

Evidence to the Ethics and Integrity Commission's Public Sector Ombudsman Review

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Summary

Through the complaints they receive, ombuds have a unique system-wide view of how public services operate in practice, how citizens experience the state, and where risks and failures are beginning to emerge. This review creates an opportunity to shape a more coherent, citizen-centred ombuds landscape that not only improves redress but also drives service improvement and increases trust in public services.

Our recommendations in response to the Committee's questions include:

- Own initiative powers, but used sparingly for failings that cannot be anchored in complaints
- More effective data sharing to support investigation of systemic failings, alongside referral of thematic or systemic issues between ombuds and other bodies
- The use of ombuds schemes to promptly investigate of matters that might otherwise escalate into slow and costly public inquiries
- Legislation to standardise and streamline ombuds schemes across the UK, bringing England closer to the systems in place in the devolved administrations
- Removal of the MP filter for access to the parliamentary ombuds scheme
- Careful review of the Housing Ombudsman's experience of mandatory complaint standards to determine whether this should be extended to other areas
- An online "Ombuds Portal" or similar to offer a single point of entry to ombuds services.

Additionally, we would suggest that the Committee highlight the lack of a clear locus of responsibility for ombuds policy in government. To the best of our knowledge, there is currently no centre of expertise – in the Cabinet Office or elsewhere – that is capable of driving legislative reform; reviewing and the ombuds landscape and its relationship to regulators and other adjacent bodies; or clarifying the functions ombuds perform and imposing discipline and consistency over their structures and remits. Some of this gap is being helpfully filled by the Ombudsman Association and by collaborative working amongst ombuds themselves, but without a clear policy locus in government a disjointed ombuds landscape is likely to remain harder to navigate and less impactful than it could be.

Answers to the questions asked

1. Is the role of a modern public sector ombudsman primarily to investigate complaints from citizens? Should it also investigate systemic failings and support public bodies with institutional learning? If the ombudsman should have a role in promoting institutional learning, how should it balance this with its responsibility to provide redress for individuals?

1.1 In practice, complainants approach public sector ombuds for explanations of how and why a service failed and reassurance that it will not happen again, as well as for redress (although in some cases redress can be a matter for the courts instead). This means not only that complaints offer an opportunity for institutional learning, but that institutional learning is an important potential outcome sought by complainants.

1.2 Even when they do not have the remit to act at a systemic level, ombuds can publicly flag systemic issues when they receive multiple related complaints (as the PHSO does for instance when it receives complaints about access to dentistry). The data they can build on complaints may be, cumulatively, more comprehensive and more shareable than that held by services themselves. By providing such data to MPs, for example, they could bring matters to their attention in a way that could replace this function of the MP filter (see question 6).

1.3 Performing a systemic role may not always require new powers, then, but ombuds would need at a minimum the right to opine and publish, with stronger potential powers ranging from an expectation that service providers comply or explain to the ability to make binding recommendations. Our view is that, in the case of systemic failings, comply or explain may be the most proportionate approach (as is already the convention regarding PHSO recommendations in response to complaints).

2. Should ombudsman schemes be granted “own-initiative” powers to investigate areas of concern without having first to receive a complaint? What type of issue should be considered for launch of an own-initiative investigation?

2.1 The Venice Principles¹, recognised by the UN General Assembly, set out guidelines for how ombuds schemes should be set up, which include “discretionary power... to investigate cases” on their own initiative, the ability to make recommendations and the capacity to “challenge the constitutionality of laws and regulations”.² Public sector ombuds in Wales and Northern Ireland do carry out investigations using own-initiative powers,^{3, 4} while those in Scotland and England do not comply with the Venice Principles in this respect. Differences between ombuds in different parts of the UK reflect devolved decisions but nonetheless create practical imbalances, for example for citizens living in one area and using services in another.

2.2 Own-initiative powers would allow ombuds to investigate issues affecting those unable or unwilling to submit an individual complaint due to their personal circumstances; for example, people experiencing homelessness or with caring responsibilities. These powers would also allow ombuds to investigate issues of broad systemic harm where a single complainant would not be able to articulate a broad failing. In this regard, own-initiative powers would make it easier for ombuds to address systemic issues as discussed in question one. But granting ombuds schemes these types of powers if they do not already have them would require updated legislation and increased resource.

2.3 The largest public sector ombuds in England, the Parliamentary and Health Services Ombudsman (PHSO) has in the past called for own-initiative powers to bring it in line with ombuds schemes in Wales and Northern Ireland (see above), as well as in the EU.⁵ But in recent years the improving ability of ombuds to analyse data arising from complaints can both help them to address systemic failings (question 1) and to achieve some of what might otherwise be achieved by own-initiative powers. Systemic failings can be brought to light by probing data on complaints to identify common issues or sources of complaint. This data can identify the areas in which ombuds would presumably want to act on their own initiative, if they had the powers, and to achieve a similar result by responding to clusters of relevant complaints.

2.4 A practical consideration for ombuds is the added administrative burden own-initiative investigations may entail (for example running consultations on topics to be investigated). In practice ombuds might limit their use of these powers to the narrowest possible range of matters that cannot be accessed through complaints.

3. As an alternative to “own-initiative” powers, would there be benefit to the right of initiative being shared between the Government and the Parliamentary and Health Services Ombudsman (PHSO), with the Government directing the ombudsman to investigate a specific systemic issue or failure? How would this work in practice?

3.1 Any shared powers would need to be carefully designed to avoid undermining the independence that allows ombuds to hold public services and government to account. One potential mechanism might give either the government or the ombudsman – independently of each other – the autonomy to investigate an issue. In order for the ombudsman to retain true own initiative powers in this setup, it would need to have some resource set aside from government to allow it to complete its own investigations as well as those conducted on the government's behalf. If this ring-fenced resource did not exist, the ombudsman could be fully occupied completing investigations under the government's direction.

3.2 One potential use case for government-directed investigations is as an early-stage alternative to statutory inquiries. With a defined remit, terms of reference and dedicated resource, an ombuds could be asked by government to investigate and potentially resolve issues before they escalate. This model would make sense only in cases where it meaningfully reduces the chance that issues later result in a statutory inquiry – if a directed investigation was followed by an inquiry, it risks becoming an additional layer of bureaucracy and cost rather than a substitute.

4. Are there any barriers to public sector ombudsman schemes investigating potential or known systemic issues within their remit?

4.1 The outdated statutory basis for public sector ombuds schemes in England is the greatest barrier to them investigating systemic issues. Standardising legislation across the UK could remove barriers to ombudsmen investigating systemic issues as well as bringing all of them in line with the Venice Principles. A draft bill for reforming the ombuds landscape, including the creation of an integrated Public Service Ombudsman merging the functions of the PHSO and LGSCO, was published in 2016 but was not passed.⁶

4.2 Public understanding of and confidence in ombuds is also a potential barrier: a lack of awareness about the role of ombudsmen leads to fewer complaints, which in turn might make it more difficult for ombudsmen to spot systemic issues by extrapolating from groups of complaints on a common theme.

4.3 Another barrier to ombuds investigating systemic failures is their resourcing, which, as demand from individual complainants for ombuds services increases,⁷ restricts ombuds to working reactively on the most urgent cases, as opposed to scanning for potential systemic issues within their remit.

4.4 It may be possible to address systemic issues better if data can be shared more easily between ombuds and other public bodies. Just as innovations in data technology are making it easier to interrogate complaints data within an ombuds, they could also enable better analysis across domains if that data were shared. Innovation in data analysis and technology may also address some of the cost-related constraints described above.

5. What formal accountability mechanisms are required for an ombudsman with enhanced powers of investigation?

5.1 Parliamentary capacity for oversight is limited, and in this light we have previously made recommendations to improve the parliamentary oversight of regulators, for instance through clearer committee responsibilities, better secretariat support and potentially an expanded role for the NAO.⁸ Similar recommendations would apply to ombuds.

5.2 Government has a clear role in ensuring that legislation is kept up to date and in supporting parliament to keep the overall landscape of bodies consistent and streamlined. There is also an important ongoing oversight role for government as well as parliament (with the exception of the PHSO's case, since it handles complaints relating to government departments themselves).

5.3 Departmental accountability mechanisms for ombuds should follow a similar pattern to other public bodies. Important mechanisms may include day to day departmental sponsorship, budget setting, framework documents and business planning, consultation requirements, impact assessments and cost benefit analyses. The government should develop a coherent view of its expectations in these areas for ombuds, but there is no clear ownership or coordination of ombuds policy within central government, which has led to a lack of coherence across the landscape of oversight, regulation and redress bodies. The Cabinet Office's overall public bodies team has been significantly reduced in recent years, so rebuilding that is probably a precondition of building a credible policy centre for ombuds.

6. It is often said that the MP filter is a barrier to accessing the PHSO's services. Should complainants have direct access to an ombudsman or are there advantages to retaining the MP filter?

6.1 Of those complainants turned away from the PHSO for not having been referred by their MP, 86% do not return.⁹ The filter is therefore reducing demand for the PHSO's services.

6.2 This may be appropriate if MPs are effectively prioritising and refining complaints, resolving matters by other means, or grouping complaints from constituents which follow a common theme. However, it is unlikely that MPs will have the capacity to do these things consistently and effectively. In practice, one constituency may have an MP able or committed to returning complaints to the ombudsman, whereas a neighbouring constituency's MP may have other priorities. The MP filter also adds a layer of procedure that may disincentivise citizens from submitting a complaint, particularly for those who are not confident in approaching their MP.

6.3 No comparable ombuds in the UK or internationally requires complaints to be referred by elected officials.¹⁰ Without the filter MPs could, of course, still encourage their

constituents to make appropriate use of the PHSO when relevant issues come to their attention.

7. How effective are the PHSO, Local Government and Social Care Ombudsman (LGSCO) and Housing Ombudsman Complaint Standards in supporting public services to respond to complaints effectively and learn from their mistakes?

7.1 Complaint standards define expectations for good complaint handling within bodies overseen by the relevant ombuds. They set out how bodies should respond to complaints and how they should use them as a tool for learning and improving their service.¹¹

7.2 Approaches to enforceability vary, with ombuds covering a wider variety of smaller entities more likely to have formal requirements. The Housing Ombudsman's Complaint Handling Code has been statutory since April 2024, meaning landlords are legally required to comply with its requirements and that the ombudsman has powers to ensure compliance.¹² By contrast, the LGSCO's Complaint Handling Code is issued as 'advice and guidance' only, meaning adoption of standards is likely to be patchy and inconsistent across councils.¹³ Similarly, government-issued guidance states only that "departments may find it useful" to refer to the PHSO's complaint standards.¹⁴

7.3 Early signs from the Housing Ombudsman's first Annual Complaints Review since the code became statutory show improvements in complaint-handling practice, with the Ombudsman "cautiously optimistic" that the code is taking effect.¹⁵ Other ombuds should look closely at developments in housing and consider whether a read-across to their areas would be appropriate, or whether they already have effective means of influence over the relevant service providers.

7.4 Having said this, the Committee on Standards in Public Life (CSPL) report *Recognising and responding to early warning signs in public sector bodies* highlights that the variability in the way that complaints are handled depends heavily on the leadership of the public sector body in question.¹⁶ Formal standards are not a substitute for leaders building organisations that are open to learning and keen to hear complaints.

8. Should the PHSO and LGSCO be granted statutory powers to mandate adherence to their Complaints Standards?

8.1 See our answer to question 7. If the PHSO and LGSCO were granted these statutory powers, they would also need sufficient resource for enforcement. It would be misleading to create an expectation of compliance and enforcement that, for example, public services lacked the resource to meet and ombuds lacked the resource to monitor.

9. Should the PHSO and LGSCO findings be binding?

9.1 Making recommendations relating to specific complaints binding could enhance consistency of outcomes for complainants, in that otherwise some bodies may act on the ombudsman's recommendations while others may not. For more systemic recommendations, however, it could be harder to define what it means for findings to be made binding and how this would be enforced. An alternative could be that service providers be required to either comply with findings or to explain publicly why they have not done so (as is already the convention regarding PHSO recommendations, for example).

9.2 If ombuds' decisions were made binding, the structures of accountability surrounding them would take on heightened importance for both complainants and service providers. The legitimacy of the ombuds' findings is contingent on the trust citizens have in them. Maintaining this trust is important, both to encourage complaints to be made and given the onerous nature of judicial review in cases where citizens do not feel their complaint has been appropriately heard.

9.3 In the case of central government departments, there is an ombuds (the PHSO) but no corresponding regulator, which makes it important to build demand for the PHSO's findings among those in departments. Ministers and other parliamentarians have an important ongoing role in maintaining a high level of ambition to learn from experience.

9.4 The absence of a regulator for government departments might strengthen the case for the PHSO's findings to be binding but would risk turning them into a regulator by default, which is not their function.

10. Should the ombudsman and other bodies, such as the courts, be able to refer thematic or systemic issues to each other in order to examine wider failings beyond individual complaints?

10.1 Better coordination and mutual referral between ombuds and other bodies would help to identify and address systemic issues in particular. Ombuds have wide oversight of the issues arising in their fields, making them well placed to raise thematic concerns to other bodies.

10.2 Any system of referral would need strict safeguards surrounding confidentiality and data protection. In the case of investigations into systemic failings, it may be possible to refer themes without reference to individual cases, using anonymised information with the prior consent of complainants. The 'emerging concerns' arrangement in health and care regulators, where issues raised by one body can be shared with others to identify wider systemic risks, demonstrates a precedent for information sharing along these lines.¹⁷

11. What changes could make it easier for the public to navigate the public sector ombudsman landscape?

11.1 Making the ombuds landscape easier to navigate should start with addressing its current fragmentation. This fragmentation operates in two ways: within England, where multiple schemes cover different services, and across the UK, where the devolved administrations each have separate public service ombuds.

11.2 Different ombuds existing for different services in England leads to confusion among the public regarding to whom they should bring their complaints. In contrast, Scotland, Wales and Northern Ireland each have their own integrated public service ombuds, which is clearer in those administrations but contributes to a disjointed and uneven landscape across the UK. If the English model were brought closer to that in the devolved administrations, this would make the landscape easier to navigate for complainants across England as well as reducing confusion and inconsistency in those cases where there is cross-border service use.

11.3 These issues of fragmentation are not new: a draft Public Service Ombudsman Bill was published in 2016 which would have legislated for an integrated ombuds scheme but was never passed.¹⁸ Such a Bill is unlikely to be taken forward in the near future. If public sector ombuds schemes remain distinct, though, navigation could still be made easier by improving signposting and messaging. It should also be possible to develop something along the lines of an online 'Ombuds Portal', creating a one stop shop for citizens and helping them direct their complaint to the right body. In the interim, the PHSO's upcoming rebrand as the "Public Service Ombudsman" should help to move in this direction – and the PHSO recognises that as a result of this rebrand it will be more explicitly taking on the triage role across other ombuds that it already performs to a large extent.

11.4 More broadly, new digital technology may help the government to further clarify for citizens not only the inconsistent and complex landscape of ombudsmen, but also citizens' interactions with adjacent regulators, commissioners and advocates.

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