

**Response of the Public Services Ombudsman for Wales to the
Welsh Government Consultation: 'Striking the Right Balance: Proposals for a Welsh Language Bill'**

I am pleased to have the opportunity to respond to the Welsh Government's White Paper '**Striking the Right Balance: Proposals for a Welsh Language Bill**'.

As Public Services Ombudsman for Wales (PSOW), I investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction, which essentially are all those organisations responsible for delivering public services devolved to Wales. These include:

- local government (both county and community councils);
- the National Health Service (including GPs and dentists);
- registered social landlords (housing associations); and
- the Welsh Government, together with its sponsored bodies.

I am also able to consider complaints about privately arranged or funded social care and palliative care services.

In addition I have jurisdiction to consider allegations that members of local government bodies have broken their authority's code of conduct.

The Welsh Language Commissioner is a listed authority in Schedule 3 of the Public Services Ombudsman (Wales) Act 2005. I have also signed a Memorandum of Understanding with the Welsh Language Commissioner and my office has undertaken the investigation of language related complaints about Community Councils where no language scheme has been put in place.

My response to this consultation is restricted to the complaints aspects of the White Paper.

The Welsh Government's target of 1 million Welsh Speakers by 2050 is an ambitious one, which should require that all resources available to support the language are used in the most effective way possible.

It would appear that the current system is over-bureaucratic and complicated and that it can be wasteful. This could not only put goodwill towards the language at risk, but it also absorbs resources that could be better spent in promoting Welsh and creating new Welsh speakers.

It is a matter for the Government to decide whether it is appropriate to bring language promotion and regulation together. However, I believe that complaint handling could and should follow arrangements in other devolved fields, ensuring that complaints are not investigated by Government, or by Government appointees, but by a wholly independent body. This helps to maintain public confidence in the complaint handling process.

I welcome the fact that Section 75 of the Consultation overview refers to the PSOW good practice of generally allowing bodies the opportunity to investigate and respond in the first instance. The full document helpfully refers also to the all Wales Model Concerns and Complaints policy. I think the proposed reform would save money and also ensure more mainstream adoption of good language

practice. However, it is also important to note that my statutory powers also give me discretion not to insist on such a referral to the body being complained about where I consider that not to be appropriate. A similar position for complaints about Welsh language matters would allow for discretion in appropriate cases.

A number of the matters investigated, and referred to in the consultation document, seem trivial, and in my view would be more appropriately dealt with by an Early Resolution procedure. My office agreed some 287 early resolutions or voluntary settlements in 2016/17, an increase of 26% on 2015/16. These not only avoided the costs of an investigation, but also offered an effective and timely outcome for the complainant.

My jurisdiction pre-dates that of the Welsh Language Commissioner. I do not therefore believe that the Public Services Ombudsman (Wales) Act 2005 would require any statutory amendment to allow my office to investigate Welsh language complaints against public bodies. Furthermore, section 8 (3) of the Act specifies that any function relating to Welsh language or any aspect of Welsh culture is discharged in relation to Wales falls within my jurisdiction. As the Welsh Language Commissioner was subsequently established, complaints relating to the Welsh language have been referred to the Welsh Language Commissioner's in accordance with the Memorandum of Understanding referred to above and for consistency in approach.

Whilst complaints about Welsh language matters could sensibly follow the two stage process discussed above, I do not consider that I should be involved in determining any sanction that should be applied. This should remain a matter for the Commission/er, with appeals considered by the Tribunal. My role, under these arrangements, would be akin to that I fulfil in Code of Conduct cases, where the Local Government Act 2000 gives my office powers to carry out the investigation but any sanction is applied by either a standards committee or the Adjudication Panel of Wales.

Whilst my powers allow me to investigate private care providers, if the intention is to bring private utility companies within jurisdiction I believe this would mark a significant change in my jurisdiction and would require a redrafting of the Public Services Ombudsman Bill.

In summary, should the Welsh Government proceed with reform I would recommend the following approach:

- That complaints about Welsh language matters follow the two-stage procedure expected in other complaints about devolved matters.
- Discretion is retained for consideration by my office in the first instance where appropriate.
- That Early Resolution processes are used to maximum effect.
- Residual unresolved complaints should come to my office.
- My office's role would only be in relation to investigation.
- Should the actions of a body warrant sanction this should remain a matter for the Commission/er. The Tribunal would continue its role in considering appeals for standards impositions or sanctions.

Benefits

- **Save significant amounts of public money**

- **Reflect best practice as exists in Catalonia and Basque Country, where both respective ombudsmen have full jurisdiction over language complaints.**
- **Mainstream best practice in complaint handling maintaining public confidence in the process.**
- **Early resolutions to complaints provide an effective and timely resolution for complainants.**

Should these suggestions be of interest, I would be happy to discuss them with you and/or your officials.

Public Services Ombudsman for Wales

September 2017

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cc Meri Huws, Welsh Language Commissioner

Simon Thomas AM, Chair of National Assembly for Wales Finance Committee