Agenda – Finance Committee

Meeting Venue:
Committee Room 2 – Senedd
Meeting date: Thursday, 9 March 2017
Meeting time: 09.15

For further information contact:
Bethan Davies
Committee Clerk
0300 200 6372
SeneddFinance@assembly.wales

1 Introductions, apologies, substitutions and declarations of interest

(09.15)

2 Consideration of the Draft Public Services Ombudsman (Wales) Bill: Evidence session

(09.15–10.15) (Pages 1 – 65)

Nick Bennett, Public Services Ombudsman for Wales
Katrin Shaw, Assistant Director & Legal Adviser, Public Services Ombudsman for Wales
Huw Bryer, Managing Director, OB3 Research

Paper 1 – OB3 Research - Regulatory Impact Assessment for the Draft Public Services Ombudsman (Wales) Bill

Supporting document:
Fourth Assembly Finance Committee Report: Consideration of the consultation on the Draft Public Services Ombudsman (Wales) Bill

3 Motion under Standing Order 17.42 to resolve to exclude the public from the remainder of the meeting

(10.15)

4 Consideration of the Draft Public Services Ombudsman (Wales) Bill: Consideration of evidence

(10.15–10.30) (Pages 66 – 69)

Paper 2 – Draft Public Services Ombudsman for Wales Bill

5 Senedd@Newport

(10.30-10.45) (Pages 70 - 72)

Paper 3 – Senedd@Newport proposal paper

Ombudsman Ombwdsmon
PUBLIC SERVICES OMBUDSMAN FOR WALES
OMBWDSMON GWASANAETHAU CYHOEDDUS CYMRU

Our ref: NB/SMH Ask for:

Your ref: 01656 641150

Date: 14 December 2016

Mr Simon Thomas, AM
Chair
Finance Committee
National Assembly for Wales
Cardiff Bay
CARDIFF
CF99 1NA

Dear Chair

Bill Public Services Ombudsman (Wales) Bill

I refer to our previous correspondence concerning the draft Public Services Ombudsman (Wales) Bill, and the specific request in your letter dated 4 October 2016 for a Regulatory Impact Assessment so that the Committee could consider and decide whether to introduce the Bill. In accordance with that request, I commissioned OB3, a research company, to undertake the necessary assessment and I am pleased to enclose the resultant work.

I note the reference in your letter that it is likely that the Committee will invite me to a meeting to examine the financial information and to discuss the draft Bill in more detail, and I look forward to hearing further from you on this in due course.

Finally, you will of course be familiar with the fact that I have been urging the Assembly to ensure that Wales's Ombudsman continues to be at the vanguard as a modern ombudsman scheme; you may wish to note therefore that earlier this month the UK Government published draft legislation on the introduction of a single Public Service Ombudsman (England and UK).

Yours sincerely

Nick Bennett
Ombudsman

Ymchwil
Research

December 2016

A Regulatory Impact Assessment (RIA) for the Draft Public Services Ombudsman (Wales) Bill

December 2016

A Regulatory Impact Assessment (RIA) for the Draft Public Services Ombudsman (Wales) Bill

Author: Huw Bryer

Quality Check: Heledd Bebb

57a Stryd Rhosmaen
Llandeilo, Sir Gaerfyrddin
SA19 6LW

01558 822 922
huw@ob3research.co.uk

38 Llewelyn Goch
St Fagans, Cardiff
CF5 6HR

029 2221 9226
heledd@ob3research.co.uk

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Glossary of Acronyms

Acronym/Term	Explanation
PSOW	Public Services Ombudsman for Wales
GP	General Practitioner
IOI	International Ombudsman Institute
IT	Information Technology
NI	Northern Ireland
NIPSO	Northern Ireland Public Services Ombudsman
RaISe	Northern Ireland Assembly Research and Information Service
RIA	Regulatory Impact Assessment
SPSO	Scottish Public Services Ombudsman

1. Introduction

The office of the Public Service Ombudsman for Wales (PSOW) commissioned OB3 (Old Bell 3 Ltd.) in October 2016 to produce a Regulatory Impact Assessment (RIA).

The RIA is needed to assist the National Assembly for Wales in its consideration of a draft Public Services Ombudsman (Wales) Bill. The intention of the Bill is to update existing legislation, the Public Services Ombudsman (Wales) Act 2005, which currently governs the PSOW's role.

The Finance Committee of the National Assembly for Wales has set out in detail what it expects an RIA to cover. This report is designed to address those specific requirements as far as possible within the confines of available information, data and evidence. Thus, the remainder of this report is structured as follows:

- An outline of the methodological approach adopted in the production of the RIA (Section 2)
- An outline of the legislative context within which this RIA has been produced (Section 3)
- An overview of the justifications for and desired outcomes from the proposed legislative changes (Section 4)
- An assessment of the availability and limitations of information, data and evidence relating to direct and indirect costs and potential savings (Section 5)
- Options and scenarios which consider the direct and indirect costs and benefits associated with each of the legislative changes being requested (Section 6)
- Conclusions (Section 7)

2. Methodology

The methodology adopted in the production of this RIA involved:

- Attending an inception meeting held on 12th October 2016 with the Ombudsman and members of his team to discuss in detail the approach to be taken and the information, data and evidence required to perform this RIA. The inception meeting included a discussion on the policy options to be developed as part of the RIA process
- Receiving background information, data and evidence from the PSOW's office and analysing this material. A detailed list of the material reviewed is outlined in this report. We also made a number of requests for further information from the PSOW's office which were duly processed
- Attending and observing a good practice seminar jointly organised by the Ombudsman Association, the International Ombudsman Institute and Aberystwyth University. The seminar (held on Friday 28th October 2016) helped provide context on the scope and nature of investigative powers available to other Ombudsmen schemes
- Drawing together the evidence presented for review in this report.

It is important to note that no primary research was undertaken as part of this RIA. As such, the information, data and evidence used to inform the process has either been provided to us via the PSOW's office or is material already in the public domain.

3. Context and need for the RIA

3.1 National Assembly for Wales Finance Committee Inquiry

The Finance Committee of the National Assembly for Wales conducted an inquiry into the PSOW's powers. Their report 'Consideration of Powers: Public Services Ombudsman for Wales' was published in May 2015.

The Committee concluded that (based on the evidence they received), the Ombudsman's role was working effectively and that the 2005 Act which currently governs the PSOW's role was generally fit for purpose. However, the Committee also concluded that it was 'persuaded by the evidence that 10 years later, there was a need to strengthen the role of the Ombudsman and to future-proof the legislation to ensure it was citizen-centred'[1].

Based on this conclusion, the Committee set out a series of 18 recommendations in its report. In summary, the main recommendations of relevance to this RIA exercise are that:

- There should be a revision to the powers of the Ombudsman and that a Bill should be introduced into the Assembly to extend the role of the Ombudsman
- If a Bill is introduced, it should include provision for the Ombudsman to initiate own investigations
- If a Bill is introduced, the Ombudsman should have full discretion to decide how complaints can be made…allowing the Ombudsman flexibility to react to changing methods of communication in future
- There should be a mechanism that if a complaint is made orally, the complainant is made fully aware that a formal complaint has been instigated and understands the implications of this
- Should a Bill be introduced, the Ombudsman should have a statutory complaints handling role. This complaints role should include provisions to:
    - Publish a model complaints handing policy for listed authorities
    - Require regular consultation with relevant stakeholders
    - Require public bodies to collect and analyse data on complaints
    - Ensure a standardised language is used by public bodies when collecting data to ensure comparisons can be made
- Should a Bill be introduced, the Ombudsman's jurisdiction should be extended to enable him/her to investigate the whole complaint when a combination of treatment has been received by public and private healthcare providers and when that treatment has been initiated in the NHS
- Should a Bill be introduced, it should encompass all public authorities that provide services within Wales and that the inclusion of non-devolved bodies providing public services in Wales should be explored (including Boards of Conservators in Wales)[2].

[1] National Assembly for Wales Finance Committee. Consideration of Powers: Public Services Ombudsman for Wales. May 2015. Page 5.
[2] Ibid. Pages 7, 8 and 9.

3.2 Draft Public Services Ombudsman (Wales) Bill and Public Consultation Responses

Following on from the Finance Committee's inquiry report, the National Assembly for Wales published a draft Public Services Ombudsman (Wales) Bill and consulted on it. The consultation ran from Wednesday 21st October 2015 to Monday 18th January 2016.

In effect, the Bill re-enacts much of the existing 2005 Act, but introduces some key new provisions as recommended by the Finance Committee in its report. Thus in the draft Bill, there are new provisions for:

- The PSOW to instigate 'own initiative' investigations[3] with the criteria for own initiative investigations to be developed. In effect, this provides discretion for the PSOW to establish and amend the criteria and the Finance Committee made it clear that this was their preferred approach[4]
- The PSOW to be able to accept oral complaints[5]
- The PSOW to investigate private health services where a person has received medical treatment by a listed (public) authority and also a private health provider[6]
- For the PSOW to undertake a role in relation to complaints handling standards and procedures[7] similar to that undertaken by the Scottish Public Services Ombudsman.

In March 2016, the Finance Committee published a summary report setting out the key points emerging from the consultation process[8]. We deal specifically with the financial considerations and the views of respondents on potential costs and savings arising from the consultation in Section 5.

Following the consultation process, the Committee recommended that:

'The Public Services Ombudsman for Wales should contribute evidence to a fully costed Regulatory Impact Assessment to accompany the Draft Public Services Ombudsman (Wales) Bill that can be tracked through future budgets presented by the PSOW to the National Assembly for Wales'[9].

It also needs to be noted that as a result of the consultation, a number of aspects considered during the Committee's inquiry were not subsequently included in the draft Bill. These related to:

- Links with the courts - it was considered that there could be issues in relation to the Assembly's competency in this area and that this was a matter that the Welsh Government should consider raising at a UK level.

[3] Draft Public Services Ombudsman (Wales) Bill [Draft]. Part 3, Paragraph 4.
[4] Ibid. Part 3, Paragraph 5.
[5] Ibid. Part 3, Section 8.
[6] Ibid. Part 3, Section 10.
[7] Ibid. Part 3, Sections 34 through 41.
[8] National Assembly for Wales Finance Committee. Consideration of the consultation on the Draft Public Services Ombudsman (Wales) Bill. March 2016.
[9] Ibid. Page 39.

- Whether the recommendations of the Ombudsman to public bodies should be binding – the view was taken that no change should be made to the existing arrangements.
- Protecting the title of Ombudsman – it was considered that there were wider UK considerations to this matter and that this be pursued separately with the Welsh Government.
- Code of conduct complaints – it was recommended that the issue of mandatory training for elected members on the Code of Conduct should be considered by the Welsh Government as part of its consideration of forthcoming legislation on Local Government Reform.

As such, these excluded provisions have not formed part of this RIA process.

3.3 The need for a Regulatory Impact Assessment (RIA)

On 3rd October 2016, the Chair of the Assembly's Finance Committee[10] wrote to the PSOW formally outlining the requirement for a Regulatory Impact Assessment (RIA) to accompany the Bill.

Specifically, the Committee has requested that the PSOW should 'set out the best estimates of':

- The gross administrative, compliance and other costs to which the provisions of the Bill would give rise
- The administrative savings arising from the Bill
- Net administrative costs of the Bill's provisions
- The timescales over which such costs and savings would be expected to arise
- On whom the costs would fall.

The Committee Chairman's letter also set out a number of 'high level principles' that the RIA should cover. These include the need to:

- Set out the justification of need for the action
- Set out the desired outcomes and objectives in order to identify a range of options that may enable delivery
- Examine a 'number of options' including a 'do nothing' scenario and 'more interventionist' scenarios which should be assessed. For each option brought forward, the analysis should include:
    - Identification of the costs for at least three years from commencement
    - Identify the value and benefits of each option
    - Consider the direct, indirect impacts and possible unintended consequences on other organisations and different sections of society
    - Adjust for risk and optimism
- Set out the 'best option or options' which are then refined into a solution. This should include a form of cost benefit analysis which quantifies in monetary terms as many of the costs and benefits as are feasible. This will also need to include a comparison with the costs of

[10] Simon Thomas AM

alternative ways of producing the same or similar outputs. The overall estimate of costs will need to include:

- Gross estimates (for both direct and indirect costs)
- Administrative costs
- Costs for enforcement and compliance
- Any income, fees or charges.

4. Justifications and Desired Outcomes

The PSOW submitted written evidence[11] to the National Assembly for Wales' Finance Committee on 21st January 2015 in respect of proposed amendments to the existing Public Services Ombudsman (Wales) Act of 2005. This was followed by a further submission to the Committee on 25th March 2015.

In his first submission (January 2015), the Ombudsman set the overall context in that the existing legislation (i.e. the 2005 Act) was [at the time] nearing 10 years old. The point was made that since the introduction of the Act in Wales, new legislation had been introduced in the Republic of Ireland and elsewhere, while 'new legislation drawing on the Welsh experience but designed to further develop it' was being introduced in Northern Ireland.

The PSOW's submission also referenced work undertaken by the Law Commission to review legislation governing public services ombudsmen in England and Wales[12]. Overall, the review commented favourably on the existing Public Services Ombudsman (Wales) Act but made a series of 17 of recommendations for change.

4.1 Desired outcomes

The value and benefits expected to arise from each of the requested powers are outlined in a series of options at Section 6 of this RIA.

More broadly, the Ombudsman has made it clear that he expects a set of high level outcomes to emerge from the package of proposed legislative changes. These include:

- Future proofing. That the proposals being put forward for legislative change address future challenges which will affect service users in an ageing society where there are greater levels of physical and emotional vulnerability
- Social justice. That the proposals will strengthen the citizen's voice and ensure that wherever possible processes follow the citizen rather than the sector or the silo
- Drive complaint handing and public service improvement. By making a real contribution to reform whilst offering excellent value for money[13].

[11] National Assembly for Wales. Finance Committee, 21 January 2015. Amendments to the Public Services Ombudsman (Wales) Act 2015. Submission by the PSOW.
[12] Law Com No 329 14 July 2011 http://lawcommission.justice.gov.uk/areas/public-services-ombudsmen.htm
[13] National Assembly for Wales. Finance Committee, 21 January 2015. Amendments to the Public Services Ombudsman (Wales) Act 2015. Submission by the PSOW. Page 2.

4.2 Justification – Oral Complaints

The PSOW's evidence submission to the Finance Committee acknowledges that the existing [2005] legislation was 'generally helpful' in providing access to the office. In this context, the submission referred to the fact that the PSOW's services are free of charge to complainants and there is a requirement on bodies within the Ombudsman's jurisdiction to tell people about their right to complain.

However, there is a requirement that all complaints should be in writing and while the current legislation means that the Ombudsman has discretion to accept complains in other formats, this has to be 'considered on a case by case basis'.

The submission set out that 'in view of the changing nature of electronic communication and the considerable equalities issues about potentially excluding people who cannot write, for example people with learning disabilities, there is a case to be made for modernising this area of the legislation'.

The submission specifically called for complaints to be made orally to the Ombudsman highlighting the fact that 'at UK level, 94 percent of the population attain literacy level 1 or above, while in Wales the equivalent figure is 87 percent'. As such, the Ombudsman argued that people who cannot write should have 'the same access as any other service users in Wales'.

Reference was also made in the submission to recent legislative reforms to the Local Government Ombudsman in England to enable oral complaints. On this basis, the submission concluded that 'there is a danger that in Wales we have a greater need but are lagging behind'.

The Equality Act 2010 makes reference to the fact that public authorities must have due regard to the need to 'eliminate discrimination…advance equality of opportunity and minimise disadvantages' in the exercise of their functions[14].

4.3 Justification - Own Initiative Investigations

In terms of own initiative investigations, the PSOW's evidence submission to the Finance Committee set out that:

- 'Virtually without exception' public services ombudsmen throughout Europe and internationally have the power to undertake investigations on their own initiative. Outside of the UK, only five members of the Council of Europe have ombudsmen who do not have their own initiative powers (Belgium, Luxembourg, Azerbaijan, Kyrgyzstan and Liechtenstein)
- Own initiative investigations are powers that are normally 'used sparingly' to investigate whether there is an obvious problem but no complaint has come forward, or more usually to extend an investigation into a complaint to other bodies where it appears that there may be maladministration or service failure. To give some context, the Ombudsman in the Republic of

[14] Source: Equality Act 2010. Part 11, Chapter 1, Section 149.

Ireland undertook five own initiative investigations between 2001 and 2010 on issues ranging from subventions in nursing home care, tax refunds to widows, refuse collection charges and the rights to nursing home care for elderly people
- Own initiative investigation powers would only be used where appropriate and cases could be referred to regulators or commissioners where this was the more suitable alternative
- The power is likely to become more important in the context of an ageing society where citizens are increasingly in vulnerable positions and are either unable or afraid to complain[15].

Following on from this initial submission and in response to a call in some of the responses to the Finance Committee's consultation citing concerns that own initiative investigations could conceivably lead to duplication of effort (e.g. with other Commissioners and the Wales Audit Office), the second submission by the PSOW set out four scenarios under which it envisaged deploying own initiative investigation powers. These are outlined in Figure 1:

Figure 1: Scenarios in which own initiative investigation powers might be used by the PSOW

Scenario	Description under which own investigation powers might be used
A	The Ombudsman could extend the investigation of a complaint made to him where during the course of an investigation issues have come to light where it is desirable, to extend the investigation to look into the actions of another body within jurisdiction. For example, an investigation into a health board may bring to light questions about the actions of a General Practitioner (GP). It is currently unwieldy to have to ask a complainant then to make another complaint about the GP.
B	An issue may be brought to light where systemic failings have been identified whereby the Ombudsman may have concerns that those same systemic failings may exist in other bodies within that sector of the public service. Currently, the Ombudsman has to rely on publication of his recommendations under Section 16 of the PSOW Act and the 'voluntary self-examination' by public bodies as regards ensuring that the same system failings do not exist in their own authority. This new power would enable the Ombudsman to proactively look to see if this is the case or not.
C	The Ombudsman receives an anonymous complaint, providing evidence of likely maladministration/service failure on behalf of an authority. Under this new power the Ombudsman would be able have discretion to pursue the complaint, where at present he currently cannot.
D	The Ombudsman may be made aware of concerns about service delivery across the whole, or part, of a sector of the public service in Wales, but that he was not receiving direct complaints on this. The reason behind this could be because the recipients of the

[15] Ibid. Page 2.

	service were vulnerable people, who may be wary of making a complaint due to being worried about possible repercussions for them of doing so as regards the service provider. There would need to be a sound basis and rationale set out for undertaking any wide ranging own initiative investigation of this type. Reputational risk is a fundamental factor in the mind of any ombudsman; no ombudsman would want to put that reputation at risk by pursuing such a high profile investigation without firm evidence that there were matters of concern that needed investigating.

Source: PSOW's submission to the National Assembly for Wales' Finance Committee. 25th March 2015

Moreover, the Ombudsman confirmed in his March 2015 submission that 'I believe it would only be right for the Ombudsman to consider whether it would be more efficient or effective to either co-operate with, or refer a matter to, another relevant public body before undertaking a large scale own initiative investigation'.

The Office of the Ombudsman Ireland facilitated a web based survey of Ombudsman Schemes across Europe on behalf of the International Ombudsman Institute (IOI)[16]. Based on its survey, the Ombudsman for Ireland found that the use of own initiative powers varies and that not all Ombudsman schemes keep data relating to own initiative investigations. The Ombudsman for Ireland also found as part of the survey that while own initiative powers may be used sparingly, they can 'nevertheless be indispensable'. In all, 28 Ombudsman institutions responded to the IOI survey with 20 of those having the power to undertake own initiative investigations. Most of the 20 Ombudsman institutions that responded to the survey that had own initiative powers said they conducted between 20 and 40 own initiative investigations (of different types and scale) each year.

As part of the RIA process, we asked the PSOW's office to provide us with some anonymised examples of where own initiative investigatory powers would have been helpful in the context of recent work. In response, we were provided with a number of examples which related to:

- An investigation by the PSOW to a complaint made in respect of a GP surgery. During the investigation, it became apparent to the Ombudsman that it was likely that there were aspects of the patient's care at a hospital where there had also been failings. In order to fully investigate this, it was necessary for the Ombudsman to go back to the complainant and ask them to submit a second complaint about the health board. Having own initiative powers *(such as in the case of Scenario A above)* in this particular instance would have enabled the Ombudsman to extend/commence his own investigation without having to trouble the complainant with the need to make a second and separate complaint about the health board in question. Further detail on this example (marked Example 1) can be read in Annex A
- A complaint based investigation by the PSOW into a health board led to concerns that an approach adopted by the board (in relation to its role in respect of GP surgery complaints) was too restrictive and may also be adopted by other health boards in Wales. Having own initiative

[16] This was conducted while the Irish Ombudsman held the presidency of IOI Europe. The results of the survey were analysed in January 2015.

powers (*such as in the case of Scenario B above*) would have enabled the Ombudsman to proactively investigate whether or not this was the case. Further detail on this example (marked Example 2) can be read in Annex A

- Two complaint based investigations of social housing associations where failures had emerged in respect of the approach being taken towards requests by tenants for adaptations to the properties they inhabited. Having own initiative powers (such as in the case of scenario B above) would have enabled the Ombudsman to investigate whether such failures were also taking place at other housing associations. Further details on these two examples (marked Example 3a and 3b) can be read in Annex A
- An investigation into a health board following a complaint where failings relating to the Board's appointments system were identified. The Ombudsman was restricted in his investigation of the failings of the appointments system to the individual complainant's case. However, the PSOW argued that it would have been desirable to extend the investigation to examine the Health Board's other services and departments to identify whether the failings in the appointments system represented a wider problem. Having own initiative powers *(such as in the case of Scenario B above)* would have enabled the Ombudsman to pursue this. Further detail on this example (marked Example 4) can be read in Annex A.

4.4 Justification – Private Healthcare

In terms of justifying the need for an extension and reform to health care jurisdiction, the Ombudsman, in his submission to the Finance Committee referred directly to a recent case.

The case involved a patient that had 'been treated by the NHS, then privately (self-funded) and then again in the NHS'. The Ombudsman had been unable to investigate the private funded healthcare element which led to the conclusion that 'there is a need to reform legislation where a patient chooses to be treated in both public and private sectors and that the complaints process follows the citizen and not the sector'[17].

In his submission, the Ombudsman acknowledged that this raises the issue about who should pay for complaints handling and compliance relating to private healthcare provision should this become within the PSOW's jurisdiction. In this context, the submission set out that some private sector ombudsman schemes are funded by an annual levy or based on case by case charging (or sometimes a combination of both). This has the 'dual function of ensuring that the cost does not fall to the public purse while engaging the "polluter pays" principle, giving providers an incentive to avoid error and resolve complaints as a means of not incurring the costs'. However, the complexities and challenges of introducing such as system were also acknowledged in the submission[18].

In terms of compliance, the submission made clear that the 'democratic process cannot be engaged in the same way and compliance may be harder to secure' with private health providers. It also noted

[17] Ibid. Page 4.
[18] Ibid. page 4.

that private sector ombudsman schemes 'normally have binding powers' and that it would be 'helpful to consider including this provision in respect of private providers only in the future'[19].

Finally on health, the Ombudsman's submission pointed out an anomaly in the existing legislation whereby 'individual family health service providers (e.g. GPs or dentists, rather than surgeries or practices) are in jurisdiction'. The Ombudsman pointed out that this can lead to 'the unfortunate effect of personalising complaints…whereas elsewhere it is the public service provider, rather than the individual who is in jurisdiction'.

4.5 Justification - Complaints Standards Role

In his submission to the National Assembly's Finance Committee[20], the Ombudsman explained that Wales has a model complaints policy to help achieve consistency across public service providers. However, the Ombudsman argued that whilst improving, 'take up has been patchy'. Adoption of the model complaints policy in Wales is voluntary, but strongly encouraged and 'in theory, all public services devolved to Wales should be operating a streamline two stage complaints procedure'. However, the Ombudsman set out that 'the problem lies with enforcement'.

The PSOW drew attention to the fact that in Scotland, the Public Services Ombudsman had been asked to perform the role of Complaints Standards Authority and had 'found this arrangement to be particularly effective in enabling him to tackle problems in the standards of complaint handling with the bodies in his jurisdiction'.

The Scottish Public Services Ombudsman (SPSO) gave evidence to the Finance Committee which contained specific reference to his role in terms of complaints standards. The SPSO's submission drew attention to the fact that:

- Standard models of complaint handling have been put in place across the majority of the public sector (in Scotland)
- Thousands of public sector staff have been trained to respond better to complaints
- For the first time we [i.e. the SPSO] are beginning to see regular, reliable and comparable data on complaints being published
- This part of the SPSO's role has never been heavily resourced. At present, we have 1.5 members of staff and in the early days when more resource was needed it was no more than three [members of staff].
- This small team, working collaboratively with many others across the public services in Scotland have arguably had greater impact on the day to day relationship between the public and public services than any other initiative undertaken by this office[21].

[19] Ibid.
[20] Dated: 21st January 2015.
[21] Source: Scottish Public Services Ombudsman (SPSO) written submission to the National Assembly for Wales Finance Committee on the Draft Public Services Ombudsman (Wales) Bill. Dated 03/02/2016. National Assembly for Wales website.

The PSOW went on in his own submission to the Committee to explain that 'I believe there is a case for adopting such an approach in Wales so that any guidance I give to bodies on complaints handling has statutory force so that I can help support improvement in public sector complaints handling'[22].

In a subsequent submission to the committee, the Ombudsman also noted that:

- Informal discussions held by the PSOW's office with local authority officers responsible for complaint handling about the provisions for complaints handling standards within the new Act had 'met with a positive response'
- Data collection and reporting on complaints to management/cabinet/scrutiny varied widely in different local authorities
- Not all IT systems in local authorities were fit for purpose in relation to data collection and in some cases manual recordings/adjustments were being made
- Since no-one actually collects complaints related data at an all-Wales level, there is no real motivation (or indeed external pressure) to encourage change/improvement in this regard[23].

The Ombudsman concluded in this second evidence submission that the ability to have a statutory power (as in Scotland) would assist him in being able to address this 'patchy' approach in relation to the way in which complaints are handled and reported upon.

[22] Ibid. Page 3.
[23] Further evidence in support of proposal to amend the Public Services Ombudsman (Wales) Act 2005. Public Services Ombudsman Wales. Page 5.

5. Quantifying the costs and benefits – data limitations

Before setting out various options in detail (Section 6), we first reflect on the issues and challenges of attempting to quantify and 'monetise' the costs and benefits associated with the Ombudsman's role. In its request for an RIA, the National Assembly's Finance Committee set out the need for the Ombudsman to contribute evidence to a 'form of cost benefit analysis which quantifies in monetary terms as many of the costs and benefits as are feasible'.

The PSOW has made it clear that the aims behind seeking additional powers through the draft Bill are to improve and extend access to the Ombudsman's service and to strengthen the ability to deliver administrative justice to members of the public in Wales.

In setting out the range of possible options (Section 6), we have been supplied with financial data by the Ombudsman relating to the anticipated direct costs (to the PSOW's office itself) that will arise as a result of proposed legislative changes.

However, a lack of evidence and data means that it has been impossible for us to quantify or monetise the potential indirect costs and benefits or savings that might arise from the powers being sought and the delivery of administrative justice.

In particular, there is a lack of robust data relating to the potential indirect costs and savings arising for public sector bodies as a result of investigations pursued by the Ombudsman. It is clear from our review of material we have been supplied with (and during discussions at the international Ombudsman's seminar in Aberystwyth on 28th October 2016) that this is not a Wales specific problem. There is a similar lack of data relating to the costs and benefits of Ombudsman schemes internationally and indeed the work of other bodies with public sector investigatory powers such as Auditors and Commissioners.

While information is available on the recommendations made by the PSOW's office as a result of investigated complaints including financial redress amounts, no data or information was available for us to examine in relation to the costs or savings arising from enforcement and compliance on public sector bodies in jurisdiction.

5.1 Evidence on financial implications from the Assembly's consultation

This gap in the evidence base and the inherent difficulties in estimating costs and benefits was clearly highlighted in the responses to the Finance Committee's consultation on the draft Bill. The consultation itself asked respondents to comment and provide evidence on the potential financial implications of the draft Bill. In theory therefore, this should have been a good source of evidence to assist the RIA process. However, the responses contained little in the way of specific financial estimations.

In March 2016, the Finance Committee published a summary report setting out the key points emerging from the consultation process[24].

Section 9 of this report deals with the potential financial implications of the provisions in the Bill and provides an overview of (the 16) consultation responses in this respect. The key points included that respondents:

- Predicted that the number of complaints would increase as a result of being able to submit complaints orally
- Raised concerns about the potential for additional pressures as a result of new provisions and the need to strike an appropriate 'balance between the provision of services and the cost of regulation'
- Acknowledged that estimating the costs of the draft Bill 'would be difficult'
- Acknowledged that the Bill offers the potential to lead to efficiency savings but that 'such benefits are very difficult to quantify, let alone predict'[25].

None of the 16 bodies that responded to this part of the consultation provided any quantified data relating to financial costs or savings.

5.2 Input from the Auditor General for Wales

As part of the process of preparing this RIA, we asked the PSOW's office to make enquiries with other bodies, including the Auditor General for Wales in order to try and gain further inference on the direct and indirect costs and benefits/savings to public bodies subject to investigations, inquiries or audits.

The intention of this was to try to generate some data to help contextualise the potential costs and benefits associated with some of the additional powers being sought under the PSOW Bill.

The Auditor General for Wales responded to this request on 8th November 2016. In his response, the Auditor General noted that while the direct costs of his office's work in relation to different types of studies had been estimated, no work had been done to estimate the indirect costs of these studies for audited bodies themselves. He also noted that while there is scope to 'develop very sophisticated models that take account of as many variables as accurately as possible, such models are expensive to develop and use'.

However, while being unable to provide monetised estimations, the Auditor General did provide some helpful background information in considering the potential cost to audited bodies of participating in

[24] National Assembly for Wales Finance Committee. Consideration of the consultation on the Draft Public Services Ombudsman (Wales) Bill. March 2016.

studies. It needs to be noted of course that this information is not necessarily directly transferrable to the PSOW since the nature and scale of inquiries and studies differ.

Some of the key points made by the Auditor General (summarised) in his submission include that:

- The costs to audited bodies may not vary much with the size of the study (not to be confused with the length of the report). A key determinant in the cost for the audited body is the number and grade of staff to be interviewed or surveyed as part of the study
- An important factor in the cost of a study to the audited body related to the methods applied. Some audit methods (for instance documentary reviews) are more time-intensive for auditors, but are usually not at all time intensive for audited bodies. Interviews in contrast (excluding planning, recording and analysis) will usually take up as much time for the audited body as the auditor
- The aggregate total costs for audited bodies will usually increase as the number of bodies involved increases. However, not all aspects of studies will necessarily increase with the number of bodies involved. For instance, most aspects of study design (e.g. research instruments) are usually much the same for a study of one body as for several bodies[26].

In his response to the PSOW's request, the Auditor General for Wales developed some estimations of the inputs required of audited bodies in the different phases of a typical study. This work was based on estimating the proportion or 'factor' of the direct costs of the study that would apply to the body being audited.

Whilst interesting to note, there are clear limitations in terms of the extent to which this can be applied to the PSOW's work not least because of the different approaches to studies and investigations. However, this initial work undertaken by the Auditor General for Wales could represent a model that the PSOW could amend and apply to its own work with a view to it being one way of monitoring the indirect costs for investigated bodies should some or all of the proposed new powers be approved (i.e. post implementation review).

5.3 Research by the Northern Ireland Assembly

In November 2013, the Northern Ireland Assembly's Research and Information Service (RaISe) published a briefing note into the cost implications of the Northern Ireland Public Services Ombudsman Bill[27].

The paper set out work undertaken to assess costs associated with policy proposals given effect by the Bill, much in the same was as is required of this RIA process.

[26] Source: Paper estimating costs to audited bodies of studies. Prepared by the Auditor General for Wales for the Public Services Ombudsman Wales. 8th November 2016.
[27] Northern Ireland Assembly. Research and Information Service Briefing Note. Paper 47/15. 22 November 2013, Heery, N. NIAR 827-2013.

The approach in Northern Ireland adopted a methodology of estimating average unit costs per complaint handled based on dividing the costs associated with handling complaints and the number of complaints handled. This 'unit cost' was then used as the basis on which to set out some potential cost savings on the assumption that certain powers might lead to a reduction in the number of complaints made.

It is very important to note however that the Northern Ireland Assembly **did not** use this analysis in attempting to estimate cost savings in the context of own initiative powers on the basis that in the absence of any robust evidence or data, RaISe was unable to identify an appropriate basis to quantify the saving which may result. Therefore it was not included in the costing model.

6. Options Appraisal

6.1 Overview and rationale

In this section, we set out a number of options in relation to each of the four additional powers being considered under the auspices of the new Public Services Ombudsman (Wales) Bill.

For each new power requested via the Bill and bearing in mind the limitations explained in Section 5, we set out the desired policy intent followed by options, which include the consideration of:

- Direct costs to the PSOW's office (administrative and enforcement)
- Indirect costs to public sector service providers within jurisdiction (enforcement, compliance and redress)
- Value and benefits
- Indirect impacts and unintended consequences.

We then set out the Ombudsman's preferred solution for each requested power.

6.2 Accepting Oral Complaints as 'Duly Made'

6.2.1 Policy Intent

The desired policy objective of this new power would be to enable the Ombudsman to accept complaints as 'duly made' via communications methods other than 'in writing' and therefore improve accessibility to the Ombudsman.

6.2.2 Option 1 – Do Nothing

Option 1	Do Nothing. This would mean that the Ombudsman's office would continue to function as currently in relation to accepting complaints from members of the public.
Direct costs	There would be no additional costs. However, it should be noted that there are pre-existing costs associated with this option since the PSOW's office seek to assist members of the public who cannot, or have difficulty in making written complaints. Currently, staff notate information provided over the phone and then send these to the complainant for them to sign and return as a formal complaint. The Ombudsman notes that frequently, these documents are never returned, largely attributed to issues such as literacy skills problems.
Indirect costs	There would be no additional costs to public service providers within the Ombudsman's jurisdiction associated with this option.

Value and benefits	There would be no added value or any associated benefits with this option.
Indirect impacts and unintended consequences	The inequality of the current situation would persist. Under this scenario, the PSOW 2005 Act would continue to be 'at odds' with Part 11, Chapter 1, Section 149 of the Equality Act 2010.

6.2.3 Option 2 – Amend the current legislation to enable oral complaints to be duly made

Option 2	Amend the current legislation so that the Ombudsman may receive and act on complaints made orally or in writing including via electronic formats
Direct costs	Some additional, direct costs to the Ombudsman's office would occur as a result of an increase in the number of complaints received and investigated through non written channels. Frontline staff in the PSOW's office are at full capacity. During the first six months of 2016/17 there was a 17 percent increase in enquiries and an 11 percent increase in complaints compared with the same period in 2015/16. Based on experience[28], the Ombudsman anticipates that in the region of 10 percent of complainants will want their complaint taken over the telephone. The Ombudsman estimates that the additional direct costs would involve: • The upgrading of an existing Casework Officer post to reflect the additional higher level of responsibility • The addition of a new Casework Officer post at the same upgraded level • Office, administrative and support costs (including training) associated with the newly created Complaints Officer post. Additional on-going revenue costs (per annum) would be: £'000 One upgraded casework officer, including NI & Pensions 3 One new casework officer (at upgraded scale) incl. NI & Pensions 32 Office costs, including printing, stationery and IT 5 Other – training, travel and subsistence 1 Total Costs 41

[28] This is based on the experience of PSOW staff and their interactions with complainants.

	There would also be a one percent per year annual cost of living increase associated with the salary costs. There would be a 'one-off' set up cost associated with the creation of a new Casework Officer post (recruitment, IT, office furniture). This would amount to £5,000. Thus, over a three year period, the net increase in direct costs would amount to £124,000, including a 1 percent cost of living increase, plus £5,000 one off costs in Year 1.
Indirect costs	It is possible that as a result of allowing oral complaints to be taken forward as 'duly made', there may be some indirect costs to public service organisations within the PSOW's jurisdiction. This would be as a result of some complaints being taken forward (with public service organisations having to bear the costs of responding) that would not otherwise have proceeded if the power to follow up on oral complaints had not been in place. However, the PSOW has concluded that it is impossible to forecast with any degree of accuracy or to provide any data relating to: a) How many additional complaints are likely to be followed-up as a result of this new power – though the net increase is expected to be very modest indeed b) The additional, indirect costs that public service organisations subject to those complaints might face in addressing complaints and resolving them. On that basis, it has not been possible as part of this RIA process to quantify or monetise the potential scale of the indirect costs of pursuing this option to public bodies in Wales.
Value and benefits	Introducing this power would remove a communication barrier and enable improved accessibility to the Ombudsman's services. This outcome would be fully in-keeping with the spirit of the Equality Act 2010. The power would mean that the Ombudsman is free to determine what constitutes a 'duly made' complaint. This improvement in accessibility would also mean that there would no longer be 'lost complaints' compared to the current situation where

	complaints captured over the phone and sent to complainants for confirmation/signature are often not returned.
Indirect impacts and unintended consequences	If the Ombudsman is able to follow-up on complaints (even if these are very low in number) that could not previously be pursued because of a lack of written confirmation, then there is clearly the potential for there to be a range of indirect benefits resulting from the PSOW's investigative work. These could include improvements to the delivery of services and the possibility of wider efficiency gains from the avoidance of repeat mistakes and maladministration in the future. Given the lack of data concerning the extent of any efficiency savings, it is impossible to estimate with any degree of rigour the scale of such potential future savings.

6.2.4 Preferred Solution

The preferred solution is Option 2, to amend the legislation and enable oral complaints to be pursued.

In summary, pursuing Option 2 as the preferred solution would:

- **Incur estimated net, direct additional costs of £124,000, including 1 percent cost of living increase, plus £5,000 one off costs in Year 1 over a three year period**
- **Probably result in some indirect costs for public bodies within the PSOW's jurisdiction. These costs are likely to arise as a result of complaints being investigated that would not otherwise have been pursued. It has not been possible on the basis of the data and evidence provided to estimate how much these costs will amount to. However, the PSOW expect that any net increase in the number of investigations as a result of pursuing this option to be very modest.**
- **Result in the benefit of removing a communication barrier and enabling improved accessibility to the Ombudsman's office in-line with Part 11, Chapter 1 of the Equality Act 2010.**

6.3 Own Initiative Investigations

6.3.1 Policy Intent

The intended policy objective is to provide the Ombudsman with the power to investigate where there is some evidence of a problem but no complaint has been received. The power would also enable the Ombudsman to investigate where a complaint has been made anonymously, or to extend an investigation out to other departments of a body or other authorities where there are concerns that maladministration or service failure could be systemic and might affect people other than the claimant. The introduction of this power would bring the PSOW in-line with the vast majority of other Ombudsmen schemes throughout Europe and internationally.

6.3.2 Option 1 – Do Nothing

Option 1	Do nothing and maintain the current system.
Direct Costs	Projecting caseload trends to 2020, and whilst the PSOW will always seek to absorb caseload increases, it is estimated that this 'do nothing' option will result in a 5 percent increase in PSOW complaint handling costs, which would equate to £150,000.
Indirect Costs	There may be unforeseen indirect costs arising from the 'do nothing' option. For instance, if the Ombudsman is not able to extend an investigation (beyond the initial complainant) to examine potentially systemic or more widespread problems or maladministration, then those issues may continue to occur un-checked and cause public bodies to incur (potentially much higher) costs via investigation and the need for compliance and redress at a later stage.
Value and benefits	There would be no added value or any associated benefits with this option.
Indirect impacts and unintended consequences	Indirect impacts could occur from pursuing the do nothing option. These could include: • Some people in vulnerable circumstances continuing to suffer from a poor service or a lack of service to which they are entitled as a result of the PSOW being unable to expand a particular investigation where wider, systemic issues are suspected • Opportunities to address and improve systemic problems are missed.

6.3.3 Option 2 – Amend the legislation to enable Own Initiative Investigations

Option 2	Amend the current legislation so that the Ombudsman has the power to carry out own initiative investigations.
Direct Costs	In the context of the four scenarios under which own initiative investigation powers might be used by the PSOW (Figure 1), it is envisaged that scenario D will only be used sparingly. Scenarios A, B and C are likely to be used somewhat more frequently. The resources within the PSOW's office are currently being utilised at full capacity. As such, the Ombudsman envisages needing to create two additional posts (one Investigation Officer and one Investigation and Improvement Officer) to be able to deploy the own initiative investigation powers effectively. The cost per annum of these two additional posts is estimated to be£115,000. There would also be a one percent per year annual cost of living increase associated with the salary costs. £'000 Two full time officers, including NI & Pensions 115 Professional fees, including specialist advice 10 Office costs, including printing, stationery and IT 10 Other – training, travel and subsistence 2 Total Costs 137 There would be a 'one-off' set up cost associated with the creation of the new posts (recruitment, IT, office furniture). This would amount to £10,000 Thus, over a three year period, the net increase in direct costs would amount to £413,000, including 1 percent cost of living increase, plus one off costs £10,000 in Year 1.
Indirect Costs	It is not envisaged that there will be any significant costs for bodies in the PSOW's jurisdiction beyond the staff time required to respond to the Ombudsman's questions and requests for information. For instance, this may relate to the extension of a complaint based investigation to examine whether there is evidence of wider systemic failures. As such there should not be a significant impact on the general finances of the bodies within the Ombudsman's jurisdiction.
Value and benefits	There are equality and social inclusion benefits in relation to this option. This power would enable the Ombudsman to investigate areas of concern in

	relation to public service delivery where those people in receipt of (or denied) a service are less likely or less able to make a complaint in their own right. For example, this could be because of a disability; poor educational attainment; or, because they are fearful of challenging a public authority, particularly if they are in vulnerable circumstances.
Indirect impacts and unintended consequences	Due to the fact that the Ombudsman will need to be able to demonstrate justifiable grounds for commencing an own initiative investigation, there is a higher probability that the findings will result in recommendations leading to improved service delivery (together with the possibility of associated cost savings – for example, reduced compensation claims for the bodies in jurisdiction). Such investigative action could lead to wider efficiency gains. However, given the lack of data available, it is impossible to quantify or monetise those potential benefits with any degree of rigour.

6.3.4 Preferred Solution

The preferred solution is Option 2 to amend the current legislation and enable the Ombudsman to pursue own initiative investigations.

In summary, pursuing Option 2 as the preferred solution would:

- **Incur estimated net, direct additional costs of £413,000, including 1 percent for cost of living increase, plus one off costs £10,000 in Year 1 to the PSOW's office over a three year period**
- **Help avoid an estimated 5 percent increase in PSOW complaint handling costs amounting to £150,000 (by 2020). This would arise from a lower level of increase in complaints (compared with the current projected increase) as a consequence of the impact of the own initiative power**
- **Result in some very modest indirect costs for public bodies within the PSOW's jurisdiction. These costs are likely to arise as a result of staff time required to respond to the Ombudsman's questions and requests for information where evidence of wider systemic failure is being explored. It has not been possible on the basis of the data and evidence provided to estimate how much these indirect costs will amount to**
- **Probably result in potential indirect cost savings for public bodies in jurisdiction as a result of identifying systemic failures which could avoid the need for future compensation and redress. However, on the basis of the data and evidence available, it has not been possible to estimate how much these indirect savings could amount to.**
- **Result in the benefit of the Ombudsman being able to proactively investigate systemic failures and investigate areas of concern where no complaint is forthcoming because of vulnerability, fear or inequality issues.**

6.4 Private Healthcare

6.4.1 Policy Intent

The intended policy objective is to enable the Ombudsman to 'follow the citizen' when health complaints received involve component parts of treatment and/or care that involve both public and private hospitals in Wales.

6.4.2 Option 1 – Do Nothing

Option 1	Do Nothing. This would mean that the Ombudsman's office would remain unable to consider complaints about private health care providers (unless the care has been commissioned by the NHS in Wales).
Direct Costs	There would be no additional direct costs associated with this option.
Indirect Costs	There would be no additional indirect costs associated with this option.
Value and benefits	There would be no added value or any associated benefits with this option.
Indirect impacts and unintended consequences	The consequences of this do nothing option could result in: • Unanswered questions for the complainant as to whether they received appropriate health care/treatment throughout the whole of their health care pathway • Uncertainties for both public and private health care providers that where it has been established 'something went wrong' for a patient's care, it could remain unclear as to where the problem occurred and where the responsibility lay.

6.4.3 Option 2 – Amend the legislation to provide the Ombudsman discretion to investigate the private health care element of a complaint in a public/private health care pathway

Option 2	Amend the current legislation so as to provide the Ombudsman with the discretion to be able to investigate the private health care element of a complaint, where the patient has had a public and private health care pathway.
Direct Costs	The Ombudsman's office does not currently hold data on its system in relation to health related complaints that contain a private healthcare element. However, based on staff experience, the PSOW's office estimates

	that this could be in the region of one percent of health sector complaints received each year (in the region of seven per year)[29]. Due to the limited nature of this extension of power and the very limited number of cases it would affect, it is not expected that any additional complaint handling staff would be required to undertake this role. As such, there are no additional direct costs envisaged by the PSOW's office.
Indirect Costs	There are unlikely to be any additional indirect costs on public bodies within the PSOW's jurisdiction. It is possible that there would be some additional indirect costs for private healthcare providers who are investigated by the Ombudsman as part of wider complaint cases that also involve NHS care. Based on a lack of data, it is impossible to quantify or monetise the indirect costs for private health care providers as a result of this power. However, the overall scope (in terms of the number of cases this affects) is likely to be very limited as outlined above. It should also be noted that private health care providers are already required to have clinical governance and complaints processes which means that there will already be structures in place to deal with and respond to any investigations undertaken by the PSOW. The existing draft Bill makes provision for the Ombudsman to be able to demand costs 'when the provider has obstructed the Ombudsman's investigation'. This cost recovery would be a cost for the private healthcare provider, rather than a mitigation of PSOW costs.
Value and benefits	The key benefit that would arise from this new power would be that the Ombudsman would be able to consider the whole of a complaint when a combination of treatment has been received by public and private healthcare providers. This has the dual benefit of the Ombudsman being able to carry out a comprehensive investigation providing the complainant with a full explanation of what did or did not happen during their period of treatment; and also serve the public interest by being able to establish whether there had been any failure by the NHS or whether any failure occurred during private treatment.

[29] There were 1,992 public body complaints in 2015/16 of which 36 percent (717 complaints) related to the health sector. Source: 2015/16 Annual Report. Public Services Ombudsman for Wales.

Indirect impacts and unintended consequences	A potential consequence of this option could be a greater call on the investigation resource of the office, as a result of extended investigations of some health complaints. However, this is mitigated by the provision set out in the Bill to be able to recharge private health providers should the need arise.

6.4.4 Option 3 – Amend the legislation to provide the Ombudsman with the power to consider complaints about all private health care providers

Option 3	Amend the current legislation so as to provide the Ombudsman with the power to consider complaints about all private health care providers registered with Healthcare Inspectorate Wales.
Direct Costs	In view of the number of organisations involved and the nature of the services provided, this option could potentially lead to a very significant increase in complaints to the Ombudsman. While it is impossible to quantify or monetise this in terms of a direct cost impact, it would necessitate the introduction of a complex levy system that would enable costs to be recouped from the private sector.
Indirect Costs	It would be necessary to introduce a complex levy system to recoup costs associated with considering complaints against the private healthcare sector to ensure that no inappropriate costs fell to the public purse. There is insufficient data available to be able to estimate the extent of these costs. However, the costs involved in establishing and operating a levy system of the sort needed are likely to be significant and would reduce the viability of this more wide ranging option.
Value and benefits	Individuals purchasing care and treatment from registered private health care establishments in Wales would have a statutory right to seek redress. This is opposed to the current situation whereby such establishments can choose whether or not they wish to become members of an alternative dispute organisation.
Indirect impacts and unintended consequences	A consequence of an up-lift in complaints as a result of this option could dilute or distract the purpose of the public sector Ombudsman's role and function. The inclusion of establishments such as tattoo and beauty parlours could exacerbate this issue.

6.4.5 Preferred Solution

The preferred solution is option 2 based on the fact that that it would be in both the interests of the citizen and the NHS in Wales for the Ombudsman to be able to consider the whole of a complaint (both public and private elements) so that:

a) The complainant can understand where, if anywhere, failure in care/treatment occurred
b) The NHS in Wales can either be exonerated from any blame if the Ombudsman's investigation identifies that a failure occurred during treatment provided by the private health provider, or the NHS can learn the lessons of what went wrong if a failure identified occurred during its element of care or treatment
c) The NHS in Wales/Health Boards will be able to take account of any failings identified in respect of relevant private healthcare providers in any future commissioning arrangements.

In summary, pursuing Option 2 as the preferred solution would:

- **Not incur any additional direct additional costs for the PSOW's office**
- **Not result in any additional indirect costs for public bodies in jurisdiction**
- **Potentially lead to some additional indirect costs for private healthcare providers who are investigated by the Ombudsman as part of wider public/private health packages. Based on a lack of data, it is impossible to quantify or monetise the indirect costs for private health care providers as a result of this power. However, the overall scope (in terms of the number of cases this affects) is likely to be very limited**
- **Result in the benefit of the Ombudsman being able to investigate the whole of a complaint when a combination of treatment has been received by public and private healthcare providers.**

6.5 Complaints Handling Standards and Procedures

6.5.1 Policy Intent

The policy objective in relation to complaints handling standards is to strengthen the Ombudsman's role in securing effective complaint handling across the public sector in Wales.

6.5.2 Option 1 – Do Nothing

Option 1	Do nothing and maintain the current system.
Direct Costs	In view of the ever increasing caseload at the Ombudsman's office, 'doing nothing' in relation to trying to improve complaints handling in bodies in jurisdiction will also have associated costs. It is the Ombudsman's view that the office will simply not be able to deal with the level of increase projected without additional resource to deal with it. If the trends continue along similar lines to those experienced since 2008/09, it is foreseen that there could well be a 10 percent increase in complaints against current caseload by 2020, which would equate to a cost of £300,000 to the PSOW.
Indirect Costs	There would be no additional indirect costs associated with this option.
Value and benefits	There would be no added value or any associated benefits with this option.
Indirect impacts and unintended consequences	The consequences of pursuing this option would be the continuation of the inconsistent and 'patchy' approach to complaints handling and a lack of intelligence and comparable data in relation to complaints. In addition, there would be no scrutiny of complaints across the public sector in Wales with an associated lack of transparency.

6.5.3 Option 2 – A minimum data only role

Option 2	A minimum 'data only' role. This would limit the complaints standards role to providing the Ombudsman with the powers to make consistent data collection by public authorities mandatory.
Direct Costs	There would be direct costs associated with this option for the PSOW's office. The Ombudsman estimates this would require the appointment of an additional member of staff. Ongoing costs would be as follows: £'000 One full time officer, including NI & Pensions 60 Office costs, including printing, stationery and IT 5 Other – training, travel and subsistence 1 Total Costs 66 There would also be a one percent per year annual cost of living increase associated with the salary costs. There would be a 'one-off' set up cost associated with the creation of the new posts (recruitment, IT, office furniture). This would amount to £5,000. The cumulative direct costs for three years for this option would thus be approximately £200,000, including a 1 percent increase for cost of living, plus £5,000 one off costs for Year 1.
Indirect Costs	The costs associated with this option for public bodies within jurisdiction would be limited. All major bodies within the Ombudsman's jurisdiction have IT complaint handling systems in place. Health Boards are already working with the Welsh Government towards adopting a common IT system for complaints. There may be software development changes required for some, but as systems vary these costs will also vary.
Value and benefits	The main benefit from pursuing this option would be an improvement in the ability to collect data at an all-Wales level.
Indirect impacts and unintended consequences	The restricted scope of this option may well limit the comparability of data given the need to improve consistency in complaint handling.

6.5.4 Option 3 – Complaints design, implementation oversight and data collection role

<table>
<tr><td>Option 3</td><td>This option would involve a complaints design authority and data collection oversight role. It would enable the Ombudsman to have a statutory complaints handling role, in respect of public authorities, which would include:

• Publishing a statement of principles
• Publishing a model complaints handling policy for listed authorities
• Requiring regular consultation with relevant stakeholders
• Requiring public bodies to collect and analyse data on complaints
• Ensuring a standardised language is used by public bodies when collecting data to ensure comparisons can be made.</td></tr>
<tr><td>Direct Costs</td><td>There would be direct costs associated with this option for the PSOW's office. The Ombudsman envisages the need to recruit two (full-time) additional officers to fulfil this work.

<table>
<tr><td></td><td>£'000</td></tr>
<tr><td>Two full time officers, including NI & Pensions</td><td>115</td></tr>
<tr><td>Professional fees, including specialist advice</td><td>10</td></tr>
<tr><td>Office costs, including printing, stationery and IT</td><td>10</td></tr>
<tr><td>Other – training, travel and subsistence</td><td>2</td></tr>
<tr><td>Total Costs</td><td>137</td></tr>
</table>

There would also be a one percent per year annual cost of living increase associated with the salary costs.

There would be a 'one-off' set up cost associated with the creation of the new posts (recruitment, IT, office furniture). This would amount to £10,000.

Thus, over a three year period, the net increase in direct costs including a 1 percent increase for cost of living would amount to £413,000, plus £10,000 one off costs in Year 1.</td></tr>
<tr><td>Indirect Costs</td><td>The costs to public service providers within the Ombudsman's jurisdiction would be minimal and essentially one off costs. All of the major bodies in jurisdiction have some form of computerised complaint recording systems. All authorities should be reporting in some shape or form to their board, cabinet, executive etc. Therefore, there should be no significant additional administrative costs associated with this option. The key area of expenditure</td></tr>
</table>

	would be to adapt current arrangements to ensure a consistent data capture approach across the relevant sectors. Nevertheless, such costs should be negligible. The Welsh Government and local health boards began work in 2015 on developing a common complaints handling system, so there should be minimal costs in relation to any enhancement to software in this regard. The current position in relation to local authority computerised complaints handling systems vary.
Value and benefits	There has been an exponential increase in the number of enquiries and complaints to the Ombudsman's office over recent years. The Complaints Standards Authority role would enable to Ombudsman to stipulate good complaint handling practice, require consistent data gathering and have an overview of complaint trends of bodies within jurisdiction. There is also potential for savings to those bodies within jurisdiction as a result of improved complaint handling. To illustrate this potential, in a report by the NAO comptroller and auditor general 'Department for Work and Pensions – Handling Customer Complaints', it states that: 'Complaints resolved successfully at Tier 1 may be as much as 40 times cheaper than those resolved at Tier 3 [that is Ombudsman stage]. Reducing the number of cases that reach Tier 3 by a third could save the Department over £700,000'[30].
Indirect impacts and unintended consequences	There could possibility be tensions with giving the Ombudsman a complaints standards role with existing statutory complaints processes in the fields of health and social services. However, in recognising this, the Bill addresses this issue and provides that listed authorities are not required to comply with the Ombudsman's specification if the duties are inconsistent with any other enactment.

[30] National Audit Office. Department for Work and Pensions. Handling Customer Complaints. Report by the Comptroller and Auditor General. HC 995, Session 2007-2008. 23 July 2008.

6.5.5 Preferred Solution

The preferred solution is Option 3 to amend the current legislation and enable the Ombudsman to have the necessary powers to be able to act with an authoritative voice on good complaints handling across the public service sector in Wales.

In summary, pursuing Option 3 as the preferred solution would:

- **Incur estimated net, direct additional costs of £413,000, including 1 percent cost of living increase, plus £10,000 one off costs in Year 1, to the PSOW's office over a three year period**
- **Help avoid an estimated 10 percent increase in PSOW complaint handling costs amounting to £300,000 (by 2020). This would arise from a lower level of increase in complaints (compared with the current projected increase) as a consequence of the impact of the complaint handling standards role. This would effectively offset some of the additional direct costs associated with pursuing Option 3**
- **Result in some, one off costs for some public bodies within jurisdiction to adapt current systems and arrangements to ensure more consistent data capture. It has not been possible on the basis of the data and evidence provided to estimate how much these indirect one-off costs will amount to. However, these are estimated by the Ombudsman to be negligible**
- **Probably not result in any significant on-going indirect administrative costs to public bodies in jurisdiction**
- **Result in the benefit of the Ombudsman being able to further develop good complaints handling practice (more in line with Scotland). It would also result in more consistent data on complaints being gathered and analysed**
- **Probably lead to indirect savings to bodies in jurisdiction as a result of improved complaint handling and resolving more complaints locally without these being escalated to the Ombudsman (as referenced at 6.5.4 'Value and Benefits' above).**

7. Conclusions

This Regulatory Impact Assessment (RIA) has considered and analysed available information and evidence relating to the intended outcomes, justifications for as well as the likely costs incurred and benefits that might be derived from the additional powers being sought under the draft Public Services Ombudsman (Wales) Bill.

7.1 New Powers Sought

The new provisions being sought via the draft Bill are to enable the Ombudsman to:

- Be able to accept oral complaints as being duly made
- Instigate 'own initiative' investigations with the criteria for own initiative investigations to be developed. In effect, this provides discretion for the PSOW to establish and amend the criteria and the Finance Committee made it clear that this was their preferred approach
- Investigate private health services where a person has received medical treatment by a listed (public) authority and also a private health provider
- Undertake a role in relation to complaints handling standards and procedures similar to that undertaken by the Scottish Public Services Ombudsman.

In attempting to address the detailed requirements for an RIA (as set out in the Chairman of the Finance Committee's letter to the PSOW in October 2016), it needs to be recognised that there is a lack of robust data relating to the potential indirect costs and savings arising for public sector bodies as a result of investigations pursued by Public Services Ombudsmen. This is not a Wales specific problem. There is a similar lack of data relating to the costs and benefits of Ombudsman schemes internationally and indeed the work of other bodies with public sector investigatory powers such as Auditors and Commissioners. This has severely limited the extent to which indirect costs and benefits can be monetised as part of the RIA process.

7.2 Intended Outcomes

The PSOW expects the requested legislative changes to:

- Address future challenges which will affect service users in an ageing society where there are greater levels of physical and emotional vulnerability
- Strengthen the citizen's voice and ensure that wherever possible processes follow the citizen rather than the sector or the silo
- Drive complaint handing and public service improvement.

7.3 Justifications

In terms of the justifications underpinning the requested legislative changes:

- The request for new legislation to enable oral complaints to be considered 'duly made' is intended to modernise the PSOW service in light of the changing nature of electronic communications and to ensure that there is equality in terms of access to the service, particularly by people who may not be able to read or write
- The request for own initiative investigation powers is intended to bring the PSOW in-line with the majority of other Ombudsmen schemes in Europe and internationally, most of whom already have such powers. These powers would only be used where appropriate, and would not duplicate the work of other regulators or commissioners. The powers being requested are considered vitally important in the context of an ageing society where citizens are increasingly in vulnerable positions and are either unable or too afraid to complain
- The request for extended powers in relation to health care is intended to enable the PSOW to investigate the whole of a complaint where NHS and privately funded healthcare elements have been received by a complainant
- The request for new powers to implement a complaints standards role is intended to build on the model complaints policy already in place in Wales by giving guidance issued by the PSOW statutory force in order to help support improvement in public sector complaints handling. This would enable the PSOW to address the 'patchiness' of current complaint handling arrangements and generate similar outcomes and benefits to those achieved in Scotland from having introduced similar arrangements.

7.4 Options Appraisal

The RIA has set out and considered a range of different options for each of the new powers being sought. In conclusion, the preferred solutions for each option are set out in the following paragraphs.

7.4.1 Accepting oral complaints as 'duly made'

The preferred solution is Option 2. This would involve amending the legislation and enabling oral complaints to be pursued.

Pursuing Option 2 as the preferred solution would:

- Incur estimated net, direct additional costs of £124,000, including 1 percent cost of living increase, plus £5,000 one off costs in Year 1 over a three year period
- Probably result in some indirect costs for public bodies within the PSOW's jurisdiction. These costs are likely to arise as a result of complaints being investigated that would not otherwise have been pursued. It has not been possible on the basis of the data and evidence provided to estimate how much these costs will amount to. However, the PSOW expect that any net increase in the number of investigations as a result of pursuing this option to be very modest.
- Result in the benefit of removing a communication barrier and enabling improved accessibility to the Ombudsman's office in-line with Part 11, Chapter 1 of the Equality Act 2010.

7.4.2 Own Initiative Investigations

The preferred solution is Option 2. This would involve amending the current legislation to enable the Ombudsman to pursue own initiative investigations.

Pursuing Option 2 as the preferred solution would:

- Incur estimated net, direct additional costs of £413,000, including 1 percent for cost of living increase, plus one off costs £10,000 in Year 1 to the PSOW's office over a three year period
- Help avoid an estimated 5 percent increase in PSOW complaint handling costs amounting to £150,000 (by 2020). This would arise from a lower level of increase in complaints (compared with the current projected increase) as a consequence of the impact of the own initiative power
- Result in some very modest indirect costs for public bodies within the PSOW's jurisdiction. These costs are likely to arise as a result of staff time required to respond to the Ombudsman's questions and requests for information where evidence of wider systemic failure is being explored. It has not been possible on the basis of the data and evidence provided to estimate how much these indirect costs will amount to
- Probably result in potential indirect cost savings for public bodies in jurisdiction as a result of identifying systemic failures which could avoid the need for future compensation and redress. However, on the basis of the data and evidence available, it has not been possible to estimate how much these indirect savings could amount to.
- Result in the benefit of the Ombudsman being able to proactively investigate systemic failures and investigate areas of concern where no complaint is forthcoming because of vulnerability, fear or inequality issues.

7.4.3 Private Healthcare

The preferred solution is Option 2 based on the fact that that it would be in both the interests of the citizen and the NHS in Wales for the Ombudsman to be able to consider the whole of a complaint (both public and private elements) so that:

a) The complainant can understand where, if anywhere, failure in care/treatment occurred
b) The NHS in Wales can either be exonerated from any blame if the Ombudsman's investigation identifies that a failure occurred during treatment provided by the private health provider, or the NHS can learn the lessons of what went wrong if a failure identified occurred during its element of care or treatment
c) The NHS in Wales/Health Boards will be able to take account of any failings identified in respect of relevant private healthcare providers in any future commissioning arrangements.

Pursuing Option 2 as the preferred solution would:

- Not incur any additional direct additional costs for the PSOW's office
- Not result in any additional indirect costs for public bodies in jurisdiction
- Potentially lead to some additional indirect costs for private healthcare providers who are investigated by the Ombudsman as part of wider public/private health packages. Based on a

lack of data, it is impossible to quantify or monetise the indirect costs for private health care providers as a result of this power. However, the overall scope (in terms of the number of cases this affects) is likely to be very limited
- Result in the benefit of the Ombudsman being able to investigate the whole of a complaint when a combination of treatment has been received by public and private healthcare providers.

7.4.4 Complains Handling Standards and Procedures

The preferred solution is Option 3. This would involve amending the current legislation and enable the Ombudsman to have the necessary powers to be able to act with an authoritative voice on good complaints handling across the public service sector in Wales.

Pursuing Option 3 as the preferred solution would:

- Incur estimated net, direct additional costs of £413,000, including 1 percent cost of living increase, plus £10,000 one off costs in Year 1, to the PSOW's office over a three year period
- Help avoid an estimated 10 percent increase in PSOW complaint handling costs amounting to £300,000 (by 2020). This would arise from a lower level of increase in complaints (compared with the current projected increase) as a consequence of the impact of the complaint handling standards role. This would effectively offset some of the additional direct costs associated with pursuing Option 3
- Result in some, one off costs for some public bodies within jurisdiction to adapt current systems and arrangements to ensure more consistent data capture. It has not been possible on the basis of the data and evidence provided to estimate how much these indirect one-off costs will amount to. However, these are estimated by the Ombudsman to be negligible
- Probably not result in any significant on-going indirect administrative costs to public bodies in jurisdiction
- Result in the benefit of the Ombudsman being able to further develop good complaints handling practice (more in line with Scotland). It would also result in more consistent data on complaints being gathered and analysed.
- Probably lead to indirect savings to bodies in jurisdiction as a result of improved complaint handling and resolving more complaints locally without these being escalated to the Ombudsman (as referenced at 6.5.4 'Value and Benefits' above).

Annex A

This annex contains the examples referred to in 4.3 of the RIA report i.e. justifications for the requested own initiative investigation powers. The examples were provided by the PSOW's office.

Example 1:

Mrs X complained that her mother's GP had failed to ensure that aspirin, which had previously been prescribed for atrial fibrillation, was reinstated following a period when it had been stopped because she was taking warfarin. Mrs X said that her mother, Mrs Y, had suffered a debilitating stroke, which she believed could have been avoided, or its severity reduced, if she had been taking aspirin. Although the Ombudsman found that the GP had failed to re-prescribe aspirin for Mrs Y in January 2013, there was no evidence that aspirin would have reduced the risk of Mrs Y suffering a stroke.

The Ombudsman's Advisers expressed concerns about the failure of the GP to consider prescribing warfarin, rather than aspirin, for atrial fibrillation, and the failure of secondary care professionals in the Health Board to alert the GP to consider this. The scope of the Ombudsman's investigation was therefore broadened to include the Health Board.

The Ombudsman found that it had not been unreasonable for the GP to prescribe aspirin in 2004, as guidelines at that time did not clearly recommend warfarin. However, a CT scan in 2011 showed that Mrs Y had suffered a stroke; she was therefore known to be at high risk of a further stroke, and the Health Board ophthalmology service, which had arranged the scan, should have referred her to the Stroke Department. Also, the GP should have considered prescribing warfarin for her, in accordance with guidelines at that time.

Further opportunities to recognise the situation were missed in July and September 2012; in July Mrs Y suffered a DVT, and was prescribed a six month course of warfarin, but neither the clinician who referred her to the haematology department in July nor the cardiologist who saw her in September alerted the GP to the desirability of considering prescribing warfarin for Mrs Y on a long-term basis. The GP did not review Mrs Y's medication then or subsequently. The Ombudsman found that these were serious failings and upheld the complaint; if Mrs Y had been taking warfarin the risk of her suffering a stroke would have been significantly reduced, although he could not conclude that she would not have done so.

The Ombudsman recommended that the GP should:

- Apologise to Mrs X for the failings identified
- Pay Mrs X the sum of £1000 in recognition of the significant distress the failings had caused her
- If she had not already done so, carry out an audit of all patients at the Practice who have been diagnosed with atrial fibrillation, to ensure they are prescribed the most appropriate anticoagulant

- Introduce and maintain a register of such patients, with annual review of their treatment being carried out.

The Ombudsman recommended that the Health Board should:

- Apologise to Mrs X for the failings identified
- Pay Mrs X the sum of £1000 in recognition of the significant distress the failings had caused her
- Consider the introduction of a register and annual medication review of patients with atrial fibrillation
- Introduce a procedure to ensure a medication review by the original clinician before the discharge of a patient on warfarin
- Advise all clinicians to be explicit in their correspondence with GPs as to their expectations for future management of the patient
- Undertake a review of the procedures in the ophthalmology department for referral to other specialties.

Example 2:

The investigation examined the way Betsi Cadwaladr University Health Board (the Health Board) investigated Mrs A's complaint about her late husband's care at a GP surgery in the Health Board's area. Complaints about the NHS in Wales are handled under "Putting Things Right", the Welsh Government's guidance on dealing with concerns. The Regulations31 which provide the legislative framework for Putting Things Right allow for a complaint against a GP to be investigated either by the GP practice or by the relevant Health Board.

Putting Things Right states that "local health boards may not make any determination about the liability in tort of a primary care provider." The Ombudsman found that this would not preclude the Health Board from investigating, from reaching conclusions, or from finding fault with a GP practice. The Ombudsman upheld the complaint and found that the Health Board's interpretation of its role in respect of GP complaints was too restrictive.

The Health Board agreed to implement the following recommendations:

- To apologise to Mrs A for its shortcomings in handling her concern about her husband's care
- To pay her the sum of £500 for her time and trouble in having to pursuing this matter to the Ombudsman's office
- To review its approach to investigating concerns and complaints about primary care, and to update its written procedures.

[31] Welsh statutory instrument 2011 no.704 (W.108) The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 Part 1 Regulation 3 (b) and (c)

The Ombudsman shared her report with the Welsh Government.

Example 3(a)

Mr K complained that Cartrefi Cymunedol Gwynedd ("CCG"), his housing association landlord, has unfairly refused his application to adapt his property to install a walk-in shower. He said that CCG had accepted that he had a need for the adaptation, as two occupational therapy assessments have indicated.

Mr K explained that CCG had refused the application mainly because he and Mrs K were under-occupying their home, as it was a three bedroom property. It had stated that many families were awaiting such homes. Mr K asserted that CCG's decision to refuse the application and then turn down his appeal, demonstrated that its policies were discriminatory against older and disabled people. In addition, he considered that the way CCG handled his appeal was incorrect.

Mr K said that he was being forced to move from a home he had lived in for 36 years against his will because he could not use the bathroom facilities satisfactorily.

The Ombudsman concluded that broadly CCG was operating reasonable policies, which were compliant with legislation and took account of the balance between a prudent use of its housing stock and the rights of tenants. However, he found that CCG needed to do more to provide evidence of the number and waiting times of families within its policy framework.

In Mr K's case, however, the Ombudsman found that CCG had been maladministrative in its handling of the application and appeal. He found that the initial decision to refuse the application had been taken without due consideration of Mr K's circumstances. The appeal decision then failed to identify that omission. The Ombudsman considered that Mr K had not had a fair hearing as a result of these failures. Mr K had suffered an injustice in that context. The Ombudsman upheld Mr K's complaint. He recommended that CCG:

- Apologise to Mr K
- Pay him £300
- Offer Mr K a fresh and prompt re-determination of his application
- Review its Adaptations Policy with regard to one aspect of its wording
- Consider how it could incorporate the evidential basis regarding the need for family homes into the Adaptations Policy.

CCG accepted these recommendations.

Example 3(b)

Ms A complained about a decision by Tai Ceredigion Cyf, a housing association, not to install a walk-in shower in her bathroom, and the explanations it gave about that. Ms A is a single woman living in a two-bed general needs property. She has some mobility problems. She made it clear that she was otherwise happy in her home and would not consider moving.

The Ombudsman noted that housing bodies have to balance prudent use of housing stock and the rights of tenants. While the issues are complex, a housing authority/association may decline a request for an adaptation based on under-occupancy in certain circumstances where there is a need for family accommodation. However, decisions in each case must be made within a robust policy framework, sensitively applied, which ensures that due consideration is given to the individual circumstances of the applicant.

The Ombudsman upheld the complaint concluding that:

- Varying reasons were given for the refusal of the shower indicating a lack of clear thinking
- Assumptions were made about Ms A's future needs
- There was no evidence that Ms A's individual circumstances were fully considered
- There was no evidence of thoughtful communication with Ms A, in particular to identify her specific objections to moving and consideration of ways those objections might have been overcome.

The Ombudsman made the following recommendations to Tai Ceredigion:

- To apologise to Ms A for the failings identified
- To pay her £500 to recognise the distress its failings caused her, and for her time and trouble in pursuing the complaint
- To review its Adaptations Policy to ensure it properly reflects guidance, good practice, and the Ombudsman's comments. The review of the Policy to have regard to the following:
    - The need to consider each case individually
    - Evidence of alternative demand for the property if applicable
    - The need to sensitively involve the tenant in discussions
    - Consideration of possible incentives as set out in its Incentives Policy, but also to include individually led incentives (such as decorating, arranging telephone connection etc)
    - The need to fully explain the outcome to the applicant
    - A fair appeal mechanism.

Example 4

Mr C complained about his follow-up care from the Health Board after he had been diagnosed with cancer of the prostate. His active monitoring treatment plan ought to have involved 3 monthly check-up appointments from November 2008, with a repeat biopsy at 12 months. He said that he received no follow-up appointment until over a year later (when he enquired about the biopsy appointment in December 2009). When seen, his cancer had advanced. Mr C complained that a timely appointment would have meant the cancer's advancement being noticed earlier and an active treatment regime would have begun sooner. He was dissatisfied with the Health Board's response to his complaint feeling no adequate explanation had been given about the lack of follow-up care.

The investigation uncovered serious failures, including that: the Health Board's Urology service at the relevant time had an appointment backlog of over 11 months; no effective or urgent action was taken to address the increasing backlog within that time; there were no written procedures for appointment making which was a function of the medical records department; ineffective liaison between the medical records department and clinical staff with no system of prioritising those patients in need of urgent follow-up appointments (such as Mr C who had a cancer diagnosis requiring close monitoring); and a consequential breach of NICE clinical guidance. All shortcomings had severe consequences for Mr C. The Ombudsman was very critical of these fundamental failings which he felt called into question the Health Board's governance and potentially placed more patients at risk. In addition to making the circumstances known to Health Inspectorate Wales to monitor the Health Board's future appointment arrangements, the Ombudsman made a number of recommendations, including: an apology and redress of £3000 to Mr C for the failures and distress caused to him; a review of its appointments system across all specialties; an action plan to address the issue of timely follow-up appointments; and accompanying written procedures regarding appointment booking. The Health Board agreed to implement all the recommendations.

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