

Response of the Public Services Ombudsman for Wales to the Law Commission's Consultation on 'The Form and Accessibility of the Law applicable to Wales'

1. I am pleased to have the opportunity to respond to the Law Commission's consultation on 'The Form and Accessibility of the Law Applicable to Wales'.
2. As Public Services Ombudsman for Wales (PSOW), I investigate complaints made by members of the public who believe they have suffered hardship or injustice through maladministration or service failure on the part of a body in my jurisdiction, which essentially are all those organisations responsible for delivering public services devolved to Wales, these include:
 - local government (both county and community councils);
 - the National Health Service (including GPs and dentists);
 - registered social landlords (housing associations);
 - and the Welsh Government, together with its sponsored bodies.

I am also able to consider complaints about privately arranged or funded social care and palliative care services. In addition, I consider and investigate complaints that members of local government bodies have broken their authority's Code of Conduct for Members. I am independent of all government bodies.

3. I now turn to the questions contained in the consultation paper. My comments below address those questions which either would have an impact upon the PSOW, or where I believe that the PSOW's experience may be helpful to the Law Commission's consideration of accessibility of the law applicable to Wales:
 - **Question 2 – Importance of accessibility of law in Wales:** 10 – This is extremely important to PSOW as our work often requires ensuring that the public bodies in our jurisdiction are correctly applying the law. In order to do this effectively, my staff and I need to be able to easily access the laws applicable in Wales.
 - **Question 3 – How often do you look up the law:** Daily given the extent of my jurisdiction (see above) and all the different Statutes and Regulations that would apply to the range of complaints made to my office.
 - **Question 4 – Sort of law required:** The nature of PSOW work requires us to research all types of law relevant to devolved public services in Wales.
 - **Question 5 – What topics do you research:** Similarly to the types of law we require (Question 4), we research all topics that are relevant to devolved public services in Wales.

- **Question 6 – How straightforward is finding the law you require:** It is extremely difficult to access and find the law applicable to Wales. Legal database providers, for example, legislation.gov.uk, Westlaw and Lexis Nexis do not keep up to date with changes to Welsh law in a timely manner. The legislation search function on the Welsh Assembly website is also very difficult to use.

An example of the law in Wales being inaccessible and confusing is in relation to my powers to investigate complaints of a breach of the code of conduct for local authority members in Wales.

My powers of investigation are found in Part III of the Local Government Act 2000. However, relevant provisions in ss60 - 63 as they applied in England were applied in Wales by the Public Services Ombudsman for Wales (Standards Investigations) Order 2006 (SI 2006, No.949). When sections 60 – 63 were repealed in England by the Localism Act 2011 the provisions as they apply in Wales no longer appear on the face of the Local Government Act 2000 on any of the legal databases available.

- **Question 8 – Example of something that you have researched and any difficulties encountered:** An example of difficulties encountered in researching (and of identifying an error on a legal database) involved examining the current status of provisions contained in the Welsh Language Act 1993, a Westminster pre-devolution statute (“the Act”), after the passing of the Welsh Language (Wales) Measure 2011, originating from the National Assembly for Wales (“the Measure”).

The Measure repealed parts of the Act only as and when relevant Commencement Orders were introduced to implement the Measure’s new provisions. These have been varyingly introduced over time, since June 2011. It was found that Lexis indicated s5(2) of the Act had been repealed (there was some doubt that it had been). A check had to be undertaken of all the relevant Commencement Orders establishing that this particular provision had not in fact, as yet, been repealed or replaced with any comparable provision in the Measure.

- **Question 12 – Other resources available:** PSOW currently has access to Westlaw, Lexis and Lawtel and I rely on my Legal Advisor and other staff members to research the law.
- **Question 13 – Confidence in accuracy:** 9 – Ultimately, we are confident in the accuracy of what we find, but the issue is in the length of time it can take to find what we want. [see example in Q8 above]
- **Question 14 – Have you made any errors due to inaccuracy of law:** PSOW is not aware that it has made any errors because of an inaccuracy in the law, but only through taking considerable time to ensure accuracy.

- **Question 15 – Examples of difficulties when researching:** An example of the difficulty in researching Welsh law relates to the following. The Social Services and Well-being (Wales) Act 2014 made certain amendments to the Public Services Ombudsman (Wales) Act 2005, with effect from 1 November 2014. These amendments were not incorporated into the text of the PSOW Act shown on Westlaw for many months.
- **Question 16 – What would make finding law easier:** It would be useful to have access to a consolidation of Welsh law e.g. all local government provisions in one place. It would also facilitate research if the major UK databases appreciated the importance of differences between Welsh and English law. Currently these databases concentrate only on English law. Core text books and publications should also note variations in English and Welsh laws, or a separate Welsh version should be produced although we appreciate that this may not be economically viable.
- **Question 17 and 18 – Costs saved if resources requested in Q16 were available:** If the law was available in an easily accessible format, this would greatly reduce staff time spent on searching for relevant laws.

Public Services Ombudsman for Wales
October 2015
