

Dawn Bowden AM

Chair, Committee on Assembly Electoral Reform

22 April 2020

Dear Dawn,

Committee Legislation

Thank you for your letter of 6 March 2020, seeking my views in relation to the Finance Committee's experience of developing a Committee Bill and steering it through the legislative process.

As you mentioned in your letter, the Finance Committee is the only Committee to date that has made use of the provision in Standing Orders (26.81) which enables any Assembly committee to introduce a Bill relating to its remit. The Committee used this provision to introduce the **Public Services Ombudsman (Wales) Bill** (the Bill).

The introduction of this Bill followed substantial consideration of the need for legislation, which spanned two Assemblies. The Finance Committee of the Fourth Assembly undertook an initial inquiry into considering the powers of the Ombudsman in 2015, followed by a consultation on a draft Bill, before the final Bill and Explanatory Memorandum was laid in the Fifth Assembly in October 2017. The Bill passed through the Assembly's four stage scrutiny process and received Royal Assent on 15 May 2019.

This Act represents a significant amount of hard work undertaken over a number of years and a rigorous scrutiny process including work by several Assembly Committees. It was a privilege to be the Chair of the Committee steering this important legislation through the Assembly. Whilst the Bill took a great deal of clerking, legal and research resources, it also provided an excellent opportunity for drafting experience and built capacity within the Assembly Commission.

More recently, the Committee has been developing the draft Public Audit (Amendment) (Wales) Bill and EM, which proposes reform to the existing Public Audit (Wales) Act 2013.



Cynulliad Cenedlaethol Cymru
Bae Caerdydd, Caerdydd, CF99 1NA

✉ SeneddCyllid@cynulliad.cymru

☎ 0300 200 6565

National Assembly for Wales
Cardiff Bay, Cardiff, CF99 1NA

✉ SeneddFinance@assembly.wales

☎ 0300 200 6565

Additionally, in considering non-government legislation, I would like to refer you to the **Autism (Wales) Bill**. This Bill was introduced by Paul Davies AM in July 2018, and the financial implications were scrutinised by the Finance Committee. The Committee's report detailed that Members were unable to make a decision on the validity, or not, of the Regulatory Impact Assessment due to a lack of information provided by the Welsh Government. Following this, I wrote to the **First Minister** detailing concerns over the lack of Welsh Government engagement in non-Government Bills and the **First Minister responded**.

I have provided a more detailed response to your proposed questions in the Annexe attached which I hope will be useful to you when considering the different mechanisms by which Bills may be introduced.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Llyr', is centered on a light yellow rectangular background.

Llyr Gruffydd AM
Chair of the Finance Committee



Annexe – Finance Committee’s experience in relation to developing the Public Services Ombudsman (Wales) Bill

• Developing legislative proposals and provisions, and associated supporting documentation, impact assessments and financial estimates.

Background to the legislation

The role of the Public Services Ombudsman for Wales (the Ombudsman) was established by the **Public Services Ombudsman (Wales) Act 2005** (2005 Act). Since 2013, there had been calls to extend the powers of the Ombudsman’s role in five main areas, by the previous Ombudsman, Peter Tyndall and the current Ombudsman, Nick Bennett. The Communities, Equality and Local Government (CELG) and Finance Committee of the Fourth Assembly scrutinised the work and financial considerations of the Ombudsman’s office. As part of the CELG Committee’s scrutiny of the Ombudsman’s annual report it heard from the outgoing Ombudsman Peter Tyndall that the 2005 Act needed updating.

The Welsh Government said that as it was a public body subject to scrutiny by the Ombudsman, it would be more appropriate for the Assembly to lead on any legislative change.

Subsequently, the CELG Committee wrote to the Finance Committee to say there was merit in reviewing the Act but it was unable to devote the necessary time to it and suggested the Finance Committee could take this work forward if it wished.

Work on the Bill started in 2015 by the Finance Committee. The Committee undertook a public consultation to inform its **inquiry into the proposals to extend the Ombudsman’s powers**. Having been persuaded by the evidence it heard, the Committee agreed that changes were required to the legislation and in early October 2015 consulted on the **draft Bill**. Given the limited time remaining in the Fourth Assembly for a Bill to proceed through its legislative passage, the Committee recommended that a future Committee should introduce the Bill, as soon as possible. It also recommended that the Ombudsman contribute to a fully costed Regulatory Impact Assessment (RIA) to accompany the Bill, which it could track through future budgets presented by the Ombudsman to the Assembly.

Consideration by the Finance Committee of the Fifth Assembly

In September 2016, the Finance Committee considered the recommendations of the Fourth Assembly Finance Committee. It subsequently wrote to the Ombudsman, noting it would need to see robust financial information to support the proposed legislative intervention before Members considered whether to introduce the Bill.

The Ombudsman commissioned OB3, an external research company, to undertake the necessary assessment. In December 2016, the Ombudsman presented the information about the costs and benefits of the Bill to the Chair of the Finance Committee.



The Ombudsman gave evidence regarding the financial implications of the Bill to the Finance Committee at its meeting on **9 March 2017**. Following the meeting, the Finance Committee Chair wrote to the Ombudsman to request further information. Specifically, the Finance Committee sought an estimate of the likely cost to the other public bodies affected by the provisions in the Bill (or 'indirect' costs), which had not been quantified by the Ombudsman. The Finance Committee recognised the challenges and limitations in terms of quantifying these costs due to a lack of evidence and data available. However, it believed it was essential that any Bill introduced included detailed and measured costings. The Ombudsman responded to the Committee's request on **28 April 2017**.

Assembly officials prepared an early draft of the Explanatory Memorandum (EM) and RIA, incorporating the costs and benefits provided by the Ombudsman, while the Finance Committee continued its consideration of the Bill. In preparing an early draft of the EM, Assembly officials made some assumptions about the cost estimates and identified the need for clarification or additional information. The Committee wrote to the Ombudsman to request this, and also sought information to inform its consideration of other aspects of the Bill. As well as responding to the Committee's requests in writing, the Ombudsman's staff also met with Assembly officials to discuss the financial implications of the Bill and the draft EM.

The Committee continued its considerations of the Bill and the draft EM during spring 2017. In July 2017 it agreed that a Bill should be introduced, which reflected a number of changes to that drafted by the Finance Committee of the Fourth Assembly.

▪ **Consulting and working with policy and political stakeholders, including on draft Bills.**

As mentioned above, two consultations were undertaken giving policy and political stakeholders opportunities to shape the legislation prior to introduction of the Bill.

The Welsh Government responded to the Fourth Assembly Finance Committee's consultation on the **draft Bill** but not on the **initial inquiry**.

After introduction of the Bill, the Equalities, Local Government and Communities Committee (ELGC), the responsible Committee (this is covered in more detail in the bullet-point below) undertook full Stage 1 scrutiny of the Bill, which included a further consultation on the general principles of the Bill.

▪ **Introducing legislation and guiding it through the legislative scrutiny process.**

The Finance Committee authorised the Chair of the Committee as the 'Member in Charge' (MiC) of the Bill (SO 24.7). The Chair laid the Bill and EM on 2 October 2017 and made an oral statement in Plenary on 4 October 2017, mirroring the approach adopted by the Welsh Government (but not required in Standing Orders).

At that time, Standing Orders allowed a committee bill to automatically bypass referral to a responsible committee to consider and report on the general principles. However, in the interest of best practice and transparency and as the Bill's drafting had taken place over two different



Assemblies, the MiC proposed that Members should be provided with the opportunity to consider and report on the general principles. As a result, Standing Order 26.82 was removed¹ and the Bill was referred to the ELGC Committee and subject to full Stage 1 scrutiny. This included scrutiny of the general principles of the Bill and its financial implications, given that the latter is normally carried out by the Finance Committee, the ELGC Committee appointed an expert adviser to help assist with its scrutiny of the financial implications of the Bill.

As well as providing oral evidence during the Stage 1 as is customary, the ELGC Committee also wrote to the MiC in December 2017 and January 2018 to request responses to questions and issues raised by the Expert Adviser.

At Stage 1, the Bill was also scrutinised by the Constitutional and Legislative Affairs (CLA) Committee, which considered the subordinate legislation provisions in the Bill. The CLA Committee took evidence from the MiC and the Cabinet Secretary for Finance and reported (as is standard practice for all Bills).

Removing the ability to automatically bypass referral to a responsible committee means it is now the Business Committee's decision whether to refer a committee bill to a responsible committee for Stage 1 scrutiny (as is the case with government and other non-government bills). However, I believe that when the change to Standing Orders was suggested, to allow for a Committee Bill to be referred for Stage 1 scrutiny, the intention was that the provisions to allow a Committee Bill to bypass Stage 1 should remain.

In the preparation of a draft Bill a huge amount of Assembly and stakeholder time is utilised and, if the Government is engaged on the Bill prior to introduction, the automatic referral of a Bill to a Committee for Stage 1 scrutiny could be an inefficient use of Committee time.

Bill's Timetable

The Finance Committee sought to time the Bill's introduction to coincide with a convenient period in the workload of the ELGC Committee and followed best practice by facilitating a longer Stage 1 period, to enable the Committee scrutinising the Bill to carry out a full consultation and allow for other committee work to be undertaken at the same time.

In considering the timetable for the Bill, the MiC also held discussions with the then Cabinet Secretary for Local Government and Finance to minimise the pressure on the Welsh Government. Whilst the Assembly agreed the general principles of the Bill within the timetable agreed by the Business Committee, the MiC sought an extension to the Stage 2 deadline in order to secure the Assembly's approval of the financial resolution. The deadline proposed by the MiC purposely sought to avoid the substantial workloads of both the ELGC Committee and Finance Committee in the autumn term.

¹ By resolution of the Assembly on 27 September 2017



• **Building and maintaining consensus among Committee members on, for example, policy objectives, legislative proposals and amendment strategies.**

The Committee agreed that the MiC would liaise with the Welsh Government and undertake all relevant functions as the MiC of the Bill. The MiC kept the Committee informed regularly of progress by providing update papers which were discussed in private, in accordance with SO 17.42. Prior to amending stages, the Committee considered and agreed the proposed amendments that would be tabled by the MiC.

• **Building and maintaining consensus in support of your proposals among political parties and stakeholders.**

As mentioned above, the proposals in the Bill had been subject to extensive public consultation and detailed scrutiny by the Committee prior to introduction, allowing for political parties and stakeholders to express their views and influence the development of the Bill.

• **Engagement with the Welsh Government.**

As previously mentioned, the Welsh Government responded to the Fourth Assembly Finance Committee's consultation on the draft Bill. The Welsh Government's involvement was relatively limited until the Bill had passed Stage 1. The Bill cut across various subject areas including health, social care and local government and therefore the MiC established early meetings with the relevant Ministers in order to progress the legislation.

During the Assembly's consideration of the general principles, the Minister indicated that, as well as revisiting the costs included in the RIA, a number of policy and drafting issues would need to be addressed before the Welsh Government could support the Bill.

As a Minister is the only person able to move a Financial Resolution, gaining Welsh Government support was essential to progress the Bill past Stage 1. Securing the Minister's agreement to move the Financial Resolution involved revising the RIA prior to the debate (a step not usually undertaken until Stage 2 has concluded). As SO 26.74(i) requires notice of a financial resolution to be tabled within 6 months of the completion of Stage 1 (21 March 2018), the Committee faced the challenge of revising the RIA and securing the approval of the Welsh Government and the Assembly's agreement of the Financial Resolution before the Summer recess of 2018.

The MiC committed to working with the Minister to progress the Bill in a manner that was satisfactory to both the Finance Committee and the Welsh Government. This involved a significant amount of engagement between Assembly and Welsh Government officials after Stage 1. This not only helped to resolve queries about the financial implications and the Welsh Government's comments on the Bill but also ensured a coordinated approach and that targets dates and milestones were met.

In total 230 amendments were tabled at Stage 2, and 49 amendments at Stage 3. To avoid such heavy workloads for all concerned, the Committee would encourage earlier engagement from the Welsh Government during the development of draft committee bills.



• **Accessing relevant skills and resources**

Working with the Ombudsman's Office

Assembly officials established excellent working relationships with the Ombudsman's officials. This facilitated the sharing of information and resolving queries in a timely manner, which was important given the time pressures at certain points of the legislative process. Officials met regularly to discuss progress and keep the Ombudsman's office updated.

Attached below is a timetable of the Bill's progress for information.



Timeline of the Public Services Ombudsman (Wales) Bill

11 th May 2015	Finance Committee of the Fourth Assembly reports on the Consideration of Powers: Public Services Ombudsman for Wales	22 nd March 2018	Stage 2 began Assembly Members could table amendments to the Bill
18 th March 2016	Finance Committee of the Fourth Assembly reports on the Consideration of the consultation on the Draft Public Services Ombudsman (Wales) Bill	17 th July 2018	The Financial Resolution is agreed in Plenary
2 nd October 2017	Public Services Ombudsman (Wales) Bill is introduced by the Finance Committee of the Fifth Assembly	31 st January 2019	Stage 2 Amendments were consideration by the Equality, Local Government and Communities Committee
9 th March 2018	Equality, Local Government and Communities Committee reports on Stage 1: General Principles of the Public Services Ombudsman (Wales) Bill	1 st February 2019	Stage 3 began Assembly Members could table further amendments to the Bill
9 th March 2018	Constitutional and Legislative Affairs Committee reports on the powers to make subordinate legislation within the Bill	13 th March 2019	Stage 3 Amendment were considered in Plenary
21 st March 2018	Stage 1 Debate in Plenary - Motion is agreed	20 th March 2019	Stage 4 The motion to approve the Bill was agreed