

The Ombudsman and the Changing Face of Public Services

Peter Tyndall

Public Services Ombudsman for Wales

1 Ffordd yr Hen Gae

Pencoed

CF35 5LJ

peter.tyndall@ombudsman-wales.org.uk

This paper considers the practical implications for ombudsmen of the privatisation or outsourcing of public services. It looks at two possible scenarios. The first in which services are privatised but redress continues to be provided by existing public services ombudsmen and the second in which redress is provided by private sector ombudsmen or through other arrangements. It suggests a particular role for public service ombudsmen in signposting complaints within the complex landscape which is emerging and promoting standard approaches to complaint handling to help complainants get a consistent response across providers, drawing on practical examples. It considers the implications of privatisation for the IOI and advocates a policy stance based on existing public services ombudsmen retaining jurisdiction even when services are privatised or outsourced.

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The IOI Rules say that membership of the Institute is open to public service ombudsmen. The rules don't specify, however, what public services are.

As Brian Thompson has described in his paper, since the election of the Thatcher Government in 1979 and under successive administrations, many former public services have been privatised in the UK including most utilities – telecommunications, water, gas, electricity, and public transport. A large proportion of public housing has been sold to its tenants or transferred to third sector landlords. Parts of the health service have been outsourced. In England, many schools have become independent trusts while still retaining state funding. The financial crisis and EU competition requirements have seen the acceleration of privatisation across Europe.

It is instructive to consider that some countries which do not have the same tradition of state funded or delivered public services do not have national ombudsmen. The USA is a good example of this. There is no ombudsman at the federal level although there are some state ombudsmen. There must be concern that an erosion of jurisdiction could potentially undermine the foundations of existing schemes. However, the growing complexity of service provision also has practical implications for Public Service Ombudsmen.

Where all services are provided by the state, access to redress is usually straightforward. Public Services Ombudsmen across the world tend to have all publicly provided or commissioned services within their remits. But when services are privatised, access to redress can be lost.

As we've heard, Public Services Ombudsmen typically report to their Parliament or other democratic body, make recommendations rather than have binding powers and are funded from the public purse, rather than by bodies in their jurisdiction.

Wholly private ombudsman schemes can have a statutory basis. Their existence can be established by law and organisations in their jurisdiction can be required in law to co-operate

with them. A key distinction from public services ombudsmen is that although such schemes can be created by statute, their funding is provided by the industry sector in which they operate, and not by the state.

Private sector ombudsman schemes can be funded in two different ways. The first of these is by a levy, where all bodies in jurisdiction pay towards their running costs, often based on the size of the body concerned. The second is based on the number of complaints. This incorporates an element of the “polluter pays” principle, and is said to encourage bodies in jurisdiction to better address complaints internally to avoid the costs associated with complaints going to the Ombudsman. Some schemes incorporate an element of both funding arrangements. Schemes which rely heavily on a pay per complaint model can have great difficulties in workforce planning as income streams are not predictable.

As we’ve heard the UK redress landscape is a complex one. In Wales, for example most public sector delivered services are covered by ombudsman schemes, either by my office, or by the Parliamentary Ombudsman in respect of non-devolved areas. Services commissioned by state bodies or local government from private sector or third sector organisations are also covered.

Where public services have been fully privatised, there is some coverage in certain sectors including water, telecoms and power. This situation has not arisen due to any policy stance; rather it is the product of different decisions being taken at different times by different administrations with no overriding direction.

To complicate matters, some public services provided independently with elements of funding from the state are in the jurisdiction of ombudsmen, including third sector social housing providers, housing associations, which are in my jurisdiction and universities. The Welsh Government also proposes to bring independent hospice care for people who are at the end of their lives and private care home residents who pay for their own care, within my remit. Currently, residents in care homes funded by a local authority or health board are within my remit while those who pay for their own care are not.

In these examples, there is no charge to the provider for the services of the Ombudsman. Instead, it is funded through the existing budgetary arrangements. These are examples where entirely privately funded services are within the remit of a public services ombudsman, creating a hybrid, public/private scheme.

In my view, there is a strong argument for saying that all public services, whether publicly provided or not, should be in the remit of an ombudsman. While it may be argued, as Brian Thompson has done, that these need not necessarily be in the remit of a public services ombudsman, I believe the principle of independent redress should be consistently applied. There is also a strong argument for creating access to redress for consumers across the private sector, and proposals to this effect are being actively developed by the European Commission. It is evident, however, that such redress schemes while needing to be seen to be independent, need not necessarily be provided by an ombudsman.

The net effect of all of these developments in the UK is a far more complex network of ombudsmen spanning both publicly provided services and those which have been privatised. Some sectors have more than one ombudsman, while others have no access at all. This is far from being a solely British phenomenon.

The Austrian Ombudsman Board in their Annual Report for 2011 talk of the numerous divestment and privatisation processes during the last two decades which have actually diminished their investigative authority. They say that they have repeatedly pointed out that without an extension to their remit the promised improved customer orientation and higher quality of services is only partially being achieved.

In Belgium, we have seen the creation of an energy ombudsman. In Spain, Public Services Ombudsmen are retaining responsibility for utilities as they are privatised.

From the citizen's perspective, the rapid expansion in redress schemes presents its own challenges. As more public services are delivered by the private or independent sectors, finding your way to the appropriate ombudsman scheme can be difficult. What can we do to help complainants to effectively hold public services providers to account? I want to talk about two initiatives taken by my office. The first, Complaints Wales, is a signposting service to help complainants put their complaint to the appropriate body or ombudsman. The

second is a Model Complaints Policy for use across public services providers to ensure that complainants get a prompt, consistent response regardless of who they complain to.

The Complaints Wales Service is a signposting service with its own website, telephone hotline and brand identity. It was established in response to research showing that many people were not complaining about public services because they didn't know how to go about it. It is operated by the same team of staff who deal with first contacts to my office. They will respond to the caller either as Public Services Ombudsman for Wales or as Complaints Wales depending on which number they ring.

In order to establish the service we conducted extensive research into the complaints handling processes of all public service providers in Wales. We also looked in detail at which were the appropriate Ombudsmen or next stage handler for each one, and got details of their complaints handling processes in addition. Crucially, we then approached each of these bodies, whether they were within the public sector or not, and asked them to agree to accept a complaint captured by us and forwarded to them as a properly made complaint under their processes. **We did not want to signpost people**, as we know that many will not pursue a complaint if the process involves too many steps. Instead, **we wanted to signpost their complaints**, although we are happy to pass on the details of the appropriate body if that is what the complainant prefers. We were very encouraged by the response, as almost every body agreed to work with the service, and in the few instances where they had very specific requirements on their complaint form, we are arranging for the complainant to be seamlessly linked to this from the Complaints Wales website.

This is a pragmatic solution to the issue of complexity but of course, we would prefer not to have seen such a situation develop in the first place, and intend to work now to simplify the landscape, rather than signposting complainants through it.

So what can we conclude about the impact of diversity in public service providers on the work of ombudsmen? I will argue that it would have been preferable that the public services ombudsmen had their remits amended to include all public services, regardless of who provides them. Where schemes are covering privately provided public services, I will argue that this element of their work should be funded by a levy.

However, ensuring that complaints are dealt with properly by private providers is another challenge entirely. A recent case considered by my office illustrates some of the potential pitfalls.

An older woman with dementia was placed by the health board into a private nursing home. Her care was paid for by the Health Board, which is part of the National Health Service.

During her time there, she suffered from a series of strokes which made her progressively more ill, and less capable of expressing her own views or giving informed consent to treatment.

Before she became unable to give informed consent, she expressed a clear view about her future care. She knew that the progressive deterioration in her health was terminal. She wanted to die in the care home rather than be taken to hospital for aggressive treatment. Her daughter visited regularly and acted as an advocate for her mother, as she became unable to express her own views.

Although elements of her care were good, the home failed to document her wishes. They did not provide a chair and special pillow she required in order to avoid bed sores, and her daughter was forced to provide it herself. As she became acutely ill, the records of her care were poor, suggesting that there was neglect, and ultimately, when the doctor was called, he arranged for her to be transferred to hospital as there was no evidence in the records of her wishes, despite her daughter saying what they were.

When her daughter subsequently complained about her mother's care, her complaint was very poorly handled. It was not clear who she should complain to when the nursing home's response was unsatisfactory. The Health Board did investigate, but it did not follow the proper process. The regulator which registers care homes also became involved, and again did not investigate thoroughly, nor propose solutions which would resolve the issues raised by the complaint and offer assurances that there would be no recurrence.

When the complaint came to my office, it was clear to us that although the care was being provided by the care home, the lady in question was a patient of the health board. They should have followed the statutory complaint model for the health service in Wales, but did

not do so. Their contract should have stipulated how complaints would be handled. It did not. When asked, the home was unable to supply the relevant records, which it said had been passed to the Health Board as part of their complaint consideration.

This complaint highlights many of the concerns about outsourced services, and demonstrates the importance of the involvement of the Public Services Ombudsman.

With outsourced services, there is an opportunity to cover complaint handling in the contract. This should specify compliance with the complaints handling requirements of the body doing the outsourcing, in this case the Health Board. Patients using the service should be made aware of their right to complain to the health board if informal local resolution fails. They also need to be made aware of their right to complain to the Ombudsman.

There should also be a requirement on the provider to co-operate fully with any health board or ombudsman investigation, to provide comments within a specified time period, to provide access to records and to make staff available for interview or to respond to written questions as required, and to fully implement any recommendations arising from investigations. All of this is readily achievable when services are outsourced. But what happens when they are privatised?

In this instance, the statute underpinning the privatisation must require all service providers to comply fully with ombudsman investigations. In almost every instance, there will be a need to allow the service provider an initial opportunity to put things right. This will usually encompass an informal process at the point the concern arises, and a formal process within the organisation. There should be clear timescales laid down for these processes, to avoid lengthy delays before the complaint reaches the ombudsman.

As with outsourced services, there needs to be a clear responsibility to fully co-operate with the ombudsman's investigation. However, unlike with outsourced services, there will almost certainly need to be a requirement to comply with the ombudsman's recommendations, as is typical in wholly private sector schemes, with only recourse to the courts as an alternative.

One way to tackle the complexity that can ensue when there are multiple agencies providing services is to develop a Model Complaints Policy. My office has developed such a policy for

all public service providers in my jurisdiction where a statutory complaints policy does not exist. The Scottish Public Services Ombudsman operates a statutory complaints standards agency which can and does specify the features of the complaints handling systems which have to be adopted by bodies in his jurisdiction.

In developing a model policy we concluded that a common, streamlined system should be to everyone's advantage, and set about working with Government and public bodies to introduce a common complaints policy. We saw a number of advantages. When complaints are handled badly, the public's trust in public services is eroded. Good complaints handling, on the other hand, can enhance the image of a public body and may even turn critics into admirers

With a Model Complaints Policy, for the complainant, it is clear from the outset how to complain about any public service and what will happen to their complaint. Having a streamlined process is less frustrating and results in a quicker 'final' response to their complaint from the public body concerned

It's easier for the public to make a complaint about an incident involving more than one service provider and have that complaint dealt with in a joined up way.

The Policy specifies that in the first instance, there should be an attempt to resolve the matter informally at the point at which the concern arises. If a complaint is not resolved by front line staff, a streamlined internal complaints process must then be used based on the principle "investigate once, investigate well." Multiple internal stages in complaints processes do not usually add value. They delay final resolution and are often there because there is a presumption that a significant proportion of investigations will not be properly undertaken and not lead to an outcome which is satisfactory for the complainant.

A streamlined process releases staff resource, as a less bureaucratic approach means tying up less staff time, both of those involved in the investigation of a complaint and those the subject of a complaint. A common system enables public bodies to more easily deal with complaints that span more than one public service, or, in a world where privatisation is becoming commonplace, more than one provider.

Staff across public service can be confident that they know how to deal with complaints, because the process will be the same wherever they work. The Model Policy removes uncertainty about differences in procedure when staff move from one area of public service to another. Being the subject of a complaint is often stressful for the staff concerned. Quicker outcomes to investigations are invariably welcomed.

From a Government perspective, a common policy is consistent with the aim of providing citizen centred public services and enables them to obtain a comprehensive picture of areas of complaint – and to identify lessons to be learnt that can be applied across all public services.

The model includes

A standard complaints form which gathers basic data about the complainant, the service and the matter complained about. This ensures that information is gathered once, and can be then used many times, for example when a complaint involves more than one public body, or when the complaint is escalated to my office.

One informal stage to seek to resolve complaints either at the point at which the concern arrives or very shortly thereafter.

One *local investigation* only, proportional to the complaint.

One *External investigation*: Previously, there were many complaints processes which included a further stage before referral to my office. They rarely if ever added value, they could be bypassed as complainants could bring their case to my office after the first stage in any event, and prolonged the process by delaying, often considerably, the ultimate outcome. When the outcome is delayed, resolution is often more difficult as positions become entrenched and the facts become less well remembered. A single, earlier process reduces the overall cost, and streamlines the system for complainants.

The Model Policy was developed by a group including members from all key service areas. It was then adopted by the Welsh Government and issued to all public bodies in Wales. In Scotland, the Public Services Ombudsman has been rolling out a similar approach to develop consistent complaint handling within sectors.

Ombudsmen often have cause to criticise the bodies in their jurisdiction for poor complaints handling. Complaints about this are upheld even when the original decision making was not at fault. We see that the ways that bodies deal with complaints are different by historic accident, and usually the differences don't add value. Often there are many stages in complaints processes which only serve to further annoy the complainant.

Taking the initiative and developing a common approach to complaint handling by bodies in our jurisdiction has many advantages. We can offer guidance, but that often won't address needless variation. A simple standard method is better for complainants and better for improving public services. We need to drive this agenda, and not be observers of unsatisfactory practice.

Signposting complaints and developing a consistent approach to complaint handling are two ways in which Public Services Ombudsmen can help to tackle the complex redress landscape facing users of public services in a post privatisation landscape.

The alternative approach is to retain services in jurisdiction, or bring them back into jurisdiction, after they have been privatised. This has a different set of challenges which need to be addressed.

In the UK, we've seen that in general, public services ombudsmen make recommendations and do not have binding powers, while private sector ombudsmen do. In a hybrid model, it is likely that binding powers, at least in respect of private providers, will be necessary. The political recourse open to most public sector ombudsman through bringing reports on non-compliance to the attention of their parliamentary body will not have the same weight in respect of wholly private providers. Only compulsion is likely to prove effective. As most of the privatised industries are also regulated, strong links with the regulator to enable compliance to be monitored and factored in to regular inspections is another useful lever of change.

Ultimately, Ombudsmen are about improving services as well as providing redress to individuals. Although other models of redress are possible, it is the combination of a service which is independent, objective, free at the point of use, and able to address the aspirations of complainants that their experience will help to ensure that what happened to them will not

happen to others, which leads me to the conviction that public services ombudsmen are uniquely placed to provide redress, across the public service landscape.

What of the implications for the IOI? Where existing members retain responsibility for public services which have been outsourced or privatised, then there are no issues to address. However, if responsibility for external consideration of complaints about public services provided by private companies rests with another ombudsman, as is the case in part in the UK, in Belgium, the Republic of Ireland, Australia and New Zealand, to name but a few, then should such ombudsmen be encouraged to join the IOI if their schemes are otherwise compliant with IOI requirements? The IOI is an organisation of public services ombudsman and I do not advocate a widening of the membership to include wholly private sector schemes. However, schemes which cover elements of public services, even where these are privately provided, are not currently able to become members.

In my view, the IOI should set out a clear policy position favouring the retention of access to existing public services ombudsmen, either at national or the appropriate regional level, when any services are outsourced or privatised. We should not encourage the creation of new redress schemes or ombudsmen for services which are already covered. Where redress has been lost, we should argue for it to be restored. Where privatised services fall within the remit of a private sector ombudsman, provided that such schemes are compliant with our requirements, we should encourage them to become associate members. Decisions on their membership should be informed by the view of the relevant local Public Services Ombudsman.

BIOA, the British and Irish Ombudsman Association, has been enriched by the combination of private and public sector ombudsman members, which has been the case since its foundation. Although the bodies in jurisdiction are very diverse, the schemes are underpinned by common principles which create a sound foundation for mutual learning, representation and support. I have no doubt that ANZOA, the body for ombudsmen in Australia and New Zealand finds a similar strength from its membership.

BIOA, has clearly stated its view that proliferation is not in the interest of public service users and that any extension of access to redress should, if possible, be taken on by existing schemes. We should do likewise in the IOI.

We have already seen some evidence of redress access which was lost on privatisation being restored. The water industry in Scotland, for example, has been brought within the remit of the Scottish Public Services Ombudsman.

It is the job of the state to ensure that citizens have access to public services. We believe they should also have access to ombudsmen. Complexity in service provision should be counterbalanced by simplicity in accessing redress. The best way to do this is to preserve and extend the jurisdiction of Public Services Ombudsmen so that they can provide comprehensive access to redress for all public services.

Peter Tyndall

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