

# Agenda – Equality, Local Government and Communities Committee

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Meeting Venue:

Committee Room 3 – Senedd

Meeting date: 7 December 2017

Meeting time: 09.00

For further information contact:

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Pre-meeting (09.00 – 09.15)

- 1 Introductions, apologies, substitutions and declarations of interest**
  
- 2 Public Services Ombudsman (Wales) Bill: evidence session 2**  
(09.15 – 10.15) (Pages 1 – 31)  
Nick Bennett, Public Services Ombudsman for Wales  
Katrin Shaw, Director of Policy Legal and Governance  
Chris Vinestock, Director of Investigations and Chief Operating Officer  
Break (10.15 – 10.30)
  
- 3 Public Services Ombudsman (Wales) Bill: evidence session 3**  
(10.30 – 11.30) (Pages 32 – 39)  
Ruth Friel, Head of Patient Experience, Cwm Taf University Health Board  
Shan Kennedy, Head of Investigation and Redress, Betsi Cadwaladr University Local Health Board  
Denise Williams, Senior External Reporting Manager, Betsi Cadwaladr University Local Health Board  
Angela Hughes, Acting Assistant Director of Patient Experience Cardiff and Vale UHB and Chair of the All Wales Listening and Learning from Feedback group
  
- 4 Public Services Ombudsman (Wales) Bill: evidence session 4**  
(11.30 – 12.30) (Pages 40 – 55)



Rosemary Agnew, Scottish Public Services Ombudsman

Marie Anderson, Northern Ireland Public Services Ombudsman

Lunch (12.30 – 13.15)

## **5 Public Services Ombudsman (Wales) Bill: evidence session 5**

(13.15 – 14.15)

(Pages 56 – 58)

Disa Young, Head of External Affairs, Welsh Independent Healthcare Association

Jacky Jones, Deputy Chair of Welsh Independent Healthcare Association and Executive Director of BMI Werndale

## **6 Paper(s) to note**

### **6.1 Letter from Bangor and District Women's Aid in relation to the Welsh Government's draft budget 2018–19**

(Pages 59 – 61)

### **6.2 Letter from Adam Price AM in relation to the Public Services Ombudsman for Wales**

(Pages 62 – 66)

### **6.3 Letter from the Welsh Language Commissioner in relation to Welsh medium childcare and early year's education provision**

(Pages 67 – 90)

### **6.4 Letter from the Minister for Housing and Regeneration in relation to making the economy work for people on low incomes**

(Pages 91 – 97)

### **6.5 Additional information provided by the Public Services Ombudsman for Wales in relation to scrutiny of the annual report**

(Pages 98 – 101)

## **7 Motion under Standing Order 17.42 (vi) to resolve to exclude the public from the remainder of the meeting**

**8 Public Services Ombudsman (Wales) Bill: consideration of evidence received under items 2, 3, 4 and 5**

(14.15 – 14.30)

Document is Restricted

**National Assembly for Wales**

**Equality, Local Government and Communities Committee**

**7 December 2017**

**Evidence in support of the Public Services Ombudsman (Wales) Bill**

**1. Introduction**

- 1.1 The legislation governing my office is the Public Services Ombudsman (Wales) Act 2005 (PSOW Act 2005). At the time it was enacted, it was at the cutting edge of Ombudsman legislation<sup>1</sup> and is still highly regarded in the UK and internationally<sup>2</sup>.
- 1.2 I am pleased that the Assembly's Finance Committee has introduced the Public Services Ombudsman (Wales) Bill and that in addition to my current powers (as contained in the 2005 Act) the Bill has also proposed new powers.
- 1.3 The changes set out in this paper, and included in the Bill, reflect four underlying priorities:
- a) **Future proofing:** the proposals are intended to ensure that the legislation continues to be fit for purpose, but that it also addresses future challenges which will affect service users in an ageing society where there are greater levels of physical and emotional vulnerability.
  - b) **Social justice:** the proposals seek to ensure that citizens from more deprived backgrounds, who may be more reliant on public services, will find it easier to make a complaint.
  - c) **Citizen Centred:** the proposals would strengthen the citizen's voice and ensure that wherever possible processes follow the citizen rather than the sector or the silo.
  - d) **Drive complaint handling and public service improvement:** these proposals will make a real contribution to public service improvement and reform whilst offering excellent value for money. The changes can be achieved whilst maintaining the Public Services Ombudsman for Wales (PSOW) budget at no more than 0.03% of the Welsh block budget.

<sup>1</sup> Ombudsman Legislation – time for a review? Peter Tyndall, March 2013

<sup>2</sup> Law Commission: Public Services Ombudsman – July 2011

## 2. Areas for change

### 2.1 Own Initiative Investigations

- a) Almost without exception, public services Ombudsman schemes throughout Europe, and indeed internationally, have own initiative powers, allowing them to investigate an area of concern without having first received a complaint about all aspects to be investigated. The Ombudsman in the Republic of Ireland and the Northern Ireland Public Services Ombudsman also have such a power and in Scotland the Ombudsman is now seeking this power.
- b) The power is used sparingly and only with good reason. (Between 2001 and 2010 the Ombudsman in the Republic of Ireland undertook just five own initiative investigations.)
- c) This power is likely to become more important as we see the impact of an ageing society with citizens in vulnerable positions, either unable or too afraid to complain.
- d) Own initiative investigations would be considered in the following circumstances:
  - i. Where a failure brought to my attention in one organisation appears likely to affect other people because it is systemic within the organisation and/or may exist in other bodies. The new power would allow my office to look proactively to see whether this is the case. For example:

#### **Example 1**

*Looked after Children are often vulnerable young people who need the best support that they can be given. A complaint from one Looked after Child in one local authority identified an unexplained loss of savings whilst in foster care. Failings on the part of the local authority meant that the Looked after Child did not have the savings when leaving care that he had expected. He also had no explanation about how his savings had been used or where they had gone.*

*My investigations suggested that there were unclear processes and responsibilities, together with an absence of meaningful oversight of savings by the local authority. The nature of the failings suggested that it was likely that other Looked after Children in that local authority were affected and, since the adequacy of national guidance was brought into question, that Looked after Children across Wales might be similarly affected.*

*The current limitations meant that I could address the issues only for the one Looked after Child who submitted a complaint. Whilst I could make recommendations to the local authority involved and publicise*

*the issue through the publication of my report, I could only hope that this might help secure improvement across Wales.*

**Example 2**

*I recently received a complaint that there had been a lengthy delay before an ambulance could attend to a person who had been injured at home. The cause of the delay appeared to be as a result of ambulances being tied up at a hospital. There was no complaint against the relevant Health Board because there had been no direct service provided between the complainant the hospital concerned and the complainant had had no direct contact with the relevant Health Board.*

*If I were to have the power to start an own initiative investigation I would, in future, be able to investigate both bodies in order to investigate the circumstances as a whole. Depending on the outcome of such an investigation there may also have been an opportunity to consider whether there were any general wider learning points across Wales.*

- ii. Where I receive an anonymous complaint and the issues raised appear sufficiently serious to warrant an investigation.
- iii. Where I am made aware of a problem about service delivery across the whole, or part, of a sector of the public service in Wales but no direct complaint has come forward, perhaps because the persons affected are too vulnerable or concerned about the repercussions. Investigations of this type would need a sound basis and rationale to protect the Ombudsman's reputation, as pursuing high profile investigations without firm evidence could pose reputational risk.
- iv. To extend an investigation into a complaint to other bodies where it appears that the maladministration or service failure identified involves an organisation other than the one initially complained about. For example, an ongoing investigation of a complaint against a GP could reveal information about a related matter involving a local health board. There may be evidence of a systemic problem at the Health Board which is beyond the control of the GP complained about or the complainant may not be aware that any service failure was in fact the fault of the local health board as opposed to the GP they have complained about.

**Example 3**

*My office considered a complaint made by a daughter who 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 other medication.*

*It became apparent that the investigation had to be broadened out to include the actions of Health Board professionals, after my 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 complainant had to then submit a fresh complaint so that I was able to investigate the Health Board's actions in addition to the GP practice.*

*I upheld both the original complaint against the GP and the complaint against the Health Board. I also recommended that both organisations make financial redress payments to the complainant in recognition of distress caused by the failures identified and that procedures be reviewed to ensure that a medication review is carried out in the relevant hospital before a patient on warfarin is discharged and communication in correspondence between clinicians and GPs are explicit and clear.*

If new powers are enacted, in the future I would not have to ask the complainant to submit a fresh complaint, making it a less bureaucratic system for the complainant, and saving time and resource within my office.

## **2.2 Oral Complaints**

- a) The current legislation requires for all complaints to be made in writing. Whilst I have discretion to accept a complaint in another form if appropriate, this must be considered on a case by case basis.
- b) A key point that has been reinforced by several people, and the Law Commission, is that this requirement could be at odds with Equality legislation. It is certainly a barrier in relation to the first of my office's values 'Equality and Fairness'. Allowing complaints only in writing is potentially excluding people who find it difficult to write, for example people with learning disabilities. In Wales, only 87% of the population attain literacy level 1 or above (compared with 94% in the UK)<sup>3</sup>. My services should be accessible to all and not dependent upon my exercising discretion to accept a complaint. Also there are instances when my staff exercise my discretion and complete forms for complaints over the telephone but these are not signed and returned to my office. Recent examples of this include the following cases:

### **Example 4**

*A complaint concerning the failure of a local authority to provide support to a child with difficulties in schooling and also the alleged failure of a health board to provide appropriate care and treatment to the child.*

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<sup>3</sup> Welsh Government Social Research: National Survey of Adult Skills in Wales 2010



**Example 5**

*A complaint alleging that a council's social services department failed to carry out a Community Care Assessment.*

**Example 6**

*A complaint alleging that a GP practice had failed to diagnose a lung condition.*

- c) Increasingly Ombudsman schemes are taking a human rights-based approach to the way they consider and investigate complaints. Whilst implicit in the way we work, this year has seen my office give more detailed consideration to the way we work from this perspective. Fundamental to a human rights approach is provision for the right of speech, and other communication methods, to convey a grievance.

### **2.3 Complaints Standards Authority (CSA)**

- a) The overall aim of the CSA is to improve complaints handling to ensure that complaints are handled more simply, more effectively and more consistently, and are resolved at the first point of contact, wherever possible. In Scotland, the CSA role has been particularly effective in allowing the Scottish Ombudsman to tackle problems in the standards of complaint handling within the bodies in its jurisdiction. Whilst we have developed a model complaints policy to help encourage consistency across public service providers in Wales, take-up has been patchy in some sectors, and under current arrangements there are no powers to address this. I believe that there is a strong case for adopting a CSA approach so that any guidance given to bodies on complaints handling has statutory force so that I can help support improvement in public sector complaints handling.
- b) Data collection and the reporting on complaints to management/ Cabinet/scrutiny committees also vary widely. Not all IT systems in local authorities are fit for purpose in relation to data collection, and in some cases manual recordings/adjustments are being made. The approaches to data collection and what is being captured also varies amongst them. It should be said that since no-one collects this data at an all-Wales level, there is no real motivation (or indeed external pressure) to encourage change/improvement in this regard.
- c) A statutory power to tackle these issues would address this 'patchy' approach to complaints handling reporting. Consistency would then enable comparisons at an all-Wales level and contribute to an understanding of areas where service delivery in Wales may not be what it should be. Consistent data would allow for these to be explored by relevant parties, such as the sector itself and the Welsh Government.
- d) With the proposed local government reforms in Wales, now is a perfect time to introduce this power in line with these changes, and ensure that further collaborative arrangements do not become more complicated from the citizen's

perspective. Accountability should always be clear to the service user where bodies collaborate on the delivery of services.

## 2.4 Private Healthcare

- a) With an ageing society, integration of health and social care is an important part of public policy. In 2014, my jurisdiction was extended to include self-funded social care. However, I currently cannot investigate private healthcare unless it was commissioned by the NHS. The circumstances where I would want the discretion to consider complaints about private healthcare would be where a person's healthcare pathway has involved NHS treatment and private healthcare, for example where care has been delivered both by an NHS GP or clinician, and an 'independent hospital' or the private practice of health professionals conducted on NHS premises.
- b) I am of the view that there is public interest in being able to investigate 'the whole of a complaint' made to me where there has been treatment by public and private providers to allow me to identify where something may have gone wrong. The complaint should follow the citizen and not the sector.

### **Example 7**

*In one case that I could not resolve, a patient had been treated by the NHS, then privately (self funded) and then again in the NHS. The patient sadly died. I was unable to investigate the private funded healthcare.*

Although this issue does not arise in many cases it does have a significant impact for the individual concerned when it does arise because they are not able to receive full answers to their concerns about care which has involved both NHS and private healthcare.

## 3. Comments

- 3.1 Schedule 3 - I do not believe that it is necessary to include the Wales Audit Office (WAO) in the revised schedule 3 of the Act. I agree with the Auditor General that the inclusion of the WAO within my jurisdiction risks causing confusion for individuals who may erroneously consider that I could review audits undertaken by the Auditor General. The WAO's functions are limited to providing resources to and monitoring and advising, the Auditor General, therefore I agree with the Auditor General that it is hard to see how I could be presented with a case that would warrant investigation.
- 3.2 Whilst the criteria for own initiative investigations as outlined in sections 4 & 5 and 44 & 45 of the Draft Bill would, if enacted, empower me to undertake the "Wider investigations" outlined in i,ii,and iii above it is not clear whether the criteria would also empower me to undertake all of the possible "Extended investigations" outlined in iv above. For example, where systemic issues may not be apparent but the complainant has not complained about a particular body because they are not aware of the full facts.

- 3.3 Section 33 of PSOW Act 2005 appears to have been omitted from the Bill. This is an important provision because it places a duty upon public bodies to inform complainants of their right to approach my office. Whilst I could include similar requirements in any complaint handling procedures I issue under Part 4 of the Bill, I believe that having the direct duty placed upon public bodies on the face of the 2005 Act has had a positive impact.
- 3.4 Section 64 - the Northern Ireland Public Services Ombudsman and the Prisons & Probation Ombudsman are not listed.

<b>4. Conclusions</b>
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- 4.1 The Public Services Ombudsman (Wales) Bill will future proof my legislation, be more citizen-centred and help drive better complaint handling and service improvement and, ultimately, social justice.

**Nick Bennett**  
**Public Services Ombudsman for Wales**  
**November 2017**

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# Agenda Item 3

Y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau  
Equality, Local Government and Communities Committee  
ELGC(5)-35-17 Papur 2 / Paper 2

## **Introduction**

1. The Welsh NHS Confederation welcomes the opportunity to respond to the Equality, Local Government and Communities Committee inquiry into the general principles of the Public Services Ombudsman (Wales) Bill.
2. The Welsh NHS Confederation represents the seven Health Boards and three NHS Trusts in Wales. The Welsh NHS Confederation supports our members to improve health and well-being by working with them to deliver high standards of care for patients and best value for taxpayers' money. We act as a driving force for positive change through strong representation and our policy, influencing and engagement work.

## **Summary**

3. Patients' expectations of the NHS are growing. It is not only about whether their treatment worked or how long they had to wait, but how they were cared for by staff, how they were spoken to and how comfortable they were made to feel. In an age of rising expectations among the public, it is a critical issue for healthcare providers and something that the NHS must get right.
4. Patients in Wales come into contact with the NHS Wales more than 22 million times each year, with 80% of contacts taking place outside of hospital. Every year there are approximately 17 million GP contacts, 3 million in outpatient clinics, around 460,000 ambulance calls, over 330,000 elective admissions to hospitals, around 360,000 emergency admissions and over 1 million A&E attendances.<sup>i</sup> A recent survey showed that 91% of patients were satisfied with the overall care they received and 96% of patients in Wales say they were treated with dignity and respect when using hospital services.<sup>ii</sup> However, as Keith Evans' review<sup>iii</sup> into NHS complaints in 2014 highlighted, there is always room for improvement and there is no doubt that there are areas where more can be done. Local Health Boards and NHS Trusts are doing more and more to encourage feedback from patients, their families and their carers to make sure they are getting these things right, as well as treating patients and their families in the way they expect. This is evidenced in the annual reports prepared by each Health Board and Trusts in Wales, based on the four-quadrant approach.
5. Effective investigative processes, feedback and complaints systems are an integral part of an open and transparent culture in the NHS. The complaints process within the NHS has become more accessible and complaints should be, and generally are, seen by the NHS in Wales as an opportunity to improve services. The Public Services Ombudsman Wales

(PSOW) is a key part of this, and provides an effective escalating route for complaints. It is independent of the service which is important to ensure public confidence in the NHS.

6. The role of the PSOW, as an independent arbitrator, cannot be understated and should not be compromised by the extension of its role. In 2016/17, health accounted for 38% of all complaints to the PSOW, and social services a further 9% (during 2016/17 PSOW received 2,056 complaints about public sector providers). Overall the Welsh NHS Confederation believes that the current jurisdiction of the PSOW is appropriate and sufficiently extensive considering the role of other organisations, including Health Inspectorate Wales (HIW), Care and Social Services Inspectorate Wales (CSSIW) and Community Health Councils (CHCs), to consider complaints and carry out investigations. It is key that if the role of the PSOW is extended that there is no duplication in roles and the access routes available to each organisation should not become blurred or difficult to navigate for the patient/ the public if there are multiple avenues available.
7. Finally, as the Bill develops there should be awareness around the responses to the Welsh Government White Paper, *“Services Fit for the Future, Quality and Governance in Health and Care in Wales”*, which considered: the joint investigation of health and social care complaints, a duty of candour, standards across health and social care and the role of HIW and CSSIW. As health, local government and other public service partners are increasingly working together to define and deliver against agreed aims and objectives through Public Service Boards, the current governance and management models operated by the NHS and local government in Wales will require further change which this Bill should consider.

### **Terms of Reference**

#### **The general principles of the Public Services Ombudsman (Wales) Bill and the need for legislation to deliver the stated policy intention**

8. The Welsh NHS Confederation support the general principles of the PSO (Wales) Bill to deliver the stated policy intention. However, it is important that the role and the capacity of the PSOW is not compromised and does not duplicate the statutory functions of other organisations. It is essential that there is transparency in the roles and functions of the PSOW and other bodies.
9. While the Public Services Ombudsman (Wales) Act 2005 has facilitated public access to the Ombudsman’s services and enabled the resolution of disputes, best practice and international standards have moved on since then. Such developments include the strengthening of the powers of the Ombudsman in Scotland and Northern Ireland. The Bill will develop the PSOW power and should better align the functions with others across the UK.

#### **The provisions of the Bill which set out the new powers for the Ombudsman to:**

##### **a. accept oral complaints;**

10. We support the new powers for the Ombudsman to accept oral complaints because this is in line with the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011, collectively known as Putting Things Right.

However, there would need to be clear guidance on the verification process of the information received.

11. From April 2011, the Putting Things Right Guidance on dealing with concerns about the NHS, allows people (patients, families and carers) to raise concerns to any member of NHS staff in writing (by letter, on a concern form), electronically (by email, fax or text), or verbally (by telephone or in person). The adoption of option 2 within the Explanatory Memorandum, allowing acceptance of oral complaints, would be consistent with the Putting Things Right Guidance and therefore provide consistency in approach for people wishing to complain. Through the introduction of these new powers it will make the process consistent across all public bodies in Wales, which is a clear advantage for members of the public wishing to access the PSOW services.

12. Health Boards and Trusts are actively supportive of assisting people to attain a position of being satisfied when raising a concern, and recognise that escalating their concern to the PSOW, whilst unfortunate, can be an important step for people to gain satisfaction. While we support the new powers, there is the potential for an increase in complaints and there needs to be clear guidance in relation to the process for verifying complaints. We seek reassurance regarding the process for verifying complaints raised verbally to ensure that they are screened for all relevant aspects, for example screening for safeguarding, and that those requiring advocacy support to make a complaint receive it because this is not outlined in the Bill. In addition, further information regarding the timescales and process of investigation would be useful and there needs to be consistency in the grading of concerns in relation to oral concerns and a recognition of the use of a proportionate investigation conversant with the grading.

**b. Undertake own initiative investigations;**

13. Where there are concerns about significant service failure, which is a matter of public interest, then investigations should be carried out. In deciding whether such investigations should be conducted by the PSOW or another organisation, such as HIW or CSSIW, our concern would be to avoid any duplication with other regulatory bodies who already have a remit to undertake investigations. In order to respond fully to this question there would need to be further explanation of this additional power for the PSOW.

14. NHS bodies across Wales are accountable to the Healthcare Quality Division in relation to service failing and subsequent Serious Adverse Incidents investigations. In addition, HIW provides assurances on the quality, safety and effectiveness of healthcare services and they can also make recommendations to healthcare organisations to promote improvements.

15. For this power within the Bill to be fully effective, the relationship between other regulators should be clearly defined, for example, HIW and their power to initiate investigations. There also needs to be clear criteria for situations whereby the PSOW can initiate their own investigation and the framework for the PSOW undertaking such investigation alongside the roles of HIW and the Welsh Government Delivery Unit. The

Welsh NHS Confederation recommends if any “*own initiative*” investigations were being considered by the PSOW, there would need to be an early dialogue between the PSOW office, the NHS service, Welsh Government and HIW.

16. From a financial perspective, these organisations, such as HIW, are already funded to undertake such initiatives and there is a risk that NHS bodies, and other public bodies, will be subject to multiple investigations on similar themes, which will have an impact on the resources within NHS organisations/ public bodies to support this work. There will need to be explicit pathways in place to ensure that where relevant intelligence is passed to an alternative body for investigation the PSOW is made aware of this.
17. The Welsh NHS Confederation believes it would be more appropriate that where the PSOW identify generic issues which require investigation, following the provision of clear evidence and a rationale to why there should be such an investigation, they should link into the existing bodies who are resourced and experienced in undertaking such investigations. This approach would avoid duplication of activities, prevent placing unreasonable burdens on NHS bodies, and improve the utilisation of limited resources. It would ensure that any investigation being undertaken would reflect and consider the intelligence and main issues of the relevant NHS body.
18. The Explanatory Memorandum (section 10.7) proposes two options for implementation of the Bill in relation to the undertaking of own initiative investigations. Option 1 purposes do nothing and option 2 explores four scenarios whereby amended legislation would be agreed to allow PSOWs own initiative investigations.

Extending an investigation into a complaint to include another public body without needing a new complaint from the complainant (Scenario A);

19. We recognise the need for people to gain satisfaction when raising a concern. This equally applies when they approach the PSOW. Health care provision can be confusing with the public not always clear on which organisations provide which services, including confusion between health and social care providers.
20. The ability of the PSOW to include other public bodies as required to provide a complete response to an individual’s complaint is to be welcomed. However, there would be a caveat of ensuring relevant consent is in place with the complainant happy for other public bodies to be approached regarding their complaint, or those they represent. Consideration of other bodies such as CSSIW will be key when engaging with wider organisations too.

Findings from a complaint investigation prompts an investigation into other bodies to establish whether similar failings exist elsewhere (Scenario B);

21. Sharing learning within an organisation and across organisations is important. Highlighting issues of concern raised by one organisation with another is always useful and is currently achieved by the PSOW publishing the ‘Ombudsman Casebook’. There are a number of issues in relation this scenario that impact on both the Ombudsman Office and the public bodies.

22. The impact on the Health Boards and Trusts of implementing such action is twofold. Firstly, the NHS has agreed mechanisms for being inspected and regulated. As highlighted previously, there are a significant number of organisation whose primary role is to inspect the NHS and investigations instigated under Scenario B would potentially cross over with those of other Regulators. Secondly, instigating investigation under this scenario would require significant work for the NHS body to provide sufficient information to satisfy the PSOW that an identified issue in another body is not an issue for a different NHS organisation. As identified by the Explanatory Memorandum, there would be additional financial costs to this work as well as staff time being taken away from undertaking their key roles to provide patient care. Where the PSOW identifies an issue, which may be similar in other public bodies, it would be more effective and efficient if this information/evidence was provided to the relevant NHS regulator/Inspector for them to ascertain whether further work is required and agree this with the NHS organisation.

Investigation of an anonymous complaint (Scenario C);

23. The NHS is wanting to improve services and patient safety and to respond to feedback where appropriate. Should an issue be raised with the PSOW that meets the criteria for investigation, the fact that the source is anonymous should not preclude investigation of the issues raised. However, there may be limitations in the depth of the investigation by not having details of an individual or where consent may be an issue. The intent of the investigation would be for the purposes of learning and improving as no response to an individual would be possible.

Investigation across all, or part, of a sector of service delivery in light of concerns (Scenario D);

Please see comments for the above scenarios especially those relate to scenario B.

Overall we support scenarios A and C but have reservations in relation to scenarios B and D.

**c. Investigate private medical treatment including nursing care in a public/private health pathway;**

24. We support the PSOW having the power to investigate private medical treatment. These additional powers reflect today's society and the nature of modern public services in Wales.

25. These additional powers will enable the PSOW to reflect the population's whole journey across public services. Without this, the effectiveness of some public service investigations may be limited because of the PSOW's inability to investigate private care as part of an NHS patient's journey/ pathway means that the PSOW cannot give the complainant a full response and this could be deemed unsatisfactory. Private care provision should be investigated with the same rigor and to the same standards as NHS services as patients can suffer the same detriment and the same degree of maladministration as the NHS. Any findings with regard to maladministration or service failings should have the same principles applied as NHS health care to ensure consistency.



26. While supported, there is uncertainty in relation to whether a private care provider can be compelled to act accordance with the advice offered in a PSOW expert report. Further information is required in relation to what sanctions would there be against private companies if they failed to comply with a report and its recommendations.

**d. Undertake a role in relation to complaints handling standards and procedures.**

27. We do not agree with these additional powers because undertaking an operational role in setting standards and complaint handling procedures within NHS bodies, we believe, may be in conflict with the PSOW's independent investigation role. The more operational and involved the PSOW role becomes, there is a risk that it may be seen as less objective when reviewing how a body has implemented that procedure.

28. The PSOW currently has a key role in commenting on the effectiveness of the NHS complaints handling procedures. While we acknowledge that the PSOW would wish to share expertise in managing complaints and improve standards in complaint handling, the Bill does not make any reference to the Putting Things Right Regulations and the processes that NHS organisations must adhere to in relation to a complaint handling.

29. Each health body complies with the principles of the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 and their complaints policies are based on their strategic intent of complaint handling. All NHS responsible bodies must manage their concerns in line with these Regulations. The Welsh Government, and the appropriate regulatory and inspection bodies, monitor compliance of NHS organisations with these Regulations. Work is ongoing within the NHS, led by the Welsh Government, to standardise the collection of data across NHS Wales, therefore it is difficult to see the benefit of having additional requirements from the PSOW in this area. While there may be a benefit nationally to public bodies having some standardisation, this should be the role of the Welsh Government to lead and implement to ensure it is in line with national priorities and monitoring, especially considering the recent Welsh Government White Paper, *"Services Fit for the Future, Quality and Governance in Health and Care in Wales"*.

30. We are aware that the Bill is in line with similar legislation in Scotland and other European countries, however these countries do not have Putting Things Right Regulations and, as highlighted, the bulk of complaints investigated by the PSOW is around healthcare.

**Any potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them**

31. As highlighted previously, there are some potential barriers to the implementation of the Bill. Firstly, the NHS processes are determined by Regulations and clarity is required regarding the PSOW relationship with these Regulations because we note that the language used in the Bill does not reflect the language used in the Putting Things Right Regulations.

32. In relation to oral complaints, while supported, the question should be around the type and level of information that would be required prior to starting an investigation. This should be clarified as there is a risk that work could be commenced on very little information or evidence.
33. Finally, further information is required around the clarification on the governance arrangements for the handling of complaints/ concerns and redress, especially due to the role of HIW, CSSIW and CHCs.

**The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 6 of Part 1 of the Explanatory Memorandum)**

34. We would support the powers in the Bill for Welsh Ministers to make subordinate legislation. The powers are suitable to be delegated because it allows the Act to come into force at the right time, which is important given the new powers that are included in the Bill. This will allow Welsh Ministers to make any transitional arrangements that are needed when moving to from the 2005 Act regime to this new regime. Delegation of powers will also allow the Welsh Ministers to make appropriate changes to the criteria, where required, to protect the citizens of Wales.

**Whether there are any unintended consequences arising from the Bill**

35. The Explanatory Memorandum identifies the potential for additional work for all bodies impacted by this Bill. Additional work is in itself not inappropriate, if it improves services to the public. However, as outlined previously, there are significant reservations as to the benefits versus the costs, especially in relation to the own initiative investigations and the role in relation to complaints handling and standards.
36. The main barriers will be financial resources, organisational cultures and a changing landscape. As highlighted there are possible conflict with the Putting Things Right Regulations and a risk of a two-tier process for complaints management. We recommend that there is an impact assessment on the new Bill and the current Putting Things Right Regulations, including the financial and staff resources which could affect Health Boards and Trusts, to ensure that any unintended consequences or conflict between the Regulations are addressed before the Bill becomes an Act.

**The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum)**

37. Overall the financial implications within the Explanatory Memorandum are comprehensive, however estimating costs for the management and investigation of concerns raised via the PSOWs office is difficult due to the variable nature of the work needed. There will be ongoing and transition costs relating to setting up relevant systems and processes to enable this to happen, additional staffing costs as the complaints will be taken orally and ensuring the complaints have been recorded correctly will take additional time. As this will also enable more people to raise complaints more easily to the PSOW it will invariably also result in more complaints being raised, which will increase costs to both PSOW office and the body being investigated. However, as highlighted, the benefits

are that all members of the public with difficulties in writing or communicating will have the same opportunity to raise as concern as others.

38. The Explanatory Memorandum for the Bill indicates that there will be an increase in cases and some costings have been given for the NHS. We are aware that the implications of the Bill is not cost neutral and without activity analysis the actual financial costs borne by health bodies through implementation of the Bill is unknown. The Explanatory Memorandum assumes cost avoidance as a result of the additional work under the Bill; whilst the theory of this maybe possible, there is no clear evidence that the reality will be realised. The Evans<sup>iv</sup> report has been clear in the recommendations that concerns teams need to have the necessary resources in terms of appropriate staffing levels. Whilst the PSOW office would have additional resource of £270,000 per annum these proposed changes will have a domino effect upon NHS concerns teams and this should also be resourced appropriately. A clear funding formula will be required so this does not impact on the public finances and there will need to be a comprehensive plan agreed with private healthcare providers.
39. The other element of costs to health bodies, as a result of both the existing and potential additional work as a result of the Bill, is the cost of financial penalties made by the PSOW, either as a recommendation in a final investigation report or increasingly as an early resolution settlement prior to investigation. Whilst the NHS does of course recognise that learning from cases can minimise penalties incurred, where the PSOW does make a penalty there is no financial framework in place and the amount levied is, it seems, dependent on the individual investigator; this leads to inequity for complainants.

### **Conclusion**

40. In conclusion, the patient/ the public must be at the centre of the new Bill. There needs to be confidence that this Bill will enable the NHS and other public bodies to use its existing governance mechanisms, systems and processes to put things right to gain public confidence and to learn from any investigations and recommendations.

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<sup>i</sup> Information received directly from Welsh Government Health & Social Services Group

<sup>ii</sup> Welsh Government <http://gov.wales/docs/statistics/2017/170628-national-survey-2016-17-infographic-en.pdf>

<sup>iii</sup> Keith Evans, June 2014. Review of concerns (complaints) handling within NHS Wales – 'Using the gift of complaints'

<sup>iv</sup> Keith Evans, June 2014. Review of concerns (complaints) handling within NHS Wales – 'Using the gift of complaints'

# Agenda Item 4

Prif Wngylwr Llywodraeth Leol a Chymunedau  
Equality, Local Government and Communities Committee  
ELGC(5)-35-17 Papur 3 / Paper 3

## Introduction

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1. The Scottish Public Services Ombudsman's (SPSO) written evidence focuses on the areas where our experience in Scotland is most relevant to the changes proposed in the Bill. These are:
  - 1.1. our role in Scotland as the Complaints Standards Authority; and
  - 1.2. our experience taking oral reviews.
2. We also express our support for the Public Services Ombudsman for Wales having own initiative powers.

## Overview of SPSO statutory functions

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3. To assist the Assembly, we have summarised our statutory functions to provide both context and comparison when deliberating the draft Public Services Ombudsman (Wales) Bill.

### *Complaints*

4. The SPSO is the final stage for complaints about most devolved public services in Scotland, including complaints about:
  - the NHS
  - local authorities
  - prisons
  - Scottish Government and associated agencies and public bodies
  - registered social landlords
  - Universities
  - colleges and
  - water providers.

### *Complaints Standards Authority*

5. The Complaints Standards Authority (CSA) is a statutory function, conferred under The Scottish Publish Services Ombudsman Act 2002 as amended<sup>1</sup>. The CSA was established by the SPSO in October 2010.
6. The CSA:
  - 6.1. gives the SPSO the power to publish standardised complaints handling procedures for listed authorities
  - 6.2. requires the SPSO to monitor and promote best practice in complaints handling.
7. In practice, we:
  - 7.1. aim to drive improvement through improved complaints handling
  - 7.2. work closely with public bodies to standardise and simplify complaints handling procedures
  - 7.3. promote greater consistency, and resolution at the first point of contact, wherever possible.

### *Independent review service*

8. Since 1 April 2016, the SPSO has also provided the independent review service for the Scottish Welfare Fund. We carry out independent reviews of decisions the councils make on community care and crisis grant applications, and have the powers to overturn and substitute a new decision.

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<sup>1</sup> The complaints standards amendments in 2010 by the Public Services Reform (Scotland) Act 2010

9. Community care grants are made to help people on a low income live independently in the community or to help people maintain their home in the face of exceptional pressure. Crisis grants are made to help people cope with unexpected expenses arising out of an emergency or disaster.

## Complaints Standards Authority

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### Background

10. The Scottish Government and Parliament have long had an interest in the quality of complaint handling in public services. In 2008, Douglas Sinclair reported<sup>2</sup> to Scottish Ministers on behalf of the Fit for Purpose Complaints System Action group. That report set out concerns about the quality of complaint handling across the public sector in Scotland.
11. In January 2011, the Scottish Parliament became the first Parliament in the UK to approve a set of Complaint Handling Principles<sup>3</sup> which all public services must apply when handling complaints.
12. Parliament also gave the SPSO new legislative duties and powers as the Complaints Standards Authority (CSA)<sup>4</sup> to publish model complaint handling procedures for each sector, which, in turn, require listed authorities to ensure their complaints handling procedure complies with the published model.

### The Model Complaints Handling Procedures

13. The model complaints handling procedure (MCHP) is a procedure which sets out the process and key elements of governance, recording and learning that organisations
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<sup>2</sup> <http://www.gov.scot/Resource/Doc/923/0063564.doc>

<sup>3</sup> <http://www.valuingcomplaints.org.uk/sites/valuingcomplaints/files/resources/principles.pdf>

<sup>4</sup> Public Services Reform (Scotland) Act 2010

must have in place to ensure they are acting in line with the complaints handling principles approved by the Scottish Parliament<sup>5</sup>.

14. Our approach was to work from a basic model which was adapted for the specific needs of each sector of public service.

15. There are now six model complaints handling procedures operating in Scotland. These were introduced as part of a phased programme.

- local authorities – 28 March 2012
- registered social landlords – 28 April 2012
- Scottish government, parliament and associated public authorities – 28 March 2013
- further and higher education – 30 August 2013
- social work<sup>6</sup> – 1 April 2017
- NHS – 1 April 2017

16. While there are individual differences, all models operate the same basic structure.

This is designed to be simple for complainers and has only two stages: early, front-line resolution (within 5 working days) and more in-depth investigations or complaints which cannot be resolved in the first stage (within 20 working days). More detailed information about this can be found at [www.valuingcomplaints.org.uk](http://www.valuingcomplaints.org.uk)

17. The MCHP is not only about procedures. Organisations must record and report how they respond to complaints. They must do so internally at least quarterly and publish a public report annually. The SPSO expects them to scrutinise, analyse and demonstrate that they have learned from complaints to both improve complaint handling and improve the services they provide.

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<sup>5</sup> The legislation does allow for variation for individual organisations if we agree they can or need to deviate from the model

<sup>6</sup> This followed changes to legislation which had prevented a MCHP applying to social work before this date.

18. This approach gives valuable information about complaints handling across Scotland and highlights or indicates where support may be needed to help public bodies improve. The longest-established model procedure is the one for local authorities. The recording of information across the sector means that we can say for example that provisional 2016/17 figures tell us:

- over 75,000 complaints were received by councils in Scotland
- on average around 88% of these complaints were closed at the stage 1
- around 70% of complaints were upheld or partly upheld at stage 1
- around 60% of complaints were upheld or partly upheld at stage 2.

This indicates to us that Councils identify, and are accepting when failings occurred.

19. The MCHP and associated performance reporting go beyond the reporting of numbers. They include a requirement to produce evidence of learning from complaints and to survey users of their experience of the complaints procedure.

20. The SPSO is not naïve and appreciates that the existence of the procedure will not in itself ensure the quality of response. We strive, both through the complaints that subsequently come to us, and through other stakeholder engagement, outreach, training, support and guidance, to promote and enable improvement in complaint handling standards. Indeed, our legislation requires us to support the sharing of best practice and that commitment is open-ended.

21. The SPSO's CSA team continues to provide support and advice to organisations. In addition to the website dedicated to supporting good complaints handling referenced above, we undertake a range of support activities. We report on these activities in our newsletter<sup>7</sup> which we issue monthly and also in our annual report. We would particularly highlight:

- The networks of complaint handlers which meet around three to four times per year to compare and contrast performance, identify and share good practice, discuss

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<sup>7</sup> <https://www.spsso.org.uk/ombudsmans-newsletter>



areas of common interest and challenge in complaints handling practice. This is sector-led but SPSO attends.

- Our training unit which has produced free e-learning tools as well as providing more intensive training on investigation skills<sup>8</sup>.
- Our good practice guidance including:
- guidance on making a good apology<sup>9</sup>
- guidance for elected members which we developed alongside the Improvement Service<sup>10</sup>.

## External evaluation

22. The approach in use in Scotland is still relatively new. The first academic evaluation was published in October 2017 and concentrated on the local authority sector. In their executive summary the researchers commented<sup>11</sup>:

*“The new model CHP has been implemented across Scotland and stakeholders directly involved in the process are unanimous that this has been a success. Key benefits identified by interviewees were improvements in simplicity and speed for complainants and the beginnings of a more positive culture around complaints in local authorities. The publication of complaints data was seen by most interviewees as focusing minds on complaints and providing opportunities for learning. The key challenges in relation to the new system related to inconsistency between authorities in collecting data, how complaint data should be interpreted, and how performance indicators around complainant satisfaction and learning from complaints should be reported against.”*

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<sup>8</sup> <https://www.spsso.org.uk/training>

<sup>9</sup> <http://www.valuingcomplaints.org.uk/handling-complaints/resources/apology>

<sup>10</sup> [http://www.improvementservice.org.uk/documents/em\\_briefing\\_notes/EM-briefing-spsso.pdf](http://www.improvementservice.org.uk/documents/em_briefing_notes/EM-briefing-spsso.pdf)

<sup>11</sup> The quote is from p. 2. The full report is available here:  
<https://www.spsso.org.uk/scottishwelfarefund/sites/scottishwelfarefund/files/Documents/SWFAnnualReport2016-17.pdf>

23. One of the recommendations in the research was that policy makers in other UK jurisdictions should consider: *“Investigating, where appropriate, the scope for adopting a Complaint Standards Authority approach in other parts of the UK public sector.”*

## Oral reviews

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24. The SPSO has been the independent reviewer of the Scottish Welfare Fund since 2016.

25. We published our first annual report for this service on 29 June 2017 and it identified the improvement in accessibility as a result of allowing oral complaints as one of the highlights of the first year. We said<sup>12</sup> :

*“From the outset, we recognised the importance of accessibility for the particularly vulnerable people who apply for SWF grants. We held a public consultation to gather views on our suggested approach. We set up two sounding boards (for councils, and for the third sector), held a user engagement event and visited several councils. The responses, feedback and learning from these helped shape our processes.*

*“An important decision we made as a result of the feedback was that we would accept reviews by telephone, using a Freephone number. This represents a significant change from the previous scheme, which required second tier reviews to be in writing. In 2016–17, 72% of all initial contact was made by phone, evidence that this is people’s preferred method of accessing the service. We also saw a 26% increase in the number of crisis grant reviews received compared with the previous year, which we believe is likely to be in large part due to our service being accessible by phone.”*

26. We accept there are significant differences between the types of review we receive and complaints. Complaints are more complex and the amount of information people provide is often significantly more than we need to conduct a review. While we do not think the percentage who would prefer to access a complaints process by telephone,

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<sup>12</sup> From p8 of the annual report available here:

<https://www.spsso.org.uk/scottishwelfarefund/sites/scottishwelfarefund/files/Documents/SWFAnnualReport2016-17.pdf>

would be anywhere near 72%, our experience that it has improved accessibility for people who rarely access formal complaints processes, means we strongly support its inclusion in the Bill.

27. The SPSO has itself asked for the powers to take a complaint in any format, not restricting it only to oral complaints as we have sought to future-proof as far as we are able the provisions in the legislation. In this respect we recognise that methods of communication are developing continually and we do not want to restrict it to any one approach.

### **Own initiative investigations.**

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28. Own initiative investigations are simply a normal aspect of role and function of many Ombudsmen globally. The UK notably lags behind and so far only the Northern Ireland Ombudsman has these powers.<sup>13</sup>

29. We are pleased that Wales is to get these powers and continue the strong lead and example that sets in the UK.

30. This is a power we would also like to see in Scotland. While the level and reasons for use can differ, across Europe where this power is common, we have found no evidence of widespread concern this power is used indiscriminately or excessively. Indeed, it is our experience that it is seen as an important protection for the vulnerable who can be reluctant to complain and a way of ensuring that issues which affect many people are resolved quickly.

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<sup>13</sup> We note the explanatory note published with the Bill at paras 3.36 highlights how few Ombudsmen in Europe do not have this and also links to the RIA which also provides some information about how this has used. Given this, we have focussed on the principle.

## **Northern Ireland Public Services Ombudsman - Evidence on the Draft Public Services Ombudsman (Wales) Bill 2017**

### **1.0 Introduction**

- 1.1 I am pleased to have the opportunity to contribute to the Committee's scrutiny of the Public Services Ombudsman (Wales) Bill and to share with the Committee my experiences as Northern Ireland Public Services Ombudsman (NIPSO). I was appointed as the first ever NIPSO on 1 April 2016. As Ombudsman, my role is to investigate complaints about a wide range of public service providers in Northern Ireland. My jurisdiction extends to complaints about education, housing, health and social care. In health and social care I investigate not only complaints of maladministration but also complaints relating to professional judgment.
- 1.2 As NIPSO I investigate complaints from members of the public about maladministration in public services in Northern Ireland. The Office of Northern Ireland Public Services Ombudsman (NIPSO) was established in April 2016 by the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). It replaces and expands the functions of the former offices of Assembly Ombudsman for Northern Ireland and Northern Ireland Commissioner for Complaints, bringing them together into a single statutory office. This creation of a 'one stop' shop for complaints about devolved public services builds on similar reforms introduced in Scotland by the Public Services Ombudsman (Scotland) Act 2002 and in Wales by the Public Services Ombudsman (Wales) Act 2005.
- 1.3 I also hold the office of Northern Ireland Local Government Commissioner for Standards, investigating and adjudicating on complaints about alleged breaches of the Local Government Code of Conduct for Councillors (the Code). I can impose sanction where I find a breach of the Code, unlike the Welsh Ombudsman who has an investigative role only in relation to Code of Conduct complaints.
- 1.4 From 1 April 2016 the functions of the Northern Ireland Judicial Appointments Ombudsman also transferred to my Office in respect of complaints of maladministration in the judicial appointments process.

### **2.0 The Draft Public Services Ombudsman (Wales) Bill**

- 2.1 I have reviewed the Draft Public Services Ombudsman (Wales) Bill 2017 (the Bill) under consideration. I fully support and welcome the approach it takes to the modernisation of the Welsh Ombudsman's powers and remit. I have outlined

detailed views below on some of the areas where we consider our experience in Northern Ireland may provide a helpful perspective given the recent introduction of similar legislation in the 2016 Act.

- 2.2 Ombudsmen in the devolved nations of the United Kingdom have historically developed models of working on the basis of national and international developments elsewhere. In initiating reviews of the legislative framework in Northern Ireland, the Northern Ireland Assembly considered the provisions of the Public Services Ombudsman (Wales) Act 2005 in relation to investigations, reporting and information sharing with other bodies to be appropriate for the NIPSO legislation. In due course consideration was also taken of reforms undertaken in Scotland to add to and increase the remit of the Scottish Ombudsman, most notably in relation to its role as a Complaints Standards Authority. The Northern Ireland Assembly, through the vehicle of the 2016 Act, went beyond the reforms in Scotland and Wales to introduce powers to undertake systemic Own Initiative investigations, reflecting common practice across European and International ombudsmen.
- 2.3 I commend the Committee for its innovative approach to ensure that the reform of the proposed Ombudsman legislation in Wales should mirror similar reforms that have already been implemented in Northern Ireland and Scotland. This is important given our broad remits and the challenges which we face but also to ensure commonality in access to justice for Welsh citizens when compared with Scotland and Northern Ireland. The proposed Bill is welcome and I believe will deliver benefit in delivering a modern Ombudsman service that fairly and independently investigates citizen's complaints.

### **3.0 Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act)**

- 3.1 The 2016 Act, in addition to bringing together the full range of roles into one office, introduced a range of initiatives to modernise my Office and provide greater access for the public to redress injustice. These measures included a broader remit and enhanced investigation and reporting powers, as well as clearer accountability arrangements. The new powers in the 2016 Act for me as Ombudsman to consult, co-operate and share information with other ombudsmen and oversight bodies had its genesis in the 2005 Welsh legislation.
- 3.2 Again in mirroring the Welsh legislation, the 2016 Act was intended to increase accessibility to the Ombudsman for members of the public; extend the Ombudsman investigation powers to cover previously excluded jurisdictions such as FE and HE bodies and schools. The 2016 Act established new reporting arrangements for public interest reports and an accountability mechanism for the Northern Ireland Assembly to scrutinise my budget and use of resources.

3.3 There are a number of new provisions in the 2016 Act that have been particularly beneficial to me in my role. In this submission, I highlight and comment on below those elements which may be most relevant to your consideration of the Bill.

#### **4.0 Accessibility to the Public**

4.1 A key aim of the 2016 Act was to increase accessibility to the Ombudsman and to make it easier for the public to complain. The legislative provisions underpinning this aim include:

- members of the public are no longer required to obtain MLA sponsorship in order to make a complaint about a Government Department; although MLAs and other public representatives can act 'on behalf' of a constituent in bringing a complaint to my Office where appropriate.
- public service providers are required to signpost complainants to NIPSO at the conclusion of their complaints process
- an oral complaint can be accepted by NIPSO where previously only a written complaint was investigated.

4.2 These changes allow the office to accept complaints from members of the public. They support individuals with vulnerabilities such as learning difficulties, to make their complaints. The 2016 Act removed a significant barrier to individuals who wish to complain by removing the requirement for a complaint to be made in writing. The 2016 Act was (like the Bill) a Committee-led piece of primary legislation developed by the former OFMdfM Committee of the Assembly. That Committee was keen to ensure that all citizens in Northern Ireland were directed as a matter of law to the Ombudsman at the end of internal complaints process. As a result, my office has, in 2016/17 and the year to date, experienced a significant increase in enquiries and complaints.

#### **5.0 Alternative resolution**

5.1 The 2016 Act provides explicit authority to take any action which the Ombudsman considers appropriate with a view to resolution of a complaint. This is an important provision in ensuring an increase in the proportion of complaints that can be resolved without the need to pursue a full investigation. This is often in the interests of all parties and certainly in the public interest in terms of public resource efficiency. The alternative resolution provision was introduced in Northern Ireland based on the equivalent Welsh provision in the 2005 Act. It has been used to deal proportionately with complaints to my office where a practical solution can be achieved. For instance, in one case involving a housing authority

it was agreed with that body that providing a support worker to a tenant with mental health issues helped focus her concerns about housing repairs and neighbour issues.

## **6.0 Consultation, Co-operation and Information Sharing**

- 6.1 The 2016 Act provides new powers for me, as Ombudsman, to consult, co-operate and share information with other Ombudsmen and oversight bodies. This facilitates information sharing with bodies whose role is to ensure public service improvement. Consultation on and awareness of issues about public service delivery arising in the course of investigations enhances our respective roles. It also helps us ensure ensure there is no duplication of investigative resource in areas where my jurisdiction overlaps with bodies such as the Northern Ireland Audit Office (NIAO) and the Northern Ireland Human Rights Commission (NIHRC). For example, in relation to nursing home complaints the RQIA has powers to inspect without notice where serious failings are identified.
- 6.2 In December 2016 I signed a Protocol for data sharing and consultation with the Regulation and Quality Improvement Authority (RQIA) to ensure that where I recommend improvements in the health and social care sector these can be monitored by that body. Work is continuing with similar protocols with the NIAO and NIHRC as well as the Northern Ireland Commissioner for Children and Young Persons (NICCY).

## **7.0 Own Initiative Investigations**

- 7.1 The 2016 Act also provided the authority for me as Ombudsman to undertake own initiative investigations where there is evidence of systemic maladministration on systemic injustice. These powers commence from 1 April 2018. The authority to undertake own initiative/own motion investigations was a key part of Assembly reforms to NIPSO powers under the 2016 Act.
- 7.2 The provisions of the 2016 Act provide discretion in terms of the criteria decision and the investigation methodology. A number of conditions to the exercise of that discretion are provided as follows:
- (i) a requirement for the NIPSO to have a 'reasonable suspicion' of 'systemic maladministration', or 'systemic injustice'.
  - (ii) a proposal must be developed that meets investigation criteria, which must be published.

- (iii) the listed authority which is the subject of the own initiative investigation should have the opportunity to comment on an investigation proposal. The proposal sets out the reasons for the proposed investigation and how the Ombudsman's criteria for an own initiative investigation have been met.
- (iv) there is a requirement that the relevant listed authority should have the opportunity to comment on evidence presented in the proposal.

7.3 An important element of the own initiative power is that a report must be published. This is, in my view, important in ensuring full transparency and holding to account where failures in public services are identified. As an officer of the Assembly, my role is to highlight systemic maladministration or injustice to that body and to support the statutory Committees of the Assembly in their scrutiny role. For instance, an own initiative investigation report on education or health can be presented to the subject committee.

7.4 In terms of resource, I have already established that the operation of the Own Initiative power will require an additional staff complement of two Senior Investigating Officers. This reflects my thinking that the own initiative function should relate to a relatively smaller number of high impact investigations. The Office is currently preparing for the commencement of these powers from April 2018 with a project established to take forward the following activities:

- (i) Development of selection criteria through which the potential own initiative investigations will be identified;
- (ii) Methodology for investigation, including an initial investigation to ensure the robustness of the issue and that it warrants a full investigation using this power;
- (iii) Development of reporting templates and framework for publication and liaison with the Assembly and its Committees (where appropriate);
- (iv) Engagement strategies designed to ensure that key stakeholders across the public sector in Northern Ireland understand the own initiative power and how investigations will proceed.

Our engagement to date has included discussions with key regulators and scrutiny bodies on this new role. These discussions have proved useful in developing an understanding of how the Ombudsman's own initiative role could complement the role of key regulators and scrutiny bodies rather than overlap with their powers. Discussion with bodies such as the Northern Ireland Audit Office, the Regulation and Quality Improvement Authority (regulating the quality of health and social care services) and Northern Ireland Human Rights Commission will continue to focus on their planned programmes of inspection, investigation or audit activity in light of my plans for Own Initiative investigations.



- 7.5 The traditional Ombudsman model in the UK has developed in a way which requires an individual to pursue a complaint of injustice. This is not the model which has developed internationally where Ombudsmen commonly have the power to commence an investigation without first receiving a complaint from a citizen. In the Republic of Ireland, the Ombudsman's office has since its inception in 1980 a discretion to commence such an investigation and this has been used to significant effect in areas such as health complaints. I am aware that the Welsh Ombudsman (Nick Bennett) has previously highlighted the use of own initiative powers in other countries to this Committee in May 2015<sup>1</sup>. I have found this paper useful in developing my approach to own initiative powers.
- 7.6 The provision for own initiative powers in the Bill is a key vehicle for addressing injustice and delivering systemic improvements for a greater number of Welsh citizens and not just the complainant in a particular case. The power will address a range of different situations where the traditional UK Ombudsman model does not enable the Ombudsman to address system wide failings and injustice. It is a powerful tool where the Ombudsman has received no complaints, because vulnerable individuals fear retribution and are disinclined to make complaints. These are the 'voiceless' for whom the own initiative provision in sections 5 and 45 of the Bill addresses this access to justice issue. The Bill ensures that failures in public service experienced by one person in relation to one public body would very likely apply to other public service users in other public bodies without this new power. The Welsh Ombudsman may not have received complaints from other individuals and may require a new complaint to be made to him. This is inefficient and overly burdensome on the citizen.
- 7.7 Own Initiative powers will allow the Ombudsman to achieve justice for the maximum number of citizens who experience failures in public services. It is for this reason that I welcome my new powers. I commend to the Committee the introduction of these provisions to the Bill under consideration in Wales.

## **8.0 Complaints Standards Authority**

- 8.1 Part 3 of the 2016 Act outlines the statutory powers which would allow me to undertake the role of Complaints Standards Authority (CSA), similar to that which has been operating in Scotland since 2010. The 2016 Act in Northern Ireland has similar provisions to the Bill under consideration, enabling me to set standards of complaints handling across public services in Northern Ireland and simplify and improve the way complaints are handled across the public sector. I

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<http://www.senedd.assembly.wales/documents/s37196/Additional%20Information%20from%20PSOW%20from%20evidence%20session%2021%20January%202015.pdf>

also will have a role in the sharing and promotion of best practice on complaints handling.

- 8.2 This is an important new role which I regard as essential to my strategic aims of achieving a greater culture of learning lessons from complaints. The Welsh Ombudsman in his thematic report 'Ending Groundhog Day'<sup>2</sup> highlighted repeat failings in terms of complaints handling by public bodies. I also see these failings in the cases that my office investigates. There are significant barriers to people complaining about public services with confusing, unclear and lengthy complaints procedures and poor complaints handling in individual cases which is a clear access to justice issue. The CSA powers will allow me to work with public service providers on a sectoral basis to help address these issues.

The other significant benefit the Complaints Standards Authority role will bring will be the ability to ensure better quality information is available on complaints made to public bodies. There is also very little, if any, robust publicly available information on complaints handling by public bodies. The Complaints Standards Authority role will allow us to address this and help encourage public bodies to benchmark and improve their performance and ensure better opportunities for cross sector learning from complaints.

- 8.3 My CSA powers are unlikely to be commenced until restoration of the Northern Ireland Executive and Assembly and is subject to confirmation on resource. Initial planning work has commenced to allow us to move quickly to implement this role once the Assembly is re-established and ready to consider commencement. Currently the Office is researching complaints handling across Northern Ireland and preparing for consultation with stakeholders. As with the provisions in the Bill, consultation is an important part of the process for developing complaints handling principles to be approved by the Assembly as a first step. The requirement to consult is also required as part of the process of developing model complaints handling procedures. It is important to develop an approach which works in partnership with public services to successfully implement and embed the necessary changes and improvements. It is also important, in my view, that regulators are involved from the outset and that monitoring of compliance with the CSA is built into their own existing regulation, to ensure that monitoring is as light touch as possible.

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<sup>2</sup> [https://www.ombudsman-wales.org.uk/~media/Files/Thematic%20Reports/22624%20Thematic%20report\\_GroundhogDay\\_ENGLISH\\_Final%20FOR%20ISSUE.ashx](https://www.ombudsman-wales.org.uk/~media/Files/Thematic%20Reports/22624%20Thematic%20report_GroundhogDay_ENGLISH_Final%20FOR%20ISSUE.ashx)

## **9.0 Conclusion**

- 9.1 I welcome the opportunity to provide evidence to the Committee in person in December and would be happy to explore these areas further. I am also willing to answer questions about these or other areas arising from the Northern Ireland experience.
- 9.2 Finally, I commend the important changes and timely Ombudsman reforms brought forward in the Bill by this Committee. In developing new Ombudsman legislation in Northern Ireland, the Welsh model created by the 2005 Act was highly innovative at the time and now is in need of future proofing to ensure the concerns of citizens who are 'voiceless' can be heard.

*Marie Anderson*

**MARIE ANDERSON**  
**Northern Ireland Public Services Ombudsman**  
**22 November 2017**

# Agenda Item 5

Welsh for Llywodraeth, Llywodraeth Leol a Chymunedau  
Equality, Local Government and Communities Committee  
ELGC(5)–35–17 Papur 5 / Paper 5

## Introduction

1. The Welsh Independent Healthcare Association (WIHA) welcomes the opportunity to respond to the Committee's call for evidence on this Bill and Explanatory Memorandum. As per the Committee's request, WIHA's response addresses the Bill's terms of reference.
2. WIHA is the representative association of independent healthcare providers in Wales. Providers are largely acute, mental health and learning disability hospitals in Wales. WIHA also represents a hospice provider and an oncology centre providing proton beam therapy.
3. Please find attached for reference the latest WIHA Credentials document which provides an overview of the independent healthcare sector in Wales.

## Terms of Reference Comments

4. *The general principles of the Public Services Ombudsman (Wales) Bill and the need for legislation to deliver the stated policy intention.*  
WIHA welcomes this Bill and believes it will be beneficial for patients who have a complaint spanning treatment across the NHS and independent healthcare sectors. It is right that the complaints process should follow the citizen and not the sector.
5. The Ombudsman already has jurisdiction over complaints made about NHS-funded treatment in WIHA member hospitals as well as treatment in hospices.
6. *Provisions of the Bill which set out the new powers for the Ombudsman to: accept oral complaints;*  
This seems like a positive initiative to improve social justice and equal opportunities.
7. *Provisions of the Bill which set out the new powers for the Ombudsman to: undertake own initiative investigations;*  
WIHA recognises the value of 'own initiative investigations' undertaken by Ombudsmen services to patients and hospital providers. It would appear the necessary checks and balances have been built into determining the criteria whereby the Public Services Ombudsman can undertake own initiative investigations.
8. *Provisions of the Bill which set out the new powers for the Ombudsman to: undertake a role in relation to complaints handling standards and procedures*  
This seems a good initiative in reducing variation in effective complaints handling standards and procedures across public services in Wales. WIHA's understanding is that

this does not apply to the independent healthcare sector. Many WIHA members subscribe to the Independent Sector Complaints Adjudication Service (ISCAS), which provides annual training for members on complaints handling.

9. *Provisions of the Bill which set out the new powers for the Ombudsman to: investigate private medical treatment including nursing care in a public/private health pathway;*

As per WIHA's previous submission to the Finance Committee, we welcome this provision and believe it will be beneficial to patients in these circumstances. In practice, the number of complaints against WIHA members that reach an external review stage is relatively small. The number of complaints that involve both combined NHS and private treatment is even smaller. We note that the Ombudsman estimates that such cases represent one per cent of health sector complaints or seven cases each year (11.55).

10. *The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum).*

WIHA recognises that the inclusion of investigations of the private health service element in a public/private health service pathway will have a small, but direct, financial impact on the Ombudsman, costing £17,535 over 5 years (Table 4, page 56). WIHA has calculated the cost of including such cases will make up less than 0.1% of the Ombudsman's yearly budget (using figures from 2017-18 found within the Summary Table on Page 45). We also note in Paragraph 11.11 of the Explanatory Memorandum that the Ombudsman could accommodate the additional cost within existing resources.

11. WIHA recognises the right of the Ombudsman to serve a costs recovery notice on a private health service provider as a means of recovering additional costs incurred by the Ombudsman where the provider has obstructed the Ombudsman or done something which would amount to contempt of court if the investigation were proceeding in the High Court.

12. *Section 34: Compensation for the person aggrieved*

WIHA represents a hospice provider for which this section presents significant concerns. Hospices receive very limited statutory funding and do not work on a commissioned or privately funded basis. Consequently, having to pay compensation to patients according to levels defined by the Ombudsman would present a financial risk to the organisation.

13. *Any potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them*

WIHA is not aware of any potential barriers to the implementation of the Bill's provision.

14. *Whether there are any unintended consequences arising from the Bill*

At this stage, WIHA cannot foresee any unintended consequences for independent healthcare providers arising from the Bill.

**Conclusion**

In summary, WIHA members support the extension of the PSOW's remit to investigate complaints that include an NHS and private health element of care.

We are also pleased to note that there will be a review of the legislation after five years from the date of the Act receiving Royal Assent and further reviews thereafter as Welsh Ministers deem appropriate.

WIHA look forward to providing oral evidence to the committee and responding to any further questions on the terms of reference.

**22 November 2017**

20/11/17

Dear Ministers

## **RE: Welsh Government's Draft Budget 2018-19 and impact on VAWDASV services**

As a local Charity operating in Arfon we provide refuge & community work with women and children as survivors of domestic abuse. We are aware of the current threats to the budget and this is very unsettling with the regionalization agenda in the sector and find this extremely worrying for our client group.

We welcome:

- The proposed increase in 2018-19 to the VAWDASV grant from £4.5 million to £5 million, and the 2018-19 protection of the Supporting People (SP) programme at £124 million.

However, we are extremely concerned that:

- It is proposed that in 2019/20 **the local authority slice of the VAWDASV Services grant (£2.4 million) will be integrated into a new single Early Intervention, Prevention and Support (EIPS) grant**, without any transitional arrangements mentioned or proposals to ring-fence this for VAWDASV;
- In 2019/20 **the SP budget line would also disappear**, to be integrated into the EIPS grant, without any transitional arrangements or proposals to ring-fence this;
- The proposed EIPS grant in 2019-20 will be **£13 million less** than the combined total of the proposed grants that make this up currently, and there is no clarity on which grant streams will be cut to achieve this or how priorities would change.
- Loss of ring-fencing means we will not clearly know how much is being spent on VAWDASV work locally, or on homelessness and housing related support services in Wales in the future. **We need a commitment to ensure measures are introduced to support resource mapping for these priority areas** – across government departments and responsible authorities locally.
- We are also concerned that changes are being ‘piloted’ within seven ‘full flexibility pathfinder areas’, without mention of transitional arrangements – and that **Assembly agreement on the budget is being sought before the Welsh Government VAWDASV statutory commissioning guidance** will be



# Cymorth i Ferched Bangor a'r Cylch Bangor & District Women's Aid

7 Llys y Fedwen, Parc Menai, Bangor LL57 4BN

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consulted on and published or can be implemented.<sup>1</sup> We contributed to the consultation on the Act to protect females from domestic abuse and have provided statistics regularly on.

- It is vital the **SP and VAWDASV Services ring-fence of baseline funding is maintained when funding transfers to regions and local areas** (commissioners are welcome to increase or diversify funding but we cannot lose vital funds to this sector; VAWDASV services do not have the resilience to recover from this).<sup>2</sup>

Context:

- VAWDASV specialist services in the third sector have already experienced a 5% cut in resources this year across the board, compared with 2016/17; the majority of services cannot sustain any further cuts without closure or a significant reduction in their life-saving services.
- In England ring-fencing of SP was lost in 2009. Between 2010 and 2014, accompanied by a period of parallel austerity measures, they lost 17% of specialist refuges and a third of all referrals to refuge were turned away, normally due to a lack of available space.<sup>3</sup> Specialist services that support survivors of sexual violence and those led by and for BME women are particularly at risk,<sup>4</sup> and recent reports suggest council spending on domestic violence refuges across 33 local authorities in one region of England has fallen by up to 75% since 2010<sup>5</sup>. We do not want Wales to have to go down this same path.
- The Violence against Women Bill in Wales was given Royal Assent and the statutory guidance has not yet been published and implemented in Wales and requires a commitment from MP's to ensure vital services are offered to victims' and their families.

The future consequences:

- If these issues are not resolved urgently, survivors of abuse in Wales will at best face a postcode lottery when trying to access safety, support and protection, or alternately, face a stark choice of staying with abusers, destitution or death, if they cannot access specialist services for help and support.
- Currently survivors are being affected by the cuts to the Welfare system and the cuts to Legal Aid and are getting lost in the system with increasing numbers losing their children. This is at an increasing cost to other public services and not preventative.

<sup>1</sup> 'Full Flexibility Pathfinders': Bridgend, Cardiff, Conwy, Newport, Merthyr Tydfil, Rhondda Cynon Taf, Torfaen.

<sup>2</sup> Following the Supporting People programme losing its ring-fence in England in 2009, 20% refuges have closed since 2010, and Westminster is now reviewing refuge funding in England with a view to centrally funding this again (as it had already done with rape support funding, due to sexual violence services being lost).

<sup>3</sup> <https://www.womensaid.org.uk/what-we-do/campaigning-and-influencing/campaign-with-us/sos/>.

<sup>4</sup> <https://zine.imkaan.org.uk/new-report-life-saving-black-women-s-groups-in-critical-state-facing-closure-government-must-e3eb904bf8e0>.

<sup>5</sup> <http://www.islingtongazette.co.uk/news/crime-court/domestic-violence-refuge-funding-cuts-islington-charity-says-women-are-dying-because-they-don-t-get-access-to-safe-beds-1-5252240>.





## **Cymorth i Ferched Bangor a'r Cylch Bangor & District Women's Aid**

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We would welcome further discussions with you around the Draft Budget and how to ensure the continuation of vital specialist violence against women, domestic abuse and sexual violence services in your constituency and across Wales.

Yours Sincerely,

Jamie Crank  
Manager

# Agenda Item 6.2

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

Document is Restricted



**Adam Price**

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

Y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau  
Equality, Local Government and Communities Committee  
ELGC(5)-35-17 Papur 7 / Paper 7

John Griffiths AC  
Cadeirydd – Y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau  
Cynulliad Cenedlaethol Cymru  
Bae Caerdydd  
Caerdydd  
CF99 1NA

Ein cyf: AP0051/CJH

28 Tachwedd 2017

Annwyl John,

### **Ombwdsmon Gwasanaethau Cyhoeddus**

Rwy'n ysgrifennu atoch i godi pryder sydd gen i ynghylch ymyriad yr Ombwdsmon Gwasanaethau Cyhoeddus y mae eich pwyllgor chi yn bennaf yn gyfrifol am ei oruchwyllo. Rwy'n hefyd yn copio'r llythyr i Simon Thomas, Cadeirydd y Pwyllgor Cyllid, sydd yn gyfrifol am faterion ariannol yn ymwneud â'r Ombwdsmon a'r bil arfaethedig newydd.

Fe fyddwch yn ymwybodol bod yr Ombwdsmon wedi gwneud sylwadau cyhoeddus, yn y cyfryngau a'r cyfryngau cymdeithasol, ac wedi cyflwyno ymateb i ymgynghoriad Llywodraeth Cymru yn gwneud yr achos i'w swyddfa ef gymryd drosodd swyddogaeth cwynion Comisiynydd y Gymraeg yng nghydestun argymhelliad y Llywodraeth i'w diddymu. Fel aelod o blaid sydd yn gwrthwynebu'r awgrym yma dwi yn gresynu bod Ombwdsmon sydd, o ddiffiniad, i fod yn ddiuedd yn wleidyddol ac yn annibynnol o'r Llywodraeth nid yn unig yn mynegi safbwynt ond yn llobio o blaid polisi sydd yn destun cyfredol o anghytundeb go sylfaenol.

Mae'n glir o'r dystiolaeth sydd wedi dod i law bod yna rhyw faint o gydlynu wedi bod rhwng swyddfa'r Ombwdsmon ac Adran y Gymraeg y Llywodraeth. Yn yr ateb ysgrifenedig i gwestiwn WAQ74552 wedi ei atodi fe welwch chi fod cyfarfod wedi ei gynnal rhwng swyddfa'r Ombwdsmon a phrif swyddogion Adran y Gymraeg y Llywodraeth ym mis Medi i drafod cynnig yr Ombwdsmon, ar ei gais ef, ac fe gynigiwyd adborth ynghylch y syniad gan swyddogion y Llywodraeth a oedd yn ddefnyddiol, mae'n ymddangos, wrth lunio'r papur terfynol gan yr Ombwdsmon a groesawyd fel allbwn posib y drafodaeth gan swyddogion y Llywodraeth. Byddai'n ymddangos felly bod yr Ombwdsmon wedi rhoi ei hun mewn sefyllfa lle y gadawodd i gynrychiolwyr Llywodraeth Cymru, y mae'n gyfrifol am ei goruchwyllo, i ddylanwadu ar gynnwys ei ymateb i'r ymgynghoriad ac ar ei benderfyniadau ar yr achlysur hwn.

Mewn cyd-destun lle mae annibyniaeth o'r Llywodraeth, mewn realiti a chanfyddiad, yn allweddol, haerïaf fod yr ymgysylltu agos yma rhwng tîm datblygu polisi'r Llywodraeth a'r Ombwdsmon yn hollol amhriodol. Fel y mae Cymdeithas yr Iaith wedi nodi yn eu llythyr nhw atoch chi, mae yna dystiolaeth yma bod yr Ombwdsmon wedi torri'r memorandwm o ddealltwriaeth rhyngddo fe â Chomisiynydd y Gymraeg a lofnodwyd ganddo ar y 7fed o Fedi 2016.

**Cynulliad Cenedlaethol Cymru**

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**Plaid Cymru** | **Party of Wales**

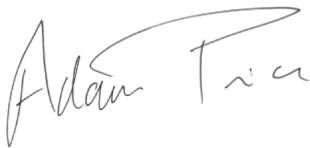
Mae'r ddogfen hynny yn nodi o dan Gymal 7.1 i: "Ni chaiff....Comisiynydd y Gymraeg....nac Ombwdsmon Gwasanaethau Cyhoeddus Cymru adolygu'r modd mae'r naill ai'r llall yn cyflawni eu swyddogaethau, oni fo darpariaethau statudol yn caniatáu hynny." Nid yw darpariaethau statudol yn codi yn y cyswllt hwn felly mae cyfeiriadau'r Ombwdsmon yn y cyfarfod hwn at well gost- effeithiolrwydd yr Ombwdsmon, a'r cyfeiriad at gwynion "dibwys" yn yr ymateb i'r ymgynghoriad, yn glir yn torri'r cytundeb hwn.

Byddwn felly yn croesawu eich asesiad chi ac aelodau'r Pwyllgor ynghylch priodoldeb a dilysrwydd gweithredoedd yr Ombwdsmon yn yr achos hwn, gan gynnwys eich arweiniad ynghylch pa gamau mae'r Pwyllgor yn credu y dylid eu cymryd yng ngoleuni'r wybodaeth ddiweddaraf sydd wedi dod i law.

Ar fater ehangach, byddwn hefyd yn gwerthfawrogi pe baech yn cadarnhau pa weithdrefn y mae eich Pwyllgor yn ei defnyddio i oruchwylio gwaith yr Ombwdsmon, ac sy'n amlinellu'r safonau disgwylidig o ddeiliaid y swydd. Yn ogystal, byddwn yn gwerthfawrogi eglurder ynghylch y drefn y dylai unrhyw un sydd â chwyn am weithredoedd yr Ombwdsmon ei dilyn, ac a yw'r trefniadau hynny'n hysbys?

Edrychaf ymlaen at glywed gennych.

Yn gywir,



**Adam Price AC/AM**

**Dwyrain Caerfyrddin a Dinefwr / Carmarthen East & Dinefwr**

Copiau:

Simon Thomas AC – Cadeirydd Y Pwyllgor Cyllid

Eluned Morgan AC – Gweinidog y Gymraeg a Dysgu Gydol Oes

Meri Huws – Comisiynydd y Gymraeg

Nick Bennett – Ombwdsmon Gwasanaethau Cyhoeddus



Llywodraeth Cymru  
Welsh Government

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**WRITTEN ASSEMBLY QUESTION  
FOR ANSWER BY  
THE CABINET SECRETARY FOR EDUCATION  
ON 08 NOVEMBER 2017**

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**Adam Price (Dwyrain Caerfyrddin a Dinefwr):** A wnaiff Ysgrifennydd y Cabinet gyhoeddi cofnodion unrhyw gyfarfodydd rhwng Gweinidog y Gymraeg a Dysgu Gydol Oes a/neu ei swyddogion ac Ombwdsmon Gwasanaethau Cyhoeddus Cymru yn ystod y 12 mis diwethaf? (WAQ74552)

**Adam Price (Carmarthen East and Dinefwr):** Will the Cabinet Secretary publish the minutes of any meetings between the Minister for Lifelong Learning and Welsh Language and/or his officials and the Welsh Public Services Ombudsman during the last 12 months? (WAQ74552)W

**Eluned Morgan:** Rwy'n cael ar ddeall na wnaeth cyn Weinidog y Gymraeg a Dysgu Gydol Oes gyfarfod ag Ombwdsmon Gwasanaethau Cyhoeddus Cymru yn ystod y 12 mis diwethaf. Fe wnaeth ei swyddogion gyfarfod ag Ombwdsmon Gwasanaethau Cyhoeddus Cymru ar ddau achlysur. Cynhaliwyd cyfarfod ar 27 Mehefin 2017 i drafod agweddau ar Fil Anghenion Dysgu Ychwanegol a'r Tribiwnlys Addysg (Cymru). Ni chynhyrchwyd nodyn am y cyfarfod hwnnw. Mae nodyn am gyfarfod a gynhaliwyd ar 13 Medi wedi ei atodi i'r cwestiwn hwn.

**Eluned Morgan:** I understand the previous Minister for Lifelong Learning and Welsh Language did not meet with the Public Services Ombudsman for Wales during the last 12 months. His officials met with the Public Services Ombudsman for Wales on two occasions. A meeting was held on 27 June 2017 to discuss aspects of the Additional Learning Needs Education Tribunal (Wales) Bill. No note was produced for that meeting. A note of a meeting held on 13 September is annexed to this question.

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**Note of Meeting with Public Services Ombudsman Wales**

**PSOW Offices, Pencoed, 13/9/2017**

PSOW – Nick Bennett and three officers

Advisory Panel – Margaret Griffiths, Jonathan Morgan, Bill Richardson, Sharon Warnes, Jan Williams, John Williams

Welsh Government – Bethan Webb, Daniel Jones

The meeting followed an invitation from PSOW to WG staff to discuss the White Paper.

Following introductions, BW outlined the *Cymraeg 2050* strategy and the policy drivers behind the White Paper. DJ provided further detail on the policy underpinning the proposed changes to the way standards made, imposed and enforced, and the proposed Commission. Members of the Panel were supportive of the clear and ambitious strategy. NB sought to understand better how complaints are currently handled, how many are received each year and the costs of the Commissioner's complaints handling procedures. PSOW dealt with around 2300 new complaints in 2016/17 (budget ca. £4.2m) whilst in 2015/16, the Commissioner dealt with 250 complaints (budget ca. £3.4m).

NB made a proposition that PSOW could provide a more cost-effective way of handling and investigating complaints about Welsh language standards. PSOW has the benefit of objectivity and independence from Government as funding comes directly from the Consolidated Fund. PSOW already handled complaints about language matters, notably in relation to community councils. He also noted the position in the Basque Country where complaints about services in Basque are dealt with by the Ombudsman.

Ombudsmen focus on putting things right and can take a flexible and rapid approach to resolving problems – this could avoid some of the lengthy investigations by the Commissioner of relatively minor matters which the White Paper highlighted. However, if necessary, PSOW also has full investigation powers. JM noted such a move would 'mainstream' standards complaints and free up resources for the Commissioner to focus on the more important task of promoting the language. Members of the panel discussed the importance of promoting the language in the context of a million Welsh speakers and reaching out to all people in Wales, and generally supported the PSOW's proposal.

DJ noted three possible objections: the White Paper set out the Government's intention to be able to extend standards to the private sector which is generally outside the PSOW's remit, that ombudsmen generally do not have enforcement powers of the kind proposed for the Commission, and that thought would need to be given to the role of the Welsh Language Tribunal which could sit uneasily alongside the PSOW.

In response, PSOW noted that Part 5 of the draft Public Services Ombudsman Bill (due to be introduced shortly) would extend his powers to private sector care home, domiciliary care and palliative care providers, and that it was not wholly unusual for ombudsmen to deal with complaints about the private sector (e.g. Financial Services Ombudsman). In relation to enforcement, NB noted he currently investigated complaints about alleged code of conduct breaches by elected members of local authorities and was able to refer serious cases to the Adjudication Panel which could take enforcement action. It might be possible to consider such a model in relation standards, with the proposed Commission having powers to impose sanctions. Panel members agreed it would not be appropriate for the Tribunal to be able to review decisions of PSOW in the way it currently reviews decisions of the Commissioner. NB agreed and noted PSOW decisions were subject to JR but the Tribunal could have a role hearing appeals about the level of sanction imposed by the Commission. DJ noted thought would also need to be given to the role of the Tribunal in relation to the imposition of standards by the Welsh Government.

Panel members discussed the merits of the proposition and agreed the PSOW should submit a consultation response setting out his proposal in more detail. BW thanked the PSOW and Panel for their time and noted the consultation was intended to stimulate open discussion and new ideas.



Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

Naomi Stocks.

Clerk

Equality, Local Government and Communities Committee

National Assembly for Wales

Cardiff Bay

Cardiff

CF99 1NA

27 November 2017

Dear Clerk,

## **Welsh medium childcare and early year's education provision briefing note.**

The Welsh Government's Cymraeg 2050: Welsh Language Strategy emphasises the importance of the early years towards achieving the aim of a million Welsh speakers by 2050. With this in mind I presented this briefing note on Welsh medium childcare and early years education to the Cabinet Secretary for Education as advice under Section 4 of the Welsh Language (Wales) Measure 2011.

The briefing note discusses the significance of the childcare and early years education sector in creating new Welsh speakers. The paper discusses current childcare and early years education provision in Wales, and outlines the Welsh Medium provision in particular. The policy context is discussed, particularly the Welsh Government's commitment to offer 30 hours of free childcare to all 3-4 year olds whose parents are in full time work, and also the vision of reaching a million Welsh speakers by 2050.

The paper concludes that there exists clear potential to integrate the above policies. When the 30 Hours Offer comes to fruition, it will lead to a significant increase in the demand for childcare across Wales, and thus presents a timely opportunity to take significant strides towards achieving the vision of a million Welsh speakers by 2050. To realize this potential, however, several recommendations should be considered:

- The Welsh Government needs to ensure that the Welsh language and its vision for 2050 are key considerations in the process of planning, funding and implementing its plans for childcare and early years education.





Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

Although general plans and commitments are outlined in Cymraeg 2050's work programme for 2017-2021, there are no explicit plans on the way forward and there is a risk that a golden opportunity to take highly significant steps forward with regard to the future of the Welsh language will be lost.

- The Welsh Government should use Welsh in Education Strategic Plans (WESPs) as a framework for coordinating the actions of the Government, local authorities and childcare providers. Specifying growth targets in the childcare sector as a specific outcome in WESPs would ensure that local childcare strategies are aligned with the government's national aspirations and targets for Welsh language provision. Growth in this sector would contribute significantly to increasing numbers across the Welsh medium education sector in the long term.
- In order to produce effective national and local strategies, and to evaluate the impact and success of these strategies in the future, valid and reliable data is essential. The Welsh Government needs to take the lead in reforming the way childcare data is collected and shared in order to ensure that national and local plans and strategies are based on reliable information.

I trust that this paper will be of interest to you, and I hope you'll share the paper with members of the Equality, Local Government and Communities Committee.

Yours Sincerely,

**Meri Huws**  
Welsh Language Commissioner



Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

Briefing Note:

# Welsh Medium Childcare and Early Years Education Provision

**Author:** Hywel Iorwerth

**Date:** 22/11/2017

## Welsh Language Commissioner

The principal aim of the Welsh Language Commissioner, an independent organization established by the Welsh Language (Wales) Measure 2011, is to promote and facilitate the use of the Welsh language. This entails raising awareness of the official status of the Welsh language in Wales and imposing standards on organizations. This, in turn, will lead to the establishment of rights for Welsh speakers.

Two principles will underpin the work:

- In Wales, the Welsh language should be treated no less favourably than the English language
- Persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so

Welsh Language Commissioner

Market Chambers

5–7 St Mary Street

Cardiff CF10 1AT

0345 6033 221

[post@comisiynyddygydraeg.cymru](mailto:post@comisiynyddygydraeg.cymru)

Correspondence is welcomed in Welsh and English

[comisiynyddygydraeg.cymru](http://comisiynyddygydraeg.cymru)

@ComyGymraeg

## Key facts

Increasing the number of young children who receive Welsh medium care and early years education will be critical to achieving the Government's vision of a **million** Welsh speakers by **2050**.

**51%** of all Welsh speakers learnt the language at school: 11% at nursery school, 25% in primary school, and 15% at secondary school.



**80%** of Welsh speakers aged 3-15 learnt the language at school: 22% at nursery school, 46% in primary school, 12% in secondary school.

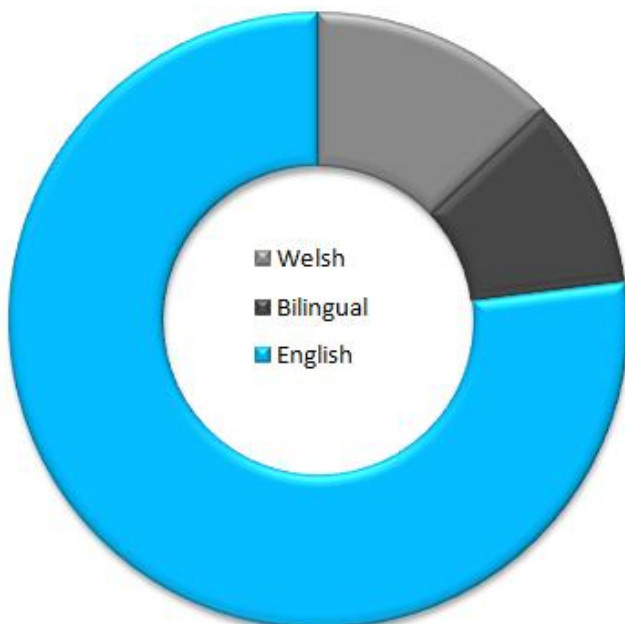


**25%** of those who learnt Welsh in primary school are fluent.



**50%** of those who learnt Welsh at nursery school are fluent.

English is the main language of **77%** of childcare providers; whilst **13%** are Welsh medium, and **10%** are bilingual\*



Language is acquired quickly and naturally between the ages of **0-5**, and research shows that as many as **80-85%** of children in Welsh medium pre-statutory care transfer to Welsh medium primary education.

## Executive summary and recommendations

This paper discusses the current situation with regards to Welsh medium childcare and early years education. Here are the main findings:

- Ensuring that children and young people start learning Welsh as early as possible is vital in order to produce fluent Welsh speakers who are likely to use the language and transfer it to the next generation. The childcare and early years education sector has a highly significant role to play in this context.
- Growth in the number of young children who receive Welsh medium care and early years education could be critical in achieving the Welsh Government's vision of a million Welsh speakers by 2050.
- The Welsh Government has committed to offering 30 hours of free childcare to every 3 and 4 year old child whose parents are in full-time work. If this comes to fruition, it will lead to a significant increase in the demand for childcare across Wales and, as a result, a golden opportunity to ensure an increase in the numbers who receive Welsh medium childcare.
- Although the Welsh Government is aware of the importance of childcare to the future of the language, there are no specific and firm plans on how they intend to integrate the 30 Hours Scheme and the 2050 vision. It is unclear how the Welsh Government intends to move from general commitments to increase Welsh medium childcare provision to specific actions which will have an impact on the ground.
- Welsh in Education Strategic Plans (WESPs) have significant potential to turn broad and general commitments into specific and material actions and targets.
- WESPs could provide an effective framework for coordinating the actions of the Welsh Government, local authorities and childcare providers, in order to ensure that there is significant increase in the numbers receiving Welsh medium childcare and subsequently transferring to Welsh medium education.
- Developing and evaluating national and local strategies to increase the numbers receiving Welsh medium childcare depends on the availability of reliable data and information.
- Current data on Welsh medium childcare in Wales is fragmented, inconsistent and difficult to interpret. There is currently a lack of robust information, and this deficiency may undermine attempts to reform the Welsh medium childcare sector in Wales and, as a result, the potential to take significant strides towards achieving the vision of a million Welsh speakers by 2050.

Based on these findings, we recommend the following:

- The Welsh Government needs to ensure that the Welsh language and its vision for 2050 are key considerations in the process of planning, funding and implementing its plans for childcare and early years education. Although general plans and commitments are outlined in Cymraeg 2050's work programme for 2017-2021, there are no explicit plans on the way forward and there is a risk that a golden opportunity to take highly significant steps forward with regard to the future of the Welsh language will be lost.
- The Welsh Government should use Welsh in Education Strategic Plans (WESPs) as a framework for coordinating the actions of the Government, local authorities and childcare providers. Specifying growth targets in the childcare sector as a specific outcome in WESPs would ensure that local childcare strategies are aligned with the government's national aspirations and targets for Welsh language provision. Growth in this sector would contribute significantly to increasing numbers across the Welsh medium education sector in the long term.
- In order to produce effective national and local strategies, and to evaluate the impact and success of these strategies in the future, valid and reliable data is essential. The Welsh Government needs to take the lead in reforming the way childcare data is collected and shared in order to ensure that national and local plans and strategies are based on reliable information.

# 1. Context: Childcare and Cymraeg 2050: A Million Welsh Speakers

Evidence shows that the majority of children and young people tend to learn Welsh at school today.<sup>1</sup> Research jointly commissioned by the Welsh Language Commissioner and the Welsh Government shows that around 80% of Welsh speakers aged 3-15 have learnt the language at school. This compares with 51% of Welsh speakers of all ages who learnt the language at school. Unfortunately, fluency rates amongst those who have learnt the language at school are not as high as they are amongst those who learnt Welsh at home. For example, whilst 80% of those who learnt the language at home are fluent, only 25% of those who learnt the language in primary school are fluent. The fluency rates of those who learnt the language in secondary school is lower (11%) whilst the fluency rate of those who learnt the language at nursery school is much higher (50%). The research proves that there is a correlation between when and where individuals acquire or learn Welsh and how fluent or willing they are to use the language.

The above facts are highly significant in the context of the Welsh Government's ambitious strategy to ensure a million Welsh speakers by 2050. Not only does it emphasise the importance of the education system in terms of creating new Welsh speakers, but also the fact that learning Welsh from the very start of the education process is essential in order to produce fluent Welsh speakers who will use the language and transfer it to the next generation. Language is acquired quickly and naturally between the ages of 0-5, and research shows that as many as 80-85% of children in Welsh medium pre-statutory care transfer to Welsh medium primary education.<sup>2</sup>

In summary, a growth in the numbers receiving Welsh medium pre-statutory provision is likely to lead to an increase in the numbers in Welsh medium statutory education and also the numbers speaking Welsh fluently in society. It is therefore of no surprise that numerous key bodies and stakeholders are becoming increasingly aware of the importance of the pre-statutory period as the start of the journey towards achieving the Welsh Government's target of reaching a million Welsh speakers by 2050.<sup>3</sup>

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<sup>1</sup> For a more detailed overview of the data, see: The Welsh Language Commissioner and the Welsh Government, *Welsh language use in Wales, 2013-15 (2015)*; The Welsh Language Commissioner, *The Position of the Welsh Language 2012-2015: The Welsh Language Commissioner's 5-year Report (2015)*.

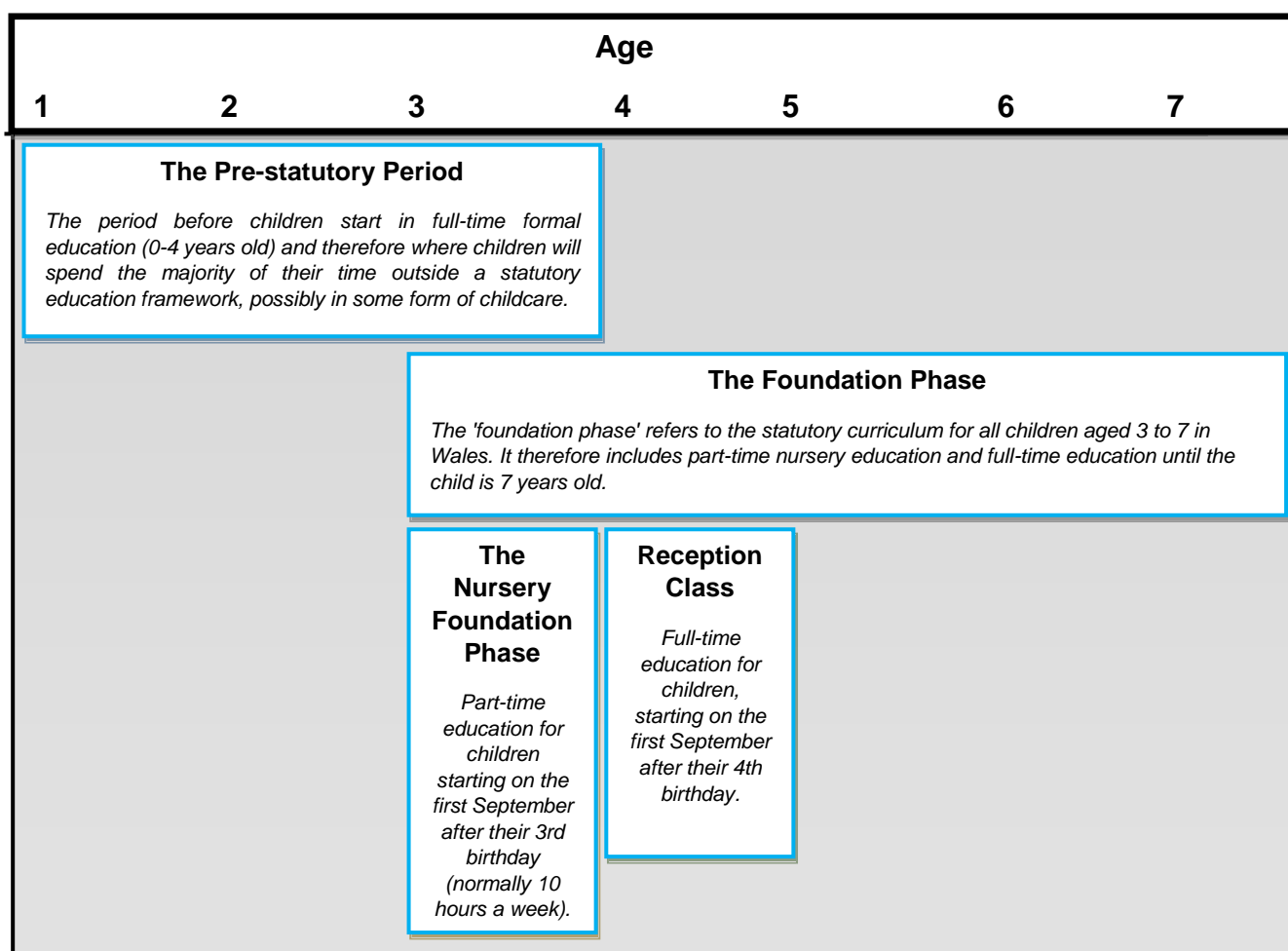
<sup>2</sup> 2015-16 data provided directly by Mudiad Meithrin.

<sup>3</sup> The Welsh Language Commissioner, *The Position of the Welsh Language 2012-2015: The Welsh Language Commissioner's 5-year Report (2015)*; Direct discussions with Mudiad Meithrin; Welsh Government, *Urgent Review of Welsh in Education Strategic Plans, 2017-20 by Aled Roberts (August 2017)*; National Assembly for Wales, Children, Young People and Education Committee, *Inquiry into Welsh in Education Strategic Plans (WESPs) (December 2015)*.

## 2. The current situation

### 2.1. Childcare and early years education in Wales

**Figure 1:** Timetable and explanation of the key phases:



Apart from part-time early years education provision, the pre-statutory period is not controlled directly by the Welsh Government and is provided by a wide range of individuals, companies and voluntary and private organisations. This provision includes a variety of childminders (full-time, part-time), full day care (for example nurseries), morning or afternoon day care sessions (Mudiad Meithrin's substantial provision is the most notable example of Welsh medium provision), crèches, nannies, and open access play provision.

Pre-statutory childcare has changed significantly over recent years, partly as a result of the Welsh Government's offer of free early years education and childcare, for example the Flying Start project and, more recently, the 30 Hours Offer (discussed further in 3.1 below). Providers have had to adapt to these changes by offering more



flexible provision. As part of the process of piloting the 30 Hours Offer, the Welsh Government's Social Research department has published a report outlining the current situation in terms of childcare capacity in Wales.<sup>4</sup> Here are some of the key facts in the report:

- It is currently estimated that there are around 175,000 children aged 0-4 living in Wales.
- There are 4,025 childcare providers in Wales, offering around 80,000 childcare places.
- There are around 2,000 childminders, offering around 15,000 places.
- There are around 700 full day care providers, offering around 30,000 places.
- There are around 1,200 part-time providers, offering around 35,000 places.
- There was no information about the range of Welsh medium provision in the report.

Although childcare is not controlled directly by the Welsh Government, the Childcare Act 2006 lists the duties imposed on local authorities as strategic leaders in local childcare provision.<sup>5</sup> Local authorities have a legislative duty to assess and plan childcare provision in order to ensure its availability and quality. Local authorities are required to monitor and assess provision through Childcare Sufficiency Assessment (discussed further in 2.2 and 3.3 below).

## 2.2. The Welsh language in childcare and early years education provision

As part of their wider duties to monitor and assess childcare provision, local authorities are specifically required to consider and plan for Welsh medium childcare. The Welsh Government's childcare and early years plan highlights the advantages of bilingualism for children, and outlines a number of actions to support it.<sup>6</sup> Firstly, local authorities are required, through Childcare Sufficiency Assessments (CSAs), to monitor and fill gaps, ensure sustainability and improve the quality and amount of Welsh language and bilingual provision in the area.<sup>7</sup> They also work with Mudiad Meithrin and other providers via a range of grants to achieve the above objectives.

According to a recent report by the Welsh Government<sup>8</sup> there are around 175,000 children aged 0-4 living in Wales. Unfortunately, there is no complete and reliable data on the numbers in childcare, and in Welsh medium childcare specifically (more details in 3.3 below). The main source of information on this sector is data collected by the Care and Social Services Inspectorate Wales (CSSIW). All childcare providers registered with CSSIW are required to complete a Self Assessment of Service Statement (SASS) which includes questions on the language of provision.

<sup>4</sup> Welsh Government Social Research, *Childcare capacity in Wales* (October 2017). This report was a result of collaboration between the Welsh Government, the Care and Social Services Inspectorate Wales (CSSIW) and the Wales Institute of Social and Economic Research, Data a Methods (WISERD).

<sup>5</sup> Childcare Act (2006) - [http://www.legislation.gov.uk/wsi/2016/88/pdfs/wsi\\_20160088\\_mi.pdf](http://www.legislation.gov.uk/wsi/2016/88/pdfs/wsi_20160088_mi.pdf)

<sup>6</sup> Welsh Government, *Building a Brighter Future: The Early Years and Childcare Plan* (2013).

<sup>7</sup> Welsh Government, *Childcare Guidance* (2016).

<sup>8</sup> Welsh Government Social Research, *Childcare Capacity in Wales* (October 2017)

One problem with this source is that not all providers complete the self assessment. For example, in 2016, only 76% of those working in the sector completed the self assessment, thereby giving an incomplete picture. The second fundamental problem is that it is the childcare providers themselves who are responsible for assessing the language of provision. It is inevitable that there will be some inconsistency and misinterpretation here in terms of defining language, which then impacts on the reliability and validity of the data.

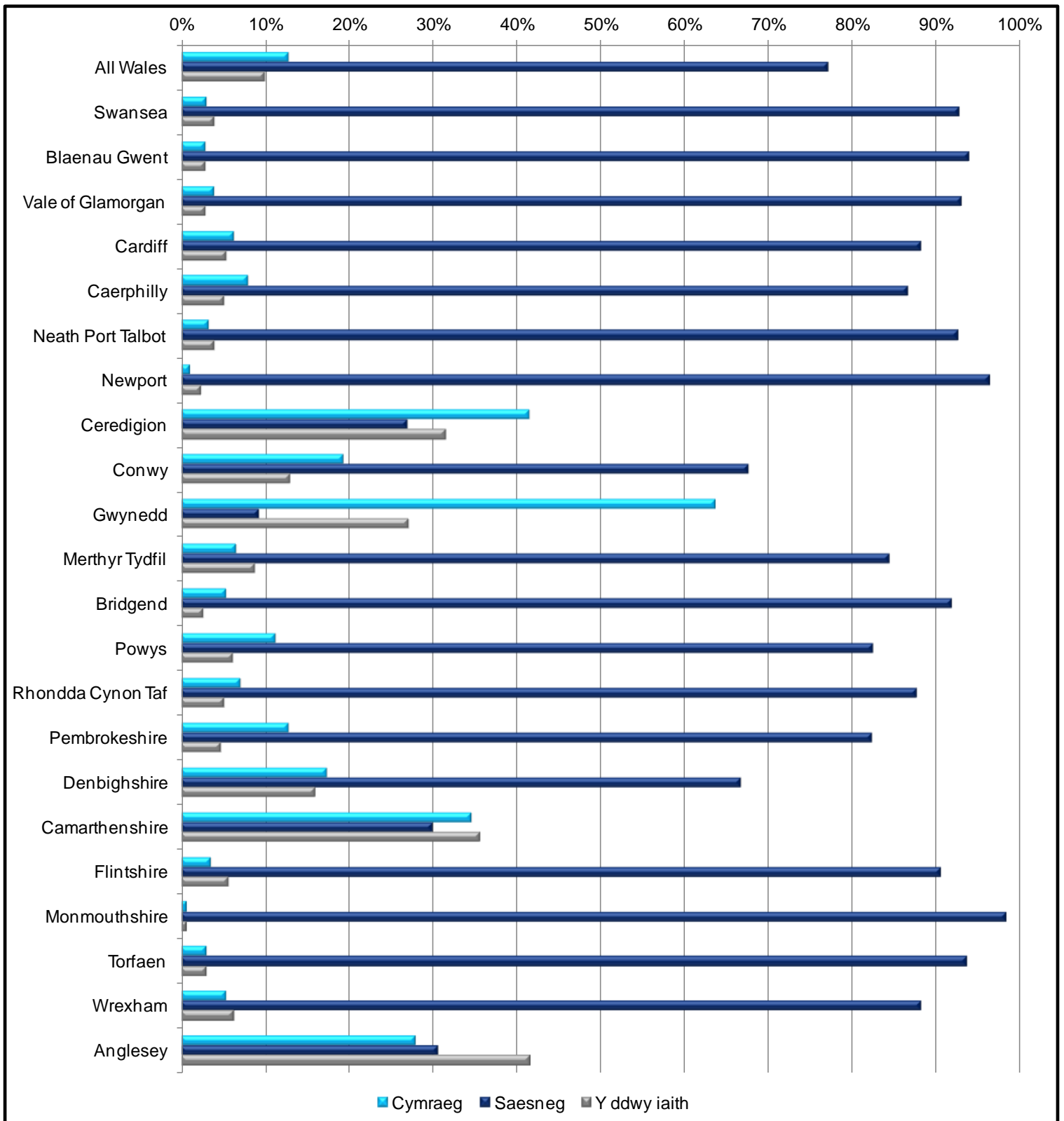
This data, which is provided by CSSIW, is essential in preparing an evidence base for ensuring the sufficiency of local authority provision (the CSAs). Although the majority of local authorities use CSSIW data to undertake their assessments, the majority also use local data to support this information. As a result, the data reported in local authority reports is different to that held by CSSIW. The ways in which local authorities collect and use data also varies significantly. As a result, the national and local picture of Welsh medium childcare in Wales is fragmented, inconsistent and difficult to interpret. However, the data available can provide an useful snapshot of general patterns in Welsh medium childcare provision in Wales today:

**Figure 2:** The main language of provision in numbers and percentages in all local authorities, according to CSSIW data based on data from SASS (25 September 2017)<sup>9</sup>.

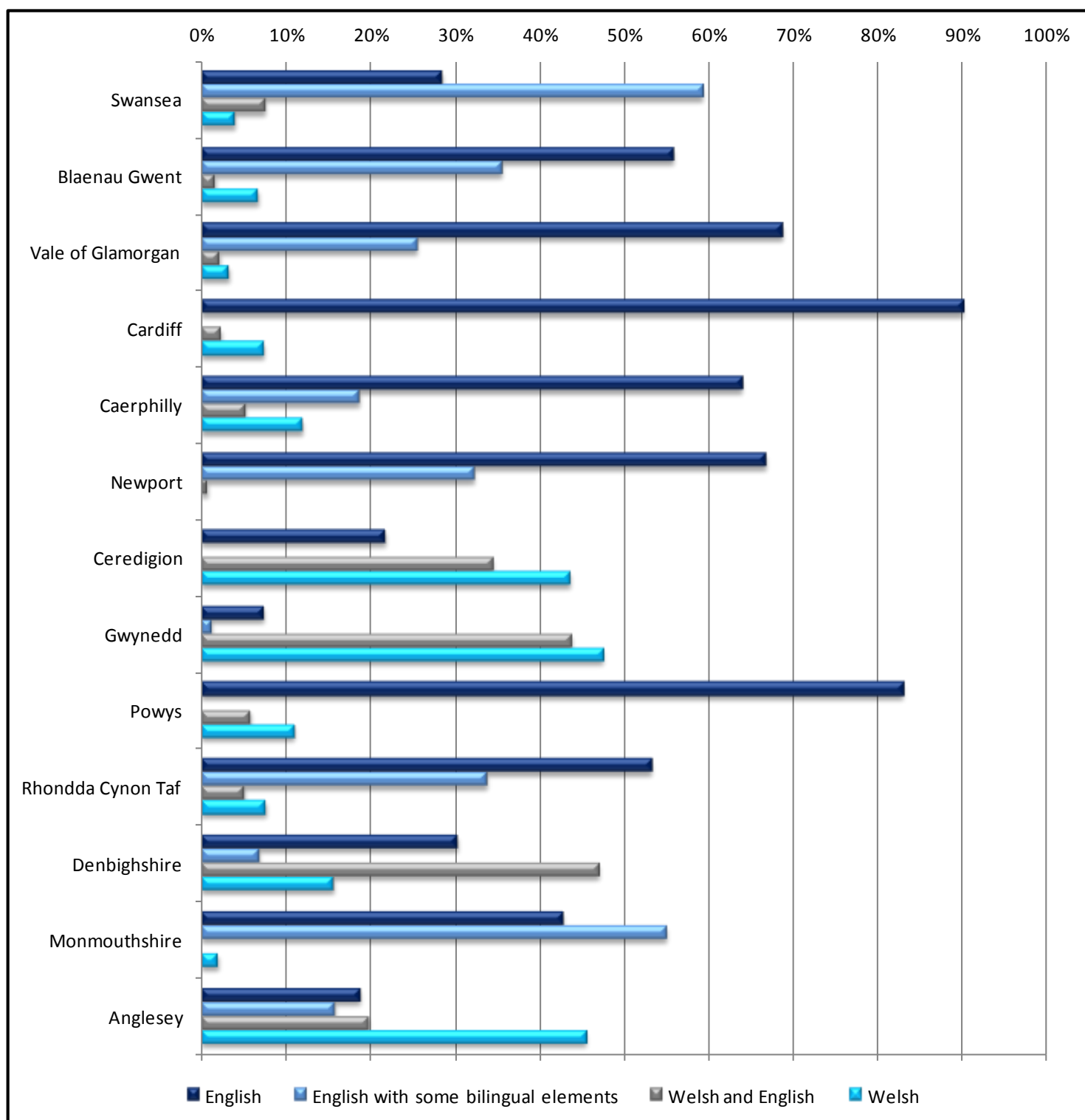
Local Authority	Welsh		English		Both Languages	
	Number	Percentage	Number	Percentage	Number	Percentage
<b>All Wales</b>	<b>500</b>	<b>13%</b>	<b>2993</b>	<b>77%</b>	<b>389</b>	<b>10%</b>
Swansea	7	3%	205	93%	9	4%
Blaenau Gwent	2	3%	62	94%	2	3%
Vale of Glamorgan	9	4%	207	93%	6	3%
Cardiff	28	6%	390	88%	24	5%
Caerphilly	20	8%	214	87%	13	5%
Neath Port Talbot	5	3%	138	93%	6	4%
Newport	2	1%	158	96%	4	2%
Ceredigion	46	41%	30	27%	35	32%
Conwy	27	19%	94	68%	18	13%
Gwynedd	129	64%	19	9%	55	27%
Merthyr Tydfil	3	7%	38	84%	4	9%
Bridgend	8	5%	135	92%	4	3%
Powys	22	11%	160	82%	12	6%
Rhondda Cynon Taf	18	7%	221	88%	13	5%
Pembrokeshire	19	13%	121	82%	7	5%
Denbighshire	24	17%	92	67%	22	16%
Carmarthenshire	76	35%	66	30%	78	35%
Flintshire	9	4%	221	91%	14	6%
Monmouthshire	1	1%	121	98%	1	1%
Torfaen	3	3%	89	94%	3	3%
Wrexham	11	5%	178	88%	13	6%
Anglesey	31	28%	34	31%	46	41%

<sup>9</sup> It appears that these figures are slightly different to those noted in the Government's most recent report, as there is no information about the language of all provision.

**Figure 3:** The main language of provision in percentages in all local authorities, according to CSSIW data based on data from SASS (25 September 2017).



**Figure 4:** The language of provision in 13 local authorities, according to data collected by the Commissioner from local authority CSAs 2017-2022.



This data shows a rather different picture of Welsh medium childcare provision compared to figure 3. The significance of these differences will be discussed in 3.3 below.

### 3. Strategic planning for Welsh medium childcare and early years education

The Welsh Government has stated the importance of expanding Welsh medium childcare and early years education in order to achieve the target of a million Welsh speakers by 2050. Various factors will affect the success of that vision:

#### 3.1. National strategy and integrating Government policies

**The Welsh Government needs to ensure that the Welsh language and its vision for 2050 are key considerations when planning, funding and implementing its plans for childcare and early years education. Without explicit plans on the way forward, it is likely that a golden opportunity will be lost to take highly significant steps forward with regard to the future of the Welsh.**

A national target has been set to expand Welsh medium childcare provision by creating 150 more nursery groups over the next 10 years.<sup>10</sup> In Cymraeg 2050's work programme for 2017-2021, the Welsh Government states that it wants to 'support the expansion of Welsh-medium early years provision by 40 nursery groups by 2021.'<sup>11</sup> It also states the intention to deliver the offer of 30 hours of free childcare across Wales, providing more Government-funded Welsh-medium childcare places. Beyond this general commitment to provide support and funding, it is not yet clear what specific actions the Welsh Government intends to take, nor what framework will be used to drive this work forward.

#### The Welsh Government's childcare policies

The Flying Start project targets children under the age of 4 who live in some of the most deprived areas in Wales. One part of the project is the provision of free part-time childcare to 2 and 3 year old children. Although local authorities are expected to offer Welsh medium provision, statistics show that only 7% of those who were eligible requested Welsh medium childcare. This percentage is far lower than the percentage of children receiving Welsh medium education in Wales.<sup>12</sup> It is fair to say that there is room for improvement in terms of integrating the objectives of this project with the aim of increasing the numbers in Welsh medium childcare.<sup>13</sup>

<sup>10</sup> Welsh Government, *Cymraeg 2050: A Million Welsh speakers* (2017), p. 12.

<sup>11</sup> Welsh Government, *Cymraeg 2050: A Million Welsh speakers - Work Programme 2017-21* (2017), p. 10.

<sup>12</sup> Arad, *Welsh Medium Childcare Provision for Pre-School Children* (March 2017).

<sup>13</sup> The organisation Parent for Welsh Medium Education has echoed these concerns and has gone so far as to say that Flying Start is militating against the expansion of Welsh medium education. See below its response to the consultation on Welsh in Education Strategic Plans:

<http://www.senedd.assembly.wales/mgConsultationDisplay.aspx?id=179&RPID=1008375631&cp=yes>

The Welsh Government's 30 Hours Offer is more far-reaching than Flying Start in terms of childcare. The Government has committed to offering 30 hours a week of free childcare to working parents of 3 or 4 year old children. The childcare will be offered for 48 weeks of the year. The 30 Hours Offer is a combination of early education time (Nursery Foundation Phase) and childcare. During term time (39 weeks), children who are 3 years old before September get at least 10 hours of early years education a week. The 30 Hours Offer will include an extra 20 hours of childcare in addition to this early years education, as well as 30 hours of childcare outside of term time (up to a total of 48 weeks).<sup>14</sup> The Government is piloting this plan in 7 local authorities, including specific areas in Anglesey, Gwynedd, Blaenau Gwent, Caerphilly, Flintshire, Rhondda Cynon Taf and Swansea.

Full details of the 30 Hours Offer continue to be developed, and they are likely to be modified as a result of the pilot scheme. If the full offer does come to fruition, however, it would lead to a significant increase in demand for formal childcare across Wales and, as a result, provide a timely opportunity to create new Welsh speakers in line with the vision for 2050. Despite being a positive opportunity to improve the position of the language, this offer is also likely to intensify challenges relating to the provision of Welsh medium childcare.

A recent report by the Welsh Government's Social Research department<sup>15</sup> was commissioned with the aim of mapping childcare provision in Wales against the possible demand for that provision as a result of the 30 Hours Offer. The comprehensive report provides a wide range of data along with very important strategic planning information for the 30 Hours Offer. Given that the Welsh Government has emphasised the importance of childcare and early years education to the vision for 2050, it is surprising that the report makes no mention of Welsh medium provision. Nonetheless, here are some key facts from the report which outline the availability of childcare in Wales in the context of potential demand as a result of the '30 Hours Offer'.

- There are 175,000 children aged 0-4 living in Wales, and there are around 80,000 childcare places.
- There are 115,000 children aged 0-4 with working parents, who are therefore likely to be using some form of childcare.
- There are 70,000 children aged 3-4 in Wales, and around 46,000 of these are currently eligible for the 30 Hours Offer.
- There are only 45,000 full childcare places (that would currently be able to offer 30 hours or more childcare a week) in Wales.
- If all full-time childcare places for children in Wales were earmarked for 3 and 4 year old children eligible for the 30 Hours Offer, more provision would still be needed. This does not take account of the likelihood that some of the places would be taken by some of the 69,000 children under the age of 3 with working parents. Some places could also be taken by older children (possibly after school or during school holidays).

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<sup>14</sup> These hours can vary slightly from one local authority to another. Some local authorities offer 15 hours of nursery education a week and, in this case, an additional 15 hours of childcare will be provided.

<sup>15</sup> Government Social Research, *Childcare capacity in Wales* (October 2017)

- It is likely that a significant number of the 46,000 children who will be eligible for the 30 Hours Offer are not currently receiving childcare. It is very likely that the majority of these will want to take advantage of the free childcare when the scheme is fully operational.
- It is likely that there will be an increase in demand for childcare in deprived areas in particular, where the offer could enable parents to look for work without having to worry about childcare costs.

Trying to estimate how much additional childcare will be needed as a result of the 30 Hours Offer is both complex and inconclusive. The Welsh Government's report includes detailed calculations in order to try to map capacity and availability and, although we must treat this data carefully, it is safe to say that there is a significant gap between current capacity and likely demand over the coming years. All of the evidence strongly suggests that there is a lack of places, and that far more childcare places will be needed when this scheme is rolled out across Wales.

### **Integrating the 30 Hours Offer with the vision for 2050**

The figures above show the general challenge that will likely arise as a result of the 30 Hours Offer, but no consideration has been given to the more specific challenges we are likely to face in the context of increasing Welsh medium provision. Despite the Government's commitment to creating 40 new nursery groups by 2021, this commitment, by itself, is not ambitious enough. Mudiad Meithrin's statistics<sup>16</sup> state that there is an average of 21 children in each of its nursery groups in Wales. Based on this average, 40 new nursery groups would create approximately 900 new Welsh medium places. Despite the fact that it is likely that these new nursery groups would provide more spaces than the above average<sup>17</sup>, the Government's recent report suggests that there is a need for tens of thousands of new places in order to meet the demand which is likely to be seen as a result of the 30 Hours Offer. It is unclear whether creating a total of 40 new nursery groups by 2021 will improve the current situation in terms of the percentage receiving Welsh medium childcare. Whilst such central strategies are part of the answer, it is clear that more detailed and ambitious planning is needed to ensure that local authorities and childcare providers shoulder some of the responsibility for increasing Welsh medium provision. There are several important questions that need answering if the Government really does want to see childcare making a significant contribution to the vision for a million speakers by 2050:

- What framework could be adopted to ensure effective collaboration between the Welsh Government, local authorities and childcare providers in order to increase Welsh medium provision?
- How could the Welsh Government's funding plans be used to ensure an increase in Welsh medium childcare provision? Mudiad Meithrin has received additional funding for 2018/19 and there are important questions about how

<sup>16</sup> Mudiad Meithrin, *Annual Report 2015-16*.

<sup>17</sup> Most of the current nursery groups consist of morning/afternoon sessional care whilst the 30 Hour Offer will require full daycare provision which will likely increase the numbers attending such nursery groups.

exactly this funding should be used and the role of the Welsh Government and local authorities in terms of this planning. Some local authorities use the Government's childcare grants to fund Mudiad Meithrin in their local area, whilst other authorities operate in different ways. There is little detail so far about the framework and processes for managing investment and planning at national and local levels.

- In relation to the point above, Mudiad Meithrin is the most notable Welsh medium childcare provider in Wales and it would be useful to hear the Welsh Government's plans in terms of the Mudiad's contribution to planning and provision at national and local levels. The Mudiad has already started mapping the position of each nursery group, with specific consideration being given to their ability to respond to, and provide for, the 30 Hours Offer. How will this feed into the action of the Government and specific local authorities?
- What information and data is needed to create an effective strategy to increase Welsh medium childcare provision? The recent Welsh Government report has provided information on general capacity, but the linguistic agenda also needs consideration.
- Welsh medium provision cannot be protected nor widened without securing a sufficient supply of staff with the appropriate language skills, as well as the correct expertise, to work in the sector. Although projects to increase the numbers of qualified Welsh medium staff in the sector (for example, the Cam wrth Gam scheme) have been successful, many members of staff are leaving their posts in nursery groups and the childcare sector due to low salaries compared with the salaries of classroom assistants in the primary education sector.
- Consideration needs to be given to the ways in which Welsh medium childcare provision can be promoted and facilitated, rather than simply meeting the demand.

To conclude, the Government has stated that increasing the numbers receiving Welsh medium childcare is essential in order to reach a million Welsh speakers by 2050. A recent Government report clearly shows that far more childcare provision will be needed over the coming years. There is no doubt, from reading Cymraeg 2050's work programme for 2017-2021, that the Government is aware of the importance of childcare and early years education in terms of its vision for 2050. It is, however, unclear how the Government intends to turn a general commitment to develop the sector into specific actions which will have an impact on the ground. Below are two more specific recommendations on ways of mitigating the challenges outlined above, and ensuring that the potential to integrate childcare policies with the vision for 2050 comes to fruition.



### 3.2. Childcare and Welsh in Education Strategic Plans (WESPs)

**Welsh in Education Strategic Plans (WESPs) could provide an extremely effective framework for coordinating the actions of the Welsh Government, local authorities and childcare providers. Specifying growth targets in the childcare sector as a specific outcome in WESPs would ensure that local childcare strategies are aligned with the government's national aspirations and targets for Welsh language provision. Growth in this sector would contribute significantly to increasing numbers across the Welsh medium education sector in the long term.**

Since publishing the Welsh Medium Education Strategy in 2010, local authorities have been required to prepare Welsh in Education Strategic Plans and submit them to the Welsh Government. The School Standards and Organisation (Wales) Act 2013 provided a statutory basis for those plans. Local authorities are required to plan a Welsh medium education strategy, including 7 specific outcomes, in order to increase and improve provision. Following a great deal of criticism about the strategic plans, Aled Roberts was asked to conduct an urgent review of the current system for planning Welsh medium education in Wales in March 2017. Like many other previous reports,<sup>18</sup> Aled Roberts' report is critical of many local authority plans and of the general governance and legislative system. According to the report, one clear shortcoming in the plans is the fact that there is no outcome relating to pre-statutory provision.

Currently, there is no specific outcome which requires local authorities to provide a plan, targets and specific criteria with regard to Welsh medium childcare. Although Cymraeg 2050's work programme for 2017-2021 states that WESPs should include plans to improve Welsh medium early years provision, it is not compulsory. As a result, very little attention is currently being paid to childcare in local authority plans. Requiring local authorities to include a clear and definite plan to increase the numbers receiving Welsh medium childcare and early years education would be beneficial for two main reasons.

1. WESPs have significant potential as a means of coordinating the actions of the Government, local authorities and providers. WESPs would provide an effective framework for the Government to ensure that sufficient local planning and action coexists with its national aspirations and targets. Although CSAs already require local authorities to undertake childcare planning and to consider the language of provision, there is no approval process relating to these reports. WESPs need to be approved by the Government in order to ensure their quality and authorities would therefore be accountable for the targets set. These local plans would also be an effective way of promoting and targeting the work of Mudiad Meithrin as the provider who is likely to develop the majority of new Welsh medium provision. It is likely that the

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<sup>18</sup> National Assembly for Wales: The Children, Young People and Education Committee, *Inquiry into Welsh in Education Strategic Plans* (December 2015); Estyn, *Local authority Welsh in Education Strategic Plans* (September 2016).

Government will expect the additional funding earmarked for the Mudiad to be used to reach its target of creating 40 new nursery groups by 2021. In order for this work to have the biggest possible impact in terms of creating new Welsh speakers, it is essential that local authorities are part of this planning process. The situation in terms of Welsh medium provision varies significantly from one area to another, and there are different requirements within and between areas. There is no one-size fits all solution, and local authorities will have the relevant information to prepare a plan and strategy that befits the local area. If local authority WESPs were to outline a clear plan for growth in Welsh medium childcare and early years education in the area, if there was a strong strategic relationship between the local authority and Mudiad Meithrin, and if the Mudiad received support and investment from the Government, then significant developments should be seen in the numbers of children receiving Welsh medium childcare. Reforming WESPs in accordance with Aled Roberts' recommendation would therefore be a positive way of addressing the challenges noted in 3.1 and would represent a substantial and tangible act on part of the Welsh Government.

2. Including a specific outcome for Welsh medium childcare provision in WESPs could lead to significant growth in numbers across the Welsh medium education sector. The current plans' first outcome relates to growth in the number of 7 year old children who are taught through the medium of Welsh. Given the evidence which shows the transition rates between childcare and Welsh medium primary education and the clear relationship between how early in life someone learns Welsh and their fluency at the end of the journey, it is surprising that there is no specific outcome on increasing the number of children receiving Welsh medium childcare and early years education. This is especially true given the fact that there is a fundamental problem with the current outcomes required by the WESPs framework. The majority of local authorities do not set targets for the number of 7 year old children who will be taught through the medium of Welsh. Instead, projections are noted based on the numbers in Yr2, Yr1 and reception class in the area. Local authorities, therefore, know the figures in terms of the number of 7 year old children who will be taught through the medium of Welsh for the next 3 years (the length of the current plans) because these children are already part of the Welsh medium education system. In order to set targets for growth rather than reporting facts, local authorities either need to be asked to prepare more long term plans or be required to set growth targets for pre-school years. Growth in the pre-school sector would have a significant influence on the numbers of 7 year old children in Welsh medium education in subsequent years. Ensuring large numbers across the Welsh medium statutory education system would subsequently be based on successful progression and transfer from one phase of education to another.

### 3.3. Collecting and recording data

**In order to produce effective national and local strategies, and to evaluate the impact and success of these strategies in the future, valid and reliable data is essential. The Welsh Government needs to take the lead in reforming the way childcare data is collected and shared in order to ensure that national and local plans and strategies are based on reliable information.**

The recent report by the 'Government Social Research' department<sup>19</sup> is striking and demonstrates how data could potentially be used as a way of informing government strategies. Unfortunately, no consideration was given to Welsh medium provision in this report, and data on Welsh medium provision is very poor in comparison. As discussed earlier (see 2.2 above), there is no effective framework for collecting reliable and valid information on Welsh medium childcare in Wales. Aled Roberts' recommendation to include a specific outcome in the WESPs on increasing pre-statutory Welsh medium provision, depends on the ability to collect and present reliable and valid data on this sector. Without reliable and valid data, there is no robust evidence base to inform Welsh Government and local authority decisions and strategies in terms of funding and planning improvements to the provision. Neither is it possible to assess the effectiveness of any operational strategies. The fact that this sector is not directly controlled by the Welsh Government and includes a wide range of different services makes this a difficult task.

Here is a summary of the main problems that need to be addressed:

**Reliability:** There exists problems with the consistency of data collection and presentation methods within and between local authorities. The aim of CSAs is that all local authorities provide a clear picture of the childcare sector in order to undertake effective planning for the future. Local authorities are required to use CSSIW self assessment data to complete their childcare sufficiency assessments. One problem in this regard is the self assessment completion rates, which means that the picture is incomplete. Another more fundamental problem is that local authorities often supplement CSSIW data with their own data. This can include data in the form of surveys or quantitative data collected by the local authority itself. The ways in which local authorities collect, interpret and present this additional data varies from one report to another and from one authority to another. CSSIW data and data presented in CSAs never correspond (even when taking self assessment response rates into account); many local authorities completely ignore statistics about the language of provision; some local authorities provide statistics on the language of childcare provision as one combined figure, whilst others only provide statistics on language according to the type of provider (childminders, nurseries etc). This makes the process of following trends over time and comparing different authorities complex, unclear and, in some cases, impossible.

Despite the introduction of a new process in 2016 in an attempt to ensure a more consistent and standardised method of preparing CSAs, reviewing the CSAs that have recently been submitted for 2017-2022 shows that fundamental problems still

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<sup>19</sup> Government Social Research, *Childcare capacity in Wales* (October 2017)

exist. For example, only data from 13 of the 22 local authorities can be used in figure 4 (above), either because the data is unavailable or because it has been presented in a way which makes it impossible to use. If the data collection method is inconsistent and unreliable, then the information will be invalid and it will not be possible to prepare or evaluate any plans and strategies for increasing and improving provision in this sector in a meaningful manner.

**Validity:** a very important factor in ensuring the quality of any data collected on childcare provision language patterns is the problem of categorisation. The Childcare Statutory Guidance defines 4 language categories:<sup>20</sup>

- a) Welsh medium setting
- b) Welsh and English medium setting
- c) English medium setting with some bilingual elements
- d) English medium setting

Here are the categories most frequently used in CSAs recently submitted by local authorities in 2017. However, as can be seen in figures 2 and 3, CSSIW's most recent data (25 September 2017), in the same way as its previous data, uses only three categories. This is very unclear given that the CSAs are meant to be based on CSSIW data in the first place.<sup>21</sup>

Beyond obvious problems with the consistency of the categories and the source of the data, there are questions about the validity of the self assessment process in terms of the language of provision. Research conducted by Arad on behalf of the Welsh Language Commissioner states that misinterpretation occurs on both sides, with settings describing themselves as Welsh medium and English medium settings when only one member of staff is able to say a few words in Welsh, and other settings which, to all intents and purposes, are Welsh medium or bilingual settings but are afraid to describe themselves as such as they feel uncomfortable about being able to prove that all their paperwork and correspondence is in Welsh.<sup>22</sup> In addition, it appears that the use of different language categories can have a significant impact on the process of self assessing the language of provision. For example, there are significant differences between figures 3 and 4 above and more detailed comparisons in specific areas are noted below:

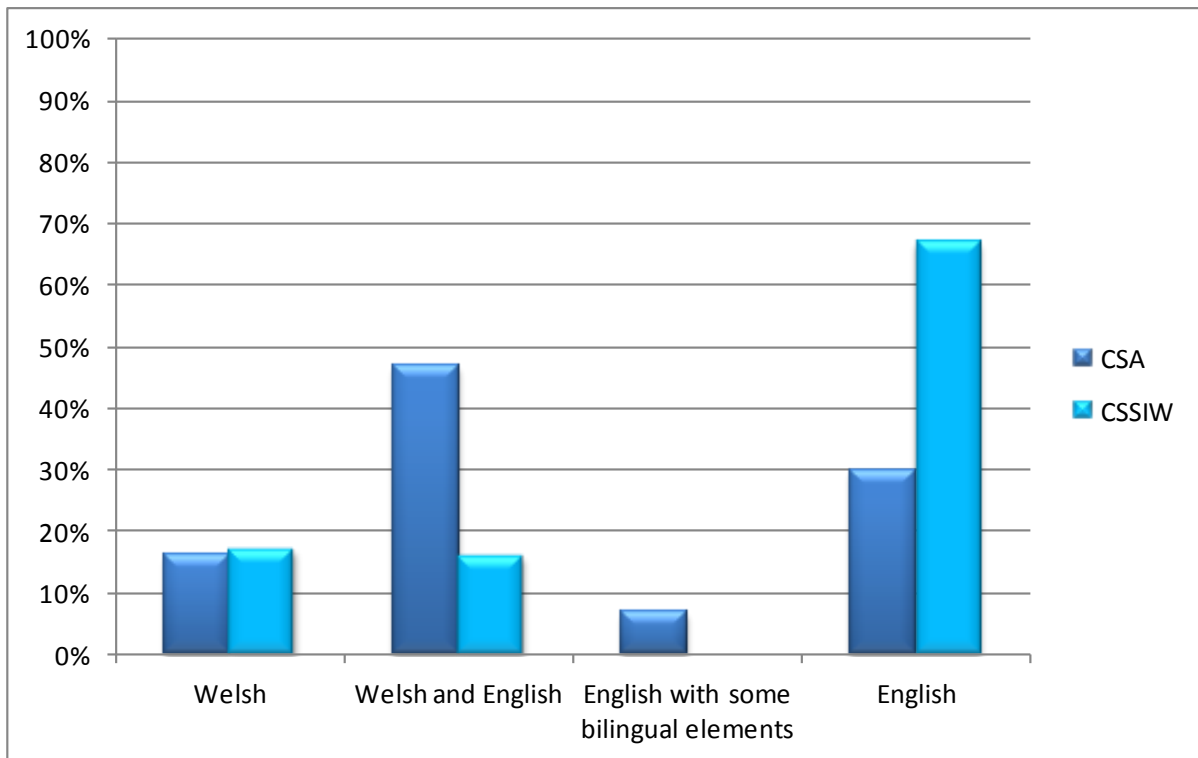
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<sup>20</sup> Welsh Government, *Childcare Statutory Guidance* (2016), p. 32.

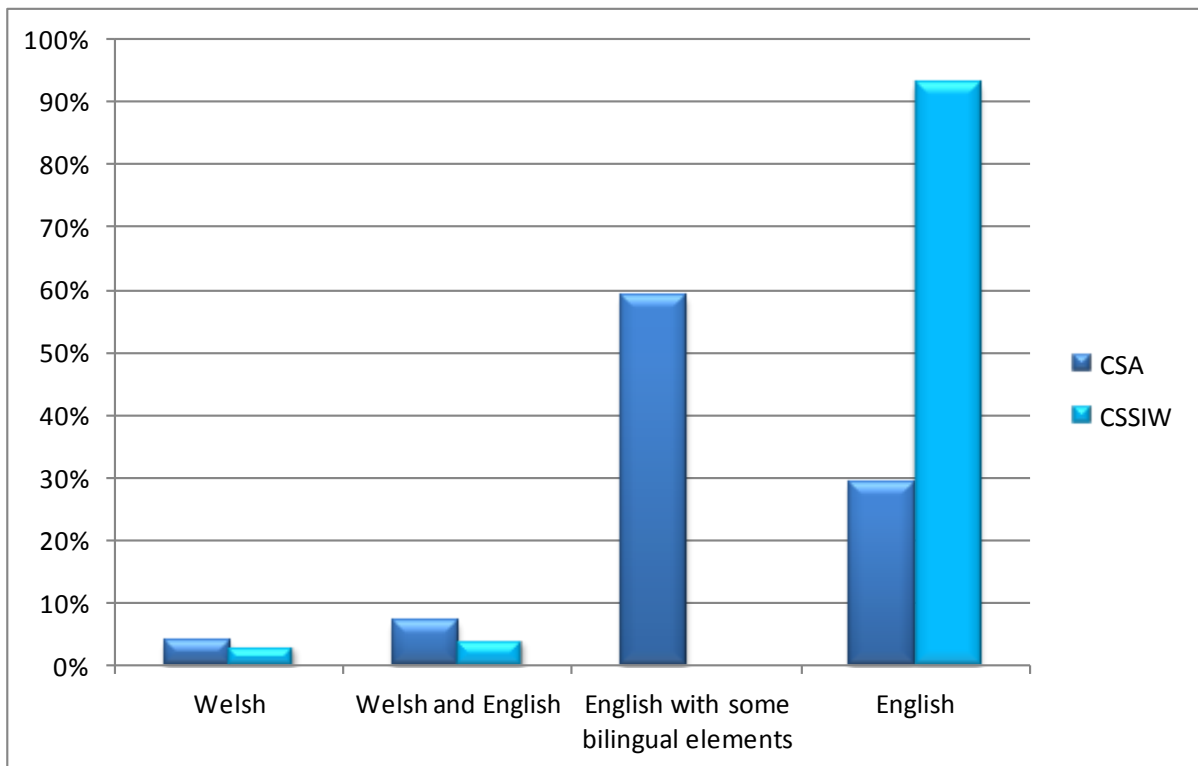
<sup>21</sup> All of the CSAs evaluated use 4 language categories and state that the data has come from CSSIW's SASS. In recent correspondence with the Commissioner, CSSIW stated that the SASS includes 3 language categories and that it is not aware of any data which includes 4 language categories.

<sup>22</sup> Arad, *Welsh Medium Childcare Provision for Pre-School Children* (March 2017).

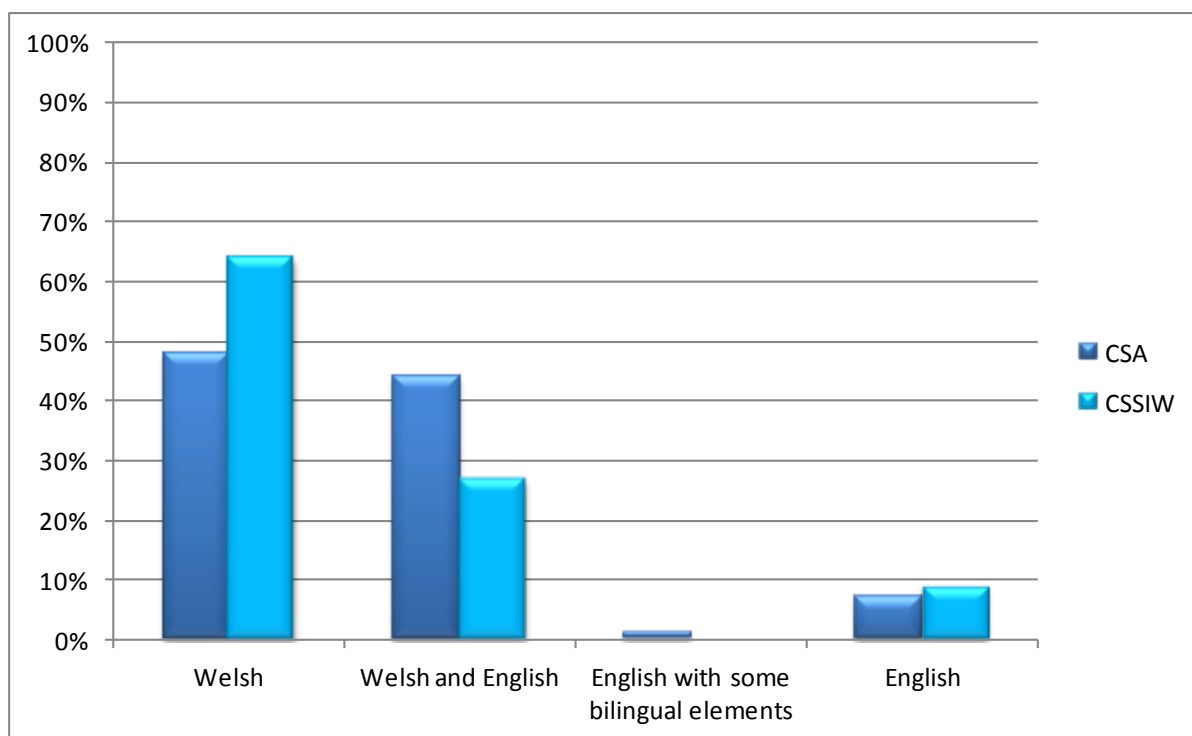
**Figure 6:** Comparison between CSSIW data (2017) and data collected from Denbighshire CSA 2017-2022.



**Figure 7:** Comparison between CSSIW data (2017) and data collected from the City and County of Swansea CSA 2017-2022.



**Figure 8:** Comparison between CSSIW data (2017) and data collected from Gwynedd CSA 2017-2022.



The data above shows that there are important questions to be answered about how the data is collected and interpreted and the subsequent findings i.e. concluding that the City and County of Swansea has moved from a situation where 95% of childcare was being provided in English to a situation where 60% of the provision is bilingual would be very misleading. It is fair to conclude, from looking at the data, that around 90% of childcare in Swansea is, to all intents and purposes, provided through the medium of English. It is important to be clear about this when describing the position of the language in the area, in terms of providing information to parents on the available provision and, more importantly, in terms of ensuring a valid evidence base to evaluate any previous strategies and plan new ones. It is impossible to avoid these problems completely, but it is important to consider and try to minimise the impact of these on the quality and accuracy of the data.

It appears that the most effective way of moving forward is to reform the current framework. The most comprehensive data on the sector is likely to be provided by CSSIW, and work should be undertaken with the organisation to improve the quality of self assessments and completion rates. Specific local authority data could be used to support CSSIW's data, but consistency is needed in terms of how this is done and how the data is presented. The Government has already tried to move in this direction, but it is obvious that further standardisation and management is needed. It appears, from looking at the recent report by the Government's Social Research

department<sup>23</sup>, that CSSIW and the Welsh Government have a wide range of detail and data on childcare in Wales. They also have the research expertise needed to collect, interpret and present this data in an effective way. In view of this, it is unclear why 22 local authorities need to be given raw data from CSSIW, before interpreting and presenting it themselves in the CSAs. It appears also that the Welsh Government and CSSIW could provide data on Welsh medium childcare at national and local levels. This data could be considered alongside the published report on childcare capacity and availability in Wales. It is clear that the Government already has the software and data, and it would just be a case of swapping or adding variables (for example, the availability and location of Welsh medium and bilingual provision, details on Welsh medium schools in the area, areas where the demand for childcare is likely to increase, and the numbers of children aged 0-4 in the area). Good quality data would provide a robust evidence base and enable local authorities to plan and evaluate the first outcome in their WESPs, namely increasing the number of children in Welsh medium childcare. It would also enable local authorities and the government to measure the success of these strategies in terms of increasing Welsh medium childcare provision.

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<sup>23</sup> Government Social Research, *Childcare capacity in Wales* (October 2017)

# Agenda Item 6.4

Rebecca Evans AM  
Y Gweinidog Tai ac Adfywio

Minister for Housing and Regeneration

Y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau  
Equality, Local Government and Communities Committee  
ELGC(5)-35-17 Papur 9 / Paper 9



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref MA – P/RE/3949/17

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8 November 2017

Dear John

Thank you for your letter, addressed to Carl Sargeant AM, as Cabinet Secretary for Communities and Children, regarding the Equality, Local Government and Communities Committee's inquiry into making the economy work for people on low incomes, and specifically relating to the role that welfare benefits play in supporting people on low incomes in Wales.

I am deeply concerned about the negative impact that the UK Government's welfare reforms are having on individuals, families and communities across Wales. I share the Committee's concerns regarding the devastating consequences that the roll out of Universal Credit is currently having on vulnerable people.

Thank you for sharing your letter of 11 October to the Rt Hon David Gauke MP, the Secretary of State for Work and Pensions, setting out the Committee's concerns and calling for a pause to the roll out of Universal Credit allowing time for operational issues to be addressed. Carl Sargeant AM, as Cabinet Secretary for Communities and Children wrote on the 6 October to the Secretary of State for Work and Pensions, copying in the Secretary of State for Wales, calling for a pause to the accelerated roll out of Universal Credit in Wales. In the Secretary of State's response he confirmed his announcement of 2 October to continue the roll out of Universal Credit.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



Local Authorities, where Universal Credit full service is already in operation, are continuing to see increases in rent arrears for many tenants. This is causing or exacerbating debt problems for those in most need of support, and has serious consequences for people who may face eviction as a result of not having any money to pay their rent. As a matter of urgency the UK Government needs to address the financial difficulties being experienced by claimants transitioning to Universal Credit, by significantly reducing the waiting times for a first payment, getting rid of the 7 day waiting period and ensuring that the default position for those with housing costs is for them to be paid directly to their landlord.


I recognise that the Secretary of State for Work and Pensions has offered claimants an advance payment of up to 50%, or same day for those people most in need, however this is not sustainable as a permanent solution for vulnerable claimants who might already now be in debt, and this loan could well plunge them further into the abyss of debt.

I wrote to the Secretary of State for Work and Pensions on 7 November calling for a halt to the roll out of Universal Credit in Wales, and seeking assurances that he will put in place a better solution to eliminate the financial difficulties which the system is currently creating.

In your letter, you make reference to the Welsh Government's Ministerial Task and Finish Group on Welfare Reform who commissioned research on the impact of the UK Government's welfare reforms in Wales. You refer to a publication in November 2014. Since then, we have published two reports as part of this research programme, one in September 2015 and the other in November 2015. These reports can be accessed via the following webpage: <http://gov.wales/topics/people-and-communities/welfare-reform-in-wales/analysing-reforms/?lang=en>. The direct links to the two reports are: <http://gov.wales/docs/dsjlg/publications/150918-welfare-reform-en.pdf> <https://www.ifs.org.uk/publications/8053>.

Since November 2015, the Welsh Government has continued to analyse and monitor research and statistics on the impact of the UK Government's welfare reforms in Wales. The table attached (**Annex A**) summarises our latest analysis of the key welfare reforms, including Universal Credit. We will publish a similar summary update on the Welsh Government's website by the end of the year, along with a recent paper we have produced on the potential impact of the change to housing support under Universal Credit for 18 to 21 year olds. In addition, the 2017-2018 National Survey for Wales will include questions on changes to the benefits system, and we are also looking to include questions on this topic in the 2018-2019 National Survey. The headline results from the whole 2017-2018 National Survey will be published by the end of June 2018. I will send you the links to the relevant National Survey documents upon publication.

Yours sincerely



**Rebecca Evans AC/AM**  
Y Gweinidog Tai ac Adfywio  
Minister for Housing and Regeneration

## Annex A – Estimated impact of UK government’s welfare reforms in Wales

Reform	Date of introduction	Impact
Introduction of Personal Independence Payment (PIP)	<p>June 2013 for new claimants in Wales and from October 2013 for those in receipt of DLA</p> <p>Currently expected to be fully rolled out by October 2018</p>	<p>PIP has been gradually replacing Disability Living Allowance (DLA) since 2013. The expected completion date for the rollout of PIP is October 2018. DWP statistics show at the end of July 2017, 114,520 people in Wales had a PIP claim in payment, an increase of 8,380 (or 8%) on the previous quarterly figure (April 2017). Of these claims in payment, 64,130 were reassessment claims from DLA, which is equivalent to 56% of the total PIP caseload (48% in Great Britain). In February 2017, there were 53,360 DLA claimants in Wales.</p> <p>Initially PIP was expected to lead to a 20% fall in caseload and spending by 2015-16 compared to DLA. However, as noted by the Institute for Fiscal Studies (IFS)<sup>1</sup>, this fall in caseload has not materialised. The caseload for disability benefits is now expected to rise by 3% between 2014-15 and 2017–18. This, along with a higher number of individuals receiving the enhanced PIP rates than originally expected, means that spending on disability benefits continues to grow strongly in real terms, contrary to previous forecasts.</p>
Rollout of Universal Credit (UC)	<p>From April 2014 (in Wales)</p> <p>Currently expected to be fully rolled out by March 2022</p>	<p>The rollout of UC is in its early stages. DWP statistics show there were around 21,500 households on UC in Wales in June 2017 (with 13,900 or 64% receiving a UC payment). We estimate this is around 5% of all households that would be on UC at full rollout. The average amount of UC paid to households in Wales was £380 per month, and 94% of UC awards were paid to single people without children. Of the 5,450 households in Wales receiving a payment of UC with entitlement to support for housing costs, 20% had their housing costs paid directly to a landlord (via an Alternative Payment Arrangement).</p> <p>DWP monthly statistics on the number of people on UC are more up-to-date than the biannual household statistics. The number of people on UC in Wales rose to 24,100 in September 2017, which is a 3% increase from last month. Of these, 9,120 (38%) were in employment. The number of people on UC in Wales is equivalent to 4% of the total in Great Britain (609,900).</p> <p>IFS analysis shows there are winners and losers of UC. In terms of impacts on income, working lone parents and two-earner couples are relatively likely to lose, and one-earner couples with children are relatively likely to gain. Overall, UC is less generous, on average, than the system it is replacing. However, the estimated effect on take-up means UC is actually estimated to increase benefit receipt in 2021. The transition to UC is expected to reduce overall absolute poverty in Wales in 2019-21, but this is more than outweighed by projected increases in poverty from other welfare reforms<sup>2</sup>. Although IFS analysis shows that UC strengthens the financial incentive for couples with children to have one adult in work rather than none, it weakens the incentive for both parents to work. It also weakens the incentive for single parents to be in work.</p>

<sup>1</sup> <https://www.ifs.org.uk/publications/9106>

<sup>2</sup> <https://www.ifs.org.uk/publications/8053>; <https://www.ifs.org.uk/publications/8136>; <https://www.ifs.org.uk/publications/10028>

## Annex A – Estimated impact of UK government’s welfare reforms in Wales

Reform	Date of introduction	Impact
Rollout of UC cont...	From April 2014 (in Wales)  Currently expected to be fully rolled out by March 2022	Recently updated DWP analysis <sup>3</sup> suggests UC is having a positive labour market effect on the limited group covered by the analysis (single unemployed claimants without children). In particular, it suggests new UC claimants are more likely to have moved into work after making a new claim than a matched sample of Jobseeker’s Allowance (JSA) claimants. However, it is not possible to draw firm conclusions from this early limited analysis about the impact of UC when it’s fully in place. Other evidence (e.g. Citizens Advice, Work and Pensions Select Committee, and the Equality, Local Government and Communities Committee) highlights numerous issues with the implementation of UC, in particular the full service. Examples of some of these issues are a lack of awareness for UC claimants of access to advance payments of up to 50%, a wait of six weeks or more for some for their first payment, and increased debt and rent arrears. We will continue to monitor the implementation of UC, and any other emerging issues.
Freeze most working-age benefits, tax credits and Local Housing Allowances	April 2016 (for four years)	As reported by the IFS <sup>4</sup> , this freeze is now expected to reduce entitlements in 2019–20 by an average of £450 per year for the 10.5 million households affected in the UK (saving the UK Exchequer £4.6 billion). When the policy was first announced, the expected average loss among the losing households was £320 per year (saving the UK Exchequer £3.4 billion). The difference is because inflation over the 4 years is now expected to come in higher than was anticipated at the time.
Reduction of UC work allowances	April 2016	The IFS estimate <sup>5</sup> this will reduce spending by £3.4 billion in 2020-21, with three million working families losing an average of around £1,000 per year. Although the very poorest are protected, this weakens the incentive for families to have someone in work. The cut to the taper rate provides only partial compensation.
Remove family element in tax credits and UC, and the family premium in Housing Benefit, for new claims	April 2016 for Housing Benefit  April 2017 for tax credits and UC	First children born on or after 6 <sup>th</sup> April 2017 will no longer receive the extra £545 paid through the family element. Similar changes were made to Housing Benefit by removing the family premium for children born, or claims made, after April 2016. Losses are notional <sup>6</sup> so there will be no cash losers, and there are exemptions in place. This change is expected to save the UK Exchequer £2 billion a year in the long run, and affect around 4 million families in the UK <sup>7</sup> . We estimate around 200,000 families in Wales will be affected in the longer term <sup>8</sup> .

<sup>3</sup> <https://www.gov.uk/government/publications/universal-credit-employment-impact-analysis-update>

<sup>4</sup> <https://www.ifs.org.uk/publications/9993>

<sup>5</sup> [https://www.ifs.org.uk/uploads/publications/budgets/Budgets%202015/Summer/Hood\\_distributonal\\_analysis.pdf](https://www.ifs.org.uk/uploads/publications/budgets/Budgets%202015/Summer/Hood_distributonal_analysis.pdf)

<sup>6</sup> A measure of the entitlement claimants would have been eligible for had the policy not been changed, rather than losing income they had already been receiving.

<sup>7</sup> <https://www.ifs.org.uk/publications/9117>

<sup>8</sup> Welsh Government estimate based on the 2014-15 stock of families in receipt of Child Tax Credits as a proxy for the affected population.

<https://www.gov.uk/government/statistics/personal-tax-credits-finalised-award-statistics-geographical-statistics-2014-to-2015>

## Annex A – Estimated impact of UK government’s welfare reforms in Wales

Reform	Date of introduction	Impact
Reduce household benefit cap to £20,000 in Wales	Gradually rolled out between November 2016 – January 2017	Since November 2016, the household benefit cap was cut from £26,000 to £20,000 (or £18,200 to £13,400 for single adults without children) in Wales. DWP statistics show 3,230 households in Wales (68,080 households in Great Britain) had their benefits capped in May 2017, compared to 580 households in October 2016 (19,100 households in Great Britain), just before the benefit cap was reduced. The average reduction in entitlement was £54 per week in Wales in May 2017, with 70% of those affected being single with child dependant(s).
Limit child element of tax credits and UC to two children	April 2017	The IFS estimate the policy to limit the child element of tax credits and UC to two children will save the UK Exchequer around £3 billion a year in the long run, with 900,000 families affected in the UK. There are a number of exemptions to this policy. Three and four child families will get around £2,500 or £7,000 less a year respectively <sup>9</sup> . In the long run, we estimate around 40,000 families in Wales will be affected. As this cut only applies to new births and new claims, this represents a notional loss. The IFS <sup>10</sup> estimate this cut will increase the overall absolute poverty rate in Wales by 0.6 percentage points in 2019-21.
Align Work-Related Activity Group (WRAG) rate with JSA for new claims	April 2017	Since April 2017, Employment and Support Allowance payments (and the UC Limited Capability for Work element) for new claims from those deemed able to carry out work-related activities (i.e. those in the WRAG) have been aligned with JSA and the standard rate of UC. DWP estimate 500,000 families in Great Britain will be affected in the longer term, using the stock of WRAG claimants as a proxy for the affected population <sup>11</sup> . Using equivalent data for Wales, we estimate around 35,000 affected claimants will be in Wales. The notional loss for those affected will be around £29 a week, saving the UK Exchequer around £650 million a year in the long run. From April 2017, DWP put in place a number of measures to support ESA claimants in the WRAG and in the UC Limited Capability for Work group to get into employment, as set out within the ‘Improving Lives: Work, Health and Disability Green Paper’.
Changes to UC housing support for 18-21 year olds	April 2017	A DWP Equality Impact Assessment <sup>12</sup> estimates around 1,000 people in Great Britain will be affected by the change to UC housing support for 18-21 year olds in 2017-18, rising to 11,000 by 2020-21. Following our request of estimates for Wales, we know DWP estimate claimants in Wales represent around 5% of the total caseload in Great Britain, which means there will be around 500 affected claimants in Wales by 2020-21. We have also undertaken our own analysis of the potential impact of this change, and estimate around 650 people in Wales will be affected in the long-run, which is similar to DWP’s estimate. Economic conditions (e.g. the labour market) and demographic factors, amongst other factors, will play a role in the number of people affected by this policy. Our full analysis is available on request.

<sup>9</sup> <https://www.ifs.org.uk/publications/9117>

<sup>10</sup> <https://www.ifs.org.uk/publications/10028>

<sup>11</sup> <http://www.parliament.uk/documents/impact-assessments/IA15-006B.pdf>

<sup>12</sup> <https://www.insidehousing.co.uk/news/news/up-to-11000-affected-by-under-21-benefit-cap-by-2021-50306>

## Annex A – Estimated impact of UK government’s welfare reforms in Wales

Reform	Date of introduction	Impact
UC parent conditionality from when a youngest child turns 3	September 2017	Since September 2017, parents within the welfare benefits system with a youngest child aged 3 or over (reduced from 5 or over), who are able to work, have been expected to look for work. When their youngest child turns 2, they are expected to prepare for work. DWP estimate this measure will affect around 220,000 responsible carers claiming UC in Great Britain with a youngest child aged 3 or 4, with over 75% of these being lone parents <sup>13</sup> . We expect around 8,000 lone parents in Wales to be affected by this measure <sup>14</sup> .
Total impact of tax and benefit changes	2015-16 – 2019-20  (For modelling purposes, it is assumed UC is fully rolled out by this date)	<p>IFS analysis<sup>15</sup> for the Welsh Government shows households in Wales would lose 1.6% of their net income on average (or around £460 a year) if all of the tax and benefit reforms planned to be introduced by the previous UK government between 2015-16 and 2019-20 are implemented. This is equivalent to £600 million a year in Wales as a whole. Some of these reforms have already been introduced in the last couple of years. We await information in the Autumn Budget 2017 on the current UK government’s tax and benefit policies.</p> <p>If the same policies go ahead, lower-income households, particularly those with children, would lose considerably more on average (around 12% of net income). Large families would be particularly hard hit losing around £7,750 a year or 20% of net income on average. Households containing a disabled person lose significantly more than those without, on average (2.4% or £618 versus or 0.9% or £272 a year). Recent IFS analysis<sup>16</sup> projects that absolute child poverty in Wales will increase by nearly 7 percentage points between 2013-15 and 2019-21, the largest increase out of all UK countries and English regions. This is driven by the UK government’s welfare benefit changes, such as the limiting of tax credits and UC to two children, and the freeze to most working-age benefits. The planned UK government’s tax and benefit reforms account for nearly 4 percentage points, or around 60 per cent, of the increase in absolute child poverty in Wales over this period.</p>

<sup>13</sup> <http://www.parliament.uk/documents/impact-assessments/IA15-006A.pdf>

<sup>14</sup> <https://www.gov.uk/government/statistics/income-support-for-lone-parents-by-jobcentre-plus-district-and-age-of-youngest-child>

<sup>15</sup> <https://www.ifs.org.uk/publications/8053>

<sup>16</sup> <https://www.ifs.org.uk/publications/10028>



**Independent Review Service for Customer Complaints**

**ICRS ANNUAL REPORT**

**FOR THE PUBLIC SERVICES OMBUDSMAN FOR WALES**

**2016 - 2017**

**Fair, Impartial, Independent**

## Introduction

ICRS is the independent complaints review service for the PSOW. We were appointed to act as the Independent Review Service for Customer Complaints (IRSCC) from 1 December 2015 to provide a fair and impartial, independent service for the review of complaints made about the service provided by PSOW and their response to complaints. This report outlines the activities of the office during the last year and gives examples of complaints referred to us. It also explains how ICRS can make a meaningful contribution to improving customer service and experience.

Our role is to review individual complaints and settle matters by agreement or adjudication. Where appropriate, we can recommend that PSOW takes action to put things right for individuals or to improve the future quality of service. PSOW is committed to implementing our recommendations wherever practicable. This year we received only five referrals but two further referrals received last year were concluded.

When we receive complaints our first task is to assess whether or not they meet the criteria for acceptance. Our published literature makes it clear that we cannot accept complaints unless and until people have tried to settle matters through PSOW's internal complaints procedure. Further our remit is limited to dealing with complaints about process and customer service and we are unable to respond to complaints about decisions taken by PSOW in line with its statutory responsibilities. PSOW has an internal review process which facilitates a reconsideration of decisions, following which they can only be challenged through the courts by way of judicial review.

It is fair to say that people unhappy with decisions taken by PSOW often see this as a service complaint about the way that the Ombudsman has responded to the concerns they have raised about an organisation within PSOW's remit. This year all of our complaint referrals fell into this category and so, having identified this, we were unable to take these complaints forward. Nevertheless, contact with ICRS may still help people to understand what has happened and to move forward, as we can offer a balanced and informed view of whether PSOW has followed procedures and adhered to the standards to be expected.

The introduction of an independent complaint review process demonstrates the Ombudsman's wish to be open and accountable in relation to its process and actions. PSOW is keen to learn from its complaints and feedback, which can act as a catalyst for change and improvement. We hope to support PSOW in this effort in the coming year.

Jodi Berg OBE

## The ICRS service

ICRS aims to achieve impartial and fair settlement of complaints, and to make a positive difference for PSOW and the public now and in the future. If people are dissatisfied with the PSOW's final response to their complaint, they can refer it to ICRS at no cost to them. Our remit is to look into complaints about maladministration, or how PSOW has handled things.

There are limitations on our role:

- ICRS can only investigate a complaint after PSOW's internal complaints process has been concluded
- we are only able to investigate complaints about the conduct of PSOW for example about delay, discourtesy or inefficiency
- we cannot investigate complaints about decisions
- we cannot investigate complaints against organisations within PSOW's remit

Complainants can refer their complaint to ICRS via PSOW or directly. If the internal complaints process has been completed, we ask PSOW for the information so that we can consider the issues. Before embarking on a full review we will always explore the possibility of resolution by agreement between the complainant and the PSOW. If resolution is not possible, and the complaint falls within our remit, ICRS will carry out a review unless it appears, in all the circumstances, that this would be unreasonable or disproportionate.

If a complaint is upheld or we identify other concerns, we will make recommendations to PSOW, either for specific redress, such as an apology, or for improvements to its systems and processes to reduce the risk of similar complaints arising in the future. Our aim is to bring matters to a final close for both the complainant and PSOW. We may not be able to give a complainant the result they want, but we always try to understand their perspective and ensure that they end up with a better understanding of what happened in their case and why. ICRS is also able to offer people advice and assistance to help them to resolve matters informally or to explain how they can take forward their complaints in the appropriate way.

ICRS welcomes customer feedback and complaints as an essential part of helping us to improve our own service. All complaints are taken seriously and responded to quickly by an ICRS Reviewer who has not dealt with the complaint previously. We do our utmost to provide a good service and, where reviews are undertaken, to provide a comprehensive and just report.

## Facts & Figures

The following statistics show the number of referrals received during the last year, including information on the number of complaints closed in the year.

### Statistics - Cases Received

Only 5 cases were referred to ICRS during the reporting year and 2 more received in the previous year were concluded. To date we have been unable to accept any cases for review because they did not fall within our remit. This year our referrals were about decisions taken by PSOW. Nevertheless, our responses to complainants reflect knowledge and expertise within ICRS in relation to the way in which PSOW works and its own internal procedures, and also clarity as to what we can do to help complainants.



## **Response to recommendations arising from an overview of referrals**

Last year we recommended that PSOW should:

- Provide clarity regarding the role and limits of internal complaints and review processes and possible routes forward at the beginning of the process.
- Ensure that the option of referring complainants to ICRS is explained in all final complaint responses with a brief explanation of the limitations of the service

We are pleased to report that it is clear from correspondence reviewed in the current year that PSOW has taken this feedback on board and has been clear about process in all its responses and, as a result, complaints have not been referred prematurely, although people have known how to take matters forward when needed.

## **Key Themes**

### **Dissatisfaction with PSOW decisions**

It is inevitable that not every complainant will be satisfied by the outcome of their referral to PSOW. Where there is a complaint about a public service, most people would naturally wish PSOW to understand their perspective on the matter and agree with them that what has happened to them amounts to maladministration. If this is not possible complaints against PSOW may then arise because people take the view that if their complaint has not been upheld, it is because of some failing on the part of PSOW. This is also true in some cases where PSOW decides not to undertake a comprehensive investigation because a complaint does not reflect maladministration on the part of the organisation concerned. In this situation, providing an explanation of why this is the case to aggrieved complainants can frequently be very difficult and can be assisted by clear information about how PSOW's assessment process works.

This year our referrals included:

- Concerns raised by a member of the public dissatisfied with PSOW's decision not to investigate their complaint about the service received from a GP Practice and with the Practice's decision to remove them from their practice register
- A complaint about PSOW's decision not to take forward a complaint about reported discourtesy on the part of a local council's employees towards the complainant
- Concerns raised about PSOW's decision not to reopen historic complaints about the Welsh Assembly Government, a local council and a local health board

### **Costs**

The cost of the service provided by ICRS in the reporting period was £1687.50 plus VAT. This inclusive figure covered complaint review, the provision of general advice and assistance to complainants and visits to PSOW. We keep administrative costs to an absolute minimum, and focus resources on complaint investigation and overview functions. The service cost reflects our determination to deliver value for money.