



## BRIEFING PAPER

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# Draft Public Service Ombudsman bill

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## Summary

On 5 December 2016 the Government published a draft Public Service Ombudsman Bill.

The Bill would create a Public Service Ombudsman (PSO) for UK reserved matters and public services in England.

The draft Bill would:

- Create a single Public Service Ombudsman for UK reserved matters and for public services delivered solely in England, absorbing the existing remits and responsibilities of the Parliamentary Ombudsman, the Health Service Ombudsman and the Local Government Ombudsman.
- Abolish the existing Parliamentary Ombudsman, Health Service Ombudsman and Local Government Ombudsman.
- Abolish the MP filter, meaning that all complaints of maladministration can be made directly to the PSO. Currently, complaints to the Parliamentary Ombudsman have to be made through an MP – this is known as the ‘MP filter’. Under the draft Bill MPs would still be able to submit complaints if constituents wanted them to.
- Create a statutory body, known as the Board of the Public Service Ombudsman, to provide staff and resources for the PSO to carry out her functions.
- Provide for Parliamentary oversight and scrutiny of the Board
- Equip the PSO with powers to investigate complaints and to promote good complaints handling.
- The Housing Ombudsman is unaffected by the draft Bill and would continue. However, the draft Bill gives the Minister for the Cabinet Office the power to pass secondary legislation which would enable its responsibilities surrounding complaints against social landlords to be absorbed into the PSO’s remit at a later date.

Other public service ombudsmen – in Scotland, Wales and Northern Ireland – are unaffected by the draft Bill, although it is envisaged that the new PSO will work with these existing ombudsmen.

# 1. A public service ombudsman for the UK

On 5 December 2016 the Government published a draft Public Service Ombudsman Bill.

The draft bill would create a Public Service Ombudsman (PSO) for UK reserved matters and public services in England.

The draft Bill would abolish the existing [Parliamentary and Health Service Ombudsman](#) (PHSO)<sup>1</sup> and the [Local Government Ombudsman](#) (LGO), merging their responsibilities into a single PSO.

The [Housing Ombudsman](#) would continue unaffected. However, the draft Bill does contain provisions which may allow some of its responsibilities to be absorbed by the PSO at a later date.

Other public service ombudsmen – in Scotland, Wales and Northern Ireland – are also unaffected by the draft Bill, although it is envisaged that the new PSO will work with these existing ombudsmen.

The draft Bill is unlikely to be controversial. There has been broad and longstanding agreement that reform of the ombudsman landscape is needed. The Government's draft Bill is also based on recommendations made in a 2014 review of the public sector ombudsman landscape by Robert Gordon QC. The Government then held a consultation on Gordon's findings and recommendations in 2015.

However, some initial commentary on the Bill by Richard Kirkham and Brian Thompson, lecturers in law, has raised concerns that the draft Bill represents "a conservative model of the ombudsman enterprise when compared to...counterparts in the UK and elsewhere".<sup>2</sup>

## 1.1 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".<sup>3</sup>

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,

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<sup>1</sup> The Parliamentary Ombudsman and the Health Service Ombudsman are two separate Ombudsman offices which, by convention, are held by the same person. She is known as the Parliamentary and Health Service Ombudsman (PHSO).

<sup>2</sup> Richard Kirkham and Brian Thompson, '[An initial commentary on the draft public service ombudsman bill](#)', UK Administrative Justice Institute blog, 20 December 2016

<sup>3</sup> Ombudsman Association, '[The Role of an Ombudsman](#)', [accessed 13 December 2016]

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.

### **Difference 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.

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 What happens to a draft Bill?**

Draft Bills are published to enable consultation and pre-legislative scrutiny. Most draft Bills are examined either by a select committee in the House of Commons or in the House of Lords, or by a joint committee of both Houses.

After consultation and pre-legislative scrutiny has taken place, the Bill may be introduced in either the House of Commons or the House of Lords.

## 2. Policy Background

There have been longstanding calls for the reform of the public service ombudsman landscape, and for the creation of a single public service ombudsman service. Further details on this can be found in the Library Briefing Paper [A Public Service Ombudsman for the UK](#), Section 2.4.

### 2.1 *Time for a People's Ombudsman (2014)*

In 2014 the Public Administration Committee (PAC) published a report, [Time for a People's Ombudsman Service](#).<sup>4</sup> Amongst other things, this recommended that there should be a consultation on the creation of a single public service ombudsman for England, which brought together the relevant parts of the Parliamentary and Health Service Ombudsman, the Local Government Ombudsman and the Housing Ombudsman.

The PAC report also recommended that:

- the 'MP filter' (the requirement that all complaints to the Parliamentary Ombudsman must be referred by an MP) should be abolished;
- the existing Parliamentary and Health Service Ombudsman (PHSO) should have 'own initiative powers';
- the PHSO should be able to receive complaints other than in writing.

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.<sup>5</sup>

### 2.2 The Gordon Report (2014)

Robert Gordon QC (a previous Director General in the Scottish Government) was tasked by the Cabinet Office in 2014 to look at reforming the ombudsman landscape.

The Gordon Report, [Better to Serve the Public: Proposals to restructure, reform, renew and reinvigorate public service ombudsmen](#), recommended that the Government should legislate to create a new single public service ombudsman.

The Gordon Report concluded that 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

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<sup>4</sup> Public Administration Select Committee, [Time for a People's Ombudsman Service](#), HC 655, 28 April 2014

<sup>5</sup> Public Administration Committee, [More Complaints Please! and Time for a People's Ombudsman Service: Government's Response to the Committee's Twelfth and Fourteenth Reports of Session 2013-14](#), 12 September 2014, p5

redress if the service deliverer fails to address their complaint to their satisfaction".<sup>6</sup>

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)".<sup>7</sup> 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 Accounts Commission) for its costs and performance against objectives, targets and key performance indicators. The Commission should also be responsible for setting the PSO's budget and making appointments to its Board.<sup>8</sup>

## 2.3 Government consultation and proposals for a PSO (2015)

The Government welcomed the conclusions and recommendations in the Gordon Report, and held a consultation on proposals for reform based on these.

The consultation was launched on 25 March 2015 and ran for 12 weeks. 158 responses were received "from a broad range of organisations and individuals, including ombudsmen".<sup>9</sup>

The Government's response to the consultation was published on 17 December 2015. In this, the Government reaffirmed its intention to bring forward draft legislation for a PSO before the end of the Parliamentary Session:

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.<sup>10</sup>

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

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<sup>6</sup> Robert Gordon, [Better to Serve the Public: Proposals to restructure, reform, renew and reinvigorate public services ombudsmen](#), October 2014, para 3

<sup>7</sup> Ibid., para 60

<sup>8</sup> Ibid., para 87

<sup>9</sup> Cabinet Office, [A Public Service Ombudsman: Government Response to Consultation](#), December 2015, p4

<sup>10</sup> Ibid., p19

would encompass the existing jurisdictions of the PHSO and the LGO only. This would include a framework that allowed others, such as the Housing Ombudsman, to join over time.<sup>11</sup>

Dr Richard Kirkham, a senior lecturer in administrative justice at the University of Sheffield, criticised the Government's proposals as being too modest, in a December 2015 [blog post](#). According to Kirkham, the Government's 2015 proposals "looked like a pragmatic merger of two/three ombudsman schemes with a bit of modernisation thrown in, rather than a bold attempt to reinvigorate the ombudsman model".<sup>12</sup>

## 2.4 Draft legislation announced

Following the consultation feedback, the Government announced that they would be publishing a draft Public Service Ombudsman Bill in the Queen's Speech at the start of the 2015 Parliament. This would "absorb the functions of the Parliamentary Ombudsman, the Health Ombudsman, the Local Government Ombudsman and potentially the Housing Ombudsman".<sup>13</sup> This 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.<sup>14</sup>

Despite this no legislation was introduced in the 2015-16 parliamentary session.

Responses to parliamentary questions shortly before the end of the 2015-16 session indicated the Government's intention 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 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.<sup>15</sup>

A written statement by Chris Skidmore, Minister for the Constitution,<sup>16</sup> announced the publication of the draft Public Service Ombudsman Bill on 5 December 2016.<sup>17</sup>

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<sup>11</sup> Cabinet Office, [A Public Service Ombudsman: Government Response to Consultation](#), December 2015, pp17-18

<sup>12</sup> Richard Kirkham, '[More merger than radical reform: the Government's response to its consultation on a new public service ombudsman](#)', Ombudsman Association, 22 December 2015

<sup>13</sup> Cabinet Office, [Queen's Speech: background briefing notes](#), 27 May 2015, p102

<sup>14</sup> Cabinet Office, [Queen's Speech: background briefing notes](#), 27 May 2015, p102

<sup>15</sup> PQ 35650 [[Parliamentary Commissioner for Administration](#)], 4 May 2016

<sup>16</sup> HC WS315 [[Draft Public Service Ombudsman Bill](#)] 5 Dec 2016

<sup>17</sup> Cabinet Office, [Draft Public Service Ombudsman Bill](#), Cm 9374, 5 Dec 2016



In May 2018 the Minister for the Cabinet Office, Chloe Smith, reiterated the Government's intention to progress the draft bill "as and when a legislative opportunity arises".<sup>18</sup>

## 2.5 Pre-legislative scrutiny

The Housing, Communities and Local Government Committee held a one-off evidence session on 6 March 2017. The Committee took evidence from the Local Government Ombudsman, Mick King, and the Housing Ombudsman, Denise Fowler.<sup>19</sup>

The Local Government Ombudsman welcomed the bill as an opportunity to create a modern ombudsman "designed around the need of the public rather than designed around service silos."<sup>20</sup>

The Housing Ombudsman commented that if the Public Service Ombudsman were to incorporate housing at some point in the future, her preference would be for "a chief ombudsman with ombudsmen reporting to it from each of the relevant sectors." She would also want "to look at what the relevant powers would be for a Housing Ombudsman".<sup>21</sup>

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<sup>18</sup> PQ 141686 [[Public Service Ombudsman Bill \(Draft\)](#)] 15 May 2018

<sup>19</sup> Communities and Local Government Committee, [Oral evidence 6 Mar 2017: Draft Ombudsman Bill](#), HC 1052 9 Mar 2017

<sup>20</sup> *Ibid* Q2

<sup>21</sup> *Ibid* Q40

### 3. Current UK Public Service Ombudsmen

At present, there are several ombudsmen for different public services across the UK (see Table 1).

The Parliamentary Ombudsman (PO) investigates complaints of maladministration by UK government departments and associated public bodies. It is the only public service ombudsman with a UK-wide remit.

Scotland, Wales and Northern Ireland all have their own unified public service ombudsmen covering public services devolved there. Broadly speaking, these cover the devolved administrations, their associated public bodies, and certain health and local government services.

In England, by contrast, there are several ombudsmen covering these public services. They are:

- the Health Service Ombudsman (HSO)
- the Local Government Ombudsman (LGO)
- the Housing Ombudsman (HO)

In addition to her UK-wide remit, the PO also has jurisdiction over 'England only' UK Government Departments, such as the Department for Education.

By convention, the positions of PO and HSO are held by the same person, known as the Parliamentary and Health Service Ombudsman (PHSO).

The table below provides a summary of the current public service ombudsmen in the UK. A more comprehensive account of current UK public service ombudsmen can be found in the Library Briefing Paper [Public Service Ombudsman for the UK](#).

**Table 1: Current Public Service Ombudsmen in the UK**

Ombudsman	Established	Jurisdiction	Coverage includes
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 for Wales	2005	Wales	Welsh Assembly and its public bodies, Welsh health service bodies, local government bodies and social landlords. A full list of authorities can be found in Schedule 3 of the <i>Public Service Ombudsman (Wales) Act 2005</i> .
Northern Ireland Public Service Ombudsman	2016	Northern Ireland	Northern 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 <i>Northern Ireland Public Service Ombudsman Act 2016</i> .

### 3.1 Reform of the Public Service Ombudsman for Wales

The Public Service Ombudsman for Wales (PSOW) was created in 2005 by the *Public Services Ombudsman (Wales) Act 2005*.

In the first half of 2015, the Finance Committee of the National Assembly for Wales held an inquiry looking at whether the PSOW's powers should be strengthened.

The Committee's report, published in May 2015, made 18 recommendations to improve and strengthen the PSOW. Recommendations included giving the PSO:

- own-initiative powers;
- full discretion to decide how complaints can be made;
- a statutory complaints handling role for the PSOW.

The Committee put together and consulted on a draft Bill, which it recommended should be introduced in the National Assembly during the Fourth Assembly.<sup>22</sup>

The Bill was not introduced, owing to time constraints, but the Committee has recommended that the Bill should be introduced as a priority in the Fifth Assembly.

The *Public Services Ombudsman (Wales) Bill* was introduced on 2 October 2017 and a motion to agree the general principles of the bill was agreed on 21 March 2018. The bill is currently remitted to the

<sup>22</sup> National Assembly for Wales Finance Committee, [Consideration of the Consultation on the Draft Public Services Ombudsman \(Wales\) Bill](#), March 2016, pp.11-13

## 12 Draft Public Service Ombudsman bill

Equality, Local Government and Communities Committee; Stage 2 of the 4 Stages required for Welsh Assembly bills.

The bill includes provisions which set out the new powers for the Ombudsman to:

- accept oral complaints;
- undertake own initiative investigations;
- investigate private medical treatment including nursing care in a public/private health pathway;
- undertake a role in relation to complaints handling standards and procedures.<sup>23</sup>

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<sup>23</sup> Welsh Assembly, [Public Services Ombudsman \(Wales\) Bill](#)

## 4. What does the draft Bill do?

### Summary

The draft Public Service Ombudsman Bill would:

- Create a single Public Service Ombudsman for UK reserved matters and for public services delivered solely in England, absorbing the existing remits and responsibilities of the Parliamentary Ombudsman, the Health Service Ombudsman and the Local Government Ombudsman.
- Abolish the existing Parliamentary Ombudsman, Health Service Ombudsman and Local Government Ombudsman.
- Abolish the MP filter, meaning that all complaints of maladministration can be made directly to the PSO. Currently, complaints to the Parliamentary Ombudsman have to be made through an MP – this is known as the ‘MP filter’.
- Create a statutory body, known as the Board of the Public Service Ombudsman, to provide staff and resources for the PSO to carry out her functions.
- Provide for Parliamentary oversight and scrutiny of the Board
- Equip the PSO with powers to investigate complaints and to promote good complaints handling.
- The Housing Ombudsman is unaffected by the draft Bill and would continue. However, the draft Bill gives the Minister for the Cabinet Office the power to pass secondary legislation which would enable its responsibilities surrounding complaints against social landlords to be absorbed into the PSO’s remit at a later date.

### A public service ombudsman (Clauses 2, 29, 26 and Schedule 1)

#### **Background**

There are currently several public service ombudsmen in England. They are the Local Government Ombudsman, the Health Ombudsman and the Housing Ombudsman.

In addition to these, the Parliamentary Ombudsman (PO) investigates complaints of maladministration by UK Government Departments and associated public bodies, as well as England only Government Departments, e.g. the Department for Education.

Scotland, Wales and Northern Ireland all already have their own unified public service ombudsmen covering devolved public services there.

#### **The Bill**

**Clause 2** creates the office of the Public Service Ombudsman and introduces **Schedule 1**. That Schedule makes provisions about the appointment, conditions of tenure and functions of the PSO. The new PSO would be appointed by Her Majesty the Queen, under letters patent, for a period of seven years. They may not be appointed again.

**Clause 29** abolishes the existing offices of Parliamentary Ombudsman, Local Government and Health Service Ombudsman. The new PSO would effectively absorb their remits and is provided with some enhanced powers.

### **Comment**

The 2014 Public Administration Committee Report *Time for a People's Ombudsman Service* recommended that there should be a consultation on the creation of a single public service ombudsman for England, which brought together the relevant parts of the Parliamentary and Health Service Ombudsman, the Local Government Ombudsman and the Housing Ombudsman.

One of the conclusions set out in the Gordon Report (2014), which also recommended the establishment of a PSO, was that people should not have to make complex decisions about who to complain to. Instead, Gordon recommended that there should ideally be one PSO for everything.

The Government has said that the draft Bill will “ensure that anyone who makes a justified complaint can expect a rapid, effective remedy and that their voice will be heard”.<sup>24</sup>

However, the absence of the Housing Ombudsman from the new PSO might therefore raise some questions about how far the proposed PSO simplifies the complaints process or fulfils the intention of creating a single PSO for all public service complaints (see below).

## **Housing Ombudsman not abolished (Clause 26)**

### **Background**

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”.<sup>25</sup>

Both the Public Administration Committee, in their report *Time for a People's Ombudsman Service*, and the Gordon Report (2014), recommended that the Housing Ombudsman should be included in a new PSO.

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

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<sup>24</sup> Cabinet Office, [Draft Public Service Ombudsman Bill](#), 5 December 2016

<sup>25</sup> Housing Service Ombudsman, [About HOS: Overview](#)

complaints in areas of public service which straddle current jurisdictions (such as health and social care)".<sup>26</sup> 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.

### **The Bill**

The Housing Ombudsman is not abolished, and would continue in its existing form. However, **Clause 26** of the draft Bill contains provisions which would allow the Minister for the Cabinet Office to pass secondary legislation to enable the HO's responsibilities surrounding complaints against social landlords to be absorbed into the PSO's jurisdiction at a later date, and to repeal section 51 and schedule 2, of the *Housing Act 1996*.

Before doing so, the Minister must first consult with the following:

- the PSO's board
- the Public Accounts Commission
- the Housing Ombudsman under an approved scheme
- the Regulator of Social Housing; and
- any other person who appear to the Minister to have an interest in the proposed legislation.

### **Comment**

One of the conclusions set out in the Gordon Report (2014), which recommended the establishment of a PSO, was that people should not have to make complex decisions about who to complain to. Instead, Gordon recommended that there should ideally be one PSO for everything.

The Government had originally proposed to include the HO in the new PSO. However, it later dropped this intention, following concerns raised by representatives from the Housing sector.

The main issue concerning the HO is that its remit covers private as well as social landlords. During the 2015 consultation on the Government proposals, a number of representatives from the Housing sector questioned whether the HO should be included in a scheme set up to investigate failures in public service. According to the HO's submission to the Government's consultation, 83% of its members are private organisations involved in a very wide range of housing related activities.<sup>27</sup>

The HO did not think that there was a strong imperative for it to be included in the new PSO. It said that there "are significant potential risks to our current service which is working well and the majority of our stakeholders are against the proposals". They added that they would only join if the new organisation was "not entirely 'public sector' in nature (e.g. its name reflects the wider range of services covered,

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<sup>26</sup> Ibid., para 60

<sup>27</sup> [Housing Ombudsman submission to Cabinet Office Consultation](#), 16 June 2015

avoiding any impact on housing association's private sector status or voluntary members' ability to join)".<sup>28</sup>

The Government accepted these concerns and the Housing Ombudsman is not included in the draft Bill. However, the Bill does contain provisions which would allow some of the HO's responsibilities to be absorbed at a later date.

## What can be investigated? (Clauses 6, 7 and 8)

### **Background**

All of the public service ombudsmen in the UK can investigate 'maladministration'.

Maladministration is not defined in any of the statutes which established the various ombudsmen. 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. At the time the office of Parliamentary Ombudsman was established in 1967, 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".<sup>29</sup>

In addition to complaints of maladministration, the Health Service Ombudsman and the Local Government Ombudsman are able to investigate complaints of service failure.<sup>30</sup> The single public service ombudsmen in Scotland, Wales and Northern Ireland can also investigate service failure, alongside complaints of maladministration. The Law Commission noted in 2011 that it is "slightly anomalous" that similar provisions on service failure have not been enacted for the Parliamentary Ombudsman.<sup>31</sup>

### **The Bill**

**Clause 6** allows the PSO to investigate matters of "alleged maladministration", service failure, or failure to provide a service by designated bodies. Specifically, the Ombudsman is able to investigate the following, in relation to a designated authority:

- a) alleged maladministration by the authority in connection with action taken by the authority;
- (b) an alleged failure in a relevant service provided by the authority;
- (c) an alleged failure by the authority to provide a relevant service;
- (d) where the authority is an adult social care provider, an allegation relating to action taken by the authority in connection with the provision of adult social care;
- (e) where a relevant duty under the Domestic Violence, Crime and Victims Act 2004 is imposed on the authority, an alleged failure by the authority to perform the duty.

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<sup>28</sup> [Housing Ombudsman submission to Cabinet Office Consultation](#), 16 June 2015

<sup>29</sup> HC Deb 18 October 1966 vol 734 c51

<sup>30</sup> Law Commission, [Public Service Ombudsmen](#), July 2011, para 2.51

<sup>31</sup> Law Commission, [Public Service Ombudsmen](#), July 2011, para 2.51



**Clauses 7, 8 and Schedule 4** set out matters which cannot be investigated. These include complaints where the affected person could appeal to a tribunal.

**Comment**

Giving the PSO the power to investigate both maladministration and service failure would bring the existing PO's jurisdiction into line with the LGO and HSO.

The Government have argued that this makes the PSO's remit "wide enough" to cover situations where a service, such as the treatment of an illness or care of a vulnerable adult, is defective or where a service should have been provided but was not.<sup>32</sup>

As in all existing ombudsman legislation in the UK, there is no definition of maladministration in the draft Bill. This is usually seen as a strength of the ombudsman model, as it allows ombudsmen some flexibility in determining what constitutes maladministration. It has been argued that any attempt to define the term might restrict it, and prevent those with legitimate grievances outside a strict definition from obtaining a remedy.<sup>33</sup>

The excluded matters included in **Schedule 4** broadly replicate those contained in the existing legislation for the PHSO and the LGO.

## Direct access to the PSO - Abolition of the MP filter (Clause 5)

**Background**

The Parliamentary Ombudsman has a unique requirement that all complaints referred to her must be made by a Member of Parliament – this is known as the MP filter.

The MP filter was introduced by the *Parliamentary Commissioner Act 1967*, which created the Ombudsman, and was initially intended as a temporary measure, to be phased out after five years.

The filter was devised as a way for MPs to filter any complaints that did not fall within the Parliamentary Ombudsman's remit, preventing the newly established body from being swamped with complaints to investigate. It was also seen as 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.

No other UK ombudsman has this requirement. A person can complain directly to the Parliamentary and Health Service Ombudsman about NHS complaints.

**The Bill**

**Clause 5** sets out who can complain to the PSO. It states that "a member of the public...who claims to have suffered injustice or hardship in consequence of a matter which the Ombudsman is entitled

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<sup>32</sup> Cabinet Office, Draft Public Service Ombudsman Bill, Explanatory Notes, December 2016, pp60-61

<sup>33</sup> M Seneviratne, *Ombudsmen: Public Services and Administrative Justice*, 2002, pp40-44

to investigate” is entitled to complain. This clause provides for direct access to the PSO and in doing so removes the MP filter.

Clause 5 (b) provides that a person, such as a Member of Parliament or a local councillor, can complain to the ombudsman on a person’s behalf, if they are authorised to do so.

Clause 5 (c) provides that where the affected person is dead or otherwise unable to act, a personal representative of that person, or anyone else the PSO considers suitable, can make a complaint on their behalf.

### **Comment**

There is general support for the abolition of the MP filter. Critics have long argued that it unnecessarily slows the complaints process and restricts people’s direct access to administrative justice. In their 2014 Report, *Time for a People’s Ombudsman Service*, the Public Administration Select Committee concluded that the MP filter “disempowers citizens, obstructs access to their rights, and deters people from making complaints”.<sup>34</sup> The Committee concluded the MP filter “must be abolished”.<sup>35</sup>

The 2014 Gordon Report similarly recommended the filter be removed.<sup>36</sup> Earlier reports on ombudsman reform had also recommended its removal.<sup>37</sup>

In their response to the 2015 consultation on proposals for a PSO, the Government said a “significant number of respondents supported the principle of direct access to the ombudsman without needing to go through a Member of Parliament”.<sup>38</sup>

However, they also noted that some respondents had welcomed the role their MP played in driving their own complaint forward.<sup>39</sup> Several MPs in the past have also seen the requirement as a way of keeping in touch with constituency problems.<sup>40</sup>

Nevertheless, the removal of the filter is unlikely to generate much controversy, especially as the draft Bill still enables MPs to play a part in the complaints process if a complainant wishes.

## **Powers of Investigation (Clauses 4)**

### **Background**

The PHSO can only investigate complaints if they are made to the ombudsman in writing.<sup>41</sup> In their 2014 report, *Time for a People’s*

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<sup>34</sup> Public Administration Committee, [Time for a People’s Ombudsman Service](#), HC 655, 28 April 2014, para 55

<sup>35</sup> Ibid, Summary

<sup>36</sup> Robert Gordon, [Better to Serve the Public: Proposals to restructure, reform, renew and reinvigorate public services ombudsmen](#), October 2014

<sup>37</sup> See Public Administration Committee, [Time for a People’s Ombudsman Service](#), Box 3

<sup>38</sup> Cabinet Office, [A Public Service Ombudsman: Government Response to Consultation](#), December 2015, p13

<sup>39</sup> Cabinet Office, [A Public Service Ombudsman: Government Response to Consultation](#), December 2015, p13

<sup>40</sup> M Seneviratne, *Ombudsmen: Public Services and Administrative Justice*, 2002, p123

<sup>41</sup> *Parliamentary Commissioner Act 1967*, Section 5 1(a)

*Ombudsman*, the Public Administration Committee recommended that complaints to the PHSO should be allowed in other forms, including over the telephone or in person. They concluded that the requirement that all complaints be made in writing “presents a barrier to access and is out of step with other ombudsmen services”.<sup>42</sup>

The 2014 Gordon Report also recommended that complaints should be made to the PHSO in forms other than in writing.<sup>43</sup>

According to the *Local Government Act 1974*, which established the LGO, that ombudsman can also only receive complaints in writing.<sup>44</sup>

The Welsh Public Service Ombudsman similarly requires that complaints are made in writing.<sup>45</sup>

However, the Northern Ireland Ombudsman does not have this requirement. The *Northern Ireland Public Service Ombudsman Act 2016* enables the ombudsman to specify the form which a complaint can be made in.<sup>46</sup>

The *Scottish Public Service Ombudsman Act 2002* specifies that that ombudsman can receive complaints made “in writing or electronically unless the Ombudsman is satisfied that there are special circumstances which make it appropriate to consider a complaint made orally”.<sup>47</sup>

Many private sector ombudsmen, including the Legal Ombudsman and the Energy Ombudsman, allow consumers to submit their complaints over the phone, via email or in writing.<sup>48</sup>

### **The Bill**

**Clause 4** sets out the PSO’s powers to investigate complaints. It specifies that the ombudsman can investigate a complaint if it relates to a matter which the ombudsman is entitled to investigate and if it is made in writing “or in any other way approved by the Ombudsman”.

**Clause 4** also specifies that a complaint must be made to the PSO within 12 months of the complainant having become aware of the issue, although it also gives the PSO the discretion to waive this time-limit requirement.<sup>49</sup>

**Clause 4** also gives the Ombudsman the power to re-open an investigation, or begin a new one, if he/she thinks that it is “in the interest of fairness” to do so.

### **Comment**

Clause 4 enables the new PSO to choose how he/she is to receive complaints.

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<sup>42</sup> PAC, *Time for a People’s Ombudsman Service*, para 59

<sup>43</sup> Gordon, *Better to Serve the Public*, para 132

<sup>44</sup> *Local Government Act 1974*, Section 26B

<sup>45</sup> *Welsh Public Service Ombudsman Act 2005*, Section 5 1(a)

<sup>46</sup> *Northern Ireland Public Service Ombudsman Act 2016*

<sup>47</sup> *Scottish Public Service Ombudsman Act 2002*, Section 10 (3)

<sup>48</sup> PAC, *Time for a People’s Ombudsman Service*, para 58

<sup>49</sup> Clause 4, paras 2 & 3

The other powers contained in clause 4 largely follows existing legislative powers for the PHSO and LGO, although it increases these in places.

Richard Kirkham and Brian Thompson, lecturers in law, have commented in particular on the power contained in Clause 4(6), which allows the PSO to re-open a complaint or bring a new one. They suggests that this new provision could be a response to the situation that has arisen in cases such as [Cavanagh, Miller](#) and [JR55](#), in which midway through an investigation the ombudsman has expanded the focus of the inquiry beyond the grounds of the original complaint due to discoveries made during the initial investigation. According to Kirkham and Thompson, to avoid the questions of legality that have arisen in these cases, clause 4(6) outlines one way to proceed, and “builds in fairness by requiring consultation with the relevant parties (cl.4(7))”.

## Accountability (Clause 3 and Schedule 2)

### **Background**

The Parliamentary and Health Service Ombudsman is accountable to Parliament through the presentation of its annual reports and accounts to the House of Commons. In addition, the Select Committee on Public Administration and Constitutional Affairs examines reports of the Ombudsman, and holds annual evidence sessions with the PHSO, raising issues of performance.

The Local Government Ombudsman is also accountable to Parliament through the presentation of its annual report and accounts.<sup>50</sup> The LGO is similarly expected to appear before the Communities and Local Government Select Committee on an annual basis.

The Gordon Report (2014) had recommended that a new PSO should be accountable to a Parliamentary Commission (modelled on the Public Accounts Commission) for its costs and performance against objectives and key performance indicators.

### **The Bill**

**Clause 3** creates a statutory “Board of the Public Service Ombudsman”, whose “principal duty is to provide staff and other resources for the Ombudsman”.<sup>51</sup> The Board’s role is expanded on in **Schedule 2**, and it includes a duty to “monitor the carrying out of the Ombudsman’s functions...with particular reference to the quality and efficiency of the service provided by the Ombudsman and the desirability of securing improvements in that service”.<sup>52</sup> The Board must also report to the Public Accounts Commission every three years on the operation of the Act.<sup>53</sup>

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<sup>50</sup> Under Section 23A (3A) of the Local Government Act 1974, as amended by Section 170 (1) (5) of the Local Government and Public Involvement in Health Act 2007 and Section 7 of the Government Resources and Accounts 2000.

<sup>51</sup> Clause 3, paragraph 2

<sup>52</sup> Schedule 2, paragraph 23 (1)

<sup>53</sup> Schedule 2, para 24

Under **Schedule 2**, the PSO will continue to be subject to the oversight of the National Audit Office in regards to its annual accounts.

The Public Accounts Commission (PAC) is also given some oversight of the PSO. **Schedule 2** provides that PAC, along with the Chair of the Board, will decide the number of people who will sit on the PSO Board.

### **Comment**

The draft Bill provides three layers of accountability.

The PSO would be accountable to Parliament for its costs and performance through the Public Accounts Commission, rather than through the Public Administration and Constitutional Affairs Select Committee, which currently scrutinises the work of the PHSO.

The creation of a permanent PSO Board is a notable feature of the draft Bill. No other UK ombudsman currently has a statutory board which is designed to oversee and monitor the performance and work of the PSO.

A third layer of accountability is provided by the oversight of the National Audit Office.

Richard Kirkham and Brian Thompson, lecturers in law, have questioned whether this triple layer of formal accountability is “proportional for a body the size of the PSO and concerns will be raised as to the clash of responsibility between Ombudsman and the Board”.<sup>54</sup>

However, the Gordon Report (2014) had recommended that a new PSO should have a statutory Board with a nonexecutive Chair, responsible for the overall strategy and effective operation of the organisation, against agreed targets.<sup>55</sup>

## **Raising Complaints Standards (Clauses 27 and 28)**

### **Background**

A notable development in the ombudsman sector has been the introduction of a complaint standards role for the Scottish Public Services Ombudsman. This was provided for in the *Public Services Reform (Scotland) Act 2010*, which gives the SPSO powers to promote good complaint handling amongst service providers.

The Gordon Report (2014) had proposed that a PSO should play a wider and enhanced role in dispute resolution, becoming the champion of best practice and taking a lead in changing the culture of complaint handling within the public sector.

### **The Bill**

**Clause 27** requires the PSO to promote best practice in the handling of complaints by providing information, advice and training to designated authorities.

Subsection 4 requires relevant authorities to have regard to the relevant material provided by the Ombudsman when handling a complaint.

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<sup>54</sup> Richard Kirkham and Brian Thompson, '[An initial commentary on the draft public service ombudsman bill](#)', UK Administrative Justice Institute blog, 20 December 2016

<sup>55</sup> Gordon, [Better to Serve the Public](#), para 106

Subsection 6 provides that the PSO may provide information to designated authorities and others about complaints and investigations that have been handled by the Ombudsman.

**Clause 28** makes it a legal duty for authorities to inform users of their right to complain to an ombudsman.

### **Comment**

The Bill's requirement that the PSO provide information, advice and training to designated authorities has been labelled a "step forward in terms of the existing law on the PHSO", by Richard Kirkham and Brian Thompson and mirrors similar work already undertaken by the LGO, which will be absorbed into the PSO.

However, other than the requirement contained in clause 27 (4) for public authorities to "have regard to applicable information", Kirkham and Thompson have noted that there are no powers in the Bill to demand information from public authorities or to publicise failings, which are to be found in the Scottish Public Service Ombudsman and the Northern Ireland Public Service Ombudsman (and which are proposed for the Welsh Public Service Ombudsman).

Kirkham and Thompson therefore describe the draft Bill as making "limited moves towards raising complaints standards".<sup>56</sup>

## **Cooperation with other ombudsmen (Clause 19)**

### **Background**

The existing Parliamentary Ombudsman's remit includes investigating complaints of maladministration against UK Government Departments in England, Wales, Scotland and Northern Ireland. However, Wales, Scotland and Northern Ireland all have their own unified public service ombudsman covering devolved public services there.

There are requirements in the existing statutory framework for the ombudsmen for them to consult other ombudsmen where there is a matter which crosses jurisdictions. The *Parliamentary and Health Service Commissioners Act 1987* made these requirements to be equal across the PHSO and the LGO. The *Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007* made further amendments to the *Parliamentary Commissioner Act 1967*, the *Local Government Act 1974* and the *Health Service Commissioners Act 1993*, empowering the ombudsmen to conduct investigations jointly where a matter partly engages another ombudsman's jurisdiction.

### **The Bill**

**Clause 19** allows the new PSO to consult her counterparts, including in the devolved administrations, if he/she considers that a complaint or part of a complaint, may fall within their jurisdiction.

### **Comment**

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<sup>56</sup> Richard Kirkham and Brian Thompson, '[An initial commentary on the draft public service ombudsman bill](#)', UK Administrative Justice Institute blog, 20 December 2016

Gavin McBarnie, a PhD student and lecturer in dispute resolution at Queen Margaret University, has stated that “one of the key issues arising from the Bill is the relationship between the new PSO and the ombudsmen of the devolved administrations”. He argues that the answer to a ‘no wrong door’ approach to complaints handling is to have only one door:

A resident from any of the four constituent nations in the UK should be able to complain to their local public service ombud service, with the respective ombud reporting to the relevant Parliament(s). It is known that if complainants face blocks while pursuing a complaint many will give up, so why make it more complicated for them?<sup>57</sup>

What needs to be resolved, according to McBarnie, is that the draft Bill currently provides discretion to the new PSO as to whether it should pass details to another ombudsman of a complaint it receives that is within the jurisdiction of that other ombudsman:

If a ‘no wrong door’ approach is to be implemented, then that discretion should be removed and instead a requirement should be placed upon the PSO to pass complaints over to the correct ombudsman, subject to consent from the complainant being secured.<sup>58</sup>

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<sup>57</sup> G McBarnie, [‘The draft Public Service Ombudsman Bill: What recommendations are being taken forward?’](#), UK Administrative Justice Institute Blog, 12 January 2017

<sup>58</sup> Ibid

## 5. Does the draft Bill go far enough?

### Summary

The provisions in the draft Bill itself are unlikely to be highly controversial.

Most of the comment and criticism of the draft Bill has focused on what has not been included in the draft Bill.

Despite recommendations from the then Public Administration Committee and the 2014 Gordon Report, the new PSO does not have 'own initiative powers', i.e. the power to open a case without having to receive a complaint first.

The draft Bill's silence on whether the PSO's findings would be binding has been labelled a "regressive move which undermines the ombud's ability to deliver justice".

The draft Bill has also been criticised for offering a "conservative" model of ombudsman.

### 5.1 Comment on the draft Bill

The provisions contained in the draft Bill itself are unlikely to be controversial.

There is broad and longstanding agreement that reform of the ombudsman landscape is needed.<sup>59</sup> The Government's draft Bill is also based on recommendations made in the 2014 Gordon report, and follows a public consultation on proposals drawn up following Gordon's recommendations.

The Government has said that the draft Bill will "ensure that anyone who makes a justified complaint can expect a rapid, effective remedy and that their voice will be heard".<sup>60</sup>

Publication of the draft Bill was also jointly welcomed by the Local Government Ombudsman, Dr Jane Martin, and the Parliamentary and Health Service Ombudsman, Julie Mellor, who said that it would simplify the complaints process:

The creation of a single Public Ombudsman Service will make it easier for people to have their complaints about public services resolved.

The current complaint system is too complex and fragmented, leaving people confused as to which ombudsman to turn to if things go wrong or haven't been resolved locally.

We have long been urging the government for these reforms, and are delighted we are one step closer to making this a reality.

<sup>59</sup> For a summary of these views see the Library Briefing Papers: The Parliamentary Ombudsman: Role and Proposals for Reform and A UK Public Service Ombudsman.

<sup>60</sup> Cabinet Office, [Draft Public Service Ombudsman Bill](#), 5 December 2016



We will be looking at the proposals carefully and look forward to working with the government to agree a practical and realistic timescale.<sup>61</sup>

Dr Richard Kirkham, Senior Lecturer in Public Law at the University of Sheffield, and Brian Thompson, Senior Lecturer at the School of Law, University of Liverpool, have also said that “there is much to commend in the Bill”. The Bill “represents a significant advance on the present” and can serve “as a template that could be expanded upon through the integration of other areas of public service, with provision already made for the transfer of social housing complaints at a later stage”.<sup>62</sup>

However, Kirkham and Thompson also concluded that the Bill “is a classic product of Whitehall pragmatism and lacks a strong vision”. They have argued that what the draft Bill proposes is a “conservative model of the ombud enterprise”, and that the Government has “not provided the ombud with full powers to seek out systemic maladministration”.<sup>63</sup>

Most of the criticism of the draft Bill is likely to focus on what has not been included in it.

### No ‘own initiative’ powers

Own initiative powers are not included in the draft Bill.

Own initiative powers means that an ombudsman is able to launch an investigation without first receiving a complaint from an individual. While many ombudsman outside the UK have such powers, in the UK currently, only the Northern Ireland Public Services Ombudsman is equipped with this power.

However, the 2016 draft Bill for reforming the Welsh Public Service Ombudsman also contains provisions for own initiative powers and would equip the ombudsman with this if passed.

A number of respondents to the Government’s 2015 consultation said that a PSO should be able to undertake investigations on its own initiative, without first receiving a complaint from an individual. It was argued that this is standard for most ombudsmen outside the UK, and had proved useful in bringing systemic improvements in public services.

Both the PAC report *Time for a People’s Ombudsman Service*, and the 2014 Gordon Report had also proposed that a PSO should be equipped with own initiative powers.<sup>64</sup>

The Government have argued that while own initiative powers might seem attractive, there “is a risk that the introduction of such powers

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<sup>61</sup> Local Government Ombudsman, [Ombudsmen welcome publication of draft legislation on ombudsman reform](#), 5 December 2016

<sup>62</sup> Richard Kirkham and Brian Thompson, ‘[An initial commentary on the draft public service ombuds bill](#)’, UK Administrative Justice Institute Blog, 20 December 2016

<sup>63</sup> Ibid

<sup>64</sup> Public Administration Select Committee, *Time for a People’s Ombudsman Service*, HC 655, 28 April 2014, para 72; Robert Gordon, [Better to Serve the Public: Proposals to restructure, reform, renew and reinvigorate public services ombudsmen](#), October 2014, paras 137 and 138

could detract from PSO's role in putting things right for the individual citizen".<sup>65</sup>

### PSO's findings not binding

The draft Bill is silent on whether the new PSO's findings are binding on public bodies. The Government had previously said in response to their 2015 consultation that they would not make the findings of the PSO binding.<sup>66</sup>

Gavin McBarnie, a lecturer in dispute resolution at Queen Margaret University, has argued that this is an "extremely worrying development".<sup>67</sup>

The existing PHSO's findings have to be accepted unless they can be shown to be wrong, although there is only a moral obligation to accept its recommendations. According to McBarnie, "the Government is now saying that bodies do not need to accept the ombud's findings". He argues that this is a "regressive move" that "undermines the ombuds ability to deliver justice:

If a body is able to reject the findings of an ombud (as a sizeable number may like to do), then where does that leave the complainant and the ombud service? Justice is about remedying injustice and that will not occur if bodies can reject findings and recommendations. The status quo is sensible, and the Bill should be amended to maintain that.<sup>68</sup>

### Calls for a lead ombudsman for each sector

The Bill does not provide for sectoral ombudsmen within the proposed PSO.

During the Government's consultation, 65 respondents (of 102 respondents who addressed this point) said that each sector within the new PSO should be led by a senior ombudsman (or someone of equivalent status), e.g. a Local Government Ombudsman or Health Service Ombudsman operating under an overarching PSO.

According to the Government's summary of these responses:

Several reasons were given as to why a senior ombudsman in each sector would be beneficial. These included the respect and authority sector-specific ombudsmen would command amongst key stakeholders, the confidence both bodies in jurisdiction and members of the public would have in someone who displays expert knowledge and insight of a subject area, and the benefits of having recognisable and accessible figureheads for PSO within the different sectors.<sup>69</sup>

However, other respondents were concerned that by creating senior leads, the PSO would be duplicating existing processes, limiting efficiencies that could be gained from the merger of the existing

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<sup>65</sup> Cabinet Office, [A Public Service Ombudsman: Government Response to Consultation](#), December 2015, p18

<sup>66</sup> Cabinet Office, [A Public Service Ombudsman: Government Response to Consultation](#), December 2015, p18

<sup>67</sup> G McBarnie, 'The draft Public Service Ombudsman Bill: What recommendations are being taken forward?', UK Administrative Justice Institute Blog, 12 January 2017

<sup>68</sup> Ibid

<sup>69</sup> Cabinet Office, [A Public Service Ombudsman: Government Response to Consultation](#), December 2015, p1

schemes, and increasing the risk of silo-working and fragmentation. Some respondents also felt that any decisions on organisational structure should be for PSO to make. This would allow for the organisation to be flexible to adapt to any changes in public service delivery models as well as changing demand for its services.<sup>70</sup>

The Government said that they did not see the necessity to legislate for a cadre of lead ombudsman, and this is not provided for in the draft Bill.

### **No clarification on remedies**

Richard Kirkham and Brian Thompson, lecturers in law, have criticised the draft Bill for saying nothing about the remedies that the PSO can recommend.

Generally speaking, if an existing UK ombudsmen finds that an injustice or maladministration has occurred, they are able to recommend a range of remedies – including an apology, explanation and acknowledgement of responsibility, or recommending changes to make sure the same thing does not happen again. An appropriate remedy may or may not include some sort of financial remedy.

Ombudsmen’s recommendations and remedies are not enforceable.

Most existing ombudsmen legislation does not specify the nature of remedies that ombudsmen can recommend, although the two most recent pieces of ombudsman legislation – the *Northern Ireland Public Service Ombudsman Act 2016* and the draft Public Service Ombudsman for Wales Bill – do provide for financial remedies.<sup>71</sup>

Kirkham and Thompson have argued that the PSO draft Bill should specify the nature of remedies for the PSO, following the Supreme Court case of [JR55](#).<sup>72</sup>

JR55 concerned the legality of a decision by the former Northern Ireland Ombudsman to recommend financial compensation of £10,000 following a complaint against a General Practitioner (GP). The Supreme Court ruled that the Ombudsman had no power to make such a recommendation.<sup>73</sup>

Part of the Court’s judgement rested on the fact that the complainant had not taken the matter to the ombudsman to secure monetary redress, but rather wanted to establish what had gone wrong.

Dr Kirkham has suggested that the Supreme Court’s ruling is “ambiguous at various key points” and the particular ombudsman scheme in question has now been replaced by the Northern Ireland Public Service Ombudsman. Nevertheless, Dr Kirkham has argued that the reasoning in the Supreme Court’s judgement suggests that it “would be wiser for the legislature to clarify in advance the nature of permissible remedies, particularly in the field of Health complaints”.

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<sup>70</sup> Ibid

<sup>71</sup> *Northern Ireland Public Service Ombudsman Act 2016*, Section 11 (b) (ii); *Draft Public Service Ombudsman Bill for Wales*, Clause 41

<sup>72</sup> [JR55 Application for Judicial Review \(Northern Ireland\) \(Rev 1\) \[2016\] UKSC 22](#)

<sup>73</sup> Ibid

### **Role of the PSO “disappointing”**

Clause 2 of the draft Bill states that the role of the new PSO is to investigate complaints. Gavin McBarnie has said that this “is disappointing”. According to McBarnie, “the Government has previously stated that it saw the role of the ombud is to put things right for individual citizens through consideration of their complaints”. He argues that this represents “an old-fashioned view”.<sup>74</sup>

He suggests that the new PSO should have a role actively identifying administrative deficiencies and recommending procedural and even administrative reform.<sup>75</sup>

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<sup>74</sup> G McBarnie, [‘The draft Public Service Ombudsman Bill: What recommendations are being taken forward?’](#), UK Administrative Justice Institute Blog, 12 January 2017

<sup>75</sup> Ibid

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