



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

**Y Pwyllgor Cyllid
The Finance Committee**

**Dydd Mercher, 11 Mawrth 2015
Wednesday, 11 March 2015**

**Cynnwys
Contents**

[Cyflwyniadau, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions](#)

[Papurau i'w Nodi
Papers to Note](#)

[Ystyried Pwerau: Ombwdsmon Gwasanaethau Cyhoeddus Cymru: Sesiwn Dystiolaeth 7
Consideration of Powers: Public Services Ombudsman for Wales: Evidence Session 7](#)

[Ystyried Pwerau: Ombwdsmon Gwasanaethau Cyhoeddus Cymru: Sesiwn Dystiolaeth 8
Consideration of Powers: Public Services Ombudsman for Wales: Evidence Session 8](#)

[Ystyried Pwerau: Ombwdsmon Gwasanaethau Cyhoeddus Cymru: Sesiwn Dystiolaeth 9
Consideration of Powers: Public Services Ombudsman for Wales: Evidence Session 9](#)

[Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd or Cyfarfod
Motion under Standing Order 17.42 to Resolve to Exclude the Public from the Meeting](#)

Cofnodir y trafodion yn yr iaith y llefarwyd hwy ynndi yn y pwyllgor. Yn ogystal, cynhwysir trawsgrifiad o'r cyfieithu ar y pryd.

The proceedings are reported in the language in which they were spoken in the committee. In addition, a transcription of the simultaneous interpretation is included.

**Aelodau'r pwyllgor yn bresennol
Committee members in attendance**

Peter Black

Democratiaid Rhyddfrydol Cymru
Welsh Liberal Democrats

Christine Chapman	Llafur Labour
Jocelyn Davies	Plaid Cymru (Cadeirydd y Pwyllgor) The Party of Wales (Committee Chair)
Mike Hedges	Llafur Labour
Alun Ffred Jones	Plaid Cymru The Party of Wales
Ann Jones	Llafur Labour
Julie Morgan	Llafur Labour
Nick Ramsay	Ceidwadwyr Cymreig Welsh Conservatives

**Eraill yn bresennol
Others in attendance**

Ruth Marks	Prif Weithredwr, Cyngor Gweithredu Gwirfoddol Cymru Chief Executive, Wales Council for Voluntary Action
Dr Nick O'Brien	Arbenigwr ar Ombwdsmyrn Ombudsmen Specialist
Martin Peters	Swyddfa Archwilio Cymru Wales Audit Office
Huw Vaughan Thomas	Archwilydd Cyffredinol Cymru Auditor General for Wales
Liz Withers	Pennaeth Polisi ac Ymgyrchoedd Cymru, Cyngor ar Bopeth Head of Policy and Campaigns Wales, Citizens Advice

**Swyddogion Cynulliad Cenedlaethol Cymru yn bresennol
National Assembly for Wales officials in attendance**

Richard Bettley	Y Gwasanaeth Ymchwil Research Service
Leanne Hatcher	Clerc Clerk
Tanwen Summers	Dirprwy Glerc Deputy Clerk
Joanest Varney-Jackson	Uwch-gynghorydd Cyfreithiol Senior Legal Adviser

*Dechreuodd y cyfarfod am 09:30.
The meeting began at 09:30.*

**Cyflwyniadau, Ymddiheuriadau a Dirprwyon
Introductions, Apologies and Substitutions**

[1] **Jocelyn Davies:** [*Inaudible.*]—have a mobile device that you switch it to silent, I'd be very grateful if you'd do that. We haven't had any apologies, so I'm assuming that Chris Chapman will be joining us very shortly.

09:31

Papurau i'w Nodi
Papers to Note

[2] **Jocelyn Davies:** We've got a number of papers to note. Are Members content to note those? Lovely, thank you. And agree the minutes of the last meeting? Everybody happy with that?

Ystyried Pwerau: Ombwdsmon Gwasanaethau Cyhoeddus Cymru: Sesiwn
Dystiolaeth 7
Consideration of Powers: Public Services Ombudsman for Wales: Evidence
Session 7

[3] **Jocelyn Davies:** Perhaps we could move to our first substantive item on the agenda this morning, and that's the consideration of the powers of the Public Services Ombudsman for Wales. This is our seventh evidence session, and we have the Auditor General for Wales with us. We've had a paper from the auditor general. It's a very helpful paper, actually. Would you like to introduce yourselves for the record, and then we'll go straight to questions?

[4] **Mr Peters:** I'm Martin Peters. I'm compliance manager at the Wales Audit Office.

[5] **Mr Thomas:** Huw Vaughan Thomas, auditor general. I'll just make sure this headset is working.

[6] **Jocelyn Davies:** Yes, sure. Is that working okay?

[7] **Mr Thomas:** No, we're okay.

[8] **Jocelyn Davies:** You're okay, lovely. Well, as I said, thank you very much for sending us information in advance. We've all read your paper, but just for the record and before we discuss the specific proposals, can you outline your role in approving charges on the Welsh consolidated fund?

[9] **Mr Thomas:** Yes, it's a restricted role. It's essentially those charges that are then not really subject to budget motions, basically, for example, the salary of the Presiding Officer, and so on—charges that are a first call on the fund. So, something like changes in the budget, say, of the ombudsman should be subject to normal budget motions, and therefore I don't have a role in terms of changes in the ombudsman's budget.

[10] **Jocelyn Davies:** You said in your paper and now you've clarified for us that you don't think any of the proposals that we have in front of us would make any difference to that situation.

[11] **Mr Thomas:** They wouldn't need a new approval.

[12] **Jocelyn Davies:** Lovely, thank you. Mike, shall we come to your questions?

[13] **Mike Hedges:** How do the functions of the auditor general interact with those of the ombudsman? What we're really trying to tease out here is whether there is any overlap or are there any demarcation disputes?

[14] **Mr Thomas:** Clearly, I liaise with the ombudsman fairly regularly. If I can illustrate, in local government, for example, we've mapped with the ombudsman where a number of complaints were arising, and what we were finding in terms of the various work that we were doing—corporate assessments, and so on, and Anglesey was a particular case—was that the

ombudsman and ourselves were actually noting the kind of complaints that were arising as part of the governance arrangements of that body. We do the same in terms of health bodies, in terms of the rising level of complaints that take place. Really, to take account of some of the findings that the ombudsman makes as part of his consideration, which we take into account in our own structured assessment of individual bodies. So, there is quite a lot of dialogue that does take place in the course of the year.

[15] **Mike Hedges:** Does that differ from other auditor generals and ombudsmen in the rest of the United Kingdom?

[16] **Mr Thomas:** I haven't actually looked to see if that is the case. In terms of my meetings with the auditor generals, we haven't gone down to that level of detail, but certainly it's the practice I inherited in Wales and have continued.

[17] **Mike Hedges:** And you're happy with it?

[18] **Mr Thomas:** Yes.

[19] **Jocelyn Davies:** Okay. Peter.

[20] **Peter Black:** Do you believe that the own-initiative investigations proposed by the ombudsman would be beneficial to the public?

[21] **Mr Thomas:** I think that there are important considerations. One, I do feel that there are times when, perhaps, a concentration of complaints about certain things needs that bit of extra investigation on the part of the ombudsman, but, at the same time, I think that any exercise of that power needs to be done in consultation. There's no point overlapping perhaps with work that I'm intending to do, or work that other inspectorates are intending to do. So, so long as there is a level of consultation before the exercise of the own-initiative powers, I'd be quite supportive of that. In any case, I think the issue is going to be what the budget is that the ombudsman has and the extent to which that work can be done within that particular budget.

[22] **Peter Black:** Do you get situations now where the ombudsman has come across a particular issue, which he thinks, if he had the own-initiative powers, he might want to investigate, but has instead referred them to you?

[23] **Mr Thomas:** What we've discussed with the ombudsman in the past has been the pattern, and we've taken that up as part of the work that we've done. Now, it may be that actually a quicker way of dealing with it might've been if the ombudsman had himself extended his work. So, I do see it as a sort of complementary power that it would be useful for the ombudsman to have.

[24] **Peter Black:** Are there any examples of investigations you've carried out that have been triggered in that way?

[25] **Mr Thomas:** Yes. Certainly, we've taken account of that in work on some health boards. So, they have been triggered by what the ombudsman identified.

[26] **Peter Black:** Is it more cost-effective to do it that way—through him referring it to you?

[27] **Mr Thomas:** I don't think you could argue it's one or the other. It depends: if we're already there and we're picking up some issues and we're getting complementary evidence supplied by the ombudsman, it obviously makes more sense for us to continue. On the other hand, we may not be there, and the ombudsman may already be considering two or three

complaints, and it might be easier for the ombudsman to extend—so long as there's dialogue so that we're not running across each other.

[28] **Peter Black:** So, if we were to, say, legislate to give the ombudsman this power to self-initiate investigations, would you like to see something built into that legislation to say that there should be consultation first, or do you think it would be better to rely on common sense?

[29] **Mr Thomas:** No, I think it is important to put it in for the avoidance of doubt.

[30] **Peter Black:** Right, okay. Thanks.

[31] **Jocelyn Davies:** Of course, we've got other commissioners and other regulators. Do you have the same relationship with all the others so that you share your work plans so that you know, for example, what the Commissioner for Older People in Wales is going to do? Do you have a memorandum of understanding between you all?

[32] **Mr Thomas:** I've taken the initiative during the time that I've been auditor general to convene meetings at least twice a year of the commissioners, so that we can share information. Now, clearly, as well as that, I can illustrate, for example, that we're doing a current study jointly with the older persons' commissioner. So, there is that ability to, really, draw from each other's experience.

[33] **Jocelyn Davies:** Yes, and none of the commissioners and so on is likely to quickly go into a review of something; it is something that you plan in advance. You have to plan in advance, so you would have good notice, do you think? Would there be timely notice that somebody was planning to undertake a piece of work?

[34] **Mr Thomas:** I think it's a question of encouraging people to just give notice and to do it, obviously, before we start, so that we're able to adjust each other's programmes.

[35] **Jocelyn Davies:** Should this go ahead and own-initiative powers be given to the ombudsman, and this issue of consultation with you, it wouldn't require any changes to the legislation that covers yourselves.

[36] **Mr Thomas:** No, because you could rely on the changes in the ombudsman's legislation, by putting an obligation to consult in.

[37] **Jocelyn Davies:** Right, okay. Nick, shall we come to your questions?

[38] **Nick Ramsay:** Thank you, Chair. Focusing on complaints handling across public services, do the annual financial audits undertaken by your office routinely consider the complaints policies and the levels of complaints about public bodies?

[39] **Mr Thomas:** No, not if you're looking at financial audit. I have to rely on other powers, and it's the kind of work that we would take into account, as I think I've already indicated. In terms of the structured assessment work in health and local government, we would take account of what kind of complaints are there. We might want to look at some evidence in terms of how they deal with complaints and handle them. In fact, we did some work in terms of a memorandum to the Public Accounts Committee on NHS governance at the end of last year, where we specifically looked in terms of compliance with what the Government has already set out to the NHS bodies on how they should handle complaints. So, that aspect we look at and, as I said, the same in terms of local government. But it's from other powers, not from the financial audit powers, and I do feel there is a tendency for people to assume that, because I am auditing the finance, I'm somehow looking at everything with a

body. I do need other authorities, other powers, to actually do that.

[40] **Mr Peters:** In health, it's perhaps worth noting that the powers that permit what we call the structured assessment are quite closely aligned to the audit of accounts, but it isn't actually a matter of looking at complaints in the course of the actual audit of the accounts; it's something that goes alongside. It's not something that has to be done every year, but, in recent years, we have placed quite a lot of emphasis on that in health, because of the significance for governance arrangements.

[41] **Nick Ramsay:** That's helpful. Do you think it would be beneficial if the ombudsman had a co-ordinating role in overseeing complaints handling by public bodies?

[42] **Mr Thomas:** You have to recognise, I think, to start with that the Welsh Government's already laid out very clear guidance and issued regulations as regards the handling of complaints by NHS bodies. The issue is, I think, what about the rest of the public sector? Should there be some kind of model system? I think that there is something to be said for the ombudsman to draw on his experience and to set out certain standards that they would expect. Apart from anything else, I think that that might help when considering the complaints that do come to the ombudsman, for him and his staff to be able to look at what has already happened in terms of handling that particular complaint. So, I think there is something to be said for giving the ombudsman a responsibility to promote, if you like, a model of practice.

[43] **Nick Ramsay:** Do you want to comment as well on that?

[44] **Mr Peters:** The only thing I would add is that, in developing something like that, the arrangements do need to take account of existing regulations. I mean, there are particular regulations in terms of NHS redress and there are other areas where what would commonly be called complaints are actually regulated by someone else, an example being in terms of freedom of information requests. Reviews are usually viewed as complaints, but that's something that's regulated by the Information Commissioner. So, these things need to be dovetailed, I suppose, so that there aren't excessive overlaps between a new ombudsman's role in that respect and other roles.

[45] **Nick Ramsay:** Great. And what would do you estimate would be the financial costs and benefits on public bodies from complying with any of these new requirements?

[46] **Mr Thomas:** It's a question of whether you're looking to promote good practice and instil that. If that is the case, then, ideally, there shouldn't be extra cost. I imagine that, initially, there might be a need in terms of cost as people adjust their existing practices to fit the new model, but afterwards, I wouldn't have thought that there would have been that particular cost on the individual bodies. Of course, there will be some expenses, which the ombudsman will need to meet in terms of developing, promoting and, if you like, checking that those procedures are being implemented. But we could also do that, in terms of checking how bodies are complying with guidance, as part of the work that we do from time to time. So, I think it would be marginal as opposed to significant cost.

09:45

[47] **Nick Ramsay:** And, on balance, from what you've said, you think that there would be merit in developing the ombudsman role, but it would have to be done within the right framework, which took account of existing remits of other—. Yes. Thank you.

[48] **Jocelyn Davies:** From your experience, perhaps you'd tell us, do poor complaints procedures always end up cheaper than better ones?

[49] **Mr Thomas:** No. Poor complaints procedures actually end up more expensive. You know, sometimes, you get almost an instinctive refusal to consider complaints, which actually makes the situation worse. The ombudsman has already pointed in a number of his cases to the fact that what people sometimes want at the beginning is simply someone saying, ‘Sorry, and this is how we’ll try and avoid it in future’, instead of, ‘Well, hang on a minute, we’ll send you a very formal legal letter and, sorry, we can’t even say “sorry” because that might admit legal responsibility’. I think there’s much to be said for improving the way complaints are handled; it diffuses the situation, and I think poor complaints procedures add to the cost.

[50] **Jocelyn Davies:** Well, certainly in my experience, people want to be assured that other people in the future won’t have the same experience as them, and sometimes complain for quite altruistic reasons. Chris, shall we come to your questions?

[51] **Christine Chapman:** I just want to ask you about the complaints procedure. We know that the Act requires complaints to be made in writing. I know there is discretion; the Ombudsman can have discretion to investigate oral complaints. Do you think this works generally? Do you think this is an effective way? The Act says it’s got to be in writing.

[52] **Mr Thomas:** Do you want to take that?

[53] **Mr Peters:** Sure. We know from speaking to the ombudsman that there are some issues around that. I think the problem the ombudsman would set out is that they spend time recording oral complaints and then the person who’s made the complaint doesn’t confirm that they want to proceed. So, they see that as nugatory work. In our own experience, we very occasionally come across that situation where someone will raise something orally but won’t confirm it, even when it’s sent back in writing to them. From our experience, it’s not a huge problem. I’m not sure that it should necessarily be such a great problem for the ombudsman. 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. So, we did wonder whether actually the own-initiative power might be something that would help in that regard, in that, if there are several unconfirmed oral complaints, and say they’re coming from a particular group of people who share a protected characteristic and they’re fearful of confirming these things, then that might be something that could help that sort of thing to be investigated without necessarily having this sort of strict sign-off by individuals.

[54] **Christine Chapman:** You say that the system at the moment is reasonably effective, then—the discretion to transcribe some of the oral statements. In the main, it’s okay. Is that what you’re saying?

[55] **Mr Thomas:** Having discussed this with the ombudsman, I must admit I’m not convinced as to why there’s a change needed in legislation. The provision already exists for the ombudsman to consider oral complaints. So, getting rid of the complaints-must-be-in-writing section doesn’t seem justified. In any case, if you really are pushing this, you do need to have, as Martin was saying, some kind of confirmation from the person on whose behalf you’re investigating the complaint.

[56] **Christine Chapman:** And you’re not, you don’t—or do you think, then, that, in some instances, some members of the public are put off, you know, making a complaint? How would you assess that?

[57] **Mr Thomas:** Well, that, I think, is a matter of how the ombudsman actually presents to the public and receives the complaint. In terms of legislation, he already has the permission, so that’s why I don’t see the need for change, but maybe there’s a need for

change in how you get complaints in, and, as Martin said, if you've now got own-initiative powers, that also provides an extra lever.

[58] **Christine Chapman:** But it doesn't mean legislation, then. That's what you're saying.

[59] **Mr Thomas:** I wouldn't see the need to legislate.

[60] **Christine Chapman:** Okay, that's fine.

[61] **Jocelyn Davies:** I think you wanted to come in on this, Mike.

[62] **Mike Hedges:** Without putting words in the ombudsman's mouth, I think that part of his problem is he thinks people suffer from literacy problems—there are people who suffer from form phobia—and to make it that people can pass it on, especially those with a low level of literacy or some elderly people who've got other problems who might well find it easier to say, 'Look, this is what's happened' rather than actually have to put it in writing; I think that's the point I think the ombudsman is trying to get across.

[63] **Mr Thomas:** And I'm saying, 'yes', of course that's a way in which the ombudsman must start opening up in order to take complaints. It doesn't need legislative change.

[64] **Jocelyn Davies:** Can I just say—I don't know if you've ever seen a letter from a public body to somebody that tells them they've got the right to complain. They're given a decision by a local authority that says, 'If you don't agree with this, you have recourse to the ombudsman and the complaint must be in writing.' So, what's in the legislation is repeated to the person in a letter before they've even considered complaining. So, they don't contact the ombudsman's office and then discover they have to put it in writing. They might be put off at an earlier stage by being told that it would have to be in writing at some point. That is—

[65] **Mr Thomas:** But you can get round that, I think, by saying, if you're giving the ombudsman the ability to set out model complaints procedures, then that can be tackled. It can also be tackled in terms of the advice the ombudsman currently gives as to how complaints should be received by him. There's no need to change legislation if legislation already is permissive in this regard.

[66] **Jocelyn Davies:** I can see you have a strong feeling—I think some Members might as well. You wanted to come back on this, Mike.

[67] **Mike Hedges:** I think that, on something you just said, Chair, the word 'recourse' is not one that is used in general conversation. An awful lot of the wording itself is complicated and outside of the literacy level of many people who are filling it in. I think that—

[68] **Jocelyn Davies:** Do you want to phrase this in a question now?

[69] **Mike Hedges:** Isn't the advantage of being able to make an oral complaint that they can use language they feel happiest in rather than feel they have to make it in language that equates to that which the form is written in?

[70] **Jocelyn Davies:** You don't need to answer that. There's a number of questions on this, and you can sum up—

[71] **Peter Black:** I think we come back to—you're saying that there's no need for legislative change for the ombudsman receive a complaint that is not in writing, and I think we're on the same page in terms of the flexibility the ombudsman needs. But my

understanding was that the Public Services Ombudsman (Wales) Act 2005 states categorically that all complaints to the ombudsman have to be in writing. So, if that's the case and we want that flexibility, surely we need to legislate to give that flexibility, which is not currently in the present Act?

[72] **Mr Thomas:** Well, the section—

[73] **Jocelyn Davies:** Before you answer that one, last week, when we heard from the Northern Ireland ombudsman, what he said was is, as a matter of principle, why should you start from the position that you have to exercise your discretion in order to accept a complaint that isn't in writing, so you're not putting everybody on the same level in terms of receiving a complaint? The assumption is it will be in writing, and, if it's not, then I have to think about whether I exercise my discretion. He saw that as an injustice, to start with, that you were not considering people equally at the very start of the process.

[74] **Mr Thomas:** I suppose I come from a different standpoint, and it's a standpoint I remember Parliamentary Counsel telling me about 40 years ago, when I started drafting legislation: don't put into legislation things that might later cause doubt. So, the more you over-specify in legislation, the more doubt you create as to whether you can do certain things. We already have the ability to investigate—. The ombudsman already has, under section 2(4), the ability to investigate oral complaints. Therefore, you can change the way in which you present and seek complaints within the existing legislation. As I said, I'm not convinced that simply changing that will change practice. Practice is changed by how the ombudsman reaches out, makes sure that complaints are directed to them, advertises, and talks to the various public bodies about how they should refer complaints. So, I don't see the need just simply to change legislation.

[75] **Peter Black:** But if the 2005 Act does over-specify, and that is seen as an obstacle, then surely you need to de-specify that in new legislation.

[76] **Mr Peters:** You could view it that way, I suppose. If you were to, say, take the requirement out and leave the matter silent, that would be an approach that may work. Although, I think you need to be mindful of to what extent you can then rein back in, perhaps, on an untapped demand, because, if that encourages a very large number of oral complaints, then without—. Well, I suppose, there's still the ombudsman's discretion. That could be—

[77] **Peter Black:** Because the ombudsman still then has the discretion to ask them to put in writing.

[78] **Jocelyn Davies:** I think we've exhausted that now. Ann, shall we come to your questions?

[79] **Ann Jones:** Thanks. The ombudsman is keen to see his powers extended into the private healthcare sector. What are the potential strengths and weaknesses of putting that extending that jurisdiction?

[80] **Mr Thomas:** I suppose I've got to be careful here, because, in a sense, you're inviting me to look at issues that are policy, which I tend to sort of keep out of, to preserve my independence. The example that the ombudsman has given me, when I've raised and discussed this with him, has been, in a sense, one of hot pursuit. This is a case where there's somebody being dealt with by the public health system and there's an element of private healthcare in as well. Therefore, in order to investigate the whole complaint, he needs to look at what is happening in private healthcare.

[81] On the other hand, I think that you need to think very carefully in terms of extending

the ombudsman's powers into private healthcare. Where do you draw the line? Are you allowing it to be entirely open, so that, for example, issues about cosmetic surgery, aromatherapy and all the complementary medicines are things that the ombudsman can look at, or is what you're really trying to get at that, if responsibility for an element of healthcare has been contracted out by the public health area, the NHS, to a private facility, the ombudsman has powers to pursue and that, therefore, there is a need to make it beyond doubt that the ombudsman can, in those cases, pursue that case? I can see that there is a logic there, because the commissioning is coming from the NHS, the NHS has still a responsibility when commissioning to look after, and the ombudsman ought to be able to follow that through. So, in that limited area, I can see quite a lot of merit for clarifying the legislation. But, as I said, I think you need to be very careful about the extent of simply opening up and saying the ombudsman can look at private healthcare.

[82] **Ann Jones:** Okay. Thanks.

[83] **Jocelyn Davies:** Okay?

[84] **Ann Jones:** That's fine, thank you.

[85] **Jocelyn Davies:** Ffred.

[86] **Alun Ffred Jones:** Diolch yn fawr. A gaf i gyfeirio at y cysylltiadau gyda'r llysoedd a'r gwaharddiad statudol sydd yna ar yr ombwdsmon i ystyried achos sydd wedi cael ei adolygu gan lys, neu â'r posibilrwydd o gael ei adolygu gan lys? Rydych chi'n dweud:

Alun Ffred Jones: Thank you very much. Can I refer to the links with the courts and the statutory bar on the ombudsman to consider a case that has been reviewed by a court, or has the possibility of being reviewed by a court? You say:

[87] 'nid wyf yn sicr bod dadl gadarn dros gael gwared ar y gwaharddiad statudol'.

'I am not sure that there is a pressing case for the removal of the statutory bar'.

[88] Mae yna gyfeiriad, wedyn, eich bod yn meddwl efallai y byddai hyn yn dod â chostau ychwanegol. A allwch chi ymhelaethu ar y costau posibl yna yr ydych chi'n eu rhagweld petai'r gwaharddiad yma yn cael ei newid?

There is a reference, then, to the fact that you think that this might incur additional costs. Can you elaborate on those possible costs that you foresee should this statutory bar be removed?

10:00

[89] **Mr Thomas:** Rwyf yn gweld bod yna achos i'r ombwdsman fynd i'r llys os oes angen 'sort-o' allan beth yw pwynt arbennig o gyfraith. Gallaf weld fod hynny yn bwysig, ond, ar y llaw arall, rwy'n gwybod bod Comisiwn y Gyfraith wedi bod yn trafod os gall pobl fynd at ombwdsman neu fynd i'r llysoedd, yn enwedig efo adolygiad barnwrol. Ond mae hynny'n rhywbeth rwy'n credu y mae'n rhaid cael ei benderfynu ar lefel y Deyrnas Unedig ac nid jest yng Nghymru. Ond y broblem rwy'n gweld yw y gall pobl fynd at ombwdsman ac rwy'n siŵr bydden nhw'n gobeithio cael cyfiawnder ynglŷn â

Mr Thomas: I do see that there is a case for the ombudsman to turn to the courts if there is a need to sort out what a specific point of law is. I can see that as being important, but, on the other hand, I know that the Law Commission has been discussing whether people can turn to the ombudsman or go to the court, especially with a judicial review. But I do see that as being something where there needs to be an agreement or a decision on a UK level rather than just in Wales. But the problem that I foresee is that people can turn to the ombudsman and I'm sure that they would hope to have justice in relation to their

beth maen nhw wedi cwyno yn ei gylch. Ond os yw'r ombwdsman yn darganfod nad ydynt yn iawn, ac efallai bod dim achos i'r gŵyn, a ydyn nhw felly yn gallu mynd i'r llysoedd hefyd? Rwy'n gweld bod gan Gomisiwn y Gyfraith rywbeth i sicrhau bod costau yn cael eu rheoli yn well.

complaint. But, if the ombudsman discovers that they are not right, and that, perhaps, there is no cause for their complaint, can they, therefore, go to the courts as well? I do see that the Law Commission has something to ensure that costs are managed better.

[90] **Martin**, would you like to add anything?

[91] **Mr Peters**: 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. So, we do wonder to what extent, if we talk about a choice between the ombudsman and administrative law, we really are talking about a one or the other: we most probably are talking about the option of a twin-track approach.

[92] **Alun Ffred Jones**: Iawn. Mae'r WCVA yn gwneud dau sylw ar y mater yma. Maen nhw'n dweud bod mwyafrif y rhai sy'n achwyn heb yr adnoddau ariannol i fynd â'r gŵyn i'r llys a hefyd maen nhw'n nodi ei bod yn anaddas i'r broses llysoedd, sy'n ddruad iawn, i ymwneud â llawer o'r cwynion yma ac y byddai'n well, felly, i'r ombwdsman, ac yn fwy addas i'r ombwdsman, ddelio â nhw ac yn rhatach. A ydych chi'n credu bod y rheini'n sylwadau perthnasol yn y cyfeiriad yma?

Alun Ffred Jones: Right. The WCVA makes two comments on this issue. They say that the majority of those who complain don't have the financial resources to take the complaint to court and they also note that it is inappropriate for the court process, which is very costly, to deal with many of these complaints and that it would be better, therefore, for the ombudsman, and more appropriate for the ombudsman, to deal with them and also cheaper. Do you think that those are relevant comments in that respect?

[93] **Mr Peters**: They are relevant comments. I suppose, again, this is where the ombudsman's discretion helps. I take the point that there's, perhaps, an inherent injustice in relying on discretion from the start. But I think that applies across all the ombudsman's investigations. Clearly, in many cases, it should be apparent that the ombudsman's route is the more practical in the circumstances. But I'm not sure how, other than through the use of discretion, you can get round the problem of creating a potential twin-track approach.

[94] **Alun Ffred Jones**: Océ, iawn, **Alun Ffred Jones**: Okay, fine, thanks. diolch.

[95] **Jocelyn Davies**: Okay, Ffred?

[96] **Alun Ffred Jones**: Yes.

[97] **Jocelyn Davies**: Julie, shall we come to your questions?

[98] **Julie Morgan**: Yes. Just to go back to the health question a moment, I can see that it's quite clear where services are contracted out by the health service to a private body, but what about the situations where people are back and forth between the private and the public sector in a way that you have to look at it all to reach a clear view?

[99] **Mr Thomas**: Yes, that's the kind of illustration that the ombudsman has used with me. But, on the other hand, once you start looking at one part of the private healthcare market, where do you draw the line? You will need to define or you might risk opening up the

ombudsman to being able to deal with any matters in private healthcare. I think that there is an issue that if somebody is opting to use public health and then going into private health, perhaps there is an element of rough justice that has to say that the way to do this is that if you're choosing voluntarily to use private healthcare, then any of your complaints are within the private healthcare system and are not a matter for the ombudsman. On the other hand, as I said, where the NHS commissions work from private healthcare, that is different. So, I think it needs to be thought through extremely carefully before just saying that the ombudsman is able to consider private healthcare complaints. You need to define the market better.

[100] **Julie Morgan:** Because I think a more likely scenario is that somebody starts off in private healthcare and then goes to the NHS, and if you judge a complaint, it may have to take in that first bit as well.

[101] **Mr Thomas:** Yes, it does, but it is a matter of, I think, as I said, how do you better define that? Otherwise, are you therefore only able to take a complaint to the ombudsman if you have been in private healthcare and the complaint then arises in the public element or are you able to take the complaint just about the private element? If you do that, then private healthcare is a large market. Let's take dentists, for example. If you're with an NHS dentist, are you able to take a complaint to the ombudsman? If your dentist is a private one, are you? Perhaps you might be referred to have more extensive surgical work that is NHS-supported at present. So, I would think this area needs to be thought through extremely carefully and, I suppose, that really is the point I'm trying to make.

[102] **Julie Morgan:** Thank you. Do you believe that the recommendations and the findings of the ombudsman should remain non-binding on public bodies where there is democratic control?

[103] **Mr Thomas:** 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, as I said in my note to you, I do think it confuses the accountability of the public bodies themselves. So, I personally wouldn't argue for the current recommendation to become binding.

[104] **Julie Morgan:** Right. I don't know whether there is any evidence about whether the ombudsman's recommendations are ignored sometimes or only half followed through. I don't know whether you have any of that information.

[105] **Mr Thomas:** I don't think we've got any.

[106] **Mr Peters:** Off hand, I have a recollection that in most sectors, they are not ignored. I mean, certainly there is provision for a declaration or certification by the court, if a report is being ignored. There is a sector, though, that, I think, does tend not to adhere to recommendations.

[107] **Julie Morgan:** A sector.

[108] **Mr Peters:** Yes. I might be confused on that point. I perhaps better—

[109] **Mr Thomas:** Could we write to you on that point? We will check our files.

[110] **Julie Morgan:** It would be interesting to know what sector that is.

[111] **Jocelyn Davies:** Martin, perhaps you could send us a note on that if you can get clarification. Perhaps we should have let you know that we were going to ask about that and then you would have done it. From the top of your head, you can't—

[112] **Mr Peters:** I might be getting terribly confused about something.

[113] **Julie Morgan:** I can think of ones that have been half done, which I have had personal contact with. So, I think it is an interesting debate really.

[114] **Mr Thomas:** When we do our various bits of work at local government and at the NHS, we do look to see how they respond to, particularly, a collection of complaints by the ombudsman. So, as I said, it would be foolhardy just simply to reject an ombudsman's findings.

[115] **Jocelyn Davies:** And there are none that come to your mind that are of any particular note.

[116] **Mr Thomas:** No.

[117] **Jocelyn Davies:** Happy, Julie?

[118] **Julie Morgan:** Yes. I'll just ask about the title of 'ombudsman'. How do you think that could be protected from private bodies using the title, so that the public aren't misled?

[119] **Mr Thomas:** Martin.

[120] **Mr Peters:** There are trading names regulations that I think it may be appropriate to ask for the 'ombudsman' name to be put into. I think they have the effect that if a business wishes to use a particular name, they have to obtain the consent of the relevant person, and in the case of the ombudsman, it may be sensible to have the ombudsman as the relevant person. So, that would be one approach—using an existing regulatory mechanism. It would seem the sensible thing to do.

[121] **Jocelyn Davies:** Okay. Peter, you wanted to ask something specific.

[122] **Peter Black:** Yes. You may need to give me a note on this as well. Currently, as far as I'm aware, there are two boards of conservators in Wales that have been set up by Acts of Parliament to manage common land—

[123] **Jocelyn Davies:** You're nodding your head, so—

[124] **Peter Black:** He knows about it. The ombudsman has no jurisdiction over these. Do you have any jurisdiction over them in terms of inspecting their accounts?

[125] **Mr Thomas:** I'm not sure you've had my letter, as yet.

[126] **Peter Black:** I haven't.

[127] **Mr Thomas:** Right. 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. I do, of course, have jurisdiction over bodies that are set up by the Assembly. So, the one you particularly have written to me about falls outside my jurisdiction and I'd imagine it falls outside the ombudsman's jurisdiction.

[128] **Peter Black:** Would that apply to the one in Anglesey, as well, then?

[129] **Mr Peters:** I don't know anything about Anglesey.

[130] **Peter Black:** I think it's most probably the same. I haven't seen that Act.

[131] **Mr Peters:** I think, if we're talking about one that's covered by an Act passed in 1976, Huw is absolutely right that there's no audit provision in that Act. 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.

[132] **Peter Black:** So, you'd be able to audit that amount of money—that money that is paid from the public body.

[133] **Mr Thomas:** Yes, but then, you're really accessing from where that money is paid into that particular body. I think your original correspondence related to the audit of the conservation body itself.

[134] **Peter Black:** Yes, I understand that. That's great, thanks.

[135] **Jocelyn Davies:** Okay. You've got that clarification. Thank you very much. Was there anything you wanted to add before we end the session?

[136] **Mr Thomas:** No, other than to reassure you that, if you do decide to give the ombudsman own-initiative powers, we will be able to continue to work with the ombudsman as we do at present.

[137] **Jocelyn Davies:** Because the fear of duplication of your work is something that witnesses have raised with us, but you've been able to assure us on that point. We'll send you a transcript, as normal; if you'll check that for factual accuracy, we'd be grateful, before we publish it.

[138] I think we can break now for 15 minutes and then we'll see the Wales Council for Voluntary Action and Citizens Advice. Thank you.

*Gohiriwyd y cyfarfod rhwng 10:13 a 10:30.
The meeting adjourned between 10:13 and 10:30.*

**Ystyried Pwerau: Ombwdsmon Gwasanaethau Cyhoeddus Cymru: Sesiwn
Dystiolaeth 8
Consideration of Powers: Public Services Ombudsman for Wales: Evidence
Session 8**

[139] **Jocelyn Davies:** Okay, welcome back to the meeting of the Assembly's Finance Committee. We're now on item No. 4, which is the consideration of powers of the Public Services Ombudsman for Wales. This is our evidence session No. 8, and we have the Wales Council for Voluntary Action with us, and Citizens Advice. You've sent us papers in advance—thank you for that; they were very interesting. If you'd like to introduce yourselves for the record, and then, if it's okay, we'll go into questions.

[140] **Ms Marks:** Bore da. Good morning. My name is Ruth Marks and I'm the chief executive of WCVA—Wales Council for Voluntary Action.

[141] **Ms Withers:** Hello. I'm Liz Withers. I'm head of policy and campaigns at Citizens Advice Cymru.

[142] **Jocelyn Davies:** Thank you. As I say, we have read your papers, but just for the

record, do you think that the own-initiative investigations proposed by the ombudsman would be beneficial to the public? Ruth, shall we start with you?

[143] **Ms Marks:** Fine. Thank you very much indeed, Chair. Yes—the simple answer is ‘yes’, absolutely, and a few more points of clarification. Where there are cases of suspected widespread systemic maladministration or service failure, in the words of Ann Abraham, the former parliamentary and health services ombudsman, it would be wrong for an ombudsman to just stand idly by if there is the opportunity for the ombudsman, through evidence and through complementary working, as identified by the auditor general in your earlier session this morning, to play a part in prevention, to raise the quality of public services for everyone in Wales, and certainly to increase the trust amongst members of the public in public services. Then, I think the opportunity to undertake an own-initiative investigation should be welcomed, and I think that the evidence that the auditor general has submitted, and also that colleagues from Citizens Advice Cymru have submitted, in relation to the desire and evidence of us working effectively in partnership in Wales, would ensure that the query that has rightly been raised as regards potential duplication or the stepping on toes or waste of public resources could certainly be avoided.

[144] **Jocelyn Davies:** Liz, do you have anything to add to that?

[145] **Ms Withers:** Yes. I agree with everything Ruth said. I think it is important that there is real potential in this area to drive sector and service improvements. I think it’s particularly important when you consider certainly the clients who come to us, because we support many thousands of clients across Wales to resolve their problems, and when they come to us, as part of the advice assessment process, we will actually ask them, ‘Do you want to make a complaint to the authority?’ very often, and nine times out of 10, people will say ‘no’. And there are a number of reasons why people choose not to make complaints to public authorities and choose to come to advice providers instead. I think that’s why it’s important that the ombudsman has the potential to have own-initiative powers, because only a certain proportion of people will ever go to the ombudsman with complaints. So, not only is it appropriate for the ombudsman to look across those complaints and see where there are wider sector failures that could be investigated, but also I think there is real potential to look at areas where there may be sector failings or systematic failures, where people may not complain, particularly particular groups of people, and in particular sectors, such as the health sector, as well, where people are less likely to complain. I think there is real potential there to drive up service improvements.

[146] I would, however, say, and we did raise this in our evidence, that if these powers are taken forward and given to the ombudsman, it’s really, really important that we have some clarity and transparency in the process as to how decisions are made and which investigations the ombudsman chooses to work on. I also think it’s important that advice agencies and other agencies are able to suggest investigations and that we’re able to be clear about what referral procedures are in place. It’s also important that the user perspective is taken into account in terms of any investigations or reviews. So, taking into account and listening to the users of a particular service in shaping an investigation or an inquiry, but also in the development of that inquiry. Finally, I’d say, I think it’s really important that we look at what tangible service improvements come from any investigation. So, whether the ombudsman has the right enforcement powers and whether that needs to be looked at, if the provision is to be given. Also, I think it’s key, from our experience in the past, that after a review and recommendations have been put in place, a further review is taken at a later stage to assess whether those things have been implemented and put in place.

[147] **Jocelyn Davies:** Julie, you wanted to come in on this point.

[148] **Julie Morgan:** I wanted to ask if you could give us any sort of examples in Wales

where you think this would have helped. I think you mention Mid Staffs, don't you, in your evidence? If these powers had been available, where could they have been helpful?

[149] **Ms Marks:** No specific example, I'm afraid. But, going back to the point about working in collaboration and organisations sharing information and data early on, especially in terms of the opportunity on the prevention agenda, if the ombudsman is seeing a trend in the cases that are coming to the ombudsman's office, then in discussion with anybody—whether it's the auditor general, the older people's commissioner, the children's commissioner, third sector organisations offering advice and advocacy and so on—if there is something that is perhaps jointly identified that would be best for individuals and could have a wider systemic positive impact, then it would seem sensible to support own-initiative powers. The other comment in relation to this is that Wales has been ahead of the game in so many areas of public service administration and giving voices to individuals who find it difficult to get their voices heard. By supporting the ombudsman's proposal in this regard, I think that furthers that opportunity. There is also the opportunity to monitor the impact. So, if those powers are awarded and used by the ombudsman, they could be monitored, obviously, in the production of the ombudsman's annual report, and two years, five years down the line, the benefits or not as seen in practice. I think it's an eminently sensible proposal.

[150] **Jocelyn Davies:** Peter, you wanted to come in on this.

[151] **Peter Black:** To come back on Liz's outline of how you consider the own-initiative powers would work, what you outlined there is effectively a major inquiry into an organisational process, the like of which you might expect maybe an Assembly committee to undertake, or perhaps the Auditor General for Wales. My understanding was that the ombudsman is looking for these powers in terms of limited interventions maybe around specific cases, as opposed to that sort of organisational—. I'm just wondering if you had a different understanding of what the ombudsman was trying to do here.

[152] **Ms Withers:** No, I don't think so. When I did some research looking at some of the recommendations from the Law Commission and some of the work that's happened in Scotland, the proposals were that there would be one to two of these significant reviews a year. You'll know that the responsibilities of Consumer Focus have now come into Citizens Advice and we're responsible for taking forward that work now. At Consumer Focus, we had an investigation unit. As part of that, we kind of did some of the things that I've been talking about in terms of setting up referral protocols and making sure we had clear criteria. I'm not talking about substantive public inquiries—that type of element—but I do think it's important that we're not just looking at the wider benefits that can be sought from individual cases from people that come to be ombudsman. I think we should be looking at the potential beyond that as well. We should be looking particularly, as I said, at people where maybe particular groups don't complain, or maybe individuals in a particular sector don't complain either. We certainly know, from the people that we see—we see thousands of people across Wales every year—that a large proportion of those people do not complain, and if they don't complain, then they don't go through an internal complaints system and then they don't get to the ombudsman in the first place. So, I suppose I'm just saying that it should be broader than seeing the kind of implications of an individual case, and there should be the opportunity to identify systematic or kind of thematic reviews based on evidence that other people bring as well.

[153] **Peter Black:** Is there a danger that, when he takes that particular approach, he will be duplicating other agencies, such as the Wales Audit Office?

[154] **Ms Withers:** I think it would be really important that there would be the right protocols in place when making a decision about what to investigate, that there would be information sharing and, perhaps, memorandums of understanding across the relevant

organisations.

[155] **Jocelyn Davies:** Can I ask you this: you say the vast majority of people who come to you, if you ask them 'Do you want to make a complaint?', they reject that, do you record the reasons why they reject it? Obviously, you've got overall figures; are you able to break those down at all to give us a flavour of why people say 'no'?

[156] **Ms Withers:** Yes. We don't record the specific reasons, but some of our bureaux have done some research, and, as I said, we've taken on responsibilities from Consumer Focus and they'd done quite a lot of research around why people don't complain as well. There's a number of reasons. Certainly, in terms of our clients, people have a lack of knowledge about what they should expect from a public service. So, they don't actually know, in terms of the service that they receive, whether that's the type of service that they should be receiving and in the way they should be receiving it. Very often, when they come to us, they're asking for information at the same time as advice and trying to get a sense of 'Is this what I should've expected?' I think, ultimately, people want the right information, the right support and the right service at the right time and in the way that they need it. Fundamentally, when they come to us they want to resolve their problem. People have complex lives. So, very often people will come to us about maybe a debt problem, but when you look into it there are two or three other big issues going on there as well. Fundamentally, they're trying to just get through the day. I think by the time you've solved your problem, actually, it can be too much to think about making a formal complaint.

[157] Finally, I would say that I think, on a lot of the areas that we advise on, they're essential services that people need—so, housing and access to benefits. If you're making a suggestion to someone who's making an application in terms of homelessness, for instance, that they should complain to the housing department and that housing department is making decisions about whether they should be entitled to housing, moving forward, then you can see why the individual would be less likely to want to complain. In areas such as health, people will have continuing relationships. So, I think there's a number of very complex issues as to why people don't complain.

[158] **Jocelyn Davies:** Nick, did you want to come in on this point?

[159] **Nick Ramsay:** Yes. Just listening to what you've just said there, Liz, are you saying, basically, that people with their busy lives just don't think they've got enough time to complain? In which case, is that a good argument for saying that the complaints system should be streamlined to such an extent that people think: 'It's an easy thing to do, and it's not really going to take a lot of time out of my day that I could be devoting to other things—my family, my work or whatever'?

[160] **Ms Withers:** I'm saying it's more complex than that. I'm saying there's a variety of different reasons why different groups—. Different groups of people will have different reasons for not complaining. So, coming through bureaux, we see a particular group of people. Two-thirds of people that we see are below the poverty line. So, some of those groups of people might have their own challenges in terms of literacy and dealing with very complex life arrangements. For other people, they might be in poor health. So, it would depend on the individual. In terms of the latter point, about making the complaints process more streamlined, yes, most certainly. I think it needs to be as clear, simple and easy for people to access as possible and people need to understand the implications of making a complaint—i.e. it won't affect the outcome of any service they receive in the future. I guess that comes on to how public services across the board deal with complaints and that, certainly, can be improved.

[161] **Nick Ramsay:** Are they scared to make a complaint?

[162] **Jocelyn Davies:** Yes.

[163] **Ms Withers:** I think in some circumstances, people will be scared about the implications of making a complaint. If you have an ongoing relationship with that public service, depending on what the situation is, then there will be potential concern about what happens to your relationship, moving forward.

[164] **Jocelyn Davies:** Yes, and they're just worried, because they come to you with a problem. They don't come to you and say 'How do I complain?' They come to you with a problem. The fact that they've got a right to complain is a secondary thing to them. Their overall issue is that it's their problem. Do you have any mechanisms available to you in terms of being able to raise wider concerns, for example with the ombudsman or with others, about public service delivery? Do you have a way, if you think there's a particular area that needs further investigation? Currently, is that lacking?

10:45

[165] **Ms Marks:** At this particular moment in time there isn't any formal mechanism between the Public Services Ombudsman for Wales and the voluntary sector, but the ombudsman and I met a couple of weeks ago and had discussions about ways that we can improve dialogue and joint working, and it's an area that we're interested in progressing for exactly the points that you're referring to.

[166] **Jocelyn Davies:** Okay. Liz, did you have anything to add?

[167] **Ms Withers:** Yes, I suppose there's what bureaux do at a local level and then what we do at national level as well. So, we don't have any formal arrangements, likewise, with the ombudsman. I think that would be very helpful to establish, moving forward. In terms of our local bureaux, their priority is giving people the advice they need to resolve their problems, but they do aim to try and influence change where they can at a local level. But they're not specifically resourced to do that, so there are resource and capacity implications.

[168] **Jocelyn Davies:** So, in a local area, if you've got concerns around—you mentioned housing—about housing, would you have a mechanism that would allow you to take a general concern to that organisation that is raising a lot of casework for you?

[169] **Ms Withers:** I would say that they're informal. So, a local bureau might do a number of things. They might give the person individual advice and help that person to make their own case. They might undertake casework on behalf of the individual, and raise the issue on a case-by-case basis—but that wouldn't be seen as a formal complaint by the public authority. They might take a range of different cases and they might hold a meeting with the housing department and try and influence the process. We do that quite a lot. They might hold meetings with the chief exec of the local authority, and they might also be invited to sit on forums to help influence change. But none of those things would be part of the formal complaints process. So, going back to this issue about informing, there is kind of a gap between what happens through formal complaints, and monitoring those, and then feeding up into systematic issues, and also perhaps how we and other advice agencies are feeding things into public bodies. We also, obviously, at a national level will aim to talk about big issues and influence policy at that level as well.

[170] **Jocelyn Davies:** Okay. Peter, shall we come to your questions?

[171] **Peter Black:** I think Citizens Advice has noted that problems affecting individuals may span several sectors, and that's our experience as well, as Assembly Members. That can

include non-devolved areas. How do you believe the Public Services Ombudsman for Wales should work with other ombudsmen and regulators to carry out joint investigations?

[172] **Ms Withers:** I think exactly that: there should be protocols in place so they are able to carry out joint investigations. I think that would be extremely beneficial.

[173] **Peter Black:** Do you know if that happens at the moment?

[174] **Ms Withers:** Not to my knowledge. There might be some areas. I suppose, for instance, the Competition and Markets Authority would sometimes work very closely with Ofgem on the energy investigation that's happening currently, so they would be taking evidence from Ofgem and us, because we have statutory responsibility for energy consumers. But, yes, I think that's less formalised.

[175] **Peter Black:** And when it comes to the ombudsman utilising own-initiative powers, is there a case to say that, if he comes across a particular problem, and some of that problem is outside his statutory responsibility, he should, on his own initiative, involve other agencies and use those powers in that way?

[176] **Ms Withers:** I think so, and also make recommendations to other agencies as well.

[177] **Jocelyn Davies:** Okay. Are you happy, Peter? Chris, shall we come to you?

[178] **Christine Chapman:** We know that the ombudsman Act states that complaints have to be made in writing. We know that the ombudsman, though, has discretion to investigate oral complaints. Do you think that this is a barrier to the public making complaints?

[179] **Jocelyn Davies:** Ruth, I can see that you're nodding.

[180] **Ms Marks:** I think both of us were nodding. As a starting comment, I would say that I see this as an equality of access issue, and the fact that writing can be a barrier, especially for people who are currently under-represented, or marginalised, in relation to going through a formal complaints process—especially when we note that the ombudsman is really the place of last resort in terms of complaints that people may have in relation to a public service that they've received and a problem that they want resolved. Firstly, that will have been looked at in the local setting. Secondly, that might have been looked at at senior management level or in a different setting. And by the time somebody actually gets to the ombudsman, as you know, there's often years of anguish, years of heartache, and probably many, many files of information, not just one written piece of correspondence. So, I think that the opportunity for the ombudsman to support the desire that the ombudsman has to increase access, to have a wider reach and impact, and to increase knowledge and accessibility of the service and people's rights to a good service—. If complaints handling is improved, which I expect we might come onto in a while, then completely taking away that barrier, whether it's there in practice or not; there is a perceived reality—. I heard the Chair quote, more or less, from correspondence earlier on as regards a complaints process that somebody might go through with a local service provider, and then the comment towards the end of that letter that's going back to the individual: 'and if you're not satisfied with the outcome of this particular inquiry you have the right to go... and your complaint should be made in writing'. Now, if that sentence doesn't need to be there, and if that knowledge amongst complaints' handlers, and across all staff and managers in public services in Wales, is made clear, that takes away that barrier. I think that the ombudsman's office would be able to gear up very effectively and record or take notes and then obviously check that transcript as the colleagues from the auditor general's office made clear earlier on.

[181] **Christine Chapman:** We did hear evidence that, sometimes, people are put off. Once

the evidence has been transcribed, some people are still put off when they actually see it in black and white, in the cold light of day, really. Do you think that is the case? Does that happen?

[182] **Ms Marks:** I haven't got any personal experience or professional experience of that, but I would say that that might be down to perhaps the language that is used in the correspondence. I heard committee members talk about the complexity of language that's used. I think there is an issue there. Also, the overall relationship with the public service provider in the first instance, or the ombudsman's office, or the role that we have in the voluntary sector, especially if we're working in advice or advocacy organisations, as regards being able to chat through with somebody as regards what the outcome is that they're looking for—'What do you want to achieve by going through this process?' This should be a streamlined, easy, supportive and good process, but often it isn't. So, what is it about that process, and is writing part of that? But also then, how does that feel when it's read back to you, or when you read it back? One might say, 'Well, that's not what happened', 'That isn't what I said', 'That isn't what I experienced'. If that is all worked through in a collaborative way, and the clarity as regards the outcome that is desired is also discussed, maybe that issue would be reduced.

[183] **Christine Chapman:** But there is a discretion at the moment, I suppose. Well, we are seeing practices where they can do this already. Do we need the law to change in order for that to happen?

[184] **Ms Marks:** When I was listening to the earlier evidence session I heard that point being raised. I suppose if there is already that discretion there, then let's just make it clear and make sure that people know, and start putting it into practice and talking about some of the learning about that and sharing whether there are any improvements in ease of access for currently under-represented individuals and groups, and just get on with it, I suppose.

[185] **Christine Chapman:** Could I ask Liz now? We know this from your response. You recommend that trusted intermediaries should be able to bring a complaint on the person's behalf. I just wonder whether you could expand on this proposal and whether complaints can currently be made in this way, where you have an intermediary.

[186] **Ms Withers:** I guess, really, it comes back to Ruth's point about maybe the bigger issues about people's perceptions of complaining and kind of what I was talking about before. I think, actually, you know, the more significant barrier—. It's helpful to take away, you know, as many barriers as possible to people making a complaint. If the discretion's there, then yes, we should be really clear about it, and it shouldn't just be on a case by case basis. The more significant barrier is people's perceptions of complaining and the implications of this. So, I think that, actually, sometimes people feel, certainly, that if they were able to have someone to advocate on their behalf, maybe their own particular circumstances where they don't have particular good communication or they might be vulnerable for a particular reason—they might be an older person, they might have communication difficulties, as I said. But also, you know, just from the confidence perspective as well. And certainly, we know from previous research we've done that actually that's an extremely beneficial option to have—to have a trusted intermediary to act on your behalf—but also you should have the opportunity to choose that person. I think that should be fundamental. Because some people will—. You know, people will have particular relationships with different types of advice agencies, or different types of providers, and I think that's really, really key. And I think that, you know, certainly from the people that we see in bureaux—. We do the outcome focus—you know, we start from the point of 'What is the outcome here?', and largely through the support and advice that we give people, the majority of people can go on and solve their problem themselves with that advice we've given. So, only about 21% of the people that we see we're actually advocating directly on behalf of.

[187] So, maybe it's a mixture of the two; it's having the ability for trusted intermediaries to play that role, but also making sure that people know where they can go for advice and support to take them through the process and hand-hold them through the process as well.

[188] **Jocelyn Davies:** Ffred, did you want to come in on this particular point?

[189] **Alun Ffred Jones:** Cwestiwn i Gyngor ar Bopeth. A ydych chi fel Cyngor ar Bopeth yn cyfeirio pobl at yr ombwdsmon? Ac os ydych chi'n gwneud hynny, ydych chi'n ysgrifennu neu'n cysylltu ar eu rhan nhw er mwyn eu helpu nhw?

Alun Ffred Jones: It's a question for Citizens Advice. Do you as an organisation refer people to the ombudsman? And if you do, do you write to or contact the ombudsman on their behalf to help them?

[190] **Ms Withers:** We would refer people on to the ombudsman, depending on the situation. Coming back to what I was saying earlier, in the majority of cases where people come to us, they come to us at an earlier stage, because obviously people have to go through a public body's internal complaints procedure before they can go to the ombudsman. So we'll be asking the person we're trying to resolve their problem, we'll be saying to them, 'Would you like to make a complaint?' In a large proportion, people don't want to make a complaint. So if they don't want to make a complaint to the public body, then they're not going to go through the process to then go up to the ombudsman beyond that. So, if the circumstance is right, we would give people the option when we were going through the options on the table, if they'd already been through a complaints process, to say, 'Okay, if this is the outcome you want, the ombudsman is definitely—. You know, we recommend that you would consider that route.' And if people wanted us to, we would give them the right information and advice and support, and maybe advocate on their behalf as well.

[191] **Jocelyn Davies:** Ruth, in terms of equality, you can't complain to the ombudsman just because you don't like the decision of a local authority, so it's how you've been dealt with that you can complain about. So, that's a barrier. There's usually first and second tier complaints. And you just feel that, with having to make the complaint in writing, it's an adding another—. In terms of your equality hat—we know that you're particularly expert in equality issues—the point that I made earlier with the auditor general was, 'Why should you have to ask for somebody to exercise their discretion because you can't submit something in writing?' I know you're going to say 'yes'—it's not really a question: do you find that there's a tension with giving people equality in asking that that's the case, even though that discretion does exist?

[192] **Ms Marks:** Yes. And I think that in the whole way in which people expect to receive services and don't feel involved in designing or delivering services that meet their needs, we're not actually focusing on the individual or families or communities currently in many of the areas that we're delivering public services. I know we'll come on to it in a moment, but in case I don't get the opportunity, I'm going to say it now: just in the break that we've had between your sessions this morning, there is a group of visitors today from the Cardiff third sector council who are here completely coincidentally listening as visitors to the Health and Social Care Committee. And I had the opportunity to say to them 'In a minute, colleagues and I might be asked about links between public health services and private healthcare, and the ombudsman's powers, if somebody is going through a complaints process. Do you think that the ombudsman should have powers in that regard?' So, I'm answering that question in advance of being asked it, hopefully. There were about 20 visitors and they all quickly heard and they all quickly said 'yes' because they said, in the same way as Liz has commented, people's lives are complicated; people experience different services through different providers; and what's best for the individual. That's what was given in that snapshot in the tea break that you've just had. So, I think that just reinforces the equality of access point that

you've raised, Chair.

11:00

[193] **Jocelyn Davies:** Okay. On the back of that, shall we do yours, Ann, and then we'll come back?

[194] **Ann Jones:** I was going to ask you about extending the jurisdiction of the ombudsman to private healthcare and you've quite clearly said, doing a quick sort of straw poll, that it comes out favourably. Is there a flip side to that, then? Is there any disadvantage to allowing the ombudsman to look at private healthcare?

[195] **Ms Marks:** I don't think so, because I think the ombudsman currently has the powers in relation to social care provision and I'm not aware that that has caused any problems in relation to continuity of care. I think, as most people don't necessarily see the boundaries between organisations and individuals who are providing healthcare and others who are providing social care, that in terms of the continuity of care argument, and focusing on the person, and focusing on the individual, and their lives, as opposed to putting in silos particular services provided by particular sectors, I just think it's a really important point of principle in relation to that individual focus. In terms of my experience of independent healthcare providers, their desire to work in effective partnership with the NHS in Wales, and with commissioners and the ombudsman, is writ large in the meetings and evidence that I've received in other pieces of work that I've been involved with. So, I'm not aware of any flip side at this particular moment in time.

[196] **Ann Jones:** Okay. I'll leave that then and come back to my other questions later.

[197] **Jocelyn Davies:** Yes, okay. Nick, shall we come to your questions then and then go back to Ann?

[198] **Nick Ramsay:** Thanks. Do you believe that it would be beneficial if the ombudsman had a statutory co-ordinating role in overseeing complaints handled by public bodies?

[199] **Ms Withers:** Yes, in a nutshell. I think that—. Would you like me to talk about the model complaints policy here as well?

[200] **Nick Ramsay:** Yes.

[201] **Ms Withers:** So, I think, certainly from my understanding of the model complaints policy, its implementation to date has been quite patchy. I think it's really, really important that, if we're going to encourage more people to complain, and people can see it as an easy, clear thing that they can do, then, actually, we need to make it as easy as possible for them. So, if we have clear processes that are similar across public authorities, it not only allows an easier route for the public, but it also allows, potentially, easier comparison across public authorities as well in terms of complaints handling, but also in terms of the outcomes of the complaints as well. So, I think that that's really important.

[202] I think it would be helpful, before actually rolling out a mandatory model complaints process, which I think would be a useful thing to do—and I've had a look at policy and I think it's really strong and takes account of a lot of the key principles you'd want to see in a complaints handling policy—before that's rolled out across Wales, it would be a really helpful opportunity to actually review how that's working in practice. So, whether that's working for public bodies, and also whether it's working for citizens as well. I think we should be asking users who have actually taken complaints under public bodies that are operating the procedure how it was for them. So, how could it be improved and what needs to

change before it's actually rolled out? I also think we should be asking those public authorities that don't currently use it why they don't currently use it, and what the barriers are. I think there's also potential to look at whether there needs to be any sector-specific policies put into place as well, so any adaptations, to make it more appropriate for particular sectors. I think that needs to be taken as part of a wider piece of work in terms of this proposal for a complaints handling authority, so a unit within the ombudsman's office to actually look at complaints handling across the public sector with the potential for driving forward service improvements, because, at the end of the day, what people generally want when they make a complaint, when they've had a problem, is that they want the problem resolved as soon as possible, they want to receive the service, advice or information, they want to make sure that the authority recognises when they're wrong and makes an apology as appropriate, but, fundamentally, they want the service to be improved for them and also for others in the future.

[203] **Nick Ramsay:** Ruth's nodding vigorously. Do you want to come in on that, Ruth?

[204] **Ms Withers:** That's really key, and there's a real potential here when looking across public bodies and how they deal with complaints to actually look at how we can drive forward public service improvements across the board.

[205] **Nick Ramsay:** Do you think that requires a statutory, a legal footing? In the evidence we just heard from the auditor general, he questioned whether a change in the law was necessary for that or whether it would actually be a complicating factor.

[206] **Ms Withers:** I'm not a legal adviser. [*Laughter.*]

[207] **Nick Ramsay:** Good answer. You sound just like one in giving that answer. [*Laughter.*]

[208] **Ms Withers:** I think that we need to think about how public authorities would respond to the requests that were being made by the ombudsman, and on what footing those requests would need to be made. I note that, in the Law Commission evidence, it was actually recommended that the ombudsman should be able to make binding recommendations on public authorities, and currently the ombudsman's only recommending that happens for private providers. I actually think that the ombudsman should have the powers to make binding recommendations because, actually, if you're looking at taking on own-initiative powers, then that is a lot more challenging, potentially, because you're looking at systematic and systemic issues. But I do think a complaints handling authority, and being able to look across the big picture, would be very helpful. I think that there are some key things that the ombudsman could do as part of that, but also I'd say that the one thing that I thought was missing when I looked at the model complaints policy was about publication and analysis of the outcomes of complaints. I think that public authorities at a local level could do better on that, because that's what we want: we want more transparency for people to see what the outcome and the resolution have been as a result of that. But also the ombudsman should be looking across the board in terms of analysis and identifying trends and looking at where things need to be picked up.

[209] **Jocelyn Davies:** Okay, Nick?

[210] **Nick Ramsay:** Oh, I did have another question.

[211] **Jocelyn Davies:** Oh, go on then. Sorry, Nick.

[212] **Nick Ramsay:** That's all right. I went a bit off-script. On training and advice on complaints, what forms of training and advice on complaints handling are currently available

to public bodies? And could it be improved?

[213] **Jocelyn Davies:** Do you know? Would either of you know?

[214] **Nick Ramsay:** Would that be your area?

[215] **Ms Marks:** There are networks of complaints handlers, I think, in different parts of the public service, but I think there are huge opportunities, and I believe that the ombudsman is really keen to develop these in partnership across the wider public service, the NHS and local government in terms of sharing learning. I think that, a while ago, you might have taken evidence from colleagues from Scotland in relation to the way in which they have sought to standardise complaints handling, share that learning, but also make sure that complaints handling is relevant within particular sectors. I think there are some examples in Wales where it would be absolutely fantastic for people who are involved in handling complaints to get together within the sector, but also then across sectors as well. I think things can always be improved with the development of online learning tools, e-learning and so on, and the opportunity for people to have secondments across organisations, to be mentored by others and also to maybe have that experience, as Liz was describing, 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. Often, some of the dissatisfaction is because the outcome has not actually been the desired one, but, in terms of learning and making sure that other errors and other cases of maladministration don't happen, that's incredibly important as well. I think that there are opportunities there, and certainly real opportunities across Wales in terms of the partnership principles that people seek to work to.

[216] **Nick Ramsay:** Thanks.

[217] **Jocelyn Davies:** Okay. Mike, shall we come to your questions?

[218] **Mike Hedges:** I have two questions. The first one is: do you agree that public bodies should have consistency of data collection in order that analysis can be carried out?

[219] **Ms Marks:** Yes.

[220] **Mike Hedges:** That's what I like to hear. Do you also agree that the language in these complaint forms should be written at what we call level 2—that's GCSE grade D to G—rather than the stage it tends to be written at, with words like 'recourse', which would probably be a level 4 or level 5 word?

[221] **Ms Marks:** I think that any documentation for anybody involved in delivering public services should be as accessible as possible. If that's level 2, then I bow to your knowledge on that. I think that the whole way in which we talk and communicate and work with individuals is really important.

[222] **Mike Hedges:** Level 2 would pick up 98 per cent of people. I don't think you can get to a level where you'd pick up 100 per cent, but 98 per cent of people are picked up at that level. And the word 'recourse' wouldn't be in it. [*Laughter.*]

[223] **Ms Marks:** I think that might be helpful.

[224] **Jocelyn Davies:** Did you have anything to add?

[225] **Ms Withers:** Yes. Can I just add to that? I think, yes, we should be making forms et cetera as easy as possible, and I think, actually, what we should be doing is, where we can, we are looking at changing what forms look like. We should be actually involving users to co-

design those forms. We've done some work successfully with bureaux and working with local authorities on council tax claim forms—that type of thing—and that can be extremely helpful.

[226] **Mike Hedges:** Can I just agree with you on that? I think one of the problems is, when you get involved with users, you end up often with the usual suspects, and you're not hitting the more difficult-to-get groups, in the main—those that do have a language problem. If you're going to do it, don't you agree that you need a cross section of the population, not just the young retired with plenty of time on their hands and good educational attainment, whose level of complexity in the form might make it more difficult for others?

[227] **Ms Withers:** I completely agree. There are a range of voluntary organisations that, you know, authorities can engage with to support that. I think that's really important.

[228] **Jocelyn Davies:** Okay. Ann, did you want to come back to the specific question you had?

[229] **Ann Jones:** Yes, there are a couple of questions around—. Ruth, your consultation response suggests, or you propose, that voluntary groups and non-devolved public services could come under the remit of the public services ombudsman. Could you expand a little bit on that suggestion?

[230] **Ms Marks:** Sure. In relation to voluntary sector organisations, the point was made in the context, I think, of the question as regards extending powers to include private healthcare. I think that the increase in voluntary sector organisations, social enterprises and large charities, as well as small voluntary groups, providing services, either directly commissioned by local councils or through the NHS, means that we should be making sure that the sector is geared up to the best standard that public services are expected to deliver, and that, when commissioning a service, the commissioning authority should perhaps include reference to the model complaints policy in the commissioning process. Organisations that are delivering services should be working to that policy and working to the same high standards that other public sector or private sector providers should be working to. Obviously, in relation to the smallest voluntary groups or community organisations that might be undertaking services there, there are local infrastructure organisations—the councils for voluntary service—across Wales that can provide support there, and at a national level, obviously, the Wales Council for Voluntary Action can also work in that support role.

[231] In relation to non-devolved matters, there may well be a range of other complicating and complicated factors that would need to be uncovered in that regard. But, again, just to give a recent example: the Department for Work and Pensions called a reference group meeting that Citizens Advice Cymru were invited to attend, with other organisations including Cymorth and the expertise that they have around Supporting People, Community Housing Cymru and their membership role in terms of registered social landlords, and WCVA. The desire for organisations where services impact on people's lives and families and communities in Wales where those services interrelate with public services in Wales—I think that the opportunity for the ombudsman to at least be in that space and have those discussions is helpful.

[232] **Ann Jones:** Okay; thanks. Liz, Citizens Advice Cymru recommends that the Residential Property Tribunal Wales comes under his scope. Can you just explain to us how that organisation handles its complaints currently?

[233] **Ms Withers:** How the organisation—

11:15

[234] **Ann Jones:** How are complaints handled against the residential property tribunal?

[235] **Ms Withers:** I have to say that I don't have detailed knowledge. The reason why I mentioned it is I was looking at the list of organisations that were included, that were in scope, and there were a range of devolved tribunals and the residential property tribunal wasn't included. We've done quite a lot of work at Consumer Focus Wales on the Mobile Homes (Wales) Act 2013, and, certainly, when we were working very, very closely with residents across Wales, it was very, very clear that they had a number of challenges and problems, and it was really important that the recourse wasn't just to the courts. So, actually, as part of the Bill, as part of the Act now, they have greater opportunities to use the residential property tribunal and I guess I felt that, actually, with the increase in scope for the tribunal, it would make sense for it to come into scope.

[236] **Jocelyn Davies:** Peter, did you want come in on this particular point?

[237] **Peter Black:** Yes. I am just interested in what other tribunals the ombudsman has jurisdiction over, because it seems to me that the residential property tribunal is, effectively, acting as an ombudsman in its own right in many ways.

[238] **Ms Withers:** I haven't got the list to hand, but I could look it up.

[239] **Jocelyn Davies:** Will you send it? Do you know what, we ought to be able to look that up ourselves—we'll look that up.

[240] **Peter Black:** It just seems to me that the residential property tribunal is doing work in terms of resolving complaints in the same way as the ombudsman is. So, it seems to be a bit bizarre to have an ombudsman overseeing that.

[241] **Ms Withers:** I recommended it because there were other tribunals on the list, and it seemed bizarre the other way around, that it wasn't included.

[242] **Jocelyn Davies:** Well, we'll get a note prepared and we'll get that sent out. Ffred, can we come to your questions now?

[243] **Alun Ffred Jones:** Iawn, diolch yn fawr. Mae'r ddau gorff rydych yn cynrychioli o blaid dileu'r gwaharddiad ar yr ombwdsman i ystyried cwyn lle y gallai'r llys neu dribiwnlys neu Weinidog Cymru ystyried y mater. Pam?

Alun Ffred Jones: Right, thank you very much. The two bodies that you represent are in favour of removing the statutory bar on the ombudsman considering complaints where a court or tribunal or a Welsh Minister could consider that matter. Why?

[244] **Jocelyn Davies:** Ruth.

[245] **Ms Marks:** Thank you very much, Chair. The WCVA response considered that removing the statutory bar would offer an effective alternative to the courts system and would also lend itself to the equality of access point that we've been talking about earlier on, and that, by removing the statutory bar and enabling somebody to consider whether the organisation or the route that they wanted to take in relation to progressing their complaint was either the court or the ombudsman—. I'll come back in a moment perhaps to the auditor general's comments as regards a twin-track approach, which I learnt from listening a little while ago, but I think, fundamentally, it felt to us that it would increase people's access, it would increase people's choice, and, therefore, that that would be a good thing. But I do understand the evidence that you heard earlier on as regards the twin-track comment that the auditor general was making.

[246] **Ms Withers:** In terms of—. Yes, similar points really: to give people the option, to give people the choice, particularly in light of the additional complexities of people having to go through the courts process, so, the additional bureaucracy, but also, the implications and the challenges to people having legal advice or access to legal advice, particularly in terms of cuts to legal aid. And I think it's really important that, if people are going through the courts process, they have the right legal advice, they have access to the right support, so that they can make the best use of it.

[247] What we also said in our response was that we supported the Law Commission's recommendation for the ombudsman to actually publish detailed guidance outlining when it may be appropriate to make a complaint to them and when it may be more appropriate to make a complaint to the court or other mechanism of administrative justice. I also think, and we said it in our evidence, that I think, if someone makes a complaint or takes an issue to court, and the court thinks it's more appropriate for the public services ombudsman to take that case, then actually the court should be able to stay an action while the public services ombudsman considers that case, and, if the ombudsman decides it's not within their scope, then, actually, the complainant's issue should still be taken through the court process.

[248] **Jocelyn Davies:** Ruth, did you have something that you wanted to add to what you said earlier?

[249] **Ms Marks:** I'll wait.

[250] **Jocelyn Davies:** Okay. Ffred, do you want to continue with your question?

[251] **Alun Ffred Jones:** Mi wnaeth yr archwilydd cyffredinol sylw ei fod yn bryderus y byddai gwneud i ffwrdd â'r gwaharddiad yn ychwanegu at y costau potensial oherwydd y byddai pobl yn gallu defnyddio'r naill a'r llall—y ddau lwybr, felly. A oes gennych unrhyw sylwadau ar hynny?

Alun Ffred Jones: The auditor general made a general comment that he was concerned that removing the statutory bar would add to the potential costs because people could use either route—both routes, therefore. Do you have any comments to make on that?

[252] **Ms Marks:** Again, I've got no direct evidence as regards whether that would or wouldn't be the case. But I think that the removal of the statutory bar and allowing people the access to the ombudsman ensures that those principles of good administration and the principles behind the model complaints policy come to the fore and that the ombudsman obviously operates in an official capacity and operates everything in a way that is transparent and open to scrutiny and so on. But, in my experience of liaising with the ombudsman's office, you also then get a personal service: you get usually a named individual who will be liaising with you and develop a rapport, whether that's through e-mail communications, through phone communication, or potentially meeting face to face. I think that you then get that test as regards what actually feels right and feels equitable and fair over and above the strict tests of legality that would come into effect in relation to an individual complainant following the full justice system as opposed to the ombudsman system.

[253] **Jocelyn Davies:** So, the outcomes could be different.

[254] **Ms Marks:** The outcomes could be different. I think the experience could be different and I think that that could be—again, I don't know from any evidence, but it could be—a more supportive and constructive experience and possibly less time-consuming and possibly less resource-intensive, linking back to the question.

[255] **Alun Ffred Jones:** A oes gennych **Alun Ffred Jones:** Can you give us any

chi unrhyw enghraifft o rywun yn methu â mynd at yr ombwdsman am eu bod nhw methu â fforddio mynd i'r llys? Achos rydych yn dweud yn eich tystiolaeth nad oes gan lawer iawn o bobl yr adnoddau ariannol i ymgymryd â llwybr cyfreithiol. Felly, a chymryd bod yna bobl felly sydd yn methu â mynd i'r llys, a oes unrhyw enghraifft yr ydych chi'n gwybod amdano lle mae pobl felly wedyn yn methu â mynd i'r ombwdsman achos mi ddylai nhw fynd i'r llys?

examples of someone failing to go to the ombudsman because they couldn't afford to go to the courts? Because you said in your evidence that some people don't have the financial resources to follow a legal route. So, accepting that there are some people who can't turn to the courts, are there any examples that you know of where people can then fail to the ombudsman because they should go to the courts?

[256] **Ms Withers:** No, I don't have any specific examples. I guess I was just thinking about our experience as an advice provider, and the impact that legal aid has had on us. 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. Now, some of that has kind of been picked up through funding from Welsh Government, but I was just thinking that there would be other implications in terms of cuts to legal aid, but also other advice and support that people have access to.

[257] In terms of the point that Ruth made, I think it also has to come back to the outcome that the individual wants and what is the best way for that individual to move towards that outcome. Certainly, our experience of undertaking work in particular policy areas in the past has been that, if someone goes to court, and particularly if they don't have anyone to represent them and they look to represent themselves, for instance, and they're going up against maybe a local authority that has barristers and lawyers who are very well-informed, then that can be a very, very distressing experience for an individual, and you wouldn't be able to represent yourself in the best way possible. I think that we should go back to the outcomes and what is the best option for the individual concerned. So, people should most certainly be seeking advice and guidance as to what the best route is, but people should have the option of the two routes.

[258] In terms of whether people would go down both routes, I would perhaps go back to this issue of people being reticent about complaining. Therefore, I wouldn't see a large proportion of people looking to go down both routes. You would have the odd person, but I don't know if anything can be done around that—I don't know; I don't have any specific knowledge about it.

[259] **Jocelyn Davies:** Peter, did you want to come in on this point?

[260] **Peter Black:** Just following up on that, because you did say earlier on that the court should have the option to stop a case and refer back to the ombudsman, but, of course, in those situations, the ombudsman would have lesser powers in terms of resolution than the courts. So, I'm just wondering in what circumstances would a court want to do that, given that the remedy available to the court is most probably more binding and more substantial than the remedy available to the ombudsman.

[261] **Ms Withers:** The proposal was taken from the Law Commission review, and the reason why I felt that was a good thing was I suppose there could be circumstances—. Going back to what is the best outcome for the individual, if the individual wants a particular outcome, they might get that outcome in a better, more effective way by going through the ombudsman.

[262] **Peter Black:** So, really, you need to catch that before it gets to the courts.

[263] **Ms Withers:** In an ideal world, and coming back to this issue of producing guidance as to when it's appropriate to go to the ombudsman and when it's appropriate to go through the courts.

[264] **Peter Black:** I know from experience that judges and magistrates in court don't like giving way to a lesser authority in terms of resolving a particular issue. So, really, I think what we're looking for is a mechanism whereby you can catch someone before they get in front of a court, and incur quite a lot of public expense to get there, to actually make sure that they go by the right route. I'm just wondering if there is a mechanism you can think of that might be appropriate.

[265] **Jocelyn Davies:** Well, I don't think we can predict what judges are going to do in the administrative court, but I guess the proposal here is that it's a possibility that a judge might see the wisdom in staying proceedings and referring to the ombudsman.

[266] **Ms Withers:** Yes, because the onus is on them to make that decision, I suppose. But I would say, in terms of kind of preventing people getting to the point: providing guidance, so people are very, very clear about what their options are, and also having access to timely and appropriate, independent advice, so they can be helpfully informed to make the decision.

[267] **Peter Black:** There should be a compulsory pre-hearing review of the case, maybe, to look at those options. Perhaps that's one way of doing that.

[268] **Jocelyn Davies:** Okay. Julie, shall we finish on your questions?

[269] **Julie Morgan:** Yes, just a few last questions. Liz, you recommended in your written evidence that the time limit in making complaints should be extended. Is that based on actual experiences that you've had?

[270] **Ms Withers:** I guess it was based on anecdotal information and considering some of the work that we've done in the past as a consumer organisation, particularly in the health sector, and, actually, the experiences in that sector in particular are that it can be more difficult for people to make decisions about making complaints; it can take people longer to actually make a decision. But, also, because of the specific kind of time limits—for instance, if a local health board needs to undertake an in-depth inquiry, they have six months to do that. So, they have six months to do that, and then, obviously, you've only got a year to go to the ombudsman. But, if it's taken you six months to decide to go through the internal complaints process, then, by the time you've got there, and if they have to do an in-depth enquiry, you're out of time to go to the ombudsman. I think that, for people making complaints in the health sector, you know, it can be very, very complex in terms of whether people feel well enough. It's a very complex area for people to choose to advocate and take complaints, particularly if they have ongoing issues and an ongoing relationship with the health bodies. So, that was the reason why, just to give people that additional option by just extending the period from the point at which they'd had their decision from the health authority.

[271] **Julie Morgan:** Right, thank you. Did you have anything? Did you agree with that, Ruth?

[272] **Ms Marks:** Yes.

[273] **Julie Morgan:** Fine. Then, finally, the use of the title 'ombudsman'. How do you think it can be regulated in a way that it can't be used by private bodies, which does cause confusion to the public generally?

[274] **Ms Marks:** I haven't actually got any direct evidence to offer on this, but I think that, if that regulation would increase clarity for individuals, and if it would therefore, by default, hopefully increase access, then I think it sounds like a good idea, but we have no specific evidence or information to share on that particular point.

[275] **Ms Withers:** I think I probably need some clarity on what that might look like, because I think there are issues about what's within the National Assembly's competency, but then there's also—. The ombudsman landscape is quite complex, so, in terms of schemes like the energy ombudsman and the financial ombudsman, they are licensed by the regulators, so, they are licensed and they are, obviously, set up—they were set up through the Consumers, Estate Agents and Redress Act 2007. So, they were kind of set up in statute, if you like, and they have very clear complaints procedures in place.

11:30

[276] So, I think there may be some outside of that, some schemes. For instance, you've got a couple of voluntary schemes in particular sectors that are outside of that, but broadly the issue is more to do with the complexity across different types of ombudsman schemes and people's lack of clarity about where to go, rather than the regulation. But I probably don't know enough about what the options would be to give you a clear answer.

[277] **Julie Morgan:** The question was really to do with private-sector bodies taking on the name and causing confusion and whether there ought to be some way of protecting the ombudsman.

[278] **Ms Withers:** I think I'd probably have to know more about the examples, because in a number of sectors they do have to be licensed by the regulator. So, the energy ombudsman and the financial ombudsman are examples of that, and they have to have clear procedures in place. We work very closely with the energy ombudsman, for instance.

[279] **Julie Morgan:** Okay, thank you. That's fine.

[280] **Jocelyn Davies:** Okay, thank you. We've run out of questions for you. Thank you very much. That was a very informative session. We'll obviously send you a transcript, as usual. If you'd check it for accuracy before we publish it, we'd be very grateful.

11:31

**Ystyried Pwerau: Ombwdsmon Gwasanaethau Cyhoeddus Cymru: Sesiwn
Dystiolaeth 9
Consideration of Powers: Public Services Ombudsman for Wales: Evidence
Session 9**

[281] **Jocelyn Davies:** If we move to our next item then, which is obviously still considering this particular issue of the Public Services Ombudsman for Wales's powers. Our next witness, who we're just bringing in now, is Dr Nick O'Brien. You've had his paper. I hope you've all read his paper. He's a specialist. I'll ask him, once he comes in, to introduce himself.

[282] Welcome to a meeting of the Finance Committee. Thank you very much for sending us a paper in advance. As you know, we are considering the powers of the Public Services Ombudsman for Wales. This is our ninth evidence session. Would you like to introduce yourself for the record, then we'll go straight into questions.

[283] **Dr O'Brien:** Yes. I'm Nick O'Brien; I'm an honorary research fellow at the local university.

[284] **Jocelyn Davies:** Obviously, we found your paper very informative. In general, what should be the main functions of our ombudsman and why?

[285] **Dr O'Brien:** What makes the ombudsman distinctive is that it's part of the democratic fabric, really. I would say it is having a constitutional role and holding the executive to account. It does that by receiving complaints from individuals, but, in many ways, I think those complaints should be seen as a means rather than an end. The end is ultimately the humanising of the bureaucracy, if you like, to use the language of the Government of the 1960s when it introduced the parliamentary ombudsman to the UK. So, yes, it's complaint handing, but, it has a broader, almost cultural, certainly a much broader systemic ambition, I think.

[286] **Jocelyn Davies:** You mentioned in your paper the Public Administration Select Committee and the role of the UK parliamentary ombudsman. What are the key changes that have been proposed there?

[287] **Dr O'Brien:** The UK parliamentary ombudsman legislation is 1967 legislation, so it needs significant modernisation, really. Access to the ombudsman is still through Westminster MPs, so the proposal is, which has been around for a long time, that that should be removed to give wider access. Complaints must be in writing and they're limited to the person aggrieved; again, a relaxation of that requirement is a key consideration. Relaxation of the so-called statutory bar, whereby the availability of remedy elsewhere is regarded as a reason for not investigating—relaxation of that provision has been proposed. The introduction of own-initiative investigations has also been suggested. So, very much along the lines that are proposed here, except in many ways the ombudsman in Wales is ahead of the UK parliamentary game in that the 2005 legislation already modernises the 1967 Act to a considerable extent.

[288] **Jocelyn Davies:** Well, if we're ahead of the game, we want to stay ahead of the game, I think. What about the emerging issues, then, that are likely to impact on the role of the ombudsman in the future? Are there any that you'd like to particularly draw our attention to?

[289] **Dr O'Brien:** Well, I think the way in which public services are delivered, the way in which public authorities act, the way in which they're constituted and their relationship with the private sector are obviously all factors that impact upon a public ombudsman, so the very nature of the public realm, if you like, is changing, so that has consequences. No doubt, expectations of individual citizens have changed and the way in which complaints can be made, the way in which people expect their voices to be heard, have changed, not least through the emergence of digital media. I suppose, looking ahead, we don't know what, in 10 years' time, will be the various media that might be at people's disposal, but we can be pretty sure they'll be very different from now. So, I suppose that, if ombudsmen are going to keep pace with the changes in the way in which public services are delivered, the expectations that people have of them and the media at their disposal for raising their concerns—whether it be tripadvisor mentalities or otherwise—if we are going to stay ahead of the game generally and specifically in Wales, we can't afford to stand still.

[290] **Jocelyn Davies:** Okay. Julie, shall we come to your questions?

[291] **Julie Morgan:** Yes, thank you. You mentioned in your paper about the EU alternative, an online dispute resolution directive, and that that may impact on the role of

public services ombudsmen. Could you expand on that and what you think the implications will be?

[292] **Dr O'Brien:** Well, I think, since the 1960s, there has been a general drift towards what you might call a more sort of consumerist mentality amongst ombudsmen. So, when the ombudsmen were first established in the 1960s, the remit was very much one of maladministration, and I don't think that was seen primarily as about service delivery. With the emergence of various private sector ombudsmen in the 1980s and 1990s, there was a shift towards quality of service being the main focus for ombudsmen and, I think, close identification of the ombudsmen, certainly in this country and throughout Great Britain, with a consumer rights approach. That's in contrast to many parts of the world where, actually, the main focus of attention is human rights and a much broader political constitutional focus. What the EU directive really does, I think, is probably reinforce the emphasis on consumer expectations. It is limited to the private sector, but it introduces various requirements in terms of speed, process, efficiency and so on, all of which will no doubt be welcomed. As one commentator remarked, there is a danger that you might end up with a sort of 'Complaints-R-Us' mentality, where the focus is purely upon high-volume, rapid rate resolution of complaints, quite possibly in a fairly subterranean way, so that some of the more distinctive, systemic aspirations of ombudsmen traditionally could be lost, and I think that that would be a shame. So, it's not so much that the things that the directive proposes are bad; it's just a question of whether or not the ombudsman should be completely wrapped up in them to the exclusion of other of its functions.

[293] **Julie Morgan:** But you did say that it is for the private sector only.

[294] **Dr O'Brien:** Yes, it is, but I think that the feeling amongst ombudsmen watchers is 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.

[295] **Julie Morgan:** So, you're wary of the consequences, basically.

[296] **Dr O'Brien:** So, I think it's probably cause for, yes, a certain amount of, perhaps not anxiety, but certainly we want to keep a watching brief.

[297] **Jocelyn Davies:** What would it require the ombudsman to do then? How does it impact on our ombudsman?

[298] **Dr O'Brien:** Well, the proposal is that there will be various quite tight time limits, for example. The most significant change overall is that they'll have to be a form of ADR, alternative dispute resolution, available for every consumer-to-business transaction. So, there will have to be that sort of extensive coverage. I suppose that the feeling is that, with those sorts of volumes, it will have to be a fairly light-touch operation, so that some of the more systemic, time-consuming, in-depth work could well be lost. I think that would be the major fear.

[299] **Jocelyn Davies:** Nick, did you want to come in on this point?

[300] **Nick Ramsay:** I did. I think you've just answered it. I'm very interested in that point that you just made. In this movement, although it's becoming more consumer-like, and consumer-driven, and that has merits, do you think there is a real danger that at the end of this process there will be a loss of that original purpose of the ombudsman? I think you said maladministration of public bodies was the original purpose, and there'd be no-one really to pick up that aspect of the work.

[301] **Dr O'Brien:** Yes, I think there is a danger of that. I think 'maladministration' is not a great term. Indeed, I heard some of your earlier discussion. I think, when research is done on ombudsmen and maladministration, the two words that most people in the public find difficult to understand are 'ombudsmen' and 'maladministration', which isn't a great start. *[Laughter.]* But it does denote, I think, something of that broader, qualitative thing that people want in public service delivery and indeed public authority behaviour, which perhaps isn't quite the same as straightforward service delivery from a purely consumer-benefit angle. I think the ombudsman has the capacity to have that slightly richer approach.

[302] **Jocelyn Davies:** So, just before we move on from this, obviously our ombudsmen can look at some private providers. Are you saying that there will be another alternative dispute person also dealing with private providers in Wales?

[303] **Dr O'Brien:** Not necessarily. The requirement will be for there to be some sort of overarching body that ensures that there is a provider of dispute resolution for each consumer-to-business transaction, and that could well include ombudsmen. The danger, I suppose, would then be, though, that an ombudsman would be drawn into that rather restricted role of straightforward individual dispute resolution.

[304] **Jocelyn Davies:** I see. This is a complication that we hadn't thought of. Maybe we need to—. Right, Julie, back to yours.

[305] **Julie Morgan:** You've obviously got a wide knowledge of all the methods that are used throughout the world—by the ombudsmen throughout the world. How does the Welsh Act, as it is, in 2005, stand up? You know, how is it regarded?

[306] **Dr O'Brien:** Well, I think it's certainly regarded, domestically, very well. As I said earlier, the 2005 Act has the benefit really of correcting some of the omissions and refining some of the elements of the earlier generation of legislation. So, in terms of transparency and relative flexibility, there's quite a lot left to the ombudsman's discretion, but not without boundaries. I think that it would be seen as a good example of a modern ombudsman remit. It is, I think, still very much within the British, English-speaking model, understandably, but I think some other refinements that have been talked about today are at the top end, if you like, of the spectrum of things that an ombudsman can do. So, again, it's just a further process of refinement. But it would be seen, I think, as one of the better examples of legislation on ombudsmen, certainly in the English-speaking world, anyway.

[307] **Julie Morgan:** Thank you.

[308] **Jocelyn Davies:** Obviously, you're an expert on ombudsmen the world over, so you see the use of own-initiative investigations and how that can benefit the public. How are they carried out in practice? Are there any lessons that we can learn from elsewhere where these things have gone slightly wrong?

[309] **Dr O'Brien:** Well, I think some of the best examples, or the most frequently cited examples, are from the state ombudsmen in Canada and Australia. Possibly, you've heard other people talking about Ontario. Others have a fairly progressive use of these sorts of investigations. Certainly, the lessons from there have been, I think, that there is a resource involved. It's quite a different activity, I think, to conduct a generic investigation from what's involved in simply responding to an individual's complaints. So, then it can be assumed that you can just carry on as normal. There tend to be specialist units that pick up these complaints, or these issues. The impact is generally reported to be high and, certainly in Australia, the national ombudsman, the Commonwealth Ombudsman as it is there, has always reported that taking a more active approach to own-initiative investigations in the late 1990s

and early 2000s did transform the institution, both in terms of visibility and impact.

11:45

[310] I think the UK experience of these sorts of inquiries more generally—and I'm thinking here about the use of similar sorts of powers by the equality commissions, in the 1970s and 1980s, really—does suggest that the process needs to be above reproach, because, clearly, those organisations that are going to find themselves under scrutiny will feel there's a reputational risk, even if an investigation is launched and then is largely benign. The very fact of a sector coming under scrutiny, or a particular organisation, will be a cause for concern. So, in the UK, there was a series of judicial reviews of the equality commissions, for example, in the 1970s, saying that their grounds were not strong enough for even suspecting there was a problem, so I think there are certain protocols that probably need to be put in place to ensure that that doesn't happen.

[311] I think the general lesson is that, in most places, this power is seen as a very useful supplement to the merely reactive power of responding to individual complaints. It allows a greater degree of strategic prioritisation. It allows ombudsmen to get involved at an earlier stage, perhaps before a particular complaint has crystallised, and, of course, ombudsmen very often only get involved very late in the process anyway. It can be sometimes years after the event. So, it gives ombudsmen greater salience and therefore helps deliver a more significant impact, and certainly makes the ombudsman more visible as an institution.

[312] **Jocelyn Davies:** In terms of working with other regulators—the ombudsmen who have these powers and have used them in other jurisdictions—has there been duplication, or have there been concerns about duplication with other regulators?

[313] **Dr O'Brien:** Well, in Australia, for example, I think there's normally a requirement to co-operate with the relevant commissioners. I think it probably is the case that the UK generally is more heavily regulated. I mean, the population of regulators is more dense than in most other countries, so it is perhaps more of an acute issue here than elsewhere. But I think the experience there, which presumably could be replicated here, would be through the use of memoranda of understanding and so on, and also a clear understanding, I suppose, of what's distinctive about the ombudsman's investigation. They're not there to simply duplicate a regulatory function. They're not primarily there prescribing rules and monitoring; generally, they are still reacting to intelligence about empirical situations that have gone wrong. It's just that they're not confined to an individual person's experience. It's a broader experience, so it's a difference of degree rather than kind, I would suggest, in that respect.

[314] **Jocelyn Davies:** So, I suppose what I'm hearing is that it's a very useful power, it can have a high impact, and it makes the office of the ombudsman more visible, but there are caveats, because there are reputational risks if you go about this in the wrong way. You need to be very clear and transparent in how you use those powers.

[315] **Dr O'Brien:** Yes.

[316] **Jocelyn Davies:** Okay. Chris, shall we come to your questions?

[317] **Christine Chapman:** Thanks. Is there a need to make complaints in writing, because, you know, we have heard that this could be a significant barrier to the public making complaints? Do you think we need to have that?

[318] **Dr O'Brien:** I think on equality grounds, I think it's desirable to remove the expectation of writing, which I think, for most people, probably still connotes letters. Indeed, I've heard legal advisers in ombudsmen's services debate whether in fact writing includes e-

mail, whether it includes texting, and so on. So, to avoid all those sorts of debates—and who knows where those debates could go over the next decade or so?—I think it has to be accepted that asking to have them in writing probably sends the wrong signal.

[319] In some parts of the world, ombudsmen receive complaints by people wandering into an office. In Scandinavia, that's the way an ombudsman is accessible: you know, face-to-face contact with citizens. It seems part of the democratic transparency of the institution that it has that facility. So, I think in terms of what it signals, in terms of the equality aspects of it, and I think in terms of the practicalities, as we see communication media change so rapidly, that, really, signalling writing as being the sort of Rolls-Royce way of complaining is no longer desirable.

[320] **Christine Chapman:** You mentioned Scandinavia. Obviously, there's a discretion here that the ombudsman can actually not have the complaint in writing, but do we need legislation to change that? You've mentioned Scandinavia. How different are the requirements for those countries?

[321] **Dr O'Brien:** I suppose, with legislation, people will always find ways of making it work. To that extent, you know, ombudsmen have made it work. It think it's as much there about what it signals and about the sort of style of operation that it creates expectations of. So, I think the Scottish legislation is the only domestic legislation that specifically talks about electronic means—so it talks about complaining in writing, or electronically, which, I think, is probably useful, because at least it signals that people can expect to complain electronically—but I think probably having open access more generally would be even more desirable.

[322] **Christine Chapman:** What about the workload, because, obviously, if you are opening it up to different forms of complaints, do you think there's a potential for an increased workload for the ombudsman?

[323] **Dr O'Brien:** There could be, but I think the number of contacts that most ombudsmen have by telephone and other means already vastly exceeds the number of complaints that they actually end up investigating. There will no doubt be a certain amount of work involved at the moment in turning people away and then people coming back and so on. I expect there will be savings to be made just by crystallising a complaint at that point when somebody's got the gist of what the complaint is over the phone, rather than going through a bureaucratic procedure, which then generates work later on, and also delays the complaint coming to the ombudsman, by which time, again, there will be extra work involved in understanding what's happened. So, I don't think, necessarily, that it can be assumed that it necessarily generates a massive amount of extra work.

[324] **Christine Chapman:** Can I just ask from the other side? Obviously, we've been looking at this from the perspective of the person who wants to complain. Is there the other perspective of the person who is being complained about and whether some of these maybe less formal ways of complaining would actually give them justice—you know, if they're being complained about? Is there a problem or could there be potential for that person not to have a fair hearing—the other person who is being complained about?

[325] **Dr O'Brien:** I think we probably have to trust ombudsmen themselves to ensure that their processes take account of those sorts of considerations. As now, I mean, generally, they have broad discretion to regulate their own processes and practices. I suspect, in the private sector, most private providers of high-street services, for example, are very accustomed to receiving complaints orally. It may not have been the norm in the public sector, but perhaps that's one of the ways in which public authorities do need to modernise themselves and make their own complaints processes more responsive to people's actual needs and expectations these days. So, again, I don't think it's an insurmountable problem. I think, yes, there would

have to be the usual balance of interests that would be reflected in the processes, but I think most ombudsmen could accommodate that.

[326] **Christine Chapman:** Okay, thank you.

[327] **Jocelyn Davies:** We've got about 15 minutes left and about, I don't know, 12 questions, so I'll just ask Members to be brief with their questions. Nick—I'm not picking on you. Go on.

[328] **Nick Ramsay:** I'm good at getting the hint. Great, thanks, Chair. Would it be beneficial if the ombudsmen had a statutory co-ordinating role in overseeing complaints across public bodies?

[329] **Dr O'Brien:** Yes, I think so. It's worked well in Scotland, as far as we can tell. I think lots of people have assumed that ombudsmen could carry out that sort of function in the past, anyway. That is one of their areas of expertise—complaint handling and getting the messages out to the public sector on what complaints handling looks like. It seems to sit well with the ombudsmen's actual experience and expertise. It does seem that, without having that role formalised, there's patchy implementation. One of the problems that people seem to have about public sector complaints in particular is how fragmented the system is and how fragmented the process is. Even the terminology that is used by different public authorities is so various that it does seem that something that integrated that and created standard expectations would be a step in the right direction. It's hard to see any body other than a public sector ombudsman having the standing and authority to do that.

[330] **Nick Ramsay:** You've mentioned Scotland, and you've obviously got experience of the UK system. What types of costs and benefits were identified, or do you think have come about, from the ombudsman having that statutory role of overseeing complaints?

[331] **Dr O'Brien:** Well, I think it is that streamlining of process and all that goes with that, in the way of simplification of expectation. It does appear, from the research, certainly, for example that was done on Westminster and Whitehall, that there was huge wastage in terms of the volumes of correspondence that were coming in to civil servants in the form of complaints and not being dealt with expeditiously. People talk about the complaints 'maze' that citizens encounter. So, both in terms of the rather unco-ordinated responses of public authorities and in terms of the lack of knowledge on the part of citizens about how to go about complaining and what they can expect, at the moment, it does appear that there's a huge wastage of energy and time—and money, no doubt.

[332] **Nick Ramsay:** You've created a good picture there of a mountain of complaints that may have built up in the past. Once the complaints are dealt with or while they're being dealt with, what data should public bodies collect on those complaints to help future complaints be dealt with better, or should they keep any at all?

[333] **Dr O'Brien:** Well, I think they certainly should. I mean, again, it does appear to have been one of the missions of public authorities over the years that they haven't always kept this sort of data, and that's partly a reflection, I suppose, of a slight defensiveness about complaints. So, perhaps even recording them was seen as a fault, or the fact that they existed was almost seen as an embarrassment. If complaints are going to be used as positive feedback, then those data need to be made available, in terms of volumes, the issues about which the complaints were made, the profile of the people complaining, the time it took to complain, the outcome, and all this sort of information ideally needs to be made available and should be part and parcel of the review of services that public authorities undertake routinely, you would hope. That is potentially one of the great untapped sources of intelligence, I suppose, about citizen experience more generally.

[334] **Nick Ramsay:** Is there a danger there of sweeping things under the carpet afterwards, because of embarrassment that the complaint was ever made?

[335] **Dr O'Brien:** Well, I think there has been in the past. I mean, I think there has been a perception that there was quite a strong blame culture and that complaints evoked a context in which blame was likely to be delivered. I think the lessons from the private sector have been that complaints should be seen as a more neutral expression of reaction to a service, and that service deliverers, in particular, can benefit and learn from that intelligence. So, I think there has been a shift. It does appear to have been one that has been led by the private sector. It's possibly been less the case in the public sector, but I think the signs are that that has begun to change.

[336] **Jocelyn Davies:** Ann, shall we come to yours?

[337] **Ann Jones:** Thanks. You've given some qualified support to extending the remit of the ombudsman to cover private healthcare organisations—the private healthcare sector. Would you like to expand on that qualification? What are the main principles that we should consider before extending that remit?

[338] **Dr O'Brien:** Well, I think the primary one is the one that I mentioned at the very beginning, which is just the danger of reducing the ombudsman function to that of straightforward consumer dispute resolution. I think, so long as we preserve the expectation of public service having other aspects to it, then there is a potential danger of completely merging the two operations. So, the standards that might be expected of a private body delivering a service where the primary mechanism for regulation is the market should be, I suspect, subtly at least, different from those governing a public authority. If you've got an ombudsman who is seeking to respond to complaints about both, then that's a slightly delicate juggling act that has to be performed. It's not that it can't be performed, but I think it's a cause for some reservation about leaping in.

12:00

[339] **Ann Jones:** In your view, is there a way you could look at somebody who receives private healthcare but funded by the public purse? Is that a barrier to extending private healthcare?

[340] **Dr O'Brien:** No, and I think that that coverage—. I think when, in effect, the service is being delivered on behalf of the NHS, there is no difficulty there, since the obligations that the NHS would have would relate also to the private deliverer. I suppose the sorts of situations that would be innovative would be where somebody is self-funding private care but it's seen as almost inseparable from the NHS care they're getting. Dentistry is sometimes used as a better example, where somebody goes for their NHS check-up and then pays for an x-ray. It just seems a bit daft that those two things can't be considered at the same time. That's a very simple and obvious example. I think it's those situations, though, that are being considered as an extension of the existing coverage.

[341] **Ann Jones:** Is it feasible for the ombudsman to raise a levy against private healthcare providers to pay for the complaints that they may handle?

[342] **Dr O'Brien:** It's what most of the exclusively private sector ombudsmen do, and that works perfectly well. Again, it would be a new departure for a public service ombudsman, and to that extent would, no doubt, bring some confusion, but it's eminently doable, I think.

[343] **Ann Jones:** Okay. Are you aware of any other examples of a private or public body

that should come within the remits of the public services ombudsman?

[344] **Dr O'Brien:** No. I think the only thing to say on that is that most of the ombudsmen in this country have a list of public authorities, and the other way of doing it is to include all public authorities and exclude them by exception, as it were, which might be easier for people to understand. You can end up with several pages of listed authorities, if you're not careful.

[345] **Ann Jones:** Okay; thanks.

[346] **Jocelyn Davies:** Okay. Ffred, shall we come to yours?

[347] **Alun Ffred Jones:** You're in favour of getting rid of the bar on the ability of the ombudsman to take a case if it could be or should be heard in a court or a tribunal, or by a Welsh Minister. What is the situation in general across the world with ombudsmen? Is that the usual position?

[348] **Dr O'Brien:** Yes. I think it's a peculiarly British preoccupation, and I think it probably gave more prominence to what is one amongst several factors that an ombudsman might want to take into account in deciding whether to accept a complaint. I think the assumption in the 1960s was that there was a danger that ombudsmen would seriously trespass on the remit of the courts, but that never really happened and it happens less and less now; indeed, access to the courts becomes increasingly rare, I suppose. So, it seems that it highlights one amongst several factors that might be relevant to deciding whether to take on a complaint unnecessarily, and creates all sorts of anxieties that probably don't need to exist.

[349] Elsewhere in the world, there tends to be a much stronger understanding of the very distinctive non-legal role of the ombudsman, I think, which means that the overlap is probably less perceived as a risk anyway.

[350] **Alun Ffred Jones:** Does that need to be defined in any way—the role of the ombudsman? Should it be defined more clearly in a declaration, or something?

[351] **Dr O'Brien:** Personally, I think it would be quite nice to have a preamble explaining what an ombudsman is, but we tend not to go for preambles very much in this part of the world, do we? But I do think, partly to address some of the issues we were talking about before, that if the ombudsman is not going to be seen simply as a private dispute resolver, then it would be useful to signal that in some way in the legislation.

[352] **Alun Ffred Jones:** Why would an individual choose to take a complaint to court rather than to the ombudsman? What would be the—

[353] **Dr O'Brien:** Well, if there are clearly issues involved—legal interpretation—that the ombudsman wouldn't be thought competent to resolve. Issues of remedy might also be relevant and, of course, an ombudsman's representation is not binding. So, there could be various situations where people might be rightly advised to go to court.

[354] **Jocelyn Davies:** Courts can quash decisions of other organisations; ombudsmen couldn't do that.

[355] **Dr O'Brien:** No.

[356] **Jocelyn Davies:** And, I don't know, it could be something like planning or something. Even if the ombudsman recommended that a decision be overturned, he isn't always in a position to do that himself; it's not legally possible. So the court's remedy is slightly different. Other legal advice is available from much more eminent people than me, by

the way. [*Laughter.*] Mike, shall we come to yours? We'll finish with your questions.

[357] **Mike Hedges:** I rely on you for my legal advice. [*Laughter.*]

[358] **Jocelyn Davies:** Do you?

[359] **Mike Hedges:** I've got two questions. On the ombudsman, you don't think that the—. You say that the ombudsman's job is to influence rather than sanction, and you don't believe that the ombudsman's recommendation should be binding. Is there anywhere in the world where it is binding, that you know of?

[360] **Dr O'Brien:** Most private sector ombudsmen in the UK are binding.

[361] **Mike Hedges:** No, I mean in the public sector.

[362] **Dr O'Brien:** In the public sector. No, not that I'm aware of. Normally, the whole ethos is one of persuasion rather than sanction.

[363] **Mike Hedges:** And something that I completely agree with is that code of conduct complaints should not be dealt with under the ombudsman's remit—one, the ombudsman is not suited to it, and secondly, it drags him into something that, perhaps, he shouldn't be involved in. Is there anywhere else where the ombudsman does deal with code of conduct complaints, or similar type of complaints, in other parts of the world?

[364] **Dr O'Brien:** I'm not sure.

[365] **Mike Hedges:** But you don't know of any.

[366] **Dr O'Brien:** I don't know of any offhand, no.

[367] **Mike Hedges:** That itself is an answer.

[368] **Jocelyn Davies:** Okay. Are there any other questions? Well, thank you very much. I don't know whether you've given evidence here in the Assembly before, but we'll send you a transcript before we publish it. If you could check that it's factually accurate, we'd be very grateful. And we're very grateful for the evidence you've given us today.

[369] **Dr O'Brien:** Thank you very much.

12:08

Cynnig o dan Reol Sefydlog 17.42 i Benderfynu Gwahardd y Cyhoedd or Cyfarfod

Motion under Standing Order 17.42 to Resolve to Exclude the Public from the Meeting

Cynnig:

Motion:

bod y pwyllgor yn penderfynu gwahardd y cyhoedd o weddill y cyfarfod yn unol â Rheol Sefydlog 17.42(vi).

that the committee resolves to exclude the public from the remainder of the meeting in accordance with Standing Order 17.42(vi).

Cynigiwyd y cynnig.

Motion moved.

[370] **Jocelyn Davies:** Right, I'll move the relevant motion then, under 17.42, that we now go into private session.

*Derbyniwyd y cynnig.
Motion agreed.*

*Daeth rhan gyhoeddus y cyfarfod i ben am 12:08.
The public part of the meeting ended at 12:08.*