

# Research Briefing **Public Services Ombudsman (Wales) Bill**

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Author: **Osian Bowyer**  
Date: **March 2018**



**National Assembly for Wales**  
Research Service

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Research Briefing  
**Public Services Ombudsman  
(Wales) Bill**

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# 1. Introduction

The Public Services Ombudsman (Wales) Bill will replace the existing legislation governing the functions of the Public Services Ombudsman (Wales) Act 2005.

Provisions within the Bill aim to make the Public Services Ombudsman for Wales' ("the Ombudsman") services **easier to access**. This will be achieved by removing requirements that a complaint must be received in written form as prescribed in the 2005 Act. The Bill also makes provision for the Ombudsman to undertake **own initiative investigations** and to publish model **complaints-handling procedures** ('CHP') for listed authorities (as set out in Schedule 3).

The Bill makes specific provision to allow the Ombudsman to investigate private medical treatment, including nursing care, when treatment was received as part of a **public/private health pathway**. The Bill does not make provision for the Ombudsman to investigate private health services in isolation.

The Explanatory Memorandum for the Bill notes:

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*The Bill makes provision about the office of the Ombudsman and the investigatory functions of the role. It also requires the Ombudsman to publish a statement of principles concerning complaints-handling procedures of listed authorities and enables the Ombudsman to publish model complaints-handling procedures.*

*The Bill also 'future proofs' access to the Ombudsman's services and allows his office to develop guidance to respond to future developments, such as the changing nature of electronic communications and advances in technology.*

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The key policy aims of the Bill include:

- Improving social justice and equal opportunities
- Protecting the most vulnerable
- Being more responsive to the citizen
- Driving improvement in public services and in complaint handling
- Contributing towards the achievement of the well-being goals

## 2. Background

### 2.1 The Public Services Ombudsman (Wales) Act 2005

The role of the Public Services Ombudsman for Wales (PSOW) was established by the Public Services Ombudsman (Wales) Act 2005 ('the 2005 Act'), with the office of the Ombudsman established in April 2006.

The Ombudsman currently has legal powers to look into:

- complaints by members of the public about maladministration or service failures by public services and independent care providers (such as care homes); and
- to investigate complaints that members or employees of local government may have breached the authority's code of conduct.

The 2005 Act also made provisions relating to the PSOW's functions. These functions include among others, the Ombudsman's investigatory powers, powers to seek compensation for the aggrieved and powers to issue guidance to public bodies.

### 2.2 Additional powers and responsibilities

In November 2014, the PSOW's powers were extended to cover complaints in relation to **social care and palliative care in the private health sector**. The provisions for the extended powers are set out in the Social Services and Well-being (Wales) Act 2014.

The Ombudsman's role in respect of Code of Conduct complaints was also amended from April 2016 as a result of the Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016 and the Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016.

### 2.3 Scrutiny and accountability of the Ombudsman

The Ombudsman is independent of all government bodies, and is **accountable to the National Assembly for Wales**. The Ombudsman is appointed for a period of seven years.

The Ombudsman is required to produce 'Estimates' for each financial year, setting out the resources required to carry out his statutory functions. The financial considerations of his office are scrutinised by the Assembly's Finance Committee. The Ombudsman's budget for 2018-19 is **£4.48 million** (Net resource expenditure).

The Equality, Local Government and Communities Committee scrutinises the Ombudsman's work more generally, which includes scrutiny of the Ombudsman's Annual Report and Accounts.

### 2.4 Calls for increased powers

According to the Explanatory Memorandum, the 2005 Act was 'generally considered a model piece of ombudsman legislation', not only in the UK, but internationally. In 2013, the Public Services Ombudsman for Wales 2007-2014, Peter Tyndall, wrote to the Chair of the Communities, Equality and Local Government Committee of the Fourth Assembly setting out changes he believed that were required to the 2005 Act, and referred to these during a scrutiny session of his Annual Report for 2012-13:

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*The legislation in Wales was ground-breaking when it was introduced, and it remains close to the forefront, but 2015 will be the tenth anniversary of that legislation and things have moved on. We have talked about privatisation, and there are issues around jurisdiction that need to be addressed... there is a need to make sure that there is a comprehensive range of public services that you can complain about. There are also other areas of jurisdiction such as private healthcare where there is no independent redress. I do not think that the state should pay for it.*

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The Local Government and Government Business Secretary, Lesley Griffiths AM at the time said the Ombudsman raised some worthwhile points. However, she also noted that detailed consideration and discussion was needed, which required the input of the successor Ombudsman.

## 2.5 Inquiry and draft Bill

On 21 January 2015, the Ombudsman attended the Finance Committee to discuss proposals for extending his powers. Five key proposals were brought forward for consideration by the Committee. These were:

- Own-initiative investigations
- Oral complaints
- Complaints handling across public services
- Increasing jurisdiction – private health sector
- Links with the courts

Following the Committee session, the Finance Committee agreed to undertake an inquiry: **Consideration of Powers: Public Services Ombudsman Wales**, which sought views from stakeholders and the public, as well as the views of Welsh Ministers. The Finance Committee of the Fourth Assembly published its **report** and recommendations in May 2015. The Committee stated that it had been 'persuaded by the evidence that there should be a revision to the powers of the Ombudsman'.

Between October 2015 and January 2016, the Finance Committee of the Fourth Assembly **consulted** on a **Draft Public Services Ombudsman (Wales) Bill**. In its **report** in March 2016, the Committee recommended that a Bill be introduced 'as soon as possible' in the Fifth Assembly.

On 2 October 2017, the Finance Committee introduced the **Public Services Ombudsman (Wales) Bill**

## 2.6 Legislative Competence

According to the Explanatory Memorandum, the National Assembly for Wales 'has the legislative competence to make the provisions in the Public Services Ombudsman (Wales) Bill ('the Bill') pursuant to Part 4 of the Government of Wales Act 2006'. Further details relating to legislative competence can be found on page 6 of the **EM**.

The Constitutional and Legislative Affairs Committee (CLAC) sought clarification on the matter of competence during scrutiny of the Bill. The Member in Charge of the Bill asserted that as it stands, he was 'confident that the Bill is within the legislative competence of the Assembly'. In responding to the Chair of CLAC on legislative competence and the *Wales Act 2017*, he stated:

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*I am very confident that the Bill is within the legislative competence of the Assembly at the moment, but you're right, of course, to highlight the fact that that legislative competence is to change with the 2017 Act. The Bill is based on the previous Act of 2005, but also on Schedule 7 to the Government of Wales Act 2006, and therefore relates to the public services ombudsman in that context. Now, if this Bill weren't to pass that point that you mentioned (Stage 1), namely the cut-off point for the new legislative competence, then that would raise some questions on competence in its current form. We would have to review the Bill in light of that, but I am very confident that in its current form it does fall within the current competence of the Assembly as things stand.*

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## 3. What the Bill is seeking to do

### 3.1 Structure of the Bill

The Bill is divided into **seven parts**. A significant proportion of the Bill **restates the existing Public Services Ombudsman (Wales) Act 2005**, although some sections have been modified substantially.

A table of derivations can be found on **pages 41-44 of the EM** providing a section by section breakdown of which sections have changed and which are restated from the 2005 Act. Key areas of the Bill are set out below:

**Part 1:** provides an overview of the provisions within the Bill.

**Part 2:** provides for the continuation of the role of the Ombudsman.

**Part 3:** sets out the Ombudsman's powers and procedures to investigate listed authorities (in Schedule 3). A significant proportion of Part 3 is a restatement of the 2005 Act, although some sections have been modified extensively. Section 19 and 24 are **new** for the purposes of this Bill.

Key provisions in Part 3 include:

- Section 4: provides the power for the Ombudsman to investigate on own initiative.
- Section 5: sets out the criteria for own initiative investigations.
- Sections 8 and 9: make provision for requirements for accepting complaints submitted to the Ombudsman.
- Section 10: sets out what the Ombudsman is able to investigate subject to specific exceptions in section 11-14.
- Section 19: makes provision for the Ombudsman to **demand costs** from a private health services provider if the provider has obstructed the Ombudsman in the discharge of their functions.
- Section 24: relates to action following receipt of a report in relation to an investigation of a private health service provider.

**Part 4:** makes provision for the Ombudsman to set standards and good practice in complaint handling.

- Section 35: sets a requirement on the Ombudsman to publish a statement of principles concerning complaint-handling procedures (CHP).
- Section 36: makes provision for the Ombudsman to publish model CHPs, and allows for different models for different purposes.

**Part 5:** makes provision for the Ombudsman to investigate social care and palliative care. This part of the Bill mainly restates the provisions of the 2005 Act but with amendments.

**Part 6:** relates to how the Ombudsman should work with and consult with other ombudsmen, regulators, commissioners and statutory advisers. It also makes provision for working with the Auditor General for Wales.

**Part 7:** makes provision for a number of general matters, including preparing and publishing a Welsh language strategy along with a provision for reviewing the Act within five years of receiving Royal Assent.

**Schedule 1:** sets out matters relating to the appointment of the Ombudsman and the Ombudsman's office and is a restatement of Schedule 1 of the 2005 Act with modifications.

**Schedule 2:** relates to excluded matters and restates Schedule 2 of the 2005 Act with modifications.

**Schedule 3:** lists the authorities who can be investigated by the Ombudsman. It restates the 2005 Act but with modifications.

## Documentation accompanying the Bill

The Finance Committee published an [Explanatory Memorandum](#) alongside the Bill. This includes a Regulatory Impact Assessment (RIA), which details the policy options considered and the associated costs and benefits of bringing forward legislation.

## 3.2 Brief overview of the four key new provisions

### Own initiative investigations

At present, the Ombudsman can only investigate a complaint if it has been duly made or referred to the PSOW. The Ombudsman cannot therefore initiate an investigation without first receiving a complaint

**The Bill makes provision for the Ombudsman to undertake investigations on his or her own initiative, bypassing the requirement for a complaint to be made first.** There are however specific criteria on the face of the Bill that must be met before an own initiative investigation can proceed.

Section 5 sets out the criteria for own initiative investigations. The Ombudsman must be satisfied that such an investigation is in the public interest. Additionally, one of the following criteria must also be met:

- That a vulnerable or disadvantaged person is likely to suffer injustice or hardship; or
- The investigation must be about systematic failure that may cause someone to suffer injustice or hardship (in deciding on this criterion, the Ombudsman must have regard to any complaints they have received).

In undertaking an own initiative investigation, the Ombudsman would be required to prepare an investigation proposal and to submit it to the listed authorities (see Schedule 3) being investigated.

There are also requirements within the Bill for the Ombudsman to consult and co-operate with other ombudsmen, commissioners, regulators and statutory advisers (see sections 64-67 of the Bill). The Ombudsman would be expected to consult with these bodies when undertaking own initiative investigations.

However, the decision on whether to proceed with an own initiative investigation rests solely with the Ombudsman.

## Requirements of a complaint made or referred to the Ombudsman

The 2005 Act made specific provision for submitting a complaint to the Ombudsman. The current requirements are:

- (a) The complaint **must be made in writing**;
- (b) The complaint must be made to the Ombudsman **before the end of the period of one year** starting on the day on which the person aggrieved first has notice of the matters alleged in the complaint

The 2005 Act does contain discretionary powers (section 2(4)) that allows the Ombudsman to accept a complaint received other than in writing, for instance, an oral complaint. However, this leaves the decision of whether to accept a complaint purely at the Ombudsman's discretion.

**The Bill, as it stands, removes the requirement for complaints to be made in writing. Instead, complaints must be in a form and contain such information as specified by the Ombudsman in guidance.** The Ombudsman must publish such guidance. There are no other requirements in the Bill relating to the development of the guidance, for example, a requirement on the Ombudsman to consult before publication.

It will be a matter for the Ombudsman to decide whether the guidance specifies that a complaint may be made orally. If it does, section 8 (4) to (9) of the Bill set out additional requirements in relation to accepting oral complaints, which includes maintaining a register of oral complaints.

## Matters which may be investigated

Section 10 of the Bill sets out what the Ombudsman is entitled to investigate (subject to the exceptions provided for in sections 11-14). The most significant change in this provision from the 2005 Act is that it allows for the Ombudsman to investigate certain matters as they relate to **private health services**. The Bill makes provision for the Ombudsman to investigate a complaint where a patient has received private healthcare as part of a **public / private care pathway**. The private treatment can occur at any stage of the care pathway.

Currently, the Ombudsman can only investigate treatment where the **NHS has commissioned private healthcare**. The changes provided for in the Bill would allow a complaint to be considered if the individual had commissioned their own private healthcare, but that the care had encompassed both private and public elements of healthcare. **The Bill does not provide the power to investigate purely private healthcare providers** which remains outside the Ombudsman's jurisdiction.

Section 19 of the Bill makes provision for the Ombudsman to demand costs from private healthcare providers, but only when the private healthcare provider has, in the opinion of the Ombudsman, **obstructed the Ombudsman in the discharge of their duties**.

In addition to the above, section 24 of the Bill provides that listed authorities must have regard to an Ombudsman's report and any action subsequently taken by the private healthcare provider when deciding whether to enter into a contract for services with that provider.

## Complaints-Handling Procedures

Part 4 of the Bill introduces powers for the Ombudsman to publish a statement of principles and to set complaints-handling procedures for listed authorities. The statement of principles will form the basis of the entire statutory model complaints-handling procedures. The operation of the statutory complaints-handling procedure (CHP) therefore relies on the development, approval and subsequent publication of the statement of principles.

Sections 36-41 make specific provisions relating to the publication of a complaint-handling procedure for listed authorities, along with exemptions to when a CHP should apply. Section 41(2) states that references to listed authorities, or to specified listed authorities, **do not include** references to private health services providers.

The Explanatory Memorandum accompanying the Bill notes that a model complaints policy already exists in Wales, with the aim of ensuring greater consistency in complaints-handling across public services. However **adoption of the model is voluntary and is inconsistent across the public sector.**

## 4. General Principles

The Bill, according to the Explanatory Memorandum, seeks to improve access to justice and enable the Ombudsman to be more responsive to the citizen.

Stakeholders were **generally supportive of the general principles of the Bill**, while the Northern Ireland Public Services Ombudsman commended the Finance Committee for its “innovative approach to ensure that the reform of the proposed Ombudsman legislation in Wales should mirror similar reforms that have already been implemented in Northern Ireland and Scotland”.

Despite support for the general principles of the Bill, some stakeholders raised specific concerns about certain aspect of the proposed new powers, along with some concerns around the financial implications of the Bill.

Some of the key concerns were in relation to the **potential duplication of roles** with other regulators, further crowding an already complex regulatory landscape; concerns around how the provisions might work in practice; and concerns around the **cost burden** falling on public bodies.

The Cabinet Secretary for Finance stated that the Welsh Government were **happy to support two of the key new provisions in the Bill** (provisions relating to requirements for making a complaint and matters which may be investigated). However, the Welsh Government were **reserving their position** on the other two main new provisions.

The Member in Charge of the Bill was strongly of the view that the Bill did not fundamentally change the Ombudsman’s role, and that the provisions in the Bill would bring about improvements to public services and access to justice.

### Committee view

The Equality, Local Government and Communities Committee **support the general principles of the Bill**.

The Committee are of the view that the Bill will broadly deliver the policy intentions set out in the Explanatory Memorandum. However, the Committee also wish to see amendments brought forward at Stage 2, along with additional work on the Regulatory Impact Assessment (RIA). Once this is done, the Welsh Government should lay the necessary financial resolution.

## 5. Own initiative investigations

The own initiative provision is intended to enable the Ombudsman to undertake investigations without a complaint being duly made or referred. Own initiative investigation can only proceed once specific criteria have been met. The Ombudsman must be satisfied that conducting an investigation is in the **public interest**, and must also meet specific criteria (see 3.2 Brief overview of four key new provisions).

Stakeholders were generally supportive of the proposal, although some had specific concerns around operational issues. **Possibly the most significant concern among stakeholders was the potential risk of further complexity and duplication of work with other regulators and commissioners.** The NHS Confederation noted:

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*Where there are concerns about significant service failure, which is a matter of public interest, then investigations should be carried out. In deciding whether such investigations should be conducted by the Ombudsman or another organisation, such as HIW or CSSIW, our concern would be to avoid any duplication with other regulatory bodies who already have a remit to undertake investigations.*

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Despite concerns around what was coined the ‘crowded regulatory landscape’, regulators themselves were of the view that the provision for own initiative investigations was workable, along as there were clear lines of communication and co-operation between public bodies.

The Cabinet Secretary for Finance in written evidence noted that **the Welsh Government would reserve their position on this provision, and would consider the Committee’s view before taking a position.** The Cabinet Secretary however acknowledged the safeguards already in place within the Bill, specifically the provision for Ministers to bring forward regulations to amend criteria. **He also noted his belief that the safeguards are sufficient, however Ministers wish to see how the provisions work in practice.**

The Cabinet Secretary also echoed similar concerns that stakeholders had expressed around the risk that the provisions in the Bill would create additional complexity to an already complex regulatory landscape. However, the Cabinet Secretary also observed that the Ombudsman has the benefit of oversight across a range of policy areas that other regulators do not.

The Member in Charge is of the view that the provision would help strengthen the robustness of complaints handling, leading to service improvements for the public. The new power to investigate on own initiative are additional to the core function of the Ombudsman’s office, which is to deal with complaints. The criteria to be met before an investigation can be conducted ensures this power is not a “blank cheque” to change the fundamental role of the Ombudsman.

### Committee view

The Committee acknowledge that the new powers will have benefits for both the individual citizens facing injustice and for the improvement of public services more widely. The Committee were reassured by the Member in Charge during scrutiny of the Bill that the roles of the Ombudsman and the regulators are very different, and that they look at an issue from “two completely different perspectives”.

The Committee did however wish to minimise the risk of duplication, and **recommended that changes should be brought forward at Stage 2 to place a requirement on the Ombudsman to consult with regulators before embarking on an own initiative investigation.**

## 6. Requirements of a complaint made or referred

The provisions in the Bill seek to improve access for citizens to the Ombudsman's services. It also seeks to "future proof" access and allow the Ombudsman to respond to future developments, such as the changing nature of digital communication.

**However, it is the issue of oral complaints that garnered most attention during scrutiny of the Bill.** While the Ombudsman currently has the power to accept oral complaints, it is at the Ombudsman's discretion whether to accept that complaint.

The Public Services Ombudsman for Wales was clear of the need for change, particularly in ensuring citizens with literacy issues and the most disadvantaged can access the Ombudsman's services.

Stakeholders were generally in favour of the change, noting that it removed a barrier to the most disadvantaged to access justice. Some stakeholders did highlight specific areas of concern with operational issues, particularly around the verification process of a complaint received orally.

The Cabinet Secretary for Finance noted that the Welsh Government were "happy" to support the provisions in the Bill on this issue, noting that there are safeguards to ensure that oral complaints don't become a choice of convenience rather than need.

The Member in Charge addressed the Committee on some of the operational concerns that might occur with extending the format a complaint could be received. He was clear that the Bill is a place for "principles and power", and that decisions around procedures and administration are for the Ombudsman to set in guidance.

### Committee view

**The Committee support the widening of the Ombudsman's powers to accept oral complaints as a matter of course**, along with future-proofing the legislation for advancements in technology. Nevertheless, the Committee were of the view that there are opportunities to further tighten the provisions in the Bill.

The Committee recommend that the Member in Charge bring forward amendments at Stage 2 so that section 8(9) places a requirement on the Ombudsman to maintain a register of all complaints received, not simply oral complaints.

The Committee also recommend that the Ombudsman reflects on evidence received regarding operational matters, such as verification procedures for oral complaints. Areas the Committee consider this should cover include

## 7. Matters that may be investigated

The Bill makes provision to allow the Ombudsman to investigate the private healthcare element of treatment received and commissioned by the citizen. Previously, the Ombudsman could only investigate private healthcare services where the NHS had commissioned that service.

However, the Ombudsman will only be able to investigate the private healthcare element of the treatment received as part of a **public / private pathway**. The private treatment can occur at any stage of the care pathway. The Bill does not make provision for the Ombudsman to investigate purely private care, which remains outside the Ombudsman's jurisdiction.

Stakeholders were generally supportive of this provision. Support spanned both public and private healthcare sectors. The support for the provision stems from the ever-changing nature of public service provision, which is increasingly integrated and crosses a number of providers across sectors. The Welsh Independent Healthcare Association (WIHA) noted that patients may not realise that they have "crossed various boundaries" during their healthcare treatment.

The Ombudsman noted that the current system follows the sector rather than the citizen, which can result in unacceptable delays to the citizen in investigating their complaint.

The Member in Charge stated that the provision was closing a "clear loophole" rather than extending the Ombudsman's powers, with the powers "very tightly drawn".

### Committee view

The Committee **support the provisions** in the Bill that will allow the Ombudsman to investigate the private element of care where treatment was received as part of a public / private healthcare pathway.

## 8. Complaint-handling procedures

Part 4 of the Bill provides new powers for the Ombudsman to publish a statement of principles in relation to complaints-handling procedures, along with publishing model complaints-handling procedures (CHP) for listed authorities.

Stakeholders on the whole supported the provisions in the Bill, however, some had reservations around specific aspects of the new power, while the NHS Confederation disagreed with the provision in Part 4. The NHS Confederation's main concerns related to the fact that there are existing complaints-handling procedures embedded in the health sector. *Putting Things Right* is non-statutory guidance which is derived from [The National Health Service \(Concerns, Complaints and Redress Arrangements\) \(Wales\) Regulations 2011](#).

The Cabinet Secretary told the Committee that the Welsh Government is “open minded” about the new provision relating to model complaints-handling procedures. However, he also shared similar concerns to the NHS Confederation that the provisions in this part of the Bill could contradict principles already set by the legislature through existing enactments.

The Member in Charge stated that the provision would ensure greater “consistency across the public sector in Wales”. However, he conceded that the Bill could be clarified to ensure that existing legislation could not be overridden by this Bill, which is not the intention of the Bill.

### Committee view

The Committee are of the view that the provisions in the Bill in relation to model complaint-handling procedures are proportionate to the perceived benefits. The Committee therefore **supports the proposal** in the Bill. The Committee stated:

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*In our view, this will lead to better justice and earlier resolution for complainants, and as a result, fewer complaints submitted to listed authorities and to the Ombudsman's office overall.*

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In relation to the issues raised by the NHS Confederation, the Committee recommended that the Member in Charge brings forward amendments at Stage 2 to ensure that **due allowance is made for existing non-statutory guidance in relation to complaints-handling procedures**.

## 9. Part 5 – Social and Palliative Care

Part 5 of the Bill make provision for the Ombudsman to investigate social care and palliative care service providers. The 2005 Act provides a standalone regime for investigation of complaints relating to social and palliative care. The Ombudsman’s jurisdiction in this field was extended by amendments inserted by the **Social Services and Well-being (Wales) Act 2014**. The Bill in effect restates the provisions in the 2005 Act, although it has been modified to reflect changes made to Part 3 of the Bill.

Stakeholders who expressed a view on Part 5 of the Bill could not see a reason why the regime for social and palliative care could not be merged with the general investigation regime in Part 3. Hospices UK were of the view that not merging the two regimes would be considered a “missed opportunity to improve seamless integrated provision for complainants”.

However, stakeholders were also pragmatic, and did not object in principle to having two separate regimes. WIHA noted that as long as there were no practical difference as to how a complainant was dealt with, they would not be overly concerned with keeping the regimes separate.

The Cabinet Secretary for Finance also noted during his evidence session that failure to create one single investigatory regime within this Bill would be considered a “missed opportunity”. But the Member in Charge outlined why the two investigatory regimes had not been merged:

- preserving a decision recently made by the National Assembly to insert a separate regime for social and palliative care into the 2005 Act; and
- drafting issues with combining the two regimes, which would lead to a more complex piece of legislation.

The Member in Charge also stated that the Welsh Government themselves had not taken the opportunity to merge the two regimes during drafting of the Social Services and Well-Being (Wales) Act 2014.

### Committee view

The Committee shared the views expressed in evidence that it is considered a ‘missed opportunity’ not to merge both investigatory regimes in this Bill, although it also acknowledged that the Welsh Government had not merged the two regimes during drafting of the Social Services and Well-Being (Wales) Act 2014. However, the Committee were also reassured by the Member in Charge, and also the Ombudsman that having two separate investigatory regimes will have no practical impact on how people access the Ombudsman’s service, and so did not recommend merging.

## 10. Welsh Language Strategy

Part 7 places a statutory duty on the Ombudsman to prepare and publish a Welsh language strategy. No such requirements were included in the 2005 Act.

The Ombudsman is not subject to current Welsh language legislation, and therefore not subject to Welsh language standards. The Ombudsman does however publish a **Welsh Language Policy** which outlines the services the Ombudsman provides to the public, and how these are provided through the medium of Welsh.

Both the Welsh Language Commissioner (WLC) and Cymdeithas yr Iaith Gymraeg felt that the provisions relating to the Welsh language should be strengthened. Cymdeithas yr Iaith noted that more duties should be placed on the face of the Bill, including consulting with the Welsh Language Commissioner; having due regard for the Commissioner's comments; and having due regard to the Welsh Language Standards (No.1) Regulations 2015.

The WLC in her evidence suggested amendments should be brought forward to place more specific requirements on the Ombudsman, such as a requirement to reflect the **Welsh Language Standards (No. 2) Regulations 2016** in preparing a strategy. The Commissioner also suggested the possibility of making the Ombudsman subject to Welsh Language Standards.

### Committee view

The Committee welcomed the new provisions placing a requirement on the Ombudsman to develop a Welsh language strategy. However, the Committee also saw a need to strengthen the provision to ensure that the Ombudsman has a robust strategy in place.

One such area to strengthen according to the Committee is the discretion provided to the Ombudsman to decide when to review the strategy. The Committee therefore recommended that the Member in Charge brings forward amendments at Stage 2 to **strengthen the Welsh language duties and responsibilities**.

# 11. Financial Implications of the Bill

## General matters

### Financial Scrutiny

Ordinarily, scrutiny of the financial implications of a Bill would not be taken up by a policy committee, but by the Finance Committee. However, as the Bill has been brought forward by the Finance Committee themselves, it was not considered appropriate for the Finance Committee to scrutinise its own Bill.

The Equalities, Local Government and Communities Committee took evidence from stakeholders, the Cabinet Secretary for Finance, the Public Services Ombudsman for Wales and the Member in Charge on the financial implications of the Bill, and also commissioned the input of an expert advisor. The report of the expert advisor can be found [here](#).

### Costs and benefits resulting from the Bill

The RIA highlights that, **under the 'do nothing' option, the Ombudsman anticipates facing additional costs of £2.9 million to £8.1 million between 2018-19 and 2022-23** due to predicted increases in caseload of 5% or 12% per year.

The RIA states that **the Bill itself will have additional costs, but also contribute to cost avoidance**. Table 1 sets out the **additional costs of the Bill, which are between £1.8 million and £1.95 million from 2018-19 to 2022-23**. Table 2 sets out the **cost avoidance savings resulting from the Bill, which are between £1.9 million and £2.6 million** between 2018-19 and 2022-23.

**Table 1: Additional costs resulting from the Bill**

Cost	2018-19	2019-20	2020-21	2021-22	2022-23	Total
<b>Additional costs to Ombudsman</b>						
Accept oral complaints	46,000	41,350	41,703	42,060	42,421	213,534
Enable own initiative investigations	147,000	138,150	139,312	140,485	141,670	706,617
Enable investigation of private health services	3,507	3,507	3,507	3,507	3,507	17,535
Complaints handling standards and procedures	147,000	138,150	139,312	140,485	141,670	706,617
<b>Total costs for Ombudsman</b>	<b>343,507</b>	<b>321,157</b>	<b>323,834</b>	<b>326,537</b>	<b>329,268</b>	<b>1,644,303</b>
Public bodies low unit cost	43,833	33,806	34,144	34,486	34,830	181,099
Public bodies high unit cost	85,242	54,765	55,312	55,865	56,424	307,608
<b>Total cost (low public body unit cost)</b>	<b>387,340</b>	<b>354,963</b>	<b>357,978</b>	<b>361,023</b>	<b>364,098</b>	<b>1,825,400</b>
<b>Total cost (high public body unit cost)</b>	<b>428,749</b>	<b>375,922</b>	<b>379,146</b>	<b>382,402</b>	<b>385,692</b>	<b>1,951,910</b>

Source: Research Service calculations from National Assembly for Wales, [Public Service Ombudsman \(Wales\) Bill Explanatory Memorandum](#)

**Table 2: Cost avoidance savings resulting from the Bill**

Cost/benefit	2018-19	2019-20	2020-21	2021-22	2022-23	Total
<b>Cost avoidance mitigations assuming 5% increase in caseload per annum based on unit cost of £501</b>						
Reduction in caseload from 5% increase (number)	-68	-175	-695	-1,170	-1,665	-3,773
Projected caseload (number of cases)	7,433	7,701	7,575	7,514	7,453	
<b>Total cost avoidance (£)</b>	<b>-34,068</b>	<b>-87,675</b>	<b>-348,195</b>	<b>-586,170</b>	<b>-834,165</b>	<b>-1,890,273</b>
<b>Cost avoidance mitigations assuming 12% increase in caseload per annum based on unit cost of £501</b>						
Reduction in caseload from 12% increase (number)	-77	-212	-900	-1,616	-2,453	-5,258
Projected caseload (number of cases)	8,458	9,347	9,806	10,375	10,977	
<b>Total cost avoidance (£)</b>	<b>-38,577</b>	<b>-106,212</b>	<b>-450,900</b>	<b>-809,616</b>	<b>-1,228,953</b>	<b>-2,634,258</b>

Source: Research Service calculations from National Assembly for Wales, [Public Service Ombudsman \(Wales\) Bill Explanatory Memorandum](#) and [letter from Member in Charge to Equalities, Local Government and Communities Committee 10 January 2018](#)

## General issues

The Ombudsman during his evidence to Committee noted that despite the increase in resourcing, this would remain under 0.03% of the total Welsh block, which would lift the Ombudsman's expenditure back to 2010 levels.

There was a general acceptance among stakeholders that in providing the Ombudsman more powers, that would bring with it additional costs. However, there were concerns around the impact of the legislation on the resources of an already stretched public services.

The Ombudsman in evidence to the Committee stated that the money spent as a result of the Bill were long term strategic costs, done on an 'invest to save basis'. The Ombudsman also highlighted that compared to the cost to the NHS of dealing with complaints, this additional cost is "very small", and that spending more to ensure world-class public services was "worth doing".

## Cost avoidance

Not all stakeholders were convinced by the narrative around costs and benefits of the Bill. The WLGA believed the £2.6 million cost avoidance figure was "ambitious", fearing that the cost avoidance for the Ombudsman's office could mean shifting the costs onto other public sector bodies.

The expert advisor to the Committee is of the view that the direct costs associated with the proposals are overestimated, as is the level of cost-avoidance, and therefore the financial impact on public bodies is also overestimated.

The Cabinet Secretary for Finance had concerns around how some cost assumptions had been reached based on projected increase in complaints over the next five years and costs avoided as a result of caseload reduction as a result of own initiative investigations.

## Committee view

The Committee is of the view that the case has been made for the policy intent of the Bill, but share some of the stakeholders' concerns and reservations about the financial implications of the Bill. Consequently the Committee recommend that **the Member in Charge publishes a revised Explanatory Memorandum and Regulatory Impact Assessment before Stage 2 of the legislative process which takes account of the Committee's recommendations.**

The Committee notes that the Welsh Government will not be tabling the financial resolution motion until further work on the RIA has been conducted. The Committee urge the Finance Committee and Welsh Government to work together to ensure that this is done within the six-month limit.

## Own initiative investigations – Financial implications

Very few stakeholders expressed significant concerns regarding the financial implications of the proposals for the Ombudsman to have the power to conduct own initiative investigations. However, the NHS Confederation raised concerns about the potential burden on listed authorities in dealing with multiple investigations on similar matters.

The expert advisor to the Committee concluded that the direct costs associated with this proposal were reasonable and manageable within existing resources:

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*Own initiative investigations are not likely to bring about significant reductions in individual complaints, but rather, their value lies in the fact that potential thousands of people can benefit from a single investigation, representing excellent value for money.*

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The Cabinet Secretary for Finance provided a unit cost of between £9,100 and £13,700 for conducting own initiative investigations, however, the Member in Charge disputed these figures. The RIA does not include a unit cost for own initiative investigations.

The Member in Charge did not accept the Cabinet Secretary's figures, and did not think looking at cost per investigation was appropriate as the number of investigations may vary each year.

It was also put to the Member in Charge the possibility of following a model being suggested in Scotland where funding for own initiative investigations would be done on a case by case basis, drawing down on a contingency budget when required. The Member in Charge was robust in his answer:

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*You either trust the ombudsman with these powers or you don't. I would suggest that, if you're not happy with those powers, you remove them from the face of the Bill, rather than try to manage them through a supplementary budget approach.*

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## Committee view

The Committee was **broadly reassured** by the costs associated with the own initiative proposals. But the Committee **also recommended that the RIA be strengthened by providing clarity on the possible range of costs for such investigations.**

## Method of complaints received and referred – Financial implications

**One of the key concerns among stakeholders around the issue of oral complaints was that the RIA may have underestimated the level of oral complaints submitted.** The Auditor General for Wales and WLGA both referred to the experience of local authorities, where oral complaints tended to be a "significant proportion" of complaints.

The Expert Adviser to the Committee also deemed the 25 additional complaints submitted orally as being "modest in their scale", recommending that further sensitivity analysis should be undertaken on the financial impact of this part of the Bill as even a small increase in the number of complaints could have a significant impact. In other jurisdictions there is evidence that a higher proportion of complaints are received orally.

The Cabinet Secretary's main concerns around oral complaints was the disparity between the cost of accepting a written complaint (£501) and an oral complaint (£1,640).

The Member in Charge noted that the Ombudsman already has the discretion to accept oral complaints, and that this was not an "opening of the floodgates". However, the Member in Charge also accepted that there were additional costs attached to accepting oral complaints, but that the policy intent of the Bill is to make public services more efficient, therefore reducing the need for complaints.

## Committee view

The Committee, while accepting the additional power was justified, was of the view that some uncertainties around the accuracy of costs set out in the RIA remained. The Committee therefore recommended that the Member in Charge **undertakes sensitivity analysis based on different scenarios around the number of oral complaints**, as well as **including additional information in the RIA to justify the additional staff costs resulting from the power to accept oral complaints**.

### Investigating public / private care pathway – Financial implications

The estimated number of cases that span both public and private healthcare is 7 per year according to the RIA. This figure was not disputed by witnesses from the private sector, stating this figure reflected current levels of complaints of this nature. However, the omission of an estimate on the impact of the provision on the private health sector was a concern for the Expert Advisor, and the Independent Sector Complaints Adjudication Service (ISCAS). He acknowledged however that if the estimate of seven complaints a year is accurate, the costs would be “nominal rather than real”.

The Cabinet Secretary for Finance, while agreeing to the provisions in the Bill had specific concerns in relation to the recovery of costs from private health care providers, noting that he felt the bar for recovering costs was placed “pretty high”, and the public purse picking up the cost.

The Member in Charge while acknowledging the omission of cost estimates for the private health sector, as the number of complaints were considered low, there was a question of reasonableness according to the Member:

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*The Finance Committee wasn't convinced that this was a big enough sum to have some kind of complex levy system...we have not been persuaded, at this stage, that there needs to be a separate cost recovery regime for this narrow and tightly -drawn aspect of public health provision.*

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## Committee view

The Committee was of the view that the RIA should include ‘more detailed analysis’ of the potential costs on the private health sector as a result of the new provision. It recommended that the Member in Charge **work with ISCAS and the private health sector to develop these figures**.

### Complaints handling procedures – Financial implications

One of the key concerns raised by stakeholders during evidence sessions was the potential additional resource and changes required as a result of a model complaint-handling procedure, and that there would be transition costs associated with that.

The Ombudsman noted however that if listed authorities embraced the proposals, there would be “significant savings” in the long term. The Expert Advisor to the Committee noted that the provisions would likely incur costs for listed authorities, although it would not result in significant additional expenditure.

The Member in Charge noted that complaints would lead to improved services, reducing costs in the long term. The main cost relating to this provision according to the Member is related to staffing costs at the Ombudsman’s office, although there would be some indirect costs on listed authorities.

## **Committee view**

The Committee was content with the costs outlined in the RIA around the provisions in Part 4, and while there would be some costs to listed authorities, it was not thought it would be significant.

## 12. Passage through the Assembly

### Stage 1

The Bill was scrutinised at Stage 1 of the Assembly's legislative process by both the Equality, Local Government and Communities Committee (ELGC) and the Constitutional and Legislative Affairs (CLA) Committee.

The ELGC Committee considered the **general principles** of the Bill and also considered **the financial implications** of the Bill (since the Finance Committee could not scrutinise its own Bill). The Committee heard oral evidence from a number of stakeholders, including the WLGA, Health Inspectorate Wales, NHS Confederation and the Independent Sector Complaints Adjudication Service (ISCAS). It received written evidence via a public consultation, held two scrutiny sessions with the Member in Charge of the Bill - Simon Thomas AM, the Public Services Ombudsman for Wales and the Cabinet Secretary for Finance - Mark Drakeford AM.

The Committee in its **Stage 1 Committee Report** made a total of 19 recommendations. Critically, the Committee recommended that the **Assembly agrees to the general principles of the Bill**.

The CLA Committee took evidence from the Member in Charge of the Bill and the Cabinet Secretary for Finance on 15 January 2018. The Committee had a specific focus on matters relating to the legislative competence of the National Assembly to pass the Bill, the drafting of the Bill, and observations on specific powers to make subordinate legislation.

The CLA Committee in its **Stage 1 Report** made 1 recommendation.

The motion to agree the general principles of the Bill will take place in **Plenary on 21 March 2018**.

## 13. Glossary

### Specific terms for the Bill

Charges on the Welsh Consolidated Fund – Codi gwariant ar Gronfa Gyfunol Cymru

Complaints-handling procedures – Gweithdrefnau ar gyfer ymdrin â chwynion

Cost avoidance – Osgoi costau

Cost recovery notice – Hysbysiad adennill costau

Criteria for own initiative investigations – Meini prawf ar gyfer ymchwilio ar ei liwt ei hun

Disclosure of information – Datgelu gwybodaeth

Duly made (complaint) – Gwneud yn briodol (cŵyn)

Investigation proposal – Cynnig ymchwilio

Listed authorities – Awdurdodau rhestredig

Model complaints-handling procedures – Gweithdrefnau enghreifftiol ar gyfer ymdrin â chwynion

Oral complaint – Cŵyn ar lafar

Own initiative investigations – Ymchwilio ar ei liwt ei hun

Power of investigation – Pŵer i ymchwilio

Power to demand cost – Pŵer i fynnu costau

Private health services provider – Darparwr gwasanaethau iechyd preifat

Protection from defamation claims – Diogelu rhag hawliadau difenwi

Public interest – Er budd y cyhoedd

Public Services Ombudsman (Wales) Bill – Bil Ombwdsmon Gwasanaethau Cyhoeddus (Cymru)

Regulatory Impact Assessment – Aseiad Effaith Rheoleiddiol

Sensitivity analysis – Dadansoddiad sensitifedd

Social and palliative care providers – Darparwyr gofal cymdeithasol a gofal lliniarol

Statement of principles – Datganiad o egwyddorion

Systemic failure – Methiant systemig

The Public Services Ombudsman Wales (PSOW) – Ombwdsmon Gwasanaethau Cyhoeddus Cymru

Vulnerable or disadvantaged person – Person hyglwyf neu dan anfantais

Welsh language strategy – Strategaeth iaith Gymraeg