

Y Pwyllgor Cydraddoldeb, Llywodraeth Leol a Chymunedau
Equality, Local Government and Communities Committee
ELGC(5)-03-18 Papur 2 / Paper 2

**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:

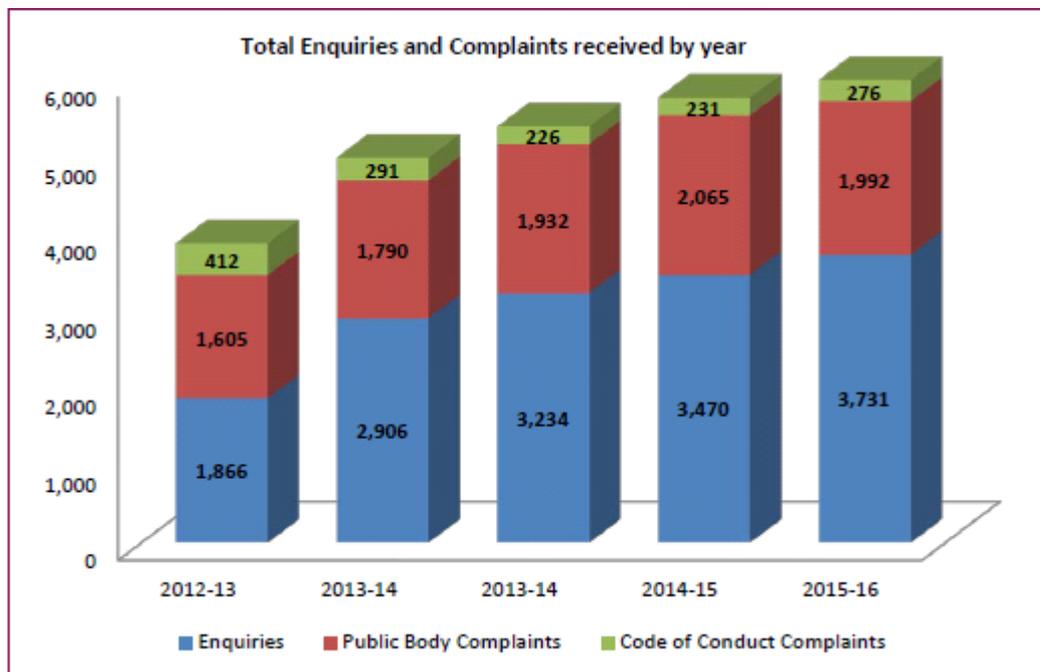
Table 1: Year on Year increase in caseload

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 orally¹. 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

¹ 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 copy 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 bodies² 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

² 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 complaint³. 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

³ 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*⁴, 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*⁵ 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

⁴ 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 P.39

⁵ 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

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*⁶. 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*

⁶ 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.