



House of Commons  
Welsh Affairs Committee

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**Public Services  
Ombudsman (Wales)  
Bill [HL]**

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**Third Report of Session 2004–05**

*Report, together with formal minutes, oral and  
written evidence*

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## The Welsh Affairs Committee

The Welsh Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Secretary of State for Wales (including relations with the National Assembly for Wales.)

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## Summary

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The Public Services Ombudsman (Wales) Bill will bring together the separate offices of the Commission for Local Administration in Wales (which includes the Local Commissioner), the Health Service Commissioner for Wales, the Welsh Administration Ombudsman and, when established, the Social Housing Ombudsman for Wales into a unified office led by a single individual – the Public Services Ombudsman for Wales .

We welcome the Public Services Ombudsman (Wales) Bill, which has the potential to provide a modern, flexible and accessible service for members of the public. This report makes a number of minor recommendations that would improve the Bill.

We are not convinced that the reduction in the length of tenure of the Ombudsman from ten to seven years, as introduced in the House of Lords, improves the Bill. We recommend that a five year appointment, with the possibility of reappointment for a further five years, represents a better balance between the need for stability in post and the need to reinvigorate the office on a periodic basis.

The Bill sets out all those authorities that may be subject to investigation by the Ombudsman. Individual Community Health Councils are included in that list but the Board of Community Health Councils is not. We recommend that the Board of Community Health Councils be included in the list of “listed authorities”.

The Bill allows for the Ombudsman to conduct inquiries into maladministration as a result of an authority’s failure to comply with its obligations to the Welsh language. This power overlaps with the role of the Welsh Language Board. We ask the Government to provide further information on how the Ombudsman and the Welsh Language Board will manage that overlap.

The Bill, as currently drafted removes the power of the Ombudsman in England to transfer cases to the Welsh Ombudsman. While there are many provisions in the Bill to facilitate joint working between Ombudsmen, we believe that the retention of this power is necessary. We recommend that the Government, retain in the Bill, the power of the Ombudsman in England to transfer cases to the Welsh Ombudsman.



# 1 Introduction

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## Background

1. The Public Services Ombudsman (Wales) Bill contains provisions to establish an Office of the Public Services Ombudsman for Wales. The Bill will bring together the separate offices of the Commission for Local Administration in Wales (which includes the Local Commissioner), the Health Service Commissioner for Wales, the Welsh Administration Ombudsman and, when established, the Social Housing Ombudsman for Wales into a unified office led by a single individual – the Public Services Ombudsman for Wales (PSOW).<sup>1</sup>

2. The Bill was presented to the House of Lords on 24 November 2004, and had its Second Reading on 16 December 2004.<sup>2</sup> The Bill received its Committee stage on 25 January 2005<sup>3</sup> and its Report Stage on 10 February 2005.<sup>4</sup> We expect the Bill to come to the House of Commons before the end of February.

## Scrutiny of the Draft Bill

3. In the last session of Parliament, the House of Commons and the National Assembly for Wales passed changes to their procedures to allow the Welsh Affairs Committee and Committees of the National Assembly for Wales to undertake formal joint working on matters of mutual interest.<sup>5</sup> We took advantage of those powers to meet formally with the Local Government and Public Services Committee to scrutinise the Public Services Ombudsman (Wales) Bill. The first evidence session was held under the Local Government and Public Services Committee's procedures at the National Assembly for Wales on Thursday 13 January.<sup>6</sup> The second evidence session was held under our procedures on Monday 17 January.<sup>7</sup>

4. We understand that the Local Government and Public Services Committee of the National Assembly will also be publishing a report on the Bill. Our understanding is that its recommendations will be along similar lines to the recommendations in this report.

5. We thank our colleagues from the National Assembly and our witnesses for their co-operation in the joint scrutiny of the Public Services Ombudsman (Wales) Bill.

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1 Ev 33

2 HL Deb, 16 December 2004, Session 2004-05, col 1429-1443.

3 HL Deb, 25 January 2005, Session 2004-05, col GC365-422.

4 HL Deb, 10 February 2005, Session 2004-05, col 906-927.

5 For further information see the First Report of the Welsh Affairs Committee, Work of the Committee in 2004, HC 256 of Session 2004-05.

6 Qq1-85

7 Qq86-176

## 2 The Public Services Ombudsman (Wales) Bill

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### Scope of the Bill

6. The Public Services Ombudsman (Wales) Bill makes provisions for the establishment of a single Ombudsman to investigate those matters that currently investigated by the existing Ombudsmen and Commissioners in Wales. The Ombudsman will have responsibility for investigating maladministration and service failure by the National Assembly; its sponsored public bodies (the equivalent, in Wales, of non-departmental public bodies); Welsh health service bodies (primarily NHS Trusts and Local Health Boards in Wales); certain health service providers in Wales; local government bodies in Wales; and social landlords in Wales.<sup>8</sup>

7. Part 1 of the Bill establishes the Office of the Public Services Ombudsman for Wales. Schedule 1 of the Bill sets out in detail, the length of service of the Ombudsman and the qualifications for office; the establishment of the Office of the Ombudsman; the Ombudsman's powers to appoint staff and expert advisers; and powers of delegation. Schedule 1 also sets out the requirements to be placed upon the Ombudsman in relation to the production and publication of annual and extraordinary reports; estimates of the income and expenditure of his or her office and accounts; and audit and value for money examinations into the use of the resources of the Ombudsman's Office.<sup>9</sup>

8. Part 2 of the Bill contains provisions relating to the Ombudsman's powers of investigation, in particular, which matters and which authorities, the Ombudsman may investigate. The list of "listed authorities" is set out in Schedule 3. Part 2 also empowers the National Assembly to amend that list. Clause are also contained in this part to establish who is able to complain to the Ombudsman and the manner of that complaint. The Wales Office and the Welsh Assembly Government, in their joint written evidence told us that:

“The PSOW may only investigate a complaint if it has been made in writing to him or her by the aggrieved person, by a person authorised by the aggrieved to act on their behalf or, if the aggrieved person is not capable of doing so, by any person whom the Ombudsman is satisfied is an appropriate person to act on behalf of that person”.<sup>10</sup>

However, the Welsh Assembly Government further noted that the Ombudsman could exercise his or her discretion to consider a complaint which has not been made in writing if he or she was satisfied that there were special circumstances which make it reasonable for it not to have been made in writing.<sup>11</sup>

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8 Explanatory Notes to the Public Services Ombudsman (Wales) Bill, para 3.

9 Explanatory Notes to the Public Services Ombudsman (Wales) Bill, para 7.

10 Ev34

11 Ev 34

9. The Ombudsman would also have powers to obtain information, evidence and documents in relation to investigations. In the discharge of his or her duties, the Ombudsman would have “the same powers as the High Court in respect of obtaining information/documents and the attendance/examination of witnesses”.<sup>12</sup>

10. The Public Services Ombudsman (Wales) Bill also contains provisions relating to reports from the Ombudsman and provides powers to consult, co-operate, work and report jointly with other specified ombudsmen and commissioners.<sup>13</sup> It also includes provisions for the issue of guidance, a duty on listed authorities to publicise complaints procedures, protection from defamation claims and additional provision relating to the powers of listed authorities to pay compensation.<sup>14</sup>

11. Part 3 makes provision about the Ombudsman's functions in relation to the conduct of local government members and employees; and for the abolition of the offices of Welsh Administration Ombudsman, Health Service Commissioner for Wales; Social Housing Ombudsman for Wales and for the abolition of the Commission for Local Administration in Wales (including the office of the Local Commissioner for Wales).

## Reaction to the Bill

12. The Bill was welcomed by all of our witnesses. The Welsh Consumer Council argued that people in Wales were likely to be better served by the establishment of a single Ombudsman's Office, and that the Office would be “more flexible and more comprehensive in the way that it dealt with complaints”.<sup>15</sup> The Community Health Councils and the Board of Community Health Councils also agreed that the Bill represented a significant improvement on the current arrangements.<sup>16</sup> Furthermore, the Welsh Local Government Association welcomed the Bill and described it as “comprehensive”.<sup>17</sup>

13. Adam Peat, the current Local Government and Health Service Ombudsman for Wales; Welsh Administration Ombudsman, argued that the Bill was a significant step forward for the Ombudsman service in Wales. Commenting on the practical changes he stated that

“It will make it a great deal easier because at the moment I have three different sets of legislation that I have to operate to and my staff have to be familiar with. Although the legislation all comes ultimately from the same source, there are minor differences which make it quite tricky to remember at all times clearly which set of provisions one is operating”.<sup>18</sup>

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12 Ev 35

13 Clauses 17-23

14 Clauses 30-33

15 Q1

16 Q33

17 Q59

18 Q87

14. Ann Abraham, UK Parliamentary Ombudsman and Health Service Ombudsman for England, welcomed the Bill as “a modern, practical and pragmatic reorganisation of the Ombudsman’s service which will ensure that all investigations into public service complaints in Wales will be dealt with in light of the same principles and the same standards”.<sup>19</sup>

**15. We welcome the Public Services Ombudsman (Wales) Bill which, if enacted, would make significant improvements to the Ombudsman service in Wales.**

## **Appointment and Dismissal of the Ombudsman**

16. Schedule 1 of the Bill contains provisions to require the Secretary of State to consult the National Assembly should he wish to terminate the employment of the Ombudsman. However, there are no provisions to require the Secretary of State to consult the National Assembly on the appointment of the Ombudsman. Don Touhig MP, Parliamentary Under Secretary of State for Wales, argued that, in practice, the Secretary of State for Wales would consult the National Assembly and highlighted the fact this had happened on similar appointments.<sup>20</sup> Sue Essex, AM, Minister for Finance, Local Government and Public Services, Welsh Assembly Government, also noted that such consultation with the National Assembly “has been custom and practice not just on appointments on this but every appointment”.<sup>21</sup>

17. During the Second Reading Debate of the Bill in the House of Lords, the Government stated that: “In practice, appointments procedure for recruiting the Ombudsman will be run by [National] Assembly officials on behalf of the Secretary of State. In the longer term, splitting the Assembly between its executive and legislative elements, as the Richard report recommends, would allow for the possibility of the National Assembly advising Her Majesty on the appointment”.<sup>22</sup>

18. However, that lack of formal consultation on the appointment of the Ombudsman was debated in the Bill’s Committee stage in the House of Lords. Lord Evans of Temple Guiting told that Committee that the Government had accepted the principle that the National Assembly should be consulted both before and after the appointment and that the requirement should appear on the face of the Bill.<sup>23</sup>

**19. We welcome the Government’s decision to amend the Bill to require the Secretary of State for Wales to consult the National Assembly on the appointment, in addition to the dismissal of the Public Services Ombudsman for Wales.**

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19 Ev 49

20 Q165

21 Q165

22 HL Deb, 16 December 2004, Session 2004-05, col 1443.

23 HL Deb, 25 January 2005 of Session 2004-05, col GC367.

## Tenure of Appointment

20. Paragraph 3 of Schedule 1 of the Bill states that a person’s term of office as the Ombudsman is ten years; and that “a person appointed as the Ombudsman is not eligible for re-appointment”.<sup>24</sup>

21. Our witnesses were of the opinion that this was an appropriate length of tenure. Adam Peat thought that the ten year period was appropriate as it gave the post-holder an appropriate length of service.<sup>25</sup> Peter Johns, Director of the Board of Community Health Councils, also thought that the fixed ten year appointment was appropriate as it brought stability to the post.<sup>26</sup> Furthermore, the Welsh Local Government Association believed it to be an appropriate length of tenure.<sup>27</sup> Sue Essex AM, Minister for Finance, Local Government and Public Services at the Welsh Assembly Government, confirmed that the ten year appointment had the benefit of providing a level of job security for the post-holder.<sup>28</sup>

22. The length of tenure was raised in debate during the Bill’s passage through the House of Lords. Several amendments were tabled at that stage to alter the length of tenure. Lord Roberts of Conwy proposed a five year appointment with the possibility of reappointment for a further five year period.<sup>29</sup> By contrast, Baroness Gale argued for a reduction in the term of appointment from ten years to 7 years without the possibility of renewal.<sup>30</sup> Lord Evans of Temple Guiting explained that the Government had concluded that a seven year appointment, without the possibility of renewal, “would strike more accurately the balance that we seek to achieve between security of tenure and opportunities to re-invigorate the office” and that the Government had undertaken to introduce an amendment to that effect.<sup>31</sup>

**23. There appeared to be a general level of agreement in the House of Lords that a seven year period of appointment was appropriate. However, that was not the views and experience of our witnesses, who considered a ten year appointment as appropriate. We recommend that the Government reconsider its decision to reduce the length of tenure of the Ombudsman in the light of our evidence. Should the Government believe that a balance needed to be made between security of tenure and the opportunity to re-invigorate the office, we recommend it reconsider appointments on a five year basis with the possibility of reappointment for a further five years.**

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24 Public Services Ombudsman (Wales) Bill, Schedule 1, Clause 3(1) and (2).

25 Q89

26 Q40

27 Q62

28 Q140

29 HL Deb, 25 January 2005, Session 2004-05, col GC368.

30 HL Deb, 25 January 2005, Session 2004-05, col GC368.

31 HL Deb, 25 January 2005, Session 2004-05, col GC, 371

## Ombudsman's Staff

24. Part 1 of the Bill establishes the Office of the Public Services Ombudsman for Wales. Paragraph 11 of Schedule 1 which makes provision for the appointment of the Ombudsman's staff, and would transfer existing Ombudsmen staff from the civil service to employees of the Ombudsman.<sup>32</sup>

25. The Welsh Consumer Council argued that this was an important move as it demonstrated that the Ombudsman's office would be "separate from the machinery of Government".<sup>33</sup> The Board of Community Health Councils agreed that this approach would help to reinforce the Ombudsman's independence from government.<sup>34</sup> The Welsh Local Government Association also welcomed this change, and described it as sending "a clear signal regarding their autonomy and independence".<sup>35</sup>

**26. The transfer of the Ombudsman's staff from the civil service to the Office of the Public Services Ombudsman for Wales will reinforce the independence of the Ombudsman. We welcome that decision and applaud the Government for not merely replicating the existing arrangements, but improving upon them.**

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32 Public Services Ombudsman (Wales) Bill, Schedule 1, Para 11 (1) to (5).

33 Q11

34 Q66

35 Ev 37

## The Appointment of Deputies

27. The provisions in the Bill that establish the Office of the Ombudsman differ from those of which established the Scottish Ombudsman. The Scottish Ombudsman has the power to appoint deputies and those clauses have not be replicated in the Public Services Ombudsman (Wales) Bill.<sup>36</sup>

28. The Welsh Local Government Association believed that to be an unfortunate omission from the Bill. It argued for the ability to appoint deputies to be included in the Bill, in particular, a Deputy with responsibility for Local Government. Steve Thomas, Director of the WLGA averred that “the weight of functions that local authorities have in Wales demands this type of approach”.<sup>37</sup>

29. When we took evidence from Eric Drake, the Scottish Public Services Deputy Ombudsman, he told us that the rationale for appointing Deputies was to avoid the potential loss of the expertise that the individual offices had built up in their areas of jurisdiction.<sup>38</sup> However, he did not consider the power to appoint Deputies as a necessary power. He added that “to my knowledge, our office is the only public sector Ombudsman certainly in the British Isles that has that provision for the appointment of deputies as part of the legislation”.<sup>39</sup> He further argued that the retention of the experience of the existing Ombudsmen services could be been done “equally well by the Ombudsman appointing appropriate people”.<sup>40</sup>

30. Adam Peat, the Local Government and Health Service Ombudsman for Wales; Welsh Administration Ombudsman, acknowledged the absence of any power to appoint deputies but argued that the Bill would give the Ombudsman “a very wide ranging discretion”,<sup>41</sup> to delegate his powers, not only to members of his staff, but also to appropriate individuals outside of his Office. He believed that to be an important and valuable power:

“It means, for example, that I could engage an independent expert to undertake part of a particular investigation and they could do so using the full panoply of powers available to me. There is no provision for deputies as such and I personally see no need for that to be so, given the wide power of delegation that I have”.<sup>42</sup>

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36 Q124

37 Q82

38 Q124

39 Q124

40 Q125

41 Q123

42 Q123

31. Sue Essex, the Assembly Minister for Finance, Local Government and Public Services in the Welsh Assembly Government, stated that the Assembly Government was of the opinion that “it would be better to allow the Ombudsman a free hand to organise the office as the Ombudsman sees fit rather than delegating function to a member of staff or setting up official deputies as such”. Furthermore, she argued rationale behind the Bill was to establish an integrated Ombudsman service and that the inclusion of formal deputies could have the potential to fragment the service along perhaps individual service lines.<sup>43</sup> Don Touhig MP agreed that the Bill gave the responsibility to the Ombudsman in Wales to make decisions on appointments for himself rather than have those responsibilities specified on the face of the Bill.<sup>44</sup>

**32. We conclude that the Bill is sufficiently flexible for the Ombudsman to appoint those staff that he or she feels necessary. Therefore we do not see any need to include on the face of the Bill, the power to appoint Deputy Ombudsmen.**

### Advisory Board

33. Vivienne Sugar, Chair of the Welsh Consumer Council, told us that in its response to the original consultation on the Bill, the Council argued in favour of the inclusion of a statutory Advisory Board on the face of the Bill. It believed that the establishment of such a Board would have ensured clear lines of communication and advice between the Ombudsman, and users and service providers.<sup>45</sup>

34. Eric Drake, the Deputy Scottish Ombudsman told us that the Scottish Ombudsman Act did not include a statutory advisory board.<sup>46</sup> However, he explained that the Ombudsman’s Office was considering the creation of an informal panel of “critical friends”.<sup>47</sup> Adam Peat stated that his preference would be to follow the Scottish model of establishing an informal panel. He argued that a statutory board could risk the possibility of conflict between the Ombudsman. In particular, he was concerned that it could “risk the possibility of conflict if the members of that advisory board were in any way to misinterpret that role and perhaps come to think of themselves more in the mode of the board of an Assembly Sponsored Public Body”.<sup>48</sup> Ann Abraham was also in favour of a informal approach to advisory panels. She told us that appointments to her panel were conducted by open competition to avoid any implication of bias.<sup>49</sup>

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43 Q141

44 Q141

45 Q3

46 Q126

47 Q127

48 Q129

49 Q144

35. Sue Essex explained that a statutory advisory body was under consideration during consultation on the Bill.<sup>50</sup> She acknowledged that some respondents were interested in such a board but noted that others raised a concern that it had the potential to threaten the independence and a perception of independence of the Ombudsman.<sup>51</sup> She argued that the Bill contained sufficient discretion for the Ombudsman to receive “advice from whomever he or she sees fit”.<sup>52</sup> Don Touhig, agreed that a statutory board was unnecessary. He stated that paragraph 12 of Schedule 1 gave the Ombudsman the ability “to consult whomever he or she wishes to consult”.<sup>53</sup>

**36. We conclude that the Bill gives sufficient flexibility for the Ombudsman to take account of the view of stakeholders and experts in the delivery of his or her duties. We agree with the Government that provisions to establish a statutory advisory board are neither necessary nor desirable.**

### Listed Authorities

37. Schedule 3 of the Bill contains the list of “listed Authorities” that could be subject to investigation by the Ombudsman. In evidence to us, the Board of Community Health Councils noted that while individual Community Health Councils would be subject to the Ombudsman’s scrutiny, the Board of Community Health Councils would not. Peter Johns, Director, Board of Community Health Councils in Wales, argued that “there should be the opportunity for people to take a complaint the full distance against us, the same as against anybody else. We should be equally accountable”.<sup>54</sup>

**38. We welcome the approach taken by the Board of Community Health Councils and agree that it should be subject to the same level of accountability as individual Community Health Councils. We recommend that the Board of Community Health Councils be included in the list of Listed Authorities.**

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50 Q142

51 Q142

52 Q142

53 Q142

54 Q44

## The Welsh Language Board

39. Clause 8 of the Bill would authorise the Ombudsman to investigate a listed authority in relation to Welsh Language provision. The Welsh Language Board welcomed the Clause and argued that it strengthened the message that “failure [of authorities] to comply with their Welsh Language Schemes is an example of maladministration and a failure to provide a service by public bodies”.<sup>55</sup>

40. However the Board noted that its own powers under the Welsh Language Act 1993 empowered it to “consider written complaints about alleged failures of public bodies to implement their Welsh Language Schemes”.<sup>56</sup> Therefore, there would be an overlap of the responsibilities of the Welsh Language Board and the Ombudsman. The Welsh Language Board argued that a memorandum of understanding or protocol would need to be established between the Ombudsman and the Welsh Language Board in order to avoid a duplication of work.<sup>57</sup>

41. Adam Peat agreed that if an authority departed from its stated Welsh language scheme; it could be considered maladministration, and therefore open to investigation by the Ombudsman. He further noted the potential overlap in authority between the Ombudsman and the Welsh Language Board. However he believed that an overlap was a more preferable situation than the existence of “a crack down which things might fall”.<sup>58</sup> He agreed with the Board that, in practice, a concordat may be needed between the two Offices to formalise their working relationship. However he did not believe that such a relationship needed to be provided for on the face of the Bill.<sup>59</sup>

**42. We agree that the Bill does not need to prescribe the relationship between the Welsh Language Board and the Public Service Ombudsman for Wales. However, we would welcome further clarification from the Government on the relationship between the Welsh Language Board and the proposed Public Services Ombudsman for Wales, in relation to the Welsh Language.**

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55 Ev 54

56 Ev 54

57 Ev 54

58 Q116

59 Q116

## The Transfer of Cases from the Ombudsman in England to the Ombudsman in Wales.

43. Under the existing procedures, the Ombudsmen in England and in Wales had the power to transfer cases to each other, where it was appropriate to do so. Clause 8(8) of Schedule 6, of the Bill, amends Section 23(10) of the Local Government Act 1974 to remove the power of the Ombudsman in England to continue to transfer such cases to the Ombudsman in Wales. However, the Bill does retain provision for the Ombudsman in Wales to transfer cases to the Ombudsman in England.

44. In its written evidence, the Commission for Local Administration in England argued that under the 1974 Act, there had been well-established arrangements for the English Local Government Ombudsmen and the Welsh Local Government Ombudsman to transfer individual cases for investigation without restriction depending on the country in which the complaint arose. In particular, it argued that those provisions had been used principally where an ombudsman – either in England or in Wales – was presented with a conflict of interest in conducting an investigation.<sup>60</sup> The Commission stated that

“Paragraph 8(8) would have the effect of removing the powers of the English Local Government Ombudsmen to transfer cases received by them, even if the Welsh Public Services Ombudsman may be able to use his new powers in the Bill”.<sup>61</sup>

45. Ann Abraham, the Parliamentary Commissioner for Administration (Ombudsman) and Health Service Commissioner for England, agreed that the Bill, as currently drafted, would remove this power, and argued that “it was an important issue and one that should be resolved before the Bill was enacted”.<sup>62</sup>

46. Co-operation with other Ombudsmen is provided for in Clause 24; which requires the Ombudsmen to consult another specified ombudsman whenever he or she thinks that a complaint is about a matter that could be the subject of investigation by that other ombudsman. Furthermore, the Ombudsman may cooperate with another Ombudsman on how an investigation into the complaint should be conducted; and on the form, content and publication of a report following an investigation.

47. Don Touhig MP highlighted the fact that the Bill provided for close working between the Ombudsmen in Wales and in England and concerns over the repeal of the power to transfer cases were “not terribly real in the sense that there will be any inhibition upon our Ombudsman in working closely with the Ombudsman in England”.<sup>63</sup>

**48. The Minister is correct to state that the Bill provides for close cooperation between Ombudsmen in Wales and in England. However, we are not convinced that the Ombudsmen would no longer need the power to transfer cases between them when it is appropriate to do so. We recommend that the Government, retain in the Bill, the power of the Ombudsman in England to transfer cases to the Welsh Ombudsman.**

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60 Ev 52-53

61 Ev 52

62 Q156

63 Q155

# Conclusions and recommendations

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## Public Services Ombudsman (Wales) Bill

1. We welcome the Public Services Ombudsman (Wales) Bill which, if enacted, would make significant improvements to the Ombudsman service in Wales. (Paragraph 15)

## Consultation with the National Assembly for Wales

2. We welcome the Government's decision to amend the Bill to require the Secretary of State for Wales to consult the National Assembly on the appointment, in addition to the dismissal of the Public Services Ombudsman for Wales. (Paragraph 19)

## Length of Tenure

3. There appeared to be a general level of agreement in the House of Lords that a seven year period of appointment was appropriate. However, that was not the views and experience of our witnesses, who considered a ten year appointment as appropriate. We recommend that the Government reconsider its decision to reduce the length of tenure of the Ombudsman in the light of our evidence. Should the Government believe that a balance needed to be made between security of tenure and the opportunity to re-invigorate the office, we recommend it reconsider appointments on a five year basis with the possibility of reappointment for a further five years. (Paragraph 23)

## Ombudsman's Staff

4. The transfer of the Ombudsman's staff from the civil service to the Office of the Public Services Ombudsman for Wales will reinforce the independence of the Ombudsman. We welcome that decision and applaud the Government for not merely replicating the existing arrangements, but improving upon them. (Paragraph 26)
5. We conclude that the Bill is sufficiently flexible for the Ombudsman to appoint those staff that he or she feels necessary. Therefore we do not see any need to include on the face of the Bill, the power to appoint Deputy Ombudsmen. (Paragraph 32)
6. We conclude that the Bill gives sufficient flexibility for the Ombudsman to take account of the view of stakeholders and experts in the delivery of his or her duties. We agree with the Government that provisions to establish a statutory advisory board are neither necessary nor desirable. (Paragraph 36)

## Listed Authorities

7. We welcome the approach taken by the Board of Community Health Councils and agree that it should be subject to the same level of accountability as individual Community Health Councils. We recommend that the Board of Community Health Councils be included in the list of Listed Authorities. (Paragraph 38)

## Welsh Language Board

8. We agree that the Bill does not need to prescribe the relationship between the Welsh Language Board and the Public Service Ombudsman for Wales. However, we would welcome further clarification from the Government on the relationship between the Welsh Language Board and the proposed Public Services Ombudsman for Wales, in relation to the Welsh Language. (Paragraph 42)

## Transfer of Cases Between Ombudsmen

9. The Minister is correct to state that the Bill provides for close cooperation between Ombudsmen in Wales and in England. However, we are not convinced that the Ombudsmen would no longer need the power to transfer cases between them when it is appropriate to do so. We recommend that the Government, retain in the Bill, the power of the Ombudsman in England to transfer cases to the Welsh Ombudsman. (Paragraph 48)

# Formal minutes

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**Wednesday 9 February 2004**

Members present:

Mr Martyn Jones, in the Chair

Mr Martin Caton

Julie Morgan

Mr Huw Edwards

Mrs Betty Williams

Mr Hywel Francis

Mr Roger Williams

The Committee deliberated.

Draft Report (Public Services Ombudsman (Wales) Bill [HL]) proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 48 read and agreed to.

Summary agreed to.

*Resolved*, That the Report be the Third Report of the Committee to the House.

Several Papers were ordered to be appended to the Minutes of Evidence.

*Ordered*, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House.

[Adjourned till Wednesday 23 February at 3.00pm.]

## Witnesses

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### Thursday 13 January 2005

<b>Vivienne Sugar</b> , Chair, Welsh Consumer Council	Ev 1
<b>Tommy Morgan</b> , Chair, and <b>Peter Johns</b> , Director, Board of Community Health Councils in Wales	Ev 7
<b>Steve Thomas</b> , Director, Welsh Local Government Association	Ev 10

### Monday 17 January 2005

<b>Adam Peat</b> , Local Government and Health Service Ombudsman for Wales; Welsh Administration Ombudsman, and <b>Eric Drake</b> , Scottish Public Services Deputy Ombudsman	Ev 15
<b>Don Touhig MP</b> , Parliamentary Under Secretary of State for Wales, <b>Sue Essex</b> , Assembly Minister, National Assembly for Wales, Minister for Finance, Local Government and Public Services, Welsh Assembly Government, and <b>Ann Abraham</b> , Parliamentary Commissioner for Administration (Ombudsman) and Health Service Commissioner for England	Ev 24

## List of written evidence

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Wales Office and Welsh Assembly Government	Ev 33
Community Health Councils and the Board of Community Health Councils in Wales	Ev 37
Welsh Local Government Association	Ev 37
Welsh Local Government Association Response to the <i>Time for Change</i> Consultation, January 2003	Ev 40
Local Government, Health Service and Welsh Administration Ombudsman	Ev 42
Scottish Public Services Ombudsman	Ev 43
Ann Abraham, UK Parliamentary Ombudsman and Health Service Ombudsman for England	Ev 47
Citizens Advice Cymru	Ev 49
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Standards Committee of Conwy County Borough Council	Ev 54
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# Reports from the Welsh Affairs Committee since 2001

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The following reports have been produced by the Welsh Affairs Committee in the 2001 Parliament.

## Session 2004 – 05

First Report	Work of the Committee in 2004	HC 256
Second Report	Manufacturing and Trade in Wales	HC 329

## Session 2003–04

First Special Report	Government Response to the Fifth Report of Session 2002–03, The Draft Public Audit (Wales) Bill	HC 87
Second Special Report	Government Response to the First Report of Session 2003–04, The Empowerment of Children and Young People in Wales	HC 459
Third Special Report	Government Response to the Third Report of Session 2003–04, The Provision of Rail Services in Wales	HC 708
Fourth Special Report	Government Response to the Committee's Fifth Report of Session 2003–04, The Powers of the Children's Commissioner for Wales	HC 1126
Fifth Special Report	Government Response to the Committee's Fourth Report of Session 2003–04, The Draft Transport (Wales) Bill	HC 1252
First Report	The Empowerment of Children and Young People in England and Wales	HC 177 i & ii
Second Report	Work of the Committee in 2003	HC 178
Third Report	The Provision of Rail Services in Wales	HC 458
Fourth Report	Draft Transport (Wales) Bill	HC 759
Minutes of Evidence	The Wales Office Annual Report 2004	HC 808

## Session 2002–03

First Special Report	Government Response to the First Report of Session 2002-03, Broadband in Wales	HC 413
Second Special Report	Government Response to the Second Report of Session 2002–03, Transport in Wales	HC 580
Third Special Report	Government Response to the Fourth Report of Session 2002–03, The Primary Legislative Process as it affects Wales	HC 989
First Report	Broadband in Wales	HC 95
Second Report	Transport in Wales	HC 205
Third Report	Work of the Committee in 2002	HC 263
Fourth Report	The Primary Legislative Process as it affects Wales	HC 79

Fifth Report	Draft Public Audit (Wales) Bill	HC 763
Minutes of Evidence	The Wales Office Departmental Report 2003	HC 883
Oral and Written Evidence	Changes in Customs and Excise Operations in Wales	HC 916

### Session 2001–02

First Special Report	Government Response to the First Report of Session 2000–01, Wales in the World	HC 270
Second Special Report	Response of the National Assembly for Wales to the First Report of Session 2000–01, Wales in the World	HC 311
Third Special Report	Response of the National Assembly for Wales to the Third Report of Session 1999–2000, Social Exclusion in Wales	HC 604
Fourth Special Report	Response of the Government and the Welsh Assembly Government to the Second Report of the Committee of Session 2001–02, objective 1: European Funding for Wales	HC 1169
Fifth Special Report	The draft National Health Service (Wales) Bill: Response of the Government to the Third Report of the Committee of Session 2001–02	HC 1215
First Report	The Children’s Society in Wales	HC 525
Second Report	Objective 1 European Funding for Wales	HC 520
Third Report	The Draft National Health Service (Wales) Bill	HC 959
Fourth Report	The Children’s Society in Wales: Responses from the Government and The Charity Commission to the First Report of the Committee of Session 2001–02	HC 989
Minutes of Evidence	The Wales Office Departmental Report 2002:	HC 1216



# Oral evidence

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## Transcript of the meetings of the Local Government and Public Services Committee, National Assembly for Wales (enlarged by the Welsh Affairs Committee) held at the National Assembly for Wales, Cardiff

on Thursday 13 January 2005

Members present:

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### Local Government and Public Services Committee

Ann Jones, in the Chair

Lorraine Barrett  
Tamsin Dunwoody-Kneafsey

Laura Anne Jones  
Mr Dai Lloyd

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### Welsh Affairs Committee

Mr Martyn Jones

Mr Martin Caton  
Mr Huw Edwards  
Julie Morgan

Hywel Williams  
Mr Roger Williams

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Written evidence from the Welsh Consumer Council is printed on Page Ev 56.

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*Witness: Ms Vivienne Sugar, Chair, Welsh Consumer Council, examined.*

**Q1 Chairman:** I welcome you to this joint working of the Welsh Affairs Select Committee from Westminster and our Local Government and Public Service Committee here at the Assembly. Members can speak in either English or Welsh; there are interpretation facilities available via the headsets. Members of the Local Government and Public Service Committee of the National Assembly are invited to make any declarations of interest, in accordance with our standing order 4.5 and the code on standards for conduct for members and our guidance. There are no declarations of interest. I understand that members of the Welsh Affairs Select Committee do not have to do that, but if they wish to do so voluntarily, now is the time. We have received a number of apologies from both committees, a list of which will be added into the report, but they are: Glyn Davies, Alun Fred Jones, Mike German, Peter Law, Sue Essex; and from Westminster Albert Owen, Mark Prisk, Nigel Evans and Betty Williams. The purpose of our working is to look at scrutiny of the Public Service Ombudsman (Wales) Bill, which was published on 24 November, following the Queen's Speech, which set out the UK Government's legislative programme for the new parliamentary session. The aim of this Bill is to

create a single office of Public Service Ombudsman for Wales to replace the current ombudsman for Welsh Administration Social Housing and the Office of the Health Service Commissioner for Wales. The UK parliamentary ombudsman will retain responsibility for investigating non-devolved functions such as social security, pensions, income tax and immigration. This Bill was introduced into the House of Lords on 24 November, received its Second Reading on 16 December; and so today's proceedings are to take oral evidence in connection with this Bill. There is also another session to be held in Westminster on Monday, 17 January. It is my pleasure now to welcome Vivienne Sugar, who is the Chair of the Welsh Consumer Council, to give us evidence as to this Bill. You are welcome, Vivienne. Will you first introduce yourself for the record, and then give a brief overview of your organisation, because there is no written evidence? We will then go into questions.

**Ms Sugar:** Thank you, Chair. My name is Viv Sugar; I am the Chair of the Welsh Consumer Council and was appointed in April 2003. The Welsh Consumer Council is the leading generalist consumer organisation in Wales, established by the

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Government in 1975 to represent the interests of domestic consumers of goods and services, but with a particular emphasis on the needs of disadvantaged and vulnerable customers. It is probably fair to say that we leave the territory of goods more to our colleagues in the Consumers' Association and *Which?* magazine. We tend to concentrate on how groups of people are affected as consumers, communities, and groups of interest; and in particular research on public policy to look at how consumers' rights are affected. We are funded by the DTI and our main purpose is to promote action for furthering and safeguarding the interests of consumers; to ensure that those who take decisions which will affect the consumer can have a balanced and authoritative view of the interests of consumers before them; and to insist that the interests of all consumers, including people who are inarticulate or disadvantaged, are taken into account. Obviously, we are part of that network of the National Consumer Council, the Scottish Consumer Council, but in Wales we lay a particular emphasis on working within the international consumer movement and the consumer rights as embraced by the United Nations in their guidelines. Those rights are the right to satisfaction of basic needs, the right to safety, the right to be informed, the right to choose, the right to be heard, the right to redress, the right to consumer education, and the right to a healthy environment. Perhaps of those it is in a public services ombudsman context today; it is the right to satisfaction of needs; the right to be informed; the right to be heard, and the right to redress, that are particularly relevant. When the original consultation paper came out, we welcomed the proposals to bring together in one office the work of the various ombudsmen and commissioners in Wales. We believe that the Ombudsman system has provided an important service for consumers, having an essential role in ensuring that consumers do have redress, where redress is needed, and that complaints are investigated professionally and resolved by whatever means are appropriate. We stated then that we believed that people in Wales are likely to be better served if a single ombudsman's office was established, so we endorsed the argument for a service that would be more flexible and more comprehensive in the way that it dealt with complaints, supporting the idea of a joined-up way of providing service, the idea of a one-stop shop for better service. We also believed that that would give a higher public profile, because I am sure this joint committee will be aware that people's understanding and knowledge of ways of complaining is not as widespread as we would like it to be. In our original response to the consultation paper we also commented very favourably on the idea of an advisory board to assist. If that is not to be a statutory requirement, we would like to press for some mechanism in order that users of public services and people with knowledge of specific areas of public administration are regularly consulted by the new ombudsman. Here we are, therefore, with the Bill, which strengthens and widens the powers for resolving disputes, for handling complaints in a

rationalised and clarified way. We think this is particularly important, as public services are moving towards jointly provided services by different agencies working together. The new single service should be a streamlined, efficient and joined-up approach. We are particularly keen on the role that the Welsh Ombudsman will have in issuing guidance on good practice.

**Q2 Chairman:** I do not want to stop you, but there are specific questioning that we need to go into, and we can bring out what you are saying. I am ticking off the list and you have already in part answered some of the questions. Can I ask you to draw your opening remarks to a conclusion; then we can go into questions.

**Ms Sugar:** I wanted to talk about the role of the Ombudsman in terms of good practice, the need to have an accessible service throughout Wales for all communities, and some specific comments about the clauses in the Bill, giving the Ombudsman flexibility in the way that he decides to process complaints. There is a question about how he might deal with service failure or failure to provide relevant services unless he has powers to question professional and clinical judgment across the different agencies; there is something about standards, and then back to the issue of how he might consult users in the future.

**Chairman:** I think most of those will be covered. If they have not been covered by the end of the session, we will allow you to give a final analysis of the session.

**Q3 Mr Lloyd:** (Translated from Welsh) Thank you, Chair. Thank you also to Vivienne Sugar for that polished presentation. Following on from what you have just said, are there any other issues? I believe that you made some comments about other issues that you would have liked to have seen. Can you confirm what other issues you would have liked to have seen included in this Bill but which are not there at present?

**Ms Sugar:** We would have liked to have seen the idea of the advisory board, but if we are not to have that, then we would want some kind of commitment from the Ombudsman about how he is going to consult users and service providers. We would want to question exactly how the co-ordination arrangements will work with the other ombudsmen on cross-border issues. For example, a lot of health provision is being provided by English hospitals across the border, and we would want to understand how that would work. In a Welsh context there will need to be a formal protocol with the Children's Commissioner, and the Older Persons' Commissioner to make sure that what we are getting from this Bill is a single route for people to have their complaints dealt with on a satisfactory basis.

**Q4 Hywel Williams:** (Translated from Welsh) Thank you very much, Chair. May I ask a similar question? Where would you envisage the Welsh Language Board's complaints procedure fitting into this new system? The language board has a procedure which

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allows you to make a direct complaint about organisations which do not comply with their language schemes.

**Ms Sugar:** I cannot comment on that from a Welsh Consumer Council point of view, but perhaps I can recall some past experience in local government. Complaints about the implementation of Welsh language schemes were not often solely a technical complaint but were related to some aspect of public service. It was that employment opportunities were not being advertised by local government bilingually or that public documents were not being translated to the extent that they should have been; and there was a question as to whether the Welsh language scheme was an approved scheme and was being implemented properly. I can imagine that there will be some questions about whether somebody has suffered an injustice from the way in which the Welsh language scheme has been implemented; so the Welsh Language Board will have the role of looking at the scheme that a body has and whether it is operating satisfactorily, but there could be cases where somebody feels there is mal-administration or a service failure. In many parts of Wales there are not enough social workers who speak Welsh, and there is not a lot of evidence that local government is planning succession for future generations of social workers to make sure that older people who want to use their first language could do so, particularly people who have had a stroke who only have the use of one language. So people are not getting the support that they need in local community hospital from social services everywhere in Wales, because there are not enough social workers who speak Welsh. That is a cross-over between the area of responsibility of the Welsh Language Board and the area of responsibility of the Ombudsman to ensure that people are getting the level of service that they should get.

**Q5 Hywel Williams:** (Translated from Welsh) For your information, the language board notes that the failure to make provision through the medium of Welsh in this regard counts as maladministration. In this regard, it is clear that you and the board see the world in much the same way.

**Ms Sugar:** For the record, I do not think I was saying that. I think there is a distinction.

**Q6 Julie Morgan:** You said in your response to the question about what you would wish to see included that there should be some kind of protocol for the Children's Commissioner. As you probably know, we have been concerned certainly in the Welsh Affairs Committee and other committees about how the Children's Commissioner will relate to the English Children's Commissioner with the non-devolved issues. I think it is very important that the routes to the Children's Commissioner should be as clear as possible. You think that something should be included in the Bill about the different routes that the consumer could take to the Children's Commissioner.

**Ms Sugar:** I do not want to say whether it should actually be in the Bill, or whether there should be some formal agreement between the respective organisations, but the Welsh ombudsman will need protocols with a variety of different bodies, and whether that needs a statutory footing I think is for a lawyer to answer.

**Q7 Mr Jones:** I am not sure whether I should be welcoming you to our side of the Committee, but I do anyway. I believe we have met before, Ms Sugar. Can I apologise for my delay in arriving, which resulted in your delay in starting, on behalf of Westminster City Council, which managed to jam up an entire part of Chelsea because of their temporary lights! Can you tell us what role you have played, if any, in the consultation on the Bill?

**Ms Sugar:** We were consulted, and our council submitted a formal response.

**Q8 Mr Jones:** Do you believe that that response has been taken into account in the draft Bill?

**Ms Sugar:** The only aspect that I picked out was this issue of the advisory board. I would just add to that and say that in the lead-up to these meetings we have had discussions with colleagues in the Welsh Local Government Association and various other bodies to see whether there were any common areas of concern that we should all speak about.

**Q9 Ms Dunwoody-Kneafsey:** The Bill states that the Ombudsman will have an appointment, a tenure of ten years; do you feel that is appropriate, and if so why, or if not, why not?

**Ms Sugar:** I do not think that is a matter for the Welsh Consumer Council to comment on. We would only look to ensure that the Ombudsman were seen by the public as independent, vigorous in their approach and energetic in their pursuit of people's complaints. Their terms of employment I do not think are in our remit.

**Q10 Ms Dunwoody-Kneafsey:** I would like you to take you to the broader issue—not terms of employment. You say the role of the Consumer Council is to ensure that communities view the Ombudsman as being independent. If communities do not view it in that way, the tenure has a direct impact on your ability to maintain that perception. Has that been considered by your organisation?

**Ms Sugar:** We have not considered that, but I can give you a personal opinion that I do not think it does matter. I think that people can maintain their independence and integrity even if they are in the same job for forty years.

**Q11 Ms Jones:** The Bill states that Ombudsman Office staff will not be civil servants. Do you welcome this approach?

**Ms Sugar:** Again, this is not something that the Council has formally considered, but I would say it is important that the Ombudsman's office is seen as separate from the normal machinery of

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government, and that the fact that they are separately employed will help build that public image of distance.

**Q12 Mr Caton:** Are you satisfied with the accountability of the Ombudsman's office both to the National Assembly and local authorities as outlined in the Bill?

**Ms Sugar:** I cannot think of anything that I could propose to you that would change what is there for the better. I think it is a question of the experience of it, and perhaps as with all other bills looking back after a few years and seeing whether the practice is as was envisaged when it was written. However, I do not have any suggestions to make about that.

**Q13 Mr Caton:** It is interesting because you were a member of the Richard Commission when it was being, which made the recommendation, which you supported, of separation of the executive and the legislative role of the Assembly. That was raised in the Lords by the Government, which said that it expects that to happen. It says that instead of the appointment of the commissioner being by the Secretary of State, even though in practice the Assembly will do it, at that stage you could transfer the power to the Assembly as long as it was the parliamentary side of the Assembly. Do you welcome that?

**Ms Sugar:** I look forward to coming to a future scrutiny committee to be questioned about the powers of the Assembly in any new bill that might come forward eventually! To try and answer your question, my understanding was that the Ombudsman was appointed by the Queen, and that although the Assembly administered the process of recruitment and appointment, it was a royal appointment to ensure that there was that degree of separation. I had not understood that that was changing, but maybe I misunderstand your question.

**Q14 Mr Caton:** You are quite right that it is proposed that the appointment is made by the Monarch, but the Bill states: "The Secretary of State must consult the Assembly if he or she wishes to dismiss the Ombudsman", but there is no requirement for the Assembly to be consulted on the appointment at the moment. During the Second Reading debate, the Government responded: "In practice, appointments procedure for recruiting the Ombudsman will be run by Assembly officials on behalf of the Secretary of State. In the longer term splitting the Assembly between its executive and legislative elements, as the Richard report recommends, would allow for the possibility of the National Assembly advising Her Majesty on the appointment."

**Ms Sugar:** Good!

**Q15 Hywel Williams:** (Translated from Welsh) Are you satisfied that the measure as it stands provides the ombudsman with a higher profile among the Welsh public?

**Ms Sugar:** The Bill itself is an opportunity to start a process of publicity and awareness-raising. I hope that as things go through the Ombudsman will come forward with a programme for raising the profile of the service across Wales, not just to the public, but to all those people in advice agencies, people who work in the public sector, so that they know what the powers are and the referral mechanisms, and how to make sure that someone has got that Bridgend phone number, if it is a Bridgend phone number and so on. This is the start of an opportunity over the next six months, or however long it is going to be, to get that publicity campaign moving. For example, I would hope that if there were to be any press coverage of your meeting today, that again just getting something into the media—the newspapers and a mention on the news—all helps to build that awareness that something new is going to happen and that people should have higher expectations of it being easier to make a complaint in the future.

**Q16 Hywel Williams:** (Translated from Welsh) May I ask, further to that, from your experience as a council—and as a North Wales member, I have an interest in a northern presence for southern organisations, as it were—do you have any practical suggestions to make which would be of interest to the committee with regard to how the profile could be raised across Wales?

**Ms Sugar:** It is important that the Ombudsman has sufficient staff to be able to give universal coverage of all areas of Wales, so that they are able to go to the people, rather than the people coming to them. He will need to make sure that he has caseworkers, suitable facilities and contact points in every area of Wales. As I understand it, in the past they have used local government premises to carry out interviews and investigations, but for all public services the more local a service delivery can be, the better. Equally, it is very important that he has sufficient staff that can deal with cases through the medium of Welsh, but also other languages, because there are people from different cultures and backgrounds, particularly in South Wales, who would find it very difficult to raise their complaints in English and would need to have access to other languages.

**Q17 Mr Caton:** In your opening remarks, Viv, you mentioned that redress is one of the eight fundamental consumer rights endorsed by the UN and campaigned for by consumer groups throughout the world. Do you think that this Bill gives the Ombudsman, or should give the Ombudsman, stronger powers to enforce her or his decisions?

**Ms Sugar:** I do not think there is anything wrong with the powers to enforce decisions, because if all else fails, naming and shaming the body in the past has been enough for the different ombudsmen and commissioners to get what they wanted. I am more interested in the scope for intervening at an early stage to try and get resolution, and in particular promulgating good practice to get people to learn

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to say “sorry”. Our research says that if somebody has had a problem, if somebody says “sorry” early enough in the process, and can say, “we are sorry this has happened to you, or your family, but we are also going to make sure it does not happen to anybody else, because we have learnt from the mistakes that have happened”—if we can get more of that, there would be less people getting to the point where they needed formal redress. If you look at the statistics for the number of complaints that come forward at the moment for the commissioners and the ombudsmen, in their hundreds, very, very few—only double figures end up as being proved/found cases, where there was mal-administration or whatever. That means there are hundreds of unhappy people who did not get the formal investigation that resulted in a formal redress situation, but they needed something before then. I am very keen on seeing how the idea of the Ombudsman spreading good practice and improving understanding of customer care in public bodies is going to develop.

**Q18 Hywel Williams:** (Translated from Welsh) Thank you. As a member, I fairly regularly receive requests to go to the ombudsman. In my opinion, members of the public do not always understand the basis on which complaints can go forward. Looking at the Bill, there are a number of conditions under clauses 4, 5 and 6 for taking complaints forward. Would you like to comment on that—how to formulate arrangements which are adequately robust, so that the public understands that the internal complaints procedures must be followed in the first instance, for example, and that they can make verbal as well as written complaints? Do you have any comments on a robust complaints procedure?

**Ms Sugar:** The first thing is to make sure that the body providing the service in the first place has a good complaints procedure that is easy to use and gives swift feedback to the individual, and heads these complaints off at the pass, as it were. If they are going to then move forward to the Ombudsman because somebody is dissatisfied, as I understand the Bill, there are clauses that would allow him to exercise his discretion. If someone is not technically compliant with the time limits or the procedures for submission, there is more flexibility in the way that this is written so that he can use his discretion and say that while they may not have dotted every “i” and crossed every “t” there is still a basis to move forward. There is even a provision that where something might have affected a group of people, if the lead complainant drops out for whatever reason, the Ombudsman can still say there is something worth pursuing and take it forward.

**Q19 Julie Morgan:** What are your views on the Ombudsman’s power to review complaints without proceeding to formal investigation? You have already touched on that, but I do not know whether you have anything else you would like to say.

**Ms Sugar:** The only thing I would express a bit of concern about is that we are moving towards encouraging more resolution of disputes at an earlier stage, at the same time as we are living in a more litigious society. We all have lawyers standing behind us saying, “whatever you do, do not admit any liability for anything”. I still hope that what is here will make more of a difference than has been possible previously. It depends as much as anything on the willingness of the public bodies that the Ombudsman is looking at, whether they can be flexible enough and generously spirited enough to try to find something which does settle something to somebody’s satisfaction without going necessarily to the expense, complication and time of a formal investigation.

**Q20 Julie Morgan:** I think there will be some difficulty, because authorities are very reluctant to say “sorry” for the very reason you have given, that there are lawyers breathing down their necks. You think it is possible to get some way of moving forward that would avoid that dilemma.

**Ms Sugar:** Mediation is proven to work in a lot of other areas of life. Most people are reasonable. If they feel that somebody is listening to them, paying attention, and wants to do something to help them, albeit it is within the constraints of the money available or whatever the problem might be, most people are satisfied with what they think is a fair deal. They do not want something impossible. I am optimistic.

**Q21 Julie Morgan:** I think it is true of the consumer, but it is the authorities that have legal advice which cause difficulty in moving towards what the consumer is looking for, in my experience at least.

**Ms Sugar:** It is about trying to get prompt action so that it does not get to the stage where somebody is thinking about putting things in the hands of solicitors.

**Q22 Ms Dunwoody-Kneafsey:** I agree that previously that was the basis of most complaints being dealt with in the Health Service, for example, that a private meeting would be arranged with the complainant and the organisation. Communication at that stage would often resolve the issue so that it would not go forward into a litigious situation. Do you think that the very fact that the Ombudsman can take action in private could assist that process, because Julie’s point is very valid, that the hearing of the complaint in private without the whole rigmarole of public evidence would assist in that early resolution?

**Ms Sugar:** It is always worth trying that softer approach. It will deal with some complaints and make people feel that they have had a fair hearing, and that there has to be closure. Other people will set out on this process determined to see it through to whatever extent and will never accept that their case has been dealt with satisfactorily, and will go on to complain about the way in which the Ombudsman dealt with it. I am sure that all of you in elected office have the experience of people coming to your surgeries on a regular basis who are serial complainers.

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**Q23 Mr Roger Williams:** In your introduction you mentioned cross-border issues, but in reference mainly to people living in Wales making use of health services in England. There are other occasions, for instance the proposed closure of a leisure centre in my constituency, which led to me getting more letters from England than from Wales. There are also parents sending their children to school in Wales, with problems about special needs and whatever. Are you satisfied that the Bill clarifies how these issues should be dealt with, or have you any suggestions as to how improvements could be made?

**Ms Sugar:** As I understand it, there is the requirement for the Welsh ombudsman to liaise with his colleagues. The difficulty will be about who is responsible, so in a Welsh context it is often difficult for the public to understand whether it is their local council or local NHS trust, or whether it is the Assembly or a non-devolved body that is responsible for a particular issue of concern. With cross-border things it is even more complicated for people to know whom they should be trying to make representations to, and that is before they even think about ombudsman level cases. There are some examples down the border of joint provision across English and Welsh local authorities and health, which add another degree of difficulty. I think it is about making sure that the Welsh ombudsman and the English ombudsman co-ordinate their literature and their information to the public, so that people know who to go to and what they can expect. There will be occasions that they need to agree between themselves who will take the lead in the particular case, so that it can be quite clear that it is either Mr Peat or one of his colleagues dealing with the issue.

**Q24 Mr Roger Williams:** You believe that that could be best resolved with a memorandum between the different people, rather than on the face of legislation.

**Ms Sugar:** I will say what I said about the Children's Commissioner. I am not a lawyer, but I would hope that protocols should suffice, but you would need to take advice from somebody else about that.

**Q25 Mr Roger Williams:** Another issue relates to the amount of time people have to make a complaint to the Ombudsman and the amount of time authorities have to respond to any adjudication that the Ombudsman might make. Do you have any views as to whether those time periods are realistic or helpful?

**Ms Sugar:** If I remember correctly, the individual has a year to the day that the problem first came to their attention to make a complaint; but, again, the Ombudsman has discretion if there are extenuating circumstances, or if he wants to pursue it, to be able to waive that one-year requirement. I am sure that the Welsh Local Government Association will want to comment on how long

local authorities are being given to respond. I would only urge speed in this process because for the ordinary member of the public these timescales seem incredible. Most people can imagine next week or next month. Once you get beyond their next birthday it just feels as though something is disappearing into the mists of time. Also, we have to remember that every time it comes back, every time there is a stage of this process, people have to re-live the agony of the problem. It will make them recall the pain of the circumstances of whatever has led to the complaint. Therefore, the shorter the timescale, whilst being fair to people's ability to take part and give considered responses, the better.

**Q26 Mr Roger Williams:** Are you saying that there should be a shorter timescale in the Bill?

**Ms Sugar:** I am describing what I think is general good practice.

**Q27 Mr Roger Williams:** But from the point of view of the complainant, sometimes a problem may build up over a very long period of time, and we would not want to see anybody who felt that continuous bad service by an authority might disbar them from making a complaint because it had built up over a long time. You think the discretion that the Ombudsman has to address that issue might be satisfactory.

**Ms Sugar:** There might be two separate issues in your question. One is the issue of at what point cumulative poor service constitutes service failure, when each incident on its own might not go over that threshold. There is then a separate issue, which is how long-standing a complaint could be before the Ombudsman rules it out and says, "no"—and he is not going back twenty years. The Bill gives the Ombudsman flexibility above the one-year level to say, "I will look at this". It is entirely a question of your judgment as to whether giving somebody a year with a bit of flexibility is long enough for somebody to realise that they have a problem and that they should be able to come through and get a response. Most people, when they have a problem and they start to talk to others would go to their local councillor or advice agency, or MP's surgery, or whatever. I cannot personally think, going back over previous ombudsmen's reports, of many cases where there was a problem over the timescale.

**Q28 Mr Jones:** You talk about flexibility; do you see this as being different to the way that the English ombudsman works? Are you asking for greater flexibility within Wales than other ombudsmen have?

**Ms Sugar:** I was assuming—and I might be wrong—that this gives a little more flexibility than currently applies on the other side of the border.

**Q29 Mr Jones:** So was I. Are you happy with that?

**Ms Sugar:** Yes, I am.

**Chairman:** That concludes this session. Thank you for coming along to give us your thoughts.

Written evidence from the Community Health Councils and the Board of Community Health Councils in Wales is on page Ev 37.

*Witnesses:* **Mr Tommy Morgan**, Chair, and **Mr Peter Johns**, Director, Board of Community Health Councils in Wales, examined.

**Q30 Chairman:** Can I now welcome to the table Peter Johns and Tommy Morgan. You are both very welcome to our session this afternoon. Can you introduce yourself for the record, and we will then go straight into questions by the joint working panel, which consists of the Welsh Affairs Select Committee from Westminster, and the Local Government Public Services Committee here at the Assembly.

**Mr Morgan:** I am Tommy Morgan, the Chair of the Board of Welsh Community Health Councils. I would like to take this opportunity to thank you for allowing us to speak here today. We welcome the opportunity to make this submission, and we have some general points to make as well as some specific points.

**Mr Johns:** I am Peter Johns, Director of the Board of CHCs in Wales.

**Q31 Ms Dunwoody-Kneafsey:** Do you in principle welcome the aims of the Bill?

**Mr Johns:** Most definitely, yes.

**Q32 Ms Dunwoody-Kneafsey:** Would you like to expand on that?

**Mr Johns:** I thought you liked direct answers.

**Q33 Ms Dunwoody-Kneafsey:** We do, but just a little bit more!

**Mr Johns:** We welcome it because one of the difficulties we have identified in our submission to you is the fact that there are often cross-boundary issues which create difficulties. Having one agency that deals with complaints through the whole process is a great advance as far as we are concerned.

**Q34 Mr Lloyd:** (Translated from Welsh): Thank you, Chair. Are there any other issues that you would like to see contained in this Bill which are not currently included? Would you like to see any additional points added to what is already there?

**Mr Johns:** First of all, I apologise that I cannot respond in Welsh because I am a Cornishman, not a Welshman. The points in our submission cover the bits and pieces that we felt were appropriate to bring forward from our point of view, and I do not have any comments to make other than that.

**Q35 Mr Jones:** Did you play any role in consultations for the Bill?

**Mr Johns:** I personally did not. I have been in my job for two years, and I do not recall having had any opportunity to respond to that previously. I may have overlooked it, but not as far as I am aware.

**Q36 Mr Jones:** As far as you know, were you approached by government?

**Mr Johns:** I cannot recall that I was, but it may be an oversight on my part as much as on anybody else's.

**Q37 Mr Jones:** Did you take part in consultation anyway?

**Mr Johns:** No.

**Q38 Mr Jones:** You have not been consulted.

**Mr Johns:** No.

**Q39 Mr Jones:** Are you happy with the Bill as it stands?

**Mr Johns:** Yes, subject to minor points we have picked up on, generally, yes.

**Q40 Chairman:** The Bill states that the Ombudsman should have a fixed-term appointment, a tenure of ten years. What are your views on that: do you think that is appropriate?

**Mr Johns:** I think you need stability, and I think that is appropriate.

**Q41 Ms Jones:** The Bill states that the Ombudsman Office staff will not be civil servants. How do you feel about that?

**Mr Johns:** To be perfectly honest, I do not have a great view on that. The main thing from my point of view is the complainants and how their complaints are dealt with. It is the process from the complainants' end which we, as CHC representatives, we are particularly interested in. I do not have a strong view on that.

**Q42 Ms Jones:** Do you believe that it will help create a public perception of distance and be good in that respect?

**Mr Johns:** I think it will help, but I am not sure that it will make a huge difference to people who are preoccupied with making sure they get their complaint dealt with in a timely way.

**Q43 Mr Caton:** Are you satisfied with the accountability of the Ombudsman's office, both to the National Assembly and local authorities, as outlined in the Bill?

**Mr Johns:** Broadly, yes. I would not have any problems with that.

**Q44 Hywel Williams:** (Translated from Welsh) Thank you, Chair. I want to ask you about the specific points in your presentation, namely numbers two and three, where you talk about the organisations that should be included under schedule three. You say that you want to see the inclusion of organisations such as your board of community councils, and also the primary care trusts in England. We have already discussed cross-border issues. Would you like to explain why you

believe it to be important that you and these other organisations from England are listed under schedule three?

**Mr Johns:** As far as our own body is concerned, individual community health councils, being independent legal entities, are already to be covered, and I think that is good. The Board of CHCs—it is possible for people to make complaints against us as well of course, and we do have a statutory status under the Health (Wales) Act 2003. It seemed appropriate to me that there should be the opportunity for people to take a complaint the full distance against us, the same as against anybody else. We should be equally accountable. That was the reasoning behind that. As far as primary care trusts are concerned, we are concerned because we are aware that across the border there may be some difficulties with people accessing complaints services on occasions. There are problems with people going to health services in England when they may be living in Wales and vice versa. Primary care trusts obviously have a role to play in the provision of those services in England, and we felt it was appropriate that there should be some cross-reference between the two. I hope that helps.

**Q45 Hywel Williams:** (Translated from Welsh) Yes, certainly. Do you have any comments on problems or practical ways of solving problems that you have come across as a board or as community health councils with regard to these cross-border issues? This is a reasonable cause of concern to many people in Wales who depend on public services—especially health services—in England. Do you have any practical lessons that you have learned which would be of interest to the committee and, perhaps, to the new ombudsman when he or she is appointed?

**Mr Johns:** From our point of view, we would hope to ensure equal recognition of the role of community health councils in assisting patients with complaints and other matters, whether they be English organisations or Welsh organisations. I think that is the important thing for us. As far as the Ombudsman service is concerned, we would hope that the two would work closely enough together and that there was never going to be a gap through which people could fall. How you achieve that, I am sorry I am not expert enough to say, but I do think that is quite important.

**Q46 Hywel Williams:** (Translated from Welsh) Have you noticed any difference since the community health council system changed in England, and since the fora were established? Has there been any change in the way in which you can take cases across the border, for example? Has that affected your work in any way, and would that have any implications for the ombudsman?

**Mr Johns:** I have to say that I do not have details of individual cases with me, and I do not have a clear steer that there are major problems. In

making the points to you, we are saying that we do not want to leave any doors open where this sort of thing could happen.

**Q47 Ms Dunwoody-Kneafsey:** In his written evidence, Adam Peat states that he is particularly keen to be able to consider synoptically complaints about the actions of multi agency, multi-disciplinary teams, which are common nowadays, and particularly pertinent in your field because now, instead of being simply in Wales LHBs you now have local authorities and various other things. Do you think that the Bill should be improved in terms of drafting, or in terms of the implications in there for that type of multi-agency working?

**Mr Johns:** The wording of the Bill is down to the drafting experts. The points that we tried to set out here were areas where it seemed to be relevant to us to make points that there was an opportunity not to see clearly how this would work. Whether that is covered in a commentary or whether it needs an amendment to the Bill, I would not be prepared to say, because I am not competent; but it is important that the points that we have tried to identify, where there is a potential for misunderstanding or failure to pick something up, are covered.

**Q48 Ms Dunwoody-Kneafsey:** On the failure to pick something up, one of your key points is obviously timing, and a multi-agency approach could exacerbate that timing situation.

**Mr Johns:** Absolutely, yes.

**Q49 Ms Dunwoody-Kneafsey:** I just wondered if you felt there should be more strength to that.

**Mr Johns:** It would be helpful, certainly. We have said that we felt there should be a time limit beyond which, once the listed authority or authorities have had notice, that the Ombudsman should be able to intercede if things are not moving. That would certainly be helpful.

**Q50 Julie Morgan:** Your written evidence highlights concerns over the delays in the processing of complaints, where continual failure to deliver the service has a huge impact on someone's life, such as a very young person or a very old person, and you argue that the Bill should be strengthened to allow the Ombudsman to act quickly. Is that in reference to the time limits that you have already referred to, or do you feel the Bill should be amended to prevent delays?

**Mr Johns:** The other one that we mentioned in (i) at the bottom of the page was in section 11, which talks about the exercise of discretion, and we were concerned about how that would be interpreted. Exercise of a discretion can cause delays on occasions as well, when people are arguing the toss about whether there is discretion or not. That is relevant in the same context, because if a service is not being provided the authority can simply claim "we have exercised our discretion not to provide it"

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and yet that is having a major impact on the well-being or development of a young person, and particularly the health of an elderly person. That links with the timing issue because prevarication can occur then quite severely, and we would be concerned to avoid that happening.

**Q51 Julie Morgan:** What powers could be put in the Bill to prevent that which are not there?

**Mr Johns:** Again, somebody may well tell me that the wording is sufficient, and that may well be the case, but having read it as a layman it would seem to me that there was room for manoeuvre under the exercise of discretion, but unless it is fairly well defined there is the possibility of prevarication.

**Q52 Julie Morgan:** So you think something should be done there to prevent the possibility of prevarication?

**Mr Johns:** We would like to see something done, yes.

**Q53 Chairman:** Do either of you have any general points you would like to make, it would be useful for the Committee to hear those to help in preparation of the report. Now is the time to express those views.

**Mr Morgan:** You have read the Bill, Peter, and I have not, so you are the one—

**Q54 Chairman:** That is a good chair!

**Mr Johns:** The important point is that we come at it from the point of view of patients and the public, who come to us, and from the anecdotal experience that we have gained. I have tried to identify from that real base the sort of interpretations that might cause us difficulties, and that is why we have made the points we have to you. I hope that I have picked them all up. It was quite a detailed bill and I am not expert in reading parliamentary language, but I believe I have picked up the points that are relevant to us, and I do not think we wish to make any other points.

**Q55 Mr Roger Williams:** We heard earlier from Viv Sugar that the ability of organisations to say “sorry” is very important in settling complaints and disputes because very often people do not want to go through the process of litigation. Is there anything that you feel could be put into this to encourage organisations to accept responsibility for fault and to make that known to the complainant and thereby bypass a lot of the extremely expensive litigation that takes place in the Health Service?

**Mr Johns:** You have made a very good point. There is obviously an advantage, if that can be achieved. Unfortunately, a lot of “sorry”s are “sorry, but” and you get lots of justification for things having

happened after the “sorry”, and when you finish reading the letter it does not look as if they are sorry at all. That has always been a problem. There is a lot out there already advising organisations to be prepared to face up to their mistakes and to say “sorry”, and I am not sure that it is necessary for this Bill to contain anything on that.

**Q56 Mr Edwards:** Would you agree that often the public are quite mystified by bodies like the community health council, which they confuse with other trusts and boards? They may be confused about the existence of a Health Service ombudsman as well. These are mystifying bodies which those who work in the field may be familiar with, but they are not generally known to a great many people. If people have complaints about the Health Service, they will often go to their Assembly member or their MP. How do you think that the new public services ombudsman could have a public profile which would be understood and known universally by the public?

**Mr Johns:** That is a good question, and one that has taxed us as community health councils, as you rightly point out. We have been trying to improve our profile over the last few years. One thing I would say is that most times, people who are in difficulties and need help seem to find the way to our door. That is through the good offices of MPs and AMs and CABs and the like, who will be aware of our existence generally. That happens. We will do whatever we can to promote the Ombudsman service in that respect, and I am sure that will happen in many other ways. We can only rely on those people who do know to make sure the word is passed on. There is an awful lot of publicity material out there about community health councils at the present time—we have spent a lot on it this year. I am not sure that we have raised the profile, if we did a street poll now, very much. I am comforted to some extent by the fact that an awful lot of people find their way to our doors when they need help and advice. As I said, that is really through your good offices and others like you.

**Mr Morgan:** When there was an NHS Ombudsman and an ombudsman looking after local government and social services, now that the NHS and social services are very much more closely linked, whereas in the past people were falling into that grey area, things have changed dramatically. One person is looking after the service of public service ombudsman, and the feedback from people who have had their cases referred to the Ombudsman is that it has very much improved.

**Chairman:** You have obviously given us a lot to think about there and to put into our report. Thank you both for coming along this afternoon and for your contribution to this evidence session.

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Written evidence from the Welsh Local Government Association is on page Ev 37.

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*Witness:* **Mr Steve Thomas**, Director, Welsh Local Government Association, examined.

**Chairman:** Our last evidence session for today is from the Welsh Local Government Association, and it is my pleasure to invite Steve Thomas to join us at the table. Steve is a regular attendee of the Local Government Public Services Committee—not quite a member, but we will see what we can do! Thank you for giving up your time, Steve. As you are aware, this is a joint session between the Welsh Affairs Select Committee from Westminster and ourselves as the Local Government Public Services Committee, into the Public Services Ombudsman (Wales) Bill. Your written evidence is very comprehensive, so we will go straight into a set of questions.

**Q57 Ms Dunwoody-Kneafsey:** Do you, in principle, welcome the aims of the Bill?

**Mr Thomas:** We do indeed. The Bill and the consultation has been reported to all the 22 local authorities in Wales. It was reported when it originally came out as consultation. We have done some subsequent research on authorities' intentions and views on the Bill in recent months, and we have not had any authority saying they oppose this principle. In broad terms, it is very welcome.

**Q58 Ms Dunwoody-Kneafsey:** You have said that was in broad terms, but have there been any specifics?

**Mr Thomas:** There are always some specifics. I do not want to present it as a cosy relationship because it is not, but we have a good relationship with the current Ombudsman Office, the Local Government Ombudsman. We would not want to see any dilution of that service in Wales. From our point of view, it is a vitally important service. It deals with a range of public inquiries and links very much into the local authority complaints procedures at the moment, and we want to ensure that there is a clear line of continuity there.

**Q59 Mr Lloyd:** (Translated from Welsh) Thank you, Chair. Would you like to see any other issue included in this Bill? In your opinion, is there any issue that you would have liked to have seen included which are not currently there?

**Mr Thomas:** The Bill is very comprehensive from our point of view. A bill cannot encapsulate some of the concerns that we have got, concerns that have gone on in the background, which we have put into our evidence. That is the current profile of not only the Local Government Ombudsman but the Ombudsman Office in general. We have some evidence from local survey work that people do not understand what the Ombudsman Office is and do not understand the concept of an ombudsman. There are some issues in terms of awareness-raising and the role the Assembly can play and the House of Commons in raising the profile of this. We have not necessarily got a great culture of complaint within the wider UK, and some of the mechanisms

we have in place are not very user-friendly at the moment. I accept that that cannot be encapsulated into the Bill, but the spirit of the discussions you are having and the type of evidence we want to put in would try and push for a greater profile in terms of the service. Bringing these organisations together will partly achieve that, but it is not the end of the story.

**Q60 Mr Jones:** Mr Thomas, I can see from your paper that you have been consulted by the Welsh Assembly Government over ombudsman services in the past. Were you consulted about this draft Bill?

**Mr Thomas:** We were. We have seen the draft Bill and we have seen much of the supporting evidence.

**Q61 Mr Jones:** Do you think that the consultation has been effective? Have you got what you wanted in it, in your consultation with the Government?

**Mr Thomas:** From our point of view, as an organisation, definitely. We have no problems with the consultation on this. The feedback we have had from the 22 local authorities and our associate members has been very good.

**Q62 Ms Barrett:** The Bill states that the Ombudsman will be a fixed-term appointment of ten years. Do you think that is appropriate?

**Mr Thomas:** We have said in the evidence we have submitted that it is. We did consider a contractually based process. From our point of view, part of the reason why we supported the ten-year time-frame—and it is not always a good reason, but I am going to state it anyway—was the experience we had built up under the previous ombudsman, prior to Adam Peat, Mr Elwyn Mosely, was one of continuity and real value to local authorities and to citizens. I am sure that Adam will also provide that level of expertise, and that takes time to build up. I think this is a position that does not necessarily lend itself to a contractual arrangement.

**Q63 Ms Barrett:** That is fine, and in some ways we should look at whoever the Ombudsman might be rather than individuals. I appreciate what you say about Elwyn Mosely, because I have had lots of experience over the years with him as the Local Government Ombudsman. I am not sure if there are mechanisms to curtail the appointment at any stage. I know the others were in place for an awful long time, but ten years does seem a long time and I am sure there must be mechanisms in place to deal with it. Do you know of any, and what do you think of them? This may not be a question for you.

**Mr Thomas:** My understanding is that the position is advertised as a public servant as such, and as a public servant it could be a lifelong position. It is slightly different to the position of myself and other chief executives in local authorities at the moment, which is usually on a four-year basis.

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**Q64 Ms Dunwoody-Kneafsey:** I had read it as there being an ability to cease the appointment at any stage, and that the serving of the ten-year tenure could not be repeated.

**Mr Thomas:** I am not aware of that. You will have to put that question to Adam Peat.

**Ms Dunwoody-Kneafsey:** Am I correct in that?

**Chairman:** That is something we need to follow up when we take evidence from Adam Peat and the Under Secretary of State and the Minister for Local Government.

**Q65 Julie Morgan:** The Children's Commissioner post was for seven years, and I think the Children's Commissioner in England is going to be five years as I remember. Do you have any comments on that, because in some ways it is a similar type of post? I believe that the Children's Commissioner in Wales cannot repeat the tenure. Are they different types of posts?

**Mr Thomas:** I think they are different types of post. I have some views on the tenure of the Children's Commissioner post, not least because that post does lack some accountability in the Welsh context. From our point of view, however, in terms of the Ombudsman post, by definition it is less controversial than the Children's Commissioner's post. It clearly has a linkage in to many controversial subjects, but the Ombudsman clearly comes forward with a veil of objectivity on all the things that he or she does. The Children's Commissioner is a far more "subjective" advocate based post, pushing the rights of children, which is why the Assembly has promoted this. There are distinctions between the two, and the differing timescales should not be seen as problematic in that regard.

**Q66 Ms Jones:** The Bill states that Ombudsman Office staff will not be civil servants. Do you welcome this approach?

**Mr Thomas:** Good! I think because the Ombudsman Office is characterised by a degree of independence and because it will be examining areas under the remit of the Assembly, they cannot be civil servants.

**Chairman:** We have checked, and it is a ten-year appointment without re-appointment.

**Q67 Mr Edwards:** What do you feel about the level of accountability within the Bill of the Ombudsman to the Assembly and to the local authorities?

**Mr Thomas:** We have put specific proposals in, in terms of the Ombudsman's accountability. From our point of view, we have a number of informal accountability mechanisms in place. We think that the Public Services Ombudsman should regularly report to the Partnership Council mechanisms within the National Assembly. As you know, the Partnership Council is a partnership between local government, the National Assembly, the fire authorities, community councils and a range of other public bodies. It is vital that those mechanisms are seen as accountability mechanisms; and I think that the new ombudsman must clearly

have a role in that regard. We seek informal dialogue as well with the Ombudsman; we generally have an annual meeting, where the Ombudsman reports back to the Association, particularly on the new members' code of conduct and the role that he plays in that. That is very useful. From our point of view as well the Ombudsman generally attends councils around Wales and there is a level of accountability there. There is a need for some sort of formal reporting to the Partnership Council in Wales, which would add a new dimension.

**Q68 Mr Edwards:** Do you think the Bill needs to be amended with respect to the first point you made?

**Mr Thomas:** I think it should be a statutory consultation with the Partnership Council, yes.

**Q69 Mr Edwards:** Have you submitted evidence precisely on how that can be achieved?

**Mr Thomas:** We have put that forward as a suggestion. We have not put detail behind the suggestion.

**Q70 Hywel Williams:** (Translated from Welsh) Thank you. I would like to ask a question about raising awareness of the Ombudsman's function. You have partly answered this in your reply to Dai Lloyd. Do you have any creative ideas about how we could use this Bill to raise public awareness about the Ombudsman?

**Mr Thomas:** I think there are some things that could be achieved. Firstly, local authorities do point towards the Ombudsman in their complaints procedures. In fact, I dealt with a lady yesterday on a planning inquiry, and she was seeking the address of the Ombudsman, which tends to suggest there is a staging post approach. We would like to see far more publicity around the role of the Ombudsman Office. We do not seem to get that in the media or the press at all. Most Ombudsman reports, other than mal-administration reports generally do not get coverage. Many of them do not deserve coverage but some of them do; but there is a need for upping the media profile of the Ombudsman. One of the things we have discussed with the Assembly—and this ties in to the *Making the Connections* report is the possibility of a survey of public sector bodies in Wales under the badge of Local Voices. That was initially going to be solely a customer satisfaction survey about local government, but now we are starting to talk about integrated public services in Wales, there is clearly the opportunity to use a vehicle such as that, again to check on a regular time series basis people's views, awareness and perception of the Ombudsman service. There are plenty of mechanisms there. The problem we have by definition is that the bread and butter of the Ombudsman service is not particularly exciting unless you are an individual complainant, but at the same time, as a method of redress, it is vital in terms of democratic accountability; so both the Assembly and local government and other public sector agencies in Wales have a role in promoting

the Ombudsman Office, but I think the Ombudsman himself could be more proactive in that regard.

**Q71 Hywel Williams:** (Translated from Welsh) Thank you. I see from your presentation that you talk of making the service citizen-centred, and on the basis that everybody starts by looking at his or her own situation. Do you see that as a way of raising public awareness? I note that you state here that only 45% of people in England are aware of the health service ombudsman, and 44% aware of the local government ombudsman, and so on. Would making the service more citizen-centred be one way of making it more real for people?

**Mr Thomas:** To follow that statistic through, the point made about the awareness of the Citizens' Advice Bureau clearly suggests that, does it not? If you have 94% awareness of CAB, it suggests that a voluntary sector body can generate more interest and more legitimacy than a public body, and there must be some lessons to be learned there. From our point of view, it is a question of appropriateness. Many of the things that get to the Ombudsman perhaps should not, and that may be down to the inadequacy of complaints procedures in local government; it may be down to a misunderstanding of the ombudsman role, and there is a role to perform there. I have to say—I would say this, wouldn't I? The dealing of complaints in the public sector has improved dramatically over recent years. From my personal experience as a consumer that has improved, and dealing with the private sector has gone down somewhat. At the same time, there is a greater role in terms of awareness-raising, and we all have a responsibility in that regard. Making it a more citizen-focused service may be the way forward, making it more readily understandable. I am not convinced that the term "ombudsman" engages people.

**Q72 Ms Dunwoody-Kneafsey:** Steve, on the media profile and the reporting of the Ombudsman, you will be as aware as I am that frequently the media reporting of local government ombudsman findings is not always accurate, and does not accurately reflect the findings of those reports. However, there is an issue, is there not, around to whom the Ombudsman provides the report and when, particularly in view of elected representatives and their role at any stage in casework. Do you have anything to say on that because you do not bring that out?

**Mr Thomas:** In terms of local government, there is a varying practice in the way that ombudsman reports are treated. Most ombudsman reports that are dismissed do not see the light of day in local authorities; it is generally through the committee process—mal-administration reports or the more controversial reports that come forward. There is, as you know, some press interest on some reports—classic in your constituency the Bluestone issue, which has rolled on for a period of time. In the vast majority of cases, that interest is not generated. How you go about doing that must be part of the

mandate of the new service because, clearly, one of the things you want as elected representatives is a much higher profile service by bringing these four services together. That, by implication, should be one of the real effects of this merger. That also means an ombudsman with more profile than the current individuals have, an ombudsman more in a consumer champion mode than the current civil service portrait of an ombudsman. In local government we have to support that process.

**Q73 Ms Dunwoody-Kneafsey:** Do you think that a memorandum of understanding would suffice to cover those people who should be receiving the reports—and I am thinking very much in line with the Estin practice of automatically putting those out?

**Mr Thomas:** I think a memorandum of understanding would be useful. What we could do as an association is some further work on the reporting of ombudsman reports, and whether there is merit and common treatment in that regard, because I am sure there is varying practice from authority to authority.

**Q74 Mr Roger Williams:** You have already made mention of the code of conduct for local authority members, and in your evidence you state that the existing code of conduct for members has placed some strain on the relationship between Welsh local government and the Ombudsman, not least because of a lack of clarity in the current framework. Are you satisfied that the Bill provides sufficient clarity on these issues?

**Mr Thomas:** I do not necessarily think it provides clarity in terms of adjusting the code of conduct, but we are doing that anyway. The current code of conduct we have in local government—it is rather foolish to say this in front of you, but I will say it anyway—I think it is probably the most rigorous code that any set of politicians faced within the UK political environment. There are problems however with that code. It was put into place in a very rushed process, and one of the things that the Association was very keen to do when it accepted the code was to review it after 18 months to two years because we do have some problems with the nature of that code. The Ombudsman has contributed extensively. Adam Peat has been one of the major drivers in the review of the code because he and his office appreciate that some of the grey areas are causing real problems, not only for members but for people who want to take part in the ethical and standards framework for local government and have an imprecise understanding of what that means. From our point of view we want to continue to develop the code of conduct. What we want to ensure in the new Ombudsman Office is a clear government flavour that can take that forward because, clearly, ombudsmen have two main roles in terms of local government and the members' code of conduct is one of those.

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**Q75 Mr Roger Williams:** If I can take that a little bit further—and forgive me because I am only just getting to grips with the Bill—the function of the Local Government Ombudsman in Wales is to look at mal-administration but also complaints against individual members.

**Mr Thomas:** Absolutely.

**Q76 Mr Roger Williams:** Is that included in this Bill because when I look at section 7 and matters that are investigated, it does not include complaint against individual members of local government.

**Mr Thomas:** My understanding of this—and I suspect Adam Peat can elaborate on this tomorrow—is that we have a team of people, including local authority lawyers, the Ombudsman Office, and people from other sectors, including the Consumer Council, looking at the current code of conduct. That is a separate exercise to the Bill. The code of conduct that exists currently will be the code that the Ombudsman works to. We will however be seeking revisions to that code over the forthcoming period. I understand that the report will go to the Partnership Council in March, which will show those areas where key revisions will occur. I have no doubt that some of those revisions will be based on the definitions of personal interest and some of the criminal clauses within the current code of conduct, and around declarations.

**Q77 Mr Roger Williams:** A member of the public may have a complaint against the way a member of a local authority conducts himself, without that resulting in mal-administration, so do you think that would be covered?

**Mr Thomas:** A member of the public has the recourse at the moment to refer a complaint like that to the Ombudsman, who may examine the complaint and in first instance refer it to the local standards committee. That committee is independent of the council. In all 22 cases they are chaired by a layperson. As a result, that standards committee will undertake an initial investigation. Part of the problem with the current code of conduct is that certain vexatious claims have gone to the Ombudsman, and that has led to real problems in terms of the code and the credibility of the code. From our point of view, clearer definitions would lead to more local judgments in terms of the standards regime.

**Q78 Mr Roger Williams:** I was going to ask you about the relationship between the standards committee and this, but you are happy that this Bill deals with it.

**Mr Thomas:** Yes.

**Q79 Mr Roger Williams:** I know it is not your responsibility, but how do you think this legislation would impact on town and community councils and their members?

**Mr Thomas:** You are right that it is not my responsibility. I think in broad terms many town and community councils have found the members' code of conduct very difficult to implement because

of the scale of their operations and the extensiveness of that code. There were examples of some town and community councils not adopting the members' code of conduct and some councillors resigning before they did that. There is a new association in place for the town and community councils in Wales, One Voice, and I have no doubt that they will be looking at that. If they want to be members of the WLGA of course, we would accommodate them!

**Q80 Julie Morgan:** You say in paragraph 12 that it is vital that the new management structure of the Public Services Ombudsman Office retains a clear local government flavour with specialised knowledge of your service. Are you satisfied that that will happen with the Bill as it stands?

**Mr Thomas:** I hope so. I am still not clear on the management structures that were put in place. I have referred to paragraph 12 there. We were not supporting a collegiate structure where there would be a division of powers within the office, but we want to ensure that there is clear local-government based expertise within the new Ombudsman service. We want to see a more integrated service, but the balance between integration and specific knowledge is something that the Office must be able to accommodate. From our point of view, many of the complaints that go into the Ombudsman service are very technical complaints, and to lose the level of expertise that we have got would be a problem for us. There is no suggestion of that in the Bill, and we are satisfied with the proposals coming forward; but until I see the organisational charts—

**Q81 Julie Morgan:** If you do not have a collegiate structure, what structure could you have that would ensure that this happened?

**Mr Thomas:** The Ombudsman's annual report talks about an integrated service, but with flavours within the service. That would mean that there are dedicated experts in that. I suspect that when it comes to things like back office services, and the support that goes into that, there is clear integration across the service, so it is a bottom-up process. We support that, but we want to make sure there is a deputy for local government within that office.

**Q82 Ms Barrett:** That leads nicely into my question, which is about a dedicated deputy particularly with responsibility for local government. Why do you think that that is so important? What about the other strands of local government?

**Mr Thomas:** My personal view is that I would have no objection to somebody based on the Health Service side because I think the complaints process in the Health Service is Byzantine in its complexity. At the same time, from our point of view, the weight of functions that local authorities have in Wales demands this type of approach. If you just think about the planning function alone, there is so much controversy in the local planning function that you could almost have a deputy for planning.

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We are suggesting people with over-arching corporate views of local government, and people who can bring that necessary expertise in. Planning and housing are the two key areas, but there is clearly a growing set of complaints around social services, education and highways, and we cannot lose the expertise for dealing with the profession of local government and political administration of local government, and also in terms of public accountability.

**Q83 Mr Caton:** In the same paragraph where you call for the dedicated deputy for local government, you also argue for the full independence of the Ombudsman Office. Are you satisfied that the Bill will achieve this?

**Mr Thomas:** Yes. It goes back to the question of whether the officials in the Office should be civil servants. I think there is a degree of independence that currently exists, and I am sure that by bringing the offices together that that independence can be maintained. My view is that in my own personal dealings with the Ombudsman and the experience I get from talking to other chief executives that that independence is hugely valued, and we must not dilute that.

**Q84 Mr Roger Williams:** Without being political in this matter, I agree that the devolution settlement in Wales is becoming more complicated as *ad hoc* elements are devolved to the Assembly; but also there are ways in which, through articles of memoranda, the Assembly takes up particular

functions that are still reserved to Westminster but are actually delivered through the Assembly. How do you think the ombudsman system outlined in this Bill will tackle that? I am told that there is no central register of articles of memoranda, and you have to trawl through every department in Westminster to find where they have been issued.

**Mr Thomas:** I was rather hoping your Committee would give me the answer to that. I think it is a very complex process. There are also issues within Wales about the complexity of the process, where a complaint cuts across both the Health Service and local government. I have alluded to delayed transfer of care—which is the body that must examine that complaint? There are some lines of demarcation there. I have always felt that one of the things you must do with devolution is learn to love the contradictions, and I suspect that this is one of them.

**Q85 Chairman:** Steve, is there anything that we have not covered that you would like to put on record?

**Mr Thomas:** No, but I would stress the point I made at the outset. This, to the local government community, is a non-controversial Bill. I would not say the same about the other piece of Welsh legislation going through at the moment, but this is non-controversial, and from our point of view we can sign up to the processes that you have set out.

**Chairman:** Thank you very much for giving evidence today and for sharing your thoughts and the thoughts of the WLGA with us.

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**Oral evidence taken by the Welsh Affairs Committee  
(enlarged by the Local Government and Public Services Committee, National  
Assembly for Wales) held at the House of Commons**

**on Monday 17 January 2005**

Members present:

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Welsh Affairs Committee

Mr Martyn Jones in the chair

Mr Martin Caton  
Mr Nigel Evans  
Mr Huw Edwards

Mrs Betty Williams  
Hywel Williams  
Mr Roger Williams

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Local Government and Public Services Committee

Ann Jones

Lorraine Barrett  
Glyn Davies  
Tamsin Dunwoody-Kneafsey

Dai Lloyd  
Jenny Randerson

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Written evidence from the Local Government Health Service Ombudsman for Wales and Scottish Ombudsman is on page Ev 42.

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*Witnesses:* **Mr Adam Peat**, Local Government and Health Service Ombudsman for Wales; Welsh Administration Ombudsman, and **Mr Eric Drake**, Scottish Public Services Deputy Ombudsman, examined.

**Q86 Chairman:** Welcome to this joint meeting of the Welsh Assembly Committee and our Committee here, looking at the Public Ombudsman for Wales Bill. There may be translation in which case you have a translation set in front of you. The channel is one. Could you introduce yourselves for the record, please?

**Mr Drake:** My name is Eric Drake and I am the Deputy Scottish Public Services Ombudsman.

**Mr Peat:** My name is Adam Peat and I currently hold three offices as the Local Government Ombudsman for Wales, the Health Service Commissioner for Wales and also the Welsh Administration Ombudsman.

**Q87 Chairman:** Mr Peat, how will this Bill impact on your job as Ombudsman in Wales?

**Mr Peat:** It will make it a great deal easier because at the moment I have three different sets of legislation that I have to operate to and my staff have to be familiar with. Although the legislation all comes ultimately from the same source, there are minor differences which make it quite tricky to remember at all times clearly which set of provisions one is operating.

**Q88 Chairman:** Is there anything in your opinion that you would like to have seen in the Bill that is not there?

**Mr Peat:** No, I do not think so. As I said in my written evidence to you, I was a little concerned about clause 11 which deals with my ability as the Health Service Commissioner to assess matters of clinical judgment. I do feel that that needs to be extended. One frequently sees health service personnel operating alongside social services personnel from the local authority these days in multi-agency, multidisciplinary teams. It does seem to me I need to be able to look at the actions of all members of those teams in exactly the same way but I do take comfort from what was said in the House of Lords Second Reading debate. The government are clearly prepared to consider an amendment in that area.

**Q89 Ms Barrett:** The Bill states that the Ombudsman's post will be a fixed term appointment set for 10 years. Do you think that is appropriate?

**Mr Peat:** Yes, I think so. The current situation in respect of each of my appointments is that they are appointments to age 65. That has been the previous

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pattern, if you will, for UK public sector Ombudsmen, outwith Scotland. I understand that the government no longer wishes to have age specific provisions in Bills. It is against the current philosophy. I think 10 years was a figure that was landed on as being a figure that would effectively do what appointment to age 65 has done before: give a sufficiently long period of appointment so that the Ombudsman would not have to be concerned about what he or she might have to do in order not to cause offence and not to jeopardise their chances of reappointment. The two things go hand in hand, the 10 years but also no possibility of reappointment.

**Q90 Ms Barrett:** The tenure for the Scottish Ombudsman is set at a fixed five year appointment with the possibility of extending it for another five years. I wonder if you could tell us what you think the advantages or disadvantages might be for that compared to the suggested tenure?

**Mr Drake:** The reality is that there is very little difference from what is proposed for Wales because the provision is for a term of five years with the probability of a second five years, but almost certainly not a term beyond that. It is effectively a 10 year appointment but the Scottish Parliament chose to do it that way.

**Q91 Ms Barrett:** Do you see any obvious advantages? I hear what you say but there is that get out clause, if you like. Maybe one side could resign the post but it does give that get out clause.

**Mr Drake:** We have not got to the first five years yet so I cannot speak from experience but I cannot see that there is any great, practical difference from what is being proposed with the Welsh legislation.

**Q92 Ms Randerson:** I would be grateful if both of you could answer this. Debates in the Scottish Parliament on the Scottish Bill resulted in the extension of the Ombudsman's powers beyond investigation of complaints against the exercise of administrative functions to also include complaints about the failure of a public authority in service delivery. On your reading of the Bill, will the office in Wales have the power to investigate failures in service delivery?

**Mr Peat:** Yes it will, very clearly. That has been very specifically provided for. The one point that I mentioned earlier is wanting to be able to look at complaints about service failure in the same light, whether they are complaints about the exercise of clinical judgment within the NHS or complaints about a comparable, professional judgment by what might be, say, a psychiatric social worker working alongside a psychiatric community nurse. With that minor point of detail, I am satisfied and indeed very pleased that the Bill does extend the ability to look at complaints about service failure to all of the bodies that will be inside the jurisdiction of public services Ombudsmen and to do so in the same light and spirit.

**Q93 Ms Randerson:** Mr Drake, do you believe that the powers for Wales will be parallel to those in Scotland in that respect?

**Mr Drake:** Yes, I do. The argument that happened in Scotland was very much what Adam has described. The legislation governing the health Ombudsman has always had that provision, that he could look at service failure. The discussion in the Scottish Parliament was that it was illogical to have it for one sector of the Scottish public services Ombudsman and not for the rest of the jurisdiction. It is extended for us to cover the whole of our jurisdiction and that seems to me eminently sensible and appears to be what has been gone for in the Welsh legislation too.

**Q94 Ms Randerson:** Mr Peat, in your evidence you say that a formal investigation will be carried out where appropriate. What do you believe will be the criteria for determining whether a formal investigation is appropriate?

**Mr Peat:** The question I would have to answer each time is: is there some wider lesson here that needs to be learned or is what the body is alleged to have done really so frightful that it ought to be made known to the public if, when I investigate, the facts show that something has gone very wrong. There are any number of cases that come to an Ombudsman where frankly it is not like that. Yes, there has been maladministration. Yes, somebody has been badly treated but it is essentially a one-off slip up and the main thing is to see if one can sort that out and get redress for the individual as quickly as possible. I am very pleased with the provisions in the Bill that will make it easier for me to look into things in a streamlined way and not have to mount a formal investigation each and every time. I think it is better to save the heavy guns for the times when they are really needed.

**Q95 Ms Barrett:** Mr Peat, just looking at the issue of service delivery and the extension of the powers from just maladministration, a lot of people in the past have been frustrated that the Ombudsman could only look at maladministration. What could you do to prevent hundreds and hundreds of people coming to you just to complain that their rubbish is not being collected regularly? Surely that is something that the local councillor or the chief executive, the director of the department, should be dealing with? You would need, I presume, some sort of sifting process so that you do not become a very expensive commodity, looking at things that somebody else perhaps should be doing.

**Mr Peat:** Yes, absolutely. The Bill provides for what is currently the situation. The Ombudsman does not have to investigate any complaint that comes before him. You have a discretion as to whether or not you are going to investigate. That is the first point. Secondly, the legislation specifically provides that I should not normally investigate a complaint unless the complainant has first made some sort of attempt to bring the thing they are complaining about to the attention of the authority of whom they complain and asked them to sort it

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out. One would normally be looking to see some evidence (a) that somebody had something that appeared to be on the face of it worth complaining about and (b) that they had been to the council, been to the NHS trust, and made some attempt to get that body to put it right first.

**Q96 Mr Caton:** While we are looking at the remit of the new Ombudsman, as I understand it, in your current capacity as a local government Ombudsman you are not empowered to investigate community councils. Do you think we should be looking at this Bill as an opportunity to extend your powers in that direction?

**Mr Peat:** At the present time, I can look at allegations that a community councillor has broken the statutory code of conduct for councillors but not, as you rightly say, at complaints of maladministration. As I understand it, the intention is that complaints of maladministration by community councils will be within my remit as the public services Ombudsman and the Bill specifically provides a mechanism by which the National Assembly may, whenever it chooses, add any form of public body in Wales to those bodies that I will be able to investigate. If memory serves me, community councils are not explicitly named on the face of the Bill as bodies that I would be able to investigate a complaint of maladministration about but the intention is that, if the National Assembly so chooses, a proposal will be brought forward for the Assembly to consider.

**Q97 Mr Caton:** As I understand it, when this post is created after the passage of this Bill, the Ombudsman would not immediately be able to investigate a complaint of maladministration against a community council until after the Assembly has considered it and presumably extended the list in the schedule?

**Mr Peat:** Yes.

**Q98 Mr Caton:** What sort of timescale do you think that will be?

**Mr Peat:** That is very much a matter for the National Assembly but it is certainly feasible in practice, if the Assembly so chose, that that Assembly secondary legislation could be in place by the time the Bill was brought into effect. I am working on the assumption that, regardless of the date that the Bill might achieve Royal Assent, it will probably not be brought into force before 1 April 2006.

**Q99 Mr Caton:** Would you welcome the extension of powers in that direction?

**Mr Peat:** Yes, I would. It is somewhat illogical that there is no avenue for seeking redress and investigation of a complaint of maladministration against a community council. I do not think it is necessarily going to lead to a flood of new cases and new investigations simply because the administrative functions of community councils are so limited, apart perhaps from a handful of those

that were once in the distant past urban district councils. In the main, community councils have very limited administrative functions, as you know, and I think the scope for complaint about them will be fairly small. That is no reason why people should not be able to complain about them if indeed they are capable of maladministration.

**Q100 Mr Caton:** One of the reasons I ask the question is because there is some evidence that the government is looking to extend responsibility of community councils, particularly in the field of antisocial behaviour. It seemed an appropriate time to look at whether the Ombudsman's function should be extended as well. I am very glad to hear that you look forward to that happening.

**Mr Peat:** Yes. My memory has just been jogged. I apologise. I inadvertently misled the Committee. Community councils are expressly on the face of the Bill at line 32 on page 23. There was some discussion earlier as to whether they would be on the face of the Bill or would be left for later Assembly legislation. We will be able to investigate from the outset.

**Q101 Mr Caton:** They are not one of the listed authorities under Schedule three, unless they are counted as a local authority.

**Mr Peat:** That is precisely what the provision at lines 30 to 33 on page 23 of the Bill does. It says, "Local authority in Wales means a county council, a county borough council or community council in Wales."

**Q102 Mr Williams:** In her written evidence to us, Ann Abraham stated that cross border issues—that is, public health and civil defence—will require joint working and cooperation between Ombudsmen. Will there be any formal mechanism for cooperation and joint working or will this be an informal agreement?

**Mr Peat:** I am sorry; could you repeat that?

**Q103 Mr Williams:** We were told by Ann Abraham that on cross border issues such as public health and civil defence there may be joint working between Ombudsmen in England and Wales. The question is will that be a formal mechanism or an informal mechanism?

**Mr Peat:** I think it will be both. This Bill provides specifically powers for the public service Ombudsman for Wales to cooperate with other Ombudsmen in the UK. What it does not do is to provide those other Ombudsmen with a reciprocal power. I understand that that may have to be the subject of a regulatory reform order in due course. There is an excellent working relationship between myself and the other public service Ombudsmen in the UK, both with Professor Alice Brown in Scotland, with Ann Abraham and indeed with the local government Ombudsman in England. All of us would always have a focus on the complainant and trying to sort things out for a complainant by cooperating as best the statutory powers that were available to us would allow.

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**Q104 Mr Williams:** A number of powers are or have been transferred from Westminster to the Assembly, not specific powers, but allowing the Assembly to use its staff to carry out those functions in Wales. If there was a complaint about that type of service, would it be appropriate to use the Welsh Ombudsman because the service was being delivered in Wales by the Assembly or a Parliamentary Ombudsman because the powers of those things remain with Westminster?

**Mr Peat:** My understanding is that under this Bill any administrative action of the Welsh Assembly would be subject to my scrutiny rather than to that of the Parliamentary Ombudsman.

**Q105 Mr Williams:** In particular, there is concern about cross border issues as far as health is concerned with people living in one country and having the service in another or being part of a GP surgery in one of the other countries. We are told about that from the Board of Community Health Councils. Are you confident that the Bill ensures that these concerns are clearly and adequately addressed?

**Mr Peat:** The Bill specifically empowers the public services Ombudsman for Wales to carry out a joint investigation with the health service Commissioner for England. What is less clear is the power that the health service Commissioner for England has to reciprocate, but the intention of both myself and Ann Abraham is clear and we are clear too that this is a real issue, particularly along that long border and particularly in the area of Powys. There is a great deal of to-ing and fro-ing between the GP's surgery in Wales and the hospital in Shrewsbury and so on. We certainly would, between us, look to investigate jointly. I am sure we could achieve that at least. Until such time as Ann Abraham as the health service Commissioner for England was given a formal power, we might not be able to produce a single, joint report at the end but two reports produced together on the same day, to be read together, we certainly could manage.

**Q106 Mr Williams:** On behalf of the complainant, is it necessary to have a joint inquiry? Could not the responsibility or the function be given to one Ombudsman? It seems to me that in the complainant's mind why should they be bothered with this complexity.

**Mr Peat:** I hope that in practice what will happen is that the complainant will treat me as a one stop shop. They will bring their complaint to me. If I think there is some aspect of it that needs to be looked at by another Ombudsman, I would seek the complainant's agreement to get that other Ombudsman involved, but I certainly would not tell them that they had to go away and make out a whole new complaint. I want to offer a seamless service and I know that my Ombudsman colleagues elsewhere in the UK would be very happy to cooperate in that.

**Q107 Chairman:** Mr Peat, in your written evidence to us you said that you were particularly keen to be able to consider synoptically complaints about the actions of multi-agency, multi-disciplinary teams which are common nowadays in fields such as care in the community. That is an area where you felt that the Bill could be improved. Can you expand on that?

**Mr Peat:** Yes. I think I have already referred to that. That is clause 11 of the Bill. It says two things. The first thing it says is that the Ombudsman may not question the merits of the decision taken without maladministration by a listed authority in the exercise of a discretion. Then it goes on to say, "Subsection (1) does not apply to the merits of a decision to the extent that the decision was taken in consequence of the exercise of clinical judgment." In other words, I can look at whether the GP did the wrong thing in prescribing Aspirin for your child's meningitis without having to consider whether that was or was not maladministration. I am asking myself as a question about the exercise of clinical judgment: was there or was there not a service failure here? I think I need to be able to apply the same sort of yardstick when I am looking at the actions of social workers and of people who are assessing children's special educational needs. It is all one nexus. As far as the family is concerned, it may all be one problem. It needs to be looked at together in the same way. I am encouraged by what the government has so far said about their willingness to look again at the wording of the Bill in this area.

**Q108 Mrs Williams:** (Translated from Welsh) You touched on this matter when Mr Williams asked you a question about joint inquiries. The Bill prohibits the Welsh ombudsman from conducting and reporting on joint inquiries with the ombudsman in Scotland. Can you anticipate any circumstances where it would be worthwhile for you to conduct joint enquiries? I am putting the question to both of you.

**Mr Peat:** Yes. In principle, I can. The geography makes it very much less likely to happen at all frequently in practice. One example that comes to my mind is the possibility that perhaps an elderly person who has been in the care of a social services authority in Scotland might move to Wales to be closer to their family. Therefore, they come under the care of a social services department in Wales. Somewhere, something goes wrong with the transfer arrangements and each authority is blaming the other for what went wrong. I am constructing a hypothetical example but you can see that it would be quite difficult to get to the bottom of that, if I and the public services Ombudsman for Scotland did not cooperate at least informally. The Bill does not make any specific provision for me to operate jointly with Scotland. I would have preferred it to but probably in practice we would get by on an informal basis.

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**Q109 Mrs Williams:** (Translated from Welsh) You have just said that you would welcome it. Do you wish to express that in stronger terms?

**Mr Peat:** What I would like to see is that I would have the power to cooperate in a like manner and undertake joint investigations with any of the other statutory Ombudsmen in the UK. It is certainly not due to any reluctance on my part in any way to cooperate with the public services Ombudsman for Scotland, with whom I have a very close working relationship. I am very grateful to Alice Brown for all of the practical help and advice that she has given me to date.

**Mr Drake:** Speaking from the Scottish point of view, I would entirely agree with that. We take the same position. My understanding for why that particular provision is there is that the Scottish Executive feels that, because of the terms of the devolution settlement in Scotland, it would cause difficulties if there were joint investigations by the Scottish Ombudsman who is answerable to Scottish Parliament and the Welsh Ombudsman who is not. I am not a constitutional expert. I do not pretend to understand the basis for those concerns but practically they are unlikely to cause us significant problems given that we have the other provisions for cooperation with the Welsh Ombudsman and we have good relations and cooperate on a number of things already. We would also on the whole have preferred to have exactly the same provisions for all Ombudsmen.

**Q110 Mr Lloyd:** (Translated from Welsh) Thank you, Chair. I have a question for Mr Eric Drake. With your experience of dealing with complaints in Scotland, what powers do you have to ensure that your decisions are acted upon, so that your recommendations are followed through? What powers do you have to determine compensation in individual cases?

**Mr Drake:** The formal position is that we can only make recommendations. We cannot require bodies to implement our recommendations. There is a provision in our legislation that, as the legislation puts it, if we find hardship or injustice caused by maladministration or service failure that has not been remedied, we can make a special report to that effect to the Scottish Parliament. We can also require the body complained against to meet the cost of that report and any giving of publicity to it that we think is appropriate. That could be quite a useful lever to persuade bodies to do what we want them to. In practice, in the two years that we have existed, we have not had to resort to that. Although on a couple of occasions bodies have quibbled initially about recommendations, they have always seen the light eventually and done what we said, so it seems to work.

**Q111 Mr Lloyd:** Following on from that, I have a further question for Mr Drake. Do you think that the situation is perfectly satisfactory, or does the system need to be strengthened?

**Mr Drake:** Putting it briefly, it is a satisfactory situation. We see no problems with it. We think it might cause difficulties if we had enforcement powers because it would put us in a rather different position from where we are at the moment.

**Q112 Mr Lloyd:** Mr Peat, in your experience, considering this new Ombudsman, do you believe that the Ombudsman has sufficient powers to secure adequate redress for the individual or does the Bill need to be strengthened in this regard?

**Mr Peat:** Drawing not only on my own rather brief experience to date but also on that of my predecessors, there does not seem to be any problem in practice about getting public bodies in Wales to comply with an Ombudsman's recommendation. There is sometimes a degree of grumbling and reluctance at first but when you persist and if necessary make it clear that you would go to the issue of a second report, they comply. The provisions in this Bill for the public services Ombudsman for Wales to issue a special report are very close to the arrangements which Eric has described for Scotland. There has been no occasion in recent history when it has proved necessary to issue a special, further report. The mechanics in practice are going to be satisfactory. Providing a power of compulsion would frankly be overkill and might jeopardise what is currently a generally very cooperative relationship with local government in particular.

**Q113 Ms Randerson:** The Bill refers to the fact that a complaint must be referred to the Ombudsman before the end of the period of one year starting on the day on which the complaint was made to the listed authority. Mr Peat, in your experience, do you think one year is a sufficiently long time, given the protracted nature of the way in which some public bodies deal with complaints? How do you take the definition of a complaint because people very often make an informal complaint, for example, to a local authority and it is ages down the line before they make the formal complaint.

**Mr Peat:** One year would certainly be unreasonably short if this was a rigid requirement but the Bill gives me a very wide measure of discretion to accept complaints after the period of one year has elapsed. The Bill is also more flexible than the provision of some of the existing Ombudsman legislation. The NHS legislation in particular currently states that the complainant should normally have "invoked and exhausted" the NHS complaints procedure before they come to me. Anybody who has ever come across the NHS complaints procedure will recognise that it is as likely to be the procedure that exhausts the complainant as the other way around. I do have a wide measure of discretion to take complaints early. The only requirement in respect of the complainant having first used the complaints procedure is a very flexibly worded one: that they will first have drawn the matter complained of to the notice of the authority and given them an opportunity to put matters right. Those may not be

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the very words but they are close. I have a complete discretion to decide to take up a complaint, either out of time or before the complaints process of the authority itself has finished. If the complainant feels they are not getting anywhere, they can come to me and I can exercise my discretion to pick that up. Given all of that, I am happy with the time limit of one year. It does make sense to have some sort of time limit and, as a matter of practical common sense, the longer somebody leaves it before they come to me the harder it becomes to investigate and get to the bottom of the facts.

**Q114 Ms Randerson:** Mr Drake, do you have a similar provision in the Scottish legislation? Are you finding it satisfactory?

**Mr Drake:** We do. Our legislation has carried over that unfortunate “invoked and exhausted” wording from the old health Ombudsman’s legislation and is much more worded in terms of taking the complaint through formal complaints procedures. The more flexible arrangements that Adam has described are highly desirable but we do also have discretion to take complaints that either have not completed a process or have not been raised at all. We do use that if we think somebody is being messed about in an internal complaints procedure. The flexible wording that is going to be in the Welsh legislation is highly desirable.

**Q115 Mr Caton:** In responding to the questions about securing proper redress, you have both given the strong impression that you think statutory enforcement powers would be counterproductive and you, Mr Drake, said they would put you in a different position which you thought would create difficulties. Could you both expand on that a little more, about the negative impact of having statutory enforcement powers?

**Mr Drake:** The position for us is very much as Adam has described. We have a generally cooperative relationship with the bodies within our jurisdiction and if we had enforcement powers it is possible that that relationship would be affected. That to some extent is speculation but I start from the basis that it is not broken so we do not need to fix it. It does seem to work pretty well as it is at the moment.

**Mr Peat:** That is essentially my position too. It works as a matter of practice. The Bill in this respect is squarely within the British Ombudsman tradition. To put provision in to make my recommendations enforceable would not bring any practical benefit but would have the effect of making the Bill controversial in a way that perhaps it need not be.

**Q116 Hywel Williams** (Translated from Welsh): Thank you very much, Chair. This is a question for Mr Peat. In its written evidence, the Welsh Language Board welcomes the fact that the ombudsman has the power to investigate failures to comply with the Welsh Language Act 1993, as an example of maladministration. Can you explain the relationship between the Welsh Language Board

and yourself as ombudsman, and how would you manage the joint interest that you would shares in such cases?

**Mr Peat:** I have seen the evidence that the Welsh Language Board submitted and I find myself very much in agreement with what they have had to say to you. It is the case that if an authority departs from its stated Welsh language scheme that is potentially maladministration. I can investigate it. Equally, there is provision for complaints to be made direct to the Welsh Language Board so I think there will be some small overlap of jurisdiction. It is probably better to have a degree of overlap than a crack down which things might fall. Probably what will be necessary in practice and does not need to be provided for on the face of the Bill is that the Welsh Language Board and I might enter into some sort of concordat about what types of case we would take and perhaps, in relation to an individual complaint should it arise, we might need to have discussion with them.

**Q117 Hywel Williams:** (Translated from Welsh): It is the Assembly’s intention to change the Welsh Language Board’s status and to bring it in-house, leaving some functions to the *dyfarnydd*. Do you anticipate any difference if that were to happen?

**Mr Peat:** I do not think that is likely to make a very major difference. It might be in practice that I would have rather more investigative machinery at my disposal. It might at the margin make it easier and more appropriate for me to take rather more of the investigations perhaps and the part of the Welsh Assembly that takes over the function of the Welsh Language Board to handle a little less.

**Q118 Hywel Williams:** (Translated from Welsh): I will conclude with one further question, if I may. In its evidence, the Welsh Language Board stated that failure to ensure the language choice of an individual could be construed as maladministration or failure. This is a detailed brief. Would you go so far as to say that it is an example of maladministration or failure?

**Mr Peat:** For me, it all depends on what the authority in question has put into its defined Welsh language scheme. Maladministration in this context consists in failure to adhere to your own published policies. That is what I would be looking at.

**Q119 Ms Dunwoody-Kneafsey:** Mr Peat, how do you intend to increase the public profile, raise public awareness and maximise accessibility to your office?

**Mr Peat:** That is a very good question and one that I have spent some time thinking about. The very act of bringing the three offices together and having one Ombudsman will create a much clearer public profile. It will be much easier to explain to the public. Once we have that, we will need to produce a range of much more user friendly publicity material, leaflets and so on than we currently have. I look at one or two of the leaflets that we currently have and shudder a bit because they seem to spend so much time explaining to members of the public

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what I cannot do rather than what I can do for them. I want to overhaul all of that but, at the end of the day, there is a real problem about publicising the office, short of spending large sums of the taxpayers' money on advertisements and so on. It is not as though I am trying to persuade somebody to buy a new packet of washing powder next week. I need them to be vaguely aware that there is an Ombudsman who might be able to do something for them perhaps when they have a grouse five years down the line. Research that has been done jointly by the Parliamentary Ombudsman and the local government Ombudsman in England has shown pretty clearly that there is a much higher level of public awareness of front line advice agencies like Citizens' Advice than there is of the existence of an Ombudsman's service. One of my primary tactics is going to be working alongside organisations like Citizens' Advice, like Welsh Women's Aid, like some of the ethnic minority community organisations, to ensure that all of their front line advice workers know absolutely about the Ombudsman's service and what we could do for people so that they will steer people who come to them, who they think could benefit from our investigations, to come to us. That is going to be the most practical, pragmatic way of doing it. I should add that I am very pleased that this Bill has borrowed a particular provision from the Scottish Ombudsman's scheme. That is to say that any body which has had a complaint from a member of the public and is saying to that member of the public, "I am sorry, chum, you have reached the end of the road. This is as far as we go with the complaints procedure", will have to say to the complainant in the same breath, "You do have the right to go to the Ombudsman." I think that is very important.

**Q120 Ms Dunwoody-Kneafsey:** Could I request respectfully that you add elected representatives to that list because we do a lot of the referring as well? Mr Drake, are there any specific examples that you could give of this kind of public awareness raising in Scotland?

**Mr Drake:** As Adam said, our legislation puts a duty on public bodies to publicise the fact that people can complain to us. We have done a lot of work making sure that they have the message right. Unfortunately still we occasionally have to rap knuckles because people are still dishing out old, local government Ombudsman leaflets and that sort of thing but mostly we now have the public bodies in a position where they are giving the right message. We have done quite a lot of work with Citizens' Advice Scotland to make sure that the material they put out to bureaux has information about us. We have also done quite a lot of work with elected representatives in the Parliament. We have spoken to parliamentary committees, for example. We have spoken to clerks of committees collectively and individually. When we have been out visiting, we have tried to get into constituency offices and local Citizens' Advice Bureaux to hand out leaflets and say, "Have you heard of us? Do you know what we can and cannot do?" It is a big

job and we do worry about how far it is practical to raise public awareness generally. As Adam says, the best you can hope for is to have a general notion at the back of people's minds that there is this creature called the Ombudsman and if they are in a position where they might want to come to us, if they go along to the Citizens' Advice Bureau, they will get accurate information.

**Q121 Ms Dunwoody-Kneafsey:** At the other end of the scale, do you think the Bill could be strengthened in any way to assist in the dissemination of the final report, particularly in section 16(3): "The Ombudsman may send a copy of the report to any persons he thinks appropriate." Again, elected representatives are not specified but it is a very open ended definition. Do you feel it should be more closely defined or do you think it should have more power to disseminate that information and report elsewhere?

**Mr Peat:** What the Bill is providing for is quite a step forward from where we are now. At the moment, if I publish as the local government Ombudsman a report about a local authority, the local authority is obliged to publish that report. They are obliged to put a notice in the local newspaper. There are not at the moment parallel provisions for publicising complaints about the NHS. This Bill for the first time will mean that NHS bodies too are going to have to publicise any adverse report that I make. In the case of GPs, it will be the local health board that has to do that. That is a step forward. Also, the provisions are modernised because it is not just going to be the local newspaper. Whenever the body in question has a website, this Bill specifically says they are going to have to put a copy of the report on the website and draw attention to it and, pretty crucially, it gives me a power to give guidance to the bodies about how they are to do that. Turning to your specific point about my power to send copies to anybody, I quite like it the way it is. It is a discretion for me to do that but it is quite clear I can send as many copies I like to whoever I like. I am not compelled to do it in circumstances where frankly it would be a waste of time. I do not want to be wasting the time of elected representatives by making reports into something comparatively trivial. Reverting to your earlier question, I do very much recognise the role of elected representatives, whether they be AMs, MPs or indeed local councillors, in potentially picking up a complaint and saying, "You have something here that you need to take to the Ombudsman." I do already get a lot of complaints that way. I am certainly very mindful of the need to ensure that elected representatives are as aware as they can be of the provisions of the new Ombudsman scheme.

**Q122 Ms Dunwoody-Kneafsey:** I am glad you said that because the second question related very directly to that point. Where the appropriateness of your dissemination of reports happens, how are you aware that it is us who has referred the individual, because I have specific examples of the

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dissemination of a report not coming to me on one of my cases I had referred. It is that very link between the elected representative and the report dissemination that is critical.

**Mr Peat:** I am very sorry to hear that. That means the system has gone wrong. What is supposed to happen is the file is very clearly flagged up when the case has been referred by an elected representative and the drill most certainly ought to be that that elected representative then gets a copy of the report when it is issued, so I do apologise.

**Q123 Mr Caton:** Mr Peat, what is your understanding of the Bill's position on deputies and their appointment?

**Mr Peat:** The Bill's position is that there are no deputies as such. However, the Bill gives me a very wide ranging discretion to delegate my powers, not only to members of my staff, but indeed to anybody. I think that is very important and very valuable. It means, for example, that I could engage an independent expert to undertake part of a particular investigation and they could do so using the full panoply of powers available to me. There is no provision for deputies as such and I personally see no need for that to be so, given the wide power of delegation that I have.

**Q124 Mr Caton:** Mr Drake, what was the rationale behind the power to appoint deputies in Scotland?

**Mr Drake:** I think it came out of a concern that arose in consultation. There was a general welcome for bringing the previously separate Ombudsmen together and having the one stop shop, as it was billed. The concern was that that might lead to some loss of the expertise that the individual offices had built up in their areas of jurisdiction. My understanding is that the Parliament introduced the post of deputy, appointed in the same way as the Ombudsman, with that concern in mind. The three deputies who have been appointed each have a background in different areas of the jurisdiction so it has addressed that point. I do not see that it is necessary to have that and, to my knowledge, our office is the only public sector Ombudsman certainly in the British Isles that has that provision for the appointment of deputies as part of the legislation.

**Q125 Mr Caton:** Has your experience of being in operation found that specialist deputies have in any way undermined the one stop shop approach?

**Mr Drake:** We have worked very hard to make sure they do not. I do not feel they have but equally I do not think it was necessary to have those appointments to make sure that the office would work. I think it could have been done equally well by the Ombudsman appointing appropriate people in the way that Adam has just described.

**Q126 Chairman:** Does the Scottish Ombudsman's office have a statutory advisory board?

**Mr Drake:** No, it does not.

**Q127 Chairman:** Do you think you should have one?

**Mr Drake:** We are considering setting up a board, which would not be statutory because it is not provided for in the statute, but we think it might be helpful to have what the Ombudsman tends to refer to as a body of critical friends.

**Q128 Chairman:** Mr Peat, would you like a body of critical friends?

**Mr Peat:** Yes but as with my other friends I would prefer that they were friends of my choosing.

**Q129 Chairman:** That means they may not be as critical as they should be perhaps.

**Mr Peat:** Maybe. I think there will be some risks in having an advisory board provided for in statute. The situation I would prefer is to go along the path that the Parliamentary Ombudsman has gone down and indeed that Professor Alice Brown was thinking of going down and consider an advisory board on a voluntary basis. I think the statutory board risks the possibility of conflict and it would particularly risk the possibility of conflict if the members of that advisory board were in any way to misinterpret that role and perhaps come to think of themselves more in the mode of the board of a quango.

**Q130 Mr Davies:** I want to ask questions about lessons learned so I suppose they are primarily directed at Mr Drake. We have covered the lessons learned in a lot of specific areas and there has been a lot of discussion of cooperation between you and Wales but are there any other areas where you have lessons or experience that might be helpful to us, particularly in terms of the initial changing over to a unified system?

**Mr Drake:** A general lesson—we have alluded to it in our written evidence—is that it is not a straightforward process, even though we are fairly small organisations. We have a staff of 36 now and you might think that bringing those numbers of people together should be fairly straightforward, but in reality it is quite a complex process and one that requires quite a lot of effort in terms of bringing about that culture change at the same time as continuing to deal with the complaints that are coming through the door. The main lesson to be learned from our experience is that you do need to be aware that it is going to take some doing. The way a lot of it is being done in Wales, where a lot of the work that we had to do after our legislation had been passed, is ahead of the legislation and that should help you in that way because we had a run in of about three weeks before we were up and operative, which made life interesting for us in those early stages certainly.

**Q131 Mr Davies:** Has there been any formal evaluation of how things have gone or is there intended to be any formal evaluation? I suppose you are inevitably learning as you go along and

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there is always going to be an element of continuing informal evaluation but it would be useful if you have a point at which you look back to see how it went. In a sense, it is how you learn lessons yourself.

**Mr Drake:** Yes, you are right. There is a continual process of informal evaluation and, in a sense, each of our annual reports is an exercise in how it is going. We are just about to produce our second one. I think it would be useful after two or three years to have something rather more formal. We are thinking about that. We have not reached the stage of formulating what form that might take.

**Q132 Mr Davies:** Have you thought in Wales how you might want to evaluate how things go or is that something you are leaving for some stage in the future or for us perhaps to ask you at some stage in the future?

**Mr Peat:** I feel quite sure that the Assembly will want to ask for some assessment of my performance and the performance of my office. That is provided for in the Bill. I will be reporting annually to the National Assembly and I am quite sure that the Assembly will rightly want to scrutinise the exercise of my functions. As Eric said, it is helpful that to some extent we are having a little bit of a dry run by my having been appointed to the three separate offices now. Obviously, I am doing what I can right now to try to iron out the differences in working culture and get all the staff together into a single office in the Bridgend area. Alice Brown and her office have been incredibly helpful to us in that process and we have learned a great deal from them.

**Q133 Hywel Williams:** (Translated from Welsh): Thank you, Chair. I have a question for Mr Drake, while he is here. Have there been examples in Scotland of complaints relating to administration and the Gaelic language, which has specific legal status, or to any other language for that matter, such as Lallans, Doric and so forth. That would be of interest to me and the committee, as well as to Mr Peat perhaps.

**Mr Drake:** The short answer is no, we have not. There is a Gaelic Bill going through the Scottish Parliament at the moment and it may well be that once that is in force the picture will change. To date we have had nothing; nor about any of the other languages either. Prior to being in my present job, I had a spell of six months on secondment to the Dublin Ombudsman and they have had a number of complaints about people being able to use the Irish language to do business with government departments, so there is that parallel.

**Q134 Ms Barrett:** Mr Peat, we were just discussing the transfer of staff and the harmonisation of the three administrations but I have to ask you about the arrangements under TUPE for the transfer of

staff. I would be grateful if you could tell us of the negotiations between yourself and the trade unions and your partnership agreement. I understand there are some difficulties there which affect staff.

**Mr Peat:** Yes, there are, as you might expect, some difficulties and tensions at the moment. The Bill is very clear that when the new office is set up people will transfer on a TUPE basis. What I am trying to do at the moment is to offer a new package of terms to people on a voluntary basis and I am making it very clear that if they prefer to stay on their existing terms and conditions they may do that. I am in negotiation and discussion with the unions at the moment about the basis of their recognition by myself as the Ombudsman. The position is that, because the two organisations—the Commission for Local Administration in Wales and my organisation as health service Commissioner—have low numbers of employees, therefore they fall below the statutory threshold for union recognition. We are in discussion with them.

**Q135 Ms Barrett:** I am not sure if this is the place for us to have protracted discussions about this but I understand there is some disagreement as to the last statement you have just made between the unions. Are you prepared to extend your deadline of today for the unions accepting your terms and conditions, to enable some more discussions go on? I am particularly concerned about a suggestion that you would not, for instance, be allowing industrial action. That could be one of the clauses in your agreement for staff.

**Mr Peat:** I am sorry?

**Q136 Ms Barrett:** I understand in your agreement that you have put forward for the staff that you are suggesting that there could be no industrial action allowed and they would have to sign up to that. I am wondering if you could keep those negotiations open in order to get the smoothest transition for everybody.

**Mr Peat:** I certainly intend to have ongoing discussions with the unions, yes.

**Q137 Mr Caton:** When the Scottish public services Ombudsman was created, were there any negotiations to change trade union status at that time?

**Mr Drake:** There were negotiations about staff status certainly. We had the same issues about staff being on certain conditions and an agreement that they would be TUPE protected. We have two unions in the office and have negotiated common terms of service in most respects. There are still a couple of areas to be sorted out.

**Q138 Mr Caton:** Was there any question of derecognition at the time?

**Mr Drake:** No.

**Chairman:** Thank you very much.

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Written evidence from the Wales Office and Welsh Assembly Government is on page Ev 33.  
The written evidence from the Parliamentary Ombudsman is on page Ev 47.

*Witnesses:* **Mr Don Touhig**, a Member of the House of Commons, Parliamentary Under Secretary of State for Wales, **Ms Sue Essex**, Assembly Minister, National Assembly for Wales, Minister for Finance, Local Government and Public Services, Welsh Assembly Government, and **Ms Ann Abraham**, Parliamentary Commissioner for Administration (Ombudsman) and Health Service Commissioner for England, examined.

**Q139 Chairman:** Welcome, Ministers, before this joint session of the Assembly Committee and our Committee here looking at the Public Ombudsman for Wales Bill draft scrutiny. It is a little odd welcoming Ms Essex because she is a member of the Assembly Committee, but it is one of the anomalies of the way we are working at the moment which is that she will have had all the papers for the Committee and is essentially part of the Committee. So, we are expecting great things of your answers, Minister! With something uncontroversial like this, it is not a problem but it may be in the future. If we ever do have joint working where there is something controversial, it may be that we may have to have some kind of convention and you come off your Committee for the purposes of joint sessions. We are breaking ground with everything we do at the moment with these things but it is a pleasure to see you both together before this joint session. We all know who you are of course but, for the purposes of the record, could you introduce yourselves.

**Ms Essex:** I am Minister for Finance, Local Government and Public Services in the National Assembly for Wales.

**Mr Touhig:** I am Don Touhig and I am the Parliamentary Under Secretary of State for Wales.

**Ms Abraham:** I am Ann Abraham and I am the UK Parliamentary Ombudsman and the Health Service Ombudsman for England.

**Q140 Chairman:** Thank you all very much for coming. Was a tenure of appointment similar to that of the Scottish Ombudsman considered for the Public Service Ombudsman for Wales? There is a slight difference in the tenure: I think it is five and five there and 10 for the Welsh one. Why was the same time limit not used?

**Ms Essex:** I think the view was that a 10-year appointment gave length of security of tenure and of course this was one of the aspects that went out to consultation and the responses back endorsed that, but I do understand that there has been some discussion about that and certainly when I had a very early discussion with the Lords on the briefing, that was one of the issues that came up. It was thought through originally to give this length of time, so it was clearly thought about and it was endorsed in the consultation responses but clearly again I would say we are listening and we know this is one of the issues that has cropped up with the Bill and obviously we will look with interest at what this Committee comes up with.

**Mr Touhig:** We had 38 responses to the two consultations we have had on the Bill so far and that is how we have arrived at the proposal that is

in the Bill. Clearly, as Sue has said, when we met the peers, their lordships—and it has come up with amendments and so on in the Lords—feel that this ought to be looked at and part of this exercise is listening and understanding what people think might be of benefit to improve the Bill and we will certainly listen.

**Chairman:** I will now ask Ann Jones, who is the Chair of the Assembly Committee, to ask questions.

**Q141 Ms Jones:** Does the wording in Clause 1(13) which “provides that the Ombudsman may authorise any person to discharge his/her functions on his/her behalf” effectively allow the Ombudsman to appoint *de facto* deputies if he/she wants?

**Ms Essex:** We felt that the principle of having the Ombudsman there without stated deputies meant that we really do have an integrated service, but the issue is that there may be times when the Ombudsman would require specific areas of knowledge. So, case by case, there may be issues where he could use deputies from within the establishment. Our general conclusion is that it would be better to allow the Ombudsman a free hand to organise the office as the Ombudsman sees fit rather than having a delegated function to a member of staff or setting up official deputies as such. I would emphasise that the main rationale behind this legislation is trying to get an integrated Ombudsman service, a public service, which I know everybody supports and what we have to be careful of is that, within that new service, it does not start to fragment yet again along perhaps individual service lines.

**Mr Touhig:** I think it is important, as Sue has said, that we go down this road. We decided not to specify on the face of the Bill that there can be deputies but built in that the Ombudsman would be there to consider that. If you reflect over the work that both Committees have done in scrutinising other legislation, pre-leg scrutiny, you will know that we have done a number of Bills in which we have broadly provided a facility/enabling power to the Assembly without specifying how it might be used. This is not quite in the same category but is in the broad thrust and it is more enabling in giving the responsibility then to the Ombudsman in Wales to make that decision for himself/herself rather than specified on the face of the Bill which could possibly lead to the fragmentation of the service which this whole Bill is designed to overcome as Sue was just explaining.

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**Q142 Mrs Williams:** (Translated from Welsh): Evidence given by previous witnesses made the case for the establishment of a statutory advisory board for the Welsh ombudsman. Did you consider establishing such a board? If so, why was this not included in the Bill?

**Ms Essex:** I understand that, in the consultation, there were some soundings of whether the respondees would be interested in having an advisory board and indeed, if there were an advisory board, what kind of useful function that board could perform. I think the most important view for me, looking back at the consultation responses, was this issue of threatening the independence and a perception of independence of the Ombudsman. I really do think it is absolutely crucial—and I am sure we have all experienced this in representing people—that the Ombudsman appears to be and is completely independent of other people and other organisations in coming to decisions. My current view, having looked at this and coming to this as a minister, is that the integrity of the role as an independent person is absolutely paramount in terms of reassuring the public that they will get their complaints considered in a fair and impartial way. I think there is huge discretion to the Ombudsman to get advice from whomever he or she sees fit. There is no fettering of that ability and freedom for the Ombudsman if he/she needs specialist advice to ask for this and to listen to what is coming forward. So, on balance, I think that independence and the ability not to be constrained or not to be seen to be constrained or influenced unduly is, as I say, of paramount concern.

**Mr Touhig:** Paragraph 12 of Schedule 1 makes clear that the Ombudsman does have the ability to consult and ask and seek advice from whomever he sees fit and, in a personal sense—and this is a personal view which I share with colleagues—I am sure that if we were bringing forward a proposal for a statutory board, we would be asked, “Why are you setting up another quango?” I am sure it is not a quango as such but that is how it would be perceived and I think that where we do not need to do that and we have given the power to the Ombudsman to consult whomever he/she wishes to consult, then I think we have covered everything so far as that is concerned.

**Q143 Chairman:** The Scottish Ombudsman is setting up a non-statutory advisory board; would you support that?

**Ms Essex:** I would really take some soundings as to whether that is sensible and again I reflect on experience and I guess that elected members have their own experience from which to draw. The issue of a board behind advising whether it is statutory or non-statutory I guess will not make much difference to Mr or Mrs Jones. Their belief is that the Ombudsman is there to make a decision in his/her own part. I still feel, as I have said, that this is the main issue. If we were introducing a piece of legislation and the main purpose of this legislation is the functional one of bringing the different

Ombudsmen together, I think the public will understand that very, very clearly. If, in addition to that, we were actually changing or seeming to change the role of the Ombudsman and saying that the Ombudsman would be supported by a board of advisers, I think there may be some disquiet amongst the interested public.

**Q144 Mr Caton:** Ms Abraham, do you have an advisory board or indeed advisory boards in your two capacities?

**Ms Abraham:** I have no statutory provisions at all in relation to an advisory board and I think it is very important to me that my independence is not fettered in any way. I have established—and the legislation in relation to my office is very similar to the provisions here—a small advisory board and, as I understand the proposals in the Bill, there is nothing which precludes that happening should the Ombudsman decide to do that. I did it because I felt that it would be helpful to have some particular expertise in certain areas such as diversity and such as governance and I did it through a process of open competition in order that I could not be accused of choosing my critical friends in a cosy way. So, I have done it, it has only been in operation for less than a year and I am finding it useful. I think it is something that different Ombudsmen would perhaps want to consider in different ways for different reasons and I think there is nothing in the legislation that would preclude it.

**Q145 Mr Caton:** Does your advisory board advise you on specific investigations or has it a more general function?

**Ms Abraham:** Absolutely not. It has no role in casework. It is there to advise on governance, on strategy, on helping me with my role as accounting officer in terms of accountability, issues around public awareness of the scheme and so on, but our governance statement and the terms of reference of the board make it very clear that the advisory board has no role in casework.

**Q146 Mrs Williams:** (Translated from Welsh): Therefore, do you really feel that it is needed, if that is its role? On that point, how were you persuaded of the need to establish this advisory board?

**Ms Abraham:** I would say that nothing compelled me and it was a decision that I took looking at the overall governance really of the Ombudsman's office against modern standards and how that compared with my experience in other areas. I think there is something unique and special about an Ombudsman's office which means that the independence of the Ombudsman is paramount and my responsibilities in terms of accountability are, I think, not in any way changed by having an advisory board, but I thought it would help the office because it would give me access to expertise in different areas and I thought it would help in terms of our public accountability to be able to demonstrate that we had external members on an advisory board and we also had an external chair

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of an audit committee. I suppose it was recognising the special position of the Ombudsman but wanting to make some arrangements which would enable me to feel that public accountability was being properly addressed within the organisation by modern standards, but it was a decision which was about my scheme at that time. I think a statutory board would be a very, very different creature and I think I would share the concerns that have been expressed about how that might have an impact on the real and perceived independence of the Ombudsman.

**Q147 Mr Edwards:** What sort of people do you have on your advisory board?

**Ms Abraham:** I have one other Ombudsman who is the Local Government Ombudsman for England who is also an accountant so brings financial skills but brings wider awareness of the ombudsman community and of local government and particular expertise in governance, and I have a woman who is a freelance consultant with specialist expertise in areas of diversity and equal opportunities who has a background as an equal opportunities commissioner and also with ACAS and in the voluntary sector and has good connections with the voluntary sector, and I have an external chair of the Audit Committee who fulfils a rather different role. We went through a process of open competition and the Committee may be interested to know that I asked the Chair of the Public Administration Select Committee to help me with the process of selecting my external members.

**Q148 Mr Edwards:** Can I move you to an issue to do with public awareness and understanding of the role of the Ombudsman. Witnesses from whom we have heard believe that the public do not have an adequate understanding of the role of the various Ombudsmen and we wonder if there is anything that could be done through this Bill that would help increase public understanding of the role. I, for example, was not aware that some of you had two or three roles until investigating this Bill and I suspect that might be a cause of confusion to people outside.

**Ms Essex:** If you go to Clause 32 of the Bill, it does provide for those bodies that are within the Ombudsman's jurisdiction to actually take reasonable steps, I think that is the phrase used within the legislation, to inform the public about their rights. From our perspective as the Assembly for Wales, we do have a code of practice on complaints which again highlights the role of the Ombudsman but I do think that, hopefully with this piece of legislation going through, it gives us an opportunity to promote the role of the Ombudsman. Clearly, there needs to be a public information exercise when the legislation goes through but also to think of the way that we can also, as you say, rightfully inform people not just of the existence of the Ombudsman but perhaps to elucidate a little more about the role and function of the Ombudsman because I guess, again if I can allude to our own experiences, in fairness most

people understand that there is an Ombudsman out there. They may not understand at the moment that there is a series of Ombudsmen. What I think they do not always understand is the terms of reference which the Ombudsman works under and I do think that, if this Bill goes through which I sincerely hope it does in whatever form, it gives us a major opportunity to have a real public information campaign about the nature of this function and the nature of the integration of the service and what service that can provide for the public.

**Q149 Mr Edwards:** Could I ask Ms Abraham to comment on that?

**Ms Abraham:** I would agree that bringing together the various Ombudsmen roles is a major opportunity both for simplification and improving public awareness and I am sure that will happen. What I would say more generally and certainly in relation to my scheme is that I think all the public sector Ombudsmen to whom I talk know very well that we have some work to do on improving public awareness of Ombudsmen generally and also specifically our schemes and my office has, jointly with the Local Government Ombudsman in England, undertaken some research on public awareness both in relation to the public generally but also with the advice sector and I would certainly say, as I was hearing in the evidence given in the previous session, that one of the ways we address this is to think not only about people coming directly to us but about the source of referrals, whether that is elected representatives, whether it is advice agencies or whatever, and ensuring that our contacts and our awareness with people and representatives who are likely to be sources of referrals is an important area of work for us. I have some envy, but not huge, about the provisions in the Bill in relation to requirements on public bodies to ensure that the reference to the Ombudsman is made at the appropriate time, but we would do that anyway informally without the statutory provision. So, I think it is really important when the public body or the NHS has reached the end of its part of the complaints procedure that there is a clear direction to the Ombudsman. I think we all know, as public sector Ombudsmen, that there is more work to do here.

**Mr Touhig:** Page 19, Clause 32 to which Sue had referred of course does set out the responsibilities placed upon the listed authorities and the actions they should take in order to publicise the work of the Ombudsman. I do not know what colleagues find when people come to them about matters, say, with the local authority and say, "Will you take it up with the Ombudsman?" and they are not clear what the Ombudsman can do. The Ombudsman will look at maladministration and service failure. I often think it would be very useful just to have a two-column list of dos and don'ts—the Ombudsman does do this, he/she does not do that. I think that very often the public have a perception that the Ombudsman can do much more than actually presently permitted to.

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**Q150 Mr Edwards:** At present, to go through the Ombudsman, one needs a Member of Parliament. Do you think it would be better if the public did not have to need to go through a Member of Parliament to talk to the Ombudsman or make a complaint to the Ombudsman?

**Mr Touhig:** I think that is a point that has just been made now and I think that we should give the widest opportunity that people have to seek a redress if they feel they have some sort of grievance. That may well follow but that is a personal view. There are many issues that I have come across in my years in the House and before that as a councillor where it has needed an outside body, like an ombudsman, to look at a particular complaint or concern and it seems to me that it should not be restricted and that people should have the chance to have a complaint investigated if they feel that there is a grievance and be told that they have a legitimate complaint or that they do not.

**Q151 Ms Barrett:** I have some questions regarding cross-border issues which I would first of all like to put to Ann Abraham. In your written evidence, you state that cross-border issues—and you use an example such as Public Health and Civil Defence—will require joint working and cooperation between Ombudsmen, their words not mine. Will there be a formal mechanism for co-operation and joint working or will it be an informal arrangement?

**Ms Abraham:** I would hope that the combination of this legislation and the Regulatory Reform Order in relation to my own legislation which we are currently discussing with the Cabinet Office, the ODPM and the Department of Health, will create the enabling powers for that cooperation. I think it is unlikely that we would therefore need a further formal mechanism to ensure that we work together cooperatively because it is not just goodwill and trust between us as public sector Ombudsmen, it is that we are, as a group of Ombudsmen, focused on providing a single point of reference for the complainant and working together in the best interests of the complainant and therefore I think that our informal mechanisms are extremely well developed when that happens.

**Q152 Ms Barrett:** Do you have any examples of cross-border cooperation with the Scottish Public Service Ombudsman?

**Ms Abraham:** Perhaps I can give a general one rather than a case specific one but obviously it affects a large number of cases, and it relates to the health jurisdiction where we have talked and agreed, both with colleagues in Scotland and indeed are doing so in Wales, about how we get the necessary professional clinical expertise to ensure that, when we are looking at matters of clinical judgment, we are properly advised and you can imagine that there is a very wide range of clinical issues which are brought to us and, rather than each of us setting up our own pool of clinical advisers, we collaborate on that and work together on it and it serves two purposes: it gives us a wider pool but also, if there are issues about clinicians

who are complained about in one country who are well known in a specialist field, there is the ability to actually bring in somebody who is not so closely involved with that clinical community and that is a very useful thing to be able to do.

**Q153 Ms Barrett:** I have another question for you regarding examples of patients living in Wales who may be registered with GP practices in England and may get their hospital care in England. How do you think the Bill ensures that their concerns are clearly and adequately addressed in issues of complaint?

**Ms Abraham:** As I have said previously, I think the combination of the Bill and the Regulatory Reform Order which actually enables those reciprocal provisions on consultation, cooperation and joint working should enable us to do exactly what we would wish to do to ensure that that episode of care, as these things tend to be called, is looked at in the round and not in a fragmented way.

**Q154 Ms Barrett:** I have a question for the Ministers. The office of the Ombudsman for Wales has been welcomed by a broad range of bodies within Wales, as you know, because it will create that “one stop shop”. Given that the Ombudsman in Wales only has jurisdiction for devolved matters, will he be able to deliver that genuine “one stop shop” service to the people of Wales?

**Mr Touhig:** Yes, we think so because he will have jurisdiction over a wide range of bodies of course. There is already extensive co-operation between the existing structure and those that exist in England. He will also have wide powers to consult, cooperate and to work jointly with the Ombudsman in England and I think that is going to be very important. I think there is great scope there for close collaboration and close cooperation. As we have seen, as you have scrutinised Health Bills and so on that we have put forward in the past where we needed cooperation with CHI and the Health Inspectorate of Wales, we successfully got a good working arrangement where it has been cross-border. At the present time, as you recognise, the Ombudsman looks at matters within the orbit of Wales and I think it is appropriate that that continues but bearing in mind that he does have very extensive powers now to consult, cooperate and work closely with the Ombudsman in Wales.

**Q155 Mr Williams:** Perhaps now we could deal with the collaboration with other Ombudsmen. In representations from the Commission for Local Administration in England, we are told that they are concerned that, in repealing the section of the 1974 Local Government Act, this changes, their phrase, the “long established” arrangements for transferring cases between England and Wales if and as required. They seek assurance that “the English Local Government Ombudsman and the Public Services Ombudsman for Wales retain explicit power to transfer cases between them comparable to that enjoyed for many years under current legislation.” How does the Bill ensure that

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this relationship between the English Local Government Ombudsman and the Public Service Ombudsman for Wales is retained?

**Mr Touhig:** I think in answer to the previous question it was said that there is the ability with this Bill for very close working collaboration between our Ombudsman in Wales and the Ombudsman in England and the ability to work together and to work closely together. I understand the concerns expressed by the Commission for Local Administration in England, but I think they are not terribly real in the sense that there will be any inhibition upon our Ombudsman in working closely with the Ombudsman in England.

**Q156 Mr Williams:** Clause 24, which deals with consultation and cooperation with other Ombudsmen, will only be triggered when the Ombudsman in Wales identifies a cross-border issue followed by a complaint to him/her. Similar powers are not conferred on the Local Government Ombudsmen in England or indeed any other specified Ombudsmen in connection with complaints received by them. Should the Bill be amended to ensure that these powers are two-way?

**Ms Essex:** As I understand it, there is a review being carried out in England which I think Ann alluded to and I guess very much that this would pick up that issue making that compatibility and probably would be looking for legislative change to achieve that.

**Ms Abraham:** The Commission for Local Administration in England is not part of my jurisdiction but perhaps if I could just try and be helpful with my understanding of this issue which I think is a very specific and self-contained issue and rather different from the broader issue of collaboration and, as I understand it—and I have seen the letter from the Chairman of the Commission for Local Administration in England—there is a specific provision in the existing legislation which the Bill would remove and that is the concern that the Commission for Local Administration in England are saying they hope can be looked at again, which is simply that it is not about new provisions, it is about saying, please do not take this out because it is extremely useful and it is their ability to actually hand a case directly between the two Commissions as they were. I think it is a different point from the one about consultation, cooperation and joint working and I think there is a very real point that it would be helpful if that could be looked at again.

**Q157 Mrs Williams:** (Translated through Welsh): Can you foresee that similar argument, such as when we were discussing the Children's Commissioner in England, will be made? What I mean of course is that when issues arise where the person actually comes from Wales but that particular person at the time is actually in England, rather than the Welsh Commissioner being able to safeguard the interests of the Welsh, they would actually be required to complain to the Commissioner in England?

**Ms Abraham:** I certainly had not identified that as an issue. It did not appear to be a problem that I had seen in the legislation but it may be that I do not understand the point in sufficient detail.

**Mr Touhig:** If there is an issue of course where someone is having a service provided in England and there is a failure of that service, then the complaint would be made to the Commissioner responsible in England for that service and there is a requirement of course to cross-consult and obviously, if it were appropriate, the Welsh Commissioner would be advised, informed etc that that would be the proper way to deal with it for a service that is provided in England but someone is living in Wales.

**Q158 Mrs Williams:** (Translated through Welsh): But do you anticipate problems arising as a result? I am not necessarily talking about devolved matters?

**Mr Touhig:** We went through something similar, if you remember, on the Children's Commissioner and responsibilities and we had discussions, if I recall, at that time. The point I was trying to make in the earlier response which I alluded to of course is that the Commissioner will have the ability to collaborate and work closely with the Commissioner in England. I think that is slightly different to the way that we actually structured the Children's Commissioner for England in the legislation that we considered just recently in Parliament. So, I think there is a greater scope and opportunity here which I am sure our Commissioner will avail himself of.

**Q159 Mr Williams:** There are also concerns about multi-agency issues and perhaps if we make it even more complex, there are concerns that, if you have cross-border issues that are also multi-agency, how are these looked at? Can you explain how the Ombudsmen in England and Wales would address these issues?

**Ms Essex:** We feel that the clauses do allow for the cooperation of joint working to take place. I would want to be sure, picking up the reference of Betty Williams, that there are no loopholes within the provisions in the legislation and with all the different kinds of cases where you have either multi-agency or joint-agency working that people who have concerns would be able to make sure that those concerns were being explored by the appropriate Ombudsman or Ombudsmen or whatever you want to say. We feel confident that that is the case and is covered within those proposals but certainly we are very conscious of the issue and we will go through with a toothcomb to make sure there are not the kind of circumstances or cases that could be left or that would slip through the net. We do not think there are but we will give, as this Bill progresses, more thought to this to make sure that we are absolutely watertight on this.

**Mr Touhig:** We are working to a very close timetable as you know with this Bill and clearly we would welcome the comments in the reports of the

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Committees sitting here today before matters are absolutely finalised but it is a tight timetable and there may be things that you will throw up in your reports that will cause us, even at the eleventh hour, to look at something again and say, "This is something that we do not have quite right" or "we need to look at again" and the opportunity would then hopefully be there to deal with that but, as you appreciate, Chairman, it is a very tight timetable because we are doing our best. This Bill has the support of all parties in the Assembly and we are told that it has the support of all parties here because I do not know if there might be any reason this year why the legislative timetable might be shortened but there may be and we would clearly want to advance this Bill as far as we possibly can and get it on to the Statute Book if we possibly can.

**Q160 Mr Williams:** In the Bill, the one thing that the Welsh Ombudsman cannot do is work with and have joint reports with the Scottish Ombudsman. Would the Ministers like to comment on that and do they believe that the powers could be extended to the Scottish Ombudsman as well?

**Ms Essex:** We have had quite detailed discussions with our counterparts on the Scottish Executive as to whether or not the Ombudsman should be able to work and report jointly with the Scottish PSO. The arrangement already in place between the Scottish Public Service Ombudsman and other Ombudsmen relies on consultation and cooperation rather than formal joint working. We feel that, in practice, it is highly unlikely that circumstances will arise necessitating joint working between joint Welsh and Scottish PSOs, whereas joint working between the Welsh and English Ombudsmen would quite easily be envisaged for the simple practical fact that we have adjoining boundaries. This is why we do think there is a slightly different case and clearly cooperation and joint consultation would apply anyway.

**Q161 Mr Caton:** As I understand it, under the proposals in this Bill, publicity and potential embarrassment effectively substitutes for the Ombudsman's lack of enforcement powers. Is 'name and shaming' an effective and adequate substitute for statutory powers of enforcement?

**Ms Essex:** It appears to have been since 1996 because I do not think there has been a case where an authority has not complied with the recommendation from the Ombudsman. I think the responses to the issue of powers of enforcement were interesting in terms of the consultation exercise and the specific question that was included in the consultation exercise, if I can read it out, is, "In relation to redress for individuals, the legislation should make similar provision as now rather than conferring additional powers on the new Ombudsman either to enforce his recommendations through the courts or to impose sanctions on public bodies which failed to act in accordance with them." The general consensus of opinion, including that of the Ombudsman I have to say, was that no such power is required. I do feel

that, within Wales, as I have said, the record has been very good and your point about "naming and shaming" has been a salutary one because, in my experience as well looking back over the cases, there has not been an issue of non-compliance. The Ombudsman of course has the power within the legislation to carry on with a special report, if there has been non-compliance, and I would also say that since the introduction of the Assembly and all this legislation will be there with the Assembly in position, we have the situation where the annual report goes through a plenary session. So, there are many opportunities, I think, through Committee and through the plenary session if needed to endorse the recommendations or, if you like, to emphasise the recommendations of the Ombudsman. So, I take the view, and Don does too, that, in the situation as it is now, we should respect the responses to the consultation and feel that there does not need to be extra enforcement powers included.

**Q162 Mr Williams:** Some of the most difficult cases ombudsmen have to deal with is where there is not an injustice to an individual but where maladministration has, for instance, led to the environment being affected in general and sometimes it is difficult to see how the Ombudsman can obtain redress. For instance, if planning permission is given in the open countryside without any justification for it. Is there anything that could be put in this Bill that could help the Ombudsman in addressing those difficult situations?

**Ms Essex:** I have thought long and hard frequently on this as I deal with cases on issues on planning and, to the best of my ability, I cannot think of a way round that anyway on redress because you are coming into issues of human rights and to people who have already had a decision made, to be blunt. To me, the interesting point is the provision for guidance to be brought forward by the Ombudsman. I think this is a useful step because the important thing is that, as well as the issue of the individual who has made the complaint feeling satisfied that the complaint has been duly heard and responded to is the issue of learning lessons and sometimes some of the lessons are not just for the one agency that is being dealt with but there are wider lessons. Indeed, as we bring these various statutory agencies together under this legislation, I think the ability to have guidance will be more so. I think that is a very positive move forward and I think will be something that will be appreciated both by the individuals who have made a complaint and the wider feeling that, yes, lessons are being learned from this.

**Q163 Mr Davies:** We have had discussions before about this business of the "naming and shaming" and we have not always agreed on this. Clearly, you accept that it has been a very effective way of carrying forward the Ombudsman's recommendations in the past and now we have the power of precedent. I think it is almost unthinkable that the Ombudsman's recommendation would not

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be accepted. Do you think there is a danger that, if we did change the nature of that, in a sense the Ombudsman recommendation would become an acceptable price to pay for doing something that was not proper? Clearly, if some financial payment is forced on somebody, it becomes an acceptable price to pay when the existing system works very, very well and, if it is working okay, why change it?

**Ms Essex:** I think you are right. I think you are possibly going into quite difficult and I perhaps would use the word “dangerous” territory that you could move into something where there are repercussions that you did not actually expect. As you said, all the evidence so far is that the system does work and does deliver. I think there is every reason to think that will persist in the future, perhaps even more so. As I say, with the existence of the Assembly, we have the power to put the public spotlight on issues more obviously than when the whole issue of the Ombudsman was introduced. So, for various reasons but particularly because of the reality of practice, I think it would not be a good move at this moment to move down anything that is stronger than the provisions within the Bill and, as you say, it could take us down a path that we might actually regret.

**Q164 Mr Caton:** You are quite right, Minister, it is clear that there is fairly broad consensus to go down the approach that is included in the Bill although it is not quite unanimous and, certainly, in the Second Reading in the House of Lords, there was at least one honourable Lord who felt that an opportunity was being missed. Can I ask all of you, are you aware of any other Ombudsman either within the UK or on the international scene where there is statutory enforcement provision other than the sort of “naming and shaming” approach?

**Ms Abraham:** Not in the public sector, I think, and certainly not where there is a relationship with an elected body or with Parliament. If you look at private sector ombudsman, the financial ombudsman is the most obvious example of where binding decisions are made but it is a very different world and there is not the ability to actually name and shame in the public sector sense and there is not the ability to report to the Assembly. I would endorse what has been said this afternoon about, if it is working and working well, what is there to be achieved by making a very significant shift, I think, both in the relationship with the public bodies and how that works and I think it is very good for Ombudsmen in this context to have a relationship where they are seeking to persuade, when it comes to improving public services, I think that is a much better relationship than simply saying, “I have made a binding decision and that is it.” I would add only one other *caveat* which is when Ombudsmen get into the business of determining civil rights and obligations by making the binding decisions, there is a tendency to go for a much more legalistic and formal approach to the whole question of investigations and I think that is dangerous territory as well in this tradition. I think what Adam Peat said about this legislation being

squarely in the tradition of British Ombudsmen is exactly how I see it. It is based on the benefit of experience, so it is an opportunity to improve and modernise but it is not a dramatic or radical shift away from that tradition which has worked very well for many years.

**Q165 Ms Dunwoody-Kneafsey:** Can you clarify the role that the National Assembly for Wales has in the appointment and possible dismissal of the Ombudsman.

**Mr Touhig:** The Bill as currently drafted provides in Schedule 1 for the Ombudsman to be appointed by the Queen on the recommendation of the Secretary of State. There is no requirement on the face of the Bill for the Secretary of State to consult the Assembly but we expect that this would happen in practice and has happened in practice since the appointment was made in 1999 but we are aware of possible amendments on this matter and will give that proper consideration.

**Q166 Ms Dunwoody-Kneafsey:** Minister, are you happy with that situation?

**Ms Essex:** As I have said, that has been custom and practice and not just on appointments on this but every appointment. Clearly, we will look at what your report says and reflect on that and other observations that come through.

**Q167 Ms Dunwoody-Kneafsey:** The Bill states that the Ombudsman’s budget will be laid before the National Assembly for approval and that the Assembly will be responsible for the salaries, allowances and expenses. If there is a separation of the legislative and executive bodies of the National Assembly, will that Bill actually still survive that separation?

**Ms Essex:** We are looking into the future. We do not actually know what will happen. Clearly, there is a whole range of arrangements that would have to be looked at and this would be included, so I think we will face that when and should it arise.

**Mr Touhig:** The Government have committed to a White Paper on the future of devolution in Wales and clearly if this were to come forward as a proposal to split the executive from the broad body of the Assembly, then this matter would have to be taken into account in any Bill that would then follow.

**Q168 Ms Dunwoody-Kneafsey:** Clause 23 requires a special report relating to a complaint against the Assembly to be laid before the Plenary by the First Minister and motion to be tabled asking the Assembly to approve the recommendation of the Ombudsman. Clause 23(3) requires that the Assembly standing orders should require the motion to be moved as soon as reasonably practicable. So, on the one hand, you have a check and a balance but, on the other hand, you actually have quite a prescriptive thing within standing orders. Does the Bill reconcile these two positions or does it make it harder to actually implement?

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**Ms Essex:** Our view is that it is not actually about reconciling the two positions. This provision in the Bill reflects what is already provided for in the Government of Wales Act. We do recognise that it is a prescriptive provision but it seemed appropriate it retain what had already been provided for in statute. We do believe that if we had not had a proposed re-enactment of this provision, there would have been well-founded criticism that we had left an obvious hole in the enforcement arrangements against the Assembly.

**Q169 Ms Randerson:** Can I go back to Sue Essex's answer on the appointment of the Ombudsman. Can you think of another example where the Secretary of State makes the appointment without consultation with the Assembly but the report and the budget both come to the Assembly for approval? I know there are other examples where various representatives are appointed in that way but I cannot for myself think of one where you have that very direct Assembly involvement at the later stages without involvement in the appointment.

**Mr Touhig:** Of course, this is a Crown-appointed appointment, it is made by Her Majesty the Queen on the recommendation of the Secretary of State and there is plenty of precedence for us doing that. We recognise that, in practice, the Secretary of State would obviously consult the Assembly. We are aware that there would probably be amendments requiring, on the face of the Bill, the Secretary of State to consult the Assembly and we will be giving that proper consideration. As my father would say, "If it ain't broken, don't try and mend it" and what has worked in that way in the past has worked terribly well, I think, and we have certainly proved since the establishment of the Assembly the close collaboration between Government here and the Assembly and consultation and, as you recall, when you yourself were Minister in the Assembly, it was certainly beneficial to all of us.

**Q170 Chairman:** In Clause 24(8)(b), the Assembly is given the power to omit a person by order from the list of consultees. I wonder what circumstances would be appropriate for somebody to be omitted from the list of consultees.

**Mr Touhig:** Clearly if there were issues that the Assembly felt made this difficult, then it is right that they should have that power. There is nothing that I particularly or, I think, Sue have in mind specifically in the way it might be used but again, Chairman, as you will recall—and this is a point I made earlier on—we have done a lot of legislation in this Parliament to be as enabling as we possibly can to the Assembly rather than being prescriptive, recognising that there is "a grey area" between what we seek to do in making legislation in this place and the Assembly's right and responsibility to make secondary legislation and I think that being over-prescriptive can be difficult. That is why I think it is in its broader sense that we have the provision there.

**Q171 Chairman:** It is in the sense of adding, omitting or changing the prescription, whatever they want to do, it is up to them.

**Mr Touhig:** Yes. I think it is important that that degree of flexibility is given.

**Q172 Hywel Williams:** (Translated through Welsh): Thank you, Chair. I refer you to clause 8.3, particularly the concept of aspects of Welsh culture. Clause 8.3 establishes that a function of a listed authority in relation to the Welsh language, or any other aspect of Welsh culture, is to be regarded as it is discharged in relation to Wales. The Welsh language's legal status is familiar. It featured in the Acts of Union of 1536 and 1543, the Welsh Courts Act 1942, and the Welsh Language Acts of 1967 and 1993. However, I am not familiar with the legal concept of "any other aspect of Welsh culture", which strikes me as something akin to a bar of soap in a shower. How will it be defined and by whom, and would you care to suggest a possible definition?

**Ms Essex:** The clause replicates existing provision in the Government of Wales Act 1998 and this is where the phrase comes from, we have replicated this clause for the Welsh Administrative Integration Ombudsman, and partly defines Welsh culture because it expressly provides that the Welsh language is an aspect of Welsh culture. Otherwise, Welsh culture as such, as you use the terminology, is not defined in the Bill. So, that is the derivation of the term. Whilst the Government of Wales Act does not define Welsh culture, Schedule 2 of the Act which sets out the fields in which the Assembly has a function specified one of those fields as culture. This, in turn, was specified as including museums, galleries and libraries. I guess that it would be for the Courts, if anyone wants to take the definition that far to actually define it but, as I say, it is there from the Government of Wales Act and has been replicated for this purpose.

**Q173 Hywel Williams:** (Translated through Welsh): I move on to another question. In its written evidence, the Welsh Language Board welcomed the fact that the ombudsman has the power to conduct inquiries into failures to comply with the Welsh Language Act 1993 as an example of maladministration. Can you explain the relationship between the ombudsman and the Welsh Language Board and how that relationship will be established and managed?

**Ms Essex:** The Welsh Language Board is a listed authority under Schedule 3 of the Bill and, as such, it could be the subject of investigation by the Ombudsman. As a Crown body, the Ombudsman may be asked by the Welsh Language Board to prepare a Welsh language scheme, so that is an important provision as well. Most of the listed authorities that are subject to investigation by the Ombudsman also have a duty to prepare a Welsh language scheme or have agreed to prepare a scheme. The Welsh Language Board can look into any failures by public bodies, not just those in Wales interestingly enough, to comply with the

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terms of the Welsh language schemes. Where those bodies are also listed authorities, it is possible that a complaint of maladministration or service failure might be made to the Ombudsman. We would therefore expect the Ombudsman to discuss with the Welsh Language Board the way in which such complaints would be handled.

**Mr Touhig:** It is two-pronged really: the Language Board will have the opportunity and, if necessary, so will the Ombudsman have an opportunity to look into any area where there is service failure or maladministration.

**Q174 Hywel Williams:** (Translated through Welsh): May I ask a further question? Do you anticipate that the relationship between the ombudsman and the Welsh Language Board will change following changes to the board's status as a result of the plans to bring some of its functions within the Assembly Government, leaving other functions externally to the office of the dyfarnydd, as it is known.

**Ms Essex:** It may well do. It is an interesting and perhaps a kind of unique area in terms of language but certainly, going back to Don's point, the important thing is that the provisions are in the Bill and we get these provisions through. I hope you will agree that this strengthens aspects of protecting the language, as it were, and perhaps gives me an opportunity to re-emphasise the point that this has been really welcome. We have had two consultation sessions on this Bill, we have had regulatory reform orders that have gone through Parliament to enable the office to be set up at present. I think the critical thing for us is to consider the reports that have come through but to make the point that we all hope that this Bill will become statute within this session of Parliament and clearly we will be reflecting on whether there are any amendments and changes that need to be made but we are hoping that, with the kind of work that has gone

on, with the intensive consultation and discussions that have taken place, certainly the thrust of this Bill could be carried through into legislation.

**Q175 Chairman:** I have one last question which you might or might not be able to answer. Have you any idea when this Bill is going to be presented to the House? I know it is not going to be long?

**Mr Touhig:** Funny you should say that, I was asking the Leader of the House only about that today!

**Q176 Chairman:** And what did he have to say?

**Mr Touhig:** There are discussions clearly going on. We are dependent on how they handle these matters in their Lordships House. I would like to put on record that we do appreciate that this Bill is well supported, it is not controversial, but it has been given a fair reading by all parties in the other place and we appreciate their help and understanding and recognise they have a duty to table amendments and so on, but nevertheless it has made good progress. If that can be maintained, then hopefully we might get to a report stage in their Lordships House round about the half-term break, just before or just after, and then of course we will have to find the opportunity to bring it to our place. So, there will be discussions going on with the usual channels and, as Sue has said and I have said earlier, we are very, very keen that, should there be any interruptions to the parliamentary timetable this year for any reason, then we would want to try and get this on the Statute Book. As you know, Chairman, that will very much depend upon how we might get to arrangements with the other parties and I am sure we will have full support from the parties here. I am not sure we will have the support of the parties who are not here but we will have to wait and see how those discussions go on.

**Chairman:** We will try and do our end of the business and get our separate reports to you as quickly as we can. Thank you very much indeed.

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# Written evidence

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## 1. Written evidence from the Wales Office and the Welsh Assembly Government

### PURPOSE

1. This memorandum is in response to the invitation of the Welsh Affairs Committee and the Local Government and Public Services Committee of the National Assembly for Wales to give evidence to its joint inquiry into the Public Services Ombudsman (Wales) Bill.

### SUMMARY OF BILL

2. The Public Services Ombudsman (Wales) Bill will bring together the separate offices of the Commission for Local Administration in Wales (which includes the Local Commissioner), the Health Service Commissioner for Wales, the Welsh Administration Ombudsman and, when established, the Social Housing Ombudsman for Wales into a unified office led by a single individual—the Public Services Ombudsman for Wales (PSOW).

3. It will provide a modern flexible and accessible service for members of the public who wish to complain about a wide range of public service providers operating in relation to Wales. This will be achieved through harmonising the respective jurisdictions of the existing Welsh ombudsmen to provide for dealing with complaints about maladministration and service failure and, in relation to local authorities in Wales, allegations that an elected member or employee of an authority has contravened that authority's Code of Conduct.

4. It will provide clear powers to facilitate joint working between the PSOW and other ombudsmen for the investigation of cross-jurisdictional complaints (Clause 24). It will also empower the PSOW to take action other than a full investigation to facilitate a resolution of a complaint (Clause 3). These powers will enable the PSOW to provide a more efficient, effective and timely service to both members of the public and public service providers.

### BACKGROUND

5. Public sector ombudsmen have served the citizens of Wales well, but there is now a strong case for change.

6. The legislation that currently provides for the existing offices was enacted separately for the different ombudsmen, the assumption then being that a particular service would be the particular responsibility of local government, central or devolved government or the National Health Service. The effect of this is that there are differences between the statutory provisions relating to each of the separate offices that are largely out of date in the current environment where there is often a multi-service approach to the provision of public services. From a policy and operational perspective this means that the legislation inhibits the development of a properly coherent and effective Ombudsman's service in Wales. From the citizen's perspective, the increasing emphasis being placed on "joined-up" services provided through partnerships between different public bodies, means that an individual citizen may have dealings with several different public bodies in relation to a particular case. It follows that if an individual is dissatisfied about some aspect of a service provided, it may not be easy to identify which public body has been responsible for the alleged failure and so to which ombudsman a complaint should be submitted.

7. Against that background Ministers are committed to ensuring that the valuable service the ombudsmen provide can continue not only now but also into the future, with a new legislative framework to support the development of a joined-up service.

### CONSULTATION

8. In March 2001 the Secretary of State for Wales jointly announced with the First Minister that there would be a review of public sector ombudsman services in Wales. The purpose would be to consider whether the present arrangements met the needs of our citizens in the 21st century and allowed the service to evolve in step with the changing face of public sector service delivery in Wales.

9. The provisional view of the Secretary of State and the First Minister was that there should be one ombudsman for Wales. In reaching this view they recognised a recommendation made by the National Assembly Advisory Group which, in its 1998 report said, "We welcome the creation of a new office of Welsh Administration Ombudsman, and note that the office can be held simultaneously with that of the Health Services Commissioner for Wales. We recommend that consideration be given in due course to both offices, and that of the Local Government Commissioner for Wales being held by the same person . . ."

10. In December 2002 The Wales Office jointly published with the Assembly "Ombudsmen's Services In Wales: Time for change?", a consultation document on the principle of bringing together the offices of Commission for Local Administration in Wales (which includes the Local Commissioner), Welsh

Administration Ombudsman and Health Service Commission for Wales into a unified service led by a single individual. The proposal does not include the office of the Parliamentary Commissioner for Administration as that post-holder is an officer of the House of Commons.

11. The proposal received widespread support and in October 2003 a consultation document on the detailed powers and jurisdiction of that new office, entitled, “A Public Services Ombudsman for Wales: Powers and Jurisdiction” was published.

12. The proposal for a PSOW has unanimous cross party support in the National Assembly for Wales.

13. As an interim step to achieving the longer term policy objective the Regulatory Reform (Local Commissioner for Wales) Order 2004 removed a restriction in the Local Government Act 1974 the effect of which was to prevent a single individual from simultaneously holding the three existing offices in Wales. This has allowed the Government to take advantage of an opportunity that arose when the office of the Commission for Local Administration in Wales (which includes the Local Commissioner), the Health Service Commissioner for Wales and the Welsh Administration Ombudsman all fell vacant in 2003 to appoint the same person to each office. In its scrutiny of this Order the House of Commons Regulatory Reform Committee recommended that a Public Services Ombudsman (Wales) Bill should be included in the legislative programme for the 2004–05 Session (HC553).

## POLICY

### *Jurisdiction*

14. The PSOW’s jurisdiction in relation to listed authorities (Clause 27 with Schedule 3) will (unless any exclusions from jurisdiction apply) be to investigate complaints about injustice or hardship (Clause 4) in the consequence of (Clause 7):

- (a) Maladministration by or on behalf of a listed authority in connection with “relevant action”. Maladministration is not defined but it is a well established concept and includes delay; bias; neglect etc—the Crossman catalogue. (In piloting the 1967 Act through Parliament, the then leader of the House of Commons, Richard Crossman, referred to maladministration as “bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude and arbitrariness”. This became known as the Crossman Catalogue. (*Hansard House of Commons* 18 October 1996 col 51).)
- (b) Service failure. A failure in a service provided by or on behalf of a listed authority is not defined in the Bill but both failure to provide a service and a failure in that service itself are captured.

15. The PSOW can also consider allegations that an elected member or employee of a local authority has breached his/her authority’s Code of Conduct (Clause 34 with Schedule 4).

16. The PSOW will not be able to investigate certain matters listed in Schedule 2 in addition to which he or she may not:

- Investigate complaints about legislative or judicial functions of bodies like the Assembly. (This is not a specific exclusion but a consequence of the fact that relevant action by a listed authority is defined as action taken in the discharge of administrative functions, which excludes legislative or judicial functions (Clause 7(3)(e)).
- Investigate a complaint where the aggrieved person has (or had):
  - a right of appeal, reference or review before a statutory tribunal;
  - a right of appeal to a Minister of the Crown or the Assembly; and
  - a remedy in a court of law.except where he or she considers it reasonable to do so (Clause 9).
- Investigate a complaint the genesis for which is more than 12 months old (Clause 5) or where the body concerned has not had an opportunity to consider the complaint (Clause 9) although he or she can exercise a discretion to do so in relation to either.
- Question the merits of a discretionary decision taken without maladministration unless it is in consequence of the exercise of clinical judgement (Clause 11).

### *Investigation of complaints*

17. The PSOW may only investigate a complaint if it has been made in writing to him or her by the aggrieved person, by a person authorised by the aggrieved to act on their behalf or, if the aggrieved person is not capable of doing so, by any person whom the PSOW is satisfied is an appropriate person to act on behalf of that person (Clause 4). The PSOW can exercise his or her discretion to consider a complaint which has not been made in writing if satisfied that there are special circumstances which make it reasonable for it not to have been made in writing (Clause 2(4) and Clause 5).

18. A listed authority may refer to the PSOW a complaint that it has received from an aggrieved person (Clause 6) but they cannot make a complaint to the PSOW. Neither can a nationally owned industry or undertaking, a body whose members are appointed by Her Majesty, a Minister of the Crown or the Assembly, or a body whose revenue consists wholly or mainly of money provided by government make a complaint to the PSOW.

19. It is for the PSOW to decide whether to begin or discontinue an investigation. The PSOW has a wide discretion as to the procedure for dealing with complaints within his or her jurisdiction. If a complaint is withdrawn the PSOW may still begin or continue with the investigation (Clause 2).

20. If the PSOW decides not to begin an investigation or decides to discontinue an investigation because, for example, the PSOW has resolved the complaint under Clause 13, he or she must prepare a statement setting out the reasons for this decision and send it to the complainant and the listed authority concerned. When the PSOW considers that it is in the public interest to do so he or she may publish a copy of the statement. When the PSOW issues or decides to publish a statement it must be in a form that will not name or identify the complainant or any other person except the listed authority, unless, having had regard to the interests of the aggrieved person or any other person, the PSOW considers that it is in the public interest to do so (Clause 12).

21. The Bill requires that the PSOW consults certain other ombudsmen where a complaint includes a matter that may be investigated by that other ombudsman. Where the PSOW so consults, the PSOW will also be able to carry out a joint investigation with the ombudsman concerned, except for the Scottish Public Services Ombudsman (SPSO), and report jointly on that investigation. Those ombudsmen with whom the PSOW can consult and co-operate can be added to by means of an Assembly Order but the SPSO, having been excluded, cannot now be included for the purposes of joint investigation and reporting (Clause 24).

22. For the purposes of undertaking an investigation the PSOW has wide powers to make inquiries and request access to people and documents (Clause 13). The PSOW has the same powers as the High Court in respect of obtaining information/documents and the attendance/examination of witnesses (Clause 14).

23. Information obtained by or on behalf of the PSOW in connection with a complaint must be kept confidential. It can only be disclosed in limited circumstances, for example, where there is a threat to the health and safety of one or more persons (Clause 25). If, however, a Minister of the Crown considers that disclosure of certain information would be prejudicial to the safety of the State or contrary to the public interest he or she may give the PSOW notice to that effect. If such a notice is given then neither the PSOW or a member of the PSOW's staff etc. can disclose the information under this Bill (Clause 26).

24. The PSOW will however still be required to comply with the Freedom of Information Act 2000, the Data Protection Act 1998 and other statutory access to information regimes (such as the Environmental Information Regulations) (Clause 25).

25. If a person without lawful excuse obstructs the PSOW in the discharge of his or her functions the PSOW can certify that to the High Court. If the High Court considers the matter and finds that an obstruction or contempt has occurred then that person can be dealt with by the High Court as if in contempt of court (Clause 15).

### *Reporting*

26. The reporting options being provided by this Bill will allow for reports of investigations to be produced, and failings scrutinised, in a way that is proportionate to the complaint. There will be two methods of reporting on an investigation:

- (i) The full reporting procedure whereby a formal report on an investigation is sent principally to the complainant and the listed authority although the PSOW can send a copy to whomever he/she considers appropriate (Clause 16). This is underpinned by a power for the PSOW to issue a special report if the report is not responded to or acted upon satisfactorily (Clause 21). The body concerned must respond to the report within 1 month unless the PSOW agrees an extension of time (Clause 19) and will be required, within a certain timescale, to make the report available to the public for copying/inspection, including downloading, without payment, from a website (Clause 17).
- (ii) The alternative reporting procedure where after investigation the PSOW decides that the aggrieved person has not sustained injustice or hardship in consequence of the matter investigated or, where he or she has concluded that such injustice/hardship has been suffered, the listed authority has agreed to implement his or her recommendations and the public interest does not warrant the full procedure (Clause 20). Similarly, this is underpinned by a power for PSOW to issue a special report if the report is not acted upon satisfactorily (Clause 21)

27. These reports must not name any person or allow any person to be identified except the listed authority being complained about unless, having regard to the interests of the aggrieved person and any other person (as the PSOW considers appropriate), the PSOW considers that it is in the public interest to do so.

28. In addition to reporting on investigations, the PSOW must also produce an annual report on the discharge of his or her functions and may produce an extraordinary report in respect of those functions as necessary (Schedule 1, paragraph 14).

*Guidance, redress and enforcement*

29. The PSOW will be able to issue guidance to listed authorities on good administrative practices as the PSOW considers appropriate (Clause 30).

30. A listed authority may make a payment to or provide any other benefit for the complainant regardless of whether the PSOW has decided not to investigate a complaint, had discontinued an investigation or not upheld a complaint (Clause 33) but where the PSOW has made a recommendation for redress there is no power to enforce that recommendation.

*The office of PSOW*

31. The PSOW will be appointed by Her Majesty for a single fixed term of 10 years. The PSOW can however be relieved/removed from office by Her Majesty at the PSOW's request or, after consulting the Assembly, on recommendation of the Secretary of State for reasons of misbehaviour or incapacity due to medical reasons. If the office falls vacant there is provision for an acting PSOW to be appointed (Schedule 1, paragraphs 1–4).

32. Certain people, essentially any person who is a member of a listed authority, are disqualified from being the PSOW or an acting PSOW. Conversely, a person who has held office as PSOW or acting PSOW is disqualified for a period of three years from being appointed to/ becoming a listed authority but that does not apply to offices held as a consequence of a democratic election process (Schedule 1, paragraph 5).

33. The office will be funded by the National Assembly (Schedule 1, paragraphs 9–10) but the PSOW will be the Accounting Officer for the purposes of maintaining (subject to directions by HM Treasury) accounts, and for the regularity and propriety of, expenditure for the office and for submitting those accounts to the Auditor General for Wales (Schedule 1, paragraphs 16–20).

34. The PSOW will be able to recruit staff necessary to undertake the functions of office and obtain advice from any person to assist in the discharge of his or her functions. Neither the PSOW or the staff will be civil servants but they will be Crown servants for the purposes of the Official Secrets Act. The PSOW also has wide powers to delegate the functions of office. (Schedule 1, paragraphs 11–13).

*Consequential amendments*

35. This Bill will make a number of consequential amendments (Schedule 6) but of note is that made to the Local Government Act 2000.

36. Clause 34 with Schedule 4 confers on the PSOW the functions of the Local Commissioner (of the Commission for Local Administration in Wales) in relation to the investigation of allegations of misconduct by local government members and employees in Wales.

37. At the same time paragraph 22 of Schedule 4 remedies an anomaly that exists whereby relevant authorities in Wales have to notify the Standards Board in England when they have established a register of members' interests. At present they do not have to notify the Local Commissioner even though investigations of allegations of misconduct by local government members and employees in Wales falls to the Local Commissioner not the Standards Board in England. The Bill provides for relevant authorities in Wales to notify the PSOW.

38. Police authorities in Wales will however have to notify both the Standards Board in England and the PSOW because it is the Standards Board in England that is responsible for issuing guidance on matters relating to the conduct of members of police authorities in both England and Wales.

CONCLUSION

39. We would like to thank the Committees for this opportunity to present written evidence to inform their inquiry into the Public Services Ombudsman (Wales) Bill. We hope that it will assist the Committees in their scrutiny of the Bill and of the examination of witnesses.

40. We look forward to the Committees' conclusions and will give serious consideration to any recommendations that the Committees make in relation to this Bill.

*Don Touhig MP*, Parliamentary Under Secretary of State for Wales  
*Sue Essex AM*, Minister for Finance, Local Government and Public Services

6 January 2004

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## **2. Written evidence from the Community Health Councils and the Board of Community Health Councils in Wales**

We welcome the opportunity to make this submission and we have some general points to make as well as one or two specific points.

### THE GENERAL POINTS ARE AS FOLLOWS

1. Reference is made throughout the Bill to “a listed authority” and we recognise that the majority of complaints which are referred to the Ombudsman will relate to one Authority. However, in our experience with handling complaints on behalf of patients, it is often the case that the complaint overlaps health services and social services and that it is possible that both are at fault at the interface. We would commend the Committee to consider a reference to the eventuality somewhere in the bill.

2. Timing is an issue.

When a complaint is made it is often because attempts to procure a service or to persuade the authority to fill a gap in service have failed. If the complaint relates to services for a child or an elderly person, it is likely that delays in the processing of a complaint will be crucial, because continuing failure to deliver the service may have a lasting impact on the person who is the subject of the complaint. We would ask the Committee to consider making it more explicit in the Bill that where time is of the essence, the Ombudsman will accept the complaint after, say, a month of the listed authority being made aware of it. Examples of our concerns are young children needing remedial therapies to enable them to enter education and elderly persons whose future quality of life or life expectancy may be limited by a failure to provide such a service.

3. We see no reference to the Public Service Ombudsman in Wales having to comply with the Welsh Language Act, but no doubt that will be covered elsewhere.

4. We are concerned at the present time about cross-border issues between England and Wales in particular, whereby patients living in Wales may be registered with GP practices in England and may receive hospital care in England. We would like to be assured that there will be clarity as to how these issues will be dealt with.

5. We are concerned that decisions made by the Ombudsman which have far-reaching effects, such as for instance the decisions made in England about Continuing NHS Care being fully funded by the NHS, will be implemented in a consistent way across Wales and that the Assembly will take responsibility for ensuring that this happens.

### ON THE SPECIFIC POINTS

- (i) Section 11 refers to decisions taken without maladministration and 11.1 in particular refers to the “exercise of a discretion”. We are concerned that this may be used as a means to avoid provision of services which are not available for financial or manpower reasons either temporarily or permanently but would normally be construed as services to be provided by the listed authority. We would ask the Committee if this could be clarified or defined in such a way as to prevent a listed authority from avoiding its obligations. Reference is made particularly to remedial therapies for pre-school children in this respect.
- (ii) We welcome the inclusion in Schedule 3 of Community Health Councils, but given that it has also been created in the Health (Wales) Act 2003, we would suggest that the Board of Community Health Councils in Wales should also be listed in Schedule 3 and subject to the powers of the Ombudsman.
- (iii) There is reference in Schedule 3 to a variety of listed health authorities but given previous comments about cross-border issues, should not Primary Care Trusts also be included?

*13 January 2005*

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## **3. Written evidence from the Welsh Local Government Association**

### PURPOSE

1. To present the Association’s response to the development of legislation on the future of Ombudsmen’s service in Wales and the Committee’s enquiry into the Public Services Ombudsman (Wales) Bill (HL).

### BACKGROUND

2. The Welsh Assembly Government has previously issued a consultation paper concerning the provision of Ombudsmen’s services in Wales. They sought views on a number of specific issues. The main element of those proposals was to amalgamate all four Ombudsmen’s services in Wales into one body. This would replicate the situation in Scotland with the creation of the Scottish Public Services Ombudsman in October

2002 (SPSO). The WLGA responses to the specific questions raised by that consultation are included at annex one which has been approved by our Coordinating Committee. It should be noted that the WLGA were broadly supportive of this approach and this was endorsed by our members.

3. Since that consultation the Assembly government has also published its vision for public services in Wales “Making the Connections: Delivering Better Public Services for Wales”. In this setting the WLGA believes that the proposal to amalgamate the service sits within this contextual sphere and that philosophy behind this would be fully supported by local government.

4. Merging structures, however, might create greater efficiency but is not a guarantee of greater effectiveness for the public in terms of assurance. As a result the need for the new service to become more citizen centred is fundamental to the new approach. Social justice must be at the heart of Welsh public policy but it is clearly the case that large parts of the Welsh public have scant understanding of the precise role of this office and its terms of reference.

5. Local government does much to highlight the Ombudsman role to its customers particularly in terms of complaints procedures but there is the need for a significant awareness raising which must be an aspiration at the heart of new service as it develops. This was confirmed by last years survey undertaken by MORI for the Parliamentary, Health Service and Local Government Ombudsmen in England where just under half of people surveyed say they have heard of the Health Service (45%) and Local Government (44%) Ombudsmen. This is higher than awareness of the Parliamentary Ombudsman (37%). But public recognition is much higher for Citizens Advice Bureaux (94%), the Police Complaints Authority (72%) and OFSTED (69%).

#### BILL PROPOSALS AND ISSUES

6. The Bill as currently framed makes provision about the functions of the Public Services Ombudsman for Wales, and to allow the abolition of the Commission for Local Administration in Wales and the offices of Welsh Administration Ombudsman, Health Service Commissioner for Wales and Social Housing Ombudsman for Wales.

7. The Association has consulted Welsh Local Government on this issue and responses are broadly in favour of the suggested changes. The pivotal role of the Local Government Ombudsman in the new Standards and Ethics regime in Wales is such that any proposed changes should not be detrimental to local government and the people it serves. In terms of local government the Ombudsman has two main roles.

- The first, under the Local Government Act 1974, is to investigate complaints from members of the public that they have suffered injustice as a result of maladministration by local authorities in Wales. A number of matters are outside the Commissioner’s jurisdiction: these include personnel issues and commercial and contractual disputes other than those related to the sale of land. The Ombudsman will not usually investigate complaints where the complainant has an alternative remedy for his or her grievance by way of an appeal to the National Assembly for Wales, a government minister or to a particular tribunal or through legal proceedings in a court of law.
- The Local Government Act 2000 made it a legal requirement for serving local authority members to undertake to comply with their authority’s code of conduct. Under the Act, the Ombudsman has powers to investigate allegations that members of local authorities in Wales have failed to do so. Anyone can make an allegation and the Ombudsman’s jurisdiction to investigate the allegation is not restricted in the same way as his jurisdiction to investigate complaints of maladministration. The Ombudsman has, nevertheless, a discretion whether to investigate an allegation or not, and he can discontinue an investigation at any stage.

8. The relationship between Welsh Local government and the Ombudsman is generally good and undertaken with efficiency. It is characterised by rigour although there are also examples within the current standards regime where the existing code of conduct for members has placed some strains on the relationship not least of all because of a lack of clarity in the current framework. This is currently subject to review and has concentrated upon on bringing sharper definitions to factors such as what constitutes a personal interest, the applicability of the code in other settings beyond the council environment and disclosure of interests.

9. In service areas levels of complaints have declined in recent years and in particular the number of complaints upheld has fallen. Information from the Local Government Ombudsman’s office is set out below. The majority of these complaints fall into the service areas of planning and housing.

#### Number of complaints received:

2002–03	806
2003–04	722
2004–05	505 (to date)

#### Number of complaints upheld:

2002–03	13
2003–04	2
2004–05	4

10. We accept that the problem with this type of analysis is that it does not always reflect increased satisfaction but can signal some frustrations with the “system” and a belief that the impact of a complaint may not be worth the input required to make it. In this respect it is vital that the first point of contact for a complainant provides in most cases the necessary redress and local authorities have invested considerable resources in recent years in the establishment of customer contact centres and one stop shops.

11. The development of the Freedom of Information Act 2000, which has been welcomed in local government, will also be a new area which will see developing practice over time particularly in terms of how councillor activities are covered by the Act. There are grey areas around which parts of members work are caught by Act the council policy is covered but their work with constituents is not unless subsequently raised with the council machine in relation to policy.

12. Bearing in mind the above factors it is vital that the new management structure of the Public Services Ombudsman office retains a clear local government flavour with specialised knowledge of our services. To stress we are not seeking a “college” based approach which would appear externally as one organisation but be based on clear internal demarcation. The Local Government Ombudsman, Adam Peat makes the point in his Annual Report 2003–04 about the advantages of an integrated service and the establishment of a new office, of which we are fully supportive. We do need however more information around the new management arrangements to ensure, that local government interests and that of complainants are well served.

13. The merger of four Ombudsman offices in Wales will bring together bodies that deal with a range of public complaints and their investigation. As stated the proposals to merge these into one structure reflect broader thinking in terms of “joined up” provision of services. The main advantage of any form of one-stop shop is that it provides a simpler means for members of the public to make complaints.

14. The consultation paper by the Scottish Executive produced in 2000 on “Modernising the complaints system” set out a further range of advantages which are worth repeating. Firstly, regardless of which public service the complaint is against, all complaints are made to the same place and information on how to complain is available from the same source. Secondly, it helps to avoid the confusing situation where some bodies are covered by two different Ombudsmen, there is often confusion over cross boundary complaints in areas such as delayed transfers of care which jointly effect both local government and health. Thirdly, it enables the arrangements for submitting complaints to be standardised. Finally, because there is, at least from the outside, only one organisation dealing with all public service complaints, it will tend to have a higher profile and be easier to draw to the attention of the public

15. Other perceived advantages of the change would be:

- Economies of scale.
- Greater legitimacy with public bodies.
- In line with the concept of an integrated Welsh public service.
- As more services are based on partnerships it is increasingly difficult for members of the public to determine where they should direct their complaints.

16. This also will allow for a more responsive structure for the people of Wales and it is envisaged by the document, a better service. For local government key issues will be the maintenance of the full independence of the Ombudsman’s office, the primacy of the Local Standards Regime to ensure local accountability and the existence of a dedicated Deputy with lead responsibility for local government.

#### OTHER MATTERS

17. The WLGA welcomes the separation of the staff of the Ombudsman service from the Civil service as this will send a clear signal regarding their autonomy and independence.

18. This process should bring greater clarity to the remit of the ombudsman service and a greater public understanding of how to resolve complaints of maladministration against public bodies.

19. This new combined office should see improved efficiencies and pooled resources and expertise, the WLGA would therefore not expect to see additional costs incurred. We have written this year to the Ombudsman’s office as a consultee about future costs.

20. The funding of this new body should be proportionate to the cases made and work involved in each of the public bodies the new Ombudsman will oversee and as a result the WLGA would not expect to see a resultant growth in local governments contribution via the RSG.

21. It is the view of the Association that the Ombudsman should regularly report to the Partnership Council and the Co-ordinating Committee to ensure awareness of local government concerns and issues particularly in relation to the Members Code of Conduct.

22. The Association would also seek an annual scrutiny meeting with the Public Services Ombudsman where key issues of concern to local government can be raised.

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WLGA Response to the “Time for Change” consultation—January 2003

Annex 1

WAG CONSULTATION QUESTIONS

SET QUESTIONS A

(i) *Do you agree that people in Wales are likely to be better served in the future if a single Ombudsman office is established, with powers to investigate complaints about public bodies in Wales?*

RESPONSE

There are persuasive arguments that a single Ombudsman’s body would better reflect the complexity of public service delivery in Wales and ensure that the public are better served by the office. However, it is clear that this should not be at the expense of a loss of expertise on the individual areas covered within the Office’s responsibility. Therefore the Association welcomes the move to establish Deputies with lead responsibilities in these areas.

(ii) *What should be the title of this appointment; might it, for example, be the Public Services Ombudsman for Wales, or can you suggest a better name?*

RESPONSE

This title seems appropriate, the Scottish version is now called the Scottish Public Service Ombudsman.

(iii) *Should provision be made in the legislation creating the new office for the appointment of one or more deputies?*

RESPONSE

This is important to maintain a clear area of expertise and understanding within the Ombudsman service in the areas covered. Whilst expert advice is often sought to aid the office it is essential that the Ombudsman’s office has the understanding to interpret that advice properly. In terms of local government investigations most of the initial investigative burden falls upon the authority itself. Whilst this will always be the case it is clear that the Ombudsman’s office must be more supportive of this role in offering advice and guidance.

(iv) *If you do not agree with the proposal for a single Ombudsman’s office, what alternative structure for the organisation of Ombudsman services in Wales would you suggest in the future?*

RESPONSE

On the balance of the arguments expressed in the consultation document it seems sensible to create the single office.

SET QUESTION B

*If a new single Ombudsman’s office is established, should appointments of individuals be made for fixed terms with (or without?) the prospect of reappointment, or should the present practice of appointment normally to age 65 be retained?*

RESPONSE

It seems appropriate that given the necessity to develop expertise on the relevant portfolio’s that appointments should continue to be done on the permanent basis. This of course is subject to the need for accountability and should be periodically reviewed.

SET QUESTION C

*Given that the National Assembly would provide the resources for any new single Ombudsman’s office for Wales, what funding arrangements should be put in place via legislation that would effectively secure the independence of that office? Should the arrangements currently operating in respect of the WAO and the HSCW, described in para 21–23, be carried over and applied when the new office is established, or should there be new arrangements (and if so, what should they be?)*

## RESPONSE

This is the key issue and there should be no suggestion of any compromise in terms of the Ombudsman independence as currently practised. The current funding arrangements ensure the independence of the Ombudsman but as in all areas of public life this arrangement and its effectiveness such be subject to periodic review and consultation. It is the view of the Association that the Ombudsman should regularly report to the Partnership council and the Co-ordinating Committee to ensure awareness of local government concerns and issues particularly in relation to the Members Code of Conduct.

It is evident that considerable officer and Member time is expended by Local Government in undertaking the initial investigative work for the Ombudsman and perhaps consideration needs to be given to how this issue is addressed to prevent a perverse outcome where authorities with a smaller capacity to undertake this work are penalised further. Authorities have also questioned in the past the relationship of the Ombudsman to police investigations which can be on relatively small matters but incur disproportionate costs for the local authority.

## SET QUESTION D

*Should staff employed by the new Ombudsman be civil servants as those serving the WAO/HSCW are now, or should they be outside the civil service as are those serving CLAW?*

## RESPONSE

The key issue here is to ensure proper accountability whilst guaranteeing the independence of the work of the Ombudsman's office. Whilst it may be of benefit to allow the flow of staff, and therefore expertise between the main body of civil servants and the Ombudsman's office this practice may give the perception of damaging its independence. Therefore the Association feels that a separation of the service is the most appropriate model.

## SET QUESTION E

(i) *Would it be appropriate, or worthwhile, to provide in legislation for the establishment of an advisory board to support the Ombudsman in his or her work.*

## RESPONSE

The Association welcomes this development especially in terms of involving service users/providers to provide a reality check on experience of receiving and providing services.

(ii) *What functions might the Board perform, what sort of people should be Members of it, and who would appoint them?*

## RESPONSE

The Board's role should be to act as a sounding board for the Office, ensuring the necessary reality checks on its work and to inform the development of its corporate and operational planning processes.

The Board should be drawn from a diverse cross section of society and be recruited in an open and transparent manner in line with guidance from the Nolan/Wicks commission.

## SET QUESTION F

(i) *Do you agree that the new Ombudsman should be required to produce Annual Reports and that these should be laid before the National Assembly?*

## RESPONSE

The Association welcomes this level of accountability but in addition believes that both the Partnership Council and the Co-ordinating Committee should also receive reports on issues of importance to Governance in the broadest sense.

(ii) *What statutory arrangements, if any, might be made to enable Welsh local authorities collectively to consider such reports?*

Again this matter should fall within the remit of the Partnership council.

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#### **4. Written evidence from the Local Government, Health Service and Welsh Administration Ombudsman**

I was appointed in October 2003 as Local Government Ombudsman for Wales, in November 2003 as Health Service Ombudsman for Wales, and in November 2004 as Welsh Administration Ombudsman. Remuneration is paid as the Local Government Ombudsman only. The relevant statute provides in each case that the Ombudsman shall hold office until the end of the year of service in which he attains the age of 65.

The various Ombudsman offices are each governed by separate, albeit broadly similar provisions. These separate statutory frameworks make it very difficult at present to offer the seamless service which I would wish, even though the offices have been brought together under a single postholder.

In addition to investigating complaints about local government bodies, the Local Government Ombudsman has the role of investigating allegations that councillors (including community councillors) may have breached their council's statutory code of conduct. The Housing Act 2004 empowers the National Assembly to confer on the Local Government Ombudsman the additional function of acting as Social Housing Ombudsman for Wales in respect of housing owned by housing associations.

In 2003–04, the number of complaints made to the Ombudsman under the various jurisdictions was as follows:

Local government complaints	629
Local government allegations of breach of code	183
NHS complaints	209
WAO complaints	64

I set out in my annual reports for 2003–04 as Local Government and Health Service Ombudsman my vision for the integrated Public Services Ombudsman service. I reproduce that statement here for the assistance of the Committee:

#### **A FIRST CLASS OMBUDSMAN SERVICE**

The primary role of the Public Services Ombudsman for Wales is to investigate complaints made to him by members of the public about the way they have been treated by a public body. Complaints will be investigated independently and impartially, and when upheld, the Ombudsman will say what the public body should do to make amends to the complainant and impress the need for improvement in its standard of service in the future. He will also promote good administration and high standards of conduct by investigating allegations that local authority members have breached their own authority's code. Lessons learned from investigations will be publicised, along with those experienced by other ombudsmen.

#### *Service to the individual member of the public*

The Ombudsman expects public bodies to treat people fairly, considerately and efficiently. When people consider that they have been badly treated, the ombudsman service must provide an easily accessible means by which they can be heard. Their complaints must be looked into independently and impartially, and if upheld, fair redress must be given.

To assist in the delivery of a first class service, the Ombudsman is keen that all his staff should be well motivated and have the right training to meet both the needs of the service, and the demands of the public.

#### *Outreach/Awareness*

A large proportion of the population have little or no idea of the existence of the Ombudsman service—still less of what it might be able to do for them in time of need. The Ombudsman service must be made accessible in practice to vulnerable and disadvantaged members of society, including the black and minority ethnic community.

*Impartial and efficient investigation*

When a formal investigation is appropriate, it will be carried out impartially and thoroughly, although the Ombudsman will be concerned to bring matters to a conclusion as soon as possible.

*Informal resolution*

Where it is helpful, informal resolution and speedy redress will be sought for any complainant, so long as an informal approach does not compromise the wider public interest.

*Securing proper redress*

When the Ombudsman upholds a complaint, he will be vigorous in seeking redress which is fully proportionate to the harm suffered by the complainant.

*Alertness to wider implications*

When they are investigating a complaint, the Ombudsman's officers will remain alert to the possibility that it may not be an isolated case and that other individuals may have suffered in a similar way. If so, the Ombudsman will be proactive in seeking similar redress for those people.

*Promoting good administration*

In order to secure better service for the individual citizen, the Ombudsman may give guidance on good administrative practice to bodies within his jurisdiction. This will be done sparingly and only after consultation with the bodies concerned, drawing not only on experience in Wales, but also from other ombudsman schemes.

The Ombudsman will ensure that allegations of breach of the code of conduct for local authority members are investigated rigorously but proportionately.

I welcome this Bill and I am grateful to have been consulted during its drafting. In unifying the current ombudsman statutes the Bill usefully streamlines and modernises the statutory framework, much of which has remained unchanged since 1967. In particular the Bill's provisions will:

- Make it more likely that complainants are aware of their right to go to the Ombudsman, and make it easier for them to do so.
- Make it easier to deal flexibly and relatively speedily with those cases where the public interest does not require a formal public report.
- Facilitate collaboration with other ombudsmen and with the Children's Commissioner for Wales.
- Enable a "one-stop shop" for complaints about most public bodies in Wales, and joined-up consideration of complaints which affect more than one public body.

In that last regard, I am particularly keen to be able to consider synoptically complaints about the actions of multi-agency, multi-disciplinary teams which are common nowadays in fields such as care in the community. This is one area where I do feel that the drafting of the Bill as it currently stands may be capable of improvement. I very much welcome therefore the commitment given by Lord Evans of Temple Guiting during the Second Reading debate in the House of Lords to consider "whether the Bill can be improved by express provision to ensure that, in health and social care, the Ombudsman can look across the scene at complaints about the consequences of decisions made by social care professionals who are working alongside clinical colleagues."

*Adam Peat*  
Ombudsman

4 January 2005

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## 5. Letter from the Scottish Public Services Ombudsman

Thank you for your invitation to give oral evidence to the National Assembly for Wales Local Government and Public Services Committee and the House of Commons Welsh Affairs Select Committee in their joint consideration of the above Bill.

I regret that it is not possible for me to give such evidence in person. As my Deputy, Eric Drake, will have explained, I had an accident before Christmas. I have broken my ankle and will not be able to travel for some time. However, I am pleased that Eric is able to deputise for me and I am confident that you will find his evidence of value.

As requested, I attach a short memorandum for consideration by the Committees. As you will be aware, we have very direct experience of merging the former offices of public service Ombudsmen in Scotland. Unlike the situation in Wales, my three (part-time) Deputies and I were appointed after the Scottish Public Services Ombudsman Act 2002 had been passed. We took up our posts on 30 September 2002 and three weeks later began the process of merging the three previous offices and operating the new “one-stop-shop” service.

We have been happy to share our experiences and the lessons learned with colleagues in Wales on an ongoing basis. However, I thought it might be helpful if I summarised some of the key issues in our written evidence to the Committees. In addition, I enclose a copy of our first Annual Report which outlines some of the steps taken by the SPSO in its first months of operation. We would be happy to provide copies of other documents/guidance that we have prepared and most of these are available on our website.

*Professor Alice Brown*  
Ombudsman

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### **Written Evidence from the Scottish Public Services Ombudsman (SPSO)**

#### **1. INTRODUCTION**

1.1 My office was established in 2002 to provide a “one-stop-shop” for consideration of complaints about devolved public services in Scotland. This memorandum seeks to set out:

- the background to the setting up of my office and the legislative framework within which it was established;
- key issues which faced us in setting up the office;
- new developments which we have had to address since we were established;
- key lessons from our experience; and
- taking account of the above, our comments on the Public Services Ombudsman (Wales) Bill.

#### **2. LEGISLATIVE BACKGROUND**

2.1 The rationale for the establishment of the new office of the Scottish Public Services Ombudsman is set out clearly in paragraphs 2 and 3 of the Policy Memorandum for the Bill that was presented to the Scottish Parliament. It states:

“The key policy objective of the Bill is to establish a one-stop shop headed by a new Scottish Public Sector Ombudsman to deal with complaints currently dealt with by the Scottish Parliamentary Commissioner for Administration (SPCA), the Health Service Commissioner for Scotland (the ‘Health Service Ombudsman’), the Commissioner for Local Administration in Scotland (the ‘Local Government Ombudsman’) and the Housing Association Ombudsman for Scotland. The Ombudsman will also take over:

- The Mental Welfare Commission’s function of investigating the handling of complaints relating to mental health; and
- Complaints against Scottish Enterprise and Highlands and Islands Enterprise whose External Complaints Adjudicators will be abolished.

The Bill aims to establish a public sector complaints system which is open, accountable, easily accessible to all and has the trust of the Scottish public. This will be achieved by way of:

- A simpler and more effective means for members of the public to make complaints about maladministration in the public sector;
- A re-enforcement of the Ombudsman’s independence from the authorities within his or her jurisdiction; and
- Improved publicity and transparency of the Ombudsman’s functions.”

2.2 It was proposed that the Ombudsman would have powers to lay reports before the Scottish Parliament, in addition to the requirement to lay an Annual Report. These include reports on formal investigations into complaints; special reports where the Ombudsman believes that, following the issuing of a report, an injustice or hardship has not been remedied; and any other reports relating to the carrying out of the Ombudsman’s functions that s/he thinks are necessary.

2.3 An important dimension of the Bill was the proposal that members of the public could make a complaint to the Ombudsman without the necessity of referring that complaint to a Member of the Scottish Parliament or other elected representative in the first instance.

2.4 The debates in the Scottish Parliament on the Bill, specifically in relation to matters that could be investigated, resulted in an extension of the powers of the Ombudsman beyond the investigation of complaints against the exercise of administrative functions of a public authority to include service failure (defined as: “(a) any failure in a service provided by the authority; and (b) any failure of the authority to provide a service which it was a function of the authority to provide”). Previously this power only existed in relation to NHS bodies and providers.

2.5 The key policy objective of the Bill and subsequent parliamentary debates were put into effect by the Scottish Public Services Ombudsman Act 2002. This Act created a number of “givens” for the new service:

- That it would perform all the functions of the predecessor Ombudsmen;
- That it would have an extended remit (to include mental health complaints, complaints about the Enterprise bodies and other areas such as the administration of schools);
- That in a number of respects it would work in new ways (simpler and more effective ways for making complaints, more accessible, greater transparency, improved publicity, etc);
- That it would take over the staff of the predecessor Ombudsmen whose terms and conditions would be protected under TUPE principles.

2.6 These givens were reinforced by the duties that the Scottish Parliamentary Corporate Body set for the Ombudsman and the three (part-time) Deputy Ombudsmen appointed under the Act:

- Managing the merger of the three existing offices into one new office;
- Managing the day-to-day running of the new office;
- Setting up appropriate arrangements for providing advice to members of the public on complaints procedures;
- Dealing with complaints by members of the public;
- Promoting public awareness of the Ombudsman’s role in dealing with complaints;
- Promoting good administrative practice by public authorities;
- Laying before the Parliament an annual general report on the exercise of the Ombudsman’s functions; and
- Laying before the Parliament special reports on cases of unremedied injustice or hardship.

In exercising these duties the Ombudsman and Deputy Ombudsmen are independent of any member of the Parliament, any member of the Scottish Executive and the Parliamentary Corporation.

### 3. IMPLEMENTATION AND TRANSITION PHASE

3.1 When the Ombudsman and Deputy Ombudsmen assumed their powers on 23 October 2002, it became apparent that there were a number of barriers to implementing the objectives set for the new service:

- The staff of the predecessor Ombudsmen were based in three different locations, none of which was large enough to accommodate the new one-stop-shop or suitable for receiving members of the public;
- The predecessor services had different staffing structures, working practices and case-handling processes, none of which was fully adapted to meeting the requirements placed on the new service;
- Staff of the predecessor services had substantially different terms and conditions, and the practices for appraisal and promotion also varied considerably;
- Staff of the predecessor services would require training in the new legislation under which they were to operate, in dealing with complaints made in person or by members of the public with special language or other needs, and in raising awareness of the service; and
- The predecessor services had adopted IT to varying degrees and the IT systems that were in use were not compatible or capable of facilitating the delivery of a modern complaints handling system for the new office.

3.2. Urgent tasks facing the new Ombudsman and Deputy Ombudsmen therefore included:

- Arranging a single telephone access point for members of the public and others contacting the service;
- Organising the design and printing of new leaflets to provide information about the service as well as a new complaints form;
- Issuing initial Guidelines to listed authorities drawing their attention to the duties placed on them under the Act (eg to include information on the Ombudsman’s service in their documentation and the time limits for making a complaint);
- Identifying, acquiring and fitting-out office premises in a single location suitable to accommodate the new service;
- Establishing a management structure to develop policy and strategy and to manage the new service;

- Creating a new complaints handling process based on the requirements of the legislation and good practice;
- Identifying what new procedures were required, for example, to deal with oral complaints and to improve publicity and transparency;
- Agreeing new working practices and staffing structures adapted to meeting the needs of the new service;
- Harmonising staff terms and conditions, not only on grounds of equity, but also to establish an integrated and enhanced service fit to meet the requirements placed on it;
- Agreeing new HR policies for the new service;
- Establishing new IT systems to meet the needs of the new case consideration process and to deliver the new service to the public;
- Producing further guidance for listed authorities in carrying out their duties under the Act;
- Estimating:
  - additional training needed for existing staff;
  - expertise required to be bought in to provide support services (eg HR, IT, Finance/Audit);
  - additional staff required to deliver the enhanced service.

#### 4. NEW DEVELOPMENTS

4.1 Since the new office of the SPSO was set up in October 2002 there have been important developments that will have an impact on the powers and jurisdiction of the Ombudsman. These include:

- Health. It has been announced that the second stage of the internal NHS complaints process is to be abolished in Scotland which it is anticipated will substantially increase the number of cases coming to the Ombudsman.
- Further and Higher Education. The Further and Higher Education (Scotland) Bill currently making its way through the Scottish Parliament includes provision to bring complaints about Scottish FE and HE institutions within the jurisdiction of the SPSO. The Bill as introduced gives students, however funded, and other aggrieved persons the right to refer complaints about colleges or universities to the Ombudsman.

4.2 Other proposals to reform social work complaints arrangements and the planning system in Scotland, replace the Water Industry Commissioner with a Water Industry Commission, and create new transport bodies will all impact on the future work of the SPSO.

#### 5. KEY LESSONS

5.1 There are a number of lessons that can be learned from the experience of the SPSO. These include:

5.1.1 The time taken and commitment needed to merge former offices and processes and make the full transition to a new combined Ombudsman service should not be under-estimated.

5.1.2 Similarly there is a considerable challenge in continuing to provide a service in all the different sectors while, at the same time, establishing a new combined service based on new legislation.

5.1.3 In building the new service it is important to bear in mind the aspirations of the legislators and to establish procedures and processes based on the key principles and values.

5.1.4 Cultural and procedural differences between and within the different sectors of public service need to be reduced in order for greater consistency across the delivery of public services to be achieved.

5.1.5 The joint delivery of public services has implications for joint responsibility when problems do arise. More work is needed to ensure greater continuity and co-ordination of complaint handling processes across different sectors of public service.

5.1.6 The handling of complaints should not be seen as a separate activity at the end of a process. Instead it should be integrated into the central aim of developing and delivering better public services.

5.1.7 The Ombudsman can work with public authorities and provide guidance in order to help reduce the possibility of complaints arising and setting standards, principles and models of good practice in complaint handling and administrative practice. There is also considerable scope for sharing of experience and training with the different sectors.

5.1.8 The Ombudsman has an important role to play in helping to raise public awareness of the right to make complaints and note concerns about services with public bodies. This is a task that can be undertaken with other key agencies especially in making contact with hard-to-reach groups.

5.1.9 Sufficient time and resource is required in order to direct some of the activities of the Ombudsman towards a more proactive role that will enhance understanding and help prevent complaints from arising. This requires a shift in emphasis from simply reacting to complaints that are received.

5.1.10 Working with other public service Ombudsmen, where appropriate, and collaborating with other Commissioners is a valuable way of improving the effectiveness and accessibility of the service and reducing the confusion often experienced by members of the public when they wish to pursue a complaint.

5.1.11 Consideration must be given to changes in the external political context so that the Ombudsman's service is up-to-date with policy developments and factors that may impact on its role and function.

5.1.12 The merger of Ombudsmen's offices to create a single service for complaints against public services should not be seen as a single event but rather as an ongoing process of change and improvement of service in line with public expectations and needs.

## 6. COMMENTS ON THE PUBLIC SERVICES OMBUDSMAN (WALES) BILL

6.1 In our view, there have been clear benefits arising from the establishment of a single Ombudsman service dealing with devolved public services in Scotland. This approach has been widely endorsed and supported in helping to provide greater simplicity, clarity and accessibility for members of the public. There is evidence of the "one-stop-shop" working in practice, for example in complaints about care for the elderly. Such a complaint can now be dealt with by the SPSO while in the past it may have involved three separate Ombudsmen for Local Government, Health and Housing.

6.2 We therefore welcome the proposal to establish a similar one-stop-shop service in Wales. We consider that the Public Services Ombudsman (Wales) Bill is very clearly structured and comprehensive in its coverage. There are considerable similarities with the powers and provisions in the Scottish Public Services Ombudsman Act 2002. In particular, we would endorse:

6.2.1 The clear statement of the arrangements for appointment of the Ombudsman and the robust provisions to ensure his/her independence (Schedule 1 to the Bill)

6.2.2 The clarity with which the Ombudsman's powers of investigation and jurisdiction are set out (Part 2 of the Bill)

6.2.3 The highlighting of an important and proactive role for the Ombudsman in issuing guidance to listed authorities and improving good administrative practices in Wales. This is in line with the practice of the SPSO.

12 January 2005

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## 6. Written evidence from Ann Abraham UK Parliamentary Ombudsman and Health Service Ombudsman for England

### 1. INTRODUCTION

In November 2002, when I was appointed to my current offices of UK Parliamentary Ombudsman and Health Service Ombudsman for England, I was also asked to take on the responsibilities of Welsh Administration Ombudsman and Health Service Commissioner for Wales. Adam Peat, the Public Service Ombudsman for Wales, became Health Service Commissioner for Wales when he was appointed in September 2003, and Welsh Administration Ombudsman on 4 November 2004.

The offices of Welsh Administration Ombudsman and Health Service Commissioner for Wales are to be abolished along with the Commission for Local Administration in Wales and the Social Housing Ombudsman for Wales. The responsibilities for all four offices will be combined in the body of the new Public Services Ombudsman as established by the Bill.

The new unified Ombudsman service will have responsibility for investigating maladministration and service failure by the Assembly, its sponsored public bodies and a number of other publicly funded bodies; the Welsh Health Service bodies (primarily NHS Trusts and Local Health Boards in Wales) and certain health service providers in Wales; all local government bodies and all social landlords in Wales. This follows the recommendation made by the National Assembly Advisory Group in 1998 and reflects the results of the 2002–03 Wales Office consultation on the principle of bringing these offices together into a unified service led by one person to provide a modern, flexible and accessible service for complainants.

As the elements and powers of the unified role are currently based in a number of different pieces of legislation it has been necessary to produce a new and sound legislative framework to create a coherent and unified jurisdiction. This has also created a valuable opportunity to modernise the legislation to reflect the demands and pressures of the work of today's Ombudsmen.

## 2. MAIN RESPONSIBILITIES

The unified Ombudsman's office will provide a single route for receipt and investigation of complaints about public bodies in Wales.

The Ombudsman will deal with complaints relating to functions devolved to the Welsh Assembly including Health and the NHS in Wales, Local Government, Social Housing, Agriculture, Forestry, Fisheries and Food, Planning, Culture, Industrial and Economic Development, Transport and Roads, and Sport, Recreation and Tourism.

Certain functions are reserved to my office of UK Parliamentary Ombudsman, as they remain the responsibility of the UK government. These matters include Social Security and Pensions, Immigration and Nationality, Income Tax and Tax Credits, Defence, Foreign Affairs and National Security and Customs and Excise.

Of course, there will be some issues that are shared between the two legislatures—for example Public Health and Civil Defence—and these “cross-border” issues will require co-operation and joint working between Ombudsmen.

## 3. THE BILL

*The Bill is divided into three parts*

Part One establishes the office of the Ombudsman. Part Two covers the Ombudsman's powers of investigation, including the identification of bodies in remit, and establishes the process for dealing with complaints, including the reporting arrangements. Part Three deals with the Ombudsman's functions as they relate to the conduct of local government members and employees. This part also formally abolishes the offices of Welsh Administration Ombudsman and the Health Service Commissioner for Wales, the Social Housing Ombudsman for Wales and the Commission for Local Administration in Wales.

The Ombudsman's powers of investigation are similar to the powers I hold as UK Parliamentary Ombudsman and Health Service Ombudsman for England; the Welsh Ombudsman is entitled to investigate maladministration by an organisation within his (or her) remit; an alleged failure in a service provided by an organisation within remit or an alleged failure by such organisations to provide certain services. The Ombudsman will be directly accessible to the people of Wales on all matters, as there is no equivalent of the UK requirement to have complaints against governmental bodies referred by a Member of Parliament.

The definitions of actions and services contained in the Bill ensure that only the public functions of the listed authorities can be investigated. The Ombudsman may investigate alleged maladministration in the exercise of the Assembly's administrative functions but may not investigate the exercise of the Assembly's legislative, judicial or quasi-judicial functions.

The Ombudsman cannot investigate a complaint relating to the discharge by a listed organisation of its functions otherwise than in relation to Wales, except in relation to the Assembly as, of course, the Assembly may exercise cross-border functions on occasion. Any function of a body in remit which relates to the Welsh language or any other aspect of Welsh culture is automatically regarded as being discharged in relation to Wales and is therefore included within the Ombudsman's jurisdiction.

The Ombudsman is entitled to take reasonable steps to resolve complaints without having to proceed with a formal investigation in every case. This power of alternative resolution is available to the Ombudsman to use instead of or in addition to the power of investigation as he thinks fit, and allows for greater local dispute resolution where appropriate. The Scottish Ombudsman already has this useful power and the Local Government Ombudsman and I anticipate receiving it by means of a Regulatory Reform Order later this year.

An additional power given to the Welsh Ombudsman is the power to issue guidance to bodies within remit about the exercise of their functions and about good administrative practice. The Bill makes it clear that this guidance should be followed by listed bodies unless there is good reason not to. This valuable power will enable the Ombudsman to assist organisations in improving their services by offering clear advice based on issues of concern emerging from investigations and by setting clear bench markers for the authorities concerned.

## 4. JOINT WORKING

There is an increasing need for joint working, information sharing and close co-operation between Ombudsmen, and this is reflected in all new legislation in this area, including the current Bill. It is clearly essential that investigative bodies are able to share information and work together to achieve common ends where this will allow more effective investigation and improve the service for customers.

The Bill requires the Welsh Ombudsman to consult other specified Ombudsmen, including myself, whenever he (or she) thinks that a complaint could be the subject of investigation by that other Ombudsman. When such consultation takes place, the Ombudsmen may co-operate and agree on any aspect of the investigation; for example, on how it should be conducted and the form and content of any report produced

as a result of the investigation. There is also a specific power to carry out joint investigations and publish joint reports. To supplement this, information that would normally have to be kept confidential may be disclosed by the Ombudsman for the purposes of consulting, co-operating, working and reporting jointly with other Ombudsmen.

These powers will be particularly useful where, for example, an issue under investigation is a cross-border or a national one where combined investigation would be an obvious and sensible use of resources. The use of these powers will also work towards ensuring a “joined up” service for complainants where joint investigation proves to be necessary or expedient.

As regards my own jurisdiction, it is anticipated that a reciprocal power to consult, investigate collaboratively and share information will be specified in the proposed Regulatory Reform Order, to supplement the implied power that exists currently.

## 5. CONCLUSION

I greatly welcome the Bill and the creation of the new Public Services Ombudsman for Wales, as a modern, practical and pragmatic reorganisation of the Ombudsman’s service which will ensure that all investigations into public service complaints in Wales will be dealt with in light of the same principles and the same standards.

The reinforced powers of consultation and joint working will ensure an efficiency of investigation and the provision of a seamless service to complainants as well as reducing any problems presented by cross-border issues.

6 January 2005

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## 7. Written evidence from Citizens Advice Cymru

### INTRODUCTION

Citizens Advice Cymru welcomes the opportunity to comment on the Public Services Ombudsman (Wales) Bill 2004. The Citizens Advice Bureaux (CAB) Service in Wales is the largest integrated network of independent advice agencies in Wales with service delivered from 54 main offices and 210 secondary advice outlets, with telephone access in every CAB, which is available 467 hours per week. In the year 2003–04, Wales CABx dealt with 299,078 enquiries including welfare benefits, debt, consumer, employment, housing and legal issues.

As the request from the Joint Committee is to look at the proposals within the context of the Bill, we will make comments with references to particular clauses and some general comments at the end.

### PART 1 THE PUBLIC SERVICES OMBUDSMAN FOR WALES

#### *Clause 1 The Public Services Ombudsman for Wales*

Citizens Advice Cymru strongly supports a single Ombudsman Service in respect of the functions to be adopted, which were previously exercised by the Commission for Local Administration in Wales, the Welsh Administration Ombudsman, the Health Service Commissioner for Wales and the Social Housing Ombudsman for Wales.

The new framework should lead to more effective handling of complaints, which cross lines of jurisdiction and give a single point of entry for complainants and CAB advisers acting on behalf of clients.

It would also help in the creation of a higher national profile of Ombudsman Services in Wales.

It should also afford all affected groups and individuals equality of redress. Many CAB clients are particularly dependent on public services. They may also be disadvantaged by low incomes, sickness and disability, language and isolation. A research study conducted by MORI on behalf of Citizens Advice (2003–04) shows that CAB users overall are more likely to be in social grades C2DE, have a long-term limiting illness or disability and live in social housing than people who approached other organisations for help and advice. The true test of any redress mechanism is whether it is accessible to and meets the needs of the most disadvantaged. That is what matters for CAB clients. It is important that any reform does not lose sight of those requirements.

PART 2: INVESTIGATION OF COMPLAINTS

*Clause 3 Alternative resolution of complaints*

We welcome the provision that allows for the Ombudsman to take steps to resolve complaints without proceeding to a formal investigation. The primary concern of a Bureau adviser, is to find the most effective solution to a client's problem. At the point of entry, the client is at a stage when ombudsmen are a distant prospect. When clients come to a Bureau nursing a grievance and asking how to progress it, with some few exceptions we start mostly with a problem to be resolved preferably quickly. A system of alternative resolution is therefore an important avenue of redress when a solution is easily obtainable and will provide Bureaux with an efficient resource in terms of progressing client casework. For example,

A client in Mid Wales, who had a central heating system installed through a full Home Energy Efficiency Scheme grant, had been without hot water for 18 months due to incomplete installation. Despite numerous contacts with the Scheme manager and the installer, nothing had been done. The client had been powerless, as she had no contractual relationship with the installation company. However, contact with the Welsh Administration Ombudsman resulted in an immediate visit from the contractor, who promised to complete the work the following week.

*Clause 6 Requirements: Complaints referred to the Ombudsman*

Subsection (1) (d) states that a complaint "must be referred to the Ombudsman before the end of the period of one year starting on the day on which the complaint was made to the listed authority". In order for one-year time-limit to be met, it is vital that internal checks of a listed authority are time-limited to ensure sufficient time for complainant to consider taking forward to the Ombudsman within one year. We welcome the inclusion of subsection (2), which allows for the Ombudsman to determine any question of whether the requirements of subsection (1) are met in terms of a complaint as an avenue for judgments over the complainant's rights to complain to the Ombudsman in terms of time limits.

Furthermore, there is a confusing range of internal mechanisms in terms of complaints to listed authorities and CABx experience shows that complainants can find it difficult to know what stage their complaint has reached. A clear signal that the option of going to the Ombudsman could be taken up, after a given time has elapsed, would be a significant advance and provide authorities and departments with incentives to respond quickly. For example,

A client at a North Wales CAB had appealed against a decision by his Local Authority to refuse Council Tax Benefit on grounds of too much capital, due to the judgement the client had and amount of notional capital that took him above the capital level. The money related to a savings bond that the client's partner had and which she cashed and gave to her son, for her grandchildren, 18 months before she moved in with client. An appeal letter had been written two months previously, to which in response the LA said they would be reviewing the decision. Despite numerous telephone calls from the client and Bureaux, there still had been no decision. The CAB wrote to the Benefits Section referring to a recent Ombudsman report on delays in referring Housing Benefit appeals to Appeals Service and stating that they would be initiating a social policy action in relation to Council Tax Benefit appeals. They promptly received a reply to say that the cases would be passed to Appeals Service within 14 days.

We therefore seek clarity over whether periods for internal consideration by all listed authorities is to be time limited and that sufficient mechanism for notices on the option to go to the Ombudsman will be put in place. This would add further incentives for listed authorities to respond quickly and avoid confusion as to the client's rights in terms of referrals.

*Clause 8 Exclusions: matters not relating to Wales*

Where services are provided in England under contract for a listed authority under Schedule 3, there should be sufficient clarity for clients and Bureau advisers and the general public, as to the appropriate Ombudsman for referral eg for services provided from and NHS Trust in England, which is contracted as a regional centre by a Welsh authority, or whether the investigation is subject to Consultation and Co-operation as referred to in Clause 24. CAB advisers base their work on the sharing of sufficient and appropriate information for clients in order for them to find the most effective solution in relation to their enquiry. It is therefore vital that any information material published by the Ombudsman makes it clear the extent of his/her remit.

## GENERAL

*Profile of the Ombudsman*

The Bill provides a framework for the structure of the Ombudsman service and his/her office and the powers of investigation of the new body. We suggest that the new body should also have a high profile and be given an enabling, rather than prescriptive, framework. This needs to be coupled with adequate financial foundations to this end.

In this respect, we would expect the Ombudsman to reflect the principles of the CAB Service. As well as helping, we have an equal commitment to ensuring that their experience has an influence on policymaking and service delivery. In Ombudsman language, we alert to systematic problems and much effort is expended at a UK, national and local level to secure improvement.

Furthermore, we see the value of redress for the relatively few individuals, which only an Ombudsman can secure as an essential ultimate right and also ultimate sanction on the organisation responsible for the injustice. But we attach as much, if not more importance to the influence which ombudsmen exercise, in their judgements on individual cases, in defining standards and influencing practice ie serving the wider public good.

*Quality of internal complaints handling*

We attach particular importance to the new body being free to develop its operations in the best interest of complainants. We suggest that it should be an integral part of the new body's function to comment upon, and engage in continuing dialogue about the quality of internal complaints handling. Public sector ombudsmen have the potential to exert a major influence since they are, in effect, auditing internal complaints handling in every complaint they investigate. The relationship between access to internal complaints mechanisms and the ombudsmen will be crucial. It will affect how accessible ombudsmen genuinely are.

*Independence of the Ombudsman Service*

In view of the relationship with the Assembly (with regards to the directions over the production of annual reports, salary, estate etc and the powers of investigation into maladministration or service failure by the Assembly), the independence of the Ombudsman, as an adjudicator of the standards of services delivered to the public must be guarded.

12 January 2005

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### 8. Letter from Newport City Council

The Bill aims to bring together the separate Offices of Welsh Administration Ombudsman, Health Service Commission Wales, Commission for Local Administration in Wales and the Social Housing Ombudsman for Wales, to create a unified Ombudsman's jurisdiction for Wales.

This unified approach is to be welcomed. A number of complaints cut across several organisations and a "joined up" approach to settling and determining complaints is therefore sensible. Further thought will, however, need to be given to the detail of the new arrangements in order to ensure that effective procedural arrangements are put in place to deal with complaints which cut across several organisations such as partnership issues.

In terms of the detailed provisions of the Bill, it appears that there are many similarities between the new Ombudsman and the Commission for Local Administration in Wales in terms of the way in which the new Ombudsman will undertake his role. As such, there are no specific matters within the Bill which I would wish to highlight on behalf of Newport City Council.

*J G Ashurst*

Head of Law and Standards

7 January 2005

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### 9. Written evidence from The British and Irish Ombudsman Association

The British and Irish Ombudsman Association welcomes the new legislation which it believes will provide a coherent basis for a unified public services ombudsman scheme for the people of Wales.

The Association has had the opportunity to read the memoranda submitted by Ms Ann Abraham, Parliamentary and Health Service Ombudsman, and Mr Tony Redmond, Chairman of the Commission for Local Administration in England, and endorses the following key points made by them:

- The importance of cooperation and joint working between ombudsmen, especially in areas of overlapping responsibility such as public health and civil defence.
- The need for consultation between the Welsh Public Services Ombudsman and other ombudsmen in appropriate cases. The Association particularly welcomes the provision of specific powers for the ombudsmen to carry out joint investigations and publish joint reports.
- The facility for the people of Wales to have direct access to the Ombudsman without the requirement that a complaint about a government department must be made through a member of the Welsh Assembly.
- The emphasis on resolving complaints at the earliest possible stage without having always to proceed to formal investigation. This is in line with the approach which increasingly ombudsmen in both the public and private sectors are now taking.
- The provision of a power to give guidance to organisations within the Ombudsman's jurisdiction and the expectation that they will follow the guidance unless there is a good reason not to do so.
- The need for the English Local Government Ombudsmen and the Public Services Ombudsman for Wales to retain explicit powers to transfer cases between them.

*Gordon Adams*  
Secretary

11 January 2005

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## 10. Written evidence from the Commission for Local Administration in England

### GENERAL

I welcome the several aspects of the Bill which are clearly designed to modernise in a number of ways provisions that were previously contained in the Local Government Act 1974—the legislation which still governs our procedures and jurisdiction. For example, the Bill opens the door to alternative ways of resolving complaints other than by way of investigation, provides alternative processes for reporting on investigations and widens the Ombudsman's powers of delegation.

All of these—and others—are useful measures. We are also seeking to modernise some aspects of the 1974 legislation in conjunction with the Parliamentary and Health Services Ombudsman, with the main object of permitting closer working between us. The current intention is that this will be achieved through a Regulatory Reform Order, the terms of which are still in preparation.

But given the need for brevity, and the advanced progress of this Bill, the comments which we set out below concentrate on two areas where I consider there is a case for further improvement of the Bill's provisions.

### 1. TRANSFER OF CASES BETWEEN THE LOCAL COMMISSIONERS IN ENGLAND AND THE PUBLIC SERVICES OMBUDSMAN FOR WALES

Section 23(10) of the Local Government Act 1974 currently provides:

“Each of the Commissions—

- (a) shall make arrangements for Local Commissioners to accept cases for which they are not responsible including, where the other Commission so request, a case arising in the country of that other Commission, and
- (b) shall publish information about the procedures for making complaints under this Part of this Act.”

Under these provisions, there have been well-established arrangements for the English Local Government Ombudsmen to transfer individual cases for investigation to the Welsh Local Government Ombudsman (and vice versa) without restriction as to the country in which the complaint arose. These provisions have been used principally where an ombudsman (in England or Wales) was presented with a conflict of interest in conducting an investigation. The ability of the ombudsman in the other country to investigate in such cases enhanced the public perception of the independence of the ombudsman institutions in both countries.

In 2004 both the English and Welsh Commissions were given jurisdiction over internal drainage boards. In a small number of cases the area of the board is partly in Wales and partly in England. In these cases, it was agreed between the English and Welsh ombudsmen that complaints would be dealt with on the basis of the geographical location of the particular problem. Section 23(10) confers the legal power for the English Local Government Ombudsmen to transfer such complaints received by them to the Welsh Ombudsman.

My understanding is that it has been the intention of the Welsh Ombudsman and ourselves that these arrangements for the transfer of cases between the institutions should continue. In January 2004, I wrote to the relevant official in the Welsh Assembly Government in response to the consultation on the proposal for the Welsh Administration Ombudsman to undertake investigations as Commissioner for Local Administration in Wales. In doing so, I expressed my support for the continuation of the reciprocal arrangements for transferring cases.

But my understanding of Schedule 6 to the Bill paragraph 8(8) is that the words appearing in italics in my above citation of section 23(10) will be repealed. This will have the effect of removing the powers of the English Local Government Ombudsmen to transfer cases received by them, even if the Welsh Public Services Ombudsman may be able to use his new powers in the Bill eg on delegation to any other person. (The powers of delegation by Ombudsmen under the 1974 Act are limited to “officers” of the English Commission.)

In addition paragraph 11(3) of Schedule 6 to the Bill inserts a completely new provision in the 1974 Act to the effect that an English Local Government Ombudsman:

“... shall not conduct an investigation under this Part of this Act in respect of any action taken in connection with the discharge by an authority of any of the authority’s functions otherwise than in relation to England.”

This provision would also prevent the transfer of individual investigations between England and Wales as currently permitted by the 1974 Act.

I would request the powers of the English Local Government Ombudsmen to make arrangements to transfer cases to the Public Service Ombudsman for Wales be restored.

## 2. CONSULTATION AND CO-OPERATION BETWEEN OMBUDSMEN—CLAUSE 24 OF THE BILL

I welcome the provisions of this Clause, as far as they go. The Clause places the Public Services Ombudsman for Wales under a duty to consult with the Local Government Ombudsmen (or certain other specified statutory ombudsmen or commissioners) where he considers that the subject of the complaint or investigation could be the subject of an investigation by us (or one of the other specified ombudsmen). The extent of the duty to consult and cooperate imposed on the Public Services Ombudsman for Wales is comprehensive and powers are conferred on him and the appropriate “other” ombudsman to conduct a joint investigation and prepare and publish a joint report.

However, Clause 24 will only be triggered where the Public Services Ombudsman for Wales identifies a cross-boundary issue following a complaint to him. Similar powers are not conferred on the Local Government Ombudsmen in connection with complaints received by them (or the other specified ombudsmen). This would seem to be a missed opportunity to ensure that these powers are two-way. If they are appropriate for complaints received in Wales, the question must be asked why not for complaints received by comparable institutions outside Wales?

We are seeking to address these issues in conjunction with the Parliamentary and Health Services Ombudsman through the proposed Regulatory Reform Order which I have previously mentioned. But it is a wider issue and I can see no objection to amending this Clause so that the duty to consult and cooperate, including powers of sharing information and joint investigation, are made truly reciprocal across a broad spectrum of ombudsman institutions.

## CONCLUSION

In summary, I ask that the provisions of the Bill be amended as appropriate so that:

- (a) the English Local Government Ombudsmen and the Public Services Ombudsman for Wales retain explicit powers to transfer cases between them comparable to those enjoyed for many years under current legislation; and
- (b) the powers of consultation and cooperation be made reciprocal so that they do not only apply where the Public Services Ombudsman for Wales receives a complaint which he considers to contain a cross-boundary issue.

I hope these comments are helpful. If you require any further clarification please do not hesitate to contact me.

I am sending a copy of this letter to Adam Peat, Welsh Administration Ombudsman, Jerry White and Patricia Thomas, Local Government Ombudsmen, Ann Abraham, Parliamentary and Health Services Ombudsman and also to Virginia Hawkins (National Assembly for Wales).

*Tony Redmond*  
Chairman

7 January 2005

## 11. Written evidence from the Welsh Language Board

### PUBLIC SERVICES OMBUDSMAN (WALES) MEASURE

1. Thank you for the invitation to provide evidence on the draft measure noted above, to follow on from our previous contributions. The response refers to specific clauses of the measure where appropriate.

### THE REMIT OF THE PUBLIC SERVICE OMBUDSMAN

2. The Board is of the opinion that the nature of the relationship between the office of the Ombudsman, the functions under this measure and the functions of the Welsh Language Board under the Welsh Language Act 1993 needs to be considered and discussed. At present, the Board has powers under clause 17 and 18 of the 1993 Act to consider written complaints about alleged failures of public bodies to implement their Welsh Language Schemes. Clause 7(1) of the above measure refers to the matters the Ombudsman could investigate, while clause 4(1) notes who can present a complaint to the Ombudsman. Subject to arrangements and processes that are outlined in the measure, the Board's understanding is that the Ombudsman can investigate complaints of maladministration or failures by listed bodies in the context of their duties under the Welsh Language Act 1993.

3. We welcome the fact that the Ombudsman will be able to consider complaints of this kind. This is consistent with the principle of mainstreaming the Welsh language in the work of all public sector bodies here in Wales. It is also helpful in strengthening the message that failure to comply with their Welsh Language Scheme is an example of maladministration and a failure to provide a service by public bodies.

4. On a practical level, a memorandum of understanding or protocol will need to be established between the Ombudsman and the Welsh Language Board setting out how the type of complaint noted above are dealt with in order to avoid duplicating work. While there is an overlap between the work of the Ombudsman and the Board in this field, it should also be noted that there are differences in the functions and remit of the two bodies. The exact nature of the relationship will need to be considered in light of the incorporation of the Board into the Welsh Assembly Government.

5. Any publicity material developed by public bodies about how to submit a complaint (see clause 32 of the measure) will need to specify to whom complaints regarding the implementation of Welsh Language Schemes should be addressed. This material should also include a reference to the fact that failure to ensure the language choice of an individual can also constitute maladministration or failure.

6. The Board welcomes the inclusion of clause 8(3), which reiterates the points made above. This clause makes it clear that the function of a listed body that deals with the Welsh language or any aspect of Welsh culture is a matter for the Ombudsman.

### THE STATUS OF THE PUBLIC SERVICES OMBUDSMAN

7. The measure confirms that the intention is to establish the Public Services Ombudsman as a Crown body. This will enable the Board to contact the Ombudsman's office immediately after it has been established, to ask it to prepare a Welsh Language Scheme in accordance with the Board's statutory guidelines. The Scheme will set out how the Ombudsman will implement the principle, when carrying out public business in Wales, will treat the Welsh and English languages on the basis of equality, in accordance with the Welsh Language Act 1993. It is essential and important that the Ombudsman can offer effective, bilingual services to the public, especially considering that the Ombudsman can investigate examples of maladministration in the bilingual service offered by listed bodies.

*Prys Davies*  
Strategic Operations Director

*11 January 2005*

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## 12. Letter from Standards Committee of Conwy County Borough Council

### PUBLIC SERVICES OMBUDSMAN (WALES) BILL

Having considered the Public Services Ombudsman (Wales) Bill, the Standards Committee of Conwy County Borough Council wish to submit the following response for consideration:

Whilst it is noted that the Bill gives comprehensive cover to dealing with matters of alleged maladministration, it does not appear to acknowledge to the same extent matters relating to ethics and probity and in particular breaches of the members code of conduct.

In this connection it is suggested that the Standards Committee could pay an important part in improving the co-operative working between and amongst officers and elected members. For example, the Committee would refer to matter of alleged breach of the code of conduct reported to the Ombudsman (as is now the case in Wales) and where the Ombudsman concluded that no formal action or investigation was necessary. Where the alleged breach (or the allegation of a breach) appears to have been caused by a lack of understanding of the code, the Committee believes that in such cases provision should exist for the Ombudsman to refer such matter(s) on an anonymous basis through the Monitoring Officer with a recommendation that the Committee looks into a possible “training” requirement on specific issues.

The Committee also noted that the Bill seemed to provide the Ombudsman with wide discretion. Having regard in particular to the provisions of clauses 9(3), 9(4) and 13(3) of the Bill, the role of the Committee in general could perhaps be strengthened if a similar opportunity was provided for earlier involvement of the committee in respect of alleged breaches of the code.

Turning to clause 13(4)(b) of the Bill, the Committee raised the question of a possible conflict of these provisions with Human Rights legislation.

The Committee hopes that the Ombudsman will continue to work closely with Monitoring Officers and that this Bill will be an opportunity for a system to be approved that will provide Standards Committees in general at a local level, to make a positive contribution to the ethical framework of local government.

*M G Mason*  
Chairman

*18 January 2004*

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### 13. Written evidence from Dr A H Stamp

#### PUBLIC SERVICES OMBUDSMAN (WALES) BILL [HL]

1. Ombudsman. Satisfactory.
2. & 3. Powers of Investigation. Satisfactory.
4. Complainants. Satisfactory.
5. & 6. Requirements to complain. Satisfactory, but suggest Ombudsman could extend one year duration if appropriate.
7. Matters to be investigated. Satisfactory.
- 8.–11. exclusions. Satisfactory.
12. Decision not to investigate. Sub-section 3, for “may” substitute  
(What provision is there for disagreement with Ombudsman’s decision not to investigate? See “Later Comment”).
13. Investigation procedure Sub-section 4b Any person can be represented by counsel if the person so wishes.
14. & 15. Information; Obstruction Very satisfactory in providing the Ombudsman with real power.
16. Reports of investigation 5 for “May” substitute “must”.
17. Publishing reports. (1) (4) At least four weeks not three. Otherwise satisfactory.
18. Publishing, health care. Sub sections (2) (6) four weeks not three. Otherwise satisfactory.
19. Action after report. Very satisfactory.
20. Reports, alternative procedure. Sub section (6) substitute “must” for “may”.  
(What is the procedure for objection to Ombudsman’s decision ? See “Later Comment”).
- 21.–22. Special reports. Satisfactory.
23. Special reports. See “Later Comment”.
24. Consultation and Co-operation Satisfactory.
25. Disclosure of information. Does this consider Freedom of Information Act 2005?
26. Disclosure prejudicial etc Satisfactory.
- 27.–29. Listed authorities. Satisfactory.
30. Power to issue guidance. Satisfactory
31. Defamation. Satisfactory.

32. Publicity for complaints. Satisfactory.
33. Compensation Satisfactory.
- 34.–45. Page 31 Section 14 lb Substitute “must prepare any other report . . .”.

LATER COMMENT

With regard to the establishment of the Ombudsman, there does not seem to be sufficient emphasis or clarity on the role of the Ombudsman in relation to the Assembly.

1. If the Ombudsman is to investigate complaints against the Assembly, then he must be fully independent of the Assembly, and his judgment accepted by the Assembly.

2. What occurs if the Assembly does not resolve to approve the Ombudsman’s recommendations. Section 23. Does this involve further proceedings in a Court of Law ?

3. Again, if there is a complaint against the Ombudsman, who decides the procedure and verdict.

4. Also, is there any appeal by either party from the judgment of the Ombudsman? If so, to whom?

Page 31 Section 14 16 is noted.

29 December 2004

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**14. Written evidence from Mal Bowen**

RESPONSE TO PUBLIC SERVICE OMBUDSMAN (WALES) ACT 2005

Having read the draft Bill, I would like to congratulate the Lord Evans of Temple Guiting for his excellent work. However, there are two points which I believe need to be addressed.

A. SCHEDULE 1. PARAGRAPH 3. TERM OF OFFICE

In an effort to ensure public confidence in the complete impartiality of the new ombudsman, I believe that it should be mandatory for the successful candidate to declare any membership or any links to any clandestine organisation, as is the case with current members of the Welsh Assembly. When the ombudsman delegates to any person who he/she authorises to carry out his duties, it should be mandatory that they make the same declaration.

B. SCHEDULE 1. PARAGRAPH 21, SUPPLEMENTARY POWERS

I believe that adequate notice should be given by the new ombudsman to the Welsh Assembly Government of any major sale or acquisition of property he deems to be necessary to the discharge of any of his/her functions.

3 January 2005

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**15. Written evidence from the Welsh Consumer Council**

SCRUTINY OF THE PUBLIC SERVICES OMBUDSMAN (WALES) BILL

INTRODUCTION

My name is Viv Sugar; I am the Chair of the Welsh Consumer Council and was appointed in April 2003. The Welsh Consumer Council is the leading generalist consumer organisation in Wales, established by the Government in 1975 to represent the interests of domestic consumers of goods and services, but with a particular emphasis on the needs of disadvantaged and vulnerable customers. It is probably fair to say that we leave the territory of goods more to our colleagues in the Consumers’ Association and *Which* magazine. We tend to concentrate on how groups of people are affected as consumers, communities, and groups of interest; and in particular research on public policy to look at how consumers’ rights are affected. We are funded by the DTI and our main purpose is to promote action for furthering and safeguarding the interests of consumers; to ensure that those who take decisions which will affect the consumer can have a balanced and authoritative view of the interests of consumers before them; and to insist that the interests of all consumers, including people who are inarticulate or disadvantaged, are taken into account. Obviously, we are part of that network of the National Consumer Council, the Scottish Consumer Council, but in Wales we lay a particular emphasis on working within the international consumer movement and the consumer rights as embraced by the United Nations in their guidelines. Those rights are the right to satisfaction of

basic needs, the right to safety, the right to be informed, the right to choose, the right to be heard, the right to redress, the right to consumer education, and the right to a healthy environment. Perhaps of those it is in a public services ombudsman context today; it is the right to satisfaction of needs; the right to be informed; the right to be heard, and the right to redress, that are particularly relevant. When the original consultation paper came out, we welcomed the proposals to bring together in one office the work of the various ombudsmen and commissioners in Wales. We believe that the Ombudsman system has provided an important service for consumers, having an essential role in ensuring that consumers do have redress, where redress is needed, and that complaints are investigated professionally and resolved by whatever means are appropriate. We stated then that we believed that people in Wales are likely to be better served if a single ombudsman's office was established, so we endorsed the argument for a service that would be more flexible and more comprehensive in the way that it dealt with complaints, supporting the idea of a joined-up way of providing service, the idea of a one-stop shop for better service. We also believed that that would give a higher public profile, because I am sure this joint committee will be aware that people's understanding and knowledge of ways of complaining is not as widespread as we would like it to be. In our original response to the consultation paper we also commented very favourably on the idea of an advisory board to assist. If that is not to be a statutory requirement, we would like to press for some mechanism in order that users of public services and people with knowledge of specific areas of public administration are regularly consulted by the new ombudsman. Here we are, therefore, with the Bill, which strengthens and widens the powers for resolving disputes, for handling complaints in a rationalised and clarified way. We think this is particularly important, as public services are moving towards jointly provided services by different agencies working together. The new single service should be a streamlined, efficient and joined-up approach. We are particularly keen on the role that the Welsh Ombudsman will have in issuing guidance on good practice.

#### GOOD PRACTICE

The Bill strengthens and widens the powers for resolving disputes. Handling of complaints will be rationalised bringing greater clarity and public understanding. This is particularly important in the context of today's "joined-up" approach, where different agencies work together in partnerships to jointly provide services. We believe that the creation of a single service will bring opportunities for streamlining and greater efficiency in the way that people's complaints are handled. We also welcome the emphasis on the Welsh Ombudsmen's role in promoting good practice through the issuing of guidance and advice—encouraging public sector agencies to say sorry and to learn lessons so that mistakes are not repeated in the future. We are aware that the current Ombudsman and Commissioner Services find a case to answer in only a small minority of the referrals they deal with. There must, therefore, be a lot of frustration and unhappiness in the cases where no maladministration or fault is found but where citizens have felt sufficiently aggrieved to pursue matters sometimes over long period of time. Perhaps an early apology (without necessarily admitting responsibility) or the use of a mediation service could be considered as useful steps before a decision is made to approach the Ombudsman.

#### ACCESSIBILITY

The Welsh Consumer Council is concerned that the Welsh Ombudsman service should be accessible, regardless of geography or disadvantage, and hopes that sufficient staff will be employed so that people can be visited in their own localities or special arrangements made for vulnerable people. There will also need to be arrangements for non English speakers and those who prefer to do business through the medium of Welsh or those from black and ethnic minority communities. The service must be visible, with publicity for the new role and a standardised process for all complaints—the simpler and speedier the better! It will also be important to train all advice agencies and public officials in how to advise people who wish to pursue a complaint to the Welsh Ombudsman.

#### FLEXIBILITIES

We welcome the new flexibilities in the Bill which will allow the Ombudsman to carry on investigating complaints affecting groups of people even if the lead complainant withdraws [Clause 2 (7) and Clause 2 (4)] where the procedure for submission of complaints may not have been technically fully compliant but where the Ombudsman thinks it reasonable to proceed. Similarly Clause 5(1)(b) which gives flexibility on time limits beyond the normal one year.

#### BOUNDARIES

In cases which involve service failure/failure to provide relevant service, the Welsh Ombudsman will need to agree protocols with the Children's Commissioner, the Older Peoples' Commissioner and his colleagues across the border in England. There is a complex world of cross boundary service provision—between health and social care agencies, between housing, care and voluntary bodies, between social services and education, between England and Wales—particularly in health treatment or other public facilities which serve the

population on both sides of Offa's Dyke! Another crucial issue is to establish whether the proposals in the Bill give the Ombudsman the powers he needs to question clinical or professional judgement across all the disciplines involved in joint care.

#### STANDARDS

The Welsh Ombudsman has an important role in Standards in Public Life. Consumers and citizens have the right to question the conduct of their representatives and the Ombudsman has a role in investigating allegations that a Councillor has failed to comply with the Code of Conduct of his/her authority under the Local Government Act 2000. However there is still confusion about what constitutes an interest and differences between the codes that apply to different public bodies. We understand that a review is under way and hope that there will be greater clarity in the near future.

#### FUTURE RELATIONSHIPS

Others are calling for the Ombudsman to report to Partnership Councils, the Welsh Local Government Association Coordinating Committee, etc. The Welsh Consumer Council would like to build on Mr Peat's practice in 2004 when he attended a Consumer Forum we convened to brief all the different organisations in Wales about his work and ideas about the future. A wide range of organisations attended (energywatch, Postwatch, Citizens' Advice, Trading Standards officers, etc) and we believe this could develop into a useful opportunity to discuss with the Welsh Ombudsman the experiences of the people we all represent.

In the absence of a formally constituted Advisory Board we would like the Welsh Ombudsman to develop a consultation strategy to ensure that his work and the way it develops is informed by feedback from consumers and users.

#### CONCLUSION

The Welsh Consumer Council welcomes the Bill and the proposals for a Public Services Ombudsman (Wales) subject to the queries raised above and thanks the Joint Committee for the invitation to give evidence.

*Viv Sugar*  
Chair

24 January 2005

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### 16. Written evidence from Mr Chris W Drew

#### PUBLIC SERVICES OMBUDSMAN (WALES) BILL (HL)

##### COMMENTS FROM

1. I wish to make the following comments on one aspect of the Bill, specifically the scope and extent of the work of the Ombudsman.

2. Clause 27 (Listed Authorities) defines the extent of the remit and drives Schedule 3, the definitive list of public bodies, as well as providing for how that list can be amended to reflect changed circumstances.

3. The overall effect of the proposed Schedule 3 is to achieve a worthwhile and comprehensive unification of Ombudsman coverage within the Welsh public sector.

4. The inclusion of Registered Social Landlords, and many education, training, arts and leisure agencies and boards demonstrates a clear intent to ensure that any corporate bodies that receive large sums of public money should be included.

5. Many of the Schedule 3 bodies not only receive Government money but also are responsible for distributing it in accordance with criteria established either by the body itself or its sponsoring body or department.

6. The above situation can create a system whereby public money is eventually awarded to organisations that are not subject to the Ombudsman, thereby losing the "trail" of accountability.

7. This could be rectified by including within Schedule 3 some form of enabling authority that made it possible for any organisation already listed in Schedule 3 to make grants of public money conditional on that recipient agreeing for their organisation to be subject to the scrutiny of the Ombudsman—ie as though they were themselves a Schedule 3 body. It would be for the awarding body to determine whether such a condition was in the public interest, based on the nature, purpose and size of the money granted and the practicality or desirability of such consequential scrutiny.

8. One by-product of such an amendment would be to minimise and perhaps even eliminate any need for future amendments to the Schedule, in that all participants from WAG downwards could enforce Ombudsman supervision on any organisation that wished to receive public money.

An Independent Member of North Wales Police Authority

An Independent member of Conwy CBC Standards Committee

A Board Member of North Wales Housing Association (A Registered Social Landlord)

*21 January 2005*

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