

Our ref: NB/CV/mm

Ask for: Nick Bennett



Date: 7 February 2022



Peredur Owen Griffiths MS
Chair of Finance Committee
Senedd Cymru

Dear Peredur

I refer to the Committee's recent scrutiny of my Annual Report & Accounts and my Estimate for 2022/23. I am pleased to attach my response to each of the Committee's recommendations. I hope that these detailed responses are helpful but would be very happy to discuss them further with the Committee Chair and/or the Committee.

As I near the end of my term of office, I am reflecting on the last seven years or so. I am very proud of what has been achieved, but also immensely grateful to the Senedd and to successive Finance Committees for their vital support. Key achievements during my tenure are:

- Published **51 public interest reports**.
- Considered over **50,000 enquiries and complaints**, helping to address individual injustices and make recommendations for improvement.
- Published **5 Thematic reports** (Ending Groundhog Day – Lessons in Poor Complaint Handling; Out of Hours-Time to Care; Home Safe and Sound: Effective Hospital Discharge; Justice Mislaid – Lost Records and Lost Opportunities; At Your Service: A Good Practice Guide).
- Completed the first wider **Own Initiative Investigation** - Homelessness Reviewed: an open door to positive change.
- Introduced **Oral complaints**, with more than 150 so far this year.
- **Transitioned seamlessly to all staff working at home** when the pandemic struck, facilitated by investment in IT systems to allow paperless working.
- Focused on **supporting improvement in complaints handling** by public bodies in Wales, with Improvement Officers and now my complaints standards team.

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Rydym yn hapus i dderbyn ac ymateb i ohebiaeth yn Gymraeg. Ni fydd hyn yn arwain at oedi. Mae ein holl ddogfennau ar gael yn Gymraeg ac yn Saesneg
We are happy to accept and respond to correspondence in Welsh. This will not lead to a delay. All our documents are available in both Welsh and English

- Provided **training to 4,000 public body staff** on complaints handling.
- Increased awareness of the office from 35% in 2012 to 48%.

All of these achievements reflect the support and engagement of the Finance Committee, and I wanted to put on record my gratitude for the work of the Committee and its predecessors over the last seven years. The Committee's support for investment in IT and for the additional powers under the 2019 Act have, along with support for core funding of the service, been central to these achievements.

In my previous correspondence I indicated that I would be delighted to meet the Chair and talk more about the work of the office. As my term of office concludes and as my successor has now been appointed, it would be more appropriate to meet Michelle, who would, I am sure, also welcome that opportunity.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Nick Bennett', with a stylized flourish at the end.

Nick Bennett
Ombudsman

Senedd Cymru Finance Committee Annual Scrutiny of the Public Services Ombudsman for Wales

Response of Public Services Ombudsman for Wales - February 2022

Introduction

The Senedd Finance Committee considered the Annual Report and Accounts and the initial Public Services Ombudsman for Wales (PSOW) Estimate 2022-23 on 13 October 2021. The Committee subsequently indicated that it would agree an increase in budget only if it did not exceed that sought by the Senedd Commission. We prepared and submitted a revised Estimate reflecting this.

On 22 November the Committee laid its report on the revised Estimate and the Annual Report and Accounts for 2020/21. The Committee's report made 12 recommendations, and this paper considers and responds to each of them.

Recommendation 1. The Committee recommends the Ombudsman ensures that the statistics about caseload are presented clearly and consistently and that data labels are included in graphs and infographics so that the information used to inform the assumptions underpinning the request for resources is more clearly presented.

Agreed

Our intention in both the Estimate submission and the Annual Report and Accounts is to show sufficient detail to be meaningful, but also to keep presentation as clear and simple as possible. We will work to achieve this balance and set out more clearly the basis for any forecasts and assumptions in our Estimates submission.

Recommendation 2. The Committee reiterates a previous recommendation that the Ombudsman should revisit the Key Performance Indicators for the next financial year to ensure they are sufficiently ambitious and seek continual improvement in the delivery of the Ombudsman's work.

Agreed

Our new Corporate Plan for the years 2022/23 to 2024/25 will be prepared by my successor from April 2022. As part of that, our Key Performance Indicators and associated targets, will be reviewed and revised. In setting new and ambitious targets, we will take account both of the budget / resources available and of the current and projected future caseload demands on our service.

We recognise the value of all complainants having their complaints considered by a member of staff. However, we also recognise that the current demands on our service are not ones we can meet within our existing budgets and with our current approach to service delivery. We are therefore exploring the scope for more digitisation (including on-line automated screening) to reduce the number of complaints requiring initial manual consideration. Resource constraints mean that we will also look at 'raising the bar' so that less-serious complaints are discouraged and, if received, no longer investigated.

Recommendation 3. The Committee reiterates a previous recommendation that the Ombudsman should report unit cost per case in cash and real terms, including sufficient information to ascertain the basis for the calculation, such as which costs are included, and the reference year adopted for the trend data.

Agreed

The unit costs we include in our Annual Report & Accounts are adjusted to a constant price base to facilitate meaningful year-on year comparison. However, in our Estimates submission to the Finance Committee, we will ensure that we include unit costs in both real terms and cash terms. For the real terms unit costs, we will use the latest inflation figures and state the month and year used.

Whilst projecting future workload is not an exact science, we will state our core assumptions and the reasons for them.

Recommendation 4. The Committee recommends that the Ombudsman provides further information about the proposed new methodology for calculating the unit cost and explains why it will be a more effective measure of performance than the existing approach.

Agreed

The principles we have used in developing our unit costs are that:

- Costs included in the calculation should be those related to the activity for which units are counted (so the audited cost of complaints handling activity is used instead of the total budget).
- Costs should be presented at a constant price base, so that changes shown relate to cost or volume changes rather than inflation.
- Values shown should be at **current** prices as that is more meaningful than some arbitrary previous year.
- The units used in the calculation of unit costs should reflect, as far as possible, the work undertaken in the period in question (so that the number of enquiries/complaints **closed** is considered a more appropriate basis for unit costs than enquiries/complaints **received**).

The Annual Report and Accounts included an explanation of the approach to unit costs (p85). We will revisit the explanation in our next Annual Report & Accounts, with the Committee's concerns in mind, and will ensure that the explanation is clear.

The Committee may also be reassured to know that our external auditors have audited our unit costs and made no adverse comment on the approach that we are using.

Recommendation 5. The Committee recommends that the Ombudsman undertakes a full staff survey in 2022 with a particular focus on staff wellbeing to ensure that the impact of the pandemic on the organisation is understood and that lessons are being learnt to improve work practices

Agreed

Our main staff survey is undertaken every two years. It was undertaken in 2020 and will be undertaken again in 2022.

In the period between our main staff surveys we have undertaken a Chwarae Teg FairPlay Employer survey of all staff, as well as surveys to ascertain how well staff were managing during the pandemic and to gather information on attitudes to returning to the office. We have also received very positive assurance from our internal auditors, who undertook audits of our wellbeing arrangements (August 2020) and of the support that we provide to staff whilst working remotely (June 2021).

Recommendation 6. The Committee recommends that the Ombudsman continues to quantify the cost of the new powers in the Public Services Ombudsman (Wales) Act 2019 and data about them in the Annual Report.

Agreed

This information was included in the 2020/21 Annual Report and Accounts, and we plan to include it every year.

Recommendation 7. The Committee recommends that the Ombudsman provides evidence on the cost avoidance benefits arising from the Public Services Ombudsman (Wales) Act 2019 in future Annual Report and Accounts and Estimates. This should include additional evidence on efficiencies and improvements arising from the legislation, as part of future disclosures.

Agreed

I share the Committee's interest in, and wish to focus on, the impact and effectiveness of the 2019 Act. I have been working to collect and consider data now to support this and the future post-legislative scrutiny of the Act. I am mindful of the social justice motivation for the Act, as well as the financial consequences of its implementation, and both will be included in the analysis.

There are some challenges in both data collection and analysis, however, as the impact of our work will depend partly on whether, and to what extent, public bodies in Wales act on the training we provide to their staff and implement the recommendations for public service delivery improvement that we make. It also remains challenging to identify the numbers of enquiries and complaints that would have been received without the additional powers under the 2019 Act.

Since the Senedd's intentions, in approving the Act, included securing improved access to justice, it is important that an assessment of this outcome is also included in our analysis, though it does not have a direct financial value. Our complaints standards work aims to encourage public bodies to recognise complaints as complaints, and to treat them as such. This will mean that in some cases the recorded number of complaints will probably increase, but so too will justice for complainants.

My use of own initiative powers to extend the investigation of a single complaint has, for example, already identified and addressed service failures in prostate cancer care so that they could be remedied, reducing or preventing harm to 8 patients. Similarly, our Own Initiative investigation and report on homelessness will result in positive change affecting many people facing homelessness in the future.

These are very real benefits of the 2019 Act but not necessarily ones that are easy to quantify. We will seek to capture both qualitative and quantitative benefits.

Recommendation 8. The Committee recommends that the Ombudsman ensures that resources to support own-initiative investigations are not prioritised at the expense of dealing with the Ombudsman’s caseload.

As the Committee will appreciate, the statutory independence of the Ombudsman means that decisions on the number and scale of Own Initiative investigations are a matter for the Ombudsman, following consideration of appropriate data, comments and views.

Own Initiative investigations from 1 April 2022 onwards are a matter for my successor, but I will certainly draw this recommendation to her attention as part of our handover discussions. The Committee’s views will, I am sure, be included in her considerations.

Recommendation 9. The Committee notes the detail in the revised “Public Services Ombudsman for Wales: Estimate 2022-23” and considers the Estimate acceptable. Subject to the comments and recommendations in this report, the Committee supports the overall request for resource.

I and my colleagues appreciate and are grateful for this support.

Recommendation 10. The Committee recommends that the Ombudsman must clearly demonstrate how the statement of principles are adhered to when formulating future budgets beyond 2022-23, and that, in particular, the Ombudsman should not assume an increase in funding from one year to the next.

Agreed

Our Estimate submission for 2022/23 sought to meet all the principles and referenced them explicitly in the document. In future submissions, the office will continue to take account of the budget principles, efficiencies and economies, as well as demands, caseload and inflationary pressures. Where an increase is sought, this will be clearly explained and evidenced. We will review the presentation next year to make sure that we more clearly demonstrate adherence to the Statement of Principles.

The Statement of Principles makes clear that there should be no assumption that budgets will increase in line with the Welsh Block. We have certainly not assumed such increases during my term of office. In that context, it is interesting to note that the Welsh Block (TME) increased by 52% from 2015 to April 2021, whilst the Ombudsman’s budget has increased by 26%. Had the Ombudsman’s budget increased in line with the Welsh Block, our budget for the current year would be more than £1m greater than it is.

Recommendation 11. In line with the statement of principles, the Committee recommends that the Ombudsman should fund in-year pressures by making in-year savings and efficiencies, rather than through supplementary budgets.

I certainly accept and agree the principle that in-year pressures should be contained within approved resources wherever possible. However, it would be impossible for me to commit **never** to seek additional in-year resources via a supplementary budget submission.

To illustrate the approach I have adopted, I have looked back at previous supplementary budget submissions during my tenure. Over the last seven years I have used the Supplementary Budget process only in respect of extraordinary/one-off events. I have always looked to manage within the budget allocated and do not make Supplementary

Budget submissions lightly. The occasions I have made Supplementary Budget submissions have been¹:

- To meet the costs of a High Court challenge to decisions of the Adjudication Panel for Wales in a high-profile Code of Conduct case – 2015/16 and 2017/18
- Capital fit out costs for accommodation at Bocam Park following changes to accommodation and a new lease agreement – 2015/16
- To vary the budget between revenue and capital at nil net cost – 2018/19
- To return cash to the Welsh Consolidated Fund – this related to pensions, with cash returned in 2017/18 and in 2020/21, totalling £1.3 million

The overall net effect of Supplementary Budget submissions during my tenure has been a net repayment to the Welsh Consolidated Fund of just under £1 million (cash).

As the Committee will be aware, I have no ability to carry resources from one period to the next, no reserves and no borrowing powers. 80% of my annual costs are staff costs, and after taking account of other committed and fixed costs such as rent, IT contracts, non-domestic rates, energy costs, there is less than 8% of the budget remaining to cover other costs such as printing and stationery, clinical advice, translation, training, postage, outreach and publicity.

To make savings in-year is therefore problematic, with significant savings possible only by reducing staff numbers. Redundancies made to try to balance the budget would themselves be likely to generate supplementary budget submissions to meet in-year redundancy costs.

The Committee's recommendation therefore prompts a review of our current approach. To date we have not included any contingency sums in our Estimate, on the basis that significant unexpected or exceptional costs would be dealt with through Supplementary Budget submissions. However, in light of the Committee's recommendation, I will suggest to my successor that consideration should be given to including a contingency sum in future budgets, as this would reduce the likelihood of a supplementary budget being required in future. This might, however, be a matter for discussion as, even with a contingency, it would not be possible to guarantee that no Supplementary Budget would ever be needed. The inclusion of a significant contingency in the budget might also result in unspent budget being returned at the year-end, unnecessarily reducing in-year resources available for the rest of the Welsh budget.

Recommendation 12. The Committee recommends that the Ombudsman provides an update bi-annually on the efficiency savings made in-year.

It would not be appropriate for me to commit my successor to this. I will, however, draw her attention to this recommendation so that she can engage further with the Committee.

I welcome scrutiny of the office's use of public monies, and I confirm my commitment to securing value for money and efficiency in service delivery. I am conscious that the Ombudsman's budget makes up only around 0.2% of the overall Welsh budget, and I would wish to avoid introducing additional reporting requirements that could be disproportionately resource consuming. I note that the last Finance Committee concluded, in the context of the

¹ The Supplementary Budget process was also used, as we were requested to do, for sector-wide changes to employer pension contributions and for the costs of new powers once the 2019 Public Services Ombudsman (Wales) Act received Royal Assent and commencement dates were set

requirement that the Auditor General produces an Interim Report each year, that this requirement should be removed.

Under the new oversight arrangements, the Senedd Finance Committee considers the Estimates submission (produced around the middle of the year) and the Annual Report and Accounts (produced after the year-end and looking back on the completed year). The Estimates submission also includes an update on the current year. This therefore already gives the Finance Committee the opportunity to explore efficiencies achieved in the completed year, an update on the current year and efficiencies anticipated in the Estimate for the forthcoming year. I would hope that this would provide the Committee with the information it requires, without the need for (and costs of) additional reporting.

I note that the Committee has focussed particularly on cash-releasing savings. As indicated above, a large proportion of the costs of the Ombudsman's office are effectively fixed, and 80% of costs relate to staff, and so the potential for generating in-year cash-releasing savings is extremely limited.

Efficiency savings on the other hand, by increasing productivity, are vital and should not be under-valued. The Finance Committee's welcome support during my tenure has allowed staff numbers to increase, particularly to resource the additional powers under the 2019 Act. However, my office is dealing with 48% more complaints and enquiries now than it did when I took up office whilst the budget has increased in real terms by 21% (much of which actually relates to the additional powers under the 2019 Act). The fact that the budget has not increased proportionately is itself a sign of the substantial efficiencies of the last seven years or so. We will consider how best to show these efficiencies, as well as seeking cash savings in variable costs, in future budget submissions.