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Dear Peredur

## **Post-legislative review of the Public Services Ombudsman (Wales) Act 2019**

Thank you for your letter of 9 May 2025. I attach responses to your written questions in the annex to this letter.

I hope that is helpful. I would of course be happy to discuss further.

Yours sincerely



**ADRIAN CROMPTON**  
**Auditor General for Wales**

**Post-legislative review of the Public Services Ombudsman (Wales) Act 2019:  
issues for consideration**

*Effectiveness of the legislation*

1. To what extent has the Public Services Ombudsman (Wales) Act 2019 (the 2019 Act) been successful in future proofing the powers of the Public Services Ombudsman for Wales (the Ombudsman); do you see any gaps or issues that have arisen since the 2019 Act was enacted?

We do not see any gaps or issues arising from the 2019 Act. However, as it has not been part of our work programme to assess the ongoing exercise of the Ombudsman's powers, we are not in a position to assess success in future proofing.

2. Do the changes implemented through the 2019 Act continue to reflect best practice in terms of Ombudsman bodies within the UK and internationally?

We consider that the changes implemented through the 2019 Act continue to reflect good Ombudsman practice. In particular, we continue to consider that:

- i. own initiative investigations should enable wider systemic problems to be addressed coherently;
- ii. enabling easier submission of oral complaints should be beneficial for vulnerable people;
- iii. there is merit in considering healthcare coherently, where both privately obtained and publicly provided care is involved; and

- iv. there is scope for improvements in practice, or at least maintenance of good practice, and efficiencies through model complaints-handling procedures and guidance across public bodies.

However, it has not been part of our work programme to assess the 2019 Act in terms of best practice, so we are not in a position to say whether it has enabled the achievement of such practice.

### *New powers*

3. Under Section 4 of the 2019 Act, the Ombudsman has power to undertake own initiative investigations, whether or not a complaint has been received. Is the 2019 Act enabling the Ombudsman to make best use of their own initiative powers?

We think the requirement in section 4 for consultation before exercising own initiative powers is helpful for ensuring best use of such powers, as is the requirement to consult under section 68. We certainly appreciate the opportunity to comment on the Ombudsman's proposals, as this helps ensure the avoidance of overlapping work.

4. The Northern Ireland Public Services Ombudsman **said** there is an argument for the removal of the requirement for the Ombudsman to generally consult those who may be affected or have an interest prior to launching an own initiative investigation. Would this be beneficial for the Ombudsman and what difference would it make?

This does not seem appropriate. Aside from potentially reducing procedural fairness, it may have a harmful effect on service delivery in practice. Removing the consultation requirement would disadvantage public bodies that need some "space" to address resourcing problems. The loss of consultation would reduce the opportunity for bodies to explain such needs and would potentially reduce the likelihood of the Ombudsman taking account of that position in deciding whether it is appropriate to launch an investigation.

Removing the requirement for consultation would also raise the risk of wasting resources through duplication. See Q3 above and Q6 below.

5. If there is evidence of systemic maladministration in an own initiative investigation, the Ombudsman may make recommendations to public bodies they investigate, but **not wider recommendations to other public services in the same sector**. Should the Ombudsman be able to make sector wide recommendations?

We do not see the need for such a bar on wider recommendations.

6. During the legislative process for the 2019 Act, **some witnesses raised concerns** that own initiative powers may lead to the Ombudsman duplicating the work of other regulatory bodies. Are you confident this has been avoided since the implementation of the 2019 Act?

As we have not encountered any instances of duplication between the Ombudsman's own initiative investigations and our examinations and studies, we consider that duplication has successfully been avoided.

7. One of the new powers in the 2019 Act was the ability to accept complaints other than in writing. What impact do you think the power for the Ombudsman to accept complaints in a form other than writing (often referred to in the context of oral complaints) has had for citizens in Wales, particularly the most vulnerable in society?

We continue to consider that the power to accept complaints in a form other than in writing should be beneficial for vulnerable people, and we see it as conducive to the principle of accessibility, but we have not examined the use of this power in practice, so cannot comment further.

8. The 2019 Act **required** the Ombudsman to publish a statement of principles concerning complaints-handling procedures of the bodies within their jurisdiction, as listed in **Schedule 3 to the 2019 Act** (the 'listed authorities'). It also **enabled** the Ombudsman to publish model complaints-handling procedures for the listed

authorities, as well as monitor complaint handling by them. Have these extended complaints handling powers been successfully implemented by the Ombudsman and public bodies; have these have been effective and achieved the desired outcomes.

It has not been part of our work programme to examine the Ombudsman's exercise of functions relating to producing a statement of principles concerning complaints handling and model procedures, nor any corresponding implementation by public bodies. We are, therefore, not in a position to comment further.

9. The Ombudsman **told** the Finance Committee she had not yet used the powers relating to private health care but the rationale to retain this power "remains as strong as ever". Do you agree?

Yes, we agree. We consider that the rationale still applies—it should enable a coherent approach to considering health care that involves private sector provision.

#### *The Ombudsman's jurisdiction*

10. The Ombudsman is unable to consider school complaints (other than school admission, exclusion and appeal decisions) and has **called for their jurisdiction to be widened to address this**. Can you outline what the potential consequences and opportunities of this may be and what barriers may be in place to this change?

We consider that extending the Ombudsman's jurisdiction to the full range of school complaints may lead to an increase in the Ombudsman's workload. We are not aware of any estimates of the volume of such an increase, so we would suggest such an estimate is obtained in case the proposal leads to a significant additional call on PSOW's resources. We also consider that it would be prudent to consider how the Ombudsman's proposed role would fit with the functions of Estyn, so as to ensure co-ordination and avoid applying public money to overlapping work.

11. The Ombudsman **said** the removal of the “statutory bar” (which prevents the Ombudsman from investigating a complaint that could be considered in the courts) would further strengthen public confidence in its office and lead to greater justice for citizens in Wales. Would this be appropriate?

Given the potential additional cost to the public purse, we would be concerned if the removal of the statutory bar meant that complainants had not just a choice of remedy (i.e. one or the other) but two remedies to pursue. Furthermore, as we understand it, the statutory bar does not apply if the Ombudsman is satisfied that in the particular circumstances it is not reasonable to expect the person to resort to court, we are not sure that there is a pressing case for the removal of the statutory bar.

#### *The financial implications of the 2019 Act*

12. Have the costs associated with the new powers in the 2019 Act delivered the level of expected benefits and if not why?

We do not consider it possible to comprehensively and reliably quantify the delivered benefits, let alone to link them to particular costs.

In terms of costs, we can only consider the Ombudsman in the round rather than in terms of specific functions. Most of the Act’s relevant provisions commenced in July 2019. The cost of the Ombudsman, in terms of net revenue outturn before adjustment for inflation, increased by 19% between 2019-20 and 2023-24 (with significant fluctuations both up and down between certain individual years): £5,736,000 in 2023-24 from £4,181,000 in 2019-20. The real terms increase (i.e. adjusted for inflation using the GDP deflator) however, has been quite modest at 0.28%. This suggests that any benefits of the new legislation have been delivered by little real terms increase in costs.

We consider that the Act may have contributed to the significant increase in the number of complaints handled by the Ombudsman since 2019—caseloads have risen by 37% since 2019 (most of the Act’s relevant provisions commenced in July 2019). But we consider that other factors, such as the effects of the Covid

pandemic on public services and the ongoing effects of austerity will have also influenced the caseload trend, and we do not consider it possible to separate these effects. (We understand the Ombudsman has completed two "own initiative examinations" but has not exercised the new ability to investigate private health cases, so we do not think it is likely that those particular new powers will have caused significant costs.)

13. How accurate or otherwise do you see the **Regulatory Impact Assessment** to be 6 years on?

As noted under Q12, we do not consider it possible to separate the effects of the 2019 Act from other effects. However, overall, we consider that the Regulatory Impact Assessment was reasonable rather than unrealistically optimistic. After allowing for inflation, it would seem that the RIA estimate of additional annual cost was if anything too high rather than too low, but that would seem to be reflective of a prudent approach.

*Any other comments*

14. Do you have any other comments regarding the 2019 Act which are relevant to the **Committee's Terms of Reference** for this inquiry?

The provisions for audit in the 2019 Act are the best in any Welsh legislation, as they provide for both sensible arrangements for dealing with unavoidable delays in audit and for proportionate ongoing consideration of whether the Ombudsman has made proper arrangements for securing value for money. It would be helpful if this model were more widely applied in legislation.