

**National Assembly for Wales**  
Finance Committee

**Consideration of the consultation  
on the Draft Public Services  
Ombudsman (Wales) Bill**

March 2016

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



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# Finance Committee

The Committee was established on 22 June 2011. The Finance Committee's role is to carry out the functions set out in Standing Order 19. This includes consideration of the use of resources by the Assembly Commission or Welsh Ministers, and in particular reporting during the annual budget round. The Committee may also consider any other matter relating to expenditure from the Welsh Consolidated Fund.

The Finance Committee's remit also includes specific statutory powers under the Public Audit (Wales) Act 2013 relating to new responsibilities for governance oversight of the Wales Audit Office.

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## Current Committee membership:



**Jocelyn Davies (Chair)**  
Plaid Cymru  
South Wales East



**Peter Black**  
Welsh Liberal Democrats  
South Wales West



**Christine Chapman**  
Welsh Labour  
Cynon Valley



**Mike Hedges**  
Welsh Labour  
Swansea East



**Alun Ffred Jones**  
Plaid Cymru  
Arfon



**Ann Jones**  
Welsh Labour  
Vale of Clwyd



**Julie Morgan**  
Welsh Labour  
Cardiff North



**Nick Ramsay**  
Welsh Conservatives  
Monmouth

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## Chair's Foreword

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The Finance Committee began its work into considering the role and powers of the Public Services Ombudsman for Wales in January 2015. Our initial inquiry into the Consideration of Powers: Public Services Ombudsman for Wales resulted from appeals from the incumbent Ombudsman and his predecessor that the current legislation governing the role the Public Services Ombudsman (Wales) Act 2005 should be updated.

It was our intention that should the evidence support the extension of powers to the Ombudsman, the Finance Committee would consider introducing a Committee Bill.

We heard in our initial inquiry that the Ombudsman's current role was working effectively and that the 2005 Act was generally considered as a model piece of Ombudsman legislation around the world. However, we were persuaded by the evidence received that 10 years later, there was a need to strengthen the role of the Ombudsman and to future-proof the legislation to ensure it was citizen-centred.

Rather than amending the 2005 Act, we felt that the Ombudsman's role should be governed by Welsh legislation. Our aim was to create one piece of bilingual legislation which would repeal (in relation to Wales) the 2005 Act and therefore help consolidate the Welsh statute book.

We were also keen to engage with Welsh Government, public bodies and the general public affected by the proposed legislation and issued a consultation on the content and structure of the Draft Public Services Ombudsman (Wales) Bill.

Respondents to the consultation were generally very supportive of the provisions in the draft Bill and made valuable contributions and suggestions to improve the legislation. We considered the responses and updated the Bill accordingly. Unfortunately, due to the time remaining in the Forth Assembly, we were unable to introduce the draft Bill into this Assembly.

The Ombudsman plays a vital role in ensuring that any member of the public who believes they have suffered injustice through maladministration or service failure by a public body, are able to make a complaint with the reassurance that their complaint will be dealt with fairly and independently by the Ombudsman. For this reason, we sincerely hope this legislation is taken forward during the Fifth Assembly and that its implementation will enhance the role of the Ombudsman and increase public confidence in Wales.

I would like to thank everyone who has contributed to our extensive work in relation to this proposed legislation, your input has been invaluable.

A handwritten signature in cursive script, appearing to read 'Jocelyn Davies', enclosed in a thin rectangular border.

Jocelyn Davies AM  
Committee Chair

## **Summary of Recommendations and Conclusions**

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**Recommendation 1.** The Committee recommends that a future Committee of the National Assembly for Wales should introduce the Draft Public Services Ombudsman (Wales) Bill, as soon as possible, in the Fifth Assembly. (Page 13)

**Recommendation 2.** The Committee recommends that should the Draft Public Services Ombudsman (Wales) Bill be introduced, the Public Services Ombudsman for Wales should work with Commissioners and the Auditor General for Wales to produce information sharing protocols. (Page 22)

**Recommendation 3.** The Committee recommends the Public Services Ombudsman for Wales should contribute evidence to a fully costed Regulatory Impact Assessment to accompany the Draft Public Services Ombudsman (Wales) Bill that can be tracked through future budgets presented by the Public Services Ombudsman for Wales to the National Assembly for Wales. (Page 39)

**Conclusion 1.** In relation to all investigations, the Committee agreed the following changes to the text of the Draft Bill:

- to give a power to the Public Services Ombudsman for Wales to work with regulators (such as Healthcare Inspectorate Wales and the Care and Social Services Inspectorate Wales) and all future commissioners and statutory advisers created by Acts of the Assembly, in order to ensure effective and co-ordinated working on matters;
- the Public Services Ombudsman for Wales may carry out an own initiative investigation whether it relates to action taken before or after the Bill receives Royal Assent. (Page 22)

**Conclusion 2.** The Committee noted the evidence received in relation to the sections 33 to 39 (Listed authorities: complaints handling procedures). The Committee noted that the draft Bill provides that listed authorities would not have to comply with a model complaints handling procedure to the extent that the model complaints handling procedure is inconsistent with any statutory requirement to have a complaints handling procedure. Therefore, the Committee is content with the draft Bill as drafted. (Page 24)

Conclusion 3 – In relation to investigating private health services, the Committee agreed the following changes to the text of the Draft Bill:

- the definition of “private health services” should be broadened to encompass medical treatment and nursing care;
- a new section should be included, Power to demand costs from private health service providers, to allow the Public Services Ombudsman for Wales to serve a costs recovery notice on a private health care provider as a means of recovering additional costs incurred by the Public Services Ombudsman for Wales where the provider has obstructed the Ombudsman’s investigation. (Page 29)

**Conclusion 4.** In relation to the listed authorities under Schedule 3 of the draft Bill, the Committee agreed the following changes to the text of the draft Bill:

- the rules on amending the list under Schedule 3, should be the same as those currently set out in the Public Services Ombudsman (Wales) Act 2005 (i.e. the requirements that must be satisfied before a person can be added to the list in Schedule 3);
- the following bodies should be included as listed authorities in Schedule 3:
  - Coity Wallia Board for Conservators;
  - Harbour authorities;
  - Port authorities;
  - Qualifications Wales;
  - Towyn Trewan Board for Conservators;
  - Wales Audit Office;
  - Welsh Health Specialised Services Committee;
  - The Welsh Revenue Authority. (Page 32)

**Conclusion 5.** In relation to the disqualification period, the Committee agreed the following change to the text of the draft Bill:

- the disqualification period for the Public Services Ombudsman for Wales (or acting Ombudsman) from a list of various roles

should last until the end of the financial year after the financial year the Ombudsman ceased to be in office. (Page 34)

**Conclusion 6** Despite the consultation responses being strongly in favour of bringing social and palliative care into the mainstream investigation process, on further reflection and discussion, the Committee decided to keep social and palliative care as a standalone regime. This is because of the specific nature of social and palliative care, and the fact that merging the two regimes would create one very complex and intricate regime. Therefore, the Committee prefers the approach adopted in the draft Bill which provides for two separate but clear investigation regimes. (Page 37)

**Conclusion 7.** In relation to the Welsh language and reviewing the effectiveness of the legislation, the Committee agreed the following changes to the text of the draft Bill:

- a new section to place a duty on the Public Services Ombudsman for Wales to prepare and publish a Welsh language strategy;
- a new section which places a duty on Welsh Ministers to carry out a review of the legislation after five years from the date of the Act receiving Royal Assent and further reviews thereafter as Welsh Ministers deem appropriate. (Page 37)

# 1. Introduction

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## *Background*

1. On 21 January 2015, the Finance Committee “the Committee” agreed to undertake an inquiry [Consideration of powers: Public Services Ombudsman for Wales](#).
2. This inquiry followed calls from the previous Public Services Ombudsman for Wales “the Ombudsman”, Peter Tyndall and the current Ombudsman, Nick Bennett that the role should be strengthened.
3. During this initial inquiry, the Committee agreed to consider extending the powers of the Ombudsman and should the evidence support the extension of powers, the Committee would consider introducing a Committee Bill.

## **The Committee’s approach**

4. Between 26 January and 20 March 2015, the Committee undertook a public consultation to inform its work, [43 responses](#) were received.
5. In May 2015, the Committee published its initial [report](#) and made 18 recommendations to improve and strengthen the Ombudsman’s role. In addition to the formal report, the Committee produced an [at a glance summary](#) of its inquiry.
6. The Committee recommended that a Bill should be introduced into the Assembly to extend the role of the Ombudsman. The Committee’s main recommendations to strengthen the role included:
  - powers to initiate own investigations when exercising this power there must be sufficient evidence to support an investigation and there must be consultation with Commissioners, relevant stakeholders and any other person the Ombudsman considers appropriate;
  - full discretion for the Ombudsman to decide how complaints can be made and guidance must be issued specifying the accepted methods (allowing flexibility to react to changing methods of communication in future);

- a statutory complaints handling role for the Ombudsman, including provision to publish a model complaints handling policy for listed authorities; requirement for regular consultation with relevant stakeholders, requirement for public bodies to collect and analyse data on complaints and ensure a standardised language is used by public bodies when collecting data to ensure comparisons can be made;
- extending the Ombudsman's jurisdiction to enable him/her to investigate the whole complaint when a combination of treatment has been received by public and private healthcare providers and when that treatment has been initiated in the NHS.

7. In addition, the Committee made a number of other recommendations to support the legislation, including:

- a requirement for the Ombudsman and the Auditor General for Wales to take account of each other's views before exercising the relevant functions and to co-operate with one another in so far as they consider it necessary for the effective exercise of those functions;
- joint and collaborative working with the Children's Commissioner for Wales along similar lines to those currently applicable to the Older People's Commissioner for Wales and the Welsh Language Commissioner.

## 2. Committee's consultation on a draft Bill

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### *Background*

8. On 13 May 2015, the Committee agreed to prepare and consult on a [Draft Public Services Ombudsman \(Wales\) Bill](#). The Committee agreed that the Bill should re-enact much of the existing Public Services Ombudsman (Wales) Act 2005 “the 2005 Act”<sup>1</sup> and include the recommendations made in their initial report.

### **The Committee's approach**

9. The Committee were keen to ensure full engagement with public bodies and the general public affected by the proposed legislation and policy intentions. The Committee issued a 12 week consultation, between 21 October 2015 and 18 January 2016, on the structure and content of the draft Bill, [34 responses](#) were received.

10. This report details the Committee's consideration and conclusions based on the consultation responses received. References to sections/schedule in this report refer to the numbering of those sections/schedules in the draft Bill that was issued for consultation.

11. Attached at Annexe A, is the final text of the draft Public Services Ombudsman (Wales) Bill and Explanatory Notes at Annexe B.

12. The Committee would like to thank all those who have contributed to the extensive work which has been undertaken in relation to this proposed legislation.

### *Our view*

13. The Committee believes there is a need to strengthen the role of the Ombudsman and considers the draft Public Services Ombudsman (Wales) Bill, would future-proof the legislation whilst ensuring it is citizen-centred. Due to the time remaining in the Fourth Assembly, the Committee has been unable to introduce the Bill. We believe this Bill should be introduced as a priority by a future Assembly Committee of the Fifth Assembly before the Welsh Government's legislative programme gets underway.

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<sup>1</sup> Public Services Ombudsman (Wales) Act 2005:  
[www.legislation.gov.uk/ukpga/2005/10/contents](http://www.legislation.gov.uk/ukpga/2005/10/contents)

**Recommendation 1 - The Committee recommends that a future Committee of the National Assembly for Wales should introduce the Draft Public Services Ombudsman (Wales) Bill, as soon as possible, in the Fifth Assembly.**

### **3. Power to investigate on own initiative**

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#### **Section 4 – Power to investigate on own initiative**

##### ***Background***

14. This power would allow the Ombudsman to investigate a matter whether or not the Ombudsman has received a complaint. Therefore, it allows the Ombudsman to initiate an investigation.

15. The power in section 4 of the draft Bill can only be used to investigate matters within the Ombudsman’s jurisdiction. Sections 10 to 14 set out the matters which may be investigated.

##### ***Evidence from respondents***

##### **Duty to consult regulators**

16. Many respondents were concerned that, where the Ombudsman investigated on his/her own initiative, there could be confusion and duplication of effort as to whether the matter could also be the subject of an investigation by another regulatory body, Commissioner or the Auditor General for Wales “the Auditor General”. This was the biggest concern raised in consultation responses.

17. Healthcare Inspectorate Wales said that all those with a remit to undertake independent and objective reviews and investigations should be consulted prior to undertaking an own initiative investigation, including:

“...all relevant inspectorates, regulators and audit bodies. In order to minimise burden on listed authorities, own initiative investigations should only be undertaken where they will add value and provide specific benefit which should be determined at the outset of the investigation.”<sup>2</sup>

18. The Older People’s Commissioner for Wales said:

“I would fully expect that I would be consulted about any own initiative investigations which impact upon older people and be able to contribute towards the investigation and that any

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<sup>2</sup> DB PSOW 21, Healthcare Inspectorate Wales

changes to legislation places on the Ombudsman a requirement to consult.”<sup>3</sup>

19. In addition, the Older People’s Commissioner referred to an information-sharing protocol established between herself and the Auditor General and she felt that such an approach could also work with the Ombudsman.<sup>4</sup>

20. The Welsh Government agreed there needs to be an appropriate duty to consult placed on the Ombudsman before an own initiative investigation is undertaken. They said that prior to any inquiry, the Ombudsman should satisfy him/herself that:

“no other body, Police, Health and Safety Executive, Coroners, professional regulators and non-devolved bodies, commissioners, regulators, the Auditor General for Wales, inspectorates and or the Welsh Ministers has work planned or underway on the same subject.”<sup>5</sup>

## **Section 5 – Criteria for own initiative investigations**

### ***Background***

21. Under section 5 of the draft Bill, the Ombudsman must establish and publish criteria that have to be satisfied before the power in section 4 Power to investigate on own initiative can be used to investigate a matter.

22. The draft Bill provides that when deciding whether to use the power in section 4, the Ombudsman must satisfy the section 5 criteria. It is for the Ombudsman to decide what the criteria should include, but the criteria must set out the evidence that will be required before the power in section 4 can be used.

23. The draft Bill gives the Ombudsman scope to set his/her own criteria and evidential requirements. In this context, the Ombudsman would be subject to the general principle of public law i.e. there is a duty to act reasonably and in the good faith and using powers for proper purposes.

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<sup>3</sup> DB PSOW 19, Older People’s Commissioner for Wales

<sup>4</sup> DB PSOW 19, Older People’s Commissioner for Wales

<sup>5</sup> DB PSOW 29, Welsh Government

### ***Evidence from respondents***

24. The Committee for Administrative Justice and Tribunals Wales were confident that, when the Ombudsman devises criteria for own initiative investigations, the Ombudsman will act in accordance with the spirit of the *Principles for Administrative Justice*<sup>6</sup> published by the Administrative Justice and Tribunals Council in November 2010.<sup>7</sup>

25. Some respondents including the Local Democracy and Boundary Commission for Wales suggested that the criteria for carrying out an own initiative investigation should include a review of who is the most appropriate person to carry out an investigation.<sup>8</sup> This is linked to the concern that there may be duplication where the Ombudsman and a regulatory body could investigate a matter.

26. Another common theme amongst respondents was the criteria for own initiative investigations should cover matters in the public interest; which would not be investigated by anyone else; and would lead to wider improvement across a particular service. The Auditor General said issues that may appropriately be covered in the criteria for own initiate investigations may include:

“a) The possibility that maladministration or failure to provide service would cause significant distress or hardship;

b) Services that by their nature are important to and chiefly used by service users who are generally not disposed towards raising complaints;

c) Services and other areas of administration that are qualitatively important in terms of issues such as fairness, but for which low financial resource requirements mean examinations of economy, efficiency and effectiveness by the Auditor General would generally be regarded as not appropriate.”<sup>9</sup>

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<sup>6</sup> Principles for Administrative Justice:  
[http://ajtc.justice.gov.uk/docs/principles\\_web.pdf](http://ajtc.justice.gov.uk/docs/principles_web.pdf)

<sup>7</sup> DB PSOW 28, Committee for Administrative Justice and Tribunals Wales

<sup>8</sup> DB PSOW 05, Local Democracy and Boundary Commission for Wales

<sup>9</sup> DB PSOW 14, Auditor General for Wales

27. However, the Auditor General did not think it would be necessary to have an approach in which each and every criterion had to be met in order to justify an investigation.<sup>10</sup>

28. Caerphilly County Borough Council said that as an investigation would involve resources from both the Ombudsman and the authority subject to the investigation, the criteria needs to ensure that only significant issues of public interest are investigated.<sup>11</sup>

29. The Welsh Language Commissioner referred to her criteria for conducting investigations and inquiries, and offered to share experiences in relation to this.<sup>12</sup>

## **Retrospective effect**

### ***Background***

30. The draft Bill allowed a matter to be investigated under section 4 if it related to action taken after the Bill had received Royal Assent.

### ***Evidence from respondents***

31. Most respondents felt the power should commence after Royal Assent of the Bill, including Ceredigion County Council, Local Democracy and Boundary Commission for Wales and Betsi Cadwaladr University Health Board amongst others.

32. Pembrokeshire Coast National Park Authority and Brecon Beacons National Park Authority said:

“No exceptional reason has been given to vary the general rule that legislation is not retrospective in effect. If the case is to be made out for retrospective powers this must be specifically argued in greater detail.”<sup>13</sup>

33. The Welsh Government agreed it was “unusual to introduce legislation that seeks to address concerns retrospectively” and did not

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<sup>10</sup> DB PSOW 14, Auditor General for Wales

<sup>11</sup> DB PSOW 22, Caerphilly County Borough Council

<sup>12</sup> DB PSOW 07, Welsh Language Commissioner

<sup>13</sup> DB PSOW 10 Pembrokeshire Coast National Park Authority and Brecon Beacons National Park Authority

believe a case had been made for powers to be extended to this extent.<sup>14</sup>

34. However, some respondents suggested that matters should be capable of investigation, no matter how long ago they took place. The Northern Ireland Ombudsman said there should not be a “cut off point” beyond which the Ombudsman can carry out an own initiative investigation. He said a similar provision for retrospective applications was included in section 8(6) of the Northern Ireland Public Services Ombudsperson Bill.<sup>15</sup>

35. Whilst other respondents suggested cut-off points between one to five years. The Ombudsman suggested he should be able to investigate a matter that occurred two years prior to the date of Royal Assent. He said:

“Such a time restriction would serve to ensure that any concerns about service delivery which are apparent from complaints to my office when the Act receives Royal Assent can be investigated whilst also recognising that the investigating of historical matters can be problematic for those who are the subject of an investigation.”<sup>16</sup>

36. The University of Sheffield said consideration should be given to including a provision to allow matters which took place before Royal Assent to be investigated, but only if they were still live after Royal Assent. They said:

“This should be written as a discretionary power to be exercised by the ombudsman. Eg ‘The Ombudsman may investigate matters that arise before [implementation date] where it is necessary to complete an investigation into an ongoing matter post [implementation date] that the Ombudsman has decided to commence under s.4.’<sup>17</sup>

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<sup>14</sup> DB PSOW 29, Welsh Government

<sup>15</sup> The Northern Ireland Public Services Ombudsperson Bill has since received Royal Assent [www.legislation.gov.uk/nia/2016/4/contents/enacted](http://www.legislation.gov.uk/nia/2016/4/contents/enacted)

<sup>16</sup> DB PSOW 13, Public Services Ombudsman for Wales

<sup>17</sup> DB PSOW 30, University of Sheffield

## **Own initiative investigations: procedure**

### ***Background***

37. Section 16(2) of the draft Bill sets out the procedure to be followed when the Ombudsman uses the power in section 4 to initiate an investigation. The procedure requires the Ombudsman to prepare an investigation proposal i.e. a proposal which includes the reasons for the investigation and how the section 5 criteria have been met (but the Ombudsman is given discretion so that he/she does not have to prepare an investigation proposal where it is impractical to do so).

38. Under sections 16(4) and 16(5), the Ombudsman must specify further procedural requirements to be followed when the Ombudsman uses the power in section 4 to initiate an investigation. Such requirements must include procedures allowing those under investigation an opportunity to comment.

39. The draft Bill does not include timescales for the investigative procedures, which mirrors the provisions in the 2005 Act.

### ***Evidence from respondents***

40. The Ombudsman's response stated that the procedure, in so far as it relates to certain types of own initiative investigations, is too "onerous". For example, where the Ombudsman has identified systematic failings in Body A, the Ombudsman may have concerns that the same systematic failings may exist in Body B. The Ombudsman's evidence says that, in such circumstances, the Ombudsman should only have to notify Body B of his intention to carry out an own initiative investigation into Body B.<sup>18</sup>

41. Respondents were concerned that there were no timescales included in the investigations procedure. The Local Democracy and Boundary Commission for Wales said timescales should be included regarding the duration of an investigation.<sup>19</sup>

42. Healthcare Inspectorate Wales said in addition to giving reasons for carrying out an own initiative investigation, the Ombudsman should specify:

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<sup>18</sup> DB PSOW 13, Public Services Ombudsman for Wales

<sup>19</sup> DB PSOW 05, Local Democracy and Boundary Commission for Wales

“who has been consulted during the drafting of the proposal, how the proposed investigation relates to other review activity undertaken, in progress, or planned, and what specific additional purpose will be served by the own initiative investigation.”<sup>20</sup>

## **Section 63 – Working collaboratively with other Commissioners**

### ***Background***

43. Section 63 of the draft Bill allows the Ombudsman and other Commissioners<sup>21</sup> to work collaboratively in relation to certain matters.

### ***Evidence from respondents***

44. There was strong agreement that the draft Bill should require the Ombudsman to consult with any future commissioner created by an Act of the Assembly. The Care Council for Wales said it was “sensible to “future proof” the Bill as far as possible”.<sup>22</sup>

45. The Auditor General agreed and felt it would “be unhelpful and inconsistent for the Ombudsman to be able to work jointly with some Commissioners but not others.”<sup>23</sup>

46. The Welsh Government welcomed the inclusion of future Commissioners and said:

“All Commissioners have an interest in promoting and improving public services. Each commissioner will bring their own specialism, knowledge and expertise to the table, and together with their insight in their areas, they will add real value to joined up working.”<sup>24</sup>

### ***Our view***

47. The Committee noted that sections 61 to 64 of the draft Bill place a duty on the Ombudsman to consult and co-operate with various Ombudsmen, Commissioners and the Auditor General. The Committee agrees with the evidence which suggested that there should be a duty

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<sup>20</sup> DB PSOW 31, Healthcare Inspectorate Wales

<sup>21</sup> Including the Commissioner for Older People in Wales, the Welsh Language Commissioner and the Children’s Commissioner for Wales

<sup>22</sup> DB PSOW 04, Care Council for Wales

<sup>23</sup> DB PSOW 14, Auditor General for Wales

<sup>24</sup> DB PSOW 29, Welsh Government

on the Ombudsman to consult with regulators such as Healthcare Inspectorate Wales and the Care and Social Services Inspectorate Wales.

48. The Committee believes that detailing on the face of the Bill the criteria and evidence that would be required before the Ombudsman could carry out an own initiative investigation could constrain the Ombudsman's ability to act effectively. The Committee believes that the draft Bill provides the Ombudsman with discretion and allows flexibility, whilst acting within the principles of public law. Therefore, the Committee is content with the current wording of the draft Bill that requires the Ombudsman to publish the criteria under section 5.

49. With regard to own initiative investigations under section 4 of the draft Bill, the Committee considered that the Ombudsman should be able to investigate action which took place both before and after the Bill received Royal Assent. However, action which took place before Royal Assent should only be investigated where the Ombudsman considers that the matter has not been resolved satisfactorily. The Committee considered this was appropriate for the new section 4 power (while not changing the timescale involved where an investigation is carried out following a complaint under section 3).

50. The Committee believes that, when carrying out own initiative investigations, the default position should be that the Ombudsman must prepare an investigation proposal and give it to the listed authority or private health services provider. However, the Committee accepts that, in some case, this would create an unnecessary burden and therefore the Ombudsman should have discretion as to whether or not to prepare an investigation proposal where it is impractical to do so (provided always that the listed authority or private health services provider is given opportunity to comment on the investigation).

51. The Committee agreed that all future Commissioners that may be created by Acts of the Assembly should be included under section 63 Working collaboratively with other Commissioners to future-proof the legislation and ensure consistency. This should also include statutory advisors such as the National Adviser for Violence against Women and other forms of Gender-based Violence, Domestic Abuse and Sexual Violence.

**Recommendation 2 - The Committee recommends that should the Draft Public Services Ombudsman (Wales) Bill be introduced, the Public Services Ombudsman for Wales should work with Commissioners and the Auditor General for Wales to produce information sharing protocols.**

**Conclusion 1 - In relation to all investigations, the Committee agreed the following changes to the text of the Draft Bill:**

- to give a power to the Public Services Ombudsman for Wales to work with regulators (such as Healthcare Inspectorate Wales and the Care and Social Services Inspectorate Wales) and all future commissioners and statutory advisers created by Acts of the Assembly, in order to ensure effective and co-ordinated working on matters;**
- the Public Services Ombudsman for Wales may carry out an own initiative investigation whether it relates to action taken before or after the Bill receives Royal Assent.**

## **4. Complaints-handling across public services**

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### **Section 33 – Complaints-handling: statement of principles and Section 34 – Model complaints-handling procedure**

#### ***Background***

52. Section 33 of the draft Bill requires the Ombudsman to publish a statement of principles concerning complaints handling procedures of the listed authorities in Schedule 3. The Ombudsman must consult on the first such statement and any material changes and must obtain Assembly approval before publishing these.

53. Section 33(12) defines “complaints-handling procedures” to mean procedures of listed authorities which examine complaints or review decisions in respect of action taken by a listed authority where the matter in question is one in respect of which a complaint to the Ombudsman can be made and investigated under the draft Bill.

54. Section 33(2) requires every listed authority to have a complaints-handling procedure (or procedures) in respect of action taken by that listed authority, and these procedures must comply with the published statement of principles. Section 34(3) also requires a listed authority which has statutory responsibility for a complaints-handling procedure in relation to, or operated by, another listed authority, to ensure that these procedures comply with the statement of principles.

55. Section 34 enables the Ombudsman to publish model complaints-handling procedures “model CHPs” for listed authorities. Model CHPs must also comply with the statement of principles published by the Ombudsman. Section 34(6) ensures that listed authorities specified under section 35(1) must comply with any published changes to the relevant model CHP, but it is left to the Ombudsman to decide whether to direct the listed authority to resubmit a description of its complaints-handling procedure under section 37(1). If the Ombudsman withdraws a model CHP, any related specifications under section 35(1) cease to have effect.

#### ***Evidence from respondents***

56. Most respondents including the Northern Ireland Ombudsman and the City of Cardiff Council were content with the complaints handling provisions as drafted. The University of Sheffield felt the

provisions would “drive forward quality complaint-handling and data collection at the service provider level”.<sup>25</sup>

57. The Auditor General considered the provisions were appropriate to grant the Ombudsman sufficient powers to ensure that complaints are dealt with consistently and fairly across the Welsh public sector.<sup>26</sup>

58. Ceredigion County Council agreed and said they already follow the Welsh Government’s Model Concerns and Complaints Policy and Guidance<sup>27</sup> and therefore support having similar standards and policies across Wales.<sup>28</sup>

59. The Welsh Government welcomed the provisions of model CHP’s for listed authorities. However, they raised a concern around the Ombudsman’s discretion under section 34(3) of the draft Bill regarding:

“...the publication of different model CHPs for different purposes as this may lead to confusion.”<sup>29</sup>

60. The Welsh Government stated that listed authorities who have a statutory requirement to have complaints-handling procedures should be exempt from the model regime set out in sections 32 to 35 of the draft Bill.<sup>30</sup>

61. The Welsh Government also noted the Bill provided the Ombudsman with discretion to determine who to consult on the principles and the model CHP, but was silent on compliance and the sanction available to the Ombudsman when a listed authority fails to comply with a model CHP.<sup>31</sup>

### ***Our view***

**Conclusion 2 - The Committee noted the evidence received in relation to the sections 33 to 39 (Listed authorities: complaints handling procedures). The Committee noted that the draft Bill provides that listed authorities would not have to comply with a**

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<sup>25</sup> DB PSOW 30, University of Sheffield

<sup>26</sup> DB PSOW 14, Auditor General for Wales

<sup>27</sup> [www.ombudsman-wales.org.uk/en/Information%20for%20Public%20Bodies/Polisi-pryderon-a-chwynion-enghreiffiol-a-chanllawiau.aspx](http://www.ombudsman-wales.org.uk/en/Information%20for%20Public%20Bodies/Polisi-pryderon-a-chwynion-enghreiffiol-a-chanllawiau.aspx)

<sup>28</sup> DB PSOW 21, Ceredigion County Council

<sup>29</sup> DB PSOW 29, Welsh Government

<sup>30</sup> DB PSOW 29, Welsh Government

<sup>31</sup> DB PSOW 29, Welsh Government

**model complaints handling procedure to the extent that the model complaints handling procedure is inconsistent with any statutory requirement to have a complaints handling procedure. Therefore, the Committee is content with the draft Bill as drafted.**

## 5. Investigating private health services

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### Section 10 – Matters which may be investigated

#### *Background*

62. Sections 10(1)(d) and (2) of the draft Bill allow the Ombudsman to investigate certain matters relating to private health services. This has a significant effect on the interpretation of the Bill – each time the word “investigation” is used in Part 3, it may include an investigation into private health services. For example, the duty to publish a report of investigations under section 19 would apply where the Ombudsman has investigated private health services.

63. In the draft Bill, “Private health services” was defined in section 71 to mean:

- (a) medical treatment provided in a private hospital, and
- (b) private medical treatment provided in an NHS hospital.

64. Section 10(2) of the draft Bill defines the circumstances in which the Ombudsman can investigate private health services. These circumstances are:

- “(a) the person must have received medical treatment in the form of relevant action by a listed authority (relevant action is defined in section 10(4) and all listed authorities are listed in Schedule 3),
- (b) the person must have also received private health services, and
- (c) the Ombudsman cannot effectively or completely investigate the relevant action without also investigating the private health services.”<sup>32</sup>

65. Therefore, section 10(2) acts as a check on the power to investigate private health services, because it limits the circumstances in which private health services can be investigated.

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<sup>32</sup> Draft Public Services Ombudsman (Wales) Bill - Explanatory Notes:  
[www.senedd.assembly.wales/documents/s45204/Draft%20Public%20Services%20Ombudsman%20Wales%20Bill%20-%20Explanatory%20Notes.pdf](http://www.senedd.assembly.wales/documents/s45204/Draft%20Public%20Services%20Ombudsman%20Wales%20Bill%20-%20Explanatory%20Notes.pdf)

66. Sections 11 to 13 set out further restriction on matters which may be investigated. However, the matters set out in sections 10(1) and 10(2) have a significant effect on the interpretation of the Bill. Read with the powers in sections 3 and 4, the Ombudsman could:

- 1: investigate a listed authority following a complaint (using section 3 or section 4);
- 2: investigate private health services following a complaint (using section 3 or section 4);
- 3: investigate a listed authority where there has been no complaint (using section 4);
- 4: investigate private health services where there has been no complaint (using section 4).<sup>33</sup>

### ***Evidence from respondents***

67. The Care Council for Wales supported this new provision as “it will achieve greater equality of opportunity for investigation and possible redress for the range of mechanisms by which healthcare may be funded.”<sup>34</sup>

68. Other respondents including the Ombudsman<sup>35</sup> and Barry Town<sup>36</sup> Council were content with the provisions as drafted.

69. The Local Democracy and Boundary Commission for Wales supported the proposal, but questioned:

“would a private care provider be compelled to act [in] accordance with the advice offered in an expert report. What would the sanctions be for failing to comply with a report and its recommendations?”<sup>37</sup>

70. Healthcare Inspectorate Wales said that the definition of “private health services” appeared to be based on an establishment based definition around a hospital. They continued:

“It also limits applicability to medical treatment. It is therefore too narrow and should consider moving to a definition based

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<sup>33</sup> In each case, the section 4 power can only be used if the section 5 criteria are met

<sup>34</sup> DB PSOW 04, Care Council for Wales

<sup>35</sup> DB PSOW 13 Public Services Ombudsman for Wales

<sup>36</sup> DB PSOW 08, Barry Town Council

<sup>37</sup> DB PSOW 05, Local Democracy and Boundary Commission for Wales

around services rather than establishments. Consideration should also be given to extending the definition to aspects of care other than medical care.”<sup>38</sup>

71. The Welsh Government agreed the definition of “private health services” should be broadened to encompass medical treatment and nursing care.<sup>39</sup>

72. There were mixed views on the provision which would give the Ombudsman the power to recover costs incurred in investigating private health services. Betsi Cadwaladr University Health Board suggested that costs should be recoverable “if the investigation is upheld”.<sup>40</sup>

73. Barry Town Council agreed that the Ombudsman should have the power to recover costs incurred when investigating private health services as:

“they are in the business of charging and making money why should it fall to the public purse to pay for their mistakes.”<sup>41</sup>

74. With regard to the Ombudsman’s power to obtain evidence, information, documents and facilities from private health services providers, the Independent Sector Complaints Adjudication Service “ISCAS” did not support this on the basis that a mechanism for independent review of complaints already exists, at no public cost.<sup>42</sup>

75. ISCAS added that it would welcome the opportunity to enter into an information-sharing agreement with the Ombudsman for complaints that cross between the public and private sectors.<sup>43</sup>

76. The Welsh Government confirmed it supports the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received by public and private health services providers, as long as there is no additional cost to the public purse.<sup>44</sup>

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<sup>38</sup> DB PSOW 31, Healthcare Inspectorate Wales

<sup>39</sup> DB PSOW 29, Welsh Government

<sup>40</sup> DB PSOW 16, Betsi Cadwaladr University Health Board

<sup>41</sup> DB PSOW 08, Barry Town Council

<sup>42</sup> DB PSOW 33, Independent Sector Complaints Adjudication Service

<sup>43</sup> DB PSOW 33, Independent Sector Complaints Adjudication Service

<sup>44</sup> DB PSOW 29, Welsh Government

77. However, the Welsh Government did feel section 10(2) needed to be clearer as to whether it covers Welsh patients receiving services in England and whether these were commissioned services or private treatment. They continued:

“It [the Bill] also needs to clarify whether / how it would apply to Welsh patients who undergo treatment across the border.”<sup>45</sup>

### ***Our View***

78. The Committee agrees with the evidence received that the definition of “private health services” should be broadened to encompass medical treatment and nursing care.

79. The Committee believes that the Ombudsman should be able to recover costs incurred in investigating private health services and this cost should not fall to the taxpayer.

**Conclusion 3 – In relation to investigating private health services, the Committee agreed the following changes to the text of the Draft Bill:**

- **the definition of “private health services” should be broadened to encompass medical treatment and nursing care;**
- **a new section should be included, Power to demand costs from private health service providers, to allow the Public Services Ombudsman for Wales to serve a costs recovery notice on a private health care provider as a means of recovering additional costs incurred by the Public Services Ombudsman for Wales where the provider has obstructed the Ombudsman’s investigation.**

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<sup>45</sup> DB PSOW 29, Welsh Government

## 6. Listed authorities

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### Section 30 – Restriction on power to amend Schedule 3

#### *Background*

80. Schedule 3 of the draft Bill lists the persons who are subject to the remit of the Ombudsman. The Ombudsman’s current jurisdiction in this respect extends to most devolved public services in Wales. However, as changes are made to the devolution settlement in Wales, this will lead to new areas coming into the Ombudsman’s jurisdiction.

81. Section 30(2) provides that an order to amend Schedule 3 may add a person only if the person has functions dischargeable in relation to Wales or a part of Wales (even if those functions are also dischargeable otherwise than in relation to Wales).

82. Such an order can never remove the Welsh Ministers or the National Assembly from the list of listed authorities in Schedule 3.

#### *Evidence from respondents*

83. Most respondents were content with the restrictions on the power to amend Schedule 3. The Welsh Local Government Association “WLGA” said the restrictions as drafted appeared “clear and proportionate” compared to the 2005 Act.<sup>46</sup>

84. The WLGA felt the listed authorities were largely consistent with those of the 2005 Act, but said it was not clear why some certain bodies were listed, whilst other similar bodies were not, for example:

“the Welsh Language Commissioner is included as a listed authority but other Commissioners are not and Estyn is included as a listed authority other regulatory and inspectorate bodies are not included. It may be appropriate to include harbour or port authorities in the list.”<sup>47</sup>

85. The Auditor General said it was not clear why the additional requirements of the 2005 Act (i.e. the requirements that must be satisfied before a person can be added to the list in Schedule 3) have

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<sup>46</sup> DB PSOW 32, Welsh Local Government Association

<sup>47</sup> DB PSOW 32, Welsh Local Government Association

not been reproduced in the draft Bill as they work to ensure that only public authorities can be added to Schedule 3. He said:

“Removal of these requirements seems undesirable as it would allow for the extension of the Ombudsman’s jurisdiction further into the private sector without the need for primary legislation.”<sup>48</sup>

86. The Welsh Government agreed with the Auditor General and said its preference would be to retain the restrictions as they appear in the 2005 Act, believing this provided more flexibility to the Ombudsman in exercising his/her powers.<sup>49</sup>

87. The Welsh Government noted that the list in Schedule 3 was consistent with the list in the 2005 Act and made a number of suggestions of bodies that would need updating, removing or changing.<sup>50</sup>

88. Marshfield Community Council felt that Schedule 3 should be “kept under review to reflect evolving circumstance”.<sup>51</sup>

### *Our view*

**Conclusion 4 – In relation to the listed authorities under Schedule 3 of the draft Bill, the Committee agreed the following changes to the text of the draft Bill:**

- **the rules on amending the list under Schedule 3, should be the same as those currently set out in the Public Services Ombudsman (Wales) Act 2005 (i.e. the requirements that must be satisfied before a person can be added to the list in Schedule 3);**
- **the following bodies should be included as listed authorities in Schedule 3:**
  - **Coity Wallia Board for Conservators;**
  - **Harbour authorities;**
  - **Port authorities;**
  - **Qualifications Wales;**

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<sup>48</sup> DB PSOW 14, Auditor General for Wales

<sup>49</sup> DB PSOW 29, Welsh Government

<sup>50</sup> DB PSOW 29, Welsh Government

<sup>51</sup> DB PSOW 18, Marshfield Community Council

- **Towyn Trewan Board for Conservators;**
- **Wales Audit Office;**
- **Welsh Health Specialised Services Committee;**
- **The Welsh Revenue Authority.**

## 7. Disqualification period

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### *Background*

89. Paragraph 7 of Schedule 1 to the draft Bill provided that a person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified from a list of specified roles for a period of two years. The current disqualification period in the 2005 Act is for a period of three years. There is a list of appointment terms and disqualification periods for other various public offices in Wales at Annexe C.

### *Evidence from respondents*

90. Respondents were divided on the question of whether the disqualification period of two years was appropriate.

91. Some respondents including various local authorities, the Welsh Government and two University Health Boards agreed that two years was appropriate.<sup>52</sup>

92. The Auditor General said the disqualification period seemed appropriate and was consistent with the provisions relating to the Auditor General's role.<sup>53</sup>

93. However, the Ombudsman, the Scottish Ombudsman and the Northern Ireland Ombudsman believed the two year period was too long. The Northern Ireland Ombudsman said it was "excessive, disproportionate and unnecessary."<sup>54</sup>

94. The Ombudsman said the position in the Northern Ireland Public Services Ombudsman Bill is the same as is currently in force in Scotland, that is:

"former ombudsmen are restricted from taking up certain employment without the consent of the Assembly Commissioner/Parliamentary Commission. This restriction

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<sup>52</sup> DB PSOW 06, Cardiff and Vale University Health Board

<sup>53</sup> DB PSOW 14, Auditor General for Wales

<sup>54</sup> DB PSOW 27, Northern Ireland Ombudsman

expires at the end of the financial year following the financial year in which the person ceased to hold office.”<sup>55</sup>

95. The Ombudsman said that future recruitment to the role of Ombudsman, may deter a number of “potential first class candidates from applying for the position” given the length of the disqualification period particularly for an acting Ombudsman.<sup>56</sup>

### ***Our view***

96. The Committee considered the disqualification periods for Ombudsman in other jurisdictions and various public offices in Wales. The Committee believes that the period should be consistent with the Scottish and Northern Ireland Ombudsmen, in that disqualification lasts until the end of the financial year after the financial year the Ombudsman ceased to be in office (and that the Assembly Commission should be able to consent to a shorter period).

**Conclusion 5 – In relation to the disqualification period, the Committee agreed the following change to the text of the draft Bill:**

- **the disqualification period for the Public Services Ombudsman for Wales (or acting Ombudsman) from a list of various roles should last until the end of the financial year after the financial year the Ombudsman ceased to be in office.**

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<sup>55</sup> DB PSOW 27, Northern Ireland Ombudsman

<sup>56</sup> DB PSOW 13, Public Services Ombudsman for Wales

## 8. Other issues

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### Social care and palliative care

#### *Background*

97. The 2005 Act provides a standalone regime for investigations relating to social care and palliative care. This jurisdiction was extended by amendments inserted by the Social Services and Well-being (Wales) Act 2014.<sup>57</sup>

98. The draft Bill follows the approach of the 2005 Act. Consultees were asked for their views on whether the regime for social care and palliative care should remain a standalone regime, or whether it should come within the “mainstream” investigation regime.

#### *Evidence from respondents*

99. The consultation responses to this issue were divided as follows:

#### **Social care and palliative care should remain a standalone regime**

- Pembrokeshire Coast NPA and Brecon Beacons National Park Authority.

#### **Social care and palliative care should come within the “mainstream” investigation regime**

- Cardiff & Vale University Health Board;
- Public Services Ombudsman for Wales;
- Auditor General for Wales (tentatively);
- Betsi Cadwaladr University Health Board;
- Liverpool University;
- Ceredigion County Council;
- Northern Ireland Ombudsman;
- Welsh Government;
- University of Sheffield.

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<sup>57</sup> Social Services and Well-being Act 2014:  
[www.legislation.gov.uk/anaw/2014/4/pdfs/anaw\\_20140004\\_en.pdf](http://www.legislation.gov.uk/anaw/2014/4/pdfs/anaw_20140004_en.pdf)

100. In relation to the social care and palliative care regime being included within the mainstream investigation regime in the Bill, the Welsh Government agreed there should only be “one investigating process”.<sup>58</sup>

### ***Welsh Language***

101. The Welsh Language Commissioner noted the Bill did not place any Welsh language requirements on the Ombudsman. She said:

“At present, it is not clear what the Ombudsman's duties are in terms of providing services through the medium of Welsh. The Commissioner would welcome it if the Committee were to place specific duties on the Ombudsman in the draft Bill in relation to the use of Welsh.”<sup>59</sup>

### ***Evaluation of legislation after commencement***

102. Consultees were asked to comment on when the impact of the legislation should be evaluated. There were mixed views on this issue with most respondents suggesting evaluation between three to five years after implementation.

103. The Auditor General said:

“...given the timescales for undertaking and allowing the effects of own-initiative investigations and model complaints policy work, evaluation at least three to five years after commencement should be appropriate if the evaluation is to address effectiveness.

“However, if the evaluation were confined to assessing whether the provisions were fit for purpose in terms of enabling the processes to commence (which is quite a narrow focus), then it could be undertaken one to two years after commencement.”<sup>60</sup>

104. The University of Liverpool agreed and suggested the legislation “should not be reviewed sooner than three years, nor later than seven years after its coming into effect”.<sup>61</sup>

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<sup>58</sup> DB PSOW 29, Welsh Government

<sup>59</sup> DB PSOW 07, Welsh Language Commissioner

<sup>60</sup> DB PSOW 14, Auditor General for Wales

<sup>61</sup> DB PSOW 17, University of Liverpool

105. The Welsh Government referred to the Assembly's ability to receive reports from the Ombudsman and its ability to hold the Ombudsman to account. They said this provided:

“...a forum, where the Ombudsman can relay any fears if he feels that his work is being hindered and needs reviewing. It is how this process began. In addition, the introduction of a complaint standards authority should provide the legislature with hard evidence of how complaints are being handled, and whether or not there is dissatisfaction from Welsh citizens.”<sup>62</sup>

### *Our view*

**Conclusion 6 - Despite the consultation responses being strongly in favour of bringing social and palliative care into the mainstream investigation process, on further reflection and discussion, the Committee decided to keep social and palliative care as a standalone regime. This is because of the specific nature of social and palliative care, and the fact that merging the two regimes would create one very complex and intricate regime. Therefore, the Committee prefers the approach adopted in the draft Bill which provides for two separate but clear investigation regimes.**

**Conclusion 7 – In relation to the Welsh language and reviewing the effectiveness of the legislation, the Committee agreed the following changes to the text of the draft Bill:**

- a new section to place a duty on the Public Services Ombudsman for Wales to prepare and publish a Welsh language strategy;
- a new section which places a duty on Welsh Ministers to carry out a review of the legislation after five years from the date of the Act receiving Royal Assent and further reviews thereafter as Welsh Ministers deem appropriate.

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<sup>62</sup> DB PSOW 29, Welsh Government

## 9. Financial Implications

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### *Background*

106. There were 16 consultation responses that made comments relating to the financial implications of the draft Bill.

### *Cost implications for the Ombudsman and other bodies*

107. Several respondents including those from the Auditor General and Cardiff and the Vale University Health Board noted that the number of complaints would increase when it is possible to submit complaints orally. They state that this will have resource implications for the Ombudsman and other bodies.<sup>63</sup>

108. The majority of respondents, such as One Voice Wales and Gwynedd Council, said they were concerned about additional pressure that could be placed on their limited resources. Ceredigion Council said:

“Whilst it is important to support the Ombudsman in his work, there needs to be a balance between the provision of services and the cost of regulation.”<sup>64</sup>

### *Regulatory Impact Assessment*

109. The Welsh Government noted that the explanatory material did not provide an assessment of costs and impacts of the draft legislation, particularly in terms of costs that may fall on health bodies and local government. They stated:

“The main barriers will be financial resources, organisational cultures, and a changing landscape. There is a need for a clear financial assessment and a case to demonstrate that the benefits outweigh the costs.”<sup>65</sup>

110. The WLGA’s response acknowledged that estimating the cost of the draft Bill would be difficult but recommended that a Regulatory

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<sup>63</sup> DB PSOW 06 Cardiff and Vale University Health Board and DB PSOW 14 Auditor General for Wales

<sup>64</sup> DB PSOW 21 Ceredigion County Council

<sup>65</sup> DB PSOW 29 Welsh Government

Impact Assessment should be introduced alongside the draft Bill in the next Assembly term.

111. The Auditor General suggested that in the future the draft Bill could lead to efficiency savings but that “such benefits are very difficult to quantify, let alone predict”.<sup>66</sup>

*Our view*

112. The Committee has made the following recommendation in its Legacy Report, and would reassert the requirement that the Ombudsman be fully involved in preparing the costs associated with the legislation.

**Recommendation 3 - The Committee recommends the Public Services Ombudsman for Wales should contribute evidence to a fully costed Regulatory Impact Assessment to accompany the Draft Public Services Ombudsman (Wales) Bill that can be tracked through future budgets presented by the Public Services Ombudsman for Wales to the National Assembly for Wales.**

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<sup>66</sup> DB PSOW 14 Auditor General for Wales

## List of written evidence

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The following people and organisations provided written evidence to the Committee. All written evidence can be viewed in full at:

[www.senedd.assembly.wales/mgConsultationDisplay.aspx?ID=204](http://www.senedd.assembly.wales/mgConsultationDisplay.aspx?ID=204)

<b>Organisations</b>	<b>Ref</b>
Welsh St Donats Community Council	DB PSOW 01
National Clinical Assessment Service	DB PSOW 02
Henllanfallteg Community Council	DB PSOW 03
Care Council for Wales	DB PSOW 04
Local Democracy and Boundary Commission for Wales	DB PSOW 05
Cardiff and Vale University Health Board	DB PSOW 06
Welsh Language Commissioner	DB PSOW 07
Barry Town Council	DB PSOW 08
One Voice Wales	DB PSOW 09
Pembrokeshire Coast National Park Authority and Brecon Beacons National Park Authority	DB PSOW 10
Janet Treharne Oakley	DB PSOW 11
Scottish Public Services Ombudsman	DB PSOW 12
Public Services Ombudsman for Wales	DB PSOW 13
Auditor General for Wales	DB PSOW 14
Vale of Glamorgan Council	DB PSOW 15
Betsi Cadwaladr University Health Board	DB PSOW 16
University of Liverpool	DB PSOW 17
Marshfield Community Council	DB PSOW 18
Older People's Commissioner for Wales	DB PSOW 19
Welsh Independent Healthcare Association	DB PSOW 20
Ceredigion County Council	DB PSOW 21
Caerphilly County Borough Council	DB PSOW 22
City of Cardiff Council	DB PSOW 23
Penarth Town Council	DB PSOW 24
Velindre NHS Trust	DB PSOW 25
Gwynedd Council	DB PSOW 26
Northern Ireland Ombudsman	DB PSOW 27
Committee for Administrative Justice and Tribunals Wales	DB PSOW 28
Welsh Government	DB PSOW 29
University of Sheffield	DB PSOW 30

Healthcare Inspectorate Wales	DB PSOW 31
Welsh Local Government Association	DB PSOW 32
Independent Sector Complaints Adjudication Service (ISCAS)	DB PSOW 33
Aneurin Bevan UHB	DB PSOW 34

**ACCOMPANYING DOCUMENTS**

**Explanatory Notes and an Explanatory Memorandum are printed separately.**

# Public Services Ombudsman (Wales) Bill

[DRAFT]

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# Public Services Ombudsman (Wales) Bill

[DRAFT]

An Act of the National Assembly for Wales to make provision about the office of the Public Services Ombudsman for Wales; to make provision about the functions of the Public Services Ombudsman for Wales; to make provision about compensation; and for connected purposes.

5 **Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:**

## PART 1

### INTRODUCTION

#### 1 Overview

(1) Part 2 of this Act provides for the continuation of the role of the Ombudsman.

10 (2) Part 3 of this Act—

(a) sets out the Ombudsman's powers to investigate listed authorities and private health services providers,

(b) makes provision for the procedures that apply to those investigations,

(c) makes provision for the procedures that apply to reports of those investigations,

15 (d) makes provision for complaints-handling procedures of listed authorities,

(e) makes provision for various matters relating to listed authorities and private health services providers.

(3) Part 4 of this Act—

20 (a) sets out the Ombudsman's powers to investigate social and palliative care providers,

(b) makes provision for the procedures that apply to those investigations,

(c) makes provision for the procedures that apply to reports of those investigations,

(d) makes provision for various matters relating to social and palliative care.

(4) Part 5 of this Act makes supplementary provision relating to investigations.

## PART 2

### THE PUBLIC SERVICES OMBUDSMAN FOR WALES

#### 2 The Public Services Ombudsman for Wales

- 5 (1) The office of the Public Services Ombudsman for Wales or Ombwdsmon Gwasanaethau Cyhoeddus Cymru (in this Act referred to as “the Ombudsman”) is to continue.
- (2) Schedule 1 makes further provision about the Ombudsman.

## PART 3

### INVESTIGATIONS

#### *Power of investigation*

#### 10 3 Power to investigate complaints

- (1) The Ombudsman may investigate a complaint under this Part in respect of a matter if—
- (a) the complaint has been duly made or referred to the Ombudsman, and
  - (b) the matter is one which the Ombudsman is entitled to investigate under sections 10 to 14.
- 15 (2) A complaint is “duly made” to the Ombudsman if (but only if)—
- (a) it is made by a person who is entitled under section 7 to make the complaint to the Ombudsman, and
  - (b) the requirements of section 8(1) are met in respect of it.
- (3) A complaint is “duly referred” to the Ombudsman if (but only if)—
- 20 (a) it is referred to the Ombudsman by a listed authority, and
- (b) the requirements of section 9(1) are met in respect of it.
- (4) The Ombudsman may investigate a complaint under this Part in respect of a matter even if the requirements of section 8(1) or (as the case may be) section 9(1)(b), (c) or (d) are not met in respect of the complaint, if—
- 25 (a) the matter is one which the Ombudsman is entitled to investigate under sections 10 to 14, and
- (b) the Ombudsman thinks it reasonable to do so.
- (5) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation.
- 30 (6) The Ombudsman may take any action which the Ombudsman thinks may assist in making a decision under subsection (5).
- (7) The Ombudsman may begin or continue an investigation into a complaint even if the complaint, or the referral of the complaint, has been withdrawn.

(8) But this section is subject to section 8(5).

#### **4 Power to investigate on own initiative**

(1) The Ombudsman may investigate a matter under this Part, in respect of which the Ombudsman is entitled to investigate under sections 10 to 14, whether a complaint has been duly made or referred to the Ombudsman or not.

(2) The matter may relate to action taken before or after this Act receives Royal Assent.

(3) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation under this section but the Ombudsman must consult such persons as the Ombudsman considers appropriate when making such a decision.

(4) The Ombudsman may take any action the Ombudsman thinks may assist in making a decision under subsection (3).

#### **5 Criteria for own initiative investigations**

(1) The Ombudsman must establish (and may from time to time amend) criteria to be used in determining whether to commence an investigation under section 4.

(2) The criteria must include the evidential requirements to be used in determining whether to commence an investigation under section 4.

(3) The Ombudsman must publish the criteria.

#### **6 Alternative resolution of complaints or matters**

(1) The Ombudsman may take any action the Ombudsman thinks appropriate with a view to resolving a complaint or matter which the Ombudsman has power to investigate under this Part.

(2) The Ombudsman may take action under this section in addition to or instead of conducting an investigation.

(3) Any action under this section must be taken in private.

#### *Complaints*

#### **7 Who can complain**

(1) The persons entitled to make a complaint to the Ombudsman under this Part are –

(a) a member of the public (in this Part referred to as “the person aggrieved”) who claims or claimed to have sustained injustice or hardship in consequence of a matter which the Ombudsman is entitled to investigate under sections 10 to 14;

(b) a person authorised by the person aggrieved to act on his or her behalf;

(c) if the person aggrieved is not capable of authorising a person to act on his or her behalf (for example because the person has died), a person who appears to the Ombudsman to be appropriate to act on behalf of the person aggrieved.

(2) “Member of the public” means any person other than a listed authority acting in its capacity as such.

But a private health services provider acting in its capacity as such is not a member of the public if the matter relates solely to a matter within section 10(1)(d).

- (3) It is for the Ombudsman to determine any question of whether a person is entitled under this section to make a complaint to the Ombudsman.

5 **8 Requirements: complaints made to the Ombudsman**

- (1) The requirements mentioned in section 3(2)(b) are that the complaint must –
- (a) be in a form specified by the Ombudsman in guidance;
  - (b) contain such information as specified by the Ombudsman in guidance;
  - (c) be made to the Ombudsman before the end of the period of one year starting on the day on which the person aggrieved first had notice of the matter.

- (2) The Ombudsman must publish the guidance referred to in subsection (1).

- (3) It is for the Ombudsman to determine any question of whether the requirements of subsection (1) are met in respect of a complaint.

- (4) If a complaint which meets the requirements of subsection (1) is made orally, the Ombudsman must –

- (a) explain to the person aggrieved that a complaint has been duly made under this Act and the implications of making such a complaint, and
- (b) ask the person aggrieved whether he or she wishes the complaint to continue to be treated as a complaint that has been duly made.

- (5) If the person does not wish the complaint to continue to be treated as being duly made, the Ombudsman must not use the power in section 3 to investigate the matter.

- (6) If the person wishes the complaint to continue to be treated as being duly made, the Ombudsman must ask the person whether he or she wishes the complaint to be confirmed in writing.

- (7) If the person wishes the complaint to be confirmed in writing, the Ombudsman must make such arrangements as are necessary for the complaint to be confirmed in writing.

- (8) If the person does not wish the complaint to be confirmed in writing the Ombudsman must record this in writing.

- (9) The Ombudsman must maintain a register of all oral complaints.

- (10) In this section, “in writing” includes in electronic form.

9 **Requirements: complaints referred to the Ombudsman**

- (1) The requirements mentioned in section 3(3)(b) are that the complaint –
- (a) must have been made to the listed authority by a person who would have been entitled under section 7 to make the complaint to the Ombudsman;
  - (b) must have been made to the listed authority before the end of the period of one year starting on the day on which the person aggrieved first had notice of the matters alleged in the complaint;

(c) must be referred to the Ombudsman in a form and contain such information as specified by the Ombudsman in guidance;

(d) must be referred to the Ombudsman before the end of the period of one year starting on the day on which the complaint was made to the listed authority.

5 (2) The Ombudsman must publish the guidance referred to in subsection (1).

(3) It is for the Ombudsman to determine any question of whether the requirements of subsection (1) are met in respect of a complaint.

*Matters which may be investigated*

**10 Matters which may be investigated**

10 (1) The matters which the Ombudsman is entitled to investigate under this Part are—

(a) alleged maladministration by a listed authority in connection with relevant action;

(b) an alleged failure in a relevant service provided by a listed authority;

(c) an alleged failure by a listed authority to provide a relevant service;

(d) where subsection (2) applies, matters relating to private health services.

15 (2) This subsection applies where in the Ombudsman's opinion—

(a) a person has received medical treatment by way of relevant action taken by a listed authority,

(b) the person has also received private health services, and

20 (c) matters relating to the relevant action cannot be investigated effectively or completely without also investigating matters relating to the private health services.

(3) Subsection (1) is subject to sections 11 to 14.

(4) Relevant action is—

25 (a) in the case of a listed authority which is a family health service provider in Wales or an independent provider in Wales, action taken by the authority in connection with the provision of a relevant service;

(b) in the case of a listed authority which is a social landlord in Wales or a Welsh health service body other than the Welsh Ministers, action taken by the authority in the discharge of any of its functions;

30 (c) in the case of a listed authority which is a person with functions conferred by regulations made under section 113(2) of the Health and Social Care (Community Health and Standards) Act 2003 (c.43), action taken by the authority in the discharge of any of those functions;

(d) in the case of a listed authority which is a listed authority by virtue of regulations under section 30(2) adding it to Schedule 3, action taken by the authority in the discharge of any of its specified functions;

(e) in any other case, action taken by the authority in the discharge of any of its administrative functions.

(5) A relevant service is –

(a) in the case of a listed authority which is a family health service provider in Wales, any of the family health services which the authority had, at the time of the action which is the subject of the complaint, entered into a contract, undertaken, or made arrangements, to provide;

(b) in the case of a listed authority which is an independent provider in Wales, any service which the authority had, at that time, made arrangements with a Welsh health service body or a family health service provider in Wales to provide;

(c) in the case of a listed authority falling within subsection (4)(c), any service which it was, at that time, the authority's function to provide in the discharge of any of the functions mentioned in that paragraph;

(d) in the case of a listed authority falling within subsection (4)(d), any service which it was, at that time, the authority's function to provide in the discharge of any of its specified functions;

(e) in any other case, any service which it was, at that time, the authority's function to provide.

(6) For the purposes of subsections (4)(d) and (5)(d), a listed authority's specified functions are the functions specified in relation to the authority in regulations under section 30(2) as falling within the Ombudsman's remit.

(7) An administrative function which may be discharged by a person who is a member of the administrative staff of a relevant tribunal is to be treated as an administrative function of a listed authority for the purposes of subsection (4) if –

(a) the person was appointed by the authority, or

(b) the person was appointed with the consent of the authority (whether as to remuneration and other terms and conditions of service or otherwise).

## 11 Exclusion: matters not relating to Wales

(1) The Ombudsman may not investigate a matter arising in connection with –

(a) the discharge by a listed authority of any of the authority's functions otherwise than in relation to Wales,

(b) private health services provided otherwise than in relation to Wales.

(2) Subsection (1)(a) does not apply in relation to the Welsh Government.

- (3) To the extent that a function of a listed authority is discharged in relation to the Welsh language or any other aspect of Welsh culture, it is to be regarded for the purposes of subsection (1)(a) as discharged in relation to Wales.

## 12 Exclusion: other remedies

- 5 (1) The Ombudsman may not investigate a matter under this Part if the person aggrieved (if any) has or had –
- (a) a right of appeal, reference or review to or before a tribunal constituted under an enactment or by virtue of Her Majesty's prerogative,
  - 10 (b) a right of appeal to a Minister of the Crown, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Government, or
  - (c) a remedy by way of proceedings in a court of law.
- (2) But subsection (1) does not apply if the Ombudsman is satisfied that, in the particular circumstances, it is not reasonable to expect the person to resort, or to have resorted, to the right or remedy.
- 15 (3) The Ombudsman may investigate a matter under this Part only if the Ombudsman is satisfied that –
- (a) the matter has been brought to the attention of the listed authority or the private health services provider (as the case may be) to which the matter relates by or on behalf of the person aggrieved (if any), and
  - 20 (b) the authority or the private health services provider has been given a reasonable opportunity to investigate and respond to it.
- (4) But subsection (3) does not prevent the Ombudsman from investigating a matter if the Ombudsman is satisfied that it is reasonable in the particular circumstances for the Ombudsman to investigate the matter despite the fact that the requirements of that subsection have not been met.
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## 13 Other excluded matters

- (1) The Ombudsman may not investigate under this Part a matter specified in Schedule 2.
- (2) The Welsh Ministers may by regulations amend Schedule 2 by –
- (a) adding an entry;
  - 30 (b) removing an entry;
  - (c) changing an entry.
- (3) Before making regulations under subsection (2), the Welsh Ministers must consult the Ombudsman.
- (4) No regulations are to be made under subsection (2) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.
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- (5) Subsection (1) does not prevent the Ombudsman from investigating action of a listed authority in operating a procedure established to examine complaints or review decisions.

#### 14 Decisions taken without maladministration

- (1) The Ombudsman may not question the merits of a decision taken without maladministration by a listed authority in the exercise of a discretion.
- (2) Subsection (1) does not apply to the merits of a decision to the extent that the decision was taken in consequence of the exercise of professional judgement which appears to the Ombudsman to be exercisable in connection with the provision of health or social care.

#### *Decisions not to investigate etc*

#### 15 Decisions not to investigate or to discontinue investigation

- (1) If the Ombudsman decides under section 3(5) or section 4(3) –
- (a) not to begin an investigation, or
  - (b) to discontinue an investigation,
- the Ombudsman must prepare a statement of the reasons for the decision.
- (2) The Ombudsman must send a copy of the statement to the persons listed in subsection (3) who have been, or in the opinion of the Ombudsman would have been, involved in the investigation.
- (3) The persons referred to in subsection (2) are –
- (a) any person aggrieved;
  - (b) any listed authority;
  - (c) any private health services provider.
- (4) The Ombudsman may send a copy of the statement to any other persons the Ombudsman thinks appropriate.
- (5) The Ombudsman may publish a statement under this section if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to do so.
- (6) The Ombudsman may supply a copy of a statement published under subsection (5), or any part of such a statement, to any person who requests it.
- (7) The Ombudsman may charge a reasonable fee for supplying a copy of a statement, or part of a statement, under subsection (6).
- (8) If a statement prepared under subsection (1) –
- (a) mentions the name of any person other than a listed authority or a private health services provider which has been, or in the opinion of the Ombudsman would have been, involved in the investigation, or
  - (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the statement,

that information must not be included in a version of the statement sent to a person under subsection (2) or (4) or published under subsection (5), subject to subsection (9).

- 5 (9) Subsection (8) does not apply in relation to a version of the statement if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the statement.

*Investigation procedure and evidence*

**16 Investigation procedure**

- 10 (1) If the Ombudsman conducts an investigation under section 3, the Ombudsman must –
- (a) give the listed authority or private health services provider an opportunity to comment on any allegations contained in the complaint;
  - (b) give any other person who is alleged in the complaint to have taken or authorised the action complained of an opportunity to comment on any allegations relating to that person.
- 15 (2) If the Ombudsman conducts an investigation under section 4, the Ombudsman must –
- (a) prepare an investigation proposal, and
  - (b) submit the investigation proposal to the listed authority or private health services provider being investigated.

20 But this subsection does not apply where the Ombudsman is satisfied, having regard to the matter being investigated, that it is impractical to prepare an investigation proposal and submit it to the listed authority or private health services provider being investigated.

- (3) An investigation proposal must include –
- (a) the reasons for the investigation, and
  - 25 (b) how the criteria referred to in section 5 have been met.
- (4) The Ombudsman must specify and publish procedural requirements the Ombudsman must follow (in addition to the requirements specified in subsection (2)) when conducting an investigation under section 4.
- (5) The requirements in subsection (4) must include procedures allowing –
- 30 (a) listed authorities and private health services providers opportunity to comment on the investigation proposal;
- (b) any person identified in the investigation proposal in a negative way opportunity to comment on the investigation proposal (as far as the investigation proposal relates to that person);
- 35 (c) where there is no investigation proposal –
- (i) listed authorities and private health service providers opportunity to comment on the investigation;

- (ii) any person identified by the Ombudsman in relation to the matter in a negative way opportunity to comment on the investigation (as far as the investigation relates to that person).

(6) An investigation must be conducted in private.

(7) Subject to the other provisions of this section, the procedure for conducting an investigation is to be such as the Ombudsman thinks appropriate in the circumstances of the case.

(8) In particular, the Ombudsman may –

(a) make such inquiries as the Ombudsman thinks appropriate;

(b) determine whether any person may be represented in the investigation by an authorised person or otherwise.

(9) In subsection (8) “authorised person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).

(10) The Ombudsman may pay to the person who made the complaint (if any) and to any other person who attends or supplies information for the purposes of the investigation –

(a) such sums as the Ombudsman may determine in respect of expenses properly incurred by the person, and

(b) such allowances as the Ombudsman may determine by way of compensation for the loss of the person’s time,

subject to such conditions as the Ombudsman may determine.

(11) The conduct of an investigation in respect of a listed authority or a private health services provider does not affect –

(a) the validity of any action taken by the listed authority or the private health services provider, or

(b) any power or duty of the listed authority or the private health services provider to take further action with respect to any matter under investigation.

## **17 Information, documents, evidence and facilities**

(1) This section applies in relation to investigations conducted under this Part.

(2) For the purposes of an investigation the Ombudsman may require a person the Ombudsman thinks is able to supply information or produce a document relevant to the investigation to do so.

(3) For the purposes of an investigation the Ombudsman has the same powers as the High Court in respect of –

(a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and

(b) the production of documents.

- (4) For the purposes of an investigation the Ombudsman may require a person the Ombudsman thinks is able to supply information or produce a document relevant to the investigation to provide any facility the Ombudsman may reasonably require.
- (5) Subject to subsection (7), no person is to be compelled for the purposes of an investigation to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.
- (6) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service, whether imposed by any enactment or rule of law, is to apply to the disclosure of information for the purposes of an investigation.
- (7) The Crown is not entitled in relation to an investigation to any privilege in respect of the production of documents or the giving of evidence that would otherwise be allowed by law in legal proceedings.

## 18 Obstruction and contempt

- (1) If the Ombudsman is satisfied that the condition in subsection (2) is met in relation to a person, the Ombudsman may issue a certificate to that effect to the High Court.
- (2) The condition is that the person—
- (a) without lawful excuse, has obstructed the discharge of any of the Ombudsman's functions under this Part, or
  - (b) has done an act in relation to an investigation which, if the investigation were proceedings in the High Court, would constitute contempt of court.
- (3) But the condition in subsection (2) is not met in relation to a person merely because the person has taken action such as is mentioned in section 16(11).
- (4) If the Ombudsman issues a certificate under subsection (1), the High Court may inquire into the matter.
- (5) If the High Court is satisfied that the condition in subsection (2) is met in relation to the person, it may deal with the person in any manner in which it could have if the person had committed contempt in relation to the High Court.

### *Reports of investigations*

## 19 Reports of investigations

- (1) The Ombudsman must, after conducting an investigation—
- (a) prepare a report on the Ombudsman's findings, and
  - (b) send a copy of the report to the persons listed in subsection (2) who have been involved in the investigation.
- This is subject to section 25.
- (2) The persons referred to in subsection (1)(b) are—
- (a) any person aggrieved;

- (b) any listed authority;
- (c) any private health services provider;
- (d) any person who is alleged in any complaint to have taken or authorised the action complained of or is identified by the Ombudsman in relation to the matter in a negative way;
- 5 (e) if the listed authority is a family health service provider in Wales –
- (i) any Local Health Board with whom the authority had, at the time of the action which is the subject of the investigation, entered into a contract to provide the family health services which are under investigation;
- 10 (ii) any person to whom the authority had, at that time, undertaken to provide those services;
- (iii) any person with whom the authority had, at that time, made arrangements for the provision of those services;
- (f) if the listed authority is an independent provider in Wales –
- 15 (i) any Welsh health service body with whom the authority had, at the time of the action which is the subject of the investigation, made arrangements for the provision of the services under investigation;
- (ii) any family health service provider in Wales with whom the authority had, at that time, made arrangements for the provision of those services;
- 20 (g) the First Minister for Wales (unless the listed authority is itself the Welsh Government or is a local authority in Wales).
- (3) The Ombudsman may send a copy of the report to any other persons the Ombudsman thinks appropriate.
- (4) The Ombudsman may publish a report prepared under this section if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to do so.
- 25 (5) The Ombudsman may supply a copy of a report published under subsection (4), or any part of such a report, to any person who requests it.
- (6) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (5).
- 30 (7) If a report prepared under this section –
- (a) mentions the name of any person other than a listed authority or a private health services provider in respect of which the report was made, or
- 35 (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report,

that information must not be included in a version of the report sent to a person under subsection (1)(b) or (3) or published under subsection (4), subject to subsection (8).

- 5 (8) Subsection (7) does not apply in relation to a version of the report if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report.

## 20 Publicising reports

- 10 (1) If a listed authority or a private health services provider (as the case may be) receives a copy of a report under section 19(1)(b), the authority or the private health services provider must make copies of that version of the report available for a period of at least three weeks –

- (a) at one or more of their offices, and
- (b) on their website (if any).

- 15 (2) Throughout that period of three weeks, any person may –

- 15 (a) inspect the copy of the report at the office or offices concerned at any reasonable time without payment;
- (b) make a copy of the report or any part of it at any reasonable time without payment;
- 20 (c) require the listed authority or the private health services provider to supply the person with a copy of the report or any part of it, on payment of a reasonable sum if requested;
- (d) view the copy of the report on the website (if any) without payment.

- 25 (3) Not later than two weeks after the copy of the report is received, the listed authority or the private health services provider must ensure that a notice is published in a newspaper circulating in the part of Wales in which the matter which is the subject of the report arose.

- (4) The notice must specify –

- 30 (a) the date on which the period of three weeks referred to in subsection (1) will begin,
- (b) the office or offices at which a copy of the report can be inspected, and
- (c) the website (if any) identified in subsection (1)(b).

- (5) The Ombudsman may give directions to listed authorities and private health services providers with regard to the discharge of their functions under this section.

- (6) Directions under subsection (5) may relate –

- 35 (a) to a particular listed authority or private health services provider in respect of a particular report, or
- (b) generally to the discharge of functions under this section by all or any listed authorities or any private health services providers.

(7) A person commits an offence if –

- (a) the person wilfully obstructs a person in the exercise of a right conferred by subsection (2)(a), (b) or (d), or
- (b) the person refuses to comply with a requirement under subsection (2)(c).

(8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(9) The Ombudsman may direct that subsections (1) to (4) are not to apply in relation to a particular report.

(10) In deciding whether to give a direction under subsection (9), the Ombudsman must take into account –

- (a) the public interest,
- (b) the interests of the person aggrieved (if any), and
- (c) the interests of any other persons the Ombudsman thinks appropriate.

## **21 Publicising reports: health care providers**

(1) If an investigation is conducted in respect of a listed authority which is a family health service provider in Wales, section 20 has effect with the modifications specified in subsections (2) to (4).

(2) For subsection (1) substitute –

“(1) A person who has received a copy of a report under section 19 by virtue of section 19(2)(e) must make copies of the report available for a period of at least three weeks –

- (a) at one or more of the person’s offices, and
- (b) if the person has a website, on the website.”.

(3) The references to the listed authority are to be taken to be references to that person.

(4) The references to listed authorities, or to a particular listed authority, are to be taken to be references to persons, or a particular person, of the same description as that person.

(5) If an investigation is conducted in respect of a listed authority which is an independent provider in Wales, section 20 has effect with the modifications specified in subsections (6) to (8).

(6) For subsection (1) substitute –

“(1) A person who has received a copy of a report under section 19 by virtue of section 19(2)(f) must make copies of the report available for a period of at least three weeks –

- (a) at one or more of the person’s offices, and
- (b) if the person has a website, on the website.”.

(7) The references to the listed authority are to be taken to be references to that person.

- (8) The references to listed authorities, or to a particular listed authority, are to be taken to be references to persons, or a particular person, of the same description as that person.

## **22 Action following receipt of a report: investigation of a listed authority**

- (1) This section applies if, in a report under section 19 of an investigation in respect of a listed authority, the Ombudsman concludes that any person has sustained injustice or hardship in consequence of the matter investigated.
- (2) The listed authority must consider the report and notify the Ombudsman before the end of the permitted period of –
- (a) the action it has taken or proposes to take in response to it, and
  - (b) the period before the end of which it proposes to have taken that action (if it has not already done so).
- (3) The permitted period is –
- (a) the period of one month beginning on the date on which the authority receives the report, or
  - (b) any longer period specified by the Ombudsman in writing.

## **23 Action following receipt of a report: investigation of private health services**

- (1) This section applies if, in a report published under section 19(4) of an investigation in respect of private health services, the Ombudsman concludes that any person has sustained injustice or hardship in consequence of the private health services.
- (2) The Ombudsman must give the private health services provider the opportunity to notify the Ombudsman of –
- (a) the action it has taken or proposes to take in response to it, and
  - (b) the period before the end of which it proposes to have taken that action (if it has not already done so).
- (3) If a listed authority is considering whether to enter into a contract for services with the private health services provider, the listed authority must have regard to the report and any action taken by the private health services provider in response to the report.

## **24 Non-action following receipt of a report**

- (1) If the Ombudsman is satisfied that the condition in subsection (2) is met in relation to a listed authority, the Ombudsman may issue a certificate to that effect to the High Court.
- (2) The condition is that the listed authority has wilfully disregarded the Ombudsman's report without lawful excuse.

**25 Reports: alternative procedure**

- (1) This section applies if, after the Ombudsman has conducted an investigation –
- (a) the Ombudsman concludes that no person has sustained injustice or hardship in consequence of the matter investigated, and
  - (b) the Ombudsman is satisfied that the public interest does not require sections 19 to 23 to apply.
- (2) This section also applies if, after the Ombudsman has conducted an investigation –
- (a) the Ombudsman concludes that any person has sustained injustice or hardship in consequence of the matter investigated,
  - (b) the listed authority or private health services provider agrees to implement, before the end of the permitted period, any recommendations the Ombudsman makes, and
  - (c) the Ombudsman is satisfied that the public interest does not require sections 19 to 23 to apply.
- (3) The permitted period is –
- (a) a period agreed between the Ombudsman, the listed authority or the private health services provider (as the case may be) and the person who made the complaint (if any), or
  - (b) if the Ombudsman thinks that no such agreement can be reached, the period specified by the Ombudsman in writing.
- (4) The Ombudsman may decide to prepare a report on the Ombudsman’s findings under this section instead of under section 19.
- (5) If the Ombudsman decides to prepare a report under this section –
- (a) sections 19 to 23 do not apply;
  - (b) the Ombudsman must send a copy of the report to –
    - (i) the person aggrieved (if any);
    - (ii) any listed authority or private health services provider in respect of which the report was made;
  - (c) the Ombudsman may send a copy of the report to any other persons the Ombudsman thinks appropriate.
- (6) The Ombudsman may publish a report prepared under this section if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to do so.
- (7) The Ombudsman may supply a copy of a report published under subsection (6), or any part of such a report, to any person who requests it.
- (8) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (7).

(9) If a report prepared under this section –

(a) mentions the name of any person other than the listed authority or the private health services provider in respect of which the report was made, or

(b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman’s opinion, can be omitted without impairing the effectiveness of the report,

that information must not be included in a version of the report sent to a person under subsection (5) or published under subsection (6), subject to subsection (10).

(10) Subsection (9) does not apply in relation to a version of the report if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report.

### *Special reports*

## **26 Special reports**

(1) The Ombudsman may prepare a report under this section (a “special report”) if subsection (2), (4) or (6) applies.

(2) This subsection applies if, in a report under section 19, the Ombudsman has concluded that any person has sustained injustice or hardship in consequence of the matter investigated and –

(a) the Ombudsman has not received the notification required under section 22 before the end of the period permitted under that section,

(b) the Ombudsman has received that notification but is not satisfied with –

(i) the action which the listed authority has taken or proposes to take, or

(ii) the period before the end of which it proposes to have taken that action,

(c) the Ombudsman has received that notification but is not satisfied that the listed authority has, before the end of the permitted period, taken the action it proposed to take,

(d) the Ombudsman has not received any notification under section 23 within a reasonable time, or

(e) the Ombudsman has received that notification but is not satisfied with –

(i) the action which the private health services provider has taken or proposes to take, or

(ii) the period before the end of which it proposes to have taken that action.

- (3) The permitted period for the purposes of subsection (2)(c) is –
- (a) the period referred to in section 22(2)(b), or
  - (b) any longer period specified by the Ombudsman in writing.
- (4) This subsection applies if the Ombudsman –
- (a) has prepared a report under section 25(2), and
  - (b) is not satisfied that the listed authority or the private health services provider has implemented the Ombudsman’s recommendations before the end of the permitted period.
- (5) The permitted period for the purposes of subsection (4)(b) is –
- (a) the period referred to in section 25(2)(b), or
  - (b) any longer period specified by the Ombudsman in writing.
- (6) This subsection applies if –
- (a) a matter in respect of which the Ombudsman is entitled to investigate has been resolved,
  - (b) in resolving the matter, the Ombudsman has concluded that any person has sustained injustice or hardship in consequence of the matter,
  - (c) the listed authority or the private health services provider has agreed to take particular action before the end of a particular period, and
  - (d) the Ombudsman is not satisfied that the listed authority or the private health services provider has taken that action before the end of the permitted period.
- (7) The permitted period for the purposes of subsection (6)(d) is –
- (a) the period referred to in subsection (6)(c), or
  - (b) any longer period specified by the Ombudsman in writing.
- (8) A special report must –
- (a) set out the facts on the basis of which subsection (2), (4) or (6) applies, and
  - (b) make such recommendations as the Ombudsman thinks fit with respect to the action which, in the Ombudsman’s opinion, should be taken –
    - (i) to remedy the injustice or hardship to the person, and
    - (ii) to prevent similar injustice or hardship being caused in the future.
- (9) The Ombudsman must send a copy of a special report –
- (a) if the special report is prepared because subsection (2) applies, to each person to whom a copy of the report under section 19 was sent under section 19(1)(b);
  - (b) if the special report is prepared because subsection (4) or (6) applies, to the person aggrieved (if any) and any listed authority or private health services provider in respect of which the report was made.
- (10) The Ombudsman may send a copy of a special report to any other persons the Ombudsman thinks appropriate.

**27 Special reports: supplementary**

- (1) The Ombudsman may –
- (a) publish a special report made under section 26;
  - (b) supply a copy of the published report or any part of it to any person who requests it.
- (2) The Ombudsman may charge a reasonable fee for supplying a copy of a report (or part of a report) under subsection (1)(b).
- (3) The listed authority or the private health services provider in respect of which a special report is made must reimburse the Ombudsman for the cost of publishing a special report if requested to do so by the Ombudsman.
- (4) If a special report –
- (a) mentions the name of any person other than the listed authority or the private health services provider in respect of which the report was made, or
  - (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report,
- that information must not be included in a version of the report sent to a person under section 26(9) or (10) or published under subsection (1) of this section, subject to subsection (5).
- (5) Subsection (4) does not apply in relation to a version of the special report if, after taking account of the interests of any person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the special report.
- (6) Sections 20 and 21 (publicising reports under section 19) apply in relation to a special report under section 26 as they apply in relation to a report under section 19.
- (7) Subsection (8) applies if a special report in respect of a private health services provider is published under subsection (1)(a).
- (8) If a local authority is considering whether to enter into a contract for services with the private health services provider, the listed authority must have regard to the special report and any action the private health services provider has taken as a result of the recommendations made by the Ombudsman in the special report.

**28 Special reports relating to the Welsh Government etc**

- (1) This section applies if a special report is made in a case where the investigation was made in respect of the Welsh Government or the National Assembly for Wales Commission.
- (2) The relevant person must lay a copy of the report before the Assembly.

- (3) In subsection (2) “the relevant person” means –
- (a) if the investigation was made in respect of the Welsh Government, the First Minister for Wales, and
  - (b) if the investigation was made in respect of the National Assembly for Wales Commission, a member of that Commission.

*Power to demand expenses from private health services providers*

**29 Power to demand costs from private health service providers**

(1) This section applies where the Ombudsman investigates a private health services provider and the Ombudsman is satisfied that the condition in subsection (2) is met.

(2) The condition is that the private health services provider –

- (a) without lawful excuse, has obstructed the discharge of any of the Ombudsman’s functions under this Part, or
- (b) has done an act in relation to the investigation which, if the investigation were proceedings in the High Court, would constitute contempt of court.

(3) But the condition in subsection (2) is not met in relation to a person merely because the person has taken action such as is mentioned in section 16(11).

(4) The Ombudsman may serve a notice (“costs recovery notice”) on the provider as a means of recovering costs incurred by the Ombudsman as a result of any obstruction or action referred to in the condition in subsection (2).

(5) The costs referred to in subsection (4) include (but are not limited to) the costs of obtaining expert advice (including legal advice).

(6) A costs recovery notice must –

- (a) set out the total costs the Ombudsman seeks to recover under subsection (4), including a detailed breakdown of those costs,
- (b) set out the date by which payment must be made, and
- (c) explain the right of appeal in subsection (9).

(7) The date referred to in subsection (6)(b) must be at least 28 days later than the date on which the costs recovery notice is served on the provider.

(8) The costs must be paid by the provider by the date specified in the costs recovery notice (but this is subject to the remaining provisions of this section).

(9) The provider may appeal to the magistrates’ court against a costs recovery notice within 21 days beginning with the date of the notice.

(10) An appeal is to be by way of a complaint for an order, and in accordance with the Magistrates’ Court Act 1980 (c.43).

(11) For the purposes of the time limit for making an appeal, the making of a complaint is to be treated as the making of an appeal.

(12) On appeal, the magistrates’ court may –

- (a) confirm the notice;
- (b) quash or vary the notice;

(c) in any case, remit the case to the Ombudsman to dispose of in accordance with directions given by the Court;

and may make such order as to costs as it thinks fit.

5 (13) Where on appeal under this section a magistrates' court quashes or varies a notice, it may order the Ombudsman to compensate the provider for loss suffered as a result of the service of the notice.

(14) If a costs recovery notice is appealed under this section, then to the extent that the notice is upheld, the provider must pay the costs within 28 days of the day on which the appeal is determined.

10 (15) Costs recoverable under this section are recoverable as a debt.

#### *Listed authorities*

### **30 Listed authorities**

(1) The persons specified in Schedule 3 are listed authorities for the purposes of this Act.

(2) The Welsh Ministers may by regulations amend Schedule 3 by –

15 (a) adding a person;

(b) omitting a person;

(c) changing the description of a person.

(3) Regulations under subsection (2) adding a person to Schedule 3 may provide for this Act to apply to the person with the modifications specified in the regulations.

20 (4) Before making regulations under subsection (2), the Welsh Ministers must consult the Ombudsman and any other persons they think appropriate.

(5) No regulations are to be made under subsection (2) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

25 (6) Sections 31 and 32 contain further restrictions on the power in subsection (2).

### **31 Restrictions on power to amend Schedule 3**

(1) Regulations under section 30(2) may not omit the Welsh Government or the National Assembly for Wales Commission from Schedule 3.

(2) Regulations under section 30(2) may add a person to Schedule 3 only if –

30 (a) the person has functions dischargeable in relation to Wales or a part of Wales (whether or not the functions are also dischargeable otherwise than in relation to Wales),

(b) all or some of the person's functions are in a field in which the Welsh Ministers have, or the First Minister or the Counsel General to the Welsh Government has, functions, and

35 (c) the person falls within subsection (3), (4) or (5).

- (3) A person falls within this subsection if –
- (a) it is a body established by or under an enactment or by virtue of Her Majesty's prerogative or in any other way by a Minister of the Crown, a government department, the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Government or another listed authority,
  - (b) it is a body wholly or partly constituted by appointment made by Her Majesty, a Minister of the Crown, a government department, the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Government or another listed authority, and
  - (c) at least half of its expenditure on the discharge of its functions in relation to Wales is met out of the Welsh Consolidated Fund or is met directly from payments made by other listed authorities.
- (4) A person falls within this subsection if –
- (a) it is a body established by or under an enactment, and
  - (b) it has power to issue a precept or a levy.
- (5) A person falls within this subsection if –
- (a) it appears to the Welsh Ministers that the person discharges functions of a public nature, and
  - (b) at least half of the person's expenditure on the discharge of those functions in relation to Wales is met out of the Welsh Consolidated Fund or directly or indirectly from payments made by other listed authorities.
- (6) Regulations under section 30(2) may not add to Schedule 3 –
- (a) a Special Health Authority discharging functions only or mainly in England;
  - (b) a person who carries on under national ownership an industry or undertaking or part of an industry or undertaking.

### 32 Provisions in regulations adding persons to Schedule 3

If the Welsh Ministers propose to make regulations under section 30(2) adding a person to Schedule 3, they must also specify in the regulations –

- (a) whether all or only some of the person's functions are to fall within the remit of the Ombudsman under this Part;
- (b) if only some of the person's functions are to fall within the remit of the Ombudsman under this Part, which those functions are.

### 33 Power to issue guidance

- (1) The Ombudsman may issue to one or more listed authorities such guidance about good administrative practice as the Ombudsman thinks appropriate.
- (2) Before issuing guidance under this section the Ombudsman must consult such listed authorities, or persons appearing to the Ombudsman to represent them, as the Ombudsman thinks appropriate.

- (3) If guidance issued under this section is applicable to a listed authority, the authority must have regard to the guidance in discharging its functions.
- (4) In conducting an investigation in respect of a listed authority, the Ombudsman may have regard to the extent to which the authority has complied with any guidance issued under this section which is applicable to the authority.
- (5) The Ombudsman may publish any guidance issued under this section in any manner that the Ombudsman thinks appropriate, including in particular by putting the guidance in an annual or extraordinary report.
- (6) Guidance issued under this section may contain different provision for different purposes.
- (7) Subject to subsection (8), guidance issued under this section must not –
- (a) mention the name of any person other than the listed authorities to which it is applicable or a listed authority which has been investigated under this Act, or
  - (b) include any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman’s opinion, can be omitted without impairing the effectiveness of the guidance.
- (8) Subsection (7) does not apply if, after taking account of the interests of any persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in the guidance.

*Listed authorities: complaints handling procedures*

**34 Complaints-handling: Statement of principles**

- (1) The Ombudsman must publish a statement of principles concerning complaints-handling procedures of listed authorities.
- (2) A listed authority must ensure –
- (a) it has a complaints-handling procedure in respect of action taken by the listed authority, and
  - (b) any such procedure complies with the statement of principles.
- (3) A listed authority which is responsible, by virtue of any enactment, for a complaints-handling procedure –
- (a) in relation to, or
  - (b) operated by,
- another listed authority, must ensure the procedure complies with the statement of principles.
- (4) The first statement of principles under subsection (1) is not to be published unless a draft of the statement has been laid before, and approved by a resolution of, the Assembly.
- (5) The Assembly may not approve the draft later than 2 months after being laid.

- (6) In calculating any period of 2 months for the purposes of subsection (5), no account is to be taken of any time during which the Assembly is dissolved or is in recess for more than 4 days.
- (7) Before laying a draft statement of principles before the Assembly in accordance with subsection (4) the Ombudsman must consult –
- (a) the Welsh Ministers, and
  - (b) such listed authorities and other persons as the Ombudsman thinks appropriate.
- (8) The Ombudsman must, in preparing the draft statement of principles to be laid before the Assembly in accordance with subsection (4), have regard to any representations made during the consultation mentioned in subsection (7).
- (9) The statement of principles comes into force when it is published by the Ombudsman.
- (10) The Ombudsman may from time to time revise and re-publish the statement of principles.
- (11) Where the Ombudsman considers that any revision of the statement of principles under subsection (10) is material, subsections (4) to (8) apply to that statement of principles as they do to the first statement of principles.
- (12) In this section and sections 35 to 38, “complaints-handling procedures” means procedures of listed authorities which examine complaints or review decisions in respect of action taken by a listed authority where the matter in question is one in respect of which a complaint to the Ombudsman can be made and investigated under section 3.

### 35 Model complaints-handling procedure

- (1) The Ombudsman may publish model complaints-handling procedures for listed authorities.
- (2) A model complaints-handling procedure (referred to in this Act as a “model CHP”) must comply with the statement of principles.
- (3) The Ombudsman may publish different model CHPs for different purposes.
- (4) Before publishing a model CHP the Ombudsman must consult such listed authorities or groups of listed authorities as the Ombudsman thinks fit.
- (5) The Ombudsman may from time to time revise and re-publish any model CHP; and in doing so subsection (4) applies.
- (6) Where a model CHP is revised and re-published by virtue of subsection (5), section 36 has effect with the following modifications –
- (a) any specification under subsection (1) of that section in relation to the model CHP continues in effect as a specification in relation to the revised and re-published model CHP,
  - (b) any other reference to a model CHP is to the model CHP as revised and re-published,
  - (c) subsection (3) of that section is omitted.

- (7) The Ombudsman may withdraw any model CHP at any time; and any specification under section 36(1) in relation the model CHP ceases to have effect.

### **36 Model complaints-handling procedures: specification of listed authorities**

- 5 (1) The Ombudsman may specify any listed authority to which a model CHP is relevant; and must notify the authority accordingly.
- (2) Where a model CHP is relevant to a listed authority by virtue of a specification under subsection (1), the authority must ensure there is a complaints-handling procedure which complies with the model CHP for the purposes of the specification.
- 10 (3) Where subsection (2) applies the authority must submit a description of the complaints-handling procedure, having taken account of the relevant model CHP, within 6 months of the specification mentioned in that subsection.
- (4) A listed authority may, with the consent of the Ombudsman, modify the application of the model CHP which is relevant to it but only to the extent that is necessary for the effective operation of the procedure by the authority.
- 15 (5) The Ombudsman may revoke any specification under subsection (1) at any time.

### **37 Declarations of non-compliance**

- 20 (1) Where a model CHP is relevant to a listed authority by virtue of a specification under section 36(1) the Ombudsman may declare that the complaints-handling procedure of the authority, a description of which was submitted by the authority under section 36(3) or otherwise, does not comply with the model CHP.
- (2) Where there is no specification under section 36(1) in relation to a listed authority the Ombudsman may declare that the complaints-handling procedure of the authority, a description of which was submitted by the authority under section 38 or otherwise, does not comply with the statement of principles.
- 25 (3) Where a declaration is made under subsection (1) or (2) the Ombudsman—
- (a) must give reasons in writing,
  - (b) may specify such modifications to the complaints-handling procedure as would result in the declaration being withdrawn.
- 30 (4) Where a declaration is made under subsection (1) or (2) the listed authority must submit a description of its complaints-handling procedure, having taken account of the reasons given under subsection (3)(a) and any modifications specified in subsection (3)(b), within 2 months of the declaration.
- (5) The Ombudsman may withdraw a declaration of non-compliance made under subsection (1) or (2) at any time if the Ombudsman thinks fit.

**38 Submission of description of complaints-handling procedure: general**

- (1) A listed authority must submit a description of its complaints-handling procedure if the Ombudsman so directs; and must do so within 3 months of being so directed or such other period as the Ombudsman may direct.
- (2) Sections 36(3) and 37(4) are subject to any direction given under this section.
- (3) When a listed authority has submitted a description of its complaints-handling procedure to the Ombudsman under this Act or otherwise, the authority must provide such additional information in relation to that procedure as the Ombudsman may reasonably request; and must do so within such period as the Ombudsman directs.

**39 Complaints-handling procedures: application of other enactments**

The duties in sections 34(2) and (3) and 36(2) do not apply to the extent that –

- (a) the listed authority lacks the necessary powers (other than by virtue of this Act) to ensure compliance with the duties, or
- (b) the duties are inconsistent with any other enactment.

**40 Complaints-handling procedures: promotion of best practice etc**

- (1) The Ombudsman must –
- (a) monitor practice and identify any trends in practice as respects the way in which listed authorities handle complaints,
- (b) promote best practice in relation to such complaints-handling,
- (c) encourage co-operation and the sharing of best practice among listed authorities in relation to complaints-handling.
- (2) A listed authority must co-operate with the Ombudsman in the exercise of the function in subsection (1).
- (3) The duty in subsection (2) does not apply to the extent that –
- (a) the listed authority lacks the necessary powers (other than by virtue of this Act) to ensure compliance with the duty, or
- (b) the duty is inconsistent with any other enactment.

*Compensation***41 Compensation for the person aggrieved**

- (1) This section applies if –
- (a) a complaint in respect of a matter is made or referred to the Ombudsman, and
- (b) the complaint is one which the Ombudsman has power to investigate under this Part.

- (2) The listed authority in respect of which the complaint is made may make a payment to, or provide any other benefit for, the person aggrieved in respect of the matter which is the subject of the complaint.
- (3) It is immaterial for the purposes of this section that the Ombudsman has decided not to investigate the complaint, has discontinued an investigation of the complaint, has not yet completed an investigation of the complaint or has not upheld the complaint.
- (4) The power in subsection (2) does not affect any other power of the listed authority to make the payment or provide the benefit.

## PART 4

### 10 INVESTIGATION OF COMPLAINTS RELATING TO OTHER PERSONS: SOCIAL CARE AND PALLIATIVE CARE

#### *Application of this Part*

#### 42 Matters to which this Part applies

- (1) This Part applies to the following matters—
- (a) action taken by a care home provider in connection with the provision of accommodation, nursing or personal care in a care home in Wales;
- (b) action taken by a domiciliary care provider in connection with the provision of domiciliary care in Wales;
- (c) action taken by an independent palliative care provider in connection with the provision of a palliative care service in Wales.
- (2) But this Part does not apply to—
- (a) matters which may be investigated under Part 3, or
- (b) matters described in Schedule 4.
- (3) The Welsh Ministers may by regulations amend Schedule 4 by—
- (a) adding an entry,
- (b) removing an entry, or
- (c) changing an entry.
- (4) Before making regulations under subsection (3), the Welsh Ministers must consult the Ombudsman.
- (5) No regulations are to be made under subsection (3) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.
- (6) For the meaning of the following terms see sections 61 to 63—
- “care home” (“*cartref gofal*”);
- “care home provider” (“*darparwr cartref gofal*”);
- “domiciliary care” (“*gofal cartref*”);

“domiciliary care provider” (“*darparwr gofal cartref*”);

“palliative care service” (“*gwasanaeth gofal lliniarol*”);

“independent palliative care provider” (“*darparwr gofal lliniarol annibynnol*”).

### *Investigation of complaints*

#### 5 **43 Power to investigate complaints**

- (1) The Ombudsman may investigate a complaint about a matter to which this Part applies if –
- (a) the complaint has been duly made or referred to the Ombudsman, and
  - (b) in the case of a complaint which relates to an independent palliative care provider, the condition in subsection (2) is met.
- (2) The condition is that the independent palliative care provider has received public funding, within the three years before the date of the action to which the investigation relates, in respect of a palliative care service that it provides in Wales.
- (3) In subsection (2) “public funding” means funding from –
- (a) the Welsh Ministers,
  - (b) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006,
  - (c) an NHS Trust, or
  - (d) a county council or county borough council in Wales.
- (4) A complaint is “duly made” to the Ombudsman if (but only if) –
- (a) it is made by a person who is entitled under section 47 to make a complaint to the Ombudsman,
  - (b) before the complaint is made –
    - (i) the matter to which it relates has been brought, by or on behalf of the person affected, to the notice of the provider to whom it relates, and
    - (ii) the provider has been given a reasonable opportunity to investigate the matter and to respond, and
  - (c) the requirements of section 48 are met in respect of it.
- (5) A complaint is “duly referred” to the Ombudsman if (but only if) –
- (a) it is made by a person who is entitled under section 47 to make a complaint to the Ombudsman, and
  - (b) the requirements of section 49 are met in respect of it.
- (6) It is for the Ombudsman to determine whether the requirements of subsection (1) have been met in respect of a complaint.

(7) Where the Ombudsman determines that the requirements of subsection (1) have not been met in respect of a complaint because the requirements of subsection (4)(b), section 48 or section 49(1)(b), (c) or (d) have not been met in respect of that complaint, the Ombudsman may nonetheless investigate the complaint if –

- 5           (a) it relates to a matter to which this Part applies, and  
          (b) the Ombudsman thinks it reasonable to do so.

(8) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation.

10       (9) The Ombudsman may take any action which the Ombudsman thinks may assist in making a decision under subsection (8).

(10) The Ombudsman may begin or continue an investigation into a complaint even if the complaint has been withdrawn.

#### **44       Power to investigate on own initiative**

15       (1) The Ombudsman may investigate a matter to which this Part applies whether a complaint has been duly made or referred to the Ombudsman or not.

(2) But if the matter relates to an independent palliative care provider, the power in subsection (1) may only be used if the condition in section 43(2) is met.

20       (3) The matter may relate to action taken before or after this Act receives Royal Assent, but if the matter relates to action taken before Royal Assent the Ombudsman may only investigate the matter if the Ombudsman considers that the matter has not been resolved satisfactorily.

(4) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation under this section but the Ombudsman must consult such persons as the Ombudsman considers appropriate when making such a decision.

25       (5) The Ombudsman may take any action the Ombudsman thinks may assist in making a decision under subsection (4).

#### **45       Criteria for own initiative investigations**

30       (1) The Ombudsman must establish (and may from time to time amend) criteria to be used in determining whether to commence an investigation under section 44.

(2) The criteria must include the evidential requirements to be used in determining whether to commence an investigation under section 44.

(3) The Ombudsman must publish the criteria.

#### **46       Alternative resolution of complaints**

35       (1) The Ombudsman may take any action the Ombudsman considers appropriate with a view to resolving a complaint or matter which the Ombudsman has the power to investigate under this Part.

(2) The Ombudsman may take action under this section in addition to or instead of conducting an investigation.

- (3) Any action under this section must be taken in private.

#### 47 Who can complain

- (1) The persons entitled to make a complaint to the Ombudsman are—
- 5 (a) a member of the public (referred to in this Part as “the person aggrieved”) who claims or claimed to have sustained injustice or hardship as a result of a matter to which this Part applies,
- (b) a person authorised in writing by the person aggrieved to act on that person’s behalf, or
- 10 (c) if the person aggrieved is not capable of authorising a person to act on his or her behalf (for example because the person has died), a person who appears to the Ombudsman to be appropriate to act on behalf of the person aggrieved.
- (2) “Member of the public” does not include a person acting in his or her capacity as—
- (a) a care home provider,
- (b) a domiciliary care provider,
- 15 (c) an independent palliative care provider, or
- (d) a listed authority.
- (3) It is for the Ombudsman to determine any question of whether a person is entitled under this section to make a complaint.

#### 48 Requirements: complaints made to the Ombudsman

- 20 (1) The requirements mentioned in section 43(4)(c) are that the complaint must—
- (a) be in a form specified by the Ombudsman in guidance;
- (b) contain such information as specified by the Ombudsman in guidance;
- (c) be made before the end of the period of one year beginning with the day on which the person aggrieved first has notice of the matter.
- 25 (2) The Ombudsman must publish the guidance referred to in subsection (1).
- (3) It is for the Ombudsman to determine whether the requirements of subsection (1) are met in respect of a complaint.
- (4) If a complaint which meets the requirements of subsection (1) is made orally, the Ombudsman must—
- 30 (a) explain to the person aggrieved that a complaint has been duly made under this Act and the implications of making such a complaint, and
- (b) ask the person aggrieved whether he or she wishes the complaint to continue to be treated as a complaint that has been duly made.
- (5) If the person does not wish the complaint to continue to be treated as being duly made, the Ombudsman must not use the power in section 43 to investigate the matter.
- 35 (6) If the person wishes the complaint to continue to be treated as being duly made, the Ombudsman must ask the person whether he or she wishes the complaint to be confirmed in writing.

- (7) If the person wishes the complaint to be confirmed in writing, the Ombudsman must make such arrangements as are necessary for the complaint to be confirmed in writing.
- (8) If the person does not wish the complaint to be confirmed in writing the Ombudsman must record this in writing.
- 5 (9) The Ombudsman must maintain a register of all oral complaints.
- (10) In this section, “in writing” includes in electronic form.

#### 49 Requirements: complaints referred to the Ombudsman

- (1) The requirements mentioned in section 43(5)(b) are that the complaint—
- 10 (a) must have been made to the provider to whom it relates by a person who would have been entitled under section 47 to make the complaint to the Ombudsman;
- (b) must have been made to the provider to whom it relates before the end of the period of one year beginning with the day on which the person aggrieved first has notice of the matter;
- 15 (c) must be referred to the Ombudsman in a form and contain such information as specified by the Ombudsman in guidance;
- (d) must be made before the end of the period of one year beginning with the day on which the complaint was made to the provider.
- (2) The Ombudsman must publish the guidance referred to in subsection (1).
- (3) It is for the Ombudsman to determine any question of whether the requirements of
- 20 subsection (1) are met in respect of a complaint.

#### *Decisions not to investigate etc*

#### 50 Decisions not to investigate complaints or to discontinue investigations

- (1) If the Ombudsman decides under section 43(8) or section 44(4) —
- 25 (a) not to begin an investigation, or
- (b) to discontinue an investigation,
- the Ombudsman must prepare a statement of the reasons for that decision.
- (2) The Ombudsman must send a copy of the statement to —
- (a) the person who made the complaint (if any), and
- (b) the provider to whom the complaint relates.
- 30 (3) The Ombudsman may also send a copy of the statement to any other persons the Ombudsman thinks appropriate.
- (4) The Ombudsman may publish a statement under this section if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to
- 35 do so.
- (5) The Ombudsman may supply a copy of the published statement, or part of that statement, to any person who requests it.

- (6) The Ombudsman may charge a reasonable fee for supplying a copy of a statement, or part of a statement, under subsection (5).
- (7) The following information must not be included in a version of a statement sent to a person under subsection (2)(b) or (3) or published under subsection (4) –
- 5 (a) the name of a person other than the provider to whom the complaint relates;
- (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman’s opinion, can be omitted without impairing the effectiveness of the statement.
- 10 (8) Subsection (7) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the statement.

*Investigation procedure and evidence*

**51 Investigation procedure**

- 15 (1) If the Ombudsman decides under section 43 to conduct an investigation, the Ombudsman must –
- (a) give the provider to whom the investigation relates an opportunity to comment on the investigation, and
- 20 (b) give any other person who is alleged in the complaint to have taken or authorised the action complained of an opportunity to comment on the allegations relating to that person.
- (2) If the Ombudsman conducts an investigation under section 44, the Ombudsman must –
- (a) prepare an investigation proposal, and
- (b) submit the investigation proposal to the provider being investigated.
- 25 But this subsection does not apply where the Ombudsman is satisfied, having regard to the matter being investigated, that it is impractical to prepare an investigation proposal and submit it to the provider being investigated.
- (3) An investigation proposal must include –
- (a) the reasons for the investigation, and
- 30 (b) how the criteria in section 45 have been met.
- (4) The Ombudsman must specify and publish procedural requirements the Ombudsman must follow (in addition to the requirements specified in subsection (2)) when conducting an investigation under section 44.
- (5) The requirements in subsection (4) must include procedures allowing –
- 35 (a) providers opportunity to comment on the investigation proposal, and
- (b) any person identified in the investigation proposal in a negative way opportunity to comment on the investigation proposal (as far as the investigation proposal relates to that person);

(c) where there is no investigation proposal –

(i) providers opportunity to comment on the investigation;

(ii) any person identified by the Ombudsman in relation to a matter in a negative way opportunity to comment on the investigation (as far as the investigation relates to that person).

(6) An investigation must be conducted in private.

(7) Subject to the other provisions of this section, the procedure for conducting an investigation is that which the Ombudsman thinks appropriate in the circumstances of the case.

(8) The Ombudsman may, among other things –

(a) make any inquiries which the Ombudsman thinks appropriate, and

(b) determine whether any person may be represented in the investigation by an authorised person or another person.

(9) In subsection (8) “authorised person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).

(10) The Ombudsman may pay to the person who made the complaint (if any) and to any other person who attends or supplies information for the purposes of the investigation –

(a) sums in respect of the expenses properly incurred by them, and

(b) allowances to compensate for the loss of their time.

(11) The Ombudsman may attach conditions to those payments.

## **52 Information, documents, evidence and facilities**

(1) This section applies for the purposes of an investigation under this Part.

(2) The Ombudsman may require a person the Ombudsman thinks is able to supply information or produce a document relevant to the investigation to do so.

(3) The Ombudsman has the same powers as the High Court in relation to –

(a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and

(b) the production of documents.

(4) The Ombudsman may require a person the Ombudsman thinks is able to supply information or produce a document relevant to the investigation to provide any facility the Ombudsman may reasonably require.

(5) Subject to subsection (6), no person may be compelled to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.

- (6) The Crown is not entitled to any privilege in relation to the production of documents or the giving of evidence that would otherwise be allowed by law in legal proceedings.
- (7) Where an obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service has been imposed by an enactment or rule of law, the obligation or restriction does not to apply to the disclosure of information for the purposes of the investigation.

### 53 **Obstruction and contempt**

- (1) If the Ombudsman is satisfied that the condition in subsection (2) is met in relation to a person, the Ombudsman may issue a certificate to that effect to the High Court.
- (2) The condition is that the person—
- (a) without lawful excuse, has obstructed the discharge of any of the Ombudsman's functions under this Part, or
  - (b) has done an act in relation to an investigation which, if the investigation were proceedings in the High Court, would constitute contempt of court.
- (3) If the Ombudsman issues a certificate, the High Court may inquire into the matter.
- (4) If the High Court is satisfied that the condition in subsection (2) is met in relation to the person, it may deal with that person in the same manner as it may deal with a person who has committed contempt in relation to the High Court.

#### *Reports about investigations*

### 54 **Investigation reports**

- (1) This section applies to investigations under this Part unless section 57 applies.
- (2) The Ombudsman must, after conducting an investigation into a matter to which this Part applies—
- (a) prepare a report on the findings of the investigation ("an investigation report"), and
  - (b) send a copy of the report to the appropriate persons.
- (3) The appropriate persons are—
- (a) the person who made the complaint (if any),
  - (b) the provider to whom it relates,
  - (c) any other person who is alleged in the complaint to have taken or authorised the action complained of (if any) or is identified by the Ombudsman in relation to the matter in a negative way, and
  - (d) the Welsh Ministers.
- (4) The Ombudsman may also send a copy of the report to any other persons the Ombudsman thinks appropriate.

- (5) The Ombudsman may publish the report if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to do so.
- (6) The Ombudsman may supply a copy of the published report, or part of that report, to any person who requests it.
- (7) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (6).
- (8) The following information must not be included in a version of a report sent to a person under subsection (3)(b) or (c) or (4) or published under subsection (5) –
- (a) the name of a person other than the provider to whom the investigation relates;
  - (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report.
- (9) Subsection (8) does not apply if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the report.

## **55 Further publicity for investigation reports**

- (1) The Ombudsman may arrange for a notice about an investigation report to be published –
- (a) in one or more newspapers, or
  - (b) by means of broadcast or other electronic media.
- (2) The notice may, for example –
- (a) provide a summary of the Ombudsman's findings,
  - (b) specify an address or addresses at which a copy of the published report can be inspected during ordinary office hours and from which a copy of that report (or part of that report) may be obtained, and
  - (c) specify a website address at which a copy of the published report can be viewed.
- (3) The provider to whom the report relates must, if required to do so by the Ombudsman, reimburse the Ombudsman for the reasonable costs of arranging the publication of the notice.
- (4) In deciding whether it is appropriate to make arrangements under subsection (1), the Ombudsman must take into account –
- (a) the public interest,
  - (b) the interests of the person aggrieved (if any), and
  - (c) the interests of any other persons the Ombudsman thinks appropriate.

**56 Action following receipt of investigation reports**

- (1) This section applies where the Ombudsman has concluded in an investigation report that any person has sustained injustice or hardship as a result of the matter investigated.
- (2) The provider to whom the matter relates must consider the report and notify the Ombudsman before the end of the permitted period of –
- (a) the action the provider has taken or proposes to take in response to the report, and
  - (b) the period before the end of which the provider proposes to take that action (if that action has not already been taken).
- (3) In subsection (2) “the permitted period” means –
- (a) the period of one month beginning on the date on which the authority receives the report, or
  - (b) a longer period specified by the Ombudsman in writing (if any).

**57 Reports: alternative procedure**

- (1) This section applies if, after the Ombudsman has conducted an investigation under this Part –
- (a) the Ombudsman concludes that no person has sustained injustice or hardship as a result of the matter complained of, and
  - (b) the Ombudsman is satisfied that the public interest does not require sections 54 to 56 to apply.
- (2) This section also applies if, after the Ombudsman has conducted an investigation under this Part –
- (a) the Ombudsman concludes that any person has sustained injustice or hardship as a result of the matter complained of,
  - (b) the provider to whom the investigation relates agrees to implement, before the end of the permitted period, any recommendations that the Ombudsman makes, and
  - (c) the Ombudsman is satisfied that the public interest does not require sections 54 to 56 to apply.
- (3) In subsection (2)(b) “the permitted period” means –
- (a) a period agreed between the Ombudsman, the provider and the person who made the complaint (if any), or
  - (b) if the Ombudsman thinks that no such agreement can be reached, a period specified by the Ombudsman in writing.
- (4) The Ombudsman may decide to prepare a report on the Ombudsman’s findings under this section, rather than under section 54; and if the Ombudsman decides to do so, sections 54 to 56 do not apply.

- (5) If a report is prepared under this section, the Ombudsman –
- (a) must send a copy of the report to the person who made the complaint (if any) and the provider to whom the complaint relates, and
  - (b) may send a copy of the report to any other persons the Ombudsman thinks appropriate.
- (6) The Ombudsman may publish the report if, after taking account of the interests of the persons aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to do so.
- (7) The Ombudsman may supply a copy of a report published under subsection (6), or a part of that report, to any person who requests it.
- (8) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (7).
- (9) The following information must not be included in a version of the report sent to a person under subsection (5) or published under subsection (6) –
- (a) the name of a person other than the provider to whom the investigation relates;
  - (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman’s opinion, can be omitted without impairing the effectiveness of the report.
- (10) Subsection (9) does not apply if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the report.

#### *Special reports*

### **58 Circumstances in which special reports may be prepared**

- (1) The Ombudsman may prepare a special report under section 59 if case 1, 2 or 3 applies.
- (2) Case 1 applies if –
- (a) the Ombudsman has concluded in an investigation report that any person has sustained injustice or hardship as a result of the matter investigated, and
  - (b) one of the circumstances in subsection (3) applies.
- (3) The circumstances are that –
- (a) the Ombudsman has not received the notification required under section 56 before the end of the period permitted under that section;
  - (b) the Ombudsman has received that notification but is not satisfied with –
    - (i) the action which the provider has taken or proposes to take, or
    - (ii) the period before the end of which the provider proposes to have taken that action;

(c) the Ombudsman has received that notification but is not satisfied that the provider has, before the end of the permitted period, taken the action that the provider proposed to take.

(4) In subsection (3)(c) “the permitted period” means –

- 5 (a) the period referred to in section 56(2)(b), or  
(b) a longer period specified by the Ombudsman in writing (if any).

(5) Case 2 applies if –

- 10 (a) the Ombudsman has prepared a report under section 57 by virtue of subsection (2) of that section, and  
(b) the Ombudsman is not satisfied that the provider has implemented the Ombudsman’s recommendations before the end of the permitted period.

(6) In subsection (5)(b) “the permitted period” means –

- (a) the period referred to in section 57(2)(b), or  
(b) a longer period specified by the Ombudsman in writing (if any).

15 (7) Case 3 applies if –

- (a) a matter (which the Ombudsman is entitled to investigate) in respect of a provider has been resolved,  
(b) in resolving the matter, the Ombudsman has concluded that any person has sustained injustice or hardship as a result of the matter,  
20 (c) the provider has agreed to take particular action before the end of a particular period, and  
(d) the Ombudsman is not satisfied that the provider has taken that action before the end of the permitted period.

(8) In subsection (7)(d) “the permitted period” means –

- 25 (a) the period referred to in subsection (7)(c), or  
(b) a longer period specified by the Ombudsman in writing (if any).

## 59 Special reports

(1) A special report must –

- 30 (a) set out the facts which entitle the Ombudsman to prepare the special report (that is, the facts on the basis of which case 1, 2 or 3 of section 58 applies), and  
(b) make such recommendations as the Ombudsman thinks fit as to the action which, in the Ombudsman’s opinion, should be taken –  
(i) to remedy the injustice or hardship to the person, and  
(ii) to prevent similar injustice or hardship being caused in the future.

35 (2) If the special report is prepared because case 1 of section 58 applies, the Ombudsman must send a copy of the report to each person to whom a copy of the section 54 report was sent under section 54(2)(b).

- (3) If the special report is prepared because case 2 or 3 of section 58 applies, the Ombudsman must send a copy of the report to the person who made the complaint (if any) and the provider to whom the complaint relates.
- (4) The Ombudsman may send a copy of a special report to any other persons the Ombudsman thinks appropriate.
- (5) The Ombudsman may publish a special report.
- (6) The Ombudsman may supply a copy of a published special report, or a part of such a report, to any person who requests it.
- (7) The Ombudsman may charge a reasonable fee for supplying a copy of a special report, or part of such a report, under subsection (6).
- (8) The following information must not be included in a version of a special report sent to a person under subsection (2), (3) or (4) or published under subsection (5) –
- (a) the name of any person other than the provider in respect of whom the report was made;
  - (b) information which, in the opinion of the Ombudsman, is likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the special report.
- (9) Subsection (8) does not apply if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the special report.

## **60 Further publicity for special reports**

- (1) The Ombudsman may arrange for a notice about a special report to be published –
- (a) in one or more newspapers, or
  - (b) by means of broadcast or other electronic media.
- (2) The notice may, for example –
- (a) provide a summary of the Ombudsman's findings,
  - (b) specify an address or addresses at which a copy of the published report can be inspected during ordinary office hours and from which a copy of that report (or part of that report) may be obtained, and
  - (c) specify a website address at which a copy of the published report can be viewed.
- (3) The provider to whom the report relates must, if required to do so by the Ombudsman, reimburse the Ombudsman for the reasonable costs of arranging the publication of the notice.
- (4) In deciding whether to make arrangements under subsection (1), the Ombudsman must take into account –
- (a) the public interest,
  - (b) the interests of the person aggrieved (if any), and
  - (c) the interests of any other person the Ombudsman thinks appropriate.

*Interpretation***61 Meaning of “care home” and “care home provider”**

- (1) This section applies for the purposes of this Act.
- (2) “Care home” has the same meaning as in the Care Standards Act 2000.
- 5 (3) “Care home provider” means a person who carries on a care home.
- (4) Action is to be treated as action taken by a care home provider if it is taken by –
- (a) a person employed by that provider,
  - (b) a person acting on behalf of that provider, or
  - (c) a person to whom that provider has delegated any functions.
- 10 (5) Action is also to be treated as action taken by a care home provider if –
- (a) that provider provides, by means of an arrangement with another person, accommodation, nursing or personal care in a care home in Wales for a person falling within section 3(2) of the Care Standards Act 2000, and
  - (b) the action is taken by or on behalf of the other person in carrying out the
- 15 arrangement.

**62 Meaning of “domiciliary care” and “domiciliary care provider”**

- (1) This section applies for the purposes of this Act.
- (2) “Domiciliary care” means personal care provided in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without
- 20 assistance.
- (3) “Domiciliary care provider” means a person who carries on an activity which involves the provision of domiciliary care, but it does not include an individual who –
- (a) carries on the activity otherwise than in partnership with others,
  - (b) is not employed by a body corporate or unincorporated association to carry it on,
  - 25 (c) does not employ any other person to carry out the activity, and
  - (d) provides or arranges the provision of domiciliary care to fewer than four persons.
- (4) Action is to be treated as action taken by a domiciliary care provider if it is taken by –
- (a) a person employed by that provider,
  - (b) a person acting on behalf of that provider, or
  - 30 (c) a person to whom that provider has delegated any functions.
- (5) Action is also to be treated as action taken by a domiciliary care provider if –
- (a) that provider provides domiciliary care by means of an arrangement with another person, and

- (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

**63 Meaning of “palliative care service” and “independent palliative care provider”**

- (1) This section applies for the purposes of this Act.
- (2) “Palliative care service” means a service the main purpose of which is to provide palliative care.
- (3) “Independent palliative care provider” means a person who –
- (a) provides a palliative care service, and
  - (b) is not a Welsh health service body.
- (4) Action is to be treated as action taken by an independent palliative care provider if it is taken by –
- (a) a person employed by that provider,
  - (b) a person acting on behalf of that provider, or
  - (c) a person to whom that provider has delegated any functions.
- (5) Action is also to be treated as action taken by an independent palliative care provider if –
- (a) that provider provides palliative care by means of an arrangement with another person, and
  - (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

**PART 5**

**INVESTIGATIONS: SUPPLEMENTARY**

*Consultation and co-operation*

**64 Consultation and co-operation with other ombudsmen**

- (1) This section applies if, in making a decision under section 3(5), 4(3) or 43(8) or conducting an investigation under Part 3 or 4, the Ombudsman forms the opinion that a matter which is the subject of the complaint or investigation could be the subject of an investigation by an ombudsman mentioned in subsection (7).
- (2) The Ombudsman must consult that ombudsman about the matter.
- (3) The Ombudsman may co-operate with that ombudsman in relation to the matter.
- (4) Consultation under subsection (2), and co-operation under subsection (3), may extend to anything relating to a matter which is the subject of the complaint or investigation, including (among other things) –
- (a) the conduct of an investigation into the complaint, and
  - (b) the form, content and publication of a report of the investigation.

- (5) If the Ombudsman consults an ombudsman about a matter under subsection (2), the Ombudsman and that ombudsman may –
- (a) conduct a joint investigation into the matter,
  - (b) prepare a joint report in relation to the investigation, and
  - (c) publish the joint report.
- (6) Subsection (5) does not apply if the ombudsman consulted under subsection (2) is the Scottish Public Services Ombudsman.
- (7) The ombudsmen referred to in subsection (1) are –
- (a) the Parliamentary Commissioner for Administration;
  - (b) the Health Service Commissioner for England;
  - (c) a Local Commissioner;
  - (d) the Scottish Public Services Ombudsman;
  - (e) a housing ombudsman appointed in accordance with a scheme approved under section 51 of the Housing Act 1996.
- (8) The Welsh Ministers may by regulations amend subsection (7) by –
- (a) adding a person,
  - (b) omitting a person, or
  - (c) changing the description of a person.
- (9) Regulations under subsection (8) may add a person to subsection (7) only if the person appears to the Welsh Ministers to have functions relating to the investigation of complaints.
- (10) No regulations are to be made under subsection (8) unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of the Assembly.

25 **65 Working jointly with specified persons**

- (1) This section applies if it appears to the Ombudsman that –
- (a) there is a matter which the Ombudsman is entitled to investigate, and
  - (b) the matter is one which could also be the subject of an examination by a person specified in subsection (2) (“specified person”).
- (2) The following are specified persons –
- (a) the Children’s Commissioner for Wales;
  - (b) the Commissioner for Older People in Wales;
  - (c) the Future Generations Commissioner for Wales;
  - (d) the Welsh Language Commissioner;
  - (e) any other commissioner or statutory adviser created by an Act of the Assembly;
  - (f) Welsh regulators.

- (3) If the Ombudsman considers it appropriate, the Ombudsman must—
- (a) inform the relevant specified person about the matter, and
  - (b) consult the specified person in relation to it.
- (4) If the Ombudsman consults a specified person under this section, the Ombudsman and the specified person may—
- (a) co-operate with each other in relation to the matter,
  - (b) conduct a joint investigation into the matter, and
  - (c) prepare and publish a joint report in relation to the investigation.
- (5) Regulations may amend subsection (2) by—
- (a) adding or removing a specified person to or from the list, or
  - (b) varying a reference to a type or description of specified person for the time being contained in that subsection.
- (6) No regulations are to be made under subsection (5) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

## **66 Working collaboratively with specified persons**

- (1) This section applies if it appears to the Ombudsman that a matter could be the subject of an examination by a specified person (“the connected matter”).
- (2) If the Ombudsman considers it appropriate, the Ombudsman must inform the relevant specified person about the connected matter.
- (3) If the Ombudsman considers that the matter is also a matter into which the Ombudsman is entitled to conduct an investigation (“the Ombudsman matter”), the Ombudsman must also if the Ombudsman considers it appropriate—
- (a) inform the relevant specified person about the Ombudsman’s proposals for conducting an investigation, and
  - (b) consult the specified person about those proposals.
- (4) If the Ombudsman and the specified person consider that they are entitled to investigate, respectively, the Ombudsman matter and the connected matter, they may—
- (a) co-operate with each other in the separate investigation of each of those matters,
  - (b) act together in the investigation of those matters, and
  - (c) prepare and publish a joint report containing their respective conclusions in relation to the matters they have each investigated.
- (5) If the Ombudsman considers—
- (a) that the matter is not a matter into which the Ombudsman is entitled to conduct an investigation, and
  - (b) that it is appropriate to do so,
- the Ombudsman must inform the person who initiated the complaint (if any) about how to secure the referral of the connected matter to the relevant specified person.

**67 Working with the Auditor General for Wales**

- (1) If the Ombudsman considers it appropriate, the Ombudsman must—
- (a) inform the Auditor General for Wales about the Ombudsman's proposals for conducting an investigation, and
  - 5 (b) consult the Auditor General with regard to the most effective way of conducting an investigation.
- (2) If the Ombudsman consults the Auditor General under this section, the Ombudsman and the Auditor General may—
- (a) co-operate with each other in relation to the matter,
  - 10 (b) conduct a joint investigation into the matter, and
  - (c) prepare and publish a joint report in relation to the investigation.

*Disclosure***68 Disclosure of information**

- (1) The information to which this section applies is—
- 15 (a) information obtained by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of the Ombudsman's functions—
    - (i) in deciding whether to begin an investigation,
    - (ii) in the course of an investigation, or
    - 20 (iii) in resolving a matter under section 6 or 46;
  - (b) information obtained from an ombudsman mentioned in section 64(7) by virtue of any provision of section 64 or a corresponding provision in an enactment relating to any of those ombudsmen;
  - (c) information obtained from a specified person in section 65(2) by virtue of any provision of section 65 or 66 or a corresponding provision in an enactment relating to any of those specified persons;
  - 25 (d) information obtained from the Auditor General for Wales by virtue of section 67 of this Act or section 29A of the Public Audit (Wales) Act 2013;
  - (e) information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (disclosure between Information Commissioner and ombudsmen).
- (2) The information must not be disclosed except—
- (a) for the purposes of deciding whether to begin an investigation;
  - (b) for the purposes of an investigation;
  - 35 (c) for the purposes of resolving a complaint under section 6 or 46;
  - (d) for the purposes of a statement or report made in relation to a complaint or investigation;
  - (e) for the purposes of any provision of section 64, 65, 66 or 67;

- (f) for the purposes of proceedings for –
- (i) an offence under the Official Secrets Act 1911 to 1989 alleged to have been committed by the Ombudsman, a member of the Ombudsman's staff or other person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of the Ombudsman's functions;
  - (ii) an offence of perjury alleged to have been committed in the course of an investigation;
- (g) for the purposes of an inquiry with a view to the taking of proceedings mentioned in paragraph (f);
- (h) for the purpose of proceedings under section 18 or 53;
- (i) in the case of information to the effect that a person is likely to constitute a threat to the health or safety of one or more persons, to any person to whom the Ombudsman thinks it should be disclosed in the public interest;
  - (j) in the case of information to which subsection (3) applies, to the Information Commissioner;
  - (k) for the purposes of an investigation and of any report to be made under section 69 of the Local Government Act 2000.

(3) This subsection applies to information if it appears to the Ombudsman to relate to –

- (a) a matter in respect of which the Information Commissioner could exercise a power conferred by an enactment mentioned in subsection (4), or
- (b) the commission of an offence mentioned in subsection (5).

(4) The enactments are –

- (a) Part 5 of the Data Protection Act 1998 (enforcement);
- (b) section 48 of the Freedom of Information Act 2000 (practice recommendations);
- (c) Part 4 of that Act.

(5) The offences are those under –

- (a) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 to that Act (obstruction of execution of warrant);
- (b) section 77 of the Freedom of Information Act 2000 (offence of altering etc records with intent to prevent disclosure).

(6) No person may be called upon to give evidence in any proceedings (other than proceedings mentioned in subsection (2)) of information obtained by that person as mentioned in subsection (1)(a) or (b).

## **69 Disclosure prejudicial to safety of State or contrary to public interest**

- (1) A Minister of the Crown may give notice to the Ombudsman with respect to –
- (a) any document or information specified in the notice, or
  - (b) any class of document or information so specified,

that, in the opinion of the Minister, the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest.

- 5 (2) If a notice is given under subsection (1), nothing in this Act is to be construed as authorising or requiring the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of the Ombudsman's functions to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice.

## 10 **70 Protection from defamation claims**

- (1) For the purposes of the law of defamation, the following are absolutely privileged –
- 15 (a) the publication of a matter, in the discharge of any of the Ombudsman's functions under this Act, by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of the Ombudsman's functions;
  - (b) the publication of a matter by a person in the discharge of functions under section 20;
  - (c) the publication of a matter in connection with an investigation made or referred to the Ombudsman under this Act, in communications between –
    - 20 (i) a listed authority, a member or co-opted member of a listed authority, an officer or member of the staff of a listed authority or another person acting on behalf of a listed authority or assisting it in the discharge of any of its functions, or a private health services provider, and
    - 25 (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of the Ombudsman's functions;
  - (d) the publication of a matter in connection with an investigation made or referred to the Ombudsman under this Act, in communications between –
    - 30 (i) a care home provider, domiciliary care provider or independent palliative care provider, an officer or member of staff of such a provider or another person acting on behalf of such a provider or assisting it in the discharge of any of its functions, and
    - 35 (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of the Ombudsman's functions;
  - (e) the publication of a matter in connection with an investigation, in communications between a person and an Assembly member;
  - (f) the publication of a matter in connection with an investigation, in communications between –
    - 40 (i) the person, and

- (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of the Ombudsman's functions.
- (2) For the purposes of subsection (1)(d)(i) a person is an officer of a provider if the person has control or management of a provider which is not an individual or the affairs of such a provider.
- (3) In this section, reference to matters in connection with an investigation include matters in connection with the Ombudsman's decision whether to investigate or not.

*Welsh language strategy*

10 **71 Welsh language strategy**

- (1) The Ombudsman must prepare and publish a Welsh language strategy.
- (2) The strategy must include—
- (a) an assessment of the need for the functions of the Ombudsman to be carried out in the Welsh language,
- (b) a statement setting out the steps the Ombudsman proposes to take to meet that need, and
- (c) any other information the Ombudsman considers appropriate.
- (3) The Ombudsman must publish the strategy no later than one year after this Act receives Royal Assent.
- (4) The Ombudsman may review the strategy at any time.
- (5) Where the Ombudsman reviews the strategy and considers that a change is needed, the Ombudsman must—
- (a) revise the strategy, and
- (b) publish the revised strategy.

25 *Review of Act*

30 **72 Review of Act**

- (1) The Welsh Ministers must carry out a review of the operation of this Act over the period of five years from the date this Act receives Royal Assent.
- (2) The Welsh Ministers must prepare and publish a report of the review as soon as is reasonably practicable after the five year period.
- (3) The Welsh Ministers must lay the report before the Assembly.
- (4) Subsequently, the Welsh Ministers may carry out further reviews of the operation of this Act at any time, and if such a review is carried out, the Welsh Ministers must prepare and publish a report of the review and lay the report before the Assembly.

**PART 6****MISCELLANEOUS AND GENERAL****73 Investigations commenced before sections 3, 4, 43 and 44 come into force**

- 5 (1) Subsection (2) applies if the Ombudsman has commenced an investigation into a matter before the date on which sections 3, 4, 43 and 44 come into force and the investigation has not been determined by the Ombudsman or the matter has not been resolved by that date.
- (2) On and after that date, the Public Services Ombudsman (Wales) Act 2005 continues to apply for the purposes of the investigation despite the other provisions of this Act.

*General***74 Amendments and repeals**

- 10 (1) The Public Services Ombudsman (Wales) Act 2005 is repealed, but—
- (a) see section 73 (investigations commenced before sections 3, 4, 43 and 44 come into force);
- 15 (b) section 35 of the 2005 Act continues to have effect.
- (2) Schedule 5 (consequential amendments) has effect.

**75 Commencement**

- 20 (1) The preceding provisions of this Act come into force in accordance with provision made by the Welsh Ministers by order.
- (2) An order under subsection (1) may—
- (a) appoint different days for different purposes;
- (b) make transitional, transitory or saving provision in connection with the coming into force of a provision of this Act.

**76 Interpretation**

- 25 (1) In this Act—
- “act” (“*gweithredu*”) and “action” (“*camau gweithredu*”) include a failure to act (and related expressions must be construed accordingly);
- “annual report” (“*adroddiad blynyddol*”) has the meaning given in paragraph 14 of Schedule 1;
- 30 “the Assembly” (“*y Cynulliad*”) means the National Assembly for Wales;

“care home” (*“gofal cartref”*) has the meaning given by section 61(2);

“care home provider” (*“darparwr gofal cartref”*) has the meaning given by section 61(3);

“co-opted member” (*“aelod cyfetholedig”*), in relation to an authority, means a person who is not a member of the authority but who –

- (a) is a member of a committee or sub-committee of the authority, or
- (b) is a member of, and represents the authority on, a joint committee on which the authority is represented or a sub-committee of such a committee,

and who is entitled to vote on any question which falls to be decided at a meeting of the committee or sub-committee;

“domiciliary care” (*“gofal cartref”*) has the meaning given by section 62(2);

“domiciliary care provider” (*“darparwr gofal cartref”*) has the meaning given by section 62(3);

“extraordinary report” (*“adroddiad eithriadol”*) has the meaning given in paragraph 14 of Schedule 1;

“family health service provider in Wales” (*“darparwr gwasanaeth iechyd teulu yng Nghymru”*) means –

- (a) a person who, at the time of action which is the subject of investigation under this Act, provided services under a contract entered into by that person with a Local Health Board under section 42 or section 57 of the National Health Service (Wales) Act 2006;
- (b) a person who, at that time, had undertaken to provide in Wales general ophthalmic services or pharmaceutical services under that Act;
- (c) an individual who, at that time, provided in Wales primary medical services or primary dental services in accordance with arrangements made under section 50 or 64 of that Act (except as an employee of, or otherwise on behalf of, a Welsh health service body or an independent provider in Wales);

and includes employees of persons referred to in paragraphs (a), (b) and (c) where those persons are acting in a capacity referred to in paragraphs (a), (b) or (c);

“family health services” (*“gwasanaethau iechyd teulu”*) means services mentioned in any of paragraphs (a) to (c) of the definition of “family health service provider in Wales”;

“financial year” (*“blwyddyn ariannol”*) means the 12 months ending on 31 March;

“independent palliative care provider” (*“darparwr gofal lliniarol annibynnol”*) has the meaning given by section 63(3);

“independent provider in Wales” (*“darparwr annibynnol yng Nghymru”*) means a person who, at the time of action which is the subject of a complaint under this Act—

- (a) provided services of any kind in Wales under arrangements with a Welsh health service body or a family health service provider in Wales, and
- (b) was not a Welsh health service body or a family health service provider in Wales;

“investigation” (*“ymchwiliad”*)—

- (a) in relation to the Ombudsman, means an investigation under section 3, 4, 43 or 44 (and cognate expressions must be construed accordingly);
- (b) in relation to another ombudsman or commissioner, includes an examination (and cognate expressions must be construed accordingly);

“listed authority” (*“awdurdod rhestredig”*) has the meaning given in section 30;

“local authority in Wales” (*“awdurdod lleol yng Nghymru”*) means a county council, county borough council or community council in Wales;

“Local Commissioner” (*“Comisiynydd Lleol”*) has the meaning given in section 23(3) of the Local Government Act 1974 (c.7);

“NHS trust” (*“Ymddiriedolaeth y GIG”*) has the same meaning as in the National Health Service (Wales) Act 2006;

“the Ombudsman” (*“yr Ombwdsmon”*) has the meaning given in section 2;

“palliative care service” (*“gwasanaeth gofal lliniarol”*) has the meaning given by section 63(2);

“the person aggrieved” (*“y person a dramgwyddwyd”*) in Part 3 has the meaning given in section 7(1)(a) and in Part 4 has the meaning given in section 47(1)(a);

“private health services” (*“gwasanaethau iechyd preifat”*) means –

- (a) medical treatment, including nursing care, provided by an independent hospital within the meaning of section 2 of the Care Standards Act 2000;
- (b) medical treatment, including nursing care, provided by health professionals who, under contractual arrangements other than by virtue of national health service contracts of employment, have access to national health service staff and facilities;

5 “publicly-funded dwelling” (*“annedd a ariennir yn gyhoeddus”*) means –

- (a) a dwelling which was provided by means of a grant under –
  - (i) section 18 of the Housing Act 1996 (c.52) (social housing grant), or
  - (ii) section 50 of the Housing Act 1988 (c.50), section 41 of the Housing Associations Act 1985 (c.69), or section 29 or 29A of the Housing Act 1974 (c.44) (housing association grant);
- (b) a dwelling which was acquired on a disposal by a public sector landlord (within the meaning of Part 1 of the Housing Act 1996);

5 “relevant tribunal” (*“tribiwnlys perthnasol”*) means a tribunal (including a tribunal consisting of only one person) specified by regulations made by the Welsh Ministers;

“social landlord in Wales” (*“landlord cymdeithasol yng Nghymru”*) means –

- (a) a body which was at the time of action which is the subject of a complaint under this Act registered as a social landlord in the register maintained by the Welsh Ministers under section 1 of the Housing Act 1996 (or in the register previously maintained under that section by the Assembly constituted by the Government of Wales Act 1998, the Secretary of State or Housing for Wales);
- (b) any other body which at the time of action which is the subject of a complaint under this Act was registered with Housing for Wales, the Secretary of State, the Assembly constituted by the Government of Wales Act 1998 or the Welsh Ministers and owned or managed publicly-funded dwellings;

5 “special report” (*“adroddiad arbennig”*) in Part 3 has the meaning given in section 26 and in Part 4 has the meaning given in section 59;

“Wales” (*“Cymru”*) has the meaning given in section 158(1) of the Government of Wales Act 2006 (c.32);

“Welsh health service body” (*“corff gwasanaeth iechyd yng Nghymru”*) means –

- (a) the Welsh Ministers;
- (b) a Local Health Board;
- (c) an NHS trust managing a hospital or other establishment or facility in Wales;
- (d) a Special Health Authority not discharging functions only or mainly in England.

“Welsh regulator” (*“rheoleiddiwr Cymru”*) means any person with regulatory functions in Wales.

- 5 (2) For the purposes of the definition of “independent provider in Wales”, arrangements with the Welsh Ministers are arrangements with a Welsh health service body only to the extent that they are made in the discharge of a function of the Welsh Ministers relating to the National Health Service.
- 10 (3) A statutory instrument containing regulations under subsection (1) is subject to annulment in pursuance of a resolution of the Assembly.
- (4) The Welsh Ministers may by regulations amend the definitions of “family health service provider in Wales”, “independent provider in Wales” and “social landlord in Wales”.
- (5) Before making regulations under subsection (4), the Welsh Ministers must consult such persons as they think appropriate.
- 15 (6) No regulations are to be made under subsection (4) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.
- (7) Section 13 of the National Audit Act 1983 (c.44) (interpretation of references to the Committee of Public Accounts) applies for the purposes of this Act as it applies for the purposes of that Act.
- 20 (8) For the purposes of this Act, references to action taken by a listed authority include action taken by –
- (a) a member, co-opted member, committee or sub-committee of the authority acting in the discharge of functions of the authority;
  - 25 (b) an officer or member of staff of the authority, whether acting in the discharge of his or her own functions or the functions of the authority;
  - (c) any other person acting on behalf of the authority.

**77 Former health care providers, social landlords, social care providers and palliative care providers: modifications**

- 30 (1) The Welsh Ministers may by regulations provide for this Act to apply with the modifications specified in the regulations to persons who are –
- (a) former family health service providers in Wales;
  - (b) former independent providers in Wales;
  - (c) former social landlords in Wales;
  - 35 (d) former care home providers in Wales;

- (e) former domiciliary care providers in Wales;
- (f) former independent palliative care providers in Wales.

(2) “Former family health service provider in Wales” means a person who –

- (a) at the relevant time, provided family health services of a particular description, and
- (b) subsequently ceased to provide services of that description (whether or not the person has later started to provide them again).

(3) “Former independent provider in Wales” means a person who –

- (a) at the relevant time, provided services of a particular description in Wales under arrangements with a Welsh health service body or a family health service provider in Wales,
- (b) was not a Welsh health service body or a family health service provider in Wales at that time, and
- (c) subsequently ceased to provide services of that description (whether or not the person has later started to provide them again).

(4) “Former social landlord in Wales” means a person who –

- (a) at the relevant time –
  - (i) was registered as a social landlord in the register maintained by the Welsh Ministers under section 1 of the Housing Act 1996 (c.52) (or in the register previously maintained under that section by the Assembly constituted by the Government of Wales Act 1998, the Secretary of State or Housing for Wales), or
  - (ii) was registered with Housing for Wales, the Secretary of State, the Assembly constituted by the Government of Wales Act 1998 or the Welsh Ministers and owned or managed publicly-funded dwellings, and
- (b) subsequently –
  - (i) ceased to be registered as mentioned in paragraph (a)(i) or (ii) (whether or not the person later became so registered again), or
  - (ii) ceased to own or manage publicly-funded dwellings (whether or not the person later did so again).

(5) “Former care home provider in Wales” means a person who –

- (a) at the relevant time, provided accommodation, nursing or personal care of a particular description at a care home (within the meaning given by the Care Standards Act 2000) in Wales, and
- (b) subsequently ceased to do so (whether or not the person has later started to do so again).

(6) “Former domiciliary care provider in Wales” means a person who –

- (a) at the relevant time, provided domiciliary care services of a particular description in Wales, and

(b) subsequently ceased to do so (whether or not the person has later started to provide those services again).

(7) “Former independent palliative care provider in Wales” means a person who –

(a) at the relevant time, provided a palliative care service of a particular description in Wales, and

(b) subsequently ceased to do so (whether or not the person has later started to do so again).

(8) “The relevant time” is the time of action which is the subject of a complaint under this Act.

(9) No regulations are to be made under this section unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

## **78 Consequential, transitional provisions etc**

(1) The Welsh Ministers may by regulations make –

(a) such consequential, incidental or supplemental provision, and

(b) such transitory, transitional or saving provision,

as they think necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) No regulations are to be made under subsection (1) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

(3) A reference in any enactment to the Public Services Ombudsman for Wales established under the Public Services Ombudsman (Wales) Act 2005 is a reference to the office of the Public Services Ombudsman for Wales which continues under this Act.

## **79 Regulations and directions**

(1) A power of the Welsh Ministers to make regulations under this Act is exercisable by statutory instrument.

(2) Regulations made by the Welsh Ministers under this Act may –

(a) make different provision for different purposes;

(b) make consequential, incidental, supplemental, transitory, transitional or saving provision.

(3) A direction given under this Act –

(a) may be amended or revoked by the person who gave it;

(b) may make different provision for different purposes.

## **80 Short title**

This Act may be cited as the Public Services Ombudsman (Wales) Act 2016.

SCHEDULE 1  
(introduced by section 2)

PUBLIC SERVICES OMBUDSMAN FOR WALES: APPOINTMENT ETC

*Appointment*

5 1 The Ombudsman is to be appointed by Her Majesty on the nomination of the Assembly.

*Status*

- 2 (1) The Ombudsman is a corporation sole.
- (2) The Ombudsman holds office under Her Majesty and discharges his or her functions on behalf of the Crown.
- 10 (3) The Ombudsman is a Crown servant for the purposes of the Official Secrets Act 1989 (c.6).
- (4) But service as the Ombudsman is not service in the civil service of the Crown.

*Term of office*

- 3 (1) A person's term of office as the Ombudsman is seven years (subject to sub-paragraphs (3) and (4) and paragraph 5).
- 15 (2) A person appointed as the Ombudsman is not eligible for re-appointment.
- (3) Her Majesty may relieve a person of office as the Ombudsman –
- (a) at his or her request, or
- (b) on Her Majesty being satisfied that the person is incapable for medical reasons of performing the duties of the office.
- 20 (4) Her Majesty may remove a person from office as the Ombudsman on the making of a recommendation, on the ground of the person's misbehaviour, that Her Majesty should do so.
- (5) A recommendation for the removal of a person from office as the Ombudsman may not be made unless –
- 25 (a) the Assembly has resolved that the recommendation should be made, and
- (b) the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.

30 *Acting Public Services Ombudsman for Wales*

- 4 (1) If the office of the Ombudsman becomes vacant, Her Majesty may, on the nomination of the Assembly, appoint a person to act as the Ombudsman.
- (2) A person appointed to act as the Ombudsman ("an acting Ombudsman") may have held office as the Ombudsman.
- 35 (3) A person appointed as an acting Ombudsman is eligible for appointment as the Ombudsman (unless he or she has already held office as the Ombudsman).

- (4) The power to appoint a person as an acting Ombudsman is not exercisable after the end of the period of two years starting with the date on which the vacancy arose.
- (5) An acting Ombudsman holds office in accordance with the terms of his or her appointment, subject to sub-paragraph (6) (and paragraph 2, as applied by sub-paragraph (7)).
- (6) An acting Ombudsman must not hold office after –
- (a) the appointment of a person as the Ombudsman, or
  - (b) if sooner, the end of the period of two years starting with the date on which the vacancy arose.
- (7) While an acting Ombudsman holds office he or she is to be regarded (except for the purposes of paragraphs 1, 3, 5 to 9 and this paragraph) as the Ombudsman.

### *Disqualification*

- (1) A person is disqualified from being the Ombudsman or an acting Ombudsman if any of the following applies –
- (a) the person is a member of the House of Commons;
  - (b) the person is a listed authority;
  - (c) the person is a member, co-opted member, officer or member of staff of a listed authority;
  - (d) the person is disqualified from being a member of the Assembly (other than by virtue of paragraph 6 of this Schedule or section 16(1)(d) of the Government of Wales Act 2006);
  - (e) the person is disqualified from being a member of a local authority in Wales (other than by virtue of paragraph 6 of this Schedule);
  - (f) the person is a care home provider, domiciliary care provider or independent palliative care provider;
  - (g) the person is an officer or member of staff of a provider of that kind;
  - (h) the person is a private health services provider;
  - (i) the person is an officer or member of staff of a provider of that kind.
- (2) For the purposes of sub-paragraphs (1)(g) and (i) a person is an officer of a provider if the person has control or management of a provider which is not an individual or the affairs of such a provider.
- (3) The appointment of a person as the Ombudsman or an acting Ombudsman is not valid if the person is disqualified under sub-paragraph (1).
- (4) If a person who has been appointed as the Ombudsman or an acting Ombudsman becomes disqualified under sub-paragraph (1), the person ceases to hold office on becoming so disqualified.
- (5) But the validity of anything done by a person appointed as the Ombudsman or an acting Ombudsman is not affected by the fact that the person is or becomes disqualified under sub-paragraph (1).

- 6 (1) A person who holds office as the Ombudsman or an acting Ombudsman is disqualified from –
- (a) being a listed authority;
  - (b) being a member, co-opted member, officer or member of staff of a listed authority;
  - 5 (c) holding a paid office to which appointment is by a listed authority;
  - (d) being an employee or member of, or holding a paid office with, a private health services provider.
- (2) A person is not disqualified under sub-paragraph (1) from being a member of the Assembly.
- 10 7 (1) A person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified for the relevant period from –
- (a) holding an office which is a listed authority;
  - (b) being a member, co-opted member, officer or member of staff of a listed authority;
  - (c) holding a paid office to which appointment is by a listed authority;
  - 15 (d) being an employee or member of, or holding a paid office with, a private health services provider.
- unless the National Assembly for Wales Commission approves otherwise.
- (2) The relevant period –
- 20 (a) starts when the person ceases to hold office as the Ombudsman or, as the case may be, an acting Ombudsman, and
  - (b) ends on the expiry of the financial year following the financial year in which the Ombudsman or, as the case may be, the acting Ombudsman, ceased to hold such office.
- (3) But sub-paragraph (1) does not disqualify a person from –
- 25 (a) being a member of the Assembly or the National Assembly for Wales Commission;
  - (b) holding the office of presiding officer or deputy presiding officer of the Assembly or of First Minister for Wales, Welsh Minister appointed under section 48 of the Government of Wales Act 2006, Counsel General to the Welsh Government or
  - 30 Deputy Welsh Minister;
  - (c) being a member or co-opted member of a local authority in Wales;
  - (d) holding the office of chairman, vice-chairman or elected mayor of a local authority in Wales.
- 8 The references in paragraphs 6 and 7 to a paid office include an office the holder of which
- 35 is entitled only to the reimbursement of expenses.

*Remuneration etc*

- 9 (1) The Assembly must –
- (a) pay a person who is the Ombudsman or an acting Ombudsman such salary and allowances, and
  - 5 (b) make such payments towards the provision of superannuation benefits for or in respect of him or her,
- as may be provided for by or under the terms of his or her appointment.
- (2) The Assembly must pay to or in respect of a person who has ceased to hold office as the Ombudsman or an acting Ombudsman –
- 10 (a) such amounts by way of pensions and gratuities, and
  - (b) such amounts by way of provision for those benefits,
- as may have been provided for by or under the terms of his or her appointment.
- (3) If a person ceases to be the Ombudsman or an acting Ombudsman and it appears to the Assembly that there are special circumstances which make it right that the person should receive compensation, the Assembly may pay to that person a sum of such amount as it thinks appropriate.
- 15 (4) In Schedule 1 to the Superannuation Act 1972 (c.11) (offices etc to which section 1 of that Act applies) in the list of “Offices” at the appropriate places insert –
- “Public Services Ombudsman for Wales”
  - 20 “Acting Public Services Ombudsman for Wales”.
- (5) The Assembly must pay to the Minister for the Civil Service, at such times as he or she may direct, such sums as he or she may determine in respect of any increase attributable to sub-paragraph (4) in the sums payable out of money provided by Parliament under the Superannuation Act 1972 (c.11).
- 25 (6) Sums required for the making of payments under sub-paragraphs (1), (2) and (5) are to be charged on the Welsh Consolidated Fund.

*Special financial provisions*

- 10 (1) Any sums payable by the Ombudsman in consequence of a breach, in the performance of any of the Ombudsman’s functions, of any contractual or other duty are to be charged on the Welsh Consolidated Fund.
- 30 (2) And sub-paragraph (1) applies whether the breach occurs by reason of an act or omission of –
- (a) the Ombudsman,
  - (b) a member of the Ombudsman’s staff, or
  - 35 (c) any other person acting on the Ombudsman’s behalf or assisting the Ombudsman in the exercise of functions.

- (3) The Ombudsman may retain income derived from fees charged by virtue of sections 15(7), 19(6), 25(8) and 27(2) (rather than pay it into the Welsh Consolidated Fund) for use in connection with the exercise of the functions conferred or imposed by this Act.

### *Staff*

- 5 11 (1) The Ombudsman may appoint such staff as he or she thinks necessary for assisting him or her in the discharge of his or her functions, on such terms and conditions as he or she may determine.
- (2) No member of staff of the Ombudsman is to be regarded as holding office under Her Majesty or as discharging any functions on behalf of the Crown.
- 10 (3) But each member of his or her staff is to be treated as being a Crown servant for the purposes of the Official Secrets Act 1989 (c.6).
- (4) In Schedule 1 to the Superannuation Act 1972 (offices etc to which section 1 of that Act applies) in the list of “other bodies” at the appropriate place insert—
- 15 “Employment as a member of the staff of the Public Services Ombudsman for Wales.”.
- (5) The Ombudsman must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sum as the Minister may determine in respect of any increase attributable to sub-paragraph (4) in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

### *Advisers*

- 20 12 (1) The Ombudsman may obtain advice from any person who, in the Ombudsman’s opinion, is qualified to give it, to assist the Ombudsman in the discharge of his or her functions.
- (2) The Ombudsman may pay to any person from whom the Ombudsman obtains advice under sub-paragraph (1) such fees or allowances as the Ombudsman may determine.

### *Delegation*

- 25 13 (1) Any function of the Ombudsman may be discharged on the Ombudsman’s behalf—
- (a) by any person authorised by the Ombudsman to do so, and
- (b) to the extent so authorised.
- (2) Sub-paragraph (1) does not affect the responsibility of the Ombudsman for the discharge of any such function.
- 30 (3) A person authorised by the Ombudsman under sub-paragraph (1) is to be treated as being a Crown servant for the purposes of the Official Secrets Act 1989 (c.6).
- (4) No arrangements may be made between the Ombudsman, on the one hand, and the Welsh Ministers (or the First Minister for Wales or the Counsel General to the Welsh Government), on the other, for—
- 35 (a) any functions of one of them to be exercised by the other,

- (b) any functions of the Welsh Ministers (or the First Minister for Wales or the Counsel General to the Welsh Government) to be exercised by members of staff of the Ombudsman,
- (c) any functions of the Ombudsman to be exercised by members of the staff of the Welsh Government, or
- (d) the provision of administrative, professional or technical services by one of them for the other.

(5) Sub-paragraph (4) applies despite any provision that would otherwise permit such arrangements to be made.

10 *Annual and extraordinary reports*

14 (1) The Ombudsman—

- (a) must annually prepare a general report on the discharge of the Ombudsman's functions (an "annual report");
- (b) may prepare any other report with respect to the Ombudsman's functions that the Ombudsman thinks appropriate (an "extraordinary report").

(2) A report prepared under this paragraph may include any general recommendations which the Ombudsman may have arising from the discharge of the Ombudsman's functions.

(3) The Ombudsman must lay a copy of each report prepared under this paragraph before the Assembly and at the same time send a copy to the Welsh Government and (if the report is an extraordinary report) must send a copy of it to any listed authorities (other than the Welsh Government) he or she thinks appropriate.

(4) The Ombudsman may also send a copy of any report prepared under this paragraph to any other persons the Ombudsman thinks appropriate.

(5) The Ombudsman must, and the Assembly may, publish any report laid before the Assembly under this paragraph.

(6) The Ombudsman must comply with any directions given by the Assembly with respect to an annual report.

(7) If a report prepared under this paragraph—

- (a) mentions the name of any person other than a listed authority, private health services provider, care home provider, domiciliary care provider or independent palliative care provider in respect of a matter which may be investigated by the Ombudsman under this Act, or
- (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report,

that information must not be included in a version of the report laid before the Assembly under sub-paragraph (3), sent to a person under sub-paragraph (3) or (4) or published by the Ombudsman under sub-paragraph (5), subject to sub-paragraph (8).

- (8) Sub-paragraph (7) does not apply in relation to a version of the report if, after taking account of the interests of any persons he or she thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report.

5 *Estimates*

- 15 (1) For each financial year other than the first financial year, the Ombudsman must prepare an estimate of the income and expenses of the Ombudsman's office.
- (2) The Ombudsman must submit the estimate at least five months before the beginning of the financial year to which it relates to the committee or committees of the Assembly
- 10 specified in the standing orders of the Assembly.
- (3) The committee or committees must examine an estimate submitted in accordance with sub-paragraph (2) and must then lay the estimate before the Assembly with any modifications thought appropriate.
- (4) Before laying before the Assembly with modifications an estimate submitted in
- 15 accordance with sub-paragraph (2), the committee or committees must –
- (a) consult the Ombudsman, and
  - (b) take into account any representations which the Ombudsman may make.
- (5) The first financial year is the financial year during which the first person to be appointed as the Ombudsman is appointed.

20 *Accounts*

- 16 (1) The Ombudsman must –
- (a) keep proper accounting records; and
  - (b) for each financial year, prepare accounts in accordance with directions given to him or her by the Treasury.
- 25 (2) The directions which the Treasury may give under sub-paragraph (1)(b) include directions to prepare accounts relating to financial affairs and transactions of persons other than the Ombudsman.
- (3) The directions which the Treasury may give under sub-paragraph (1)(b) include, in particular, directions as to –
- 30 (a) the information to be contained in the accounts and the manner in which it is to be presented;
- (b) the methods and principles in accordance with which the accounts are to be prepared;
  - (c) the additional information (if any) that is to accompany the accounts.

35 *Audit*

- 17 (1) The accounts prepared by the Ombudsman for a financial year must be submitted by the Ombudsman to the Auditor General for Wales no later than 30 November in the following financial year.

- (2) The Auditor General for Wales must—
- (a) examine, certify and report on each set of accounts submitted to the Auditor General for Wales under this paragraph, and
  - (b) no later than four months after the accounts are so submitted, lay before the Assembly a copy of them as certified by the Auditor General for Wales together with the Auditor General for Wales's report on them.
- (3) In examining accounts submitted to the Auditor General for Wales under this paragraph the Auditor General for Wales must, in particular, satisfy himself that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it.

#### *Accounting officer*

- 18 (1) The Ombudsman is the accounting officer for the office of the Ombudsman.
- (2) If the Ombudsman is incapable of discharging his or her responsibilities as accounting officer, the Audit Committee may designate a member of his or her staff to be the accounting officer for as long as he or she is so incapable.
- (3) If the office of the Ombudsman is vacant and there is no acting Ombudsman, the Audit Committee may designate a member of the Ombudsman's staff to be the accounting officer for as long as the office of the Ombudsman is vacant and there is no acting Ombudsman.
- (4) The accounting officer has, in relation to the accounts and the finances of the Ombudsman, the responsibilities which are from time to time specified by the Audit Committee.
- (5) In this paragraph references to responsibilities include in particular—
- (a) responsibilities in relation to the signing of accounts,
  - (b) responsibilities for the propriety and regularity of the finances of the Ombudsman, and
  - (c) responsibilities for the economy, efficiency and effectiveness with which the resources of the Ombudsman are used.
- (6) The responsibilities which may be specified under this paragraph include responsibilities owed to—
- (a) the Assembly, the Welsh Ministers or the Audit Committee, or
  - (b) the House of Commons or its Committee of Public Accounts.
- (7) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee may—
- (a) on behalf of the Committee of Public Accounts take evidence from the accounting officer, and
  - (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.

*Examinations into the use of resources*

- 19 (1) The Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which the Ombudsman has used the Ombudsman's resources in discharging the Ombudsman's functions.
- 5 (2) Sub-paragraph (1) is not to be construed as entitling the Auditor General for Wales to question the merits of the policy objectives of the Ombudsman.
- (3) In determining how to discharge the Auditor General for Wales's functions under this paragraph, the Auditor General for Wales must take into account the views of the Audit Committee as to the examinations which the Auditor General for Wales should carry out.
- 10 (4) The Auditor General for Wales may lay before the Assembly a report of the results of any examination carried out by the Auditor General for Wales under this paragraph.

*Examinations by the Comptroller and Auditor General*

- 20 (1) For the purposes of enabling the Comptroller and Auditor General to carry out examinations into, and report to Parliament on, the finances of the Ombudsman, the Comptroller and Auditor General –
- 15 (a) has a right of access at all reasonable times to all such documents in the custody or under the control of the Ombudsman, or of the Auditor General for Wales, as the Comptroller and Auditor General may reasonably require for that purpose, and
- (b) is entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which the Comptroller and Auditor General reasonably thinks necessary for that purpose.
- 20 (2) The Comptroller and Auditor General must –
- (a) consult the Auditor General for Wales, and
- (b) take account of any relevant work done or being done by the Auditor General for Wales,
- 25 before the Comptroller and Auditor General acts in reliance on sub-paragraph (1) or carries out an examination in respect of the Ombudsman under section 7 of the National Audit Act 1983 (c.44) (economy etc examinations).

*Supplementary powers*

- 30 21 The Ombudsman may do anything (including acquire or dispose of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of the Ombudsman's functions.

SCHEDULE 2  
(introduced by section 13)

EXCLUDED MATTERS: PART 3

- 1           Action taken by or with the authority of the Welsh Ministers, the First Minister for Wales,  
5           the Counsel General to the Welsh Government or a police and crime commissioner for a  
          police area in Wales for the purpose of –
- (a) the investigation or prevention of crime, or  
(b) the protection of the security of the State.
- 2           The commencement or conduct of proceedings before a court of competent jurisdiction.
- 10   3           Action taken by a member of the administrative staff of a relevant tribunal so far as taken  
          at the direction, or on the authority (whether express or implied), of a person acting in his  
          or her capacity as a member of the tribunal.
- 4           Action taken in respect of appointments, removals, pay, discipline, superannuation or  
15           other personnel matters (apart from procedures for recruitment and appointment) in  
          relation to –
- (a) service in an office or employment under the Crown or under a listed authority;  
(b) service in an office or employment, or under a contract for services, in respect of  
20           which power to take action in personnel matters, or to determine or approve  
          action to be taken in personnel matters, is vested in Her Majesty or a listed  
          authority.
- 5           Action relating to the determination of the amount of rent.
- 6   (1)       Action taken by an authority specified in sub-paragraph (2) and relating to –
- (a) the giving of instruction, or  
(b) conduct, curriculum, internal organisation, management or discipline,  
25           in a school or other educational establishment maintained by a local authority in Wales.
- (2)       The authorities are –
- (a) a local authority in Wales;  
(b) an admission appeal panel;  
(c) the governing body of a community, foundation or voluntary school;  
30           (d) an exclusion appeal panel.
- 7           Action under –
- (a) the National Health Service Act 1977,  
(b) Part 1 of the National Health Service and Community Care Act 1990,  
(c) Part 1 of the Health Act 1999 (with the exception of sections 33 to 38), or

(d) Part 1 of the Health and Social Care (Community Health and Standards) Act 2003, where the action is or has been the subject of an inquiry under the Inquiries Act 2005.

8 Action taken by a Local Health Board in the discharge of its functions under –

- 5
- (a) the National Health Service (Service Committees and Tribunal) Regulations 1992 or any instrument replacing those regulations;
  - (b) regulations made under section 38, 39, 41 or 42 of the National Health Service Act 1977 by virtue of section 17 of the Health and Medicines Act 1988 (c.49) (investigations of matters relating to services).

SCHEDULE 3  
(introduced by section 30)

LISTED AUTHORITIES

*Government of Wales*

- 5           The Welsh Government.  
            The National Assembly for Wales Commission.

*Local government, fire and police*

- A local authority in Wales.  
            A joint board the constituent authorities of which are all local authorities in Wales.  
10          A fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire  
            and Rescue Services Act 2004 (c.21) or a scheme to which section 4 of that Act applies.  
            A police and crime commissioner for a police area in Wales.

*Environment*

- The Committee on Climate Change.  
15          A National Park authority for a National Park in Wales.  
            The Natural Resources Body for Wales.  
            The Environment Agency.  
            The Forestry Commissioners.  
            The Flood and Coastal Erosion Committee.

20    *Health and social care*

- Social Care Wales.  
            The Board of Community Health Councils in Wales.  
            A Local Health Board.  
            An NHS trust managing a hospital or other establishment or facility in Wales.  
25          A Special Health Authority not discharging functions only or mainly in England.  
            A Community Health Council.  
            An independent provider in Wales.  
            A family health service provider in Wales.  
30          A person with functions conferred by regulations made under section 113(2) of the  
            Health and Social Care (Community Health and Standards) Act 2003 (c.43).

*Housing*

A social landlord in Wales.

*Education and training*

5 The Office of Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru.

The Higher Education Funding Council for Wales.

An admission appeal panel constituted in accordance with regulations under section 94(5) or 95(3) of the School Standards and Framework Act 1998 (c.31).

10 The governing body of any community, foundation or voluntary school so far as acting in connection with the admission of pupils to the school or otherwise discharging any of their functions under Chapter 1 of Part 3 of the School Standards and Framework Act 1998.

An exclusion appeal panel constituted in accordance with regulations under section 52 of the Education Act 2002 (c.32).

*15 Arts and leisure*

The Arts Council of Wales.

The Sports Council for Wales.

*Tax*

The Welsh Revenue Authority.

*20 Miscellaneous*

The Building Regulations Advisory Committee for Wales.

Coity Walia Board for Conservators.

Comisiynydd y Gymraeg (The Welsh Language Commissioner).

25 Harbour authorities in Wales (and "harbour authority" has the meaning given in section 313(1) of the Merchant Shipping Act 1995).

Port authorities in Wales (and "port authority" means a harbour authority or, if there is no such authority, the person having control of the operation of the port).

Qualifications Wales.

The Local Democracy and Boundary Commission for Wales.

30 Towyn Trewan Board for Conservators.

Wales Audit Office.

Welsh Health Specialised Services Committee.

SCHEDULE 4  
*(introduced by section 42)*

EXCLUDED MATTERS: PART 4

- 1 The commencement or conduct of proceedings before a court of competent jurisdiction.
- 5 2 Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters.

SCHEDULE 5  
(introduced by section 74)

CONSEQUENTIAL AMENDMENTS

*Care Standards Act 2000*

5 1 Insert new section 75ZB—

**“75ZB Working with the Public Services Ombudsman for Wales**

(1) This section applies where it appears to the Commissioner that a case which he is—

10 (a) examining in accordance with regulations made under section 74, or

(b) considering whether to examine in accordance with such regulations,

15 relates to or raises a matter which could be the subject of an investigation by the Public Services Ombudsman for Wales (the ‘connected matter’).

(2) Where the Commissioner considers it appropriate, he must inform the Public Services Ombudsman for Wales about the connected matter.

20 (3) Where the Commissioner considers that the case also relates to or raises a matter which he is entitled to examine himself (‘the children matter’), he must also if he considers it appropriate—

(a) inform the Public Services Ombudsman for Wales about the Commissioner’s proposals for the examination of the case;

(b) consult the Public Services Ombudsman for Wales about those proposals.

25 (4) Where the Commissioner and the Public Services Ombudsman for Wales consider that they are entitled to examine, respectively, the children matter and the connected matter they may—

(a) co-operate with each other in the separate examination of each of those matters;

30 (b) act together in the examination of those matters; and

(c) prepare and publish a joint report containing their respective conclusions in relation to the matters they have each examined.

(5) Where the Commissioner considers—

35 (a) that the case is not one which relates to or raises a matter that he is entitled to examine himself, and

(b) that it is appropriate to do so,

he must inform the person whose case it is, or another person interested in it that he thinks fit, about how to secure the referral to the Public Services Ombudsman for Wales of the connected matter.”.

*Public Audit (Wales) Act 2013*

2           Insert new section 29A –

**“29A Working with the Public Services Ombudsman for Wales**

5           (1) Where the Public Services Ombudsman for Wales consults the Auditor General under section 67 of the Public Services Ombudsman for Wales Act 2016, the Ombudsman and the Auditor General may –

- 10                   (a) co-operate with each other in relation to the matter,  
                      (b) conduct a joint investigation into the matter, and  
                      (c) prepare and publish a joint report in relation to the investigation.”.

## **Annexe B: Draft Public Services Ombudsman (Wales) Bill: Explanatory Notes**

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The draft Public Services Ombudsman (Wales) Bill uses the Public Services Ombudsman (Wales) Act 2005 as its base, but adds new sections in places. These Explanatory Notes cover those “new” sections only.

### **PART 2**

#### **Section 4 – Power to investigate on own initiative**

This power allows the Ombudsman to investigate a matter whether the Ombudsman has received a complaint or not, so it allows the Ombudsman to initiate an investigation.

This has a significant effect on the interpretation of the Bill – when the word “investigation” is used in Part 3, it can mean either an investigation under section 3 or an investigation under section 4. For example, section 17 applies “in relation to an investigation conducted under this Part”. Therefore, section 17 applies in relation to an investigation under section 3 and an investigation under section 4.

Like the power under section 3, the power in section 4 can only be used to investigate matters the Ombudsman is entitled to investigate. Sections 10 to 14 set out the matters which may be investigated.

Under section 4, the Ombudsman can investigate matters which took place before or after the Bill received Royal Assent.

Royal Assent is when the Queen formally agrees to make a Bill into an Act. The date of Royal Assent for every Act can be found at the start of the Act, after the long title.

#### **Section 5 – Criteria for own initiative investigations**

The Ombudsman must establish and publish criteria that have to be satisfied before the power in section 4 can be used to investigate a matter. When deciding whether to use the power in section 4, the Ombudsman must satisfy the criteria.

It is for the Ombudsman to decide what the criteria should include, but the criteria must set out the evidence that will be required before the power in section 4 can be used.

### **Section 7 – Who can complain**

Only a “member of the public” can make a complaint to the Ombudsman. This section excludes two categories of persons from being “members of the public”:

- persons acting in the capacity of a listed authority cannot make a complaint to the Ombudsman under this Part;
- persons acting in the capacity of a private health services provider cannot make a complaint to the Ombudsman under this Part where the complaint relates to private health services.

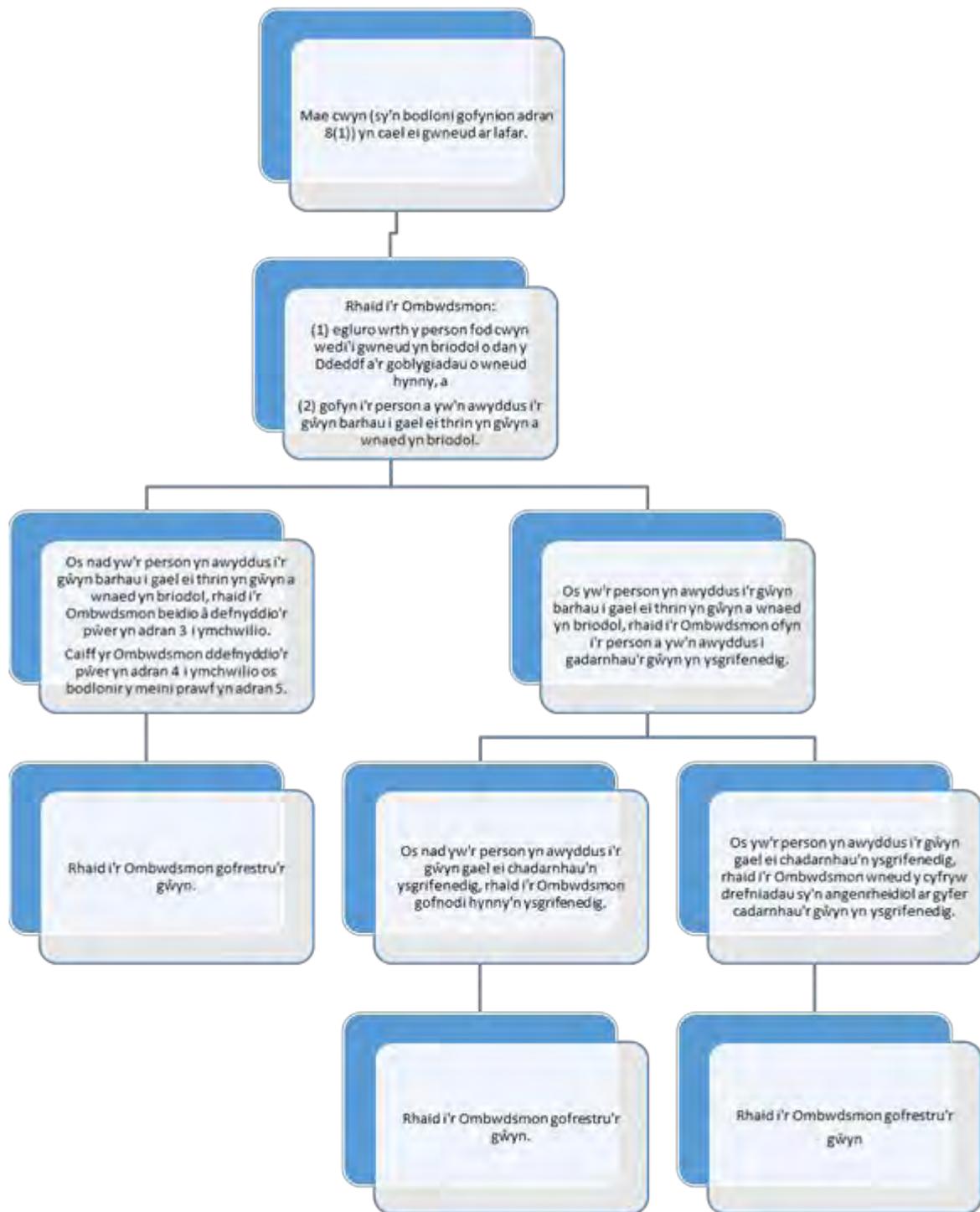
However, this does not prevent someone who is, for example, an employee of a listed authority from making a complaint, provided the person is making the complaint in his/her personal capacity.

### **Section 8 – Requirements: complaints made to the Ombudsman**

If a person wishes to make a complaint to the Ombudsman, the complaint must satisfy the requirements of this section.

But section 8 does not specify the exact requirements of a complaint. The exact requirements will be set out in guidance published by the Ombudsman. Therefore, persons who wish to complain should read that guidance in order to help them make a complaint.

If the guidance specifies that a complaint may be made orally, section 8 sets out additional requirements. Those additional requirements can be illustrated as follows:



## Section 10 – Matters which may be investigated

Sections 10(1)(d) and (2) allow the Ombudsman to investigate certain matters relating to private health services. This has a significant effect on the interpretation of the Bill – each time the word “investigation” is

used in Part 3, it may include an investigation into private health services. For example, the duty to publish a report of investigations under section 19 would apply where the Ombudsman has investigated private health services.

“Private health services” is defined in section 76 to mean:

- (a) medical treatment, including nursing care, provided in a private hospital; and
- (b) private medical treatment, including nursing care, provided in an NHS hospital.

Section 10(2) defines the circumstances in which the Ombudsman can investigate private health services. The circumstances are:

- (a) the person must have received medical treatment in the form of relevant action by a listed authority (relevant action is defined in section 10(4) and all listed authorities are listed in Schedule 3);
- (b) the person must have also received private health services; and
- (c) the Ombudsman cannot effectively or completely investigate the relevant action without also investigating the private health services.

Therefore, section 10(2) acts as a check on the power to investigate private health services, because it limits the circumstances in which private health services can be investigated.

Sections 11 to 14 set out further restriction on matters which may be investigated. However, the matters set out in sections 10(1) and 10(2) have a significant effect on the interpretation of the Bill. Read with the powers in sections 3 and 4, the Ombudsman can:

- 1 investigate a listed authority following a complaint (using section 3 or section 4);
- 2 investigate private health services following a complaint (using section 3 or section 4);
- 3 investigate a listed authority where there has been no complaint (using section 4);
- 4 investigate private health services where there has been no complaint (using section 4).

(In each case, the section 4 power can only be used if the section 5 criteria are met.)

### **Section 16 – Investigation procedure**

Sections 16(2) sets out the procedure to be followed when the Ombudsman uses the power in section 4 to initiate an investigation. The procedure requires the Ombudsman to prepare an investigation proposal (i.e. a proposal which includes the reasons for the investigation and how the section 5 criteria have been met).

However, there may be circumstances where it is impractical for the Ombudsman to prepare an investigation proposal. For example, if the Ombudsman has already prepared an investigation proposal in relation to an investigation into Health Body X, and that investigation brings to light similar issues in relation to Health Body Y, then the Ombudsman may not have to prepare and submit a new investigation proposal if the Ombudsman decided to extend the investigation to include Health Body Y. However, in those circumstances, the Ombudsman must give Health Body Y (and any other person identified by the Ombudsman in relation to the matter in a negative way) an opportunity to comment on the investigation.

Under sections 16(4) and (5), the Ombudsman must specify further procedural requirements to be followed when the Ombudsman uses the power in section 4 to initiate an investigation. Such requirements must include procedures allowing those under investigation opportunity to comment, whether they have received an investigation proposal or not.

### **Section 23 – Action following receipt of a report: investigation of private health services**

If the Ombudsman concludes that a person has sustained injustice or hardship in consequence of private health services, and the Ombudsman's conclusions are published under section 19(4), then the Ombudsman must give the private health services provider reasonable opportunity to notify the Ombudsman of:

- (a) the action the private health services provider has taken (or proposes to take); and

- (b) the time within which such action is to be taken (unless it has already been taken).

Section 23(3) provides an incentive for the private health services provider to take proper action in response to the Ombudsman's conclusions. This is because a listed authority must have regard to any action (good or bad) taken by the private health services provider when the listed authority is deciding whether to enter into a contract for services with the private health services provider.

The duty to have regard requires:

- (a) that the listed authority must be aware of its duty to have regard;
- (b) the duty to be fulfilled before and at the time the decision is taken; it involves a conscious approach and state of mind;
- (c) the duty must be exercised in substance, with rigour and with an open mind; it is not a question of ticking boxes;
- (d) the duty is non-delegable; the duty will always remain on the listed authority;
- (e) the duty is a continuing one;
- (f) it is good practice for a listed authority to keep an adequate record showing it has actually considered the duty and pondered relevant questions.

### **Section 29**

Section 29 gives the Ombudsman power to demand costs from private health services providers where the provider has:

- obstructed the Ombudsman; or
- done something which would amount to contempt of court if the investigation were proceedings in the High Court.

The costs that can be demanded are the additional costs incurred by the Ombudsman as a result of such actions of the provider.

Before demanding such costs, the Ombudsman must give proper notice to the provider which includes giving details of things like breakdown of the total costs, the date of payment and the right of the provider to appeal to the magistrates' court.

### **Section 34 – Complaints-handling: statement of principles**

This section requires the Ombudsman to publish a statement of principles concerning complaints-handling procedures of the listed authorities in Schedule 3. The Ombudsman must consult on the first such statement and any material changes and must obtain Assembly approval before publishing these.

Subsection (12) defines “complaints-handling procedures” to mean procedures of listed authorities which examine complaints or review decisions in respect of action taken by a listed authority where the matter in question is one in respect of which a complaint to the Ombudsman can be made and investigated under the Bill.

Subsection (2) requires every listed authority to have a complaints-handling procedure (or procedures) in respect of action taken by that listed authority, and these procedures must comply with the published statement of principles. Subsection (3) also requires a listed authority which has statutory responsibility for a complaints-handling procedure in relation to, or operated by, another listed authority, to ensure that these procedures comply with the statement of principles.

### **Section 35 – Model complaints-handling procedure**

This section enables the Ombudsman to publish model complaints-handling procedures “model CHPs” for listed authorities. Model CHPs must also comply with the statement of principles published by the Ombudsman. Subsection (6) ensures that listed authorities specified under section 36(1) must comply with any published changes to the relevant model CHP, but it is left to the Ombudsman to decide whether to direct the listed authority to resubmit a description of its complaints-handling procedure under section 38(1). If the Ombudsman withdraws a model CHP, any related specifications under section 36(1) cease to have effect.

### **Section 36 – Model complaints-handling procedures: specification of listed authorities**

This section enables the Ombudsman to specify any listed authority to which a model CHP is relevant. A specified listed authority must have a complaints-handling procedure that complies with the relevant model CHP. On being specified, a listed authority must submit a description of its complaints-handling procedure which takes account of the model CHP within 6 months. The listed authority may, with the Ombudsman’s

consent, disapply aspects of the model CHP if this is necessary for its effective operation. Specifications can be revoked at any time.

### **Section 37 – Declarations of non-compliance**

This section enables the Ombudsman to declare that a complaints-handling procedure of a specified listed authority does not comply with the relevant model CHP, and if not specified, that the procedure does not comply with the statement of principles. The Ombudsman must give reasons in writing and may also specify changes that would allow the declaration to be withdrawn. The listed authority must send a description of its complaints-handling procedure to the Ombudsman within 2 months of the declaration, having taken account of the reasons for non-compliance and any changes specified by the Ombudsman.

### **Section 38 – Submission of description of complaints-handling procedures: general**

This section gives the Ombudsman a power to require a listed authority to submit a description of its complaints handling procedure within 3 months or such other period as the Ombudsman thinks fit. A shorter period has effect even if the period given in section 36(3) or 37(4) has not yet expired. A listed authority is also required to provide additional information on request. This enables the Ombudsman to get an adequate description of a listed authority's complaints-handling procedure.

### **Section 39 – Complaints-handling procedures: application to other enactments**

This section provides that the duties in sections 34(2) and (3) and 36(2) do not apply to the extent that the relevant listed authority lacks the necessary powers to ensure compliance with the duties, for example, where another body is responsible for determining or approving the procedures to be followed. In addition, the duties in sections 34(2) and (3) and 36(2) do not apply to the extent that they are inconsistent with any other enactment. The latter applies to the extent, for example, that another piece of legislation expressly provides on the face of that legislation that the relevant procedures of a listed authority must apply in a way, or contain provision, that is inconsistent with these duties.

## **Section 40 – Complaints-handling procedures: promotion of best practice**

This section imposes duties on the Ombudsman in relation to complaints-handling by listed authorities to (1) monitor practice, (2) promote best practice and (3) encourage co-operation and the sharing of best practice. Listed authorities must co-operate with the Ombudsman in the exercise of these duties except to the extent that they lack the necessary powers to ensure compliance with the duty, or the duty is inconsistent with any other enactment.

## **PART 4**

### **Sections 42 to 63**

These sections relate to investigating social care and palliative care providers. These sections have been amended along the same lines as the new sections that have been inserted in Part 4. In particular, Part 4 now includes:

- a power for the Ombudsman to initiate investigations where no complaint has been made;
- a duty on the Ombudsman to publish criteria that must be met before carrying out such own initiative investigations;
- requirements regarding the procedures that must be followed when carrying out own initiative investigations;
- a duty on the Ombudsman to publish guidance on how complaints should be made, with specific requirements relating to oral complaints.

But not all of the changes made to Part 3 have been carried over into Part 4. For example, there is no change to the list of providers who may be investigated under Part 4. Nor is there any change to the matters which may be investigated under Part 4.

## **PART 5**

### **Section 65 – Working jointly with specified persons**

This section allows the Ombudsman and “specified persons” to work jointly in relation to certain matters. The specified persons are:

- the Children’s Commissioner for Wales;

- the Commissioner for Older People in Wales;
- the Future Generations Commissioner for Wales;
- the Welsh Language Commissioner;
- any other commissioner or statutory adviser created by an Act of the Assembly;
- Welsh regulators.

### **Section 66 – Working collaboratively with specified persons**

This section allows the Ombudsman and the same specified persons to work collaboratively in relation to certain matters.

### **Section 67 – Working with the Auditor General for Wales**

This section allows the Ombudsman and the Auditor General for Wales to work jointly in relation to certain matters.

### **Section 71 – Welsh language strategy**

This section requires the Ombudsman to prepare and publish a Welsh language strategy. The strategy must include a fair and reasonable assessment of the need for the functions of the Ombudsman to be carried out in the Welsh language. This will require consideration of all aspects of the Ombudsman’s work, and what Welsh language needs arise.

The strategy must also set out how the Ombudsman proposes to meet those needs. It will be for the Ombudsman to decide how to meet those Welsh language needs, but that does not mean the Ombudsman has full discretion. That is because the Ombudsman is subject to both the principles of public law (such as acting reasonably and without bias) and scrutiny of the Assembly.

### **Section 72 – Review of the Act**

Given the new powers and duties in the Act, there is a new duty on the Welsh Ministers to review the operation of the Act after five years. A report of the review must be laid before the Assembly.

Subsequently, further reviews may be carried out at any time. And if there is such further review, a report of the review must be laid before the Assembly.

### **Section 73 – Investigations commenced before sections 3, 4, 43 and 44 come into force**

If the Ombudsman has already commenced an investigation under the Public Services Ombudsman (Wales) Act 2005 when the powers in sections 3, 4, 43 and 44 come into force, then the Ombudsman must continue with the investigation as if the 2005 Act remained in force.

## **SCHEDULE 1**

### **Schedule 1, paragraph 7 – Disqualification**

Where the Ombudsman ceases to be the Ombudsman, the Ombudsman is prevented from holding certain offices (in particular offices with listed authorities and private health service providers) for the “relevant period”.

The relevant period starts when the Ombudsman ceases to be the Ombudsman and ends at the end of the financial year following the financial year in which the Ombudsman ceased to hold office. So, for example, if the Ombudsman ceases to be the Ombudsman on 9 November 2017, the Ombudsman is prevented from holding office until the end of 31 March 2019.

The restrictions apply equally to an acting Ombudsman who ceases to hold office as an acting Ombudsman.

However, the Ombudsman (or acting Ombudsman) may hold office with a listed authority or private health service provider before the end of the relevant period if the National Assembly for Wales Commission gives its consent.

## **SCHEDULE 3**

The listed authorities have been updated to include new authorities such as harbour and port authorities, Qualifications Wales, Wales Audit Office, two Boards of Conservators, the Welsh Health Specialised Services Committee and the Welsh Revenue Authority.

Other references to listed authorities have been updated, either to give them their updated name or to remove them where they no longer exist.

## Annexe C: Appointment terms and disqualification periods for various public offices in Wales

Office (and term)	Rules on disqualification after ceasing to hold office
As set out in the Public Services Ombudsman (Wales) Act 2005: PSOW (7 years)	As set out in the Public Services Ombudsman (Wales) Act 2005: Disqualified from working for/as a listed authority for 3 years.
Scottish Public Services Ombudsman (8 years)	Disqualified from working for/as a listed authority until the end of the financial year following the financial year during which the person ceased to be Ombudsman. But the Scottish Parliamentary Corporate Body can consent otherwise.
As set out in the current Northern Ireland Bill: Northern Ireland Public Services Ombudsman (7 years)	As set out in the current Northern Ireland Bill: Disqualified from working for/as a listed authority until the end of the financial year following the financial year during which the person ceased to be Ombudsman. But the Northern Ireland Assembly Commission can consent otherwise.
Auditor General for Wales (8 years)	Disqualified from certain offices (such as working for any person whose accounts are examined by the AG for Wales or a person subject to “value for money” examination) for 2 years. But disqualification does not apply to equivalent auditor general offices in England, Scotland and Northern Ireland.

<p>Welsh Ministers</p>	<p>On leaving office, Ministers must seek advice from the independent Advisory Committee on Business Appointments about any appointments they wish to take up within two years of leaving office, other than unpaid appointments in non-commercial organisations or appointments in the gift of the Welsh Government.</p>
<p>Children’s Commissioner for Wales (7 years)  Future Generations Commissioner for Wales (7 years)  Welsh Language Commissioner (7 years)  Older People’s Commissioner for Wales (4 years, but may be re-appointed once)</p>	<p>No rules</p>