



BRIEFING PAPER

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A Public Service Ombudsman for the UK

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Summary

The Government announced in the 2015 Queen's Speech that they would publish a Draft Public Service Ombudsman Bill to "absorb the functions of Parliamentary Ombudsman, the Health Ombudsman, the Local Government Ombudsman and potentially the Housing Ombudsman".

To date, no draft bill has been published. The Queen's Speech 2016 did not mention legislation for a public sector ombudsman, although responses to Parliamentary Questions shortly before the end of 2015/16 Parliamentary Session indicated that the Government still intended to publish draft legislation "as soon as reasonably possible".

An ombudsman is a person appointed to receive complaints from an aggrieved person against a public authority (although ombudsmen also exist for the private sector). They usually have the power to investigate, to recommend corrective action, and to issue a report.

At present, there are a number of public service ombudsmen across the UK. The Parliamentary Ombudsman can investigate complaints of maladministration by UK government departments across the UK and in England. Scotland, Wales and Northern Ireland all now have their own unified public service ombudsmen that deal with complaints on a range of devolved public services. In England there are currently several ombudsmen, each of which covers a different public service. These are the Parliamentary Ombudsman, the Health Service Ombudsman, the Local Government Ombudsman and the Housing Ombudsman.

The Government's announcement in the Queen's Speech 2015 followed the publication of a report by Robert Gordon (October 2014), which had recommended that the Government should legislate to create a new single public services ombudsman. The Gordon Report suggested that this new service should comprise, at the least, the current remits and responsibilities of the UK Parliamentary Ombudsman, the Health Service Ombudsman, the Local Government Ombudsman and the Housing Ombudsman.

A government consultation was held between March and June 2015. The Government response, issued in December, stated that they intended to create a public service ombudsman that would encompass the existing jurisdictions of the Parliamentary and Health Services Ombudsman and the Local Government Ombudsman only. This would also include a framework that would allow others, such as the Housing Ombudsman, to join over time.

This briefing paper looks at the Government's proposal to bring forward a draft bill for a public service ombudsman which will provide a unified ombudsman service for UK reserved matters and public services delivered solely in England. It also looks at the existing ombudsmen landscape for public services across the UK.

1. What is an ombudsman?

An ombudsman is a person appointed to receive complaints from an aggrieved person against a public authority (although ombudsmen also exist for the private sector). They usually have the power to investigate, to recommend corrective action, and to issue a report. According to the [Ombudsman Association](#), ombudsmen offer their services “free of charge, and are thus accessible to individuals who could not afford to pursue their complaints through the courts”.¹

In the UK, the focus of ombudsmen in the public sector concerns complaints of maladministration by public bodies. The term maladministration is not defined in the legislation which established the various public services ombudsmen in the UK. However, it can be broadly defined as the public body not having acted properly or fairly, or having given a poor service and not put things right (see Box 1).

An ombudsman is a Scandinavian concept. The term is derived from a Swedish word which means a representative or agent of the people, or group of people.²

Box 1: What is maladministration?

All of the public service ombudsmen in the UK can investigate maladministration. Some, like the Health Service Ombudsman, also have a wider remit. However, maladministration is not defined in any of the statutes which established the various ombudsmen discussed in this briefing paper. This was deliberate. It has been argued that any attempt to define maladministration might prevent those with legitimate grievances outside a strict definition from obtaining a remedy.³

Generally speaking, however, maladministration can be defined as the public body not having acted properly or fairly, or having given a poor service and not put things right. At the time the office of Parliamentary Ombudsman was established, Richard Crossman, the then Leader of the House of Commons, defined maladministration as including “bias, neglect, inattention, delay, incompetence, inaptitude, perversity, turpitude, arbitrariness and so on”.⁴ He explained that “Discretionary decision, properly exercised, which the complainant dislikes but cannot fault the manner in which it was taken” was excluded by the legislation which established the Parliamentary Ombudsman.⁵

Mary Seneviratne, Professor of Law, has also offered a definition of maladministration:

In practice, maladministration often includes fairly minor matters, for example, losing a file or a letter, mistakes in calculations, or some other human error. It can cover administrative action or inaction, based on or influenced by improper considerations or conduct. Such improper considerations would include arbitrariness, malice, bias or unfair discrimination. Neglect, unjustifiable delay, incompetence, failure to observe relevant rules and procedures, and failure to take relevant considerations into account, are all examples of improper conduct. Officials must act in compliance with the law and departmental rules, and a failure to establish a review procedure where there is a duty to do so or the use of faulty systems are examples of maladministration.⁶

¹ Ombudsman Association, [The role of an ombudsman](#) [accessed on 11 March 2016]

² M Seneviratne, *Ombudsmen: Public Services and Administrative Justice*, 2002, p1

³ See Seneviratne, *Ombudsmen*, pp40-44 for a further discussion on these points.

⁴ HC Deb 18 October 1966 vol 734 c51

⁵ *Ibid*

⁶ Seneviratne, *Ombudsmen*, pp41-42

1.1 Differences between ombudsmen and the courts

Public service ombudsmen have powers similar to those of a court, including powers:

- to conduct formal investigations;
- to require documents to be produced; and
- to require witnesses to attend and be examined, in some instances, under oath.

However, there are important distinctions between ombudsmen and the courts. The courts determine whether people have suffered damage as a result of unlawful actions. In other words, they are concerned with the legality of an action or decision. Ombudsmen are not empowered to determine whether the law has been breached.

An ombudsman asks different questions from those asked in a court and looks at different issues. An ombudsman case does not involve lawyers or litigation, and generally proceeds more informally than a court case, using inquisitorial methods rather than the more adversarial model of a court. Investigations of maladministration, particularly in complex cases, can take nine months or sometimes much longer.

Ultimately, ombudsmen offer an alternative system of justice than taking a case to court, but they are not a substitute or surrogate court.

1.2 Public Service Ombudsman in the UK

At present, there are a number of ombudsmen for different elements of public services across the UK.

The only ombudsman which has a UK-wide remit is the Parliamentary Ombudsman, who can investigate complaints of maladministration by UK government departments across the UK and in England only. Scotland, Wales and Northern Ireland all now have unified public service ombudsmen covering the public services devolved in those areas. In England there are currently several ombudsmen covering such services, these are the Parliamentary Ombudsman, the Health Service Ombudsman, the Local Government Ombudsman and the Housing Ombudsman.

Box 2: A brief history of ombudsmen

The first ombudsman was introduced in Sweden in 1809. Finland followed just over a century later, setting up its own ombudsman in 1919 following independence from Russia. The first ombudsman to be established in a common law country was the Parliamentary Commissioner in New Zealand, which was set up in 1962.

Since then there has been a proliferation of ombudsmen across Western Europe. Mary Seneviratne, Professor of Law, has described the spread of the ombudsman model over the last fifty years:

By the 1970s, ombudsmen had appeared in many parts of the world, and by the 1980s, the ombudsman idea had been accepted by almost every country in Western Europe. In the past 30 years, there has been an extraordinary spread of ombudsman systems across the world, with an estimated 90 countries having ombudsman offices at the end of the 1990s. Not only have

ombudsmen multiplied, but they have also diversified. They are now to be found in the private sector, operating as consumer redress mechanisms.⁷

The first ombudsman to be established in the UK was the Parliamentary Ombudsman (referred to in legislation as the Parliamentary Commissioner for Administration) in 1967.

⁷ Seneviratne, *Ombudsmen*, p1

2. A public service ombudsman?

Summary

The Government announced in the 2015 Queen's Speech that they would publish a Draft Public Service Ombudsman Bill to "absorb the functions of Parliamentary Ombudsman, the Health Ombudsman, the Local Government Ombudsman and potentially the Housing Ombudsman".

To date, no draft bill has been published. The Queen's Speech 2016 did not mention legislation for a public sector ombudsman, although responses to Parliamentary Questions shortly before the end of 2015/16 Parliamentary Session indicated that the Government still intended to publish draft legislation "as soon as reasonably possible".

The Government's announcement in the 2015 Queen's Speech followed the publication of a report by Robert Gordon (October 2014), which had recommended that the Government should legislate to create a new single public services ombudsman. The Gordon Report suggested that this new service should comprise, at the least, the current remits and responsibilities of the UK Parliamentary Ombudsman, the Health Service Ombudsman for England, the Local Government Ombudsman for England and the Housing Ombudsman for England.

A government consultation was held between March and June 2015. The Government response, issued in December, stated that they intended to create a public service ombudsman that would encompass the existing jurisdictions of the Parliamentary and Health Services Ombudsman and the Local Government Ombudsman only. This would also include a framework that would allow others, such as the Housing Ombudsman, to join over time.

2.1 Proposals for a draft Bill

In the Queen's Speech at the start of the 2015 Parliament, the Government announced that they would be publishing a Draft Public Service Ombudsman Bill to "absorb the functions of the Parliamentary Ombudsman, the Health Ombudsman, the Local Government Ombudsman and potentially the Housing Ombudsman".⁸ The new Public Service Ombudsman would provide "a simplified, improved and more accessible final tier of redress for customers of public services who have complained and do not feel satisfied by how their complaint has been handled". This new ombudsman would be independent of Government but directly accountable to Parliament.⁹

To date, no draft legislation has been published, and the Queen's Speech 2016 did not mention legislation for a public sector ombudsman. However, responses to Parliamentary Questions shortly before the end of the 2015/16 Parliamentary Session indicated that the Government still intend to bring forward draft legislation. On 4 May 2016 John Penrose MP, Parliamentary Secretary for the Cabinet Office, said that the Government

is committed to the reform and modernisation of the public service ombudsman sector [...] we intend to publish draft

⁸ Cabinet Office, [Queen's Speech: background briefing notes](#), 27 May 2015, p102

⁹ Cabinet Office, [Queen's Speech: background briefing notes](#), 27 May 2015, p102

legislation to create a new Public Service Ombudsman, which will encompass the existing jurisdictions of the Parliamentary and Health Service Ombudsman and the Local Government Ombudsman.¹⁰

Previously, on 15 March 2016, Matthew Hancock MP, Minister for the Cabinet Office, said that it was the Government's intention to introduce draft legislation "as soon as reasonably possible".¹¹

Box 3: Draft Bills

The Government publishes a number of Draft Bills during each Parliamentary session.

A Draft Bill is published to enable consultation and pre-legislative scrutiny. After consultation and pre-legislative scrutiny has taken place, the Bill may be introduced formally in House of Commons or the House of Lords.

Most Draft Bills are examined either by select committees in the House of Commons or in the House of Lords or by a joint committee of both Houses of Parliament.

2.2 Better to Serve the Public: the Gordon Report

The Government's consultation and announcement in the 2015 Queen's Speech followed recommendations in a 2014 report by Robert Gordon QC on reforming the ombudsmen landscape. The Gordon Report, *Better to Serve the Public: Proposals to restructure, reform, renew and reinvigorate public service ombudsmen*, had been commissioned by Rt Hon Oliver Letwin MP. It recommended that the Government should legislate to create a new single public services ombudsman. This new service should comprise the current remits and responsibilities of the UK Parliamentary Ombudsman, the Health Service Ombudsman, the Local Government Ombudsman and the Housing Ombudsman. The report commented that "the public should not have to make complex determinations about who is accountable for delivering a service and to whom they should turn for redress if the service deliverer fails to address their complaint to their satisfaction".¹²

The Gordon Report suggested that the new organisation should, at the least, be formed of the Parliamentary and Health Service Ombudsman and the Local Government Ombudsman as this "would provide the right starting point and have critical mass... and would have the immediate practical benefit of simplifying the investigation of complaints in areas of public service which straddle current jurisdictions (such as health and social care)".¹³ Gordon then questioned whether the Housing Ombudsman should be included in the new PSO, arguing in favour for reasons of coverage across public services and in reflection of a trend towards greater integration.

Gordon suggested that the new Public Service Ombudsman should be accountable to a Parliamentary Commission (modelled on the Public

¹⁰ [PQ 35650](#) [Parliamentary Commissioner for Administration], 4 May 2016

¹¹ [PQ 30340](#) [Ombudsman], 15 March 2016

¹² Robert Gordon, [Better to Serve the Public: Proposals to restructure, reform, renew and reinvigorate public services ombudsmen](#), October 2014, para 3

¹³ Gordon, [Better to Serve the Public](#), para 60

Accounts Commission) for its costs and performance against objectives, targets and key performance indicators. The Commission could also be responsible for setting the PSO's budget and making appointments to its Board.

Box 4: Public Accounts Commission

The Public Accounts Commission examines the National Audit Office's Estimate and lays this before the House of Commons. The Commission appoints the Accounting Officer for the NAO, as well as non-executive members of the NAO Board, and has the power to report to the House of Commons on the exercise of its functions. The Chair of the Public Accounts Commission also answers Parliamentary Questions relating to the work and budget of the NAO.

The role of the Public Accounts Commission is defined by the *National Audit Act 1983* and the *Budget Responsibility and National Audit Act 2011*.

The Gordon Report also considered how a new Public Service Ombudsman would work within the devolution settlement:

- Public service ombudsman provision should continue to follow the devolution settlements in Northern Ireland, Scotland and Wales;
- The PSO embracing the role of the UK Parliamentary Ombudsman would continue to deal with cases relating to matters reserved to the UK Parliament and Government which arise in Northern Ireland, Scotland and Wales
- The PSO in the role of UKPO should liaise closely with the Northern Ireland Ombudsman, Scottish Public Services Ombudsman and the Public Services Ombudsman for Wales undertaking joint investigations where cases straddle devolved and reserved areas;
- The PSO in the role of UKPO should work with the NIO, SPSO and the PSOW to:
 - Help ensure that complainants wishing to raise issues relating to reserved matters in Northern Ireland, Scotland and Wales are, where necessary, assisted to lodge their complaint within the UKPO
 - Monitor the flow of business on reserved matters from Northern Ireland, Scotland and Wales to ensure that the number of cases to the UKPO is at a level broadly in line with population shares and if necessary take action to improve arrangements for signposting or referring complaints to the UKPO.¹⁴

Gordon also recommended that there should be no MP filter (see Box 5) for the new Public Services Ombudsman, although it should still be open to complainants to enlist the support of the MP, local councillor or other advocate to help articulate and present their case to the PSO.¹⁵

Box 5: The MP Filter and the Parliamentary Ombudsman

¹⁴ Robert Gordon, [*Better to Serve the Public: Proposals to restructure, reform, renew and reinvigorate public services ombudsmen*](#), October 2014, p.10

¹⁵ Robert Gordon, [*Better to Serve the Public: Proposals to restructure, reform, renew and reinvigorate public services ombudsmen*](#), October 2014

The MP filter refers to the requirement that an MP must refer a case to the Parliamentary Ombudsman before she can investigate it. This requirement was introduced by the *Parliamentary Commissioner Act 1967*, which created the Parliamentary Ombudsman. The original argument for the MP filter was that it would prevent the ombudsman from being overwhelmed with cases. It was also a way to ensure that MPs would not be by-passed by their constituents, and that Parliament would remain the forum within which grievances were raised with Ministers.

Several recent reports and reviews have recommended that the MP filter should be removed. It has been argued that doing so would increase the efficiency and speed of the investigative process.

There is no MP filter for the Health Service Ombudsman, the Local Government Ombudsman or the Housing Ombudsman.

2.3 Government Consultation on a public service ombudsman, 2015

The Government welcomed the recommendations contained in the Gordon Report, and was “keen to make progress towards creating a new PSO”.¹⁶ Before the announcement in the May 2015 Queen’s Speech, a government consultation began on 25 March and closed on 17 June 2015. This sought views on what any new ombudsman service should deliver. 158 consultation responses were received from a broad range of organisations and individuals, including ombudsmen, charities, local authorities, housing associations, professional bodies, academics and individuals with direct experience of the current system. The Government’s response to the consultation was published on 17 December 2015.¹⁷

In their response, the Government reaffirmed its intention to bring forward draft legislation for a PSO:

We will continue to develop the detail and will work with interested parties...we intend to publish draft legislation that sets out the detail of the proposals for further consideration before the end of the current Parliamentary session.¹⁸

The Government acknowledged that while there was “broad support” for the inclusion of PHSO and LGO’s services in a new PSO, questions had been raised by representatives of the housing sector about the inclusion of the Housing Ombudsman. The main point of concern was whether a scheme set up to investigate failures in public service should extend to the private provision of housing. The Government therefore said that, in the first instance, they would work to create a PSO that would encompass the existing jurisdictions of the PHSO and the LGO only. This would include a framework that allows others, such as the Housing Ombudsman, to join over time.¹⁹

¹⁶ Cabinet Office, [A Public Service Ombudsman: A Consultation](#), March 2015, p3

¹⁷ Cabinet Office, [A Public Service Ombudsman: Government Response to Consultation](#), 17 December 2015

¹⁸ Cabinet Office, [A Public Service Ombudsman: Government Response to Consultation](#), 17 December 2015, p19

¹⁹ Cabinet Office, [A Public Service Ombudsman: Government Response to Consultation](#), 17 December 2015, pp7-8

2.4 Previous proposals

There have been a number of previous proposals for a single public service ombudsman service to be created.

In October 1998 the Local Government Ombudsmen for England and the Parliamentary and Health Service Ombudsman submitted a joint paper to Ministers proposing a single commission for public administration. They suggested moving the focus from cases of 'maladministration' to 'hardship'.²⁰

In April 2000 the Cabinet Office report, *Review of Public Sector Ombudsmen in England* by Philip Collcutt and Mary Hourihan (the Collcutt Review) was published. Its remit was to consider whether the present arrangements "were in the best interest of complainants and others against a background of moves towards the more integrated provision of public services; and whether those arrangements hindered achieving better value for money".²¹ The Review's main recommendation was the creation of a new Commission of ombudsmen combining the current Parliamentary Commissioner for Administration, Health Service Commissioner and Commission for Local Administration in England.

The Government launched a consultation on Collcutt's proposal but pressure on legislative time meant that primary legislation to implement the proposals was not forthcoming.

The Law Commission published a report in 2011 on the public ombudsman services. Their report recommended that the Government should establish a wide-ranging review of public service ombudsmen and their relationship with other institutions for administrative redress, such as courts and tribunals.²²

In April 2014 the Public Administration Committee published the report, *Time for a People's Ombudsman Service*. Amongst other things, this recommended the removal of the MP filter and that there should be a consultation on the creation of a single public service ombudsman.²³ The report recommended 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

²⁰ P Collcutt & M Hourihan, *Review of the public sector ombudsmen in England*, April 2000, pp5-6

²¹ Collcutt, *Review of the public sector ombudsmen in England*, April 2000

²² The Law Commission, *Public Services Ombudsmen*, HC 1136, July 2011

²³ Public Administration Committee, *Time for a People's Ombudsman Service*, HC 655, 28 April 2014

gather perspective on the performance of public services and administration from across the country.²⁴

In their response to this report, published in September 2014, the Government confirmed that they had committed to undertake a review of the public sector landscape, and to look at the case for a single public sector ombudsman for England.²⁵

²⁴ Ibid., para 99

²⁵ Public Administration Committee, [*More Complaints Please! and Time for a People's Ombudsman Service: Government Responses to the Committee's Twelfth and Fourteenth Reports of Session 2013-14*](#), 12 September 2014, p.5

3. Current Public Service Ombudsmen in the UK

There is no single model of public service ombudsman in the UK. In England at present, there are a number of ombudsmen which can investigate complaints regarding public bodies or services. These are the Parliamentary and Health Services Ombudsman, the Local Government Ombudsman and the Housing Ombudsman. By contrast, Scotland, Wales and Northern Ireland each have their own unified public service ombudsman. These are broadly similar to one another.

Although there is not a single model of public service ombudsman in the UK, each of the ombudsmen described above is empowered to investigate complaints of maladministration, although some also have wider remits. Another general similarity is that, with the exception of the Housing Ombudsman for England, none of the public service ombudsmen are able to enforce their recommendations or decisions. Instead they can, and usually must, produce a report outlining their findings and make recommendations about the appropriate action that a public body should take in order to remedy the injustice.

Table 1 provides a summary of the current public service ombudsmen in the UK. Sections 4 and 5 look at these various ombudsmen in greater detail.

Table 1: Current Public Service Ombudsmen in the UK

Ombudsman	Year Established	Jurisdiction	Coverage
Parliamentary Ombudsman	1967	UK-wide for UK government departments and England only, e.g. Department for Education	UK government departments and their agencies, and England only.
Health Service Ombudsman	1973	England	The NHS in England.
Local Government Ombudsman for England	1974	England	Local authorities, specified public bodies, education admissions and appeals panels and adult social care providers
Housing Ombudsman for England	1996	England	Social landlords registered, regulated or operating in England; some private landlords.
Scottish Public Service Ombudsman	2002	Scotland	Scottish Government, the NHS in Scotland, local councils, housing associations and cooperatives, colleges and universities, prisons, and most water and sewage providers. A full list of authorities can be found in Schedule 2 of the <i>Scottish Public Service Ombudsman Act 2002</i> .
Public Service Ombudsman	2005	Wales	Welsh Assembly and its public bodies, Welsh health service bodies, local government bodies

for Wales

and social landlords. A full list of authorities can be found in Schedule 3 of the *Public Service Ombudsman (Wales) Act 2005*.

Northern
Ireland Public
Service
Ombudsman

2016

Northern Ireland

Norther Ireland government departments, district councils, education and library boards, universities and Housing Associations. The full list of authorities can be found in schedule 3 of the *Northern Ireland Public Service Ombudsman Act 2016*.

4. UK-wide and England-only ombudsmen

4.1 The Parliamentary and Health Service Ombudsman

The Parliamentary and Health Services Ombudsman comprises the post of Parliamentary Ombudsman, established by the *Parliamentary Commissioner Act 1967*, and the post of Health Service Ombudsman, established by the *NHS Reorganisation Act 1973*. Until devolution, the Parliamentary Ombudsman was chosen by convention as Health Service Ombudsman for each part of the UK, except Northern Ireland. Currently, the post is combined with the Health Service Ombudsman for England.

Parliamentary Ombudsman

The role of the Parliamentary Ombudsman (formally referred to in legislation as the Parliamentary Commissioner for Administration) is to investigate complaints from members of the public who believe that they have suffered injustice due to maladministration by government departments or certain other public bodies. The bodies that are within the jurisdiction of the Parliamentary Ombudsman are essentially UK government departments and non-departmental public bodies, and departments in England only, e.g. the Department for Education. The authorities are listed in Schedule 1 of the *Parliamentary and Health Service Commissioners Act 1987*, although this is not an exhaustive list.

The Parliamentary Ombudsman was established by the *Parliamentary Commissioner Act 1967*. It was the first ombudsman to be established in the UK. Section 5(1) of the *Parliamentary Commissioner Act 1967* requires that a complaint made to the Parliamentary Ombudsman must be submitted to a Member of Parliament, who then, at their discretion, forwards it on to the Parliamentary Ombudsman. This is known as the 'MP filter'.

The House of Commons Library Paper Briefing Paper, *The Parliamentary Ombudsman: role and proposals for reform*, contains further information on the Parliamentary Ombudsman.

Health Service Ombudsman

The Health Service Ombudsman can investigate complaints into maladministration or service failure by a health service body in England. The current remit of the Health Service Ombudsman is set out in the *Health Service Commissioners Act 1993* (as amended), which gives the Ombudsman power to investigate in certain circumstances, including:

- (1) On a complaint duly made to a Commissioner by or on behalf of a person that he has sustained injustice or hardship in consequence of—
 - (a) a failure in a service provided by a health service body,

(b) a failure of such a body to provide a service which it was a function of the body to provide, or

(c) maladministration connected with any other action taken by or on behalf of such a body...

[...]

Any failure or maladministration mentioned in subsection (1) may arise from action of—

(a) the health service body,

(b) a person employed by that body,

(c) a person acting on behalf of that body, or

(d) a person to whom that body has delegated any functions.²⁶

The Health Service Ombudsman therefore has a wider remit than the Parliamentary Ombudsman. Rather than being confined to allegations of maladministration, the ombudsman can also investigate failures in a service provided by a health service body and failure to provide a service which it was a function of the body to provide.²⁷

The office of Health Service Ombudsman was first created in the *NHS Reorganisation Act 1973*. This was in response to pressure for an effective resolution of grievances, given the exclusion of the NHS from the *Parliamentary Commissioner Act 1967*, as outside the direct responsibility of the then Minister for Health. It was subsequently modified by the *Parliamentary and Health Service Commissioners Act 1987*, the *Health Service Commissioners Act 1993* and the *Health Service Commissioner (Amendment) Act 1996*. This last Act considerably broadened the scope of the investigations by enabling the HSO to investigate all aspects of NHS care and treatment, including clinical judgement. It was designed to place the Ombudsman at the top of the new unified NHS complaints procedure.

Although the Health Service Ombudsman is a separate post to the Parliamentary Ombudsman, the two have always been held by the same individual. That person is referred to as the Parliamentary and Health Services Ombudsman.

The Health Service Ombudsman's jurisdiction in Scotland and Wales was transferred to the Scottish Public Services Ombudsman and the Public Services Ombudsman for Wales when they were established. The Health Service Ombudsman's jurisdiction in England is still held by the Parliamentary Commissioner.

There is no MP filter on the Health Service Ombudsman.

The Library Briefing Paper on [NHS Complaints Procedures in England](#) contains further details on the Health Service Ombudsman.

²⁶ *Health Service Commissioners Act 1993*, Section 3

²⁷ *Health Service Commissioners Act 1993*, Section 3; M Seneviratne, *Ombudsmen: Public Services and Administrative Justice*, 2002, p169

4.2 Local Government Ombudsman

The Commission for Local Administration, usually known as the Local Government Ombudsman (LGO), deals with complaints about local authorities, other specific public bodies, education admissions appeals panels and adult social care providers (such as care homes and home care providers).²⁸ Parish and town councils do not come within the LGO's jurisdiction.

The LGO's jurisdiction covers England only. Similar duties are carried out for Wales, Scotland and Northern Ireland by the Public Services Ombudsman for Wales, the Scottish Public Services Ombudsman and the Northern Ireland Public Services Ombudsman.

The LGO was established by the *Local Government Act 1974*. The 1974 Act required that a complainant must have sustained injustice in consequence of maladministration in connection with the action taken by or on behalf of an authority. The *Local Government and Public Involvement in Health Act 2007* widened this to allow the Ombudsman greater discretion to decide whether to initiate, continue or discontinue an investigation.

There are two Local Ombudsmen, each appointed by the Queen on the advice of the Secretary of State. However, there is currently only one in post.

The House of Commons Library Briefing Paper on the [Local Government Ombudsman](#) contains further information.

4.3 Housing Ombudsman

The Housing Ombudsman deals with complaints from social housing tenants and leaseholders about their landlords. It does so under the [Housing Ombudsman Scheme](#), which states that the role of the Ombudsman is to resolve disputes involving members of the Scheme, including making awards of compensation or other remedies when appropriate. The Scheme applies to all social landlords registered, regulated or operating in England. The Housing Ombudsman also resolves disputes relating to voluntary members of the Scheme. These include private landlords and letting agents who, according to the Housing Ombudsman's website, are "committed to good service for their tenants".²⁹

The Ombudsman operates in accordance with the Housing Ombudsman Scheme, which is approved by the Secretary of State for Communities and Local Government under the terms of the *Housing Act 1996*. The *Housing Act 1996* requires social housing providers to sign up to the Housing Ombudsman Scheme.³⁰ Section 51 of the 1996 Act states that the scheme will be "investigated by a housing ombudsman".³¹

²⁸ Local Government Ombudsman, [Home](#) [accessed 16 March 2016]

²⁹ Housing Service Ombudsman, [About HOS: Overview](#) [accessed 23 February 2016]

³⁰ [Housing Act 1996](#), Section 51 and Schedule 2

³¹ [Housing Act 1996](#), Section 51

The Law Commission has noted that the Housing Ombudsman is in a different position to other public service ombudsmen because the relationship between the Ombudsman and social housing landlords “is governed by private law in that landlords are contractually obliged to implement the ombudsman’s recommendations”.³²

Changes to the Housing Ombudsman’s jurisdiction were made by the *Localism Act 2011*. This extended the Ombudsman’s jurisdiction to Local Housing Authorities. It also gave “designated persons” a role in dealing with disputes between members of the Scheme and their residents, and in referring complaints that have not been resolved through the landlord’s procedures, to the Ombudsman.³³

The House of Commons Library Briefing Paper [Housing Complaints – the role of designated persons](#) contains further information on the Housing Ombudsman.

³² Law Commission, *Public Service Ombudsman*, 13 July 2011, HC 1136, para 1.6

³³ [Localism Act 2011](#), Section 180

5. Unified public service ombudsmen

5.1 Scottish Public Service Ombudsman

The Scottish Public Service Ombudsman (SPSO) handles complaints in Scotland concerning public services provision. Its remit includes councils, the National Health Service, housing associations and cooperatives, universities and colleges, most water and sewage providers, prisons, the Scottish Government (and its agencies and departments), and most Scottish authorities.³⁴ The precise bodies within the SPSO's jurisdiction are set out in parts 1 and 2 of Schedule 2 of the *Scottish Public Service Ombudsman Act 2002*. The 2002 Act also sets out a standardised set of procedures for dealing with all relevant complaints.

Like all the existing public service ombudsmen in the UK, the SPSO is empowered to investigate allegations of maladministration causing injustice. However, the SPSO can also investigate "any failure in service" provided by a public body or that it was the function of such a public body to provide.³⁵ The SPSO's service failure jurisdiction does not extend to "family health services" or registered social landlords.³⁶

Section 91 of the *Scotland Act 1998* required that the Scottish Parliament make provision for the investigation of maladministration by the Scottish Administration.³⁷ The Scottish Executive used that opportunity to conduct a far wider consultation and reform of public services ombudsmen in Scotland.³⁸ This resulted in the *Scottish Public Service Ombudsman Act 2002*.

The *Scottish Public Service Ombudsman Act 2002* established the SPSO. The Act provided for a new, integrated ombudsman service in Scotland, which combined the existing roles of Scottish Parliamentary Ombudsman, the Health Service Ombudsman for Scotland, the Local Government Ombudsman for Scotland and the Housing Association Ombudsman for Scotland into a single ombudsman post.

As with other ombudsmen, the SPSO has no power to enforce his or her recommendations or to impose sanctions. The decisions of the ombudsman therefore remain as recommendations to the authorities concerned. The SPSO does, however, have the power to lay before the Scottish Parliament a special report on any case of un-remedied injustice.

³⁴ Scottish Public Service Ombudsman, [About Us](#), 31 January 2014

³⁵ *Scottish Public Services Ombudsman Act 2002*, Section 5 (1) (c) and 5 (2). The public bodies the ombudsman can investigate are listed in Schedule 2.

³⁶ *Scottish Public Services Ombudsman Act 2002*, Section 5 (1) (c) and 5 (2); Law Commission, *Public Services Ombudsmen*, 13 July 2011, HC 1136, para 2.26

³⁷ [Scotland Act 1998](#), Section 91

³⁸ Scottish Executive, *Modernising the Complaints System*, 2000; Law Commission, *Public Services Ombudsmen*, 13 July 2011, HC 1136, para 2.25

5.2 The Northern Ireland Public Services Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) investigates complaints of maladministration in the delivery of public services in Northern Ireland. It replaced and expanded on the existing jurisdictions of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints. These were separate offices held by the same person by convention, and which were previously known collectively as the Northern Ireland Ombudsman.³⁹

NIPSO was established in April 2016 by the *Northern Ireland Public Service Ombudsman Act 2016*. Schedule 3 of that Act lists the authorities that are within the ombudsman's jurisdiction. This includes all Northern Ireland government departments, their agencies and public bodies; district councils, education and library boards, as well as Housing Associations in Northern Ireland. The NIPSO was also given the power to look into maladministration in relation to university students. Section 18 of the *Northern Ireland Public Service Ombudsman Act 2016* states that NIPSO may investigate alleged maladministration through action taken by a university "in the exercise of administrative functions, in respect of students enrolled in courses provided or validated by the university".⁴⁰

In addition, NIPSO was also given the new power to investigate matters on his or her own initiative, i.e. the NIPSO does not have to have received a complaint. This power commences on 1 March 2018. The NIPSO can only look into a matter on their own initiative if they have a "reasonable suspicion" of "systemic maladministration". The 2016 Act requires NIPSO to establish criteria to determine when they might commence an investigation.⁴¹

The *Northern Ireland Public Service Ombudsman Act 2016*, which established NIPSO, was originally entitled the *Public Services Ombudsperson Bill* when introduced in the Northern Ireland Assembly. The Committee for the Office of the First Minister and Deputy First Minister, who had been tasked with drawing up the Bill, had decided to replace 'Ombudsman' with 'Ombudsperson' because the latter was "unambiguously gender neutral".⁴² In light of further research on the origins of the term 'Ombudsman', however, the Committee agreed to support the Ad Hoc Committee on the Public Services Ombudsperson

³⁹ The two offices existed under separate legislation. The *Parliamentary Commissioner Act (Northern Ireland) 1969* created the post of Parliamentary Ombudsman for the then Northern Ireland Parliament (called the Northern Ireland Parliamentary Commissioner for Administration). *The Ombudsman (Northern Ireland) Order 1996* SI 1996/1298 (N.I. 8) changed the title of the post to the Assembly Ombudsman for Northern Ireland to reflect the new devolved legislative arrangements. The office of Northern Ireland Commissioner for Complaints was established by the *Parliamentary Commissioner Bill 1969*. This Act was replaced by the *Parliamentary Commissioner Bill 1969*.

⁴⁰ *Northern Ireland Public Services Ombudsman Act 2016*, Section 18(2)

⁴¹ *Northern Ireland Public Services Ombudsman Act 2016*, Sections 8 & 9

⁴² Public Service Ombudsperson Bill, [Explanatory and Financial Memorandum](#), April 2015, para 40

Bill's amendments, and revert to 'Ombudsman', at consideration stage and further consideration stage. Lord Morrow, the Chairperson of the Ad Hoc Committee on the Public Services Ombudsperson Bill, explained their reasoning for reverting to 'ombudsman':

The Ad Hoc Committee considered the use of the term "ombudsperson" in the Bill and noted that it was the intention of the Committee for OFMDFM that the name should be unambiguously gender-neutral. The Ad Hoc Committee received evidence from the International Ombudsman Institute, the International Ombudsman Association, and the Welsh and Irish Ombudsmen that the term "ombudsman" was already gender-neutral. The word is of Scandinavian origin, and its original meaning in Swedish is "representative". We received a research paper on the etymology of the term. We were advised that "ombudsman" was a trusted and recognised brand and that to change the title could cause confusion among the public.⁴³

5.3 Public Services Ombudsman for Wales

The Public Services Ombudsman for Wales (PSOW) investigates maladministration and service failure by the National Assembly for Wales and its public bodies, a number of other publicly funded bodies, Welsh health service bodies (primarily NHS Trusts and Local Health Boards in Wales), certain health service providers in Wales, local government bodies in Wales and social landlords in Wales.⁴⁴ The list of bodies within the ombudsman's jurisdiction are listed in Schedule 3 of the *Public Services Ombudsman (Wales) Act 2005*.

The PSOW was established by the *Public Services Ombudsman (Wales) Act 2005*. The Act also abolished the following four bodies in Wales: the Welsh Administration Ombudsman, the Health Service Commissioner for Wales, the Social Housing Ombudsman for Wales and the Commission for Local Administration in Wales (including the office of the Local Commissioner for Wales). The Act was intended to provide a unified ombudsman service in Wales, amalgamating the remits of the existing ombudsmen and commissioner roles.

In addition to the jurisdiction the PSOW has over the general service provision by the devolved administration and local authorities, social landlords, and the National Health Service in Wales, the PSOW also has what the Law Commission has described as a "unique" jurisdiction for an ombudsman.⁴⁵ The PSOW has jurisdiction over the ethical conduct of local government members and employees. Under the 2005 Act, the Ombudsman took over the investigative functions of the Local Commissioner for Wales. Schedule 4 of the Act amends Part 3 of the *Local Government Act 2000*, and gives the PSOW the power to investigate complaints regarding the standards of conduct of local government members and employees.⁴⁶

⁴³ Northern Ireland Assembly, [Official Report](#), 30 November 2015

⁴⁴ Public Service Ombudsman for Wales, [Bodies in the Ombudsman's jurisdiction](#) [accessed 14 April 2016]

⁴⁵ Law Commission, *Public Services Ombudsmen*, 13 July 2011, HC 1136, para 2.28

⁴⁶ *Public Services Ombudsman (Wales) Act 2005*, Schedule 4

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