



Adam Price

Aelod Cynulliad dros Ddwyrain Caerfyddin a Dinefwr
Assembly Member for Carmarthen East and Dinefwr

John Griffiths AM
Chair of Equalities, Local Government and Communities Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

Our Ref: AP0063LJH

18 December 2017

Dear John,

I am writing to you to ask if you will give due consideration to matters relevant to your current inquiry into the Draft Public Service Ombudsman Bill.

These have been prompted by a constituent's case which was the subject of an Ombudsman Report in June 2017¹ that failed to find evidence of maladministration to the dismay of my constituent who believes that compelling evidence was provided to the contrary.

To my mind, this case raises two substantive issues.

Firstly, *quis custodiet ipsos custodes?* In cases where the complainant is unhappy with the Ombudsman's conduct or the outcome of its own investigation, what right of redress or independent investigation should complainants enjoy? The Ombudsman has reported to your committee a rising number of complaints against the Ombudsman – 62 I believe in the most recent year for which there are figures. I do not believe there is currently any statutory provision for dealing with complaints of this nature, though I understand some informal arrangement – a commercial third party contracted to review cases and report to the Ombudsman – is in place which, in essence, amounts to self-adjudication.

This arrangement has the potential to erode public trust in the Ombudsman. Various alternatives could be enshrined in the Bill, include placing the current independent advisory panel on a statutory basis and affording them a stronger oversight role, or the creation of a Parliamentary Commission for this purpose.

The second matter arises from the Ombudsman's statement in the report in question that he "cannot question the professional judgement of a professional employed by a public body" in the absence of evidence of maladministration. This reflects Section 11 (1) of the 2005 Act. i.e. if a professional, having weighed up all relevant matters, decides X then the decision is unimpeachable even if X as a decision appears to fly in the face of the available evidence. The distinction here between the process and content of decision-making is not one that the public readily understands.

[1] Carmarthenshire County Council – Unauthorised Development – calls for enforcement action etc. Case Number 201507076

Cynulliad Cenedlaethol Cymru

37 Stryd y Gwynt, Rhydaman,
Sir Gaerfyrddin, SA18 3DN
Adam.Price@cynulliad.cymru
www.cynulliad.cymru
01269 597 677

National Assembly for Wales

37 Wind Street, Ammanford,
Carmarthenshire, SA18 3DN
Adam.Price@assembly.wales
www.assembly.wales
01269 597 677



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Since the principle of “Wednesbury unreasonableness” is applied to professional judgements in cases of judicial review it does seem unclear as to why decisions that to any reasonable person would appear questionable cannot be addressed through the quasi-judicial process of an Ombudsman’s investigation. Section 11 (2) does specifically allow professional judgement to be questioned in Health and Social Care related matters. It seems unclear as to why this latitude should not be similarly afforded in other areas of public administration.

I do hope that it will be possible for you to consider these matters in the course of your deliberations. I am also copying this letter to Simon Thomas as Chair of the lead committee in charge of the legislation.

With best regards,

Adam Price AC/AM
Dwyrain Caerfyddin a Dinefwr / Carmarthen East & Dinefwr

Cc: Simon Thomas AM

Cynulliad Cenedlaethol Cymru

37 Stryd y Gwynt, Rhydaman,
Sir Gaerfyddin, SA18 3DN
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