

**STANDARDS AND ETHICS COMMITTEE: 22 SEPTEMBER 2015**

---

**REPORT OF THE MONITORING OFFICER**

---

**INQUIRY INTO POWERS OF THE OMBUDSMAN**

**Reason for this Report**

1. To inform the Committee of the recommendations made by the NAW Finance Committee's Inquiry into the Powers of the Ombudsman.

**Background**

2. The Standards and Ethics Committee has statutory responsibility to monitor the ethical standards of the authority, and to consider ethical issues arising from complaints and to recommend to Council guidance on issues of probity (paragraphs (a), (e) and (h) of the Committee's terms of reference).
3. The role of the Public Services Ombudsman for Wales ("the Ombudsman") was established by the Public Services Ombudsman (Wales) Act 2005, bringing together the previous functions and powers of the Local Government Ombudsman, the Health Service Commissioner for Wales, the Welsh Administration Ombudsman and Social Housing Ombudsman for Wales. Under the current regime, the Ombudsman is responsible for considering complaints about maladministration or service failure by public bodies and misconduct of local authority elected Members or officers.

**Issues**

4. In late January 2015 the National Assembly's Finance Committee initiated an inquiry into the powers of the Ombudsman, specifically considering certain possible additional powers, such as powers to undertake investigations under his own initiative, to accept complaints orally, and to investigate complaints involving a combination of public and private healthcare treatments.
5. The Standards and Ethics Committee was invited to give evidence as part of the public consultation for the Inquiry. As the Committee had no scheduled meeting before the deadline for consultation responses, the consultation document was circulated to Committee members by email. The Chair, in consultation with the Monitoring Officer, then drafted a response on behalf of the Committee, reflecting Committee members' comments. Committee members were broadly supportive of the potential extension of the Ombudsman's powers, but highlighted various issues needing further consideration. The full consultation response sent on behalf of this Committee is attached as **Appendix 1** to this report.

6. In addition the Committee expressed a wish to see Connect to Cardiff (C2C) response to the consultation which sent separate to the Committee response and this is attached as **Appendix 2** to this report.
7. The Inquiry has now been concluded and the Inquiry report, published in May 2015, is appended as **Appendix 3** to this report. The issues and concerns raised by this Committee appear to have been given due regard. The Inquiry report recommends that a bill should be introduced into the Assembly to extend the role of the Ombudsman, as detailed in the 18 recommendations of that report.
8. The Welsh Local Government Association (WLGA) has circulated to Monitoring Officers a helpful summary of the key recommendations of the Inquiry, as follows:
  1. **Own initiative investigations** – the Inquiry agreed that the Ombudsman should have powers to undertake investigations under his own initiative, but that there should be ‘sufficient evidence to support an investigation’, consultation with Commissioners and relevant stakeholders and the Ombudsman should liaise with the Auditor General to take account of each other’s views and co-operate where necessary.
  2. **Oral Complaints** – Inquiry agreed that the Ombudsman should be able to accept complaints orally.
  3. **Statutory Complaints Process** – the Inquiry agreed that the Ombudsman should have a statutory complaints handling role. This complaints role should include provisions to:
    - publish a model complaints handling policy for listed authorities;
    - require regular consultation with relevant stakeholders;
    - require public bodies to collect and analyse data on complaints; and
    - ensure a standardised language is used by public bodies when collecting data to ensure comparisons can be made.
  4. **Ombudsman’s jurisdiction in private health** - Inquiry agreed and recommended the Ombudsman’s powers be extended ‘to enable him/her to investigate the whole complaint when a combination of treatment has been received by public and private healthcare providers and when that treatment has been initiated in the NHS’.
  5. **Changes to the statutory bar** (links with court action) – ‘Due to the legal complexities and the issue of the competence of the Assembly, the [Inquiry] concludes that changes should not be made in relation to the statutory bar, stay provisions and referral of a point of law at this time. However, the [Inquiry] recommends the Welsh Government explore these issues with the UK Government as part of future devolution discussions.’

#### **Code of Conduct**

- There was some debate, and split opinion from contributors, about the Ombudsman’s continued role in terms of member’s code of conduct. WLGA and OVV were clear about the importance of his continued role
- ‘The Ombudsman has indicated he 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. The Ombudsman was generally content to retain this function, but only for the most serious cases. He had concerns with the resource implications of dealing with “low level Member against Member

complaints". He felt these type of complaints should be dealt with by councils at local level in the first instance and this should be reflected in legislation.'

- "The [Inquiry] believes that training for elected members and guidance could see a reduction in the number of trivial complaints in the future. The [Inquiry] acknowledges the work undertaken by the Ombudsman so far and believes he should continue to encourage local authorities to deal with complaints locally."
- The Inquiry recommends the Welsh Government considers mandatory training for elected members as part of their consideration of forthcoming legislation on Local Government reform.

9. The Committee is invited to note the recommendations of the Inquiry as set out in **Appendix 3** and summarised in the paragraph above, and make any appropriate comments on these issues.

### **Legal Implications**

10. There are no legal implications arising directly from the recommendations of this report.

### **Financial Implications**

11. There are no direct financial implications arising from this report.

## **RECOMMENDATIONS**

The Committee is recommended to note the recommendations of the NAW Inquiry into the Powers of the Ombudsman appended at **Appendix 3**.

**Marie Rosenthal**

**Director Governance and Legal Services and Monitoring Officer**

16 September 2015

### **Appendices**

- |            |  |
|------------|--|
| Appendix 1 | Cardiff Standards & Ethics Committee's Consultation Response to the Inquiry into the Powers of the Ombudsman |
| Appendix 2 | Connect to Cardiff (C2C) Consultation Response to the Inquiry into the Powers of the Ombudsman               |
| Appendix 3 | NAW Finance Committee Report 'Consideration of Powers: Public Services Ombudsman for Wales' May 2015         |

### **Background Papers**

NAW Finance Committee Consultation letter dated 26<sup>th</sup> January 2015  
WLGA email from Head of Policy (Improvement and Governance) to Monitoring Officers dated 26<sup>th</sup>  
June 2015