- Refund of taxi fares

- Process introduced to ensure drivers check their schedules at start of shift to ensure pick ups are not missed

Highways/Grounds Maintenance

- Tidying up hard and soft landscaping
- Improve kerb upstands to help keep flood water on the road
- Improved drainage
- Signage amended

Schools

- Providing accessible wheelchair access
- Providing midday supervisors with safeguarding training

Website

- More explicit text explaining the term times for swimming

Public Lavatories

- More regular cleaning.
- The flushing systems overhauled.

Parks

- Revisit some gate opening/closing of park gates

Tree works

- Tree preservation orders – processes reviewed in order that all statutory checks are adequately made and recorded.

Car Parking

- Reviewing operation of car parks, re: concerns raised about lack of mother and baby parking services
- Assisting with obstructive parking

Commentary

Some people do not wish to formally complain, however they do want to make comments about the service they receive. The negative comments received are to all intents and purposes informal complaints. However, some customers do not wish to go through a formal process but want to express their dissatisfaction or views and be listened to. All comments are recorded and responded to.

The number of comments has more than doubled. The overwhelming majority of comments were in relation to the changes with waste and recycling services.

Complaints continue to rise, up 16% up on the number received in 2012/13. In terms of the time taken dealing with complaints, this varies depending on the complexity of the issues raised. The majority of complaints we received (73%) were dealt with in the 10 working days time frame. Stage 2 complaints generally take much longer than our 20 working days timescale. This is due to a number of factors mostly because of the complexity of the case.

Some matters that members of the public believe to be complaints are requests for service and these are recorded – 97 in total were forwarded to the relevant departments for appropriate action.

Annette Evans

June 2014

Freedom of Information and Environmental Information Regulations

Activity Report 1st April 2013 to 31st March 2014

	2013-14	(2012-13)	
Requests received:	918	(780)	Increase over 2012-13 = 18%
Requests closed:	906	(788)	
Requests closed on time:	93%	(89%)	

Requests under Fol and EIR are not segregated, and figures include both.

Main focus of request	Received	% Closed in 20 Working Days
Regeneration & Culture	329	90%
Chief Executive's	232	94%
Social Care & Housing	94	91%
Deputy Chief Executive's	197	93%
Children & Young People	66	94%
Total MCC	918	93%

Note: Division by Department is not precise due to the cross-functional nature of many requests.

Most common sources (stated or interpreted)

Commercial	37%
Grievance with Council	5%
Local Resident	7%
Political researchers	6%
Press - Local	5%
Press - National	18%
Pressure Group	9%
Unknown	8%

Most common subjects (broad categorisation)

Social Care	90
Other	85
HR & Staffing	77
CT/NNDR	76
Highways	63
Intestate deaths & PH funerals	59
Planning	52
Educational matters	40
Procurement/Contracts	40
Financial information	33
IT & Software	32
Processes	30
Public Health	29
Housing	27
Asset Management	22
Parking	20
Trading Standards/Animal Health	19
Members & Electoral matters	17
Waste & Recycling	17
Compensation	15
Structures/Contracts	15
Licensing	12
Empty Property	10
MCC projects	10

Target for percentage closed in 20 Working Days

Processes have now been improved to the extent that the target for 13-14 was raised from 88% to 90%.

Trends over time

The number of requests received has grown every year since Fol came into force on 1st January 2005, and the trend continues. This is common to the public sector in general and is not Monmouthshire-specific.

The number of requests received by Monmouthshire in each financial year is as follows:

2004-05 (3 months only)	31
2005-06	135
2006-07	118 (believed that some records are missing)
2007-08	172
2008-09	305
2009-10	421
2010-11	609
2011-12	662
2012-13	780
2013-14	918



SUBJECT: Welsh Government White Paper – Reforming Local Government: Power to Local People
MEETING: Standards Committee
DATE: 9th March 2015
DIVISION/WARDS AFFECTED: All

1. **PURPOSE:** To inform Standards Committee of the Welsh Government's White Paper on the reform of local government.

2. **RECOMMENDATIONS:** To note the contents of the report.

3. **KEY ISSUES:**

3.1 The Welsh Government is consulting on a wide ranging White Paper on the future of local government. The consultation will end on 28th April 2015. The relevant proposals for Standards Committee include:

- Roles and responsibilities of leaders and cabinet members.
- Council Leaders to have explicit duties in respect of diversity and standards of behaviour, including bullying and harassment of councillors and staff.
- Reduction in number of councillors in line with UK average.
- Mandatory training introduced for councillors and all councillors have to produce annual reports detailing activities, attendance, training.
- Councils will be elected on a fixed five year election cycle in line with Parliament and the Assembly.
- Views are sought on whether Council elections should be phased in thirds.
- Term limits of 5 terms for councillors and 2 terms for leaders and cabinet members.
- Enhanced powers for Standards Committees.
- A review to reduce the level of remuneration of councillors, Leaders and Cabinet members.
- Lift the restrictions on council staff (other than politically-restricted posts) from standing for election to their own authority (although they would have to resign if they were elected).

- Views sought on whether people should be prevented from holding posts as a Councillor and Assembly Member at the same time, or Community Councillor and County Councillor.
- Role and responsibilities of the Chief Executive in Local Authorities defined in legislation, including duties around improvement, corporate planning and promoting democratic engagement.
- Proposed term limits on chief executive appointments.
- Chief Executives to be recruited through a national recruitment process via a Public Sector Appointments Commission.
- Tight and more consistent, nationally set standards and controls on the remuneration of chief executives and other chief officers

3.2 In respect of the proposals to increase the powers of Standards Committees the full text in the White Paper is: *The Local Government (Democracy) (Wales) Act 2013 makes provision for the establishment of joint Standards Committees, the electronic publication of registers of interests and powers to enable the transfer of misconduct reports and Member dispensation requests between Standards Committees to overcome potential conflicts of interest. These provisions will be brought into effect later this year. Also, this year, we will bring forward legislation to modify the model code of conduct for Local Authority Members to facilitate the operation of local resolution policies and to clarify the position of Members with constituency interests. We will also exempt Local Authorities from publishing misconduct reports during ongoing proceedings.*

We believe these reforms will improve and strengthen the ethical standards framework. However, we are seeking views on whether there should be any further reforms, in particular in respect of the most serious cases. Standards Committees and Monitoring Officers already play a key role in supporting and advising Members on conduct matters. There should be a new power for Standards Committees to consider cases where there are serious concerns that an Elected Member is failing to fulfil their duties satisfactorily. We would provide Standards Committees with appropriate sanctions which could be imposed. There would need to be safeguards against vexatious complaints.

It is important Local Authorities take full responsibility for the poor performance of Elected Members and manage this internally in a transparent manner. It is also important that as part of this process we consider an appropriate appeals process for Elected Members, whether that be internally within the Authority, to the Adjudication Panel for Wales or another body. We are seeking views on the most appropriate procedure.

4. REASONS: To note a possible increase in powers for the Standards Committee contained within the White Paper.

5. RESOURCE IMPLICATIONS: None

6. SUSTAINABLE DEVELOPMENT IMPLICATIONS: None

7. **CONSULTEES:** None

8. **BACKGROUND PAPERS:** The full version of the White Paper can be found at <http://wales.gov.uk/docs/dsjlg/consultation/150203-power-to-local-people-full-en.pdf>

9, **AUTHOR:**

Robert Tranter, Temporary Monitoring Officer.

9. **CONTACT DETAILS:**

Tel: 01633 644064

E-mail: roberttranter@monmouthshire.gov.uk



SUBJECT: Monitoring Officer's Update
MEETING: Standards Committee
DATE: 9th March 2015
DIVISION/WARDS AFFECTED: All

1. **PURPOSE:** To advise Standards Committee of recent developments.
2. **RECOMMENDATIONS:** To note the contents of the report and make observations as appropriate.
3. **KEY ISSUES:**

3.1 **Public Interest Test**

Attached at appendix 1 is the Public Services Ombudsman for Wales' (PSOW) proposal to introduce a public interest test to stem the tide of fairly low level complaints being received by the PSOW from town and community councils.

3.2 **Consultation on increasing the Principles for Good Administration**

The first six "principles of Good Administration" were published by the PSOW in 2008. They are broad statements that the PSOW considers bodies within his jurisdiction should be doing to deliver good administration and customer service. The consultation looks to add 2 more principles to the original six being *creating good quality records* and *managing records effectively*. Attached at appendix 2 is the consultation document produced by the PSOW and Information Commissioner's Office. The consultation ends on 29th April 2015.

3.3 **Welsh Assembly's Finance Committee Review of Powers of PSOW**

The Assembly's Finance Committee has launched an inquiry into a review of the powers of the Public Services Ombudsman for Wales. Attached at appendix 3 is the PSOW's representation to the Finance Committee. However of particular note for the Standards Committee is that the inquiry also wants to hear views on "*code of conduct complaints – the Ombudsman would prefer to focus on the element of his work that deals with service users and service delivery, rather than local authority and town and community councils*" resolutions. Whilst a local resolution procedure exists and has been adopted by 22 local authorities, variance exists in practice." This query must be seen in the light of an increase in the PSOW's workload by complaints of service users of public bodies in Wales, while the number of complaints received in respect of allegations of breaches in the members' code of conduct has decreased from 291 in 2012/13 of which 140 came from town community councils to 228 in 2013/14 of which 111 came from town/community councils.

The Welsh Local Government Association will be making representations to the Finance Committee on behalf of the Welsh councils.

3.4 Standards Conference 2015

The 2015 Standards Conference will take place at City Hall Cardiff on Tuesday 20th October. One of the emerging themes for the conference will be to celebrate/explore the Nolan Principles since this year is the 20th year of their adoption. Another potential theme may be in recognising the pace of change in public life against severe financial and demand pressure and what this means for ethical standards.

4. REASONS: For the Standards Committee to be aware of possible future changes in the role and practise of the PSOW and other relevant developments.

5. RESOURCE IMPLICATIONS: None at present but if the work of the Standards Committee increases then there will be.

6. SUSTAINABLE DEVELOPMENT IMPLICATIONS: None

7. CONSULTEES: None

8. BACKGROUND PAPERS: None

9, AUTHOR:

Robert Tranter, Temporary Monitoring Officer.

9. CONTACT DETAILS:

Tel: 01633 644064

E-mail: roberttranter@monmouthshire.gov.uk

Guidance on the Code of Conduct for Local Authority Members

Public Interest Test

- 1) Whilst the local resolution processes within county or county borough councils appear to have had the effect of resolving many of the low level member versus member code of conduct complaints within those bodies, the Ombudsman remains concerned about the number of frivolous, trivial and vexatious complaints being received from community and town council members. It is proposed that we introduce a further public interest test when deciding whether to investigate a complaint or whether to continue an investigation of a breach of the Code to the stage of referring the matter to the Adjudication Panel for Wales.
- 2) The attached paper outlines the proposed new test and we would be grateful to receive any feedback prior to incorporating it into the Ombudsman's revised Guidance on the Code of Conduct for Local Authority Members in the new year.
- 3) It would be helpful to receive any feedback from monitoring officers on:
 - how PSOW's system of referring member versus member cases for local resolution is working; and
 - how beneficial monitoring officers consider the system of offering cases which the Ombudsman considers are unlikely to attract a sanction for local investigation. Take up on this has been fairly low (1 case during 2013/14 and 4 cases so far this year).
- 4) Also, following the Ombudsman's recent appearance before the National Assembly for Wales's Finance Committee it has made the following recommendation to the Ombudsman:

"The Committee recommends that the Ombudsman increase his liaison with the local government sector to ensure that complaints between politicians at local authority and community council level are resolved locally, wherever possible. The Ombudsman should publish a policy to make it clear what action he may take against those politicians who breach their code of conduct by making vexatious complaints."

It would also therefore be helpful if monitoring officers could give their views on this proposal.

Katrin Shaw
Investigation Manager & Legal Adviser

Public Interest Test

It is my role as Public Services Ombudsman to investigate complaints that members of local authorities in Wales have breached the Code. In determining whether to investigate a complaint or whether to continue an investigation of a breach of the Code to the stage of referring the matter to the Adjudication Panel for Wales ("the Adjudication Panel) or a standards committee my office has for a number of years applied the following two stage test.

The first test which has been applied is to establish whether there is evidence that a breach of the Code actually took place. The second test is whether the breach alleged would be likely to lead to a sanction. When exercising my discretion to investigate or to refer a matter for further consideration account is taken of previous cases considered by standards committees across Wales cases are decided accordingly.

Since taking up office I have become increasingly concerned about the number low level complaints my office is receiving. Whilst the local resolution processes within county or county borough councils appears to have had the effect of resolving many of the low level member versus member complaints within those bodies, I remain concerned about the number of frivolous, trivial and vexatious complaints I am receiving from community and town council members.

I have therefore decided to expand upon the two stage test and also consider whether an investigation or a referral to the Adjudication Panel or a standards committee is required in the public interest.

When applying the public interest test I consider each of the following public interest factors set out below. These factors are not exhaustive, and not all may be relevant in every case. The weight to be attached to each of these factors, and the factors identified, will also vary according to the facts and merits of each case.

- the seriousness of the breach, for example, has the member brought their authority seriously into disrepute? The more serious the breach the more likely investigation and referral for further hearing is required.
- has the member deliberately sought personal gain for himself or another person at the public expense? If there is evidence of this I am likely to investigate and refer the matter for further hearing.
- are the circumstances of the breach such that a member has misused a position of trust or authority and caused harm to a person? If there is evidence of this I am likely to investigate and refer the matter for further hearing.

- was the breach motivated by any form of discrimination against the victim's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity? If a member's conduct is motivated by any form of discrimination I am likely to investigate and refer the matter for further hearing.
- is there evidence of previous similar behaviour on the part of the member? If so and the matter complained about is serious enough I am likely to investigate and refer the matter for further hearing.
- is the breach such that an investigation or referral to the Adjudication Panel for Wales or a standards committee is required to maintain public confidence in elected members in Wales? If so I am likely to investigate and if evidence of a serious breach is found refer the matter for further hearing.
- is investigation or referral to the Adjudication Panel for Wales or a standards committee a proportionate response? namely, would the cost of an investigation or hearing by the Adjudication Panel for Wales or a standards committee be regarded as excessive when weighed against any likely sanction?

My role is to investigate serious cases in order to maintain public confidence in standards in public life. If I am not satisfied that an investigation or referral to the Adjudication Panel or standards committee is proportionate in the circumstances I will decline to investigate or if, having started any investigation this becomes apparent, I will close my investigation.

Nick Bennett
Ombudsman

Consultation
Document:
Principles of Good
Administration
and Good **Records**
Management



Contents

Introduction to the Consultation	
Joint Introduction – The Principles	02
Principle 1: Getting it right	05
Principle 2: Being customer focused	08
Principle 3: Being open and accountable	11
Principle 4: Acting fairly and proportionately	13
Principle 5: Putting things right	16
Principle 6: Seeking continuous improvement	20
Principle 7: Creating good quality records	22
Principle 8: Managing records effectively	24

Introduction to the Consultation

The Principles for Good Administration were originally published in 2008. This document provides an opportunity for the Public Services Ombudsman for Wales and the Information Commissioner to jointly communicate with bodies in the Ombudsman's jurisdiction and to reflect the evolution of the Principles over the past 7 years. Principle 5 recognises the progress made in relation to standardising the approach to complaints handling processes in Wales since 2008.

The review of the original guidance has ensured that it remains fit for purpose and has enabled further development in relation to good records management. As a result, this revised draft document has introduced two new Principles in respect of good record keeping. In addition, examples based on actual cases considered by either the Ombudsman or the Information Commissioner have been introduced with the view of illustrating the points being made at each of the Principles.

It is intended that the revised Principles be issued in accordance with Section 31 of the PSOW Act. Accordingly, there is a requirement that the Ombudsman consults such bodies as appear to him to be concerned with any Guidance that he issues.

How to Respond

Responses to this consultation are requested by 29 April 2015. Responses should be sent by email to consultation@ombudsman-wales.org.uk or in writing to:

The Executive Team
Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
CF35 5LJ

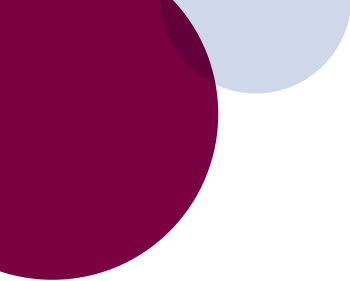
Consultation Questions

1. Are these Principles written in a way that is relevant and helpful to your work?
2. In your opinion, do the additional Principles included in this revised version of the Guidance make clear to public service providers what the Information Commissioner and the Ombudsman expect of them as regards good records management?
3. Do you find the inclusion of examples (case studies) helpful to illustrate the behaviours being addressed by the Principles?
4. Are there any words or terms that are unclear?
5. Are there any additional principles which may be beneficial for inclusion/should anything else be included (for example, are there any other developments which you think need to be reflected in the guidance)?

Joint Introduction – The Principles

As the Public Services Ombudsman for Wales, I provide a service to the public by undertaking independent investigations into complaints about almost all of the wide range of public services for which the National Assembly for Wales has devolved responsibility. I can look into the actions of councils and other local government bodies (including community councils), NHS bodies (including GPs), the Welsh Government and its sponsored bodies, and registered housing associations. The bodies that fall within my jurisdiction under the Public Services Ombudsman (Wales) Act 2005 ('the PSOW Act') are referred to in this document as 'public service providers'. I am responsible for deciding whether the public service provider complained about has acted unfairly or unreasonably, or has provided a poor service. The Ombudsman's view is final, subject only to judicial review by the courts. I apply a test of fairness and reasonableness, taking into account the circumstances of each case; not a test of perfection. I draw attention to any failures and suggest how things may be put right. I also aim to share the lessons learned from complaints to help improve the way public services are provided.

The first six Principles in this document are those which were originally published in the document 'Principles of Good Administration' published by the Public Services Ombudsman for Wales in 2008. A key aim of that document remains, which is to be open and clear with both complainants and the public service providers about the sorts of behaviour expected in their service delivery and the tests I apply in deciding whether maladministration and service failure have occurred. In particular, I want public service providers to understand how I will approach complaints, and complainants to understand how I will consider their case. Central to my assessment of the seriousness of any complaint is the impact of the public service provider's actions on the individuals or organisations concerned. New to this edition of the Principles, is the introduction of examples to illustrate and provide clarification on the behaviours I expect from public service providers. Even though these case studies have been attributed to a particular Principle, many of them have elements that are also applicable to other Principles in this Guidance.




In addition, my investigations have identified time and again occasions of poor records management, which can sometimes have serious consequences. I am extremely pleased therefore to have been able to work with the Information Commissioner during the review of this Guidance document. I am particularly grateful for his contribution in respect of the two new Principles which have been introduced and for the case studies, which all relate to Welsh public bodies, that he has provided.

The Principles are not a checklist, nor the final or only means by which I will assess and decide individual cases. They are broad statements of what I believe the bodies within my jurisdiction should be doing to deliver good administration and customer service. If I conclude that a public service provider has not followed the Principles, I will not automatically find maladministration or service failure. I will apply the Principles fairly and sensitively to individual complaints, which I will, as ever, decide on their merits and the circumstances of the case.

I understand that there is often a balance between being sensitive to the needs of a service user and yet acting proportionately to maximise the effective use of public resources. The actions of public service providers are of course limited by their resources and they have to weigh the highest standards of customer service against what is affordable. All public bodies should spend public money with care. However, finite resources should not be used as an excuse for poor service or administration.

I appreciate that the bodies within my jurisdiction are many and varied, have a wide range of remits and statutory duties, and often have their own demanding standards. Public service providers have to take reasonable decisions bearing in mind all the circumstances; delivering good service often means taking a broad and balanced view of all of the individuals or organisations that may be affected by decisions. Despite their diversity, I believe that the Principles of Good Administration and Good Records Management will provide a framework for all public service providers to follow in fulfilling their duties.

Nick Bennett
Ombudsman



Upholding information rights in the public interest is what the ICO exists to do. But that involves much more than the traditional regulator's enforcement role. An important part of securing compliance with the Data Protection Act 1998 and the Freedom of Information Act 2000 is our work with other regulatory authorities in educating organisations about their responsibilities. We recognise the need for joined up approaches in the joined up world of information handling.

Good administration and information handling are an essential part of delivering high-quality public services. They are also vital to organisations being able to meet their statutory obligations under data protection and freedom of information law. So it is very appropriate that the Public Services Ombudsman for Wales and the Information Commissioner have worked together to produce this publication for public bodies in Wales.

As the Ombudsman points out, poor records management can have serious consequences for service users where a record is incorrect or inaccessible, or where its security is compromised. I have powers to issue substantial fines for such failures, and have done so on a number of occasions both in Wales and across the rest of the UK. Furthermore, for the individuals affected by these errors, timely provision of accurate and relevant information relating to their cases can be crucial to their understanding of what may have gone wrong and why. Consequently it is important that their own legal rights of access to information are properly upheld.

Applying the Principles of Good Administration and Good Records Management will help organisations address the too numerous failures by public bodies which both the Ombudsman and I have identified from complaints made to us by members of the public. These failures are illustrated within the case studies, which all relate to Wales. My office in Wales will now work with the Ombudsman's office to promote the adoption of the Principles by organisations and thus improve practice in record handling across Wales.

Christopher Graham
Information Commissioner

Principle 1: Getting it right

This includes:

- acting in accordance with the law and with due regard for the rights of those concerned;
- acting in accordance with the listed authority's policy and guidance (published or internal);
- taking proper account of established good practice;
- providing effective services, using appropriately trained and competent staff;
- taking reasonable decisions, based on all relevant considerations.

In seeking to achieve the above, public service providers:

- Must comply with the law and have due regard for the rights of those concerned. They should act according to their statutory powers and duties and any other rules governing the service they provide. They should follow their own policy and procedural guidance, whether published or internal.
- Should act in accordance with recognised quality standards, established good practice or both, for example about clinical care.
- Should be alert to possibilities where a novel approach will bring a better result or service. When they decide to depart from their own guidance, recognised quality standards or established good practice, they should record why.
- Should provide effective services with appropriately trained and competent staff. They should plan carefully when introducing new policies and procedures. Where listed authorities are subject to statutory duties, published service standards or both, they should plan and prioritise their resources to meet them.
- In their decision making, should have proper regard to the relevant legislation and guidance. Proper decision making should give due weight to all relevant considerations, ignore irrelevant ones and balance the evidence appropriately.
- Assess risks as part of taking decisions. They should, of course, spend public money with care and propriety. At the same time, when assessing risk, they should ensure that they operate fairly and reasonably.

EXAMPLE

A Care Provider

The Information Commissioner investigated a care provider when a member of the public found ten care plans in the street. The plans related to elderly individuals and included sensitive personal information such as care needs and medication as well as confidential key safe numbers.

The Commissioner's investigation revealed that whilst there was a basic data protection policy in place requiring that care plans were not carried in cars, there was no clear procedure, minimum security requirement or policy on the safe handling and storage of sensitive personal information taken outside the office. The Commissioner also found that the employee in question had been in possession of the files for up to 10 weeks prior to the incident without the apparent knowledge of the organisation as there was no system in place to log sensitive information being taken out of the office. The Director of the organisation entered into a formal Undertaking with the Information Commissioner to ensure proper systems, processes and staff training were put in place to protect the security of personal information both on and off site.

EXAMPLE

A County Council

A profoundly disabled man lived with his parents until he moved to supported accommodation. He had accessed the family home using a lift from street level to the front of the house, which had been installed under a Disabled Facilities Grant. The lift was ageing and after he moved out it broke down beyond repair. His visits since had been very limited and he had to be carried into the home. The Ombudsman's investigation considered complaints that the Council did not properly advise and support the gentleman in maintaining the lift; and that it failed to take proper account of his need to maintain contact with his family in declining to repair/replace the lift.

Having taken account of professional advice, the Ombudsman did not uphold the complaint about support to maintain the lift. However, he upheld the second complaint, concluding that the Council needed to do more to enable the gentleman concerned to be part of his family in the privacy and familiarity of the home environment. The Council agreed to implement a number of recommendations, including:

- provide an apology to the gentleman's parents for the failings identified;
- look for possible solutions to enable the gentleman to visit the family home; and,
- re-consider an application for a replacement lift under the Council's discretionary policy.

The Ombudsman also concluded that Article 8 of the Human Rights Act (the right to respect for private and family life) had been engaged, and that the gentleman's fundamental right to a family life did not appear to have been fully taken account of by the Council.

EXAMPLE

A County Council

A woman complained about the actions of the Social Services Department when she asked for her daughter to be accommodated by the department. Although the daughter was initially placed with a foster carer, after a short time the department arranged for her to stay with her mother's sister, despite the relationship between the two women having broken down some time previously. The mother believed that the Social Worker's professional relationship with her sister had caused a conflict of interest leading to a number of failings.

The investigation found that the mother only gave her consent for her daughter to stay with the aunt reluctantly, and that it could not be considered an agreed family placement. It was a placement arranged by the Council, and the aunt should have been assessed in accordance with the Regulations. No assessment of the girl's needs, or the aunt's suitability to care for her, was carried out and no other prospective carers were considered for the girl. In the absence of any assessment of the aunt, the placement was an irregular foster placement. There was minimal contact with her mother after the girl went to stay with her aunt, and the Council failed to provide assistance and services to enable the girl to return home successfully and to help the family to rebuild their relationship. The Ombudsman concluded that the lack of case recordings was reflective of a lack of action on the part of officers. However, she could not conclude that professionals were influenced by their relationship with the aunt.

Amongst the Ombudsman's recommendations were that the Council should arrange for all social workers in the Child and Family Assessment and Support Team to receive refresher training on the law, regulations and guidance relating to looked after children.

Principle 2: Being customer focused

This includes:

- ensuring people can access services easily;
- informing customers what they can expect and what the listed authority expects of them;
- the public service provider keeping to its commitments, including any published service standards;
- dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances;
- responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

In seeking to achieve the above, public service providers should:

- Provide services that are easily accessible to their customers. Policies and procedures should be clear and there must be accurate, complete and understandable information about the service.
- Aim to ensure that customers are clear about their entitlements; about what they can and cannot expect from the listed authority; and about their own responsibilities.
- Do what they say they are going to do. If they make a commitment to do something, they should keep to it, or explain why they cannot. They should meet their published service standards, or let customers know if they cannot.
- Behave helpfully, dealing with people promptly, within reasonable timescales and within any published time limits. They should tell people if things take longer than the listed authority has stated, or than people can reasonably expect them to take.

- Communicate effectively, using clear language that people can understand and that is appropriate to them and their circumstances.
- Treat people with sensitivity, bearing in mind their individual needs, and respond flexibly to the circumstances of the case. Where appropriate, they should deal with customers in a co-ordinated way with other providers to ensure their needs are met; and, if they are unable to help, refer them to any other sources of help.

EXAMPLE

A Housing Association

A couple complained that a housing association had failed to properly administer their application for housing by incorrectly calculating their housing need points. They also complained that one of their applications was suspended, other than in accordance with the housing association's own policy, and that the housing association's own complaints panel had concluded that this resulted in them missing out on a property which they would otherwise have been allocated. They complained that this resulted in a delay of a year in them being allocated a property.

The Ombudsman found that elements of the housing association's policies and information leaflets were confusing and inconsistent. He also found that the housing association had acted other than in accordance with its policies in suspending the couple's application. The Ombudsman concluded that, as a result of these failings, the couple should indeed have been allocated a property a year earlier. Amongst the Ombudsman's recommendations were that the housing association should make various amendments to policies and information leaflets to address the failings identified.

EXAMPLE

A General Practitioner (GP)

A woman complained about a GP, who she said had cancelled an appointment for her son, about whom she was very worried, during a telephone conversation. She added that he was rude. She stated that the GP acted unprofessionally and disrespectfully at a subsequent local resolution meeting after she had complained.

The Ombudsman found that the GP breached two vital aspects of good medical practice. Firstly, he did not properly record the telephone consultation with the complainant about her son. Secondly, he failed to respond appropriately to a complaint by virtue of being rude, dismissive and in error in various aspects. The Ombudsman made a number of recommendations, including that the GP should agree to share his report with his appraiser at the next annual meeting and consider how he can prevent a repeat.

EXAMPLE

A County Council

A gentleman complained about the Council's response to allegations of abuse against him, apparently made to care workers by his autistic daughter, who was removed from his and his wife's care and remained away for six months. During this time, a Protection of Vulnerable Adults investigation and police enquiries took place. Neither investigation substantiated the allegations. The complainant said that the Council should have allowed his daughter to rejoin the family after a few weeks; had failed to communicate properly with him; and did not liaise effectively with the police. He said that his daughter's allegations were made via Facilitated Communication ("FC"). FC was a technique that the family used for day-to-day matters but was not reliable as a method of making allegations. After six months, the Council established that the daughter did not have capacity to decide where she lived. Given that it had been obvious for some months that there was no evidence to support the allegations, the complainant's daughter returned home.

The Ombudsman found that the Council was faced with a very difficult set of circumstances and worked hard in what it believed to be the daughter's best interests. The Council initially determined that the complainant's daughter had capacity to decide where she resided and appeared to consistently state her preference not to return home. However, the Ombudsman agreed with the complainant that FC was not reliable and that the complainant had provided information to that end to the Council in support of his contentions. The Ombudsman concluded that, if the Council had been more flexible in its considerations and more pro-active, the daughter should have returned home about two months earlier than she did. The Ombudsman also criticised aspects of the Council's communications and liaison with the police. Amongst the Ombudsman's recommendations were that relevant staff should reflect on their role.

Principle 3: Being open and accountable

This includes:

- being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete;
- stating its criteria for decision making and giving reasons for decisions;
- handling information properly and appropriately;
- taking responsibility for its actions.

In seeking to achieve the above, public service providers should:

- Handle information as transparently and as openly as the law allows. People should be given information and, if appropriate, advice that is clear, accurate, complete, relevant and timely.
- Be open and truthful when accounting for their decisions and actions. They should state their criteria for decision making and give reasons for their decisions.
- Handle and process information properly and appropriately in line with the law. So while policies and procedures should be transparent, public service providers should, as the law requires, also respect the privacy of personal and confidential information.
- Take responsibility for the actions of their staff and those of others who act as their agents.

EXAMPLE

A County Council

A woman's complaint centred on the Council's handling of her housing application.

The Ombudsman's investigation identified shortcomings in the Council's administration of Miss A's housing application which led to periods when it was not dealt with as efficiently or effectively as it should have been. Such administrative inadequacies included documentation being mislaid, the complainant's housing application not being appropriately pointed, as well as instances of poor record keeping.

The Ombudsman's investigation also found evidence that Miss A's housing application had, for a period of time, been erroneously cancelled and this was coupled with other administrative failings. The investigation also found that there was a failure by the Council to recognise when its statutory homelessness duties were engaged.

Finally, given the failings identified, the Ombudsman concluded that the Council's response to the complainant had not been as robust, transparent, or open as it could have been in acknowledging failings in the administration of her housing application.

The Ombudsman made a number of recommendations, including that the Council:

- develop relevant guidance on its housing allocation; and
- provide relevant training.

EXAMPLE

A Health Board

Whilst cycling home from work a medical consultant lost a bag containing sensitive personal information including a patient's mental health tribunal report, a solicitor's letter and CVs for a job vacancy. The documents were in a rucksack that the consultant had believed to be securely fastened to a child seat, and were needed for the consultant to work away from the office.

Investigation by the ICO established that the consultant had not received mandatory data protection induction training at the time of the incident, and that there was no relevant protective marking scheme in place at the time to guide staff on the appropriate handling of documents. The investigation also established that whilst the Board provided suitable alternative means of transporting or accessing the information, such as encrypted portable devices and remote server access, these options were not communicated clearly to staff or supported by clear procedures. The Medical Director entered into a formal Undertaking with the Information Commissioner to ensure appropriate training and policies were put in place to protect information security on and off site.

Principle 4: Acting fairly and proportionately

This includes:

- treating people impartially, with respect and courtesy;
- treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests;
- dealing with people and issues objectively and consistently;
- ensuring that decisions and actions are proportionate, appropriate and fair.

In seeking to achieve the above, public service providers should:

- Always deal with people fairly and with respect. They should be prepared to listen to their customers and avoid being defensive when things go wrong.
- Treat people equally and impartially. They should understand and respect the diversity of their customers and ensure fair access to services and treatment regardless of background or circumstance.
- Ensure that their actions and decisions are free from any personal bias or interests that could prejudice those actions and decisions, and any conflict of interests should be declared. Public service providers should not act in a way that unlawfully discriminates against or unjustifiably favours particular individuals or interests.
- Ensure that people are treated fairly and consistently, so that those in similar circumstances are dealt with in a similar way. Any difference in treatment should be justified by the objective features or the individual circumstances of the case.
- When taking decisions, and particularly when imposing penalties, behave reasonably and ensure that the measures taken are proportionate to the objectives pursued, appropriate in the circumstances and fair to the individuals concerned.
- Seek to address the unfairness if applying the law, regulations or procedures strictly would lead to an unfair result for an individual. In doing so public service providers must, of course, bear in mind the proper protection of public funds and ensure they do not exceed their legal powers.

EXAMPLE

A County Council

A Council undertook covert surveillance on an employee who was suspected of fraudulently claiming sickness absence. The employee had been off work with a sick note for four weeks at the time the surveillance was authorised. The Council believed she would use the absence to avoid attending compulsory work meetings, but took no action to clarify her ability to attend with her or medical advisors before resorting to the covert surveillance. The employee attended one such meeting before she was aware that the Council had already undertaken covert surveillance. The resulting surveillance report was never used.

After investigating, the Information Commissioner deemed the surveillance to be unfair and unlawful under the Data Protection Act as there were not sufficient grounds at that early stage of the absence to justify covert surveillance. The Chief Executive of the Council signed a formal Undertaking with the Information Commissioner to ensure legal compliance and good practice in any future consideration of covert surveillance.

EXAMPLE

A Health Board

A woman complained about the treatment her late father had received during two admissions at a hospital. Following investigation, the Ombudsman did not uphold the complaint about the first admission. However, he found serious failings with regard to the second admission. He found that there was no systematic approach to diagnosing the patient's condition, no plan about when clinical reviews should take place and no decision made about the frequency that nursing staff should record observations for the patient. In the event, a doctor did not review the patient the day before his death and observations were not sufficient or carried out properly. Had those failings not occurred, the problem with the patient's undiagnosed gastric ulcer might have come to light. The Ombudsman concluded that there was a chance that had that happened, the sad outcome might have been different. The Ombudsman also found that the patient's daughter was right about the poor administration of a drug. Further, he concluded that the Chief Executive should not have signed the complaint response without informing the family of the connection between her and a clinician who had been involved in the patient's care, even though that clinician was not criticised in his report.

The Ombudsman made numerous recommendations to the LHB, which it accepted. These included financial redress to the complainant as an acknowledgement of the uncertainty she had to live with concerning whether her father might have survived the episode with better care; providing evidence that effective systems are in place regarding nursing observations; carrying out an audit to ensure that patients requiring daily clinical reviews are receiving them; and introducing a written conflict of interest policy.

EXAMPLE

A County Council

Two similar breaches occurred in the Council's Social Services Department within a year. In the first case a mother correctly received a report about her own child that erroneously included a page of highly sensitive information about another child. The mother was able to identify the other child and mother from the information breached. It is not known precisely how the error happened, but it was clear to the Information Commissioner that no checks were made of the report prior to its despatch. Following this incident the Council advised the Information Commissioner that they would ensure staff had appropriate training, guidance on checking any work before posting, and improved access to secure printing facilities in the department. Within seven months an almost identical breach occurred, with the same mother again being sent details of another child and family that she could identify.

It was clear to the Information Commissioner that insufficient steps had been taken by the Council following the first breach. Taking into account that the Council had failed to take appropriate measures to prevent further breaches, that the contravention was likely to cause significant distress, and that the Council knew – or ought to have known – that there was a risk of further breach, the Information Commissioner served the Council with a monetary penalty of £130,000.

EXAMPLE

A County Council

A gentleman complained about the Council's decisions to grant consent for the extension of a caravan site close to his home. There were a number of aspects to his complaint. One of these was that he said that there was a conflict of interest because of the involvement of a senior planning officer, who was a former consultant to the applicant. Amongst the Ombudsman's findings were that in terms of the alleged conflict of interest of a senior planning officer, exchanges of e-mails on the file were inappropriate and gave a perception of bias which could be damaging in the eyes of the public. Also the appropriate written declarations within the planning department, or to the Monitoring Officer, as required by the Council's code of conduct for officers, had not been made. However, there was no indication that the senior planning officer concerned had directly influenced the outcome of the applications, which had been dealt with by the case officer and managed by another more senior planning officer. On this aspect the Ombudsman recommended that the Council should remind officers in the planning service of the need to make declarations of interest in accordance with the code of conduct for officers, including the more informal business of the Council e.g. when e-mailing, to avoid the perception of undue influence and partiality.

Principle 5: Putting things right

This includes:

- acknowledging mistakes and apologising where appropriate;
- putting mistakes right quickly and effectively;
- providing clear and timely information on how and when to appeal or complain;
- operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

In seeking to achieve the above, public service providers should:

- When mistakes happen, apologise, explain what went wrong and put things right quickly and effectively.
- Recognise that putting things right may include:
 - reviewing any decisions found to be incorrect;
 - reviewing and amending any policies and procedures found to be ineffective, unworkable or unfair; and
 - giving adequate notice before changing the rules.
- The actions of a public service provider can sometimes bear more heavily on an individual because of their particular circumstances, even though statutory duties, service standards or both have been met. Public service providers should be alert to this and respond flexibly to avoid or, where appropriate, put right any such undue effect.
- Provide clear and timely information about methods by which people can appeal or complain.
- Provide information about appropriate organisational or independent ways of resolving complaints.
- Operate effective complaints procedures, which are:
 - compliant with statutory requirements (for example, health and social services), if applicable, and consistent with the principles for dealing with complaints, as set out in the Model Concerns and Complaints Policy issued by the Welsh Government in July 2011¹;

and include:

- providing information about possible sources of help for the service user, particularly for people who may find the complaints process daunting;
- investigating complaints thoroughly, quickly and impartially;
- providing an appropriate range of remedies to the complainant and any others similarly affected when a complaint is upheld. As a minimum, an appropriate range of remedies should include an explanation and apology from the public service provider to the complainant, remedial action, financial redress for the complainant or a combination of these. The remedy offered should seek to put the complainant back in the position they would have been in if nothing had gone wrong. Where this is not possible - as will often be the case - the remedy offered should fairly reflect the harm the complainant has suffered.

EXAMPLE

A County Council and a Housing Association

A gentleman, who uses a wheelchair, complained that the property he was initially allocated by a housing association in order to discharge the duty he was owed by the Council under Part 7 of the Housing Act 1996 was unsuitable. In particular, he said that he was unable to adequately access the bathroom, which meant that he had to use a commode, and wash, in the kitchen. He also said that the access to the property was poor, and that the width of the internal doorways caused him to graze his knuckles when moving from room to room. The complainant said that after he requested a review, the property was deemed unsuitable and he was offered his current property. He said that he incurred costs due to this second move, and he felt that they should be reimbursed.

The Ombudsman found that the Council and the Housing Association had taken appropriate professional advice before allocating the property. They had also made the complainant aware that significant adaptations would be needed, and that they would not be in place when he moved in. There was evidence that the complainant and his partner had accepted this. It was very unfortunate that the property had turned out to be unsuitable, but once they were made aware of this, the Housing Association and the Council moved quickly to allocate the complainant a property that could be more easily and suitably adapted to his needs. The Ombudsman did not uphold the complaint.

¹ Model Concerns and Complaints Policy: <http://wales.gov.uk/topics/improvingservices/publicationevents/publications/public-service-complaints-policy/?lang=en>

EXAMPLE

A County Council

A gentleman complained (with the help of an advocate) that the Council, under pressure from an Inspectorate, had changed a policy to his and others' detriment. He explained that tenants living in supported accommodation could provide food to Council-funded carers during visits. However, this policy was changed so that carers were not allowed to accept food. The complainant stated that this restricted the opportunity to share meals and refreshments with carers and enjoy the social interaction that this allowed. He added that the decision was contrary, and made without due regard to the Mental Capacity Act 2005, the Human Rights Act 1998 and the Equality Act 2010.

The Ombudsman recognised the difficulties authorities face when devising policies that involved concerns about competing principles such as choice, equality and protection. An investigation was commenced to ensure that these matters had been fully considered; however, it became clear that the Council and the Inspectorate were both content that a choice-based policy, with safeguards to protect against possible exploitation of vulnerable adults, was feasible and appropriate. The Ombudsman pointed out that miscommunication between the bodies might have led to the change in policy. He invited the Council to reconsider the change in policy in conjunction with the Inspectorate, and suggested that both parties write to the complainant's advocate to explain the situation. The Council and the Inspectorate agreed to do so. The complaints were settled on that basis without the need to prepare findings.

EXAMPLE

A Health Board

A woman complained about the standard of care provided to her. She complained that she had no care and treatment plan and was not made aware who her care co-ordinator was. When she made a complaint, she did not feel that the Health Board responded properly.

Amongst the Ombudsman's findings was that the Health Board's response to her complaint was poor and did not comply with the NHS Redress 'Putting Things Right' measures, in that the investigating officer was someone who was named in the complaint. The Ombudsman made a number of recommendations, including that the Health Board should review how it investigates complaints to ensure that its actions are compatible with 'Putting Things Right'.

EXAMPLE

A Welsh Government body

The complainants expressed, amongst other points, dissatisfaction with the way that a Welsh Government body had dealt with their complaint. The Ombudsman's investigation identified shortcomings, including in the area of complaints handling. He was of the view that it would have been appropriate, given the Investigating Officer's previous dealings in the complainants' case, for the Stage 1 investigation to have been carried out by another officer. The Ombudsman noted that it was unfortunate that the inference of bias had tainted the complaints process.

The Ombudsman made a number of recommendations including that, in terms of complaints handling, the body concerned should take steps to ensure that its complaints procedure was compatible with the aims and objectives of the Welsh Government's Model Concerns and Complaints Policy and Guidance.

Principle 6: Seeking continuous improvement

This includes:

- reviewing policies and procedures regularly to ensure they are effective;
- asking for feedback and using it to improve services and performance;
- ensuring that the public service provider learns lessons from complaints and uses these to improve services and performance.

In seeking to achieve this, public service providers should:

- Put in place processes to ensure policies and procedures are regularly reviewed.
- In the process of reviewing their policies and procedures, actively seek and welcome all feedback, both compliments and complaints to improve their public service delivery and performance.
- Capture and review lessons learned from complaints so that they contribute to developing and improving services.

EXAMPLE

Health Board

A woman complained about the care her late husband – who was deaf – had received in hospital during his final illness.

The Ombudsman’s investigation resulted in a number of findings, but included that the Health Board had failed to make reasonable adjustments, as required by the Equality Act 2010, to accommodate the gentleman’s deafness whilst treating him for his medical condition. Amongst the Ombudsman’s recommendations in relation to this case were that his report should be discussed at a meeting of the working group responsible for the Health Board’s “Dignified Care?” action plan.

EXAMPLE

A County Council

A gentleman complained that he had a long-standing complaint with the Council over his rubbish collection. He said that he had experienced repeated problems with rubbish and recycling collections. He said that even though he contacted the Council repeatedly the service did not improve.

Following contact from the Ombudsman’s office, the Council stated that it was aware of previous issues but understood these had been resolved. The Council advised that the complainant would be placed on the weekly monitoring list and receive a weekly phone call to check that the rubbish and recycling had been collected.

Principle 7: Creating good quality records

This includes:

- keeping records which are accurate;
- keeping records which are comprehensive;
- keeping records which are reliable;
- keeping records containing personal information in accordance with the Data Protection Act.

In seeking to achieve the above, public service providers should:

- Ensure that facts recorded are correct and are an accurate reflection of the transactions they document. A good record will reflect the facts about the given activity. To be reliable, these facts should be correct. Where necessary, they should also be kept up to date.
- Ensure that records are supported by information about the circumstances in which they were created and used. Records cannot be fully understood without adequate knowledge of the activity that gave rise to them, the wider function of which that activity forms part, and the administrative context, including the identities and roles of the various participants in the activity.
- Ensure that it is possible to prove that records created are what they purport to be. It goes without saying that if a record is worth keeping it is worth keeping well, so that there can be no doubt as to its reliability as evidence of the past and for use in the future. Where information is later added to an existing document within a record, the added information must be signed and dated. With electronic records, changes and additions must be identifiable through audit trails.
- Ensure that, as set out in the Data Protection Act, recorded personal information must be:
 - adequate, relevant and not excessive
 - accurate and up to date
 - not kept longer than is necessary.

The importance of good record keeping in the health sector is also emphasised in the Good Medical Practice guidance issued by the General Medical Council.²

² Available on their website: www.gmc-uk.org

EXAMPLE

A Health Board

A gentleman complained about a number of matters, including delays by a hospital in arranging a referral and the pain and distress his wife experienced during a procedure. He also complained about later delays by the hospital's radiology department in forwarding copies of his wife's scans to another hospital in England.

Amongst the Ombudsman's findings were that there had been an unreasonable delay on the part of the hospital in arranging the patient's test and a failure by the hospital to retain records documenting the manner in which the request had been managed. Due to conflicting evidence, the Ombudsman was unable to arrive at a finding about the level of distress experienced by the patient during the procedure.

The Ombudsman's recommendations included that the Health Board should:

- remind relevant staff who consider referrals for radiological investigations of the need to appropriately document all clinical decisions relating to a patient's management;
- ensure, if it had not done so already, that any referrals it receives for radiological investigations are documented, preferably electronically, at all stages;
- ensure that it has a robust process for recording and managing all requests for investigation results such as images, and that all relevant staff receive sufficient training in its implementation.

EXAMPLE

General Practitioners (GPs)

A woman complained about the diagnosis arrived at by two GPs, and their response to her complaint, which contained inaccurate information, belittled her concerns and did not acknowledge that both GPs had failed to diagnose her bowel cancer. The complainant sadly passed away during the course of the investigation.

The Ombudsman found that the treatment the complainant received did not fall within the bounds of acceptable clinical practice. He also found that the records did not meet the standards expected by the GMC Guidance. Whilst the complaint response from the Practice did not contain inaccurate information (although there were concerns about the standard of record keeping, casting doubt on the sufficiency of what was recorded), the lack of recognition that the complainant should have been clinically examined, may have given the impression that her concerns were belittled.

The Ombudsman made a number of recommendations, which the GPs agreed to implement, including: reviewing the standard of record keeping to ensure compliance with the GMC Guidance.

Principle 8: Managing records effectively

This includes:

- ensuring that all staff are aware of what is expected of them in regards to records;
- managing records according to recognised standards, following a records management programme;
- maintaining records in such a way that they are both retrievable and usable.

In seeking to achieve the above, public service providers should:

- Ensure that staff at all levels are aware of:
 - what records to keep
 - where to keep them
 - who should keep them
 - when to keep them.
- Identify what should be kept, according to statutory duty or business need. Decisions as to what records are to be kept should be documented in a way that can be used by staff in their daily work and can serve as evidence of the organisation's intentions.
- Never destroy a record without having the authority to do so. Good records management aims to ensure that retention decisions are made rationally, and shows why any particular records were destroyed. The existence of a structured retention system allows the organisation to prove that any destruction took place as part of normal business practice.
- Adhere to the Data Protection Act and the Code of Practice on the management of records issued under Section 46 of the Freedom of Information Act 2000.
- Ensure that records are stored and managed in such a way that they can be discovered when there is a need to consult them. There should be measures in place to ensure that retrieval is efficient and that the records have been appropriately and securely stored.

EXAMPLE

A Health Board

The Health Board arranged therapy sessions for the complainant in Bristol, and agreed to fund them. However, they refused her requests to pay her travel expenses to attend them. She attended the sessions, mostly weekly, during a period of five years.

The Ombudsman noted that non-emergency specialist transport may be provided by a Health Board in case of clinical need, but that there had been no suggestion that the complainant had needed or qualified for transport. A patient is entitled to be reimbursed travel expenses if they are in receipt of one of a number of benefits, or may qualify for help if he is otherwise on a low income. An independent investigator who had considered the woman's complaint at stage 2 of the Health Board's complaints procedure had recommended that the Health Board should reconsider its decision not to pay her travel expenses.

The Ombudsman found that the Health Board's panel, convened to consider this recommendation, focussed on whether the woman qualified for specialist transport, and thus had misinterpreted the panel's recommendations.

The Ombudsman made a number of recommendations, which included an apology and payment of redress in recognition of the time and trouble to which she had been put in pursuing her complaint and that it should:

- convene a panel to reconsider the recommendation, and the complainant's application for payment of her travel expenses. The panel should consist of members who were not involved in the original consideration of the matter and should consider all relevant information. A record should be kept of the matters the panel considered, their deliberations and the outcome; and,
- remind members of staff making administrative decisions of this nature of the importance of keeping records of the decision-making process.

EXAMPLE

A County Council

The Information Commissioner was asked to assess a Council's handling of an individual's subject access request. (A subject access request is a request by an individual under the Data Protection Act to an organisation to be informed of and receive a copy of all information that organisation holds about them).

As a result of investigation the Commissioner found that the Council had failed to respond to the request within the statutory 40 days, due primarily to systemic failures in the Council's storage of paper records and their approach to handling requests. The Chief Executive signed a formal Undertaking with the Information Commissioner to ensure implementation of proper policies, procedures and staff training to handle requests, as well as improvements to records management systems and performance reporting to ensure that requests are responded to in an appropriate and timely manner in future.

EXAMPLE

General Practitioners (GPs)

A woman complained about the standard of care provided to her late daughter. She stated that, despite numerous attendances at the GP practice, her daughter's diagnosis of cancer was missed. It was only when the family had subsequently taken their daughter to A&E, as she appeared so ill, that her cancer was diagnosed. The complainant said that a referral to hospital should have been made by the GPs involved in her daughter's care. She also raised a concern about the quality of the computerised GP records.

Having investigated, the Ombudsman concluded that the daughter had not presented with the typical symptoms of the disease and therefore the Ombudsman did not criticise the fact that a hospital referral was not made. However, he was critical of the poor quality of the record keeping, which lacked clarity and appropriate detail of clinical assessment, physical signs and examination and made the following recommendations:

- the practice should review its standard of record keeping to ensure record keeping by GPs comply with GMC guidelines;
- that the GPs should specifically reflect on the adviser's comments and the findings of this report in relation to record keeping;
- the practice should provide a full written apology to the complainant and her family for the shortcomings in record keeping identified in this report and make a financial redress payment in acknowledgement of the uncertainty and distress that the poor recording had caused.



1 Ffordd yr Hen Gae
Pencoed
CF35 5LJ
Tel: 01656 641150
Fax: 01656 641199

E-mail: ask@ombudsman-wales.org.uk
Web: www.ombudsman-wales.org.uk
Twitter: [@OmbudsmanWales](https://twitter.com/OmbudsmanWales)

National Assembly for Wales – Finance Committee – 21 January 2015

**Amendments to the
Public Services Ombudsman (Wales) Act 2005**

1. Introduction

- 1.1 The legislation governing the Ombudsman's office is the Public Services Ombudsman (Wales) Act 2005. At the time it was enacted, it was considered to be at the cutting edge of ombudsman legislation and is still highly regarded in the UK and internationally¹.
- 1.2 In 2015 the Act will be ten years old. New legislation has been introduced in the Republic of Ireland and elsewhere since 2005, while new legislation, drawing on the Welsh experience but designed to further develop it, is being introduced in Northern Ireland.
- 1.3 In addition, the Law Commission reviewed the legislation governing public services ombudsmen in England and Wales.² It commented favourably on the existing Public Services Ombudsman (Wales) Act but did make a number of recommendations for change one of which is referred to in section 2.5.
- 1.4 I have been in post since August 2014; during that time I have now had the opportunity to discuss legislative issues with my peers in all jurisdictions of the UK.
- 1.5 This paper sets out five key areas for change which have been informed from the experience of the office, developments of best practice elsewhere as well as the recommendations of the Law Commission.
- 1.6 The paper focuses on these five discrete parts in the hope that the suggested changes will be uncontroversial and can enjoy broad support for review and enactment by the Assembly in 2015. The suggested changes reflect four underlying priorities:
- **Future proofing:** the proposals are intended to ensure that the legislation continues to be fit for purpose, but that it also addresses future challenges which will affect service users in an ageing society where there are greater levels of physical and emotional vulnerability.

¹ Ombudsman Legislation – time for a review? Peter Tyndall March 2013

² Law Com No 329 14 July 2011 <http://lawcommission.justice.gov.uk/areas/public-services-ombudsmen.htm>

- **Social justice:** the proposals ensure that citizens from more deprived backgrounds, who may be more reliant on public services, will find it easier to make a complaint.
- **Citizen Centred:** proposals will strengthen the citizen's voice and ensure that wherever possible processes will follow the citizen rather than the sector or the silo.
- **Drive complaint handling and public service improvement:** these proposals will make a real contribution to public service improvement and reform whilst offering excellent value for money. The changes can be achieved whilst maintaining the Public Services Ombudsman for Wales (PSOW) budget at no more than 0.03% of the Welsh Budget block.

2. Five Areas for Change

2.1 Own initiative investigations

- (a) Virtually without exception, public services ombudsmen throughout Europe, and indeed, internationally, have the power to undertake investigations on their own initiative. The Ombudsman in the Republic of Ireland already has such a power and it will shortly be introduced in Northern Ireland also. Outside of the UK, only five members of the Council of Europe have ombudsmen who do not have own initiative powers: Belgium, Luxembourg, Azerbaijan, Kyrgyzstan and Liechtenstein.
- (b) This is a power normally used sparingly to investigate where there is an obvious problem but no complaint has come forward or, more usually, to extend an investigation into a complaint to other bodies where it appears that the maladministration or service failure identified is likely to be systemic and affecting people other than the complainant.
- (c) The Ombudsman in the Republic of Ireland undertook five own initiative reviews between 2001 and 2010 on issues ranging from subventions in nursing home care, tax refunds to widows, refuse collection charges and the rights to nursing home care for elderly people.³
- (d) It would be important to frame any changes in such a way as to ensure that the power would be used only where appropriate and cases could be referred to regulators or commissioners where this was a more suitable alternative.
- (e) This power is likely to become more important as we see the impact of an ageing society with citizens in vulnerable positions either unable or afraid to complain.

³ A Paper Prepared by the Office of the Northern Ireland Ombudsman on a Power to Commence and Own Initiative Investigation

2.2 Access – oral complaints

- (a) The current legislation is generally helpful in providing access to the office. The Ombudsman's service is free of charge and the requirement for bodies in jurisdiction to tell people about their right to complain has ensured that people can access the office as they need to. There is a requirement that all complaints should be in writing. Whilst the Ombudsman has discretion to accept a complaint in another form if appropriate, this has to be considered on a case by case basis.
- (b) However, in view of the changing nature of electronic communication, and the considerable equalities issues about potentially excluding people who cannot write, including, for example, people with learning disabilities, there is a case to be made for modernising this area of the legislation so that it is explicit in the legislation that complaints may be made orally with the Ombudsman being obliged to justify to a body being investigated why he has decided to set aside the requirement for a complaint to be made in writing in individual cases. At UK level 94% of the population attain literacy level 1 or above, in Wales it is only 87%. Access for people who cannot write should not be discretionary. They should have the same access as any other service user in Wales. In England legislation has recently been reformed for the Local Government Ombudsman. There is a danger that in Wales we have a greater need but are lagging behind in this regard.

2.3 Complaint Standards Authority

- (a) In Wales, we have developed the model complaints policy to help to achieve consistency across public service providers. Take up has been patchy, but is improving. Adoption is voluntary, but strongly encouraged. In theory, with the recent changes to the social services statutory complaints procedure, all public services devolved to Wales should be operating a streamline two stage complaints procedure. However, the problem lies with enforcement. I am conscious of the arrangement in Scotland where a few years ago, the Scottish Ombudsman was given the role of Complaints Standards Authority. I know that the Scottish Ombudsman has found this arrangement to be particularly effective in enabling him to tackle problems in the standards of complaint handling within the bodies in his jurisdiction. I believe that there is a case for adopting such an approach in Wales so that any guidance I give to bodies on complaints handling has statutory force so that I can help support improvement in public sector complaints handling.

2.4 Extension and reform of jurisdiction- Healthcare

- (a) With an ever ageing society the integration of health and social care is an important part of public policy. Recently my jurisdiction was extended to include self-funded social care and hospice care; however I cannot investigate private healthcare, unless it was commissioned by the NHS.

- (b) Recently there was a case that I could not resolve where a patient had been treated by the NHS, then privately (self funded) and then again in the NHS. The patient sadly died. I was unable to investigate the private funded healthcare. Clearly there is a need to reform legislation where a patient chooses to be treated in both public and private sectors that the complaints process follows the citizen not the sector⁴. It has been recommended that the remit of the Parliamentary Health Service Ombudsman should be extended to cover the whole private healthcare sector.⁵
- (c) The inclusion of private sector providers raises issues around funding of complaints handling and also compliance. Whilst the investigation of private social care complaints is currently resourced from the public funding that I receive through the National Assembly, there might be a view that a different arrangement should be considered if private healthcare providers also came into jurisdiction.
- (d) Private sector ombudsman schemes are normally funded by the bodies in their jurisdiction. This is usually underpinned by statute. The funding mechanism may be an annual levy, or based on case by case charging, or often on a combination of both.
- (e) This has the dual function of ensuring that the cost does not fall to the public purse while also engaging the “polluter pays” principle, giving providers an incentive to avoid error and resolve complaints as a means of not incurring the costs. There is again a strong case for ensuring this is the case for any private provider in the office’s jurisdiction. This hybrid funding model is already in place at the New South Wales Ombudsman’s office, for example.⁶ However, as Lesley Griffiths noted as Local Government Minister: “The suggestion of a levy, for example, would be very challenging to put into practice”.⁷ The introduction of such a system is clearly a policy choice for the Committee.
- (f) Where the bodies in jurisdiction are public bodies, the existing powers of recommendation work well and there is no evident need for change. Thus far, no public service provider has refused to implement a recommendation. However, where private bodies are in jurisdiction, as is now the case with social care providers, the democratic process cannot be engaged in the same way and compliance may be harder to secure. Private sector ombudsman schemes normally have binding powers and it would be helpful to consider including this provision in respect of private providers only in the future.

⁴ With the Wales Act 2014 having received Royal Assent I am also aware that an amendment may be required to Schedule 3 of the PSOW (Wales) Act 2005 to give me jurisdiction to consider complaints against the new Welsh Revenue Authority

⁵ DoH Review of the Regulation of Cosmetic Interventions

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/192028/Review_of_the_Regulation_of_Cosmetic_Interventions.pdf

⁶ Ombudsman Legislation – time for a review? Peter Tyndall March 2013

⁷ Letter from Lesley Griffiths AM to Christine Chapman Chair of Communities, Equalities and Local Government Committee

- (g) There is also an anomaly in the existing legislation whereby individual family health service providers (e.g. GPs or dentists, rather than surgeries or practices) are in jurisdiction. This has the unfortunate effect of personalising complaints in this sector whereas elsewhere, it is the public service provider, rather than an individual, who is in jurisdiction. Any change would have the effect of my naming the relevant practice or surgery in any report rather than an individual practitioner. This may also be unfair if the practitioner responsible for any service failure has since moved from the particular practice or surgery. However, I already have the power to name any person (other than the listed authority being investigated) if, having taken into account the interests of person aggrieved in any complaint or any other person I think it is appropriate and I consider it is in the public interest to do so.

2.5 Links with the courts

- (a) The Law Commission identified a number of areas where changes to legislation would be desirable. There is currently a statutory bar which prevents the PSOW from considering a complaint where the case could be considered by the courts. However, there is discretion to set this requirement aside. The Law Commission take the view that this bar should be set aside entirely, so that complainants can choose which is the more appropriate route for them.
- (b) In addition, there is currently no provision to allow the PSOW to consider a complaint when a judge determines that it would be the better means of resolution. Changing the law to allow the Administrative Court to “stay” cases and to refer them to the Ombudsman would address this issue, but the Law Commission recommend that the discretion as to whether to investigate or not should remain with the Ombudsman as at present.
- (c) Finally, the Law Commission have suggested that the PSOW should be able to refer a case to the court for determination of a point of law. They suggest that this will enable the PSOW to seek clarity on a legal point which might otherwise hinder or prevent an investigation as well as seeking clarity where there is doubt as to whether a matter is in jurisdiction.
- (d) This latter point clearly impact on the English and Welsh court system and advice is sought as to whether this latter change could fall within the purview of an amended PSOW Act.

3. The Cost of Change

3.1 Own initiative investigations

- Two full time investigation officers £80k-£100k, including on-costs.

3.2 Access – oral complaints

- No cost.

3.3 Complaint Standards Authority

- Two full time investigation officers – £80k-£100k, including on-costs.

3.4 Extension and reform of Jurisdiction- Healthcare

- Dependent on public or private funding method – £0k-£40k-£50k provision (dependent on policy choice re levy).

3.5 Links with the courts

- £20k Referrals from/to courts.

3.6 Total costs: £180k- £270k per annum.

4. The Case for Change

4.1 In considering the case of change, I have been keen to focus on:

- the need to future-proof the legislation and organisation
- improving social justice and making sure that voices of complainants from more disadvantaged backgrounds are heard
- making sure the Ombudsman’s work is Citizen Centred, rather than constrained to individual sectors or silos.
- driving improvement in public services and in complaint handling
- affordability and value for money.

4.2 I believe the suggested changes address these priorities, and hope that they will enjoy broad support.

Nick Bennett
Public Services Ombudsman for Wales
January 2015
