

## Finance Committee

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Meeting Venue:

**Committee Room 2 – Senedd**

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Meeting date:

**Thursday, 5 March 2015**

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Meeting time:

**09.00**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

**Bethan Davies**

Committee Clerk

0300 200 6565

[SeneddFinance@Assembly.Wales](mailto:SeneddFinance@Assembly.Wales)

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### Agenda

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**1 Introductions, apologies and substitutions (09:00)**

**2 Papers to note (09:00–09:05) (Pages 1 – 9)**

(In accordance with Standing Order 17.42, the Committee resolves to meet in private for items 3, 4, 5 and 6)

**3 Initial Consideration of Local Government (Wales) Bill (09:05–09:15)**  
(Pages 10 – 16)

**4 Consideration of the Auditor General for Wales and the Wales Audit Office Annual Plan 2015–2016 (09:15–09:25) (Pages 17 – 18)**

**5 Assembly Commission Corporate Performance – April–December 2014 (09:25–09:35) (Pages 19 – 41)**

**6 Land Transaction Tax: Factual Briefing from Welsh Government**

**(09:35–10:15)** (Pages 42 – 47)

**(Break: 10:15–10:30)**

**7 Consideration of powers: Public Services Ombudsman for Wales:  
Evidence session 5 (10:30–11:30)** (Pages 48 – 66)

Nicholas Paines QC – Law Commissioner with responsibility for Public Law

Beth Gascoyne – Law Commission

David Connolly – Law Commission

[Report by the Law Commission on the Public Service Ombudsman](#)

**8 Consideration of powers: Public Services Ombudsman for Wales:  
Evidence session 6 (11:30–12:15)** (Pages 67 – 71)

Tom Frawley – Northern Ireland Ombudsman

[Annual Report of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints 2013~2014](#)

**9 Motion under Standing Order 17.42 to resolve to exclude the public  
from the meeting for the following business: (12:15)**

Items 10

**10 Consideration of powers: Public Services Ombudsman for Wales:  
Discussion of Evidence (12:15–12:30)** (Pages 72 – 77)

## Finance Committee

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Meeting Venue: **Committee Room 2 – Senedd**

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Meeting date: **Wednesday, 25 February 2015**

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Meeting time: **09.00 – 12.06**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



This meeting can be viewed on [Senedd TV](http://senedd.tv/en/2651) at:  
<http://senedd.tv/en/2651>

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### Concise Minutes:

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#### Assembly Members:

**Jocelyn Davies AM (Chair)**  
**Peter Black AM**  
**Christine Chapman AM**  
**Mike Hedges AM**  
**Alun Ffred Jones AM**  
**Ann Jones AM**  
**Julie Morgan AM**  
**Nick Ramsay AM**  
**Kirsty Williams AM**

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#### Witnesses:

**Jane Hutt AM, The Minister for Finance and Government Business**  
**Gawain Evans, Welsh Government**  
**Matt Denham Jones, Welsh Government**  
**Lyn Cadwallader, One Voice Wales**  
**Daniel Hurford, Welsh Local Government Association**

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#### Committee Staff:

**Bethan Davies (Clerk)**  
**Leanne Hatcher (Second Clerk)**  
**Tanwen Summers (Deputy Clerk)**  
**Martin Jennings (Researcher)**  
**Gareth David Thomas (Researcher)**

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## **1 Introductions, apologies and substitutions**

1.1 The Chair welcomed Members to the meeting.

1.2 There were no apologies. Kirsty Williams substituted for Peter Black for part of the meeting.

## **2 Papers to note**

2.1 The papers were noted.

## **3 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

3.1 The motion was agreed.

## **4 Best Practice Budget Process: Consideration of Draft Report**

4.1 The Committee considered the draft report on Best Practice Budget Process Part 2 and agreed a small number of changes.

## **5 Appointment of non–executive Members the Wales Audit Office Board**

5.1 The Committee agreed the appointment of Lindsay Foyster as a non–executive Member to the Wales Audit Office Board under Standing Order 18.10(v).

## **6 Initial Consideration of Renting Homes (Wales) Bill**

6.1 The Committee considered the financial implications of the Renting Homes (Wales) Bill.

## **7 Wales Audit Office Supplementary Estimate 2014–15**

7.1 The Committee considered the Wales Audit Office Supplementary Estimate 2014–15.

## **8 Assembly Commission Supplementary Budget 2014–15**

8.1 The Committee considered the Assembly Commission Supplementary Budget 2014–15.

## **9 Welsh Government Second Supplementary Budget for 2014–15**

9.1 The Committee took evidence from Jane Hutt AM, Minister for Finance and Government Business, Gawain Evans, Deputy Director Financial Controls, Welsh Government and Matt Denham-Jones, Head of Budgetary Control and Reporting, Welsh Government.

9.2 The Minister agreed to provide the following:

- Confirm if all the three-year plans submitted by health boards have been agreed.
- Provide information on the protection offered to the local government budget.

## **10 Welsh Government Second Supplementary Budget 2014–15:**

### **Consideration of Evidence**

10.1 The Committee considered the evidenced received.

## **11 Consideration of powers: Public Services Ombudsman for Wales: Evidence Session 4**

11.1 The Committee took evidence from Daniel Hurford, Welsh Local Government Association and Lyn Cadwallader, Director, One Voice Wales on its inquiry.

11.2 The Welsh Local Government Association agreed to provide information on the ways in which local authorities accept complaints.

## **12 Consideration of powers: Public Services Ombudsman for Wales – Discussion of evidence**

12.1 The Committee considered the evidenced received.

# Comisiynydd Plant Cymru Children's Commissioner for Wales

Keith Towler

Jocelyn Davies AM (Chair)  
National Assembly for Wales Finance Committee  
Cardiff Bay  
Cardiff  
CF99 1NA

19 February 2015

Dear Chair

## **Inquiry into the Consideration of Powers: Public Services Ombudsman for Wales**

Thank you for your letter dated 9 February. Please find below our response to your specific questions. For your information, we do intend on responding to the consultation, a copy of which we'll share with you in due course.

- **Could 'own-initiative' investigations by the Ombudsman conflict with the role of independent commissioners?**

I am broadly in favour of supporting 'own initiative' investigations by the Ombudsman. However, I would wish to reinforce the need for the Ombudsman to consult with the Children's Commissioner for Wales in relation to any investigation involving a child or young person, as outlined in the current Memorandum of Understanding (MoU) between both institutions. This MoU has been established to protect the institutions' independence and I would wish to ensure that 'own initiative' investigations by the Ombudsman do not adversely impact on the scope and remit of the Children's Commissioner for Wales.

This perhaps offers an opportunity to firm up arrangements between ourselves and the Ombudsman in legislation – currently outlined in the MoU – as well as our working relationship with other similar institutions in Wales.

- **Is there a need for a co-ordination role between independent commissioners, the Ombudsman and the Auditor General for Wales to help their investigations and recommendations to improve public services?**

I already work closely with the Older Person's Commissioner, Welsh Language Commissioner and the Public Services Ombudsman for Wales and have established a Memorandum of Understanding on joint work and the sharing of information. Also established are Memoranda of Understanding with Welsh Government, Care Council for Wales and CAF/CASS Cymru. I meet with the other independent commissioners and the Public Services Ombudsman for Wales on a quarterly basis. I also have meetings with the Auditor General for Wales.

Cont/d...

Page 2

It would be useful to explore further what is meant by a 'coordination role'.

- **Would the proposed reforms of the Ombudsman's role be better carried out in advance of wider public sector reforms, or after?**

We do not believe that the proposed public sector reforms have a bearing on the Public Services Ombudsman's ability to look into complaints about public services and independent care providers in Wales, although regard must be given to the financial constraints of the public sector when considering increasing the resources of the Ombudsman.

Your Inquiry into the consideration of powers of the Public Services Ombudsman for Wales coincides with my calls to strengthen the role and remit of the Children's Commissioner for Wales, discussions which I'm sure my successor and the team would be happy to pursue with you at an opportune time.

I wish you well with the Inquiry.

Yours sincerely

A handwritten signature in black ink that reads "Keith Towler". The signature is written in a cursive style and is positioned above a horizontal line that extends to the right.

**Keith Towler**  
**Children's Commissioner for Wales**

24 February 2015

Jocelyn Davies AM  
Chair  
Finance Committee  
National Assembly for Wales

Dear Chair,

At the evidence session on 4 February 2015, I agreed to provide some additional information.

I enclose a brief paper providing some background on the type and range of press coverage that we receive.

I also promised to provide some statistics on complaints handling that have come directly from the new complaints handling procedures.

The complaints handling procedure developed by SPSO requires all organisations to publish publicly an annual complaints report. This report must include some key indicators as well as demonstrating how they have learned from complaints to improve services.

These reports were published in the local authority sector for the first time about 2013/14. We recently undertook a quick analysis of the data available from all the reports issued by Scotland's 32 local authorities. I share below some of the figures that have become available as a result. As I explained, I do not see it as the role of this office to act as a regulator for each sector. We undertook this work because it was the first year and we wanted to understand how the reporting requirements were working. I am extremely pleased that the network of local authority complaints handlers themselves wish to look at this in more detail and will be undertaking further analysis.

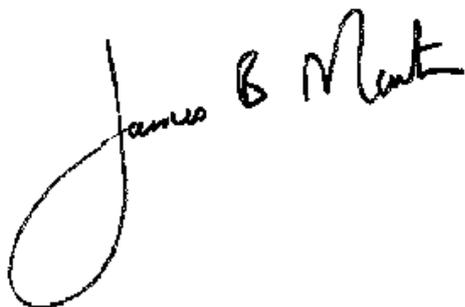
While it is great progress to have such information available for the first time, I need to explain that, because this is the first time such data has been available the numbers should be treated with some caution. First, this is a result of a quick in-house analysis by my complaints standards team and has not gone through the formal cleansing and processing of data that official statistics would undergo; secondly, we have seen some significant variations that may be explained by differences in recording and how data is presented rather than differences in complaints handling. We anticipate that, over the next few years, the work of the

network will even out this variation and mean that, for the first time, reliable benchmarking data will be available to local authorities. With those caveats in mind, the key findings from our analysis of the 2013/2014 local authority complaints reports are:

- Total number of complaints received 62,071
- Percentage closed at stage 1 (five day early resolution stage) 85%
- Percentage closed at stage 2 (20 day investigation stage) 15%
- Complaints upheld/partially upheld at stage 1 = 25,268 (51%)
- Complaints upheld/partially upheld at stage 2 = 4797 (52%)
- Average time to respond to complaints at stage 1 = 5 working days
- Average time to respond to complaints at stage 2 = 17 working days.
- Percentage of complaints at stage 1 closed within 5 working days (as a percentage of total number of stage 1 complaints) varies across Local Authorities from 53% to 95%.
- Percentage of complaints closed at stage 2 within 2 working days (as a percentage of stage 2 complaints) varies across Local Authorities from 33% to 98%.

I hope this additional information is helpful.

Yours sincerely

A handwritten signature in black ink that reads "James B Martin". The signature is written in a cursive style with a large, looped initial 'J'.

Jim Martin  
Ombudsman

## **SPSO Press Coverage**

Press coverage is analysed as the press are an important facilitator of information about SPSO. The statistics below apply to the period January 2013 – December 2013 (the last full-year media evaluation available).

- There was a record volume of coverage identified in 2013 (a total of 381 items: 243 newspaper, 125 web, 13 broadcast). This compares with 206 newspaper, 64 web and no broadcast items in 2012.
- This was generated from coverage in 59 different publications, spanning local and national press; daily newspapers and specialist publications.
- The split between national and local coverage was 49% and 51%, reversing the trends observed in previous years. There was an increase in the proportion of national press items (49%, up from 42% in 2012).
- 53% of coverage was generated by the monthly compendium of investigation and decision reports. As with previous years, this was the highest generator of coverage.
- The topics that generated the highest number of items were about the NHS (204 items – 54%).

Each month, we expect to see a large proportion of press articles to be focused on cases in our monthly compendium of investigation and decision reports, but we also monitor for activity relating to the Complaints Standards Authority, external political events that impact on the work of the Ombudsman, and other mentions of the SPSO.

By way of example, here are some links to recent press cuttings, arranged by category:

### **Content generated from the monthly compendium of investigation and decision reports:**

19 February 2015 “Trainee Aberdeen doctor failed to spot fatal tear near patient’s heart”, <https://www.pressandjournal.co.uk/fp/news/aberdeen/495718/trainee-aberdeen-doctor-failed-spot-fatal-tear-near-patients-heart/>

19 February 2015 “NHS Tayside ordered to apologise for PRI’s treatment of dementia patient” <http://www.thecourier.co.uk/news/local/perth-kinross/nhs-tayside-ordered-to-apologise-for-pri-s-treatment-of-dementia-patient-1.840930>

### **Content related to complaints handling / Complaints Standards Authority / Model CHP:**

22 Jan 2015, “Lessons learned when it comes to school bullying”, The Southern Reporter <http://www.thesouthernreporter.co.uk/news/local-headlines/lessons-learned-when-it-comes-to-school-bullying-1-3668408>

**Content not generated by monthly investigation / decision reports:**

*A complainant saying that they may bring a case to the SPSO:*

16 February 2015, "Parents pledge to fight on for more space for school", Evening Times <http://www.eveningtimes.co.uk/news/parents-vow-to-fight-on-for-space-for-their-school-197393n.118465889>

*A complainant going to the press about an issue and mentioning that they have already brought their case to the SPSO:*

28 December 2014: "Your country has killed me' – final damning attack by man whose cancer was missed 32 times" <http://www.sundaypost.com/that-s-life/your-health/fighting-chance/your-country-has-killed-me-final-damning-attack-by-man-whose-cancer-was-missed-32-times-1.757488>

**Relating to political events / consultations and legislation that mentions the SPSO:**

31 December 2014, Holyrood Magazine, State of the Nation, Michael McMahon MSP [on legislation relating to Scottish Welfare Fund] <https://www.holyrood.com/articles/inside-track/state-nation>

Accountancy Live, 28 Jan 2015, "Revenue Scotland consults on taxpayer charter" <https://www.accountancylive.com/revenue-scotland-consults-taxpayer-charter>

# Agenda Item 3

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted



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Ms Jocelyn Davies AM  
Chair, Finance Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

Date: 23 February 2015  
Our ref: HVT/IG/227/fgb  
Page: 1 of 2

Dear Jocelyn

### **AGW AND WAO BUSINESS PLAN 2015-2018 INCORPORATING ANNUAL PLAN 2015-2016**

Under section 25 of the Public Audit (Wales) Act 2013, before the beginning of each financial year, the Auditor General for Wales and the Wales Audit Office must jointly prepare an annual plan for that year. In particular, the annual plan must set out our respective work programmes and priorities, alongside the resources available and how those resources are to be used.

However, as we have indicated at several points over the past 12 months, we feel it would be far more beneficial for us and the Finance Committee to incorporate the annual plan, which provides detail on programmes of work for the forthcoming year, within our broader rolling three-year Business Plan which we are using to drive our business, and which outlines how we propose to prioritise and strengthen our programmes of work in the medium term.

We intend to update and then lay the Business Plan before the Assembly on an annual basis and this will allow us to better communicate our longer term view of how the effectiveness of public sector audit in Wales can be enhanced.

We can confirm that each requirement of section 25 of the Public Audit (Wales) Act 2013 in terms of the content of the annual plan has been incorporated within our broader three-year Business Plan for the period 2015-2018, which is currently in the final stages of development.

When devising the Plan, we have paid particular attention to considering what sort of audit office Wales needs now and in the future, how best we can work together with other external review bodies and our key stakeholders, and how we can effectively assess whether we are getting it right.



Huw Vaughan Thomas  
Auditor General for Wales

Isobel Garner  
Chair, Wales Audit Office

24 February 2015

Dear Huw and Isobel

Thank you for your letter dated 23 February 2015.

I have considered your suggestions for changing the annual plan and incorporating this into your three year business plan.

I will be discussing this with the Committee and I shall inform you in due course if the Committee are content with your proposals.

Yours sincerely,

**Jocelyn Davies AM**  
**Chair**

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Jocelyn Davies AM  
Chair of the Finance Committee  
National Assembly of Wales  
Tŷ Hywel  
Cardiff Bay  
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20 February 2015

Dear Jocelyn

I am pleased to provide the Committee with the latest Corporate Performance Report of the Assembly Commission, for the period April-December 2014.

Many of the indicators continue to show an improving position based on comparisons with the same period last year. Where that is not the case, the Commission is taking action to make progress.

In terms of engaging with the people of Wales, the Commission has:

- since September 2014 engaged face to face with almost 6,000 young people across Wales;
- held a number of public activities to engage a broader range of people in Assembly business;
- improved access to information and Assembly proceedings through use of the latest technology, such as the launch of a new Senedd.tv platform and subsequent increase in engagement; and
- reached almost 35,000 Twitter followers.

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**Croesewir gohebiaeth yn y Gymraeg a'r Saesneg/We welcome correspondence in both English and Welsh**

We have also realised efficiency gains of 20% by using the new machine translation tools. Further development and promotion of the machine translation tools continue in collaboration with Microsoft.

In terms of sustainability, although we are falling just short of our ambitious target of 40% for reducing energy emissions, excellent progress has been made with a 35% reduction to date. The amount of waste to landfill also continues to reduce. In recognition of the work undertaken, our sustainability achievements for the estate were independently commended when the Commission won the “Most Sustainable Public Sector Organisation in Government” award in the Annual Public Sector Sustainability Awards.

The Assembly also continues to receive external recognition for its accessibility and inclusivity, as explained in the report’s introduction.

I hope the Committee continues to find the report informative and helpful. Please do not hesitate to contact me if you have any queries or would like any further information.

Yours sincerely

A handwritten signature in black ink that reads "Claire Clancy". The signature is written in a cursive style with a large initial 'C'.

**Claire Clancy**  
**Prif Weithredwr a Chlerc/Chief Executive and Clerk**  
**Cynulliad Cenedlaethol Cymru/National Assembly for Wales**

**National Assembly for Wales**  
Assembly Commission

## Corporate Performance Report of the Assembly Commission

April – December 2014

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

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**National Assembly for Wales**  
Assembly Commission

## Corporate Performance Report of the Assembly Commission

April – December 2014

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales





## Introduction

The corporate body for the National Assembly for Wales is known as the Assembly Commission. The Commission serves the National Assembly for Wales to help make it a strong, accessible and forward looking democratic institution and legislature that delivers effectively for the people of Wales.

The Commission consists of Dame Rosemary Butler AM, the Presiding Officer, and four Assembly Members nominated by each of the four party groups represented in the Assembly: Peter Black AM; Angela Burns AM; Sandy Mewies AM; and Rhodri Glyn Thomas AM. The Commission is responsible for the strategic direction of Assembly services and is accountable to the Assembly. Day-to-day management and delivery is delegated to the **Chief Executive and Clerk**.

The **Assembly Commission Strategy 2011-16** sets out our goals for the Fourth Assembly. Our goals are to: provide outstanding parliamentary support; engage with the people of Wales; promote Wales; and use resources wisely.

In support of the Commission's strategic goals, we have five priority areas for change, innovation and investment for this Assembly. These are set out in the **Assembly Commission Strategy 2014-16** - a corporate plan developed to provide greater clarity and direction for staff on our strategy, priorities and various elements of governance.

### Performance reporting

This is the second report for the financial year 2014-15, and provides information on the corporate performance of the Commission for the period April – December 2014, consisting of:

- highlights in performance, by strategic goal;
- a traffic light summary which sets out the overall performance under each of our strategic goals;
- a more detailed breakdown of the individual indicators that feed into that summary; and
- appropriate comparators, from a range of sources, where available.

## **Performance in providing outstanding parliamentary support**

Sustained high levels of performance across the range of indicators under this goal are supported by results from the 2014 Member feedback survey which show generally high levels of satisfaction with the services Members receive. In particular, it is worth noting the significant improvement in the score for “working in the language of choice” (from 6.2 to 8.9).

The Assembly’s website has been upgraded and made more user-friendly. The same technology platform is being used to develop the new Siamb software system, to be launched in the summer of 2015. A new Senedd.tv platform was launched in September, offering advanced features for users and improved access to proceedings across a wide range of mobile devices.

## **Performance in engaging with the people of Wales and promoting Wales**

Visitor numbers continue to increase and there has been a significant increase in social media interactions, particularly for Twitter, YouTube and Senedd TV.

The Assembly continues to receive external recognition in terms of its accessibility and inclusivity. In addition to being listed in the Times Top 50 employers for women, Investors in People Gold, the UK’s top 20 for family friendly working practices and Stonewall’s top public sector employer in Wales, we have received recognition from Action on Hearing Loss, the National Autistic Society’s Access Award and we were shortlisted for Diverse Cymru’s Excellence in Equality Award for our equality impact assessment work.

In October 2014 the Assembly was also shortlisted as finalists in this year’s Apprenticeship Awards Cymru.

## **Performance in using our resources wisely**

Our budgetary performance shows that we remain on course to deliver a year-end position within the 1% target underspend. Financial performance is monitored diligently to balance the demands of operating and investment expenditure within the 1% target. In addition, we have already achieved the value for money target (£500,000 for the year).

Our sickness absence rates have also reduced and remain within the target of <3% in the year to December 2014 (2.71% compared with 3.06% in the same period last year).

Our sustainability achievements for the estate were independently commended when the Commission won the “Most Sustainable Public Sector Organisation in Government” in the Annual Public Sector Sustainability Awards. The award was given in recognition of an “impressive and important achievement” in contributing towards lowering the carbon emissions of the public sector. Our drive to lower energy emissions greatly assists in delivering cost savings at a time when energy costs have been particularly high.

Results from the latest Member feedback survey show high levels of satisfaction with the services they receive, with improvements in scores on: allowances and staffing; overall support in Tŷ Hywel and the Senedd; and ICT. The results are also helping to inform areas for improvement such as ICT in constituency and regional offices, the Caseworker system, member offices in Ty Hywel, and environmental conditions in our buildings.

## **Access to information**

The Commission publishes an **Annual Report and Accounts**, providing an overview of performance on an annual basis, linking performance with the money we spend in providing services to the Assembly. The Commission publishes a **range of other information about its annual budget and key organisational policies** to the Assembly website.

The Commission is happy to provide further information if you would like to learn more about our work:

- You can contact us here: **[www.assembly.wales/contact](http://www.assembly.wales/contact)**
- Guidance on **access to information** is available on the Assembly website.

# Corporate Performance Measures - Achievement against Strategic Goals

Summary overview of the more detailed KPI information that follows (see matching KPI groups).

KPI group no.	Providing Outstanding Parliamentary Support	April - Dec 2013	April - Dec 2014	Comment - for detail see pages 6 – 8
1	Member Satisfaction	 amber	 green	No change in scores for plenary and committee meetings: the score for working in language of choice has increased from 6.2 in 2013 to 8.9 in 2014.
	Timeliness and Service Delivery	 green	 green	Consistently high performance on timeliness. The two indicators falling slightly below 95% performance were for issuing committee papers and publishing committee proceedings where more challenging targets have recently been set.
	Professional Development	 green	 green	Welsh learners increasing, along with numbers of AMs and AMSS participating in CPD activity.
	Progress on Corporate Plan Priorities	 green	 green	Further embedding of progress towards “world class committees”. Upgraded technology improving access to information and proceedings. Efficiencies realised from use of improved translation tools.
KPI group no.	Engage with the People of Wales and Promote Wales	April - Dec 2013	April - Dec 2014	Comment - for detail see pages 9 – 11
5	Member Satisfaction	-	 amber	Score of 6.7. This is a new measure with no comparator from previous surveys.
	Engagement at the Assembly	 green	 green	Visitor numbers continued to rise and visitor satisfaction levels have improved (90% good/satisfactory ratings).
	External Profile of the Assembly	 green	 green	Significant increases in social media interactions, particularly for Twitter, YouTube and Senedd TV. Fall in number of new schools engaging and traffic to Record of Proceedings.
	Progress on Corporate Plan Priorities (better engagement)	 green	 green	Good levels of engagement with Assembly business, particularly with young people and for committee work. Significant increases in social media interactions.

KPI group no.	Use Resources Wisely	April - Dec 2013	April - Dec 2014	Comment - for detail see pages 11 – 14
9	Member Satisfaction	 green	 green	Improved scores across each category with significant increases to ICT scores.
10	Budgetary Performance	 green	 green	Strong position on % underspend forecast and spend against profile. Annual VfM target achieved during December.
11	Staff	 amber	 green	Further improvement in sickness absence rates which remain below target rate and sector average. Fall in number of staff performance reviews entered by deadline.
12	ICT Customer Service	 amber	 amber	Overall performance of SLA targets for incident handling lower than average in last two months of reporting period. Customer satisfaction score remains high.
13	Governance	 green	 amber	Payments remaining within target times. Improvement in % FOI requests answered to deadline (92% against a target of 100%).
14	Sustainability	 amber	 amber	Continued reduction in energy emissions, although likely to fall short of ambitious 40% target reduction. On course to meet waste to landfill target.
15	Progress on Corporate Plan Priorities (making the most of the estate)	 green	 green	Priorities in Forward Investment and Maintenance Plan completed.

## Key

-  **RED:** There are significant issues impacting the achievement of business objectives. To achieve delivery, changes must be made to timing, costs and/or scope.
-  **AMBER:** There are issues or risks which must be addressed. However, successful delivery is achievable without major impacts to budget, service standards or target dates.
-  **GREEN:** Work is meeting agreed standards or is proceeding to plan. All known risks are being managed.

# Corporate Performance Indicators

Goal : Provide outstanding parliamentary support							
		Comparator	Target	Apr – Dec <sup>1</sup> 2013-14	Apr – Dec <sup>1</sup> 2014-15		Narrative
<b>KPI on Member satisfaction, comprising:</b>							
1	Plenary meetings	7.70 in 2013	8.00	7.70	7.70	⇒	Results from the 2014 survey of AMs. Scores showing no movement or an increase from broadly comparable scores from the 2013 survey.
	Committee meetings	7.90 in 2013	8.00	7.90	7.90	⇒	
	Working in language of choice	6.20 in 2013	8.00	6.20	8.90	↑	
<b>KPI on timeliness and service delivery, comprising:</b>							
Pack Page 30	% of committee papers issued by deadlines agreed with each Committee	n/a	100%	n/a	93.74%	-	Average April - December. No comparator as the measure has changed to show deadlines as agreed with each Committee as opposed to the Standing Order deadline of at least 2 days before meetings.
	% of research service enquiries answered within agreed deadline	98% average 2013-14	100%	98.00%	98.66%	↑	Average April - December.
	% of plenary Record of Proceedings published within deadline	100% average 2013-14	100%	100%	100%	⇒	Average April - December.
	Number of committee/plenary meetings affected by failure to deliver Commission services	12 out of 350 (3.43%) in 2013-14 (r)	Zero	11 out of 248 (4.4%)	3 out of 260 (1.15%)	↑	Total April - December.
	% of committee Record of Proceedings published within 5 working days	n/a	100%	n/a	94.50%	-	Average April - December. No comparator as target changed from 14 days to 5 days. Missed targets were due to an unprecedented high number of meetings in October (28 against an average of 16) and extended length of proceedings.
	% of Marshalled Lists for Stage 3 Bill proceedings issued by Standing Order deadline	n/a	>2 days of debate	n/a	100%	⇒	Average April – December. Time spent on stages of each piece of legislation is shown in graph in the Annex.

Footnote 1. The April – December period is not relevant to all of the indicators, for example for the Member satisfaction survey results and where we are comparing with a baseline period. (r) = revised from previous reports.

# Corporate Performance Indicators

Goal : Provide outstanding parliamentary support							
	Comparator	Target	Apr – Dec <sup>1</sup> 2013-14	Apr – Dec <sup>1</sup> 2014-15		Narrative	
<b>KPI on professional development, comprising:</b>							
3	Number of staff learning Welsh	34 (as at Mar 2014)	Increase number of Welsh learners	34	44	↑	As at December. A new indicator on Welsh capacity is being developed as part of the project to enhance bilingual services.
	Total number of new AM/AMSS participants in CPD activity	41 AM / 155 AMSS in 2013-14	Maintain number of AM / AMSS engaging in CPD	33 AM / 128 AMSS	40 AM / 139 AMSS	↑	As at December. Number of new AM/AMSS participating in CPD activity have increased in comparison to the same period last year. Repeat participant figures, which reflect total attendance by all AM/AMSS in all CPD activity in the period, have increased for AMs but fallen slightly for AMSS compared to the same period last year.
	Number of repeat AM/AMSS participants in CPD activity	407 AM / 641 AMSS in 2013-14		250 AM / 499 AMSS	255 AM / 426 AMSS	↓	
<b>Progress on Corporate Plan priorities:</b>							
Pack Page 31	Enabling the Assembly to be as effective as possible through the support we provide, including through the impact of the next stages of our ICT Strategy	-	Green	Green	Green	⇒	<p>Improvements implemented for the vision of world class Committees have been embedded and feedback from Members and support staff has been positive. Work is underway to resource heavy legislative scrutiny workload and to tailor support to individual Members' needs.</p> <p>The Assembly's website has been upgraded and made more user-friendly. The same technology platform is being used to develop the new SiambR software system, to be launched in the summer of 2015.</p> <p>A new Senedd.tv platform was launched in September, offering advanced features for users and improved access to proceedings across a wide range of mobile devices.</p>

Footnote 1. The April – December period is not relevant to all of the indicators, for example for the Member satisfaction survey results and where we are comparing with a baseline period. (r) = revised from previous reports.

# Corporate Performance Indicators

Goal : Provide outstanding parliamentary support						
	Comparator	Target	Apr – Dec <sup>1</sup> 2013-14	Apr – Dec <sup>1</sup> 2014-15		Narrative
<b>Progress on Corporate Plan priorities (continued):</b>						
Pack 4 Page 32	Enhanced bi-lingual services	-	Green	Green	Green	⇒ Efficiency gains of 20% have been realised by using new machine translation tools and targets introduced for future productivity. Changes to Record of Proceedings processes following a review have also released capacity. Further development and promotion of the Machine Translation tool continues in collaboration with Microsoft.  Several measures have been implemented to promote Welsh language learning and to raise awareness including: dedicated staff tutor to provide “meet and greet” training to all staff and Bilingual Services awareness training for all Commission staff.
	Beyond the fourth Assembly	-	Green	n/a	Green	⇒ The Remuneration Board has consulted ahead of making its Determination on remuneration and financial support for Members in the Fifth Assembly.  The Commission made representations to the Remuneration Board in relation to priorities for the strategic development of the Assembly, reflecting matters of importance to AMs such as communicating locally with their constituents.  The Presiding Officer and Commission are working to ensure that the Assembly’s interests are taken into account by the UK Government and other key stakeholders to influence the changing constitutional landscape of the UK and the devolution of new powers to the Assembly.

Footnote 1. The April – December period is not relevant to all of the indicators, for example for the Member satisfaction survey results and where we are comparing with a baseline period. . (r) = revised from previous reports.

# Corporate Performance Indicators

Goal : Engage with the people of Wales and Promote Wales							
	Comparator	Target	Apr – Dec <sup>1</sup> 2013-14	Apr – Dec <sup>1</sup> 2014-15		Narrative	
<b>KPI on Member satisfaction, comprising:</b>							
5	Engaging with the people of Wales	-	8.00	-	6.70	-	Results from the 2014 survey of AMs. Due to a change to the question asked it is not possible to identify a comparator from the 2013 survey.
<b>KPI on engagement at the Assembly, comprising:</b>							
6 Pack Page 33	Number of visitors to the Senedd / Pierhead	168,505 total 2013-14	Increase compared to 2013-14	130,031	133,737	↑	Total April - December. Visitor numbers continuing to increase with 14,860 average per month compared to an average of 14,448 per month in the same period last year.
	Number of visitors on tours	15,466 total 2013-14		11,906	13,073	↑	Total April - December. Number of visitors on tours continue to increase with 1,452 average per month compared to an average of 1,322 per month in the same period last year.
	Number of events organised on the estate	370 total 2013-14	Increase compared to 2013-14	275	219	↓	Total April - December.
	Visitor satisfaction levels	87% average 2013-14	80% good/ satisfactory ratings	85%	90%	↑	Average April - December. Average score from Senedd visitors has increased from the same period last year.
	Joint events organised with Wales Governance Centre	5 total 2013-14	-	5	3	↓	Total April - December.
<b>KPI on external profile of the Assembly, comprising:</b>							
7	Committee reports promoted by either broadcast or print media	81% average 2013-14	100%	73%	100%	↑	Average April - December. All twelve committee reports published received media coverage.
	Average time spent on a visit to our web pages	3mins 59secs average 2013-14	Aim to increase each period	3 mins 11 secs	02 mins 03 secs	↓	Average April - December. An indicator to better measure interaction with the Assembly website is being developed.

Footnote 1. The April – December period is not relevant to all of the indicators, for example for the Member satisfaction survey results and where we are comparing with a baseline period. (r) = revised from previous reports.

# Corporate Performance Indicators

Goal : Engage with the people of Wales and Promote Wales							
	Comparator	Target	Apr – Dec <sup>1</sup> 2013-14	Apr – Dec <sup>1</sup> 2014-15		Narrative	
<b>KPI on external profile of the Assembly (continued), comprising:</b>							
Pack Page 34	<b>Number of interactions on social media:</b>						
	Facebook - likes / engagement	2,610 likes at March 2014		2,402 likes	2,956 / 3,609	↑	Total as at end of December. From April 2014, the number of people engaging with the Assembly on Facebook (from likes, comments and shares) has been added. Number of “likes” continues to increase.
	Twitter - total followers (all Twitter accounts / engagement (main Twitter account only)	25,283 followers at March 2014		22,035 followers	34,924 / 1,028	↑	Total as at end of December. Number of people engaging with the Assembly on the main Twitter account has been added. Significant increase in number of Twitter followers compared to same period last year.
	YouTube – views / minutes watched	20,177 / 39,325 totals in 2013-14	Aim to increase each period	10,854 / 22,979	18,816 / 32,258	↑	Total April - December. From April 2014, the total number of minutes watched on YouTube has been added. Average 3,584 minutes watched per month compared with 2,872 in the same period last year.
	Use of Senedd TV – views / users	67,059 / 6,191 totals in 2013-14		53,021 / 4,554	87,432 / 11,124	↑	Total April - December. From April 2014 users of Senedd TV has been added. Significant increase in number of views and users compared to same period last year.
	Number of new schools engaging with the education service for the first time	106 total 2013-14 (44 outreach)		81 (35 outreach)	67 (29 outreach)	↓	Total April - December. 67 new schools engaged, of which 29 were engaged through education outreach.
	Average monthly traffic to Record of Proceedings pages - Plenary Only	7,578 average in 2013-14		7,756	5,163	↓	Average April – December. Decrease partly due to greater use of Senedd TV and corresponding increase in hits on live proceedings.
International engagement to and from the Assembly	200 total in 2013-14 (ave. 17 per month)	-	139	169	↑	Total April - December. Average of almost 19 per month compared with 17 per month in the same period last year.	

Footnote 1. The April – December period is not relevant to all of the indicators, for example for the Member satisfaction survey results and where we are comparing with a baseline period. . (r) = revised from previous reports.

# Corporate Performance Indicators

Goal : Engage with the people of Wales and Promote Wales						
	Comparator	Target	Apr – Dec <sup>1</sup> 2013-14	Apr – Dec <sup>1</sup> 2014-15		Narrative
<b>Progress on Corporate Plan priorities</b>						
8	Better engagement with the people of Wales	-	Green	Green	⇒	<p>Since September we have delivered 181 learning sessions, engaging face to face with 5,839 young people including two Question Time events in North Wales. Information about how young people are getting increasingly involved in Assembly Business is now promoted on <a href="http://www.yourassembly.org">www.yourassembly.org</a>.</p> <p>A number of public engagement activities have supported committee work aimed at getting a broader range of people involved in Assembly.</p> <p>Over 60,000 users have viewed our YouTube channel content since 2009, while more Twitter accounts have been launched to further promote specific pieces of work at the Assembly. The Assembly's Twitter reach is now 30,000.</p>

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Goal : Use resources wisely							
	Comparator	Target	Apr – Dec <sup>1</sup> 2013-14	Apr – Dec <sup>1</sup> 2014-15		Narrative	
<b>Member satisfaction rating for:</b>							
9	Allowances and staffing	8.30 in 2013	8.00	8.30	8.70	↑	Results from the 2014 survey of AMs. Scores showing an improvement from broadly comparable scores from the 2013 survey.
	Tŷ Hywel and Senedd	7.60 in 2013	8.00	7.60	7.80	↑	
	Member satisfaction rating for ICT in Tŷ Hywel and Senedd	6.60 in 2013	8.00	6.60	7.50	↑	
	Member satisfaction for ICT in Constituency/Regional Offices	6.10 in 2013	8.00	6.10	6.70	↑	

Footnote 1. The April – December period is not relevant to all of the indicators, for example for the Member satisfaction survey results and where we are comparing with a baseline period. (r) = revised from previous reports.

# Corporate Performance Indicators

Goal : Use resources wisely							
	Comparator	Target	Apr – Dec <sup>1</sup> 2013-14	Apr – Dec <sup>1</sup> 2014-15		Narrative	
<b>KPI on budget, comprising:</b>							
10	Budget - % underspend forecast at year end	0.07% year end 2013-14	<1%	0.41%	0.40%	⇒	As at December. Financial performance is being actively managed to balance the demands of operating and investment expenditure within the 1% target.
	Budget – spend vs. profile	1.24% year end 2013-14	within 2% profile	3.43%	1.47%	↑	As at December. Expenditure remains in line with budget plans.
	Value for Money target and achievement	£508k year end 2013-14	£500k	£374k	£542k	↑	As at December. Target savings for the year achieved during December.
<b>KPI on staff, comprising:</b>							
11	% sickness absence	2.44% (rolling average at Mar 2014)	<3%	3.06%	2.71%	↑	Rolling annual average, as at December. This represents an average of 6 days per employee against the CIPD public sector average of 7.9 days.
	% completion of staff performance reviews	89%	100%	89%	79%	↓	Percentage of year-end reviews recorded on the new HR/Payroll system by December 2014. The completion rates are lower than for the same period last year and work is underway to target specific areas, providing additional support and guidance as necessary.
	Staff engagement level (from staff survey)	78% 2012	80%	81%		↑	Result from 2013 survey showing 81% recommended the Assembly as a great place to work. A new staff engagement indicator is to be developed using staff survey results which will allow benchmarking against other organisations.
	Number of staff - headcount and FTE	412 people 393.87 FTEs March 2014	-	390 people 371.50 FTEs	434 people 405.26 FTEs		As at December. The turnover rate as at December was 4.37% which is the lowest it has been over the period.

Footnote 1. The April – December period is not relevant to all of the indicators, for example for the Member satisfaction survey results and where we are comparing with a baseline period. . (r) = revised from previous reports.

# Corporate Performance Indicators

Goal : Use resources wisely							
	Comparator	Target	Apr – Dec <sup>1</sup> 2013-14	Apr – Dec <sup>1</sup> 2014-15		Narrative	
<b>KPI on ICT:</b>							
12	% achievement against SLA targets for all incidents	n/a	100%	n/a	85.52	n/a	Average for April - December 2014. Overall performance affected by a drop during November and December due to the knock-on effect of providing cover for a critical vacant post on the Service Desk. SLA ratings will be reviewed as part of continuous service improvement to ensure that they are fair and fit for purpose.
	Customer satisfaction score for incident handling (out of 9)	n/a	9.00	n/a	8.6	n/a	Average April - December. This is a new indicator and there are no comparators.
<b>KPI on Governance, comprising:</b>							
Pack Page 37	Average days taken to pay Members and suppliers compared to target	3.55 average in 2013-14	<10 days	3.46	3.99	↓	Average April - December 2014.
	Number of 'Freedom of Information' requests answered	51 total 2013-14	-	40	36	-	April - December 2014. 100% of requests have been answered on time since July. In the Apr - June period, one response was late due to applying an exemption and two were late due to needing to consult in order to provide a comprehensive response.
	% FOI requests answered to statutory deadline	88% on time 2013-14	100%	90%	92%	↑	
	Number of Internal Audit recommendations overdue	-	Zero	2	2	⇒	April - December 2014.
<b>KPI on sustainability, comprising:</b>							
14	Combined energy footprint (Cardiff Bay Estate)	Baseline year 2008-09	40% reduction in total energy emissions by 2015	-31%	-35.10%	↑	As at December. A strong start to the year with continued reductions in electricity and gas consumption resulting in a reduction in cumulative emissions. This provides an excellent platform for the remainder of the year.
	Waste to landfill	43 tonnes in baseline year 2010-11	0 tonnes by March 2015	5.4t <sup>(r)</sup>	3.25t	↑	As at December. Improved recycling and enhanced segregation have led to consistently low levels of landfill waste month on month, making the zero waste target an achievable reality by 2015.

Footnote 1. The April – December period is not relevant to all of the indicators, for example for the Member satisfaction survey results and where we are comparing with a baseline period. (r) = revised from previous reports.

# Corporate Performance Indicators

Goal : Use resources wisely						
	Comparator	Target	Apr – Dec <sup>1</sup> 2013-14	Apr – Dec <sup>1</sup> 2014-15		Narrative
<i>Progress on Corporate Plan priorities:</i>						
15	Making the most of our Estate	-	Green	Green	⇒	<p>A number of priorities identified in the Forward Investment and Maintenance Plan have been completed including the creation of an additional event space in the Milling Area in Tŷ Hywel. Our sustainability achievements for the estate were also independently commended when the Commission won the “Most Sustainable Public Sector Organisation in Government” in the Public Sector Sustainability Awards.</p> <p>A further review of security arrangements, in collaboration with the police, identified improvements and the need for awareness raising which are being implemented.</p>

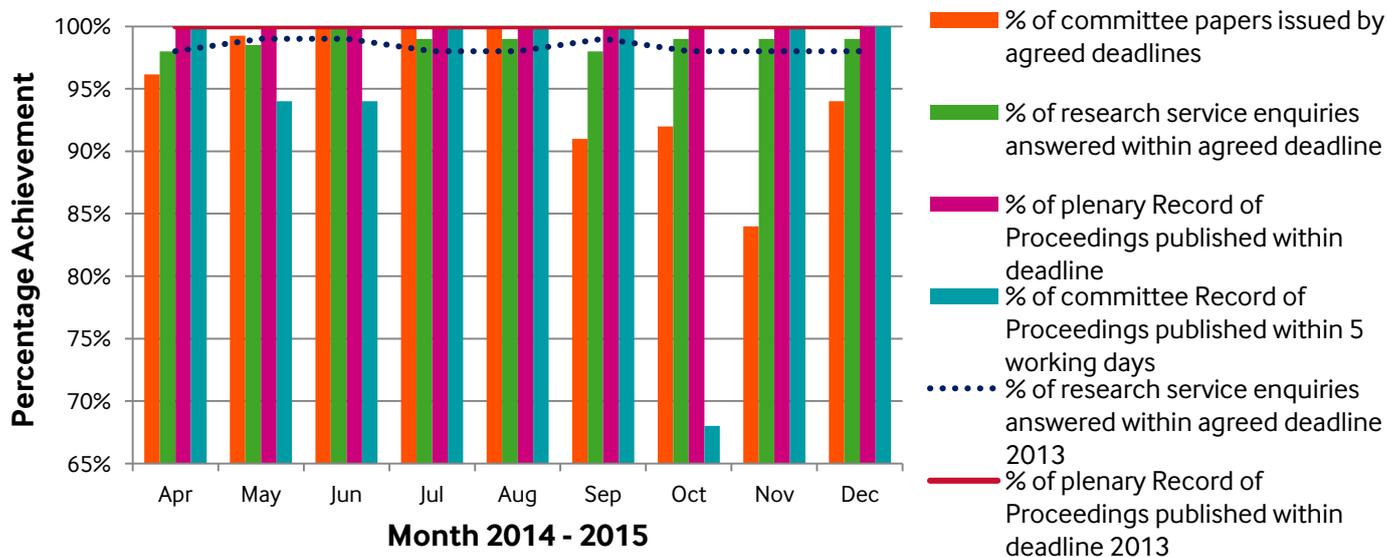
Pack Page 38

Footnote 1. The April – December period is not relevant to all of the indicators, for example for the Member satisfaction survey results and where we are comparing with a baseline period. . (r) = revised from previous reports.

## Annex - Graphs

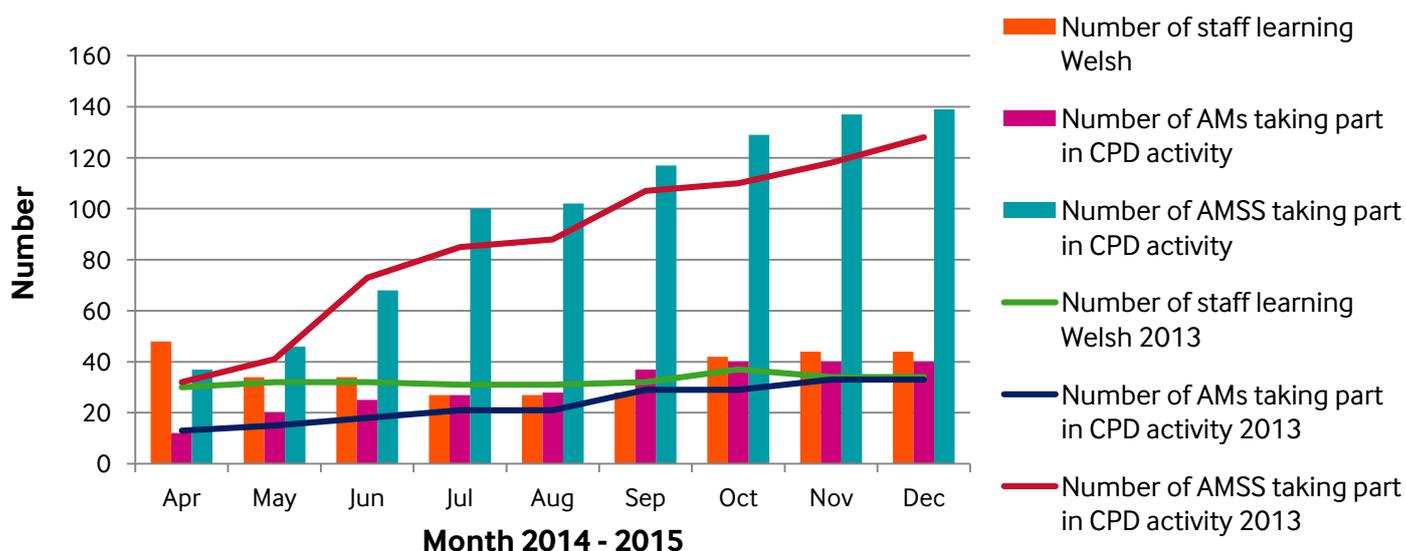
These graphs present the trends for some of the information in the detailed tables.

### Timeliness (KPI 2)



**Narrative:** Consistently high performance on timeliness continuing the trend from 2013-14. The % of committee papers issued and % of committee RoP published are now measured against more challenging targets which has had some impact on the level of performance and means comparisons with 2013 are not possible. The dip in % committee RoP published within the deadline in October was due to an unprecedented high number of meetings (28 against an average of 16).

### Professional Development (KPI 3)

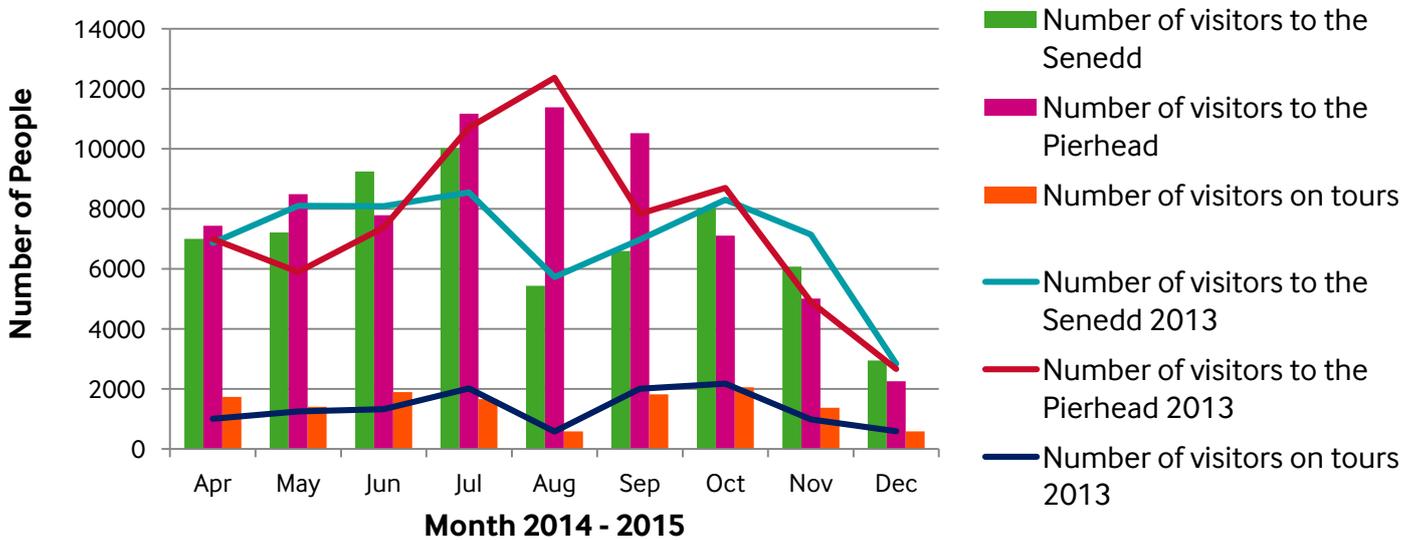


**Narrative:** The number of Welsh learners has remained constant apart from an increase in April due to attendance at intensive Welsh lessons. The cumulative numbers of new AMs and AMSS engaging in CPD activity (which includes Welsh lessons) continues to increase. The detailed table also shows data for repeat participants, i.e. total attendance by all AM/AMSS in all CPD activity.

## Annex - Graphs

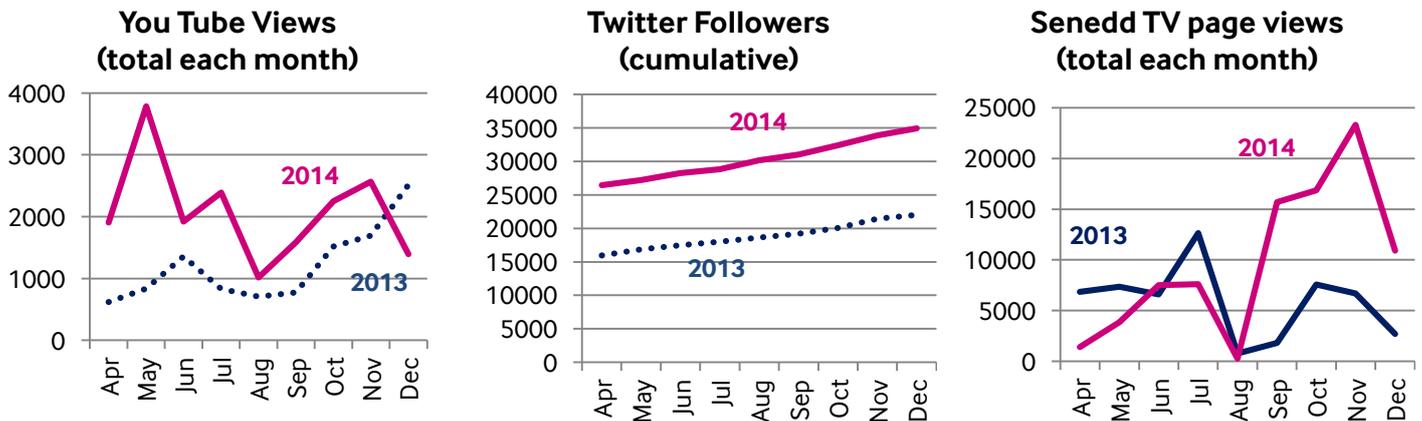
These graphs present the trends for some of the information in the detailed tables.

### Engagement (KPI 6)



**Narrative:** The target for increasing the number of visitors to the Assembly each year has been achieved in the reporting period. The detailed table also shows high levels of customer satisfaction for visitors to the Senedd.

### External profile (KPI 7)

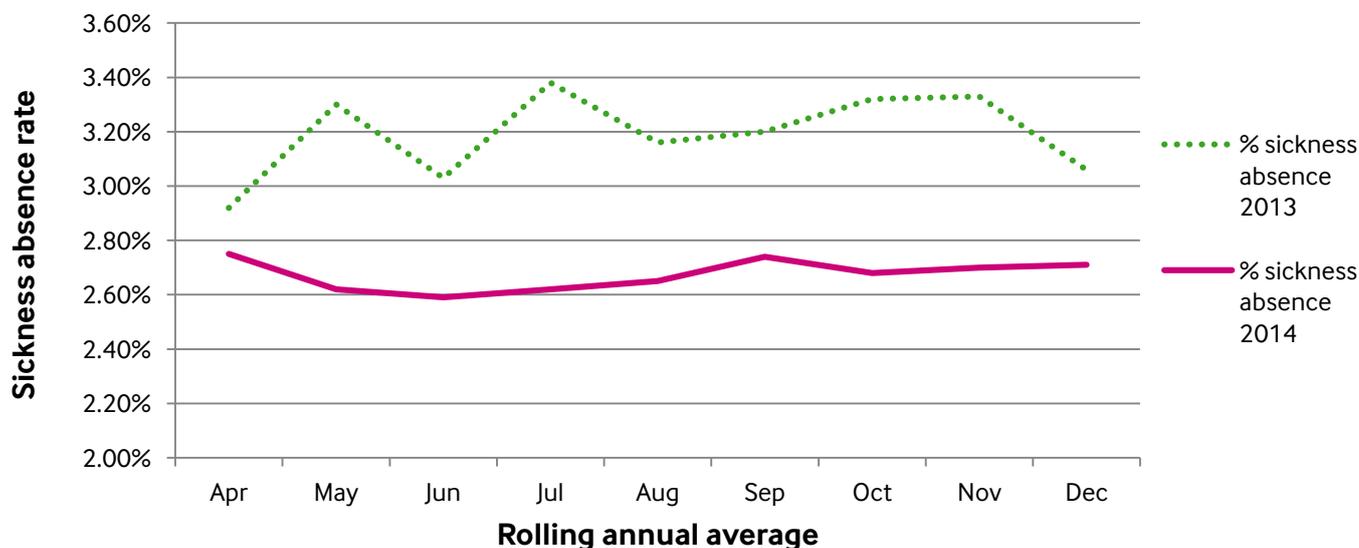


**Narrative:** Continued steady growth in Twitter followers. There have been fluctuations in YouTube views as, in May 2014, as a number of short YouTube videos celebrating 15 Years of Devolution were very popular. Senedd TV shows fewer page views during the April 2014 as it included a three week recess period (only one week of which was in April in 2013). The total number of views have increased on the same period last year for both You Tube (average 2,091 per month compared with 1,200 last year) and Senedd TV (average 9,714 per month compared with 5,891 last year). The sharp increase in Senedd TV views from September coincides with the launch of the new Senedd TV platform. Numbers of people engaging are shown in the detailed tables.

## Annex - Graphs

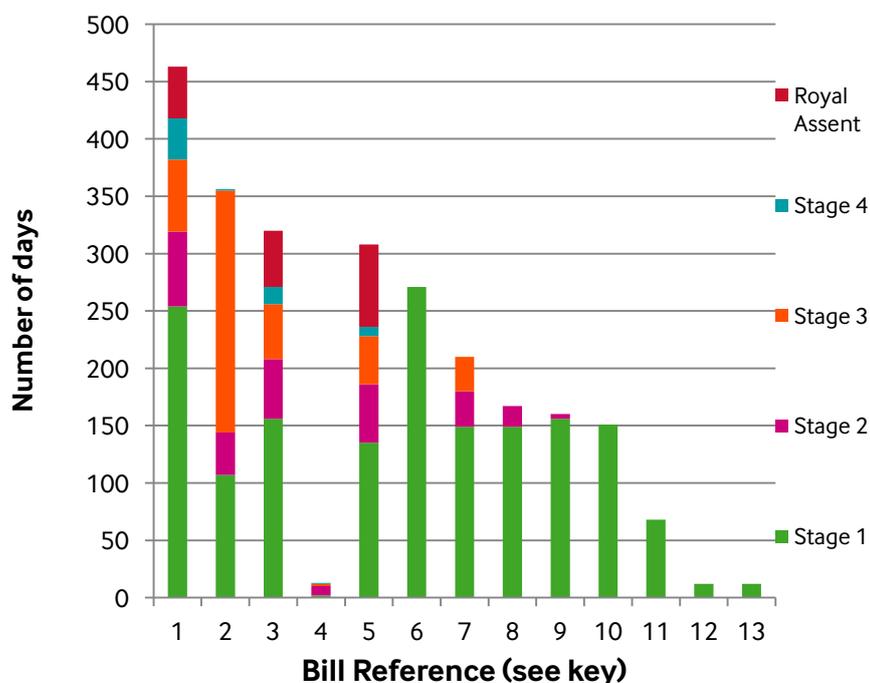
These graphs present the trends for some of the information in the detailed tables.

### % sickness absence (Commission Staff) - rolling annual average (KPI 11)



**Narrative:** Sickness absence figures been consistently lower than the same periods last year and have been within the target of 3 per cent in each month since January 2014.

### Legislation Timetables - time taken to complete each stage



#### Ref Bill (Stage as at 12 Dec)

- 1 Social Services and Well-being Bill (Complete 1 May)
- 2 Recovery of Medical Costs for Asbestos Diseases Bill (Awaiting Supreme Court Judgement)
- 3 Education Bill (Complete 12 May)
- 4 Agriculture Sector Bill (Emergency Bill) (Awaiting Supreme Court Judgement)
- 5 Housing Bill (Awaiting Royal Assent)
- 6 Holiday Caravan Sites Bill (Stage 1)
- 7 Higher Education Bill (Stage 1)
- 8 Gender Based Violence, Domestic Abuse and Sexual Violence Bill (Stage 1)
- 9 Wellbeing of Future Generations Bill (Stage 2)
- 10 Financial Literacy and Financial Education Bill (Stage 1)
- 11 Planning Bill (Stage 1)
- 12 Qualifications Bill (Stage 1)
- 13 Safe Nurse Staffing Levels Bill (Stage 1)

**Narrative:** This graph shows the time it has taken for each Bill to go through the legislative process. It reflects which Bills have received Royal Assent (i.e. are completed) or are still going through the legislative process in the period April to December 2014.

# Agenda Item 6

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted



**NATIONAL ASSEMBLY FOR WALES FINANCE COMMITTEE**

**CONSIDERATION OF POWERS: PUBLIC SERVICES OMBUDSMAN FOR WALES**

**WRITTEN EVIDENCE SUBMITTED BY THE LAW COMMISSION OF ENGLAND AND WALES, FEBRUARY 2015**

- 1.1 The Law Commission of England and Wales (“the Law Commission”) welcomes the invitation to give evidence to the Finance Committee in relation to its consideration of powers held by the Public Services Ombudsman for Wales (‘PSOW’).
- 1.2 The PSOW has asked that his powers be reviewed and has submitted proposals to the Committee around five key areas of change:
  - 1.2.1 Own initiative investigations
  - 1.2.2 Access – oral complaints
  - 1.2.3 Complaint Standards Authority
  - 1.2.4 Extension and reform of jurisdiction - Healthcare
  - 1.2.5 Links with the courts
- 1.3 The Law Commission has previously reviewed the legislation governing public services ombudsmen in England and Wales. We undertook a consultation between 2 September 2010 and 3 December 2010 (“the 2010 consultation”).<sup>1</sup> A final report making recommendations was published 13 July 2011 (“the Report”).<sup>2</sup> In the Report we made 17 recommendations for change. Those recommendations which relate to the areas of change identified by the PSOW, specifically access to the ombudsman and links with the courts, are discussed further below.
- 1.4 In producing this evidence, the Commission is able to draw on responses to our consultation and the recommendations in our Report. We are also able to update the Committee in respect of what has happened post publication of the Report.

<sup>1</sup> Public Services Ombudsman – A Consultation Paper Law Commission No 196

<sup>2</sup> Public Services Ombudsman Law Commission No 329 July 2011

- 1.5 We concluded our work on public services ombudsmen in 2011, since when we have undertaken other projects and have not done any further work on ombudsmen. The consultation responses which informed the Commission's views were received in 2010. We are constrained, in providing this evidence, to outlining the Commission's thinking at the time of preparing the Report and briefly describing what has happened subsequently within Government.
- 1.6 This note is divided into five sections:
- (1) Background to the Law Commission;
  - (2) The Public Services Ombudsman project;
  - (3) Access – oral complaints;
  - (4) Links with the Courts; and
  - (5) Report update.

### **SECTION 1 - Background to the Law Commission**

- 1.7 The Law Commission is an independent body created by Parliament by the Law Commissions Act 1965, as subsequently amended. The role of the Commission includes keeping all the law of England and Wales under review, providing advice and information to the English and Welsh Governments, and recommending reform where it is needed. The driving principle of all our law reform work is to ensure that the law is fair, modern, accessible and as cost-effective as possible.
- 1.8 The Commission is led by a Lord Justice of Appeal as Chairman. Five specialist teams of lawyers and researchers work under the supervision of the Chairman and 4 other full-time Law Commissioners.
- 1.9 Recommendations that the Commission should review an area of law are made by a wide variety of people, including the judiciary, Members of Parliament or the Welsh Assembly, Government Departments and other Government bodies in England and Wales, as well as by voluntary and private sector organisations and individuals. Periodically the Commission holds a consultation, calling for ideas for projects for the next 3 year programme of law reform.

- 1.10 The Commission is required to “prepare and submit to the Minister from time to time programmes for the examination of different branches of the law with a view to reform”.<sup>3</sup> Under the terms of a Protocol agreed between the Lord Chancellor (on behalf of the United Kingdom Government) and the Law Commission,<sup>4</sup> only projects that are appropriate for the Commission and have a reasonable expectation of implementation are selected for a programme. The selection criteria include an examination of the extent to which the law is unsatisfactory (for example, unfair, unduly complex, inaccessible or outdated).
- 1.11 Amendments made to the Law Commissions Act by the Wales Act 2014 include the creation of a specific power of the Commission to provide advice and information to the Welsh Ministers<sup>5</sup> and to agree with the Welsh Ministers a separate protocol about the Law Commission’s work relating to Welsh devolved matters.<sup>6</sup> The Law Commission is currently undertaking two projects, relating to the form and accessibility of the law in Wales and to planning and development control in Wales, that relate to devolved matters.
- 1.12 Consultation is key to law reform projects undertaken by the Commission. It allows the Commission to gain a thorough understanding of the operation of the area of law with which we are concerned, the problems that arise and how they are experienced by the public. Driven by the publication of a detailed consultation paper, the Commission’s extensive consultation process informs and strengthens our final recommendations.
- 1.13 Consultees will normally include politicians, officials and legal advisers from Government departments, the judiciary, practising lawyers, legal academics, local government, trade and industry, consumer groups, representative and campaigning organisations in the business and voluntary sectors and the public at large.
- 1.14 Scrutiny of the Commission’s work comes both internally and externally – internally through peer review by all Commissioners of each project and externally through consultation. Peer review takes place at each of the key stages in a project.

## **SECTION 2 – The Public Services Ombudsman project**

<sup>3</sup> Section 3(1)(b) Law Commissions Act 1965

<sup>4</sup> Dated March 2010,

<sup>5</sup> Law Commissions Act 1965 (as amended) s 3(1)(ea).

<sup>6</sup> Law Commissions Act 1965 (as amended) s 3D.

- 1.15 The Commission originally published a consultation paper in July 2008 entitled *Administrative Redress: Public Bodies and the Citizen*.<sup>7</sup> That consultation paper considered three primary aspects of administrative redress: judicial review, private law actions against public bodies, and ombudsmen. The first two aspects of the project were discontinued for the reasons given in the Commission's report of May 2010,<sup>8</sup> but our work on public services ombudsmen continued.
- 1.16 In relation to ombudsmen the 2008 consultation paper had made four provisional proposals:
- (1) the creation of a specific power to stay an application for judicial review, so that suitable matters are handled by ombudsmen rather than the courts;
  - (2) that access to the ombudsmen could be improved by modifying the "statutory bar" – the rule that recourse may not be had to the ombudsmen if the complaint has been or could be pursued in a court of law;
  - (3) a power for the ombudsmen to refer a point of law to the courts; and
  - (4) the removal of the "MP filter" in relation to the Parliamentary Commissioner for Administration, to allow a complainant direct access to the ombudsman without having first to submit the complaint to a Member of Parliament.
- 1.17 These provisional proposals mostly met with favourable consultation responses; however, certain consultees thought that the proposals needed to be developed further. During the 2008 consultation other issues also came to light which we felt were worth investigation. In the report of May 2010, the Commission stated its intention undertake further work on the public services ombudsmen; we published a further consultation paper in 2010.<sup>9</sup>
- 1.18 The 2010 consultation focused on the Parliamentary Commissioner for Administration; the Health Service Ombudsman; the Local Government Ombudsman; the Housing Ombudsman (although not all proposals applied to this post); and the Public Services Ombudsman for Wales.
- 1.19 The Commission received fifty-seven formal responses to the 2010 consultation. These came from a range of consultees, including: the public services ombudsmen; other public bodies; non-governmental organisations; members of the legal profession; and academics.<sup>10</sup>

<sup>7</sup> *Administrative Redress: Public Bodies and the Citizen* (2008) Law Commission Consultation Paper No 187 (hereafter CP 187).

<sup>8</sup> *Administrative Redress: Public Bodies and the Citizen* (2010) Law Commission No 322.

<sup>9</sup> *Public Services Ombudsmen* (2010) Law Commission Consultation Paper No 196.

<sup>10</sup> A complete list of those who submitted responses can be found in Annex A to the Consultation Analysis, available to download from the Law Commission Website (<http://lawcommission.justice.gov.uk/areas/public-services-ombudsmen.htm>).

1.20 The Commission set certain limits to the project. In the original administrative redress project our aim in relation to the ombudsmen was to “strengthen and clarify”<sup>11</sup> the relationship between the ombudsmen and courts. This precluded proposing fundamental change to either the number of public services ombudsmen or their individual remits. The 2010 consultation did widen the subject matter to include such matters as reporting, but this was in the context of facilitating the work of the existing ombudsmen.

1.21 In keeping with the Commission’s decision not to alter the fundamental design of the ombudsmen, we considered the subject-matter which they investigate as lying outside the scope of the project.

1.22 Following consultation between September and December 2010, the Commission published its final Report in July 2011. The Report contained 17 recommendations, of which the following five are relevant to the areas of possible change which are the focus of this inquiry:

1 That the government establish a wide-ranging review of the public services ombudsmen’s role as institutions for administrative justice.

2 That all formal, statutory requirements that complaints submitted to the public services ombudsmen be written be repealed, even where there is presently discretion to waive the requirement.

That the public services ombudsmen publish, and update regularly, guidance as to how complaints can be made.

3 That the statutory bar<sup>12</sup> be replaced with the discretion for the ombudsman to take a claim unless they decide it is not appropriate.

That the public services ombudsmen publish guidance detailing where it is appropriate to make a complaint to them, and where it would be more appropriate to make use of a court or other mechanism for administrative justice.

4 That the Administrative Court should have an express power to stay an action before it, in order to allow a public services ombudsman to investigate or otherwise dispose of the matter.

That the stay of an action should not force a public services ombudsman to accept a complaint.

5 That the ombudsmen be given a specific power to make a reference to the Administrative Court asking a question on a point of law.<sup>13</sup>

<sup>11</sup> Administrative Redress: Public Bodies and the Citizen (2008) Law Commission Consultation Paper No 187, para 5.1. An exception to this general approach was the proposed reform of the “MP filter” relating to the Parliamentary Commissioner.

<sup>12</sup> The rule that recourse may not be had to the ombudsmen if the complaint has been or could be pursued in a court of law.

<sup>13</sup> This was recommendation number ‘7’ in the Report.

That intervention in the court proceedings by the parties to the original dispute should be allowed.

That the ombudsmen should be required to notify the parties before making a reference, inviting them to make representations and advising them of their ability to intervene should they want to.

That the decision to make a reference should be that of the relevant public services ombudsman alone.

That the reference should have to pass the permission stage.

That the opinion of the Administrative Court should be considered a judgment of the Court and, therefore, potentially subject to appeal to the Court of Appeal.

That the public services ombudsmen should meet their own costs.

Where parties intervene, that they should normally meet their own costs.

### **SECTION 3 – Access – oral complaints**

- 1.23 The governing statutes for the public services ombudsmen contain a variety of approaches to whether a complaint should be made in writing. The statutory provisions governing the Public Services Ombudsman for Wales allow the ombudsman to dispense with a written complaint.<sup>14</sup>
- 1.24 At the time of embarking upon the 2010 consultation, we considered there to be no reason to alter the current position of the Public Services Ombudsman for Wales in this respect. However, following receipt of all consultation responses, we concluded that there was no need for any statutory requirements as to the form in which complaints to ombudsmen were made. We thought that removing these would allow public services ombudsmen to react to technological developments and changing preferences of service users without the need either for reform of the governing legislation or routine exercises of discretion to waive the requirement of a complaint in writing so as to keep pace with such developments or other changes.
- 1.25 We were also concerned to ensure that the system was open and transparent. Therefore, we recommended that the public services ombudsmen publish and regularly update guidance as to how complaints can be made (although we did not recommend a statutory requirement to do this).
- 1.26 The Commission considered that there were advantages to reforming the formal requirements for making a complaint to the ombudsmen; we thought that our recommendation might have a particularly beneficial impact on individuals who have physical problems writing, who are illiterate or have reduced literacy, or who are not first language English or Welsh speakers.

<sup>14</sup> Public Services Ombudsman (Wales) Act 2005, ss 2(4) and 5(1)(a).

- 1.27 We also thought that there may be cost advantages to allowing non-written complaints. Users could save in postage costs. Ombudsmen could save processing time and postage.

## **SECTION 4 - Links with the Courts**

### **Setting aside the statutory bars**

- 1.28 By the “statutory bars”, we meant the statutory provisions whereby a public services ombudsman cannot open an investigation if the complainant has or had the possibility of recourse to a court, tribunal or other mechanism for review, unless it was not reasonable to expect the complainant to resort or to have resorted to it. The purpose of these provisions was to prevent an overlap between the jurisdiction of the courts and that of the ombudsmen. In the case of the PSOW the statutory bar is contained in the Public Services Ombudsman (Wales) Act 2005, s 9.
- 1.29 The Commission considered that there had been a considerable expansion in the scope of judicial review, such that there was a clear overlap between the jurisdiction of the ombudsmen and judicial review. However, the effect of the statutory bars was to create a preference in favour of the Administrative Court, where (but for the existence of the statutory bar) both the Administrative Court and the ombudsman could potentially consider a particular matter.<sup>15</sup>
- 1.30 Proposals to reform the statutory bars were set out in the Commission’s 2010 consultation paper where we proposed their complete removal to allow the public services ombudsmen to take complaints where they thought it appropriate.<sup>16</sup>
- 1.31 Specifically, the Commission made three provisional proposals in relation the statutory bars:
- (1) We provisionally proposed that the existing statutory bars be reformed, creating a general presumption in favour of a public services ombudsman being able to open an investigation.<sup>17</sup>
  - (2) We provisionally proposed that this should be coupled with a broad discretion allowing the public services ombudsmen to decline to open an investigation.<sup>18</sup>
  - (3) We provisionally proposed that in deciding whether to exercise that discretion the public services ombudsmen should ask themselves

<sup>15</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, para 4.46.

<sup>16</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, paras 4.38 to 4.46.

<sup>17</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, para 4.42.

<sup>18</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, para 4.47.

whether the complainant has already had or should have had recourse to a court or tribunal.<sup>19</sup>

- 1.32 These provisional proposals met with substantial approval.
- 1.33 The Commission therefore recommended that the statutory bars as they relate to courts be repealed and replaced with a discretion for the ombudsmen to open an investigation, or otherwise dispose of a matter (for instance by referring it to mediation). This would give complainants greater freedom of choice over the form of redress they use.
- 1.34 Following consultation, the Commission did not think it necessary to define in statute the discretion available to the public services ombudsmen when deciding not to investigate a complaint. Decisions would still be open to challenge on normal public law grounds, which we thought would provide sufficient protection from irrational decision-making.
- 1.35 In response to the consultation, concerns were raised that individuals may not know which redress mechanism to use. By submitting an inappropriate complaint to an ombudsman, an individual may lose the opportunity to use a court or tribunal owing to the limitation periods for bringing proceedings. Given the fact that many individuals seek legal advice on important matters, we did not think that this would be a significant problem. However, we accepted there was the potential for a limited number of individuals to be affected.
- 1.36 In order to reduce the chance of individuals being detrimentally affected by the removal of the statutory bars, the Commission recommend that the ombudsmen publish guidance as to whether they are the appropriate mechanism for particular classes or sorts of complaint or whether it would be advisable for complainants to use other institutions. We appreciated that this happens already, but thought that the situation would be different without the statutory bars and new guidance should reflect this.

### **Stay provisions**

- 1.37 The Commission saw that it was possible for a matter to come before the Administrative Court, at the permission stage, where there was a sufficiently arguable case on administrative law illegality for permission to bring the proceedings to be granted, but where it was apparent to the court that the true nature of the matter (whether categorised as a dispute or not) concerned maladministration.
- 1.38 In such a situation, we thought that the appropriate institution to deal with the matter would be one of the public services ombudsmen.

<sup>19</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, para 4.47.

- 1.39 In the 2010 consultation, the Commission provisionally proposed that a matter be stayed and then “transferred” to the ombudsmen from the Administrative Court, when the court thought this suitable.<sup>20</sup> This would not be an actual transfer in the strict legal sense, as the court would not be moving the case before it to the ombudsmen; however, the term was used to emphasise a change in the institution that would consider the dispute.
- 1.40 We made one provisional proposal and asked three consultation questions.
- 1.41 First, we provisionally proposed that there should be a stay and transfer power allowing matters to be transferred from the courts to the public services ombudsmen.<sup>21</sup>
- 1.42 The three consultation questions were as follows:
- (1) whether consultees agreed that the court should invite submissions from the original parties before transferring the matter;<sup>22</sup>
  - (2) whether, in the event of such a transfer, the ombudsman should be obliged to open an investigation;<sup>23</sup> and
  - (3) whether the ombudsman should also be able to abandon the investigation should it – in his or her opinion – not disclose maladministration.<sup>24</sup>
- 1.43 The basic proposal to create stay provisions seemed acceptable to consultees. The requirement that the parties be invited to make submissions before a matter is stayed was also acceptable. However, there was considerable opposition to the proposal that the ombudsmen should be obliged to open an investigation, even if they could close it subsequently.
- 1.44 Given the consultation responses, we considered our provisional proposals in further detail.
- 1.45 The Commission considered that the mechanism would normally be used at the permission stage; however, we did not think that a stay needed to be granted before permission. We therefore suggested creating a general power to allow an action to be stayed either before or after permission.

<sup>20</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, paras 4.48 to 4.75.

<sup>21</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, para 4.76.

<sup>22</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, para 4.77.

<sup>23</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, para 4.78.

<sup>24</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, para 4.79.

- 1.46 The Commission considered that parties should be able to request that a matter was stayed. If that happened, it seemed sensible that the applicant should be able to make submissions (usually in writing) to the court on the specific point – which may raise issues different to those considered in their original application.
- 1.47 The Commission considered that where the court was, of its own motion, considering making an order to stay an action before it, it should seek written representations from the parties to the action before making such an order.
- 1.48 Following consultation, we concluded that we had been overly prescriptive in our proposals. We had provisionally proposed that the transfer of a matter should oblige the ombudsman to open an investigation. This proposal was revised in the final Report, as we thought that the better approach was for the transfer power to allow ombudsmen to dispose of a matter as they saw fit. The power should not require them to open an investigation.
- 1.49 The final issue we considered was what happened after the public services ombudsman had disposed of the matter, as there would still be stayed proceedings in existence. Where permission had not been granted by the Administrative Court, the findings of the public services ombudsman, or their refusal to investigate, could be considered at the permission stage. This would allow the Court to see whether there was still any issue of administrative illegality that it needed to consider. Where permission had already been granted, the Court could consider the ombudsmen’s findings, or decision not to investigate, at any application to set aside the stay. At that stage, the Court could set aside the stay, either with or without further case management directions.
- 1.50 The Commission did not think that movement of a matter from a court to an ombudsman would necessarily lead to the ombudsman process becoming adversarial. We considered that the ombudsmen’s processes were investigatory and the parties had to respond to that investigation rather than acting as they would in a court case. Given the discretion accorded to the ombudsmen by their governing statutes, we thought it hard to see how parties to the original case could upset the freedom of an ombudsman to dispose of a matter as the ombudsman saw fit.
- 1.51 We accepted that compelling an individual to move from the Administrative Court to a public services ombudsman would be an extreme measure. However, the Commission thought that there may be situations where compelling a complainant to move forum would be in the overall interests of justice.
- 1.52 If an ombudsman were to refuse to open an investigation, the complainant would be able return to the court with the refusal from the ombudsman and use that when arguing that the court should lift the stay, grant permission (if not already granted) and allow the matter to proceed to a hearing.

#### **Reference on a point of law**

- 1.53 The Commission thought there could be situations where the ombudsmen would be forced to abandon an investigation which otherwise they would be able to conclude due to a technical legal question that they were not equipped to resolve. In meetings with the public services ombudsmen, it had been suggested that such a power would also be useful to resolve occasional questions about the jurisdiction of the public services ombudsmen. We therefore thought that giving the public services ombudsmen the ability to pose a question of law to the Administrative Court would provide them with a useful tool which could facilitate their work.
- 1.54 In the Consultation we provisionally proposed a mechanism allowing the public services ombudsmen to ask a question of the Administrative Court.<sup>25</sup> We provisionally proposed that such a reference should bypass the court's permission stage.<sup>26</sup> We also suggested that the public services ombudsmen should meet their own costs were they to use such a mechanism.<sup>27</sup>
- 1.55 The Commission provisionally proposed that the decision of the Administrative Court should be subject to appeal to the Court of Appeal.<sup>28</sup>
- 1.56 We also provisionally proposed that the public services ombudsmen should notify the complainant and the relevant public bodies before making a reference, inviting them to submit their views and/or to intervene before the court.<sup>29</sup> When an intervention was made, the parties were to meet their own costs.<sup>30</sup>
- 1.57 While we thought it necessary for the ombudsman to consult those involved in a complaint before making a reference, we wanted to protect the ombudsmen's discretion. Consequently, we provisionally proposed that the final decision whether to refer a question to the court should be for the public services ombudsman alone.<sup>31</sup>
- 1.58 In general, the provisional proposals were broadly supported by consultees.
- 1.59 Our original intention behind the reference mechanism was to provide a tool which would allow the ombudsmen to settle a matter concerning their own jurisdiction or to allow them to process a complaint which they would not otherwise have been able to deal with.

<sup>25</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, para 5.85.

<sup>26</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, para 5.86.

<sup>27</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, para 5.92.

<sup>28</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, para 5.87.

<sup>29</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, paras 5.88 and 5.91.

<sup>30</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, para 5.92.

<sup>31</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196, para 5.89.

- 1.60 Certain consultees were concerned that the reference procedure might transform a closed investigation into an open one. We were not persuaded that this was an insurmountable obstacle. First, it was not the investigation as a whole that was being transferred, but a relevant legal question. Second, the courts already have mechanisms to deal with privacy – such as in certain cases involving children, where the parties are anonymised.
- 1.61 Several consultees raised the possibility of the reference procedure being misused by one side, either to cause additional delay or to impose extra costs on the other party. We considered that this missed the point that control of the mechanism remained with the ombudsman, and the discretion as to whether to make a reference lay with it solely.
- 1.62 We saw the key benefits as being the improvement of the quality of reports by increasing the ombudsmen’s ability to report on technical legal matters, and preventing them from having to discontinue an investigation where a difficult legal issue arose. We thought that discontinuance of investigations could also have consequential costs for the parties involved, in that the issue may then have to go to court, with significant costs being incurred by both sides to the dispute.

#### **SECTION 5 – Post-Report update**

- 1.63 The Report was submitted to the Cabinet Office in 2011. In October 2013 the government established a wide-ranging review of the public services ombudsmen’s role.
- 1.64 The review was led by Oliver Letwin, Minister for Government Policy, and a member of the Cabinet Office. This review looked at:
- How to make it easier for the public to make a complaint, with a view to introducing a single ombudsman service, entered from one main portal.
- How complaints are treated by civil servants, government departments, MPs and the NHS (this would include the ombudsman).
- 1.65 The Government is to publish the results of this review shortly, which will take the debate forward in terms of considering the role of the public services ombudsman. It is expected that the Commission’s recommendations will feed into this wider review.

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# Agenda Item 10

By virtue of paragraph(s) ix of Standing Order 17.42

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