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Mr Simon Thomas, AM  
Chair of the Finance Committee  
National Assembly for Wales  
Cardiff Bay  
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*Dear Simon*

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

I have just had a quick look at the Public Services Ombudsman (Wales) Bill, together with its Explanatory Memorandum, and unfortunately I have found a couple of issues that I think I should raise with you sooner rather than later. While writing, I have received the consultation letter dated 11 October 2017 from the Chair of the Equality, Local Government and Communities Committee. However, I think the nature of much of what I need to raise does not readily fit with the consultation on the general principles of the Bill and may be best raised directly with you.

The first issue is that the "Wales Audit Office" is listed in Schedule 3 to the Bill, which means that it is to be a body that may be subject to the Ombudsman's investigations. As I set out in my letter to the Presiding Officer of 8 June 2016, I had previously discussed and agreed with Nick Bennett this risks creating time-consuming confusion and frustration. Many people confuse the WAO with the Auditor General and erroneously regard the WAO as undertaking audits, whereas in fact its main functions are limited to providing resources to, and monitoring and advising, the Auditor General. Inclusion of the WAO in the Ombudsman's remit risks encouraging individuals who would like the Auditor General to come to different audit opinions to think that the Ombudsman provides a means by which such opinions may be reviewed.

Indeed, as the WAO's functions do not entail providing services to individuals (other than the Auditor General), both Nick and I feel it is hard to see how the Ombudsman could ever be presented with a case that legitimately calls for review of the WAO's actions. I imagine that, in the absence of a Committee with responsibility for the Bill at the time of my letter, my letter was overlooked, however it would be helpful if an amendment could be brought forward to remove the WAO from Schedule 3.

The second issue concerns the Explanatory Memorandum to the Bill. Paragraphs 9 and 10 of Schedule 1 to the Bill contain provisions for direct charges on the Welsh Consolidated Fund, so under Standing Order 26.6(xi) the Explanatory Memorandum must

incorporate a report of the Auditor General setting out his or her views on whether those charges are appropriate. The Memorandum does not, however, contain such a report, so the requirements of Standing Order 26.6(xi) have not been met.

I note, however, that the Explanatory Memorandum quotes my letter to the former Chair of the Finance Committee, Jocelyn Davies AM, of 19 February 2015, which set out that the *proposals put forward by the Ombudsman at the time* did not seem likely to need direct charge provisions. The Memorandum says that "in line with the advice, this Explanatory Memorandum does not include a report of the Auditor General". The Memorandum rather misses the point. While I may have given a view that the Ombudsman's proposals (which predated even the draft Bill) did not seem likely to need direct charge provisions, that is not the same as saying that no report was necessary on any direct provisions included in a Bill. I should, however, be happy to provide such a report so as to enable a revised Explanatory Memorandum to be introduced.

While it is a matter suitable for raising in response to the Stage 1 consultation on the Bill, it may be helpful if I mention a concern regarding section 68, which is a prohibition on disclosure of information. This restriction covers, among other things, information supplied by the Auditor General in the course of co-operation under section 67. It would be helpful if section 68 were amended to clarify that this is not a restriction on disclosure by the Auditor General of information supplied by the Auditor General under section 68. As it is, section 68 may discourage co-operation under section 67, so it could be a potential barrier to successful implementation of the Bill.

Finally given the discussion we have had about the need for consistency in audit legislation it would be useful if the Bill contained provision for the Auditor General to be satisfied as to whether the Ombudsman has made arrangements for securing economy, efficiency and effectiveness, so as to match requirements in the NHS and local government.

I should be happy to discuss and clarify these issues.



**HUW VAUGHAN THOMAS**  
**AUDITOR GENERAL FOR WALES**

cc: John Griffiths AM, Chair, Equality, Local Government and Communities Committee  
Nick Bennett, Public Services Ombudsman for Wales