

STANDARDS COMMITTEE

Date of Meeting	Monday, 3 October 2016
Report Subject	Public Services Ombudsman for Wales Bill
Report Author	Deputy Monitoring Officer

EXECUTIVE SUMMARY

The PSOW Bill (the Bill) arises from appeals from the current and previous PSOW to WG to update the existing legislation governing the office of PSOW, and to strengthen that role. The PSOW is currently governed by the Public Services Ombudsman (Wales) Act 2005 (the 2005 Act). The Bill uses the 2005 Act as its base but additionally introduces new powers and duties associated with those powers.

If the Bill is made into law in its current form then it will replace the Act and give the PSOW the following additional powers (relevant to matters of the conduct of members – there are other proposed powers but not of such relevance to Members):-

- To initiate own investigations; and
- To broaden the method of making a complaint to include oral complaints.

RECOMMENDATIONS

1	To consider and discuss the report and share views on the impact of the proposed additional powers for the PSOW.
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REPORT DETAILS

1.00	PSOW BILL
1.01	<p>Section 4 of the Bill – Power to investigate on own initiative</p> <p>This power allows the PSOW to investigate a matter whether the PSOW has received a complaint or not, so it allows the PSOW to initiate an investigation. It therefore appears that it allows the PSOW to continue to investigate a complaint that has been made but then withdrawn.</p> <p>Further, section 4 is proposed to apply retrospectively, the PSOW can investigate matters which took place before or after the Bill received Royal Assent.</p> <p>Section 5 – Criteria for own initiative investigations</p> <p>The PSOW must establish and publish criteria that have to be satisfied before the power in section 4 can be used to investigate a matter. When deciding whether to use the power in section 4, the PSOW must satisfy that criteria.</p> <p>It is for the PSOW to decide what the criteria should include (subject to general public law principles to act reasonably and in good faith and for proper purposes), but the criteria must set out the evidence that will be required before the power in section 4 can be used.</p> <p>There will also be a need to consult relevant bodies in order to avoid duplication or confusion. It is for the PSOW to decide the breadth of that consultation (subject to certain bodies that he will be required to consult), again subject to general public law principles.</p> <p>Section 16 – Investigation procedure</p> <p>Sections 16(2) sets out the procedure to be followed when the PSOW uses the power in section 4 to initiate an investigation.</p> <p>The procedure requires the PSOW to prepare an investigation proposal (i.e. a proposal which includes the reasons for the investigation and how the criteria have been met).</p> <p>However, there may be circumstances where it is impractical for the PSOW to prepare an investigation proposal. The explanatory note to the proposed Bill gives an example:- if the PSOW has already prepared an investigation proposal in relation to an investigation into Body A, and that investigation brings to light similar issues in relation to Body B, then the PSOW may not have to prepare and submit a new investigation proposal if the PSOW decided to extend the investigation to include Body B. However, in those circumstances, the PSOW must give Body B (and any other person identified by the PSOW in relation to the matter in a negative way) an opportunity to comment on the investigation.</p>

	<p>Under sections 16(4) and (5), the PSOW must specify further procedural requirements to be followed when the PSOW uses the power in section 4 to initiate an investigation. Such requirements must include procedures allowing those under investigation opportunity to comment, whether they have received an investigation proposal or not.</p> <p>Section 8 – Requirements: complaints made to the PSOW (the introduction of oral complaints)</p> <p>If a person wishes to make a complaint to the PSOW, the complaint must satisfy the requirements of this section.</p> <p>But the proposed section 8 does not specify the exact requirements of a complaint.</p> <p>The exact requirements will be set out in guidance published by the Ombudsman. Therefore, persons who wish to complain will need to read that guidance in order to assist them to make a complaint.</p> <p>If the guidance specifies that a complaint may be made orally, section 8 sets out the following further requirements for the PSOW:-</p> <ol style="list-style-type: none"> 1. The PSOW must explain that the complaint has been made under the relevant legislation and the implications of this; and 2. must ask whether the person wishes the complaint to be duly made; and 3. If the answer to that question is yes, then the PSOW must ask if it is to be confirmed in writing and if not the PSOW must record this request in writing.
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2.00	RESOURCE IMPLICATIONS
2.01	None

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	The consultation on the Bill was carried out between the 21 st of October 2015 and the 18 th of January 2016. The Finance Committee for the National Assembly for Wales recommended that it should be introduced to the Welsh Assembly.

4.00	RISK MANAGEMENT
4.01	N/A

5.00	APPENDICES
5.01	None

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	http://senedd.assembly.wales/mglIssueHistoryHome.aspx?Ild=13719 Contact Officer: Matthew Georgiou, Deputy Monitoring Officer Telephone: 01352 702330 E-mail: matthew_georgiou@flintshire.gov.uk

7.00	GLOSSARY OF TERMS
7.01	PSOW:- the Public Services Ombudsman for Wales whose duty it is to investigate complaints made by members of the public in relation to the actions and decision making of public bodies in Wales.
7.02	Royal Assent is when the Queen formally agrees to make a Bill into an Act. The date of Royal Assent for every Act can be found at the start of the Act, after the long title.