

PUBLIC SERVICES OMBUDSMAN (WALES) BILL

Explanatory Memorandum
Incorporating the Regulatory Impact Assessment
and Explanatory Notes

October 2017

PUBLIC SERVICES OMBUDSMAN (WALES) BILL

Explanatory Memorandum to the Public Services Ombudsman (Wales) Bill

This Explanatory Memorandum has been prepared by the Finance Committee and is laid before the National Assembly for Wales to satisfy the requirement of Standing Order 26.6.

Declaration

In my view the provisions of the Public Services Ombudsman (Wales) Bill, introduced by me on 2 October 2017, would be within the legislative competence of the National Assembly for Wales.

Simon Thomas AM
Chair of the Finance Committee
Member in charge of the Bill
October 2017

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PART 1 – EXPLANATORY MEMORANDUM

1. Description of the Public Services Ombudsman (Wales) Bill

- 1.1. It is intended that this Bill will replace existing legislation governing the functions of the Public Services Ombudsman for Wales ('the Ombudsman') under the Public Services Ombudsman (Wales) Act 2005 ('the 2005 Act').
- 1.2. 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.

2. Legislative competence

- 2.1. The National Assembly for Wales ('the Assembly') 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 ('GOWA 2006'). The relevant provisions of GOWA 2006 are set out in section 108 and Schedule 7.
- 2.2. Paragraph 14 of Schedule 7 sets out the Assembly's competence to legislate in relation to the Public Services Ombudsman for Wales.
- 2.3. Paragraph 14, as read with section 108, provides the Assembly with the competence to make the provisions contained in the Bill.
- 2.4. In addition, the provisions of the Bill relate to other subjects in Schedule 7. For example, Parts 3 and 5 of the Bill give the Ombudsman powers to investigate so that there can be improvements in devolved subjects such as: the treatment of illness (paragraph 9); housing and homelessness (paragraph 11); the duties of local authorities (paragraph 12); the well-being of children and the care of vulnerable persons (paragraph 15); flood risk management (paragraph 19). Similarly, Part 4 of the Bill gives the Ombudsman powers to publish model complaints-handling procedures so that there can be improvements across a broad range of devolved public services provided by listed authorities.

3. Purpose and the Intended Effect of the Legislation

Purpose of this chapter

- 3.1. This chapter provides an overview of the provisions and their intended effect in order to place the Bill in context. It sets out the Ombudsman's jurisdiction under existing legislation and the extensions proposed by the Bill.

Background

- 3.2. The role of the Public Services Ombudsman for Wales ('the Ombudsman') was established by the Public Services Ombudsman (Wales) Act 2005 ('the 2005 Act'). The 2005 Act brought together the previous functions and powers of the Local Government Ombudsman, the Health Service Commissioner for Wales, the Welsh Administration Ombudsman and Social Housing Ombudsman for Wales.
- 3.3. The 2005 Act was intended to:
- make the Ombudsman service in Wales more accessible to the public, as people were either unaware of the service or confused about which Ombudsman to approach;
 - enable the Ombudsman to develop a comprehensive and coherent system for investigating complaints across a wide range of public bodies; and
 - establish clear accountability by requiring the Ombudsman to produce an annual report to the National Assembly for Wales ('the Assembly') on the discharge of his/her functions.
- 3.4. Under the 2005 Act, the Ombudsman's role is split into two distinct parts:
- to consider complaints by members of the public about maladministration or failure by listed authorities (listed in Schedule 3 to the 2005 Act) in the provision of services.
- Listed authorities include:
- o local government (both county and community councils);
 - o the National Health Service in Wales (including General Practitioners (GPs) and dentists);
 - o registered social landlords (housing associations); and
 - o the Welsh Government and its sponsored bodies.

- to consider complaints that local authority members or employees may have breached a relevant code of conduct.
- 3.5. In November 2014, the Ombudsman's powers were extended to cover social services complaints in the private sector.
- 3.6. From April 2016, the Ombudsman's role in respect of Code of Conduct complaints was also amended by:
- 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.

Reason for the Bill and explanation of timing

- 3.7. The Ombudsman has 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 is able to make a complaint with the reassurance that their complaint will be dealt with fairly and independently by the Ombudsman.
- 3.8. The 2005 Act has facilitated public access to the Ombudsman's services. It has enabled the resolution of disputes and provided redress for individuals. In its focus on complaints handling in the public sector, the 2005 Act has also stimulated improvement in the delivery of public services.
- 3.9. While the Ombudsman's current role is working effectively and the 2005 Act is generally considered a model piece of ombudsman legislation, since 2013 there have been calls to extend his powers.
- 3.10. The Communities, Equality and Local Government (CELG) Committee and the Finance Committee in the Fourth Assembly were involved in consideration of extending the role of the Ombudsman. Discussions were also held with the Welsh Government about the issue.
- 3.11. In May 2013, the then Ombudsman (Peter Tyndall) wrote to the Chair of the CELG Committee setting out his views for changes to the 2005 Act. With his term of office coming to an end, Peter Tyndall attended a meeting of the CELG Committee on 6 November 2013 to discuss his annual report.
- 3.12. Following the meeting, the CELG Committee wrote to the then Minister for Local Government and Government Business, Lesley Griffiths AM, asking for her views on amending the Act. In the Minister's reply, she said the Ombudsman raised worthwhile points. However, she believed more detailed consideration and discussion was needed around the

issues, which should include discussions with the new permanent Ombudsman when he/she was appointed.

- 3.13. On 6 November 2014, as part of the Finance Committee's consideration of the Ombudsman's Estimate for 2015-16, Members heard from the new Ombudsman (Nick Bennett) that he believed there was an appetite to update the 2005 Act. The Finance Committee's resulting report recommended that the Ombudsman and the Welsh Government work together on a timetable for amending the Act¹.
- 3.14. In response to the recommendation to update the 2005 Act, the then Minister for Finance and Government Business, Jane Hutt AM, noted that - as the Welsh Government is a public body subject to scrutiny by the Ombudsman - it would be more appropriate for the Assembly to lead on any legislative change. The Minister said that the Welsh Government would feed its views into any considerations of the Ombudsman's powers but those comments should be considered alongside those of other bodies within the Ombudsman's jurisdiction.
- 3.15. On 11 December 2014, as part of discussion of the Ombudsman's annual report, the CELG Committee heard from the Ombudsman that, whilst the 2005 Act had been an effective piece of legislation, there were areas that needed strengthening to 'future proof' arrangements and ensure that they are citizen-centred.
- 3.16. Subsequently, the CELG Committee wrote to the Finance Committee saying there was merit in reviewing the legislation but it would be difficult to devote the necessary time to it and, as the Finance Committee had previously indicated an interest in this area of work, it may be something it would wish to pursue.
- 3.17. On 21 January 2015, the Ombudsman attended the Finance Committee to discuss his proposals for extending his powers and he subsequently submitted a background paper that provided further detailed information on these proposals².

¹ National Assembly for Wales, Finance Committee, Scrutiny of the Public Services Ombudsman for Wales' Draft Estimates 2015-16, November 2014. Available at: <http://www.assembly.wales/laid%20documents/cr-ld10012%20-%20report%20of%20the%20finance%20committee's%20%20-%20scrutiny%20of%20public%20services%20ombudsman%20for%20wales%e2%80%99%20draft%20estimates%20for%202015/cr-ld10012-e.pdf>

² National Assembly for Wales, Finance Committee, Follow up paper subsequent to evidence provided by the Public Services Ombudsman for Wales to the National Assembly for Wales' Finance Committee at its meeting on 21 January 2015. Available at: <http://senedd.assembly.wales/documents/s37196/Additional%20Information%20from%20PSOW%20from%20evidence%20session%2021%20January%202015.pdf>

- 3.18. Following this session, the Finance Committee agreed to undertake an inquiry. This included:
- undertaking a public consultation between 26 January 2015 and 20 March 2015 to inform its work;
 - seeking the views of all Welsh Ministers of how the Ombudsman's proposals would impact on specific sectors within the Welsh Government's remit; and
 - holding oral evidence sessions with a number of witnesses.
- 3.19. In May 2015, the Finance Committee published its initial report that set out the recommendations arising from its Inquiry³. These included a recommendation that a Bill be introduced into the Assembly since Members had been persuaded by the evidence that there should be a revision to the powers of the Ombudsman.
- 3.20. The Finance Committee issued a 12-week consultation on the structure and content of a draft Bill. In March 2016, it reported on its considerations and conclusions based on the responses received, including the changes to the draft Bill issued for consultation. The Finance Committee recommended that a future Committee of the Assembly introduce a Public Services Ombudsman (Wales) Bill as soon as possible in the Fifth Assembly⁴. The Finance Committee also recommended that the Ombudsman contribute to a fully costed Regulatory Impact Assessment ('RIA') to accompany the Bill, which it could track through future budgets presented by the Ombudsman to the Assembly. On 14 December 2016, the Ombudsman presented the RIA to the Chair of the Finance Committee in the Fifth Assembly.
- 3.21. The Ombudsman gave evidence regarding the RIA to the Finance Committee at its meeting on 9 March 2017. Following the meeting, the Finance Committee Chair wrote to the Ombudsman to request further information specifically in respect of an estimate of the likely cost to the other public bodies affected by the provisions in the Bill (or 'indirect' costs). The Ombudsman provided this information to the Finance Committee Chair on 28 April 2017. The Ombudsman also provided

³ National Assembly for Wales, Finance Committee, Consideration of Powers: Public Services Ombudsman for Wales, May 2015. Available at:

<http://www.cynulliad.cymru/laid%20documents/cr-ld10200/cr-ld10200-e.pdf>

⁴ National Assembly for Wales, Finance Committee, Consideration of the consultation on the Draft Public Services Ombudsman (Wales) Bill, March 2016. Available at:

<http://www.assembly.wales/laid%20documents/cr-ld10644/cr-ld10644-e.pdf>

further information⁵ in response to a letter from the Committee Chair⁶ following the Finance Committee's considerations of the Bill at its meeting on 17 May 2017. The Finance Committee also considered the Bill at its meetings on 5 and 19 July 2017.

Main changes made to the Bill

3.22. Table 1 sets out the main changes resulting from the Finance Committee's considerations of the draft Bill. The references at Table 1 refer to the sections in the Bill as introduced. Minor drafting changes have not been included in the table.

Table 1: Main differences between the draft Bill and the Bill as introduced

Section	Change made and reason
Sections 5 and 45	To specify the criteria for own initiative investigations under sections 5 and 45 on the face of the Bill (using the criteria set out in the Ombudsman's letter of 7 June 2017) with a regulation making power for Welsh Ministers to amend the criteria (subject to the affirmative procedure).
Section 16(2)	To limit the Ombudsman's discretion in section 16(2) so that an investigation proposal does not have to be prepared in limited circumstances (i.e. no investigation proposal is needed when a new own initiative investigation has a substantial connection to any previous investigation).
Section 65	To amend section 65 to clarify that the Ombudsman must inform and consult the specified persons listed in section 65(2) (which includes commissioners and statutory advisers created by the Assembly in future) whenever there is a matter that both the Ombudsman and the specified person could investigate. With regard to the certain commissioners that already exist, there is also a power to work jointly on matters.

⁵ Letter from the Chair of the National Assembly for Wales Finance Committee to the Public Services Ombudsman for Wales – 24 May 2017:

<http://senedd.assembly.wales/documents/s65395/Letter%20from%20the%20Chair%20to%20the%20Public%20Services%20ombudsman%20for%20Wales%2024%20May%202017.pdf>

⁶ Letter from the Public Services Ombudsman for Wales to the Chair of the National Assembly for Wales Finance Committee – 7 June 2017:

<http://senedd.assembly.wales/documents/s65396/Letter%20from%20the%20Public%20Services%20Ombudsman%20for%20Wales%20to%20the%20Chair%207%20June%202017.pdf>

Section	Change made and reason
Section 72	<p>To place the duty to review the operation of the Act in section 72 on the Assembly, rather than on Welsh Ministers.</p> <p>A review may be carried out at any time, but must be carried out after the first five years.</p>
Schedule 5	<p>The consequential amendments in Schedule 5 have been re-drafted to simplify and clarify the provisions around joint and collaborative working. There is also a new consequential amendment to the Well-being of Future Generations (Wales) Act 2015 to clarify that the Ombudsman and the Future Generations Commissioner can work jointly.</p>
Schedule 1	<p>New paragraph 21 clarifies that the person who is the Ombudsman the day before the Act is passed continues to be the Ombudsman after the Act is passed (and that there is no break in the 7 year term of appointment).</p>

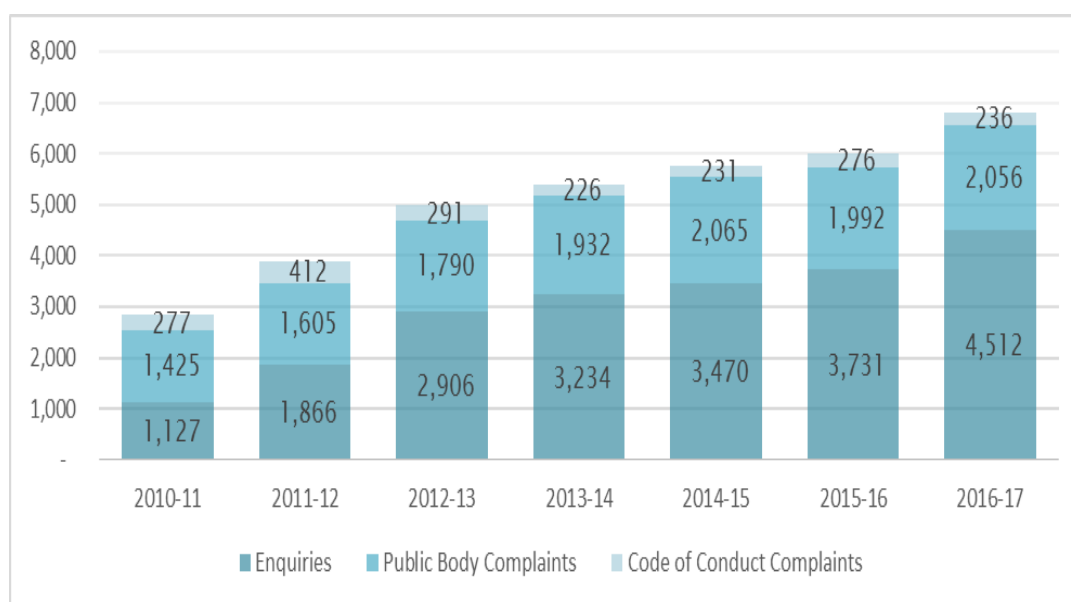
Caseload

- 3.23. The Equality, Local Government and Communities Committee and the Finance Committee in the Fifth Assembly scrutinise the work of the Ombudsman and the financial considerations of his office. Estimates are required to set out the resources required for the Ombudsman to carry out his statutory functions, with the exception of the Ombudsman's own salary (and associated costs), which are directly charged on the Welsh Consolidated Fund.
- 3.24. In scrutinising the Estimate for 2017-18, the Finance Committee noted that the Ombudsman's workload continued to rise⁷. It noted that, from 2010-11 to 2015-16, the total caseload – comprising Enquiries, Public Body Complaints and Code of Conduct Complaints – had increased by 112 per cent, with an increase of 4 per cent in cases in the year from 2014-15 to 2015-16. Figure 1 shows the increase year on year.
- 3.25. The Finance Committee also noted that the number of complaints was forecast to increase by 10 to 12 per cent in 2016-17 and between five

⁷ National Assembly for Wales, Finance Committee, Scrutiny of Public Services Ombudsman for Wales's Estimate for 2017-18, November 2016. Available at: <http://www.assembly.wales/laid%20documents/cr-ld10815/cr-ld10815-e.pdf>

and six per cent in the year after⁸. The actual figures, which are reflected in Figure 1, show an increase of 13 per cent in the Ombudsman’s caseload in 2016-17 when compared with the prior year. From November 2014, independent social care providers and hospices have been within the Ombudsman’s jurisdiction. However, the Ombudsman reports that the impact of this change on his caseload has to date been ‘small’; the Ombudsman has received a total of 29 cases in the period 2014-15 to 2016-17 (comprising 5, 15 and 9 cases in 2014-15, 2015-16 and 2016-17 respectively⁹).

Figure 1: Ombudsman’s caseload by year, 2010-11 to 2016-17 (Number of Complaints and Enquiries)



Source: Public Services Ombudsman for Wales’ Annual Report and Accounts 2016-17¹⁰

Current position

3.26. While the provisions were regarded as being of a ‘high standard’ or ground breaking at the time, since the introduction of the 2005 Act in Wales, best practice and international standards have moved on. Such developments include the strengthening of the powers of ombudsmen in Scotland and Northern Ireland.

⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 5 October 2016, paragraph 21. Transcript available at:

<http://senedd.assembly.wales/documents/s54790/5%20October%202016.pdf>

⁹ Data provided by the Public Services Ombudsman for Wales to the National Assembly for Wales Finance Committee, June 2017

¹⁰ Public Services Ombudsman for Wales’ Annual Report and Accounts 2016-17. Available at:

<http://www.assembly.wales/laid%20documents/agr-ld11135/agr-ld11135-e.pdf>

3.27. It is important that the Ombudsman's powers reflect best practice, not just in the rest of the UK but more widely. It is also vital that the Ombudsman can continue to play his/her part in ensuring that we have citizen-centred services in Wales. The public needs to have confidence in the Ombudsman to investigate where they believe they have suffered injustice through maladministration or service failure by a listed authority (listed in Schedule 3 to the Bill). Restating the provisions of the 2005 Act and extending the Ombudsman's jurisdiction in the four main areas set out in the Bill enhances the role of, and increases public confidence in, the Ombudsman.

Overview and policy intent of the Bill

3.28. The following paragraphs set out an overview, and policy intent of the Bill.

Improving social justice and equal opportunities

3.29. Section 5(1) of the 2005 Act states that all complaints to the Ombudsman must be made or referred in writing. However, there is a discretionary power under section 2(4) that allows the Ombudsman to accept a complaint other than in writing if appropriate on a case-by-case basis. When exercising this discretion, the complaints advice team in the Ombudsman's office transcribe a complaint that has been made orally; this is then sent to the complainant to be signed and returned.

3.30. In providing evidence to the Finance Committee on 21 January 2015 and 25 March 2015, the Ombudsman noted that:

- there was evidence that the Level 1 literacy levels are seven percentage points lower in Wales than they are across the rest of the UK. He noted that this meant that there was, *in theory, a higher cohort of the population who might feel daunted and uncomfortable about submitting a written complaint*¹¹; and
- while the numbers were relatively small, roughly 50 per cent of those to whom his office had sent a written record do not return it. More broadly, the Ombudsman reported that there was evidence that, for every person who does complain, there is another who does not¹².

¹¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 21 January 2015, paragraph 41. Transcript available at:

<http://senedd.assembly.wales/documents/s35941/21%20January%202015.pdf>

¹² National Assembly for Wales, Finance Committee, Record of Proceedings, 25 March 2015, paragraph 195. Transcript available at:

<http://senedd.assembly.wales/documents/s38637/25%20March%202015.pdf>

- 3.31. The data for literacy levels set out above has been taken from the National Survey of Adult Skills in Wales 2010¹³. This notes that those taking part in the survey and assessments were asked whether they were born in Wales, outside of Wales but within the UK or outside of the UK. An alternative source, which does not differentiate depending on where people living in Wales were born, shows that the proportion of adults aged 16-64 without basic (Level 1) literacy levels was 25 per cent. This was higher than any region in England¹⁴. It could therefore be argued that a quarter of adults in Wales are not currently able to access the Ombudsman's services and could be most likely to be deterred by having to ask for discretion to make an oral complaint. As noted above, the Ombudsman has advised that when his staff take an oral complaint and seek confirmation of the accuracy of the written statement, they do not always receive a response.
- 3.32. The provisions of the Bill would contribute to the Welsh Government's commitment to create a fair and equitable Wales. The Ombudsman would no longer be required to use his discretion and would be able to prescribe in guidance the ways in which complaints can be made, including orally. This would facilitate, and/or improve, the making of complaints by the most vulnerable and deprived in society, such as people with learning difficulties and the homeless. It would remove stigma and improve social justice; ensuring that all voices are heard, including those with issues around literacy, numeracy and the differing abilities to manage correspondence and administrative tasks.
- 3.33. Section 149 of the Equality Act 2010 requires public authorities to have due regard to the need to eliminate discrimination, advance equality of opportunity and minimise disadvantages in the exercise of their functions. In her written evidence to the Finance Committee's Inquiry, the Older People's Commissioner for Wales noted that insisting that a complaint is made in writing before any action can be taken could create a barrier to some older people and others with protected characteristics:
- I would hope that in accordance with the principles and requirements of the Equality Act 2010, that reasonable adjustments could be made to allow people to make complaints by email, in person or by telephone that could later be confirmed in

¹³ Welsh Government, National Survey of Adult Skills in Wales 2010, paragraph 3.2.6. Available at <http://gov.wales/docs/caecd/research/111208NatSurvAdultSkillsWales2010en.pdf> [accessed June 2017]

¹⁴ National Survey of Adult Basic Skills in Wales, 2004 and Skills for Life Survey 2002/03. Available at: <http://www.poverty.org.uk/w59/index.shtml> [accessed June 2017]

writing or through alternative means e.g. with support from an advocate or where relevant an interpreter.¹⁵

- 3.34. By removing the requirement to make a complaint in writing, 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 communication and advances in technology.

Protecting the most vulnerable

- 3.35. The Office for National Statistics (ONS) projections show that the total population of Wales is set to rise by around 188,000 (or 6 per cent) from mid-2014 to mid-2039¹⁶. However, the composition of the population during that period is forecast to change significantly:

- in absolute terms with the number of over 65s projected to increase by 22 per cent from mid-2014 to mid-2039 (increasing from 669,000 to 814,000 from mid-2014 to mid-2039); and
- by mid-2039, the number of people of pension age will reflect an increasing proportion of population of Wales. While the proportion of the population that are children is forecast to remain broadly consistent over the same period, the proportion that are of working age decreases from 60.4 per cent to 57.9 per cent. The proportion of the population of pension age increases to almost one in four (or 25 per cent of the total population of Wales).

- 3.36. The increase in the proportion of older people is significant since a longer lifespan means that there are many more people with care and support needs arising from a mixture of physical health and mental health conditions, including dementia and frailty in old age¹⁷. Other considerations may also be at play, such as fear about perceived repercussions of making a complaint, including worry that the complaint will lead to a breakdown in the relationship with care providers and/or the loss of residential care, particularly if fewer places are available. These conditions and considerations mean that some people do not wish, or are not able, to make a complaint on their own.

¹⁵ National Assembly for Wales, Finance Committee, written evidence PSOW 04, February 2015. Available at: <http://www.senedd.assembly.wales/documents/s37908/PSOW%2004%20-%20Older%20Peoples%20Commissioner%20for%20Wales.pdf>

¹⁶ Source: Office for National Statistics, Table A1-5, Principal Projection - Wales Summary (Release date October 2015), Available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationprojections/datasets/tablea15principalprojectionwalessummary> [accessed June 2017]

¹⁷ The King’s Fund, Social Care for Older People, September 2016, page 6 refers. Available at: <https://www.kingsfund.org.uk/publications/social-care-older-people> [accessed June 2017]

3.37. The Ombudsman's powers to investigate complaints about listed authorities are contained in Part 2 of the 2005 Act. The Ombudsman is currently only able to investigate if a complaint has been duly made or referred. The provisions of the Bill allow the Ombudsman to investigate a matter whether or not a complaint has been received. The discretion to carry out own initiative investigations will bring the Ombudsman's jurisdiction in line with best practice since, outside of the UK, only five members of the Council of Europe (Belgium, Luxembourg, Azerbaijan, Kyrgyzstan and Liechtenstein) have ombudsmen who do not have own initiative powers¹⁸.

3.38. This power to conduct own initiative investigations will provide a mechanism to protect the most vulnerable and give attention to the dignity of individuals, including people with learning difficulties, mental health problems and the elderly. This would be achieved by exercising the powers in situations such as those where:

- information has come to light during an investigation that suggests that the actions of another public service body within jurisdiction that should also be reviewed.

For example, an investigation into a health board may bring to light questions about the actions of a General Practitioner (GP). Under the 2005 Act, the complainant would need to make a separate complaint to the Ombudsman¹⁹.

- the complaint arises from failings in one public service body that raise concerns that are systemic in that organisation, other bodies within the same (or other) sector(s) of the public service. Under current legislation, the Ombudsman publishes recommendations under section 16 of the 2005 Act and it is for public bodies to ensure that the same system failings do not exist elsewhere. The provision in the Bill would enable the Ombudsman to be proactive in this regard.

For example, an investigation into a complaint about a health board may lead to concerns that an approach adopted by the board was too restrictive; a practice that other health boards in Wales may also adopt. Having the power to conduct own initiative investigations would enable

¹⁸ Public Services Ombudsman for Wales, Regulatory Impact Assessment (RIA) for the Public Services Ombudsman (Wales) Bill, Public Services Ombudsman for Wales, December 2016, paragraph 4.3. Available at: <http://senedd.assembly.wales/documents/s60322/FIN5-08-17%20P1%20OB3%20Research%20-%20Regulatory%20Impact%20Assessment%20for%20the%20Draft%20Public%20Services%20Ombudsman%20.pdf>

¹⁹ Public Services Ombudsman for Wales, Regulatory Impact Assessment (RIA) for the Draft Public Services Ombudsman (Wales) Bill, Supplementary Information, Annex A, page 14. Available at: <http://senedd.assembly.wales/documents/s64291/Letter%20from%20the%20Public%20Services%20Ombudsman%20for%20Wales%20-%20Regulatory%20Impact%20Assessment%20-%2028%20April%202017.pdf>

the Ombudsman to be proactive and investigate whether or not this was the case²⁰.

- a complaint has been made anonymously, providing evidence of likely maladministration/service failure on the part of a public service body.
- the Ombudsman may be made aware of concerns about service delivery across the whole, or part, of a sector of the public service in Wales but has not yet received a direct complaint. This could be due to the vulnerabilities of the recipients of the service.

- 3.39. The Ombudsman's own investigation powers would only be used when there is a sound basis and rationale. This is particularly the case for any wide ranging own initiative investigations that the Ombudsman may wish to undertake. Reputational risk is a fundamental factor in the mind of any ombudsman; no ombudsman would want to put that reputation at risk by pursuing a high profile investigation without first obtaining firm evidence that there were matters of concern that needed investigation.
- 3.40. Section 5 of the Bill includes safeguards against using the power in section 4 to initiate an investigation. Section 5 states that before beginning a section 4 investigation, the Ombudsman must be satisfied that using the power in section 4 is in the public interest. Also, the Ombudsman must be satisfied that one or more of the criteria in section 5(2) is satisfied. This means that the Ombudsman must be satisfied that either: (a) a vulnerable or disadvantaged person is likely to sustain injustice or hardship, and/or (b) there is likely to be a systemic failure that may cause any person to sustain injustice or hardship.
- 3.41. In addition, section 16 sets out certain procedural requirements that apply to own initiative investigations. For example, there is a requirement to inform the relevant listed authority of the investigation and to give the listed authority an opportunity to comment on the investigation.
- 3.42. Consistent with the 2005 Act, the Bill places a requirement on the Ombudsman to consult and cooperate with other ombudsmen. In the event that a matter could also be the subject of an investigation by others, such as commissioners, statutory advisors or Welsh regulators, the Bill requires that the Ombudsman inform and consult those persons, and in certain cases work jointly/collaboratively with those persons.

²⁰ Public Services Ombudsman for Wales, Regulatory Impact Assessment (RIA) for the Draft Public Services Ombudsman (Wales) Bill, Supplementary Information, Annex A, page 15. Available at: <http://senedd.assembly.wales/documents/s64291/Letter%20from%20the%20Public%20Services%20Ombudsman%20for%20Wales%20-%20Regulatory%20Impact%20Assessment%20-%2028%20April%202017.pdf>

Being more responsive to the citizen

- 3.43. The power to conduct own initiative investigations not only protects the vulnerable but it also has wider benefits. It affects the timing and scope of the Ombudsman's work to the public benefit of the citizens in Wales. It enables the Ombudsman to look at system failures before individuals come forward with complaints. By removing the challenges for his work to remain within the exact parameters of a complaint, it allows the Ombudsman to be more responsive to citizens, since it allows him/her to investigate the service (or services) more broadly. This extension of power also enables the Ombudsman to investigate matters reported to him/her anonymously by individuals who have witnessed a serious service failure. These benefits, therefore, strengthen the citizen's voice and ensure that the Ombudsman's work is citizen-centred.
- 3.44. Another extension of the Ombudsman's powers ensures that his/her investigations are not constrained by sector or silo but allowed to follow the citizen. Under the 2005 Act, the Ombudsman has jurisdiction to investigate where the NHS commissions private medical treatment for patients but the Ombudsman does not have jurisdiction in respect of such treatment commissioned by patients themselves. Where patients commission private medical treatment, individuals currently need to make separate complaints for the public and private elements of their treatment or care to the Ombudsman and the private health provider respectively. In giving evidence to the Finance Committee at its meeting on 9 March 2017, the Ombudsman noted a recent complaint. A member of the public had contacted his office in respect of the treatment provided to her deceased husband, who had received treatment in the NHS, then had private treatment before returning to the health service. The Ombudsman noted that the member of the public *had to wait five and a half years to get a response*²¹.
- 3.45. This is not satisfactory for citizens in Wales, particularly given the increasing extent of the integration of health and social care services in treating an ageing population.
- 3.46. The Bill allows the Ombudsman to investigate matters relating to the private health services (which includes medical treatment and nursing care) element of a complaint in a public/private pathway. This will enable the Ombudsman to explore the whole of a complaint in such

²¹ National Assembly for Wales, Finance Committee, Record of Proceedings, 9 March 2017, paragraph 103. Transcript available at: <http://senedd.assembly.wales/documents/s60762/9%20March%202017.pdf>

circumstances meaning that the complaints process will follow the citizen and not the sector.

Driving improvement in public services and in complaint-handling

- 3.47. A model complaints policy is in place in Wales to help achieve consistency across public services. While it is strongly encouraged, adoption of the model complaints policy is voluntary. The Ombudsman has noted that, while the position is improving, adoption across the public sector is not consistent²².
- 3.48. The provisions of the Bill will provide a statutory basis for any guidance given by the Ombudsman, thereby supporting improvement in public sector complaints handling. The Bill requires the Ombudsman to publish a statement of principles concerning complaints handling procedures of listed authorities. It also enables the Ombudsman to publish a model complaints-handling procedure for listed authorities.
- 3.49. The Scottish Public Services Ombudsman gave evidence to the Finance Committee in the Fourth Assembly during its Inquiry. This evidence reported progress made in Scotland since the establishment of a Complaints Standards Authority:
- in the year and a half, two years, that we've been operating the Complaints Standards Authority standardised procedures, the number of premature complaints coming to my office, and that is people who are coming to me who should have gone to a local authority, or to a health board, or to a university or wherever, has fallen from 54% to 31%."²³
- 3.50. The provisions in the Bill propose a similar approach to that in place in Scotland and hence, they will provide corresponding benefits to Wales. The most significant being the availability - for the first time - of regular, reliable and comparable data on complaints across the public sector. This will drive accountability and improvement in public services, transparency in reporting and empower the scrutiny process for which data and information are critical. They will also provide a reputational benefit to organisations.
- 3.51. The Ombudsman advised that discussions with local health boards in Wales suggest that there is support for a complaints standards role if it can bring more consistency. In addition, there was a general view that

²² National Assembly for Wales, Finance Committee, Consideration of Powers: Public Services Ombudsman for Wales, May 2015, paragraph 125. Available at: <http://www.cynulliad.cymru/laid%20documents/cr-ld10200/cr-ld10200-e.pdf>

²³ National Assembly for Wales, Finance Committee, Consideration of Powers: Public Services Ombudsman for Wales, May 2015, paragraph 130. Available at: <http://www.cynulliad.cymru/laid%20documents/cr-ld10200/cr-ld10200-e.pdf>

the provisions in the Bill would help learning and improvements in complaints handling across Wales.

- 3.52. In March 2017, the Ombudsman published his thematic report *Ending Groundhog Day: Lessons from Poor Complaint Handling*²⁴. The Ombudsman advised that, at the time of this report, the Welsh Local Government Association stated that the Bill would lead to greater consistency and improvements in complaints handling.

Contributing towards the achievement of well-being goals

- 3.53. The Well-being of Future Generations (Wales) Act 2015 places a duty on certain public bodies to work to improve the economic, social, environmental and cultural well-being of Wales²⁵.
- 3.54. While the Ombudsman is not subject to its requirements, the provisions of the Bill contribute to some of the goals set out in the Well-being of Future Generations (Wales) Act ('well-being goals'):
- A healthier Wales – the focus on learning more widely from complaints will apply to public service provision as a whole and to complaints handling. Since over a third of public body complaints to the Ombudsman in 2016-17 were about health services²⁶, the complaints standards and own initiative work will contribute positively to improving health services in Wales.
 - A more equal Wales – accepting oral complaints will mean that those who are unable to complain in writing have proper access to the Ombudsman and this supports proper access to all public services. The use of own initiative powers would enable the Ombudsman to investigate and help address differences in service quality across Wales. Data on comparative complaints handling performance will support this.
 - A Wales of Cohesive Communities – consistency of service quality and of complaints handling across Wales contribute to this goal.
 - A Wales of vibrant culture and thriving Welsh Language – oral complaints would be taken in the Welsh language, supporting those

²⁴ Public Services Ombudsman for Wales, *Ending Groundhog Day Lessons from Poor Complaint Handling*, March 2017. Available at:

http://www.ombudsman-wales.org.uk/~media/Files/Thematic%20Reports/22624%20Thematic%20report_GroundhogDay_ENGLISH_Final%20FOR%20ISSUE.ashx [accessed June 2017]

²⁵ Welsh Government, *Well-being of Future Generations (Wales) Act 2015: The Essentials*, page 5. Available at: <http://gov.wales/docs/dsjlg/publications/150623-guide-to-the-fg-act-en.pdf> [accessed June 2017]

²⁶ Public Services Ombudsman for Wales, *Annual Report and Accounts 2016-17*, page 21. Available at: <http://www.assembly.wales/laid%20documents/agr-ld11135/agr-ld11135-e.pdf>

who are confident and happy to speak Welsh but not write in Welsh; and the Bill requires the Ombudsman to publish a Welsh language strategy.

- 3.55. The Well-being of Future Generations (Wales) Act 2015 requires that, when making decisions, *public bodies need to take into account the impact they could have on people living their lives in Wales in the future*²⁷. The Bill is consistent with the expectations on public bodies to:
- work together better – own initiative and complaints standards work will promote shared learning and joint working to achieve common standards and approaches. In particular, the complaints standards role will involve bringing staff from across Wales together to share and learn.
 - involve people reflecting the diversity of our communities – the power to accept oral complaints supports those unable to make a written complaint and also those who wish to complain in the Welsh Language but are unable to do so in writing.
 - look to the long-term as well as focusing on now – the provisions in the Bill will work towards moving the focus to improvement and prevention rather than individual investigations and findings after the event.
 - take action to stop problems getting worse –the provisions in the Bill will improve prevention. Complaints handling data and own initiative powers will support this by identifying complaints issues early and supporting pro-active investigation in areas of concern without having to wait for a specific complaint. Action can and will be encouraged across Wales.

²⁷ Welsh Government, Well-being of Future Generations (Wales) Act 2015. Available at: <http://gov.wales/topics/people-and-communities/people/future-generations-act/?lang=en> [accessed June 2017]

4. Consultation

Purpose of this chapter

- 4.1. This chapter sets out the results of consultation undertaken with stakeholders on proposals to extend the Ombudsman's powers and the draft Bill.

Consultation on proposals to extend the Ombudsman's powers

- 4.2. Between 26 January 2015 and 20 March 2015, the Finance Committee in the Fourth Assembly undertook a public consultation to inform its Inquiry into the proposals to extend the Ombudsman's powers. 43 written responses were received.
- 4.3. The Committee also wrote to all Welsh Ministers seeking views of the impact of the proposals on specific sectors within the Welsh Government's remit. In addition, the Committee held oral evidence sessions with witnesses from 13 organisations and with the Public Services Ombudsman for Wales on 21 January 2015 and 25 March 2015.
- 4.4. In May 2015, following public consultation to inform its work, the Committee published its initial report²⁸. This noted that the evidence presented in the course of its Inquiry had persuaded Members that there should be a revision to the powers of the Ombudsman.
- 4.5. The Finance Committee recommended that a Bill be introduced to the Assembly. The Bill would reflect most but not all of the matters considered during the Inquiry. Most notably, the Bill would not include provisions relating to the links with the courts in respect of which the Law Commission had, in July 2011, made recommendations relevant to the Ombudsman's role in its report, *The Public Services Ombudsmen*²⁹. The Law Commission's recommendations included improving access to the Ombudsman by modifying the 'statutory bar', creating a new power to 'stay' an application for judicial review and allowing the Ombudsman to refer a point of law to the courts. In respect of these, the Committee recommended that the Welsh Government explore these issues with the UK Government as part of future devolution discussions.

²⁸ National Assembly for Wales, Finance Committee, Consideration of Powers: Public Services Ombudsman for Wales, May 2015. Available at:

<http://www.cynulliad.cymru/laid%20documents/cr-ld10200/cr-ld10200-e.pdf>

²⁹ Law Commission, *The Public Services Ombudsmen* report, July 2011. Available at:

<http://www.lawcom.gov.uk/project/public-services-ombudsmen/#public-services-ombudsmen> [accessed June 2017]

- 4.6. To ensure engagement with members of the public and public bodies affected by the legislation and policy intentions, the Finance Committee recommended that a consultation exercise be undertaken in respect of an early draft of a Bill.

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

- 4.7. In October 2015, the Committee issued a call for evidence in respect of an early draft of the Public Services Ombudsman (Wales) Bill ('the draft Bill')³⁰. The consultation sought comment on the structure and content of the draft Bill. The consultation closed in January 2016. 34 responses were received from range of respondents, including organisations across different parts of the public sector (Welsh Government, Welsh Government Sponsored Bodies, local government and NHS Wales), the higher education sector, representative bodies, town and community councils and the general public. They also included responses from a number of the public bodies affected by the proposals (such as the Auditor General for Wales, Older People's Commissioner for Wales and the Public Services Ombudsman for Wales), as well as the Ombudsmen in Scotland and Northern Ireland.
- 4.8. In March 2016, the Finance Committee set out its conclusions and recommendations³¹. This reported that respondents were generally supportive of the provisions in the draft Bill.
- 4.9. Some responses set out suggestions to improve the legislation. The Finance Committee considered these and as a result, agreed the following changes to the draft Bill:
- In relation to all investigations:
 - o give a power to the Ombudsman 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; and

³⁰ National Assembly for Wales, Finance Committee, call for evidence issued on 21 October 2015. Available at: <http://www.senedd.assembly.wales/documents/s45205/Consultation%20letter.pdf>

Consultation responses are shown at:

<http://www.senedd.assembly.wales/mgConsultationDisplay.aspx?ID=204>

³¹ National Assembly for Wales, Finance Committee, Consideration of powers: Public Services Ombudsman for Wales, March 2016. Available at:

<http://www.assembly.wales/laid%20documents/cr-ld10644/cr-ld10644-e.pdf>

- the Ombudsman may carry out an own initiative investigation whether it relates to action taken before or after the Bill receives Royal Assent.
- In relation to investigating private health services:
 - the definition of ‘private health services’ should be broadened to encompass medical treatment and nursing care; and
 - a new Section should be included, *Power to demand costs from private health service providers*, to allow the Ombudsman to serve a costs recovery notice on a private health service provider as a means of recovering additional costs incurred by the Ombudsman where the provider has obstructed the Ombudsman.
- In relation to the listed authorities under Schedule 3 of the Bill:
 - the rules on amending the list under Schedule 3 should be the same as those currently set out in 2005 Act (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; and
 - The Welsh Revenue Authority.
- The disqualification period for the Ombudsman (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.
- In relation to the Welsh language and reviewing the effectiveness of the legislation, the Finance Committee agreed the following changes to the text of the draft Bill:
 - a new section to place a duty on the Ombudsman to prepare and publish a Welsh language strategy; and
 - a new section that 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.

- 4.10. 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 Finance Committee in the Fourth Assembly decided to keep social and palliative care as a standalone regime. This was 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 Finance Committee in the Fourth Assembly preferred the approach adopted in the draft Bill that provided for two separate but clear investigation regimes.
- 4.11. Since there was not sufficient time in the Fourth Assembly to introduce a Bill, the Finance Committee recommended that the legislation be taken forward as soon as possible in the Fifth Assembly. The Finance Committee also recommended that the Ombudsman contribute to a fully costed RIA to accompany a draft Bill, which it could track through future budgets presented by the Ombudsman to the National Assembly for Wales.
- 4.12. Changes were made to the draft Bill to reflect the considerations of the Finance Committee in the Fifth Assembly. The main changes are set out in Table 1. Minor drafting changes have not been included in the table.

5. The Bill

Purpose of this chapter

- 5.1. The purpose of this chapter is to set out an overview of the Bill.
- 5.2. The Bill is divided into 7 Parts containing 80 sections and 5 Schedules. The Bill restates the 2005 Act while also setting out new powers in four main areas, enabling the Ombudsman to:
 - accept oral complaints;
 - undertake own initiative investigations;
 - investigate private medical treatment including nursing care ('private health services') in a public/private health pathway; and
 - undertake a role in relation to complaints handling standards and procedures.

Accept oral complaints

- 5.3. Section 8 of the Bill sets out the requirements that must be met for the complaint to be 'duly made'. Section 8(1)(a) states that the complaint must be in a form specified by the Ombudsman in guidance. Section 8(2) requires the Ombudsman to publish this guidance.
- 5.4. Section 8(4) of the Bill sets out the requirements on the Ombudsman in the event that a complaint made orally meets the requirements set out in the guidance issued. 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.*
- 5.5. Section 8(9) requires the Ombudsman to maintain a register of all oral complaints.

Undertake own initiative investigations

Section 4 – Power to investigate on own initiative

- 5.6. Section 4 of the Bill sets out the Ombudsman's power to undertake own initiative investigations. This power would allow the Ombudsman to initiate investigations into a matter whether or not he had received a complaint. Therefore, it allows the Ombudsman to initiate an investigation. However, just like the power to investigate under section

3, the new 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 that may be investigated.

Section 5 – Criteria for own initiative investigations

5.7. Section 5 of the Bill specifies the criteria that have to be satisfied before the power in section 4 can be used to investigate a matter. The Bill provides that, when deciding whether to use the power in section 4, the Ombudsman must satisfy the section 5 criteria.

Own initiative investigations: procedure

5.8. Section 16(2) of the 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 that includes the reasons for the investigation and how the section 5 criteria have been met. The Ombudsman is given discretion so that he/she does not have to prepare an investigation proposal in the limited circumstances specified in sections 16(3) and 16(4).

5.9. Under sections 16(6) and 16(7), 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.

Sections 64 to 67 – Working collaboratively with other ombudsmen, commissioners, statutory advisers and/or regulators

5.10. Section 64 of the Bill sets out the requirements for consultation and cooperation with other ombudsmen in the event that the subject of a complaint or investigation made to the Ombudsman could be the subject of an investigation by any of the ombudsmen set out at Section 64(7).

5.11. The Bill also requires the Ombudsman to inform and consult persons set out at Section 65(2) in the event that a matter that he is entitled to investigate could also be the subject of an examination by any of those persons. Section 65 also allows the Ombudsman and certain persons to work jointly on matters.

5.12. Section 66 specifies what the Ombudsman is required to do in the event that he or she identifies that a matter could be the subject of an

examination by certain Commissioners and allows the Ombudsman and those Commissioners to work collaboratively.

- 5.13. Section 67 allows the Ombudsman and the Auditor General for Wales to work together, where appropriate.

Complaints-handling across public sector

Section 35 – Complaints-handling: statement of principles

- 5.14. Section 35 of the Bill requires the Ombudsman to publish a statement of principles concerning complaints-handling procedures of the listed authorities in Schedule 3 (other than private health services providers). The Ombudsman must consult on the first such statement and any material changes, and must obtain Assembly approval before publishing these.
- 5.15. Section 35(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 section 3 [of the Bill]*.
- 5.16. Section 35(2) requires listed authorities to have a complaints-handling procedure (or procedures) and these procedures must comply with the published statement of principles. Section 35(3) also requires a listed authority that 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.

Sections 36 to 41 – Model complaints-handling procedure

- 5.17. Section 36 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.
- 5.18. Sections 37 to 41 make further provision about model CHPs, including where they do not apply to listed authorities.

Investigating private health services

Section 10 – Matters which may be investigated

- 5.19. Sections 10(1)(d) and (2) of the Bill allow the Ombudsman to investigate certain matters relating to private medical treatment, including nursing

care ('private health services'). This has a significant effect on the interpretation of the Bill since any references to 'investigation' in Part 3 of the Bill may include an investigation into health services provided by private providers. For example, the duty to publish a report of investigations under section 20 would apply where the Ombudsman has investigated a private health services provider.

- 5.20. Section 10(2) of the Bill defines the circumstances in which the Ombudsman can investigate private health services. These circumstances are:
- the person must have received medical treatment by way of relevant action (defined in section 10(4)) taken by a listed authority other than a private health services provider;
 - the person must have also received private health services; and
 - the Ombudsman cannot effectively or completely investigate the relevant action without also investigating the private health services.
- 5.21. Therefore, Section 10(2) acts as a check on the power to investigate private health services because it limits the circumstances in which the Ombudsman can investigate private health services.
- 5.22. Sections 11 to 14 set out further restrictions on matters that the Ombudsman can investigate.

6. Power to make subordinate legislation

6.1 The Bill gives powers to the Welsh Ministers to make subordinate legislation in the form of regulations. Table 2 sets out:

- a description of the powers in the Bill;
- why it is appropriate for the power to be delegated to the Welsh Ministers;
- the Assembly procedure that applies to the delegated power; and
- why it is appropriate for the delegated power to follow that Assembly procedure.

Table 2: Power to make subordinate legislation

Description of power	Appropriate to be delegated	Procedure	Appropriateness of procedure
<p>Section 5: this gives the Welsh Ministers the power to make regulations to change the criteria for own initiative investigations.</p>	<p>This power is suitable to be delegated because it allows the Welsh Ministers to make appropriate changes to the criteria, so that own initiative investigations always provide an effective remedy for injustice and hardship suffered by people.</p> <p>The Bill requires the Welsh Ministers to consult the Ombudsman and any other persons they think appropriate before making regulations under this section.</p>	<p>Affirmative</p>	<p>This is a power to amend primary legislation and to influence the scope of when own initiative investigations can be carried out.</p> <p>Therefore, regulations made under this section should be brought to the Assembly's attention and properly debated via the affirmative procedure.</p>
<p>Section 13: this gives the Welsh Ministers the power to make regulations to change the list of matters that the Ombudsman may not investigate</p>	<p>This power is suitable to be delegated because it allows the Welsh Ministers to make appropriate changes to the list of matters that the Ombudsman may not investigate.</p>	<p>Affirmative</p>	<p>This is a power to amend primary legislation and to change the scope of the matters the Ombudsman can investigate.</p>

Description of power	Appropriate to be delegated	Procedure	Appropriateness of procedure
under Part 3 of the Bill.	<p>This power has always been available in the 2005 Act and it has been used only once in a narrow way.</p> <p>The Bill requires the Welsh Ministers to consult the Ombudsman before making regulations under this section.</p>		<p>Therefore, regulations made under this section should be brought to the Assembly's attention and properly debated via the affirmative procedure.</p> <p>This provides an additional safeguard over and above the safeguard contained in the Bill that the Welsh Ministers must consult the Ombudsman.</p>
<p>Section 30: this gives the Welsh Ministers the power to make regulations to change the list of listed authorities.</p>	<p>This power is suitable to be delegated because it allows the Welsh Ministers to make appropriate changes to the list of listed authorities.</p> <p>This means that if the Assembly creates a new body that should be within the remit of the Ombudsman, it can be quickly included as a listed authority. Also, if a listed authority ceases to exist, then that entry can be quickly removed from the list.</p> <p>If regulations add a person as a listed authority, section 30(3) of the Bill allows those regulations to modify the application of the Act to that added person. This gives the Welsh Ministers flexibility to tailor</p>	Affirmative	<p>This is a power to amend primary legislation and to change the list of authorities the Ombudsman can investigate.</p> <p>Therefore, regulations made under this section should be brought to the Assembly's attention and properly debated via the affirmative procedure.</p> <p>This provides an additional safeguard over and above the safeguard contained in the Bill that the Welsh Ministers must consult the Ombudsman (in addition to the other restrictions on this power in section 31).</p>

Description of power	Appropriate to be delegated	Procedure	Appropriateness of procedure
	<p>certain parts of the Act to the newly added person.</p> <p>This power has always been available in the 2005 Act and it has been used only once in a narrow way (and it has never been used to tailor the 2005 Act to a newly added listed authority).</p> <p>The Bill requires the Welsh Ministers to consult the Ombudsman before making regulations under this section.</p> <p>The power in this section is also subject to the restrictions set out in section 31. For example, the power in section 30 cannot be used to omit the Welsh Government or the National Assembly for Wales Commission (see section 31(1)).</p>		
<p>Section 42: this gives the Welsh Ministers the power to make regulations to change the list of matters that the Ombudsman may not investigate under Part 5 of the Bill.</p>	<p>This power reflects the power in section 13, so the same reasons apply to delegating the power to the Welsh Ministers.</p> <p>This power has been available under the 2005 Act since it was inserted into that Act by the Social Services and Well-being (Wales) Act 2014. Therefore, this power was recently</p>	<p>Affirmative</p>	<p>This is a power to amend primary legislation and to change the scope of the matters the Ombudsman can investigate.</p> <p>Therefore, regulations made under this section should be brought to the Assembly's attention and properly debated</p>

Description of power	Appropriate to be delegated	Procedure	Appropriateness of procedure
	<p>scrutinised by the Assembly.</p> <p>Since this power was included in the 2005 Act, it has not been used.</p>		<p>via the affirmative procedure.</p> <p>This provides an additional safeguard over and above the safeguard contained in the Bill that the Welsh Ministers must consult the Ombudsman.</p>
<p>Section 45: this gives the Welsh Ministers the power to make regulations to change the criteria for own initiative investigations.</p>	<p>This power is suitable to be delegated because it allows the Welsh Ministers to make appropriate changes to the criteria, so that own initiative investigations always provide an effective remedy for injustice and hardship suffered by people.</p> <p>The Bill requires the Welsh Ministers to consult the Ombudsman and any other persons they think appropriate before making regulations under this section.</p>	Affirmative	<p>This is a power to amend primary legislation and to influence the scope of when own initiative investigations can be carried out.</p> <p>Therefore, regulations made under this section should be brought to the Assembly's attention and properly debated via the affirmative procedure.</p>
<p>Section 64: this gives the Welsh Ministers the power to make regulations to change the list of ombudsmen with whom the Ombudsman must consult and may co-operate.</p>	<p>This power is suitable to be delegated because it allows the Welsh Ministers to make appropriate changes to the list of other ombudsmen with whom the Ombudsman must consult and may co-operate.</p> <p>This means that, for example, if one of the current ombudsmen</p>	Affirmative	<p>This is a power to amend primary legislation and to change the list of ombudsmen with whom the Ombudsman must consult and may co-operate.</p> <p>Therefore, regulations made under this section should be brought to the Assembly's attention</p>

Description of power	Appropriate to be delegated	Procedure	Appropriateness of procedure
	<p>changes name or ceases to exist, the list in section 64(7) can be amended accordingly. Alternatively, if a new ombudsman is created and that ombudsman has functions relating to investigating complaints, then that new ombudsman should be quickly added to the list of other ombudsmen with whom the Ombudsman should consult.</p> <p>This power has been available under the 2005 Act since it was inserted into that Act by the Social Services and Well-being (Wales) Act 2014. Therefore, this power was recently scrutinised by the Assembly.</p> <p>Since this power was included in the 2005 Act, it has not been used.</p>		<p>and properly debated via the affirmative procedure.</p> <p>This provides an additional safeguard over and above the safeguard contained in the Bill that a person may only be added to the list if they have functions relating to investigating complaints.</p>
<p>Section 65: this gives the Welsh Ministers the power to make regulations to change the list of persons with whom the Ombudsman must consult and commissioners with whom the Ombudsman may work jointly.</p>	<p>This power is suitable to be delegated because it allows the Welsh Ministers to make appropriate changes to the list of persons with whom the Ombudsman must consult and commissioners with whom the Ombudsman may work jointly.</p> <p>For example, if the Assembly creates a new</p>	<p>Affirmative</p>	<p>This is a power to amend primary legislation and to change the list of persons with whom the Ombudsman must consult and commissioners with whom the Ombudsman may work jointly.</p> <p>Therefore, regulations made under this section should be</p>

Description of power	Appropriate to be delegated	Procedure	Appropriateness of procedure
	<p>commissioner or regulator, then that new commissioner or regulator should be quickly added to the list so that joint working and efficiency can be ensured.</p> <p>This power has been available under the 2005 Act since it was inserted into that Act by the Social Services and Well-being (Wales) Act 2014. Therefore, this power was recently scrutinised by the Assembly.</p> <p>Since this power was included in the 2005 Act, it has not been used.</p>		<p>brought to the Assembly's attention and properly debated via the affirmative procedure.</p>
<p>Section 75: this gives the Welsh Ministers the power to bring the Act into force.</p>	<p>This power is suitable to be delegated because it allows the Act to come into force at the right time, which is important given the new powers that are included in the Bill (and to allow the Welsh Ministers to make any transitional arrangements that are needed when moving to from the 2005 Act regime to this new regime).</p>	<p>No procedure</p>	<p>It is standard for commencement orders to have no procedure.</p>
<p>Section 76(1): This gives the Welsh Ministers the power to define "relevant</p>	<p>This allows regulations to capture the administrative functions of specific Welsh tribunals for the narrow</p>	<p>Affirmative</p>	<p>Although the scope of this power is narrow, it is still a power to change primary legislation.</p>

Description of power	Appropriate to be delegated	Procedure	Appropriateness of procedure
<p>tribunal” in regulations.</p>	<p>purpose of section 10(7) as read with section 10(4)(e).</p> <p>This power has always been available in the 2005 Act and it has been used only once (to specify that the valuation tribunal is a relevant tribunal).</p>		<p>Therefore, regulations made under this section should be brought to the Assembly’s attention and properly debated via the affirmative procedure.</p> <p>This provides an additional safeguard over and above the safeguard contained in the Bill that the Welsh Ministers must consult such persons as they consider appropriate.</p>
<p>Section 76(3): this gives the Welsh Ministers the power to amend certain defined terms in the Bill, including the definitions of “family health service provider in Wales”, “independent provider in Wales” and “social landlord in Wales”.</p>	<p>This power is suitable to be delegated because it allows the Welsh Ministers to make appropriate changes to these definitions when, for example, there is a change in the landscape of general medical services contracts or there is a change in the way that primary medical services are delivered under the National Health Service (Wales) Act 2006.</p> <p>This power has always been available in the 2005 Act and it has been used in a very narrow way (for example, the definition of “family health service provider in Wales” was amended in order to bring it in line with changes made to the</p>	<p>Affirmative</p>	<p>This is a power to amend certain definitions that are in primary legislation.</p> <p>Therefore, regulations made under this section should be brought to the Assembly’s attention and properly debated via the affirmative procedure.</p> <p>This provides an additional safeguard over and above the safeguard contained in the Bill that the Welsh Ministers must consult such persons as they consider appropriate.</p>

Description of power	Appropriate to be delegated	Procedure	Appropriateness of procedure
	<p>Health Service Commissioners Act 1993).</p> <p>The Bill requires the Welsh Ministers to consult appropriate persons before making regulations under this section.</p>		
<p>Section 77: this gives the Welsh Ministers the power to modify the application of the Act to former health care providers, social landlords, social care providers and palliative care providers.</p>	<p>This power is suitable to be delegated because it allows the Welsh Ministers to modify appropriately the application of the Act where a complaint is made against a person who was at the time of the action complained of a family health service provider in Wales, an independent provider in Wales or a social landlord in Wales but subsequently ceased to be such a listed authority.</p> <p>For example, the sections of the Act relating to publicising reports may need to be modified in their application to these providers.</p> <p>This power was originally included in the 2005 Act and has since been extended by the Social Services and Well-being (Wales) Act 2014, so the Assembly has recently scrutinised this extended power.</p>	<p>Affirmative</p>	<p>This is a power to amend certain definitions that are in primary legislation.</p> <p>Therefore, regulations made under this section should be brought to the Assembly's attention and properly debated via the affirmative procedure.</p>

Description of power	Appropriate to be delegated	Procedure	Appropriateness of procedure
	The power in this section has not been used.		
Section 78: this gives the Welsh Ministers power to make consequential, transitional etc. provisions.	This power is suitable to be delegated because it allows the Welsh Ministers to make consequential etc. provision in the circumstances set out in section 78(1).	Affirmative	It is appropriate that powers of this nature are given proper scrutiny. Therefore, regulations made under this section should be brought to the Assembly's attention and properly debated via the affirmative procedure.
Schedule 5, paragraph 1: this gives the Welsh Ministers power to make an order under the Care Standards Act 2000, which make provision for the Ombudsman and the Children's Commissioner for Wales to work collaboratively.	This power is suitable to be delegated because it allows the Welsh Ministers to make tailor-made provisions that will allow the Ombudsman and the Children's Commissioner for Wales to work together effectively.	Affirmative	This is a power to extend the scope of collaborative working between the Ombudsman and the Children's Commissioner for Wales. Therefore, the order should be brought to the Assembly's attention and properly debated via the affirmative procedure.

7. Charge on the Welsh Consolidated Fund

7.1 Standing Order 26.6(xi) requires that, where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, the Explanatory Memorandum includes a report of the Auditor General for Wales setting out his or her views on whether the charge is appropriate.

7.2 In providing evidence to the Finance Committee's Inquiry into the consideration of the Ombudsman's powers, the Auditor General for Wales said:

In terms of Standing Order 26.6 (viii)[(xi)], I do not think it should be necessary or likely for the proposals put forward by the Ombudsman to require provision to be made for charging directly on the Fund. As you know, direct charge provisions enable funds to be paid without further Assembly approval (in the form of budget motions), and are appropriate for enabling certainty of payment, such as for indemnities and salaries of constitutionally significant offices (such as that of the Presiding Officer). The Ombudsman's proposals do not seem to relate to that kind of matter. One of the five areas put forward is termed "Complaints Standards Authority", but I understand that this is intended to be a brand for the proposed model complaints policy work, rather than a proposal for a new public body that might require provision for direct charges.³²

7.3 In line with the advice, this Explanatory Memorandum does not include a report of the Auditor General for Wales in respect of the appropriateness of the charge on the Welsh Consolidated Fund.

³² National Assembly for Wales, Finance Committee. Written evidence PSOW 07 – Auditor General for Wales, 19 February 2015. Available at: <http://www.senedd.assembly.wales/documents/s37911/PSOW%2007%20-%20Auditor%20General%20for%20Wales.pdf>

8. Table of derivations

8.1 This chapter sets out a guide to the derivation of each section of the Bill.

8.2 Most of the sections of the Bill derive from the Public Services Ombudsman (Wales) Act 2005 ('the 2005 Act'). Some sections derive from the Scottish Public Services Ombudsman Act 2002 ('the 2002 Act') and the Public Services Ombudsman Act (Northern Ireland) 2016 ('the 2016 Act'). Some sections are new.

8.3 Where a section of the Bill derives from the 2005 Act, the 2002 Act or the 2016 Act and the modification is significant, this is indicated in Table 3.

Table 3: Table of Derivations

Section of the Bill	Derived from
PART 1	
1 Overview	New
PART 2	
2 The Public Services Ombudsman for Wales	New
PART 3	
3 Power to investigate complaints	Section 2 of the 2005 Act
4 Power to investigate on own initiative	Section 8 of the 2016 Act, but with significant modification
5 Criteria for own initiative investigations	Section 9 of the 2016 Act, but with significant modification
6 Alternative resolution of matters	Section 3 of the 2005 Act
7 Who can complain	Section 4 of the 2005 Act
8 Requirements: complaints made to the Ombudsman	Section 5 of the 2005 Act, but with significant modification
9 Requirements: complaints referred to the Ombudsman	Section 6 of the 2005 Act, but with significant modification
10 Matters which may be investigated	Section 7 of the 2005 Act, but with significant modification
11 Exclusion: matters not relating to Wales	Section 8 of the 2005 Act
12 Exclusion: other remedies	Section 9 of the 2005 Act
13 Other excluded matters	Section 10 of the 2005 Act
14 Decisions taken without maladministration	Section 11 of the 2005 Act
15 Decisions not to investigate or to discontinue investigation	Section 12 of the 2005 Act
16 Investigation procedure	Section 13 of the 2005 Act, but with significant modification

Section of the Bill	Derived from
17 Information, documents, evidence and facilities	Section 14 of the 2005 Act
18 Obstruction and contempt	Section 15 of the 2005 Act
19 Power to demand costs from private health services providers	New
20 Reports of investigations	Section 16 of the 2005 Act
21 Publicising reports	Section 17 of the 2005 Act
22 Publicising reports: health care providers	Section 18 of the 2005 Act
23 Action following receipt of a report: investigation of a listed authority	Section 19 of the 2005 Act
24 Action following receipt of a report: investigation of a private health services provider	New
25 Non-action following receipt of a report	Section 20 of the 2005 Act
26 Reports: alternative procedure	Section 21 of the 2005 Act
27 Special reports	Section 22 of the 2005 Act
28 Special reports: supplementary	Section 23, but with significant modification
29 Special reports relating to the Welsh Government and the National Assembly for Wales Commission	Section 24 of the 2005 Act
30 Listed authorities	Section 28 of the 2005 Act
31 Restrictions on power to amend Schedule 3	Section 29 of the 2005 Act
32 Provisions in regulations adding persons to Schedule 3	Section 30 of the 2005 Act, but with significant modification
33 Power to issue guidance	Section 31 of the 2005 Act
34 Compensation for the person aggrieved	Section 34 of the 2005 Act
PART 4	
35 Complaints-handling: statement of principles	Section 16A of the 2002 Act
36 Model complaints-handling procedures	Section 16B of the 2002 Act
37 Model complaints-handling procedures: specification of listed authorities	Section 16C of the 2002 Act
38 Declarations of non-compliance	Section 16D of the 2002 Act
39 Submission of description of complaints-handling procedures: general	Section 16E of the 2002 Act
40 Complaints-handling procedures: promotion of best practice etc	Section 16G of the 2002 Act

Section of the Bill	Derived from
41 Complaints-handling procedures: application and interpretation	Section 16F of the 2002 Act, but with significant modification
PART 5	
42 Matters to which this Part applies	Section 34A of the 2005 Act
43 Power to investigate complaints	Section 34B of the 2005 Act
44 Power to investigate on own initiative	Section 8 of the 2016 Act, but with significant modification
45 Criteria for own initiative investigations	Section 9 of the 2016 Act, but with significant modification
46 Alternative resolution of matters	Section 34C of the 2005 Act
47 Who can complain	Section 34D of the 2005 Act
48 Requirements: complaints made to the Ombudsman	Section 34E of the 2005 Act, but with significant modification
49 Requirements: complaints referred to the Ombudsman	Section 34F, but with significant modification
50 Decisions not to investigate complaints or to discontinue investigations	Section 34G of the 2005 Act
51 Investigation procedure	Section 34H, but with significant modification
52 Information, documents, evidence and facilities	Section 34I of the 2005 Act
53 Obstruction and contempt	Section 34J of the 2005 Act
54 Investigation reports	Section 34K of the 2005 Act
55 Further publicity for investigation reports	Section 34L of the 2005 Act
56 Action following receipt of investigation reports	Section 34M of the 2005 Act
57 Reports: alternative procedure	Section 34N of the 2005 Act
58 Circumstances in which special reports may be prepared	Section 34O of the 2005 Act
59 Special reports	Section 34P of the 2005 Act
60 Further publicity for special reports	Section 34Q of the 2005 Act
61 Meaning of “care home” and “care home provider”	Section 34R of the 2005 Act
62 Meaning of “domiciliary care” and “domiciliary care provider”	Section 34S of the 2005 Act
63 Meaning of “palliative care service” and “independent palliative care provider”	Section 34T of the 2005 Act
PART 6	
64 Consultation and co-operation with other ombudsmen	Section 34U of the 2005 Act
65 Working jointly with specified persons	Section 34V of the 2005 Act, but with significant modification

Section of the Bill	Derived from
66 Working collaboratively with Commissioners	Section 34W, but with significant modifications
67 Working with the Auditor General for Wales	New
68 Disclosure of information	Section 34X of the 2005 Act
69 Disclosure prejudicial to safety of State or contrary to public interest	Section 34Y of the 2005 Act
70 Protection from defamation claims	Section 34Z of the 2005 Act
PART 7	
71 Welsh language strategy	New
72 Review of Act	New
73 Investigations commenced before section 3, 4, 43 and 44 come into force	New
74 Repeals and consequential amendments	New
75 Commencement	New
76 Interpretation	Section 41 of the 2005 Act
77 Former health care providers, social landlords, social care providers and palliative care providers: modifications	Section 42 of the 2005 Act
78 Consequential, transitional provisions etc	Section 43 of the 2005 Act
79 Regulations and directions	Section 44 of the 2005 Act
80 Short title	New
Schedule 1 (Public Services Ombudsman for Wales: appointment etc)	Schedule 1 to the 2005 Act
Schedule 2 (excluded matters: Part 3)	Schedule 2 to the 2005 Act
Schedule 3 (listed authorities)	Schedule 3 to the 2005 Act
Schedule 4 (excluded matters: Part 5)	Schedule 3A to the 2005 Act
Schedule 5 (consequential amendments)	New

PART 2 – REGULATORY IMPACT ASSESSMENT

9. Summary - Regulatory Impact Assessment

Purpose of this chapter

9.1. The Regulatory Impact Assessment ('RIA') presents the costs and benefits of the provisions in the Bill.

Summary

<p>Preferred option:</p> <p>To introduce a Bill that restates the existing Public Services Ombudsman (Wales) Act 2005 ('the 2005 Act') while also setting out new powers in four main areas, enabling the Ombudsman to:</p> <ul style="list-style-type: none"> - accept oral complaints; - undertake own initiative investigations; - investigate private medical treatment including nursing care ('private health services') in a public/private health pathway; and - undertake a role in relation to complaints-handling standards and procedures. 		
<p>Existing costs, 2017-18 (2005 Act)</p> <p>The Public Services Ombudsman for Wales Budget (Net Resource Expenditure) 2017-18³³:</p> <p>£4,248,000</p>		
<p>Do nothing:</p> <p>Potential impact on the Ombudsman of the cost of the projected future increase in caseload under the 2005 Act (Years 1-5)¹:</p>	<p>'Cost avoidance':</p> <p>The potential savings to the Ombudsman relating to the mitigation of the increase in caseload from provisions of the Bill (compared with those</p>	<p>Additional costs:</p> <p>Cost associated with the new powers in the Bill (Years 1-5):</p>

³³ National Assembly for Wales, Finance Committee, Scrutiny of Public Services Ombudsman for Wales's Estimate for 2017-18, November 2016. Available at: <http://www.assembly.wales/laid%20documents/cr-ld10815/cr-ld10815-e.pdf>

£2,870,229 to £8,076,621.	<p>under the 2005 Act) (Years 1-5):</p> <p>£2,634,258</p>	<p>Total cost: £1,825,400 to £1,951,910 of which additional costs to the Ombudsman (or 'direct' costs): £1,644,303</p>
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Note

The Ombudsman is required to include any additional requests for resource to meet the anticipated increases in caseload through annual budgets laid before the Finance Committee.

Costs

The new powers in the Bill will result in additional costs to the Ombudsman's office ('direct costs'). Other bodies within the Ombudsman's jurisdiction are also likely to incur additional costs as a result of its provisions ('indirect costs').

Direct costs

Ongoing (or recurrent) costs: The Ombudsman's office will incur additional ongoing costs resulting from the provisions in the Bill in respect of:

- an increase in the administrative costs of the Ombudsman's office arising from oral complaints and investigating private health services in a public/private health pathway; and
- the cost of additional resources required by the Ombudsman to carry out initiative investigations and fulfil a complaints-handling role.

Costs include:

- salary costs, including 'on costs', such as Employer National Insurance Contributions and pension contributions;
- professional fees, including the cost of specialist advice;
- office costs, including printing, stationery and IT; and
- other costs, such as training, travel and subsistence costs.

Transition costs: These relate to the one-off costs associated with the additional members of staff for the Ombudsman’s office. They include the expected cost of recruitment, office furniture and fittings and IT.

Indirect costs (or cost to other bodies)

Listed authorities (as set out at Schedule 3 of the Bill) will be affected by the provisions in the Bill and hence, are also likely to incur additional costs. Listed authorities include the Welsh Government and its sponsored bodies, local authorities (including town and community councils), the National Health Service, national park authorities, independent (or ‘private’) health service providers and registered social landlords (housing associations). These ‘indirect’ costs relate to the estimated increase in the number of cases made to the Ombudsman and from whom information would be requested prior to and during investigations.

Direct transition costs: £25,000	Direct ongoing costs: £1,619,303	Indirect transition costs: £10,362 to £31,020	Indirect ongoing costs: £170,735 to £276,587
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Values and benefits

The RIA has identified a range of potential benefits to members of the public and public bodies within jurisdiction arising from the provisions in the Bill. The unquantified benefits are set out in the Policy Options section of the RIA.

Indirect impacts and consequences

While they have not been quantified, information about the indirect impacts and consequences is set out in the section of the RIA for Costs and Benefits.

Key evidence, assumptions and uncertainties

More detail is set out in the section on the Costs and Benefits of the proposals.

10. Policy Options

Purpose of this chapter

- 10.1. This chapter sets out the policy options for new powers set out in the Bill as considered as part of the RIA.

Overview

- 10.2. The Bill restates the 2005 Act while also setting out new powers in four main areas. This section presents the options that have been considered in relation to the new powers.
- 10.3. The preferred option is to introduce legislation to extend the Ombudsman's powers to:
- accept oral complaints (Option 2);
 - undertake own initiative investigations (Option 2);
 - extend the Ombudsman's jurisdiction to investigate the element of private medical treatment including nursing care ('private health services) in a public/private health services pathway (Option 2); and
 - undertake a role in relation to complaints-handling standards and procedures (Option 3).

Power to accept oral complaints

- 10.4. Two options have been considered. The preferred is Option 2:

Option 1: Do nothing

- 10.5. The provisions of the 2005 Act would continue; Section 5 of which states that all complaints to the Ombudsman must be made or referred in writing. However, Section 2(4) of the 2005 Act sets out a discretionary power that allows the Ombudsman to accept a complaint other than in writing if deemed appropriate on a case-by-case basis.

Option 2: Amend the existing legislation to allow the Ombudsman to accept oral complaints as duly made (preferred option)

- 10.6. Amend the existing legislation to allow the Ombudsman to receive and act on complaints made orally or in writing, including via electronic formats. This would improve accessibility to the Ombudsman.

Power to undertake own initiative investigations

10.7. Two options have been considered. The preferred is Option 2.

Option 1: Do nothing

10.8. The provisions of the 2005 Act would continue. The Ombudsman would be able to investigate only complaints made and the scope of those investigations would be restricted to the parameters of the specific complaint.

Option 2: Amend the existing legislation to allow the Ombudsman to undertake own initiative investigations (preferred option)

- 10.9. The existing legislation be amended to give power to the Ombudsman to conduct own initiative investigations. The introduction of this power would bring the Ombudsman in line with the vast majority of other ombudsmen schemes throughout Europe and internationally. This power is expected be deployed in four scenarios:
- extending an investigation into a complaint to include another public body without needing a new complaint from the complainant (Scenario A);
 - findings from a complaint investigation prompts an investigation into other bodies to establish whether similar failings exist elsewhere (Scenario B);
 - investigation of an anonymous complaint (Scenario C); and
 - investigation across all, or part, of a sector of service delivery in light of concerns (Scenario D).
- 10.10. The Ombudsman is likely to undertake own initiative investigations such as those described in Scenario D only sparingly; those described in Scenarios A, B and C are likely to be initiated more frequently. Further information is set out at paragraphs 11.89 to 11.93.

Extend the Ombudsman's jurisdiction to enable the investigation of private health services

10.11. Three options have been considered. The preferred is Option 2.

Option 1: Do nothing

10.12. The provisions of the 2005 Act would continue and the Ombudsman would not be able to consider complaints about private medical treatment and nursing care unless commissioned by the NHS in Wales.

Option 2: Extend the Ombudsman's jurisdiction to allow investigation of complaints in a public/private health service pathway (preferred option)

10.13. To amend the legislation to extend the Ombudsman's jurisdiction to investigate the private health service where the patient has received medical treatment including nursing care from both a public and private provider, including cases where the patient commissioned the element of private health service. This would therefore allow the Ombudsman to investigate a whole complaint, removing the need for members of the public to make separate complaints (to the Ombudsman and the private health provider respectively) where they had received health treatment or nursing care in the public sector and had commissioned such services from private providers.

Option 3: Extend the Ombudsman's jurisdiction - all private healthcare providers

10.14. To amend the legislation to extend the Ombudsman's jurisdiction to investigate complaints about all private health service providers registered with Healthcare Inspectorate Wales.

Power to undertake a role in relation to complaints handling standards and procedures

10.15. Three options have been considered. The preferred is Option 3.

Option 1: Do nothing

10.16. The current arrangements would continue; adoption of the existing model complaints policy in Wales would be voluntary. The issues in relation to the lack of, or inconsistency in, data relating to complaints held by public bodies in Wales are likely to remain. In addition, no

scrutiny of complaints across the public sector in Wales would be undertaken and the associated lack of transparency would continue.

Option 2: Amend the existing legislation - minimum 'data only'

10.17. To amend the legislation to give power to the Ombudsman to undertake a 'data only' role. This would limit the complaints standards role, providing the Ombudsman with the powers to mandate consistent data collection by public authorities only.

Option 3: Amend the existing legislation to strengthen the Ombudsman's role in securing effective complaint-handling across the public sector in Wales (preferred option)

10.18. To amend the legislation to give power to the Ombudsman to undertake a complaints design, implementation, oversight and data collection role. This would include:

- publishing a statement of principles;
- publishing a model complaints-handling policy for listed authorities requiring regular consultation with relevant stakeholders; and
- requiring public bodies to collect and analyse data on complaints. In doing so, ensuring public bodies use standardised language when collecting data to facilitate comparison across sector(s).

11. Costs and benefits

Purpose of this chapter

- 11.1. This chapter presents an assessment of the costs and benefits associated with the options identified in chapter 10. It has been structured to set out information in respect of the following:
- background to the estimate of costs and benefits (paragraphs 11.2 and 11.3);
 - evidence on which the estimates are based (paragraphs 11.4 and 11.5);
 - engagement with stakeholders in calculation of the estimates (paragraphs 11.6 and 11.7);
 - executive summary (paragraphs 11.8 to 11.20); and
 - the assumptions and uncertainties relating to the estimates (paragraphs 11.21 to 11.58);
 - summary of costs and benefits that sets out detail about the calculations of the costs and benefits (paragraphs 11.59 to 11.140).

Background

- 11.2. This section sets out background information in respect of the estimate of costs and benefits of the Bill. In reporting the results of its consultation on the draft Public Services Ombudsman (Wales) Bill, in March 2016 the Finance Committee recommended that the Ombudsman contribute to a fully costed RIA to accompany the Draft Bill³⁴. This would inform the consideration of the Bill and allow its provisions to be tracked through future budgets presented by the Ombudsman to the Assembly. The Ombudsman presented the RIA to the Finance Committee Chair on 14 December 2016³⁵.
- 11.3. The Ombudsman gave evidence regarding the RIA to the Finance Committee at its meeting on 9 March 2017. Following the meeting, the

³⁴ National Assembly for Wales, Finance Committee, Consideration of the consultation on the Draft Public Services Ombudsman (Wales) Bill, March 2016. Available at: <http://www.assembly.wales/laid%20documents/cr-ld10644/cr-ld10644-e.pdf>

³⁵ Public Services Ombudsman for Wales, Regulatory Impact Assessment (RIA) for the Public Services Ombudsman (Wales) Bill, Public Services Ombudsman for Wales, December 2016. Available at: <http://senedd.assembly.wales/documents/s60322/FIN5-08-17%20P1%20OB3%20Research%20-%20Regulatory%20Impact%20Assessment%20for%20the%20Draft%20Public%20Services%20Ombudsman%20.pdf>

Finance Committee Chair wrote to the Ombudsman to request further information, specifically in respect of an estimate of the costs likely to be incurred by other public bodies affected by the provisions in the Bill (or ‘indirect’ costs). The Ombudsman provided this information to the Committee Chair on 28 April 2017³⁶. The Ombudsman also provided further information in response to the Committee Chair following the Finance Committee’s considerations of the Bill at its meeting on 17 May 2017.

Evidence

- 11.4. This section sets out information in respect of the evidence on which the estimate of the costs and benefits of the Bill are based. The Ombudsman commissioned a research company, OB3, to assist with the completion of a first draft RIA for the Bill. While noting the data limitations in quantifying the costs and benefits³⁷, OB3 prepared estimates in conjunction with the Ombudsman and in light of discussions with some public bodies affected by the provisions set out in the Bill.
- 11.5. The assessment of costs and benefits set out in this chapter builds on this information provided by the Ombudsman in December 2016, incorporating further information provided by the Ombudsman in April 2017 and June 2017 in response to the Finance Committee’s requests.

Stakeholder engagement

- 11.6. This section sets out the engagement with stakeholders in the calculation of the estimate of costs and benefits of the Bill. The Ombudsman’s staff and OB3 engaged with stakeholders, including some public bodies affected by the provisions in the Bill, in the course of collating information for the preparation of the RIA³⁸. Officers have:

³⁶ Public Services Ombudsman for Wales, Regulatory Impact Assessment (RIA) for the Draft Public Services Ombudsman (Wales) Bill, Supplementary Information. Available at: <http://senedd.assembly.wales/documents/s64291/Letter%20from%20the%20Public%20Services%20Ombudsman%20for%20Wales%20-%20Regulatory%20Impact%20Assessment%20-%2028%20April%202017.pdf>

³⁷ Public Services Ombudsman for Wales, Regulatory Impact Assessment (RIA) for the Public Services Ombudsman (Wales) Bill, Public Services Ombudsman for Wales, December 2016, Chapter 5. Available at: <http://senedd.assembly.wales/documents/s60322/FIN5-08-17%20P1%20OB3%20Research%20-%20Regulatory%20Impact%20Assessment%20for%20the%20Draft%20Public%20Services%20Ombudsman%20.pdf>

³⁸ Public Services Ombudsman for Wales, Regulatory Impact Assessment (RIA) for the Public Services Ombudsman (Wales) Bill, Public Services Ombudsman for Wales, December 2016 (Chapter 5) and Regulatory Impact Assessment (RIA) for the Draft Public Services Ombudsman (Wales) Bill, Supplementary Information, paragraph 2.

Available at: <http://senedd.assembly.wales/documents/s60322/FIN5-08-17%20P1%20OB3%20Research%20-%20Regulatory%20Impact%20Assessment%20for%20the%20Draft%20Public%20Services%20Ombudsman%20.pdf> and Available at:

<http://senedd.assembly.wales/documents/s64291/Letter%20from%20the%20Public%20Services%20Ombudsman%20for%20Wales%20-%20Regulatory%20Impact%20Assessment%20-%2028%20April%202017.pdf>

- discussed and exchanged emails with the Head of Policy (Improvement and Governance) at the Welsh Local Government Association, the Head of Healthcare Quality Division at the Welsh Government, the Chair of the Welsh Corporate Complaints Group and the Acting Assistant Director of Patient Experience at Cardiff and Vale University Health Board to explore data sources and generate best estimates;
- sought information from the 22 local authority complaints officers in Wales via the Chair of the Welsh Corporate Complaints Group;
- requested information from NHS Wales organisations via the NHS Wales Listening and Learning from Feedback Group;
- sought views at a meeting of the Welsh Corporate Complaints Group on 26 April 2017 in respect of best estimates of the likely indirect costs arising from provisions in the Bill;
- sought input from the Auditor General for Wales in respect of direct and indirect costs and benefits; and
- reviewed the results of research by the Northern Ireland Assembly's Research and Information Service (RaISe) into the cost implications of the Northern Ireland Public Services Ombudsman Bill.

11.7. Officers have also reviewed the responses to the inquiry and consultation of the Finance Committee in the Fourth Assembly in respect of the consideration of the powers of the Ombudsman³⁹.

Executive Summary

11.8. The executive summary provides an overview of the costs of doing nothing and implementing the options considered for the RIA, as set out at Chapter 10. Further detail is set out in the summary of costs and benefits at paragraphs 11.59 to 11.140. A summary of the estimate of total costs and benefits is also set out at Chapter 9.

³⁹ Public Services Ombudsman for Wales, Regulatory Impact Assessment (RIA) for the Public Services Ombudsman (Wales) Bill, Public Services Ombudsman for Wales, December 2016, paragraph 5.2. Available at: <http://senedd.assembly.wales/documents/s60322/FIN5-08-17%20P1%20OB3%20Research%20-%20Regulatory%20Impact%20Assessment%20for%20the%20Draft%20Public%20Services%20Ombudsman%20.pdf>

Do nothing

- 11.9. The Ombudsman's Estimate for 2017-18 sought net resource expenditure of £4,248,000, with a net cash requirement of £4,460,000 to *provide the current level of service*⁴⁰.
- 11.10. The estimate of the cost of not extending the Ombudsman's powers has been calculated using the Ombudsman's projections for his caseload and reported expenditure set out in his Annual Report 2015-16. The estimate of the total related direct cost for the five years to 2022-23 ranges from £2,870,229 to £8,076,621.

'Cost avoidance'

- 11.11. The provisions of the Bill are expected to mitigate the increase in the Ombudsman's caseload. The estimate of the cost of the reduced caseload (or 'cost avoidance') over five years is £2,634,258.

Direct costs (or those incurred by the Ombudsman and his office)

Direct costs - Ongoing (or recurrent) costs

- 11.12. The new provisions set out in the Bill are expected to increase the Ombudsman's caseload, that is, the number of enquiries and/or complaints made to him or her. The power to undertake a role in relation to complaints-handling standards and procedures will also require additional resources.
- 11.13. The ongoing revenue costs to the Ombudsman, or 'direct costs', comprise salaries for additional members of staff and an uplift for upgrading existing posts to reflect additional responsibilities required of the post holder. They also include office and administrative costs, such as professional fees, specialist advice, support costs for training, travel and subsistence expenses, stationary and IT.
- 11.14. The direct ongoing cost for the preferred options for the additional new powers in the Bill are set out at Table 4.

⁴⁰ Public Services Ombudsman for Wales: Estimate 2017/18, October 2016, paragraph 5.10. Available at: <http://www.senedd.assembly.wales/documents/s54586/FIN5-07-16%20P1%20Public%20Services%20Ombudsman%20for%20Wales%20Estimate%20for%20the%20Financial%20Year%202017-18.pdf>

Table 4: Ongoing direct revenue costs arising from the Bill (preferred options), Years 1 to 5 (£)

Provision	Year 1 £	Year 2 £	Year 3 £	Year 4 £	Year 5 £	Years 1-5 £
Accept oral complaints	41,000	41,350	41,703	42,060	42,421	208,534
Enable own initiative investigations	137,000	138,150	139,312	140,485	141,670	696,617
Extend jurisdiction to investigate the private health service element in a public/private health service pathway	3,507	3,507	3,507	3,507	3,507	17,535
Complaints design, implementation oversight and data collection role	137,000	138,150	139,312	140,485	141,670	696,617
Total additional direct costs	318,507	321,157	323,834	326,537	329,268	1,619,303

Direct costs - transition

11.15. The Ombudsman is expected to incur transition, or one-off, costs of approximately £25,000. These relate to one-off costs for additional members of staff to be recruited to the Ombudsman's office. They include the expected cost of recruitment, office furniture and fittings and IT. It is assumed that these will be incurred in the first year following enactment of the legislation.

Direct costs - summary

11.16. Overall, the RIA suggests the total direct cost to the Ombudsman arising from provisions in the Bill over the five-year period (including transition and ongoing costs) to be £1,644,303.

Indirect costs – ongoing (or recurrent) costs

11.17. Indirect costs are those incurred by other bodies affected by the provisions in the Bill. The ongoing and transition costs relate to staff time incurred by public bodies in responding to the Ombudsman's requests for information in respect of complaints and in the course of investigations carried out. The indirect costs for the proposed powers to allow the Ombudsman to accept oral complaints as duly made and to undertake own initiative investigations are expected to result in ongoing costs to the public bodies affected by the Bill. The nature of complaints, and any arising investigations, differ. As such, the time taken to deal with them by complaints handling staff also varies. Given this, an estimate has been made of the range of additional time, and hence ongoing total cost to all public bodies under the Ombudsman's jurisdiction as a result of provisions in the Bill. This has been quantified

to be between £33,471 and £54,222 per annum and between £170,735 and £276,587 for five years. As noted at paragraph 11.57, the cost impact on private health service providers is not known.

Indirect costs – transition costs

11.18. The preferred proposal to amend the legislation to give the Ombudsman a role in complaints handling standards and procedures is also likely to result in additional costs for the public bodies within the Ombudsman’s jurisdiction. These are, however, likely to be transition or ‘one-off’ costs for staff time to make required changes to relevant databases to capture complaints data in a more consistent way. The total cost for all public bodies and housing associations has been estimated as between £10,362 and £31,020.

Summary – Direct and Indirect costs (ongoing and transition)

11.19. Table 5 sets out a summary of the estimated total cost for the preferred proposals for the five-year period. This sets out the estimated cost for the Ombudsman (or ‘direct’ costs) and those incurred by other bodies affected by the provisions in the Bill (or ‘indirect’ costs).

Table 5: Total costs arising from the Bill (preferred options), Years 1 to 5 (£)

Provision	Direct costs ^a		Indirect Costs ^b				Direct and Indirect Costs ^c	
	Ongoing (5 years)	Transition	Ongoing (5 Years)		Transition		TOTAL	
	£	£	Low unit cost £	High unit cost £	Low unit cost £	High unit cost £	Low unit cost £	High unit cost £
Accept oral complaints	208,534	5,000	82,437	111,544	-	-	295,971	325,078
Enable own initiative investigations	696,617	10,000	88,298	165,043	-	-	794,915	871,660
Extend jurisdiction to investigate the private health service element in a public/private health service pathway	17,535	-	-	-	-	-	17,535	17,535
Complaints design, implementation oversight and data collection role	696,617	10,000	-	-	10,362	31,020	716,979	737,637
Total	1,619,303	25,000	170,735	276,587	10,362	31,020	1,825,400	1,951,910

Notes

- a Direct costs are those incurred by the Ombudsman from the provisions in the Bill
- b Indirect costs are those incurred by other bodies affected by the provisions in the Bill
- c Estimated total cost of the preferred proposals to introduce legislation to extend the Ombudsman’s powers (as set out at Chapter 10).

Values and benefits

11.20. While such values and benefits to listed authorities have not been quantified, there is potential for the provisions within the Bill to realise cost savings to the wider public sector. The majority of the estimated savings are expected from provisions in the Bill that drive improvement in public services. The value of the savings is not known.

Assumptions and uncertainties

11.21. This section sets out the assumptions and uncertainties relating to the estimate of the costs and benefits of the Bill. The quantified costs and benefits should be considered as the best estimates of the expected costs arising from the powers set out in the Bill. A description of the main assumptions adopted in the calculations are set out in the following paragraphs.

11.22. All figures have been calculated to the nearest pound.

- 11.23. For the purpose of the RIA, calculations have been based on a commencement date of 1 April 2018 and transition (or ‘one-off’ costs) will be incurred in the first year following enactment.
- 11.24. The costs are set out for a five-year period since estimates can be calculated for this period with reasonable certainty. The Ombudsman expects that a ‘steady state’ will be reached on costs and benefits relating to the new powers after three years from the date on which the provisions come into effect. Ongoing (or recurrent) costs will continue beyond the five-year period.
- 11.25. A general inflationary factor has not been applied for the five-year period for which costs and benefits have been provided. A discount rate has not been applied to present estimates in present value terms.
- 11.26. For staff costs, the rates for Employer contributions for National Insurance and pensions for 2017-18 have been applied for the estimates for the five-year period.

Do nothing

- 11.27. The Finance Committee in the Fifth Assembly scrutinises the work of the Ombudsman and the financial considerations of his office. Estimates are required to set out the resources required for the Ombudsman to carry out his statutory functions, with the exception of the Ombudsman’s own salary (and associated costs), which are directly charged on the Welsh Consolidated Fund.
- 11.28. The Estimate for 2017-18 stated that the Finance Committee in the Fourth Assembly asked the Ombudsman not to alter the criteria for taking on complaints due to the increasing number of complaints and budget constraints⁴¹. The Estimate 2017-18 sought net resource expenditure of £4,248,000, with a net cash requirement of £4,460,000 to *provide the current level of service*⁴². Subject to the comments and recommendations in its report⁴³, the Finance Committee supported the overall request for resource.

⁴¹ National Assembly for Wales, Finance Committee, Scrutiny of Public Services Ombudsman for Wales’s Estimate for 2017-18, November 2016, paragraph 7. Available at:

<http://www.assembly.wales/laid%20documents/cr-ld10815/cr-ld10815-e.pdf>

⁴² Public Services Ombudsman for Wales: Estimate 2017/18, Paragraph 5.10. Available at:

<http://www.senedd.assembly.wales/documents/s54586/FIN5-07-16%20P1%20Public%20Services%20Ombudsman%20for%20Wales%20Estimate%20for%20the%20Financial%20Year%202017-18.pdf>

⁴³ National Assembly for Wales, Finance Committee, Scrutiny of Public Services Ombudsman for Wales’s Estimate for 2017-18, November 2016. Available at:

<http://www.assembly.wales/laid%20documents/cr-ld10815/cr-ld10815-e.pdf>

- 11.29. The estimate of the cost of not extending the Ombudsman's powers has been calculated using the Ombudsman's projections for this caseload and reported expenditure set out in his Annual Accounts 2015-16.
- 11.30. The projections for the Ombudsman's caseload assume an increase of 12 per cent per annum. This compares with the average annual rate of 17 per cent per annum over the period 2010-11 to 2015-16. The Ombudsman's Annual Report and Accounts for 2016-17 show an increase of 13 per cent on the prior year, 2015-16. While the Ombudsman advises that there is no evidence that the trend will reverse⁴⁴, the estimates also set out the number and related cost of an increase in caseload of 5 per cent per annum, to which the Ombudsman's Estimate 2017-18 referred⁴⁵.
- 11.31. The estimate of the cost of the increase in the caseload assumes that the Ombudsman would reflect additional costs in the annual estimate submitted to the Assembly. However, the Ombudsman advises that it has not been customary to link his annual budget increase to the growth in caseload in this proportionate way⁴⁶. In his Estimate for the Financial Year 2017-18, the Ombudsman notes that - while the caseload has increased by 112 per cent in the period 2010-11 to 2015-16 - unit costs have fallen by 65 per cent⁴⁷. The Ombudsman advises that he continues to review working practices and organisation structure to accommodate the growth in caseload. The Ombudsman also notes his commitment to limit the financial resource of his office to 0.03 per cent of the Welsh block⁴⁸.

'Cost avoidance'

- 11.32. By identifying issues or concerns early and by extending investigations, the Ombudsman advises that he can prevent further failings that would result in additional complaints. The Ombudsman notes that this applies locally or at an all-Wales level. This increases the focus on

⁴⁴ Information provided by the Public Services Ombudsman for Wales, June 2017

⁴⁵ National Assembly for Wales, Finance Committee, Scrutiny of Public Services Ombudsman for Wales's Estimate for 2017-18, November 2016, paragraph 10. Available at:

<http://www.assembly.wales/laid%20documents/cr-ld10815/cr-ld10815-e.pdf>

⁴⁶ Information provided by the Public Services Ombudsman for Wales (August 2017)

⁴⁷ Public Services Ombudsman for Wales Estimate for the Financial Year 2017/18, October 2016, paragraph 5.2. Available at:

<http://www.senedd.assembly.wales/documents/s54586/FIN5-07-16%20P1%20Public%20Services%20Ombudsman%20for%20Wales%20Estimate%20for%20the%20Financial%20Year%202017-18.pdf>

⁴⁸ Public Services Ombudsman for Wales Estimate for the Financial Year 2017/18, October 2016, paragraph 5.5. Available at:

<http://www.senedd.assembly.wales/documents/s54586/FIN5-07-16%20P1%20Public%20Services%20Ombudsman%20for%20Wales%20Estimate%20for%20the%20Financial%20Year%202017-18.pdf>

improvements and prevention rather than trying to put things right after they have gone wrong.

- 11.33. The Ombudsman anticipates that improvements in complaints-handling (primarily from complaints standards) and wider, quicker and earlier learning from complaints (primarily from the power to undertake own initiative investigations) will also avoid part of the projected increase in the caseload.
- 11.34. The Ombudsman has prepared projections of his caseload under the Bill. These projections are based on the experience of the Ombudsman's staff and research undertaken by them, including consideration of the impact of other ombudsman schemes. The projections reflect the expectation that 'steady state' will be reached after three years and hence, the projections of the caseload in the first two years show the phased effect of the introduction of the new powers. In 2020-21 and by the end of the Fifth Assembly, the Ombudsman estimates a reduction in caseload from the power to undertake own initiative investigations and from the complaints-handling role equivalent to 5 per cent and 10 per cent respectively of complaints made in 2015-16. The Ombudsman anticipates a continued growth in the effect of the new powers over the subsequent two years.
- 11.35. The value of 'cost avoidance' has been calculated by applying a 'unit cost' to the decrease in the number of cases when comparing projections of an annual increase of 12 per cent in complaints under the 2005 Act with the estimated caseload under the Bill. This reflects the best estimate of the impact on the Ombudsman's caseload from the preferred options in respect of complaint-handling and the power to undertake own initiative investigations.

Direct costs

- 11.36. The estimates of cost to the Ombudsman (or 'direct' costs) reflect the projections of the caseload to 2022-23, including the impact of the provisions of the Bill on them. They also reflect a number of assumptions informed by the experience of the Ombudsman's staff and his office's analysis of cases⁴⁹, including:
- the timing, scope, complexity and scale of complaints and the time required in handling them;

⁴⁹ Information provided by the Public Services Ombudsman for Wales (May 2017)

- 25 additional complaints would be made each year in light of the proposed provision for the Ombudsman to accept oral complaints and that an investigation would be carried out in respect of a quarter of these (or six investigations each year). Further details are set out at paragraph 11.73;
- the Ombudsman will undertake between 10 and 15 own initiative investigations each year. One or two of these will be initiated to investigate all, or part, of a service delivery in light of concerns;
- the unit cost per complaint for direct revenue costs reflects reported expenditure in the Ombudsman's Annual Accounts for 2015-16.

- 11.37. For the purpose of calculating the estimate of costs, it has been assumed that the provisions will be in force from 1 April 2018.
- 11.38. The costs are set out for a five-year period since estimates can be calculated for this period with reasonable certainty. Ongoing (or recurrent) costs will, however, continue beyond five years.
- 11.39. Salary and related costs are based on mid-point of the relevant salary range. Staff costs include Employer National Insurance contributions (at 13.8 per cent⁵⁰). Two pension schemes are operated by the Ombudsman on behalf of current staff: the Principal Civil Service Pension Scheme (PCSPS); and the Cardiff and Vale of Glamorgan Pension Fund⁵¹. It is assumed that staff recruited to the new posts will be members of the PCSPS pension scheme and therefore, salary costs include the related employer contributions. The employer contribution rate for PCSPS member pensionable pay for salaries ranging from £22,001 and £74,500 is between 20.9 per cent and 22.1 per cent⁵².
- 11.40. A single overall percentage for Employer National Insurance and pension contributions of 35 per cent has been included in calculating estimated costs.
- 11.41. Staff pay is linked to the pay awards made to employees within Local Government in England and Wales⁵³. An annual increase of one per cent to reflect rises in the 'cost of living' has been included in the estimate of salary costs for years two to five. This reflects the annual pay award to Local Government in England and Wales 2014-15, which covered the

⁵⁰ HMRC, Rates and allowances: National Insurance contributions Table 2.1. Available at: <https://www.gov.uk/government/publications/rates-and-allowances-national-insurance-contributions/rates-and-allowances-national-insurance-contributions> [accessed June 2017]

⁵¹ Public Services Ombudsman for Wales, Annual Accounts 2015-16, page 54. Available at: http://www.ombudsman-wales.org.uk/~media/Files/AnnualAccounts_en/Annual%20Accounts%20201516%20E.ashx

⁵² Civil Service Pensions, EPN389 - Employer Contribution Rates from April 2015. Available at: <http://www.civilservicepensionscheme.org.uk/employers/employer-pension-notice/epn389/> [accessed June 2017]

⁵³ Public Services Ombudsman for Wales, Annual Accounts, 2015-16, page 29. Available at: http://www.ombudsman-wales.org.uk/~media/Files/AnnualAccounts_en/Annual%20Accounts%20201516%20E.ashx

two-year period April 2014 to March 2016. The estimates do not reflect any other potential movements in pay scales.

- 11.42. The Ombudsman will publicise the changes brought about by the Bill as part of his ongoing work, with notifications incorporated into existing communication and material and so any additional costs will be negligible. These will be accommodated within existing resources.

Indirect costs

- 11.43. Listed authorities (as set out at Schedule 3 of the Bill) will be affected by the provisions in the Bill and hence, are also likely to incur additional costs. Listed authorities include the Welsh Government and its sponsored bodies, local authorities (including town and community councils), the National Health Service, national park authorities, independent (or 'private') health service providers. The costs, referred to as 'indirect' costs, relate to the estimated increase in the number of cases made to the Ombudsman, who would request information from listed authorities prior to and during investigations
- 11.44. The following paragraphs set out the main assumptions reflected in the estimates of the costs for other public bodies and private health service providers affected by the provisions in the Bill (or 'indirect' costs).
- 11.45. The estimate of the indirect costs for other public bodies are set out in Tables 13, 17 and 19. The Ombudsman advises that they have been calculated from work with health board and local authority representatives and reflect the broad consensus of likely impact. The Ombudsman notes that, between them, local authorities and NHS bodies in Wales represented 86 per cent of all complaints⁵⁴.
- 11.46. It is not possible to predict in respect of which public bodies the increase in the future caseload will relate. Therefore, it is assumed that it will be evenly distributed across public service providers within the Ombudsman's jurisdiction, as will the related indirect costs.
- 11.47. Other public bodies within jurisdiction are assumed to absorb the ongoing and transition costs i.e. existing staff would carry out the additional work arising from provisions in the Bill and additional resources or funding would not be provided. While it is not possible to say which of the listed authorities might be involved, the Ombudsman

⁵⁴ Public Services Ombudsman for Wales, Regulatory Impact Assessment (RIA) for the Draft Public Services Ombudsman (Wales) Bill, Supplementary Information, page 4. Available at: <http://senedd.assembly.wales/documents/s64291/Letter%20from%20the%20Public%20Services%20Ombudsman%20for%20Wales%20-%20Regulatory%20Impact%20Assessment%20-%2028%20April%202017.pdf>

advises that the consultation work undertaken by OB3 with health boards and local authority claimants' staff supported the view that the additional work could generally be accommodated within their existing resources⁵⁵.

- 11.48. As with direct revenue costs, the estimates of staff costs reflect an annual increase of one per cent for rises in the 'cost of living'. The estimates do not include any indirect costs (ongoing or transition) that would be associated with public bodies employing additional staff to undertake the increase in duties related to complaints and investigations arising from provisions in the Bill.
- 11.49. Information in respect of the indirect costs for private health service providers is set out at paragraph 11.57.

Indirect costs – power to accept oral complaints and undertake own initiative investigations

- 11.50. The best estimate of indirect costs associated with the proposed new powers have been informed by the experience of the Ombudsman and from discussions with stakeholders. The estimate has been calculated using a 'unit cost' for a complaint. This unit cost reflects the following assumptions:
- no two complaints made to the Ombudsman are identical. Nor are two investigations undertaken by the Ombudsman.
 - complaints relate to different service areas and the amount of time involved in handling them varies greatly. For instance, complaints in relation to health, social services, education and planning typically take longer to process and handle than those relating to other services. As such, estimated costs reflect an 'average' time involved in handling a complaint or investigation.
 - job titles vary between bodies within the Ombudsman's jurisdiction. The job titles reflected in the RIA are intended to be broadly representative of the level of officers involved in dealing with complaints and investigations.
 - the salaries are best estimate full-time equivalents based on working 260 paid days per year, a 5 day week and 7.4 hours per day (i.e. 37 hours per week).

⁵⁵ Public Services Ombudsman for Wales, Regulatory Impact Assessment (RIA) for the Draft Public Services Ombudsman (Wales) Bill, Supplementary Information. Available at: <http://senedd.assembly.wales/documents/s64291/Letter%20from%20the%20Public%20Services%20Ombudsman%20for%20Wales%20-%20Regulatory%20Impact%20Assessment%20-%2028%20April%202017.pdf>

- the estimates set out gross salary costs. It is assumed that staff will be members of the pension scheme and hence, the estimate of staff costs include related Employer National Insurance and pension contributions (or 'on costs'). As with direct costs, a single rate of 35 per cent has been applied to gross salary costs for on-costs.
- an annual increase of one per cent to reflect the rise in the 'cost of living' has been included in the estimate of salary costs for years two to five.

Indirect costs – complaints standards role

- 11.51. The indirect costs for bodies within jurisdiction arising from the Ombudsman's complaints standards role are likely to relate to officer time to alter pre-existing database and Information Technology (IT) systems. Evidence collated for the preparation of the RIA suggest that the time implications for undertaking such modifications to be very modest⁵⁶.
- 11.52. An assumption has been made that between one and three days of officer time would be needed to alter relevant databases and IT systems to capture complaints-related data in a more consistent way. In addition, the member of staff responsible for overseeing complaints management systems, typically the Complaints Team Manager, would undertake the related tasks. The gross salary for the Complaints Team Manager has been assumed to be £30,000 per annum. As with the estimates of additional staff costs for other aspects of the Bill, Employer National Insurance Contributions and pension contributions (or 'on costs') have been assumed to be 35 per cent of the value of gross salary.
- 11.53. Based on the knowledge and experience of staff, the Ombudsman estimates that 36 of the public bodies under his jurisdiction would need to undertake this work. Further information is set out at paragraph 11.129.
- 11.54. It has been assumed that the cost per housing association would be the same as that for other public bodies within the Ombudsman's jurisdiction and may apply to one-third of housing associations i.e. 30 out of the 90 housing associations in Wales.

⁵⁶ Public Services Ombudsman for Wales, Regulatory Impact Assessment (RIA) for the Draft Public Services Ombudsman (Wales) Bill, Supplementary Information. Available at: <http://senedd.assembly.wales/documents/s64291/Letter%20from%20the%20Public%20Services%20Ombudsman%20for%20Wales%20-%20Regulatory%20Impact%20Assessment%20-%2028%20April%202017.pdf>

Direct and indirect costs – private health services

- 11.55. The Ombudsman advises that his office does not currently hold data in relation to complaints that contain a private health service element where the patient has received medical treatment including nursing care from both a public and private provider. The Ombudsman estimates that such cases represent one per cent of health sector complaints or seven cases each year. The Ombudsman assumes that the related direct cost of handling these cases can be absorbed within the existing resources available to his office and hence, will not result in additional requests for resource⁵⁷. However, an estimate of the cost to the Ombudsman (or ‘direct’ cost) of the preferred provision is set out at paragraph 11.107.
- 11.56. The Ombudsman advises that public bodies under his jurisdiction would not incur any additional costs for the options considered for this provision.
- 11.57. The Ombudsman notes that he does not have access, or a right to access, to details of the number and the associated cost of complaints made about private health services. The Independent Healthcare Sector Complaints Adjudication Service (ISCAS) provides independent adjudication on patient complaints about ISCAS members but this does not cover all private healthcare providers. Other published data on the number of complaints does not cover all private healthcare providers. Given this, it has not been possible to estimate the value of direct costs should legislation provide the Ombudsman with the power to consider complaints about all private health service providers. Therefore, the cost impact on private health service providers is not known.

Values and benefits

- 11.58. The RIA has identified potential benefits to members of the public and public bodies within jurisdiction arising from the provisions in the Bill. The unquantified benefits are set out in the Policy Options section of the RIA.

⁵⁷ Public Services Ombudsman for Wales, Regulatory Impact Assessment (RIA) for the Draft Public Services Ombudsman (Wales) Bill, Supplementary Information (pages 28 and 29 refer). Available at: <http://senedd.assembly.wales/documents/s64291/Letter%20from%20the%20Public%20Services%20Ombudsman%20for%20Wales%20-%20Regulatory%20Impact%20Assessment%20-%2028%20April%202017.pdf>

Summary of costs and benefits

11.59. This section sets out detailed information about the estimate of costs and benefits of the Bill. As noted at paragraph 11.6, the financial data has been informed by information provided by the Ombudsman. The estimated costs and benefits are presented for a five-year period, reflecting the assumptions set out at paragraphs 11.21 to 11.58.

Do nothing

- 11.60. The Finance Committee in the Fifth Assembly scrutinises the work of the Ombudsman and the financial considerations of his office. Estimates are required to set out the resources required for the Ombudsman to carry out his statutory functions, with the exception of the Ombudsman's own salary (and associated costs), which are directly charged on the Welsh Consolidated Fund. The Estimate for 2017-18 sought net resource expenditure of £4,248,000, with a net cash requirement of £4,460,000. Subject to the comments and recommendations in its report⁵⁸, the Finance Committee supported the overall request for resource.
- 11.61. The estimate of the cost of not extending the Ombudsman's powers has been calculated using the Ombudsman's caseload projections for the period to 2022-23, which are set out at Table 6. This sets out the projected caseload with annual increases of 5 and 12 per cent per annum (to which paragraph 11.30 refers).
- 11.62. Table 7 sets out the estimate of the cost associated with the increase in caseload, using the projections set out at Table 6 and reported expenditure in the Ombudsman's Annual Report 2015-16. This shows the cumulative cost of the projected increase in caseload for the five years to 2022-23 ranges from £2,870,229 to £8,076,621. However, as noted at paragraph 11.31, the Ombudsman advises that it has not been customary for him to link his annual budget increase to a growth in caseload in this proportionate way.

⁵⁸ National Assembly for Wales, Finance Committee, Scrutiny of Public Services Ombudsman for Wales's Estimate for 2017-18, November 2016. Available at: <http://www.assembly.wales/laid%20documents/cr-ld10815/cr-ld10815-e.pdf>

Table 6: The Ombudsman’s caseload, actual and projected, 2010-11 to 2022-23 (Number of cases)

	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17
Caseload (Number)	2,829	3,883	4,987	5,392	5,766	5,999	6,804
	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	
Caseload (Number)							
Annual increase in caseload of 5 per cent ^a	7,144	7,501	7,876	8,270	8,684	9,118	
Annual increase in caseload of 12 per cent ^b	7,620	8,535	9,559	10,706	11,991	13,430	

Notes

- a Estimate of the increase in caseload as set out in the Ombudsman’s Estimate 2017-18
- b Ombudsman’s projections of caseload (July 2017)

Table 7: Cost of the projected increase in the Ombudsman’s caseload (£)

Estimate unit cost/case:							
Cost of complaints handling (£) ^a		3,008,000					
Caseload (Number) ^b		5,999					
Unit cost per complaint (£) ^c		501					
		2018-19	2019-20	2020-21	2021-22	2022-23	Total
2005 Act:							
Increase in caseload of 5 per cent per annum							
Projected caseload (Number of cases) ^d		7,501	7,876	8,270	8,684	9,118	41,449
Increase year-on-year (Number of cases)		357	375	394	414	434	1,974
Estimated additional cost year-on-year (£) ^e		178,857	187,875	197,394	207,414	217,434	988,974
Estimated additional cumulative cost from 2018-19 (£)		178,857	366,732	564,126	771,540	988,974	2,870,229
Increase in caseload of 12 per cent per annum							
Projected caseload (Number of cases) ^f		8,535	9,559	10,706	11,991	13,430	54,221
Increase year-on-year (Number of cases)		915	1,024	1,147	1,285	1,439	5,810
Estimated additional cost year-on-year (£) ^e		458,415	513,024	574,647	643,785	720,939	2,910,810
Estimated additional cumulative cost from 2018-19 (£)		458,415	971,439	1,546,086	2,189,871	2,910,810	8,076,621

Notes

- a Expenditure incurred by the Ombudsman in 2015-16 for Aim 2, *To deliver a high quality complaints handling service, which considers and determines complaints thoroughly but proportionately, and conveys decisions clearly*⁵⁹.
- b Ombudsman’s caseload, 2015-16⁶⁰.
- c Unit cost (derived from a and b above).
- d Projected caseload, assuming a 5 per cent increase in caseload per annum - Table 6.

⁵⁹ Public Services Ombudsman for Wales, Annual Accounts 2015-16, Note 4, Operating Costs by Aims and Objectives, Page 46. Available at: http://www.ombudsman-wales.org.uk/~media/Files/AnnualAccounts_en/Annual%20Accounts%20201516%20E.ashx [accessed June 2017]

⁶⁰ Public Services Ombudsman for Wales, Annual Accounts 2015-16, Overall Casework, page 6. Available at: http://www.ombudsman-wales.org.uk/~media/Files/AnnualAccounts_en/Annual%20Accounts%20201516%20E.ashx

- e Estimated potential impact of the cost of the increase in caseload year-on-year derived by applying the unit cost per complaint to the increase year-on-year in the number of cases.
- f Projected caseload, assuming a 12 per cent increase in caseload per annum- Table 6.

11.63. The Ombudsman has accommodated increases in caseload through reductions in the unit price per complaint⁶¹ rather than seek proportionate increases in funding.

11.64. The Ombudsman advises that he continues to review working practices and organisation structure to accommodate a growth in caseload. He reports that he is currently undertaking a major review of Information Technology (IT), including the case management system⁶². It is the Ombudsman's view that his office would not be able to deal with the projected level of increase in caseload without additional resources⁶³. The Ombudsman advises that, until such time that the review of IT has been completed, it is not possible to estimate how much growth could be absorbed within existing resources⁶⁴. However, the Ombudsman would have to include any additional requests for resource to meet these anticipated increases in caseload through annual budgets submitted to the Finance Committee.

'Cost Avoidance'

- 11.65. The provisions in the Bill will avoid part of the projected increase in the caseload through focus on improvement and prevention rather than trying to put things right after the event. This will be achieved by:
- identifying issues and concerns early and extending investigations to help prevent further failings that would result in additional complaints; and
 - improving complaints handling (primarily from the proposed complaints design, implementation oversight and data collection role) and wider, quicker and earlier learning from complaints (primarily from the power to undertake own initiative investigations) to avoid part of the projected increase in the caseload.

⁶¹ National Assembly for Wales, Finance Committee, Finance Committee Scrutiny of Public Services Ombudsman for Wales's Estimate for 2017-18, November 2016. Available at:

<http://www.assembly.wales/laid%20documents/cr-ld10815/cr-ld10815-e.pdf>

⁶² Information provided by the Public Services Ombudsman for Wales (August 2017)

⁶³ Public Services Ombudsman for Wales, Regulatory Impact Assessment (RIA) for the Public Services Ombudsman (Wales) Bill, Public Services Ombudsman for Wales, December 2016 (Chapter 6 refers). Available at:

<http://senedd.assembly.wales/documents/s60322/FIN5-08-17%20P1%20OB3%20Research%20-%20Regulatory%20Impact%20Assessment%20for%20the%20Draft%20Public%20Services%20Ombudsman%20.pdf>

⁶⁴ Information provided by the Public Services Ombudsman for Wales (August 2017)

11.66. Table 8 sets out the Ombudsman’s projections of the increase in caseload under the 2005 Act (assuming an annual increase of 12 per cent). It also shows the best estimate of the impact of the preferred options on the caseload arising from the provisions in the Bill relating to complaints handling and the power to undertake own initiative investigations.

Table 8: The Ombudsman’s projected caseload under the 2005 Act and Bill, (Number of cases)

	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23
Projected caseload - 2005 Act ^a	5,999	6,804	7,620	8,535	9,559	10,706	11,991	13,430
Projected Caseload - Bill ^b				8,458	9,347	9,806	10,375	10,977
Increase/(Decrease) in caseload (number of cases):				(77)	(212)	(900)	(1,616)	(2,453)
Decrease arising from the proposed power to undertake: Own initiative investigations				(26)	(71)	(300)	(539)	(818)
Complaints handling standards and procedures				(51)	(141)	(600)	(1,077)	(1,635)

Notes

- a Ombudsman’s actual caseload 2015-16 and 2016-17 and projections for 2017-18 to 2022-23 (Table 6), which assume an annual increase in caseload of 12 per cent.
- b Caseload projections provided by the Ombudsman to set out the estimated impact of the provisions in the Bill.

11.67. Table 9 sets out the estimated cost avoidance arising from the provisions in the Bill, using the unit cost set out at Table 7. This shows the value of the ‘cost avoidance’ in years 1 to 5 of £2,634,258.

Table 9: Cost avoidance arising from provisions in the Bill (£)

	2018-19	2019-20	2020-21	2021-22	2022-23	Total
Decrease in caseload:						
Own initiative investigations and Complaints Standards Authority (Number of cases) ^a	(77)	(212)	(900)	(1,616)	(2,453)	(5,258)
Estimated cost avoidance (£) ^b	38,577	106,212	450,900	809,616	1,228,953	2,634,258
Arising from the proposed power to undertake:						
Own initiative investigations (£)	13,026	35,571	150,300	270,039	409,818	878,754
Complaints handling standards and procedures (£)	25,551	70,641	300,600	539,577	819,135	1,755,504

Notes

- a Decrease in the number of cases as set out in Table 8
b Cost savings calculated using the unit cost per case as set out in Table 7

Power to accept oral complaints**Option 1: Do nothing****Direct costs**

11.68. This option would not result in any additional direct costs.

Indirect costs

11.69. This option would not result in any additional costs to public service providers within the Ombudsman's jurisdiction.

Values and benefits

11.70. This option would not generate any added value or associated benefits.

Indirect impacts and unintended consequences

11.71. The inequality of the current situation would persist and the 2005 Act would continue to be 'at odds' with Part 11, Chapter 1, Section 149 of the Equality Act 2010.

Option Two: amend the existing legislation to allow the Ombudsman to receive and act on complaints made orally or in writing, including via electronic formats (preferred option)

Direct costs

- 11.72. The estimate is that approximately 10 per cent of complainants will want their complaint taken over the telephone. This estimate reflects the experience of staff handling enquiries and advising of the way to make a complaint to the Ombudsman.
- 11.73. In 2015-16, the Ombudsman received 2,268 complaints⁶⁵. Using the estimate that 10 per cent of complainants will want to make their complaint orally, the estimate is that 227 complaints each year will be made orally. Of these, it is estimated that 202 complaints per annum would be made under the provisions of the 2005 Act i.e. they would be made in writing if the Ombudsman was not able to accept oral complaints and so do not result in additional work. The remaining 25 would be additional complaints per annum i.e. from members of the public who are not able to complain in writing. This reflects an analysis of the Ombudsman's caseload. Specifically, the number of complaints made by telephone but in respect of which the complainant does not return written confirmation of the accuracy of the statement sent to them by the Ombudsman's complaint-handling staff⁶⁶.
- 11.74. Enabling the Ombudsman to accept oral complaints would result in an increase in his/her caseload. An additional member of staff would be needed and the post of an existing member of staff upgraded to reflect related responsibilities, both additional and at a higher level, arising from fulfilling the additional workload. This reflects the additional time to take an oral complaint compared with one made in writing, particularly a complaint submitted electronically. Taking an oral complaint is also a more complex task. Staff need to work with the caller to establish the context of the complaint and also its exact nature, what injustice has been caused and the outcome sought by the complainant. The onus will be on the member of staff, rather than the complainant, to achieve this.
- 11.75. While upgrading the post of an existing member of staff would give rise to additional salary costs (including 'on costs') only, appointing an

⁶⁵ Public Services Ombudsman for Wales, Annual Accounts 2015-16, Overall casework, page 6). Available at: http://www.ombudsman-wales.org.uk/~media/Files/AnnualAccounts_en/Annual%20Accounts%20201516%20E.ashx [accessed June 2017]

⁶⁶ Public Services Ombudsman for Wales – additional information (May 2017)

additional member of staff would result in other associated revenue costs. These relate to ongoing office, administrative and support costs relating to the new post, such as stationery, printing and Information Technology (IT) costs. There would also be transition (or 'one-off') costs associated with the creation of the new post, including the cost of recruitment and office furniture. An estimate of the ongoing and transition costs to the Ombudsman's office for this option for years one to five is set out at Table 10.

Table 10: Direct revenue costs associated with the power to accept oral complaints, ongoing and transition (£)

	Year 1 £	Year 2 £	Year 3 £	Year 4 £	Year 5 £	Years 1-5 £
Ongoing revenue costs:						
Staff costs						
Salary costs ^a :						
Upgrading of an existing Casework Officer post to reflect the additional and higher level responsibilities	3,000	3,030	3,060	3,091	3,122	15,303
A new Casework Officer post (upgraded level)	32,000	32,320	32,643	32,969	33,299	163,231
Other staff costs:						
Training, travel and subsistence	1,000	1,000	1,000	1,000	1,000	5,000
Other costs						
Office, administrative and support costs associated with the new post	5,000	5,000	5,000	5,000	5,000	25,000
Total ongoing revenue costs	41,000	41,350	41,703	42,060	42,421	208,534
Transition (or 'one-off' costs)	5,000	-	-	-	-	5,000
Total direct costs	46,000	41,350	41,703	42,060	42,421	213,534

Note

a Salary costs include gross salary and on-costs (assumed to be 35% of gross salary costs)

Indirect costs – other public bodies within the Ombudsman's jurisdiction

11.76. This option is likely to result in additional costs for other public bodies within the Ombudsman's jurisdiction. These would relate to the cost of staff time to respond to the Ombudsman in respect of complaints made orally and accepted as duly made.

11.77. At other public bodies within the Ombudsman's jurisdiction, officials at differing levels of seniority and salary are involved in handling a complaint. The nature and complexity of complaints vary and so

therefore, does the amount of time taken and the related cost in dealing with them. Given this, estimates of the time and cost likely to be incurred by other public bodies before full investigation have been made for the range of complaints. To give the full range of the likely cost, Tables 11 and 12 set out low and high unit cost estimates respectively. These show that the indirect cost of staff time before full investigation is estimated to range from £231 to £357 per complaint.

Table 11: Indirect cost - Estimate of staff, time and salary costs of those involved in dealing with a complaint before full investigation, Low Unit Cost Estimate (£)

Staff involved	Number of hours per complaint	Gross Salary per annum (£)	Gross Salary per hour (£)	Salary per complaint (£)
Senior manager	1.0	50,000	26	26
Team manager	2.0	30,000	16	32
Team officer	2.5	25,000	13	33
Complaints Team Manager	5.0	30,000	16	80
Total	10.5			171
Total cost per complaint (including 'on costs')				231

Table 12: Indirect cost, Estimate of staff, time and salary costs of those involved in dealing with a complaint before full investigation, High Unit Cost Estimate (£)

Staff involved	Number of hours per complaint	Gross Salary per annum (£)	Gross Salary per hour (£)	Salary per complaint (£)
Senior manager	2.0	50,000	26	52
Team manager	3.0	30,000	16	48
Team officer	4.0	25,000	13	52
Complaints Team Manager	7.0	30,000	16	112
Total	16.0			264
Total cost per complaint (including 'on costs')				357

- 11.78. Table 13 sets out the estimates of the related indirect cost that the power to progress oral complaint will result in an additional 25 complaints per annum (to which paragraph 11.73 refers). These have been calculated using the low and high costs per complaint set out in Tables 11 and 12. Table 13 shows that the total cost to public bodies before full investigation is estimated to range from £5,775 to £8,925 per annum.
- 11.79. A proportion of these additional complaints will, however, progress to investigation and so incur additional costs to other public bodies. Using the estimates in Tables 15 and 16 and assuming that the Ombudsman will take forward 25 per cent of complaints, Table 13 sets out the additional indirect cost to other public bodies resulting from investigation; the total cost to other public bodies is estimated to range from £10,386 to £12,942. Taken together with the cost of staff time before investigation, total indirect costs to other public bodies are estimated to range from £16,161 to £21,867 or £82,437 to £111,544 for five years.

Table 13: Total estimated indirect costs per annum arising from power to accept oral complaints, low and high unit costs (£)

	Low unit cost	High unit cost
Cost prior to investigation:		
Additional complaints per annum (Number) ^a	25	25
Estimate of unit cost per complaint (£) ^b	231	357
Total estimated indirect cost (£)	5,775	8,925
Cost of investigation:		
Additional complaints per annum (Number) ^c	6	6
Estimate of unit cost per complaint (£) ^d	1,731	2,157
Total estimated indirect cost (£)	10,386	12,942
Total estimated indirect costs prior to and during investigations per annum (£)	16,161	21,867
Total estimated indirect costs prior to and during investigations Years 1-5 (£)^e	82,437	111,544

Notes

- a Assumption that 25 additional complaints received per annum by the Ombudsman
- b Low and high unit costs per complaint as set out at Tables 11 and 12

- c Assumption that the Ombudsman will progress 25 per cent of complaints to full investigation each year (ie 25 per cent of 25 additional complaints or 6 additional complaints per annum)
- d Low and high unit costs per investigation as set out at Tables 15 and 16
- e Estimate of costs for Years two to five reflect a cost of living increase of one per cent per annum for salary costs

Values and benefits

- 11.80. This provision would allow the Ombudsman to determine what constitutes a ‘duly made’ complaint. It would be in keeping with the requirements of the Equality Act 2010. It would remove a communication barrier and improve accessibility to the Ombudsman’s services. Allowing the Ombudsman to specify in guidance the form in which a complaint must be made ‘future proofs’ the legislation, enabling the Ombudsman to reflect changes in the external and internal environment, such as advances in technology.
- 11.81. This improvement in accessibility would mean that there would no longer be ‘lost complaints’. Currently, complainants do not often return complaints captured over the telephone by the Ombudsman’s office and sent to the member of the public for confirmation/signature.

Indirect impacts and unintended consequences

- 11.82. If the Ombudsman is able to follow-up on complaints that could not previously be pursued because of a lack of written confirmation, there is a range of potential indirect benefits from the Ombudsman’s investigative work. These include improvements to the delivery of services and the possibility of wider efficiency gains resulting from the avoidance of repeat mistakes and maladministration.

Summary – preferred option

- 11.83. The preferred option is to amend the existing legislation to allow the Ombudsman to receive and act on complaints made orally or in writing, including via electronic formats. Over a five-year period, the total direct cost is estimated to be £213,534. This comprises ongoing revenue costs, which reflect a one per cent cost of living increase, and transition costs of £5,000.
- 11.84. This preferred option will also result in additional ongoing costs to public bodies within the Ombudsman’s jurisdiction to deal with an increased number of complaints. These additional costs are estimated to be in the range of £16,161 to £21,867 per annum or £82,437 to

£111,544 for five years.

Undertake own initiative investigations

Option 1: Do nothing

Direct costs

11.85. Table 7 sets out the estimated cost of the projected increase in the Ombudsman's caseload for the five years to 2022-23 under the provisions of the 2005 Act.

Indirect costs

11.86. There may be unforeseen indirect costs arising from the 'do nothing' option. For instance, if the Ombudsman is not able to extend an investigation (beyond the initial complainant) to examine potentially systemic or more widespread problems or maladministration, then those issues may continue to occur without review and cause public bodies to incur (potentially much higher) costs via investigation and the need for compliance and redress at a later stage.

Value and benefits

11.87. This option would not generate any added value or associated benefits.

Indirect impacts and unintended consequences

11.88. This option could result in the following indirect impacts on members of the public or across the listed authorities:

- some people in vulnerable circumstances will continue to suffer from a poor service or a lack of service to which they are entitled since the Ombudsman will not be able to expand a particular investigation where wider, systemic issues are suspected; and
- opportunities to address and improve systemic problems will be missed.

Option 2: The existing legislation be amended to give power to the Ombudsman to undertake own initiative investigations (preferred option)

Direct costs

- 11.89. As noted in chapter 10 (paragraph 10.9 refers), the power to conduct own initiative investigations is expected to be deployed in four scenarios:
- extending a complaint investigation to include another public body without needing a new complaint from the complainant (Scenario A);
 - findings from a complaint investigation prompts an investigation into other bodies to establish whether similar failings exist elsewhere (Scenario B);
 - investigation of an anonymous complaint (Scenario C); and
 - investigation across all, or part, of a sector of service delivery in light of concerns (Scenario D).
- 11.90. The cases arising under Scenario A will not give rise to any direct or indirect costs; the provisions in the Bill will provide a quicker and more efficient way of extending an investigation to include an additional listed authority.
- 11.91. By initiating investigations in Scenarios B to D, the Ombudsman's caseload would increase, resulting in additional costs to his/her office. It is expected that the Ombudsman will initiate between 10 and 15 investigations each year⁶⁷. Of these, only one or two investigations per annum will be undertaken across all, or part, of a sector of service in light of concerns i.e. Scenario D⁶⁸. The Ombudsman would initiate the majority of investigations under this provision under Scenarios B and C.
- 11.92. Table 14 sets out the best estimate of the ongoing and transition (or 'one-off') costs arising from the projected number of investigations that the Ombudsman will initiate each year. The costs reflect assumed levels of complexity, scale and staff time in undertaking such investigations. Those initiated under Scenario D are expected to require substantial staff time.

⁶⁷ Public Services Ombudsman for Wales's projections of the number of own initiative investigations, which reflect the number of issues and cases that arise from current casework

⁶⁸ National Assembly for Wales, Finance Committee, Record of Proceedings, 9 March 2017, paragraph 68. Transcript available at: <http://senedd.assembly.wales/documents/s60762/9%20March%202017.pdf>

11.93. It is estimated that two additional members of staff would be required to carry out investigations and any other related functions: one Investigation Officer and an Investigation and Improvement Officer. Appointing additional members of staff would also result in other associated costs to the Ombudsman’s office and transition (or ‘one-off’) costs.

Table 14: Direct revenue costs associated with the power to conduct own initiative investigations, ongoing and transitional (£)

	Year 1 £	Year 2 £	Year 3 £	Year 4 £	Year 5 £	Years 1-5 £
Ongoing revenue costs:						
Staff costs						
Salary costs ^a :						
Two full-time posts (Investigation Officer and an Investigation and Improvement Officer)	115,000	116,150	117,312	118,485	119,670	586,617
Other staff costs:						
Professional fees, including specialist advice	10,000	10,000	10,000	10,000	10,000	50,000
Training, travel and subsistence costs	2,000	2,000	2,000	2,000	2,000	10,000
Other costs						
Office costs, including printing, stationery and IT	10,000	10,000	10,000	10,000	10,000	50,000
Total ongoing revenue costs	137,000	138,150	139,312	140,485	141,670	696,617
Transition (or 'one-off' costs)	10,000	-	-	-	-	10,000
Total direct costs	147,000	138,150	139,312	140,485	141,670	706,617

Note

a Salary costs include gross salary and on-costs (assumed to be 35% of gross salary costs)

Indirect costs

11.94. This option is likely to result in additional costs for other public bodies within the Ombudsman’s jurisdiction. These would relate to the cost of staff time to respond to the Ombudsman’s questions and requests for information in the course of the own initiative investigation.

11.95. Officials at differing levels of seniority and salary would be involved in handling an investigation. The nature and complexity of investigations will vary and so therefore, will the amount of time taken and the related cost in handling them. Given this, estimates of the time and cost likely

to be incurred by other public bodies arising from the investigation have been made. The Ombudsman advises that the estimates reflect the broad consensus from work with health board and local authority representatives.

11.96. Tables 15 and 16 set out the low and high unit cost estimates respectively. These show that the indirect cost of staff time before full investigation is estimated to range from £1,731 to £2,157 per investigation.

Table 15: Indirect cost, Estimate of staff, time and salary costs of those involved in dealing with a full investigation, Low Unit Cost Estimate (£)

Staff involved	Number of hours per complaint	Gross Salary per annum (£)	Salary cost per hour (£)	Cost per investigation (£)
Director	1.0	100,000	52	52
Head of Service	7.5	75,000	39	293
Senior manager	7.5	50,000	26	195
Team manager	14.0	30,000	16	224
Team officer	14.0	25,000	13	182
Complaints Team Manager	21.0	30,000	16	336
Total	65.0			1,282
Total cost per investigation, including 'on-costs'				1,731

Table 16: Indirect cost - Estimate of staff, time and salary costs of those involved in dealing with a full investigation, High Unit Cost Estimate (£)

Staff involved	Number of hours per complaint	Gross Salary per annum (£)	Salary cost per hour (£)	Cost per investigation (£)
Director	2.0	100,000	52	104
Head of Service	9.0	75,000	39	351
Senior manager	9.0	50,000	26	234
Team manager	17.0	30,000	16	272
Team officer	17.0	25,000	13	221
Complaints Team Manager	26.0	30,000	16	416
Total	80.0			1,598
Total cost per investigation, including 'on-costs'				2,157

- 11.97. As noted at paragraph 11.90, own initiative investigations undertaken in Scenario A would not result in additional costs to public bodies; the change is intended only to remove the requirement that a complainant makes a further complaint where a second public body is found to be involved and so, would not change the number of complaints investigated.
- 11.98. By initiating investigations in Scenarios B to D, the Ombudsman's caseload would increase and as a result, additional costs borne by public bodies during the course of those investigations undertaken by the Ombudsman. Table 17 shows the likely costs in the event that the Ombudsman initiates 10 or 15 investigations per annum (to which paragraph 11.91 refers). These reflect the cost per investigation as set out at Tables 15 and 16 for low and high unit costs respectively. Table 17 sets out the likely total cost to other public bodies ranges from £17,310 to £32,355 per annum and between £88,298 and £165,043 for five years depending on the number of own initiative investigations carried out by the Ombudsman each year.

Table 17: Estimate of indirect costs from undertaking own initiative investigations, low and high unit costs (£)

Number of own initiative investigations ^a :			
Scenarios B & C		9	
Scenario D		1	
Total		10	
Number of own initiative investigations ^b :			
Scenarios B & C		13	
Scenario D		2	
Total		15	
		Low unit cost	High unit cost
Cost of own initiative investigations:			
Estimate of unit cost per complaint (£) ^c		1,731	2,157
Total estimated indirect costs per annum (£):			
10 own initiative investigations per annum (£)		17,310	21,570
15 own initiative investigations per annum (£)		25,965	32,355
Total estimated indirect costs Years 1-5 (£):			
10 own initiative investigations per annum (£)		88,298	110,029
15 own initiative investigations per annum (£)		132,448	165,043

Notes

- a Estimate of 10 additional investigations per annum and an assumption in which scenario these are likely to arise
- b Estimate of 15 additional investigations per annum and an assumption in which scenario these are likely to arise
- c Low and high unit costs per investigation as set out at Tables 15 and 16

Value and benefits

- 11.99. There are equality and social inclusion benefits in relation to this option. This provision would enable the Ombudsman to investigate areas of concern in relation to public service delivery where those people in receipt of (or denied) a service are less likely or less able to make a complaint in their own right. For example, this could be because of a disability, poor educational attainment or because they are fearful of challenging a public authority, particularly if they are in vulnerable circumstances (physically or emotionally).

Indirect impacts and unintended consequences

- 11.100. Since the Ombudsman will need to be able to demonstrate justifiable grounds for commencing an own initiative investigation, there is a higher probability that the findings will result in recommendations leading to improved service delivery, together with the possibility of associated cost savings. For example, reduced compensation claims for the bodies in jurisdiction. Such investigative action could lead to wider efficiency gains as best practice is disseminated across public bodies within the Ombudsman's jurisdiction. However, since the precise nature of the savings and at which public bodies they will be made are not known, their value has not been quantified.

Summary

- 11.101. The preferred option is that existing legislation is amended to give power to the Ombudsman to carry out own initiative investigations. Over a five-year period, the total direct cost is estimated to be £706,617. This reflects the ongoing revenue costs, which reflect a one per cent cost of living increase per year, and transition costs of £10,000.
- 11.102. This option will also result in additional ongoing costs to public bodies within the Ombudsman's jurisdiction to deal with the investigations initiated by the Ombudsman. These additional costs are estimated to be in the range of £17,310 to £32,355 per annum. The estimated cost for years one to five, depending on the number of own initiative

investigations carried out by the Ombudsman each year, is between £88,298 to £165,043.

Extend the Ombudsman's jurisdiction to enable the investigation of private health services

Option 1: Do nothing

Direct costs

11.103. This option would not result in any additional direct costs.

Indirect costs

11.104. This option would not result in any additional indirect costs to other public bodies within the Ombudsman's jurisdiction.

Value and benefits

11.105. This option would not generate any added value or associated benefits.

Indirect impacts and unintended consequences

11.106. This option could result in the following consequences to members of the public and providers of private health services:

- unanswered questions for the complainant as to whether they received appropriate medical treatment/nursing care throughout the whole of their health care pathway; and
- uncertainties for both public and private health service providers that where it has been established 'something went wrong' for a patient's care, it could remain unclear as to where the problem occurred and where the responsibility lay.

Option 2: extend legislation to allow the Ombudsman to investigate the private health service element in a public/private health service pathway (preferred option)

Direct costs

11.107. The estimate is that approximately one per cent of health sector complaints (or seven cases) received each year contain a private health care element. Using the unit cost per complaint of £501 set out at Table

7, the direct cost of the additional workload is estimated to be £3,507 per annum or £17,535 for years one to five. However, it is not expected that the Ombudsman would require any additional complaint-handling staff to carry out the additional caseload⁶⁹.

Indirect costs

- 11.108. This option would not result in any additional indirect costs to public bodies.
- 11.109. While this option may result in additional costs for private health service providers, it is not possible to provide an estimate. As noted at paragraph 11.57, the Ombudsman does not have access, or a right, to details of the number and the associated cost of complaints made about private health services. The Ombudsman notes that private health service providers are already required to have clinical governance and complaints processes in place to deal with, and respond to, any investigations undertaken by his office⁷⁰. However, the value of additional costs to private health service providers arising from this provision are not known.

Value and benefits

- 11.110. This power would allow the Ombudsman to consider the whole complaint when the treatment has been provided by a combination of public and private health service providers. The benefit is that the Ombudsman would be able to carry out a comprehensive investigation providing the complainant with a full explanation of what did or did not happen during their treatment. This services the public interest by being able to establish whether there had been any failure by the NHS or whether any failure occurred during private treatment.
- 11.111. A potential consequence of this option could be a greater call on the resources available to the Ombudsman for investigations. However, this is mitigated by the provision set out in section 19 of the Bill that gives power to the Ombudsman to demand or recover costs from private health service providers in specified circumstances, including those

⁶⁹ Regulatory Impact Assessment (RIA) for the Draft Public Services Ombudsman (Wales) Bill, Supplementary Information. Available at:

<http://senedd.assembly.wales/documents/s64291/Letter%20from%20the%20Public%20Services%20Ombudsman%20for%20Wales%20-%20Regulatory%20Impact%20Assessment%20-%2028%20April%202017.pdf>

⁷⁰ Public Services Ombudsman for Wales, Regulatory Impact Assessment (RIA) for the Public Services Ombudsman (Wales) Bill, Public Services Ombudsman for Wales, December 2016, Chapter 6, paragraph 6.4.3. Available at: <http://senedd.assembly.wales/documents/s60322/FIN5-08-17%20P1%20OB3%20Research%20-%20Regulatory%20Impact%20Assessment%20for%20the%20Draft%20Public%20Services%20Ombudsman%20.pdf>

where the private health care provider has obstructed the Ombudsman in carrying out his functions.

Indirect impacts and unintended consequences

11.112. A potential consequence of this option could be a greater call on the resources available to the Ombudsman for investigations. However, the provisions in the Bill to which the paragraph above refers mitigate this. These allow the Ombudsman to demand or recover costs from private health service providers in specified circumstances.

Option 3: Amend the legislation to provide the Ombudsman with the power to consider complaints about all private health service providers

Direct costs

11.113. As noted at paragraph 11.57, published data on the number of complaints does not cover all private healthcare providers. Given this, it has not been possible to estimate the value of direct costs should legislation provide the Ombudsman with the power to consider complaints about all private health service providers. Therefore, the cost of this provision for private health service providers is not known.

11.114. This option would necessitate the introduction of a complex levy system to demand or recover the costs from the private sector. The Ombudsman has not quantified the cost of developing such a system for the purpose of this RIA since it is not the preferred option.

Indirect costs

11.115. This option would not result in any additional costs to public bodies in Wales.

11.116. As noted at paragraph 11.57, the Ombudsman does not have access, or a right, to details of the number and the associated cost of complaints made about private health services. In addition, as noted at paragraph 11.114, the Ombudsman has not quantified the cost of establishing and operating a levy system to recoup the costs incurred with considering complaints against all private health service providers. Therefore, while this option would result in additional costs for private health service providers, it is not possible to provide an estimate. Therefore, the additional cost of this provision for private health service providers is not known.

Value and benefits

11.117. Individuals purchasing care and treatment from registered private health service establishments in Wales would have a statutory right to seek redress. Currently, such providers can choose whether or not they wish to become members of an alternative dispute organisation.

Indirect impacts and unintended consequences

11.118. This option could result in a significant number of complaints made to the Ombudsman about private health service providers. This could dilute or distract the purpose of the public sector Ombudsman's role and its function. The inclusion of providers, such as tattoo and beauty parlours, could exacerbate this issue.

Summary

11.119. The preferred option is to extend the Ombudsman's jurisdiction to allow investigation of complaints in a public/private health service pathway. The estimate of the cost of the increase in the Ombudsman's caseload arising from this change to jurisdiction is £3,507 per year or £17,535 for five years. The Ombudsman advises that the additional cost could be accommodated within existing resources. Hence, it would not require any additional funding. However, the provisions set out in the Bill allow the Ombudsman to demand or recover costs from private health service providers in specified circumstances.

11.120. The preferred option would not result in any additional costs to other public bodies within the Ombudsman's jurisdiction. It has not been possible to estimate the cost of the impact of the Bill on private health service providers since the Ombudsman does not have access, or a right, to details of the number and the associated cost of complaints about private health services. Therefore, the cost for private health service providers of the preferred option is not known.

Power to undertake a role in relation to complaints-handling standards and procedures

Option 1: Do nothing

Direct costs

11.121. Table 7 sets out the estimated cost of the projected increase in the Ombudsman's caseload for the five years to 2022-23 under the provisions of the 2005 Act.

Indirect costs

11.122. This option would not result in any additional indirect costs.

Values and benefits

11.123. This option would not result in any added value or associated benefits.

Indirect impacts and unintended consequences

11.124. It is likely that this option would result in:

- the continuation of the inconsistent approach to complaints handling by public bodies in Wales;
- a lack of comparable data in relation to complaints; and
- no scrutiny of complaints across the public sector in Wales with an associated lack of transparency.

Option 2: Amend the legislation to give the Ombudsman a 'data only' role in respect of complaints handling

Direct costs

11.125. The Ombudsman would need to appoint an additional full-time member of staff to his office to carry out this role. Additional ongoing and transition (or 'one off') costs would be incurred as a result. An estimate of these is set out at Table 18.

Table 18: Direct revenue costs associated with a ‘data only’ role in respect of complaints handling, ongoing and transition (£)

	Year 1 £	Year 2 £	Year 3 £	Year 4 £	Year 5 £	Years 1-5 £
Ongoing revenue costs:						
Staff costs						
Salary costs ^a :						
Staff costs - one full-time officer	60,000	60,600	61,206	61,818	62,436	306,060
Other staff costs:						
Training, travel and subsistence costs	1,000	1,000	1,000	1,000	1,000	5,000
Other costs						
Office costs, including printing, stationery and IT	5,000	5,000	5,000	5,000	5,000	25,000
Total ongoing revenue costs per annum	66,000	66,600	67,206	67,818	68,436	336,060
Transitional (or 'one-off' costs)	5,000	-	-	-	-	5,000
Total direct costs - Year 1	71,000	66,600	67,206	67,818	68,436	341,060

Indirect costs

11.126. The Supplementary Information provided by the Ombudsman⁷¹ noted the following as key points raised in discussions with representatives of local authorities and NHS bodies in Wales about complaints standards and complaints handling systems:

- there is currently a variance (particularly across local government) in how complaints are monitored and data is collected and analysed. Different systems (including software) and varied approaches are used;
- discussions are already underway within the NHS Wales about procuring a ‘once for Wales’ complaints handling software platform that would facilitate greater consistency and comparability across health bodies. This work is being progressed regardless of whether the Ombudsman will be granted the new power being sought;
- it is unlikely that all 22 local authorities will be in a position to move towards a standard/consistent software platform for complaints handling in the foreseeable future;

⁷¹ Regulatory Impact Assessment (RIA) for the Draft Public Services Ombudsman (Wales) Bill, Supplementary Information. Available at: <http://senedd.assembly.wales/documents/s64291/Letter%20from%20the%20Public%20Services%20Ombudsman%20for%20Wales%20-%20Regulatory%20Impact%20Assessment%20-%2028%20April%202017.pdf>

- different bodies within the Ombudsman’s jurisdiction use different approaches and different software systems. However, this need not be an insurmountable barrier to achieving greater consistency and better quality data to enable more meaningful performance management and comparisons. This reflects the position in Scotland where the emphasis is on the data required rather than the system used to provide it. Public bodies in Scotland use a variety of different systems and approaches to collect the data required.
- 11.127. The focus of the Ombudsman’s work in this area would be to require public bodies within jurisdiction to collect consistent data fields that could then be combined for broader and more sophisticated analysis leading to dissemination of good practice.
- 11.128. In summary, the indirect costs for public bodies within jurisdiction as a result of the new power being sought are likely to relate to officer time to alter pre-existing database and IT systems. The officers with whom the Ombudsman consulted in developing the estimates of costs advised that the time implications for undertaking such modifications to be very modest⁷². However, the cost has been estimated. As noted at paragraph 11.52, for the purpose of the estimate, it has been assumed that between one and three days of officer time would be needed at each public body to do this.
- 11.129. As noted at paragraph 11.53, based on the knowledge and experience of staff, the Ombudsman estimates that 36 of the public bodies under his jurisdiction would need to undertake this work. Table 19 shows the estimate of the indirect transition costs per public body. It also shows the total costs likely to be incurred by the following 36 public bodies in the Ombudsman’s jurisdiction that may be required to carry out work to alter relevant databases and IT systems:
- 22 local authorities;
 - 3 national park authorities;
 - 7 health boards;
 - 3 NHS trusts; and
 - Welsh Government.

⁷² Regulatory Impact Assessment (RIA) for the Draft Public Services Ombudsman (Wales) Bill, Supplementary Information. Available at: <http://senedd.assembly.wales/documents/s64291/Letter%20from%20the%20Public%20Services%20Ombudsman%20for%20Wales%20-%20Regulatory%20Impact%20Assessment%20-%202028%20April%202017.pdf>

11.130. The Ombudsman notes that the requirement could be extended to larger housing associations⁷³. Table 19 reflects the likely costs to be borne by those organisations. For this estimate, it has been assumed that the cost per housing association would be the same as that for other public bodies within the Ombudsman’s jurisdiction and may apply to one-third of housing associations i.e. 30 out of the 90 housing associations in Wales.

11.131. The total indirect transition cost for public bodies and housing associations is estimated to range from £10,362 to £31,020. As noted at paragraph 11.23, it is assumed that transition costs will be incurred in the first year following enactment.

Table 19: Indirect transition costs associated the amending the legislation to give the Ombudsman a complaints design, implementation oversight and data collection role, transition (£)

Staff involved	Gross Salary per annum (£)	Salary cost per day (£)	Salary cost 3 days (£)
Complaints Team Manager	30,000	116	348
Salary costs, including 'on costs' per public body (£)		157	470
Total Salary costs, including 'on costs' (£):			
For all public bodies , 36 (£)		5,652	16,920
For all housing assoications, 30 (£)		4,710	14,100
For public bodies and housing associations (£'000)		10,362	31,020

Values and benefits

11.132. An improvement in the ability to collect data at an all-Wales level would be the main benefit from pursuing this option.

Indirect impacts and unintended consequences

11.133. The restricted scope of this option may limit the comparability of data given the need to improve consistency in complaint-handling.

⁷³ Regulatory Impact Assessment (RIA) for the Draft Public Services Ombudsman (Wales) Bill, Supplementary Information. Available at: <http://senedd.assembly.wales/documents/s64291/Letter%20from%20the%20Public%20Services%20Ombudsman%20for%20Wales%20-%20Regulatory%20Impact%20Assessment%20-%2028%20April%202017.pdf>

Option 3: Amend the existing legislation to strengthen the Ombudsman’s role in securing effective complaint-handling across the public sector in Wales (preferred option)

Direct costs

11.134. It is estimated that two additional full-time members of staff would be required to fulfil this role and in respect of which there would other associated ongoing and transition (or ‘one-off’) costs. An estimate of the ongoing and transition costs to the Ombudsman’s office as a result of this option is set out at Table 20.

Table 20: Direct revenue costs associated the amending the legislation to give the Ombudsman a complaints design, implementation oversight and data collection role, ongoing and transition (£)

	Year 1 £	Year 2 £	Year 3 £	Year 4 £	Year 5 £	Years 1-5 £
Ongoing revenue costs:						
Staff costs:						
Salary costs ^a :						
Two full-time officers	115,000	116,150	117,312	118,485	119,670	586,617
Other staff costs:						
Professional fees, including specialist advice	10,000	10,000	10,000	10,000	10,000	50,000
Training, travel and subsistence costs	2,000	2,000	2,000	2,000	2,000	10,000
Other costs						
Office costs, including printing, stationery and IT	10,000	10,000	10,000	10,000	10,000	50,000
Total ongoing revenue costs per annum	137,000	138,150	139,312	140,485	141,670	696,617
Transition (or 'one-off' costs)	10,000	-	-	-	-	10,000
Total direct costs	147,000	138,150	139,312	140,485	141,670	706,617

Indirect costs

11.135. The estimate of indirect costs are the same as those for option 2, which are set out at Table 19. The total indirect transition cost for public bodies and housing associations is estimated to range from £10,362 to £31,020.

Value and benefits

11.136. The Complaints Standards Authority role would enable to Ombudsman to stipulate what constitutes good complaint-handling practice, require

consistent data gathering and have an overview of complaint trends of public bodies within jurisdiction.

- 11.137. There is also potential for savings to those bodies within jurisdiction arising from improved complaint-handling. To illustrate this potential, in a report by the NAO Comptroller and Auditor General, Department for *Work and Pensions – Handling Customer Complaints*, it states that *Complaints resolved successfully at Tier 1 [in England] may be as much as 40 times cheaper than those resolved at Tier 3 [that is Ombudsman stage]. Reducing the number of cases that reach Tier 3 by a third could save the Department over £700,000⁷⁴.*

Indirect impacts and unintended consequences

- 11.138. This option could raise tensions with public bodies in some sectors, particularly given existing statutory requirements, such as those in the fields of health and social services. However, the Bill addresses this issue and provides that listed authorities are not required to comply with the Ombudsman’s specification if the duties are inconsistent with any other enactment.

Summary

- 11.139. The preferred option is to amend the existing legislation to strengthen the Ombudsman’s role in securing effective complaint-handling across the public sector in Wales. Over a five-year period, the total direct cost is estimated to be £706,617. This comprises ongoing revenue costs, which reflect a one per cent cost of living increase, and transition costs of £10,000.
- 11.140. This option will also result in transition costs to public bodies within the Ombudsman’s jurisdiction to alter relevant databases and IT systems to capture complaints related data in a more consistent way. These additional costs are estimated to be in the range of £10,362 to £31,020.

⁷⁴ Comptroller and Auditor General, *Handling Customer Complaints*, The Department for Work and Pensions, July 2008. Available at: <https://www.nao.org.uk/wp-content/uploads/2008/07/n0708995.pdf> [accessed June 2017]

12. Specific Impact Assessments

Purpose of this chapter

- 12.1. This chapter sets out the results of specific impact assessments carried out as part of the RIA.

Statutory and other obligations

- 12.2. The specific impact assessments have been carried out with due regard to related statutory obligations:
- Equality Act 2010 and the Wales- Specific Equality Duties Regulations (Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011);
 - the Human Rights Act 1998; and
 - the European Convention on Human Rights.

Human Rights Assessment and Equality Impact Assessment

- 12.3. In the sphere of the Ombudsman's work, human rights and equality operate at two levels.

Indirect level – Impact on the provision of public services in Wales

- 12.4. The Ombudsman considers complaints about the provision of public services in Wales. When considering complaints, the Ombudsman will look to see whether people have been treated unfairly or inconsiderately, or have received a bad service through some fault on the part of the service provider. The Ombudsman will also consider whether the service provider has acted in accordance with the law.
- 12.5. People who have been treated unfairly or inconsiderately or who have received a bad service may also find that they have been subject to discrimination under the Equality Act 2010 or that their human rights under the European Convention on Human Rights (ECHR) have been breached. So although the Ombudsman has no direct role in determining breaches of human rights, the failure to adequately take equality and human rights into account may amount to maladministration or service failure. The Ombudsman:
- seeks to put things right for people, which may include putting an end to any discrimination or failure to take account of a person's human rights which may amount to a breach of human rights;

- engages with the service provider in order to ensure improvement in future service delivery, so that future discrimination and breach of human rights do not occur.

- 12.6. For example, the parents of a severely disabled man complained to the Ombudsman that when their son moved away from home into supported accommodation the Council failed to take proper account of their son's need to maintain contact with his family when it declined to repair or replace the lift at their home which their son needed to access the family home. The Ombudsman concluded that the complainant's right to a private and family life under Article 8 of the ECHR had been engaged and that although the Council said it had taken into account the son's human rights the evidence available did not support this contention. The Ombudsman recommended that the Council apologised to the family, that it worked with the family to find a solution which made it possible for the son to visit the family home and that generally when it approaches future transitional planning for individuals the needs of carers are also taken into account. The Council agreed to implement all of the recommendations.
- 12.7. Therefore, the Ombudsman has an important role in addressing injustice which may arise through discrimination and a failure to take account of an individual's human rights.
- 12.8. The impact of the Bill will be to secure and to strengthen that role. The Bill provides for the continuation of the functions of the Ombudsman that have been in place under the 2005 Act and that have allowed the Ombudsman to have a role in addressing discrimination and a failure to take account of human rights. With public services facing greater challenges than ever, securing that role has never been more important.
- 12.9. But the impact of the Bill goes further. By giving the Ombudsman new powers, the Ombudsman's role in addressing discrimination and a failure to take account of human rights will be stronger and more valuable than ever, and it will ensure that the Ombudsman's service is more accessible to the public.
- 12.10. For example, the Ombudsman's power to investigate on his own initiative will allow the Ombudsman to investigate and to address systemic failures in public services. In March 2016, the Ombudsman published a thematic report entitled 'Out of Hours: Time to Care' that raised serious concerns about the standard of care given to patients in hospitals across Wales outside of normal working hours. Under the 2005 Act, the Ombudsman did not have the powers to investigate the scope of this systemic failure because the Ombudsman could only look at

individual complaints submitted by service users. Under the Bill, the Ombudsman could investigate such systemic failures on his own initiative. Systemic failures will often give rise to discrimination and human rights issues, therefore the new powers in the Bill will help address discrimination and human rights issues that arise in public services in Wales, and will help contribute to the positive obligations on those public bodies to eliminate discrimination and comply with human rights obligations.

- 12.11. Another example arises from the Bill's flexibility in the way that complaints may be made to the Ombudsman. There is flexibility to allow complaints to be made orally, thus opening up the complaints system to those who are particularly vulnerable. Vulnerable persons and the homeless are at particular risk of discrimination and having their human rights breached, therefore the equality and human rights impact in these areas is particularly important.
- 12.12. Therefore, the Bill's impact on equality and human rights is positive and will contribute more than ever to the positive obligations on public bodies to eliminate discrimination and to comply with human rights obligations.

Direct level – Ombudsman's own service provision.

- 12.13. The Ombudsman himself is subject to equality law and human rights law. For example, the Ombudsman is subject to the public sector equality duty in section 149 of the Equality Act 2010 and the Ombudsman is a public authority for the purposes of section 6 of the Human Rights Act 1998. Therefore, when the Ombudsman is exercising his functions he must comply with equality law and human rights law.
- 12.14. The Ombudsman has a history of excellent compliance with both equality law and human rights law.⁷⁵ But, again, the Bill goes even further.
- 12.15. For example, the Bill provides greater flexibility in the way that complaints may be made to the Ombudsman. No longer will a complaint have to be made in writing. By removing these restrictions, the Bill opens up the complaints system to a whole new range of vulnerable persons. For example, people who are unable to make a written complaint will be able to make complaints to the Ombudsman – the voiceless will now have a voice. People may be voiceless for many

⁷⁵ Information about the Ombudsman's compliance with equality law is available in the Ombudsman's annual equality report, published as part of the Ombudsman's annual report.

reasons, be it by reason of disability, age, fear, homelessness or any other status, and the Bill takes proactive steps to make it far more possible for those people to approach the Ombudsman and to tell the Ombudsman about unfair or inconsiderate treatment and bad service.

- 12.16. Therefore, the Bill has a significant positive impact on equality and human rights. Significant barriers that arise from discrimination or breaches of human rights will be removed, allowing the Ombudsman greater access to the issues faced by the most vulnerable people in our society.
- 12.17. The Ombudsman's staff currently seek to assist members of the public who cannot, or have difficulty in making written complaints by making a note of information provided over the phone and then sending these to the complainant for them to sign and return as a formal complaint. Often these documents are not returned. For example in one month, two complaints were taken over the telephone from elderly people, one of whom wanted to complaint about her GP and the other (who was also the sole carer for a family member) wanted to complaint about her local health board. To date neither of the complainants have signed and returned their complaints to the Ombudsman. As a result the Ombudsman has not been able to assist them further.

Protected Groups

- 12.18. The role of the Ombudsman can have a direct effect on the way that public services are provided and can therefore, have a positive impact on a broad range of equality and human rights issues.
- 12.19. Overall, the Bill is expected to have a positive impact on the people of Wales in that its provisions enable the Ombudsman to be more responsive to the needs of all citizens and follow their interests.

Age

- 12.20. The Bill provides greater flexibility for the Ombudsman to help the most vulnerable people in our society, including those vulnerable by reason of age. However, the Bill is not considered to have an age-related differential impact.

Disability

- 12.21. The Bill takes proactive steps to make it far more possible for all people, including those within this protected group, to approach the Ombudsman and to tell the Ombudsman about unfair treatment or bad

service. However, the Bill is not considered to have a differential impact in relation to disability.

Gender

- 12.22. The provisions of the Bill and extension of the jurisdiction of the Ombudsman are not considered to have a differential impact in relation to gender.

Transgender

- 12.23. The provisions of the Bill and extension of the jurisdiction of the Ombudsman are not considered to have a differential impact on those who are transgender.

Marriage and civil partnership

- 12.24. The provisions of the Bill and extension of the jurisdiction of the Ombudsman are not considered to have a differential impact in relation to marriage or civil partnership.

Pregnancy and Maternity

- 12.25. The provisions of the Bill and extension of the jurisdiction of the Ombudsman are not considered to have a differential impact on those who are pregnant or on those during periods of maternity or paternity leave.

Race

- 12.26. The provisions of the Bill and extension of the jurisdiction of the Ombudsman are not considered to have a differential impact on those in this protected group.

Religion and belief or non-belief

- 12.27. The provisions of the Bill and extension of the jurisdiction of the Ombudsman are not considered to have a differential impact on those in this protected group.

Sexual orientation

- 12.28. The provisions of the Bill and extension of the jurisdiction of the Ombudsman are not considered to have a differential impact on those in this protected group.

Monitoring

- 12.29. No further information regarding persons with protected characteristics in relation to provisions in the Bill need to be obtained.

Summary – Human Rights Assessment and Equality Impact Assessment

- 12.30. The people who suffer unfair or inconsiderate treatment and bad service may also find that they have been subject to discrimination under the Equality Act 2010 or that their human rights have been breached. For example:
- the Ombudsman investigates treatment received under the national health service, which is relevant to a person's rights under Article 8 of the Convention. For example, the Ombudsman partially upheld a complaint that the Gender Dysphoria Commissioning Policy which operated in Wales was unclear, and that the body responsible for approving the funding of treatment on behalf of the Health Board failed to respond to the complainant's concern and request for treatment to continue. The complainant received an apology, reimbursement of the cost of treatment purchased privately and a payment in recognition of the time and trouble incurred in making the complaint. Also, the Commissioning Policy was reviewed and developed to ensure it was fit for purpose.
 - the Ombudsman investigates local government provision of special educational needs, which is relevant to the protected characteristics of age and disability and is also relevant to the right to education under Article 2 of Protocol 1 of the ECHR and the UN Convention on the Rights of the Child. For example, the Ombudsman upheld a complaint that a local authority had failed to properly assess and identify a child's educational needs who was a number of years behind his peers on entering secondary education. The investigation found that the child had not received the additional support he needed during his primary school years. The Council agreed to assess the child's needs and discuss with his parent a plan for implementing any additional provision identified.
 - the Ombudsman investigates complaints about the right to receive correspondence in Welsh, which is relevant to the right to receive

information under Article 10 of the ECHR. For example, during an investigation a community council agreed to apologise to a complainant, respond to his complaint in Welsh and consider how to deal with any future correspondence received by the Council in Welsh.

- the Ombudsman investigates housing issues, which is relevant to the right to a person's home under Article 8 of the Convention. For example, the Ombudsman upheld a complaint that a Council did not effectively or promptly investigate, or take timely or sufficient action about Anti-Social Behaviour and that in failing to do so the Council failed to have regard to the complainant's human rights and dignity and those of his children. The Council recommended that the Council should apologise to the family, offer redress in the sum of £3000 in recognition of the family's distress, train its staff on evidence gathering and provide an information sheet with a named point of contact in the Council for any witnesses who are supporting the Council's legal proceedings.

12.31. The Bill secures and strengthens the role that the Ombudsman has in addressing the equality and human rights issues that arise from investigations. That role can have a direct effect on the way that public services are provided, and can therefore have a positive impact on a broad range of equality and human rights issues.

12.32. As for the investigatory process itself, the Bill provides greater flexibility for the Ombudsman to help the most vulnerable people in our society, be they vulnerable by reason of disability, age, fear, homelessness or any other status. This will have a further positive impact on equality and human rights issues that have not historically been brought to the attention of the Ombudsman.

Impact on the Welsh Language

12.33. The Ombudsman is not currently subject to the Welsh Language Standards. However, the Ombudsman provides a bilingual service in respect of a range of correspondence and material, including standard or circular correspondence, website and social media, publicity campaigns, exhibitions and advertising. The Ombudsman's normal practice is to conduct telephone communications, investigations and

general communications in English or Welsh, depending on the preference of the person making contact with him or his office⁷⁶.

- 12.34. Section 71 of the Bill requires the Ombudsman to prepare and publish a Welsh Language Strategy. It also sets out the timescale for the publication of the strategy and makes provision for any subsequent revisions deemed necessary.
- 12.35. The provisions of the Bill and extension of the jurisdiction of the Ombudsman does not have a differential impact on the Welsh language.

Sustainable development

- 12.36. Sustainable development is about improving the way that we can achieve our economic, social, environmental and cultural well-being. The Well-Being of Future Generations (Wales) Act 2015 sets out the following definition:

“sustainable development” means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the well-being goals⁷⁷

- 12.37. The Ombudsman and his office are not listed bodies in the legislation and hence they are not required to comply with the requirements of the Well-Being of Future Generations (Wales) Act 2015. However, the Bill is consistent with its principles.
- 12.38. ‘A more equal Wales’ is one of the seven well-being goals set out in the Well-being of Future Generations (Wales) Act 2015 and the Bill is expected to have a positive impact on equality. Significant barriers that arise from discrimination will be removed, allowing the Ombudsman greater access to the issues faced by the most vulnerable people in our society.
- 12.39. The provisions of the Bill are consistent with many of the five sustainable development principles set out in the Well-Being of Future Generations (Wales) Act 2015. For example:
- Prevention: The Ombudsman’s power to investigate on his own initiative will allow the Ombudsman to investigate and to address systemic failures in public services. By engaging with the service providers, the Ombudsman’s work will contribute to the prevention

⁷⁶ Public Services Ombudsman for Wales, Welsh Language Policy, (Latest revision: March 2017). Available at: http://www.ombudsman-wales.org.uk/~media/Files/Documents_en/Welsh%20Language%20Policy%20-%20Review%20March%202017%20-%20Final%20for%20publication.ashx [accessed June 2017]

⁷⁷ Well-being of Future Generations (Wales) Act 2015, Part 2 ‘improving well-being’ section 2 ‘sustainable development’

of problems reoccurring, thereby securing an improvement in future service delivery; and

- Integration and collaboration: The Bill places a duty on the Ombudsman to consult and cooperate with other ombudsmen. It also requires that the Ombudsman work collaboratively with the Auditor General for Wales and other specified persons.

12.40. Provisions under the 2005 Act mean that access to the Ombudsman's services can be difficult for those in most need of responsive public services. If the Bill is not introduced, some of the most disadvantaged in Wales may not be able to access the Ombudsman's services meaning that their voices are not currently heard.

Health and well-being

12.41. The Bill restates the 2005 Act while also extending the jurisdiction of the Ombudsman. The Ombudsman will continue to carry out investigations into health and social care. Under the provisions of the Bill, the Ombudsman will also have discretion to investigate the private health service element in a public/private health service pathway. This enables the Ombudsman to take a citizen focus to his investigations and explore complaints, which include both NHS and private healthcare elements, in their entirety. This is a significant benefit given the ageing population and the increasing integration of health and social care services.

Rural impact

12.42. The provisions of the Bill and extension of the jurisdiction of the Ombudsman is not expected to have a detrimental impact on the rural community.

Competition assessment

12.43. The Bill will not affect business or charities and/or the voluntary sector in any way that raises issues related to competition.

Impact on small business

12.44. The provisions of the Bill grant discretion to the Ombudsman to investigate the private health service element in a public/private health service pathway. It also grants powers to the Ombudsman to demand costs from private health service providers on a case-by-case basis. This

applies to all providers of private health services, irrespective of the size of the organisation given their duty of care to members of the public. As such, the provisions of the Bill and extension of the jurisdiction of the Ombudsman is not expected to have a detrimental impact on small business.

Impact on the third sector

12.45. It is not expected that the provisions of the Bill and extension of the jurisdiction of the Ombudsman will impact on organisations in the third sector.

Impact on privacy

12.46. It is not expected that the provisions in the Bill will lead to a change in the privacy expectations of individuals. Nor is it likely that there will be a significant change in the personal data being held by the Ombudsman.

PART 3 – POST IMPLEMENTATION REVIEW

13 Section 72 – Review of the Act

- 13.1 Section 72 gives the Assembly a discretionary power to carry out a review of how the Act is working at any time. It also imposes a duty on the Assembly to carry out a review of how the Act has worked over the first five years.
- 13.2 When the Assembly carries out a review under section 72, it must prepare a report of its findings. The reports must be published and must also be laid before the Assembly.

14 Post implementation review

- 14.1 The Equality, Local Government and Communities Committee and the Finance Committee of the Assembly scrutinise the work of the Ombudsman and the financial considerations of his office.

Equality, Local Government and Communities Committee

- 14.2 The Equality, Local Government and Communities Committee scrutinises the annual report of the Ombudsman as part of its scrutiny role.
- 14.3 Paragraph 16 of Schedule 1 of the Bill sets out the requirements in respect of the Ombudsman’s accounts. These provisions include the requirement for the Ombudsman to prepare accounts in accordance with directions given by HM Treasury, including directions made by HM Treasury in relation to additional information that is to accompany the accounts, such as those in respect of the format and structure of the annual report.
- 14.4 Paragraph 17 of Schedule 1 of the Bill sets out the arrangements for the audit of the Ombudsman’s accounts. Under these provisions, the Auditor General for Wales is the statutory auditor of the Ombudsman’s accounts.
- 14.5 The annual report comprises narrative reports and financial statements (or ‘accounts’). The purpose of these narrative reports is to provide information on the performance and accountability of organisations. In preparing these narrative reports, the Ombudsman will be required to disclose an assessment of the performance of his functions, including those in respect of the new powers set out in the Bill.

- 14.6 Auditors are required to review the narrative report for consistency with other information in the financial statements. Therefore, this will provide assurance in that regard.
- 14.7 Paragraphs 16 and 17 of Schedule 1 to the Bill replicate paragraphs 16 and 17 of Schedule 1 to the 2005 Act.

Finance Committee

- 14.8 Paragraph 15 of Schedule 1 of the Public Services Ombudsman (Wales) Act 2005, as amended by the Government of Wales Act 2006, requires the Ombudsman to submit an estimate of the income and expenses of his office. Estimates are required to set out the resources required for the Ombudsman to carry out his statutory functions, with the exception of the Ombudsman's own salary (and associated costs), which are directly charged on the Welsh Consolidated Fund. These provisions are replicated in the Bill.
- 14.9 The Finance Committee carries out the functions of the responsible committee set out in Standing Orders 18.10, 18.11, 19 and 20 of the National Assembly for Wales⁷⁸.
- 14.10 Standing Order 20.23 sets out that:
- The Ombudsman must submit the estimate of income and expenses required under paragraph 15 of Schedule 1 to the Public Services Ombudsman (Wales) Act 2005 to the responsible committee as soon as practicable but in any event no later than 1 November in each financial year.
- 14.11 Under Standing Orders 19 and 20, the Finance Committee's responsibilities include considering any report or document laid before the Assembly concerning the use of resources, or expenditure from the Welsh Consolidated Fund. This includes undertaking budget scrutiny of the bodies directly funded from the Welsh Consolidated Fund.
- 14.12 Budget scrutiny under Standing Orders 19 and 20 will include post implementation review. This will include monitoring and evaluation of the Ombudsman's exercise of the new powers. To inform this, the Ombudsman will be required to maintain data to set out separately:
- number of additional complaints made under each of the new powers set out in the Bill; and

⁷⁸ National Assembly for Wales, Standing Orders of the National Assembly for Wales. Available at: http://www.assembly.wales/NAFW%20Documents/Assembly%20Business%20section%20documents/Standing_Orders/Clean_SOs.eng.pdf

- the costs incurred as a result of the new provisions in the Bill.
Further, the Ombudsman will be required to explain any variances between these actual costs and those set out in the RIA.

- 14.13 Budget scrutiny for the first full financial year following enactment will include consideration of the transition costs incurred by the Ombudsman against the estimates set out in the RIA.
- 14.14 The Ombudsman should seek, through his work and engagement with other public bodies affected by the Bill, the capture of data and/information to demonstrate the values and benefits arising from the functions of the office of the Ombudsman's office and the provisions in the Bill. To aid analysis, this should be captured on a consistent basis by all public bodies within the Ombudsman's jurisdiction.
- 14.15 In presenting the annual estimate of resources required to carry out his statutory functions, the Ombudsman will be required to identify separately the costs related to the new powers. This needs to be undertaken for the period covered by the new duty on the Assembly to review the operation of the Act (to which Section 72 of the Bill refers). Subsequent arrangements will be determined at a later date.

Examinations in the use of resources

- 14.16 Paragraph 19 of Schedule 1 of the Bill (which replicates paragraph 19 of Schedule 1 to the 2005 Act) states that the Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness of the Ombudsman's use of resources in carrying out the functions of that office.
- 14.17 Paragraph 19(4) of Schedule 1 of the Bill states that the Auditor General may lay before the Assembly a report of the results of any examination carried out under this provision.
- 14.18 This provision may be used as part of the post implementation review.

ANNEX A – EXPLANATORY NOTES

Introduction

These explanatory notes relate to the Public Services Ombudsman (Wales) Act 2018 which received Royal Assent on [insert date]. These explanatory notes have been prepared in order to assist the reader in understanding the Act; they do not form part of the Act.

These explanatory notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

PART 1
Section 1: Overview This section sets out a basic overview of the Act.
PART 2
Section 2: The Public Services Ombudsman for Wales This section provides for the continuation of the office of the Ombudsman. This section also introduces Schedule 1. Schedule 1 Generally, the Schedule makes provision with regard to the office of the Ombudsman; his/her powers to appoint staff and expert advisers; his/her power of delegation; requirements in relation to annual and extraordinary reports and estimates of the income and expenditure of his/her office and accounts, audit and value for money examinations into the use of the resources of the Ombudsman's office. Paragraphs 1 to 3 make provision as to the appointment, status and term of office of the Ombudsman. Paragraph 4 makes provision for the appointment of an acting Ombudsman where the office of the Ombudsman becomes vacant. Sub-paragraph (7) provides that, generally, an acting Ombudsman is to be regarded as the Ombudsman during the period for which the acting Ombudsman holds office. Consequently, an acting Ombudsman is able, for example, to exercise the Ombudsman's full range of powers with regard to the obtaining of information, evidence and the production of documents under sections 16, 17 and 18. Paragraphs 5, 6, 7 and 8 make provision with regard to:

- a) the persons who are disqualified from being the Ombudsman (or acting Ombudsman),
- b) the offices etc. which the Ombudsman (or acting Ombudsman) is disqualified from holding whilst he or she is the Ombudsman, and
- c) the offices etc. which a person who has ceased to be the Ombudsman (or acting Ombudsman) is disqualified from holding for the period of three years from the time at which he or she ceased to hold office as the Ombudsman (or acting Ombudsman as the case may be).

In addition, the Ombudsman's disqualification from being a member of the Assembly is governed by sections 16 and 17 of the GOWA 2006

Paragraph 9 makes provision with regard to the remuneration of the Ombudsman (or acting Ombudsman as the case may be).

Paragraph 10 makes provision for the expenses of the Ombudsman to be met by the Assembly, so far as they are not met out of income received by the Ombudsman.

Paragraph 11 makes provision for the Ombudsman to appoint such staff on such terms and conditions as he/she considers necessary. Members of the Ombudsman's staff are not civil servants.

Paragraph 12 enables the Ombudsman to obtain advice (whether on payment or not) as the Ombudsman considers appropriate in relation to the discharge of his/her functions.

Paragraph 13 provides that the Ombudsman may authorise any person to discharge his/her functions on his/her behalf. However, the Ombudsman cannot make arrangements, under this Act or otherwise, with the Welsh Ministers, the First Minister or the Counsel General for the exercise by one of the other's functions or for the provision of certain specified services by one to the other.

Paragraph 14 makes provision for annual and extraordinary reports by the Ombudsman.

Paragraph 15 makes provision so that in each financial year the Ombudsman must prepare an estimate of the income and expenses of his/her office which is then considered by the Assembly committee which must then lay the estimate, with or without modifications, before the Assembly.

Paragraphs 16, 17, 18, and 19 make provision with regard to the accounts that the Ombudsman is required to keep, the audit of those accounts by the Auditor General for Wales, accounting officer arrangements and examinations by the Auditor General for Wales in relation to the economy, efficiency and effectiveness with which the Ombudsman has used the resources of his/her office.

Paragraph 20 provides the Ombudsman with powers to do things that are supplementary to being the Ombudsman. For example, it gives the Ombudsman power to do things like lease offices and vehicles in order to facilitate the discharge of the Ombudsman's functions.

Paragraph 21 clarifies that the person who is the Ombudsman the day before this Act is passed continues to be the Ombudsman after this Act is passed (and that there is no break in the 7 year term of appointment).

PART 3

Section 3: Power to investigate complaints

By virtue of section 3(1) the Ombudsman may only investigate a complaint relating to a matter if:

- a) the complaint has been duly made or referred to him/her, and
- b) he/she is entitled to investigate that matter.

Sections 10 to 14 set out the matters that the Ombudsman is entitled to investigate. Section 3(2) sets out the circumstances where a complaint is duly made to the Ombudsman. Section 3(3) sets out the circumstances where a complaint is duly referred to the Ombudsman by a listed authority.

Section 3(4) enables the Ombudsman to accept complaints even if specific requirements as to the way it has been made or referred have not been fulfilled if he/she considers it reasonable to do so. Section 3(5) and (6) provide the Ombudsman with a wide discretion as to whether to begin, continue or discontinue an investigation.

Section 3(7) makes it clear that the Ombudsman may begin or continue an investigation even if the complaint has been withdrawn. This covers the situation, for example, where a complaint has been made in relation to a listed authority's action which affects more than one person but where the complaint that has been withdrawn was put forward as the 'lead' complaint. In such cases, where the 'lead' complaint has been withdrawn, it will be open to the Ombudsman to begin or to continue an investigation as he/she sees fit.

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 Act - 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 Act 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

Before the Ombudsman can use the power in section 4 to carry out an own initiative investigation, the criteria in section 5 must be met.

Firstly, an own initiative investigation must be in the public interest. In addition, one of the following criteria must be met:

(a) it must be likely that a vulnerable or disadvantaged person will suffer injustice or hardship;

(b) the investigation must be about a systemic failure that may cause someone to suffer injustice or hardship (in deciding whether this criterion is met, the Ombudsman must have regard to any complaints he or she has received).

The Welsh Ministers have a power to amend the criteria by regulations, subject to the Assembly's affirmative procedure.

Section 6: Alternative resolution of matters

This section provides the Ombudsman with a wide power to take steps to resolve matters without proceeding to a formal investigation. The power is available to the Ombudsman to use instead of or in addition to the power to investigate.

Section 7: Who can complain

Section 7(1)(a) provides that a member of the public (the "person aggrieved") is only entitled to complain to the Ombudsman if he or she claims to have sustained injustice or hardship as a result of maladministration or service failure (as the case may be).

It is not only individuals who can complain to the Ombudsman. So, for example, companies or other corporate bodies could complain to the Ombudsman.

Listed authorities acting in their capacity as listed authorities cannot complain to the Ombudsman (section 7(2)).

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.

Listed authorities are listed in Schedule 3.

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 section 8(1) (though the Ombudsman has discretion under section 3(4) to investigate matters where these requirements are not met).

Section 8(1)(b) provides that the time-limit for making a complaint to the Ombudsman is one year from the day that the person aggrieved first has notice of the matters complained about.

But section 8(1) does not specify all of the exact requirements of making a complaint; other than the requirement around time-limits, the requirements will be set out in guidance published by the Ombudsman. Therefore, persons who wish to make a complaint should read that guidance in order to help them make the complaint.

If the guidance specifies that a complaint may be made orally, subsections (4) to (9) set out additional requirements. This includes explaining to the person what it means for a complaint to be duly made (i.e. that when a complaint is duly made, it could lead to the Ombudsman beginning an investigation), and checking with the person whether they wish the complaint to continue to be one that is duly made. If the person does not wish the complaint to be treated as one that is duly made, then the Ombudsman cannot investigate the matter as if the Ombudsman had received a complaint about the matter (but the Ombudsman can investigate the matter under the own initiative power in section 4).

Section 9: Requirements: complaints referred to the Ombudsman

This section provides that a listed authority can refer a complaint to the Ombudsman but only if it is made by a person who would have been entitled to make that complaint directly to the Ombudsman.

The complaint must have been made to the authority within a year from the day that the person aggrieved first had notice of the matter complained of.

The referral must also occur before the end of one year beginning on the day on which the complaint was made to the listed authority.

In addition, the referral must be in whatever form, and contain whatever information, the Ombudsman specifies in published guidance. Therefore, listed authorities who wish to refer a complaint should read that guidance in order to help them refer a complaint.

Under section 3(4) the Ombudsman has discretion to accept a referral where either (or both) of the time limits are not met, where the referral is not in the required form or where the referral does not contain the required information.

Section 10: Matters which may be investigated

Section 10(1) provides that the Ombudsman is, subject to sections 11 to 14, entitled to investigate:

- a) maladministration by a listed authority (other than a private health services provider) in connection with ‘relevant action’;
- b) an alleged failure in a ‘relevant service’ provided by a listed authority (other than a private health services provider);
- c) an alleged failure by a listed authority (other than a private health services provider) to provide a ‘relevant service’; or
- d) matters relating to private health services.

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 Act – each time the word “investigation” is used in Part 3 of the Act, 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(1) to include medical treatment and nursing care. ‘Private health services provider’ is defined in section 76(1) to mean:

- (a) an independent hospital providing private health services, and
- (b) health professionals who have access to NHS staff and facilities (other than under NHS contracts of employment) providing private health services.

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 (other than a private health services provider);
 - (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.

‘Relevant action’ is defined in section 10(4) and ‘relevant service’ is defined in section 10(5). The definitions are designed to ensure that it is only the functions of listed authorities in, essentially, their public capacity that can be investigated. In the case of a listed authority that falls within section 10(4)(e), the Ombudsman is entitled to investigate alleged maladministration in the discharge of that authority’s administrative functions. The Welsh Government is one such authority, and section 10(4)(e) means, for instance, that the Ombudsman is not entitled to investigate the Welsh Government’s legislative or judicial functions.

In the case of a person added to Schedule 3 (“listed authorities”) to the Act, by regulations under section 30(2), section 10(4)(d) and section 10(5)(d) provide that the Ombudsman is only entitled to investigate action which that person takes or a service which that person provides in the discharge of that person’s functions which have been specified in the regulations as falling within the Ombudsman’s remit.

The effect of subsection (7) is that where a listed authority appoints a person as a member of staff of a ‘relevant tribunal’, an administrative function of that person is treated as being an administrative function of the listed authority and so that function will fall within the remit of the Ombudsman. A ‘relevant tribunal’ means a tribunal specified by regulations made by the Welsh Ministers (section 76(1)).

Section 11: Exclusion: matters not relating to Wales

Section 11(1) provides that the Ombudsman cannot investigate a matter relating to the discharge by a listed authority of its functions otherwise than in relation to Wales. Section 11(2) makes it clear that this restriction does not apply in relation to the Welsh Government, because generally everything the Welsh Government does is in relation to Wales

Section 11(3) puts beyond doubt that any function of a listed authority in relation to the Welsh language or any other aspect of Welsh culture is to be regarded as being discharged in relation to Wales and is, therefore, not excluded from the Ombudsman’s jurisdiction by section 11(1).

Section 12: Exclusion: other remedies

In general, the Ombudsman cannot investigate a complaint about a matter if the person aggrieved has (or had) a right of appeal, reference or review (as specified) or a remedy by way of proceedings in a court of law (section 12(1)). However, if the Ombudsman is satisfied that, in the particular circumstances, it is not reasonable to expect the person aggrieved to take up (or to have taken up) that right of appeal, reference, review or remedy, then the Ombudsman may choose to investigate the complaint (section 12(2)).

Section 12(3) and (4) provides that, unless the Ombudsman is satisfied that it is reasonable for him/her to investigate the matter without the following steps having been taken, then before the Ombudsman can investigate a matter he/she must be satisfied that:

- a) the person aggrieved (or someone acting on that person's behalf) has brought the matter to the attention of the listed authority concerned, and
- b) the listed authority has been given a reasonable opportunity to investigate and respond to the complaint.

Section 13: Other excluded matters

Section 13(1) provides that the Ombudsman cannot investigate the excluded matters set out in Schedule 2 to the Act. Section 13(2) allows the Welsh Ministers, by regulations, to add to, remove or alter the entries appearing, from time to time, in Schedule 2 to the Act. Before making such regulations, the Assembly must consult the Ombudsman (section 13(3)).

Section 13(5) puts beyond doubt that despite the exclusions in Schedule 2 the Ombudsman may investigate the operation by a listed authority of any procedure established to examine complaints or review decisions. So, for example, the Ombudsman is excluded from investigating a matter that relates to the determination of the amount of rent (paragraph 5 of Schedule 2 to the Act). Section 13(5) ensures that this does not prevent him/her from investigating the manner in which a complaint about the determination of rent was considered under an authority's complaints procedure.

Schedule 2

This Schedule makes provision as to matters that are excluded from the Ombudsman's jurisdiction.

Section 14: Decisions taken without maladministration

Section 14(1) provides that the Ombudsman cannot question the merits of any decision taken by a listed authority in the exercise of any discretion if that decision was taken without maladministration. Consequently, provided that there is no delay, bias, neglect, turpitude etc. in relation to the decision (including where the decision relates to alleged service failure), the Ombudsman is not entitled to question that decision. So, where a listed

authority has, without maladministration, reached a policy decision in which it has weighed up all relevant matters (including, for example, resources), the Ombudsman is not entitled to question that decision.

However, by virtue of section 14(2), section 14(1) does not apply to the extent that a decision is taken in consequence of the exercise of professional judgement which appears to the Ombudsman to be exercisable in connection with the provision of:

- (a) health care, or
- (b) social care.

This is intended to cover decisions taken in consequence of the exercise of clinical judgement.

Section 15: Decisions not to investigate or to discontinue investigation

Section 15(1) provides that the Ombudsman must prepare a statement of reasons in relation to any decision by him/her not to begin or to discontinue an investigation. This includes the situation where, under section 6, the Ombudsman has resolved a matter and therefore decided not to undertake an investigation. Under section 15(2), the Ombudsman must send a copy of that statement to:

- a) the person aggrieved (if any); and
- b) the listed authority to which the matter relates.

Under section 15(3), the Ombudsman may send a copy of the statement to any other person.

The Ombudsman may publish such a statement if the requirements of section 15(4) are met. The Ombudsman may only publish such a statement if he/she considers that it is in the public interest to do so. In reaching his/her view, the Ombudsman must take account of the interests of the person aggrieved (if any) and any other persons he/she thinks appropriate.

Section 15(7) and (8) provides that when the Ombudsman prepares a statement that:

- a) names any person (other than the listed authority concerned); or
- b) includes anything which, in the opinion of the Ombudsman, is likely to identify any person and which, in the opinion of the Ombudsman, can be omitted from the statement without impairing its effectiveness,

the Ombudsman may only include such information in the version of the statement that he/she is required or empowered to send or which he/she publishes if it is in the public interest to include such a name or identifying particulars. In reaching his/her view, the Ombudsman must have regard to

the interests of the person aggrieved (if any) and any other persons he/she thinks appropriate.

In the case of the version of the statement that the Ombudsman is required to send, under section 15(2), to the person aggrieved (if any) and the listed authority, it is not anticipated that it would be difficult for the Ombudsman to show that it is in the public interest to include such information. This is because, in such cases, there is likely to be a strong public interest in those parties knowing the names and identities of persons that the Ombudsman considers it necessary to refer to in the statement. Indeed, in many cases such a statement is likely to name or identify only the person aggrieved, the listed authority that took the action which is the subject of the investigation, and those of its employees who are relevant (e.g. if the employee of the listed authority took the action complained of).

Section 16: Investigation procedure

Section 16(1) sets out the requirements for investigations under section 3 (i.e. investigations following a complaint).

Sections 16(2) to 16(7) set out the requirements for investigations under section 4 (i.e. investigations using the own initiative power), which includes a requirement for the Ombudsman to prepare an 'investigation proposal' and to send the investigation proposal to the listed authority being investigated, and to give the listed authority and other persons opportunity to comment on the investigation proposal. Under section 16(5), an investigation proposal must set out the reasons for the investigation and how the section 5 criteria have been met (i.e. the criteria for own initiative investigations).

But the Ombudsman does not have to prepare an investigation proposal in the circumstances set out in section 16(3) and (4). This means that if the Ombudsman has previously investigated a matter (either in response to a complaint under section 3 or using his/her own initiative under section 4) and the Ombudsman is conducting a new investigation into a matter that has a substantial connection with the previous investigation, then the Ombudsman does not have to prepare an investigation proposal.

However, even if the Ombudsman does not have to prepare an investigation proposal, section 16(7)(b) still requires the Ombudsman to bring the investigation to the attention of those being investigated and give them an opportunity to comment.

Section 16(8) requires all investigations to be conducted in private.

Section 16(9) provides that, subject to the above requirements, it is for the Ombudsman to decide the procedure for conducting an investigation. The Ombudsman could, for example, establish different procedures for different types of complaints and he/she could, in any particular case, depart from any such established procedures if he/she considered it appropriate.

Section 16(10)(a) makes it clear that the Ombudsman may make such inquiries as he/she thinks appropriate. Section 16(10)(b) provides that it is for the Ombudsman to decide whether a person may be legally represented or be represented in some other way (e.g. by an independent advocate).

Section 16(12) empowers the Ombudsman to make payments towards the expenses of persons assisting him/her in an investigation, provided that they are properly incurred, and to pay certain allowances. It is for the Ombudsman to determine whether it is appropriate to make such payments or to impose any conditions on such payments.

Section 16(13) puts beyond doubt that the fact that the Ombudsman is investigating a matter does not affect the validity of any action taken by the listed authority in relation to the matter under investigation. Nor is any power or duty of the authority to take further action with respect to that matter affected.

Section 17: Information, documents, evidence and facilities

The Ombudsman has wide powers to require the production of information or documents in relation to an investigation (sections 17(2) and 17(3)) and to require certain persons to provide him/her with any facilities he/she may reasonably require (section 17(4)). The latter provision may be needed, for example, if the Ombudsman were to require the use of certain computer hardware or software to view documents or information provided.

The Ombudsman has the same powers as the High Court in relation, amongst other things, to the taking of evidence from witnesses (section 17(3)).

Section 17(5) provides protection for those from whom the Ombudsman may require evidence or the production of information or documents. Such a person cannot be required by the Ombudsman to give any evidence or produce any documents which that person could not be compelled to give or produce before the High Court.

Section 17(6) prevents information from being withheld by the Crown on the ground that it is subject to an obligation to keep it secret or a restriction on its disclosure.

The effect of section 17(7) is that, in relation to the Ombudsman's power to require evidence or the production of information or documents, the Crown cannot rely on either its special privileges or immunities to defeat the Ombudsman's right of access to such information or on the protection that would otherwise be afforded by section 17(5).

Section 18: Obstruction and contempt

Sections 18(1) and 18(2) enable the Ombudsman to certify to the High Court that, in his/her opinion, a person has without lawful excuse obstructed him/her (or a member of his/her staff etc.) in the discharge of his/her functions under Part 3 or that the person has acted in a way that, if the act was done in relation to High Court proceedings, would amount to a contempt of court.

The Ombudsman cannot issue such a certificate if the alleged obstruction or contempt arises merely because the person concerned has taken some further action in respect of the matter under investigation (see section 18(3) and section 16(13)).

If the Ombudsman issues such a certificate then the High Court may inquire into the matter and if the High Court finds that the person concerned has obstructed the Ombudsman, the High Court may deal with the person as if he/she had committed contempt in relation to the High Court (section 18(5)).

Section 19: Power to demand costs from private health services providers

Section 19 gives the Ombudsman power to demand costs from private health services providers where the provider has:

- (a) obstructed the Ombudsman; or
- (b) 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 20: Reports of investigations

Section 20(1) provides that after conducting an investigation the Ombudsman must, unless he/she decides to report under the alternative procedure set out under section 26, prepare a report on his/her findings and send a copy of that report to the persons specified in section 20(2).

In relation to a person who is a family health service provider in Wales or independent provider in Wales the Ombudsman is required to send his/her report to the provider (as the listed authority) and to those persons with whom the provider has contracted, undertaken or arranged to provide the services that are the subject of the complaint. The Ombudsman is required to send a copy of the report to every person with whom that provider has (or

had) contracted, undertaken or arranged to provide any services (section 20(2)(d) and (e)).

The Ombudsman may publish his/her report if the requirements of section 20(4) are met. The Ombudsman may only publish such a report if he/she considers that it is in the public interest to do so. In reaching his/her view, the Ombudsman must have regard to the interests of the person aggrieved (if any) and any other persons he/she thinks appropriate.

Section 20(7) and (8) provides that when the Ombudsman prepares a report that:

- a) names any person (other than the listed authority concerned); or
- b) includes anything which, in the opinion of the Ombudsman, is likely to identify any person and which, in the opinion of the Ombudsman, can be omitted from the report without impairing its effectiveness,

the Ombudsman may only include such information in the version of the report that he/she is required or empowered to send, or which he/she publishes, if it is in the public interest to include such a name or identifying particulars. In reaching his/her view, the Ombudsman must have regard to the interests of the person aggrieved (if any) and any other persons he/she thinks appropriate.

In the case of the version of the report that he/she is required to send, under section 20(1)(b), to the person aggrieved (if any) and the listed authority etc., it is not anticipated that it would be difficult for the Ombudsman to show that it is in the public interest to include such information. This is because, in such cases, there is likely to be a strong public interest in those parties knowing the names and identities of persons that the Ombudsman considers it necessary to refer to in his/her report. Indeed, in many cases such a report is likely to name or identify only the person aggrieved (if any), the listed authority that took the action which is the subject of the report and those of its employees that are relevant (e.g. because it is the employee who took the action that is the subject of the report).

Section 21: Publicising reports

Section 21(1) to (4) requires listed authorities that receive a copy of a report under section 20(1)(b) to make specified arrangements for publicising such reports.

The listed authority is required, within specified time-scales, to make copies of the report available at one or more of its offices and via its website (if any). Members of the public have a right, free of charge, to inspect, make copies of and view the report via the authority's website (if applicable). The right to take copies would include downloading an electronic copy via the authority's website. Members of the public also have the right to require the listed authority to supply copies of the report, for which the authority can

charge a reasonable sum. It is an offence for any person wilfully to obstruct a member of the public in the exercise of these rights (section 21(7) and (8)).

The Ombudsman may, after taking account of the public interest and the interests of the person aggrieved (if any) and any other persons he/she thinks appropriate, direct that the publicity requirements are not to apply in relation to a particular report (section 21(9) and (10)). The Ombudsman also has the power to give directions with regard to the discharge by listed authorities of their functions under section 21 (section 21(5) and (6)).

Section 22: Publicising reports: health care providers

Section 22 makes provision for the application of section 21 with modifications in relation to persons who are listed authorities by virtue of being family health service providers in Wales or independent providers in Wales. The effect of the modifications is that it is the person with whom the provider contracted or made arrangements (or to whom he/she undertook) to provide the relevant services on whom the publicity requirements fall, rather than on the listed authority (i.e. the family health service provider or independent provider).

Section 23: Action following receipt of a report: investigation of a listed authority

Section 23 provides that if, following an investigation, the Ombudsman reports (under section 20) that any person has sustained injustice or hardship as a consequence of the action investigated, the listed authority concerned is required to consider the Ombudsman's report and notify him/her of the action that it has taken or proposes to take in response and also of the time within which it will take any action that it proposes to take. The listed authority must make the notification within one month starting on the day that it receives the report or such longer period as the Ombudsman in his/her discretion specifies.

Section 24: Action following receipt of a report: investigation of a private health services provider

Section 24 provides an incentive for a private health services provider to: (a) not be the subject of a report under section 20, and (b) take proper action in response to any report published under section 20(4) in respect of the private health services provider. This is because other listed authorities must have regard to any such reports and any such action (good or bad) taken by the private health services provider when they are deciding whether to enter into a contract for services with the private health services provider.

Listed authorities can comply with this duty by checking to see if a section 20 report has been published in respect of the private health services provider. If there has been such a report, the listed authorities can also ask the Ombudsman what steps the private health services provider took in

response to the report (section 68 allows the disclosure of such information in certain circumstances, including where there is likely to be a threat to the health or safety of one or more persons).

Section 25: Non-action following receipt of a report

If the Ombudsman is satisfied that the listed authority has wilfully disregarded his/her report without lawful excuse, the Ombudsman may, under section 25(1), issue a certificate to that effect to the High Court.

Section 26: Reports: alternative procedure

The full reporting procedure under sections 20 to 23 does not apply if the Ombudsman decides to report under the alternative procedure set out in section 26.

If, after an investigation, the Ombudsman concludes that:

- a) no person has sustained injustice or hardship as a consequence of the matter investigated; or
- b) a person has sustained such injustice or hardship and the listed authority concerned agrees within the permitted period (as defined in section 26(3)) to implement the Ombudsman's recommendations,

then the Ombudsman may decide to report under the alternative procedure under section 26 but only if he/she is satisfied that the public interest does not require him/her to report under the full reporting procedure set out in sections 20 to 23.

A report under the alternative procedure in this section is subject to the same restrictions with respect to naming or identifying individuals as a report under section 20 (section 26(9) and (10)).

Section 27: Special reports

Under section 27, the Ombudsman may issue a special report if the listed authority has failed to take the steps or action required or implemented the recommendations required in response to: (a) a report made under section 20, (b) a report made under section 26, or (c) following the resolution of a matter.

For example, a listed authority may fail to notify the Ombudsman, within one month of receiving a section 20 report, of the action that it has taken or proposes to take in response to the report. In such cases, the Ombudsman may issue a special report (section 27(2)(a)).

The Ombudsman may also, for example, issue a special report if a listed authority has given the notification under section 23 within the time-scale set out there but the Ombudsman is not satisfied:

- a) with the action taken or proposed by the listed authority; or
- b) with the period within which the listed authority has stated that it will take that action; or
- c) that the listed authority has taken the action that it stated that it would take within the specified period.

The Ombudsman may make whatever recommendations he or she thinks appropriate in a special report with respect to the action he/she thinks should be taken to remedy the injustice or hardship suffered by the person aggrieved and to prevent similar injustice or hardship being caused again (section 27(8)(b)).

Section 27(9) sets out to whom the Ombudsman is required to send a copy of a special report. The requirement depends on whether the original report was a full report under section 20, a report made under section 26 or a statement made following the resolution of a matter.

Section 28: Special reports: supplementary

Section 28 makes further provision with regard to special reports. In particular, a special report is subject to the same restrictions with respect of naming or identifying individuals as a report under section 20 (section 28(4) and (5)) and section 28(6) applies sections 21 and 22 (requirements as to publicising reports) to special reports.

If a special report in respect of a private health services provider is published under section 28(1)(a), then listed authorities (other than private health services providers) must have regard to that published report when considering whether to enter into any contract for services with the private health services provider.

Listed authorities can comply with this duty by checking to see if a report has been published under section 28(1)(a) in respect of the private health services provider.

Section 29: Special reports relating to the Welsh Government and the National Assembly for Wales Commission

A special report in respect of the Welsh Ministers or the National Assembly for Wales Commission must be laid before the Assembly.

Section 30: Listed authorities

This section introduces Schedule 3, which lists the persons (in the Act referred to as “listed authorities”) who are liable to investigation by the Ombudsman.

Section 30(2) gives the Welsh Ministers power, by regulations, to amend Schedule 3 by adding or removing listed authorities or changing their entries. Before doing so the Welsh Ministers must consult the Ombudsman and any other persons it thinks appropriate (section 30(4)). Section 30(3) provides that an order adding a person to Schedule 3 as a listed authority may apply the Act to that person with modifications.

The power to make an order under this section is subject to certain restrictions set out in sections 31 and 32.

Schedule 3

This Schedule lists the persons subject to the remit of the Ombudsman.

Section 31: Restrictions on power to amend Schedule 3

Section 31(1) prevents regulations under section 30(2) from changing the status of the Welsh Government or the National Assembly for Wales as listed authorities.

Section 31(2) to (5) sets out the criteria that a person must meet before the Welsh Ministers may add that person as a listed authority under section 30(2). Thus, additions to the list in Schedule 3 may only be made if the person to be listed:

- a) discharges functions in relation to Wales (“in relation to Wales” does not mean that the function has to be performed physically in Wales, although in most cases that will be the case). It does not matter that the person also discharges functions otherwise than in relation to Wales; and
- b) has functions some or all of which are in a field in which the Welsh Government also has functions. For example, if a person’s functions are in the field of agriculture then it is eligible for listing (assuming the other criteria are met) because the Welsh Government has functions in that field. The scope of this restriction will vary over time as the fields in which the Welsh Government has functions change; and
- c) falls within section 31(3), (4) or (5).

Section 31(6) prevents the Welsh Ministers adding to Schedule 3 by regulations :

- a) a Special Health Authority which discharges its functions only or mainly in England; or
- b) a nationalised industry or undertaking.

Section 32: Provisions in regulations adding persons to Schedule 3

Section 32 provides that when adding a person to the list, the Welsh Ministers must, in the regulations, specify which of the person’s functions fall within the Ombudsman’s remit.

Section 33: Power to issue guidance

Section 33(1) gives the Ombudsman power to issue guidance to listed authorities about good administrative practices. This will enable the Ombudsman to set bench marks for listed authorities. The Ombudsman has a further power to issue guidance to listed authorities in relation to complaints-handling procedures (see sections 34 to 40).

Section 33(3) provides that listed authorities are required to have regard to the Ombudsman's guidance under section 33 when discharging their functions. Listed authorities should not depart from that guidance unless there is good reason to do so. When discharging his/her functions in relation to a matter under this Act, the Ombudsman can take into account whether or not and to what extent a listed authority has complied with his/her guidance under section 33.

Section 34: Compensation for the person aggrieved

This section confers a power on listed authorities to pay compensation to a person by or on behalf of whom a complaint has been made to the Ombudsman in respect of the matter, which is the subject of the complaint.

Some listed authorities may have existing powers that would be wide enough for this purpose (see for example the power available to various local government bodies acting under section 92 Local Government Act 2000). Section 41 will ensure that all listed authorities will have such a power. It is not dependent on the Ombudsman actually investigating and reporting on the complaint and so, for example, could be used where the Ombudsman has assisted in negotiating an amicable resolution of the matter.

PART 4

Section 35: 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 Parliamentary 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 this Act.

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 36: Model complaints-handling procedures

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 37(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 39(1).

If the Ombudsman withdraws a model CHP, any related specifications under section 37(1) cease to have effect.

Section 37 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, dis-apply aspects of the model CHP if this is necessary for its effective operation. Specifications can be revoked at any time.

Section 38: 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 39: 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 37(3) or 38(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 40: Complaints-handling procedures: promotion of best practice etc

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 cooperation 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.

Section 41: Complaints-handling procedures: application and interpretation

Section 41(1) provides that the duties in sections 34(2) and (3) and 37(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 37(2) do not apply to the extent that they are inconsistent with any other legislation. This 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 41(2) provides that the complaints-handling regime set out in section 35 to 40 do not apply to private health services providers.

PART 5

Section 42: Matters to which this Part applies

Section 42 sets out the three matters to which Part 5 applies: (1) action taken by a care home provider in connection with the provision of accommodation,

nursing or personal care in a care home in Wales; (2) action taken by a domiciliary care provider in connection with the provision of domiciliary care in Wales; and (3) action taken by an independent palliative care provider in connection with the provision of a palliative care service in Wales.

Part 5 does not apply to complaints which may be dealt with under Part 3 or this Act or to matters described in Schedule 4 (matters excluded from the Ombudsman's jurisdiction). The Welsh Ministers may by regulations amend Schedule 4 but must consult the Ombudsman before doing so.

The terms used in this section are defined in sections 61 to 63.

Schedule 4

This Schedule makes provision as to matters that are excluded from the Ombudsman's jurisdiction.

Section 43: Power to investigate complaints

Section 43 mirrors the general approach taken in section 3. By virtue of section 43(1) and (2) the Ombudsman may only investigate a complaint relating to a matter to which Part 3 of this Act applies if:

- a) the complaint has been duly made or referred to him/her; and
- b) in the case of complaints about independent palliative care providers, that the independent palliative care provider has received public funding within three years preceding the date of the action to which the complaint relates.

"Public funding" is defined in subsection (3) and means funding from the Welsh Ministers, a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006, an NHS Trust or a county council or county borough council in Wales. This could, for example, cover grant funding provided by the Welsh Ministers to the independent palliative care service.

Sections 43(4) and 48 set out the circumstances in which a complaint is duly made to the Ombudsman. Section 43(5) and section 49 set out the circumstances in which a complaint is duly referred to the Ombudsman by a provider to whom it relates.

Section 43(7) enables the Ombudsman to investigate a complaint even if the specific requirements as to the way a complaint is to be made or referred have not been fulfilled if the Ombudsman considers it reasonable to do so.

Sections 43(8) and (9) provide the Ombudsman with a wide discretion as to whether to begin, continue or discontinue an investigation. Section 43(10) makes clear that the Ombudsman may begin or continue an investigation even if the complaint has been withdrawn. This may be appropriate, for example, where a 'lead' complainant has made a complaint about a

provider's action which has also affected other persons, but has subsequently withdrawn his or her 'lead' complaint. In such cases, the Ombudsman may consider it appropriate to begin or to continue an investigation, despite the withdrawal of the 'lead' complaint, so as to protect the interests of the other persons.

Section 44: 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 Act – when the word “investigation” is used in Part 5, it can mean either an investigation under section 43 or an investigation under section 44.

Like the power under section 43, the power in section 44 can only be used to investigate matters the Ombudsman is entitled to investigate under Part 5. Section 42(1) sets out the matters which may be investigated under Part 5, and section 44(2) confirms that the additional conditions that apply in the case of complaints about independent palliative care providers under section 43(1) and (2), also apply to investigations under section 44.

Under section 44(3), the Ombudsman can investigate matters which took place before or after the Act 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 45: Criteria for own initiative investigations

Before the Ombudsman can use the power in section 44 to carry out an own initiative investigation, the criteria in section 45 must be met.

Firstly, an own initiative investigation must be in the public interest. In addition, one of the following criteria must be met:

(a) it must be likely that a vulnerable or disadvantaged person will suffer injustice or hardship;

(b) the investigation must be about a systemic failure that may cause someone to suffer injustice or hardship. In deciding whether this criterion is met, the Ombudsman must have regard to any complaints he or she has received.

The Welsh Ministers have a power to amend the criteria by regulations, subject to the Assembly's affirmative procedure.

Section 46: Alternative resolution of matters

Section 46 mirrors section 6 of this Act and provides the Ombudsman with a wide power to take steps to resolve matters under Part 5 without proceeding to formal investigation. The power is available to the Ombudsman to use instead of, or in addition to, the power to investigate.

Section 47: Who can complain

Section 47 is based on section 7 of this Act. It lists the persons who may make a complaint to the Ombudsman under Part 5 of this Act.

A person may make a complaint if he or she is a member of the public (“the person aggrieved”) who claims to have sustained injustice or hardship as a result of maladministration or service failure (as the case may be), or if he or she has been authorised to act on such a person’s behalf, or otherwise appears to the Ombudsman to be appropriate to act on such a person’s behalf.

However, it is not only individuals who can complain to the Ombudsman: companies and organisations can also complain to the Ombudsman about injustice or hardship suffered by members of the public, provided that the conditions in subsection (1) are satisfied.

The Ombudsman has the power to decide whether the requirements of section 47 have been met in a particular case.

Section 48: Requirements: complaints made to the Ombudsman

If a person wishes to make a complaint to the Ombudsman, the complaint must satisfy the requirements of section 48(1) (though the Ombudsman has discretion under section 43(7) to investigate matters where these requirements are not met).

Section 48(1)(c) provides that the time-limit for making a complaint to the Ombudsman is one year from the day that the person aggrieved first has notice of the matters complained about.

But section 48(1) does not specify all of the exact requirements of making a complaint; other than the requirement around time-limits, the requirements will be set out in guidance published by the Ombudsman. Therefore, persons who wish to make a complaint should read that guidance in order to help them make the complaint.

If the guidance specifies that a complaint may be made orally, subsections (4) to (9) set out additional requirements. This includes explaining to the person what it means for a complaint to be duly made (i.e. that when a complaint is duly made, it could lead to the Ombudsman beginning an investigation), and checking with the person whether they wish the

complaint to continue to be one that is duly made. If the person does not wish the complaint to be treated as one that is duly made, then the Ombudsman cannot investigate the matter as if the Ombudsman had received a complaint about the matter (but the Ombudsman can investigate the matter under the own initiative power in section 44).

Section 49: Requirements: complaints referred to the Ombudsman

This section provides that a provider can refer a complaint to the Ombudsman but only if it is made by a person who would have been entitled to make that complaint directly to the Ombudsman.

The complaint must have been made to the provider within a year from the day that the person aggrieved first had notice of the matter complained of. The referral must also occur before the end of one year beginning on the day on which the complaint was made to the provider.

In addition, the referral must be in whatever form, and contain whatever information, the Ombudsman specifies in published guidance. Therefore, providers who wish to refer a complaint should read that guidance in order to help them make the referral.

Under section 43(7) the Ombudsman has discretion to accept a referral where either (or both) of the time limits are not met, where the referral is not in the required form or where the referral does not contain the required information.

Section 50: Decisions not to investigate complaints or to discontinue investigations

Section 50 provides that the Ombudsman must prepare a statement of reasons in relation to any decision by him/her not to begin, or to discontinue, an investigation.

Such a decision may be made, for example, where the Ombudsman has resolved a matter through alternative means under section 46 and therefore decided not to undertake a formal investigation.

Under section 50(2), the Ombudsman must send a copy of that statement to:

- a) the person aggrieved (if any); and
- b) the provider to whom the matter relates.

Under section 50(3) the Ombudsman may also send a copy of the statement to any other person.

The Ombudsman may publish such a statement if the requirements of section 50(4) are met. The Ombudsman may only publish such a statement if he/she considers that it is in the public interest to do so. In reaching his/her

view, the Ombudsman must take account of the interests of the person aggrieved (if any) and any other persons he/she thinks appropriate.

Sections 50(7) and (8) prohibits the Ombudsman from sending out or publishing a statement that:

a) names any person (other than the provider to whom the matter relates); or
b) includes information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the opinion of the Ombudsman, can be omitted from the statement without impairing its effectiveness,

unless the Ombudsman considers that it is in the public interest to include such a name or identifying particulars. This prohibition does not apply in relation to the version of the statement sent to the person aggrieved (if any).

Section 51: Investigation procedure

Section 51(1) sets out the requirements for investigations under section 43 (i.e. investigations following a complaint).

Sections 51(2) to 51(7) set out the requirements for investigations under section 44 (i.e. investigations using the own initiative power), which includes a requirement for the Ombudsman to prepare an 'investigation proposal' and to send the investigation proposal to the provider being investigated, and to give the provider and other persons opportunity to comment on the investigation. Under section 51(5), an investigation proposal must set out the reasons for the investigation and how the section 45 criteria have been met (i.e. the criteria for own initiative investigations).

But the Ombudsman does not have to prepare an investigation proposal in the circumstances set out in section 51(3) and (4). This means that if the Ombudsman has previously investigated a matter (either in response to a complaint under section 3 or using his/her own initiative under section 4) and the Ombudsman is conducting a new investigation into a matter that has a substantial connection with the previous investigation, then the Ombudsman does not have to prepare an investigation proposal.

However, even if the Ombudsman does not have to prepare an investigation proposal, section 51(7)(b) still requires the Ombudsman to bring the investigation to the attention of those being investigated and give them an opportunity to comment.

Section 51(8) requires all investigations to be conducted in private.

Section 51(9) provides that, subject to the above requirements, it is for the Ombudsman to decide the procedure for conducting an investigation. The Ombudsman could, for example, establish different procedures for different types of complaints and he/she could, in any particular case, depart from any such established procedures if he/she considered it appropriate.

Section 51(10)(a) makes it clear that the Ombudsman may make such inquiries as he/she thinks appropriate. Section 51(10)(b) provides that it is for the Ombudsman to decide whether a person may be legally represented or be represented in some other way (e.g. by an independent advocate).

Section 51(12) empowers the Ombudsman to make payments towards the expenses of persons assisting him/her in an investigation, provided that they are properly incurred, and to pay certain allowances. It is for the Ombudsman to determine whether it is appropriate to make such payments or to impose any conditions on such payments.

Section 52: Information, documents, evidence and facilities

Section 52 confers wide powers on the Ombudsman to require the production of information or documents in relation to an investigation (section 52(2) and (3)) and to require certain persons to provide him/her with any facilities he/she may reasonably require (section 52(4)). The latter provision may be needed, for example, if the Ombudsman requires the use of certain computer hardware or software to view documents or information provided.

The Ombudsman has the same powers as the High Court in relation to the taking of evidence from witnesses (section 52(3)).

Section 52(5) provides protection for those from whom the Ombudsman may require evidence or the production of information or documents. Such a person cannot be required by the Ombudsman to give any evidence or produce any documents which that person could not be compelled to give or produce before the High Court.

Section 52(6) prevents information from being withheld by the Crown on the ground that it is subject to an obligation to keep it secret or a restriction on its disclosure.

The effect of section 52(7) is that, in relation to the Ombudsman's power to require evidence or the production of information or documents, the Crown cannot rely on either its special privileges or immunities to defeat the Ombudsman's right of access to such information under section 52(5).

Section 53: Obstruction and contempt

Sections 53(1) and (2) enable the Ombudsman to certify to the High Court that, in his/her opinion, a person has without lawful excuse obstructed the Ombudsman (or a member of his/her staff) in the discharge of his/her functions under Part 5 or that the person has acted in a way that, if the act was done in relation to High Court proceedings, would amount to a contempt of court.

If the Ombudsman issues such a certificate then the High Court may inquire into the matter and if the High Court finds that the person concerned has obstructed the Ombudsman, the High Court may deal with the person as if he/she had committed contempt in relation to the High Court (section 53(4)).

Section 54: Investigation reports

Section 54(2) provides that after conducting an investigation the Ombudsman must, unless he/she decides to report under the alternative procedure set out under section 57, prepare a report on his/her findings and send a copy of that report to the persons specified in section 54(3). The Ombudsman may also send a copy of the report to any other persons he or she thinks appropriate.

The Ombudsman may publish his/her report if the requirements of section 54(5) are met. The Ombudsman may only publish such a report if he/she considers that it is in the public interest to do so. In reaching his/her view, the Ombudsman must have regard to the interests of the person aggrieved (if any) and any other persons he/she thinks appropriate.

Sections 54(8) and (9) prohibit the Ombudsman from sending out or publishing a report that:

a) names any person (other than the provider to whom the report relates); or
b) includes information which, in the opinion of the Ombudsman, is likely to identify any person and which, in the opinion of the Ombudsman, can be omitted from the report without impairing its effectiveness,

unless the Ombudsman considers that it is in the public interest to include such a name or identifying particulars.

This prohibition does not apply in relation to the versions of the report that are sent to the person aggrieved (if any) or the Welsh Ministers. In reaching his or her view as to whether it would be in the public interest to include this information in the other versions of the report, the Ombudsman must have regard to the interests of the person aggrieved (if any) and any other persons he/she thinks appropriate.

Section 55: Further publicity for investigation reports

Section 55 provides that the Ombudsman may publish a notice about an investigation report in a newspaper or other broadcast/electronic media. Any decision to publish such a notice must take account of the public interest, the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate (see section 55(4)).

The notice may (amongst other things) include the matters specified in section 55(2). The provider to whom the report relates must reimburse the

Ombudsman for the reasonable costs of arranging the publication of the notice, if requested to do so by the Ombudsman.

Section 56: Action following receipt of investigation reports

Section 56 provides that if, following an investigation, the Ombudsman reports (under section 54) that any person has sustained injustice or hardship as a consequence of the action investigated, the provider concerned must consider the Ombudsman's report and notify him/her of the action that the provider has taken or proposes to take in response and also of the time within which such action will be taken.

The provider concerned must make the notification within one month starting on the day the provider receives the report or such longer period as the Ombudsman in his/her discretion specifies.

Section 57: Reports: alternative procedure

Section 57 provides that the full reporting procedure under sections 54 to 56 does not apply if the Ombudsman decides to report under the alternative procedure set out in this section. If, after an investigation, the Ombudsman concludes that:

- a) no person has sustained injustice or hardship as a consequence of the action investigated; or
- b) a person has sustained such injustice or hardship and the provider to whom the matter relates agrees within the permitted period (as defined in section 57(3)) to implement the Ombudsman's recommendations,

then the Ombudsman may decide to report under the alternative procedure under section 57. However, the Ombudsman may do so only if he/she is satisfied that the public interest does not require him/her to report under the full reporting procedure set out in sections 54 to 56.

A report under the alternative procedure in this section is subject to similar restrictions with respect to naming or identifying individuals to those which apply to a report under section 54 (section 57(9) and (10)).

Section 58: Circumstances in which special reports may be prepared

Under section 58, the Ombudsman may issue a special report in three cases:

Case 1. The Ombudsman has concluded in an investigation report that the person has sustained injustice or hardship as a result of the matter investigated but:

- i. the Ombudsman has not been notified by the provider, in accordance with section 56 (Action following receipt of investigation reports), about the action that the provider has taken/proposes to take, or about the period within which any proposed action is to be taken, or

ii. the Ombudsman, having been notified about such matters in accordance with section 56, is not satisfied with the action/proposed action or the period within which it is to be taken, or is not satisfied that the action has been taken before the end of the permitted period.

Case 2. The Ombudsman has prepared a report under section 57(2) (alternative procedure) and is not satisfied that the provider has implemented his or her recommendations within the permitted period; and

Case 3. The Ombudsman has concluded, in resolving a matter under section 46 (alternative resolution of matters), that any person has sustained injustice or hardship, the provider has agreed to take particular action and the Ombudsman is not satisfied that the provider has taken that action before the end of the permitted period.

Section 59: Special reports

Section 59(1) requires the Ombudsman to set out, in a special report, the facts that entitle him/her to prepare the report and to make whatever recommendations that he or she thinks appropriate, with respect to the action he/she thinks should be taken to remedy the injustice or hardship suffered by the person, and to prevent similar injustice or hardship being caused again.

Sections 59(2) and (3) set out the persons to whom the special report must be sent. The requirements that apply where the Ombudsman previously considered the matter in a full report under section 54 differ from those that apply where he/she previously considered the matter under the alternative procedure under section 57 or by means of an alternative resolution process under section 46.

Sections 59(4) to (9) makes further provision with regard to special reports. In particular, a special report is subject to similar restrictions with respect of naming or identifying individuals to those which apply to a report under section 54.

Section 60: Further publicity for special reports

Section 60 provides the Ombudsman with the power to publish a notice about a special report in a newspaper or by means of broadcast and electronic media.

In determining whether to publish, the Ombudsman must take into account the public interest, the interests of the person aggrieved (if any) and the interests of any other person the Ombudsman considers appropriate. A provider to whom a report relates must, if requested to do so by the Ombudsman, reimburse the Ombudsman for the reasonable costs of arranging publication. If a provider fails to do so, the Ombudsman may recover these costs as a civil debt.

Section 61: Meaning of “care home” and “care home provider”

Section 61 provides definitions of “care”, “care home” and “care home provider” by reference to Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016. It also provides that a care home provider’s actions include actions taken by the provider’s staff and others acting on the provider’s behalf.

Section 62: Meaning of “domiciliary care” and “domiciliary care provider”

Section 62 provides definitions of “domiciliary care” and “domiciliary care provider”. It also provides that a domiciliary care provider’s actions include actions taken by the provider’s staff and others acting on the provider’s behalf.

Section 63: Meaning of “palliative care service” and “independent palliative care provider”

Section 63 provides definitions of “palliative care service” and “independent palliative care provider”. The term “palliative care” is not defined. However, it is generally used to describe the alleviation of pain of those with terminal conditions, the relief of pain without dealing with the cause of the condition and the general improvement in the quality of life of persons with life limiting conditions. Life limiting conditions are normally described as those in which a person’s life expectancy is likely to be shortened as a result of a condition or illness.

In deciding whether a particular form of care amounts to palliative care or not, it is anticipated that the Ombudsman will give some weight to the definition of “*palliative care*” that is used by the World Health Organisation. This definition provides that “*palliative care is an approach that improves the quality of life of patients and their families facing the problem associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial and spiritual*”. Weight is also likely to be given to the National Institute for Clinical Excellence (NICE) definition, which provides that “*palliative care is the active holistic care of patients with advanced progressive illness. Management of pain and other symptoms and provision of psychological, social and spiritual support is paramount. The goal of palliative care is achievement of the best quality of life for patients and their families. Many aspects of palliative care are also applicable earlier in the course of the illness in conjunction with other treatments*”.

A palliative care service is a service the main purpose of which is to provide palliative care. The term is therefore not intended to cover services that provide a degree of palliative care but where such care is incidental to the main service being provided. It is intended, however, to capture a wide range of palliative care services ranging from community based services to

palliative care hospitals. Section 63 provides that an independent palliative care provider's actions include actions taken by the provider's staff and others acting on the provider's behalf.

PART 6

Section 64: Consultation and co-operation with other ombudsmen

Section 64(1) and (2) requires the Ombudsman to consult another specified ombudsman whenever he/she thinks that a matter could be the subject of investigation by that other ombudsman. The other ombudsmen that the Ombudsman is required to consult are specified in section 64(7). There is power for the Welsh Ministers, by regulation, to amend this list of specified ombudsmen.

Where the Ombudsman is required to consult with another ombudsman on a matter, he/she may also co-operate with that other ombudsman on that matter (section 64(3)). The consultation and co-operation may extend to anything relating to the matter. Examples of matters on which there may be consultation and co-operation are set out in section 64(4), namely:

- a) how an investigation should be conducted; and
- b) the form, content and publication of a report following an investigation.

Sections 64(5) and (6) provides that, where such consultation takes place, the Ombudsman and any of the specified ombudsmen (other than the Scottish Public Services Ombudsman) can conduct joint investigations and publish joint reports.

In cases of consultation on a matter, the Ombudsman will be able to use his/her supplementary powers in paragraph 20 of Schedule 1 to this Act to forward information to the other ombudsman. Furthermore, the Ombudsman will be able to use those supplementary powers to inform the person who has made the complaint (if any) how he or she can make a complaint to the other ombudsman.

Section 65: Working jointly with specified persons

Section 65 deals with situations where the Ombudsman, when dealing with a matter, identifies matters which could be subject to examination by the Welsh commissioners, statutory advisers and regulators (identified as specified persons in section 65(2)).

This section requires the Ombudsman to inform and consult those specified persons about the matter. The Ombudsman and some of the relevant specified persons may then co-operate, conduct a joint investigation, and prepare a joint report about the matter.

Section 66: Working collaboratively with Commissioners

Section 66 contains further provision about collaborative working between the Ombudsman and various Commissioners, where matters could be dealt with by the Ombudsman or by the relevant Commissioner.

Section 67: Working with the Auditor General for Wales

This section requires the Ombudsman, if the Ombudsman considers it appropriate, to inform and consult the Auditor General for Wales about certain aspects of investigations.

The Ombudsman and the Auditor General for Wales may then co-operate, and conduct a joint investigation, and prepare a joint report about the matter.

Section 68: Disclosure of information

Section 68 provides that information obtained in the course of investigations or from other specified persons in relation to, or in connection with, matters is to be kept confidential except in limited circumstances. Section 68(2) sets out the circumstances in which such information may be disclosed.

Section 68(6) provides that neither the Ombudsman nor a member of his/her staff or other person acting on his/her behalf or assisting him/her can be required to give evidence in any proceedings (except proceedings specified in section 68(2)) about:

a) information obtained to assist the Ombudsman in deciding whether to investigate, during an investigation, in resolving a matter, or in connection with a notification under section 23; or b) information obtained from another ombudsman in consulting and cooperating with that Ombudsman.

Section 69: Disclosure prejudicial to safety of State or contrary to public interest

Section 69(1) provides that a Minister of the Crown may give notice to the Ombudsman that disclosure of any document or information or class of document or information specified in the notice would, in the opinion of the Minister, be prejudicial to the safety of the United Kingdom or otherwise contrary to the public interest. Where such a notice is given, this Act neither authorises nor requires the Ombudsman, a member of his/her staff or any other person acting on his/her behalf or assisting him/her, to disclose such specified information.

Where the Ombudsman or a member of his/her staff etc. is obliged by virtue of some other legal requirement to disclose the information then nothing in this section prevents that person from complying with that obligation.

Section 70: Protection from defamation claims

Section 70 provides that the following are absolutely privileged for the purposes of defamation, namely:

- a) the publication (which will bear its usual meaning within the law relating to defamation) of any matter by the Ombudsman, a member of his/her staff or another person acting on his/her behalf or assisting him/her in the discharge of his/her functions under this Act;
- b) the publication of any matter in any report published by a person in the discharge of its functions under section 20 of this Act (requirement on listed authorities to publish the Ombudsman's report of an investigation); and
- c) the publication of a matter in connection with an investigation, where that matter is published in one of the following communications:
 - i. communications between a listed authority as specified in section 30 of, and Schedule 3 to, this Act (including a member or co-opted member, officer or member of staff or another person acting on behalf of or assisting in the discharge of the functions of that authority) and the Ombudsman (or his/her staff or persons acting on his/her behalf or assisting him/her in the discharge of his/her functions);
 - ii. communications between a care home provider, domiciliary care provider or independent palliative care provider, (including an officer or member of staff or another person acting on behalf of or assisting in the discharge of the functions of that provider) and the Ombudsman (or his/her staff or persons acting on his/her behalf or assisting him/her in the discharge of his/her functions);
 - iii. communications between a person a and an elected member of the National Assembly for Wales; and
 - iv. communications between the person aggrieved or a person making the complaint on behalf of the person aggrieved (if any) and the Ombudsman (or his/her staff, persons acting on his/her behalf or assisting him/her in the discharge of his/her functions).

This provision generally replicates similar protection under the legislation relating to other ombudsmen.

PART 7

Section 71: Welsh language strategy

This section requires the Ombudsman to publish a Welsh language strategy. The strategy must include:

- (a) an assessment of the need for the Ombudsman's functions to be carried out in the Welsh language,
- (b) a statement of how the Ombudsman proposes to meet that need, and
- (c) any other information the Ombudsman considers appropriate to include in a Welsh language strategy.

Section 72: Review of Act

This section gives the Assembly a discretionary power to carry out a review of how the Act is working at any time. It also imposes a duty on the Assembly to carry out a review of how the Act has worked over the first five years.

When the Assembly carries out a review, it must prepare a report of its findings. The reports must be published and must also be laid before the Assembly.

Section 73: Investigations commenced before section 3, 4, 43 and 44 come into force

This sections clarifies that if the Ombudsman is part way through an investigation on the day this Act receives Royal Assent, then the investigation carries on under the provisions of the Public Services Ombudsman (Wales) Act 2005.

Section 74: Repeals and consequential amendments

This section repeals the Public Services Ombudsman (Wales) Act 2005, but:

- (a) the 2005 Act continues to apply to investigations commenced before this Act receives Royal Assent (see section 73), and
- (b) section 35 of the 2005 Act continues to have effect (this means that the changes made by section 35 of the 2005 Act in relation to the conduct of local government members and employees remain in force and are not affected).

Section 75: Commencement

This section provides that the Welsh Ministers must make regulations to bring sections 1 to 74 of this Act into force.

By remaining silent as to when sections 75 to 80 of this Act come into force, those sections automatically come into force on the day this Act receives Royal Assent (see section 4 of the Interpretation Act 1978).

Section 76: Interpretation

This section defines terms used in the Act.

Section 76(7) enables the Ombudsman to investigate action taken on behalf of a listed authority in the same way as he/she can investigate action by the listed authority itself.

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

This section confers power on the Welsh Ministers to make regulations modifying the application of the Act in respect of former family health service providers in Wales, former independent providers in Wales and former social landlords in Wales.

This will give the Welsh Ministers power to modify appropriately the application of the Act in respect of a family health service provider in Wales, an independent provider in Wales or a social landlord in Wales but subsequently ceased to be such a listed authority.

For example, it will enable the Welsh Ministers to modify sections 20 (reports of investigations); 21 (as it relates to publicising reports: health care providers); and section 23 (action following receipt of a report) in such cases.

Section 78: Consequential, transitional provisions etc

This section allows the Welsh Ministers by regulations to make consequential, incidental, supplementary, transitional, saving etc. provision that is necessary in consequence of the Act.

Section 79: Regulations and directions

This section contains provision applicable to any power in the Act to make regulations or to issue directions. Section 79(1) provides that regulations made under the Act are exercisable by statutory instrument.

Section 80: Short title

This section provides that the short title of this Act is the Public Services Ombudsman (Wales) Act 2018.

ANNEX B – INDEX OF STANDING ORDER REQUIREMENTS

Standing Order		Section	Pages / paragraphs
26.6(i)	State that in his or her view the provisions of the Bill would be within the legislative competence of the Assembly	Member's declaration	Page 2
26.6(ii)	Set out the policy objectives of the Bill	Chapter 3 - Purpose and intended effect of the legislation	The policy objectives are set out at paragraphs 3.28 to 3.55 inclusively on pages 14 to 22.
26.6(iii)	Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted	Part 2 – Regulatory Impact Assessment Chapter 10 – Policy Options	Alternative options are set out at pages 48 to 51.
26.6(iv)	Set out the consultation, if any, which was undertaken on: (a) the policy objectives of the Bill and the ways of meeting them; (b) the detail of the Bill, and (c) a draft Bill, either in full or in part (and if in part, which parts)	Chapter 4 – Consultation	A summary of the consultation is set out at pages 23 to 26.
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended	Chapter 4 – Consultation Chapter 3 – Purpose and Intended Effect of the Legislation	A summary of the outcome of the consultation in respect of the draft Bill is set out at paragraphs 4.7 to 4.11 on pages 24 to 26.

Standing Order		Section	Pages / paragraphs
			Paragraph 4.12 on page 26 notes that the Bill has been amended. Further detail is set out at paragraph 3.22 and Table 1 on pages 11 and 12.
26.6(vi)	If the bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision	Chapter 4 - Consultation	Paragraph 3.20 on page 10 sets out that a draft of the Bill was published.
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill	Annex A - Explanatory Notes	A summary of provisions is set out in the Explanatory Notes on pages 106 to 140.
26.6(viii)	Set out the best estimates of: (a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise; (b) the administrative savings arising from the Bill; (c) net administrative costs of the Bill's provisions; (d) the timescales over which such costs and savings would be expected to arise; and (e) on whom the costs would fall	Part 2 - Regulatory Impact Assessment Chapter 9 - Summary, Regulatory Impact Assessment	A summary of the Regulatory Impact Assessment is set out at paragraph 9.1 on pages 45 to 47. An Executive Summary is set out at paragraphs 11.8 to 11.20 on pages 54 to 58. Detailed costings are set out at paragraphs 11.59 to 11.140 on pages 67 to 92.

Standing Order		Section	Pages / paragraphs
26.6(ix)	Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially	Part 2 – Regulatory Impact Assessment Chapter 9 – Summary, Regulatory Impact Assessment	<p>A general summary of benefits is set out at pages 45 to 47. Further detail is set out in the following paragraphs. The asterix indicates the paragraphs in which the benefits of the preferred options are set out.</p> <ul style="list-style-type: none"> • Paragraph 11.20 • Paragraph 11.70 • Paragraph 11.80 and 11.81* • Paragraph 11.87 • Paragraph 11.99* • Paragraph 11.105 • Paragraph 11.110 and 11.111* • Paragraph 11.117 • Paragraph 11.123 • Paragraph 11.132 • Paragraphs 11.136 and 11.137*
26.6(x)	Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision:	Chapter 6 - Power to make subordinate legislation	A summary table of powers to make subordinate legislation is set out at Table 2 on pages 31 to 39.

Standing Order	Section	Section	Pages / paragraphs
	<p>(a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;</p> <p>(b) why it is considered appropriate to delegate the power; and</p> <p>(c) the Assembly procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure);</p>		
26.6(xi)	Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate	Chapter 7 - Charge on the Welsh Consolidated Fund	Page 40 sets out that the Bill does not charge expenditure on the Welsh Consolidated Fund.
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	Chapter 8 - Table of derivations	Pages 41 to 44.
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing	The requirement is Standing Order 26.6C for a Schedule of Amendments is not applicable to this Bill as	Not applicable

Standing Order	Section	Pages / paragraphs
	legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.	the Bill does not propose to significantly amend existing primary legislation.