



House of Commons
Public Administration Select
Committee (PASC)

**Time for a People's
Ombudsman Service**

**Fourteenth Report of Session
2013–14**

*Report, together with formal minutes relating
to the report*

*Ordered by the House of Commons
to be printed 1 April 2014*

Public Administration Select Committee (PASC)

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

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Summary

The British public have a right to complain about public services when mistakes, misunderstandings and maladministration occur. They often do so not for their own benefit, but to ensure the service learns from its mistakes and the same defect is not inflicted on others. If an individual is not satisfied with the way a complaint has been handled by a government department, agency, or the NHS in England, the individual can refer their complaint to the Parliamentary and Health Service Ombudsman (PHSO).

PHSO's operations are prescribed by its governing legislation, now 47 years old. Ombudsmen established since that time have had the option of adopting the model used for PHSO, but have taken a different approach. PHSO is, as the Scottish Public Services Ombudsman put it, in danger of being "stuck in time". Our conclusions are aimed at creating a more effective People's Ombudsman service that better serves the public and Parliament. We recommend:

- As a priority, the iniquitous restriction on citizens' direct and open access to PHSO, known as the "MP filter", must be abolished, as is already the case in respect of NHS complaints.
- PHSO must be able to receive complaints other than in writing: such as in person, by telephone or online, just as is expected of any normal complaints system.
- PHSO should have "own-initiative" powers to investigate areas of concern without having first to receive a complaint.
- Parliament should strengthen the accountability of PHSO. PASC, along with other Departmental Select Committees, should make greater use of the intelligence gathered by the PHSO to hold Government to account.
- In the longer term, there is scope to change the way that ombudsman services are delivered.
- A consultation on the creation of a single public services ombudsman for England.
- At the same time, there must be a distinctive ombudsman service for UK non-devolved matters.

In our Report, *More Complaints Please!*, we raised our concern that a "toxic cocktail" in respect of complaints handling—a combination of a reluctance on the part of citizens "to express their concerns or complaints" and a defensiveness on the part of services "to hear and address concerns"—so often poisons efforts to deliver excellent public services. An effective ombudsman service can help to address this but change is urgently needed if PHSO, or any future public services ombudsman, is to ensure that it delivers a more effective service that is responsive and proactive. Complaints must make a difference and they must be welcomed and used to help to improve public services for everyone.

1 Introduction

1. Mistakes, misunderstandings and maladministration are common in our public services. The British public have a right to complain. They often do so, not for their own benefit, but to ensure the service learns from its mistakes and the same defect is not inflicted on others. However these complaints are often not resolved by the relevant service provider. If an individual remains dissatisfied with the way their complaint has been handled by a government department, agency, or by the NHS in England, that individual can ask for their complaint to be referred to the Parliamentary and Health Service Ombudsman (PHSO) or can themselves refer a complaint about the NHS. This Report seeks to examine the effectiveness of current arrangements in relation to the office of PHSO and the service it provides.

2. PASC scrutinises PHSO through annual appearances of the Ombudsman at Committee. These sessions focus on an examination of the strategy and performance of PHSO's service to complainants, as detailed in its annual reports. This Report follows a full examination of PHSO's performance and effectiveness, and how its remit and function can best serve both the public and Parliament. Government and public services have changed since the Parliamentary Ombudsman was first established in 1967. We have reviewed PHSO's powers, its relationship with Parliament, and how its role and purpose should be developed.

3. We have drawn on the work and role other ombudsmen. PASC visited the Netherlands to learn about the National Ombudsman of the Netherlands, and the relationship between that office, the Dutch Government and the Dutch Parliament. A summary of our visit is provided in the Annex. We held an informal meeting with members of the public who had submitted information pertaining to their experience of complaining to PHSO, and hosted a forum discussion on the *MoneySavingExpert* website in order to help shape our evidence session with the current PHSO, Dame Julie Mellor.¹ We have received, as PASC does as a matter of course, a number of individual complaints about public services and other matters, including complaints about the office of PHSO. PASC does not have the capacity, nor is it within our remit, to adjudicate individual cases. We recognise that this can be very frustrating for individuals. Nevertheless we are grateful for the insight such cases have added to our understanding of how complaints can be handled or mishandled.

4. Our conclusions are aimed at creating a more effective People's Ombudsman service that better serves the public and Parliament. We recommend a number of changes to bring this into effect. We have also reported on our parallel inquiry into complaints handling in government departments and agencies, in *More Complaints Please!*. We wish to thank all those who contributed to this inquiry, with special thanks to Dr Nick O'Brien for his support as a Specialist Adviser on this piece of work.²

1 MoneySavingExpert.com, [Public Administration Select Committee: Have your say on the complaints process](#)

2 Dr Nick O'Brien was appointed as a Specialist Adviser for this inquiry on 11 June 2013. The following interests were declared: an Honorary Research Fellow at Liverpool University; employed as a fee-paid judge in the Mental Health

History of the Parliamentary and Health Service Ombudsman

5. PHSO is made up of two component parts: The Parliamentary Ombudsman and the Health Service Ombudsman. The post of Parliamentary Ombudsman was established in the Parliamentary Commissioner Act (1967) as the public official who “may investigate any action taken by, or on behalf of, a government department or other authority”.³ The office of Health Service Ombudsman was created in the NHS Reorganisation Act 1973 following the omission of the NHS in the Parliamentary Commissioner Act. Both Acts have been subsequently modified on a number of occasions, for example in the Health Service Commissioner (Amendment) Act 1996, which broadened the scope of the investigations by enabling the Health Service Commissioner to investigate all aspects of NHS care and treatment, including clinical judgement.⁴

6. PHSO examines complaints of ‘maladministration’, a term which at the introduction of the Parliamentary Commissioner Act was defined by the then Leader of the House of Commons, Richard Crossman, as “bias, neglect, inattention, delay, incompetence, inaptitude, perversity, turpitude, arbitrariness and so on”.⁵ Today PHSO states that:

our role is to investigate complaints that individuals have been treated unfairly or have received poor service from government departments and other public organisations and the NHS in England.⁶

Review Tribunal; held various paid advisory and employed part-time posts at the Office of the UK Parliamentary Ombudsman and Health Service Ombudsman between 2007–2012; contracted to prepare a policy position paper in April 2013 and facilitate a roundtable of academics for the Ombudsman in May 2013 in respect of the forthcoming inquiry; contributing to a project jointly for the Parliamentary Ombudsman, the Financial Ombudsman Service and the Legal Ombudsman on options for future shared approaches to redress; paid advisor to the Northern Ireland Ombudsman on a project relating to the investigation of complaints.

3 Parliamentary Commissioner Act 1967, [Section 5](#)

4 Health Service Commissioner (Amendment) Act 1996, [Section 6](#)

5 *The Ombudsman – the developing role in the UK*, Standard Note [SN/PC/04832](#), House of Commons Library, November 2012

6 Parliamentary and Health Service Ombudsman, [Welcome to the Parliamentary and Health Service Ombudsman](#), accessed May 2013

Box 1: Summary of the development of the Parliamentary and Health Service Ombudsman.

1954–Crichel Down affair leads to public outrage at behaviour of public officials and to calls for an Ombudsman.

1961–Whyatt Report on behalf of JUSTICE recommends Parliamentary Ombudsman for UK.

1967–Parliamentary Commissioner (‘the Parliamentary Ombudsman’) established, and Parliamentary Commissioner for Administration Select Committee also created with dedicated oversight of the Ombudsman.

1973–Health Service Commissioner (‘Health Service Ombudsman’) established and post combined in person of the then Parliamentary Ombudsman.

1996–Health jurisdiction of Ombudsman extended to cover complaints about clinical judgment of health professionals.

1997–PASC assumes responsibility for scrutiny of PHSO’s reports.

2000–Colcutt Review of public sector ombudsmen recommends single public services Ombudsman (not implemented in England).

2007–Parliamentary Ombudsman, Health Service Ombudsman and Local Government Ombudsman enabled to collaborate on investigations.

2009–Publication of PHSO’s “Principles of Good Administration”, “Principles of Good Complaint Handling”, and “Principles for Remedy”.

2011–Law Commission report on public services ombudsmen recommends a fundamental review of public services ombudsmen in England (not implemented).

2 Perfecting the performance of PHSO

7. PHSO's strategy for 2013–18, *More impact for more people*, published in November 2013, sets out a high-level vision for the office of PHSO:

We want complaints to make a difference and help to improve public services for everyone.⁷

8. PHSO's operations are prescribed by its governing legislation. Complaints made by members of the public to the PHSO must be directed through a Member of Parliament, unless it is an NHS-related complaint, and the complainant must first have put their grievance to the department or public body concerned to allow officials to respond before PHSO can take the matter further. PHSO cannot investigate an issue unless there has been a complaint. Subject to this, it has statutory discretion to consider cases as it sees fit. PHSO has sole accountability for the decisions made, subject to judicial review. The office holder also has powers analogous to the powers of a judge of the High Court, namely the right to summon persons and papers, (i.e. to require the attendance of witnesses and to have access to information), and absolute privilege to protect his or her reports.⁸

Enquiries and investigations: recent performance

9. In 2012–13 PHSO received 26,961 enquiries, a 13% increase on the number of enquiries made in the previous year. 16,431 enquiries were about the NHS; 7,811 were about central government departments and organisations; and 2,809 were about organisations outside the jurisdiction of PHSO, such as local authorities, devolved governments, or non-governmental organisations such as privatised utilities.

10. Not all of the enquiries made were requests for PHSO to investigate a complaint. 26,358 enquiries were resolved, meaning that a decision was made about how to handle the enquiry:

- 3,285 were advised about where to complain;
- 5,562 were advised about how to complain to the NHS and government organisations; and
- 12,622 were advised about how to complain to PHSO, including advice on getting a complaint referred by an MP.⁹

7 Parliamentary and Health Service Ombudsman, [More impact for more people. Our Strategy 2013-2018](#) (November 2013), p3

8 *The Ombudsman – the developing role in the UK*, Standard Note [SN/PC/04832](#), House of Commons Library, November 2012, p3

9 Parliamentary and Health Service Ombudsman, [Aiming for Impact. The Ombudsman's Annual Report and Accounts 2012-13](#) (July 2013), p18

11. 4,889 enquiries were “looked at closely”, resulting in formal investigations in 467 cases. Of the remaining enquiries that were looked at closely, 508 were resolved without the need for a formal investigation, and in 3,914 cases PHSO concluded that there was no further action to take.¹⁰

12. Based on PHSO’s customer survey in 2012–13, of those who made an enquiry to PHSO, 73% were satisfied with the service provided. 92% of customers whose complaints were investigated were satisfied with the service provided. PHSO noted that the final adjudication—whether or not a complaint is upheld—“has a significant impact on their satisfaction levels”. Nevertheless, 57% of those whose complaints were investigated but not upheld were satisfied with the service.¹¹

“More investigations for more people”

13. The main criticism we heard from a number of individual complainants was about the decision taken by PHSO not to investigate complaints. One, for example, suggested that:

PHSO consistently identify malpractice in fewer than 2% of the total number of cases presented. Therefore 98% of complainants do not receive remedy and feedback to organisations is reduced accordingly.¹²

14. PHSO has statutory discretion to consider cases as it sees fit, the office is not obliged to investigate every complaint. The potential impact of PHSO’s decision not to investigate a complaint has recently been demonstrated in the now notorious Morecambe Bay case. Mr James Titcombe made several complaints against the University Hospitals of Morecambe Bay NHS Foundation Trust, following the death of his baby in November 2008. Mr Titcombe’s complaints related to the investigation into his baby’s death and the way staff treated him and his wife. He took these complaints to PHSO in 2010, but they were not investigated. PHSO subsequently investigated and published a report in February 2014, upholding three out of four of the complaints made. That report explains that in 2010 the then Ombudsman declined to investigate Mr Titcombe’s first complaint, but that the current PHSO decided to investigate outstanding elements of the complaint “in the light of new evidence from the coroner’s inquest”. With regard to the original decision, taken in 2010, the report said:

Although the decision made at the time was lawful, with the benefit of feedback from the complainant and others, it is not a decision that we would make today. We recognise that had we investigated, this family might have had answers to some of their questions regarding what happened to their

10 Parliamentary and Health Service Ombudsman, [Aiming for Impact. The Ombudsman’s Annual Report and Accounts 2012-13](#) (July 2013), p18

11 Parliamentary and Health Service Ombudsman ([PHS 40](#))

12 Della Reynolds ([PHS 19](#))

baby sooner than they did. We are sorry for the impact that has had on the Father and his family.¹³

15. As part of PHSO's strategy for 2013–18 Dame Julie Mellor, the current PHSO, stated that her office will investigate more complaints. She told us that:

In 2014–15 we expect to have the capacity to investigate and resolve 4,000 cases, with a view to resolving even more in the longer term.¹⁴

The reasons for this were explained in PHSO's 2012–13 Annual Report:

Previously, we did a lot of preliminary work on complaints before deciding whether or not to carry out a full investigation. If we decided not to investigate a complaint, we could still provide answers and explanations, but our decisions at this stage were not formal and final findings. Now under our new process, complaints that meet some basic criteria will usually be investigated straight away.¹⁵

16. This new approach is similar to that of other ombudsmen. Dr Alex Brenninkmeijer, the National Ombudsman of the Netherlands, told us during our visit to the Netherlands that an ombudsman should look at all complaints that fall within its competence. The Scottish Public Services Ombudsman, Jim Martin, told us that:

we will investigate everything that is fit for my office to look at. If something is out of jurisdiction, we will not do that, and if something comes to us prematurely, we will not do that, but everything else will get some form of investigation.¹⁶

17. Dame Julie Mellor explained the change to us, stating that the lower threshold for taking on cases means “the assessment process is a lot, lot shorter”, but that the criteria for deciding whether to investigate are the same; if someone has experienced injustice, is this due to maladministration or service failure, and is the injustice unremedied. She explained that:

Historically, we took what is called a merit-based approach, apparently, which is [that] we set a very high hurdle, and so we did not investigate unless there was considerable evidence that those criteria were met. Therefore, it was pretty likely that we were going to uphold cases if we took them on for investigation, hence our uphold rate of 86% historically.¹⁷

13 Parliamentary and Health Service Ombudsman, *Four investigation reports concerning the University Hospitals of Morecambe Bay NHS Foundation Trust* (February 2014) [HC 1096](#), p4

14 Parliamentary and Health Service Ombudsman ([PHS 48](#)). Please note that the published written evidence says “2013–14”, however we were notified by PHSO that this was an error, and should read “2014–15”.

15 Parliamentary and Health Service Ombudsman, [Aiming for Impact. The Ombudsman's Annual Report and Accounts 2012-13](#) (July 2013) p20

16 Q72

17 Q168

18. PHSO said that 576 cases were taken on for investigation in the first quarter of 2013–14: more than the service took on in the whole of the previous year.¹⁸ Since April 2013, 2,688 cases had been accepted for investigation compared to 352 the year before.¹⁹ In further evidence, PHSO provided us with a comparison of the months April to November in 2012 and 2013. This showed that:

- in April to November 2012, 313 complaints were passed on from the assessment stage to investigation stage;
- in April to November 2013, 2,436 complaints were passed on to the investigation stage; and
- of those passed to the investigation stage between April and November 2013, 869 had been completed by December 2013.²⁰

19. Professor Brian Thompson, Senior Lecturer, School of Law, University of Liverpool, said in respect of the decision to investigate more cases that:

I would like to know how she is doing it. It has been announced; the methodology of this has not been explained. I would welcome it. I think perhaps there were not enough investigations being carried out, but we will just have to wait and see.²¹

20. Dame Julie Mellor told us that to achieve this change, staff have been redeployed to focus on investigations. This was in contrast to other organisations who, for example, recruited extra staff to deal with changes in caseload. Tony Boorman, acting Chief Ombudsman, Financial Ombudsman Service, told us that, due to a rise in PPI claims, he had “needed to recruit 2,000 additional staff”, which had doubled the size of his organisation.²² He also told us his concerns about forecasting the number of complaints a service might need, or be able, to deal with:

I think there is an issue here, as our experience shows, that when you turn the focus on accessibility for individual customers, in this case for individual citizens, it is very difficult to forecast the volume impact that will have. Often, events which may be unconnected to your own personal experience, and Mid Staffs is a great example of that, will generate a real set of concerns and encourage people to make complaints they probably should have made in the first place. When people turn on a more individually-tailored complaints-handling system, they need to be aware of the potential pent-up demand that exists.²³

18 Parliamentary and Health Service Ombudsman ([PHS 48](#))

19 Parliamentary and Health Service Ombudsman, [More cases being investigated than ever before](#), accessed February 2014

20 Parliamentary and Health Service Ombudsman ([PHS 48](#))

21 Q8

22 Q127

23 Q128

21. The Public and Commercial Services (PCS) Union, which represents employees in the Civil Service and government agencies, expressed its concern about the roll out of this new strategy. It told us that the shift towards investigating more complaints was welcomed by their members but that they had raised questions about how the service would cope in light of “a reduced budget, decreasing staff numbers, and the hugely increased workload”. PCS told us that concerns were raised about the possibility of an increased backlog of work and that this had proved to have happened, with “470 complaints awaiting initial processing, plus 443 in the investigation queue” by mid to late October 2013.²⁴

22. PASC received a significant amount of correspondence from individuals who were dissatisfied that the Parliamentary and Health Service Ombudsman had declined to investigate their complaint. We welcome the decision taken by the Parliamentary and Health Service Ombudsman to investigate more complaints as a way to remedy such concerns.

23. The Parliamentary and Health Service Ombudsman must be explicit in how the decision to investigate more cases is being achieved, to demonstrate that it represents a significant change in the quality of investigations and upheld complaints and that it is a much more substantial shift than a re-classification of current workloads.

The investigation process

24. In response to PHSO’s new strategy to investigate more complaints, one member of the public said:

PHSO should certainly not be attempting to take on more complaints unless it is able and willing to investigate them properly, rather than finding excuses to dismiss them.²⁵

Reaching a decision

25. Several individuals made reference to the way that PHSO handled their complaint, particularly in respect of how their evidence was treated compared to the evidence presented by the service about which the individual was complaining. Some felt that the handling of their investigation had been poor. One individual told us that:

PHSO's operation is completely opaque: it did not tell me what evidence it had received, considered, or rejected, or give a rationale for its decisions. PHSO seems determined to minimise contact with complainants.²⁶

26. One couple referred to the handling of evidence in their investigation and subsequent request for an internal review. In their case, they raised concerns about the evidence submitted by the NHS Trust they were complaining about:

24 Public and Commercial Services Union ([PHS 49](#))

25 Tim Bartlett ([PHS 26](#))

26 [As above](#)

We had made a Freedom of Information request for the set of medical records the Trust had supplied to the Ombudsman. [...] When we checked them against our own set we found the Ombudsman had more than 100 records missing. The records were missing at every point where the Trust could have been accused of neglect.²⁷

They then provided the PHSO investigator with records that PHSO did not appear to have, but found that in the final draft of PHSO's report, those records had still not been taken into account. They suggested PHSO should have known about the records "if they had read our complaint letters with due attention".²⁸

27. Dame Julie Mellor told us that complainants receive an investigation report that "gives them that rigorous account of what happened".²⁹ In providing a complainant with an explanation and justification for the subsequent decision taken on a complaint, PHSO said:

We explain our findings and how we have reached them by setting out in the report the evidence we have relied on or which has influenced us in reaching our conclusions. We explain what that evidence said or showed, and how that led us to reach the conclusions we have reached. In health complaints, we usually also share with the complainant the clinical advice we have received. Before we reach our final decision we share our draft investigation reports to give the parties an opportunity to let us know if we have misunderstood, or failed to consider anything relevant to the complaint. In addition, even though it will be set out in the report, if a complainant asks to see the evidence we have relied on or which has influenced us in our decision-making, we will supply them with copies of the original documentation.³⁰

Reviewing a decision

28. To challenge a decision made by PHSO, an individual must first submit a formal request for an internal review within three months of the decision being made. Grounds for seeking a review should be based on whether there are new material facts or factual inaccuracies or whether PHSO has "overlooked or ignored parts of the complaint that could change the decision".³¹ PHSO can decide not to review its original decision. If a review is carried out, PHSO does not re-examine the original complaint, but reviews the relevant evidence to ensure it was all taken into account. This is the final stage of the PHSO internal complaints process. If an individual still does not agree with the final decision of PHSO, they can make an application to the High Court for judicial review.

27 Margaret and Janet Brooks ([PHS 09](#))

28 [As above](#)

29 Q174

30 Parliamentary and Health Service Ombudsman ([PHS 57](#))

31 Q189

29. In 2012–13 PHSO received 1,004 complaints about the service it had provided or about a decision that had been taken on a complaint. 61 complaints about the service that PHSO had provided were upheld or partly upheld. 979 complaints about decisions that had been taken on a complaint were looked at. 103 of these were upheld, and resulted in action being taken by PHSO that included:

apologising, giving a better explanation of our decisions and in some cases agreeing to look again at our original decision.³²

In 2012–13, four applications for judicial review were made. All were refused.³³

30. Members of the public commented on how hard they feel it is to challenge a decision. Some were unhappy about PHSO's internal review process because it only looks at the method of the decision, but excludes reconsideration of the decision itself. One individual, for example, said that:

Customers can ask for a review of decisions, but the review is [of] the system used, not the decision itself. Why tell people they can have a review when that does not happen.³⁴

Some complained that the process of judicial review is unsatisfactory, because, as one told us, no-one had ever won a judicial review case against PHSO. One individual felt it was “encouraging people to spend their money [...] with PHSO knowing people will not win”.³⁵ Another felt that judicial review was “not an appropriate mechanism to redress this imbalance” as it was too costly.³⁶ Another complainant echoed this:

I tried to use judicial review, but the HSO's response to this is to out-source the legal work to solicitors and then threaten the appellant (me) with heavy expenses unless the claim is withdrawn [...] I found the financial risk too great.³⁷

31. We were told that complainants receive a detailed account of the reasons underpinning decisions taken by the Parliamentary and Health Service Ombudsman (PHSO) in respect of their complaint. Nevertheless some complainants told us they do not feel all the evidence available in their complaint was taken into account, and evidence was not treated equally. We recognise that not all complainants may feel this way, but PHSO should review the transparency of its own arrangements for reviewing its decisions.

32 Parliamentary and Health Service Ombudsman, [Aiming for Impact. The Ombudsman's Annual Report and Accounts 2012-13](#) (July 2013), p16

33 [As above](#)

34 Brenda Prentice ([PHS 01](#))

35 [As above](#)

36 Della Reynolds ([PHS 19](#))

37 D R Tweedie ([PHS 02](#))

32. When explaining to complainants the findings of an investigation and how decisions have been reached, the Parliamentary and Health Ombudsman (PHSO) sets out the evidence that has been relied on or which has influenced investigators in reaching their conclusions. In addition, PHSO should make clear what evidence it received and considered as part of that investigation, and if necessary, what evidence was not used to form the conclusion, and why.

3 PHSO: “stuck in time”?

Criticisms of an outdated system

33. The office of PHSO is 47 years old. The potential scope for its development has been highlighted in the last 15 years by a variety of reports and academic commentary, including those by PASC.³⁸ One of the most searching critiques of PHSO in the overall context of public redress was the research conducted for the National Audit Office (NAO) in 2005 by Professor Patrick Dunleavy, Professor of Political Science and Public Policy at the London School of Economics, and colleagues. The research was published in *Citizen Redress; what citizens can do if things go wrong in the public services*. It included a survey that found that only one respondent in 14 mentioned any kind of ombudsman in connection with redress; no-one in more than 50 focus groups knew of the Parliamentary Commissioner for Administration; and respondents thought it to be irrational that the office of Parliamentary Ombudsman should apparently have two names and “be known by an alias”.³⁹

34. This research was supplemented by a study in 2010 led by Professor Dunleavy, *Joining Up Citizen Redress in UK central government*. It acknowledged the “prestige of the Ombudsman’s role” but, referring to the requirement to report to PASC, and to the influence of the post-holder, it said:

as a consequence of its institutional setting, its organisational culture and the leadership style of recent post-holders, [PHSO] does not seem to have played much of a role in informing civil service thinking on the bulk handling of complaints.⁴⁰

35. In 2011 the Law Commission, the independent body created to review law and to propose reform, produced a report on Public Services Ombudsmen and made a series of recommendations to improve access to public services ombudsmen, and their “independence and accountability”. The report recommended that the Government establish a wide-ranging review of the public services ombudsmen and their relationship with other institutions for administrative redress, such as courts and tribunals.⁴¹

38 Public Administration Select Committee (PASC), Fourth Report of Session 2009–10, [Parliament and the Ombudsman](#), HC 107

39 National Audit Office, *Citizen Redress; what citizens can do if things go wrong in the public services* HC (2004–2005) [21](#), p64

40 Patrick Dunleavy et al, *Joining up citizen redress in UK central government*, In: Adler, Michael, (ed.) *Administrative Justice in Context* (2010)

41 The Law Commission, *Public Services Ombudsmen*, HC (2011–12) [1136](#)

Box 2: Recommendations in the 2011 Law Commission review of Public Services Ombudsmen.

- The appointment of the Parliamentary Commissioner on the nomination of an individual by Parliament.
- Parliament, and the National Assembly for Wales in the case of the Public Services Ombudsman for Wales, develop close links between all the public services ombudsmen and appropriate Select Committees.
- The repeal of legislative provisions requiring complaints to be made in writing.
- The removal of statutory bars that restricts the ability of citizens to choose the institution for administrative redress they prefer.
- The reform of the “MP filter”, so that citizens can make complaints direct to the Parliamentary Commissioner.
- The findings of the public services ombudsmen, except the Housing Ombudsman, should be made binding.
- All of the public services ombudsmen should have powers allowing them to publish and distribute their reports and other materials widely.

Challenges facing the ombudsman service

36. The debate about how ombudsmen schemes are likely to develop in the future, and about the ways in which ombudsmen will need to operate to deliver a successful service, has become more prominent. Queen Margaret University (QMU) Edinburgh, for example, recently published a report commissioned by the Legal Services Ombudsman, *The future of ombudsman schemes: drivers for change and strategic responses*, that outlined three main areas of challenge for ombudsmen:

- **Expectation of citizens:** consumer demand and expectation is changing, and citizens are “increasingly demanding and resourceful and with greater expectations of speed, simplicity and online provision”.
- **Service delivery:** changing service delivery, in particular the blurring of the lines between private and public sector service provision, is impacting on ombudsmen, and “with public sector ombudsmen investigating private companies, the public and private ombudsman models [are] converging and the logic behind separation [is], perhaps, becoming undermined”.

- **Policy environment:** policy issues such as “continuing fiscal restraint” and changes to consumer advice are changing the operation of ombudsmen.⁴²

37. The QMU report concluded by identifying eight specific ways that ombudsman schemes need to change to respond better to individuals and to complaints handling:

- from formal to informal;
- from time intensive to quicker and cheaper;
- from paper-based to online;
- from written to oral;
- from low public profile to high public profile;
- from reactive-to-environment to proactive-in-environment;
- from complaint resolution to systemic improvement; and
- from sectoral jurisdiction to integrated jurisdiction.⁴³

38. The EU Directive on Alternative Dispute Resolution (ADR) is a further challenge. It is intended to promote schemes that are available to help complainants resolve their disputes outside court. The European Commission highlighted that the diversity and uneven geographical and sectoral availability of ADR in the EU prevents consumers and business from fully exploiting their potential. The European Commission’s Directorate General for Health & Consumers published new legislation on ADR and ODR (online dispute resolution) in June 2013.⁴⁴ The EU ADR Directive, although not applicable to the PHSO, nevertheless sets a benchmark, which requires all member states to provide consumers with ways to solve all contractual disputes through ADR procedures and without going to court. ADR schemes will have to be impartial, transparent, fair and effective, and consumers must be given easy access to the right ADR entity. The implications for ombudsmen services in the UK of the EU directive on ADR have yet to be given comprehensive consideration.

Comparisons with other ombudsmen

39. The remit and powers of Ombudsmen in the UK and elsewhere are all different. In the Netherlands, for example the National Ombudsman of the Netherlands investigates complaints brought to him by members of the public and can also launch investigations without a specific complaint having been made. His authority embraces almost the entire

42 Chris Gill, Jane Williams, Carol Brennan and Nick O’Brien, Queen Margaret University Edinburgh [The future of ombudsman schemes: drivers for change and strategic responses](#) (July 2013), p2-3

43 [As above](#), p4

44 European Commission, [New legislation on Alternative and Online Dispute Resolution \(ADR\) and \(ODR\)](#), accessed June 2013

sphere of public administration: not just the Dutch ministries and their different departments, but also other administrative authorities, the police, the water authorities, the provinces and many municipalities. The public have direct access to the National Ombudsman to make a complaint.⁴⁵

40. Ombudsmen in the devolved nations of the UK have developed different models of working. The Public Services Ombudsman for Wales was established by the Public Services Ombudsman (Wales) Act 2005. It brought together the jurisdictions of various offices, namely the Local Government Ombudsman for Wales, the Health Service Ombudsman for Wales, the Welsh Administration Ombudsman and the Social Housing Ombudsman for Wales. The Ombudsman has a dual role: under the Act he investigates complaints by members of the public concerning maladministration, failure in a relevant service or failure to provide a relevant service by any "listed authority" in Wales; and under the Local Government Act 2000, he is responsible for examining ethical standards in local authorities.⁴⁶

41. The Scottish Public Services Ombudsman Act 2002 set up the Scottish Public Services Ombudsman (SPSO). It replaced three previous bodies: the Scottish Parliamentary and Health Service Ombudsman, the Local Government Ombudsman for Scotland and the Housing Association Ombudsman for Scotland. SPSO's jurisdiction broadly covers devolved and local areas of government and related bodies. This includes local authorities; prisons (but not the police); the health service; registered social landlords; the Scottish Government, colleges and universities; and most Scottish NDPBs. He can handle complaints by or about private companies providing services on behalf of one of these public sector bodies. He can also receive complaints about one utility, Scottish Water, which remains state owned.⁴⁷

42. The Northern Ireland Ombudsman is made up of two public offices: the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints. The Office of the Ombudsman was established in 1969, but its current governing statutes are the Ombudsman (Northern Ireland) Order 1996 and the Commissioner for Complaints (Northern Ireland) Order 1996. The Northern Ireland Ombudsman's role is to deal with complaints of maladministration by Government and public bodies in Northern Ireland.⁴⁸ The Committee for the Office of the First Minister and Deputy First Minister in the Northern Ireland Assembly, which undertakes a scrutiny, policy development and consultation role with respect to the Office of the First Minister and Deputy First Minister, recently proposed changes to the operation of the Northern Ireland Ombudsman.⁴⁹ The proposals would reform jurisdiction and powers and provide for the appointment of a Northern Ireland Public Services Ombudsman (NIPSO) by Her

45 National Ombudsman of the Netherlands, [About the National Ombudsman of the Netherlands](#), accessed October 2013

46 Public Services Ombudsman for Wales, [Welcome to our website](#), accessed June 2013

47 Scottish Public Services Ombudsman, [We are Scotland's Ombudsman](#), accessed June 2013

48 Northern Ireland Ombudsman, [Welcome to the NI Ombudsman website](#), accessed June 2013

49 Northern Ireland Assembly, [Office of the First Minister and Deputy First Minister](#), accessed February 2014

Majesty on the nomination of the Assembly. It would also provide for NIPSO to report to the Assembly and Assembly Committees on a basis to be laid down in Standing Orders.⁵⁰

43. These ombudsmen, particularly in Scotland and Wales, are empowered by new laws that give them power to act on behalf of the public. In evidence, ombudsmen suggested that these laws allowed them to offer an improved service. Dr Tom Frawley, Northern Ireland Ombudsman, said of the proposed changes being made in Northern Ireland that:

Our colleagues in Wales and Scotland have very new legislation that is fit for purpose and fit for the time, and we have derived great benefit from looking at their practice.⁵¹

44. Jim Martin, Scottish Public Services Ombudsman, suggested to us that the parameters within which the PHSO worked are no longer fit for the delivery of an effective ombudsman service:

The Scottish Parliament had the option of replicating the model in England when it created my office, and chose not to do so. It was a deliberate decision. My office is made up of an amalgam of previous UK ombudsmen coming to Scotland. I think the reason they did that is that the model in England is stuck in time. It probably was good for its time, but I think its time has passed.⁵²

45. The restrictive legislation governing the Parliamentary and Health Service Ombudsman (PHSO) means it is unable to meet the standard set by Scotland, Wales, Northern Ireland and elsewhere. An ineffective instrument of democratic accountability cannot remedy failures in public service delivery. PHSO is impeded by out-of-date legislation so it fails to meet the expectations of today's citizens. It is, as Scotland's Public Service Ombudsman put it, in danger of being "stuck in time". The UK needs new legislation. The Ombudsman should be seen as a People's Ombudsman service as well as Parliament's Ombudsman. We address how this is to be achieved later in the report.

46. In our report, More Complaints Please!, we recommend that there should be a minister for government policy on complaints handling. In addition, we recommend that the minister also take responsibility for policy in relation to the Parliamentary and Health Service Ombudsman and that he or she should bring forward the new legislation required to enable citizens to have a simpler and more straightforward Ombudsman service that is responsive to citizens and their expectations.

50 Northern Ireland Assembly, [Report on Proposals for a Northern Ireland Public Services Ombudsman Bill](#), accessed February 2014

51 Q72

52 Q72

4 The case for open and direct access

47. Ease of access to an ombudsman is recognised as an essential feature of any ombudsman service. The statement on the role of ombudsmen agreed by the national ombudsmen of all EU member states in 2007 says that:

the ombudsmen in the Network [of European Ombudsmen] seek to facilitate free and equal access for everyone who is entitled to make use of their services. Complaints may normally be addressed to an ombudsman directly [...] Where exceptions to the above principles are imposed by law, the ombudsman seeks to minimise their adverse impact on complainants, as far as possible.⁵³

The restriction of direct access

48. The Parliamentary Commissioner Act 1967, from where the powers of the PHSO in respect of non-health sector bodies derives, determines that “the Commissioner” (PHSO) may only investigate any action taken by a government department where:

a written complaint is duly made to a Member of the House of Commons by a member of the public who claims to have sustained injustice in consequence of maladministration [...] the complaint is referred to the Commissioner, with the consent of the person who made it, by a member of that House with a request to conduct an investigation thereon.⁵⁴

49. It was anticipated at the outset that this procedure, known as the “MP filter”, would remain in place for just five years after introduction in 1967. In 1961, before the Parliamentary Commissioner Act, a report by Sir John Whyatt, *The Citizen and the Administration: The Redress of Grievances*, recommended that “in the beginning” the Parliamentary Commissioner should receive complaints only from Members of the Houses of Lords and Commons, but that at a later stage, when the Commissioner’s jurisdiction was “established and well understood”, consideration should be given to the public having direct access to the Commissioner.⁵⁵ The “MP filter” does not apply to complaints about the NHS, which can be made directly to PHSO.

50. A number of reviews have called for the removal of the restriction on direct access to PHSO, recent examples of which are summarised in Box 3. The 2005 NAO report, *Citizen Redress; what citizens can do if things go wrong in the public services*, found that the “MP filter” was not well understood. When explained to those participating in research, three out of four thought it was unhelpful and hard to understand.⁵⁶ In *Parliament and the*

53 European Ombudsman, [The European Network of Ombudsmen – Statement](#), accessed September 2013

54 Parliamentary Commissioner Act 1967, [Section 5](#)

55 John Whyatt, *The Citizen and the Administration. The Redress of Grievances* in *The International and Comparative Law Quarterly*, Vol. 11, No. 2 (April 1962), pp. 610-614

56 National Audit Office, *Citizen Redress; what citizens can do if things go wrong in the public services* HC (2004–2005) [21](#), p64

Ombudsman, the then PASC examined whether the public should have to require their MP to sign a form in order for PHSO to consider their complaint. That Report recommended that citizens should have the right of direct access and noted that:

This provision was included in the Act because of concerns that the role of the Ombudsman would undermine the position of Members of Parliament in pursuing the grievances of their constituents. This requirement, [...] has been controversial since its inception, with calls for its abolition dating back to 1977.⁵⁷

Box 3: Past reviews and recommendations about the “MP Filter”.

- 2000 - The Colcutt review, which considered whether Ombudsman arrangements “were in the best interest of complainants, reflected the “almost universal dissatisfaction” with the MP filter, and concluded that “the MP filter can no longer be sustained in an era of joined up government and we strongly recommend that it is abolished”.⁵⁸
- 2007 - The House of Commons Regulatory Reform Committee remarked in its Report on the Proposal for Regulatory Reform (Collaboration between Ombudsmen etc.) Order 2007 that, “We consider the requirement that complaints to the Parliamentary Ombudsman continue to be referred via a Member of Parliament to be long overdue for reform”.⁵⁹
- 2010 - The Law Commission suggested in the findings of its consultation on Public Services Ombudsmen that a dual track mechanism for complaining to PHSO could be preferable meaning that “the MP filter would no longer be a requirement. However, there would still be a procedure allowing for a Member of Parliament to receive a complaint and then forward it to the Parliamentary Commissioner”.⁶⁰
- 2011 - Ann Abraham, the then PHSO, consulted on whether the requirement for the MP filter should be removed. The consultation showed support for a “dual-track” approach, under which complaints could be made either via an MP or directly.⁶¹

51. PHSO told us that callers seeking access to the service are deterred from pursuing their complaints by the present procedure:

57 Public Administration Select Committee (PASC), Fourth Report of Session 2009–10, [Parliament and the Ombudsman](#), HC 107, p3

58 Collcutt, Philip & Mary Hourihan, *Review of the public sector ombudsmen in England*, April 2000

59 Select Committee on Regulatory Reform, [Proposals for Regulatory Reform \(Collaboration between Ombudsmen etc.\) Order 2007](#), HC 383

60 The Law Commission, [Public Services Ombudsmen](#) (July 2011), HC 1136

61 Parliamentary and Health Service Ombudsman, [Report on the consultation on direct access to the Parliamentary Ombudsman](#) (November 2011)

We know that of those where that is the case and we then can send people a form to take to their MP, between a third and half of those cases that are referred back to the complainant to take to their MP never return to us [...] I have sat on the phones with our staff myself and listened to our staff explaining that someone needs to get a referral from their MP, and the phone goes down. People have been so persistent to get that far and they just reach a point where they just give up, so it definitely has a dampening effect [...].⁶²

52. Individuals expressed a reluctance to approach their MP, for whatever reason, and disliked being required to do so. One individual said:

It could be the case that having to approach your MP for access to PHSO is a deterrent. The fact that my MP does not hold regular surgery times made it difficult for me to make an appointment with him and that may be a factor for some individuals.⁶³

53. The Local Government Ombudsman, Dr Jane Martin, told us that individuals have been able to access their service directly since the removal of a “councillor filter” in 1988 and that the service has “dealt very happily” which direct access ever since.⁶⁴ Scotland and Wales do not operate the same kind of restriction on access, and in Northern Ireland legislation is currently being prepared that will remove this restriction. Jim Martin, Scottish Public Services Ombudsman, told us:

I have never understood what you are filtering. I hear the phrase ‘MP filter’, but I am not certain where in the process you come in, what it is you actually filter, and whether you all filter the same things in the same way.⁶⁵

54. When asked about this issue, the Rt Hon Oliver Letwin MP, the Minister for Government Policy, told us:

My personal view is, given that the Ombudsman herself does not think, as I understand it, that this is a necessary feature on the scene, and given that the Law Commission has recommended that we should not have it, we have to take those things very seriously. My personal impression is that all too often the MP signature is a cipher, so that MPs are now very regularly signing off on these things. Therefore, whatever utility it may have been judged to have had some way back I suspect is now much diminished.⁶⁶

55. Along with all other informed opinion, we can find no justification for restricting citizens’ direct access to the Parliamentary and Health Service Ombudsman for non-NHS complaints. It was intended that the “MP filter” should be abolished after the first five years of the Parliamentary Ombudsman. Citizens were given direct access for NHS

62 Qq211-214

63 Della Reynolds (PHS 19)

64 Q131

65 Q79

66 Oral evidence taken on [16 October 2013](#), HC (2013–14) 229, Q435 [Rt Hon Oliver Letwin MP]

related complaints for good reason. The continuing prohibition of direct access for all complaints is the denial of equal access to administrative justice and is an anachronism which is at odds with the expectations of today's citizens. This defies all logic. It disempowers citizens, obstructs access to their rights, and deters people from making complaints.

56. *We recommend that the Government's new legislation to create a simpler and more straightforward Ombudsman service includes provision to abolish the iniquitous prohibition on citizens' direct and open access to the Parliamentary and Health Service Ombudsman (PHSO), known as the "MP filter". This would allow citizens to make a complaint unimpeded to PHSO in respect of all complaints about government departments and public bodies, as is already the case in respect of NHS complaints.*

The case for allowing telephone, oral and online complaints

57. Which?, an independent, not-for-profit consumer organisation, said that "it is essential that making a complaint with the PHSO is as easy as possible" and as such the requirements for consumers to submit complaints in writing should be removed.⁶⁷ This was echoed by others including Peter Tyndall, the Ombudsman and Information Commissioner for Ireland and previously the Public Services Ombudsman for Wales, who said:

Making it easy for people to complain is straightforward: having a good website, having a good telephone system and also recognising that some people still prefer to communicate in writing.⁶⁸

58. Many other private sector ombudsmen, including the Energy Ombudsman and the Legal Ombudsman, allow consumers to submit their complaint over the phone, via email or in writing. Jim Martin told us that although the statute governing his office states that complaints should be made in writing, "we would take it just about any way".⁶⁹ PASC also learnt that the National Ombudsman of the Netherlands accepts oral complaints and Dr Alex Brenninkmeijer, the current Ombudsman of the Netherlands, emphasised how important it was for an ombudsman service to be user-friendly, understanding and supportive. Dame Julie Mellor, the current PHSO, told us that she felt having to submit complaints in writing was "remarkably old-fashioned" and that:

obviously we find ways around it, and we will write things up for people where they tell us verbally on the phone, but it is going to be a lot more straightforward if we can just operate in the digital age.⁷⁰

59. **The manner in which a complaint is handled is a key part of the provision of redress, even if the complaint itself is not actually upheld. Allowing complaints to be**

67 Which? ([PHS 17](#))

68 Q105

69 Q90

70 Q210

submitted in person, by telephone, or online would empower more people to make complaints to the Parliamentary and Health Service Ombudsman (PHSO). The requirement that all complaints to PHSO must be in writing presents a barrier to access and is out of step with other ombudsman services. For many people, form filling is an anathema to an understanding and supportive approach. It constitutes an unjustified barrier to those who lack literacy skills, and is out of date in a world where so much customer service is now delivered online, in person, or via the telephone.

60. We recommend that the Government's new legislation to create a simpler and more straightforward Ombudsman service should allow complaints to the Parliamentary and Health Service Ombudsman to be made other than in writing, such as in person, by telephone or online, just as is expected of other complaints systems.

5 Wider public benefit

Learning from complaints

61. Academics Professor Trevor Buck, Dr Richard Kirkham and Brian Thompson suggest that, while complaints handling is an ombudsman's "core function", there is an increasing emphasis on passing on lessons learned from investigations and promoting good administration outside investigations.⁷¹ PHSO seeks to achieve a "wider public benefit" from its work both by securing outcomes that drive improvements in services, and by improving complaints handling within those services.

62. PHSO provided us with examples of how the service has influenced improvements in complaints handling in government departments and agencies. PHSO's strategic plan for 2013–18 outlines several objectives to achieve service improvement:

We will more systematically generate insight into service failures. This insight will be gained from investigating and resolving complaints and will be used to more effectively contribute to improving public services.

We will work with experts, service providers, regulators and policy makers to use our insight to influence the development and adoption of solutions to major service failures.

We will support Parliament in holding government and public services to account.⁷²

63. The importance of the need to learn from complaints to improve the delivery of services was endorsed by the majority of our witnesses. PHSO said that:

Insight from complaints plays a critical role in indicating early symptoms of a problem with a public service. The ability of public services to identify patterns, trends and themes promptly is central to making change happen quickly.⁷³

64. Despite the widespread endorsement of this aspect of PHSO's work, Buck, Kirkham and Thompson said that progress has not been sufficient:

what is lacking, to an alarming degree, is objective empirical evidence that this form of ombudsman work produces results [... there is therefore] the risk that there is no strong evidence that ombudsmen do succeed in promoting long-term changes for the better in administrative practice.⁷⁴

71 Trevor Buck, Richard Kirkham and Brian Thompson ([PHS 13](#))

72 Parliamentary and Health Service Ombudsman, [Delivering more impact for more people](#), (November 2013), p12

73 Parliamentary and Health Service Ombudsman ([COM 16](#))

74 Trevor Buck, Richard Kirkham, Brian Thompson, *Ombudsman enterprise and administrative justice*, (2010), p150

Box 4: Evidence from PHSO on improvements as a result of investigation.

In November 2013 PHSO published a report on sexual assault abroad, which criticised the Foreign and Commonwealth Office (FCO) for failing to provide sufficient support to a woman who had been sexually assaulted in Egypt. As a result, the FCO reviewed the way it handled complaints so that the needs and feelings of the complainant were at the centre of the process. The FCO also changed its guidance on consular assistance to take account of people's particular circumstances and changed its approach to complaint handling and training so that staff learn from mistakes.

The Warm Front scheme, run by the Department for Energy and Climate Change (DECC) until 2013, offered assistance through a private contractor (Carillion) for people on low incomes living in properties with poor insulation, or without a working heating system. PHSO investigated a number of complaints about the scheme, which all followed similar patterns. When PHSO became involved in the complaints Carillion and DECC addressed the issues, typically replacing complaints' heating systems and paying them compensation. DECC and Carillion responded to PHSO's intervention and delivered a resolution that the complainants were happy with. Since then, both DECC and Carillion have explored new ways to resolve complaints and have used the lessons from PHSO's work to improve their customers' experience.⁷⁵

The case for "own-initiative" powers

65. "Own-initiative" powers is the term used to describe an ombudsman's ability to investigate an area of concern without having first received a complaint:

This allows them [ombudsmen] to use evidence gathered through their own research, by another agency or regulator, by Parliament, or prompted by a specific public concern, to carry out a systemic investigation. The decision to carry out an own-initiative investigation would of course need to be both evidence-based and taken independently by the Ombudsman.⁷⁶

66. In considering PHSO's ability to exercise its powers on behalf of the public good generally, authors Roy Gregory and Phillip Giddings, in *The Ombudsman, The Citizen and Parliament* in 2002, drew attention to the view of former Ombudsman, Sir Michael Buckley, that:

75 Parliamentary and Health Service Ombudsman ([PHS 57](#))

76 Liaison Committee, Second Report of Session 2012-13, [Select Committee effectiveness, resources and powers](#), HC 697, Ev w64 (Parliamentary and Health Service Ombudsman)

for an ombudsman effectively to identify systemic defects he needs to see more than the relatively small number of cases of any particular kind reaching the Parliamentary [Ombudsman].⁷⁷

67. PHSO is one of the few ombudsmen in Europe who do not have own-initiative powers. Which? said that giving PHSO this power would give the service greater ability to act on trends it sees developing and “give an early warning to the regulators”.⁷⁸ PHSO said that having these powers would give the service the ability to:

- investigate issues of immediate concern to Parliament and citizens;
- respond to early warnings, maximising the preventative (and not merely the reactive) role;
- extend access to justice to those least likely to complain, for example, the most vulnerable and marginalised in society;
- prevent first-tier complaints systems being over-burdened with complaints that are identical or similar in substance;
- enable trends across a particular sector to be addressed in a single investigation; and
- gain insight into service failures and use that insight to recommend systemic remedies.⁷⁹

68. Richard Kirkham, writing for PHSO in *The Parliamentary Ombudsman: withstanding the test of time*, noted that:

The most commonly cited argument against such a power is that it would risk reducing the contact between [the Ombudsman] and complainants. But it could be created in such a way that emphasised that its purpose was to explore areas where maladministration likely to cause injustice was occurring.⁸⁰

69. Although the use of such powers by ombudsmen who have them may be infrequent, the reported impact is said to be high, with a significant “multiplier effect” in terms of value for money. In 2006 and 2007, for example, own-initiative investigations accounted for just 1%—61 and 71 cases respectively—of the Austrian Ombudsman’s caseload, and in 2007 for just 41 cases—of the Norwegian Ombudsman’s investigations, but included matters such as case processing times for child maintenance payments, and confinement periods in police custody for immigration matters.⁸¹

77 R. Gregory and P. Giddings, *The Ombudsman, The Citizen and Parliament* (2002)

78 Which? ([PHS 17](#))

79 Parliamentary and Health Service Ombudsman ([PHS 14](#))

80 Parliamentary and Health Service Ombudsman, *The Parliamentary Ombudsman: withstanding the test of time*, HC (2006–07) [421](#), p19

81 Austrian Ombudsman Board, [Report of the Austrian Ombudsman Board to the National Council and the Federal Council 2006](#), (March 2007); Austrian Ombudsman Board, [Report of the Austrian Ombudsman Board to the National](#)

70. Drawing upon the use of such powers by ombudsmen in Ireland, Queensland, Ontario, New Zealand and the European Union, Buck, Kirkham and Thompson, in *Ombudsman enterprise and administrative justice*, concluded that:

it is apparent that the power of own-initiative investigation has proved to be a very useful feature of the ombudsman enterprise [...] there were some good examples of best practice, for example, the approach of the Special Ombudsman Response Team in Ontario. Increasingly we found evidence of the ombudsman enterprise developing a research base, knowledge management systems and training to support themed, systemic and own-initiative work. We were particularly struck by the fact that the Australasian ombudsmen simply cannot conceive of not having such a power.⁸²

71. We support the principle that the Parliamentary and Health Service Ombudsman should have “own-initiative” powers, similar to other ombudsmen, which allow it to investigate areas of concern without having first received a complaint. The benefit of this would be, for example, the ability to respond better to early warning signals and to gain greater insight into service problems.

72. We recommend that the Government’s new legislation to create a simpler and more straightforward Ombudsman service should grant the Parliamentary and Health Service Ombudsman the power of own-initiative investigations.

Oversight of complaints handling

73. A consistent theme in past reviews of the office of PHSO and of complaint handling has been the difficulty encountered by citizens when confronted by today’s plethora of independent reviewers, complaint-handlers, and ombudsmen, as well as the full range of tribunals and the administrative court. Professor Patrick Dunleavy, Professor of Political Science and Public Policy at the London School of Economics, in his 2010 research, *Joining Up Citizen Redress in UK Central Government*, stated that the separation of complaints, appeals and regulatory systems created difficulties for citizens. He also observed that redress systems provide a poor standard of service for citizens, especially in respect of the quality of information available to them and in delay.⁸³

74. Buck, Kirkham and Thompson in *Ombudsman Enterprise and administrative justice*, noted that the Local Government Ombudsman for England has developed a training role and that the Queensland Ombudsman provides training not just in good complaint-handling but in good decision-making.⁸⁴ We heard that in Wales the Public Services

[Council and the Federal Council 2007](#), (June 2008); [The Parliamentary Ombudsman of Norway, Annual report 2007](#), (May 2008)

82 Trevor Buck, Richard Kirkham, Brian Thompson, *The Ombudsman enterprise and administrative justice* (2010)

83 Patrick Dunleavy et al, *Joining up citizen redress in UK central government*, In: Adler, Michael, (ed.) *Administrative Justice in Context* (2010)

84 Trevor Buck, Richard Kirkham, Brian Thompson, *The Ombudsman enterprise and administrative justice* (2010)

Ombudsman has engaged with a range of public service bodies in order to bring greater consistency to the management of complaints. Similarly in Scotland the Scottish Public Services Ombudsman has established a Complaints Standards Authority, which aims to standardise and simplify complaints handling procedures and to help drive improvement. Jim Martin, Scottish Public Services Ombudsman, told us that this training unit was small but has delivered 71 face to face training courses over the past year and is having a positive effect:

All of the chief executives I speak to in health, in local authorities, in housing associations and everywhere else tell me that it has refocused them on the customer, on the vulnerable people, and it has made them understand again that the place that complaints should be resolved is not with the Ombudsman; it is the front line. Where something happens, as quickly as possible, resolve it there and then, and it is leading to that culture. I am quite pleased with the way it is going so far.⁸⁵

75. PHSO does not have a formal role in overseeing complaints handling, but is advising the Department of Health on complaints handling, as a result of the Francis Report.

76. As we concluded in our Report on complaints handling in Government departments and agencies, *More Complaints Please!*, we remain concerned that the “toxic cocktail” in respect of complaints handling—a reluctance on the part of citizens “to express their concerns or complaints” and a defensiveness on the part of services “to hear and address concerns”—poisons efforts to deliver excellent public services. There is a clear benefit to the public and to good administration that the Parliamentary and Health Service Ombudsman should use its experience to inform and lead better complaints handling across its area of jurisdiction.

77. We recommend that the Government’s new legislation to create a simpler and more straightforward Ombudsman service should grant the Parliamentary and Health Service Ombudsman the power to oversee complaints processes across its area of jurisdiction, and a formal role in setting standards and training in complaints handling.

Box 5: An overview of administrative justice systems

Until its recent abolition, the Administrative Justice and Tribunals Council had responsibility for the oversight of nearly 100 tribunals. These included, for example, those for Social Security and Child Support, Care Standards, Criminal Injuries Compensation, Income Tax, Immigration and Asylum, and Mental Health. In 2011–12, there were 739,600 claims recorded in total for all tribunals.

Separate from tribunals are the various ombudsmen who resolve disputes about public services and public administration. The Ombudsman Association lists 17 ombudsmen among its membership, public and private, for the UK. There are also separate public services ombudsmen in the devolved administrations of Northern Ireland, Scotland and Wales.

Apart from its ombudsman members, the Ombudsman Association lists a further 28 complaint handling bodies in the UK including the Prisons and Probation Ombudsman; the Adjudicator's Office, which investigates complaints about HM Revenue and Customs; the Independent Case Examiner, which investigates complaints about several government functions, including Job Centre Plus; and the Information Commissioner, which receives complaints about data protection and freedom of information.

Within specific subject areas, there might also be a regulatory system, which in the case of health, for example, comprises the Care Quality Commission and 9 professional regulators including the General Medical Council, the Nursing and Midwifery Council, and the General Dental Council, which are all in turn subject to the oversight of the Professional Standards Authority for Health and Social Care.

PHSO's public profile

78. A striking feature of the National Ombudsman of the Netherlands is the profile that it has across the country. The National Ombudsman writes articles for newspapers, appears on TV, and uses the media to promote his messages to the public. We were told on our visit to the Netherlands that public recognition of the National Ombudsman is high amongst the public. Some are concerned that he involves himself in matters more of policy, beyond the relationship between citizen and government, but those we spoke to said it is important that the Ombudsman gave a face to the office.

79. PHSO has a low public profile and we were told that its key messages were sometimes obscured by the lack of detailed investigation reports being made public. One individual suggested that PHSO should be "more open with the public about the complaints they assess" for example by publishing summaries online.⁸⁶ Dr Tom Frawley, Ombudsman for Northern Ireland, told us that the visibility of an ombudsman was "hugely enhanced" when

the office was able to publish the outcome of a complaint.⁸⁷ PHSO explained the difficulty the service currently faced:

Our legislation allows us ‘from time to time’ to lay reports before Parliament ‘with respect to those functions’ we feel fit, whereas our colleagues in Wales can publish the outcome of a report when there is a public interest in doing so, and can issue case digests without laying them before the Assembly. Having the explicit power to publish without laying before Parliament would enable us to publicise quickly our reports on issues that many citizens may face (at present we can only lay reports while both Houses are sitting), raise awareness of our service, and ensure that the learning from our findings and recommendations is immediately accessible.⁸⁸

80. Other ombudsmen have greater freedom to publicise the outcome of their work. The Scottish Public Services Ombudsman, for example, publishes web-based monthly case digests of its casework and the Local Government Ombudsman’s annual letters to authorities are cited as models for increasing the visibility of findings and recommendations.⁸⁹ PHSO told us that:

Publishing more reports in itself will not result in improvements to public services. However, it will increase transparency about our office and how we do our work both for public services and the public, and it will provide us with the resources we need to engage with public services to drive service improvements [...] For the same reasons, we will publish case summaries of complaints we have upheld and partially upheld. These summaries will provide valuable insight into typical examples of service failure and poor complaint handling—they will help public services learn from the complaints we uphold, and help the public understand our work and what we can do for them. We will also publish some examples of complaints we have not upheld—this will give public services a better understanding of where we think they responded appropriately to a complaint, thus helping to spread best practice.⁹⁰

81. The Parliamentary and Health Service Ombudsman would benefit from a higher public profile and should be free to engage the public about how it exercises its remit and powers. It should publicise more information on the outcome of cases, and so contribute more effectively to public debate.

82. *The Parliamentary and Health Service Ombudsman (PHSO) has already begun to put measures in place to publicise the outcomes of more cases. In support of this the Government’s new legislation to create a simpler and more straightforward Ombudsman service should abolish the provision that restricts PHSO to laying reports only when*

87 Q72

88 Parliamentary and Health Service Ombudsman ([COM 57](#))

89 Local Government Ombudsman, [Councils’ performance](#), accessed January 2014

90 Parliamentary and Health Service Ombudsman ([PHS 57](#))

Parliament is sitting. This would grant PHSO the freedom to publish not only more information about its work, but also as and when it sees fit.

6 Accountability of PHSO

83. Until 1997, PHSO reported to its own dedicated Select Committee, and since then to PASC. The relationship with PASC has afforded PHSO a measure of support when faced with resistance to PHSO's recommendations, for example in respect of the disputed findings in reports on Equitable Life, and the operation of the 2005 Single Payment Scheme by the Rural Payments Agency.

84. Buck, Kirkham and Thompson wrote enthusiastically about the role of PASC in *Ombudsman Enterprise and administrative justice*, noting that its work in support of PHSO has been "hugely influential".⁹¹ They described the relationship as one of "sponsorship", "support" and "scrutiny", but noted that these responsibilities "may appear conflicting" and that:

it may be that one of the reasons that Parliamentary select committees have not fully engaged with the work of the PHSO is a concern that they should not be seen to work proactively with a body Parliament is responsible for calling to account.⁹²

85. The approach to the relationship between the ombudsman and Parliament taken in Scotland is quite different. Jim Martin, Scottish Public Services Ombudsman, explained that:

I have two bodies within the Parliament who scrutinise my activity, but I do not have a supporting committee. I do not have a committee that is there to support me; I am there to be scrutinised by Parliament [...] Where I want to be with Parliament is that I want Parliament to listen to what I have to say, but at the same time I want Parliament to show the public that I am managing the business of the Ombudsman appropriately. I do not need a supporting committee to do that.⁹³

86. Buck, Kirkham and Thompson observed that a model adopted in New Zealand makes a clear distinction between the various functions of Parliament in respect of the ombudsman. The New Zealand Officers of Parliament Committee recommends persons for appointment as officers of Parliament to the House and champions the work of the Ombudsman; and the Government Administration Committee examines the Ombudsman's performance. Within the UK Parliament, this distinct separation can be found in the relationship between the NAO and the Public Accounts Committee (PAC). PAC, which examines "the accounts showing the appropriation of the sums granted to Parliament to meet the public expenditure, and of such other accounts laid before Parliament", holds hearings based on NAO financial reports and value for money audits.⁹⁴

91 Trevor Buck, Richard Kirkham, Brian Thompson, *The Ombudsman enterprise and administrative justice* (2010)

92 Trevor Buck, Richard Kirkham, Brian Thompson ([PHS 13](#))

93 Qq115 - 116

94 Public Accounts Committee, [Role of the Committee](#), accessed January 2014

Formal scrutiny of the NAO is discharged by The Public Accounts Commission, rather than by PAC, though this does not preclude PAC also scrutinising NAO.

87. The Parliamentary Ombudsman was established in 1967, long before the creation of departmental Select Committees. PASC was, in 1997, given the remit in standing orders of scrutinising the reports of the Parliamentary and Health Service Ombudsman (PHSO), in addition to examining the quality and standards of administration within the Civil Service. The time has come to review this arrangement and to put measures in place to re-define the roles of scrutinising PHSO's service and of engaging with its reports and findings. To do so will increase transparency and will ensure there are clear lines of accountability.

88. We recommend that Parliament should strengthen the accountability of the Parliamentary and Health Service Ombudsman (PHSO). The Public Accounts Commission, or a similar body should take primary responsibility for scrutiny of PHSO, including examining corporate plans, budget and resources. PASC should have its Standing Orders amended to require it to use the intelligence gathered by the PHSO to hold to account the administration of Government. PASC should also ensure that PHSO's reports are referred to the Departmental Select Committee to which they are most relevant. From now on, we will do so. Departmental Select Committees should use PHSO's reports to hold their respective departments to account.

7 The future: An ombudsman for England?

89. In an article written for *The Guardian* on 27 November 2013, Adam Sampson, Legal Ombudsman, referring to the large number of ombudsmen and complaints systems in the UK, said that “our complaints system is a mess” and the cost of maintaining multiple systems is “startlingly high”. He went on to suggest that government should grasp the opportunity for change:

to bring some order and efficiency into what is an unwieldy, expensive and confusing world. If that means combining some schemes and eliminating others—so be it.⁹⁵

An English Ombudsman service?

90. We considered the extent to which an alternative model for public services ombudsmen could alleviate some of the problems individuals face when complaining about public services. Patrick Dunleavy, Professor of Political Science and Public Policy at the London School of Economics, in his 2010 work *Joining Up Citizen Redress in UK Central Government*, suggested that the organisation of ombudsmen is problematic, especially insofar as there is no integrated system of ombudsman services in England. Professor Dunleavy told us that:

The time is long overdue when we should aim to create within England the same kind of integrated public services ombudsman that we see in Scotland and Wales, which looks across health, local government and central government services, and does this in an integrated way.⁹⁶

91. There are examples of ombudsmen services being integrated in order to deliver a single service for a particular sector. The Financial Ombudsman, for example, told us that the service brought together a number of ombudsman schemes to create a “one stop shop’ for financial services disputes”.⁹⁷ Peter Tyndall, the Ombudsman and Information Commissioner for Ireland and previously the Public Services Ombudsman for Wales, said that:

with a joined up public service ombudsman approach as practised in Wales, Scotland and Northern Ireland, it is very much easier for the service user to complain and for the kind of complaints which cross agency borders, such as health and social care, to be effectively dealt with.⁹⁸

95 “[Time to streamline Britain’s Complaints system](#)”, *The Guardian*, 26 November 2013

96 Q11

97 The Financial Ombudsman Service ([PHS 32](#))

98 Public Services Ombudsman for Wales ([PHS 12](#))

92. Witnesses were generally supportive of such an approach for England. Dame Julie Mellor, the current PHSO, said that having a single public services ombudsman would be better for individuals with complaints relating to health and social care, who currently could approach either PHSO or the Local Government Ombudsman with their complaint, depending on the service provided.⁹⁹ We did hear some notes of caution, however. The Housing Ombudsman said:

A single PSOE [Public Services Ombudsman for England] appears, superficially, to be a good thing but, from my point of view, it is another myth that has emerged from the mists of prejudice and assumption. To my knowledge it has never been subjected to what the judges call 'nice chemical analysis'. Before I could support this idea I should need to be convinced by:

Clearly set out aims, objectives, and outcomes;

A clearly set out, argued rationale as to why it would be an improvement on where we are now;

A cost-benefit analysis;

An options appraisal;

An audit of necessary changes to primary legislation;

An informed and authoritative assessment of the likelihood of legislative changes and a clear indication of timescales;

A comprehensive risk assessment.¹⁰⁰

93. In evidence to the Committee, the Rt Hon Oliver Letwin MP, Minister for Government Policy, said that:

My personal view is that there is a great deal of merit in trying to thin down what is described in one of the reports that has been done as 'a complaints maze'. Part of that is to take very seriously the recommendation of the Parliamentary Ombudsman herself—that there should be some amalgamation of ombudsmen. We will have to think through that all very carefully and consult an awful lot of people.¹⁰¹

The remit of a single public services ombudsman for England

94. Witnesses suggested to us that bringing together ombudsmen that currently deal with complaints about public services in England, such as the Local Government Ombudsman, the Housing Ombudsman, and the relevant parts of PHSO, could be beneficial in making it

99 Parliamentary and Health Service Ombudsman ([PHS 14](#))

100 Housing Ombudsman ([PHS 34](#))

101 Oral evidence taken on [16 October 2013](#), HC (2013–14) 229, Q404 [Rt Hon Oliver Letwin MP]

simpler for people to complain. The organisation Which? illustrated in their evidence the complexity of current arrangements:

if a user has a complaint about their care home or home care agency, there are currently up to five different bodies that they could be expected to report their complaint to—their provider, the local authority, the Local Government Ombudsman, the CQC or Local Healthwatch.¹⁰²

It was also suggested that a single public services ombudsman for England could help to reduce some of the confusion individuals experienced with services increasingly being delivered via the public and private sectors. The Local Government Ombudsman said:

The public should not have to make complex determinations about who is accountable for delivering their service, and therefore liable for redress, and which Ombudsman can help them when those services fail. [...] A single Public Services Ombudsman Service for England could provide people in England with a unified, consistent and comprehensive service which avoids the current systemic confusion.¹⁰³

95. Some suggested that a single public services ombudsman for England could also assume responsibility for some areas of public service where there are gaps in the provision of dispute resolution. Dame Julie Mellor told us that:

At the moment, we have our two schemes, health and UK services, we have the Local Government Ombudsman, we have the Housing Ombudsman, but education at the moment is a bit missing. Therefore, defining this as something that is about all public services rather than listing which services are in or out, for the public it is everything that is publicly funded [...].¹⁰⁴

The issue of scale

96. Some witnesses warned of the risks associated with establishing a single public services ombudsman for England. Professor Brian Thompson, who was involved in research in Northern Ireland that led to proposals for reform of the Northern Ireland Ombudsman, raised the issue of the scale of England, saying that:

it would be a very large office if you were to replicate the devolved services in Scotland and Wales within England. I am not sure whether that would be an appropriate size.¹⁰⁵

97. The Local Government Ombudsman suggested that with different types of services being covered, “employing lead ombudsmen for different sectors” could help to ensure that the ombudsman could demonstrate expertise in different thematic areas.¹⁰⁶ Professor

102 Which? ([COM 12](#))

103 Local Government Ombudsman ([PHS 51](#))

104 Q227

105 Q13

106 Local Government Ombudsman ([PHS 51](#))

Dunleavy suggested that a single public services ombudsman could incorporate a regional focus:

Ideally, the Parliamentary Ombudsman Service would have a regional setup like the Local Government Ombudsman has, with a level somewhere between three and nine Government regions. Then there will be a National Ombudsman to do national things and to be a lead to pull together the whole redress picture, to consult with appeals and regulatory bodies. Regional commissioners or regional parliamentary ombudsmen should have a detailed knowledge of their local area and all the authorities, MPs and others in their area. I think that is impossible to do at the national level.¹⁰⁷

98. We believe that the creation of a single public services ombudsman for England would be beneficial. For complainants it would create a much simpler and more accessible ombudsman service, and for public services would allow learning and good practice to be disseminated more easily. The size of England does present a challenge for an Ombudsman, but we believe the creation of branch offices could go some way to addressing the issue and should be explored.

99. We recommend that the Government bring forward, and consult on, proposals to create a single public services ombudsman for England, bringing together, for example, the relevant parts of Parliamentary and Health Service Ombudsman, Local Government Ombudsman, and Housing Ombudsman. The jurisdiction of any single public services ombudsman for England should include areas of public services that could benefit from an ombudsman service, including for example, some educational institutions. Branch offices for the public services ombudsman for England should also be explored, to facilitate access for all parts of England and so the office can gather perspective on the performance of public services and administration from across the country.

The implications of devolution: A UK Ombudsman?

100. Professor Robert Hazell, Professor of Government and the Constitution, University College London, supported the idea of a single public services ombudsman for England but noted that:

we must all be aware that there is a devolution wrinkle to this, because the Parliamentary Ombudsman is also responsible for complaints in non-devolved matters in Scotland and Wales.¹⁰⁸

101. He considers that transforming the office of PHSO into a single public services ombudsman for England would not be sufficient. Devolution in Scotland, Wales and Northern Ireland has led to adjustments and developments of the ombudsman schemes. PHSO continues to handle complaints about matters that were not devolved to Wales, Scotland and Northern Ireland as well as complaints about maladministration in

107 Q11

108 Q12

government departments, agencies and other public bodies in the UK in relation to England, “so it has a mix of jurisdictions; some UK wide, some GB wide, some simply English and some NI only”.¹⁰⁹ Jim Martin, Scottish Public Services Ombudsman, told us:

[...] the one cautionary thing I would say to you is, do not confuse the role of the UK Parliamentary Ombudsman with an English Public Services Ombudsman. It is very important to remember that the UK Parliamentary Ombudsman is a UK function, not an English function, and it has to be looked at and dealt with—however it is dealt with—in that way [...] were there to be a decision to go down the road of creating an English Public Services Ombudsman, it would be very important to remember that currently within the PHSO, there are two bodies. There is a Parliamentary Ombudsman, which is a UK body, and the Health Service Ombudsman, which is an English body. You have to make sure that you do not put the UK as part of an English Public Services Ombudsman. It has got to be thought through.¹¹⁰

102. Dame Julie Mellor summarised the problem that would need to be addressed:

Whatever is done would need to be coherent for the service providers. For example, it would not make sense to have all the different national UK ombudsmen services considering complaints about UK services within each nation, because you would then potentially have inconsistent decisions by different ombudsman services.¹¹¹

103. A number of options to address the problem were suggested, such as the retention of a public service ombudsman for the UK as well as the creation of a separate ombudsman service just for England, or to ask one ombudsman to take on the UK function and report to all Parliaments and Assemblies. Peter Tyndall summarised the options he thought could be considered:

it might be worth contemplating that there are probably three ways of doing it, broadly speaking in models. One of them would be to have [...] an English Public Services Ombudsman mirroring the devolved functions ombudsmen in the three devolved countries, with a UK Parliamentary Ombudsman dealing with non-devolved matters. That is one model. The other one is to combine the two, and I think that does cause constitutional difficulties, personally. I think that is problematic, to have a body that is England at one level and UK at another. [...]

One of the other solutions, the most radical solution, which is probably worth thinking about, is the question of simply ‘Why not ask the Ombudsman [...] to deal with all of the complaints that arise about public

109 *The Ombudsman – the developing role in the UK*, Standard Note [SN/PC/04832](#), House of Commons Library, November 2012

110 Qq108-109

111 Q227

services there, and report to the two Parliaments? [...] That way, the public gets a completely joined-up service in England, Wales, Scotland, and Northern Ireland.¹¹²

104. The present division of power between the devolved governments of Scotland, Wales and Northern Ireland presents a difficulty for those seeking to provide England with a national ombudsman service. Non-devolved matters require a UK-wide Ombudsman Service. As long as the UK Parliament and the UK Government are responsible for the law and administration of England as well as for UK non-devolved matters, there will be a need for a distinctive ombudsman service for these functions.

105. We recommend that the Government bring forward, and consult on, proposals to deliver an effective ombudsman service for UK non-devolved matters—in addition to that of a single public services ombudsman for England—in order to optimise an ombudsman service for the UK citizen in respect of those functions. This could be provided, for example, either as a single ombudsman with a dual role as UK and England Ombudsman, or the UK and England ombudsman services could each have separate legal personality.

8 Conclusion

106. The office of Parliamentary and Health Service Ombudsman (PHSO) has taken positive steps to try and improve the service it provides, by giving a formal final adjudication on more cases, and supporting agencies such as the NHS in good complaints handling. There remain individual complainants who are dissatisfied with PHSO's service. PHSO must continue to take their feedback and concerns seriously, and to work to improve the way that it communicates with complainants to ensure that decisions are transparent and explained clearly.

107. The present legislation limits how much PHSO can develop a more responsive and proactive ombudsman service. As a priority, the restriction on direct access (the "MP filter") in respect of non-health related complaints must be abolished; complainants must be able to make a complaint in any way, not just in writing; and the ombudsman should enjoy "own-initiative" powers and so be able to investigate concerns without having first received a specific complaint. In the longer term, we believe there is scope to change the way that ombudsman services are delivered in England. We recommend a consultation on the creation of a single public services ombudsman for England. At the same time, there must be a distinctive ombudsman service for UK non-devolved matters.

108. Out-of-date legislation and ways of operating contribute to a failure to meet the expectations of today's citizens. New laws, and a reassessment of the ombudsman service, will ensure that PHSO can take serious action in the same manner as best performing ombudsman services in the UK and elsewhere.

Conclusions and recommendations

“More investigations for more people”

1. PASC received a significant amount of correspondence from individuals who were dissatisfied that the Parliamentary and Health Service Ombudsman had declined to investigate their complaint. We welcome the decision taken by the Parliamentary and Health Service Ombudsman to investigate more complaints as a way to remedy such concerns. (Paragraph 22)
2. *The Parliamentary and Health Service Ombudsman must be explicit in how the decision to investigate more cases is being achieved, to demonstrate that it represents a significant change in the quality of investigations and upheld complaints and that it is a much more substantial shift than a re-classification of current workloads.* (Paragraph 23)

The investigation process

3. We were told that complainants receive a detailed account of the reasons underpinning decisions taken by the Parliamentary and Health Service Ombudsman (PHSO) in respect of their complaint. Nevertheless some complainants told us they do not feel all the evidence available in their complaint was taken into account, and evidence was not treated equally. We recognise that not all complainants may feel this way, but PHSO should review the transparency of its own arrangements for reviewing its decisions. (Paragraph 31)
4. *When explaining to complainants the findings of an investigation and how decisions have been reached, the Parliamentary and Health Ombudsman (PHSO) sets out the evidence that has been relied on or which has influenced investigators in reaching their conclusions. In addition, PHSO should make clear what evidence it received and considered as part of that investigation, and if necessary, what evidence was not used to form the conclusion, and why.* (Paragraph 32)

PHSO: “stuck in time”?

5. The restrictive legislation governing the Parliamentary and Health Service Ombudsman (PHSO) means it is unable to meet the standard set by Scotland, Wales, Northern Ireland and elsewhere. An ineffective instrument of democratic accountability cannot remedy failures in public service delivery. PHSO is impeded by out-of-date legislation so it fails to meet the expectations of today’s citizens. It is, as Scotland’s Public Service Ombudsman put it, in danger of being “stuck in time”. The UK needs new legislation. The Ombudsman should be seen as a People’s Ombudsman service as well as Parliament’s Ombudsman. We address how this is to be achieved later in the report. (Paragraph 45)
6. *In our report, More Complaints Please!, we recommend that there should be a minister for government policy on complaints handling. In addition, we recommend that the minister also take responsibility for policy in relation to the Parliamentary and Health Service Ombudsman and that he or she should bring forward the new legislation*

required to enable citizens to have a simpler and more straightforward Ombudsman service that is responsive to citizens and their expectations. (Paragraph 46)

The restriction of direct access

7. Along with all other informed opinion, we can find no justification for restricting citizens' direct access to the Parliamentary and Health Service Ombudsman for non-NHS complaints. It was intended that the "MP filter" should be abolished after the first five years of the Parliamentary Ombudsman. Citizens were given direct access for NHS related complaints for good reason. The continuing prohibition of direct access for all complaints is the denial of equal access to administrative justice and is an anachronism which is at odds with the expectations of today's citizens. This defies all logic. It disempowers citizens, obstructs access to their rights, and deters people from making complaints. (Paragraph 55)
8. *We recommend that the Government's new legislation to create a simpler and more straightforward Ombudsman service includes provision to abolish the iniquitous prohibition on citizens' direct and open access to the Parliamentary and Health Service Ombudsman (PHSO), known as the "MP filter". This would allow citizens to make a complaint unimpeded to PHSO in respect of all complaints about government departments and public bodies, as is already the case in respect of NHS complaints.* (Paragraph 56)

The case for allowing telephone, oral and online complaints

9. The manner in which a complaint is handled is a key part of the provision of redress, even if the complaint itself is not actually upheld. Allowing complaints to be submitted in person, by telephone, or online would empower more people to make complaints to the Parliamentary and Health Service Ombudsman (PHSO). The requirement that all complaints to PHSO must be in writing presents a barrier to access and is out of step with other ombudsman services. For many people, form filling is an anathema to an understanding and supportive approach. It constitutes an unjustified barrier to those who lack literacy skills, and is out of date in a world where so much customer service is now delivered online, in person, or via the telephone. (Paragraph 59)
10. *We recommend that the Government's new legislation to create a simpler and more straightforward Ombudsman service should allow complaints to the Parliamentary and Health Service Ombudsman to be made other than in writing, such as in person, by telephone or online, just as is expected of other complaints systems.* (Paragraph 60)

The case for 'own-initiative' powers

11. We support the principle that the Parliamentary and Health Service Ombudsman should have "own-initiative" powers, similar to other ombudsmen, which allow it to investigate areas of concern without having first received a complaint. The benefit of this would be, for example, the ability to respond better to early warning signals and to gain greater insight into service problems. (Paragraph 71)

12. *We recommend that the Government's new legislation to create a simpler and more straightforward Ombudsman service should grant the Parliamentary and Health Service Ombudsman the power of own-initiative investigations.* (Paragraph 72)

Oversight of complaints handling

13. As we concluded in our Report on complaints handling in Government departments and agencies, *More Complaints Please!*, we remain concerned that the “toxic cocktail” in respect of complaints handling—a reluctance on the part of citizens “to express their concerns or complaints” and a defensiveness on the part of services “to hear and address concerns”—poisons efforts to deliver excellent public services. There is a clear benefit to the public and to good administration that the Parliamentary and Health Service Ombudsman should use its experience to inform and lead better complaints handling across its area of jurisdiction. (Paragraph 76)
14. *We recommend that the Government's new legislation to create a simpler and more straightforward Ombudsman service should grant the Parliamentary and Health Service Ombudsman the power to oversee complaints processes across its area of jurisdiction, and a formal role in setting standards and training in complaints handling.* (Paragraph 77)

PHSO's public profile

15. The Parliamentary and Health Service Ombudsman would benefit from a higher public profile and should be free to engage the public about how it exercises its remit and powers. It should publicise more information on the outcome of cases, and so contribute more effectively to public debate. (Paragraph 81)
16. *The Parliamentary and Health Service Ombudsman (PHSO) has already begun to put measures in place to publicise the outcomes of more cases. In support of this the Government's new legislation to create a simpler and more straightforward Ombudsman service should abolish the provision that restricts PHSO to laying reports only when Parliament is sitting. This would grant PHSO the freedom to publish not only more information about its work, but also as and when it sees fit.* (Paragraph 82)

Accountability of PHSO

17. The Parliamentary Ombudsman was established in 1967, long before the creation of departmental Select Committees. PASC was, in 1997, given the remit in standing orders of scrutinising the reports of the Parliamentary and Health Service Ombudsman (PHSO), in addition to examining the quality and standards of administration within the Civil Service. The time has come to review this arrangement and to put measures in place to re-define the roles of scrutinising the PHSO's service and of engaging with its reports and findings. To do so will increase transparency and will ensure there are clear lines of accountability. (Paragraph 87)
18. *We recommend that Parliament should strengthen the accountability of the Parliamentary and Health Service Ombudsman (PHSO). The Public Accounts Commission, or a similar body should take primary responsibility for scrutiny of PHSO, including examining corporate plans, budget and resources. PASC should have its Standing Orders amended to require it to use the intelligence gathered by the PHSO*

to hold to account the administration of Government. PASC should also ensure that PHSO's reports are referred to the Departmental Select Committee to which they are most relevant. From now on, we will do so. Departmental Select Committees should use PHSO's reports to hold their respective departments to account. (Paragraph 88)

An English Ombudsman service?

19. We believe that the creation of a single public services ombudsman for England would be beneficial. For complainants it would create a much simpler and more accessible ombudsman service, and for public services would allow learning and good practice to be disseminated more easily. The size of England does present a challenge for an Ombudsman, but we believe the creation of branch offices could go some way to addressing the issue and should be explored. (Paragraph 98)
20. *We recommend that the Government bring forward, and consult on, proposals to create a single public services ombudsman for England, bringing together, for example, the relevant parts of Parliamentary and Health Service Ombudsman, Local Government Ombudsman, and Housing Ombudsman. The jurisdiction of any single public services ombudsman for England should include areas of public services that could benefit from an ombudsman service, including for example, some educational institutions. Branch offices for the public services ombudsman for England should also be explored, to facilitate access for all parts of England and so the office can gather perspective on the performance of public services and administration from across the country. (Paragraph 99)*

The implications of devolution: a UK Ombudsman?

21. The present division of power between the devolved governments of Scotland, Wales and Northern Ireland presents a difficulty for those seeking to provide England with a national ombudsman service. Non-devolved matters require a UK-wide Ombudsman Service. As long as the UK Parliament and the UK Government are responsible for the law and administration of England as well as for UK non-devolved matters, there will be a need for a distinctive ombudsman service for these functions. (Paragraph 104)
22. *We recommend that the Government bring forward, and consult on, proposals to deliver an effective ombudsman service for UK non-devolved matters—in addition to that of a single public services ombudsman for England—in order to optimise an ombudsman service for the UK citizen in respect of those functions. This could be provided, for example, either as a single ombudsman with a dual role as UK and England Ombudsman, or the UK and England ombudsman services could each have separate legal personality. (Paragraph 105)*

Annex: Committee's visit to Netherlands

Programme for visit

5 November 2013

<p>British Embassy Lange Voorhout 10 2514 ED The Hague</p>	<p>Working lunch with Sir Geoffrey Adams KCMG, British Ambassador to the Netherlands and Embassy staff.</p>
<p>Office of the National Ombudsman Bezuidenhoutseweg 151 2594 AG Den Haag</p>	<p>Meeting with Dr. Alex Brenninkmeijer, National Ombudsman of the Netherlands and staff.</p>
<p>Ministry of the Interior and Kingdom Relations Turfmarkt 147 2511 DP Den Haag</p>	<p>Meeting with Ms Marilyn Haimé, Director for Constitutional Affairs, Ministry of the Interior and Kingdom relations and Ministry staff.</p>
<p>Residence of the British Ambassador to the Netherlands</p>	<p>Working dinner with Sir Geoffrey Adams KCMG British Ambassador to the Netherlands; Ms Marilyn Haimé, Director for Constitutional Affairs, Ministry of the Interior and Kingdom relations; Dr. Alex Brenninkmeijer, National Ombudsman of the Netherlands; and Mr Peter Heskes, Ombudsman for the Hague.</p>

6 November

Plein 2 Tour of Dutch Parliament.

2511 CR Den Haag

Second Chamber Meeting with Mr Pieter Litjens, Ms Astrid Oosenberg
and Mr Ronald Raak, Interior Affairs Committee,
Lange Poten 4 Dutch Parliament.

2511 CL Den Haag

British Embassy Conference Meeting with Fergal Van de Wouw, Team Leader,
Room Children's Ombudsman.

Lange Voorhout 10 Meeting with Arre Zuurmond, Municipal
2514 ED The Hague Ombudsman for Amsterdam; and Arjan Widlak,
Director, Kafka Brigade.

Meeting with Professor Marc Hertogh, Professor of
Sociology of Law, Groningen University; and Arnt
Main, Senior Researcher, Verwey-Jonker Institute.

Summary of findings

- Departments in the Dutch Government were responsible for their own complaints handling, although there were general guidelines to follow. The Ministry of the Interior, which is similar to the Cabinet Office, did not take overall responsibility for complaints handling by government departments.
- The Interior Affairs Committee in the Dutch Parliament held a session each year on the annual report of National Ombudsman. Members of the Committee felt it was not the role of the Committee to interfere in the way the National Ombudsman operated.
- Participants suggested that the professional skills of officials needed to be refreshed so that they saw complaints as a way to change the way an organisation worked. Officials needed to have the backing of politicians and high-level managers to enable them to change an organisation.
- Participants said that in the past 30 years the National Ombudsman had become a well-established institution in Dutch administrative justice, and that one of his most important contributions as an Ombudsman was that he demonstrated that good governance was “much more than following the rules”.
- The concept of “fairness” was very important for citizens in the Netherlands. The daily work of National Ombudsman of the Netherlands involved working out what was fair in individual cases—not just what was in the law. He stressed four element of fairness: personal contact; fair treatment; equal footing; and trust in citizens (most citizens were honest and should be treated as such).
- Participants broadly supported the idea of the office of ombudsman having a high profile, in order to increase its impact. The National Ombudsman of the Netherlands writes articles for newspapers, appears on TV, and uses the media to get his message across to the public. His high profile had caused some tension with MPs and some participants highlighted the danger that a high profile ombudsman could start to try and affect policy, which it had no responsibility to do.
- A single public services ombudsman was generally considered as beneficial but there was a danger of scale and creating a very large bureaucracy. Regional ombudsmen were said to provide an opportunity for ombudsmen to work more closely with the services that fall within their remit and area.
- The National Ombudsmen of the Netherlands operated direct access in respect of complaints. The “MP filter” in operation in the UK for non-health related complaints to PHSO was viewed as creating additional bureaucracy.
- Participants said that the biggest issue for the National Ombudsman in next decade was how to reach out to the whole population. They suggested that the National Ombudsman of the Netherlands had made progress: for example, he now operated a “National Ombudsman on tour” scheme and visited municipalities of the Netherlands.

Formal Minutes

Tuesday 1 April 2014

Members present:

Mr Bernard Jenkin, in the Chair

Sheila Gilmore
Kelvin Hopkins
Greg Mulholland

Lindsay Roy
Mr Andrew Turner

Draft Report (*Time for a People's Ombudsman Service*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 108 read and agreed to.

Annex and summary agreed to.

Resolved, That the Report be the Fourteenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned till Tuesday 8 April at 9:15 am

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on [the Committee's inquiry web page](#).

Tuesday 29 October 2013

Question number

Professor Patrick Dunleavy, Professor of Political Science and Public Policy, London School of Economics, **Professor Robert Hazell**, Professor of Government and the Constitution, University College London, and **Brian Thompson**, Senior Lecturer, School of Law, University of Liverpool

Q1-65

Tuesday 10 December 2013

Jim Martin, Scottish Public Service Ombudsman, **Peter Tyndall**, former Public Services Ombudsman for Wales, and **Dr Tom Frawley**, Ombudsman for Northern Ireland

Dr Jane Martin, Local Government Ombudsman, **Adam Sampson**, Legal Ombudsman, and **Tony Boorman**, Acting Deputy Chief Ombudsman, Financial Ombudsman Service

Q66-142

Monday 16 December 2013

Dame Julie Mellor DBE, Parliamentary and Health Service Ombudsman, and **Helen Hughes**, Chief Operating Officer, Parliamentary and Health Service Ombudsman

Q143-244

Published written evidence

The following written evidence was received and can be viewed on [the Committee's inquiry web page](#). PHS numbers are generated by the evidence processing system and so may not be complete.

- 1 Administrative Justice and Tribunals Council ([PHS15](#))
- 2 Anonymous ([PHS43](#))
- 3 Anonymous ([PHS47](#))
- 4 Bartlett, Tim ([PHS30](#))
- 5 Biggs and Schmidt, Martin and Richard ([PHS22](#))
- 6 Brooks, Margaret and Janet ([PHS09](#))
- 7 Budd, Julian ([PHS05](#))
- 8 Cantwell, Rosemary ([PHS11](#))
- 9 Clapp, Derek ([PHS56](#))
- 10 Colville, Elaine ([PHS20](#))
- 11 Cross-Durrant, Angela ([PHS37](#))
- 12 Dixon and Hood, Dr Ruth and Professor Christopher ([PHS24](#))
- 13 Ellicott, Lucinda ([PHS31](#))
- 14 Financial Services Ombudsman ([PHS32](#))
- 15 Healthwatch England ([PHS36](#))
- 16 Hill, Margaret ([PHS27](#))
- 17 Housing Ombudsman Service ([PHS34](#))
- 18 Legal Ombudsman ([PHS55](#))
- 19 Local Government Ombudsman ([PHS16](#)), ([PHS51](#))
- 20 Members of Parliament ([PHS28](#))
- 21 Nelson, Howard and Elaine ([PHS08](#))
- 22 Northern Ireland Ombudsman ([PHS44](#))
- 23 Parliamentary and Health Service Ombudsman ([PHS14](#)), ([PHS40](#)), ([PHS48](#)), ([PHS57](#))
- 24 Pennington, Neil ([PHS06](#))
- 25 Pensions Ombudsman ([PHS33](#))
- 26 PHSO Pressure Group ([PHS52](#))
- 27 POhWER ([PHS42](#))
- 28 Prentice, Brenda ([PHS01](#))
- 29 Professor Trevor Buck, DR Richard Kirkham and Brian Thompson ([PHS13](#))
- 30 Public and Commercial Services Union ([PHS49](#))
- 31 Public Services Ombudsman Service for Wales ([PHS12](#))
- 32 Rapp, David ([PHS39](#))
- 33 Reid, Alan ([PHS23](#))
- 34 Reynolds, Della ([PHS19](#))
- 35 Rock, C N ([PHS18](#))
- 36 Scottish Public Services Ombudsman ([PHS41](#))
- 37 Smalling-Small, Ann Marie ([PHS03](#))
- 38 Smith, Nigel ([PHS10](#))
- 39 Speers, Dee ([PHS29](#))

- 40 Tan, Mr Yu ([PHS54](#))
- 41 Terry, Gina ([PHS04](#))
- 42 Treharne Oakley, Janet ([PHS35](#))
- 43 Tweedie, D R ([PHS02](#))
- 44 Which? ([PHS17](#))

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the Committee's website at www.parliament.uk/pasc.

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2013–14

First Special Report	Public Trust in Government Statistics: A review of the operation of the Statistics and Registration Service Act 2007: Government and UK Statistics Authority Responses to the Committee's Ninth Report of Session 2012–13	HC 77
Second Special Report	Special advisers in the thick of it: Government Response to the Committee's Sixth Report of Session 2012–13	HC 515
First Report	Communicating statistics: not just true but also fair	HC 190 (HC 573)
Second Report	Public engagement in policy-making	HC 75 (HC 986)
Third Report	The role of the Charity Commission and "public benefit": Post-Legislative scrutiny of the Charities Act 2006	HC 76 (HC 927)
Fourth Report	Engaging the public in National Strategy	HC 435 (HC 986)
Fifth Report	Appointment of the Chair of the Committee on Standards in Public Life	HC 516
Sixth Report	Government Procurement	HC 123 (HC 1015)
Seventh Report	Migration Statistics	HC 523 (HC 1128)
Eighth Report	Truth to Power: how Civil Service reform can succeed	HC 74 (HC 955)
Ninth Report	Latest proposals for ministerial involvement in permanent secretary appointments: PASC's recommendations	HC 1041
Tenth Report	Statistics and Open Data: Harvesting unused knowledge, empowering citizens and improving public services	HC 564
Eleventh Report	The failure of the Cabinet Office to respond to our Report on the Business Appointment Rules	HC 1156
Twelfth Report	More complaints please!	HC 229
Thirteenth Report	Caught red-handed: Why we can't count on Police Recorded Crime statistics	HC 760

Session 2012–13

First Special Report	Public Appointments: regulation, recruitment and pay: Government Response to the Committee's Fourteenth Report of Session 2010–12	HC 18
Second Special Report	Leadership of change: new arrangements for the roles of the Head of the Civil Service and the Cabinet Secretary: Further Report: Government Response to the Committee's Twenty Third Report of Session 2010–12	HC 313
Third Special Report	Strategic thinking in Government: without National Strategy, can viable Government strategy emerge? Government Response	HC 573

	to the Committee's Twenty Fourth Report of Session 2010–12	
Fifth Special Report	The Prime Minister's Adviser on Ministers' Interests: independent or not? Government Response to the Committee's Twenty Second Report of Session 2010–12	HC 976
First Report	The Big Society: Further Report with the Government Response to the Committee's Seventeenth Report of Session 2010–12	HC 98
Second Report	The Honours System	HC 19
Third Report	Business Appointment Rules	HC 404
Fourth Report	Appointment of the Chair of the Charity Commission	HC 315-I
Fifth Report	End of term report: 2011–12	HC 316
Sixth Report	Special advisers in the thick of it	HC 134
Seventh Report	The Honours System: Further Report with the Government Response to the Committee's Second Report of Session 2012–13	HC 728
Eighth Report	The Role of the Cabinet Secretary and the Resignation of the Chief Whip	HC 864 (HC 968)
Ninth Report	Public Trust in Government Statistics, A review of the operation of the Statistics and Registration Service Act 2007	HC 406
Session 2010–12		
First Report	Who does UK National Strategy?	HC 435 (HC 713)
Second Report	Government Responses to the Committee's Eighth and Ninth Reports of Session 2009–10: Goats and Tsars: Ministerial and other appointments from outside Parliament and Too Many Ministers?	HC 150
Third Report	Equitable Life	HC 485 (Cm 7960)
Fourth Report	Pre-appointment hearing for the dual post of First Civil Service Commissioner and Commissioner for Public Appointments	HC 601
Fifth Report	Smaller Government: Shrinking the Quango State	HC 537 (Cm 8044)
Sixth Report	Who Does UK National Strategy? Further Report with the Government Response to the Committee's First Report of Session 2010–11	HC 713
Seventh Report	Smaller Government: What do Ministers do?	HC 530 (HC 1540)
Eighth Report	Cabinet Manual	HC 900 (HC 1127, Cm 8213)
First Special Report	Cabinet Manual: Government Interim Response to the Committee's Eighth Report of Session 2010–12	HC 1127
Ninth Report	Pre-appointment hearing for the post of Parliamentary and Health Service Ombudsman	HC 1220-I
Tenth Report	Remuneration of the Parliamentary and Health Service Ombudsman	HC 1350
Eleventh Report	Good Governance and Civil Service Reform: 'End of Term' report on Whitehall plans for structural reform	HC 901 (HC 1746)
Twelfth Report	Government and IT — "a recipe for rip-offs": time for a new approach	HC 715-I (HC 1724)
Thirteenth Report	Change in Government: the agenda for leadership	HC 714 (HC 1746)
Fourteenth Report	Public Appointments: regulation, recruitment and pay	HC 1389
Fifteenth Report	Smaller Government: What do Ministers do? Further Report with the Government Response to the Committee's Seventh Report of Session 2010–12	HC 1540 (HC 1746)
Sixteenth Report	Appointment of the Chair of the UK Statistics Authority	HC 910
Seventeenth Report	The Big Society	HC 902
Eighteenth Report	Change in Government: the agenda for leadership: Further	HC 1746

	Report, with the Government Responses to the Committee's Eleventh, Thirteenth and Fifteenth Reports of Session 2010–12	
Nineteenth Report	Leadership of change: new arrangements for the roles of the Head of the Civil Service and the Cabinet Secretary	HC 1582
Twentieth Report	Government and IT—"a recipe for rip-offs": time for a new approach: Further Report, with the Government response to the Committee's Twelfth Report of Session 2010–12	HC 1724
Twenty First Report	Future oversight of administrative justice: the proposed abolition of the Administrative Justice and Tribunals Council	HC 1621
Twenty Second Report	The Prime Minister's adviser on Ministers' interests: independent or not?	HC 1761
Twenty Third Report	Leadership of change: new arrangements for the roles of the Head of the Civil Service and the Cabinet Secretary, Further Report, with the Government Response to the Committee's Nineteenth Report of Session 2010–12	HC 1914
Twenty Fourth Report	Strategic thinking in Government: without National Strategy, can viable Government strategy emerge?	HC 1625