

# Agenda – Equality, Local Government and Communities Committee

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Meeting Venue:

Committee Room 3 – Senedd

Meeting date: 25 January 2018

Meeting time: 09.00

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Pre-meeting (09.00 – 09.15)

**1 Introductions, apologies, substitutions and declarations of interest**

**2 Inquiry into poverty in Wales: making the economy work for people on low incomes – evidence session 11**

(09.15 – 10.45)

(Pages 1 – 71)

Ken Skates AM, Cabinet Secretary for Economy and Transport

Eluned Morgan AM, Minister for Welsh Language and Lifelong Learning

Marcella Maxwell, Deputy Director for Organisational Development & Change Programme, Welsh Government

Maureen Howell, Deputy Director, Equality and Prosperity, Welsh Government

Rachel Garside-Jones, Acting Deputy Director, Skills, Employability and EU Funding, Welsh Government

**3 Motion under Standing Order 17.42 (vi) to resolve to exclude the public from items 4, 8, 9 and 10 of the meeting**

**4 Inquiry into poverty in Wales: making the economy work for people on low incomes – discussion of evidence received under item 2**

(10.45 – 10.55)



Break (10.55 – 11.00)

**5 Public Services Ombudsman (Wales) Bill: evidence session 11 – financial scrutiny**

(11.00 – 12.00)

(Pages 72 – 116)

Simon Thomas AM, Member in Charge

Gareth Howells, Legal Services, Assembly Commission

Joanne McCarthy, Research Service, Assembly Commission

Lunch (12.00 – 12.30)

**6 Public Services Ombudsman (Wales) Bill: evidence session 12 – scrutiny of general principles**

(12.30 – 14.00)

(Pages 117 – 137)

Simon Thomas AM, Member in Charge

Gareth Howells, Legal Services, Assembly Commission

Joanne McCarthy, Research Service, Assembly Commission

**7 Paper(s) to note**

**7.1 Letter from Simon Thomas AM in relation to the Public Services Ombudsman (Wales) Bill**

(Pages 138 – 165)

**7.2 Letter from the Cabinet Secretary for Finance in relation to the Public Services Ombudsman (Wales) Bill**

(Pages 166 – 167)

**7.3 Additional information from Citizens Advice Bureau in relation to the Public Services Ombudsman (Wales) Bill**

(Pages 168 – 170)

**7.4 Response from the Welsh Government to the report on the draft budget 2018–19**

(Pages 171 – 187)

- 8 Public Services Ombudsman (Wales) Bill: consideration of key issues**  
(14.00 – 14.45)
- 9 Consideration of the draft report on the Legislative Consent Memorandum: Financial Guidance and Claims Bill**  
(14.45 – 14.50) (Pages 188 – 193)
- 10 Inquiry into pregnancy, maternity and work in Wales: consideration of scope and approach**  
(14.50 – 15.00) (Pages 194 – 199)

Document is Restricted

1. The purpose of this paper is to provide written evidence to the Equality, Local Government and Communities Committee on their inquiry into *Making the economy work for people on low incomes*. This paper gives an overview of how the Welsh Government's National Strategy, Economic Action Plan and forthcoming Employability Plan can address poverty in Wales.

### **Prosperity for All**

2. Increasing prosperity and supporting a strong economy that generates sustainable employment opportunities that are accessible to all are fundamental to tackling poverty. This is not just about material wealth. It is about every one of us having a good quality of life and living in strong, safe communities with well paid jobs, household incomes and productivity levels.
3. The National Strategy provides a framework for our whole-government approach to increasing prosperity and addressing the root causes of poverty in a more effective, joined-up way.
4. It sets out how we will drive a Welsh economy which spreads opportunity and tackles inequality; how we will improve health and wellbeing; how we will support people to achieve their potential and how we will develop those vital links that will help Wales as a nation and as a people to prosper.
5. The Strategy identifies five priority areas which have the greatest potential contribution to long-term prosperity and well-being. These are Early Years, Housing, Social Care, Mental Health and Skills and Employability. This will mean giving every child the best start in life, building resilient communities and providing safe warm homes and taking action to ensure wellbeing across the life course. The strategy will be driven by a focus on raising skills levels, ensuring sustainable employment and spreading the benefits of economic growth as widely as possible.
6. More households in Wales have a home that is safe, warm and secure. Recent statistics show improvements in the quality of social housing. 86% of all social housing dwellings met the Welsh Housing Quality Standard (WHQS) by March 31st 2017, which is a rise of seven percentage points on the previous year.

### **Economic Action Plan**

7. To support Prosperity for All: the national strategy, and provide further detail on how we will implement our commitments, our Economic Action Plan was published in December 2017.
8. The Plan is wide-ranging and takes a cross-Government view. It draws on our levers across Government to grow our economy, spread opportunity, and promote well-being. It drives the twin goals of growing the economy and reducing inequality. It sets out a range of ambitious proposals that commit the Government to a major shift in policy direction in a number of key areas, mobilised around a common purpose to work with business and others to build resilience and future-proof the Welsh economy.

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9. The people of Wales are a central focus of the interventions throughout the Plan. It sets out a number of key changes to our approach to economic development, all of which have the potential to support prosperity for all and inclusive growth.
10. The Economic Contract is the centrepiece of our new approach, and frames the reciprocal relationship between Government and business to drive public investment with a social purpose. We will apply the Economic Contract to our direct financial support to business, and will explore extending the contract to include our wider offer to business and the adoption of these principles by the rest of the public sector in Wales. The Economic Contract will require businesses seeking investment to demonstrate that, amongst other things, they are promoting fair work and health, skills and learning in the workplace.
11. The Plan includes a commitment to work with businesses to overcome the key challenges of the future by changing our primary support mechanisms to focus on five Calls to Action. These include a focus on high quality employment, skills development and fair work, to improve our skills base and ensure work is fairly rewarded.
12. The Plan recognises the important economic and social role of foundation sectors such as care, tourism, food and retail. These sectors provide essential goods and services and are the backbone of many local communities. The Plan targets support at these sectors, to understand the challenges they face and the opportunities for growth and innovation. Strengthening these sectors will help build resilient communities in all parts of Wales, helping deliver our vision of inclusive growth.
13. The regionally focused model of economic development set out in the Plan will help tailor our delivery to the specific challenges and opportunities of different parts of Wales. This approach will allow us to work with partners to capitalise on local growth opportunities, tailor activities to the bespoke needs of regions and promote a more even distribution of growth.
14. In developing Prosperity for All, our national strategy, we recognised five areas which emerged as having the greatest potential contribution to long-term prosperity and well-being, namely early years, housing, social care, mental health, skills and employability. The Economic Action Plan contributes to all five of these areas. In particular, the focus on the care sector as a foundation sector will support capacity and capability in the sector and allow us to respond to its bespoke challenges and opportunities. In addition, the focus on health, including mental health, through the Economic Contract will include supporting employee assistance initiatives that address adverse factors affecting health and well-being.
15. The First Minister has already stated the Welsh Government's ambition to make Wales a Fair Work nation where everyone can access better jobs closer to home, where people can develop their skills and careers and where we can all expect decent, life enhancing work without exploitation or poverty.
16. We have established a Fair Work Board which as its first task is exploring a clear definition of fair work as well as identifying the levers through we can encourage more fair work outcomes from public spending and procurement practice in Wales. The

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output of the Fair Work Board will be an important element of our new Economic Contract which will provide the foundation for the new conditions we will place on those that are in receipt of public funding.

**Transport**

17. Transport plays a vital role in driving Wales' economic competitiveness, connecting people, communities and business to jobs, facilities and markets. Our focus is to provide a sustainable, multimodal and integrated transport system which enables our communities to be united and to prosper, providing access for all our people to the opportunities they need to live healthy, sustainable and fulfilling lives.
18. We continue to provide substantial funding in support of Wales's bus network. Through Bus Services Support Grant we have allocated £25m to local authorities for 2017-18 to help them to subsidise a range of bus and community transport services throughout Wales. Those are services which would not run without public funding.
19. We are currently consulting on a discounted bus travel scheme for younger persons, building upon the success of the scheme we introduced in September 2015. The aim of the consultation is to see how the existing offer of one-third discounts to all 16 to 18 year olds could be improved, and potentially extended. The consultation closed on 4 January.
20. The Welsh Government has undertaken a policy discussion with bus operators, local authorities and passenger groups in Wales, to develop proposals on how best local bus services can be developed as part of an integrated public transport system in Wales. The consultation started on 8 March and ended on 31 May 2017. An outcome report was published in August 2017. A further detailed consultation will take place in the Spring of 2018 on detailed proposals.
21. The Concessionary Bus Travel Scheme is hugely popular, with more than 750,000 passholders resident in Wales who need not worry about the cost of using the bus to access employment, education, social events, training, medical appointments and any other journey purposes.
22. Within Wales 74% of free bus journeys are undertaken by older people, with slightly less than a quarter of those journeys at "peak" travel times. Travel by pass holders accounts for 46% of all bus journeys undertaken on local buses in Wales (about 45m), more than in Scotland (36%) and England (34%).
23. A public consultation about future arrangements to maintain free bus travel for older people, disabled people and some injured service veterans began on 10 October 2017 and will run until 12 January 2018. This builds on the public consultation held earlier in 2017 about how we can better plan and deliver local bus services, as part of an integrated public transport system well into the future.
24. The Welsh Government is committed to ensuring that our scheme continues to meet the needs of the people of Wales, is affordable and continues to contribute to our goals of creating a united and connected society.

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25. We are also testing the appeal and challenges of free weekend travel for everyone on our extensive TrawsCymru longer-distance bus network. The aim is to see how people react to the offer of free travel, including the extent to which it attracts new passengers to the bus network.

**City Regions**

26. Our City Regions recognise, not only that cities must be drivers of growth, but that prosperity must be shared across the wider regions. They are emphasising connectivity and skills as core priorities. These priorities are an enabler of growth and are fundamental in facilitating inclusive access to jobs and opportunities.

**Business support**

27. Wide-ranging support is available for entrepreneurs, small and medium businesses across Wales through our Business Wales Service including access to finance. In its first three years of operation, Business Wales helped create 14,000 jobs, safeguard 3,500 jobs and create 9,600 new businesses. Advice was given to over 25,000 SMEs and information was provided to 53,000 SMEs. There were one-and-a-half million website visits.

**Employability**

28. Employability is one of the five priority areas – identified as having the greatest potential contribution to long-term prosperity and well-being – in Prosperity for All. Fair, secure and rewarding employment is critical to people’s well-being, and improving skills is key to unlocking growth and innovation for businesses.

29. Participation in the labour market is recognised as the most effective individual driver of movement in and out of poverty. Over half of entries into poverty are associated with a fall in earnings, primarily due to job loss. We know that workless households are more at risk of being in poverty and are especially at risk of living in persistent poverty. Being unemployed adversely affects both mental and physical wellbeing.

30. At the same time, children living in workless households are much more likely to have poorer health and educational outcomes, both as children and later as adults. Being unemployed as a young adult, leads to a higher likelihood of long-term “scarring” in terms of subsequent lower pay, higher unemployment, reduced life chances and greater mental health problems. From a tackling poverty perspective, the evidence to support a focus on employability is overwhelming.

31. There are also wider personal benefits to employment. Good employment and working conditions can have a positive impact, providing not only financial security, but also social status, personal development, social relations and self esteem.

32. The Employability Delivery Plan will be a high-level, ambitious forward look at how we will review and develop the employability system in Wales. The Plan is being developed in close alignment with the Economic Action Plan and the Valleys



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Taskforce Delivery Plan to ensure policies are complementary. The supporting performance dashboard will monitor and advise on the coordination of Skills, Higher education and Lifelong Learning policies and programmes in response to Taking Wales Forward.

33. Good progress has been made in improving the employment rate and reducing economic inactivity since devolution. However, low skill levels remain a problem. Unemployment is still too high in some communities across Wales and there are still too many people who are currently economically inactive but who want to work and could work with the right support. The current landscape of employability support is complex. It needs to be simplified and managed as a system if we are to improve local, community based services to people who need support.
34. The Plan will highlight new developments in different areas of the employability lifecycle. This includes the development of the Employment Advice Gateway, a joined up referral mechanism; Working Wales, a revision of our employability programmes; and the development of our Communities work through Communities for Work Plus. The Plan will also consider functional and structural barriers to employment and support, such as transport or caring responsibilities, and will outline how government can engage the levers at our disposal to break down these barriers.
35. We will have a strong focus on engagement with employers, and the role they can play through Regional Skills Partnerships in assessing the labour market needs of a region, and developing a pipeline of an appropriately skilled workforce.
36. We will outline plans for new governance mechanisms which will allow common evaluation and accountability of the whole employability system, including how programmes interact with each other.
37. The Employability Delivery Plan, planned to be published 2018, will be underpinned by a new employability offer under the name Working Wales. Working Wales is a single employability programme for young people and adults that focuses on the individual, identifying and addressing barriers to employment and providing a range of support that moves people into sustainable, quality employment.
38. The programme is split into youth and adult strands but they all share a common vision, a common delivery platform and a common purpose, namely meaningful employment for all. Working Wales will replace our current suite of programmes: ReAct, Jobs Growth Wales, the Employability Skills Programme and Traineeships. Between now and April 2019 these programmes will be reconfigured to inform a new delivery approach which will be focused on the individual and tailored to address their individual barriers.

**Valleys Taskforce**

39. Incomes in the South Wales Valleys lag behind other areas and there is high welfare benefit dependency. The UK Government's welfare reforms that have been introduced since 2010 have hit claimants in the valleys severely. The Valleys Taskforce is

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focusing on creating new jobs and opportunities in Valleys communities where work is difficult to find.

40. Poverty also persists in other communities across Wales and whilst the Valleys is no more deserving, this focus gives us an opportunity to test new ways of working in the Valleys and use the learning to deliver prosperity for all across the whole of Wales.
41. When looking at material deprivation, income deprivation and employment deprivation, levels of deprivation in the South Wales Valleys are higher than the Wales average.
42. The taskforce has recognised that we need to work differently to and learn from previous initiatives and programmes that have focussed on this area. This won't be a top-down approach. Instead, we will continue to work in partnership with communities in the Valleys. The high level plan published on 20th July and the more detailed delivery plan published 7th November have been shaped and developed following extensive engagement with communities, business and the third sector across the Valleys.
43. The taskforce, in partnership with people living in the Valleys, existing businesses, local government, third sector and civic organisations have worked to identify three priority areas;
  - a. Good quality jobs and the skills to do them;
  - b. better public services; and
  - c. the local community.
44. There is an opportunity through the investment being planned for new initiatives, such the Cardiff Capital City Region and Swansea Bay City Region City Deals and the South Wales Metro, aligned to our wider regional working approach, to bring together existing businesses, local government, third sector, civic organisations into developing a cohesive plan to promote the region for investment as well as to co-ordinate existing investment in a smarter way.
45. Our approach will enable us to use the Valleys as a test bed for a place-based approach to enhancing employability. The area of Skills and Employability is one of the five priority areas identified in the National Strategy as having the greatest potential contribution to long-term prosperity and well-being.
46. While we transition to delivery of the new employability programme, Working Wales, we are testing a number of new approaches to enhance employability support for adults who are short-term unemployed and those who churn in and out of temporary employment. The trial will be geographically focused with the initial phase commencing in the Valleys taskforce. We will manage the transition to the new Working Wales programme to ensure that there will be no pause in delivery. We aim to ensure that individuals who enter the current suite of programmes on or before 31 March 2019 will be able to complete their programme of learning; our intention is that no individual receiving support will be disadvantaged by the introduction of the new programmes.

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47. A cross-government team is taking forward the Better Jobs Closer to Home programme to align a range of commercial pilots with other interventions to support creation of meaningful employment in communities with high levels of joblessness. This means local jobs for local people with fair payment and good conditions of employment. The pilots will test new methods of procurement practice designed to create employment from commercial interventions within the Welsh Public Sector expenditure profile on works, goods and services. If the pilots prove successful, then these methods can be replicated in other areas of Wales, in other areas of spend. The programme is part of the taskforce's 'Good Quality Jobs and the Skills to do them' priority; it will create real opportunities and decent jobs where the need is greatest. This includes using public procurement to support local businesses and supply chains.

### **Living Wage**

48. The Welsh Government supports the concept of a Living Wage, as defined by the Living Wage Foundation. Working in social partnership we encourage employers to adopt the Living Wage as one of a range of positive actions to help alleviate the problems caused by poverty and low wages in Wales.

49. The Welsh Government has produced a Guide to Implementing the Living Wage through Procurement which has been made available to private, public and third sector organisations. The Guide has been published alongside a Code of Practice on Ethical Employment in Supply Chains. Part of being an ethical employer is paying employees a fair wage. We have further demonstrated our commitment by ensuring all directly employed staff within the Welsh Government are paid the Living Wage (with the exception of apprentices), as is the case within NHS Wales. The introduction of the common contract in Further Education has ensured all staff covered by this contract are now also paid at or above the Living Wage.

### **Welfare Benefits**

50. In 2016/17, Department for Work and Pensions (DWP) expenditure on state benefits in Wales was £9.5 billion (5.5 per cent of the total for Great Britain). In addition, HM Revenue and Customs (HMRC) statistics indicate that around 224,000 households in Wales received £1.4 billion in total from Working Tax Credit and Child Tax Credit payments in 2015/16 (5.2 per cent of the total for Great Britain).

51. The UK Government's welfare reforms over the next few years are estimated to result in significant reductions in benefit income for some households. This is on top of the significant welfare cuts already implemented since 2010.

52. Institute for Fiscal Studies (IFS) analysis shows households in Wales lose 1.6 per cent of their net income on average (or around £460 a year) from the tax and benefit reforms introduced by the UK government between 2015-16 and 2019-20. This is equivalent to £600 million a year in Wales as a whole.

53. We know lower-income households, particularly those with children, lose considerably more on average (around 12 per cent of net income). Large families are particularly hard hit losing around £7,750 a year or 20 per cent of net income on average.

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54. IFS analysis 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. The planned UK government's tax and benefit reforms account for nearly 4 percentage points of the increase in absolute child poverty in Wales over this period. 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.
55. The Welsh Government continues to mitigate the worst impacts of the UK Government's welfare reforms, where possible. We remain committed to maintaining full entitlements for households to receive support with their council tax bills through the Council Tax Reduction Scheme (CTRS). The CTRS is supported with £244 million of funding from the Welsh Government provided through the Local Government Settlement. As a result, almost 300,000 vulnerable and low-income households in Wales continue to be protected from any increase in their Council Tax liability, of which 220,000 continue to pay no council tax at all.
56. Since April 2013, the Welsh Government's Discretionary Assistance Fund has supported more than 150,000 awards to the most vulnerable people in Wales, with over £33 million in grants.
57. The maximisation of benefits to help the most vulnerable claim benefits that they are entitled to is supported through the Welsh Government's £5.97 million grant to provide advice on social welfare issues. As part of this funding the Better Advice, Better Lives project encourages the take-up of council tax and housing benefits, alongside other benefit entitlements, especially amongst those people and groups less likely to claim. Since the project started in 2012 to the end of September 2017, the BABL project helped over 103,400 people with confirmed gains of more than £111.4 million. During the first half of this year (April – 30 September 2017), the Front Line Advice Services funding contributed to organisations responding to over 29,713 requests for information and advice, securing over £7.9 million in income gains.
58. The roll out of Universal Credit is causing individuals and families particular problems accessing financial support in relation to their housing costs and, worryingly our most vulnerable and disadvantaged are affected. Welsh Ministers have repeatedly called on the UK Government to halt its roll out and fix the fundamental flaws within the system. The Autumn Budget 2017 did make some concessions to speed up the first payment, which will be introduced over the next few months, however, the Welsh Government considers that these do not go far enough to help those people in greatest need.
59. The Senior Officials Group on welfare reform is reviewing what more can be done cross-government to help mitigate the worst impacts of the UK Government's welfare reforms.

1. By developing projects and programmes with people experiencing and living in poverty that improve their lives and show others how things can change
2. By raising public awareness of poverty to advocate and create pressure for change
3. By working with policymakers to tackle the causes of poverty.

For further information about Oxfam’s work, please see [www.oxfam.org.uk](http://www.oxfam.org.uk)

Oxfam Cymru welcomes the opportunity to provide evidence to the Equality, Local Government and Communities enquiry. Over the last decade, we have accrued a vast amount of experience in working with partners to help people raise themselves out of poverty and build sustainable livelihoods. We work at grassroots level and pan Wales levels and actively campaign at a UK level for real and positive change.

## 1. Background

1.1 An inclusive labour market delivering an economy that works for everyone would offer people and their communities across Wales the opportunity to participate in rewarding, well paid secure work that brings both social and economic benefits.

1.2 23% of people live in relative poverty in Wales, and it is becoming increasingly clear that to realise inclusive growth and sustain labour market productivity, improved employment for low income households are essential.

1.3 Oxfam’s latest research report, *Double Trouble*<sup>1</sup> is a review of the relationship between UK poverty and economic inequality, and establishes the relationship between income inequality and relative

income poverty, as poverty rates tend to be higher when income inequality is higher.

1.4 Low pay continues to be one of the significant factors contributing to these poverty levels. Nearly a quarter of people are paid less than the living wage as defined by the Living Wage Foundation<sup>2</sup> (the Living Wage Foundation rate is calculated annually based on the cost of living whereas the UK Government National Living Wage is the minimum pay rate for over 25s currently based on 55% of median earnings). Over 100 businesses accredited as living Wage employers<sup>3</sup> (currently the Living Wage is £8.75 and £10.20 in London<sup>4</sup>).

1.5 In-work poverty is an increasingly worrying concern as labour market changes have led to shifting working practices; including an increase in zero contract hours and work that offers a lack of training routes.<sup>5</sup> This impacts on women and BAME communities of people the most.<sup>6</sup>

## Gender

1.6 Gender inequality is one of the oldest and most pervasive forms of inequality and shapes our economies, societies and communities. It denies women their voices, devalues their work and results in power imbalances between men and women.

1.7 Women are more likely to be in low-paid, insecure jobs than men, and the gender pay gap is still significant and stands at 14.8%<sup>7</sup> in Wales. The gap between median, full-time, gross pay for men and women is £68.00 a week.<sup>8</sup>

1.8 Women tend to earn less to begin with and are more likely to be lone parents with care responsibilities. In the UK, the groups with highest poverty rates are lone parent families and families with three or more children. Continued funding cuts for public services that include social care and child care provision are a common way to reduce public spending, but ultimately requires women to provide

even more unpaid labour at home, which in turn constrains the ability for women to participate fully in the labour market.

1.9 Recent analysis published by the Social Mobility Commission<sup>9</sup>, reports that it is particularly difficult for women in their early twenties to escape low pay, with the lack of good-quality, flexible work to fit alongside caring responsibilities as the main barriers.

1.10 Oxfam Cymru welcomes the Welsh Government childcare commitment of providing 30 hours of childcare for two – three year olds for 48 weeks. However, we are concerned that provision currently only extends to working parents, and that women who are looking but are not currently in employment or training, will fall even further away from the labour market and their economic empowerment will not be realised if they are unable to access this provision.

1.11 80% of all part-time jobs in Wales are held by women<sup>10</sup>, and overwhelmingly they are in low-paid 5 C's occupations typically found in the Foundational Economy (catering, cleaning, clerical, cashiering (retail), and caring work) which also affects their pensions. Part-time workers are particularly vulnerable to poverty, with a poverty rate more than twice as high as full-time workers, and qualifications are far less effective in improving their pay prospects than for full-time workers.<sup>11</sup> Women in part-time employment represent more than 63% of all women earning less than the voluntary Living Wage.<sup>12</sup>

1.12 Oxfam Cymru welcomes the *Economic Action Plan* and the commitment of the Welsh Government to tackle reckless employment practices and promotion of the Living Wage through the *Code of Practice on Ethical Employment in Supply Chains* as part of the overall package of decent work.

1.13 Oxfam Cymru also welcomes the Fair Work Commission which must be ambitious in promoting work which meets those factors which we know women value from work.

**1.14 Recommendation 1:** Gender specific process and procedures are in place to ensure that economic policy is evaluated for its impact on

womens economic empowerment, ensuring gender is accurately reflected in statistical and data capture and analysis.

**1.15 Recommendation 2:** The Welsh Government sets a target for ending the Gender Pay Gap, and puts into place an action plan to reach it.

## **2. Skills, Training and Productivity**

2.1 Oxfam Cymru welcomes the recognition within the *Economic Action Plan* of the link between skills and productivity and the commitment to investing in the labour market through its *Employability Delivery Plan*.

2.2 Recognising the social capital and value of the foundational economy is key to creating an inclusive economy, as the foundational economy provides employment to half a million people in Wales<sup>13</sup>. Women dominate the labour market in these sectors and to provide good quality employment and progression opportunities could help improve the pay and career prospects of many women in Wales, and also develop ways of improving the quality of part-time work.

2.3 Not being able to access training and progression opportunities is a significant factor in the gender pay gap, as women often remain stuck in low paid, lower skilled work. The economy needs to recognise the different skills, information and experience that women have and ensure they are treated with equal parity: so that women can build a career and benefit to a greater degree from economic growth than many currently do.

2.4 Achieving economic outcomes will require a revolution in support for these groups – away from ‘work first’ approach towards a ‘work in life’ approach which emphasises the many; away from services and activities towards building and nurturing communities and networks.



## **Oxfam Cymru: A Wales that Works for Women 2018**

During 2017, Oxfam Cymru commissioned three distinct pieces of research with a central and specific focus on women at the lower end of the labour market on the changing nature and experience of work, and what makes decent work for Women in Wales.

### **1. Focus Groups**

A series of participatory focus groups, where we asked people what they thought makes decent work for women in Wales. We wanted to hear the lived experiences and aspirations of low paid female workers in Wales and to know what their concerns, priorities and ambitions are, with a view to identifying potential barriers to enter the labour market and subsequent career progression. This report was produced by the Institute of Welsh Affairs.

### **2. Sector Analysis**

An analysis of the domiciliary care and Food and Drink Sectors, two specific sectors of the economy that are traditionally dominated by women. The Food and Drink sector has the biggest risk of in-work poverty at nearly three times the average, with residential care at twice the national average. The research comprises sector analysis of the two sectors with supporting participatory interviews where we asked women employed in the care and food and drink sectors what decent work meant for them. This report was produced by Chwarae Teg.

### **3. Literature Review:**

A review the existing literature, examining a selection of factors that it has been suggested drive the relationship between gender and inequality and the search for decent work for women in Wales. The research provided a detailed analysis of the position of women in the labour market in Wales. The report aims to identify the possible causes and barriers for women in the labour market and produces wide ranging policy solutions which should be

considered in the economic, social, cultural and environmental challenges that lie ahead. This report was produced by Dr Claire Evans at Cardiff Metropolitan University.

2.5 Oxfam Cymru would like to see the *Employability Delivery Plan* include detailed pathways that support and encourage the progression of women furthest from the labour market, as well as job entry to access the non-gendered 100,000 high level apprenticeships. It should be developed in partnership with the bodies at the local level, complimentary to the Regional framework provided by the *Economic Action Plan*, in order to reflect different labour market conditions across Wales and effectively reach into the communities.

2.6 If a positive approach to gender equality were to be adopted, additional indicators would help measure progress and could improve economic active participation rates of men and women. Given that apprenticeships in some sectors, especially STEM, have historically been dominated by men, then specific, positive action to tackle gender segregation is warranted.

**2.7 Recommendation 3:** The Welsh Government continues to work with employers and sector organisations to address gender inequality through improving progression and flexibility in employment and careers advice.

**2.8 Recommendation 4:** The Welsh Government sets out a common approach to identifying the needs of the individual as part of its approach to employability. Identifying those with employment support needs at the earliest possible stage and making the referral process more seamless and less daunting; provide tailored, community outreach for those who face multiple barriers to work: use the Valleys as a test bed for a place based approach to enhancing employability.

**2.9 Recommendation 5:** The Welsh Government develops specific proposals to remove barriers which exist for women and girls accessing the 100,000 higher level apprenticeship identified by the

Welsh government in its *Economic Action Plan*. Ensure that gender division within apprenticeships is reduced, by providing flexible or part-time opportunities supported by childcare. If these methods are not successful, quotas for apprenticeships should be considered in sectors where women are underrepresented to address this under-representation.

- <sup>1</sup> Oxfam, Double Trouble, November 2017 <https://policy-practice.oxfam.org.uk/publications/double-trouble-a-review-of-the-relationship-between-uk-poverty-and-economic-ine-620373> <sup>2</sup> Oxfam Cymru, Even it up: A Blueprint for Change, January 2016 <https://policypractice.oxfam.org.uk/publications/even-it-up-a-blueprint-for-change-593008>
- <sup>3</sup> Cynnal Cymru, accessed 11/01/2018 <https://www.livingwage.org.uk/accredited-living-wage-employers> <sup>4</sup> Living Wage Commission, accessed 11/01/2018 <https://www.livingwage.org.uk/accredited-living-wageemployers>
- <sup>5</sup> PPIW, Harnessing Growth Sectors for Poverty Reduction (January 2016) <http://ppiwi.org.uk/files/2016/10/PPIW-Report-ESRC-Evidence-Review-Paper-Progression.pdf>
- <sup>6</sup> JRF, Breaking the links between Poverty and Ethnicity in Wales, (February 2016) <https://www.jrf.org.uk/report/breaking-links-between-poverty-and-ethnicity-wales>
- <sup>7</sup> ONS Annual Survey of Hours and Earnings (October 2017) <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/annualsurveyofhoursandearningsashegenderpaygaptables>
- <sup>8</sup> Stats Wales, Gender Pay difference (October 2017) <https://statswales.gov.wales/Catalogue/BusinessEconomy-and-Labour-Market/People-and-Work/Earnings/genderpaydifferenceinwales-by-year>
- <sup>9</sup> Social Mobility Commission, State of the Nation (November 2017) [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/662744/State\\_of\\_the\\_Nation\\_2017\\_-\\_Social\\_Mobility\\_in\\_Great\\_Britain.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/662744/State_of_the_Nation_2017_-_Social_Mobility_in_Great_Britain.pdf)

<sup>10</sup> Chwarae Teg, Poverty in Wales accessed 11/01/2018

<https://www.cteg.org.uk/tackling-poverty-in-wales/>

<sup>11</sup> JRF, UK Poverty (December 2017) [https://www.jrf.org.uk/report/uk-](https://www.jrf.org.uk/report/uk-poverty-)  
[poverty-](https://www.jrf.org.uk/report/uk-poverty-)

[2017?utm\\_content=bufferd4be1&utm\\_medium=social&utm\\_source=twitter.com&utm\\_campaign=buffer](https://www.jrf.org.uk/report/uk-poverty-2017?utm_content=bufferd4be1&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer)

<sup>12</sup> ONS, Low Pay in the UK (April 2016)

[https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earnin](https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/lowpay/apr2016#low-pay-by-region)  
[gsandworkinghours/bulletins/lowpay/apr2016#low-pay-by-region](https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/lowpay/apr2016#low-pay-by-region)

<sup>13</sup> Bevan Foundation, (2017)

[https://www.bevanfoundation.org/commentary/wales\\_foundational\\_economy/](https://www.bevanfoundation.org/commentary/wales_foundational_economy/)

Dear Mr Griffiths,

**EQUALITY, LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE (NATIONAL ASSEMBLY FOR WALES)**

## **Inquiry into making the economy work for people on low incomes**

**Ymateb gan Gymdeithas Contractwyr Peirianeg Sifil Cymru / Evidence from the Civil Engineering Contractors Association (CECA) Wales**

Thank you for the opportunity to provide further evidence to the Equality, Local Government and Communities Committee on your Inquiry into making the economy work for people on low incomes following the Cabinet Secretary's launch of the Welsh Government's Economic Action Plan.

On 21<sup>st</sup> September 2017 I provided evidence to your committee in my role as Director of the Civil Engineering Contractors Association (CECA) Wales. Much of that evidence was based on :

1. opportunities to improve economic wellbeing for those on low incomes by increasing social value through the public procurement process;
2. streamlining the procurement process and making it more accessible to Welsh SMEs
3. how the Wellbeing of Future Generations Act could support those on low incomes - but only if we are willing to significantly transform our approach to procurement.

I still feel that, if we are prepared to be bold and drive through a cultural change in the way public and private sectors work together in Wales on infrastructure matters, we have an opportunity to significantly increase the social value that can be delivered through investment in infrastructure and construction in its broader sense. It is by doing this that we can help to ensure that all of our people benefit from investment in infrastructure and especially those on low incomes. The Economic Action Plan launched by the Cabinet Secretary and, more specifically, the call for an Economic Contract between public, private and Third sectors, offers an opportunity to take this forward but the words need to be converted into action, and quickly, otherwise the good intent will fall into disrepute.

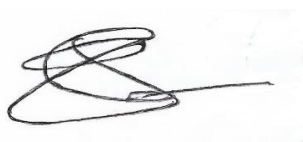
I will not reiterate the points I raised in my previous submission but I have attached an article (<http://bit.ly/2j53Wmg>) which I prepared for the Bevan Foundation and which was published in the Winter edition of their Exchange newsletter which offers a model for increasing social value through investment in infrastructure. Essentially, it involves transforming the "community benefits" agenda into one which is strategic and public sector led, delivering social value requirements at a programme/regional level over a long term, rather than the current local, contract-specific, short term and supplier led approach. This approach will need support structures and mechanisms to be established by the public sector at a regional level so that successful private

and third sector suppliers for individual contracts (or frameworks) can utilise these arrangements as and when they successfully “win” contracts. This will allow them to employ more people on low incomes as a direct output from the contract, to develop people through training and upskilling as part of the contract and to engage directly with learners at schools and colleges to support and offer them direct “bridges” into the workplace. The current proposals for City/Growth Deals and the regional proposals for local authorities offer an opportunity to establish these support structures on a regional basis using the combined resources of the public sector. I would hope that the Welsh Government’s call for an Economic Contract between public, private and Third sectors would complement this approach and give it added impetus. It offers an opportunity to turn the words in the Plan into meaningful actions which would benefit those on low incomes and their communities.

As an organisation which represents 60 of Wales’ largest and smallest civil engineering contracting businesses we see, on a day to day basis, the positive impacts that investment in infrastructure can bring for our communities. With a cumulative annual turnover in excess of £1bn and employing over 6,000 people directly, as well as many others through extended supply chains, these businesses play a huge part in supporting communities across Wales and they make a significant contribution to the economic prosperity of our nation. They are also major providers of training and apprenticeship opportunities and so are well placed to support those on low incomes to improve their life opportunities and wellbeing. But they need greater support, via meaningful collaborative relationships, from the public sector. This could be delivered through an Economic Contract!

I trust that these views and observations are helpful to you and your Committee but please contact me should you wish to discuss these matters in greater detail.

Yours sincerely



**Ed Evans**  
Director, CECA Wales/Cymru

## Introduction

- 1.1 Citizens Advice Cymru welcomes the opportunity to provide further written evidence to the Equalities, Local Government and Communities Committee to help inform its latest poverty inquiry looking at ‘Making the economy work for people on low incomes’.

This update is in addition to our original written and oral evidence submissions to the Committee last summer. It highlights some of our more recent evidence and concerns around the rollout of Universal Credit (UC), particularly in relation to how Universal Credit is working for those in work and our evidence to date on Universal Support.

We recognise that policy linked to Universal Credit is a reserved matter. However, as this benefit will form such a key element of the future income of many low income families in Wales we believe the Committee should be made aware of Citizens Advice’s latest evidence and concerns. There is also a need to fully consider the implications of UC rollout on Welsh Government policy and programmes.

- 1.2 By 2022 Citizens Advice analysis<sup>1</sup> shows **over 400,000 households in Wales** (31% of all households) will be receiving Universal Credit, around half of whom will be in work. Citizens Advice has unparalleled evidence on the roll-out of Universal Credit:

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<sup>1</sup> Based on national patterns of benefit claims from Family Resources Survey 2014-15 and constituency level administrative data from the DWP and HMRC (August 2015).

- During 2017 our advisers across England and Wales have supported **more than 49,000 people** with **nearly 94,000 Universal Credit issues**.
- We've had **over 800,000 visits** to our UC web pages in the last 6 months.
- We are seeing the equivalent of **1 in 10** new Universal Credit claimants every month.

1.3 In Wales, between April 2017 (when UC full service started to be implemented in Wales) and the end of December 2017, local Citizens Advice offices have helped **more than 1,900 people** with **nearly 3,500 UC issues**. Our local offices are reporting quarter by quarter increases in people seeking our support.

1.4 Citizens Advice supports the principles and aims of Universal Credit - to simplify the benefits system and improve work incentives. We are closely monitoring the rollout of the new benefit and its impact on people we help. We have published two reports and welcomed the steps taken by the Chancellor in the Autumn Budget 2017 towards fixing the problems we have identified. We continue to share our evidence and raise issues as they arise. Alongside our general UC monitoring, we are undertaking research on the impact on working households and on disabled people and those with health conditions. We are looking to publish our findings in these areas shortly.

The majority of this submission is an abridged version of our latest submission to the Work and Pensions Select Committee's current Universal Credit inquiry (which is due to be submitted on 16 January).

## The role of welfare benefits

### Universal Credit and work - self employment

2.1 There are around 201,000 self employed people in Wales. The self employment rate (14% of the working population) is slightly lower than the UK average (15%)<sup>2</sup>. Citizens Advice analysis shows median earnings for self-employed people lag significantly behind earnings for employees<sup>3</sup>. This means a significant proportion of the self-employed workforce are potentially eligible for in-work benefits, and will be looking to Universal Credit (UC) for support.

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<sup>2</sup> Status of employed persons by Welsh local authority and measure (year ending 30 June 2017), StatsWales.

<sup>3</sup>Who are the Self-Employed, Citizens Advice & New Policy Institute, 2015 (Figures taken from the Families Resources Survey 2013-14)



- 2.2 Universal Credit brings with it some fundamental changes for self-employed people compared to the legacy benefit system, including changes to how income is assessed and reported. UC is assessed monthly whereas tax credits are annual. This approach reduces the likelihood of overpayments. However it does mean that UC tends to work best for people in the most 'traditional' models of work: who are directly employed, working a fixed number of hours each week, and paid once each calendar month.
- Self-employed people are more likely to have variable, non-monthly and irregular incomes. For some people Universal Credit will help to smooth monthly income fluctuations but for others it can make their income far less stable.**

Citizens Advice are already seeing evidence of this. We are continuing to monitor this issue, including undertaking research on the challenges faced by people with non-traditional working patterns and incomes.

- 2.3 Under UC a number of new rules are also set to intensify the level of scrutiny on self employed people. These include the introduction of the 'gainful self-employment' test, minimum income floor and surplus earnings rules. These rules are in addition to other policies introduced in UC such as the claimant commitment and in work conditionality. The new rules for self employed people are intended to incentivise progression and make sure that people on Universal Credit are running genuine and viable businesses. These rules will penalise unviable businesses but also carry the risk of affecting self-employed people in viable businesses and choking off new businesses before they have had the time to become viable.

Further details can be found in the Citizens Advice response to the Work and Pensions Select Committee which will be forwarded to the Committee once submitted.

- 2.4 **We are currently calling on the UK Government to test and assess the variety of rules for self-employed people on UC** in order to understand how best to tackle fraud and avoid unintended labour market consequences.

Citizens Advice believe that self-employed people should be able to access an equivalent level of support to their employed counterparts.

## **Universal Credit and work - work incentives**

- 3.1 At its launch UC had ambitions to significantly improve work incentives. Since then, a series of significant cuts to the benefit have reduced the financial awards available and weakened work incentives.

Reducing the taper rate in UC and increasing work allowances are two methods that would help improve work incentives. Both let people keep more of their money as hours and earnings increase.

- 3.2 Lowering taper rates improves marginal returns to work but we believe there needs to be substantial change for most families to feel a significant impact in their budgets and work incentives. Increased work allowances extend how many hours people can work with no penalty in their benefit entitlement. This is a more targeted approach as work allowances are set at different rates (including £0) for different groups of benefit claimants. It can provide significant improvements in financial work incentives for those currently working the fewest hours.
- 3.3 To help the people most affected by poor work incentives, **Citizens Advice is calling on the UK Government to invest in work allowances.** Alternatively, to make small improvements for all claimants, the taper rate could be reduced.

## Universal Support

- 4.1 The way UC is claimed, paid and managed will mean major adjustments for many people. Universal Support should be providing this assistance and helping people adapt. Citizens Advice is concerned that **currently support is not being delivered consistently and at a high enough standard in different areas.**
- 4.2 At the end of November 2017 Citizens Advice Cymru held a roundtable event to discuss Universal Support in Wales. The aim being to bring together representatives from key organisations<sup>4</sup> and look at how we can work together to provide the most effective support for UC claimants in Wales.

A summary report detailing the outcome of these discussions is currently being prepared and can be shared with the Committee if this would be helpful. Key issues raised by participants included the need for:

- more preparatory work and awareness raising ahead of further UC rollout in Wales to ensure all supporting organisations and employers, large and small, have access to correct information about UC and what it may mean for their clients/employees
- better use of existing systems (including the legacy benefit system) to identify support needs

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<sup>4</sup> This included representatives from Welsh Government, WLGA, Money Advice Service, Citizens Advice regional UC intelligence hubs in Wales, and a number of other third sector organisations.

- a more comprehensive support package, with tailored and targeted support for particular groups (eg. lone parents; those in work; disabled people; people for whom English is a second language and those with more chaotic lifestyles)
- ensuring organisations delivering support have the resources to manage demand at the time it's needed
- improved intelligence gathering to assess what's working and what's not working in relation to support provision
- greater consideration of how UC implementation, and any support linked to this, fits with particular programmes or policy specific to Wales. This includes the Welsh Government's free childcare offer; the Council Tax Reduction Scheme; passported benefits (including free school meals), and programmes delivered by the Welsh Government and others to upskill and support people into work.

4.3 During our roundtable discussions there was overall agreement that **more needs to be done strategically across Wales to plan and coordinate Universal Support**, including an agreement on what true 'joined up' support looks like. There was also a widely held belief that the **Welsh Government could and should be doing more in this regard**. It was suggested this should be linked to work being undertaken on the future funding of advice in Wales.

4.4 At the UK level **Citizens Advice is calling on the UK Government to ensure people have access to a minimum standard of support to help them adapt to Universal Credit, which is published**.

This should, at a minimum, include

- a) Ensuring all UC claimants are made aware of, and can access budgeting support and digital support which is appropriate to their needs;
- b) Expanding the scope to include help to make and complete a claim with support available to help people manage their finances whilst waiting for their first payment
- c) Making funding available for free impartial debt advice to meet existing increases in demand as a result of Universal Credit.



# Citizens Advice response to Work and Pensions Committee inquiry into Universal Credit rollout

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## About Citizens Advice

Citizens Advice provides free, confidential and independent advice to help people overcome their problems.

In 2017 we helped 2.6 million people face to face, by phone, email or webchat. We provide support in over 2,000 locations in England and Wales and people visited our online advice pages 42 million times.

## Overview

Citizens Advice supports the aims and principles of Universal Credit - to simplify the benefit system and improve work incentives. We are closely monitoring the rollout of the new benefit and its impact on people we help.

We have unparalleled evidence on the roll-out of Universal Credit:

- Citizens Advice has helped people with over 100,000 Universal Credit issues since it was introduced.
- In 2017 our advisers supported 49,000 people with 94,000 Universal Credit issues.
- We've had over 1.3 million visits to our UC web pages in the last 6 months.
- We are seeing the equivalent of 1 in 10 new Universal Credit claimants every month.

We have published two reports and made previous submissions on UC to the Work and Pensions Select Committee. We welcomed the steps taken by the Chancellor in the Autumn Budget 2017 towards fixing the problems we have identified. We continue to share our evidence and raise issues as they arise.

Alongside our general UC monitoring, we are undertaking research on the impact on working households and on disabled people and those with health conditions. We are looking to publish our findings in these areas shortly.

# 1. Self Employment

- What effect has UC had on self-employed people?

Self-employment has grown dramatically over recent years. 4.8 million people are now self-employed - a million more than a decade ago<sup>1</sup>. This expansion in self-employment has helped push overall employment to record levels. 15% of all people in work are now self-employed<sup>2</sup>. However, median earnings for self-employed people lag significantly behind earnings for employees<sup>3</sup>. Part-time self-employment has seen the biggest expansion. This means a significant proportion of the self-employed workforce are potentially eligible for in-work benefits, and will be looking to Universal Credit for support.

Universal Credit brings with it some fundamental changes for self-employed people. Monthly reporting and assessment of incomes places new burdens on them. The design of monthly assessments in Universal Credit means those with irregular earnings can struggle to achieve financial stability. There is also set to be increased scrutiny through the introduction of the 'gainful self-employment' test, minimum income floor and surplus earnings rules. These rules are intended to incentivise progression, root out unviable businesses and minimise manipulation of earnings. However, they carry the risk of penalising a significant number of self-employed people financially, and impeding the development of new or innovative businesses.

It is difficult to strike the right balance between ensuring people are supported appropriately and guarding against fraud. **The government should test its new rules and ensure they are assessed for their impact on self-employed people and their businesses.** Citizens Advice is undertaking research on how self-employed people will be affected, and will continue to monitor the impact on the people we help.

## How Universal Credit treats variable and irregular incomes

Universal Credit makes changes to how income is assessed and reported. The benefit is assessed monthly whereas tax credits are assessed annually. This approach was intended to improve on tax credits by reducing the likelihood of overpayments when earnings change. However it does mean that UC tends to work best for people in the most 'traditional' models of work: who are directly employed, working a fixed number of hours each week, and paid once each calendar month. Yet we also know this group are declining in the wider labour market. Variable, non-monthly and irregular incomes are becoming more widespread as self-employment and other non-traditional working patterns grow. **For some people Universal Credit will help to smooth monthly income fluctuations but for others it can make their income far less stable.**

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<sup>1</sup> ONS, December 2017, [EMP01 SA](#),

<sup>2</sup> ONS, December 2017, [UK Labour Market](#)

<sup>3</sup> Citizens Advice, 2015, Who are the Self-Employed?

Annual assessments meant that working people receiving tax credits had a predictable benefit income over the course of a year, even if their earnings fluctuated. Monthly assessments mean that people who experience a change in pay from one calendar month to the next, will also experience fluctuations in their benefit payments. Whether this helps smooth income or increases income fluctuations is largely down to *timing* of earnings relative to assessment periods and UC payments. Ideally, a wage payment date should be a few days *before* the end of a UC assessment period, meaning the UC payment is effectively topping up that month's wages. However, if the wage payment date falls a few days *after* the end of the assessment period, then UC is likely to exacerbate changes in income. In this scenario, low wages can sometimes follow a few days after a low UC payment, drastically reducing monthly income.

While the timing of assessment periods relative to wage payments can be crucial for people with fluctuating incomes, it is also set entirely arbitrarily. Under current arrangements, UC assessment periods are set on the basis of the day someone submitted their UC claim - meaning the extent to which UC helps to smooth or exacerbates income fluctuations is largely down to luck.

We are already seeing people struggling to budget as a result. Citizens Advice is monitoring this issue and undertaking research on the challenges faced by people with non-traditional working patterns and incomes.

### **Case study: Fluctuating income exacerbated by Universal Credit**

John's hours vary greatly. In December he worked more due to Christmas but he has almost no work for January. After his income rose temporarily during December John received no Universal Credit payment on his scheduled payment date of 10th January. Without a Universal Credit payment and with very little earnings in January, he and his family had been experiencing financial hardship. His next Universal Credit payment was due on 10th February. He visited his local Citizens Advice as he was struggling to pay the bills, and had built up rent arrears.

## **New rules for self-employed people**

Universal Credit brings with it a number of new rules. It intensifies the level of scrutiny on self-employed people through the 'gainful self-employment' test, minimum income floor and surplus earnings rules. These rules are in addition to other policies introduced in Universal Credit like the claimant commitment and in work conditionality. The new rules for self-employed people are intended to incentivise progression and make sure that people on Universal Credit are running genuine and viable businesses. The intention is to identify and encourage people in non-viable businesses to seek work in the regular labour market. However, these approaches are currently untested. They carry the risk of affecting self-employed people in viable businesses and also choking off new businesses before they have had the time to become viable (we discuss the specific

impacts in more detail below). **The government should test and assess a variety of rules for self-employed people** in order to understand how best to tackle fraud and avoid unintended labour market consequences. DWP should ensure that self-employed people are able to access an equivalent level of support to their employed counterparts.

## Gainful Self-Employment

- How should “gainful self-employment” be defined under UC?

Self-employed people now need to demonstrate to a Jobcentre assessor that they are ‘gainfully self-employed’. They go through an initial interview at Jobcentre Plus and must provide evidence that demonstrates that their work is regular and organised, that it is their main job and that they expect to make a profit. If the Jobcentre assessor decides they are not gainfully self-employed they are required to begin job search.

The principles and measures underlying this test are reasonable, but it is important that it is set at the right level and flexible enough to accommodate the diversity in the self-employed population - the time taken to demonstrate gainful self-employment may be different for someone starting an entirely new venture versus someone in a more established area, such as taxi-driving, for example. If the bar for “gainful self-employment” is set too high or too rigidly it could deter self-employed people with viable business ideas who would genuinely benefit from support.

Another challenge is administering and delivering this test. It has already been introduced to tax credits and we see cases where it is misapplied or not completed thoroughly. For example, in practice, decision makers sometimes rely solely on earnings in a year, without considering wider issues and context. Supporting people in employment is new territory for work coaches and self-employed people in particular can have very varied needs and working patterns. This makes it potentially difficult to determine whether a business is viable. Previous Citizens Advice research has found that there is huge diversity in the self-employed population and the progression of their businesses.<sup>4</sup> Assessing the potential of a business and determining a reasonable timescale for it to reach maturity is not an exact science and judgments like these require a significant amount of experience and expertise. **Without sufficient training and resource for the Jobcentre, there is a risk that the new rules under UC could be applied inconsistently and unfairly.**

## Minimum Income Floor

- How can the Department best balance protecting public funds with supporting self-employed people in UC? Does the Minimum Income Floor (MIF) achieve this balance?
- Is the existing Start-up Period for newly self-employed UC claimants appropriate? If not, what changes should be made and how much would these cost?

<sup>4</sup> Citizens Advice, 2015, Going Solo; Citizens Advice, 2015, Who are the self-employed?

- What are the options for reforming the MIF, and what are their cost implications?

The Minimum Income Floor (MIF) is the biggest change for self-employed people receiving in-work benefits. Like the 'gainful self-employment' test, the MIF is intended to tackle fraud and make sure Universal Credit does not support businesses that are unviable.

The MIF assumes that, after the first twelve months of trading, a self-employed person will be earning a certain amount. For people without health conditions or caring responsibilities this is the equivalent of National Living Wage at full-time hours. Even if they are not earning this amount, their benefit entitlement is calculated on the basis that they are, meaning those who fall below lose out on much needed financial support. **This means that self-employed people can find themselves at a significant financial disadvantage compared to employees.**

The MIF will penalise people running potentially non-viable businesses, leaving them with a choice of changing businesses or moving into employment to increase their household income. However, it will also affect self-employed people in viable businesses with fluctuating, irregular or seasonal incomes. Following months in which a self-employed person receives high earnings they will see their Universal Credit reduced, in line with employees. But, unlike employees, in months when their income falls below the MIF threshold they will see their Universal Credit capped. This puts them at a significant disadvantage when compared to somebody earning an identical annual income evenly over 12 regular monthly payments.

### Case study: Minimum Income Floor penalises viable business

Sophie is a self-employed cleaner. She applied for Universal Credit to help her manage time out of work as she was due to undergo major foot surgery. She normally earns around £800 per month when she is able to work. She has a steady client base waiting for her when she returns to work. Following her application she attended the Jobcentre and was told that when she is unable to work she would receive Universal Credit that should cover 85% of her rent and leave some money to live on. She next visited the Jobcentre to undergo a 'gainful self-employment' test. At this interview she was informed she would be subject to the Minimum Income Floor and her Universal Credit would only be £62 per month in total.

The MIF means that Universal Credit policy for self-employed people is focused on combating fraud or unviable businesses but it is a policy which carries significant risks. It could cut businesses off before they have had time to mature, discourage people from trying innovative business ideas and push people with fluctuating incomes away from self-employment even if their total annual income clears the MIF. It is important that this policy is tested to understand whether it is effective at preventing fraud, and how it



impacts new businesses. The MIF is applied at 12 months but research by the RSA has calculated that a business takes an average of 3 years before its owner begins to earn the National Minimum Wage.<sup>5</sup> **The government should extend the MIF exception period for businesses that need more time to reach viability.**

As more self-employed people cross into the second year of their UC claim, Citizens Advice will be monitoring the impact of the MIF. **The government should test the impact of the MIF alongside and against other measures such as the business viability test and trials of in-work conditionality.** The MIF should be kept under review as it rolls out and different approaches - such as averaging functions rather than crude monthly measures - should be tested and piloted.

- Are any groups of self-employed people particularly likely to be affected by the MIF?

The Minimum Income Floor will affect people running non-viable businesses, as intended. However, its effects will also be felt by a wider group of self-employed people.

The MIF is particularly likely to affect people with irregular incomes. When irregular and unpredictable incomes interact with the MIF, the *total amount of financial support* that a self-employed person is entitled to under UC is significantly reduced. We are currently looking into the impact of this.

The MIF also carries risks for people whose self-employed earnings are low due to caring responsibilities and those who struggle to enter mainstream employment due to health conditions. The MIF is set equivalent to the hours requirements for in-work conditionality. If somebody is only required to seek 16 hours of work because they have caring responsibilities, the MIF should be calculated as NLW at 16 hours. It is crucial that this happens in practice. Otherwise, the MIF will particularly penalise these groups. The role of the workcoach is key in UC as their judgement and discretion will be used to determine a person's availability for work.

## Surplus Earnings Rule

- To what extent will UC Surplus Earnings Rules offset the impact of the MIF?

The Surplus Earnings Rule is another attempt to protect against fraud, specifically the idea that people may 'manipulate' their income - for example by declaring large amounts of income in a single month and then reporting very low wages for several months afterwards - to maximise their UC payments. It is due to come into effect in April 2018.

UC aims to simplify the benefits system but the Surplus Earnings Rule is complex and together with the MIF will add further complexity. **The government should investigate**

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<sup>5</sup> RSA, 2011, [Boosting the living standards of the self-employed](#)

**how well these rules will be understood, how they might interact, and whether they are achieving the right balance between preventing fraud and achieving the aims of Universal Credit.**

The new rule will mean that if someone's UC award ends because their income increases, that income will be used to calculate their 'surplus earnings' for that month. This is set at the amount of income which exceeds the maximum permitted for a UC payment, plus £300. If the person then needs to reclaim UC in the following five months, their surplus earnings will be counted as income and will be used to calculate their new payments (often meaning a nil or very small UC payment) until the surplus earnings are used up. Self-employed people can also carry forward a loss in any of the previous 11 months and apply it to their assessment period. However, losses can only reduce assessed income down to the Minimum Income Floor in the relevant month. **This interaction between the Surplus Earnings Rule and the MIF means some self-employed people could benefit from some loss relief but many others are likely to be left significantly worse off.**

In practice, some self-employed people will build up 'surplus earnings' in months where they have higher earnings, and see these earnings added to lower earning months alongside the MIF. This could have significant financial consequences for seasonal businesses or those with irregular incomes.

The Low Income Tax Reform Group demonstrates this with the following illustration:

"In April, Henry has a profit of £7,000. Between May and September his profit is nil. Under the current rules, Henry will receive no universal credit in April and in May to September his universal credit will have the MIF applied. Under the new surplus earnings rules from April 2018, his 'surplus earnings' from April will be carried forward and used as income in May, June, July and August, potentially reducing his Universal Credit award even further."

Self-employed claimants of Universal Credit – lifting the burdens  
Low Income Tax Reform Group<sup>6</sup>

The Surplus Earnings Rule also makes some significant assumptions about how businesses plan their finances. It is being introduced due to concerns about manipulation of income following the move to monthly reporting. However, the Surplus Earnings Rule pushes businesses towards monthly budgeting systems, even if they have legitimate business reasons for budgeting on an annual basis. For example those in the wedding industry may make the majority of their annual income during a few months of the year. Monthly budgeting in the way assumed by the Surplus Earnings Rule may

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<sup>6</sup> Low Income Tax Reform Group, 2017, [Self-employed claimants of universal credit – lifting the burdens](#)

prove difficult for these businesses and take them away from the most appropriate budgeting approach.

## Recommendations

- Different versions and combinations of the 'gainful self-employment' test, minimum income floor and surplus earnings rules should be developed and tested. The government should measure the impact on fraud, development of businesses, and the extent to which genuine and viable businesses are unintentionally affected.
- The government should investigate how well these new and complex rules are understood, and whether they are achieving the right balance between preventing fraud and achieving the aims of Universal Credit.
- The Government should introduce specialised training on supporting self-employed people for Work Coaches. Jobcentres will need to engage far more with self-employed people including in deciding whether or not their business is viable. They will require additional training and input from specialists to make such decisions.
- The MIF exception period should be extended beyond 12 months for businesses that need more time to reach viability.

## 2. Free school Meals and passported benefits

- How should eligibility for Free School Meals in UC be determined?
- How can eligibility criteria for passported benefits balance UC work incentives with achieving value for money? Is this balance currently being achieved?
- Are current eligibility criteria for other passported benefits (eg. help with health costs and the Healthy Start Scheme) appropriate? If not, how should they be reformed?

Universal Credit aims to simplify the benefits system and make every hour of work pay. When designing eligibility criteria for passported benefits, such as Free School Meals, it is important to consider the impact on these aims.

Eligibility criteria for passported benefits create complexity in Universal Credit. People need to be able to predict their eligibility for the passported benefit from month to month and if they increase their hours or earnings. This relies on clear, accessible information and reliable administration of Universal Credit and the passported benefit.

Work incentives may suffer as the eligibility threshold becomes a 'cliff edge' for families. For example, if the free school meal threshold is set at £617 per month, families will lose access to this passported benefit on months that they earn more. It could take several additional hours worth of pay to get back to the equivalent household income as before being affected by a cliff edge for free school meal eligibility. This could have serious implications for a monthly family budget and discourage people from increasing their earnings. **The government should test the impact of earnings thresholds for**

**passport benefits.** It should look at how multiple thresholds for different passported benefits would interact and how this would affect real world work incentives.

Another difficulty arises from the impact of *monthly* income assessments. Families with fluctuating or unpredictable incomes, or even those with non-monthly pay schedules, could move above the threshold for eligibility to passported benefits on some months. This makes it difficult to plan monthly budgets and could discourage people from increasing their earnings. **The government should consider how it measures earnings for assessing eligibility to passported benefits. It should ensure people are not penalised for irregular or non-monthly incomes.** If eligibility changes monthly, administration and delivery of passported benefits will prove more difficult.

## Recommendations

- Universal Credit and passported benefits need to be administered reliably and accurately. People should be provided with clear accessible information about their claims. This should include guidance on how changes in earnings and hours will affect their passported benefits as well as their Universal Credit.
- The government should assess how work incentives are affected by earnings thresholds for passported benefits such as Free School Meals. It should consider how multiple thresholds for different passported benefits would interact and the impact this has on real world work incentives.
- The government should consider how it measures income for assessing eligibility to passported benefits. It should consider assessment methods that ensure people are not penalised for irregular or non-monthly incomes.

## 3. Work incentives

- What would be the impact of adjusting a) the taper rate or b) UC work allowances on employment incentives in UC? Which option for reform would be most cost-effective?
- Should UC have different taper rates and/or work allowances for different claimant groups?
- How can the Department help UC claimants better understand the impact on their incomes of moving into work or taking on more hours?

At its launch Universal Credit had ambitions to significantly improve work incentives. Since then, a series of significant cuts to the benefit have reduced the financial awards available and weakened work incentives. The biggest change has been cuts to work allowances which are estimated to cut £5 billion per year from Universal Credit when it is fully rolled out<sup>7</sup>. Reducing the taper rate in Universal Credit and increasing work allowances are two methods that would help improve work incentives. Both let people keep more of their money as hours and earnings increase. However, **work allowances are more targeted than taper rate reductions and have the biggest real world impacts for people in terms of increasing their hours or earnings.**

Lowering taper rates - the proportion of benefit withdrawn for each pound of income

<sup>7</sup> IFS, 2016, Green Budget <https://www.ifs.org.uk/uploads/gb/gb2016/gb2016ch10.pdf>

earned above the work allowance - improves marginal returns to work, but there needs to be substantial change for most families to feel a significant impact in their budgets and work incentives. Increased work allowances extend how much people can earn with no penalty in their benefit entitlement. This is a more targeted approach as work allowances are set at different rates (including £0) for different groups of benefit claimants. It can provide significant improvements in financial work incentives for those currently working the fewest hours. **To help the people most affected by poor work incentives, the government should invest in work allowances.** Alternatively, to make small improvements for all claimants, the taper rate could be reduced.

The introduction of a greater variety of taper rates and work allowances could lead to a more personalised benefit system. **Targeted and personalised work allowances or tapers could increase work incentives for specific households** who face greater barriers and costs to entering work. With the aim of simplifying the benefit system the government has instead simplified tapers and work allowances to reduce variation. It is not clear that this simplicity has meant people have a better understanding of their work incentives. People still struggle to understand how their benefit award is calculated and how it will be affected by changes in hours or earnings. In a DWP-commissioned survey of families claiming UC, knowledge of the work allowance and taper were found to be limited. Only one in six (17 per cent)<sup>8</sup> had heard of the work allowance as part of their UC claim. Separate research<sup>9</sup> commissioned by DWP found 'a widespread perception among families that they would be worse off on UC if they entered work'.

**Work incentives need to be invested in** and will only be maximised if the Department can develop or support the provision of **personalised tools which help people calculate their benefits and their total income as they increase their earnings** to see a strong financial incentive from work or more work.

## Recommendations

- To help the people most affected by poor work incentives, the government should invest in work allowances. Alternatively, to make small improvements for all claimants, the taper rate could be reduced.
- The government should develop or support the provision of personalised tools which help people calculate their Universal Credit, passported benefits, and their total income as they increase their earnings.

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<sup>8</sup> DWP, 2017, Universal Credit Test and Learn Evaluation: Families. Findings from survey Wave 2 (Mar-Sep 2016). This was not significantly different from the proportion (14%) at Wave 1 (Dec 2015 - Jun 2016).

<sup>9</sup> DWP, 2017, Understanding how Universal Credit influences employment behaviour.

## 4. Universal support

- How important is Universal Support to the success of UC?
- Is Universal Support working well, and how could it be improved?
- Are there local variations in the quality of Universal Support? If so, how should these be addressed?

Universal Credit brings together six existing benefits. By 2022, more than 7 million households will be receiving the new benefit<sup>10</sup>. In order for it to be a success, Universal Credit needs to work for millions of people in different circumstances and with varying needs. It needs to be administered reliably and people need to be able to manage their claims, with support where necessary.

Our evidence shows that people are struggling with various aspects of Universal Credit. It is crucial that people who need it are supported to make and manage their claims online, and to adapt to budgeting a single monthly payment. Universal Support should be providing this assistance and helping people adapt. We are concerned that support is not being delivered consistently and at a high enough standard in different areas. We have been monitoring Universal Support through our network of local offices. Our early insight shows that many local Citizens Advice offices are not confident that support services in their area will meet local need and demand among UC full service claimants. The evidence also suggests that, where services are funded by the Local Authority or Jobcentre, poor or complex referral systems mean that claimants are not accessing the support they need.

Finally, the evidence suggests that the scope of Universal Support is not currently adequate for the support needs people have when claiming Universal Credit. As structured it provides support to adapt to Universal Credit but not to get on to this benefit. For example, we see people who need help with making and completing UC claims, including understanding evidence requirements.

We are continuing to monitor Universal Support across England and Wales.

### Recommendations

- The government should ensure people have access to a minimum, consistent standard of support to help them adapt to Universal Credit, which is published. This should, at a minimum, include
  - a) Ensuring all UC claimants are made aware of, and can access budgeting support and digital support which is appropriate to their needs and;
  - b) Expanding the scope to include help to make and complete a claim with support available to help people manage their finances whilst waiting for their first payment
  - c) Making funding available for free impartial debt advice to meet existing increases in demand as a result of Universal Credit.

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<sup>10</sup> Citizens Advice, 2017, Fixing Universal Credit

## 5. Childcare support

- Are UC systems for reporting childcare costs easy for claimants to use? How might they be improved?

Families on Universal Credit are asked to pay upfront for childcare and use receipts to claim costs back. This is a method to prevent fraud but the evidence requirements have proved challenging for some people. We have seen many UC claimants struggling to source and provide the required evidence. This has led to some people facing financial difficulty while they collect the evidence and then provide physical copies.

In July, Citizens Advice called for the introduction of online submission of childcare evidence. We are pleased Universal Claimants in full service areas can now submit photographic evidence electronically and will be monitoring the impact of this on our clients.

### Recommendations

- In the long-term the government should look to simplify administration further and create one portal for childcare evidence, covering UC systems, tax free childcare and free childcare hours.

Y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau  
Equality, Local Government and Communities Committee  
ELGC(5)–03–18 Papur 1d / Paper 1d

1. Thank you for the opportunity to submit additional evidence to the Committee's inquiry.
2. The Welsh Government's Economic Action Plan outlines some promising strategies to reduce inequality in Wales, and we welcome its commitment to inclusive growth, fair work and greater spatial balance.
3. However, the plan is also short on practical actions to achieve these ambitions. The new economic contract, streamlining of funding and a change in the sectoral approach are welcome but are not in our view sufficient to achieve a transformation in pay and hence a reduction in poverty.
4. Our view remains that if the action plan is to ensure 'prosperity for all' it needs to address the fundamental drivers of poverty i.e.
  - a. Increase the **number** of jobs especially in areas where there is a short-fall relative to the population.
  - b. Boost earnings at the bottom of the wages distribution including:
    - i. Raising the hourly rate of pay
    - ii. Increasing the security and number of hours of work.
5. The action plan is relatively light on action in these areas. We would therefore like to see the following:
  - a. A commitment to increasing the take up of the Living Wage, with an aim to reduce the proportion of people in Wales earning less than the Living Wage to the UK average (excluding London) within five years – requiring a cut of about 6,000 people a year.
  - b. Increased opportunities for low-paid employees to access training and development. This could include drawing on Welsh Government work-based training and other schemes where available, and working with staff and employers to overcome barriers to progression.
  - c. Increased provision of adult skills and training opportunities, including those which achieve outcomes to reduce poverty (e.g. focused on the incomes of individuals and productivity of employers rather than qualification achieved), and that resources are targeted based on need and personal circumstances.
  - d. A commitment to improving adult literacy, numeracy and digital skills through increasing participation in essential skills learning.



6. We would also like to see the plan include clear objectives in respect of specific groups of people. Whilst the plan briefly outlines how it will help those who are furthest away from the labour market to access employment, there needs to be some clear objectives here (e.g. increasing the employment rate of disabled people or individuals with severe mental health conditions by X percentage points).
7. We would also like to see the plan include clear objectives in respect of specific places. Whilst the plan makes a welcome commitment to the re-regionalisation of economic development policy, it should go further by committing to create jobs in specific places where employment opportunities are currently lacking. Making sure that the Welsh Government's own spatial targeting 'joins up' with these objectives is a key first step, backed by its other policies e.g. on transport, business rates and adult learning.

Bevan Foundation  
15<sup>th</sup> January 2018

Y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau  
Equality, Local Government and Communities Committee  
ELGC(5)–03–18 Papur 1e / Paper 1e

Prof Caroline Lloyd, School of Social Sciences, Cardiff University: Response to *Prosperity for All: Economic Action Plan*

The report includes a number of important objectives in relation to regional development, fair work and sustainable growth. Below are some comments relevant to the Committee's Inquiry into Making the Economy Work for People on Low Incomes.

1. Quality of Employment

There is a tension in the report between a recognition that there is a lack of quality jobs available and an agenda based on employability and skills improvement to enable individuals to access 'decent jobs'. The report states that 'We know that improving the level of skills for people from all backgrounds and places in Wales and encouraging a better match between these skills and the needs of employers is the best way of creating better jobs, higher wages and improved health outcomes. These changes help to reduce the pay gap...' pg 30. Unfortunately, there is no evidence that this is the 'best' way to create better jobs. Over many years, skill levels have been rising, yet the number of poor quality jobs has continued to increase. Women out-perform men in educational qualifications but the pay gap persists. Recognising that other forms of intervention are more likely to drive the creation of better jobs would provide a more realistic approach to the role of skills within such an agenda. The issue of the use of public finance to support apprenticeships, for example, could be better targeted on those areas of the economy and those employers that can deliver quality employment opportunities.

2. Inequality in access to good jobs

There is little in the report about inequalities in employment. Apart from the reference (pg 30) to skills breaking down the gender and ethnicity pay gap, there is only one other reference to inequalities in employment. On page 32, it states that attempts will be made to encourage women into traditional male preserves, girls to take STEM subjects and 'do all we can to reduce the gender pay gap'. There is no indication of the policies that might be used to achieve this. BME access is not mentioned nor encouraging men into traditional female preserves. Apprenticeship is a case in point where there is often very rigid gender segregation in participation. The quality of apprenticeships is also highly variable and we know little about inequalities in access, whether that relates to gender, ethnicity, class or locality.

3. The foundation sectors

The emphasis on placed-based services is important and provides the opportunity to enhance the quality of employment and quality of life more broadly. However, these sectors are often part of the problem for people on low incomes. The four foundation sectors identified in the plan are all characterised by high levels of low paid, female employment, and increasingly the provision of insecure and unsocial working hours. It is important to integrate policies aimed at tackling poor quality employment with local and national development plans.

4. The Fair Work Board

The Fair Work Board has considerable potential as a body that can evaluate evidence, consider different policy proposals and make recommendations to government. There are a number of gaps in the Economic Plan in relation to employment which rely on the output from the Fair Work Board. However, there appears to be no details on the Welsh government website (or elsewhere) as to its composition or terms of reference. Why is there not more transparency in relation to this body?

#### 5. Procurement

Procurement is identified as one of the key levers to affect issues of equality and inclusion. Welsh government could do more to encourage existing public sector and quasi-public sector organisations to pay the living wage and provide permanent and direct employment with security of hours, eg. local government, FE colleges and universities. For procurement policies to work in relation to equality, inclusion and fair employment, senior managers and procurement officers require adequate training and resources to ensure that these elements are integrated into the process.

#### 6. Care sectors

Childcare and elderly care have a number of commonalities in that the workforce is typically female, low qualified and low paid. At the same time, childcare is expected to be high quality delivering early years learning that can reduce inequalities, while elderly care has the potential to improve the quality of life for an ageing population. In both areas, government plays an important role as regulator and funder. A starting point to improve the quality of care and beneficial outcomes would be to raise the pay, hours and qualification standards required in these two sectors. Given restrictions on funding, choices have to be made. One example, might be to direct resources at improving pay and quality of care throughout the sector, rather than increasing free provision for 3 and 4 year olds which may only have a marginal impact on employment.

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This paper sets out additional information in response to the Committee's call in relation to the following:

1. Prosperity for All: Economic Action Plan
2. The original terms of reference, in particular a focus on low pay sectors and the role of welfare to reflect recent events and further research in these areas

### **1. Prosperity for All: Economic Action Plan**

- 1.1. Prior to the publication of the economic action plan, we were keen that it recognise that addressing gender equality is an economic issue. We called for the inclusion of a number of founding principles and a move away from focusing on sectors that are dominated by men.
- 1.2. There are a number of positives in the plan in this regard:
  - 1.2.1. The plan appears to be based on a number of foundations, which include inclusive growth and tackling inequality, and there is a strong focus on ensuring investment with social purpose. There is recognition of the need to deliver fair work as part of economic development and of the need to address some of the barriers women face to engaging fully with the economy, such as childcare.
  - 1.2.2. We are pleased to see a shift away from sectors that are predominantly dominated by men. The broader thematic sectors will incorporate more sectors in which women are working and the inclusion of foundation sectors, which tend to be lower paid and employ large numbers of women is a welcome recognition of the economic value of this work.
  - 1.2.3. We are also pleased to see the principles discussed in the plan underpinned by financial conditions in the economic contract and associated calls to action. This will build on work around procurement to further utilise the buying power of the Welsh Government to ensure public money delivers benefits for all members of Welsh society.
  - 1.2.4. We welcome the decision to make apprenticeships in the national and foundation sectors at lower levels. This will be particularly important for sectors like care as part of efforts to improve pay and progression by mapping out clear career pathways.
- 1.3. There are a number of areas in the plan where we think more could be done to ensure that economic growth benefits men and women equally and that gender equality is pursued as an economic priority.
  - 1.3.1. The plan sets out a new Ministerial Advisory Board to provide expert advice. It's important that this Board is diverse in its membership and is gender balanced.

- 1.3.2. The success of the action plan will be measured through the National Indicators. While this provides a useful link with the Well-being of Future Generations (Wales) Act, it could prove difficult to draw a direct line between actions undertaken as part of the plan and any change in the indicators. We are however pleased that this will at least ensure that success will be measured using disaggregated indicators and the gender pay gap. We would also highlight that given the focus on fair work within the action plan, there may be a need to revisit the National Indicators once the Fair Work Board has published its definition of fair work to ensure all factors are included within them.
- 1.3.3. The action plan lists a number of calls to action that businesses in receipt of Government support will be expected to contribute to. We are pleased to see high quality employment included here. However, this might be a missed opportunity to embed a focus on advancing gender equality along the lines of examples from Europe, such as the City of Berlin.<sup>1</sup>
- 1.3.4. The plan does not explicitly discuss poverty. While it's implied within discussions on inclusive growth it would be good to understand how it's envisaged that the plan will tackle some of the root causes of poverty.
- 1.3.5. The focus on foundation sectors is a positive but the plan states that the starting point for retail and care is to understand the barriers and challenges as well as the opportunities for growth and innovation. It's our view that much of this is already known, particularly for care, and that there could be a legitimate focus on action in these sectors as there is in the other foundation sectors.

## 2. The original terms of reference

- 2.1. In relation to inclusive growth and tackling economic inequalities, much of the additional points we would make are covered in the above discussion of the economic action plan.
- 2.2. In relation to low pay and wider issues of decent work, we look forward to seeing the outcomes of the Fair Work Commission and the intended next steps to improve the provision of fair work in Wales.
- 2.3. An exploration of low pay sectors
  - 2.3.1. We were pleased to carry out research on behalf of Oxfam Cymru in 2017 exploring the issue of decent work in the domiciliary care and food and drink sectors. This report is due to be launched shortly.
  - 2.3.2. Given the relevance of the research to this inquiry we have highlighted a number of the key findings:
    - 2.3.2.1. The value of both the domiciliary care and food and drink sectors is under-estimated and at odds with the reality of working in them.
    - 2.3.2.2. It's difficult for those working in these sectors to access training beyond induction and basic compliance training. The cost of training can be prohibitive for both employees and employers in these sectors and we are concerned that current provision, such as

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<sup>1</sup> Example referenced in oral evidence to the Committee on DATE

- apprenticeship and leadership training are largely funded by EU structural funding. Brexit therefore poses a significant risk.
- 2.3.2.3. In both care and food and drink it's clear that the opportunity to progress can depend on working with a manager who is able to identify and support employees to take advantage of opportunities. However, without support and training themselves it can be difficult for managers to perform this role, and while we heard examples of good practice, it can come down to luck of the draw for many employees.
  - 2.3.2.4. In both sectors, a lack of work-life balance, long hours and overworking were reported as being the norm. This has an impact on worker's well-being but also presents further barriers to progression for women, who are more likely to have pressures on their time outside of work.
  - 2.3.2.5. Gender stereotyping is also present in both sectors, but manifests itself in different ways. It shapes the demographic of the care workforce, which continues to be predominantly female, and in food and drink it leads to a heavily segregated workforce, continued issues of sexism and limits progression opportunities for women.
  - 2.3.2.6. While these two sectors share a number of challenges and some cross-sector solutions can be developed, there remains a need for a sectoral approach to deliver decent work. The context in each sector is very different and a one-size-fits-all approach is unlikely to address the key barriers to decent work in different sectors.
- 2.3.3. The role of welfare
- 2.3.3.1. Given the changing context of welfare reform and Universal Credit (UC) roll-out we thought it might be useful to highlight a number of our key concerns in relation to Universal Credit in Wales.
  - 2.3.3.2. We remain significantly concerned that the design of Universal Credit is such that women are at risk of being unfairly affected by it. Evaluations to date have suggested that the approach of Universal Credit has a limited impact on the job seeking behaviour of those with families. It's vitally important that employability programmes in Wales learn lessons from this and develop an approach that adequately supports women into sustainable, well-paid employment.
  - 2.3.3.3. Crucially, in Wales we are concerned that the potential for confusion for UC claimants is high as the new childcare offer is piloted and rolled-out. Evidence to date suggests that UC claimants are encountering difficulties in accessing the childcare element of UC and there remains a lack of awareness as to what support is available. It's vital that claimants in Wales have access to clear, accurate information about what support is available with childcare to ensure that they are not moving back out of employment as a result of caring pressures.

The new *WG Economic Plan* is to be welcomed in respect of making the economy work for people on low incomes. The plan sets out new ways to define and achieve growth (inclusive growth, support for foundation sectors, sustainability and job progression), and to maximise the potential of public spending to encourage local growth and introduce an *Economic Contract* to obtain economic and social value.

#### Up skilling and Training

Implementation will need to be underpinned by a thorough understanding of the different ways in which socio-economic disadvantage can limit aspiration and access to basic skills and/or adult learning. Learning opportunities will need to be flexible, attentive to diversity, properly resourced and provided 'close to home'.

While the intention to introduce equivalent maintenance support across full-time and part-time undergraduate and post-graduate study will assist adults with career entry into professions, the resource offer to support adult learners outside of Higher Education settings is less clear.

#### Progression from low-skilled work

The *Economic Plan* will need more detail on how job progression from low skilled work will be achieved. Job ladder and job

progression models are generally under-developed for 'entry level' and low graded jobs.

The *Women Adding Value to the Economy* (WAVE) programme found that little consideration had been given to progression for workers in the lowest grades (for example in health, local government and education from Grade 1 to supervisory level at Grade 3). Grade 3 is often the top of the grade scale for the majority of women's jobs in the public sector in cleaning, catering and clerical work.

Career pathways exist in most semi-professional and professional occupations (although there are silos within these, with women, disabled people and people from ethnic minorities more likely to be in career dead-ends and on insecure contracts), but progression into these roles from lower grades needs further consideration (for example from clerical work into higher administrative grades, from health care assistant to nursing, from porter to plumber).

New job progression models will need to facilitate vertical movement within the same occupation or horizontal movement into occupations with defined career ladders. Careers advice will need to include information on transferring skills and knowledge between occupations and sectors, as well as up-skilling, opportunities/funding sources.

WAVE employers began by introducing or revamping performance development reviews (PDRs) for workers in the lowest grades, with an emphasis on development discussions; information on



work-based learning and job shadowing development opportunities, and the availability of full time and/or permanent contracts 'close to home'.

They also equipped line managers with an understanding of how welfare transfer regulations can work to dissuade, particularly 'second earners' in a household, from taking on additional hours of paid work or moving into higher graded higher paid jobs.

Only the employer can progress employees through their grade hierarchy. To realise the *Economic Plan* goals, there must be a concerted effort to establish collaborative networks between employers, job and career advisors, training providers, and trades unions to examine and recommend how to create horizontal and vertical job ladders in different occupational areas.





Arbenigwyr mewn Busnes  
Experts in Business

## FSB Wales Briefing Prosperity for All: Economic Action Plan

### About FSB Wales

FSB Wales is the authoritative voice of businesses in Wales. With 10,000 members FSB Wales is in constant contact with business at a grassroots level. It undertakes regular online surveys of its members as well a number of research projects overseen by its Wales Policy Unit.

### Introduction

In December 2017 the Welsh Government published its long awaited economic strategy called *Prosperity for All: Economic Action Plan (EAP)*. The EAP marked a point of departure from the Welsh Government's previous economic strategy called the Economic Renewal Programme (ERP). The ERP focused on 'priority sectors' and the new EAP has removed this approach and replaced it with a number of spatial and sectoral priorities.

### Overview

The EAP has four core components that make up its approach. They are:

- **Economic Contract** – placed on all funding that comes direct from Welsh Government (except Business Wales or Development Bank). It will set out a number of prerequisites for firms to achieve before being eligible for support based around 5 calls to action.
- **New economic regions** – Three new economic regions have been created (N Wales, Mid and West Wales, SE Wales) that will be headed up by Chief Regional Officers. These will align to some extent with City Deals/Regions.
- **New 'National Thematic Sectors'** – These will replace the current 9 priority sectors. They are Tradeable Services, High Value Manufacturing and Enablers.
- **Foundation Sectors** – A direct response to the foundational economy. These are tourism, food, retail and care.

### Analysis

The publication of this document is an important moment for business in Wales.

This plan is long awaited and overdue but there is much welcome thinking contained within it. It is now time to move towards outlining proper detail that translates this from ambition and vision to meaningful action for business and the economy.

Ultimately, the Action Plan commits to recognising and working with the economic assets that we have in Wales and this is welcome. The pledge to focus on growing and promoting indigenous businesses is something that FSB Wales has long called for.

We are pleased to see that, as with the UK Government's Industrial Strategy, the document has identified some of the weaknesses of the Welsh economy, such as low productivity, and we hope to see these strategies complement each other to tackle these challenges.

We are also working closely with the Welsh Government and social partners as the Fair Work Commission develops and it is important that businesses are engaged in this conversation.

Possible improvements:

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**Swyddfa Gofrestredig | Registered Office:**  
National Federation of Self Employed and Small Businesses Limited,  
Sir Frank Whittle Way, Blackpool Business Park, Blackpool, FY4 2FE

**Cofrestrwyd yn Lloegr Rhif | Registered in England:** 1263540



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Experts in Business

- Welsh Government must now begin a wider conversation with businesses. In the first instance, this would mean **consultation** on the contents of the EAP with a focus on what it means for businesses in their day-to-day operation.
- **The EAP needs stronger targets and measures** by which to judge its performance. This should take the form of a basket of indicators such as GVA, employment and other structural indicators such as access to broadband.

## Economic Contract

The approach to the economic contract is innovative. A contract is something that must be beneficial to both parties, and we very much hope this will be the spirit in which the contract is used. It therefore needs to be easy to comply with. As with any contract, there needs to be a clear understanding on both sides as to what constitutes a 'breach'.

The Action Plan identifies a number of ways in which we can 'raise the ask' of larger firms through the contract. For our part, we'd like to see a stronger emphasis on leveraging the impact of Wales' larger firms' to help develop their Welsh supply chains and we feel that this needs to be specifically detailed as one of the 'calls to action'.

Possible improvements:

- An **additional call to action** should be included focused around the development of **Wales-based supply chains**.
- A **clear mechanism for holding both sides of any contract to account** should be included, as well as a mechanism for dealing with any breaches.

## Regional Economies

It is important that the Cabinet Secretary has recognised that the Welsh economy is regionally imbalanced; this is something that we must work together to redress. For too long, interest and attention has been focused in particular areas of Wales to the exclusion of opportunities elsewhere in the country.

Moving away from a 'one-size-fits-all' approach means that we can fully exploit the particular opportunities within each region including, but not limited to conversations on the growth deals. Allowing regions to identify their own priorities based on the needs of their businesses is the key here.

As part of this, it is encouraging to see emphasis on the rural economy following much work by the FSB. However, the Cabinet Secretary could go further than this, and adopt a Rural Challenge Fund to support rural Wales, as recommended by the FSB in our *Rural Taskforce* report which would stimulate new thinking on developing the rural economy.

Possible improvements:

- **Welsh Government should empower regional government** to deliver economic development, using the funds provided by the City/Growth Deals as leverage.
- In concrete terms, we believe that a move towards regional structures for economic development may merit **revisiting where key policy levers lie**.
- Economic development within Wales' regional economies should be balanced in terms of the internal make-up of each of the regions **recognising the spatial impact of sectoral approaches**.



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- That **arrangements are made for Mid Wales**, which stands to be neglected in current arrangements.

### Foundational Economy

We are very pleased to see an explicit ambition for the development of the foundational economy, which plays a critical role in Wales. We will work closely with the Cabinet Secretary and his team to develop the plans for this area of the economy as we move this from theory to action.

Possible improvements:

- The Welsh Government should **undertake work with firms in each of the sectors** to understand their pressures with a view to helping **deliver more sustainable business models**. The recent Welsh Government review of the childcare sector in Wales provides a useful template.<sup>1</sup>

### Business Support

The commitment to simplification and flexibility of support and interventions for business is promising and will bring tangible benefits to businesses who want a business support system that prioritises accessibility and ease of use. However, we need specific detail of what this simplification agenda will look like.

Possible improvements:

- There needs to be greater transparency as to **whether the new Economy Futures Fund will be grant or loan based** and whether it will be open to applications from SMEs.

### Sectors

We welcome the removal of a sector based approach, which was often confusing to SMEs who didn't feel it was relevant to their business and at times looked like an arbitrary approach to support. Moving forward, there needs to be greater clarity on what is included in the thematic sectors, and more importantly, what is not included.

Possible improvements:

- The **sectors identified by the EAP need to be better defined** and at present are too broad.

### Skills

Education and training are key levers in solving Wales' poor productivity. FSB welcomes the identification of this as a priority for the new Economic Action Plan. It is vital that reforms to post-compulsory education respond to SME needs.

Possible Improvements:

- Set out a **timetable for the delivery of the proposed Tertiary Education and Research Commission for Wales (TERCfW)**.

### Infrastructure

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<sup>1</sup> Government Social Research. 2018. *Review of the Childcare Sector in Wales* [Online]. Available at: <http://gov.wales/docs/caecd/research/2018/180110-review-childcare-sector-en.pdf> (accessed 10th January 2018).



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FSB welcomes the Welsh Governments actions to improve the development of infrastructure across Wales. Moving forward the role of the National Infrastructure Commission will be key, and we hope to see the commission tasked to deliver beyond traditional "hard" infrastructure

Possible Improvements:

- Further details on the possible **roll out of 5G**, and work to increase SME uptake and utilization of high speed internet access.
- The National Infrastructure for Wales should move swiftly **to engage with businesses** in drawing up its priorities.

### Low Carbon and Green Growth

FSB recognizes the challenges posed by climate change, and welcomes the clear signposting Welsh Government is seeking to provide through the carbon budgets. Moving forward, Welsh Government should seek to assist the smallest businesses in increasing their energy and water efficiency"

Possible improvements:

- Work with commercial landlords to **identify ways to assist SMEs in reducing their energy usage** or increase their energy efficiency
- Identify the priority actions required to assist SMEs to decarbonize their transport.

### Wales and the World

The document rightly recognises the need for Wales to project its brand more effectively to aid trade and investment. Welsh Government should commit to the development of a Trade and Investment Strategy to inform and guide this work and help create a vehicle for businesses prospecting abroad. However, we are pleased to see the Plan recognising the need to link with the UK Government's own activity in this area.

Possible improvements:

- Welsh Government should commit to bringing forward a **Trade and Investment Strategy for Wales.**
- Further **consideration should be given to creating an independent body** tasked with implementing the Trade and Investment Strategy.

### What's Missing

While the Action Plan identifies a number of priorities going forward, we feel there are areas for further development.

For instance, Welsh Government must also address some of our more strategic weaknesses such as how we address the lack of medium sized businesses, which was highlighted earlier this year by FSB Wales, or the lack of careers advice and support on offer in schools and the impact this has on the future of entrepreneurship.

We also recently called for a wide ranging Welsh Government review of self-employment in order to properly understand it and its impact in Wales, and would repeat this call going forwards.

Possible improvements:



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- The EAP should include **a clear commitment towards growing the medium-size cohort of Welsh firms**, what we've called the missing middle. A number of interventions would be associated with this.
- There should also be **greater recognition of self-employment** as an economic activity, given that it accounts for around 13 per cent of Welsh employment.
- The **links between businesses and wider social actors such as schools** should be explored in further detail.

## Next Steps

In consulting with business during the next stage, we would expect to see clear indicators and targets to measure success. Businesses operating on the ground must be able to see what this strategy means for them in reality.

Overall, this document strongly hints at the recalibration of thinking that FSB Wales has been calling for and seems to be heading in a positive direction. However, Welsh Government needs now to intensify a meaningful consultation with business to make it more tangible. Welsh Government must create a partnership with business that helps this plan to succeed.

# Agenda Item 5

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

Document is Restricted



**Report for the Equality, Local Government and Communities Committee of the  
National Assembly for Wales: *Public Services Ombudsman (Wales) Bill***

**Dr Gavin McBurnie MB ChB MBA LLM**

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## Summary

The Equality, Local Government and Communities Committee of the National Assembly for Wales is currently scrutinising the *Public Services Ombudsman (Wales) Bill*. This Bill, if enacted, will allow the Public Services Ombudsman for Wales (PSOW) to:

- Accept oral complaints;
- Undertake own initiative investigations
- Investigate private medical treatment, including nursing care, in a public/private health pathway; and
- Strengthen the role of the PSOW in relation to complaints handling standards and procedures.

This paper reviews the Regulatory Impact Assessment (RIA) produced on these proposals for the Equality, Local Government and Communities Committee to assist its ability to scrutinise the Bill.

### *Ability to receive oral complaints*

It is suggested that the figures contained within the RIA relating to the estimated number of complaints, both new complaints arising from easing access and the switch from written to oral complaints, significantly underestimate the likely impact. A sensitivity analysis using a 10% and 20% increase in complaints should be undertaken. It is also suggested that the case for additional direct costs has not been made and further information is required from the PSOW. If one accepts the complaint numbers in the RIA, then no additional indirect costs will actually be incurred as the estimated activity is so low that it should be met from within existing resource. If it is correct, that the number of additional complaints is a significant underestimate, then the impact on bodies in jurisdiction will need to be revisited.

### *Allow the PSOW to undertake own initiative investigations*

The direct staff costs associated with this proposal are reasonable but, again, it is argued that there will be no actual additional expenditure incurred by bodies in jurisdiction as the activity is likely to be low and managed within existing resource. The PSOW currently undertakes about 600 complaint investigations a year. This proposal will increase that number by about 10 individual complaints and undertake one to two major investigations. The way these latter investigations are inevitably conducted will have minimal financial impact upon bodies in jurisdiction. It is suggested that the number of complaints that it is estimated will be avoided by the use of this power is over estimated. Own initiative investigations are not likely to bring about significant reductions in individual complaints but rather, their value lies in the fact that potential thousands of people can benefit from a single investigation, representing excellent value for money.

*Allow the PSOW to investigate private treatment as part of a public/private healthcare pathway*

Two concerns are raised with the RIA relating to this proposal. Although untestable, the estimated number of complaints affected may well be an underestimate although it would have to be significantly wrong to have a significant impact on the PSOW or bodies. It is also felt that, in keeping with its approach to the public sector the RIA should have contained an estimate of its view of the potential financial impact. Nonetheless, as with the above two proposals it is suggested that private bodies would manage these investigations within existing resources.

*Strengthen the role of the PSOW in relation to complaints handling standards and procedures*

This direct staff costs associated with this proposal with are considered reasonable as are the total indirect costs associated with any possible changes to databases. It is suggested that other potential impacts on bodies arising from this proposal have not been recognised. These include assistance by bodies to the PSOW on the development of model complaint handlings policies, the alteration of complaints policies and procedures by bodies, where necessary, to ensure compliance and the dissemination within bodies of any changes in policies and procedures. It is suggested that these types of activities are part on the normal everyday work of any good organisation and would be funded from within existing resource. The figures within the RIA relating to the reduction in complaints received by the PSOW are considered an underestimate and that a greater number of complaints will be avoided. The complicating factor is that it is suggested that implementation may take longer than envisaged and that, while the number will be greater, it may be achieved in a slightly slower timescale than contained within the RIA. Better complaint handling at local level will reduce complaints being received and investigated by the PSOW leading, in turn, to reduced costs for the local bodies.

With regard to the direct costs relating to transition costs, other staff costs and professional fees, for each of the four proposals it is considered that all are problematic and it is suggested that the PSOW provide detail to evidence the figures within the RIA.

In summary, while very supportive of all four proposals, it is believed by the author that the direct costs associated with the proposals are overestimated, that the level of cost avoidance within the timescale covered by the RIA is also over estimated but may ultimately be greater than envisaged, and that the financial impact on bodies is seriously overestimated.

# Report for the Equality, Local Government and Communities Committee of the National Assembly for Wales

## 1. Introduction

1.1. The Equality, Local Government and Communities Committee of the National Assembly for Wales is currently scrutinising the *Public Services Ombudsman (Wales) Bill*. This Bill, if enacted, will allow the Public Services Ombudsman for Wales to:

- Accept oral complaints;
- Undertake own initiative investigations
- Investigate private medical treatment, including nursing care, in a public/private health pathway; and
- Strengthen the role of the PSOW in relation to complaints handling standards and procedures.

1.2. The Committee has sought assistance:

- To obtain an external independent analysis in understanding whether the costs outlined in the Regulatory Impact Assessment (RIA) are realistic and proportionate in terms of their completeness, timing and scale.
- To obtain an opinion as to whether the additional powers and associated expenditure arising from the Bill will provide value for money; and
- To inform the Committee's views on the presentation of the costings within the RIA and do they allow the Committee to have a full understanding of the additional costs and benefits.

1.3. This paper addresses the issues identified by the Committee and addresses these issues using the following structure: it considers the assumptions underpinning the RIA, it then examines each of the four proposed additional powers in turn, and finally provides a view on the proposed additional powers' value for money. All paragraph numbers used in this paper relate to the respective paragraph in the RIA.

## 2. Consideration of Assumptions Used in the RIA (Paragraphs 11.21-11.57)

- 2.1. Paragraph 11.30 states that there is an assumption that the ombudsman's caseload will increase by 12% per annum. This is evidenced by an average annual caseload increase of 17% between 2010-11 and 2015-16 together with a 13% increase on the prior year from 2015-16. The Ombudsman is said to have advised that he sees no evidence that this trend will decrease. Table 1 below demonstrates the year on year increase in complaints received by the ombudsman:

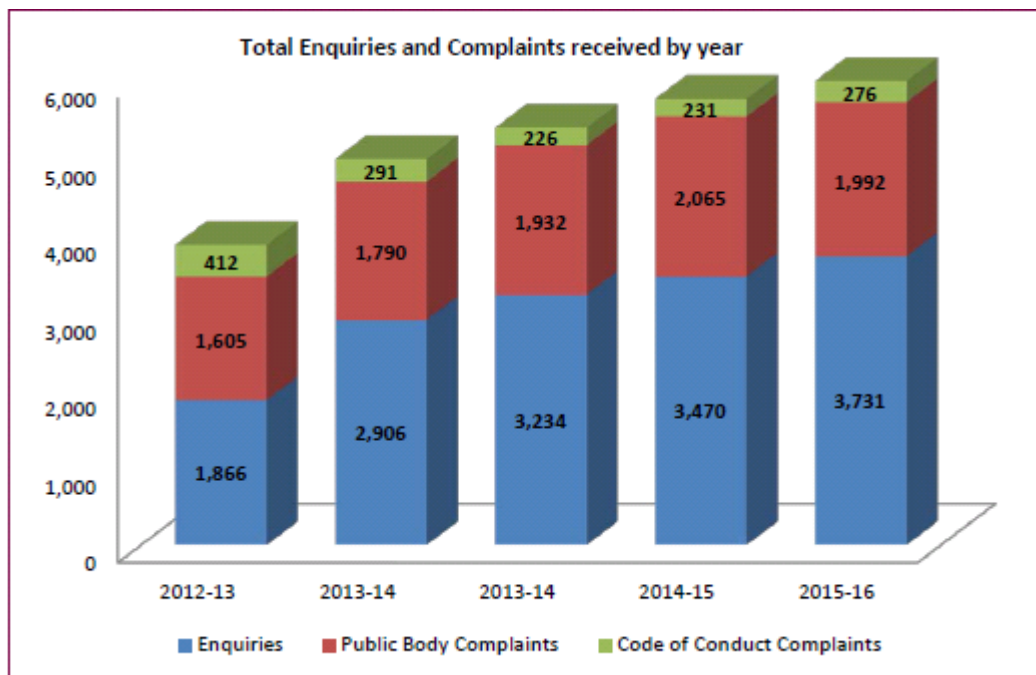
**Table 1: Year on Year increase in caseload**

Year	# of cases received	Increase in number of cases, year on year	% increase in cases, year on year
2010-11	2829		
2011-12	3883	1054	37%
2012-13	4987	1104	28%
2013-14	5392	405	8%
2014-15	5766	374	7%
2015-16	5999	233	4%
2016-17	6804	805	13%

- 2.1. This table indicates that most of the growth in caseload occurred in the period 2011-2013. From 2013-2016 the increase was 20% or about 6% annually. The period 2016-17 showed a larger increase. Including the year 2016-17 in the calculation from 2012, the increase was 36%, an average increase of about 8% per annum. It would be worthwhile asking the Ombudsman for his views as to the increase in caseload for 2016-17 to establish whether this is a structural increase or is out of trend. If it is not a structural increase then careful consideration would need to be given

before using an assumption of 12% increase in caseload per annum over the next five years.

- 2.2. The PSOW Annual Accounts for 2015-16 (P.6) provides a histogram analysis of the increases in caseload since 2012-13, see below. (Note that there is an error in this chart as the year 2013-14 is listed twice. Presumably the first 2013-14 is in fact 2012-13 and the column for 2012-13 is 2011-2012 but this needs clarified.)



- 2.3. Of interest, this histogram shows that the majority of the increase in caseload has been driven by a growth in enquiries rather than complaints. In 2012-13, the total number of complaints received by the Ombudsman totalled 2,081 complaints while, in 2015-16, the total was 2,268 complaints, an increase of 187, which is an average increase of less than 3% per annum.

- 2.4. The growth of enquiries undoubtedly has a cost for the office but the management of enquiries, assessment of complaints and actual investigations have significantly different costs. Investigations cost significantly more than assessments, which, in turn, cost more than



enquiries. **If further work is to be undertaken on the RIA then it may be worth considering using the costs of all three in a more nuanced analysis.**

2.5. Paragraph 11.35 states that the value of cost avoidance has been set against the cases expected with a 12% increase in caseload. Given the information above, the reasonableness of using the 12% model is questioned. **It is recommended that in calculating the increase in the Ombudsman’s caseload a 6% or 8% model is used and that this be used in all relevant analyses.**

2.6. In paragraph 11.31 the Ombudsman states that the unit cost of a complaint considered by his office has reduced by a total of 65% between 2010-11 and 2015-16. The resulting average cost of a complaint received by the office is £501. Table 2 provides details on cases and investigations together with budgets for the PSOW, SPSO and NIPSO.

**Table 2: Caseload and budgets for PSOW, SPSO and NIPSO** (Data from most recent annual reports)

Ombudsman	# of cases	# of investigations	Annual budget (,000)
PSOW	6804	588	£4,020
SPSO	4104	805	£3,252
NIPSO	3385	575	£1,516

2.7. It is always hard to compare data such as this due to differences in naming conventions (what is a case as opposed to a complaint or an investigation and how do they overlap), service models and local market rates for staff and accommodation. However, a cost of £501 per average case does not seem unreasonable and while the Ombudsman will continue to look at ways to reduce costs, it should be assumed that such activity is likely to produce modest benefits.

- 2.8. It is suggested in paragraph 11.32 that by identifying issues early or through the extension of investigations the Ombudsman states that he can prevent future failings which, in turn, would lead to the receipt of further complaints. The Ombudsman also suggests (paragraph 11.33) that improvements in complaint handling and better learning from complaints will also reduce the anticipated increase in caseload. It is estimated (paragraph 11.34) that, by 2020-21, own initiative investigations would reduce the number of complaints by 5% compared to the figure in 2015-16 while the addition of a complaint-handling role may reduce the equivalent figure by 10%. These estimated reductions in activity will be considered within the respective sections of this paper.
- 2.9. At this point it is worth considering the 'other staff costs' and 'transition' costs elements contained within the direct costs analysis in the RIA. As the same figures are used throughout the RIA when calculating direct costs, the comments apply to the calculations of the 'other staff costs' and 'transition' costs for each of the proposals.
- 2.10. Firstly, the one-off transition a cost of £5,000 per new employee to cover recruitment and equipment appears rather high. One would expect to achieve these at lower cost. Secondly, the 'other staff costs' are detailed at a recurrent £5,000 per person per annum to account for items such as stationery, printing and IT costs but, again, this seems high. Undoubtedly there will be costs incurred, including IT license costs. **It is recommended that the Ombudsman provide details on the calculations used to arrive at these costs.**
- 2.11. The assumptions underpinning the other direct and indirect costs associated with each of the proposals will be considered in the respective sections.

### 3. Power to accept oral complaints

- 3.1. It is estimated (paragraph 11.72) that 10% of complainants will want to make their complaint by telephone. This would imply that approximately 227 complaints would be made orally of which 25 will be additional complaints. There is reason to believe that these figures are modest in their scale. In her evidence the Scottish Public Services Ombudsman indicated that approximately 72% of complaints about the Social Welfare Fund were made orally. She correctly raised the caveat that it may be incorrect to assume that that figure will translate to the traditional type of complaints received by an ombudsman.
- 3.2. The Ontario Ombudsman in his annual report states that 61% of complaints received by his office are made orally<sup>1</sup>. Work undertaken by the author in Spring 2017, indicated that telephone complaints to the different energy ombudsmen in Australasia accounted for 70%-85% of their complaints. Within the UK, Ombudsman Services in their 20126/17 Annual Report state that 37% of complaints were made orally, while the Financial Ombudsman Service in their latest Annual Report indicate that about 43% of contacts are by telephone. As a result, the estimate that only 10% of complaints will be made by telephone looks modest. **It would be prudent to undertake a sensitivity analysis using a higher figure such as 40%.**
- 3.3. The view that accepting complaints by any means will result in an increase of 25 cases per annum also looks modest. Reading the RIA, it seems that this figure is calculated by using those people who make a complaint orally to the PSOW, which is transcribed, returned to the complainant for confirmation but is then subsequently not returned to the PSOW. It is suggested that enabling easier access to complain will generate additional

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<sup>1</sup> Ontario Ombudsman, 2017, *Annual Report 2016-2017*, P.64 [online] [viewed 13 January 2018] Available from <https://www.ombudsman.on.ca/Files/sitemedia/Documents/Resources/Reports/Annual/AR2017-EN-Final.pdf>

complaints in itself. It is known that many people do not complain for a variety of reasons and enabling complaining will undoubtedly allow people with legitimate complaints to complain when they may otherwise have not done so. **It would be prudent to undertake a sensitivity analysis using an increase in complaint numbers of 10% and 20%.**

3.4. The important issue is, would a move from written complaints to oral complaints significantly increase the workload of the office? The answer to this depends mainly on the service model and working practices of the PSOW. In the experience of the author, it can be difficult to understand the exact issues contained within a complaint received by an ombudsman's office. Good practice suggests that upon receipt of a complaint, the office should contact the complainant to clarify issues such as the following, among others:

- To understand the complaint, and to ensure that the complainant feels heard;
- To understand if local resolution has been attempted or completed;
- Whether the person making the complaint is a suitable complainant; and
- The expectations of the complainant both in terms of process and outcome.

3.5. This discussion would normally be written down and a scope of any resulting complaint sent to the complainant. Assuming that the office of the PSOW follows a similar, if not exactly the same, practice then much of the work involved will be undertaken no matter the mode of receipt of the complaint by the office. Thus, a more significant increase in the receipt of complaints by the PSOW may not result in an increase in office activity. This will particularly be the case with increased future use of smart technology. There is a move to encourage complainants to submit complaints online, in keeping with the changing use of technology (SPSO, PHSO). By doing so, a series of filters can be inserted that reduce the number of enquiries and complaints about which the office may not be able to take action. Signposting to the correct body is also available (PHSO).

- 3.6. It is suggested in paragraph 11.74 that there will be a need to increase the staffing complement by one whole time equivalent and to increase the pay of a second member of staff, as a result of increased responsibilities. The justification for this, contained within paragraph 11.74, is that staff will need to establish the context of the complaint, what injustice has been suffered and the outcome sought. However, these objectives will need to be achieved no matter how a complaint is received. **It is suggested that the case for additional staff at a higher pay grade within the RIA has not been made and further information should be obtained from the Ombudsman.**
- 3.7. Within the 'accepting oral complaints' section an estimate of the indirect costs (that is, the costs likely to be incurred by bodies in jurisdiction) is made. This amounts to range from about £16,000 to £22,000 per annum, totalling around £82,000 to £111,000 over five years. These are the costs associated with an additional 25 cases per annum of which 6 would go to full investigation.
- 3.8. However, this is not in keeping with the assumptions in paragraphs 11.43 to 11.49. In these paragraphs, it is stated that 86% of complaints will be made against local authorities and health bodies and in paragraph 11.47 it is stated that the bodies in jurisdiction receiving the remaining 14% of complaints could manage them within existing resources. Accepting that view, this means that 4 of the 25 cases received by the PSOW and one of the six investigations is likely to be against the minor bodies<sup>2</sup> in jurisdiction. Thus, the figures used in the calculations for indirect costs arising to local authorities and health bodies should be 21 and 5 respectively and not 25 and 6. This would result in annual costs ranging from £12,500 to £18,300 or £62,500 to £91,000 over the five-year period. The equivalent figures in the RIA for 25 cases and six investigations range from about £16,00 to £22,000 per annum, totalling around £82,00 to £111,000 over five years

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<sup>2</sup> By minor, it is meant in terms of scale of complaints received by the PSOW.

- 3.9. As stated above it is estimated that the ability to accept oral complaints will result in an additional 21 cases and five investigations per year. There are a total of 32 health bodies and county or county/borough councils. The implication, therefore, is that each local authority or health body may have one case reach the PSOW each year and face an investigation every six years. Thus, while the costs estimated in Tables 11, 12 and 13 should be treated as indicative sums, in reality it is unlikely that the bodies concerned will recruit additional staffing to manage such low levels of activity and that it will be undertaken within existing resources. This may change if the easing of restrictions on making a complaint to the PSOW does generate significant additional activity.
- 3.10. There are also concerns about the figures used in Tables 11 and 12. This concern arises from the author's experience as a Director in both a Scottish and an English health authority as well as experience as a clinical director. The first concern is that the total hours calculated appear high, even in the low estimate. Firstly, according to the website of the PSOW, the office will not contact the body concerned in every complaint<sup>3</sup>. Secondly, at that stage, the pre-investigation stage, the PSOW will be seeking the complaints file from the body concerned. While that request for information will create additional work, at that stage it is unlikely to be of the scale indicated in the Tables. Most of the work will fall to the complaints team, and probably at a level lower than Team Manager. This is an effectively moot point for, as suggested above, it is unlikely that organisations will incur additional staff costs.
- 3.11. The arguments for allowing the ombudsman to accept a complaint in any format compliant with his determination of what is meant by 'duly made' have been well rehearsed in the evidence received by the Committee. The

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<sup>3</sup> PSOW, 2017, *What we do when we get your complaint about a public body in Wales*, [online] [viewed 14/1/2017] Available from <http://www.ombudsman-wales.org.uk/en/Making%20a%20complaint/What-we-do-when-we-get-your-complaint-about-a-public-body-in-wales.aspx>

original legislation requiring complaints to be made in writing dates back to the Parliamentary Commissioners Act 1967. At that time many homes did not have a landline and writing to organisations was the norm. Time and technology have progressed and the legislation should reflect these changes that have occurred and future technology changes. The proposal in the Bill will allow that to occur. This is particularly important given research evidence that indicates that many people with legitimate grounds for complaint do not do so and that they can be deterred from making a complaint by even minor blocks in the process.

## 4. Undertake own initiative investigations

- 4.1. It is proposed to give the PSOW the power to conduct own initiative investigations in specific circumstances and following the ombudsman undertaking an appropriate consultation. The circumstances are:
  - A. The extension of a complaint to include another public body without the need for a new complaint from the complainant;
  - B. Where findings from a complaint investigation suggest that a wider investigation involving other bodies to establish whether the findings are more widespread;
  - C. Investigation of an anonymous complaint; and,
  - D. Investigation across all, or part, of a sector of service delivery in light of concerns.
- 4.2. The ombudsman expects to conduct 10-15 such investigations per year of which only one or two will relate to scenario D, while most are expected to relate to scenarios B and C. Investigations under scenario A and C are likely to be similar to the investigations currently undertaken by the PSOW and which currently total approximately 600 investigations a year. It is also suggested that the majority of investigations undertaken through the use of own initiative powers will relate to scenarios A and C as investigations under scenario B are likely to be resource intensive and therefore minimal in number, as is the case in scenario D. That being the case, then, given the potentially small number of investigations under scenarios A and C involved, probably up to 10 a year maximum, these specific investigations should be able to be undertaken within existing PSOW resource.
- 4.3. Investigations undertaken under scenarios B and D are likely to be more substantial, in particular, those investigations undertaken under scenario D. In the field of own initiative investigations, the ombudsman offices of Ontario and the Commonwealth Ombudsman of Australia have particularly strong reputations.
- 4.4. The author has previously been to the Ontario Ombudsman's office to gain an understanding of the process used by that office for its major own initiative investigations, the equivalent of scenario D. These investigations



are conducted by teams of around 6 persons, it can be slightly higher or lower depending upon the complexity and scale of the investigation, and are expected to conclude within three months. Multiplying the average six persons involved in the investigation by the three-month length of each case suggests that a major own initiative investigation requires 1.5 persons per year. This is in keeping with an additional staff complement of two persons conducting one to two major own initiative investigations per year under scenarios B and D proposed in the RIA. What has not been included in the costs for PSOW is the cost of senior oversight of these investigations. In Ontario, there is a Director level post with specific responsibility for these investigations. However, in Ontario they would expect to undertake 10-12 such investigations a year. With a level of 1-2 such investigations it is assumed that senior oversight of the investigations will be undertaken within existing resource. That seems a reasonable assumption.

- 4.5. Professional fees of £10,000 per annum has been identified which amounts to around 25-30 days of specialist advice. These costs must relate to investigations under scenario B or D and seems generous given that only one or two such investigations are planned each year. While additional professional fees are likely to be incurred they are unlikely to be of this scale. A more realistic level would be £5,000 per annum.
- 4.6. The approach taken to estimating the indirect costs appears to use a similar model as that used in calculating the financial impact of investigations arising from oral complaints. That is, the time and cost of a range of individuals who may be involved in an own motion investigation has been calculated. However, major own motion investigations are quite different from classical ombudsman investigation.

- 4.7. Two examples demonstrate this. The first is from the Ontario Ombudsman. Using one of their own initiative investigations, *Caught in the Act*<sup>4</sup>, indicates that a major own initiative investigation will involve a significant number of interviews across a range of bodies. In this case 49 interviews with staff from at least five groups including complainants, stakeholders, the Police and the relevant Ministry. It also involved reviewing 1,000 pages of documentation. This is a scenario D type investigation.
- 4.8. The Parliamentary and Health Service Ombudsman in England published a report *A review into the quality of NHS complaints investigations where serious or avoidable harm has been alleged*<sup>5</sup> which considered complaints it had investigated where serious harm had been alleged. This involved reviewing 150 complaint files, undertaking a survey of 170 complaint managers in the NHS in England and conducting site visits to six NHS Trusts and interviewing staff within these organisations. This approach is broadly similar to that envisaged under scenario B.
- 4.9. These examples demonstrate that these investigations are very different from the typical ombudsman investigation and the impact upon bodies in jurisdiction will also vary widely dependent upon the scope of the investigation and the corresponding complexity. For the Ontario Ombudsman investigation, *Caught in the Act*, the costs for the organisations involved were probably similar to those at the lower estimate in Table 15. For the PHSO investigation, more junior staff in health bodies were involved but again the number of hours involved would be similar to those in the lower estimate in Table 15.
- 4.10. All considered and, bearing in mind this is not an exact predictable science, the costs used in Tables 15 and 16 are probably reasonable for

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<sup>4</sup> Ontario Ombudsman, 2010, *Caught in the Act*, [online] [viewed 14/1/2018] Available from [https://www.ombudsman.on.ca/Files/sitemedia/Documents/Investigations/SORT%20Investigations/G20final-EN-web\\_1.pdf](https://www.ombudsman.on.ca/Files/sitemedia/Documents/Investigations/SORT%20Investigations/G20final-EN-web_1.pdf) P.39

<sup>5</sup> PHSO, 2015, *A review into the quality of NHS complaints investigations where serious or avoidable harm has been alleged*, [online] [viewed 14/1/2018] Available from [https://www.ombudsman.org.uk/sites/default/files/A\\_review\\_into\\_the\\_quality\\_of\\_NHS\\_complaints\\_investigations\\_where\\_serious\\_or\\_avoidable\\_harm\\_has\\_been\\_alleged.pdf](https://www.ombudsman.org.uk/sites/default/files/A_review_into_the_quality_of_NHS_complaints_investigations_where_serious_or_avoidable_harm_has_been_alleged.pdf)

use in the RIA. Again, however, these are nominal costs. As only one to two of these major own initiative investigations are likely to take place each year the impact upon any single organisation in any one year will be minimal and should be able to be accommodated within the organisation's existing resource.

- 4.11. Caution must be taken with regard the timing of the changes that are anticipated to arise from major own initiative investigations. For example, the PHSO published a systemic report, *Time to Act*, on the management of sepsis by the NHS in September 2013, yet it was not until 2017 that NICE produced its clinical guidelines in response to the report. However, many other organisations such as the Ontario Ombudsman and the Commonwealth Ombudsman in Australia have produced own initiative reports which have brought about changes much earlier.
- 4.12. Caution must also be taken with respect to the hoped for 5% decrease in complaints arising from own initiative complaints. This reduction is likely to be generated by the major investigations from scenario B and D. However, they may not occur to that degree. The Ontario Ombudsman carried out a major own initiative investigation the availability of a drug called Avastin. The report was titled *A Vast Injustice*<sup>6</sup>. This was prompted by a single complaint and on launching the investigation the Ontario Ombudsman publicly called for complaints about the same issue. A total of only 31 additional complaints were received. This indicates that such powers will not, necessarily, significantly reduce complaint numbers especially in the timescale within the RIA.
- 4.13. The ability to undertake own initiative investigations is very important. While relatively expensive for an ombudsman's office to conduct, particularly in comparison to the typical ombudsman investigation, they have the potential to secure significant benefits. In relation to the *A Vast*

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<sup>6</sup> Ontario Ombudsman, 2009, *A Vast Injustice*, [online] [viewed 16 January 2018] Available from <https://www.ombudsman.on.ca/resources/news/press-releases/2009/ministry-decision-to-restrict-cancer-drug-verges-on-cruelty-ombudsman-finds-cap-on-avastin-fundi>

*Injustice* report discussed above, the change resulting from the Ontario Ombudsman's report has the potential to save the lives of several hundreds, if not thousands, of Ontarians. Another example is the PHSO's report *Time to Act* also discussed above. Each year sepsis kills about 35,000 persons in England. The PHSO report has resulted in the production of clinical guidelines by NICE, and many other associated benefits such as publicity campaigns, widespread coverage in the media, and parliamentary focus on the issue raising its priority in the Department of Health. Together these should result in the earlier identification and better management of sepsis resulting in the saving of potentially thousands of lives per year. That change would not have occurred with even a series of single investigation reports.

- 4.14. More modest decreases in the number of complaints arising from own initiative investigations should be assumed especially by 2020-21. It is suggested that a more reasonable figure would be 100 complaints by 2020-21.
- 4.15. The own initiative investigations undertaken by the Commonwealth Ombudsman of Australia and the Ontario Ombudsman demonstrate the importance of such powers. Governments and Parliaments enact legislation to deliver public policy and democracy requires that these policies are implemented as intended. When that does not happen, trust in the legitimacy of public bodies and government can fall. Individual complaints may resolve this for individuals but it requires the major investigations to resolve major systemic problems with the implementation of parliamentary decisions.

## 5. Extend the Ombudsman's jurisdiction to enable the investigation of private health services

- 5.1. It is proposed to extend the ombudsman's powers to allow him to investigate health complaints against private health providers where that private health treatment is part of a combined public/private healthcare pathway. It is not uncommon for individuals to purchase care privately while also receiving publicly provided health care for the same problem. Where complaints arise, issues about responsibility arise and inability to investigate part of the care package inhibits a full and fair investigation. This proposal seeks to remedy that problem.
- 5.2. The ombudsman estimates that only seven complaints per year will arise if this proposed change is implemented. It is assumed that the PSOW is already investigating the public sector element of these complaints so it is an extension of the complaint rather than a new complaint. This being the case, the impact on the ombudsman's resource will be minimal as indicated in the RIA. The only question is, if the ombudsman is allowed to investigate such complaints, whether the number of complaints will rise sharply. This is a matter of untestable opinion. However, it would have to increase sharply to impact significantly upon the ombudsman's ability to conduct the investigations.
- 5.3. No indirect costs for private providers have been identified for this proposal within the RIA and this is a significant omission as it treats private providers differently from public providers of services. The author is unaware of any examples of costs of the potential impact on private providers arising from such a proposal elsewhere. Accepting that it may be difficult to quantify the costs, rather than leave a gap it would have been reasonable to assume that the cost impact of the proposal would be similar to that on which will fall on the public sector. Having said that, if the estimate of seven complaints per year is reasonably accurate then the costs would again be nominal rather than real. As with the public sector due to the low numbers involved it is unlikely that the private providers would recruit additional staff and therefore result in increased costs.

## 6. Power to undertake a role in relation to complaints-handling standards and procedures

- 6.1. The preferred option for this proposal is to enable the PSOW to provide undertake a complaints design, implementation, oversight and data collection role. This would include:
- Publishing a statement of principles;
  - Publishing a model complaints-handling policy for listed authorities requiring regular consultation with relevant stakeholders; and
  - Requiring bodies to collect and analyse data on complaints.
- 6.2. This would bring the PSOW onto the same footing as the SPSO. The SPSO is a model of good practice in this area. It consulted widely with stakeholders in the production of model complaint handling procedures, which were produced on a sectoral basis. This, inevitably, took time, roughly four years so far, but it has ensured that the CHPs were suitable for the sector in which they were intended to operate and that the sector felt that they were appropriate. Given the concerns of the Welsh NHS Confederation about consistency with *Putting Things Right* this may be an appropriate approach to follow. However, it does mean that implementation will be slower and, therefore, the benefits identified in reduced complaints received by the ombudsman may be delayed.
- 6.3. The direct costs for this activity detailed in Table 20 look reasonable. However, as with the other activities the transition and ‘other staff costs’ look rather excessive. Again, as with own initiative investigations, the professional fees also look excessive at £10,000 per annum. It is not clear from the RIA the nature of the professional advice that is required to support this work and the scale of this advice that is required. **It is suggested that the Ombudsman be asked to provide details on the professional advice he believes is required.**
- 6.4. At present, the RIA only includes costs relating to the alteration of pre-existing databases and IT systems. It is noted that the Welsh Local Government Association has highlighted concerns about the costs

associated with changing the databases used to gather information complaints information without, however, proposing any alternative estimate. Reviewing the information in the Welsh Local Government Association's submission it is suggested that the costs identified are reasonable for the purpose of the RIA.

- 6.5. However, should the PSOW undertake this new role, then there is likely to be other costs incurred by bodies although these are not likely to result in significant additional expenditure for bodies. Assuming an inclusive approach to the development of the CHPs, then there would be costs for those involved with their development. The submission from the Welsh Local Government Association indicates that, previously, they have been involved in similar work with the Ombudsman presumably within current resource. More importantly, once produced and distributed, bodies may well need to update the existing policies and procedures. There would be a need for bodies in jurisdiction to inform and train relevant staff on the new approach to complaint handling. This latter cost should be able to be subsumed in the normal training, development and update processes that exist in well managed organisations, in line with the normal approach to updating staff of revisions in other policies, with the remaining costs likely to be able to be provided from within existing resources.
- 6.6. One of the commonest failings found by ombudsman is the poor handling of complaints at local level. This is problematic for several reasons: it delays justice and closure for the complainant, ensures that potential learning is lost due to the passage of time, and, undermines confidence in the system. It also leads to the cost of 'redoing' activities. Better complaint handling would ultimately reduce costs through fewer complaints being received by the ombudsman than would otherwise have been received and lead to a better service for individuals and the scope for improving services as a result of learning from complaints.
- 6.7. Personal experience gained by the author at the Parliamentary and Health Service Ombudsman indicates that poor complaint handling was one of

the top reasons why complaints were not resolved at a local level and ended up being independently adjudicated. Thus, improving complaint handling is likely to result in reduced complaints reaching the PSOW. Indeed, the Commonwealth Ombudsman in Australia has a particular focus on improving complaint handling within bodies in jurisdiction for the express purpose of improving complaint handling at the local level, thus reducing complaints arriving at his office.

- 6.8. As well as reducing the number of complaints received by the Ombudsman due to better complaint handling by bodies in jurisdiction, there is emerging evidence (as yet unpublished) that better complaint handling at local level results in a significant reduction in the number of enquiries or cases about which the ombudsman cannot act. This emerging evidence suggests a decrease in such cases of up to 10% per annum although this is to be confirmed. Thus, the reduction in complaints being received by the Ombudsman may be greater than estimated. The 10% used within the RIA is suggested to be a realistic minimum that could rise to 12% by 2020-21. Underpinning this assumption is that the PSOW will build on the work undertaken by the SPSO.



## 7. Financial Summary

7.1. There are four proposed additional powers to be granted to the PSOW. Together the resulting increase in workload arising from these proposals, per annum, is:

- Accept oral complaints, 25 cases leading to 6 investigations;
- Own initiative complaints, 10-15 investigations of which 1-2 will be major;
- Include the private element of public/private health complaints, 7 cases a year; and,
- The adoption of a complaints standards authority type role.

7.2. The total increase is an additional activity by the PSOW of 19 assessments, 20 ombudsman investigations affecting the public sector, seven investigations affecting the private sector, and one or two major investigations per annum. Whilst it is accepted that this will have some impact on organisations and cause some short term increased activity in many organisations, given that the PSOW currently receives some 7000 cases and undertakes nearly 600 investigations each year this is a small addition in activity and should be able to be absorbed by organisations within existing resource. The figures therefore should be considered as representing the nominal cost of the activities of the ombudsman and not money diverted from the provision of services.

7.3. There is uncertainty surrounding the impact on costs affecting the PSOW. The acceptance of oral complaints is likely to increase the number of complaints beyond that estimated in the RIA. Without action, such as a move to online signposting and complaint forms, there is a real risk that the costs associated with this proposal will be greater than thought. There are unlikely to be significant real costs incurred by bodies in jurisdiction arising from the new powers unless the increase in oral complaints is much greater than estimated. In addition, caution should be taken around the potential costs savings arising from complaint handling and own initiative investigations. It is suggested that savings from own initiative

investigations will be lower than estimated while savings from complaint handling may be higher, although secured in a slower timeframe.

## 8. About the author:

- 8.1. Dr. Gavin McBurnie is a Lecturer in Dispute Resolution at Queen Margaret University. He conducts training in good practice in complaint handling at undergraduate level. He is programme lead on the module on Complaints and Ombuds Techniques as part of Queen Margaret University's MSc in Dispute Resolution. He has conducted training on behalf of the International Ombudsman Institute and the Caribbean Ombudsman Association on complaint handling and investigations. He conducted the Five Year Annual Review for Utilities Disputes Limited in New Zealand and worked with the OECD on the training of complaint staff in anti-corruption complaint management systems in Greece.
- 8.2. He formerly held various Director roles at the Parliamentary and Health Service Ombudsman in England, including Executive Director of Operations (Business Transformation), Director of Systemic Investigations, Director of Complex Health Investigations and Director of Clinical Advice, where he led on several important change projects. One of these was the More Impact for More people which saw the PHSO change their processes and allowed it to increase the number of investigations it investigated each year rise from around 400 investigations year to 4,000 investigations per year. Previously he was a Director at Fife Health Board and at the former North Yorkshire Health Authority for which he had responsibility for the handling of complaints in these organisations. He was also a Clinical Director in a Primary Care Trust.
- 8.3. Originally graduating from Glasgow University with a medical degree and practising as general medical practitioner, he also holds both an MBA and an LLM and is currently researching for a PhD on the methods used by health ombudsmen in their system improvement role.

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

Document is Restricted

John Griffiths  
Equality, Local Government and Communities  
Committee

10 January 2018

Dear John,

**DRAFT PUBLIC SERVICES OMBUDSMAN (WALES) BILL**

Thank you for your letter dated 12 December 2017 requesting further information on the Bill.

Please find attached my response to the questions you raised. Should you wish to explore these issues further, I would be happy to provide further clarity at my final evidence session before the Committee on Thursday 25 January 2018.

Yours sincerely



Simon Thomas AM

Chair

*Croesewir gohebiaeth yn Gymraeg neu Saesneg.*

*We welcome correspondence in Welsh or English.*



## Public Services Ombudsman for Wales

Questions for Simon Thomas AM, Member in Charge.

### **Section 5 [Criteria for own initiative investigations]**

**What is the meaning of ‘systemic failure’ in this context and why have you chosen not to define it for the purpose of the Bill?**

It will be for the Ombudsman to decide whether there is a systemic failure, based on his knowledge and expertise of failures in various public services (including his knowledge of complaints received, which explains the wording at the beginning of section 5(2)(b)).

Also, giving the Ombudsman some discretion is necessary because, the underlying reason for investigating has to be linked to people suffering injustice or hardship; the Bill should not hinder the Ombudsman from investigating situations where people suffer injustice or hardship.

If the Bill defined “systemic failure” as covering Circumstances A, B and C, then if the Ombudsman identified Circumstances X which may cause a person to suffer injustice or hardship, the Ombudsman would not be able to investigate. A failure in the system of a listed authority would be considered a serious matter and has the potential for many persons to suffer injustice or hardship, and therefore should be something that can be investigated.

The above reasons therefore make it appropriate for “systemic failure” not to be defined. The Public Services Ombudsman Act (Northern Ireland) 2016 also uses the word “systemic” without giving a definition.

It is also worth noting that the Ombudsman will not be able to push the meaning of “systemic failure” too far; he will be constrained by his duty to act reasonably and in the public interest etc.

### **Section 8 and 9 [Requirements: complaints made to the Ombudsman and Requirements: complaints referred to the Ombudsman]**

#### ***Guidance***

**Why doesn't the Bill contain any requirements relating to the development of the guidance for making complaints? [For example a requirement on the Ombudsman to consult before publication.]**

The Ombudsman is in the best position to develop guidance for making complaints, and the Ombudsman must be trusted to develop that guidance.

For example, the guidance will specify the form of a complaint and what information must be included in a complaint. It is the Ombudsman who has expertise in receiving thousands of complaints and it is he who understands how to get the most out of a complaint, so that he can investigate any injustice or hardship suffered by people.

This approach also help future-proof the guidance; it allows the Ombudsman to update the guidance as is necessary and to take account of changing circumstances.

[The question seems to be directed towards the **duty** of the Ombudsman to prepare guidance about the form of complaints. That duty is a new duty – there is no duty in the 2005 Act for the Ombudsman to prepare guidance about the form of complaints. (The Ombudsman does currently publish booklets about making complaints, but he does so using his general **discretionary** powers to do things that are supplemental to his main powers.)

So, the duty to prepare guidance has been added as a new layer in sections 8 and 9. But the fundamentals of sections 8 and 9 are very much based on sections 5 and 6 of the 2005 Act, and sections 5 and 6 of the Act do not require any form of consultation and have not required any form of consultation for over 12 years.]

### ***Time frame for complaints***

Like the 2005 Act, the Bill contains a discretionary power which would enable the Ombudsman to consider complaints outside of the 12 months statutory deadline. What consideration was given to increasing the statutory time limit from 12 months to a longer period or to providing the Ombudsman with a more specific power to vary the deadline for complaints?

The Bill does not seek to change this fundamental principle that has applied (and worked well) under the 2005 Act for 12 years. Since 2005,



the default position includes a 12 month limit, with a clear and reasonable discretionary power for the Ombudsman to accept older complaints. There has been no evidence that this fundamental principle needs to change.

#### **Section 14 [Decisions taken without maladministration]**

**Why is social care expressly referred to in this section and how do the provisions in the Bill relate to the existing powers and responsibilities of Social Care Wales?**

The wording of section 14 of the Bill restates, word for word, section 12 of the 2005 Act. Therefore, social care has been included in this context since 2005 and the Bill does not change that in any way.

Subject to the own initiative power, Social Care Wales will be captured under Part 3 of the Bill in the exact same way as Social Care Wales (including its predecessor, the Care Council for Wales) is captured under Part 2 of the 2005 Act. This means that maladministration by Social Care Wales can be investigated, including when the maladministration relates to merits of a decision taken in consequence of professional judgment in the field of social care.

The Bill does not seek to change this fundamental principle that has applied (and worked well) under the 2005 Act for 12 years. There has been no evidence that this fundamental principle needs to change.

#### **Sections 23 and 24 [Action following receipt of a report: investigation of a listed authority or a private health services provider]**

**What sanctions would be available to the PSOW if a listed authority or private health services provider did not address the issues or recommendations made in a report issued by Ombudsman?**

Where the Ombudsman prepares / publishes an initial report under section 20 or 26, the Ombudsman can then prepare / publish a special report under section 27. For example, if the Ombudsman is not satisfied with the action the listed authority has taken in response to the section 20 or 26 report, then the Ombudsman can prepare / publish a special report under section 27.

Again, this reflects the powers of sanction that have always been available to the Ombudsman under the 2005 Act and the Bill does not seek to change that fundamental principle.

In addition, section 33 of the Bill allows the Ombudsman to issue guidance to listed authorities, and listed authorities must have regard to that guidance (see section 33(3) of the Bill). Once again, this restates the fundamental principle which has always applied under section 31 of the 2005 Act.

It is worth noting that section 25 of the Bill restates section 20 of the 2005 Act. Section 20 of the 2005 Act has never been brought into force. Since drafting the Bill, we have become aware that section 20 was never intended to have been included in the 2005 Act, which explains why it has never been brought into force. Given that we now understand that section 20 of the 2005 Act does not work as an enforcement tool (which is why it has never been brought into force), it is accepted that section 25 of the Bill needs to be removed from the Bill. It appears that section 20 of the 2005 Act was an amendment which went to a vote in the UK Parliament and it was never expected that the amendment would be agreed, but it was. Our understanding is that one or more members did not vote as they had intended, which is how the amendment was passed.

Finally, the question refers to section 24 of the Bill. However, section 24 does not give the Ombudsman himself any powers of sanction. Section 24 imposes a duty on listed authorities (i.e. a duty to have regard to reports about private health services providers published under section 20(4) before entering into contracts with private health services providers.

#### **PART 4: LISTED AUTHORITIES: COMPLAINTS HANDLING PROCEDURES**

**What are the implications of Part 4 for those listed authorities who are already subject to statutory complaints procedures, for example, NHS bodies?**

Section 41(1)(b) of the Bill clarifies that if a listed authority is subject to

a statutory complaints–handling regime, then the listed authority does not have to comply with Ombudsman’s model complaints–handling procedures and does not have to comply with the Ombudsman’s statement of principles, to the extent that those duties to comply are inconsistent with the statutory regime.

Therefore, listed authorities will have to consider any statutory regime that applies to them and compare it with the Ombudsman’s model complaints–handling procedure, and then make a judgment about inconsistencies.

Unnecessary conflicts can be avoided because the Bill requires the Ombudsman to consult listed authorities before preparing his statement of principles and before publishing model complaints–handling procedures.

**Why doesn’t the Bill set out the timetable for the model complaints handling procedures to be consulted and published on?**

The Bill allows gives the Ombudsman flexibility to develop ideas and to consult widely before his new powers take effect.

The Bill replicates the complaints–handling provisions of the Scottish Public Services Ombudsman Act 2002, which have worked well.

**The Explanatory Memorandum emphasises that the provisions in relation to complaints–handling will mean that regular, reliable and comparable data on complaints across the public sector will be available. What consideration was given to including in the Bill a specific requirements in relation to data collection?**

Section 40 of the Bill envisages that, when the Ombudsman complies with the duty to monitor practice and identify trends in practice, this will lead to information and data being collected about complaints–handling.

Section 40 also says that listed authorities must co–operate with the Ombudsman when the Ombudsman is exercising his duty to monitor practice and identify trends in practice. This will ensure that the Ombudsman gets the information he needs, and that he gets regular,

reliable and comparable data on complaints–handling across the public sector.

**If there are different complaints procedures for different sectors (and organisations within sectors) how will any data available be used to compare and contrast?**

It is envisaged that the Ombudsman will factor this into his development of model complaints–handling procedures, i.e. if he does develop different complaints–handling procedures for different sectors, then they will still be developed in such a way as to allow him to compare and contrast the data he receives.

These issues could also be covered in the Ombudsman’s statement of principles, which the Assembly must approve.

The Ombudsman is required to consult widely before developing complaints–handling procedures and the statement of principles must be approved by the Assembly. These requirements can be used to help ensure that data can be used to compare and contrast across different sectors.

However, ultimately the Bill does not prescribe any more detail as to how the Ombudsman will develop model complaints–handling procedures.

Again, the Bill replicates the complaints–handling provisions of the Scottish Public Services Ombudsman Act 2002, which have worked well.

**What are the implications of Part 4 for those listed authorities who have already voluntarily adopted the existing model complaints policy?**

The statutory requirements of Part 4 will override any voluntary regime. But, again, the Ombudsman’s duty to consult means that any transition to a new regime can be made as smooth as possible.

## **PART 5 INVESTIGATION OF COMPLAINTS RELATING TO OTHER PERSONS: SOCIAL CARE AND PALLIATIVE CARE**

**Can you provide more detail of the complexities noted in oral evidence**

## of integrating the investigatory regimes in Part 3 and Part 5?

The starting point is that when the Welsh Government introduced Part 2A into the 2005 Act (via the Social Services and Well-being (Wales) Act 2014), the social and palliative care experts at the Welsh Government would have very carefully crafted the provisions of Part 2A so that they applied properly in the context of care home providers, domiciliary care providers and independent palliative care providers.

The Welsh Government made a conscious decision to include Part 2A as a standalone part of the 2005 Act and not to bring social and palliative care within Part 2 investigations. It is important that the Bill respects that separation.

If the specific nature of Part 2A of the Act was to be respected and preserved while also bringing Part 2A within Part 2, then Part 2 would have been particularly complex.

For example:

- Part 2 of the 2005 Act allows the Ombudsman to investigate listed authorities, subject to certain exceptions. Part 2A of the 2005 Act captures social and palliative care providers, with its own set of exceptions. Merging these into one would still require both sets of exceptions to be set out, creating a longer and more complex regime where it is not immediately clear what exceptions apply to which bodies.
- Part 2 of the 2005 Act is almost exclusively based on maladministration by a listed authority. However, under Part 2A, there is no requirement for maladministration by a social or palliative care provider. Therefore, if the sections around “matters which may be investigated” were merged into one, the maladministration requirements would apply to some bodies in Part 2 but not to others. In addition, the approach to “matters which may be investigated” is different in Part 2 and Part 2A (so much so that Part 2A does not refer to “matters which may be investigated”, instead it refers to “matters to which this Part

applies”, which has a very different structure to the equivalent section in Part 2).

- Merging Part 2 of the 2005 Act with Part 2A of the 2005 Act would have required a decision to be made as to whether social and palliative care providers should be captured as listed authorities. If they were captured as listed authorities, then further carve outs would have to apply to those listed authorities that were social and palliative care providers (because, to respect the specific nature of the social and palliative care provisions, the whole regime around listed authorities could not simply be applied *en bloc* to social and palliative care providers). If they were not captured as listed authorities, then the social and palliative care provision would just be copied and pasted into Part 2, creating one very long Part 2 which had two distinct regimes within it. This would not help people understand the Bill – it is far better and clearer if the regime for listed authorities and the regime for social and palliative providers are kept apart. This also continues the current separation in the 2005 Act with which people have become accustomed. Keeping the regimes separate would also make it much easier for each regime to be amended in future.
- Section 22 of the 2005 Act sets out the circumstances where the Ombudsman can prepare a special report under Part 2 of the 2005 Act. Section 34O of the 2005 Act sets out the circumstances where the Ombudsman can prepare a special report under Part 2A of the 2005 Act. The drafting approach taken by the Welsh Government in section 34O is different to the approach that was taken by the UK Government in section 22. To respect the specific nature of the drafting of both sections, a new section combining both section 22 and section 34O would have been lengthy and intricate.

Why doesn't Part 5 contain a similar provision to that of section 24 in Part 3?

Section 24 was considered by the Finance Committee to be a suitable way of getting private health service providers to take seriously Ombudsman investigations and reports.

Given the express link between: (a) the extent to which private health service providers are captured under the Bill, and (b) listed authorities (via section 10(2)(c) of the Bill), it was considered appropriate that any sanction imposed on the private health service provider should be linked to other listed authorities. That link is found in section 24, i.e. listed authorities must have regard to reports published in respect of private health services providers.

Part 5 is a distinct part of the Bill, dealing with different kinds of bodies – listed authorities are very different bodies compared to care home providers, domiciliary care providers and independent palliative care providers.

Part 5 was included in the 2005 Act by the Welsh Government (via the Social Services and Well-being (Wales) Act 2014) as a distinct part relating to the provision of private social and palliative care.

The Bill does not seek to change the sanctions that can arise under Part 5 of the Bill, as those sanctions were carefully chosen by the Welsh Government as being suitable in the context of care home providers, domiciliary care providers and independent palliative care providers.

## **PART 6 INVESTIGATIONS: SUPPLEMENTARY**

**Why have you chosen not to include the Northern Ireland Public Services Ombudsman and the Prison & Probation Ombudsman in the list of ombudsman set out in section 64?**

The Welsh Ministers have powers under the 2005 Act to add to the list of persons set out in section 34U of the 2005 Act (mirrored in section 64 of the Bill). Given that the Welsh Ministers have not used those powers to add the Northern Ireland Public Services Ombudsman or the Prisons and Probation Ombudsman, it was not considered appropriate to include them in the Bill.

However, if Stage 1 proceedings show that the list in section 64 of the Bill should change, then of course that should be taken into consideration at Stage 2.

What course of action could be taken by commissioners, statutory advisers and the Auditor General for Wales in the event that they dispute a decision by the Ombudsman on the relevance to their work of a matter which he/she is investigating?

Commissioners, statutory advisers, regulators and the Auditor General can simply disagree with the Ombudsman. The Bill does not force those bodies to work with the Ombudsman.

With regard to those bodies who are already captured in this context under the 2005 Act, this represents no change.

For example, under the 2005 Act, if there is disagreement between, say, the Ombudsman and the Welsh Language Commissioner then there is no duty on them to work together – they can simply go their own ways and investigate independently.

However, imposing a duty on the Ombudsman to inform and consult those bodies will help those bodies to work together. And the Bill broadens the scope for working together. For example, if the Ombudsman is currently considering whether to investigate a matter which may be something the Auditor General can investigate, the 2005 Act imposes no requirements at all on the Ombudsman to inform the Auditor General. However, the Bill addresses that by requiring the Ombudsman to inform and consult the Auditor General where it is appropriate. The same applies to the way the Bill broadens the requirements to inform and consult other commissioners, statutory advisers and regulators. By bringing more people together, the Bill reduces the scope for disagreements and overlapping investigations.

In addition, the Ombudsman has memorandums of understanding in place with various commissioners. Again, these arrangements are put in place in order to ensure efficient and effective working. And by requiring the Ombudsman to inform and consult more bodies, it is likely that the Ombudsman will enter into memorandums of understanding with more bodies; this can only help achieve more efficient and effective resolution of matters.

What consideration did you give to requiring the Ombudsman to consult



commissioners, statutory advisers, regulators and the Auditor General for Wales on all investigation proposals as a matter of course?

Requiring consultation as a matter of course could result in unnecessary work and delays in investigations. For example, if the Ombudsman is investigating a matter relating purely to health, it does not seem practical to consult every commissioner, statutory adviser, regulator and the Auditor General as a matter of course.

The Ombudsman's duty is to consult as he considers appropriate. It is right that the Ombudsman is given this discretion to consult when it is appropriate in the circumstances of each investigation. This also secures the Ombudsman's independence and does not unduly fetter his discretion to investigate matters when he is aware of a person suffering injustice or hardship.

This reflects the proportionate approach to the provisions in the 2005 Act around collaborative working, and the Bill does not seek to change that proportionate policy (as introduced by the Welsh Government via the Social Services and Well-being (Wales) Act 2014).

### **SCHEDULE 1**

What consideration was given to bringing the provisions for audit of the Ombudsman's accounts in line with the standards for NHS and local government audit provisions?

The Auditor General for Wales raised the issue of the consistency in audit legislation in his letter dated 6 October 2017 to which I responded on 7 November 2017. My letter notes that the Finance Committee is willing to revisit the issues raised by the Auditor General for Wales following publication of the Stage 1 report by the Committee.

### **SCHEDULE 3**

Both the AGW and the PSOW have raised concerns about including the Wales Audit Office as a listed body under Schedule 3. How do you respond to these concerns?

The Auditor General for Wales raised the issues in respect of inclusion, under

Schedule 3, of the Wales Audit Office in his letter dated 6 October 2017 to which I responded on 7 November 2017. My letter notes that the Finance Committee is willing to revisit the issues raised by the Auditor General for Wales following publication of the Stage 1 report by the Committee.

### **MISCELLANEOUS AREAS:**

Why have you chosen not to restate section 33 of the 2005 Act, which places requirements on listed authorities to publicise the procedure for making complaints to the Ombudsman?

Section 33 of the 2005 Act is no longer necessary because it is replaced by Part 4 of the Bill. While section 33 provided a narrow power for the Ombudsman to address complaints–handling, Part 4 of the Bill allows complaints–handling to be dealt with in a much more detailed and focused way.

Why did you choose not to restate section 35 and schedule 4 of the 2005 Act, which give functions to the Ombudsman around the conduct of local government members – this would provide a single consolidated piece of Welsh legislation on the role of PSOW?

Schedule 4 to the 2005 Act made consequential changes to the Local Government Act 2000 – those amendments have been achieved. It would be confusing and inappropriate for those amendments to be restated in the Bill.

With regard to section 35 of the 2005 Act, that section is saved by section 74(1)(b) of the Bill (meaning that the amendments made by Schedule 4 will automatically continue to have effect, and there is no need to restate the amendments all over again).

### **Regulatory Impact Assessment:**

The RIA notes that the Ombudsman has previously accommodated increases in caseload by reducing the unit cost per complaint by 65% between 2010–11 and 2015–16. What assurance do you have that he will be able to achieve further reductions with future increases in caseload, thus making the Bill affordable in the context of his overall budget?

As set out at paragraph 11.63 of the Explanatory Memorandum, the

Ombudsman has, to date, accommodated increase in caseload through reductions in the unit price per complaint rather than seek proportionate increases in funding.

The Explanatory Memorandum goes on to note that the Ombudsman advises that he will continue to review working practices and organisation structure to accommodate a growth in caseload. It is the Ombudsman's view that he would not be able to deal with the projected increase in caseload without additional resources. It is not possible to estimate exactly how much growth could be absorbed within existing resources through future efficiencies and innovations. The Ombudsman would have to include additional requests for resource through the future annual budgets submitted to the Finance Committee.

Can you clarify the difference between the unit cost per complaint of £501 for 2015–16 used to derive costs in the RIA and the unit cost of £613 for 2015–16 set out in the Ombudsman's most recent budget estimate? Have you made any assessment of the financial impact that using the figure of £613 would have on the additional costs of the Bill?

The unit cost of £501, used to derive the costs in the RIA, reflects expenditure incurred in 2015–16 by the Ombudsman's office for Aim 2, *to deliver a high quality complaints handling service, which considers and determines complaints thoroughly and proportionately, and conveys decisions clearly*. This was considered to be the most reasonable and appropriate figure for estimating the cost of the projected increase in caseload.

The Ombudsman's total expenditure, which is used to calculate the unit cost for the Annual Report and Estimate, includes the cost of other aspects of the Ombudsman's work. For example, total expenditure includes the costs incurred to improve the internal functions of the Ombudsman's office, such as governance, business processes and support functions. The cost of these activities was not deemed likely to vary with the projected increase in caseload. As such, they were not included in the calculation of the unit cost for the purpose of preparing the RIA.

Table 1 below sets out a summary of the estimated cost of the projected

increase in caseload using the unit cost in the RIA (£501) and the Ombudsman’s Annual Report (£613). It also sets out the corresponding figures for 2016–17. Further details, which presents the estimates using the same format as that used in the RIA, are set out at Annex A to this paper.

**Table 1: Cost of the projected increase in the Ombudsman’s caseload (£)**

	Unit cost per complaint (£)			
	£501 <sup>a</sup> Total (5 Years)	£613 <sup>b</sup> Total (5 Years)	£455 <sup>c</sup> Total (5 Years)	£526 <sup>d</sup> Total (5 Years)
<b>2005 Act:</b>				
<b>Increase in caseload of 5 per cent per annum</b>				
Projected caseload (Number of cases)				
Increase year-on-year (Number of cases)				
Estimated additional cost year-on-year (£)	988,974	1,210,062	898,170	1,038,324
Estimated additional cumulative cost from 2018-19 (£)	2,870,229	3,511,877	2,606,695	3,013,454
<b>Increase in caseload of 12 per cent per annum</b>				
Projected caseload (Number of cases)				
Increase year-on-year (Number of cases)				
Estimated additional cost year-on-year (£)	2,910,810	3,561,530	2,643,550	3,056,060
Estimated additional cumulative cost from 2018-19 (£)	8,076,621	9,882,173	7,335,055	8,479,646

**Notes:**

- a Unit cost per case as derived from expenditure incurred by the Ombudsman in 2015–16 for Aim 2, to *deliver a high quality complaints handling service which considers and determines complaints thoroughly but proportionately* [Expenditure (£3,008,000) divided by caseload (5,999). Source: Ombudsman’s Annual Accounts 2015–16]. This is the unit cost per case used for the cost estimates in the RIA.
- b Unit cost per case for 2015–16 as reported in the Ombudsman’s Annual Report and Accounts 2016–17 and Estimate 2018–19.
- c Unit cost per case as derived from expenditure incurred by the Ombudsman in 2016–17 for Aim 1, to *provide a complaints service that is of the highest quality, proportionate and effective* [Expenditure (£3,097,000), divided by caseload (6,804). Source: Ombudsman’s Annual Report and Accounts 2016–17].
- d Unit cost per case for 2016–17 as reported in the Ombudsman’s Annual Report and Accounts 2016–17 and Estimate 2018–19.

The Auditor General for Wales has said that it would have been appropriate to give figures in the RIA for cost avoidance as a result of the Bill based on mitigating a 5% increase in caseload (in addition to the mitigation of a 12%

increase that have been included in the RIA). For what reasons did you chose not to include these figures in the RIA, and are you able to provide the Committee with these figures?

The Ombudsman’s best estimate is that his caseload will increase by 12 per cent per annum. It is in that context that his office has estimated the mitigation or ‘cost avoidance’ arising from the provisions in the Bill (specifically the powers to conduct own initiative investigations and undertake a role in respect of complaints–handling).

In preparing the RIA, the Finance Committee noted the evidence given at its meeting on 5 October 2016 by the Ombudsman in respect of his caseload. The Ombudsman advised that, at that time, his caseload was expected to increase between 10 and 12 per cent in 2016–17 and between 5 and 6 per cent for and from 2017–18.

To reflect best practice and provide a sensitivity analysis, the estimated cost of an increase in caseload of 5 per cent per annum was also included in the RIA. As noted, the estimate of ‘cost avoidance’ was provided only in respect of the projected annual increase in caseload of 12 per cent.

Tables 2 sets out an estimate of the mitigation of the projected annual increase of 5 per cent anticipated from the provisions in the Bill. The related cost, at Table 3, is shown for each unit cost per case set out at Table 1.

**Table 2: The Ombudsman’s projected caseload under the 2005 Act and Bill**

	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Projected caseload - 2005 Act <sup>a</sup>	5,999	6,804	7,144	7,501	7,876	8,270	8,684	9,118
Projected Caseload - Bill <sup>b</sup>				7,433	7,701	7,575	7,514	7,453
<b>Increase/(Decrease) in caseload (number of cases):</b>				(68)	(175)	(695)	(1,170)	(1,665)
Decrease arising from the proposed power to undertake:								
Own initiative investigations				(23)	(58)	(232)	(390)	(555)
Complaints handling standards and procedures				(45)	(117)	(463)	(780)	(1,110)

Notes:

- a Ombudsman’s actual caseload 2015–16 and 2016–17 and projections for 2017–18 to 2022–23, which assume an annual increase in caseload of 5 per cent.

- b Caseload projections of the estimates impact of the provisions in the Bill.

**Table 3: Cost avoidance arising from the provisions in the Bill (£)**

	2018-19	2019-20	2020-21	2021-22	2022-23	Total	
Decrease in caseload:							
Own initiative investigations and Complaints Standards Authority (Number of cases)	(68)	(175)	(695)	(1,170)	(1,665)	(3,773)	
Estimated cost avoidance (£):							
Unit cost, RIA (2015-16, calculated) <sup>a</sup>	£ 501	34,068	87,675	348,195	586,170	834,165	1,890,273
Unit cost, RIA (2015-16, reported) <sup>b</sup>	£ 613	41,684	107,275	426,035	717,210	1,020,645	2,312,849
Unit cost (2016-17, calculated) <sup>c</sup>	£ 455	30,940	79,625	316,225	532,350	757,575	1,716,715
Unit cost (2016-17, reported) <sup>d</sup>	£ 526	35,768	92,050	365,570	615,420	875,790	1,984,598

**Notes:**

- a Unit cost per case as derived from expenditure incurred by the Ombudsman in 2015–16 for Aim 2, to *deliver a high quality complaints handling service which considers and determines complaints thoroughly but proportionately* [Expenditure (£3,008,000) divided by caseload (5,999)]. Source: [Ombudsman’s Annual Accounts 2015–16](#). This is the unit cost per case used for the cost estimates in the RIA.
- b Unit cost per case for 2015–16 as reported in the Ombudsman’s [Annual Report and Accounts 2016–17](#) and Estimate 2018–19.
- c Unit cost per case as derived from expenditure incurred by the Ombudsman in 2016–17 for Aim 1, to *provide a complaints service that is of the highest quality, proportionate and effective* [Expenditure (£3,097,000), divided by caseload (6,804)]. Source: [Ombudsman’s Annual Report and Accounts 2016–17](#)].
- d Unit cost per case for 2016–17 as reported in the Ombudsman’s [Annual Report and Accounts 2016–17](#) and Estimate 2018–19.

The RIA notes that it is expected the Ombudsman will initiate 10–15 own-initiative investigations per year. Did you speak to the Northern Irish Ombudsman to find out how many own-initiative cases they undertake per year to inform whether this assumption, and therefore the costs set out for this section of the RIA, is likely to be accurate?

The Explanatory Memorandum notes the range of stakeholder engagement in the calculation of the costs and benefits of the Bill. This included:

- reviewing the results of research by the Northern Ireland Assembly's Research and Information Service (RaISe) into the cost implications of the Northern Ireland Public Services Ombudsman Bill.
- consulting other ombudsmen, including discussion at a good practice seminar jointly organised by the Ombudsmen Association, the International Ombudsman Institute and Aberystwyth University.
- reviewing the results of a web based survey of Ombudsman Schemes across Europe facilitated by the Office of the Ombudsman Ireland on behalf of the International Ombudsman Institute (IOI).

The results showed that the number, types and scale of own initiative investigations varied.

Evidence given by the Ombudsman to the Finance Committee in the Fourth Assembly noted that the power to conduct own initiative investigations is “a power normally used sparingly to investigate where there is an obvious problem but no complaint has come forward or, more usually, to extend an investigation into a complaint to other bodies where it appears that the maladministration or service failure identified is likely to be systemic and affecting people other than the complainant”. The Ombudsman also noted the evidence set out in a paper prepared by the Office of the Northern Ireland Ombudsman, *Power to Commence and Own Initiative Investigation*. This paper reported that the Ombudsman in the Republic of Ireland undertook five own initiative reviews between 2001 and 2010 on issues ranging from subventions in nursing home care, tax refunds to widows, refuse collection charges and the rights to nursing home care for elderly people.

As noted, the RIA sets out that the Ombudsman expects to carry out between 10 and 15 own initiative investigations each year. **Only one or two of these are expected to an investigation across all, or part, of a sector of service delivery in light of concerns (referred to in the RIA as ‘Scenario D’).** The remainder are expected to be undertaken in response to anonymous complaint or extend an investigation into an existing complaint. As noted at

paragraph 11.36 of the Explanatory Memorandum, the estimates reflect a number of assumptions informed by the experience of the Ombudsman's staff and his office's analysis of cases. As such, the number of own initiative investigations and the related cost of undertaking them are regarded as the best estimates.

It should be noted that the Public Services Ombudsman Act (Northern Ireland) was enacted in 2016, but own initiative powers do not commence until April 2018.

The Auditor General also highlights that the forecast savings from improved complaint handling are based on the Comptroller and Auditor General's report on handling complaints in the UK Government Department for Work and Pensions. How would you respond to his view that forecasting such savings is subject to considerable uncertainty, and that this should be reflected more strongly in the RIA?

The forecasting of savings is subject to considerable uncertainty and for this reason the RIA does not quantify them.

The summary of the estimate of costs and benefits, set out at Chapter 9 of the Explanatory Memorandum, states that "the Regulatory Impact Assessment has identified a range of potential benefits to members of the public and public bodies within jurisdiction arising from the provisions in the Bill. The unquantified benefits are set out in the Policy Options section of the RIA".

Paragraphs 11.21 to 11.58 of the Explanatory Memorandum set out information in respect of the assumptions and uncertainties relating to the costs and benefits of the Bill. This notes that it is not possible to predict in respect of which public bodies the increase in the future caseload will relate. Nor is it possible to know which will benefit most from improvements in complaints-handling and quicker and easier learning from complaints.

Paragraph 11.137 of the Explanatory Memorandum notes that there are potential savings to bodies within jurisdiction arising from complaints-handling. It also reports, for illustration purposes, the potential savings from improved complaints-handling by the Department for Work and



Pensions as reported by the NAO Comptroller and Auditor General. However, the RIA does not include an estimate of the value of the savings arising from this proposed provision in Wales.

Do you agree with the Auditor General's view that the paragraphs 9 and 10 of Schedule 1 to the Bill does charge expenditure on the Welsh Consolidated Fund, and for what reasons does the explanatory memorandum take a different view?

The Auditor General set out this view in his letter dated 6 October 2017 to which I responded on 7 November 2017. My letter notes that the Finance Committee is willing to revisit this issue again following publication of the Stage 1 report by the Committee.

Do you plan to amend the Explanatory Memorandum in a way that allows Standing Order 26.6 (xi) to be met, by including the Auditor General's views that the direct charge provisions from paragraphs 9 and 10 of Schedule 1 to in the Bill are appropriate and adding in the additional provision that he suggests?

As noted above, my letter to the Auditor General advises that the Finance Committee is willing to revisit this issue following publication of the Stage 1 report by the Committee.

In estimating the additional costs of the Bill to public bodies you have assumed that staff pay will annually increase by 1% to reflect the cost of living. How realistic do you consider these estimates are given the possibility that the public sector pay cap may be lifted in some organisations covered by the Bill?

We believe that the approach taken is reasonable given the continued austerity in UK public finances. Public sector pay was frozen for two years in 2010 (except for those earning less than £21,000 a year) and since 2013, increases have been capped at 1 per cent. While the cap has been lifted for some parts of the UK public sector (for the police and prison officers), we believe that it remains reasonable to assume that it will remain in place for the rest of the public sector.

You have also estimated that the Ombudsman's staff will receive a 1% annual

increase in pay to reflect the cost of living. What consideration have you given to the possibility that his staff will receive a greater increase than this at some points over the five years after the Bill comes into force, potentially resulting in costs to the Ombudsman over and above those set out in the RIA?

As noted above, we believe that it remains reasonable to assume that the public sector pay cap will remain in place for most of the public sector.

For information, Table 4 sets out the value of the annual 1 per cent increases for years 1 to 5, currently reflected in the estimates of direct and indirect costs in the RIA, which can be used for sensitivity analysis.

**Table 4: Cost of the annual one per cent increase in pay, Years 1–5 (£)**

	Direct Costs	Indirect costs		Total	
		Low unit cost	High unit cost	Low unit cost	High unit cost
Accept oral complaints	3,534	1,632	2,209	5,166	5,743
Enable own initiative investigations	11,617	1,748	3,268	13,365	14,885
Extend jurisdiction to investigate the private health service element in a public/private health service pathway <sup>a</sup>	-	-	-	-	-
Complaints design, implementation oversight and data collection role <sup>b</sup>	11,617			11,617	11,617
<b>Total</b>	<b>26,768</b>	<b>3,380</b>	<b>5,477</b>	<b>30,148</b>	<b>32,245</b>

**Notes**

- a As noted at paragraph 11.107 of the Explanatory Memorandum, the unit cost per case has been used to estimate the financial impact on the Ombudsman of investigating the private health service element in a public/private health service pathway. The impact of an increase in staff salary costs on the unit cost has not been estimated. The cost impact on private health providers (the ‘indirect cost’) is not known (paragraph 11.57, Explanatory Memorandum).
- b As noted at paragraph 11.128 of the Explanatory Memorandum, the financial impact on public bodies of the complaints design, implementation, oversight and data collection role is likely to relate to one off (or transition) costs to alter pre-existing data and IT systems. We have assumed that such costs will be incurred in the first year following enactment (paragraph 11.23, Explanatory Memorandum) and hence the cost estimates do not include a ‘cost of living’ increase.

The Welsh NHS Confederation expresses concern that there is no consistent financial framework for imposing financial penalties on organisations as a result of the Ombudsman's investigations. Would you consider using this Bill to introduce a consistent financial framework for this purpose?

The Ombudsman does not impose financial penalties. Therefore a financial framework is not applicable and is not required in the Bill. When the Ombudsman finds there has been maladministration or service failure on the part of a body which has caused injustice to an individual he recommends that the body takes action to remedy that injustice. This may include financial redress but this is done on a case by case basis.

Your estimates for the additional costs of the part of the Bill that allows the Ombudsman to look at cases with a private health care element are based on no change from the 1% of the Ombudsman's caseload that this currently represents. For what reasons do you not consider that the Ombudsman will need to investigate more than 7 cases per year relating to the private health care sector as a result of the Bill, given the possibility that with increased awareness of this provision there may be a greater caseload and additional associated costs?

The Bill defines the circumstances in which the Ombudsman can investigate private health services, restricting this to cases in a public/private health pathway and "where the relevant action cannot be investigated or completely without also investigating matters relating to the private health services".

The estimated number of cases reflects the narrow definition, as well as the assumptions informed by the experience of the Ombudsman's staff and his office's analysis of cases. This is seen as the best estimate.

The RIA notes that it has not been possible to estimate the additional costs to private healthcare providers as a result of the Bill. What discussions did you have with private providers or their representative bodies to try to establish the level of costs that they may incur?

As noted at paragraph 11.57 of the Explanatory Memorandum, the Ombudsman advises that that he does not have access, or a right to access, to details of the number and the associated cost of complaint made about

private health services. The Independent Healthcare Sector Complaints Adjudication Service (ISCAS) provides independent adjudication on patient complaints about ISCAS members but this does not cover all private healthcare providers.

Other published data on the number of complaints does not cover all private healthcare providers and does not show separately any costs relating to Wales. Given this, the RIA notes that it has not been able to estimate the value of direct costs and hence, the cost impact on private health service providers is not known. However, the number of cases is very low.

**In March 2017, a representative of OB3 told the Finance Committee that there are significant limitations to the information available to inform robust estimates of indirect costs and benefits of the Bill to other public and private sector organisations. To what extent does the further work undertaken since then provide you with assurance that the additional costs to these bodies set out in the RIA are robust and accurate estimates?**

The Finance Committee considered the early RIA at its meeting on 9 March 2017. Members recognised the challenges and limitations in terms of quantifying the costs of the new powers due to a lack of evidence and data available. They noted the Ombudsman's comments that the additional research required to obtain further data could be considered disproportionate. However, Members concluded that, since the primary role of the Finance Committee is to consider expenditure from the Welsh Consolidated Fund, it was essential that any Bill being introduced included detailed and measured costings. The Finance Committee therefore requested additional information from the Ombudsman to meet its own standards and also those required to comply with the Standing Orders of the National Assembly for Wales.

This information, along with responses to subsequent requests made by the Finance Committee, was provided by the Ombudsman. **As noted in the Explanatory Memorandum, the Ombudsman's staff and OB3 engaged with a range of stakeholders, including some public bodies affected by the provisions in the Bill, in the course of collating information for the preparation of the RIA. The additional information provided was used to**

prepare the cost estimates in the RIA. OB3 also reviewed the responses to the inquiry and consultation of the Finance Committee in the Fourth Assembly in respect of the consideration of the powers of the Ombudsman. On this basis, we conclude that they are the best estimates of the costs.

The Auditor General notes that he cannot bind his successor to undertake an examination into the Ombudsman's use of resources as part of the post-implementation review of the Bill. Do you consider that you will need to revisit your plans for post-implementation review as a result of this?

The intent was that the work of the Auditor General for Wales in respect of the Ombudsman – such as the audit opinions on the annual report and accounts and any other reports that may be relevant – would be considered as part of post implementation review. The intent was not that specific requests for additional reviews or audit work would be made for this purpose. The Finance Committee is willing to consider whether any amendments are required to the Explanatory Memorandum to make this clearer following publication of the Stage 1 report by the Committee.

Do you consider that the Finance Committee scrutinising the Ombudsman on the costs incurred in implementing the Bill's provisions as part of the post-implementation review is appropriate given the Finance Committee's role in introducing the Bill and overseeing its progress through the Assembly? Would this be better done by another Assembly Committee?

While the Finance Committee has introduced the Bill, it does not impact in any way on its ability to carry out the functions of the responsible committee set out in Standing Orders 18.10, 18.11, 19 and 20 of the National Assembly for Wales.

The Auditor General has suggested that it would be helpful if the four month deadline for laying the Ombudsman's annual accounts after they have been submitted to him could be removed. Would you be prepared to amend section 17 (2) (b) of Schedule 1 to the Bill to remove this requirement?

The Finance Committee's Report into the delay in the laying of Natural Resources Wales Annual Accounts 2015-16 by the Auditor General for Wales noted issues in respect of the four-month reporting provision to which the

Auditor General's written evidence refers.

The Finance Committee is willing to revisit this issue again following publication of the Stage 1 report by the Committee.

## Annex A – The Ombudsman’s unit cost per case

In this Annex, we replicate the tables set out in the RIA for the figures for the unit cost per case as set out in the main body of this paper.

**Table 7: Cost of the projected increase in the Ombudsman’s caseload (£)**

### UNIT COST PER COMPLAINT, £613

Unit cost per complaint (£)	613					
	2018-19	2019-20	2020-21	2021-22	2022-23	Total
<b>2005 Act:</b>						
<b>Increase in caseload of 5 per cent per annum</b>						
Projected caseload (Number of cases) <sup>d</sup>	7,501	7,876	8,270	8,684	9,118	41,449
Increase year-on-year (Number of cases)	357	375	394	414	434	1,974
Estimated additional cost year-on-year (£) <sup>e</sup>	218,841	229,875	241,522	253,782	266,042	1,210,062
Estimated additional cumulative cost from 2018-19 (£)	218,841	448,716	690,238	944,020	1,210,062	3,511,877
<b>Increase in caseload of 12 per cent per annum</b>						
Projected caseload (Number of cases) <sup>f</sup>	8,535	9,559	10,706	11,991	13,430	54,221
Increase year-on-year (Number of cases)	915	1,024	1,147	1,285	1,439	5,810
Estimated additional cost year-on-year (£) <sup>e</sup>	560,895	627,712	703,111	787,705	882,107	3,561,530
Estimated additional cumulative cost from 2018-19 (£)	560,895	1,188,607	1,891,718	2,679,423	3,561,530	9,882,173

### UNIT COST PER COMPLAINT, £455

Unit cost per complaint (£)	455					
	2018-19	2019-20	2020-21	2021-22	2022-23	Total
<b>2005 Act:</b>						
<b>Increase in caseload of 5 per cent per annum</b>						
Projected caseload (Number of cases)	7,501	7,876	8,270	8,684	9,118	41,449
Increase year-on-year (Number of cases)	357	375	394	414	434	1,974
Estimated additional cost year-on-year (£)	162,435	170,625	179,270	188,370	197,470	898,170
Estimated additional cumulative cost from 2018-19 (£)	162,435	333,060	512,330	700,700	898,170	2,606,695
<b>Increase in caseload of 12 per cent per annum</b>						
Projected caseload (Number of cases)	8,535	9,559	10,706	11,991	13,430	54,221
Increase year-on-year (Number of cases)	915	1,024	1,147	1,285	1,439	5,810
Estimated additional cost year-on-year (£)	416,325	465,920	521,885	584,675	654,745	2,643,550
Estimated additional cumulative cost from 2018-19 (£)	416,325	882,245	1,404,130	1,988,805	2,643,550	7,335,055

### UNIT COST PER COMPLAINT, £526

Unit cost per complaint (£)	526					
	2018-19	2019-20	2020-21	2021-22	2022-23	Total
<b>2005 Act:</b>						
<b>Increase in caseload of 5 per cent per annum</b>						
Projected caseload (Number of cases) <sup>d</sup>	7,501	7,876	8,270	8,684	9,118	41,449
Increase year-on-year (Number of cases)	357	375	394	414	434	1,974
Estimated additional cost year-on-year (£) <sup>e</sup>	187,782	197,250	207,244	217,764	228,284	1,038,324
Estimated additional cumulative cost from 2018-19 (£)	187,782	385,032	592,276	810,040	1,038,324	3,013,454
<b>Increase in caseload of 12 per cent per annum</b>						
Projected caseload (Number of cases) <sup>f</sup>	8,535	9,559	10,706	11,991	13,430	54,221
Increase year-on-year (Number of cases)	915	1,024	1,147	1,285	1,439	5,810
Estimated additional cost year-on-year (£) <sup>e</sup>	481,290	538,624	603,322	675,910	756,914	3,056,060
Estimated additional cumulative cost from 2018-19 (£)	481,290	1,019,914	1,623,236	2,299,146	3,056,060	8,479,646



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref:

John Griffiths AM  
Chair  
Equality and Local Government Committee  
National Assembly for Wales  
Cardiff Bay  
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15 January 2018

Dear John

During my evidence session on the scrutiny of the Finance Committee's Public Services Ombudsman (Wales) Bill on 11 January 2018 I undertook to write regarding two matters. The first concerns whether sections 40 and 41 of the Bill provide adequate protection for the statutory framework underpinning *Putting Things Right* and social care complaints. The second matter concerns technical issues with section 8 of the Bill (oral complaints).

### *Sections 40 and 41*

Section 40 of the Bill requires the PSOW to monitor complaints practice among listed authorities.

'*Putting Things Right*' is the Welsh NHS-wide complaints procedure, made under the NHS (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011; which, in turn, are made under s113 of the Health and Social Care (Community Health and Standards) Act 2003 ("the 2003 Act"). There is also a statutory complaints procedures for social care made under the Social Services Complaints Procedure (Wales) Regulations 2014; which, in turn, are made under s114 of the 2003 Act (repealed in relation to Wales, but the Regulations made under it continue to apply to Wales by virtue of s17(2)(b) of the Interpretation Act 1978).

Those procedures set out parameters on how complaints in those sectors are to be handled, and remedies awarded etc. The Legislature (originally Parliament, now the National Assembly for Wales as these matters are devolved) has entrusted the Welsh

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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.



Ministers with responsibility for setting those parameters; but it is for the health bodies and local authorities themselves to establish the complaints procedures. In the social care sector, each local authority can make its own scheme, but it must comply with the Regulations.

As currently drafted the Bill puts the onus on the listed authority to ensure it does not act incompatibly with any other enactment (see section 41). Our view is it would be more appropriate for the onus to be on the Public Services Ombudsman for Wales (the Ombudsman) to ensure guidance given by that Office doesn't conflict either with the legislation setting the parameters of statutory schemes, nor with statutory schemes made under them.

### *Section 8*

There are some technical issues with the drafting of section 8(5).

Subsection (5) prohibits the Ombudsman from using the powers under section 3 to investigate an oral complaint which meets the requirement in subsection (1), i.e. a "duly made" complaint, if the complainant does not wish him to do so. There doesn't appear to be anything to prohibit the Ombudsman from using powers under section 4 to investigate the complaint, however, and this appears to render the prohibition worthless.

This is one of a number of concerns Government officials have identified, and on which a number of amendments may be needed at stages 2 and 3. Welsh Government officials will continue to work closely with their National Assembly colleagues to ensure those concerns are dealt with appropriately.

Yours sincerely



**Mark Drakeford AM/AC**  
Ysgrifennydd y Cabinet dros Gyllid  
Cabinet Secretary for Finance

## Agenda Item 7.3

- We believe clarity should be provided around how far the role of the PSOW extends to the tribunals listed below in so far as they relate to public services in Wales and if the remit of the PSOW does not extend to these bodies consideration should be given to include them:
  - Special Educational Needs Tribunal for Wales
  - Residential Property Tribunal Wales
  - Mental Health Review Tribunal Wales
  - Welsh Language Tribunal
- 1. We note that currently devolved tribunals in Wales do not come under the remit of the Public Services Ombudsman for Wales (these are not included in the list of organisations specified within the Bill).
- 2. We recognise that there is a right of appeal to the Upper Tribunal for the tribunals referenced above and understand that further to this individuals could go through the court system if they still felt their issue had not been addressed.

3. However we believe that the tribunal system, although meant to be less adversarial than the courts, remains difficult for individual citizens to navigate and often the other party in the matter (which may be a private business, but in the case of any role for the Ombudsman we refer to public authorities, namely local authorities) will have corporate legal representation, which can often be intimidating for individual claimants.
4. The point we wish to raise therefore, is more of a question as to if these tribunals are fully excluded from the remit of the Ombudsman (as appears the case currently), if there should be any role for the Ombudsman in future.
5. We do not have a detailed understanding of how all the differing devolved tribunals currently operate their appeals and complaints procedures, however we do feel there may be value in the issue being considered further, perhaps particularly in relation to administration.
6. We recall that a couple of years ago the Welsh Government was considering a review of devolved tribunals in Wales. We aren't clear whether this ever happened and if so if there were any issues raised regarding appeals and complaints procedures of these bodies?
7. From our analysis of the information made publically available by the tribunals, reference is given to the Upper Tribunal, but further detail does not seem to be provided about what to do if you are unhappy with the decision of this. In addition, we only note that one tribunal, the Mental Health Review Tribunal for Wales, makes specific reference to a different avenue for complaints that relate to how individuals felt they were treated or how the hearing was conducted, as detailed below:

*If you are unhappy about how you were treated by the Tribunal members or staff or how the hearing was conducted you may make a complaint to the Tribunal which will be investigated<sup>1</sup>.*

8. We would suggest that there should be clear routes to make such a complaint in the case of all devolved tribunals. We would also question if an individual is dissatisfied with the outcome of such a complaint, what recourse they then have. This comes back to our question of any role for the Ombudsman, not only in cases that relate to public bodies, but also in

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<sup>1</sup> <http://mentalhealthreviewtribunal.gov.wales/mhrtw-faqs/?lang=en>

considering devolved tribunals (and the way that they operate), being public bodies themselves.

For more further information, contact:

Liz Withers  
Head of Policy and Campaigns, Wales  
Citizens Advice Cymru

Email: [liz.withers@citizensadvice.org.uk](mailto:liz.withers@citizensadvice.org.uk)

## **January 2018**

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## **WELSH GOVERNMENT RESPONSE TO RECOMMENDATIONS FROM THE EQUALITIES, LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE REPORT**

The Welsh Government Draft Budget 2018-19 was scrutinised by the ELGC committee in November 2017. The ELGC committee has completed a report containing 16 recommendations. This paper is the formal response to those recommendations.

### **Provisional Local Government Settlement 2018-19**

#### **Recommendation 1**

**We recommend that the Welsh Government considers revisiting the proposed further reduction of 1.5% in the indicative local government settlement for 2019-20 with a view to maximising the revenue available to authorities. That being the case, we further recommend that the Welsh Government communicates any likely changes to local government funding in 2019-20 at the earliest opportunity to assist the sector in its medium term financial planning.**

#### **Response – Accept in principle**

Funding allocations between MEGs are decisions made collectively by Welsh Ministers. The Final Budget announced by the Cabinet Secretary for Finance on 19 December set out an additional £40m for local government funding in 2019-20. This was reflected in the final local government settlement published on 20 December.

**Financial implications - None. Already taken into account in the preparation of the final budget.**

## **Social care and education**

### **Recommendation 2**

**We recommend that there is greater transparency and clarification in future budgets about how additional funding is presented.**

### **Response – Accept in principle**

We support the principle of providing as much clarity and transparency as possible through the presentation of the budget.

**Financial implications - none**

## **Reserves**

### **Recommendation 3**

**We recommend that the Welsh Government clarifies whether a review of the implementation of the guidance on local government reserves has been undertaken, and to report back to the Committee on the outcome of any such review. If a review has not been undertaken, we recommend that the Welsh Government considers doing so.**

### **Response – Reject**

The guidance on local government reserves was issued in January 2016 and is intended to facilitate good scrutiny. Since then the 2017 local government election in Wales have resulted in a number of newly elected councillors and newly formed administrations. The Welsh Government has considered whether to undertake a review and considers it more appropriate to re-issue the guidance to all the recently elected councillors to make them aware of their role in scrutinising the holding and use of reserves in their council. Its timely re-issue will coincide with budget considerations currently taking place in all councils across Wales to allow local elected members satisfy themselves that decisions about holding and using reserves deliver best value for council tax payers.

**Financial implications - None**

## **Specific Grants**

### **Recommendation 4**

**We recommend that the Welsh Government clarifies how it intends to monitor spending and outcomes in areas that previously received grant funding following the incorporation of those grants into the RSG.**

### **Response – Accept**

Where specific grants have transferred into the RSG, it is a matter for the relevant policy area to consider as part of the transfer process what further arrangements it may be appropriate to establish to ensure the desired outcomes continue to be delivered. This will differ depending on the nature of the grant, the previous arrangements that existed and the extent to the outcomes are identifiable and measurable. It is important that in considering this it is recognised that in providing the funding through the unhypothecated RSG, it is intended that local government should have the freedom to manage how the resources are utilised in the most efficient manner to effectively deliver the outcomes which have been previously funded through a grant arrangement. Information on spending will be collected through the suite of expenditure returns

**Financial implications - none**



# Communities and Children Main Expenditure Group

## New Early Intervention, Prevention and Support Grant

### Recommendation 5

We recommend that the Welsh Government:

- commits to reinvesting the proposed £13 million in efficiency savings back into the Early Intervention, Prevention and Support Grant;
- takes steps to ensure that any efficiency savings made from 2019-20 onwards will not lead to a reduction in services;
- outlines the evidence base and rationale for the decision;
- details what outcome monitoring is in place to ensure that de-hypothecation does not lead to vulnerable people falling between the gaps in services;
- ensure that housing and non-housing related services funded from the Grant have some level of ring fencing, and
- ensures the new Fund is transparent by committing to collating and publishing details of the exact services, in particular services that will address homelessness, which will be funded in each Pathfinder local authority in 2018-19.

### Response – Accept in part

As set out in the 2018-19 outline Budget narrative as part of our planning process, we have examined the range of special grants provided across Welsh Government to local government and how these can be combined to increase their impact, thereby reducing bureaucracy and providing greater value for money and improving outcomes for citizens.

By consolidating more grants into the local government revenue support grant and amalgamating some grants, supported by outcome frameworks, we are increasing the flexibility for local authorities and helping to reduce the administrative burden associated with grant funding. This means we are able to reprioritise funding to protect core schools funding and social services provision through the local government revenue support grant.

It is anticipated that the funding flexibilities and efficiencies of managing a single grant around early intervention, prevention and support will help mitigate the impact of realising the savings required. In addition, the flexibility offered and the ability to increase coordination across programmes and reduce overlap are expected to help offset the impact of a £13 million reduction. As part of the ongoing work set out below we will continue to review the quantum needed to deliver the required outcomes during the planning for the 2019-20 budget.

Over many years, Welsh Government has introduced a number of programmes aimed at supporting vulnerable people and communities. Each programme is

accompanied by a specific grant with its own requirements and restrictions. Viewing these programmes and their funding as distinct and separate does not reflect the reality of people's lives nor does it reflect the need for joined up citizen centred services. We want to improve outcomes and deliver improved support for vulnerable families and individuals – unhindered by the artificial constraints sometimes created by individual grants.

Local authorities have told us the various constraints imposed by the different grant requirements can prevent them from innovating and re-designing services to meet the needs of their citizens. In addition, each of the grants brings with them a degree of administration and associated costs which could be better used delivering for citizens.

We will be working closely with pathfinder LAs over the next few months to gain further evidence to inform our decisions.

In a period of severe financial pressures, we are focussed on outcomes rather than inputs and the aim of the Early Intervention, Prevention and Support Grant, if we proceed with it, would be to enable Local Authorities to maintain services by freeing them to deliver these more flexibly and efficiently. We are not therefore able to make the requested commitment to reinvesting the savings.

No final decision has been made on the creation of an EIPS grant in 2019-20. However, if Ministers do decide to go ahead it will still be a ring fenced grant with funding protected for use only within the criteria set out for the new grant, which would be monitored closely. It is absolutely vital that services for vulnerable people are protected and we are committed to ensuring funding that supports non-statutory preventative services is protected.

We are working with the pathfinder LAs and stakeholders to develop terms and conditions and an outcomes framework that strikes the right balance between flexibility for Local Authorities to respond to their local context and the need to ensure we protect the interests of vulnerable groups. For 2018-19, we expect it to have broadly the same monitoring and reporting as for the individual grants.

Pathfinders will provide their proposed spending plans for funding included in the Funding Flexibilities pathfinder programme to Welsh Government for scrutiny. Grants will only be paid when spending plans are agreed and approved by Welsh Government.

We will continue to collect and publish data on supporting people services and the prevention of homelessness.

**Financial implications - None**

## **Equality**

### **Recommendation 6**

**We recommend the Welsh Government returns to undertaking detailed impact assessments of its draft budget in the future, in line with recommendations from our predecessor committee, the EHRC and international good practice.**

### **Response – Reject**

The Welsh Government acknowledges that detailed impact assessments, e.g. EIA and CRIA, must be undertaken as part of policy development. These will inform ongoing budget decisions and individual Ministers are responsible for completing the relevant impact assessment where necessary in order to inform the IIA, and further scrutiny. The Welsh Government intends to retain the publication of integrated impact assessments alongside the publication of the draft budget.

**Financial implications - none**

## **Poverty and employability**

### **Recommendation 7**

**Given that funding for poverty reduction programmes spans different departments, coupled with the recent change in Ministerial responsibilities across government, we urge the Welsh Government to reconsider the need for a cross-government poverty reduction strategy, which we recommended in our recent report, *Communities First: Lessons Learnt*.**

### **Response – Reject**

Our National Strategy, *Prosperity for All*, provides a framework for our whole-government approach to increasing prosperity and addressing the root causes of poverty in a more effective, joined-up way. The Strategy was published on 19 September and outlines four key themes which will contribute to prosperity for all. These are Prosperous and Secure, Healthy and Active, Ambitious and Learning, and United and Connected.

Over the autumn/winter period we have published some of the key plans which underpin these themes. These set out how we will respond to the needs of the citizens of Wales, including those living in poverty.

*Education in Wales: our national mission* is the education plan published on 26 September which sets out how we will continue to raise standards and reduce the attainment gap between disadvantaged learners and their peers.

The *Economic Action Plan* was released on 12 December. It is wide-ranging and draws on levers across Government to support economic growth, spread opportunity and promote well-being. We are committed to creating a strong economy and labour market which supports the tackling poverty agenda and reduces in-work poverty.

Looking ahead and recognising that work provides the most effective route out of poverty, our Employability Delivery Plan will be published in the New Year. It underpins the Taking Wales Forward commitment to reshape employability support for job-ready individuals and those furthest from the labour market to acquire the skills and experience they need to gain and maintain sustainable employment.

The Taskforce for the Valleys has also published the delivery plan for *Our Valleys, Our Future*. This sets out a range of aims and actions in the three priority areas of jobs and skills, improved public services and the local community. We will report on progress made and identify best practice which can be shared across the rest of Wales.

**Financial implications – none.**

## **Recommendation 8**

**We would like further information about what the Welsh Government is doing to tackle period poverty, and how much funding is allocated**

### **Response – Accept**

Welsh Government recognises that period poverty is an important issue. We are currently looking at options to address it as part of our wider work towards reducing inequality and mitigating the impact of poverty.

In particular, we are investigating the possibility of a scheme to supply feminine hygiene products to foodbank users in Wales. This work is in its early stages and will include consideration of both costs and funding.

We have also investigated the possible links between school attendance and period poverty. Over the summer, we engaged with a wide range of stakeholders to review the national arrangements for school attendance. We are advised that the availability of free feminine hygiene products is not known to be having an impact on school attendance. If instances do occur where girls require products, schools should have well understood arrangements to support learner well-being and be taking steps to remind girls regularly that sanitary products are available from named staff if needed.

Some local authorities are continuing to explore the potential impact of period poverty on learning. We will continue to work with education services and others to consider any new evidence which emerges and explore other options to tackle period poverty.

**Financial implications** - None at present.

## **Communities First**

### **Recommendation 9**

**We recommend that the Welsh Government outlines how it will ensure that Communities First Legacy Funding and the forthcoming Employability Plan will meet the needs of young and disabled people who are likely to be disproportionately affected by the closure of Communities First.**

### **Response – Accept**

The Legacy Fund will be flexible to allow local authorities to take forward the most effective aspects of Communities First in a way that best meets the needs of their local communities.

Whilst Legacy Fund activities will be identified locally, the guiding principles which have already been issued make it clear that early years should be a key consideration, along with the assessment of local well-being and the local well-being plan.

We know that young people who are unemployed are at greater risk of long term ‘scarring’, in terms of lower pay, higher unemployment and reduced life chances. Our Employability Delivery Plan will outline the steps we are taking specifically for young people to address and overcome the barriers to employment.

We also know that the employment rate for people with disabilities and long term health conditions is lower than for those without. We will outline the steps we are taking to provide a more individual and bespoke package of support to those seeking employment, and the measures we will take to ensure that disabled people, and other groups with protected characteristics are accessing both the available support and subsequent employment opportunities.

**Financial Implications.** Any additional costs will be drawn from existing programme budgets.

## **Discretionary Assistance Fund (DAF)**

### **Recommendation 10**

**We recommend that the Welsh Government clarifies what steps it has taken to promote awareness of and improve access to the DAF to ensure that the increased fund reaches those people who most need it.**

### **Response – Accept**

Promotion of the Discretionary Assistance Fund (DAF) is carried out through our partners. We continue to look for opportunities to promote awareness of the DAF amongst organisations working with potentially vulnerable and disadvantaged people. A series of information leaflets have been produced and circulated to support organisations working with vulnerable groups including homeless people, people fleeing domestic violence and care leavers to ensure relevant organisations are aware of the DAF and able to support their clients with applications.

We also continue to seek to increase the number of DAF registered partners as we believe partners are often best placed to assist with applications. There is a dedicated Partner Manager who delivers training throughout the year which is very well attended. This ongoing training programme is available to all partner organisations and those wishing to become partners, to raise awareness of the support DAF can provide and to improve access to the fund.

An improved method of communication for AMs and MPs wishing to support constituents with applications has also been introduced this year.

**Financial Implications** - Any additional costs will be drawn from existing programme budgets.

## **Recommendation 11**

**We would like the Welsh Government to provide an update on its consideration of this recommendation.**

### **Response – Accept**

We have worked with the Discretionary Assistance Fund (DAF) delivery partner – Northgate – to amend the system to enable new refugees to access the DAF in advance of receiving their National Insurance number, through trusted partners. We also understand that the Home Office intends to roll out a new process in the New Year which should significantly reduce the number of new refugees becoming destitute by ensuring that National Insurance numbers are printed on the Biometric Residency Permit when refugee status is granted.

We have also worked with the British Red Cross, Welsh Refugee Council and other partners to explore options for a destitution crisis fund for asylum seekers in Wales and these conversations are ongoing. Our partners have undertaken some initial scoping work and submitted their thoughts to us. We have recently asked for some further work to be undertaken before we meet to discuss options for potential consideration by Ministers.

A new ‘No Recourse to Public Funds’ and Destitution Forum has been established, chaired by British Red Cross and the Welsh Refugee Council, with the participation of the Welsh Government, Wales Strategic Migration Partnership, Local Authorities and other stakeholders to better coordinate activities to relieve destitution.

**Financial implications** – Any additional costs will be drawn from existing programme budgets.



## **Violence against women, domestic abuse and sexual violence**

### **Recommendation 12**

**We recommend that the Welsh Government provides further information on what the additional funding will be spent on and how it will strengthen regionalisation work.**

### **Response – Accept in principle**

The Violence against Women, Domestic Abuse & Sexual Violence (VAWDASV) grant includes funding to local authorities and third sector organisations to deliver direct service provision to support and protect victims; strategic coordination of services at a local level; and training. The funding is directed towards delivering the objectives of the VAWDASV (Wales) Act 2015.

The ongoing development of the regionalised approach will allocate resource to stronger, better joined up services, offering improved quality of service to those who are victims or survivors of VAWDASV. The additional funding will further support this approach across the regions to enhance the engagement on and delivery of frontline services.

### **Financial implications – none**

## **Homelessness**

### **Recommendation 13**

**We recommend that the Welsh Government works closely with local authorities to ensure that this funding is used for homelessness prevention. Further, we recommend that the Welsh Government clarifies whether, and if so how it intends to monitor spending and outcomes in this regard especially given the proposal to merge Homelessness Prevention funding into the new Early Intervention, Prevention and Support Grant.**

### **Response – Accept**

Homelessness prevention remains a priority for the Government and Part 2 of the Housing (Wales) Act 2014 placed new duties on local authorities to help to prevent and alleviate homelessness.

Housing Policy officials will work closely with local authority Housing Advice Teams to ensure that grant is invested in services which support people who are homeless or at risk of homelessness. Following initial award of funding officials will monitor pathfinders and their use of funding including the extent to which services continue to target people who are homeless or at risk of homelessness.

No final decision has yet been made on moving to a single combined Early Intervention, Prevention and Support grant.

Pathfinders will provide their proposed spending plans for funding included in the Funding Flexibilities pathfinder programme to Welsh Government for scrutiny. Grants will only be paid when spending plans are agreed and approved by Welsh Government.

We will continue to collect and publish data on supporting people services and the prevention of homelessness.

**Financial implications – none**

## **Housing standards**

### **Recommendation 14**

**We recommend that Welsh Government clarify how the new data on the condition of housing stock is used to inform future funding decisions to ensure resources are targeted effectively.**

### **Response – Accept**

The Housing Conditions evidence programme (HCEP) will report its findings in 2018.

We are committed to pursuing evidence based targeting and will utilise the programme in this way.

Given that we do not yet know what the evidence will reveal we cannot articulate its impact on future funding decisions. However, given that caveat, we suspect that the evidence could lead to a shift towards:

1. A different focus for WHQS post 2020 which will highlight the need to improve conditions in owner occupied properties; and
2. A major retrofit decarbonisation initiative across Wales working across both the Housing and Environment teams in Welsh Government using the new evidence.

We are also commissioning a piece of work that will build on the data that flows out of the HCEP and leads to more targeted action (and potentially different procurement initiatives) by linking the HCEP to the specific costs associated with various interventions that will work on different types of housing in different parts of Wales

**Financial implications** – Not yet known until the HCEP reports it's finding in 2018

## **Independent living and tenant participation**

### **Recommendation 15**

**We recommend that the Welsh Government clarifies when the Enable monitoring data will be made available, and reports back to us on the data at the earliest opportunity.**

#### **Response – Accept**

Officials are commissioning a small project to collate and analyse data, a final report is anticipated to become available March 2018.

**Financial Implications** - Costs will be met from existing programme budgets.

### **Recommendation 16**

**We recommend that the Welsh Government provides an update on the performance of TPAS Cymru when performance monitoring data is available.**

#### **Response – Accept**

An update will be provided to cover the period up to the end of March 2018, based on the criteria outlined in the grant offer to TPAS Cymru. This will coincide with the end of the first year of the new arrangements for tenant participation.

**Financial implications** - None

# Agenda Item 9

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

Document is Restricted



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref DC/RE/0874/17

John Griffiths AM  
Chair of the Equality, Local Government and Communities Committee

4 January 2018

Dear John,

Thank you for your letter of 8 December regarding the Supplementary Legislative Consent Memorandum on the UK Government's Financial Guidance and Claims Bill ('the Bill').

I am happy to provide further clarity on the comments in paragraph 8 of your Committee's report.

An LCM is required because the provisions within Part 1 of the Bill fall within the National Assembly for Wales' legislative competence pursuant to subject 5 Education and Training, subject 15 Social Welfare and subject 4 Economic Development within Part 1 of Schedule 7 to the Government of Wales Act 2006 ('GOWA 2006'), as the Bill is proposing to establish a Single Finance Guidance Body which has functions of pensions guidance, debt advice, money guidance and strategic financial capability to enable people to access the advice and help they need to make informed financial decisions.

Providing advice and support on debt, money guidance and financial capability skills falls within the relevant subjects within Part 1 of Schedule 7 to GOWA 2006 detailed above, relating to education and training and the promotion of advancement and application of knowledge (subject 5). Similarly, subject 4, economic development is also engaged enabling economic regeneration and development which includes the social development of communities. In addition, subject 15 is engaged as the provision of money guidance, debt advice and financial capability skills will work towards the protection and well-being of children and young adults together with the care of children, vulnerable persons and older persons.

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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.

With regards to the provisions for a 'debt respite scheme' (the breathing space amendments dealt with in the Supplementary Memorandum), the proposed framework provisions are considered to be within the legislative competence of the National Assembly for Wales pursuant to subject 4, 5 and 15 of Schedule 7 to the Government of Wales Act 2006 ('GOWA 2006') given that the primary purpose of the provisions is to provide protection, support and help in respect of debt through establishing a statutory debt respite scheme.

The Welsh Government recognises the importance of financial capability skills in improving the ability of people in Wales to make informed financial decisions and avoid experiencing crisis debt. For example, we have embedded financial capability education within the school curriculum and, through our employability programmes, individuals are directed to money management skills courses to help them to secure and sustain employment.

Within the Information and Advice Action Plan and the Financial Inclusion Strategy, we have also recognised the significant role played by social welfare advice services, including debt and money advice and guidance, in supporting economic development. For example, there are established links that social welfare problems, such as crisis debt, have a detrimental impact upon a person's mental health, which acts as a barrier to progression along their pathway to employment. However, through accessing the advice and support that they need to resolve a particular problem, the detrimental impact upon mental health is relieved, enhancing the person's ability to focus more effectively upon finding employment or training opportunities.

I would like to thank your Committee for its ongoing consideration of these important provisions which offers potential benefits for Welsh citizens through a more integrated and co-ordinated advice sector. I look forward to receiving your comments on the Supplementary Memorandum, and both Memorandums will be covered in the debate on 13 February.

Yours sincerely,

A handwritten signature in black ink that reads "Rebecca Evans." The signature is written in a cursive, flowing style.

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

Rebecca Evans AM  
Minister for Housing and Regeneration

8 December 2017

Dear Rebecca

## Supplementary Legislative Consent Memorandum on the Financial Guidance and Claims Bill

You will be aware that on 11 July 2017, the Business Committee referred the Legislative Consent Memorandum on the Financial Guidance and Claims Bill to the Children, Young People and Education Committee for consideration. As elements of the LCM fall within the Equality, Local Government and Communities Committee's remit, the LCM was also considered by our Committee.

We wrote to the Welsh Government seeking clarification on a number of issues including the extent to which the provisions identified in the LCM under Education and Training; Social Welfare; and Economic development were within the Assembly's legislative competence. The response did not cover this clarification. (Copies of both letters are enclosed).

In reporting on the LCM we stated there was no reason why the Assembly should reject the LCM, but that Members may wish to seek clarity during the debate on this issue. As the debate on the LCM has not yet occurred, this clarification remains outstanding.

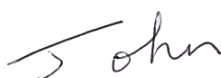




We received a letter from the Business Committee on 6 December asking if we could consider the supplementary LCM by 9 January. At our meeting on 7 December, we considered this request, and agreed to do our utmost to ensure swift consideration of the supplementary LCM. To this end, we will be tabling it for consideration at our meeting on 13 December, to ensure that if it is referred to us, we can consider it before Christmas. However because there is still an outstanding issue, we would ask that you could provide clarification on the outstanding matter in writing, as soon as possible, but no later than 2 January.

As the Llywydd's letter indicates that there will be time for committee scrutiny, we would suggest time is given to enable us to consider your response before reporting before the Plenary debate. We believe this could be done if the Plenary debate was moved back to 16 January. This would give us four sitting weeks to consider the LCM, which is still less than the six week period which the Welsh Government has previously committed to for scrutiny of LCMs.

Yours sincerely



John Griffiths AM  
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



# Agenda Item 10

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

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