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## AGENDA

<b>Committee</b>	STANDARDS & ETHICS COMMITTEE
<b>Date and Time of Meeting</b>	TUESDAY, 22 SEPTEMBER 2015, 4.30 PM
<b>Venue</b>	COMMITTEE ROOM 1, COUNTY HALL, COUNTY HALL, ATLANTIC WHARF
<b>Membership</b>	Independent Members: Richard Tebboth (Chair), James Downe, Hollie Edwards-Davies, Lizz Roe and Hugh Thomas  Councillors Cowan, Margaret Jones and Phillips  Community Councillor John Hughes

		<i>Time approx.</i>
<b>1</b>	<b>Apologies for Absence</b>  To receive apologies for absence.	4.30 pm
<b>2</b>	<b>Declarations of Interest</b>  To be made at the start of the agenda item in question, in accordance with the Members' Code of Conduct.	4.30 pm
<b>3</b>	<b>Minutes</b> ( <i>Pages 1 - 6</i> )  To approve as a correct record the minutes of the meeting of 21 April 2015.	4.35 pm
<b>4</b>	<b>Code of Conduct Complaints - Quarters 1 and 2</b> ( <i>Pages 7 - 8</i> )	4.40 pm
<b>5</b>	<b>Inquiry into Powers of Public Services Ombudsman for Wales</b> ( <i>Pages 9 - 106</i> )	5.05 pm
<b>6</b>	<b>Gifts and Hospitality</b> ( <i>Pages 107 - 126</i> )	5.20 pm
<b>7</b>	<b>Member Protocol on Child Protection Casework</b> ( <i>Pages 127 - 152</i> )	5.30 pm
<b>8</b>	<b>Standards Conference 2015</b> ( <i>Pages 153 - 160</i> )	5.50 pm

**9 Monitoring Officer's Verbal Update** 6.05 pm

- i) Independent Member Re-Appointment;
- ii) Committee's Annual Report 2014/15;
- iii) Whistleblowing Policy;
- iv) Officers' Interests Policy;
- v) Community Councils Charter.

**10 Forward Plan** (*Pages 161 - 168*) 6.25 pm

**11 Date of Next Meeting**

The next meeting is due to be held on Tuesday 15 December at 4.30pm.

**Marie Rosenthal**  
**County Clerk & Monitoring Officer**

Date: Wednesday, 16 September 2015

Contact: **Paul Burke 02920872412** [PaBurke@cardiff.gov.uk](mailto:PaBurke@cardiff.gov.uk)

**These minutes are draft and are subject to approval as an accurate record at the next meeting of the Standards & Ethics Committee to be held on 21 July 2015**

## STANDARDS & ETHICS COMMITTEE

21 April 2015

Present: Independent Members: Richard Tebboth (Chairperson), James Downe, Hollie Edwards-Davies, Lizz Roe

Councillors: Kate Lloyd, Georgina Phillips and Dianne Rees

Apologies: Community Councillor John Hughes and Hugh Thomas

### S31: DECLARATIONS OF INTEREST

The Chairperson reminded Members of their responsibilities under Part III of the Members' Code of Conduct, to declare any interests in general terms and complete 'personal interest' forms at the start of the meeting and then, prior to the commencement of the discussion of the item in question, specify whether it is a personal or prejudicial interest. If the interest is prejudicial Members would be asked to leave the meeting, and if the interest is personal, but not prejudicial, Members would be invited to stay, speak and vote. The following declarations were made:

<i>Councillor</i>	<i>Item</i>	<i>Interest</i>
Dianne Rees	Item 8 – Community Councils Charter	Personal: Councillor Rees is Chair of Old St Mellons Community Council

### S32: MINUTES

The minutes of the meeting of the Standards and Ethics Committee held on 27 January 2015 were approved as a correct record and signed by the Chairperson.

### S33: CODE OF CONDUCT COMPLAINTS - UPDATE

The purpose of this report was to provide the Committee with a brief update on complaints made against Members alleging breaches of the Code of Conduct.

The Monitoring Officer informed the Committee that this quarter there had been a rise in Member on Member complaints and in complaints from members of the public, especially in relation to delays in councillors giving responses to correspondence. The dictabank service is no longer available to councillors and there are no formal standards when it comes to the speed with which councillors should respond. Sometimes councillors are unable to respond because they are ill. Many complaints from members of the public

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concern planning issues. Member on Member complaints tend to be around disrespect and unfairness in meetings and on inappropriate use of Council resources. Training on the Code of Conduct is to be included in the new training programme.

During further discussion the following points were made:

- Members are not full-time employees and only receive an allowance. The informal deadline of five days to respond is not fair. Often Members receive what appear to be 'round robin' letters. A lot of these are political and Members can be unsure whether or not to respond.
- Now and again there is a major issue going on in a ward or within the Council as a whole and councillors can receive from members of the public a high volume of emails in a short space of time. It is inevitable that some will get missed. The real issue is Members who frequently fail to respond.
- Sometimes Members' computers are down.
- Members may not be inclined to respond to aggressive rants.
- As there are many circumstances which might cause Members not to respond it is difficult to make a blanket rule. The issue becomes a concern for the Committee when a Member's repeated failure to respond brings in the matter of the Code of Conduct, although in the first instance the problem should be reported to the party Whip.

RESOLVED –

- 1) That the report be noted.

**S34: REVISED GUIDANCE ON MEMBER CODE OF CONDUCT**

The purpose of this report was to update the Committee on revised guidance from the Public Services Ombudsman published in March 2015.

The Monitoring Officer informed the Committee that the guidance has not yet been distributed to all Councillors or Community Councils. The Ombudsman is a great advocate of training on the Code and is very keen on local arrangements to resolve Member-on-Member complaints. The guidance also addresses social media. The guidance will be used as a basis for Member training and the support of the Committee would be very valuable in encouraging all Members to attend such training, although it cannot be made mandatory.

During further discussion the following points were made:

**These minutes are draft and are subject to approval as an accurate record at the next meeting of the Standards & Ethics Committee to be held on 21 July 2015**

- When the guidance is distributed a one or two page briefing should be included to highlight the costs of dealing with Member-on-Member complaints.
- The guidance is very clear and helpful, especially the section on Social Media, and it would be a missed opportunity not to roll it out to all Members.

RESOLVED –

- 1) That the report be noted.

**S35: LOCAL GOVERNMENT (DEMOCRACY) (WALES) ACT 2013 - UPDATE**

The purpose of this report was to provide the Committee with information on new law. The Local Government (Democracy)(Wales) Act 2013 (Commencement No. 2) Order 2015 ('the 2015 Commencement Order') brings into force the remaining provisions of the 2013 Act with effect from 1 May 2015. There will be a requirement that Community Councils publish on their websites much of the information they hold, such as information on declarations of interests. Also, the Order will allow for more collaboration by allowing two or more local authorities to establish joint standards and ethics committees.

RESOLVED –

- 1) That the report be noted.

**S36: FEEDBACK FROM INDEPENDENT MEMBERS' OBSERVATION OF COUNCIL MEETINGS**

Independent members reported their observations and these were as follows:

- A meeting of the Policy Review and Performance Scrutiny Committee - The event was well chaired. The challenge to officers could have gone further. There was a sense that some Members were frustrated that there was not enough recognition of the extent of the challenge that the local authority is facing. The observation was useful as it helped to put the work of the Standards & Ethics Committee into context.
- The budget meeting of the Full Council – As this was the budget meeting it was perhaps not representative of meetings of the Full Council. There seemed to be a lack of information. Members of the public who attended were not provided with documents or with revised documents tabled during the meeting.

RESOLVED –

**These minutes are draft and are subject to approval as an accurate record at the next meeting of the Standards & Ethics Committee to be held on 21 July 2015**

- 1) That the report be noted.

**S37: MONITORING OFFICER'S VERBAL UPDATE**

- (i) All Wales Standards Conference 2015

There is a lot of interest in the Conference. There may be up to one hundred delegates. The PSOW will open the Conference. The aim is for the Conference to contribute to the maintenance of high standards and to thereby promote public trust in elected representatives. The Calver Case and the Flintshire Judgement will be considered. The Monitoring Officer will be writing to Chairs of all the standards and ethics committees in Wales inviting them to attend.

- (ii) Community Councils Charter – Update

A meeting has been held with Councillor Dan De'Ath, Cabinet Member for Safety, Engagement and Democracy. It is proposed that there will be some minor changes to the Charter, to be made in consultation with the Clerks to the Councils. This matter is to be reported to the Cabinet in May.

- (iii) Inquiry into Powers of the Public Service Ombudsman for Wales

A response was submitted to the Inquiry and it included valuable input received from the Committee.

- (iv) Committee's Annual Report to Council

The Monitoring Officer is to continue work on the report and drafts will be circulated to the Committee before it goes to a meeting of the Full Council.

- (v) Annual Meeting with Group Leaders

A date should be set for a meeting between the Committee and Group Leaders and Whips. The Monitoring officer invited comment on whether this should be a formal public or informal private meeting. It was suggested that the Chair could hold an informal meeting, which would allow feedback to be given on observations of meetings and on complaints to be followed by an invitation to Whips to attend the next Committee meeting.

RESOLVED – That the Monitoring Officer's update be noted.

**S38: DATE OF NEXT MEETING**

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The date of the next meeting has not been set. The dates for meetings of the Cabinet and scrutiny and other committees will go before the Annual Meeting of the Full Council, and the date of the next Standards and Ethics Committee meeting will be confirmed thereafter.

The meeting closed at 5.40pm

Signed \_\_\_\_\_  
Chairperson

Date \_\_\_\_\_

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**CITY & COUNTY OF CARDIFF  
DINAS A SIR CAERDYDD**



**STANDARDS AND ETHICS COMMITTEE  
22 SEPTEMBER 2015**

**REPORT OF DIRECTOR GOVERNANCE AND LEGAL SERVICES**

**MEMBER CODE OF CONDUCT COMPLAINTS 2015/16**

**Reason for this Report**

1. To provide Members of the Committee with a brief update on complaints made against Members alleging breaches of the Code of Conduct.

**Background**

2. During 2014/15, the Monitoring Officer dealt with a total of 96 Code of Conduct complaints as detailed below.

	<b>Q1</b>	<b>Q2</b>	<b>Q3</b>	<b>Q4</b>
Total	14	55	7	20
<b>Complaint Type</b>				
Member on Member	3	15	6	12
Public on Member	11	37	1	8
Officer on Member	0	3	0	0

3. The Table below shows the position for the first and second quarters of the financial year 2015/16

	<b>Q1</b>	<b>Q2</b>
Total	9	24
<b>Complaint Type</b>		
Member on Member	5	15
Public on Member	3	8
Officer on Member	1	1
<b>Status</b>		
Informally resolved	6	10
Referred to PSOW 1	2	8
Referred to PSOW 2	1	2
Referred to S&E	0	4

- *Referred to PSOW 1* = Referred to Public Services Ombudsman for Wales as their office is the appropriate body to investigate and report on the subject matter of the complaint due to the

complainant being a member of the public. Informal resolution may be attempted prior to such reference being made.

- *Referred to PSOW 2* = Referred to the Public Services Ombudsman for Wales as the matter is not considered to be a “minor” Member on Member complaint and therefore not suitable for informal or local resolution.

#### **4. Trends/Monitoring Officers Comments**

4.1 It is the Monitoring Officer’s intention that these figures be reported to the Committee on a regular basis.

4.2 There was a decline in the first quarter of the 2014/15 financial year. There does appear to be a pattern developing which sees an increase in complaints in Q2 each year.

4.3 The figures for the last three months have seen a rise especially in relation to member on member complaints. It is also concerning to see complaints by officers alleging members may have breached the Code although the numbers are very small.

4.4 Training on the Code of Conduct and the Ombudsman’s most recent Guidance is scheduled to take place in September which may help in reminding members of the requirements of the Code.

4.5 The forthcoming meeting with political group leaders will provide a useful forum to discuss these figures and what action can be taken to reduce the number of member on member complaints being reported.

4.3 The Local Resolution procedure also continues to provide a useful means to resolve most member on member complaints but there are several which will need to be dealt with more formally at the Hearings Panel.

#### **Legal Implications**

There are no legal implications arising from the content of this report.

#### **Financial Implications**

There are no direct financial implications arising from the content of this report.

#### **Recommendation**

The Committee is recommended to note the contents of the report.

**MARIE ROSENTHAL**  
**DIRECTOR GOVERNANCE AND LEGAL SERVICES**  
**15 September 2015**

**STANDARDS AND ETHICS COMMITTEE: 22 SEPTEMBER 2015**

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**REPORT OF THE MONITORING OFFICER**

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**INQUIRY INTO POWERS OF THE OMBUDSMAN**

**Reason for this Report**

1. To inform the Committee of the recommendations made by the NAW Finance Committee's Inquiry into the Powers of the Ombudsman.

**Background**

2. The Standards and Ethics Committee has statutory responsibility to monitor the ethical standards of the authority, and to consider ethical issues arising from complaints and to recommend to Council guidance on issues of probity (paragraphs (a), (e) and (h) of the Committee's terms of reference).
3. The role of the Public Services Ombudsman for Wales ("the Ombudsman") was established by the Public Services Ombudsman (Wales) Act 2005, bringing together the previous functions and powers of the Local Government Ombudsman, the Health Service Commissioner for Wales, the Welsh Administration Ombudsman and Social Housing Ombudsman for Wales. Under the current regime, the Ombudsman is responsible for considering complaints about maladministration or service failure by public bodies and misconduct of local authority elected Members or officers.

**Issues**

4. In late January 2015 the National Assembly's Finance Committee initiated an inquiry into the powers of the Ombudsman, specifically considering certain possible additional powers, such as powers to undertake investigations under his own initiative, to accept complaints orally, and to investigate complaints involving a combination of public and private healthcare treatments.
5. The Standards and Ethics Committee was invited to give evidence as part of the public consultation for the Inquiry. As the Committee had no scheduled meeting before the deadline for consultation responses, the consultation document was circulated to Committee members by email. The Chair, in consultation with the Monitoring Officer, then drafted a response on behalf of the Committee, reflecting Committee members' comments. Committee members were broadly supportive of the potential extension of the Ombudsman's powers, but highlighted various issues needing further consideration. The full consultation response sent on behalf of this Committee is attached as **Appendix 1** to this report.

6. In addition the Committee expressed a wish to see Connect to Cardiff (C2C) response to the consultation which sent separate to the Committee response and this is attached as **Appendix 2** to this report.
7. The Inquiry has now been concluded and the Inquiry report, published in May 2015, is appended as **Appendix 3** to this report. The issues and concerns raised by this Committee appear to have been given due regard. The Inquiry report recommends that a bill should be introduced into the Assembly to extend the role of the Ombudsman, as detailed in the 18 recommendations of that report.
8. The Welsh Local Government Association (WLGA) has circulated to Monitoring Officers a helpful summary of the key recommendations of the Inquiry, as follows:
  1. **Own initiative investigations** – the Inquiry agreed that the Ombudsman should have powers to undertake investigations under his own initiative, but that there should be ‘sufficient evidence to support an investigation’, consultation with Commissioners and relevant stakeholders and the Ombudsman should liaise with the Auditor General to take account of each other’s views and co-operate where necessary.
  2. **Oral Complaints** – Inquiry agreed that the Ombudsman should be able to accept complaints orally.
  3. **Statutory Complaints Process** – the Inquiry agreed that the Ombudsman should have a statutory complaints handling role. This complaints role should include provisions to:
    - publish a model complaints handling policy for listed authorities;
    - require regular consultation with relevant stakeholders;
    - require public bodies to collect and analyse data on complaints; and
    - ensure a standardised language is used by public bodies when collecting data to ensure comparisons can be made.
  4. **Ombudsman’s jurisdiction in private health** - Inquiry agreed and recommended the Ombudsman’s powers be extended ‘to enable him/her to investigate the whole complaint when a combination of treatment has been received by public and private healthcare providers and when that treatment has been initiated in the NHS’.
  5. **Changes to the statutory bar** (links with court action) – ‘Due to the legal complexities and the issue of the competence of the Assembly, the [Inquiry] concludes that changes should not be made in relation to the statutory bar, stay provisions and referral of a point of law at this time. However, the [Inquiry] recommends the Welsh Government explore these issues with the UK Government as part of future devolution discussions.’

#### **Code of Conduct**

- There was some debate, and split opinion from contributors, about the Ombudsman’s continued role in terms of member’s code of conduct. WLGA and OVV were clear about the importance of his continued role
- ‘The Ombudsman has indicated he would prefer to focus on the element of his work that deals with service users and service delivery, rather than local authority and town and community councils’ resolutions. The Ombudsman was generally content to retain this function, but only for the most serious cases. He had concerns with the resource implications of dealing with “low level Member against Member

complaints". He felt these type of complaints should be dealt with by councils at local level in the first instance and this should be reflected in legislation.'

- "The [Inquiry] believes that training for elected members and guidance could see a reduction in the number of trivial complaints in the future. The [Inquiry] acknowledges the work undertaken by the Ombudsman so far and believes he should continue to encourage local authorities to deal with complaints locally."
- The Inquiry recommends the Welsh Government considers mandatory training for elected members as part of their consideration of forthcoming legislation on Local Government reform.

9. The Committee is invited to note the recommendations of the Inquiry as set out in **Appendix 3** and summarised in the paragraph above, and make any appropriate comments on these issues.

### **Legal Implications**

10. There are no legal implications arising directly from the recommendations of this report.

### **Financial Implications**

11. There are no direct financial implications arising from this report.

## **RECOMMENDATIONS**

The Committee is recommended to note the recommendations of the NAW Inquiry into the Powers of the Ombudsman appended at **Appendix 3**.

**Marie Rosenthal**

**Director Governance and Legal Services and Monitoring Officer**

16 September 2015

### **Appendices**

Appendix 1	Cardiff Standards & Ethics Committee's Consultation Response to the Inquiry into the Powers of the Ombudsman
Appendix 2	Connect to Cardiff (C2C) Consultation Response to the Inquiry into the Powers of the Ombudsman
Appendix 3	NAW Finance Committee Report 'Consideration of Powers: Public Services Ombudsman for Wales' May 2015

### **Background Papers**

NAW Finance Committee Consultation letter dated 26<sup>th</sup> January 2015  
WLGA email from Head of Policy (Improvement and Governance) to Monitoring Officers dated 26<sup>th</sup>  
June 2015

# **Consideration of powers for the Public Services Ombudsman for Wales**

## **Response from the Standards and Ethics Committee – City of Cardiff Council**

### **1. What are your views on the effectiveness of the current [Public Services Ombudsman \(Wales\) Act 2005](#)?**

*We regard the act as wholly effective. We have had concerns in the past about delays in dealing with member complaint but performance in recent times has greatly improved . We remain concerned that the proposed changes would result in a significant increase in running costs – approximately 5-6% per annum. Is this affordable in the current financial climate? Is it possible to link this increase to cost reduction opportunities within the proposed changes?*

### **2. Currently, the Ombudsman may only investigate a matter that is the subject of a complaint made to him/her. What are your views on ‘own initiative’ investigations powers, which would enable the Ombudsman to initiate his own investigations without having first received a complaint about an issue. Please explain your answer.**

*The principle of this is acceptable and looking at the examples given and comparing with the investigations carried out by the Local Authority this would not affect our current procedure.*

*Own initiative investigations should be by exception and/or where there are opportunities to tackle wider ranging issues which affect a large number of public service organisations. If this new power is implemented, it should ensure that it does not duplicate resources or intervene where the organisation is capable of investigating the matter effectively using its own resources.*

*In advance of initiating an investigation, sufficient engagement should take place with affected parties and other organisations that may have relevant responsibilities.*

*There should be clear guidelines and criteria developed, in consultation with public service organisations, as to when an own initiative can or should be launched.*

*The potential cost implications should be assessed at the outset of any own initiative investigation and weighed against the potential benefits*

### **3. Do you have any concerns that own-initiative investigation powers could result in the Ombudsman’s responsibilities overlapping with the responsibilities of other bodies? How could this be managed?**

*Please see comments above at 2*

### **4. Do you have a view on the likely financial costs and benefits of the Ombudsman having own-initiative powers?**

*Please see comments above at 2*

**5. At present, the Ombudsman can only accept complaints in writing. What are your views on the Ombudsman being able to accept complaints made orally? Please explain your answer.**

*It is essential that the Public Service Ombudsman is accessible to all. Accepting oral complaints contributes to this but also allowing complaints through digital means by email and web form will enable better access.*

*If there is evidence to suggest that there will be a significant proportion of oral complaints, there will be time and cost implications and there will need to be the capacity to handle these. Perhaps, there may be some value in identifying an intermediary/independent person who can be assigned a specific remit for providing practical support to those who need it (e.g. Complaints Wales, Citizen's Advice Bureau), to progress a complaint. This could prove useful in filtering the direct enquiries received by the Ombudsman and provide practical support to complainants that need it.*

*Digital technologies (email and web) should be used to their maximum effect to improve the efficiency of the complaints process. The Ombudsman is currently very outdated in this respect. Those who can use digital methods should be encouraged to do so by communication via the Public Service Ombudsman website and other public service bodies.*

**6. What other type/form of submission should be acceptable (e.g. email, website form, text messages)**

*Again maximising the channels of choice to the customer would be the right thing to do.*

**7. Do you have a view on the financial costs and benefits of this provision?**

*We would accept the Ombudsman's decision to accept complaints orally or via the other forms of submission stated. However, if the Ombudsman decides to accept a case, we would appreciate clear justification be provided to the Council for why he has decided to set aside the usual requirement for a complaint to be made in writing while also allowing that though the Ombudsman may have accepted the complaint, the Council may possess further information as to why a complaint had been refused originally.*

**8. At present there is no consistency in the way public bodies deal with complaints. Adoption of the model complaints policy issued by the Welsh government is voluntary. What are your views on the Ombudsman preparing a model complaints policy which public bodies would be obliged to adopt. Please explain your answer.**

*We should aim for standardisation of the complaints policy across public service organisations, with a view to reducing administration costs, enabling greater efficiency and using a model of best practice. However, it is also important to recognise that some organisations will have differing powers and resources, which will need to be taken into consideration.*

*A Model Complaints Policy already exists and most Unitary Authorities follow this approach. Any change that can enhance this by sharing of information and performance improvements should be supported and, therefore, bring greater benefit to all public services.*



**9. Do you have a view on the financial costs and benefits of this provision?**

*Please see comments above at 8.*

**10. What are your general views on the Ombudsman's current jurisdiction?**

*No comments*

**11. At present the Ombudsman can investigate private health care that has been commissioned by the NHS. The Ombudsman would like the jurisdiction to be extended to enable him/her to investigate when a patient has received private healthcare (self-funded not commissioned by the NHS) in conjunction with public healthcare. This would enable the complaints process to follow the citizen rather than the sector. What are your views on extending the Ombudsman's jurisdiction in this way?**

*We would support this but any change will create new legal risks and needs to be managed carefully.*

**12. How do you think the investigation of private health care complaints should be funded? (Possibilities include a levy, charging on a case by case basis or no charge.)**

*No comments*

**13. Do you have a view on the financial costs and benefits of this provision?**

*No comments*

**14. What are your views on the removal of the statutory bar to allow the Ombudsman to consider a case which has or had the possibility of recourse to a court, tribunal or other mechanism for review? (ie this would give complainants the opportunity to decide which route is most appropriate for them.)**

*Complainants must have options available and any changes that supports this are acceptable*

**15. What are your views on the Ombudsman being able to refer cases to the Courts for a determination on a point of law?**

*We would support this*

**16. Do you have a view on the financial costs and benefits of this provision?**

*We agree that complainants should be given the opportunity to decide which route is most appropriate for them. However, we would appreciate some clarification on what services would be covered by 'tribunal or other mechanism for review' should there be any conflicts with what is covered by the Council's Complaints Policy.*

**17. Do you have any specific examples where the Ombudsman having the additional powers proposed could have been useful in securing a successful conclusion to an issue?**

*No examples held by the Council though it would presumably be the complainants who could offer comments on this.*

**18. Schedule 3 of the current 2005 Act, provides a list of authorities that are within the Ombudsman's jurisdiction to investigate complaints. Please provide details of any other bodies/organisations that should be included in this list?**

*No comments*

**19. If extended powers were given to the Ombudsman in a new Bill/Act, at what point should the impact of this legislation be evaluated?**

*As the current act is now being evaluated after 10 years of operation, we would suggest 5 years for the next evaluation.*

**20. What unintended consequences could arise as a result of these provisions becoming legislation and what steps could be taken to deal with these consequences?**

*No comments*

**21. What factors should be measured to determine the cost-benefit analysis of this legislation being brought forward?**

*No comments*

**22. Do you have any comments on the following issues:**

- **jurisdiction – changes to the devolution settlement have led to new areas coming into jurisdiction over time, should consideration be given to other bodies being included in the Ombudsman's jurisdiction;**

*No comments*

- **recommendations and findings - should the recommendations of the Ombudsman to public bodies be binding. This would mean that bodies cannot decide to reject the findings;**

*As long as there remains a draft stage to a report where public bodies have the chance to comment on the Ombudsman's findings before it is finalised (in case of any discrepancies or areas of ambiguity), we have no concerns.*

- **protecting the title - there has been a proliferation of schemes calling themselves ombudsmen, often without satisfying the key criteria of the concept such as independence from those in jurisdiction and being free to the complainant. Should anyone intending to use the title ombudsman gain approval from the Ombudsman;**

*No comments*

- **code of conduct complaints – the Ombudsman would prefer to focus on the element of his work that deals with service users and service delivery, rather**

**than local authority and town and community councils' resolutions. Whilst a local resolution procedures exists and has been adopted by 22 local authorities, variance exists in practice.**

*We would support this . The local resolution procedure has been implemented successfully at Cardiff and has been adopted by all the 22 local authorities although a variance exists in practice.*

**23. Do you have any views on any aspects of future planned or proposed public sector reforms that would impact on the role of the Ombudsman?**

*No comments*

**24. Do you have any other issues or concerns about the current Act and are there any other areas that need reform or updating?**

*No comments*

Richard Tebboth

Independent Chair of the Standards and Ethics Committee

Cardiff Council

19 March 2015

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## Consideration of powers for the Public Services Ombudsman for Wales

### 1. What are your views on the effectiveness of the current **Public Services Ombudsman (Wales) Act 2005**?

*We regard the act as wholly effective and representatives of the Ombudsman have always been helpful and transparent whenever there has been any possible ambiguity about why certain decisions have been made.*

### 2. Currently, the Ombudsman may only investigate a matter that is the subject of a complaint made to him/her. What are your views on 'own initiative' investigations powers, which would enable the Ombudsman to initiate his own investigations without having first received a complaint about an issue. Please explain your answer.

*We would have no concerns about this being introduced.*

### 3. Do you have any concerns that own-initiative investigation powers could result in the Ombudsman's responsibilities overlapping with the responsibilities of other bodies? How could this be managed?

### 4. Do you have a view on the likely financial costs and benefits of the Ombudsman having own-initiative powers?

*No comments*

### 5. At present, the Ombudsman can only accept complaints in writing. What are your views on the Ombudsman being able to accept complaints made orally? Please explain your answer.

*This would be of benefit to the complainant to provide access channels of choice.*

### 6. What other type/form of submission should be acceptable (e.g. email, website form, text messages)

*Again maximising the channels of choice to the customer would be the right thing to do.*

### 7. Do you have a view on the financial costs and benefits of this provision?

*We would accept the Ombudsman's decision to accept complaints orally or via the other forms of submission stated. However, if the Ombudsman decides to accept a case, we would appreciate clear justification be provided to the Council for why he has decided to set aside the usual requirement for a complaint to be made in writing while also allowing that though the Ombudsman may have accepted the complaint, the Council may possess further information as to why a complaint had been refused originally.*

### 8. At present there is no consistency in the way public bodies deal with complaints. Adoption of the model complaints policy issued by the Welsh government is voluntary. What are your views on the Ombudsman preparing a model complaints policy which public bodies would be obliged to adopt. Please explain your answer.

*Though it may be sporadic across public bodies as a whole, the majority of local authorities have adopted the model complaints policy. Cardiff Council has seen the benefit of adopting the policy and would welcome the possibility of benchmarking in the future. This would enable the sharing of best practice to complement the work done by the All Wales Corporate Complaints Group.*

**9. Do you have a view on the financial costs and benefits of this provision?**

*No comments*

**10. What are your general views on the Ombudsman's current jurisdiction?**

*No comments*

**11. At present the Ombudsman can investigate private health care that has been commissioned by the NHS. The Ombudsman would like the jurisdiction to be extended to enable him/her to investigate when a patient has received private healthcare (self-funded not commissioned by the NHS) in conjunction with public healthcare. This would enable the complaints process to follow the citizen rather than the sector. What are your views on extending the Ombudsman's jurisdiction in this way?**

*No comments*

**12. How do you think the investigation of private health care complaints should be funded? (Possibilities include a levy, charging on a case by case basis or no charge.)**

*No comments*

**13. Do you have a view on the financial costs and benefits of this provision?**

*No comments*

**14. What are your views on the removal of the statutory bar to allow the Ombudsman to consider a case which has or had the possibility of recourse to a court, tribunal or other mechanism for review? (ie this would give complainants the opportunity to decide which route is most appropriate for them.)**

**15. What are your views on the Ombudsman being able to refer cases to the Courts for a determination on a point of law?**

**16. Do you have a view on the financial costs and benefits of this provision?**

*We agree that complainants should be given the opportunity to decide which route is most appropriate for them. However, we would appreciate some clarification on what services would be covered by 'tribunal or other mechanism for review' should there be any conflicts with what is covered by the Council's Complaints Policy.*

**17. Do you have any specific examples where the Ombudsman having the additional powers proposed could have been useful in securing a successful conclusion to an issue?**

*No examples held by the Council though it would presumably be the complainants who could offer comments on this.*

**18. Schedule 3 of the current 2005 Act, provides a list of authorities that are within the Ombudsman's jurisdiction to investigate complaints. Please provide details of any other bodies/organisations that should be included in this list?**

*No comments*

**19. If extended powers were given to the Ombudsman in a new Bill/Act, at what point should the impact of this legislation be evaluated?**

*As the current act is now being evaluated after 10 years of operation, we would suggest 5 years for the next evaluation.*

**20. What unintended consequences could arise as a result of these provisions becoming legislation and what steps could be taken to deal with these consequences?**

*No comments*

**21. What factors should be measured to determine the cost-benefit analysis of this legislation being brought forward?**

*No comments*

**22. Do you have any comments on the following issues:**

- **jurisdiction – changes to the devolution settlement have led to new areas coming into jurisdiction over time, should consideration be given to other bodies being included in the Ombudsman’s jurisdiction;**

*No comments*

- **recommendations and findings - should the recommendations of the Ombudsman to public bodies be binding. This would mean that bodies cannot decide to reject the findings;**

*As long as there remains a draft stage to a report where public bodies have the chance to comment on the Ombudsman’s findings before it is finalised (in case of any discrepancies or areas of ambiguity), we have no concerns.*

- **protecting the title - there has been a proliferation of schemes calling themselves ombudsmen, often without satisfying the key criteria of the concept such as independence from those in jurisdiction and being free to the complainant. Should anyone intending to use the title ombudsman gain approval from the Ombudsman;**

*No comments*

- **code of conduct complaints – the Ombudsman would prefer to focus on the element of his work that deals with service users and service delivery, rather than local authority and town and community councils’ resolutions. Whilst a local resolution procedures exists and has been adopted by 22 local authorities, variance exists in practice.**

*We would support this. The local resolution procedure has been implemented successfully at Cardiff and has been adopted by all the 22 local authorities although a variance exists in practice*

**23. Do you have any views on any aspects of future planned or proposed public sector reforms that would impact on the role of the Ombudsman?**

*No comments*

**24. Do you have any other issues or concerns about the current Act and are there any other areas that need reform or updating?**

*No comments*



**National Assembly for Wales**  
Finance Committee

**Consideration of Powers:  
Public Services Ombudsman for  
Wales**

May 2015

Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



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**National Assembly for Wales**  
Finance Committee

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May 2015

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Cenedlaethol  
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National  
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Wales



# Finance Committee

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

Their remit also includes specific statutory powers under the Public Audit Act 2013 relating to new responsibilities for governance oversight of the Wales Audit Office.

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## Current Committee membership:



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



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



**Christine Chapman**  
Welsh Labour  
Cynon Valley



**Mike Hedges**  
Welsh Labour  
Swansea East



**Alun Ffred Jones**  
Plaid Cymru  
Arfon



**Ann Jones**  
Welsh Labour  
Vale of Clwyd



**Julie Morgan**  
Welsh Labour  
Cardiff North



**Nick Ramsey**  
Welsh Conservatives  
Monmouth

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## Chair's Foreword

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The Public Services Ombudsman for Wales has a vital role in ensuring that any member of the public who believes they have suffered injustice through maladministration or service failure by a public body, are able to make a complaint with the reassurance that their complaint will be dealt with fairly and independently by the Ombudsman.

During this inquiry, the Committee considered extending the powers of the Ombudsman. We heard from the Ombudsman that whilst the current Act governing his role had been effective over the past 10 years, there is a need to future-proof legislation and ensure it is citizen-centred.

The Ombudsman had five particular areas that he believed would improve the current Act. These included own initiative investigation powers, oral complaints, complaints handling across public services, extending the Ombudsman's jurisdiction to include the private healthcare providers (in certain circumstances) and links with the courts. These issues and others are explored in detail in this report.

The Committee agrees that changes are required to strengthened the Ombudsman's role and to ensure the most vulnerable individuals, who are often most reliant on our public services feel confident in complaining to the Ombudsman and have the right to a fair response to their complaint.

Throughout this inquiry we heard a great deal of evidence, much of which has shown how important the Ombudsman's role is. Undoubtedly we would all like to see a future in Wales that provides excellent public services but should that service fall short of an individual's expectations, they need to have the confidence in the Ombudsman to investigate. We hope that should our recommendations be implemented this will enhance the role of the Ombudsman in Wales and increase public confidence.

I would like to thank everyone who has contributed to this inquiry; your input has been incredibly valuable in developing the views and recommendations of the Committee.

A handwritten signature in black ink that reads "Jocelyn Davies". The signature is written in a cursive style with a prominent initial 'J'.

**Committee Chair, Jocelyn Davies AM**



## Summary of Recommendations

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The Committee's recommendations are listed below in the order that they appear in this report. Please refer to the relevant pages of the report to see the supporting evidence and conclusions.

**Recommendation 1.** The Committee is persuaded by the evidence that there should be a revision to the powers of the Ombudsman. The Committee recommends that a bill is introduced into the Assembly to extend the role of the Ombudsman. (Page 20)

**Recommendation 2.** The Committee recommends that if a bill is introduced, consultation on a draft bill should be undertaken to ensure engagement with public bodies and the general public affected by the legislation and policy intentions. (Page 20)

**Recommendation 3.** The Committee recommends that should a bill be introduced, provisions should be included which provide the Ombudsman with powers to initiate own investigations. (Page 31)

**Recommendation 4.** The Committee recommends that when the Ombudsman exercises this power there must be:

- sufficient evidence to support an investigation; and
- consultation with Commissioners, relevant stakeholders and any other person the Ombudsman considers appropriate. (Page 31)

**Recommendation 5.** The Committee recommends that should a bill be introduced, it should include a provision requiring the Ombudsman and the Auditor General to take account of each other's views before exercising the relevant functions and to co-operate with one another in so far as they consider is necessary for the effective exercise of those functions. (page 31)

**Recommendation 6.** The Committee recommends that should a bill should include provision for joint and collaborative working with the Children's Commissioner (along similar lines to those currently applicable to the Older People's Commissioner for Wales and the Welsh Language Commissioner). (page 32)

**Recommendation 7.** The Committee recommends that should a bill be introduced, the Ombudsman should have full discretion to decide how complaints can be made and must issue guidance specifying the accepted methods. This should allow the Ombudsman flexibility to react to changing methods of communication in future. (Page 38)

**Recommendation 8.** The Committee recommends there should be a mechanism to ensure that if a complaint is made orally, the complainant is made fully aware that a formal complaint has been instigated and understands the implications of this. (Page 39)

**Recommendation 9.** The Committee recommends should a bill be introduced, the Ombudsman should have a statutory complaints handling role. This complaints role should include provisions to:

- publish a model complaints handling policy for listed authorities;
- require regular consultation with relevant stakeholders;
- require public bodies to collect and analyse data on complaints; and
- ensure a standardised language is used by public bodies when collecting data to ensure comparisons can be made. (Page 47)

**Recommendation 10.** The Committee recommends that any model complaints handling policy should be supported by a training programme and promotional materials for staff in public bodies. (Page 47)

**Recommendation 11.** The Committee recommends that should a bill be introduced, the Ombudsman's jurisdiction should be extended to enable him/her to investigate the whole complaint when a combination of treatment has been received by public and private healthcare providers and when that treatment has been initiated in the NHS. (Page 57)

**Recommendation 12.** The Committee is concerned that patients using services provided in Private Patient Units have no ability to complain to any external body about their treatment The Committee recommends that the Welsh Government work with the Health Inspectorate Wales to resolve this apparent anomaly and report back to the Committee. (Page 57)

**Recommendation 13.** The Committee recommends that the Welsh Government liaises with the UK Government on the European Directive on Alternative Dispute Resolution and how it will affect the Ombudsman's role. (Page 57)

**Recommendation 14.** The Committee recommends the Welsh Government should respond to the Law Commission's 2011 Report. (Page 68)

**Recommendation 15.** Due to the legal complexities and the issue of the competence of the Assembly, the Committee concludes that changes should not be made in relation to the statutory bar, stay provisions and referral of a point of law at this time. However, the Committee recommends the Welsh Government explore these issues with the UK Government as part of future devolution discussions. (Page 68)

**Recommendation 16.** In relation to jurisdiction the Committee recommends should a bill be introduced, it should encompass all public authorities that provide services within Wales and that the inclusion of non-devolved bodies providing public services in Wales should be explored (including Boards of Conservators in Wales). (Page 71)

**Recommendation 17.** The Committee acknowledges the Ombudsman's commitment to raise the issue of protecting the title 'Ombudsman' with his counterparts when he meets with the Ombudsman Association and the Committee would be interested to hear the outcome of this discussion. The Committee suggests the Ombudsman liaises with the Welsh Government on this issue. (Page 75)

**Recommendation 18.** The Committee recommends the Welsh Government considers mandatory training for elected members as part of their consideration of forthcoming legislation on Local Government reform. (Page 77)

# 1. Introduction

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## Background

1. The role of the Public Services Ombudsman for Wales (“the Ombudsman”) was established by the [Public Services Ombudsman \(Wales\) Act 2005](#) (“2005 Act”). This Act brought together the previous functions and powers of the Local Government Ombudsman, the Health Service Commissioner for Wales, the Welsh Administration Ombudsman and Social Housing Ombudsman for Wales.
2. The 2005 Act was intended to:
  - make the Ombudsman service in Wales more accessible to the public, as people were either unaware of the service or confused about which Ombudsman to approach;
  - enable the Ombudsman to develop a comprehensive and coherent system for investigating complaints across a wide range of public bodies; and
  - establish clear accountability by requiring the Ombudsman to produce an annual report to the National Assembly for Wales (“the Assembly”) on the discharge of his/her functions;<sup>1</sup>
3. The Ombudsman’s role is split into two distinct parts:
  - to consider complaints by members of the public about maladministration or failure by public bodies in the provision of services; and
  - to consider complaints that local authority members or employees may have breached a relevant code of conduct.

## Calls for changes to the 2005 Act

4. Since 2013, there have been calls to extend the powers of the Ombudsman’s role, by the previous Ombudsman, Peter Tyndall and the current Ombudsman, Nick Bennett. The Communities, Equality and Local Government Committee (“CELG Committee”) and the Finance Committee scrutinise the work of the Ombudsman and the financial considerations of the Ombudsman’s office. Both Committees have been involved in consideration of extending the role the Ombudsman.

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<sup>1</sup> Memorandum to the Welsh Affairs Committee: post-legislative assessment of Public Services Ombudsman (Wales) Act 2005

In addition discussions had taken place with the Welsh Government about the issue during this time.

5. In May 2013, the then Ombudsman (Peter Tyndall) wrote to the Chair of the CELG Committee setting out his views for changes to the 2005 Act. These included:

- **own initiative powers** to enable the Ombudsman to initiate an investigations without having first received a complaint about an issue;
- **access** to the Ombudsman including allowing **oral complaints** to be accepted;
- to provide the Ombudsman with a role in **complaints handling across** public services;
- to extend the Ombudsman's **jurisdiction** to ensure there is access to independent redress for all public services, even when these services have been provided by the private sector, (such as **private healthcare sector**).
- **links with the courts** to remove the statutory bar that prevents the Ombudsman from investigation a complaint that may have recourse in the courts;
- to ensure the Ombudsman's **findings are binding**, so that bodies could not reject the findings, unless through the courts;
- to ensure the Ombudsman's **recommendations are binding** and bodies could not decide to reject or disregard them (this is not an issue with public bodies but when/if private bodies are within jurisdiction the democratic process cannot be engaged in the same way and compliance may be harder to secure);
- **protecting the title "Ombudsman"** so that any private bodies intending to use the title, would have to satisfy the key criteria of the concept such as independence from those in jurisdiction and be approved by the Ombudsman;
- **funding mechanisms** for private providers that are within the Ombudsman's jurisdiction to ensure the taxpayer does not bear the cost. Private sector ombudsmen schemes are normally funded by the bodies in their jurisdiction, by an annual levy, on a case-by-case basis or a combination of both to ensure the "polluter pays". In this context, the principle of the polluter pays

is that it gives providers an incentive to avoid error and resolve complaints as a means of not incurring costs;

- **links with the Assembly** to give the Ombudsman the power to formally lay a case before the Assembly, where the subject matter is such as to justify formally bringing it to their attention.

6. On 6 November 2013, the then Ombudsman (Peter Tyndall) (whose term of office was coming to an end) attended a meeting of the CELG Committee to discuss his annual report. As part of this meeting, the Committee heard that:

“the legislation in Wales [2005 Act] was groundbreaking when it was introduced, and it remains close to the forefront, but 2015 will be the tenth anniversary of that legislation and things have moved on.”<sup>2</sup>

7. Following the meeting, the CELG Committee wrote to the then Minister for Local Government and Government Business, Lesley Griffiths AM, asking for her views on amending the Act. In the Minister’s reply she said the Ombudsman raised worthwhile points. However, she believed more detailed consideration and discussion was needed around the issues, which should include discussions with the new permanent Ombudsman when they were appointed.

8. On 6 November 2014, as part of the Finance Committee’s consideration of the Ombudsman’s Estimate for 2015- 16, they heard from the new Ombudsman (Nick Bennett) that he believed there was an appetite to update the 2005 Act. The Committee’s report recommended the Ombudsman and the Welsh Government work together on a timetable for amending this.

9. In [response](#) to the recommendation, the Minister for Finance and Government Business, Jane Hutt AM, noted that as the Welsh Government is a public body subject to scrutiny by the Ombudsman, it would be more appropriate for the Assembly to lead on any legislative change given the Assembly’s responsibility for appointing and funding the Ombudsman. The Minister said that the Welsh Government would feed their views into any considerations of the Ombudsman’s powers

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<sup>2</sup> CELG Committee RoP, paragraph 109, 6 November 2013

but those views should be considered alongside those of other bodies subject to the Ombudsman's scrutiny.<sup>3</sup>

10. On [11 December 2014](#), as part of discussion of the Ombudsman's annual report, the CELG Committee heard from the current Ombudsman that whilst the 2005 Act had been an effective piece of legislation, there were areas that needed strengthening. He said:

“I would hope that there are four or five critical areas where we could make a real difference with a revising Act.”<sup>4</sup>

11. All five changes the Ombudsman proposed had been previously suggested by his predecessor. Including:

- own initiative powers;
- oral complaints;
- complaints handling;
- inclusion of private health within his jurisdiction; and
- links with the courts.

12. Subsequently, the CELG Committee wrote to the Finance Committee saying there was merit in reviewing the legislation but it would be difficult for them to devote the necessary time to it and as the Finance Committee had previously indicated an interest in this area of work, it may be something this Finance Committee would wish to pursue.

13. On 21 January 2015, the Ombudsman attended the Finance Committee to discuss his five proposal and submitted a [background paper](#)<sup>5</sup> which provided further detailed information on these proposals.

14. Following this session the Finance Committee agreed to undertake an inquiry into the additional powers suggested by the Ombudsman and other potential the areas of change that had been suggested by the previous Ombudsman. The Committee agreed that should the evidence support an extension of the Ombudsman's

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<sup>3</sup> Letter from the Minister for Finance and Government Business, 18 December 2014

<sup>4</sup> CELG Committee RoP, paragraph 67, 11 December 2014

<sup>5</sup> FIN(4)-01-15 Paper 1 - Amendments to the Public Services Ombudsman (Wales) Act 2005, 21 January 2015

powers the Finance Committee may consider the introduction of a Committee Bill under Standing Order 26.80.

### **Terms of scrutiny**

15. The Committee agreed to consider the following proposals as part of its inquiry:

- **own initiative powers** to enable the Ombudsman to initiate an investigations without having first received a complaint about an issue (page 21);
- to allow the Ombudsman to accept **oral complaints** (page 33);
- to enable the Ombudsman to have a role in **complaints handling across public services** (page 40);
- to **extend the Ombudsman's jurisdiction to include private health services** when a combination of treatment has been received by public and private healthcare providers and when that treatment has been initiated by the NHS (page 48); and
- **links with the courts**, including the removal of the statutory bar, stayed provisions and a referral on a point of law (page 58).

16. In addition, the Committee agreed to also consider the following:

- extending the Ombudsman's jurisdiction (page 69);
- whether recommendations of the Ombudsman to public bodies should be binding (page 71);
- protecting the title "Ombudsman" (page 73);
- the Ombudsman's role in dealing with code of conduct complaints (page 75); and
- any aspects of future planned or proposed public sector reforms that would impact on the role of the Ombudsman and the 2005 Act.

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

17. Between 26 January 2015 and 20 March 2015, the Committee undertook a public consultation to inform its work. [43 responses](#) were received.

18. As the role of the Ombudsman cuts across ministerial portfolios, the Committee also wrote to all Welsh Ministers asking for their views



on the how the Ombudsman's proposals would impact on specific sectors within the Welsh Government's remit.<sup>6</sup>

19. In addition, the Committee held oral evidence sessions with a number of witnesses. Details are available at Annex A.

20. The following report details the Committee's conclusions and recommendations based on the evidence received during the course of its inquiry. The Committee would like to thank all those who contributed.

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<sup>6</sup> Letter from the Chair to Welsh Ministers, 15 January 2015

## 2. General issues and the need for change

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### Background

21. Whilst the majority of this report looks specifically at the Ombudsman's five proposals, this section considers the wider implications of a wholesale change to the legislation governing the Ombudsman.

22. The Committee considered the need for change, the scrutiny procedure followed for a Committee bill and the appropriateness of extending the Ombudsman's role at the current time given the expected public sector reforms in Wales.

### *Evidence from respondents*

#### Public sector reform

23. Following publication of the William's Commission Report,<sup>7</sup> which was tasked with examining governance and delivery of the public sector in Wales, a substantial part of the public sector in Wales is currently preparing for major change, with the expected legislation relating to local government reform.

24. The Committee was interested to hear respondents' views on whether changes to the 2005 Act would be better considered after any future planned or proposed public sector reforms.

25. The Older People's Commissioner for Wales ("Older People's Commissioner") believed any reforms to the Ombudsman's role should be "carried out in advance of wide public sector reforms so there is no delays in investigating concerns raised by individuals".<sup>8</sup>

26. The Auditor General was not concerned there was a "strong timing issue" for when the proposed changes to the Ombudsman's role should take place.<sup>9</sup>

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<sup>7</sup> Commission on Public Service Governance and Delivery Report, January 2014

<sup>8</sup> Written Evidence, PSOW 04

<sup>9</sup> Written Evidence, PSOW 07

## **The need for change**

27. There was consensus amongst respondents that the Ombudsman's current role was working effectively and the 2005 Act was generally considered as a model piece of Ombudsman legislation.

28. Dr Nick O' Brien,<sup>10</sup> a fellow at the Law School at the University of Liverpool said:

“the PSOW Act is already among the more developed examples of public-sector ombudsman legislation.”<sup>11</sup>

29. Other Ombudsmen referred to the increase in their workload over recent years. Dr Tom Frawley, the Northern Ireland Ombudsman<sup>12</sup> said there was now a much greater willingness by people to complain than in more recent years. He said “we're seeing a very significant expansion of complaints, which is reflected, I think in our workload”.<sup>13</sup>

30. Jim Martin, the Scottish Public Service Ombudsman (“the Scottish Ombudsman”) echoed this view saying he had “seen year-on-year increases in the number of complaints across sectors” and that “the largest single sector is local authority”.<sup>14</sup>

## **Scrutiny of a potential new bill**

31. The Welsh Local Government Association (“WLGA”) raised concerns that if the inquiry potentially led to new legislation, it could result in curtailed scrutiny given that a Committee Bill is not required to undertake Stage 1 scrutiny<sup>15</sup> and requested:

“...that should the Committee decide to move to legislation, that a Draft Bill is published to encourage the widest

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<sup>10</sup> Dr Nick O'Brien served as Specialist Adviser to the House of Commons Public Administration Select Committee (PASC) inquiries into complaints about public services and into the future of the UK Parliamentary Ombudsman and Health Service Ombudsman for England (PHSO), 2013 - 2014

<sup>11</sup> Written Evidence, PSOW 09

<sup>12</sup> The Northern Ireland Ombudsman combines two public offices, the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints

<sup>13</sup> RoP, paragraph 137, 3 March 2015

<sup>14</sup> RoP, paragraph 120, 4 February 2015

<sup>15</sup> Standing Order 26.82

opportunity for consultation before the formal introduction of the Bill.”<sup>16</sup>

### ***Evidence from the Minister***

32. In response to the Committee’s letter to Welsh Minister’s seeking views on the Ombudsman’s proposals, the Minister for Public Services, Leighton Andrews AM (“the Minister”) responded on behalf of the Welsh Government. He said:

“These are important proposals and every member of the Cabinet values the role the Ombudsman plays in Wales”.<sup>17</sup>

33. The Minister also noted that on two previous occasions the Welsh Government had commented and broadly supported the proposals.<sup>18</sup>

34. The Minister understood the “desire of the ombudsman to expand some of the powers”.<sup>19</sup> However, he was concerned there are “a whole series of questions that arises from what he’s proposing”<sup>20</sup> and felt “it may benefit the Ombudsman’s office to make the case for new powers after these public service reforms embed and take effect”.<sup>21</sup>

35. In relation to the scrutiny process, the Minister was concerned about the “the pace of introduction of a piece of legislation...and whether there is sufficient opportunity to explore all of the issues” in the time remaining in the Fourth Assembly.<sup>22</sup>

36. The Minister was also concerned that the proposals could change the nature of the Ombudsman service, “moving away from the role of independent adjudicator championing citizens’ concerns” to “an enforcer issuing statutory guidance in their own right”.<sup>23</sup>

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<sup>16</sup> Written Evidence, PSOW 08

<sup>17</sup> FIN(4)-06-15 Paper 2 – Letter from the Minister for Public Services (on behalf of the Cabinet), 19 March 2015

<sup>18</sup> Responses from the then Minister for Local Government and Government Business 12 February 2014; and from the Minister for Finance and Government Business, 18 December 2015

<sup>19</sup> RoP, paragraph 213, 19 March 2015

<sup>20</sup> RoP, paragraph 216, 19 March 2015

<sup>21</sup> FIN(4)-06-15 Paper 2 – Letter from the Minister for Public Services (on behalf of the Cabinet), 19 March 2015

<sup>22</sup> RoP, paragraph 226, 19 March 2015

<sup>23</sup> Letter from the Chair to Welsh Ministers, 15 January 2015

### ***Evidence from the Ombudsman***

37. The Ombudsman said that in considering the case for change, he had focused on:

- the need to future-proof the legislation and organisation;
- improving social justice and making sure that voices of complainants from more disadvantaged backgrounds are heard;
- making sure the Ombudsman’s work is Citizen Centred, rather than constrained to individual sectors or silos;
- driving improvement in public services and in complaint handling;
- affordability and value for money.”<sup>24</sup>

38. The Ombudsman told the Committee that the 2005 Act had “stood the test of time well for the past 10 years”<sup>25</sup> and that:

“the Act, going forward, is fit for purpose and allows people to get the best out of our office and to make sure that we do have genuinely citizen-centred services in Wales.”<sup>26</sup>

39. In relation to public sector reform, the Ombudsman said:

“...I certainly feel that, to go through a reorganisation of complaints handling or new investment in IT or anything else following a reorganisation of local government in Wales would be a huge mistake.”<sup>27</sup>

### ***Our view***

40. The Committee is of the view that the 2005 Act is an important piece of legislation which has:

- enabled and facilitated public access to the Ombudsman’s services;

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<sup>24</sup> FIN(4)-01-15 Paper 1 - Amendments to the Public Services Ombudsman (Wales) Act 2005, 21 January 2015

<sup>25</sup> RoP, paragraph 10, 21 January 2015

<sup>26</sup> *ibid*

<sup>27</sup> RoP, paragraph 148, 25 March 2015

- enabled the resolution of disputes and provided redress for individuals; and
- in its focus on complaints handling in the public sector has stimulated improvement in the delivery of public services.

41. The Committee was disappointed with the Minister's lack of support at this time for a bill. The Committee notes that the Welsh Government's White Paper on reforming local government calls for citizen-centred services,<sup>28</sup> which could be delivered by the suggested amendments to the 2005 Act.

42. The Committee does not share the Minister's concerns that it would be more appropriate to consider legislation following the proposed local government reforms. The Committee believes there should be no delay in improving individuals' ability to raise concerns about services received by public bodies.

43. In relation to scrutiny of a bill, the Committee notes that in accordance with Standing Order 26.82, a Committee bill is not required to undertake Stage 1 scrutiny, the consideration of the general principles of the bill.

**The Committee is persuaded by the evidence that there should be a revision to the powers of the Ombudsman. The Committee recommends that a bill is introduced into the Assembly to extend the role of the Ombudsman.**

**The Committee recommends that if a bill is introduced, consultation on a draft bill should be undertaken to ensure engagement with public bodies and the general public affected by the legislation and policy intentions.**

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<sup>28</sup> Devolution, Democracy and Delivery White Paper – Reforming Local Government: Power to Local People

### 3. Own initiative investigations

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#### Background

44. The Ombudsman's powers to investigate complaints are contained in Part 2 of the 2005 Act. The Ombudsman is currently only able to investigate if a complaint has been made or referred to him/her.

45. The Ombudsman has called for 'own initiative investigation' powers, to enable him/her to initiate investigations without having first received a complaint about an issue. Investigations would be undertaken once the significance of the issue had been fully considered.<sup>29</sup>

46. In the Ombudsman's background paper he stated:

"Virtually without exception, public services ombudsmen throughout Europe, and indeed, internationally, have the power to undertake investigations on their own initiative. The Ombudsman in the Republic of Ireland already has such a power and it will shortly be introduced in Northern Ireland also. Outside of the UK, only five members of the Council of Europe have ombudsmen who do not have own initiative powers."<sup>30</sup>

47. The Ombudsman provided a list of scenarios where own initiative powers could be used. These included:

- enabling the investigation of broader or associated issues emerging from the investigation a specific complaint;
- an identification of systemic failings in one public service body which raise concerns that those same systemic failings may exist in other bodies within the same (or other) sector/s of the public service;
- the Ombudsman has received an anonymous complaint, providing evidence of likely maladministration/service failure on the part of an authority; and

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<sup>29</sup> FIN(4)-01-15 Paper 1 - Amendments to the Public Services Ombudsman (Wales) Act 2005, 21 January 2015

<sup>30</sup> *ibid*

- the Ombudsman may be made aware of concerns about service delivery across the whole, or part, of a sector of the public service in Wales, without receiving direct complaints.<sup>31</sup>

48. The Ombudsman estimated the cost of own initiative investigations at £80k-£100k, including on-costs, which would include two full time investigation officers.<sup>32</sup>

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

49. A number of respondents, including One Voice Wales<sup>33</sup>, Citizens Advice Cymru<sup>34</sup> and the Wales Council for Voluntary Action (“WCVA”)<sup>35</sup>, were strongly in favour of the proposal to allow the Ombudsman to be more proactive, especially where there was evidence to suggest from individual cases that there could be a wider public interest issue. Most respondents felt this would enable widespread systemic maladministration or service failure to be addressed coherently, especially as vulnerable groups may be reluctant or unable to make a complaint.

50. Citizens Advice Cymru said:

“This would be of particular value when looking across cases and seeing the connections between a range of issues and being able to undertake a strategic review of a whole service or sector.”<sup>36</sup>

51. The WCVA noted that around the world the powers of ombudsmen have been evolving, with own initiative investigation powers being a key innovation, allowing ombudsmen to move from being largely reactive to influencing stakeholders.<sup>37</sup>

52. Dr O’Brien agreed and cited Canada and Australia as some of the best examples of ombudsmen from around the world. He said that

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<sup>31</sup> FIN(4)-06-15 Paper 3 – Further evidence from the Public Services Ombudsman for Wales, 25 March 2015

<sup>32</sup> FIN(4)-01-15 Paper 1 - Amendments to the Public Services Ombudsman (Wales) Act 2005, 21 January 2015

<sup>33</sup> Written Evidence, PSOW 06

<sup>34</sup> Written Evidence, PSOW 14

<sup>35</sup> Written Evidence, PSOW 12

<sup>36</sup> Written Evidence, PSOW 14

<sup>37</sup> Written Evidence, PSOW 12



own initiative investigations are “quite a different activity” and there “tend to be specialist units that pick up these complaints”.<sup>38</sup>

53. Citizens Advice Cymru said that a large number of people are reluctant to complain for a variety of reasons, including on-going relationships with public bodies and concerns about the implications of complaining and how it may adversely affect services they receive in future, particularly in the health and housing sectors.<sup>39</sup>

54. The Northern Ireland Ombudsman confirmed that currently legislation to modernise his role was before the Northern Ireland Assembly and one of the changes included own initiative investigation powers. He said it was a “huge development”<sup>40</sup> that he had “pursued and advocated for a number of years”<sup>41</sup> and felt it was “an integral part of the toolkit of an ombudsman”<sup>42</sup>.

55. The Northern Ireland Ombudsman provided an example of an own initiative investigation that had been undertaken by the Republic of Ireland Ombudsman, where the power is available under section 4(3) (b) of the [Ombudsman Act 1980](#).<sup>43</sup> He said:

“...The ombudsman became conscious that he’d had three or four complaints over a short time around what you might call subventions for the care of elderly people in nursing homes... The complaints from their relatives were that, actually, the money wasn’t being given to them, and the health boards were actually taking the money as part of a contribution to their care costs...if you look at the refund that was calculated as a result of that decision: €1.5 billion, when they went back over 25 years and they worked out how much money had not been given to very vulnerable, very fragile elderly people. So, that’s the most significant one...”<sup>44</sup>

56. One Voice Wales said that if intelligence is received which highlights concerns, the Ombudsman should have the power to

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<sup>38</sup> RoP, paragraph 309, 11 March 2015

<sup>39</sup> RoP, paragraph 157, 11 March 2015

<sup>40</sup> RoP, paragraph 149, 3 March 2015

<sup>41</sup> *ibid*

<sup>42</sup> RoP, paragraph 153, 3 March 2015

<sup>43</sup> Ombudsman Act 1980 (number 26 of 1980)

<sup>44</sup> RoP, paragraph 153, 3 March 2015

investigate to ensure that those individuals who are “unduly restricted for whatever reason from raising the alarm” are protected.<sup>45</sup>

57. The Auditor General was generally supportive but felt that the power should be used “sparingly”. He said that the Assembly’s scrutiny of the Ombudsman would “ensure that the power is not used excessively”.<sup>46</sup>

58. Concerns were raised by some respondents about the overlapping responsibilities of the Ombudsman with other independent commissioners and the Auditor General’s role. However, most respondents were satisfied that if proper mechanisms were in place for effective communication, the proposal could work effectively to minimise duplication of effort and resources.

59. The WLGA said its main concern was around managing the burden and avoiding duplication with other bodies. However, it thought “it could well lead to service improvements...it just needs to be managed with other partners and bodies that have similar functions as well”.<sup>47</sup>

60. The Children’s Commissioner for Wales (“the Children’s Commissioner”), the Older People’s Commissioner for Wales (“the Older People’s Commissioner”) and the Welsh Language Commissioner supported the proposal in principal, providing it didn’t “adversely impact on the scope and remit”<sup>48</sup> of their roles. They confirmed they currently have arrangements in place with the Ombudsman to ensure effective communication and collaboration of work, including [Memoranda of Understandings](#).<sup>49</sup>

61. The Children’s Commissioner for Wales (“Children’s Commissioner”) and the Older People’s Commissioner reinforced the need for the Ombudsman to consult with them on cases affecting their remit, to ensure they were able to contribute towards the investigation. They suggested this could be an “opportunity to firm up arrangements between ourselves and the Ombudsman in legislation”.<sup>50</sup>

62. On this point, the Auditor General agreed and said:

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<sup>45</sup> Written Evidence, PSOW 06

<sup>46</sup> Written Evidence, PSOW 07

<sup>47</sup> RoP, paragraph 231, 25 February 2015

<sup>48</sup> Written Evidence, PSOW 10

<sup>49</sup> Written Evidence, PSOW 04, 07, 10, 11

<sup>50</sup> Written Evidence, PSOW 10

“...it would be appropriate to include provision in legislation requiring the Ombudsman and the Auditor General each to take account of the other’s views before exercising the relevant functions and to co-operate with one another.”<sup>51</sup>

63. The Northern Ireland Ombudsman confirmed “it is built into the proposed legislation in Northern Ireland that the ombudsman will, in fact, engage with the comptroller and auditor general once a year to look at what the programme of scrutiny is going to be that year” to ensure a co-ordinated approach.

64. A number of respondents including Care Council Wales, WCVA and Citizens Advice Cymru highlighted the need for the Ombudsman to consult with stakeholders before deciding to initiate an investigation. Care Council Wales said:

“We would suggest that if this power is provided to the Ombudsman, it will be essential that bodies such as ourselves work closely with him/her and that consequently consideration is given to the establishment of information-sharing protocols which would set out each organisation’s responsibilities and which organisation should lead during an investigation, even though we are a listed authority in the Ombudsman Act. There is a good precedent for this as we have an information-sharing protocol in place with the Older People’s Commissioner for Wales.”<sup>52</sup>

65. Citizens Advice Cymru commented:

“We believe that there is potential for much greater engagement with the PSOW if his powers were extended to enable own initiative investigations. Citizens Advice Cymru could play a role in sharing relevant strategic information with the PSOW about the types of issues that clients are facing, as well as raising specific issues within and across sectors that would benefit from investigation.”<sup>53</sup>

66. The Scottish Ombudsman and the Northern Ireland Ombudsman both highlighted “the difference of function” of the Ombudsman and

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<sup>51</sup> Written Evidence, PSOW 07

<sup>52</sup> Written Evidence, PSOW 15

<sup>53</sup> Written Evidence, PSOW 14

the Auditor General.<sup>54</sup> The Northern Ireland Ombudsman said that an Auditor General “is focused primarily on probity and value for money”.<sup>55</sup>

67. One Voice Wales suggested a forum of key players could be established to consider the possible involvement of the Ombudsman in appropriate cases.

68. Whilst much of the evidence supported own initiative powers, respondents emphasised that there must be a clear evidence base in order for an investigation to be initiated.

69. The Northern Ireland Ombudsman agreed that “it must be evidence based and that there has to be a rationale for it”.<sup>56</sup> He said it could be possible to develop a set of criteria to be tested before an Ombudsman embarked on an investigation.

70. The Welsh NHS Confederation supported the Ombudsman being able to “undertake “own initiative” investigations where there is firm evidence of widespread maladministration or service failure affecting the population”.<sup>57</sup>

71. The Committee asked the Northern Ireland Ombudsman how he would identify when to carry out an investigation. He said the “first source of insight would be your own complaints analysis and profile”.<sup>58</sup> He said he would also be looking for patterns in trends, engaging with relevant sectors and he wouldn’t be “limited from looking at what the media is talking about in terms of major issues and concerns, because that’s what concerns the public”.<sup>59</sup>

72. A written response was received from a care worker in a local authority care home. The respondent highlighted the fact that the Ombudsman was unable to consider complaints from whistleblowers. The respondent felt that own initiative powers should be extended to ensure the Ombudsman is able to consider issues raised by whistleblowers.<sup>60</sup>

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<sup>54</sup> RoP, paragraph 213, 4 February 2015

<sup>55</sup> RoP, paragraph 158, 3 March 2015

<sup>56</sup> RoP, paragraph 156, 3 March 2015

<sup>57</sup> Written Evidence, PSOW 24

<sup>58</sup> RoP, paragraph 165, 3 March 2015

<sup>59</sup> *ibid*

<sup>60</sup> Written Evidence, PSOW 27

73. There were only a small number of respondents that did not support the proposal of own initiative investigations. Carmarthenshire County Council said an “investigation should be complainant led”.<sup>61</sup>

74. Abertawe Bro Morgannwg University Local Health Board said the power had the potential to be “confusing, both to the public and health bodies”. It referred to the number of inspectorates, regulators and commissioners and said it was difficult to see “where the gaps would be that would mean that the ombudsman...would need to undertake this and not be able to refer on to one of the bodies that are already in existence”.<sup>62</sup>

75. Wrexham County Borough Council remained:

“unclear as to what action or incident could cause the Ombudsman to begin an investigation if this were not prompted by a complaint.”<sup>63</sup>

### ***Financial Implications of Own Initiative Investigations***

76. In commenting on the financial resources, the Northern Ireland Ombudsman said his initial calculation would be approximately £180,000 a year which would allow for two or three major investigations each year. This would likely include a team of a director and two other officials who would need sufficient authority to carry out detailed interviews and investigative processes.<sup>64</sup>

77. He said that other officials with experience and knowledge of a particular subject may need to join the team on an ad hoc basis, “but the core investigator capacity needs to be invested in in terms of training and development”.<sup>65</sup> However, he felt the resource should be flexible to ensure that if the workload demanded this money could be used elsewhere.

78. The Auditor General agreed with the cost estimate provided in the Ombudsman’s proposal paper of “two full time investigation officers £80k-£100k” and thought this was “realistic in respect of sparing use

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<sup>61</sup> Written evidence, PSOW34

<sup>62</sup> RoP, paragraph 69, 19 March 2015

<sup>63</sup> Written evidence, PSOW23

<sup>64</sup> RoP, paragraph 168, 3 March 2015

<sup>65</sup> *ibid*

of own-initiative investigation powers—say one or two investigations each year”.<sup>66</sup>

79. The Auditor General said he was unable to predict the likely financial benefits of such powers but he hoped “that good use of such powers would lead to reduced levels of maladministration leading to efficiency savings as well as increased public satisfaction (and reduced harm and distress to individuals), but such benefits are very difficult to quantify, let alone predict”.<sup>67</sup>

80. Respondents including Citizens Advice Cymru and One Voice Wales agreed that “proper investigation of own initiative investigations could save time and money in the longer term but more importantly could prevent the continuation of poor practices which have adverse effects on individuals”.<sup>68</sup>

### ***Evidence from the Minister***

81. Prior to the inquiry, in [correspondence](#) the CELG Committee was told by the then Minister for Local Government and Government Business, that own initiative investigation powers would be beneficial in some circumstances, but could only be justified in exceptional and specific cases. The then Minister raised concern that the Ombudsman could be drawn into conducting whole-system critiques of sectors, which is more appropriate by the Auditor General rather than focusing on championing individual service users.<sup>69</sup>

82. The Minister was concerned that own initiative powers could interfere with the investigatory powers of existing bodies. In the Minister’s letter to the Committee,<sup>70</sup> he drew attention to the [Well-being of Future Generations \(Wales\) Bill](#) which at the time, was being considered by the Assembly<sup>71</sup>. He said this Bill would require specified public bodies to improve the economic, social and environmental well-being of Wales. He said:

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<sup>66</sup> Written Evidence, PSOW 07

<sup>67</sup> *ibid*

<sup>68</sup> Written Evidence, PSOW 06

<sup>69</sup> Letter from the Chair of the Communities, Equality and Local Government Committee, 17 December 2014 ([a copy of the Minister’s reply is annexed to this letter](#))

<sup>70</sup> Letter from the Minister for Public Services, on behalf of the Welsh Government, 17 February 2015

<sup>71</sup> This Bill subsequently received Royal Assent and became an Act on 29 April 2015

“The responsibility for ensuring these duties are adhered to will be vested in a Future Generations Commissioner for Wales who will be able to conduct reviews into how a public body is taking account of the long-term impact of what the body does under a well-being duty.”<sup>72</sup>

83. The Minister remained unconvinced by some of the arguments put forward by the Ombudsman. In relation to an ageing society who are unwilling or afraid to pursue complaints, he said:

“I’m not sure I buy that in the context of own-initiative inquiries; I buy that in the context of a need for advocates or others to take up issues. I think there may be a role there for the older people’s commissioner, for example, in that context.”<sup>73</sup>

84. The Minister did not feel that the Ombudsman had sufficiently justified the need for own initiative investigation powers. However, he said he was open to being persuaded on the issue.<sup>74</sup>

### ***Evidence from the Ombudsman***

85. The Ombudsman felt it was important that any changes to legislation should ensure the power would only be used in appropriate circumstances and he would “either co-operate with, or refer a matter to, another relevant public body” where necessary.<sup>75</sup>

86. He said that the need to initiate an investigation would be evidence based<sup>76</sup> and he wouldn’t be in a “position to take any significant resources away from...responding to day-to-day complaints from the public”.<sup>77</sup>

87. The Ombudsman believed that scrutiny by the Assembly would provide a mechanism for ensuring that he was performing in terms of his annual targets and he would therefore have to justify any use of

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<sup>72</sup> Letter from the Minister for Public Services, on behalf of the Welsh Government, 17 February 2015

<sup>73</sup> RoP, paragraph 243, 19 March 2015

<sup>74</sup> RoP, paragraph 244, 19 March 2015

<sup>75</sup> FIN(4)-06-15 Paper 3 – Further evidence from the Public Services Ombudsman for Wales, 25 March 2015

<sup>76</sup> RoP, paragraph 48, 21 January 2015

<sup>77</sup> RoP, paragraph 52, 21 January 2015

resources on own initiative investigations that had been diverted away from dealing with public complaints.<sup>78</sup>

88. On the issue of overlapping or conflict with other bodies, the Ombudsman said the Auditor General is “looking at the whole system, fundamentally, he’s tasked to ensure that there’s value for money. There is a difference between value for money and service failure and maladministration”.<sup>79</sup>

89. The Ombudsman confirmed the “PSOW Act already makes provision for the Ombudsman to be able to co-operate with the Older Person’s Commissioner and the Welsh Language Commissioner”.<sup>80</sup> He continued:

“I would propose that it would be opportune to extend the existing provision within the Act to include a similar provision to co-operate with the Auditor General for Wales and the Children’s Commissioner. This would also then lend itself to allow the Ombudsman to produce joint reports etc with such bodies if this was deemed appropriate in the circumstances.”<sup>81</sup>

90. He noted that the Children’s Commissioner is referred to in the 2005 Act, however, “it’s not in the same section as some of the other commissioners, so I think we could tidy that up”.<sup>82</sup> In response to the suggestion that a statutory duty should be placed on the Ombudsman to consult before initiating an investigation, he was concerned it “could lead to legal challenges on the interpretation of the legislation” and “complainants would be very frustrated if investigations were delayed or hampered by challenges which could be tactical in nature by those bodies who are the subject of an investigation”.<sup>83</sup>

91. The Ombudsman said own initiative powers would make it possible for him to consider issues brought to his attention through whistle-blowing. Currently, he is unable to do this as he must be “driven by the individual complainant”.<sup>84</sup> However, he said it was

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<sup>78</sup> RoP, paragraph 52, 21 January 2015

<sup>79</sup> *ibid*

<sup>80</sup> FIN(4)-06-15 Paper 3 – Further evidence from the Public Services Ombudsman for Wales, 25 March 2015

<sup>81</sup> *ibid*

<sup>82</sup> RoP, paragraph 174, 25 March 2015

<sup>83</sup> FIN(4)-06-15 Paper 3 – Further evidence from the Public Services Ombudsman for Wales, 25 March 2015

<sup>84</sup> RoP, paragraph 186, 25 March 2015



important to have a safeguard in place to test the evidence as he would be concerned about “vindictive and anonymous” aspersions that could be made.<sup>85</sup>

### *Our view*

92. The Committee acknowledges the broad support for own initiative investigation powers and believes this could be beneficial to the wider public, given that vulnerable groups are often unable or reluctant to complain. The Committee, whilst recognising the valuable advocacy roles of the Welsh Commissioners, believes there is scope for the Ombudsman to support some vulnerable groups that are not within the remit of the Commissioners.

93. In relation to the costs of own initiative powers, the Committee feels that £80k-£100k, including on-costs, is a realistic figure based on the Ombudsman undertaking one or two investigations each year.

94. The Committee notes the 2005 Act already makes provision for the Ombudsman to be able to co-operate with the Older Person’s Commissioner and the Welsh Language Commissioner, but the Children’s Commissioner is referred to in a different section.

**The Committee recommends that should a bill be introduced, provisions should be included which provide the Ombudsman with powers to initiate own investigations.**

**The Committee recommends that when the Ombudsman exercises this power there must be:**

- sufficient evidence to support an investigation; and
- consultation with Commissioners, relevant stakeholders and any other person the Ombudsman considers appropriate.

**The Committee recommends that should a bill be introduced, it should include a provision requiring the Ombudsman and the Auditor General to take account of each other’s views before exercising the relevant functions and to co-operate with one another in so far as they consider is necessary for the effective exercise of those functions.**

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<sup>85</sup> RoP, paragraph 186, 25 March 2015

**The Committee recommends that should a bill should include provision for joint and collaborative working with the Children's Commissioner (along similar lines to those currently applicable to the Older People's Commissioner for Wales and the Welsh Language Commissioner).**

## 4. Access and oral complaints

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### Background

95. Section 5 of the 2005 Act states that all complaints to the Ombudsman must be made or referred in writing. However, there is a discretionary power under section 2(4) which allows the Ombudsman to accept a complaint other than in writing if appropriate on a case-by-case basis.

96. Within the Ombudsman's office, there is a complaints advice team which will transcribe a complaint that has been made orally; this is then sent to the complainant to be signed and returned.

97. The Ombudsman stated in his background paper there was "no cost" in relation to this provision.

### *Evidence from respondents*

98. There was overwhelming support from respondents to the proposal to accept oral complaints. Most respondents agreed that requiring complaints to be submitted in writing could be a barrier to the service. Some respondents went further and suggested other forms of communication should be considered including email, text or social media given the changing nature of electronic and digital communication.

99. The Older People's Commissioner noted the importance of a written record to support a complaint but said that insisting a complaint is made in writing before any action could be taken could "create a barrier to some older people and others with protected characteristics".<sup>86</sup> She said:

"I would hope that in accordance with the principles and requirements of the [Equality Act 2010](#), that reasonable adjustments could be made to allow people to make complaints by email, in person or by telephone that could later be confirmed in writing or through alternative means e.g. with support from an advocate or where relevant an interpreter."<sup>87</sup>

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<sup>86</sup> Written Evidence, PSOW 04

<sup>87</sup> *ibid*

100. Healthcare Inspectorate Wales agreed that “it’s important that there is a record of what the complainant has said”<sup>88</sup> and raised the importance of signposting people to advocates, to ensure they receive appropriate support to make a complaint.<sup>89</sup>

101. Similarly, Citizens Advice Cymru said that the Ombudsman should be able to accept complaints through intermediaries such as advice agency acting on behalf of a complaint, which would be particularly beneficial for vulnerable individuals or those who do not feel confident to make a complaint themselves.<sup>90</sup>

102. The Welsh Language Commissioner said that the Ombudsman should be able to receive written complaints in Welsh and English and where reasonable, the right to receive verbal complaints should be extended to both languages.<sup>91</sup>

103. The Northern Ireland Ombudsman confirmed that legislation underpinning his role is similar to that in Wales. He has discretionary powers to accept oral complaints which his office record. However, receiving a complaint in writing has been extended to include online forms in a printed format or electronically.<sup>92</sup>

104. The Northern Ireland Ombudsman said that the Ombudsman should be able to accept oral complaints and that legislation needs to be more user-friendly and move beyond discretion. He felt it was discriminatory to rely on his discretion and the current situation was “patronising and condescending”.<sup>93</sup>

105. The WLGA said that local government bodies accept complaints orally via telephone or face-to-face through contact centres and some local government polices “encourages a more informal approach”.<sup>94</sup>

106. One Voice Wales agreed in principle but was concerned that it could increase the number of vexatious complaints as it could “open the floodgates to people just picking the phone up”.<sup>95</sup>

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<sup>88</sup> RoP, paragraph 139, 19 March 2015

<sup>89</sup> *ibid*

<sup>90</sup> RoP, paragraph 186 & 187, 11 March 2015

<sup>91</sup> Written Evidence, PSOW 11

<sup>92</sup> RoP, paragraph 189, 3 March 2015

<sup>93</sup> RoP, paragraph 195, 3 March 2015

<sup>94</sup> RoP, paragraph 238, 25 February 2015

<sup>95</sup> RoP, paragraph 241, 25 February 2015

107. The Auditor General was not convinced and stressed that the Ombudsman already had discretionary powers to accept oral complaints and suggested the advice the Ombudsman currently gives as to how complaints should be accepted could be set out in a model complaints procedure. However, he did suggest that the provision for own initiative investigations could help the Ombudsman address serious issues that have been raised orally but not confirmed in writing.<sup>96</sup>

108. During evidence, the Auditor General's official said that it could be seen as "nugatory work" if time is spent by the Ombudsman's office recording oral complaints, that aren't confirmed by the complainants. He continued:

"It is difficult to see how specifically providing for oral complaints actually gets around that problem, because at some stage there has to be some sort of check that what's transcribed is accurate, and, if someone doesn't want to proceed, they won't sign it off."

109. In 2010, the Law Commission undertook a review into the powers of Ombudsmen.<sup>97</sup> At the time of embarking upon its consultation it did not consider there to be any reason to alter the current position. However,

"...following receipt of all consultation responses, we concluded that there was **no need for any statutory requirements** (*emphasis added*) as to the form in which complaints to ombudsmen were made. We thought that removing these would allow public services ombudsmen to react to technological developments and changing preferences of service users without the need either for reform of the governing legislation or routine exercises of discretion to waive the requirement of a complaint in writing so as to keep pace with such developments or other changes."<sup>98</sup>

110. The Law Commission recommended that the Ombudsman "publish and regularly update guidance as to how complaints can be

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<sup>96</sup> Written Evidence, PSOW 07

<sup>97</sup> Law Commission's 2010 consultation focused on the Parliamentary Commissioner for Administration; the Health Service Ombudsman; the Local Government Ombudsman; the Housing Ombudsman and the Public Service Ombudsman for Wales

<sup>98</sup> Written Evidence, PSOW 13

made”. They felt that this “might have a particularly beneficial impact on individuals who have physical problems writing, who are illiterate or have reduced literacy, or who are not first language English or Welsh speakers”.<sup>99</sup>

111. The Law Commission continued:

“If a complaint reaches the ombudsman that’s within the ombudsman’s jurisdiction, the mere fact that it’s come on the telephone and not in writing should not be an obstacle to putting it to the public body in question and investigating it as necessary.”<sup>100</sup>

112. Some respondents felt whilst it was important to recognise the way people are communicating has changed, confidentiality must be maintained. The Independent Sector Complaints Adjudication Service (“ISCAS”)<sup>101</sup> commented:

“...it’s important that we don’t allow patients’ confidential details to be shared inadvertently.”<sup>102</sup>

113. The Northern Ireland Ombudsman shared this view on privacy and confidentiality and said that in relation to accepting complaints via social media his office was “certainly not ready yet to move in that direction”.<sup>103</sup>

### ***Financial implications relating to access and oral complaints***

114. ISCAS challenged the Ombudsman’s evidence that accepting oral complaints would have no associated costs. They said:

“...there would surely be an associated staff and time cost. Accepting telephonic complaints would require skilled staff to capture the complaint correctly, particularly as complaints referred to the Ombudsman tend to be of a complex nature. Furthermore, opening up the option of oral complaints will

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<sup>99</sup> Written Evidence, PSOW 13

<sup>100</sup> RoP, paragraph 32, 3 March 2015

<sup>101</sup> ISCAS deals with complaints across the UK independent healthcare sector

<sup>102</sup> RoP, paragraph 394, 4 February 2015

<sup>103</sup> RoP, paragraph 189, 3 March 2015

increase the number of complaints being self-referred to the Ombudsman.”<sup>104</sup>

115. The Auditor General agreed that making it easier to submit complaints orally could lead to more complaints, which would increase costs. However, he said “there may be real benefit to vulnerable people in making the submission and investigation of oral complaints easier”.<sup>105</sup>

### ***Evidence from Ombudsman***

116. In his background paper, the Ombudsman said the 2005 Act was generally helpful in providing access to the Ombudsman. However, he felt there was “a case to be made for modernising this area of the legislation” to ensure social inclusivity, given the changing nature of electronic communication and the considerable equalities issues which could potentially exclude people who are illiterate from complaining.<sup>106</sup>

117. The Committee also heard from the Ombudsman that the literacy levels in Wales are lower than the rest of the UK, with 94% of the population attaining literacy level 1 in the UK and only 87% in Wales. He said that “access for people who cannot write should not be discretionary. They should have the same access as any other service user in Wales”.<sup>107</sup>

118. Whilst the Ombudsman accepted that allowing oral complaints could increase the volume of complaints made, he noted that often time is spent by his staff, transcribing complaints that are not signed and returned by complainants. He said:

“...in terms of assisting those citizens in Wales who cannot, for whatever reason, provide us with a written complaint, that can take staff within our complaints advice team three or four hours. That’s in terms of going through all the issues that a particular complainant has, recording it, making sure that it’s as accurate as possible, then sending it to the complainant’s address, and 50 per cent of that activity currently is wasted.”<sup>108</sup>

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<sup>104</sup> Written Evidence, PSOW 01

<sup>105</sup> Written Evidence, PSOW 07

<sup>106</sup> FIN(4)-01-15 Paper 1 - Amendments to the Public Services Ombudsman (Wales) Act 2005, 21 January 2015

<sup>107</sup> *ibid*

<sup>108</sup> RoP, paragraph 205, 25 March 2015

119. On the issue of accepting complaints via alternative methods, the Ombudsman said his office was trying “to be more in tune with social media”,<sup>109</sup> but measures are needed to ensure there is control over whether a complaint is officially being made. He highlighted the benefit for some individuals making a complaint electronically for example:

“in terms of the homeless, for those people who don’t have a fixed abode they might still be able to do something electronically.”<sup>110</sup>

120. The Ombudsman’s official confirmed they have a system for directing individuals to advocacy services “we have links so we can signpost them [complainants] in that direction so that those bodies can help them to present their complaint”.<sup>111</sup>

### ***Our view***

121. The Committee considers the overwhelming evidence received suggests there should be no restrictions on how complaints are made to the Ombudsman and that restricting the available methods for making complaints could be a barrier, particularly for the most vulnerable groups.

122. In relation to costs, the Committee disagrees that there would be no associated costs as outlined in the Ombudsman’s background paper. However, the Committee acknowledges that it could lead to a reduction of time spent by the Ombudsman’s office transcribing complaints, which are then not formally submitted.

123. The Committee recognises there are practical concerns with extending how complaints can be made. The Committee strongly believes that provisions should be considered to ensure potential complainants are able to reflect on the consequences of informally raising an issue with the Ombudsman, before a complaint is formalised.

**The Committee recommends that should a bill be introduced, the Ombudsman should have full discretion to decide how complaints can be made and must issue guidance specifying the accepted**

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<sup>109</sup> RoP, paragraph 197, 25 March 2015

<sup>110</sup> RoP, paragraph 199, 25 March 2015

<sup>111</sup> RoP, paragraph 65, 21 January 2015



**methods. This should allow the Ombudsman flexibility to react to changing methods of communication in future.**

**The Committee recommends there should be a mechanism to ensure that if a complaint is made orally, the complainant is made fully aware that a formal complaint has been instigated and understands the implications of this.**

## 5. Complaints handling across public services

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### Background

124. To improve consistency in how public service providers deal with complaints, a group chaired by the Ombudsman developed [a Model Concerns and Complaints Policy and Guidance](#), which was subsequently issued by the Welsh Government.

125. Whilst the policy is adopted by local authorities on a voluntary basis, it is strongly encouraged by the Ombudsman. However the Ombudsman has said that “take up has been patchy, but is improving”.<sup>112</sup>

126. The Ombudsman would like steps to be taken to ensure organisations are obliged to adopt a standard approach in dealing with complaints. This new complaints handling role would involve collecting data on complaints and require public bodies to adopt consistent complaints policies. In his background paper, the Ombudsman said:

“In theory, with the recent changes to the social services statutory complaints procedure, all public services devolved to Wales should be operating a streamline two stage complaints procedure.”<sup>113</sup>

127. Under the [Scottish Public Services Ombudsman Act 2002](#), the Scottish Ombudsman may publish a model complaints handling procedure for listed authorities and specify any listed authority to which the model is to apply. The Scottish Ombudsman operates a [Complaints Standards Authority](#). The Ombudsman has proposed a similar approach in Wales with the aim to achieving speedier and simpler complaints handling with early resolution.

128. The Ombudsman estimated the cost of this provision as “two full time investigation officers – £80k-£100k, including on-costs”.

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<sup>112</sup> FIN(4)-01-15 Paper 1 - Amendments to the Public Services Ombudsman (Wales) Act 2005

<sup>113</sup> *ibid*

### *Evidence from respondents*

129. Most respondents were in favour of a streamlined, consistent approach to complaints handling to enable efficient practice to be embedded across public service bodies.

130. The Committee heard that the Scottish Complaints Standards Authority appeared well-regarded and encouraged ownership of policy and complaints management by public bodies. The Scottish Ombudsman said:

“...in the year and a half, two years, that we’ve been operating the Complaints Standards Authority standardised procedures, the number of premature complaints coming to my office, and that is people who are coming to me who should have gone to a local authority, or to a health board, or to a university or wherever, has fallen from 54% to 31%.”<sup>114</sup>

131. A number of other respondents, including One Voice Wales and WCVA were supportive of the proposal and felt that a mandatory complaints policy could lead to a quicker implementation of a positive complaints culture across Wales. One Voice Wales commented:

“the complaints model needs to be mandatory, a bit like the Information Commissioner’s Office have got a scheme around freedom of information, but you would introduce it sectorally, and that is then managed through PSOW.”<sup>115</sup>

132. Citizens Advice Wales said it was important to make the process as clear and straightforward as possible to “encourage more people to complain”<sup>116</sup> and where possible users should be involved in the “co-design”<sup>117</sup> of these forms.

133. Citizens Advice Cymru also said that in developing a mandatory policy the current policy should be reviewed and evaluated by public bodies and complainants to gain an understand of the process from their perspective. They suggested this type of review should be

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<sup>114</sup> RoP, paragraph 121, 4 February 2015

<sup>115</sup> RoP, paragraph 122, 25 February 2015

<sup>116</sup> RoP, paragraph 201, 11 March 2015

<sup>117</sup> RoP, paragraph 225, 11 March 2015

undertaken at regular intervals to ensure the policy remains current and responsive to the needs of both citizens and public authorities.<sup>118</sup>

134. The Auditor General was supportive of the proposal. He said often people want an apology and by improving the way complaints are handled it could diffuse the situation. He said “poor complaints procedures actually end up more expensive”.<sup>119</sup>

135. The Auditor General made the point that it would be helpful for the Ombudsman to be able to approve deviation from a model policy, such as where the requirements of a body’s operations do not fit well with the model policy. He said there may also be a need to exempt certain matters from the model policy, such as Freedom of Information (“FOI”) review procedures, which are subject to other regulations.<sup>120</sup>

136. The Scottish Ombudsman referred to the statutory nature of the Complaints Standards Authority operating in Scotland and said it was “absolutely vital”.<sup>121</sup> He explained that when setting it up his office consulted widely across public services to ensure “the principles that underpin a Complaints Standards Authority would be commonly what people would expect them to be”.<sup>122</sup> He continued:

“We decided that the best way to do that was not to set the ombudsman up as a regulator, but to set the ombudsman up as an enabler.”<sup>123</sup>

137. He confirmed that he did not wish to compromise his role as an Ombudsman and therefore asked Audit Scotland (the equivalent of the Wales Audit Office) to include the complaints handling processes as part of its regular audits of public bodies.<sup>124</sup>

138. On this point, the Auditor General agreed that as part of the work his office undertakes, he could check how bodies were complying with guidance.<sup>125</sup>

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<sup>118</sup> RoP, paragraph 146, 11 March 2015

<sup>119</sup> RoP, paragraph 49, 11 March 2015

<sup>120</sup> Written Evidence, PSOW 07

<sup>121</sup> RoP, paragraph 152, 4 February 2015

<sup>122</sup> RoP, paragraph 141, 4 February 2015

<sup>123</sup> RoP, paragraph 142, 4 February 2015

<sup>124</sup> RoP, paragraph 143, 4 February 2015

<sup>125</sup> RoP, paragraph 46, 11 March 2015

139. The Committee heard from a number of respondents, including the Northern Ireland Ombudsman, WCVA and Citizens Advice Cymru about the importance of data collection. Citizens Advice Cymru commented that publication and analysis of the outcomes of complaints was missing from the current complaints policy and it wanted “more transparency for people” to see the “outcome and the resolution” of complaints.<sup>126</sup>

140. The Scottish Ombudsman told the Committee that data collection had been more efficient as a result of the Complaints Standards Authority and that public bodies should be “collecting data using the same language” to ensure a standard consistency when making comparisons between bodies. He said:

“...for the first time, we have data across all of the sectors in Scotland about the number of complaints...We will know what these complaints were about; we will know whether there are trends. We know how many have been satisfactorily resolved in the first stage or may have been resolved in the second stage and so on and so on.”<sup>127</sup>

141. The WCVA said that training for public bodies could improve complaint handling. They suggested:

“online learning tools, e-learning...and the opportunity for people to have secondments across organisations, to be mentored by others and also to maybe have that experience...in terms of listening directly to people who have gone through the complaints process and come out the other side and who may be satisfied or may not.”<sup>128</sup>

142. The WLGA did not support the proposal and believed the existing policy had already introduced consistency. They said:

“the model was introduced in 2011 and since then there’s been more consistency and a better approach. Models and processes are part of it, and a two-stage process is optimum, but it is

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<sup>126</sup> RoP, paragraph 208, 11 March 2015

<sup>127</sup> RoP, paragraph 147, 4 February 2015

<sup>128</sup> RoP, paragraph 215, 11 March 2015

about culture; it is around whether the organisation actually receives complaints in a constructive way..."<sup>129</sup>

143. Abertawe Bro Morgannwg University Local Health Board raised concerns over duplication of work as NHS Wales already has a role in overseeing complaints handling and data collection. The Board questioned how the Ombudsman's proposal "would fit in with the current mechanisms that are in place".<sup>130</sup>

### ***Financial Implications of complaints handling across public services***

144. The Scottish Ombudsman confirmed that the initial set-up costs of the Complaints Standards Authority were approximately £120,000, which comprised two members of his team and accounted for 3% of his financial resource. He said:

"the first year running costs, because there was lots of training and stuff, went to £200,000, but we will run that now, going forward, at around £105,000 to £110,000 a year."<sup>131</sup>

145. The Northern Ireland Ombudsman agreed that the initial start-up costs could be in the region of £150,000 and that the Scottish model consisting of two staff members would be adequate. He said despite his view that it would be a "very helpful intervention"<sup>132</sup> the Northern Ireland Committee considering the proposed legislation "were not satisfied or convinced that the money should be spent on that".<sup>133</sup>

146. The Scottish Ombudsman and the Northern Ireland Ombudsman agreed that there would be a cost on organisations complying with a mandatory complaints process. However, they noted that larger bodies are already likely to have management systems and complaints officers in place, therefore it would just be a case of existing arrangement being "harnessed in a particular way".<sup>134</sup>

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<sup>129</sup> RoP, paragraph 128, 25 February 2015

<sup>130</sup> RoP, paragraph 106, 19 March 2015

<sup>131</sup> RoP, paragraph 148, 4 February 2015

<sup>132</sup> RoP, paragraph 173, 3 March 2015

<sup>133</sup> *ibid*

<sup>134</sup> RoP, paragraph 186, 3 March 2015

147. The Auditor General said that initially there might be a cost as bodies “adjust their existing practices” but overall the cost would be “marginal as opposed to significant”.<sup>135</sup> He said:

“I think the required adoption of model policies should be conducive to improved economy by...saving bodies spending time and money on devising their own policies. Similarly some savings might be achieved where public bodies are operating poorly designed policies.”<sup>136</sup>

### ***Evidence from the Minister***

148. Prior to the inquiry, the then Minister for Local Government and Government Business told the CELG Committee in correspondence:

“We do agree with the Ombudsman there is more value to be gained from better analysis at an all-Wales level of complaints made in the different sectors of Wales, including the opportunity to make better comparison between public bodies. However, we should not under-estimate the difficulties involved in assimilating reliable data which can properly be used for such purposes. If the Ombudsman were to pursue this exercise, we would certainly support the work, subject to reassurances about the additional burden of data collection and verification, which might be added to the public service in Wales.”

149. The Minister agreed that there should be more consistency in the way complaints are managed and recorded by public bodies. However, he was “not absolutely convinced to what extent you can legislate for consistency”.<sup>137</sup> He continued:

“...it’s about embedding behaviour, it’s embedding practice, and it’s about provision of guidance, I guess, and training. So, I think the ombudsman clearly has a role in all of those things, but I’m not certain that legislation on its own is the way to do that.”

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<sup>135</sup> RoP, paragraph 46, 11 March 2015

<sup>136</sup> Written Evidence, PSOW 07

<sup>137</sup> RoP, paragraph 268, 19 March 2015

### ***Evidence from the Ombudsman***

150. The Ombudsman noted the improvements in terms of the adoption of better complaints handling. He felt more still needed to be done and there was a need to enshrine best practice in legislation.<sup>138</sup> He said:

“I don’t think there’s any scope for complacency in this regard either. We’re talking about a public service economy of some £15 billion or £16 billion, to invest a very, very small amount of time and money and legislation to make sure that we’re absolutely top of our game.”<sup>139</sup>

151. The Ombudsman was supportive of the Scottish model and the importance of the statutory nature of the Complaints Standards Authority. He said that in Scotland, so far no public body had refused to adopt the complaints system.<sup>140</sup>

152. He continued to say:

“... if scrutiny’s going to be one of the drivers of public service improvement, I can’t currently give you as detailed a picture across the whole of the public service in terms of the way in which people are dealing with a two-stage complaints system, and the absolute level or percentage who are dealt with at either stage 1 or 2...in quite the same way as they can do in Scotland. Certainly, we try and capture data on a local authority and on a health board basis, and so forth, but this would give us more granularity and it would give that to you as well. So, to some extent, it’s about extending your powers of scrutiny by capturing more data...”<sup>141</sup>

153. The Ombudsman believed there was a need for a model policy to insist on certain aspects such as “a two-stage approach, of five days and 20 days” but with scope “to allow certain flexibilities” for different sectors.<sup>142</sup>

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<sup>138</sup> RoP, paragraph 219, 25 March 2015

<sup>139</sup> *ibid*

<sup>140</sup> RoP, paragraph 72, 21 January 2015

<sup>141</sup> RoP, paragraph 73, 21 January 2015

<sup>142</sup> RoP, paragraph 225, 25 March 2015



### ***Our view***

154. The Committee acknowledges there has been an improvement in the adoption of better complaints handling procedures by public authorities.

155. The Committee believes that any model complaints handling policy should be flexible enough to allow for the needs of different sectors and not conflict with existing initiatives (e.g. in the NHS).

156. The Committee notes the Ombudsman estimate of £80 - £100k and considers this to be a realistic estimate based on the Scottish model and size variation between countries.

**The Committee recommends should a bill be introduced, the Ombudsman should have a statutory complaints handling role. This complaints role should include provisions to:**

- publish a model complaints handling policy for listed authorities;**
- require regular consultation with relevant stakeholders;**
- require public bodies to collect and analyse data on complaints; and**
- ensure a standardised language is used by public bodies when collecting data to ensure comparisons can be made.**

**The Committee recommends that any model complaints handling policy should be supported by a training programme and promotional materials for staff in public bodies.**

## 6. The Ombudsman's jurisdiction to include private health services

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### Background

157. The listed authorities that the Ombudsman can investigate are set out in Schedule 3 to the 2005 Act. The Ombudsman's jurisdiction in this respect extends to most devolved public services in Wales, including the NHS. Since November 2014, this jurisdiction has been extended to include private care services<sup>143</sup> by amendments to the 2005 Act inserted by the [Social Services and Well-being Act 2014](#). However, private healthcare<sup>144</sup> remains outside the Ombudsman's jurisdiction.

158. The Ombudsman is currently able to consider complaints against private health care providers if the treatment has been commissioned and paid for by the NHS. The Ombudsman would like this jurisdiction extended to include private health services when a patient has received private healthcare which has been self-funded, rather than being commissioned by the NHS, in conjunction with public healthcare.

159. In additional written evidence to the Committee, the Ombudsman provided clarity on who would be covered by the proposal. He said:

“I am seeking that the Public Services Ombudsman for Wales should be able to have the discretion to consider complaints from members of the public who have received treatment at an ‘Independent Hospital’ as defined by the [Care Standards Act 2000](#)...

“For the avoidance of doubt, I am seeking that this should include the private practice of health professionals (including private units) conducted on the premises of NHS organisations, who invariably under contractual arrangements with the NHS have access to NHS staff and facilities...

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<sup>143</sup> Private care services - social care services such as residential care or home care, which are privately arranged and self-funded by the individual for their own care (without involving social services)

<sup>144</sup> Private healthcare - healthcare services which are not funded by the NHS, but are paid for by the patients themselves or through private healthcare insurance. Such services could be provided on a private basis by an NHS body or by the independent sector

“I confirm that I am not seeking powers to look into complaints about other types of businesses also classified as private health care providers, such as beauty parlours, tattoo parlours etc.”<sup>145</sup>

160. The Ombudsman confirmed that he was seeking jurisdiction:

“to be able to look into care and treatment provided by a private health care provider where that care/treatment has stemmed from the NHS, or has been a part of a person’s health care pathway which has also involved the NHS.”<sup>146</sup>

161. In the Ombudsman’s estimated the cost of this provision:

“Dependent on public or private funding method – £0k-£40k-£50k provision (dependent on policy choice re levy).”<sup>147</sup>

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

162. There were mixed views amongst respondents to the proposal to extend the Ombudsman’s remit to cover private health care. Whilst most respondents agreed in principle and felt the service provided by the Ombudsman should be citizen-led rather than service-led, concerns were raised about the additional cost to the tax-payer.

163. The Older People’s Commissioner said that the “pathway followed by the individual” should form the “basis of the pathway of the complaint investigation and not be limited to just the public bodies along that pathway”.<sup>148</sup> In written evidence, she said:

“As the future model of public service delivery is likely to become more diverse and extend to social enterprises and other innovative public/private partnership arrangements then this pathway approach needs further consideration.”<sup>149</sup>

164. The Welsh NHS Confederation agreed with extending the Ombudsman’s jurisdiction in this way. They said:

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<sup>145</sup> FIN(4)-03-15 PTN2 - Additional Information from PSOW (evidence requested by Chair)

<sup>146</sup> FIN(4)-06-15 Paper 3 - Further evidence from the Public Services Ombudsman for Wales, 25 March 2015

<sup>147</sup> FIN(4)-01-15 Paper 1 - Amendments to the Public Services Ombudsman (Wales) Act 2005, 21 January 2015

<sup>148</sup> Written Evidence, PSOW 04

<sup>149</sup> *ibid*

“It would be beneficial if the PSOW is able to reflect the population’s whole journey across public services, which may include private healthcare. Without this, the effectiveness of some public service investigations may be limited because the PSOW’s inability to investigate private care as part of an NHS patient’s journey/ pathway does mean that the PSOW cannot give the complainant a full response and this could be deemed unsatisfactory. Private care provision should be investigated with the same rigor and to the same standards as NHS services as patients could suffer the same detriment and the same degree of maladministration as within the NHS.”<sup>150</sup>

165. However, the Welsh NHS Confederation felt further clarity was required, including what the sanctions would be for failing to comply with the Ombudsman’s report and recommendations and how these sanctions would be enforced.<sup>151</sup>

166. The Auditor General could also see merit in a “follow the citizen”<sup>152</sup> approach, but was concerned that defining linkages in care history could be challenging in some cases. He was also concerned that “once you start looking at one part of the private healthcare market” there might be the risk of “opening up the ombudsman to being able to deal with any matters in private healthcare” and therefore the proposal needed careful consideration.<sup>153</sup>

167. The Northern Ireland Ombudsman said the inability for the Ombudsman to investigate where a patient had received a combination of public and private health care could leave both services “wondering where did this go wrong” and that “both parties need their vindication”.<sup>154</sup>

168. Health Inspectorate Wales were also in support and felt that where appropriate arrangements for health and social care should be brought into alignment. It confirmed the number of independent private bodies that would be included within the proposal was “not excessive”.<sup>155</sup> They said:

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<sup>150</sup> Written Evidence, PSOW 24

<sup>151</sup> *ibid*

<sup>152</sup> Written Evidence, PSOW 07

<sup>153</sup> RoP, paragraph 99, 11 March 2015

<sup>154</sup> RoP, paragraph 207, 3 March 2015

<sup>155</sup> RoP, paragraph 166, 19 March 2015

“I would anticipate that the Ombudsman’s role would be to intervene where existing mechanisms have failed to reach a satisfactory conclusion. It would therefore be important to map how the existing complaints processes for NHS and private healthcare worked in relation to the Ombudsman in order to provide clear and simple guidance for complainants as to the route they should follow.”

169. In principle, the Scottish Ombudsman thought the proposal had merit but had not fully been thought through. He said his office “was established to look at public services”<sup>156</sup> and felt that “if a provision to look at private healthcare were to come in then that should be funded by the private sector”<sup>157</sup>.

170. The Northern Ireland Ombudsman welcomed the extension of the Ombudsman’s jurisdiction to include private care service but remained unconvinced about private health care. He said that as care services are means-tested, if an individual is told they have to pay for their care they should have access to the Ombudsman to examine concerns or complaints. Whereas an individual that has made a decision to use private health care has recourse via other routes.<sup>158</sup>

171. ISCAS did not support the proposal on the basis that “a mechanism for independent review of independent sector complaints already exists at no cost to the taxpayer”.<sup>159</sup> ISCAS said they had been operating a Complaints Code of Practice across the UK independent healthcare sector for over 13 years, with a three-stage complaints process, which reinforced local resolution.<sup>160</sup>

172. ISCAS confirmed that if a patient had been receiving treatment paid for by the NHS, but subsequently had treatment delivered by a private healthcare that individual “would go through the first and second stages, but then, as the third stage, they can go to the ombudsman”.<sup>161</sup>

173. The Committee were concerned that as membership to ISCAS is voluntary, patients who receive treatment by a healthcare provider that

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<sup>156</sup> RoP, paragraph 237, 4 February 2015

<sup>157</sup> *ibid*

<sup>158</sup> RoP, paragraph 206, 3 March 2015

<sup>159</sup> Written Evidence, PSOW 01

<sup>160</sup> *ibid*

<sup>161</sup> RoP, paragraph 281, 4 February 2015

was not a member of ISCAS, would only have the mechanism to take their case to court.<sup>162</sup> On this point, ISCAS said:

“...we need to point out that there will be people who are not part of ISCAS that have their own organisational complaints processes...You would hope that they would follow a code of good practice, but we just don’t know.”<sup>163</sup>

174. ISCAS confirmed that the amount of complaints in the private sector in Wales were “quite small”.<sup>164</sup> They also noted there were no costs to the complainants of using the ISCAS complaints process and that their decision to engage in the adjudication process would not preclude the complainant from pursuing litigation at a later stage (this issue is raised further in Chapter 7).

175. ISCAS drew the Committee’s attention to the predicament of private patients using services within an NHS Trust such as Private Patient Units (“PPUs”)/private beds who have no ability to complain to any external body about their treatment.<sup>165</sup> They said:

“In these services patients have no access to an independent review as the Ombudsman does not include these complainants and NHS-run PPUs cannot subscribe to ISCAS.”<sup>166</sup>

176. In further evidence provide by HIW they confirmed there is currently only one private patient unit operating in Wales, the Bridgend Clinic<sup>167</sup> which comprises nine beds and an out-patient suite containing five consultation rooms. They said:

“The Bridgend Clinic (PPU) does not need to register with HIW since it is owned and operated by the Health Board...

“For the purposes of complaint processes and the role of HIW, the Bridgend Clinic is treated as an NHS site and it is HIW understanding that if a complainant were not happy with the

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<sup>162</sup> RoP, paragraphs 302 & 304, 4 February 2015

<sup>163</sup> RoP, paragraph 306, 4 February 2015

<sup>164</sup> RoP, paragraph 321, 4 February 2015

<sup>165</sup> Written Evidence, PSOW 1

<sup>166</sup> *ibid*

<sup>167</sup> The Bridgend Clinic is located in the Princess of Wales Hospital grounds and operated by Abertawe Bro Morgannwg University Health Board

Health Board's response to their complaint they would have access to Public Service Ombudsman for Wales."<sup>168</sup>

177. Furthermore, ISCAS said that it would welcome the opportunity to enter into an information sharing agreement with the Ombudsman to jointly address the type of complaint that cross between the NHS and independent healthcare sector. ISCAS said this would be similar to its current operating protocol with the Health Inspectorate Wales ("HIW") and the Care Quality Commission ("CQC") in England and that patients would have to consent that their information was being shared.<sup>169</sup>

### **European Directive on Alternative Dispute Resolution**

178. The Northern Ireland Ombudsman and Dr O'Brien mentioned the impact that the [European Directive on Alternative Dispute Resolution](#) ("ADR") would have on Ombudsmen. Article 1 of the Directive states that its purpose is:

"to contribute to the proper functioning of the internal market by ensuring that consumers can, on a voluntary basis, submit complaints against traders to entities offering independent, impartial, transparent, effective, fast and fair alternative dispute resolution procedures."<sup>170</sup>

179. The Directive applies to disputes between consumers and traders concerning contractual obligations stemming from sales and services contracts in all economic sectors other than those specifically exempted. Article 2(h) of the Directive excludes "health services provided by health professionals to patients to assess, maintain or restore their state of health, including the prescription, dispensation and provision of medicinal products and medical devices".<sup>171</sup> However, this does not exclude social care.

180. The House of Commons' [European Scrutiny Committee](#) has considered the wider impact of this Directive on UK law. The Department for Business, Innovation and Skills also held a [consultation in 2014](#) on applying the ADR Directive. During this consultation, the Ombudsman's Association and the Scottish Public Services

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<sup>168</sup> FIN(4)-07-15 PTN2 - Additional Information from Health Inspectorate Wales, 23 April 2015

<sup>169</sup> RoP, paragraphs 285 & 323, 4 February 2015

<sup>170</sup> European Directive on Alternative Dispute Resolution

<sup>171</sup> *ibid*

Ombudsman raised concerns about the boundaries between public and private delivery of service and the extent of the Directive.

181. On this issue, Dr O'Brien said that whilst ADR is limited to the private sector, there was a feeling that "once the expectations of the directive are absorbed into the private sector ombudsmen, it will be difficult for the public sector ombudsmen to resist them and they'll become associated almost exclusively with that sort of fairly low-level, mass dispute resolution function to the exclusion of all else".<sup>172</sup>

***Financial Implications of extending the Ombudsman's jurisdiction to include private health services***

182. In correspondence the previous Ombudsman told the CELG Committee, taxpayers should not have to bear the costs of establishing the complaints process in this area.

183. In this correspondence, the previous Ombudsman said that private sector ombudsman schemes are normally funded by the bodies in their jurisdiction and this is usually underpinned by statute. He said the funding mechanism could be an annual levy, or based on case-by-case charging, or a combination of both. As such, if the Ombudsman's jurisdiction was extended to include private health, he suggested options such as annual levies, on the basis that the "polluter pays". In this context, the principle of the polluter pays is that it gives providers an incentive to avoid error and resolve complaints as a means of not incurring costs.

184. ISCAS confirmed that its members pay an annual subscription to cover the management resource, which is proportionate to their turnover. They said that if a levy or payment was introduced to cover the Ombudsman's proposal, "it would have to be a levy on everybody" and not just on the organisations that the Ombudsman's was investigating, in order to have sufficient resource to deal with the process.<sup>173</sup>

185. ISCAS said to reduce the impact on resources the Ombudsman could be a "final point of appeal". With the ISCAS three-stage process, followed by the Ombudsman as this would "very rarely happen...But it

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<sup>172</sup> RoP, paragraph 294, 11 March 2015

<sup>173</sup> RoP, paragraph 358, 4 February 2015



might give you a safety-belt kind of assurance from a public body point of view”.<sup>174</sup>

186. The Northern Ireland Ombudsman was unconvinced that a levy should be placed on the private sector. He said that the private sector may challenge why the same requirement was not being placed on the public sector. He said there “could be an argument to say that every polluter pays” but this might only work in “a very limited arena”.<sup>175</sup>

### ***Evidence from the Minister***

187. The Minister said “the ombudsman currently has no power to investigate private healthcare complaints...I think we’re open to looking at that”.<sup>176</sup> However, the Minister wanted to ensure there would be no cost to the “public purse”.<sup>177</sup>

### ***Evidence from the Ombudsman***

188. The Ombudsman’s said he would like to be “citizen-centred” not “sector-focused” to ensure he can consider the whole complaint and not just the parts delivered by the NHS. He said:

“we think that it’s possible to frame legislation to keep that definition sufficiently tight so that we can follow the interests of the citizen rather than be defined by the sector.”<sup>178</sup>

189. The Ombudsman did not believe that ISCAS could provide a suitable alternative to that of the Ombudsman as they were carrying out a different, private function. He said:

“ISCAS is a voluntary membership scheme. Independence is key to public confidence in the ombudsman system and it would be important not to undermine confidence in the PSOW’s service by working closely with voluntary membership bodies.”

190. In response to ISCAS’ suggestion of entering into an information sharing agreement, the Ombudsman believed that under the current legislation it would be difficult to share personal information.<sup>179</sup>

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<sup>174</sup> RoP, paragraph 363, 4 February 2015

<sup>175</sup> RoP, paragraph 212, 3 March 2015

<sup>176</sup> RoP, paragraph 298, 19 March 2015

<sup>177</sup> RoP, paragraph 300, 19 March 2015

<sup>178</sup> RoP, paragraph 257, 25 March 2015

191. The Ombudsman was concerned that an ADR Directive entity could be established and certified to look at complaints in the area of private social care and this could potentially impact on the independence of his office and cause confusion for complainants.<sup>180</sup> The Ombudsman's official said:

“The dilemma is: would it create confusion if we don't apply for certification for complainants and consumers? Because if we don't apply, then somebody else will be nominated as the ADR provider in that [private social care] sector.”<sup>181</sup>

192. The Ombudsman was also concerned about the additional cost that might be put on his office:

“I think there's a registration fee for becoming an ADR provider. There is a revenue potential if you're actually handling complaints as an ADR provider. But, again, we need to look at those figures in terms of cost and benefit. Is the cost of becoming a provider equal or greater to the revenue that could be generated from having that status? So, again, it's still unclear at the moment.”<sup>182</sup>

193. On the issue of Private Patient Units, the Ombudsman said this was not an issue he had put forward in his original proposal, however, if there was scope to address this issue in legislation “that would be very welcome”.<sup>183</sup>

194. The Ombudsman felt that a levy may not be the most practical solution and instead the cost should be considered on a case by case basis. He said that whilst the number of cases would be rare “they are very serious to the individuals who are involved”.<sup>184</sup> He continued

“I think we could make sure that any cost to the public purse was recovered from the private provider without having a one-

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<sup>179</sup> FIN(4)-03-15 PTN1 - Additional Information from PSOW (from evidence session 21 Jan 2015), 25 February 2015

<sup>180</sup> RoP, paragraph 152, 25 March 2015

<sup>181</sup> RoP, paragraph 153, 25 March 2015

<sup>182</sup> RoP, paragraph 172, 25 March 2015

<sup>183</sup> RoP, paragraph 257, 25 March 2015

<sup>184</sup> RoP, paragraph 259, 25 March 2015

size-fits-all levy system, particularly given the small volume of complaints that mix the public and private.”<sup>185</sup>

195. In additional written evidence to the Committee, he said that the costs of complaints “could always be revisited again in the future based on experience of actual casework volumes in this area”.<sup>186</sup>

### *Our view*

196. The Committee considers the Ombudsman’s jurisdiction should be extended to include private health care in limited circumstances and notes that the number of cases are likely to be small. Therefore any costs should be recovered from the private provider on a case by case basis.

197. The Committee is concerned about the European Directive on Alternative Dispute Resolution and how this will affect the Ombudsman’s role, in particular in relation to private social care.

**The Committee recommends that should a bill be introduced, the Ombudsman’s jurisdiction should be extended to enable him/her to investigate the whole complaint when a combination of treatment has been received by public and private healthcare providers and when that treatment has been initiated in the NHS.**

**The Committee is concerned that patients using services provided in Private Patient Units have no ability to complain to any external body about their treatment The Committee recommends that the Welsh Government work with the Health Inspectorate Wales to resolve this apparent anomaly and report back to the Committee.**

**The Committee recommends that the Welsh Government liaises with the UK Government on the European Directive on Alternative Dispute Resolution and how it will affect the Ombudsman’s role.**

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<sup>185</sup> RoP, paragraph 259, 25 March 2015

<sup>186</sup> FIN(4)-03-15 PTN2 - Additional Information from PSOW (evidence requested by Chair), 25 February 2015

## 7. Links with the courts

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### Background

198. Section 9 of the 2005 Act restricts the Ombudsman from considering a complaint if the matter could be considered by the courts, tribunal or the Welsh Ministers (or a Minister of the Crown). Therefore, where a complainant has a right or remedy to go to court, the presumption is in favour of the complainant taking that route. However, the Ombudsman does have discretion to set aside that requirement, on a case-by-case basis.

199. In July 2011, the Law Commission<sup>187</sup> published a report [The Public Services Ombudsmen report](#) that reviewed the legislation governing public services ombudsmen in England and Wales.

200. On the whole, this report commented favourably on the existing 2005 Act but did make general recommendations relevant to the Ombudsman's role, including:

- that access to the Ombudsman could be improved by modifying the "statutory bar" which restricts the ability of citizens to choose the institution for administrative redress they prefer (i.e. the Ombudsman or the courts);
- the creation of a specific power to "stay" an application for judicial review, so that suitable matters could be handled by the Ombudsman rather than the courts - currently there is no provision to allow the Ombudsman to consider a complaint when a judge determines that it would be the better means of resolution. Changing the law to allow the Administrative Court to "stay" cases and to refer them to the Ombudsman would address this issue; and
- a power for the Ombudsman to refer a point of law to the courts - this would enable the Ombudsman to seek clarity on a legal point which might otherwise hinder or prevent an investigation

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<sup>187</sup> The Law Commission is the statutory independent body that was created by the Law Commission Act 1965, to keep the law under review and to recommend reform where it is needed.

as well as seeking clarity where there is doubt as to whether a matter is within jurisdiction.<sup>188</sup>

201. The Law Commission's report was primarily addressed to the UK Parliament, although the recommendations relating to the Ombudsman also relate to the Assembly. The Law Commission are awaiting a response by the UK Government to its recommendations.

202. The Ombudsman would like to see changes made to the 2005 Act to address these issues. However, in his background paper he noted some of these issues "clearly impact on the English and Welsh court system".<sup>189</sup>

## **Statutory Bar**

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

203. There were mixed views from respondents on the removal of the statutory bar. Some respondents were supportive of the removal to allow more people to seek redress through the Ombudsman, given that access to the courts is now more limited and costly which could be a barrier to many individuals.

204. The Law Commission noted this issue may require changes to UK legislation and would be best addressed at a UK-level. However, it was supportive of the removal of the statutory bar and said:

"Our proposal in our report was that the law should be neutral on the matter of whether the ombudsman takes up the complaint or sends the complainant off to court. Our view was that neutrality at the level of the statute was far more satisfactory than the creation of this hurdle by which the ombudsman has to persuade himself or satisfy himself or herself that the statutory bar should be removed in a particular case."<sup>190</sup>

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<sup>188</sup> Law Commission: Public Services Ombudsmen Report, July 2011

<sup>189</sup> FIN(4)-01-15 Paper 1 - Amendments to the Public Services Ombudsman (Wales) Act 2005, 21 January 2015

<sup>190</sup> RoP, paragraph 56, 5 March 2015

205. The WCVA supported the proposal and felt “it would offer an effective alternative to the courts system and would also lend itself to the equality of access point”.<sup>191</sup>

206. Citizens Advice Cymru agreed and raised the complexities of an individual going to court and the implications of access to legal advice, particularly in terms of cuts to legal aid. They said:

“We were in receipt of £22 million-worth of legal aid across England and Wales. We had a £19 million cut to that. So, that has had implications on the extent to which we can provide specialist advice and support on a range of different issues to clients.”<sup>192</sup>

207. The WLGA said that Ombudsman could offer a “more informal and quicker, speedier resolution to their complaint, where a court process may take longer” but this could potentially have a significant impact on the workload and resources of the Ombudsman.<sup>193</sup>

208. The Administrative Court Office for Wales (“Administrative Court”) suggested that judicial review is often the last resort. They said:

“If there are other methods of challenge available to the claimant, and any of those methods of challenge provide an adequate remedy, the alternative remedy should be exhausted before applying for judicial review. This is a longstanding principle in judicial review and permission to apply for judicial review will generally be refused if the Court considers that there is an adequate alternative remedy.”<sup>194</sup>

209. However, the Administrative Court continued to say that the Ombudsman may not always be an adequate alternative. They explained:

“The question as to whether an adequate alternative remedy may exist in a complaint to an Ombudsman has been discussed in a number of cases, most notably *R. v Lambeth London Borough Council Ex parte Crookes and R. (Umo) v Commissioner for Local Administration in England*. Those cases

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<sup>191</sup> RoP, paragraph 245, 11 March 2015

<sup>192</sup> RoP, paragraph 256, 11 March 2015

<sup>193</sup> Written Evidence, PSOW 08

<sup>194</sup> Written Evidence, PSOW 41

suggest that a complaint to an Ombudsman can be but will not always be an adequate alternative remedy, it will depend on the circumstances of the case. However, as Mr. Justice Coulson noted in *R. (Gifford) v Governor of Bure Prison*; “*For many reasons, and in many cases, the... ombudsman would be the more effective and more efficient remedy than an application for judicial review.*”

“Therefore, the Court may refuse permission to apply for judicial review or dismiss a substantive application for judicial review if it considers that an investigation by the Ombudsman would represent an adequate alternative remedy.”

210. The Scottish Ombudsman believed the intention of the Scottish Act “was to make sure that we are an alternative to the court system and not another court system”. Although, he noted in Scotland they have a separate legal system and that he was unsure whether it would be an issue in Wales.<sup>195</sup>

211. Some respondents were concerned that the taxpayer may be expected to cover the cost of seeking redress by both the Ombudsman and by the courts.

212. The Auditor General was concerned the removal of the statutory bar would allow complainants to pursue both mechanism, giving potentially an additional cost to the taxpayer. He said “there needs to be an agreement or a decision on a UK level rather than just in Wales”.<sup>196</sup>

213. The Auditor General’s official explained:

“I think the concern is double jurisdiction, if you like, in that if someone pursues a twin-track approach that will, inevitably, lead to greater public expenditure than would be the case if they could only pursue one or the other. And it’s very hard to see how legislation could be framed that would curtail the jurisdiction of the courts.”<sup>197</sup>

214. On this issue, Citizens Advice Cymru reiterated their view that people are reticent about complaining and therefore it was unlikely

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<sup>195</sup> RoP, paragraph 253, 4 February 2015

<sup>196</sup> RoP, paragraph 89, 11 March 2015

<sup>197</sup> RoP, paragraph 91, 11 March 2015

that a large proportion of people would be “looking to go down both routes”.<sup>198</sup>

215. The Northern Ireland Ombudsman said there had to be separation between the courts and the Ombudsman as they offer two different routes to justice. He believed if an individual had a remedy in the courts, then that would be the most appropriate route to take.<sup>199</sup>

216. However, the Northern Ireland Ombudsman acknowledged that some individuals for financial reasons would be unable to access the courts and in these circumstances an Ombudsman should exercise “discretion in ensuring that we look at their issues”. He confirmed the removal of the statutory bar had been considered in Northern Ireland but the Committee considering the legislation felt that the time was not right for such a development.<sup>200</sup>

217. Citizens Advice Cymru supported the Law Commission’s recommendation that the Ombudsman should publish guidance about when it is appropriate to make a complaint to the Ombudsman and when it is more appropriate to be considered by the courts or other mechanism of administrative justice.<sup>201</sup>

## **Stayed Provisions**

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

218. On the issue of the ‘stay’ provision the Law Commission said that it was possible for a matter to come before the Administrative Court, at permission stage, where there was a sufficiently arguable case on administrative law illegality for permission to be granted, but where it was apparent to the court that the true nature of the matter concerned maladministration, in this situation the most appropriate institution to deal with the matter would be the Ombudsman.

219. The Law Commission said the stay provision offered flexibility as a stayed case would be “temporarily halted” and there would be the option to refer it back to the court in a number of circumstances, including:

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<sup>198</sup> RoP, paragraph 258, 11 March 2015

<sup>199</sup> RoP, paragraph 215, 3 March 2015

<sup>200</sup> *ibid*

<sup>201</sup> Written Evidence, PSOW 14



-if the Ombudsman had resolved the issue and the case could be withdrawn;

-if the Ombudsman had refused to investigate; or

-if the Ombudsman had investigated and there was strong evidence of illegality and the court might wish to take the case further.<sup>202</sup>

220. The Law Commission had previously thought that if a case had been stayed it should be “transferred to the ombudsmen from the Administrative Court” and the Ombudsman should be obliged to investigate.<sup>203</sup> However, they said:

“We moved away from the idea that, if the court does this, that should oblige the ombudsman to start an investigation. We concluded after consultation that that should remain a matter for the ombudsman’s discretion...”<sup>204</sup>

221. The Law Commission also felt that whilst a stay should normally be used at the permission stage, it could also be used after permission had been granted. They commented:

“...the court already has a power to stay its proceedings—it’s one of its general powers. What we’re talking about would be a specific application of that power, and I’d have thought myself that, even without a change to court rules, a party to litigation could say, ‘I’m asking you to use your general power to stay, and I’m asking it in the context of what the Law Commission recommended, and here’s a record of what the Law Commission recommended; judge, please stay in these circumstances’. I personally don’t see any obstacle to that being done under the present rules.”<sup>205</sup>

222. In relation to stayed provisions the Administrative Court confirmed they:

“...hold a discretionary power to stay any proceedings before it. The power to stay arises out of the Court’s inherent jurisdiction to control its own proceedings and thus the Administrative

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<sup>202</sup> RoP, paragraph 61, 3 March 2015

<sup>203</sup> Written Evidence, PSOW 13

<sup>204</sup> RoP, paragraph 61, 3 March 2015

<sup>205</sup> RoP, paragraph 73, 3 March 2015

Court may order proceedings be stayed at any stage of the proceedings. This inherent power to stay proceedings is expressly noted in Civil Procedure Rule (“CPR”) 3.1(2)(f). Thus, were the Court minded to exercise its discretion, it could stay proceedings to await an Ombudsman’s decision.”<sup>206</sup>

## **Reference on a point of law**

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

223. The Law Commission said there could be situations where an Ombudsman could be forced to abandon an investigation which otherwise they would have been able to conclude due to a technical legal question that they were not equipped to resolve. By allowing the Ombudsman “the ability to pose a question of law to the Administrative Court would provide them with a useful tool which could facilitate their work” and could also be used to resolve occasional questions about the jurisdiction of the Ombudsman.<sup>207</sup> They said the number of occasions upon which this power would be used “was going to be very small in number”.<sup>208</sup>

224. The Law Commission saw the key benefits as being the improvement of the quality of the Ombudsman’s reports “by increasing the ombudsmen’s ability to report on technical legal matters, and preventing them from having to discontinue an investigation where a difficult legal issue arose”.<sup>209</sup>

225. The Auditor General agreed that it is important “for the ombudsman to turn to the courts if there is a need to sort out what a specific point of law is”.<sup>210</sup>

226. However, the Welsh NHS Confederation said consideration should be given to the role of legal advice to clarify a point of law rather than proceeding directly to the courts and sought clarity over “who funds any legal requests”.<sup>211</sup> The Committee asked the Law Commission if this proposal would require a legislative change. They said:

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<sup>206</sup> Written Evidence, PSOW 41

<sup>207</sup> Written Evidence, PSOW 13

<sup>208</sup> RoP, paragraph 76, 3 March 2015

<sup>209</sup> Written Evidence, PSOW 13

<sup>210</sup> RoP, paragraph 89, 11 March 2015

<sup>211</sup> Written Evidence, PSOW 24

“References are a slightly more tricky matter, because a reference to the administrative court is not something known to the current rules. It might be possible for the ombudsman to use the current rules; for example, bringing proceedings against the public body in question for a declaration as to the law, which is something that the rules already permit individual claimants to do. It might be possible without change to the rules for the ombudsman simply to avail himself of that procedure, but I can’t claim to have studied the rules specifically with that in mind, and of course I must stress, to protect my colleagues, that the Law Commission as a body does not have any remit to give people advice as to what the current law means, but rather to make recommendations for its reform. So, what I’ve just said is an entirely personal view, and not, I’m afraid, very well researched.”<sup>212</sup>

227. The Administrative Court said it was not aware of any provisions that would allow the Ombudsman to make a reference to the Administrative Court. They said:

“There are analogous provisions where a point of law is referred to Administrative Court for the opinion of the Court. Two examples are:

“Determination of a devolution issue after a reference from a Magistrates’ Court under part 2 of schedule 9 of the Government of Wales Act 2006;

“An appeal by way of case stated from a Magistrates’ Court under s111 Magistrates’ Courts Act 1980 or the Crown Court under s28 Senior Courts Act 1981.

“There has never been a reference under schedule 9 of the Government of Wales Act 2006 and, as such, I am unable to illustrate how a reference procedure to the Administrative Court for Wales would practically work. To my knowledge a reference under schedule 9 of the Government of Wales Act 2006 is the only existing reference procedure in the Administrative Court that relates solely to devolved matters as they affect Wales.

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<sup>212</sup> RoP, paragraph 74, 3 March 2015

“The case stated procedure is a fairly frequently used procedure and it is analogous as it allows the Magistrates’ Court or Crown Court to ‘state a case’, that is to say refer a question on a point of law to the Administrative Court, which the Administrative Court will determine. The procedure applies across England and Wales.”<sup>213</sup>

228. The Administrative Court also said that in order to create a procedure for allowing the Ombudsman to make a reference to the Administrative Court the procedure would require primary legislation as “a simple change of the relevant rules of Court (the CPR) would not be sufficient”.<sup>214</sup>

229. The Administrative Court confirmed the Ombudsman can only receive guidance from the Court by bringing proceedings in the Court and even in this situation the “extent to which the Court gives guidance is entirely within the discretion of the Court”.<sup>215</sup>

### ***Financial Implications of links with the Courts***

230. The Law Commission said that the cost of the Ombudsman processing the additional complaints that might arise if the statutory bar was removed would be “set off against the cost to the public purse of judges hearing the case if they proceed by the judicial route instead”.<sup>216</sup> They continued:

“We did some work in our impact assessment on the costs to the public sector of a day in court or a day in a tribunal, and as I recall, four years ago, we costed a day in court at around £1,000—slightly more—and a day in a tribunal at around £600. That’s the cost to the public purse, of course.”<sup>217</sup>

### ***Evidence from the Minister***

231. The Minister said it was his understanding that the statutory bar provisions was only an issue in a very small proportion of the overall number of complaints currently received by the Ombudsman. He said:

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<sup>213</sup> Written Evidence, PSOW 41

<sup>214</sup> *ibid*

<sup>215</sup> *ibid*

<sup>216</sup> RoP, paragraph 63, 3 March 2015

<sup>217</sup> RoP, paragraph 70, 3 March 2015

“... we believe there is complexity in this area, and, on balance, we believe it’s better to have a line of demarcation between the ombudsman and the court. I think there’s an additional area, which is about the competence of the Assembly and therefore the competence of the ombudsman in respect of certain cases as well.”<sup>218</sup>

### ***Evidence from the Ombudsman***

232. The Ombudsman said he would welcome reform in this area, but was concerned about the whether the proposal would be within the Assembly’s legislative competence, particularly with regard to the interplay between the English and Welsh legal jurisdictions and matters that are devolved and non-devolved to Wales.<sup>219</sup>

233. The Ombudsman’s official said that the proposal would offer a choice of avenues to pursue which “would be a good thing for complainants, given that the access to the courts is, probably, more limited these days than when the Act was initially set up”.<sup>220</sup>

234. The Ombudsman acknowledged that removal of the statutory bar could lead to more individuals choosing the route of the Ombudsman which would increase his workload.<sup>221</sup>

235. The Ombudsman’s official said they had also explored other issues raised by the Law Commission where the Ombudsman could be able to refer a case to the court for determination of a point of law. She said:

“...if we were in the middle of an investigation, and there was a point of law that was at the heart of an issue, and we felt that we couldn’t resolve an investigation, for that reason, perhaps, the ombudsman would have the power to, likewise, refer matters back to the court.”<sup>222</sup>

### ***Our view***

236. The Committee is disappointed that the UK Government has not responded to the Law Commission’s 2011 Report, especially given that

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<sup>218</sup> RoP, paragraph 304, 19 March 2015

<sup>219</sup> RoP, paragraph 9, 21 January 2015

<sup>220</sup> RoP, paragraph 106, 21 January 2015

<sup>221</sup> RoP, paragraph 113, 21 January 2015

<sup>222</sup> RoP, paragraph 107, 21 January 2015

this proposal to change the court system would require changes at a UK level.

237. As some of the recommendations in the Law Commission's 2011 Report refer to Wales, it is important to have the Welsh Government's view on these issues.

**The Committee recommends the Welsh Government should respond to the Law Commission's 2011 Report.**

**Due to the legal complexities and the issue of the competence of the Assembly, the Committee concludes that changes should not be made in relation to the statutory bar, stay provisions and referral of a point of law at this time. However, the Committee recommends the Welsh Government explore these issues with the UK Government as part of future devolution discussions.**

## 8. Other proposals for change

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### Background

238. In addition to the Ombudsman's five main proposals, the Committee consulted on other issues that were originally raised by the Ombudsman's predecessor.

239. The Committee received limited evidence in respect of these additional proposals.

### Jurisdiction

240. The listed authorities that the Ombudsman can investigate are set out in Schedule 3 to the 2005 Act. The Ombudsman's jurisdiction in this respect extends to most devolved public services in Wales.

241. Over recent years, changes have been made to the devolution settlement in Wales which has led to new areas coming into the Ombudsman's jurisdiction. The Committee considered whether other bodies should be included within the Ombudsman's jurisdiction.

### *Evidence from respondents*

242. The WCVA said there was much consensus amongst Ombudsmen that the administrative justice landscape is complex and fragmented, which makes it confusing when an individual wishes to make a complaint. They continued:

“The previous PSOW and the Scottish Ombudsman recently suggested that they should be able to provide a "one-stop shop" being responsible for complaints about all public services, both devolved and non-devolved.”<sup>223</sup>

243. The Older People's Commissioner highlighted the importance of being able to review the Ombudsman's jurisdiction as the devolution settlement changes “to ensure wherever possible the impact on the individual does not get lost between systems and processes”.<sup>224</sup>

244. This view was echoed by Dr O'Brien, he said:

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<sup>223</sup> Written Evidence, PSOW 12

<sup>224</sup> Written Evidence, PSOW 04

“The distinction between public and private domain is becoming increasingly difficult to maintain. It is nevertheless a distinction that is fundamental to the function and identity of a ‘public services’ ombudsman.”<sup>225</sup>

245. Dr O’Brien suggested that legislation could encompass all public authorities and exclude bodies by exception as this may be easier for the public to understand. He said otherwise “you can end up with several pages of listed authorities”.<sup>226</sup>

246. The Committee was concerned about some bodies that are outside of the Ombudsman’s jurisdiction, in particular two boards of conservators in Wales that were set up by Acts of Parliament to manage common land.

247. The Auditor General confirmed that:

“There’s one particular one that I have no jurisdiction over, because it was set up by Act of Parliament and, indeed, that Act doesn’t actually have any provision in it as regards audit of accounts. So, I have no jurisdiction over that one.”<sup>227</sup>

248. The Auditor General’s official said:

“The only caveat I would mention is that, if that body is in receipt of public money from a body audited by the auditor general, then, there will be access rights insofar as that’s a material payment.”<sup>228</sup>

249. Other bodies that were suggested included Natural Resources Wales<sup>229</sup> as well as non-devolved tribunals.<sup>230</sup>

250. The Northern Ireland Ombudsman said he would like his jurisdiction extended to cover prisoners as they should have the same rights as anyone else. He said that in Northern Ireland the healthcare system in prisons is delivered through local trusts and it was therefore appropriate that he had authority over this area.

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<sup>225</sup> Written Evidence, PSOW 09

<sup>226</sup> RoP, paragraph 344, 11 March 2015

<sup>227</sup> RoP, paragraph 127, 11 March 2015

<sup>228</sup> RoP, paragraph 131, 11 March 2015

<sup>229</sup> Written Evidence PSOW 5 & PSOW 17

<sup>230</sup> Written Evidence, PSOW 21



## ***Evidence from the Ombudsman***

251. The Ombudsman said:

“I would be happy to explore further proposals as regards any anomalies in relation to bodies the Assembly believes should be within the PSOW’s jurisdiction, which are currently not. Clearly, I would need to identify whether any such proposals would have any significant resource implications for my office.”<sup>231</sup>

252. The Ombudsman said he would be happy to consider a review of listed authorities (Schedule 3) and in addition Schedule 2 of excluded matters to ascertain whether amendments were required.<sup>232</sup>

253. The Ombudsman’s official confirmed that the administrative functions of devolved tribunals are currently within jurisdiction. However, there are some tribunals that are not completely devolved and therefore are outside of the Ombudsman’s jurisdiction. She said that in relation to those kind of tribunals, because they are delivering decisions in Wales, she believed there was scope for them to be included.<sup>233</sup>

## ***Our view***

**In relation to jurisdiction the Committee recommends should a bill be introduced, it should encompass all public authorities that provide services within Wales and that the inclusion of non-devolved bodies providing public services in Wales should be explored (including Boards of Conservators in Wales).**

## **Binding Recommendations**

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

254. This proposal would ensure that the recommendations of the Ombudsman to public bodies would be binding, therefore bodies could not decide to reject or disregard the Ombudsman’s recommendations.

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<sup>231</sup> FIN(4)-06-15 Paper 3 – Further evidence from the Public Services Ombudsman for Wales, 25 March 2015

<sup>232</sup> RoP, paragraph 267, 25 March 2015

<sup>233</sup> RoP, paragraph 271, 25 March 2015

255. The general consensus was for the Ombudsman's recommendations to remain non-binding to allow local democratic processes to deal with implementation. The Law Commission said:

“As far as the recommendations are concerned, we saw merit in the bodies having a degree of flexibility as to whether they agreed that the solution hit upon by the ombudsman was precisely the right one. But the legislation does, once again, give considerable powers to the ombudsman for Wales as regards the various different types of report that he...can publish... If the public authority disregards the report without lawful excuse, the ombudsman can send a certificate to the High Court. If the report concludes that the citizen has suffered special hardship, there can be recommendations made about that also. And so, there are various ways in which the ombudsman can ensure that his recommendations are not wholly disregarded.”<sup>234</sup>

256. The Auditor General agreed and said the proposal could be problematic and the existing provisions in the 2005 Act for reporting and certifying non-action seemed appropriate. He said:

“I think, at present, the ombudsman works in terms of very firm recommendation, but it would, I think, be foolhardy for a public body to reject the ombudsman's conclusions. I think that if you start putting binding recommendations...I do think it confuses the accountability of the public bodies themselves.”<sup>235</sup>

257. Dr O'Brien agreed and said “it is of the essence of the distinctive approach of an ombudsman that its mandate is one of influence rather than sanction”.<sup>236</sup>

258. However, the Older People's Commissioner was supportive of the Ombudsman's recommendations being “binding so that the impact of failure by public bodies is felt by those bodies and not just by individuals who have been failed by them”.<sup>237</sup>

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<sup>234</sup> RoP, paragraph 87, 3 March 2015

<sup>235</sup> RoP, paragraph 103, 11 March 2015

<sup>236</sup> Written Evidence, PSOW 09

<sup>237</sup> Written Evidence, PSOW 04

### ***Evidence from the Minister***

259. The Minister believed that “any public body that ignores a decision of the ombudsman is going to be leaving itself open to considerable public criticism”.<sup>238</sup> He argued that if recommendations from the Ombudsman were to be binding, there would be a need for powers of sanctions and further consideration on this issue would be required.<sup>239</sup>

### ***Evidence from the Ombudsman***

260. The Ombudsman’s felt the democratic accountability argument with regards to public bodies complying with the Ombudsman’s recommendations was a strong argument and therefore he was not seeking such a power.<sup>240</sup>

### ***Our view***

261. Whilst there are clear advantages in having binding recommendations the Committee is persuaded that whilst recommendations are non-binding there is a clear obligation on public bodies to abide by the Ombudsman’s decision. The Committee remains unconvinced that this change should be made.

### **Protecting the title of the Ombudsman**

262. This proposal would ensure that any scheme intending to use the title would have to gain the approval from the Ombudsman. This would ensure private bodies intending to use the title ombudsman, would have to satisfy the key criteria of the concept such as independence from those in jurisdiction and being free to the complainant.

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

263. Most respondents agreed that the term “Ombudsman” gives the citizen the impression they are dealing with an impartial and possibly publicly appointed official who will handle a case thoroughly and fairly.

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<sup>238</sup> RoP, paragraph 316, 19 March 2015

<sup>239</sup> *ibid*

<sup>240</sup> FIN(4)-06-15 Paper 3 – Further evidence from the Public Services Ombudsman for Wales, 25 March 2015

264. The Northern Ireland Ombudsman said “it’s very important” to protect the title. He suggested that the legislature should approve requests to use the term ombudsman is not misrepresented to the public.<sup>241</sup>

265. The Auditor General supported the proposal and said that regulations already exist to provide protection for other titles such as “government” and “auditor general” and suggested an insertion into Schedule 4 of the [Company, Limited Liability Partnership and Business \(Names and Trading Disclosures\) Regulations 2015](#).

### ***Evidence from the Minister***

266. The Minister said protection of the title was an interesting issue but he did have concerns around the Assembly’s legislative competence. He said:

“...there could be UK-wide organisations that might decide, for example, to create a post of ombudsman. We might not like that, but we might not have the power to regulate it.”<sup>242</sup>

### ***Evidence from the Ombudsman***

267. The Ombudsman confirmed that whilst he had not personally sought protection of the title (this proposal was originally suggested by the previous Ombudsman), he did see its merit. He said:

“The role of an ombudsman is unique. In particular, the in-depth, systemic nature of investigations into complaints that an ombudsman undertakes sets him or her apart from mere complaint handling.”<sup>243</sup>

268. The Ombudsman gave a commitment to the Committee to raise the issue of protecting the title with his counterparts when he meets with the Association of British Ombudsmen.

### ***Our view***

269. The Committee recognises this is an important issue and that individuals should have confidence in a person appointed to

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<sup>241</sup> RoP, paragraph 233, 3 March 2015

<sup>242</sup> RoP, paragraph 312, 19 March 2015

<sup>243</sup> FIN(4)-06-15 Paper 3 – Further evidence from the Public Services Ombudsman for Wales, 25 March 2015

investigate their case and be assured that it will be dealt with fairly and impartially. However, the Committee appreciates that this potentially raises issues in relation to the Assembly's legislative competence as raised by the Minister and believes this proposal requires further consideration at a UK level.

**The Committee acknowledges the Ombudsman's commitment to raise the issue of protecting the title 'Ombudsman' with his counterparts when he meets with the Ombudsman Association and the Committee would be interested to hear the outcome of this discussion. The Committee suggests the Ombudsman liaises with the Welsh Government on this issue.**

### **Code of Conduct Complaints**

270. The Ombudsman's currently has a role to consider complaints that local authority members have failed to comply with a relevant code of conduct.

271. The [Local Government Act 2000](#) created a new ethical framework for local government in Wales. It created a power for the Assembly to issue a model code of conduct to apply to members and co-opted members of all relevant authorities in Wales. This power was transferred to the Welsh Ministers by the [Government of Wales Act 2006](#). In 2008, Welsh Ministers issued the current Model Code of Conduct which all relevant authorities are required to adopt.

272. A local resolution procedure for Code of Conduct complaints has been introduced, whereby cases are dealt with internally by local authorities. Although this policy has been adopted by the 22 local authorities, the Ombudsman has said that implementation is variable.

273. The Ombudsman has indicated he would prefer to focus on the element of his work that deals with service users and service delivery, rather than local authority and town and community councils' resolutions.

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

274. Respondents had mixed views on this proposal. Some suggested the Ombudsman should not be drawn into ethical issues, whilst others felt the Ombudsman should provide an important deterrent for serious code of conduct complaints.

275. Respondents including the WLGA, One Voice Wales and the Auditor General felt it was important that the Ombudsman still dealt with most serious complaints relating to breaches of a code of conduct. The WLGA said:

“It is not possible to meaningfully enforce a code of conduct for councillors without an independent statutorily empowered investigative and adjudicator framework.”<sup>244</sup>

276. The WLGA and One Voice Wales agreed that training on the code of conduct should be mandatory as this could lead to a reduction in the number of code of conduct and vexatious complaints as councillors would “have a sound, basic knowledge and understanding of their responsibilities in terms of public service”.<sup>245</sup>

277. In contrast, Dr O’Brien did not believe that code of conduct complaints should be within the Ombudsman’s remit. He said:

“The Ombudsman’s chief function is the democratic holding to account of public authorities for their exercise of public functions, including (but not limited to) the provision of services to the public. That function should not be diluted by inclusion within jurisdiction of a quite distinct ‘policing’ function.”<sup>246</sup>

### ***Evidence from the Minister***

278. On this issue the Minister said the Welsh Government was currently consulting on the issue of code of conduct and the way it is managed as part of its White Paper on Local Government. He said that one of the issues he wanted to address was “vexatious complaints, often generated from within councils, by councillors about each other”.<sup>247</sup> However, he felt this “probably can be resolved in other ways”.<sup>248</sup>

279. The Minister was content for the Ombudsman to continue to have a role in dealing with code of conduct complaints.<sup>249</sup>

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<sup>244</sup> Written Evidence, PSOW 08

<sup>245</sup> RoP, paragraph 181, 25 February 2015

<sup>246</sup> Written Evidence, PSOW 09

<sup>247</sup> RoP, paragraph 289, 19 March 2015

<sup>248</sup> *ibid*

<sup>249</sup> RoP, paragraph 295, 19 March 2015

### ***Evidence from the Ombudsman***

280. The Ombudsman was generally content to retain this function, but only for the most serious cases. He had concerns with the resource implications of dealing with “low level Member against Member complaints”.<sup>250</sup> He felt these type of complaints should be dealt with by councils at local level in the first instance and this should be reflected in legislation.<sup>251</sup>

281. The Ombudsman’s official confirmed that they have been working with monitoring officers of councils over the last couple of years. She said the Ombudsman was:

“...introducing and launching his new revised guidance, bringing in a public interest test to ensure that the cases that we pursue to investigation and referral for adjudication, either by local standards committees or the adjudication panel, are the really serious ones that do tick that public interest box.”<sup>252</sup>

282. The Ombudsman felt there should be a requirement on councillors to attend training on the code of conduct. His official said “I think there is scope for possible change to make it an actual requirement in the code for training to be undertaken” ideally within the first six months of being elected.<sup>253</sup>

### ***Our view***

283. The Committee believes that training for elected members and guidance could see a reduction in the number of trivial complaints in the future. The Committee acknowledges the work undertaken by the Ombudsman so far and believes he should continue to encourage local authorities to deal with complaints locally.

**The Committee recommends the Welsh Government considers mandatory training for elected members as part of their consideration of forthcoming legislation on Local Government reform.**

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<sup>250</sup> FIN(4)-06-15 Paper 3 – Further evidence from the Public Services Ombudsman for Wales, 25 March 2015

<sup>251</sup> *ibid*

<sup>252</sup> RoP, paragraph 240, 25 March 2015

<sup>253</sup> RoP, paragraph 248, 25 March 2015

## Annex A: Witnesses

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The following witnesses provided oral evidence to the Committee on the dates noted below. Transcripts of all oral evidence sessions can be viewed in full at:

[www.senedd.assembly.wales/mgIssueHistoryHome.aspx?Ild=1243](http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?Ild=1243)

<b>21 January 2015</b>	<b>Organisation</b>
Nick Bennett, Public Services Ombudsman for Wales Susan Hudson, Policy and Communications Manager Katrin Shaw, Investigations Manager and Legal Adviser	Public Service Ombudsman for Wales
<b>4 February 2015</b>	
Jim Martin, Scottish Public Services Ombudsman	Scottish Public Services Ombudsman
Sally Taber, Director Simon Rogers Welsh Independent Healthcare Association	Independent Sector Complaints Adjudication Service (ISCAS)
<b>25 February 2015</b>	
Lyn Cadwallader, Chief Executive	One Voice Wales
Daniel Hurford, Head of Policy	Welsh Local Government Association
<b>5 March 2015</b>	
Nicholas Paines, Law Commissioner with responsibility for Public Law David Connolly, Manager, Public Law Department	Law Commission
Dr Tom Frawley, Northern Ireland Ombudsman	Northern Ireland Ombudsman



<b>11 March 2015</b>	
Huw Vaughan Thomas, Auditor General for Wales Martin Peters, Compliance Manager	Wales Audit Office
Ruth Marks, Chief Executive	Wales Council for Voluntary Action
Liz Withers, Head of Policy and Campaigns Wales	Citizens Advice Bureau
Dr Nick O'Brien	Ombudsmen Specialist
<b>19 March 2015</b>	
Dr Kate Chamberlain, Chief Executive	Healthcare Inspectorate Wales
Nicola Williams, Assistant Director of Nursing	Abertawe Bro Morgannwg University Local Health Board
Leighton Andrews AM, Minister for Public Services Caroline Turner Deputy Director, Permanent Secretary's Department Sanjiv Vedi, Deputy Director and Head of Central Complaints Unit	Welsh Government
<b>25 March 2015</b>	
Nick Bennett, Public Services Ombudsman for Wales Susan Hudson, Policy and Communications Manager Katrin Shaw, Investigations Manager and Legal Adviser	Public Service Ombudsman for Wales

## Annex B: List of written evidence

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

[www.senedd.assembly.wales/mgConsultationDisplay.aspx?ID=166](http://www.senedd.assembly.wales/mgConsultationDisplay.aspx?ID=166)

Organisations	Ref
Independent Sector Complaints Adjudication Service	PSOW 01
Welsh Independent Healthcare Association Credentials 2013-2014	PSOW 01a
Connah's Quay Town Council	PSOW 02
Mochdre with Penstrowed Community Council	PSOW 03
Older People's Commissioner for Wales	PSOW 04
Abergele Town Council	PSOW 05
One Voice Wales	PSOW 06
Auditor General for Wales	PSOW 07
Welsh Local Government Association	PSOW 08
Dr Nick O'Brien	PSOW 09
Children's Commissioner for Wales	PSOW 10
Welsh Language Commissioner	PSOW 11
Wales Council for Voluntary Action	PSOW 12
Law Commission	PSOW 13
Citizens Advice Bureau	PSOW 14
Care Council for Wales	PSOW 15
Northern Ireland Ombudsman (Briefing Note)	PSOW 16
Penarth Town Council	PSOW 17
Pontaradawe Town Council	PSOW 18
Healthcare Inspectorate Wales	PSOW 19
Marshfield Community Council	PSOW 20
Brian Thompson, Liverpool Law School, University of Liverpool	PSOW 21

Local Democracy and Boundary Commission for Wales	PSOW 22
Wrexham County Borough Council	PSOW 23
Welsh NHS Confederation	PSOW 24
Care Forum Wales	PSOW 25
City of Cardiff Council	PSOW 26
Jennifer Brown, Individual Response	PSOW 27
Mold Town Council	PSOW 28
Holywell Town Council	PSOW 29
Conwy County Borough Council	PSOW 30
Joint response from the Brecon Beacons and Pembrokeshire Coast National Park Authorities	PSOW 31
Standards and Ethics Committee, City of Cardiff Council	PSOW 32
Dr Richard Kirkham, School of Law, University of Sheffield	PSOW 33
Carmarthenshire County Council	PSOW 34
Cardiff and Vale University Health Board	PSOW 35
Vale of Glamorgan Council's Standards Committee	PSOW 36
Isle of Anglesey County Council	PSOW 37
Community Housing Cymru Group	PSOW 38
Anne Carys Jones, Individual Response	PSOW 39
Deputy Children's Commissioner for Wales Acting as Children's Commissioner for Wales	PSOW 40
HM Courts and Tribunals Service	PSOW 41
Brynmawr Town Council	PSOW 42
Mr and Mrs Chesters	PSOW 43

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**CITY OF CARDIFF COUNCIL  
CYNGOR DINAS CAERDYDD**



**STANDARDS AND ETHICS COMMITTEE: 22 SEPTEMBER 2015**

**REPORT OF THE MONITORING OFFICER**

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**REGISTRATION OF GIFTS AND HOSPITALITY**

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**Reason for this Report**

1. To provide the Committee with information on registrations of gifts and hospitality received by Members (Appendix A) to enable the Committee to review the information; and to consider any comments or observations it considers appropriate in this regard

**Background**

2. In accordance with the respective Codes of Conduct, Members and Officers are required to register the receipt of any gifts, hospitality or other benefits where the value of the item or benefits exceeds an amount determined by the Council from time to time. The current threshold for receipt of gifts and hospitality is £25.00, as set out in the Council's Guidance on Hospitality, Gifts and Other Benefits Received by Members – **Appendix A** to this report.
3. The Committee has resolved to review this matter by considering regular reports providing details of registrations.
4. At its meeting on 23rd July 2014, the Committee considered gifts and hospitality registered during the period from October 2013 to June 2014.

**Issues**

5. The Register of Members' Gifts and Hospitality held by the Democratic Services Manager on behalf of the Monitoring Officer shows the registrations set out in **Appendix B** for the period from 1<sup>st</sup> July 2014 to date (16<sup>th</sup> September 2015).
6. The Committee is invited to review the information presented in this report and **Appendix B**, and to make any comments it considers appropriate in this regard.

## **Legal Implications**

7. There are no legal implications arising directly from the recommendations of this report.

## **Financial Implications**

8. There are no financial implications arising from this report.

## **RECOMMENDATION**

That the Committee notes the information supplied at **Appendix B** on the registration of Members' hospitality, gifts and other benefits during the period from 1<sup>st</sup> July 2014 to date (16<sup>th</sup> September 2015) and makes any comments it considers appropriate.

**Marie Rosenthal**  
**Director Governance & Legal Services and Monitoring Officer**  
16 September 2015

## **APPENDICES**

- |            |   |
|------------|---|
| Appendix A | Guidance on Hospitality, Gifts and Other Benefits Received by Members (with Members Registration Form)          |
| Appendix B | Register of Member's Hospitality, Gifts & Other Benefits, 1 July 2014 to date (16 <sup>th</sup> September 2015) |

### Background papers

Report to Standards & Ethics Committee, 'Registration of Gifts and Hospitality', 23 July 2014; and minutes thereof

# GUIDANCE ON HOSPITALITY, GIFTS AND OTHER BENEFITS RECEIVED BY MEMBERS FROM EXTERNAL ORGANISATIONS, BUSINESSES OR INDIVIDUALS

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## Introduction

1. This guidance is issued in accordance with the statutory Code of Conduct for Members and applies to Elected Members and Co-opted Members of Cardiff Council. It sets out the threshold or minimum value level determined by the Council under the Code, which is **£25**.
2. **All hospitality, gifts and other benefits received by Elected Members and Co-opted Members, which are estimated to exceed this value, must be notified to, and registered by, the Council's Monitoring Officer via Democratic Services.**

## Definitions

3.

Term	Definition
Hospitality received	Any entertainment beyond the offer of non-alcoholic drinks and light refreshments, which would reasonably be regarded as normal social congress, offered to Members in an official capacity or in the course of, or arising from, their official duties as Members. Hospitality received can include (but not exclusively) meals, travel opportunities, hotel accommodation, invitations to events, sport and theatre tickets.
Gift	Any tangible item given to Members in the course of, or arising from, their official duties and position held within the Council.
Other benefits	Any other benefit offered to Members in the course of, or arising from, their official duties and position held within the Council, not covered by the definitions listed above.

## Statutory and Council Framework

4. Paragraph 7 of the Council's Code of Conduct for Members states that:

*"You must not:*

- (a) *in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage.*

- (b) use, or authorise others to use, the resources of your authority-
- (i) imprudently;
  - (ii) in breach of your authority's requirements;
  - (iii) unlawfully;
  - (iv) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the authority or of the office to which you have been elected or appointed;
  - (v) improperly for political purposes; or
  - (vi) improperly for private purposes."

5. Paragraph 9(b) of the Council's Code of Conduct for Members also states that:

*"You must...avoid accepting from anyone gifts, hospitality (other than official hospitality, such as a civic reception or a working lunch duly authorised by your authority), material benefits or services for yourself or any person which might place you, or reasonably appear to place you, under an improper obligation."*

6. Paragraph 17 (Registration of Gifts and Hospitality) of the Council's Code of Conduct for Members further states that:

*"You must, within 28 days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of your authority, provide written notification to your authority's monitoring officer of the existence and nature of that gift, hospitality, material benefit or advantage."*

### **Acceptance and Refusal**

7. Whatever the value of the hospitality, gift or other benefit offered to a Member by an external organisation, business or individual, if its acceptance may place you under an improper obligation to the donor, or may reasonably appear to do so, it should always be refused.

8. It is not possible to describe all the situations where an improper obligation may arise. However, these are some examples of circumstances in which offers to Members are likely to be seen as suspect:

- The offer of hospitality, gifts or other benefits which do not appear to have any proper purpose connected with the Council (e.g. the offer of private holidays or the use of holiday accommodation; personal gifts of substantial value or other benefits offered to Members at substantially below the price they would normally be offered to the public);



- Hospitality, gifts or other benefits offered to Members who are closely involved, or who will participate, in decision making relating to an external organisation, business or individual seeking to do business with the Council and, for example, is involved in negotiating a contract; the sale or acquisition of a property; or has submitted a tender for a Council project;
- Regular and repeated hospitality, gifts or other benefits which are either offered or received from the same external organisation, business or individual;
- Hospitality, gifts or other benefits offered where a Member would be the sole guest on an essentially private occasion;
- Hospitality, gifts or other benefits offered for purely sporting or social occasions away from the Council's administrative area, where there would be no general expectation that the Council should be represented, nor any clear connection with Council business or functions.

It should be stressed that the above are examples only, and are not exhaustive. Each offer and its appropriateness should be considered on its merits and it will be necessary for Members to make a personal judgement as to whether it is appropriate to accept it.

8. Members must strike a balance between, on the one hand, taking an active part in the life of the community and ensuring that the Council is properly represented when it needs to be in a position to receive or impart information, and, on the other hand, the need to avoid the appearance of improper obligations.
9. In circumstances where it is necessary for the Council to be represented at events where hospitality is offered by an external organisation, business or individual, it is appropriate to accept unless there are circumstances which clearly suggest that an improper obligation may be seen to arise.
10. If, for example, the external organisation, business or individual offering hospitality is at a sensitive stage in contractual negotiations with the Council, it will not be appropriate for those who are directly or indirectly involved with those negotiations to accept hospitality. If the matter is a major project which affects many Council services, all invitations received during such negotiations should be refused.
11. If, however, the matter is relatively minor and confined to one service area or a small group of individual Members or employees, it may be appropriate for those Members not involved directly or unconnected with the matter to accept invitations, if it is believed that the event concerned is particularly relevant to Council business or functions.

12. The offer of hospitality from other public bodies or organisations (e.g. UK Government, National Assembly for Wales, Welsh Government, Local Health Boards and other Councils) will normally be appropriate for acceptance as the implication of improper obligation would rarely arise in those circumstances and such events are generally arranged for proper public purposes. However, those Members who are offered hospitality, gifts or other benefits by such organisations would still need to consider whether acceptance is appropriate and likely to further the Council's interests. In addition, if the organisation is involved in the process of negotiating a contract or other arrangement with the Council, careful consideration should be given before accepting any hospitality, gifts or other benefits.
13. There may be rare occasions when Members may be offered gifts in the form of bequests by local residents, as a result of their undertaking official duties. Such offers of bequests should be discouraged wherever possible in order to avoid Members being subject to any accusations of impropriety and undue influence or persuasion having been brought to bear on the testator. However, if a bequest is made then the acceptance of small bequests by Members, which represent only a minor proportion of the estate in each individual case, will generally be considered as acceptable.
14. Elected Members and Co-opted Members are not required to obtain authorisation before accepting hospitality, gifts or other benefits offered in connection with their official role. However, Elected Members and Co-opted Members will be responsible for any decision they take to accept any hospitality, gift or other benefit.

### **Registration**

15. **Elected Members and Co-opted Members are required to register any hospitality, gifts or other benefits exceeding an estimated value of £25 for each occasion, item or payment.**
16. If there is any doubt about whether the item exceeds the threshold value, you are advised to register its receipt. However, for the avoidance of any doubt, items below the threshold values do not need to be registered by Members. The threshold value will be reviewed by the Council as necessary and appropriate, in consultation with the Standards and Ethics Committee.
17. Under the Members' Code of Conduct, Elected Members and Co-opted Members are required to make such registrations **within 28 days of receipt**. Members should use the applicable Member Registration Form ([4.C.039](#)), which must be completed and returned to the Democratic Services Manager for registration purposes. The register will be made available for public inspection.

# RECEIPT OF HOSPITALITY, GIFTS & OTHER BENEFITS

## MEMBER REGISTRATION FORM

All Elected Members and Co-opted Members must complete this form in order to register the receipt of any hospitality, gifts and other benefits **which have an estimated value of £25 or greater** for each relevant occasion, item or payment.

If there is any doubt about whether any hospitality, gift(s) and other benefit(s) received exceeds the £25 threshold value, Members are advised to register its receipt. However, for the avoidance of any doubt, items below the threshold value do not need to be registered. Members should also refer to the Council's guidance on Hospitality, Gifts & Other Benefits, which is issued in accordance with the Code of Conduct for Members.

DETAILS OF HOSPITALITY, GIFTS AND OTHER BENEFITS RECEIVED			
<b>Name of Member:</b>			
<b>Name &amp; Address of Organisation, Business or Individual who provided the Hospitality / Gift / Other Benefit:</b>			
<b>Nature &amp; Purpose of Hospitality / Gift / Other Benefit:</b>			
<b>In what role or capacity did you receive the Hospitality / Gift / Other Benefit?</b> <i>(e.g. Lord Mayor/Chairman, Deputy Lord Mayor/Vice Chairman, Leader, Deputy Leader, Cabinet Member, Ward Member, representative on outside body)</i>			
<b>Gift/ Hospitality/Other Benefit Accepted?</b>		*YES / NO (*please delete as appropriate)	
<b>Date of Receipt:</b>		<b>Approximate Value:</b>	£
<b>Location / Venue:</b> <i>(if applicable)</i>			

<b>SIGNATURE:</b>		<b>DATE:</b>	
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Please note that you must register any hospitality, gifts or other benefits with an estimated value of £25 or greater **within 28 days of receipt**.

When completed, this form must be sent to the Democratic Services Manager (Room 286A, County Hall) for registration purposes. Please note that the register will be made available for public inspection.

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APPENDIX A

**MEMBERS' HOSPITALITY**  
**July 2014 to September 6th 2015**

<b>Councillor</b>	<b>Date of hospitality/gift</b>	<b>Provider of hospitality/gift</b>	<b>Nature/purpose of hospitality</b>	<b>Capacity in which hospitality/gift received</b>
Ahmed, Ali	11/07/14	City of Stuttgart	Courtesy call – VIP guests from Stuttgart – wristwatch	Deputy Lord Mayor
Ahmed, Ali	11/07/14	Islamic Relief Wales	Fundraiser dinner	Deputy Lord Mayor
Ahmed, Ali	24/10/14	Care Forum Wales	Dinner and awards ceremony	Deputy Lord Mayor
Ahmed, Ali	19/11/14	Royal College of Nursing	Dinner and awards ceremony	Deputy Lord Mayor
Ali	11/06/15	NIACE Cymru	National Voice for Lifelong Learning Awards Ceremony	Deputy Lord Mayor
Ali	12/06/15	Circus Starr	Circus Starr Big Top Show	Deputy Lord Mayor
Bale	12/07/14	Tafwyl Festival	Gift Bag	Leader
Bale	14/07/14	Deputy Mayor of Stuttgart	Solar Watch	Leader
Bale	22/07/14	Head of Community Affairs, The Aloud Charity	2014 Principality Only Boys Academy Concert	Leader

<b>Councillor</b>	<b>Date of hospitality/gift</b>	<b>Provider of hospitality/gift</b>	<b>Nature/purpose of hospitality</b>	<b>Capacity in which hospitality/gift received</b>
Bale	22/07/14	Menter Caerdydd	Tafwyl gift box of Beer (3 small bottles)	Leader
Bale	07/08/14	Director General Hon Chengzong, Xaimen Municipal Government	4 boxes of biscuits Travel Guide of Xiamen Dinsheng Art Pottery Statue	Leader
Bale	27/08/14	HRH Prince of Wales	NATO Reception	Leader
Bale	27/08/14	Nigel Roberts, Chairman Cardiff Business Council	England –v- India, One Day Cricket – Ticket & Lunch	Leader
Bale	05/09/14	CO HMS Duncan	NATO Reception & Capability Demonstration	Leader
Bale	07/09/14	Welsh Government	Reception for American Mayors	Leader
Bale	16/09/14	Keith Griffiths, Built Environment Networking Ltd	Cardiff General Development Plans 2014 Dinner	Leader
Bale	28/09/14	Robert Iger, Chairman and CEO, Walt Disney Studios	Walt Disney original cartoon artwork	Leader
Bale	15/10/14	Chongming Local Government	Silk scarf	Leader
Bale	22/10/14	Gray Hall, CEO, Alert Logic	Lovespoon	Leader

<b>Councillor</b>	<b>Date of hospitality/gift</b>	<b>Provider of hospitality/gift</b>	<b>Nature/purpose of hospitality</b>	<b>Capacity in which hospitality/gift received</b>
Bale	27/10/14	Michael Higgins, President of Ireland	Silver cufflinks	Leader
Bale	08/11/14	Welsh Rugby Union	Wales vs Australia match tickets x2, pre-match lunch, post-match reception	Leader
Bale	15/11/14	Welsh Rugby Union	Wales vs Fiji match tickets x2, pre-match lunch, post-match reception	Leader
Bale	18/11/14	Ariful Haque Choudhury, Mayor of Sylhet City, Bangladesh	Plaque	Leader
Bale	22/11/14	Welsh Rugby Union	Wales vs New Zealand match tickets x2, pre-match lunch, post-match reception	Leader
Bale	22/01/15	Keren MacKinnon, Director, Artes Mundi	Artes Mundi 6 Prize Award Dinner	Leader
Bale	04/02/15	Saleem Kidwai, Muslim Council for Wales	Lecture and Dinner	Leader
Bale	06/02/15	Dennis Gethin, Director, Welsh Rugby Union	Wales vs England pre-match dinner and match tickets for two	Leader
Bale	17/06/15	Professor Colin Riordan, Cardiff University	Innovation and Impact Awards Dinner	Leader
Bale	19/06/15	Xiamen Municipal People's Government delegation	Lady's print scarf Huihe photo carving art Scroll wall art	Leader

<b>Councillor</b>	<b>Date of hospitality/gift</b>	<b>Provider of hospitality/gift</b>	<b>Nature/purpose of hospitality</b>	<b>Capacity in which hospitality/gift received</b>
Bale	21/06/15	Cardiff Harbour Authority	Extreme Sailing prize giving and reception	Leader
Bale	26/06/15	City of Stuttgart Council	Personalised football shirt	Leader
Bale	10/07/15	Hilton Hotel	60 <sup>th</sup> Anniversary of Twinning with Stuttgart	Leader
Bale	08/08/15	Mr Denis Gethin, WRU	Dove Mens Test 2015 – Wales vs Ireland  Pre-match lunch x2  Match ticket x2  Post-match reception x2	Leader
Bradbury	26/07/14	City of Cardiff Council  St Davids Hall	Invitation (accepted) to Last Night of the Proms	Cabinet Member
Bradbury	02/11/14	Active Cardiff	Two match tickets and light refreshments	Cabinet Member
Cook, Richard	04/02/15	Saleem Kidwai, Muslim Council for Wales	Lecture and Dinner	Councillor
Cowan	12/7/14	Rhiwbina Recreation Club	Centenary Ball Celebration	Ward Member



<b>Councillor</b>	<b>Date of hospitality/gift</b>	<b>Provider of hospitality/gift</b>	<b>Nature/purpose of hospitality</b>	<b>Capacity in which hospitality/gift received</b>
Derbyshire	12/08/14	FAW	Pre-match hospitality	Cabinet Member
Derbyshire	22/08/14	Extreme Sailing	Invitation to watch race from corporate tent	Cabinet Member
Dilwar Ali	15/11/14	Councillor Bale	Wales vs Fiji match ticket, pre-match lunch, post-match reception	N/A
Govier	06/02/15	Smart Solutions	Wales vs England rugby	Personal capacity as Executive Board Member
Govier	11/03/15	British Gas	Cheltenham Race Course	N/A
Hudson	17/06/15	BBC Cardiff Singer of the World Concert	Two tickets	Ward Member
Hunt	22/11/14	Cllr Bale	Tickets to Wales vs New Zealand	Guest of leader
Hyde	05/09/14	Royal Navy, NATO Summit	NATO Reception & Capability Demonstration	Ward Member
Jones, Margaret	17/07/14	Cardiff Metropolitan University	Dinner	Lord Mayor
Jones, Margaret	21/07/14	Royal Welsh Agricultural Show	Lunch	Lord Mayor
Jones, Margaret	26/07/14	St Davids Hall	VIP Concert Tickets	Lord Mayor

<b>Councillor</b>	<b>Date of hospitality/gift</b>	<b>Provider of hospitality/gift</b>	<b>Nature/purpose of hospitality</b>	<b>Capacity in which hospitality/gift received</b>
Jones, Margaret	07/08/14 – 10/08/14	City of Edinburgh Council	Edinburgh International Festival VIP drinks reception, buffet dinner, 3 nights bed and breakfast in G&V Hotel, cut glass vase, bottle of whisky	Lord Mayor
Jones, Margaret	11/08/14	UEFA	UEFA Super cup pre-match dinner, gift plagues, paperweight	Lord Mayor
Jones, Margaret	13/08/14	Vale of Glamorgan Council	Afternoon tea at the Vale of Glamorgan Agricultural Show	Lord Mayor
Jones, Margaret	17/08/14	Powys County Council	Civic Service and afternoon tea	Lord Mayor
Jones, Margaret	30/08/14	St John Cymru Wales	Investiture service and priory deal	Lord Mayor
Jones, Margaret	12/09/14	British Warships Association	HMS Dragon pre-deployment dinner	Lord Mayor
Jones, Margaret	13/09/14	Cardiff Swimming Club	40th anniversary ball and reunion	Lord Mayor
Jones, Margaret	24/09/14	High Sherriff Mr David Jenkins	Cocktail party VIP reception	Lord Mayor
Jones, Margaret	02/10/14	HMS Dragon	Affiliates day lunch	Lord Mayor
Jones, Margaret	03/10/14	Tenovus	Ladies lunch	Lord Mayor

<b>Councillor</b>	<b>Date of hospitality/gift</b>	<b>Provider of hospitality/gift</b>	<b>Nature/purpose of hospitality</b>	<b>Capacity in which hospitality/gift received</b>
Jones, Margaret	06/10/14	Football Association of Wales	Awards dinner	Lord Mayor
Jones, Margaret	11/10/14	Worshipful Livery Company of Wales	Installation banquet	Lord Mayor
Jones, Margaret	14/10/14	Cardiff Metropolitan University	President's VIP lunch	Lord Mayor
Jones, Margaret	17/10/14	British Warships Association	Royal Marines 30th Anniversary dinner	Lord Mayor
Jones, Margaret	24/10/14 – 27/10/14	Mayor of S-Hertogenbosch	Three nights accommodation in the Colden Tulip Hotel, lunches, dinner	Lord Mayor
Jones, Margaret	01/11/14	Royal British Legion	Wales Festival of Remembrance concert ticket and buffet	Lord Mayor
Jones, Margaret	06/11/14	Castle Bingo	Cheque presentation for Lord Mayor's charity and dinner	Lord Mayor
Jones, Margaret	13/11/14	Cardiff Metropolitan University	Graduation ceremony and lunch	Lord Mayor
Jones, Margaret	13/11/14	Swiss Student Visitors	Swiss Army knife	Lord Mayor
Jones, Margaret	11/12/14	National Museum of Wales	Patron's Xmas Dinner	Lord Mayor
Jones, Margaret	20/12/14	Penylan and Cardiff Community Concern Group	Xmas lunch for the elderly	Lord Mayor

<b>Councillor</b>	<b>Date of hospitality/gift</b>	<b>Provider of hospitality/gift</b>	<b>Nature/purpose of hospitality</b>	<b>Capacity in which hospitality/gift received</b>
Jones, Margaret	04/02/15	Muslim Council of Wales	UN Interfaith Week seminar and dinner	Lord Mayor
Jones, Margaret	13/02/15	Cardiff Metropolitan University	Graduation ceremony	Lord Mayor
Jones, Margaret	24/02/15	Cardiff Metropolitan University	President's lunch	Lord Mayor
Jones, Margaret	24/02/15	Rotary Club of Cardiff	International Student Evening	Lord Mayor
Jones, Margaret	28/02/15	203 Welsh Field Hospital	St David's Day celebration	Lord Mayor
Jones, Margaret	06/03/15	Cardiff Philharmonic Orchestra	Tchaikovsky Night tickets	Lord Mayor
Jones, Margaret	07/03/15	Lions Club International	Lions Club Convention banquet and ball	Lord Mayor
Jones, Margaret	11/03/15	Clwyd Theatre Cymru	Production of Hamlet	Lord Mayor
Jones, Margaret	18/03/15	Bangor University	Smart Cities International Dinner	Lord Mayor
Jones, Margaret	30/03/15	Roary Club Cardiff	Rotary Flame Welcome event	Lord Mayor
Jones, Margaret	31/03/15	County of South Glamorgan	Inauguration of new High Sheriff, VIP reception	Lord Mayor

<b>Councillor</b>	<b>Date of hospitality/gift</b>	<b>Provider of hospitality/gift</b>	<b>Nature/purpose of hospitality</b>	<b>Capacity in which hospitality/gift received</b>
Lloyd	20/02/15	St David's Hall	Tickets	Ward member
Magill	30/04/15	Professor Medwin Hughes, Vice Chancellor, University of Wales	Honorary graduates and students celebration dinner	Cabinet Member for Education and Skills
McKerlich	20/02/15	Philharmonia Orchestra	Two tickets to concert and reception	Ward member
McKerlich	19/06/15	St David's Hall	Two tickets to Song Prize final	Councillor
Michael	16/08/14	Cardiff City FC	Invitation to game from president Mr Hammam	Councillor
Robson	12/7/14	Rhiwbina Recreation Club	Centenary Ball Celebration	Ward Member
Walker	02/06/15	203 Welsh Field Hospital	Royal gun salute VIP lunch	Lord Mayor
Walker	04/06/15	Welsh Government	Plenary interaction council dinner	Lord Mayor
Walker	09/06/15	Safe Families for Children Wales	President's lunch	Lord Mayor
Walker	10/06/15	157 (Welsh) Regiment	Royal gun salute VIP reception	Lord Mayor
Walker	11/06/15	Royal Welsh Regiment	Presentation of colours to the Royal Welsh and freedom ceremony VIP lunch	Lord Mayor

<b>Councillor</b>	<b>Date of hospitality/gift</b>	<b>Provider of hospitality/gift</b>	<b>Nature/purpose of hospitality</b>	<b>Capacity in which hospitality/gift received</b>
Walker	12/06/15	Cardiff Met University	President's lunch	Lord Mayor
Walker	13/06/15	160 Infantry Brigade	Royal gun salute	Lord Mayor
Walker	13/06/15	Worshipful Livery Company of Wales	Summer Banquet 2015	Lord Mayor
Walker	21/06/15	BBC National Orchestra of Wales	BBC Cardiff Singer of the World Reception	Lord Mayor
Walker	26/06/15	Cardiff Met University	Sporting Wales Rising Stars Dinner	Lord Mayor
Walker	08/07/15	Remembering Srebrenica	Srebrenica Memorial Day VIP reception	Lord Mayor
Walker	08/07/15	Government of Flanders in the UK	Flanders Day in Wales VIP reception	Lord Mayor
Walker	14/07/15	Cardiff Met University	Student graduation lunch	Lord Mayor
Walker	14/07/15	Cardiff University	Graduation dinner	Lord Mayor
Walker	16/07/15	Cardiff Met University	Annual dinner	Lord Mayor
Walker	20/07/15	Royal Welsh Agricultural Society	Royal Welsh Show official lunch	Lord Mayor

<b>Councillor</b>	<b>Date of hospitality/gift</b>	<b>Provider of hospitality/gift</b>	<b>Nature/purpose of hospitality</b>	<b>Capacity in which hospitality/gift received</b>
Woodman	15/07/14	Kidney Foundation, Wales	Dinner & Refreshments	Supporter of the Charity and Presenter of Medals at Annual 10k Run
Woodman	15/10/14	iwanttoparty@madeincardiff.tv	Hospitality for self and husband at Cosy Club. Launch party of Made In Cardiff channel	
Woodman	27/10/14	Cardiff City Council	Lunch with Michael Higgins, President of Ireland	Leader of the opposition
Woodman	19/11/14	Alun Davies, Honorary Consul for Hungary	Tea and wine with Peter Szabadhegy, Hungarian Ambassador	
Woodman	07/02/15	Dr H Shah, British Association of Physicians of Indian Origin	Dinner	Councillor
Woodman	09/07/15	Glamorgan CCC President and committee, Swalec Stadium	England vs Australia Ashes test One ticket and hospitality	
Woodman	06/09/15	The office of the honorary consul of Israel in Wales in conjunction with the embassy of Israel	Ticket and hospitality for Wales vs Israel Euro 2016 qualifier match	

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**STANDARDS & ETHICS COMMITTEE**

**22 SEPTEMBER 2015**

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**REPORT OF DIRECTOR OF GOVERNANCE & LEGAL  
SERVICES**

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**MEMBER PROTOCOL ON CHILD PROTECTION AND  
VULNERABLE ADULT CASEWORK AND CORPORATE  
PARENTING**

**Reason for this Report**

1. An Independent Review has been commissioned by the Chief Executive to look into the role of members in dealing with parent's complaints and acting as advocate in child protection proceedings. This followed concerns raised by an elected member about safeguarding practice within Children's Services in relation to a small number of cases. The Review has made a number of recommendations which come within the remit of the Standards and Ethics Committee.
2. Coincidentally, it was suggested at the annual meeting of the council in May 2015 that the Cardiff Undertaking for councillors which forms part of the ethical code for the Council should include a reference to the collective responsibility councillors have, to safeguard and promote the life chances of looked after children. Members are keen to publically recognise their responsibilities as corporate parents and ensuring that children in council care are able to thrive.

**Background**

3. The purpose of the Independent Review was to ascertain whether the system for managing and responding to member queries in Cardiff provide a basis for appropriately managing case related concerns, for raising challenges and for discharging accountability for safeguarding and other relevant duties.
4. Rhonwyn Dobbing an experienced former member of the Care and Social Services Inspectorate Wales carried out the Review which reported in July 2015.

## **Independent Review Findings**

5. The Review made a number of findings as detailed below:

Social workers are amongst the most scrutinised profession; especially within children's services with a high number of performance indicators, regulated and inspected services and external scrutiny by, for example, CSSIW and the court process. In addition to this, Cardiff Council has introduced an improvement programme which includes children's services. This not only demonstrates its commitment to improving services but recognises that some service improvement is required. There are processes in place to monitor and review not only performance but the quality of services. These are not the actions of a council seeking to "cover up" mistakes.

6. Children's services deal with a considerable volume of open cases. At the end of May 2015 there were 2,442 open cases, comprising of 1,515 children in need cases, 293 children on the child protection register and 634 looked after children. Furthermore, in 2014-15 there were an average number of 2,363 contacts a month resulting in 1409 initial assessments. The pressures on individual workers and managers are significant.
7. The legal and statutory framework under which the service operates is complex. Mistakes will occur and service users will sometimes feel victims of the process rather than helped by it. Complaints are inevitable and it is therefore important that there is a robust process in place to deal with them. Councillor A has identified concerns and these have or are being investigated but it is not appropriate to relate mistakes in a few cases to overall systematic failure. In making a judgement about the service it is critical to take a strategic overall view taking account of a number of measures.
8. The Review also confirmed that the individual cases raised as causing concern have all now been scrutinised by an independent complaints officer overseen by an independent person as required by statutory guidance.
9. The Review recognised that it is the responsibility of every elected member to raise concerns about individual cases and there are processes in place to address these. It is not appropriate or responsible to try and effect change via social media and the press. To do so creates distrust, fear and tensions which do not lead to an open debate. Good practice is delivered by competent, confident well trained social workers who work in a learning organisation which not only celebrates good practice but is not afraid to address any failings and to learn from mistakes. Ms Dobbing reported that in her conversations held with all parties, she had found that "this is a shared aim and vision for the future of children's service in Cardiff and the challenge for all is to ensure a high quality service is in place"

## **Independent Review Recommendations**

10. The Head of Paid Services should ask the Standards and Ethics Committee to consider the role of elected members in relation to social services casework and their role as advocates for service users. This should lead to a written protocol being devised and implemented.
11. The Monitoring Officer should ensure that training is made available for all members on Information Sharing especially in relation to the Data Protection Act.
12. The Monitoring Officer should ensure that the Social Media Policy agreed by the Standards and Ethics Committee is more widely promoted and complied with.
13. The Director of Social Services should ensure that all members of staff receive training on the complaints procedure and that all managers are clear about the procedures to be followed in response to complaints from service users. Social workers should also be clear about their responsibilities in advising service users about advocacy services especially in relation to child protection processes.
14. The Director should consider whether the current arrangements for the provision of advocacy services are able to meet the needs of all vulnerable adults and whether such services should be jointly commissioned by adult and children services.

## **Issues**

15. A draft Protocol to cover the matters recommended by the Independent Review is set out at **Appendix A** to this Report for the Committee to consider. It has been drafted, in consultation with the Director of Social Services, and includes Members' responsibilities in relation to vulnerable adults.
16. Training will be made available for all members on Information Sharing especially in relation to the Data Protection Act as part of the member development programme this year. This training will also include use of social media.
17. The Monitoring Officer has written to all members to advise them of the findings and recommendations of the independent review and to circulate the Social Media Policy agreed by the Standards and Ethics Committee last year.
18. The draft Protocol is being discussed with political group leaders and their comments will be reported to the Committee when it meets.

## **Legal Implications**

19. These are set out in the Report

## **Financial Implications**

20. None identified

## **Recommendations**

1. To recommend to Council for approval the Member Protocol in relation to social services case work set out at **Appendix A**, subject to any agreed amendments.
2. To delegate authority to the Monitoring Officer, in consultation with the Standards and Ethics Committee Chair, to make minor amendments to the Protocol set out at **Appendix A**.
3. To agree to recommend to Council that the Cardiff Undertaking for Councillors include a new obligation to recognise the collective responsibility Councillors have to safeguard and promote the life chances of looked after children.

**Marie Rosenthal**  
**Director of Governance & Legal Services**  
**10<sup>th</sup> September 2015**

## **Appendices:**

Appendix A: draft Protocol – The Role of Elected Members in Safeguarding Vulnerable Children and Adults

## PROTOCOL

### THE ROLE OF ELECTED MEMBERS IN SAFEGUARDING VULNERABLE CHILDREN AND ADULTS

1. **Purpose of the Protocol** – To provide guidance and advice to elected Members on their roles and responsibilities in relation to safeguarding vulnerable children and adults; and on how Members should raise any concerns and receive assurance about children and adults who may be at risk.
2. **Definitions** - This Protocol uses the terms used by professionals to describe certain groups of individuals, which are defined as follows:
  - “Advocate” means a person accredited or recognised as competent to act as an advocate by an independent advocacy organisation
  - “Care leavers” – means young people who have been looked after by the local authority and who the local authority has a duty to continue to support until they reach the age of 21 or remain in education or training (if longer).
  - “Children at risk of harm” – means children about whom there are concerns that they are or may be at risk of suffering harm through abuse or neglect, including any child named on the Child Protection Register.
  - “Children In Need” – means any child who has been assessed as being unlikely to achieve or maintain a reasonable standard of health or development without access to services (including all disabled children and any child named on the Child Protection Register).
  - “Looked After Children” – means children who are looked after by the local authority through a Care Order made by court or by agreement with the parent/s.
  - “Vulnerable Adult” - means a person over 18 years of age who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of himself or herself, or unable to protect himself or herself against significant harm or serious exploitation.
3. **The Role of the Council and its elected Members**
  - 3.1 All Members of the Council have a strategic role in relation to social services issues and need to satisfy themselves that the Council as a whole is discharging its statutory responsibilities and demonstrates good practice wherever possible.
  - 3.2 A number of high profile public inquiries have highlighted the importance of ensuring that child protection services are prioritised and adequately resourced, and all elected Members have responsibility in this regard.
  - 3.3 The Council as a whole is the ‘corporate parent’ of all Looked After Children, which means that elected Members, relevant Council managers and staff all need to work together to discharge their different roles and responsibilities, to ensure the best possible care and opportunities are made available.

- 3.4 Members have an important role to play in safeguarding children and vulnerable adults, as the eyes and ears in the community, where ward surgeries and local ward networks enable Members to be alerted to early signs of safeguarding concerns, whether general patterns of behaviour or concerns about a particular child or vulnerable adult.
- 3.5 The Members of the Cabinet, the Corporate Parenting Committee, the Children and Young People's Scrutiny Committee and the Community and Adults Scrutiny Committee have additional specific responsibilities, as outlined in section 9 below.

#### **4. Responsibilities of Members**

- 4.1 It is the responsibility of all elected Members to bring any concerns they have about vulnerable children or adults to the attention of the responsible officer, depending on the nature of the concern, as set out in sections 5 and 6 below.
- 4.2 Elected Members may also wish to make representations on behalf of their constituents in order to satisfy themselves that concerns or problems are being dealt with appropriately. Good practice dictates that Members should only be involved in casework issues within their own ward, and the Standards and Ethics Committee has approved a Protocol to this effect (Informal Protocol on Member Involvement in Other Wards).
- 4.3 Whilst local ward Members have an important role to play in responding to the concerns of their constituents, they must be mindful of their obligations under the Members' Code of Conduct, in particular:
- 4.4 Personal interests - Members must be mindful of their duty under the Members' Code of Conduct to disclose any personal interest in a particular case in which they may be making representations. For example, a personal interest may arise from the Member's personal relationship with a service user or from the Member's involvement in a particular organisation. Members must ensure that their personal or private interests do not conflict with their public duties, to the Council as a whole or to all ward constituents.
- 4.5 Advocacy for Service Users - It is not generally appropriate for an elected Member to act as an advocate for a service user, due to the potential conflict of interest and confusion over the role in which the member is acting. Elected Members are part of the Council and have a duty to represent all ward constituents fairly and equally; whereas the role of an advocate is to provide emotional support to an individual and help them to understand the process and to raise questions and issues as necessary. An elected Member seeking to act as an advocate is likely to have a conflict between his/her duties to: (i) the Council and its officers, (ii) the individual service user, and (iii) other ward constituents. In some cases, this may also create an impression of undue influence, in view of the Member's position within the Council. In exceptional circumstances, such as where a Member may wish to act as an advocate for a family member or if a Member is a professional advocate, this should be explained and agreed in advance with the Director of Social Services or the Monitoring Officer. The Council has a responsibility to ensure that service users have access to

advocacy services wherever necessary, and can provide contact details for independent advocacy service providers and professional advocates upon request.

- 4.6 Criticism of Officers - Members should ensure that any concerns about Council officers are raised with the relevant Director (or the Chief Executive) in accordance with the Protocol on Member / Officer Relations, as staffing issues are the statutory responsibility of the Chief Executive, as Head of Paid Service. Members should note that recent caselaw regarding a Councillor's right to freedom of expression under Article 10 of the European Convention on Human Rights (Heesom v. Public Services Ombudsman for Wales 2014) has held that:
- Council officers are not expected to tolerate the same level of criticism as politicians during political debate
  - Unwarranted criticism of officers by Councillors damages the mutual duty of trust and confidence between Councillors and officers, and that
  - There is a public interest in ensuring that officers are not subjected to unwarranted criticism which could undermine the performance of their public duties and public confidence in the administration.
- 4.7 Political / Public Debate - When raising issues politically in public debate, during Council meetings, using social media etc, Members must ensure their comments do not disclose confidential information or personal information about identifiable individuals; must not make unwarranted criticism of officers (see above); and must not conduct themselves in a manner likely to bring the Council (or the office of Councillor) into disrepute.
5. **What to do if you are concerned that a child or vulnerable adult may be at risk of harm?**
- 5.1 If a Member has any information which raises concerns about harm or potential harm to any child, a child protection referral should be made immediately to the Children's Access Point or, if outside of office hours, to the Emergency Duty Team (please see Contact List at the end of this Protocol) where an experienced Social Worker will ensure Child in Need or Child Protection Procedures are instigated if needed, and will provide you with any required advice and guidance.
- 5.2 If any information raises concerns about harm or potential harm to a vulnerable adult, these concerns should be reported immediately to the Protection of Vulnerable Adults (POVA) Support Team or, if outside of office hours, to the Emergency Duty Team (please see Contact List at the end of this Protocol) where an experienced Social Worker will ensure that any appropriate procedures are instigated, and will provide you with any required advice and guidance.
- 5.3 If a Member has concerns about immediate danger needing an emergency response or thinks a crime is being committed, the police should be contacted on 101 or 999. You should never delay taking emergency action to safeguard a child or vulnerable adult.

## **6. Who else to Contact?**

If a Member has a general safeguarding concern, which is not related to a specific child or vulnerable adult, the Member should bring this to the attention of the Operational Manager, Safeguarding Children and Vulnerable Adults, the Assistant Director of Children's Services or the Assistant Director of Adult Services (as appropriate), or the Director of Social Services.

## **7. What To Expect?**

7.1 All concerns will be investigated and assurances given to the Councillor that the welfare of the child or vulnerable adult is being safeguarded.

7.2 All referrals of children or vulnerable adults at risk of harm will be promptly investigated and a response will be given to the Councillor within 24 hours to confirm that appropriate action has been taken. The Council will not, however, be able to confirm the outcome of any particular investigation due to confidentiality and data protection laws (explained in section 8 below).

7.3 Any general queries or concerns will be carefully considered and a response will be given to the Councillor within 10 working days.

7.4 Any complaints made by or on behalf of service users will be considered in accordance with the Council's complaints procedures, which fully comply with all relevant statutory provisions and best practice.

(i) Complaints about the handling or outcomes of child protection conferences will be dealt with under the 'Procedure for handling complaints from parents, caregivers and children about the functioning of the child protection conference' (based on the All Wales Protocol). This procedure is appended as Annex 1 to this Protocol.

(ii) All other complaints about Cardiff Social Services will be dealt with under the 'Social Services Complaints Policy and Procedure' (established in accordance with The Social Services Complaints Procedure (Wales) Regulations 2014 and The Representations Procedure (Wales) Regulations 2014). This procedure is appended as Annex 2 to this Protocol.

## **8. Members' Rights to Information and Information Sharing**

8.1 The Protocol on Members' Rights of Access to Information and Documents (set out in Part 5 of the Constitution), sets out Members' rights to information held by the Council and how to access such information.

8.2 Under the "need to know" principle, all Members have a right to inspect any Council documents *if* access to the documents is reasonably necessary to enable the Member to properly perform their duties as a Member of the Council. However, access to personal information is restricted by data protection legislation (see below); and any information provided under the "need to



know” principle must only be used in connection with the Member’s duties as a Councillor, and must not be disclosed to any other persons (unless and until the information properly enters the public domain).

8.3 The Council will ensure that all elected Members have access to general information about trends and issues affecting children and vulnerable adults as well as the quality and range of services provided.

#### **Personal information / Information about individual cases**

8.4 Information relating to individuals is protected by data protection legislation (and such information may also be confidential). General advice on Members’ data protection responsibilities is set out in the ‘Data Protection’ section of the Members’ Handbook.

8.5 The Council is legally responsible (as the ‘Data Controller’) for personal information held by the Council (or held by Members for the purpose of Council business). Each elected Member is legally responsible (as ‘Data Controller’) for personal information held for constituency work purposes. The Council and all elected Members must carefully consider, on a case by case basis, their legal obligations in respect of any particular personal information they may hold.

8.6 The law requires that all personal information must be handled fairly, lawfully and securely. In particular, personal information about individual cases *must not be disclosed without the consent of the individual/s concerned*, unless a legal exemption applies. This means that the Council can only disclose information about individual cases to Members if it is satisfied that the individual/s concerned have consented to such disclosure.

8.7 In their ward Member role, if a Member is asked by a ward constituent to assist them in resolving a social services matter, the Member will be dealing with personal information, some of which will be sensitive personal information (defined by law as information about a person’s racial or ethnic origin; political opinions; religious beliefs; trade union membership; physical or mental health or condition; sexual life; alleged criminal activity; or court proceedings, and subject to additional legal restrictions).

8.8 Members must ensure that:

- The individual/s concerned understand how the Member intends to use their personal information and have consented to this.
- If the Member intends to make enquiries with the Council about a particular case, then the Member must obtain written consent from all individuals involved, expressly authorising the Council to disclose their personal information to the Member; and provide a copy of this consent to the Council.
- All personal information relating to individual cases must be used only as necessary and appropriate in order to take the agreed action on behalf of the individual; and must not be used or disclosed for any other purpose, for example, for political purposes.
- Members must have robust systems for holding personal information securely and only for as long as necessary.

8.9 Further advice is available from the Council's Information Manager. The Information Commissioner's Office website also publishes helpful guidance for Councillors on their data protection responsibilities (see Background Documents listed at the end of this Protocol).

## 9. Decision makers and Accountability

In addition to the strategic role of full Council, referred to in section 3 above, the key decision makers and their accountabilities are as follows:

### Cabinet; Cabinet Member, Early Years, Children and Families; and Cabinet Member, Health, Housing and Wellbeing

9.1 The Cabinet has a collective corporate leadership role and decision making powers in respect of children's and adults' services, subject to compliance with the Council's approved Policy Framework. The Cabinet Member, Early Years, Children and Families (and Lead Member for Children's Services) has particular responsibility to lead and inform the Cabinet's work on child protection, corporate parenting and safeguarding children matters. The Cabinet Member, Health, Housing and Wellbeing has particular responsibility to lead and inform the Cabinet's work on adult social care and safeguarding vulnerable adults matters. Both Cabinet Members are regularly briefed by the Statutory Director of Social Services on the performance of social services functions, any identified weaknesses and recommended improvement actions.

### Statutory Director of Social Services

9.2 The Statutory Director of Social Services is responsible for providing professional leadership and discharging core responsibilities in respect of all social services functions of the Council. The Director makes a Statutory Annual Report to Cabinet on the discharge of the Council's social services functions, including a report on all social services complaints.

### Corporate Parenting Advisory Committee

9.3 The Corporate Parenting Advisory Committee is responsible for advising the Council and the Cabinet on the discharge of the authority's corporate parenting functions. The Committee receives a 6 monthly Independent Reviewing Officer report, and a quarterly report of all complaints concerning children's services (in anonymised form) to check that appropriate action has been taken in response to all complaints.

### Children and Young People's Scrutiny Committee

9.4 The Children and Young People's Scrutiny Committee is responsible for scrutinising, measuring and actively promoting improvement in service provision and compliance with the Council's approved policies, aims and objectives in relation to children and young people, including children's social services.

## Community and Adult Services Scrutiny Committee

9.5 The Community and Adult Services Scrutiny Committee is responsible for scrutinising, measuring and actively promoting improvement in service provision and compliance with the Council's approved policies, aims and objectives in relation to community and adults' services, including adults' social care services.

### CONTACTS LIST:

The Children's Access Point (CAP)	029 2063 6490
POVA Support Team (Protection of Vulnerable Adults)	029 2053 6436
Emergency Duty Team (out of hours)	029 2078 8570
Operational Manager, Safeguarding Children and Vulnerable Adults	029 2087 3830
Assistant Director of Children's Services	029 2087 3803
Assistant Director of Adult Services	xxxxxxx
Director of Social Services	029 2087 3803
Operational Manager, Information Management	029 2087 3340

### APPENDICES

Annex 1	'Procedure for handling complaints from parents, caregivers and children about the functioning of the child protection conference', Cardiff and Vale of Glamorgan, Local Safeguarding Children Board
Annex 2	'Social Services Complaints Policy and Procedure', City of Cardiff Council

### BACKGROUND DOCUMENTS:

Welsh Government Guidance 'If this were my child.. A councillor's guide to being a good corporate parent to children in care and care leavers'  
Cardiff Council Social Media Guidance  
Informal Protocol on Member Involvement in Other Wards  
Protocol on Member / Officer Relations  
Protocol on Members' Rights of Access to Documents and Information  
Members' Handbook, 'Data Protection' section  
Information Commissioner's Office, 'Advice for elected and prospective councillors – Data Protection Act'

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## Cardiff and Vale of Glamorgan Local Safeguarding Children Board

### Procedure for handling complaints from parents, caregivers and children about the functioning of the child protection conference

Date ratified by the LSCB: November 2014  
 Review date: November 2017

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## 1. Introduction

- 1.1. This procedure is based on and complies with the All Wales Protocol entitled 'Handling complaints from families about the functioning of the child protection conference' (AWCPP, 2008)
- 1.2. This procedure applies to all child protection conferences held under Cardiff and the Vale of Glamorgan Local Authority's Child Protection Procedures.
- 1.3. The procedure covers both the handling and outcomes of both initial and review child protection conferences (hereafter referred to as child protection conferences).

## 2. Who may make a complaint and what can they complain about?

2.1. Parents, caregivers, persons with parental responsibility, persons with a significant interest in/involvement with the child and children of sufficient age and understanding, who are involved in the conference process, may have concerns about which they may wish to make representations or complain in respect of one or more of the following aspects of the functioning of a child protection conference:

- the process of the conference in terms of adherence to procedures;
- the registration decision, including the category; or
- a decision not to register or to de-register.

## 3. Stage 1

- 3.1. The initial complaint should be addressed in writing to the conference chair within 14 working days from the conference minutes being sent out. Complaints raised outside of this timescale can be considered where there is a rationale for not raising the complaint within 14 working days from the conference minutes being sent out.
- 3.2. The person making the complaint may need to be assisted in putting their complaint in a written format. The complainant should agree and sign and date the complaint.

## 4. Stage 1 response to a complaint

Date ratified by the LSCB: November 2014  
Review date: November 2017

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4.1. Upon receipt of the complaint the chair should:

- 4.1.1. notify the senior manager for child protection (OM, Safeguarding) in the respective local authority and their line manager about the complaint
- 4.1.2. notify the LSCB Business Manager of the complaint for inclusion on the centralised LSCB complaints register
- 4.1.3. inform the Complaints Officer within Social Services of the complaint to ensure that in the event of concurrent investigations and/or representations and complaints, these are responded to in a co-ordinated and appropriate manner.
- 4.1.4. attempt to informally resolve the complaint within 7 working days of receiving the complaint;

## 5. Outcome of the stage 1 response

5.1. The outcome of the stage 1 response to the complaint should be recorded in writing by the conference chair, and should set out the response to the complaint and any agreed actions within 5 working days of the meeting with the complainant.

5.2. A copy of the written response should be sent to:

- the complainant;
- the child, if appropriate to their age and understanding;
- the conference chair's line manager;
- any other agency representative who attended a meeting with the complainant;
- the Social Services Complaints Officer
- the senior manager for child protection (OM, Safeguarding).
- The LSCB Business Manager

5.3. Consideration must be given as to whether the parent(s) or persons with parental responsibility are notified of the complaint and outcome, where they are not the complainant.

5.4 The LSCB Business Manager will update the central complaints register with the outcome.

5.5 If the complaint is not resolved, the chair should inform the LSCB Business Manager and the senior manager for child protection (OM, Safeguarding) that the complainant wishes to go to stage 2 of the procedure which is the interagency LSCB Panel.

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## 6. Single Agency Complaint

6.1. If, whilst seeking to resolve the complaint at stage 1 it becomes apparent that the complaint or some components of the complaint do not fall within the remit of the LSCB child protection conference complaints procedure, the conference chair should refer the complainant to the relevant agency and advise the LSCB manager of this.

## 7. Stage 2 – The LSCB inter-agency panel

- 7.1 On receipt of notification that the complainant wishes to proceed to stage 2, the LSCB Business Manager will contact LSCB Executive Board members to request they identify a senior representative from their agency to make up the panel. One of these panel members will act as chair. The panel should consist of a minimum of three senior representatives from LSCB member agencies and shall not include anyone who has had direct involvement in the case that is being heard.
- 7.2 The panel has 25 working days from the date that the initial complaint is signed to complete the stage 2 process and inform the complainant in a written report of their findings. To ensure that this timescale is met, the panel should be convened no later than 20 days after the date of the initial complaint.
- 7.3 Once panel members are identified, the LSCB Business Manager will arrange the panel date, venue and administration, consulting with the senior manager for child protection (OM, Safeguarding) in the respective local authority.
- 7.4 Where the 25 day timescale cannot be met the reasons must be given to the complainant and recorded, with revised timescales, taking into account the date of the next child protection conference.
- 7.5 The complainant will be notified of the date, venue and arrangements for the panel, including the name of the chairperson by the LSCB Business Manager (Appendix 1) and advised that they can make a statement in person or in writing to the panel and call evidence relating to their complaint. The complainant will be asked to confirm whether they intend making a written submission or attending at panel.
- 7.6 Both the panel and the complainant may call witnesses and the complainant will be asked to confirm who they intend calling, so that the panel can be convened for a suitable length of time.

7.7 The complainant will be advised that they are entitled to be accompanied by an advocate and/or a legal advisor and will be asked to notify the LSCB Business Manager of the supporter's name prior to the meeting.

7.8 The LSCB Business Manager will notify the panel chair of the intentions of the complainant in respect of 7.5, 7.6 and 7.7 above.

7.9 Panel members should have considered beforehand the following documents:

- a copy of the outstanding complaint(s) and a copy of the stage 1 response to the complainant
- copies of the reports submitted to the child protection conference, the child protection conference minutes and the child protection plan
- Other relevant documents to consider include those identifying that the threshold for child protection conference has been met including referral information, initial assessment, section 47 investigation and core assessment.

7.10 The senior manager for child protection (OM, Safeguarding) in the relevant local authority is responsible for collating these documents and ensuring they are made available to panel members at least 10 days prior to the panel taking place.

7.11 The Chair of the Panel in liaison with the senior manager for child protection (OM, Safeguarding) should consider whether any further information should be sought and shared prior to the panel and agree who will undertake this.

7.12 The chair of the panel and senior manager for child protection (OM, Safeguarding) will decide whether a briefing session with the Operational Manager, Safeguarding and panel members takes place in advance of the panel. This briefing session will be organised by the senior manager for child protection (OM, Safeguarding) and can be used to discuss panel process and to ensure that all relevant documentation is being considered.

7.13 At the panel, the complainant and their representative will be invited to outline their complaint, and call witnesses. The complainant and representative will be asked to leave and panel members will meet alone to consider all of the information that has been presented to them and reach their conclusions.

7.14 If the complainant does not attend the panel, having indicated their intention to attend, the chair must decide whether to reconvene the panel or to consider the complaint on the basis of the initial written complaint or subsequent written submissions.

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7.15 The panel will determine, in respect of the child protection conference:

- whether the process followed adhered to the All Wales Child Protection Procedures;
- whether the decision that is being complained about follows reasonably from the proper observation of the procedures;
- whether the decision that is being complained about follows reasonably from the information available to the original conference.

7.16 The Panel may decide that additional information is required before conclusions can be reached and in this case, an extension of the timescale might need to be agreed between the complainant and the chairperson. The chairperson must notify the LSCB Business Manager of any agreed extensions to timescale.

**7.17 The LSCB panel cannot remove a child's name from the Child Protection Register; this can only be done at a child protection conference.**

7.18 The chair of the panel shall inform the complainant of the decision of the Panel.

The decision should be communicated in writing and also be sent to:

- The child if appropriate to their age and understanding;
- Any other parent or caregiver;
- Any other person with parental responsibility;
- Members of the relevant child protection conference;
- The chair of the child protection conference, subject to the complaint.
- The Chair of the LSCB
- The LSCB Business Manager
- The senior manager for child protection (OM, Safeguarding) in the relevant local authority

## **8 If the Complaint is upheld**

- The Panel shall refer their recommendations to a reconvened child protection conference to reconsider the registration decision and category of registration.
- A different conference chair must be nominated and the conference reconvened within 15 working days of the panel decision.
- The original conference decision will remain in place until the reconvened conference has taken place.
- The conference must consider, taking into account the panel's recommendations, whether the criteria for registration is met.
- If the criteria for registration are met, the conference chair should then determine the relevant category for registration.

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- 8.1 The line manager of the conference chair will ensure that the findings, recommendations and decisions arising from the panel process are passed to the chair of the next child protection conference.
- 8.2 The chair of the LSCB may decide to make recommendations to relevant LSCB member agencies on the basis of the decision of the panel.
- 8.3 The senior manager for child protection (OM, Safeguarding) for the relevant authority will ensure that practice issues and any recommendations in respect of the conference chair are addressed.
- 8.4 A copy of the findings and recommendations of the Panel should also be placed on the relevant child's case record held by Children's Services and a copy sent to the Social Services Complaints Manager.

## 8 Reports

- 9.1 The LSCB Business Manager will ensure a report is provided to the LSCB on a quarterly basis regarding any complaints made, outcomes and a summary of issues raised.
- 9.2 A summary of complaints activity will be included in the annual LSCB report.

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## 10 Appendix

### Appendix 1: Standard letter to complainant

Dear

The Local Safeguarding Children Board Complaints Panel has convened a meeting on ..... in respect of your complaint.

The Panel will be composed of senior representatives from the LSCB Member Agencies and will be chaired by .....

The purpose of the Panel/meeting is to ascertain:

- whether the child protection conference process followed adheres to the All Wales Child Protection Procedures;
- whether the decision that is being complained about follows reasonably from the proper observation of the procedures;
- whether the decision that is being complained about follows reasonably from the information available to the original conference.

The Panel cannot make a decision to remove your child(ren)'s names from the child protection register; this can only be done at a child protection conference.

You will have the opportunity to make a statement in person or in writing to the panel and can also call relevant witnesses. You can also make your own arrangements to be accompanied by an advocate and/or legal advisor if you wish to attend in person.

Please contact me on the telephone number/email address above to confirm your attendance, the details of witnesses you intend calling and whether you will be accompanied by an advocate and/or legal advisory

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If you wish to discuss the process of the panel or your complaint, please contact the Senior Manager for Child Protection whose details are below.

Yours sincerely

Business Manager for the LSCB

Contact details for further correspondence

Operational Manager, Safeguarding

Name:

Telephone:

Email:

Address

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**CITY OF CARDIFF COUNCIL**

**SOCIAL SERVICES COMPLAINTS POLICY & PROCEDURE**

## Document Control

<b>Organisation</b>	City of Cardiff Council
<b>Title</b>	Social Services Complaints Policy
<b>Author</b>	Kim Brown
<b>Filename</b>	
<b>Owner</b>	Angela Bourge
<b>Subject</b>	
<b>Protective Marking</b>	NOT PROTECTIVELY MARKED
<b>Review date</b>	Annual

## Revision History

<b>Revision Date</b>	<b>Revision</b>	<b>Previous Version</b>	<b>Description of Revision</b>
	New policy	0	Reflects new guidance
07.08.15	Review	1	General amendments



## INTRODUCTION

- 1.1 The City of Cardiff Council is committed to dealing effectively with any concerns or complaints about Social Services. In this document, the term 'complaint' refers to a concern, a representation or a complaint. Social Services refers to City of Cardiff services provided within children's and adults' social care.
- 1.2 We aim to clarify any issues about which service users, citizens or complainants are not sure. We will apologise if we get something wrong, and where possible we will try to put things right. We will also set in place a process so that we learn from mistakes and use the information we gain to improve our service.
- 1.3 This policy has been established in accordance with The Social Services Complaints Procedure (Wales) Regulations 2014 and The Representations Procedure (Wales) Regulations 2014. This policy takes effect from 1<sup>st</sup> August 2014 as prescribed.
- 1.4 The above regulations are made under the Social Services & Wellbeing (Wales) Act 2014. They bring the complaints handling process for Social Services in line with the Welsh Government "Model Concerns and Complaints Policy and Guidance", and the NHS Complaints Procedure "Putting Things Right".
- 1.5 This Policy also encompasses the requirements of the Children Act 1989, the Adoption of Children Act 2002, and the Community Care Act 2014 and is issued in accordance with Section 7 of the Local Council Social Services Act 1970.

## 2. OUR COMMITMENT

- 2.1 We aim to provide high quality services to eligible residents of Cardiff.
- 2.2 There will be times when people using or wanting to use social care services will want to make comments or complaints and provide feedback about the service they receive. When we receive a complaint, comment or feedback, we aim to respond in the way we explain below.
- 2.3 We have developed our Social Services Complaints Policy to ensure we resolve complaints quickly and effectively.
- 2.4 We recognise that a robust complaints framework can empower service users. Outcomes from complaints investigations will be used by Social Services to ensure that lessons are learned where things have gone wrong and in order that continuous improvement can be made to service delivery.

- 2.5 We will deal with complaints in an open and honest way.
- 2.6 We will make sure that citizens' ongoing contact with the service following resolution of a complaint, do not suffer detriment because they have expressed a concern, given feedback or made a complaint.
- 2.7 We will initially communicate with the complainant in the same way they have contacted us, unless they request we respond differently or we have good reason not to do so. However, we will always ask whether complainants prefer a different medium of contact. We will always ensure that the outcome of contact is followed up in writing. Where a complainant has contacted us by email, we will assume an implied consent to respond electronically unless we are instructed otherwise.

### **3. SERVICE REQUESTS**

- 3.1 If a person is approaching the Council for a service for the first time, this will be classified as a service request. In such cases this policy will not apply.

### **4. WHEN TO USE THIS POLICY: WHO CAN COMPLAIN?**

- 4.1 This policy applies to both adults' and children's social care. A person may be eligible to make a complaint about Social Services under the policy, in the following circumstances:
  - 4.1.1 If they have received (or were entitled to receive) a service from Social Services (e.g. a care leaver).
  - 4.1.2 If they have suffered due to the inappropriate actions of Social Services.
  - 4.1.3 A complaint may be brought forward in respect of a child (i.e. a person under the age of 18).
    - (a) By a child either being looked after by Social Services, or not being looked after by them but is in need.
    - (b) By a parent of such a child.
    - (c) By a person with parental responsibility for such a child.
    - (d) By a local Council foster carer.
    - (e) Where the Council considers that the complainant has a sufficient interest in a child's welfare to warrant it considering their representations.
  - 4.1.4 A complaint may be brought forward in respect of an adult who lacks capacity, providing the individual making the complaint is acting in the best interests of the person receiving services (who lacks capacity), or has lasting power of attorney to act on their behalf.

- 4.2 If a person is unable to make a complaint or representation themselves, they can authorise someone to make a complaint on their behalf.
- 4.3 Children in need, looked after children and care leavers and those without capacity or with people who can act in their best interests, have a right to receive assistance from an independent advocate to assist them when making a complaint. In these circumstances, we will provide an advocate if asked to do so.
- 4.4 A representative may make a complaint on another person's behalf where that person:
- Is a child; or
- Has requested the representative to act for them; or
  - Lacks capacity to make their own complaint; or
  - Has died
- 4.5 Their expressed permission must be considered to have sufficient interest in that person's welfare and be a suitable person. The Complaints Officer will determine the eligibility of a complainant in such circumstances.
- 4.6 If an individual intends expressing a concern on behalf of another person who satisfies the criteria set out in paragraph 4.1, we may require confirmation of their agreement to that person acting on their behalf. Should that person not be eligible to make a complaint under the terms of this policy, they may still be able to make a complaint under our Corporate Comments, Complaints and Compliments procedure (document 1.CM.192 on CIS).
- 4.7 Normally, we will only be able to look at complaints that are made up to 12 months after the date the matter which is the subject of the complaint occurred, or came to the notice of the complainant.
- 4.8 In exceptional circumstances the Council may be able to look at concerns which are brought to our attention later than this. However, the Council will need to be satisfied that there are good reasons for the complaint not being made within these timescales, and that it will be possible to investigate the complaint effectively and fairly.
- 4.9 There may be reasons why the Council will not, or cannot consider a complaint (e.g. if there are court proceedings in relation to those matters, or if the complaint identifies a safeguarding issue). If this is the case, the Complaints Officer will explain why the complaints cannot be considered and confirm the decision in writing.
- 4.10 Furthermore, a complaint cannot be made under this policy where:
- 4.10.1 The complaint relates to a matter that has previously been investigated under this or the former Complaints Procedure;

- 4.10.2 The complaint is being or has been investigated by the Public Services Ombudsman for Wales;
- 4.10.3 The matter relates to a Freedom of Information or Data Protection issue;
- 4.10.4 The complaint has previously been made orally, and resolved to the satisfaction of the person making complaint, by the end of the working day following the day on which the complaint was made.

## 5. HOW TO COMPLAIN

- 5.1 Complaints regarding children's social care can be made in any of the ways below:
  - 5.1.1 By contacting the Complaints Team by telephone on 029 2087 3663
  - 5.1.2 Via our website [www.cardiff.gov.uk](http://www.cardiff.gov.uk)
  - 5.1.3 By e-mail at [cscomplaints@cardiff.gov.uk](mailto:cscomplaints@cardiff.gov.uk)
  - 5.1.4 In writing, at the following address:

The Complaints Team  
Room 335 County Hall  
Atlantic Wharf, Cardiff  
CF10 4UW
- 5.2 Complaints regarding adult social care can be made in any of the ways below:
  - 5.2.1 By contacting the Complaints Team by telephone on 029 2087 3891
  - 5.2.2 Via our website [www.cardiff.gov.uk](http://www.cardiff.gov.uk)
  - 5.2.3 In writing, at the following address:

The Complaints Team  
Room 364 County Hall  
Atlantic Wharf, Cardiff  
CF10 4UW
- 5.3 We aim to have information available at all of our service outlets and public areas and also at appropriate locations in the community (e.g. libraries and Housing Offices).
- 5.4 Copies of this policy and the complaint form can be made available in other formats if required (e.g. audio, large print etc.).

## STAGE 1 OF THE COMPLAINTS PROCESS – INFORMAL RESOLUTION

- 5.5 If possible, we believe it is best to deal with things straight away rather than try to sort them out later. Ideally, complainants should raise their complaint with the person they are dealing with. He or she will try to resolve it there and then.
- 5.6 If we are unable to resolve a complaint immediately, we will acknowledge the complaint within 2 working days of receipt of the complaint and tell the complainant whom we have asked to look into the matter. Details of our complaints procedure will be enclosed with the acknowledgement.
- 5.7 We will set out our understanding of the complainant's concerns and ask them to confirm that we have got it right. We will also ask them to tell us what outcome they are hoping for.
- 5.8 We will offer the complainant a discussion with a Social Services Officer or the Complaints Officer (as appropriate). Should such a discussion be required, arrangements will be made for this to take place within 10 working days of the date of acknowledgement.
- 5.9 In the case of a representation, arrangements will be made for any required discussion to take place within 10 working days of the Local Resolution stage 'start date' set out in the Regulations. The Local Resolution stage 'start date' is governed by (a) the date of acknowledgment; (b) the date on which an advocate is appointed; or (c) where a representation is made by 'other persons', the date on which the local authority decides that the person has sufficient interest to warrant consideration; whichever is later. This timescale may only be extended in exceptional circumstances with the agreement of the complainant.
- 5.10 When the complaint has been resolved, we will provide a substantive response to the complainant in writing within 5 working days of the date of resolution.
- 5.11 If it is not possible to provide the complainant with a response within the timescales set out in 6.4 to 6.6 above, we will contact the complainant to discuss the reason for the delay.
- 5.12 Occasionally, we might suggest mediation or another method to try to resolve disputes. It is hoped that all concerns can be resolved by Social Services without a need for further action.
- 5.13 Complainants have 14 days to respond if they are not satisfied with the response to their complaint.

## 6. STAGE 2 OF THE COMPLAINTS PROCESS – FORMAL COMPLAINTS

- 6.1 If a complaint has been considered at the first stage of the complaints process and the complainant remains aggrieved with the outcome, they may ask for the complaint to be investigated by a person who is independent of the Council. In such circumstances we will commission someone from outside the Council to conduct the investigation. This person is referred to as an Independent Investigator.
- 6.2 The Independent Investigator will interview all parties and produce a report of their findings which will be provided to the person making the complaint and principal parties to the complaint. As a consequence of this report the Director of Social Services will provide the complainant with a written response to the report which will include their summary and details of any action to be taken.
- 6.3 In the case of a child, at this stage an Independent Person is also appointed to take part in the formal consideration and any discussion about the action the Council should take (in accordance with Children's Act 1989). The Independent Person's role is to oversee the handling of the complaint. This person may be an employee of the Council but must not be associated with Social Services in any way.
- 6.4 We will compile a formal written record of the complaint (as we understand it) within 5 working days of the date it is received.
- 6.5 Before the investigation starts, the complainant will be required to confirm that our understanding of the issues to be investigated is comprehensive and correct. They will also be asked to specify (or confirm) their required outcomes from the investigation. If these issues have not been clearly set out in our summary of the complaint, the complainant will need to speak to the Complaints Officer to clarify matters.
- 6.6 The date on which the content of the complaint is agreed by both the Council and the complainant will be the start date for the complaint.
- 6.7 A response to a Stage 2 complaint should be issued within 25 working days of the start date. If this is not possible, we will inform the complainant and explain why, giving an indication when they can expect to receive a response. In any event, a response to a complaint must be provided within 6 months.
- 6.8 Complainants have 14 days to respond if they are not satisfied with the response to their complaint.
- 6.9 Whilst it is recommended that a complainant tries to resolve their complaint informally, at first, they have the right to ask for a complaint to be considered at this stage from the outset.

## **7. OUTCOMES OF INVESTIGATION**

- 7.1 Following the investigation of a complaint, we will let the complainant know the outcome of the investigation using their preferred form of communication (e.g. by letter or email). If necessary, we will produce a longer report. We will explain how and why we came to our conclusion.
- 7.2 If we find that we got it wrong, we will explain what errors were made and how it happened.
- 7.3 If we find there is a fault in our system or the way we do things, we will explain what it is and how we plan to change to prevent this from happening again. If we got it wrong, we will always apologise.

## **8. PUTTING THINGS RIGHT – WHEN WE GET THINGS WRONG**

- 8.1 If we did not provide a service that should have been given, we will aim to provide it if that is possible. If we did not do something well, we will aim to put it right. If a person has lost out as result of a mistake on our part we will try to put them back in the position they would have been in if we got it right.
- 8.2 If a person had to pay for a service themselves, when they should have received that service from us, or if they were entitled to funding they did not receive, we will usually aim to make good what they have lost.

## **9. LEARNING LESSONS**

- 9.1 We take complaints seriously and try to learn from any mistakes we have made. Our senior management teams consider a periodic summary of all complaints. Details of lessons learned from complaints are also included in an Annual Report.
- 9.2 Where there is a need for change, we will develop an action plan setting out what we will do, who will do it and when we plan to do it by. If it is appropriate, we will let complainants know when the changes we have promised to make have been implemented.

## **10. CONFIDENTIALITY**

- 10.1 All complaint information is confidential and subject to the Data Protection Act. Written information on complaints is kept separately from care management records.
- 10.2 Requesting an investigation gives permission for the Investigating Officer to look at the personal data contained in care management records.
- 10.3 All Council staff, including those commissioned for a specific piece of work are bound by the rules of confidentiality.

10.4 Information gathered and processed during the complaints will be the handled in accordance with the Council's Data Protection Policy. It will only be shared with parties subject to, directly involved with or who have a professional interest in the outcome of the complaint.

## **11. CONCURRENT INVESTIGATIONS**

11.1 Where other investigations are in progress / under consideration in relation to issues raised by the complainant (e.g. court matters, police investigation, disciplinary or other legal proceedings), no investigation will be undertaken in line with this Policy.

11.2 No complaint investigation will be made under the policy where it is considered that such action may compromise any adult or child protection (or safeguarding) process, and the complainant will be informed if the complaint is being treated as a safeguarding issue.

11.3 Should this occur, we will notify the complainant in writing and invite them to re-submit their complaint when those other matters are concluded.

## **12. WHAT IF THERE IS MORE THAN ONE PUBLIC BODY INVOLVED?**

12.1 If a complaint covers more than one body (e.g. if the complaint is about both the Council and the Health Board) we will usually work with them to decide who should take a lead in dealing with the matter. In such cases, the name of the person responsible for communicating with the complainant will be provided.

12.2 If the complaint is about a body working on our behalf (e.g. agency care workers, private residential homes) the matter may be raised informally with, and dealt by, that body first. However, if the complainant wants to complain formally to the Council where the Council has commissioned this service, we will look into this and respond.

## **13. DEFERRING OR FREEZING DECISIONS**

13.1 If a complaint is about a proposed change to a care plan, a placement or a service, the Council may consider deferring or freezing the decision until the complaint is resolved.

13.2 Decisions to defer will follow careful assessment of the needs of the individual and will normally be made after detailed discussion between the Complaints Officer and Team Manager.

13.3 Should it be required, the decision of the Director of Social Services on such matters will be final.



## 14. PUBLIC SERVICES OMBUDSMAN FOR WALES

14.1 If we do not succeed in resolving a complaint, the complainant may refer the matter to the Public Services Ombudsman for Wales. The Ombudsman is independent of all government bodies and can look into complaints where the complainant or service user –

(i) has been treated unfairly or received a bad service through some failures on the part of the body providing it

(ii) has been disadvantaged personally by a service failure or has been treated unfairly.

14.2 The Ombudsman expects complainants to bring concerns to our attention first and to give us an opportunity to put things right.

14.3 The Ombudsman can be contacted in the following way:

- By e-mail: [ask@ombudsman-wales.org.uk](mailto:ask@ombudsman-wales.org.uk)

- Via the Ombudsman website: [www.ombudsman-wales.org.uk](http://www.ombudsman-wales.org.uk)

- In writing, or by telephone, at:

Public Services Ombudsman for Wales  
1 Ffordd yr Hen Gae  
Pencoed,  
CF35 5LJ  
Tel: 0300 790 0203

14.4 There are also other organisations that consider complaints. For example, the Welsh Language Commissioner can deal with issues about services in Welsh. We can provide advice about such organisations.

## 15. WHAT IF A COMPLAINANT NEEDS HELP

15.1 Our staff will aim to help complainants to make their concerns known to us. If extra assistance is needed, we will try to put complainants in touch with someone who can help.

### 15.2 Older People

15.2.1 Age Cymru provides advice for all older people in Wales. They can be contacted by any of the ways below:

- Using their Online Form:

<http://www.ageuk.org.uk/cymru/contact-us/>

- Via the Age Cymru website; <http://www.ageuk.org.uk/cymru/>

- In writing, or by telephone, at:

Age Cymru  
Ty John Pathy  
13/14 Neptune Court  
Vanguard Way  
Cardiff  
CF24 5PJ  
Tel: 0300 790 0230

### 15.3 Children & Young People

15.3.1 This policy includes complaints made by people under the age of 18. If a young person wishing to complain needs help, they can speak to someone on the Meic Helpline (phone 0808 802 3456, [www.meiccymru.org](http://www.meiccymru.org)).

15.3.2 They can also contact the Children's Commissioner for Wales:

- By email, at: [post@childcomwales.org.uk](mailto:post@childcomwales.org.uk)

- In writing, or by telephone, as shown below:

South Wales Office:  
Oystermouth House  
Phoenix Way  
Llansamlet  
Swansea  
SA7 9FS  
Tel: 01792 765600

North Wales Office  
Penrhos Manor  
Oak Drive  
Colwyn Bay  
Colwyn  
LL29 7YW  
Tel: 01492 523333

15.3.3 Advocacy services for children and young people can also be provided by NYAS, who can be contacted in the following ways:

- By email, at: [elly.jones@nyas.net](mailto:elly.jones@nyas.net)

- In writing, or by telephone, as shown below:

NYAS  
Dogfield Street  
Cardiff  
Tel: 029 2066 8956

## 16. WHAT WE EXPECT FROM COMPLAINANTS

16.1 In times of trouble or distress, some people may act out of character. There may have been upsetting or distressing circumstances leading up to a concern or a complaint. We do not view behaviour as unacceptable just because someone is forceful or determined.

- 16.2 We believe that all complainants have the right to be heard, understood and respected. However, we expect complainants to be polite and courteous in their dealings with us. We will not tolerate aggressive or abusive behaviour, unreasonable demands or unreasonable persistence.
- 16.3 We have a separate policy to manage situations where we find that someone's actions are unacceptable. Details of our Unacceptable Action by Customers Policy can be found at on CIS (1.CM.069).

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**CITY OF CARDIFF COUNCIL  
CYNGOR DINAS CAERDYDD**



**STANDARDS AND ETHICS COMMITTEE: 22 SEPTEMBER 2015**

**REPORT OF THE MONITORING OFFICER**

**AGENDA ITEM:**

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**ALL WALES STANDARDS CONFERENCE 2015**

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**Reason for this Report**

1. To provide the Committee with information on arrangements for the forthcoming All Wales Standards Conference 2015, which is being hosted by the City of Cardiff Council.

**Background**

2. The All Wales Standards Conference 2015 is being hosted by the City of Cardiff Council. A conference planning task group of the Committee has met with the Monitoring Officer on 2 occasions since the beginning of this year to discuss arrangements for the conference. The Monitoring Officer has also liaised with the Monitoring Officers of other Welsh local authorities. The Committee has received verbal updates on conference preparations at each of its meetings this year.

**Issues**

3. The Conference will take place on Tuesday 20th October 2015, with an evening reception hosted by the Lord Mayor at the Mansion House on the evening of Monday 19th October. The theme for this year's conference is 'Standards and Ethics in a Changing World', and the aim is to mark the 20th anniversary of the Nolan principles by exploring the question: Are the Nolan Principles fit for purpose in the current climate and for the next 20 years?
4. The finalised Conference Programme, attached as **Appendix A** to this report, includes key note speakers, a panel discussion and 6 workshop options to explore various topical issues in more detail.
5. There has been a good response to the Conference invitations, which were issued on 3<sup>rd</sup> August. So far, we have received bookings from 63 delegates representing 17 organisations. Reminders have been sent out recently and it is hoped that the conference may eventually attract up to one hundred delegates.

A summary of bookings information is attached as **Appendix B** for Members' information.

### **Legal Implications**

6. There are no legal implications arising directly from the recommendations of this report.

### **Financial Implications**

7. There are no financial implications arising from this report.

### **RECOMMENDATION**

That the Committee notes the information set out in this report and confirms any other instructions it may have with regard to arrangements for the Conference.

**Marie Rosenthal**

**Director Governance & Legal Services and Monitoring Officer**

16 September 2015

### **APPENDICES**

Appendix A	Programme for Standards Conference Wales 2015
Appendix B	Conference Bookings – Summary Info (to date)

#### Background Papers:

Minutes of Committee meetings in October 2013, January 2015 & April 2015 -  
Monitoring Officer's Verbal Updates on Standards Conference 2015

# Standards Conference Wales 2015 - Conference Programme

## 'Standards and Ethics in a Changing World'

Monday 19 October: Lord Mayor's Reception at the Mansion House, Cardiff

Tuesday 20 October: Conference at Cardiff City Hall

### Conference Programme

9.15am – 10.00am	<b>Registration &amp; Tea/Coffee</b>
10.00am – 10.15am	<b>Welcoming Address</b> Paul Orders – Chief Executive, The City of Cardiff Council
10.15am – 10.45am 10.45am – 11.30am	<b>Key Note Speech : Are the Nolan Principles fit for purpose in the current climate and for the next 20 years?</b> Nick Bennett : Public Service Ombudsman for Wales  <b>Panel Session:</b> Chaired by Richard Tebboth: Cardiff Standards and Ethics Committee Independent Chair  Nick Bennett : Public Service Ombudsman for Wales Lyn Cadwallader: Chief Executive : One Voice Wales Peter Davies : President of the Adjudication Panel Wales Jan Williams: Independent Police Complaints Commissioner for Wales
11.30am – 12.00pm	<b>Tea/Coffee</b>
12.00pm – 1.00pm	<b>Workshops – Session One</b> <b>1. Social Media – Staying out of Trouble</b> Workshop led by Daniel Hurford WLGA and a Monitoring Officer exploring best practice, latest cases and case law.  <b>2. Whistle Blowing – Adapting to deal with new operating models for public services</b> Workshop led by a Monitoring Officer reviewing best practice, role of standards and ethics committee in reviewing cases and communication approaches.

	<p><b>3. Community Councils – Governance and Standards</b> Workshop led by One Voice Wales and a Monitoring Officer looking at proposed new WG tests of competency; democracy, capability, capacity and Governance.</p> <p><b>4. Local Complaints Resolution – Practicalities</b> Workshop to look at Hearing panel process, role play session and dealing with media led by a Monitoring Officer.</p> <p><b>5. Are the Nolan Principles fit for purpose in the current climate and for the next 20 years?</b> Workshop to continue the Panel Discussion led by a Monitoring Officer.</p> <p><b>6. Probity in Planning - Update</b> Workshop to review current status of Planning Protocol required under Planning Act led by a Monitoring Officer.</p>
1.00pm – 2.00pm	<b>Lunch</b>
2.00pm – 3.00pm	<p><b>Workshops – Session Two</b></p> <p><b>1. Social Media – Staying out of Trouble</b> Workshop led by Daniel Hurford WLGA exploring best practice, latest cases and case law.</p> <p><b>2. Whistle Blowing – Adapting to deal with new operating models for public services</b> Workshop led by a Monitoring Officer reviewing best practice, role of standards and ethics committee in reviewing cases and communication approaches.</p> <p><b>3. Community Councils – Governance and Standards</b> Workshop led by One Voice Wales and a Monitoring Officer looking at proposed new WG tests of competency; democracy, capability, capacity and Governance.</p> <p><b>4. Local Complaints Resolution – Practicalities</b> Workshop to look at Hearing panel process, role play session and dealing with media led by a Monitoring Officer.</p> <p><b>5. Are the Nolan Principles fit for purpose in the current climate and for the next 20 years?</b></p>



	<p>Workshop to continue the Panel Discussion led by the Monitoring Officer.</p> <p><b>6. Probity in Planning - Update</b>  Workshop to review current status of Planning Protocol required under Planning Act led by a Monitoring Officer.</p>
3.00pm – 3.30pm	<b>Tea/Coffee</b>
3.30pm – 4.00pm	<p><b>Discussion and Closing Remarks</b>  Richard Tebboth  Cardiff Standards and Ethics Committee Independent Chair</p> <p>James Downe  Cardiff Standards and Ethics Committee Independent Vice-Chair</p>
4.00pm	<b>Close</b>

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**STANDARDS CONFERENCE WALES 2015  
BOOKINGS INFORMATION (AS AT 15/09/15)**

**Total attendees: 63**

**Total organisations: 17**

<b>Organisation</b>	<b>Attendees</b>
Blaenau Gwent CBC	1
Brecon Beacons National Park Authority	1
Bridgend County Borough Council	5
Caerphilly County Borough Council	4
Cardiff University	1
Ceredigion County Council	3
City & County of Swansea	5
City of Cardiff Council	4
Croesyceiliog and Llanyrafon Community Council	1
Cwmbran Community Council	1
Cyngor Bwrdeistref Sirol CONWY County Borough Council	1
Cyngor Gwynedd Council	4
Isle of Anglesey Standards Committee	2
Mid and West Wales Fire and Rescue Service	5
Neath Port Talbot County Borough Council	1
Newport City Council	5
Pembrokeshire County Council	3

**No reply from**

Carmarthenshire  
Denbighshire  
Flintshire  
Merthyr Tydfil  
Monmouthshire  
Powys  
Wrexham

**Morning workshops**

<b>Session</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>Attendees</b>	12	4	12	9	4	1

**Afternoon Workshops**

<b>Session</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>Attendees</b>	8	11	1	7	6	9

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**CITY AND COUNTY OF CARDIFF  
DINAS A SIR CAERDYDD**



**STANDARDS AND ETHICS COMMITTEE:**

**22 SEPTEMBER 2015**

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**REPORT OF THE MONITORING OFFICER**

**AGENDA ITEM:**

**FORWARD PLAN 2015/16**

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**Reason for this Report**

1. To consider the updated Forward Plan of matters for consideration by the Standards and Ethics Committee in 2015/16.

**Background**

2. The Standards and Ethics Committee's Terms of Reference provide the Committee with responsibility in the following areas:
  - (a) To monitor and scrutinise the ethical standards of the Authority, its Members, employees and any associated providers of the Authority's services and to report to the Council on any matters of concern.
  - (b) To advise the Council on the content of its Ethical Code and to update the Code as appropriate.
  - (c) To advise the Council on the effective implementation of the Code including such matters as the training of Members and employees on the Code's application.
  - (d) To consider and determine the outcome of complaints that Councillors and co-opted members have acted in breach of the Code in accordance with procedures agreed by the Standards Committee, including the imposition of any penalties available to the Committee.
  - (e) To oversee and monitor the Council's Whistleblowing procedures and to consider ethical issues arising from complaints under the procedure and other complaints.

- (f) To grant or refuse requests for dispensations in respect of Members' interests under the Members' Code of Conduct in accordance with the relevant statutory provisions.
- (g) To undertake those functions in relation to Community Councils situated in the area of the Council and members of those Community Councils which are required by law.
- (h) To recommend to Council and the Executive any additional guidance on issues of probity.
- (i) To hear and determine any complaints of misconduct by Members or a report of the Monitoring Officer, whether on reference from the Ombudsman or otherwise.
- (j) To recommend the provision to the Monitoring Officer of such resources as he/she may require for the performance of his/her duties.

### **Issues**

- 3. The work plan for the Committee needs to reflect the Council's Annual Governance Statement, and any issues arising from the Committee's work in promoting high standards and managing complaints. The views of this Committee assist in the development of an ongoing work programme designed to promote and maintain high standards of conduct across the Council.
- 4. The Committee last considered and agreed its Forward Plan at the Committee meeting in January 2015.

### **Legal Implications**

- 5. There are no direct legal implications arising from the content of this report. However, the Committee is reminded of its statutory role contained in the extract from the Local Government Act 2000 set out below which should be considered alongside its terms of reference when setting the Forward Plan:

#### *54 Functions of standards committees*

*(1) The general functions of a standards committee of a relevant authority are--*

- (a) promoting and maintaining high standards of conduct by the members and co-opted members of the authority, and*
- (b) assisting members and co-opted members of the authority to observe the authority's code of conduct.*

(2) *Without prejudice to its general functions, a standards committee of a relevant authority has the following specific functions—*

*(a) advising the authority on the adoption or revision of a code of conduct,*

*(b) monitoring the operation of the authority's code of conduct, and*

*(c) advising, training or arranging to train members and co-opted members of the authority on matters relating to the authority's code of conduct.*

### **Financial Implications**

6. There are no direct financial implications arising from this report.

### **RECOMMENDATION**

The Committee is recommended to consider the updated Forward Plan 2015/16, as set out in **Appendix A**, and advise officers how it wishes to progress the various items or topics contained therein.

**Marie Rosenthal**  
**Director of Governance and Legal Services**  
16 September 2015

### **Appendices**

Appendix A            updated Forward Plan 2015/16

### **Background Papers**

Committee report 'Forward Plan', January 2015 and minutes in respect thereof

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## APPENDIX A

### STANDARDS AND ETHICS COMMITTEE – FORWARD PLAN 2015/16

The following topics have been prioritised on a Red / Amber/ Green (RAG) basis with Red being the highest priority and include indicative timescales as applicable:

TOPIC	OBJECTIVE/OUTCOME	WHO IS RESPONSIBLE?	PRIORITY/ STATUS	REVIEW DATE
(1) S&E Committee Annual Report	Prepare Annual Report	Committee Chair / Monitoring Officer	<b>GREEN</b>	<b>March 2016</b>
(2) Social Media	To review the Members' Guidance recommended by the Committee in July 2014 (scheduled for review on / after April 2015)	Monitoring Officer	<b>AMBER</b>	<b>December 2015</b>
(3) Gifts and Hospitality	<p>(1) To monitor and review the acceptance of gifts and hospitality by Members; and</p> <p>(2) To consider standards and ethics issues relating to the provision by the Council of gifts and hospitality to third parties (to include issues such as a policy in relation to when the provision of hospitality is appropriate and the monitoring of such provision).</p>	Monitoring Officer	<b>AMBER</b>	<p><b>(1) On Agenda</b></p> <p><b>(2)December 2015</b></p>
(4) Role Descriptions for Standards and Ethics Committee Members	To review roles and responsibilities of all Members of the Standards and Ethics Committees.	Monitoring Officer	<b>AMBER</b>	

TOPIC	OBJECTIVE/OUTCOME	WHO IS RESPONSIBLE?	PRIORITY/ STATUS	REVIEW DATE
(5) Review of Members' Code of Conduct and Guidance	To consider updates and guidance from the Ombudsman on the Members' Code of Conduct.	Monitoring Officer	GREEN	
(6) Review of Member/Officer Protocol	To review the Member/Officer Protocol. This is expected to form part of a wider review of the Council's Constitution by the Constitution Committee.	Monitoring Officer and Chief HR Officer	GREEN	
(7) Planning processes and procedures (Members Planning Code of Good Practice)	To improve public perceptions relating to openness and transparency  To review procedure rules for continuous improvement	Monitoring Officer and Director of City Operations	RED	
(8) Charter between Cardiff Council and the Community Councils	To update the Charter and monitor its operation.	Monitoring Officer	GREEN	December 2015
(9) Review of Officer/Employee Code of Conduct and Guidance	To review and improve the Officer Code of Conduct. To support the dissemination of information and training to officers.	Monitoring Officer/Chief HR Officer	AMBER	
(10) Whistleblowing Policy	To monitor and review the operation of the Council's whistleblowing arrangements; to receive information on reports made under the Whistleblowing Policy and consider any ethical issues arising (and advise the Audit Committee of the outcome of the review).	Monitoring Officer	GREEN	February 2016

TOPIC	OBJECTIVE/OUTCOME	WHO IS RESPONSIBLE?	PRIORITY/ STATUS	REVIEW DATE
(11) Officers' Personal Interests Policy	To monitor and review the implementation of the new Policy	Monitoring Officer	GREEN	
(12) Annual Meeting with Group Leaders and Whips	To facilitate ongoing engagement with representatives from all political groups.	Elected Members	GREEN	
(13) Members' Role in Safeguarding Vulnerable Children and Adults	To consider a draft Members' Protocol	Monitoring Officer	GREEN	On Agenda
(14) Attendance at Conferences	To review and update the Council's policy and procedure in respect of conference attendance by Members and Senior Officers.	Monitoring Officer	GREEN	December 2015
(15) Ward Member Protocol	To review the Council's Protocol and consider any changes required	Monitoring Officer	GREEN	December 2015
(16) Members' Protocols	To review and consider any changes required to other relevant Member Protocols	Monitoring Officer	GREEN	

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