

PSOW 16

Bil Ombwdsmon Gwasanaethau Cyhoeddus (Cymru)

Public Services Ombudsman (Wales) Bill

Ymateb gan: Gofal Cymdeithasol Cymru

Response from: Social Care Wales

Social Care Wales is a Welsh Government sponsored body established under the Regulation and Inspection of Social Care (Wales) Act, 2016 to protect, promote and maintain the safety and well-being of the public in Wales.

Our aims, as set out in our strategic plan, are to:

- Provide public confidence in the social care workforce
- Lead and support improvement in social care
- Develop the early years and social care workforce

In order to provide public confidence we make sure the social care workforce is fit to practise through our regulatory role by maintaining professional standards and assuring high-quality accredited training.

We are responsible for maintaining a register of social care workers which currently includes social workers, social care managers and children's residential care workers. By 2022 domiciliary care workers and adults' residential care workers will also be registered. We investigate complaints against registered care workers through our fitness to practise process.

### **Key points and matters requiring clarification**

- **We welcome the inclusion of private health services, including nursing care within the Ombudsman's remit, but would seek further clarity on how investigations in these areas would relate to the work of other regulatory bodies with responsibilities in these areas, including Social Care Wales (par 1).**
- **We would seek clarification on how provisions in the Bill which allow the exercise of professional and clinical judgement in social care relate to the powers and responsibilities of Social Care Wales (par 2).**
- **We welcome the provisions in relation to joint working. However, we note the lack of detail about joint working with those referred to, including Social Care Wales (par 8).**

### **General comments**

1. We welcome the extension of the Ombudsman's remit to include maladministration in private health services, including nursing care. This will provide for greater consistency. We believe that they will help to ensure that the complexity of healthcare arrangements does not stand in the way of important investigations about alleged service failures. The provisions will also promote equality and fairness by giving these complainants the same opportunities for redress. However we would seek further clarity on how investigations in these areas would relate to the work of other regulatory bodies with responsibilities in these areas, including us.

2. Recently the National Assembly has introduced two major laws on the regulation of social care<sup>1</sup>. In this context, we would like a clear definition of clinical judgment as it relates to social care. We would also question whether the reference to social care in 14(2) should be removed. This is because in relation to section 14 of Part 3, the Explanatory Memorandum refers to *decisions taken in consequence of the exercise of clinical judgment*. 'Clinical judgement' could be interpreted as being related to the practise of an individual care worker, which is an area which is already covered in law through Social Care Wales' remit (see 5.1). Furthermore, clinical judgment usually relates to health care and it is not, therefore, clear why social care is expressly referred to in 14(2) alongside the reference to health care. Therefore, we would question how these provisions in the Bill relate to the existing powers and responsibilities of Social Care Wales.
3. We would like to know whether fitness to practise panels is to be regarded as relevant tribunals for the purposes of the Bill. We would also like to have clarity about whether a decision about whether to refer a matter to a fitness to practise panel under relevant fitness to practise rules would be regarded as part of an administrative or judicial function.
4. There is a lack of clarity about what is meant by the following reference in section 10 of Part 3: *discharge of any of its administrative functions*. We would welcome more information about this because it will help us to identify the areas of our work that will fall within the Ombudsman's remit and allow us to make an informed comment about the provision.
5. Section 10(1)(c) refers to alleged failure by a listed authority to provide a relevant service and we would like more information about the meaning of relevant service in the context of our work. As far as we can see, this information is not available in the Bill or the Explanatory Memorandum.
6. We feel that Part 3, Section 3 would be clearer if 3(8) were set out, rather than just referred to. If the Ombudsman requires the agreement of the complainant to use Section 3, it would be best if this was clearly stated in Section 3.
7. We welcome the provisions in section 65 of Part 6 in relation to joint working. However, we note the lack of detail about joint working with those referred to in section 65(2)(f) - any person exercising regulatory functions in Wales. We fall within this category and are one of the specified persons listed in Schedule 3. Therefore, we seek further clarification on this important point.
8. Section 65 requires the Ombudsman to inform and consult us about relevant matters where he considers it appropriate. However, we feel that we need a stronger guarantee than this, especially as we are moving towards registering domiciliary care workers and this group of workers is specifically mentioned in Part 5 of the Bill.

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<sup>1</sup> The Social Services and Well-being (Wales) Act 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016

9. We would like to know whose complaint investigation will take priority where there are parallel investigations by Social Care Wales and the Ombudsman about the same or related issues. We would also question how the Ombudsman will ensure impartiality in investigations into our handling of a complaint (under our complaint or review processes) where the Ombudsman has already been investigating complaints about the same or related issues.

### **Oral complaints**

10. We recognise that some complainants face difficulties when they are required to submit their complaints in writing. We therefore welcome and support the proposal to permit oral complaints to the Ombudsman. However, we would draw attention to the possibility of an increasing number of complainants choosing to submit oral complaints out of convenience rather than necessity and the drain on resources this might cause.
11. We note that the Ombudsman's website contains details of advocacy and advice organisations and would suggest that the Ombudsman continue to direct people to these valuable sources of support and work with these organisations to make it easier for them to support complainants. This could reduce the pressure on the Ombudsman's staff in the event of a rise in the number of people choosing to submit oral complaints.
12. We also feel that the oral complaint process will have to be carefully managed to prevent misuse by vexatious complainants and to avoid disputes about the accuracy of transcribed complaints and the extent to which these reflect the views and wishes of the complainant.

### **Ombudsman initiated investigations**

13. We welcome and support the new power enabling the Ombudsman to initiate his own investigations. We believe that this will offer greater protection to vulnerable members of society who may be reluctant to make a complaint about public services. Where the new power leads to the identification of systemic problems and results in measures to eradicate them, the benefits will be even greater.
14. However, it is our view that there is a need for greater clarity about the Ombudsman's power to continue with an investigation where the complainant does not want the complaint to be regarded as duly made. Section 8(5) of Part 3 prevents the Ombudsman's from carrying out an investigation in these circumstances. However, it appears that the Ombudsman can proceed with an investigation under section 4 whether the complaint has been duly made or not. While we support the ability to do this but there may be practical difficulties where the main complainant would not wish to be involved. We would welcome further information about this provision.

### **Complaints handling standards and procedures**

15. Social Care Wales has two complaints-handling procedures; one for complaints about social care workers and one about for complaints about our how we operate. The process for complaining about social care workers is largely set out in the Regulation and Inspection of Social Care (Wales) Act

2016 and it is likely that we will want to rely on section 41(1)(b) or section 37(4) of the Bill to justify a decision to deviate from (or use a modified version of) a model complaints-handling procedure.

16. We would welcome information about whether, under section 38(1), the Ombudsman will be able to draw attention to approved non-compliance, where an organisation has relied on sections 41(1)(b) or section 37(4) to obtain consent to deviate from the model complaints handling procedure. This could help the organisations involved avoid unnecessary challenges to their processes based on alleged non-compliance.