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Own Initiative – Wider Investigations

Introduction

This factsheet explains how we can use our wider own initiative powers under the Public Services Ombudsman (Wales) Act 2019 (“PSOW Act 2019”). Section 4 of the PSOW Act 2019 empowers the Ombudsman to undertake own initiative investigations, which do not need to be prompted by a complaint or an individual.

We may conduct two types of own initiative investigation, which we refer to as:

Extended Investigation – this can be started when we decide, during the course of an existing investigation, that additional issues, or the actions of another body in jurisdiction, are suggestive of maladministration and/or service failure and should also be considered.

Wider Own Initiative Investigation – this is a stand-alone investigation which will not usually relate to a specific individual complaint or person. A wider own initiative investigation can be started to consider whether there is evidence of, or potential for, systemic or widespread maladministration and/or service failure on the part of a body (or bodies) in jurisdiction, which may cause harm or injustice to a wide group of individuals. Wider own initiative investigations give us the opportunity to provide a service which is responsive to current issues, is citizen focused and future proof.

Further detail on the procedure and criteria for own initiative investigations can be found on the [‘Own Initiative Investigations’](#) page of our website, under the ‘About Us’ tab.

What we can do

We have discretion to start wider own initiative investigations in respect of any bodies within our jurisdiction to consider whether there is evidence that:

- Suggests that systemic maladministration/service failure has occurred
- Indicates that systemic maladministration/service failure exists
- Indicates that there is potential for systemic maladministration/service failure
- Suggests that identified maladministration or service failure may be more widespread and systemic

Maladministration and service failure are not defined in the PSOW Act 2019. As with all our investigations, the main test is whether a public body has acted in accordance with the law, its own policies and procedures and in line with good standards of administration. Examples of maladministration and service failure can include delays in taking action, failures in dealing with people openly and helpfully, failure to maintain adequate records, failure to act fairly and failing to review policies and procedures regularly. Further information can be found in our [Principles of Good Administration](#) guidance, which is intended to help public bodies to ensure they deliver good administration and customer service. Where services are commissioned, it is incumbent on all public services to ensure that they have adequate processes in place to properly monitor those services.

A wider own initiative investigation may focus on a service or services provided by an individual body in jurisdiction or consideration of the same issues across a number of bodies in jurisdiction.

How we will decide

We will use our discretion to decide if there is the need to start an investigation.

We will consider evidence available to establish if the [criteria](#) to initiate an investigation are met, including:

- Whether the matter is in the public interest
- Whether there is reasonable suspicion that there is systemic maladministration that may cause a person, or group of persons, to sustain

injustice or hardship

- Whether the concerns are such that they would impact on a wide group of citizens or individuals, particularly if they may be vulnerable or disadvantaged and appear likely to sustain injustice or hardship in consequence
- The weight of the evidence
- The persuasiveness of the evidence

Although there is no widely accepted definition of public interest it is thought to be “something which is of serious concern and benefit to the public”. We consider it to be something which has an impact on the public and is not merely a matter the public finds to be of interest or a matter that impacts solely on an individual (although an individual may be more directly impacted by the matter than the wider public).

The public in this context does not necessarily mean the entire population of Wales. It may refer to a distinct section of the public such as a small community or interest group.

We may consider evidence from a number of sources, including:

- Complainants and/or a body complained about
- Witnesses
- Other public service providers, Regulators, third sector organisations and other third parties
- Published 'open source' data
- The Media
- Anonymous complainants
- *Whistleblowers (see below)
- Concerns arising from complaints received and/or investigated by us from members of the public or intelligence obtained from the office's improvement work.

Step 1 - Consultation

The procedure which we must follow before starting a wider own initiative investigation is set out in section 4 of the PSOW Act 2019. We must have regard to the public interest in beginning an investigation, have reasonable suspicion there is

systemic maladministration or systemic injustice sustained as a result of the exercise of professional judgment in health and social care cases and have regard to our published [criteria](#). We must also consult such persons that the Ombudsman considers appropriate. This will include, amongst others, the Welsh Commissioners, other regulatory bodies and/or the Auditor General. It may be possible, in some circumstances, to collaborate with one of these bodies, to undertake a joint investigation and produce a joint report.

It may also be appropriate to seek the views of the wider public, by advertising the details of the proposed investigation on our website, in the media and/or by holding discussion events.

Step 2 - Proposal

When we start a wider own initiative investigation we must follow the procedure set out in section 18 of the PSOW Act 2019. We must prepare an investigation proposal and submit it to the public body or bodies we are minded to investigate. The proposal will include the proposed scope of the investigation, the reason for proposing the investigation, why the own initiative [criteria](#) are met and the rationale for proposing the inclusion of the body or bodies. The body or bodies will also be invited to provide written comments and express their views on the merits of investigating. They will also be offered the opportunity to meet to discuss the proposal.

Investigation

The procedure for conducting a wider own initiative investigation will be such that the Ombudsman thinks appropriate in the circumstances of the case. The investigation will be managed in accordance with our standard complaints handling processes.

A letter containing the details and scope of the investigation will be shared with the bodies concerned. The investigation process, with proposed timescales, will also be shared for information.

During an investigation, the Ombudsman has the power, under Section 19 of the PSOW Act 2019, to examine any records that we consider to be relevant to the investigation. The investigation start letter will, therefore, contain a request for information, records and data. It is likely that further requests for information will be made as the investigation progresses. It is also likely that evidence will be gathered from relevant staff through the use of [surveys and/or interviews](#). It is for the body, or bodies, investigated to ensure that they provide contact details for all relevant staff.

Evidence will also be considered from sources outside of the investigated body or bodies, for example, from other relevant bodies, stakeholders and/or service users. Relevant legislation and national guidance will also be considered and professional advice may be sought from one of the Ombudsman's professional advisers.

Often it is helpful, and advisable, for the body, or bodies, under investigation to appoint a contact person within the service area under investigation, to assist with the provision of information requested and to address any questions during the investigation. As with our standard complaints handling processes, we will also copy correspondence and requests to the PSOW Contact Officer already designated by each investigated body.

Unless the investigation is discontinued for any reason, on completion of the investigation, a draft report will be shared with the body, or bodies, under investigation to allow them to comment upon any inaccuracies, the investigation findings and any proposed recommendations. Any comments received will be considered before the investigation report is finalised and issued.

What we cannot do

Although we can consider information provided by persons who may meet the statutory definition of whistleblower, the Ombudsman is not a 'prescribed person' under the Public Interest Disclosure (Prescribed Persons) Order 2014 in respect of the Ombudsman's role of considering complaints of maladministration or service failure about public bodies in Wales. In such circumstances, whilst we may take any such communications into account when deciding whether to undertake an own

initiative investigation, we will signpost any potential whistleblowers to any other relevant body and/or the appropriate 'prescribed person' depending on the nature of the issue raised. Any resulting investigation will not substitute or interfere with the whistleblowing duties, responsibilities and processes of the public bodies concerned.

Contact us

You can submit an idea for an own initiative investigation on the ['Own Initiative Investigations'](#) page of our website, under the 'About Us' tab.

If you require any further information about own initiative investigations, please contact us: owninitiative@ombudsman.wales