

Own Initiative Investigations

Procedure for Investigation



Foreword

- 1.1 Many public services Ombudsman officeholders throughout the world have the power to undertake investigations on their own initiative.
- 1.2 It is a power, used sparingly, to investigate a problem when no complaint has been received or where information or individual complaint(s) suggests that an issue may be widespread or systemic. The power is used only where appropriate – concerns are referred to other regulators, if they are considered to be more suitable bodies to pursue them.
- 1.3 The ‘own initiative’ power is likely to become more important in our ageing society, where vulnerable people are either unable, or afraid, to complain.
- 1.4 The power will also, and more usually, be used to extend an investigation of a complaint to directly-related issues or to other bodies involved in the matters complained about.
- 1.5 The Public Services Ombudsman for Wales is pleased that this power has now been incorporated into legislation governing the Ombudsman’s jurisdiction in Wales.

Types of Own Initiative Investigation


a) Wider Investigation

2.1 The Ombudsman may exercise his discretion to initiate a wide range of investigations. For example, he may wish to look into:

- other bodies in the same sector or public service as a body originally complained about
- concerns about a part of or a whole sector of public service
- an anonymous complaint
- a complaint from a ‘whistleblower’
- concerns brought to his attention by regulatory bodies, patients’ groups, service user groups, MPs/AMs, the media etc.
- concerns arising from PSOW’s own investigations or from intelligence gleaned by the Ombudsman’s officers

b) Extended Investigation

2.2 There are a number of instances when the Ombudsman may wish to broaden a current investigation into a consideration of related issues. The Ombudsman may wish to take a live investigation in another, associated direction. For example, an ongoing investigation of




a complaint against a GP could reveal information of concern about a related matter involving the local Health Board. There may be evidence of a problem at the Health Board which is beyond the control of the GP complained about. The Ombudsman may therefore consider it appropriate to extend the current investigation to include the Health Board.

Jurisdiction and Delegation

- 3.1** The Ombudsman may start an own initiative investigation in respect of any bodies within the Ombudsman’s jurisdiction.
- 3.2** A decision to start an own initiative investigation which falls within the definition of a “wider investigation” in paragraph 2a) above, must be taken by the Ombudsman.
- 3.3** The Ombudsman has delegated authority under paragraph 14 of Schedule 1 to the PSOW Act 2019 to his Director of Improvement, Director of Investigations and Investigation Managers to start an own initiative investigation which falls within the definition of an “extended investigation” as explained in paragraph 2b) above. The Ombudsman has delegated authority to determine the outcome of such an investigation to all his investigative staff.

Suggestions for Wider Own Initiative Investigations

- 4.1 Suggestions for potential own initiative investigations may be collated from numerous sources, including:
- Suggestions from the Ombudsman’s investigative staff, stemming from existing/previous investigations or complaints received
 - Suggestions from the Ombudsman’s Improvement staff, as a result of concerns about a specific body, sector or service
 - Media reports
 - Service user groups, charities or voluntary organisations
 - Advocacy services
- 4.2 Individuals or bodies with ideas are encouraged to complete and submit a form, which will be available on his website and the Ombudsman’s staff intranet. The form records the topic suggested, the bodies to be investigated and why the matter is considered worthy of investigation (see Appendix A).
- 4.3 The Own Initiative Unit will acknowledge receipt of the forms and assess the suggestions (see Appendix B). Officers will consider whether any remedial action is planned by the body concerned, which would render investigation unnecessary. Having regard to Human



Rights considerations and whether an investigation is required in the public interest, officers will determine whether an own initiative investigation is reasonable and proportionate, using the criteria below.

Criteria for Investigation

a) Wider Investigation

- 5.1 Sufficient evidence should be available to demonstrate the need to begin a wider ‘own initiative’ investigation.
- 5.2 Evidence may:
- suggest that systemic maladministration/service failure has occurred
 - indicate that systemic maladministration/service failure exists
 - indicate that there is potential for systemic maladministration/service failure
 - suggest that identified maladministration or service failure may be more widespread and systemic.
- 5.3 Evidence may be from:
- the complainant and/or the body complained about
 - the Ombudsman’s complaint records
 - witness/es

- other public service providers, third sector organisations and other third parties

5.4 The evidence is assessed 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 any person to sustain injustice or hardship
- whether the concerns identified are such that they would impact upon a wide group of citizens or individuals, particularly if they may be vulnerable or disadvantaged (for example, a person or group of individuals who would have difficulty in making a complaint) and who appear likely to sustain injustice or hardship in consequence of the matter being considered for investigation
- the weight of the evidence
- the persuasiveness of the evidence.

5.5 If the Ombudsman considers that the above criteria are met, there will be a consultation exercise to seek views on the merits of investigating.



b) Extended Investigation

- 5.6** Where the Ombudsman has already begun an investigation into a complaint and he wishes to begin an own initiative investigation into matters that have a substantial connection with the matter already being investigated, he will begin an extended investigation on his own initiative.
- 5.7** An extended investigation may be carried out where a complaint about:
- one element of a service, and/or
 - one service provider
- is closely linked to
- another possible incidence of service failure, and/or
 - another related service provider.
- 5.8** If the Ombudsman considers that the above criteria are met, the service provider(s) involved and the complainant will be advised of the decision to extend the investigation. The parties involved will have the opportunity to submit comments and evidence as part of the investigation process. If the extended investigation relates to health services, the complainant will be given the opportunity to progress the matter under the ‘Putting Things Right’ regulations as an alternative, if they wish.

Consulting and informing

6.1 Before an investigation is initiated the Ombudsman must consult or inform, as appropriate:

a) Wider Investigation

6.2 When planning a wider investigation, it will be prudent to consult with one or more of the Welsh Commissioners, regulatory bodies or the Auditor General. It may be possible to collaborate with one of these bodies, to undertake a joint investigation and produce a joint report. In addition, the Auditor General may be able to advise on the most effective method of investigation. In certain cases, it may also be appropriate to seek the views of the wider public, by advertising the proposed investigation on the Ombudsman's website or publicising in the media.

b) Extended Investigation

6.3 When planning to extend an investigation into a related area, the Ombudsman must inform the complainant, the body being or to be investigated and any person who may be identified in relation to the investigation in a negative way. They will be given an opportunity to comment during the investigation.



Proposal for Wider Investigation

- 7.1 Following the consultation exercise, the Own Initiative Unit will prepare a proposal to detail the scope of the investigation and planned timescale and present it to the Ombudsman (see Appendix B). The proposal must state the reasons for the investigation and outline how it meets the criteria to investigate (see section 5 above).
- 7.2 The proposal must be sent to the body or bodies to be included in the investigation, with an invitation to comment. Anyone named in the proposal and referred to negatively, should also be given the opportunity to comment.
- 7.3 The Ombudsman will consider all comments on the proposal and will assess the availability of office resources, before determining whether to proceed to initiate an investigation. The Ombudsman must approve and share the final proposal with relevant bodies, if he wishes to proceed.
- 7.4 If, following consultation, a decision is taken not to start a wider investigation or a decision is taken to discontinue a wider investigation, the Ombudsman will prepare a statement of reasons and send to the relevant body/bodies involved and the complainant if applicable.

Investigation

- 8.1 When the Ombudsman has initiated an investigation, it will be managed in accordance with his existing processes for complaint handling at PSOW.



Appendices

Appendix A – Suggestion for Own Initiative Investigation

Appendix B – Assessment of Own Initiative Suggestion

APPENDIX A

Own Initiative Investigation

Suggestion

Name/Organisation:	
Date:	
Subject Matter (a brief overview):	
Body/bodies to investigate:	
Name anyone affected by this matter:	
Add any other relevant information:	

APPENDIX B

Own Initiative Investigation

Assessment of Suggested Topic

(by Own Initiative Unit at PSOW)

Suggestion from:	
Date of Suggestion:	
Assessor:	
Date of Assessment:	
Review of Subject Matter:	<i>Include any relevant case ref numbers Attach any relevant evidence from case files</i>
Body/bodies to investigate:	<i>Are they within jurisdiction? Are they the appropriate bodies? Are there other, relevant bodies?</i>
Those affected:	<i>Are there others than those named?</i>

<p>Other relevant information:</p>	<p><i>Do we know whether the relevant bodies have addressed or are addressing the matter?</i></p> <p><i>Have the individuals affected sought legal recourse in relation to the matter?</i></p> <p><i>Are there Human Rights concerns?</i></p> <p><i>Would an investigation be proportionate?</i></p> <p><i>Would an investigation be in the public interest?</i></p>
<p>Analysis and Recommendation:</p>	<p><i>Assess the merits of the proposed investigation against the criteria for 'Own Initiative' investigations.</i></p>



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