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Time for change for the ombudsmen in Wales

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***P.L. 656** The proposals for reform¹ of the public sector ombudsman system in Wales present an interesting development in the process of integrating ombudsman schemes. The proposals have followed the pattern of reform in Scotland² and the proposed reforms in England,³ which involve integration of the separate ombudsmen schemes in the public sector in those countries. However, rather than await the necessary legislation to effect the change, there is to be an interim system, whereby there will be one holder of three separate ombudsman posts,⁴ who will be known as the Public Services Ombudsman for Wales.⁵ New legislation will be necessary to have a truly integrated system.⁶

Proposals for integration can be traced back to August 1998, when the Advisory Group to the Welsh Assembly recommended to the (then) Secretary of State for Wales that the posts of Welsh Administration Ombudsman, Health Service Ombudsman for Wales and the Local Government Ombudsman for Wales should be combined. In March 2001, the Secretary of State for Wales and the Welsh Assembly Government announced that there was to be a joint review of the public sector ombudsman service in Wales. It was not until December 2002, however, that a consultation paper⁷ was issued. The consultation paper set out the case for change in Wales, with the provisional view that there should be one ombudsman for Wales.⁸ In March 2003, the Assembly Government and the Secretary of State announced that, in the light of the ***P.L. 657** responses to the consultation, they intended to proceed with the establishment of a single ombudsman office.⁹

The present system

Wales currently has four separate ombudsman systems dealing with complaints about public services. The UK Parliamentary Ombudsman¹⁰ deals with complaints about those matters not transferred to the National Assembly for Wales¹¹ after devolution.¹² The Welsh Administration Ombudsman¹³ investigates complaints of maladministration by the National Assembly for Wales and certain other public bodies.¹⁴ The Welsh Administration Ombudsman also deals, on a non-statutory basis, with complaints alleging that the National Assembly has failed to comply with its Code of Practice on Public Access to Information.¹⁵ The Health Service Ombudsman for Wales investigates complaints about the provision of services by the National Health Service and associated bodies in Wales.¹⁶ The Local Government Ombudsman for Wales investigates complaints of maladministration against local authorities and local government related bodies.¹⁷ This ombudsman has similar powers, procedures and jurisdiction as its English counterparts, but also has additional powers in relation to the investigation of allegations that members of local authorities in Wales have failed to comply with the authority's code of conduct.¹⁸

Although there are four separate ombudsman systems dealing with complaints about maladministration by public bodies in Wales, three of the posts are held by the same person. The Parliamentary Ombudsman also holds the posts ***P.L. 658** of Welsh Administration Ombudsman and Health Service Ombudsman for Wales.¹⁹

An integrated system

It is not surprising that the proposal²⁰ is for one ombudsman scheme for Wales,²¹ integrating the offices of the Welsh Administration Ombudsman, Health Service Ombudsman for Wales, and Local Government Ombudsman for Wales. Indeed, it would have been surprising if the proposal were otherwise, given the similar proposals elsewhere in the United Kingdom,²² and the fact that there are four separate schemes serving such a small population. The reasons, as outlined in the consultation document, are similar to those identified for the system in England. The present arrangements are no longer appropriate given the changes in the delivery of public services. The existing legislation is based on the assumption, correct at the time, that a particular service would be the particular

responsibility of central or devolved government, local government or the health service. This is no longer the case, and the emphasis now is on “joined-up” services, which are provided through partnerships between different public bodies.

“Joined-up” services mean that there may be several different public bodies involved in the provision of a service. If an individual has a complaint about a service, it may not be easy to identify which public body is responsible, and therefore which ombudsman should investigate. It may also be the case that more than one body is responsible, which could result in multiple investigations for the same complaint. Although the present ombudsmen do have informal arrangements to exchange information, and re-route complaints where necessary, this is only a partial solution to the problem. A better service for the public can be provided from a “one-stop shop”, with a unified jurisdiction. This would provide a simpler and clearer route for individuals who wish to complain about a public body, and eliminate the problem of identifying the relevant ombudsman where several public bodies have contributed to the service complained about. A single, unified office would make it easier to investigate and resolve complaints that come within the jurisdiction of more than one ombudsman. It would also be more efficient for there to be a single jurisdiction with complaints handled the same way, regardless of the identity of the public body complained about. Another problem with the present system is the difficulty of raising public awareness of three separate ombudsman offices. It is possible to achieve a higher profile for a single office **P.L. 659* than for the present fragmented ombudsman services and this will perhaps encourage greater willingness by the public to use the ombudsman remedy.

Public Service Ombudsman for Wales

The consultation resulted in almost unanimous support for the proposal to bring together the three ombudsman systems of Welsh Administration Ombudsman, Health Service Ombudsman for Wales and the Local Government Ombudsman for Wales. In order to integrate the three systems, primary legislation is required.²³ However, as all three of the existing ombudsmen's offices will become vacant in the near future, it has been decided, as an interim measure, to appoint one person to hold all three offices simultaneously. At present, the legislation does not allow one person to hold these three offices together. In order to enable the appointment of a single post-holder, it is proposed that a Regulatory Reform Order²⁴ be made by Parliament, in order to remove this restriction. In anticipation of this order, the post of Public Services Ombudsman for Wales has been advertised, and an appointment is in the process of being made, subject to Parliament agreeing to the order.

The interim, non-statutory title for the new ombudsman is the Public Services Ombudsman for Wales. This is to be welcomed, as the name “ombudsman” is increasingly being recognised and understood by the public as a person providing an independent and accessible redress mechanism. Although the legislation establishing the public sector ombudsmen in the United Kingdom has always used the term “commissioner”, the Parliamentary, Health Service and Local Government ombudsmen all now use “ombudsman” in preference to their statutory titles. The new system in Scotland uses “ombudsman” in the legislation, as does the legislation establishing the Welsh Administration Ombudsman. The proposed new title is similar to that in Scotland, and reflects the fact that the office is dealing with complaints about public services.

The consultation document raised the issue of the terms of appointment for the new ombudsman. At present, the holders of all three posts are appointed by the Queen, on the advice of the Secretary of State for Wales. Their appointment lasts until they retire at 65, although they can ask to be relieved of office earlier, and can be removed on medical grounds or for misbehaviour. It is proposed that appointments would be made in the same way, but the question is raised as to whether there should be fixed-term appointments, with or without the possibility of reappointment, or whether the present practice should be retained. In Scotland, the new system provides for five-year appointments, with the possibility of reappointment for a further term, and in **P.L. 660* exceptional circumstances, for a third term. Other countries also have fixed-term appointments.²⁵

The advantages of fixed-term appointments is that they encourage new approaches and ideas, and can thus more easily reinvigorate the office. The disadvantages are the loss of continuity and experience, and, more importantly, the perception that this may challenge the independence of the office. There have been examples of cases where non-renewal of fixed-term contracts has raised questions about genuine independence.²⁶ However, as the existing legislation provides for permanent appointments, the interim appointment for the new ombudsman must be on a permanent basis.²⁷

Funding and staffing

It is anticipated that the newly appointed ombudsman will appoint staff as appropriate, within the limits of the overall budget. The expectation is that these will be drawn initially from those currently serving the three existing offices. This raises the question of the status of these staff. At present, the staff of the Welsh Administration Ombudsman and the Health Service Ombudsman for Wales are civil servants. Staff of the Local Government Ombudsman for Wales are not. This issue is not yet resolved, but there is a commitment to consult the staff, and to give the option for them to retain the terms of service existing immediately prior to transferring to any new body.

The funding for each office is, at present, provided by the National Assembly for Wales, but through different mechanisms. The Welsh Administration Ombudsman and the Health Service Ombudsman for Wales are funded directly by the Assembly. Each year, the ombudsmen submit to the Assembly Cabinet estimates of the cost of the offices for the coming financial year. Although there is no formal requirement to do so, the Cabinet is expected to incorporate these into the budget without amendment. If the Cabinet does not propose to meet the budget in full, legislation²⁸ requires the Cabinet to consult the Secretary of State for Wales, and to “have regard to any advice” given. The intention in this provision is to provide the ombudsman with the assurance that the estimates will normally be met in full, and that he or she will not be forced to limit investigations through lack of resources. This helps to ensure the independence of the ombudsman. The Local Government Ombudsman for **P.L. 661* Wales is funded out of resources made available for local government in Wales, although the Secretary of State for Wales determines the ombudsman's remuneration.

There are no proposals at present as to the mechanisms for funding the new integrated office. However, the consultation document is clear that the funding must be such as to ensure that the independence of the office is not compromised. The main role of the combined ombudsman's offices is to investigate complaints against the National Assembly or bodies responsible to it, acting on the National Assembly's behalf. The National Assembly is also the paymaster for the ombudsman's office. The funding arrangements must be such that the actual or perceived independence of the office is not undermined, as independence is fundamental to the success of the office.

Remit and jurisdiction

The recent consultation process was primarily to establish the principle of integration. It did not address the crucial issues of remit and jurisdiction. These issues are to be discussed in a further consultation process. For the present, therefore, the Public Services Ombudsman for Wales will be operating under the existing three separate pieces of legislation. The investigations will still be confined to complaints made by members of the public that they have suffered injustice as a consequence of maladministration, together with complaints about clinical care and treatment in the National Health Service, and allegations of misconduct against members of local authorities. In addition, there is the non-statutory power to deal with complaints alleging that the National Assembly has failed to comply with its Code of Practice on Public Access to Information. Presumably, the future consultation will not envisage a reduction in jurisdiction, but it will be interesting to see whether there will be proposals to expand it beyond maladministration.

The present legislation establishing the individual schemes is inflexible and restrictive. Its emphasis is almost exclusively on the ombudsmen investigating and reporting on complaints. This is no longer appropriate, as the ombudsmen now typically attempt to find resolutions for complaints, by whatever means are appropriate. The existing legislation does not facilitate this approach, and therefore needs amending, even within a “joined up” system. New legislation is needed to enable the ombudsmen to have modern and flexible working methods, and it will be interesting to see how such a change will be effected.

Advice and accountability

The consultation document raises an interesting issue about whether there should be some formal mechanisms for advising the ombudsman. At present, the ombudsmen have powers to obtain advice in order to assist them in their work,²⁹ and it is envisaged that future legislation would make similar provision. **P.L. 662* The question is also raised as to whether the ombudsman should have an advisory board, perhaps with members representing the users of public services, and those with knowledge of specific areas of public administration. Such a board could give general advice on the development of the role, and comment on draft corporate or operational plans for the office and budget proposals. If there were such a board, there would then be the question of who would be responsible for appointing members of it. Although this seems a superficially attractive proposal, there

are dangers in it, as it could compromise the independence of the office.³⁰

The present accountability mechanisms involve the publication of annual reports by all three ombudsmen schemes. The Welsh Administration Ombudsman and the Health Service Ombudsman for Wales lay their reports before the National Assembly. The Local Government Ombudsman for Wales annual reports are published after consultation with the Welsh Local Government Association. It is proposed that, in a new integrated office, it would be appropriate for annual reports to be laid before the National Assembly, even though it is likely that much of the report would be dealing with local authorities.

Conclusion

Like in other parts of the United Kingdom, the ombudsman system in Wales is in need of review. This is not just a result of devolution, although the creation of another ombudsman in Wales has focused attention on a system where a multiplicity of systems can cause confusion, duplication and inefficiencies. The proposed solution, integration of the systems, is not surprising, given the developments elsewhere in the United Kingdom, and given the changes in the delivery of public services. Combining the schemes will address the problems of confusion, overlap and inefficiencies.

As the experience in England illustrates, it is not the principle of integration which is problematic. The problem is finding parliamentary time to enact the necessary legislation, and moreover, it is the detailed remit, jurisdiction and powers of the office that may be controversial. Perhaps because the Welsh reform does not trespass upon the office of the Parliamentary Ombudsman, the statutory process of integration may prove to be quicker than that of ombudsman reform in England. The danger is that, if the interim office appears to work well, the process of statutory reform loses its impetus. The developments in Wales will be watched closely over the next few months by all those concerned with reforming the ombudsman system.

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1. See *Ombudsmen's Service in Wales: Time for Change?* (Consultation Paper, Wales Office/Welsh Assembly Government, 2002).
2. See M. Seneviratne, " 'Joining up' the Scottish Ombudsmen" (2002) 24 *J.Soc.Wel.& Fam.L.* 89; J. McFadden, "The Public Sector Ombudsman System in Scotland" [2001] *Scottish Constitutional and Administrative Law and Practice* 16. The Scottish Public Services Ombudsman Act 2002 established the office.
3. See *Review of the Public Sector Ombudsmen in England* (Cabinet Office, London, 2000). For a discussion of the proposal see M. Seneviratne, " 'Joining up' the Ombudsmen--the Review of the Public Sector Ombudsmen in England" [2000] P.L. 582; B. Thompson, "Integrated Ombudsmen: Joined-up to a Point" (2001) 64 *M.L.R.* 459; D. Lewis and R. James, "Joined-up Justice: review of the public sector ombudsmen in England" (2000) 4 *International Ombudsman Yearbook* 109. There appears to be little early prospect of new legislation in England to effect the changes proposed. However, there has been co-location of the Local Government Ombudsman in England in the same premises as the Parliamentary Ombudsman and Health Service Ombudsman, so it may be possible to integrate the services to some extent without changes in the law.
4. These are the Offices of the Health Service Commissioner, the Welsh Administration Ombudsman and the Commissioner for Local Administration in Wales.
5. This is an interim non-statutory title.
6. Wales will be in a similar position to that in Northern Ireland. There, the Northern Ireland Ombudsman is the popular name for two offices, the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints. Since 1972, these two posts have always been held by the same person, the result being that although operating under two pieces of legislation, the offices function as one system. There are proposals to review the legislation under which the two offices in Northern Ireland operate, which no doubt will result in one single office established by statute.
7. *Ombudsmen's Service in Wales: Time for Change?*, n.1 above.
8. This would not include the Parliamentary Ombudsman, who would still have jurisdiction over those matters reserved for the UK Parliament.
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See written statements by the Secretary of State for Wales (HC Deb, col.12WS, March 11, 2003) and the First Minister to the Assembly (March 11, 2003).

10. Formally, the Parliamentary Commissioner for Administration, created by the Parliamentary Commissioner Act 1967. Before devolution, all complaints relating to maladministration by central government departments in Wales were within the province of the Parliamentary Ombudsman, as in the rest of Great Britain.
11. These reserved matters include, e.g. social security and taxation.
12. The Government of Wales Act 1998 provided for the establishment of the National Assembly for Wales. Its law-making powers are limited, with power to make delegated but not primary legislation. It exercises many of the functions formerly exercised by the Secretary of State for Wales.
13. This office was created by the Government of Wales Act 1998.
14. These are Assembly sponsored public bodies, and include, e.g. the Arts Council for Wales and the Wales Tourist Board.
15. This role will be taken over by the Information Commissioner when the Freedom of Information Act 2000 comes fully into force in 2005.
16. The office was created by the National Health Services Reorganisation Act 1977, amended by the National Health Service Act 1977, and consolidated by the Health Service Commissioners Act 1993.
17. Formally, the Commissioner for Local Administration, established by the Local Government Act 1974, Pt III.
18. Local Government Act 2000, Pt III. The legislation provides for anyone to make an allegation to the ombudsman that a member of a local authority has breached the code of conduct. As a result of the investigation, the ombudsman may decide to refer the outcome of the investigation to the authority's Monitoring Officer for consideration by the Standards Committee. The matter can also be referred to the President of the Adjudication Panel for Wales for adjudication by a tribunal. It is for the Standards Committee or case tribunal to decide whether or not there has been a breach of the code of conduct, and if so, what penalty should be imposed.
19. The Parliamentary Ombudsman also holds the post of Health Service Ombudsman for England. Since devolution, a separate health service report is prepared for Wales, which is reported to the Welsh Assembly.
20. *Ombudsmen's Service in Wales: Time for Change?*, n.1 above.
21. The integrated system will not include the Parliamentary Ombudsman, who will still have jurisdiction over matters reserved for the Westminster Parliament.
22. In England, there are proposals for integration, although it is unclear when these will be implemented. In Scotland, the offices have already merged, creating the Scottish Public Services Ombudsman, a one-stop shop for complaints against the Scottish Parliament, local government, the health service, and housing association bodies.
23. This will have to be implemented by the UK Parliament, as the National Assembly for Wales' lawmaking powers are limited to the making of delegated legislation. Any new legislation will, of course, depend on parliamentary time being available for the necessary Bill.
24. The Regulatory Reform Act 2001 provides for the making of Regulatory Reform Orders, in much the same way as the process for deregulation orders under the Deregulation and Contracting Out Act 1994. The new order-making procedure can be used to amend or repeal statutory provisions, and remove inconsistencies and anomalies in legislation.
25. The Norwegian Ombudsman, e.g., is appointed for four years, as is the parliamentary ombudsman in Iceland. The Human Rights Ombudsman for the Republic of Slovenia has a six-year term, and the European Ombudsman also has a fixed term appointment. In the UK the Legal Services Ombudsman is appointed for a fixed term.
26. One high-profile example is that of Elizabeth Filkin, the previous Parliamentary Commissioner for Standards. It was widely accepted that her fixed-term appointment as commissioner would be automatically renewed in 2002. She was, however, advised that she would simply be short-listed if she re-applied for the post, and as a result, she resigned.
27. Any new legislation could, of course, make the appropriate changes to the terms of appointment, in order to introduce fixed-term appointments. It does not seem, however, that such a change is being proposed. The interim arrangements provide for one ombudsman to be appointed to the three separate offices. There is an expectation that if the ombudsman wishes to relinquish office before this time, all three offices will be relinquished simultaneously.
28. Government of Wales Act 1998, s.111, Sch.9, paras 8(4) and 9(4).

- [29.](#) e.g. the Health Service Ombudsman for Wales can appoint expert clinicians to advise on the clinical aspects of complaints.
- [30.](#) On the issue of independence, the recent advertisement for the new post of Public Service Ombudsman for Wales states that the ombudsman will have "a positive attitude towards championing the rights of ordinary citizens". This is not the model of ombudsmen adopted in the UK, and could compromise the independence of the office, which should not be seen to be championing anyone's cause, but offering an impartial service.
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