Annex A
Consultation questions
Please comment on as many of the questions as relevant to you/your organisation, providing an explanation of each answer given:

General

01. Would the draft Bill improve the effectiveness of the role of the Ombudsman?
If so how?

There are limitations to the **current Public Services Ombudsman (Wales) Act 2005** Act and it would seem reasonable to amend the act to reflect the changes in Society and to reflect the Putting Things Right regulations

The draft Bill could improve some of the functions of the Ombudsman's office.

02. What, if any, are the potential barriers to implementing the provisions of the draft Bill? Does the draft Bill take sufficient account of them?

There is minimal reference to the potential impact in organisations of an increased number of cases being reviewed by the Ombudsman's office—there may be potential resource issues within organisations.

03. Are there any unintended consequences arising from the draft Bill?

See point 2

04. At what point should the impact of this legislation be evaluated?

There should be an interim evaluation after a year but a more comprehensive evaluation would take place after 2019 and implementation of the three year strategic plan.

Power to investigate on own initiative

05. Do you have any comments on the new power in section 4?

There would need to be further explanation of this power- I note that in the republic of Ireland between 2001 and 2010 only 5 such reviews have been undertaken. What would the triggers be for this power? There would need to be careful consideration of the role of other regulatory/ inspectorate bodies such as Health Inspectorate Wales and consideration of sharing of intelligence to ensure that the most appropriate body undertakes a review. In section 4 there is little discussion of the criteria to be applied.

06. Does the inclusion of this power raise any unintended consequences in the rest of the draft Bill?

The issue of consent from the complainant or Next of kin needs to be more fully considered**.**

Service users, e.g. patients, Public, Health Boards and Trusts, Elected representatives and Community Health Councils.

07. With whom should the Ombudsman consult under section 4(2)?

As above –each investigation will need to be assessed on a case by case basis

08. Should the Ombudsman have the power to initiate an investigation based on action that took place prior to the draft Bill/Act receiving Royal Assent (see section 4(4))? If so, should there be a cut-off point, beyond which the Ombudsman should not carry out an own initiative investigation?

No the power if agreed should be from Royal Assent of the draft bill. It may be useful to apply criteria of within 6 months of completion of the local resolution process.

09. What kind of issues should be included in the criteria for own initiative investigations under section 5?

Review of the appropriateness of who should investigate –e.g. is it more appropriate to be reviewed by Health inspectorate Wales or the Information Commissioner.

What is to be investigated and Why

10. What kind of evidence should be available to the Ombudsman to justify an own initiative investigation (see section 5(2)?

Thematic analysis or the seriousness of a concern—the potential for harm to be caused if an issue is not investigated and addressed.

It is a matter potentially in the public interest.

Who can complain?

11. Do you have any comments on the new definition of "member of the public "in section 7(2)?

There should be a reference to consent under this point—the person or the representative must have legal consent to request an investigation.

Requirements for complaints made and referred to the Ombudsman
12. Do you have any comments on the new requirements for complaints made to the Ombudsman in section 8?

As point 9 –the timescale should be within 6 months of completion of local resolution except in exceptional circumstances.

Voluntary settlement could also be discussed with the complainant in this section.

13. How should the proposed guidance for making a complaint to the Ombudsman be published and what formats should be available?

On the website, leaflets, posters and in other media formats e.g. twitter etc. Local newspapers and CHC information**.**

Matters which may be investigated

14. Do you have any comments on the new provision enabling the Ombudsman to investigate the whole complaint when a combination of treatment has been received by public and private health services providers (see sections 10(1)(d)and 10(2))?

It would not seem unreasonable; however would a private care provider be compelled to act accordance with the advice offered in an expert report. What would the sanctions be for failing to comply with a report and its recommendations?

15. Does section 10(2) adequately cover anyone who has received a combination of public and private treatment?

As above to point 14

16. Does the broadening of the matters which may be investigated in section 10(2) raise any unintended consequences in the rest of the draft Bill?

The issue regarding payments and the adherence to improvement actions would need to be considered in relation to private health care providers e.g. if a section 16 report was issued will the ombudsman's office take legal action if a private provider fails to comply with the request for publicity or refuses to issue a payment etc**.**

17. Is the definition of "private health services" in section 71 broad enough to cover anyone who has received a combination of public and private treatment?

Yes-however it may be prudent to reference relevant legislation rather than specific acts.

18. Should the Ombudsman have powers to recover costs incurred in investigating private health services?

The private health care provider has not requested an investigation and therefore it would not seem reasonable for them to be charged. However there may need to be provision if organisations are consistently failing to undertake their own comprehensive investigations.

19. Do you have any comments on the new definition of "family health service provider in Wales" in section 71, which is intended to capture, for example, a GP practice as a whole rather than just an individual GP?

This needs to be more explicit.

Investigation procedure and evidence

20. Do you have any comments on the procedure set out in section 16, in so far as it relates to the procedure for conducting an own initiative investigation?

There should be timescales included regarding the duration of an investigation.

21. Should the Ombudsman's power in relation to obtaining information, documents, evidence and facilities also apply to own initiative investigations and investigations into private health services (see section 17)?

Yes

Listed Authorities

22. Do you have any comments on the restrictions on power to amend Schedule 3 (see section 30(2) in particular), which are significantly narrower than the restrictions found in the 2005 Act?

It seems reasonable.

23. Are there any other bodies that should be included in the list in Schedule 3

'Listed Authorities'?

Welsh Health Specialised services

Health Inspectorate Wales

Complaints-Handling

24. Do you have any comments on sections 33 – 39 (which mirror sections 16A to 16G of the Scottish Public Services Ombudsman Act 2002)?

The Health Boards in Wales follow the Putting Things Right regulations. They are reviewed by Welsh Risk Pool who adopts a formalised and

consistent approach to monitoring compliance with the regulations and importantly the implementation of lessons learned from Concerns. The model complaints policy is embedded within the legislative framework of the regulations and should continue to be monitored via the Welsh Risk pool.

25. Is section 38(b) adequate to allow listed authorities to comply with their duties under other enactments, such as Freedom of Information duties?

This section is adequate and references the expectations of organisations to comply with other acts. It needs to be read in conjunction with sections 33(2) and (3) and 35(2) and a reasoned decision made regarding which act is most relevant to the issues raised.

Part 4: Investigation of complaints relating to other persons: social care and palliative care

26. Should Part 4 remain a standalone Part? Or should such investigations be brought within the Part 3 investigations process?

They should be brought within the Part 3 investigations process

27. If Part 4 should be brought within Part 3, are there any specific elements of Part 4 that should survive? Or can a blanket approach be applied?

A blanket approach should be applied for consistency and equity.

Part 5: Investigations: supplementary

28. Do you have any comments on sections 62, 63 and 64, which provide for joint and collaborative working with specified Commissioners and the Auditor

The time scales for joint investigations should be clarified and whether a joint report will be issued.

General for Wales?

29. Should sections 62 and 63 cover future Commissioners that may be created by the Assembly, including the Future Generations Commissioner for Wales?

Yes

30. Are there any further technical changes required in Part 5 of the draft Bill, to reflect the broadening of matters which may be investigated?

Appointment etc

31. The provisions of paragraphs 5 to 8 of Schedule 1 (disqualification) reflect largely the current provisions in the 2005 Act. Do these provisions require updating?

No they do not require updating.

32. Paragraph 7 of Schedule 1 provides that a person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified from a list of roles (listed in paragraph 7(1)) for a period of two years. Is the two year period appropriate?

Yes

33. Do you have any comments on the matters which are included within "paid office" in paragraph 8 of Schedule 1?

Should there be a reference to remuneration in relation to appraisal within the 7 year period of office ?.

Financial implications

34. Do you have a view on the financial implications of the new provisions set out in the draft Bill?

It would be assumed that increasing the methods by which one is able to raise a concern will increase the number of concerns raised. This would need to be considered from the perspective of other bodies as well the Ombudsman's office.

The Evans report has been clear in the recommendations that concerns teams need to be resourced. Whilst the Ombudsman's office would have

additional resource these proposed changes will have a domino effect upon these teams.

Other comments

35. Do you have any other comments you wish to make about the draft Bill or any specific provision within it?

The removal of the statutory bar to allow the Ombudsman to consider a case which has or had the possibility of recourse to a court, tribunal or other mechanism for review? (I.e. this would give complainants the opportunity to decide which route is most appropriate for them.)

There is a fundamental point in this change if the Ombudsman wishes to consider cases that would previously have been pursued via litigation and in essence the Ombudsman is requesting a stay of limitation then all expert reports should be Bolam compatible. This in fact should be implemented and embedded in the revision to the Ombudsman act. Care must be measured on what is reasonable and breaches in the duty of care should be clearly outlined in the report. If breaches are identified the aspect of causation should be considered.

The Ombudsman being able to refer cases to the Courts for a determination on a point of law -It would need to be identified as to who funds any legal requests. There should also be consideration of the role of counsel advice to clarify a point of law rather than proceeding directly to the courts.

There is a need to ensure that the experts used are appropriate to provide a view on the reasonableness of care provided. The expert reports need to be presented as reports that the clinicians would present in court because they are based upon the test of reasonableness.

There needs to be a transparent strategy to challenge the recommendation when they are unreasonable.