

Ombudsman Consultation  
Propriety and Ethics  
Room 208  
Cabinet Office  
70 Whitehall  
London SW1A 2AS



16 June 2015

Dear Sir/Madam

**Cabinet Office Consultation: A Public Service Ombudsman**

Thank you for the opportunity to comment on the proposals set out in the consultation document *A Public Service Ombudsman*.

We welcome the excellent work done by Robert Gordon CB on this subject, whose recommendations echo many of our own recommendations for change, as well as those made by the Public Administration Select Committee in *Time for a People's Ombudsman*. It is right that these proposals are now being tested with a wider range of organisations and individuals to make sure that they meet the needs of the consumer, and we look forward to the outcome from the consultation being reflected in the forthcoming draft Public Service Ombudsman Bill. We remain committed to working with the government and Parliament to seek the right outcome for the citizen.

We know from our recent research that the vast majority (92%) of the public agree that they have the right to complain about a public service if they are unhappy with it and 90% agree that someone who is unhappy with a service should complain. However, only one in three of those who have experienced poor service in the past twelve months went on to complain. When we asked why they did not go on to complain, people spoke of their belief that complaining would not make a difference and that the process was too complicated.

Our vision is for everyone, whoever they are, to be confident that complaining about public services is straightforward and fair and will make a difference. We need to make it



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easier for the public to pursue a complaint, and much of the work around this needs to be done at a local level. All public service leaders need to value complaints and to use both them and the data they provide as a vital source of learning and improvement. However, of equal importance is renewing, reinvigorating and reforming the service that ombudsmen provide to make sure that it is better for citizens, better for Parliament and better value for money.

In the last two years, the Parliamentary and Health Service Ombudsman (PHSO) has been building the foundations for long-term change and development of our services. We have delivered 'more impact for more people' by giving an increased number of people an independent investigation of their complaint.

We now need to change our service to become user-orientated. In the 21<sup>st</sup> century this means greater transparency, scrutiny and consumer empowerment, aided by the unprecedented impact of digital technology and social media. We have engaged with people who use our service, organisations we investigate and consumer and advocacy groups about what those changes should look like. We are evaluating everything we do and how we do it: from the way we explain our role to people and what they can expect from our service, to how we carry out our investigations and communicate our decisions. The next stage in our reforms is to develop clear and straightforward promises to show people what they can expect from our service when they come to us.

We are focused on improving our service. But if there is to be a step change in the way complaints are handled we believe there should be one Public Ombudsman Service covering all UK public services accountable to the Westminster Parliament and all public services in England, including health and social care.

Reforming the public ombudsman landscape will make it easier for people to find and use an ombudsman service, it will be better for Parliament to hold the government to account and be better value for money for the tax payer.

Attached are our responses to the specific questions raised in the consultation.

Yours faithfully

A handwritten signature in black ink that reads "Julie Mellor". The signature is written in a cursive, flowing style.

**Dame Julie Mellor, DBE**  
**Parliamentary and Health Service Ombudsman**

## Parliamentary and Health Service Ombudsman response to the Cabinet Office consultation on A Public Service Ombudsman

### The Parliamentary and Health Service Ombudsman

The Parliamentary and Health Service Ombudsman (PHSO) makes final decisions on complaints that have not been resolved by the NHS in England, UK government departments and their agencies, and other public organisations.

We look into complaints from individuals who believe that they have experienced injustice or hardship because an organisation has not acted properly or fairly or has provided a poor service and has not put it right.

We provide a high-quality, impartial and accessible complaint handling service and we share the findings of our work with others to help others improve public services and inform public policy. Our service is free to use.

We are independent of those we investigate and we are accountable to the Westminster Parliament.

### **Question 1: Do you agree that these principles should underpin reform of the Ombudsman service?**

There is a real need for transformation of the present public service ombudsmen arrangements, and any transformation should be driven by three objectives: better for citizens, better for Parliament and better value for money.

### **Question 2: Would you welcome the creation of a single Public Service Ombudsman service and are these the right services to be included?**

A citizen-centred ombudsman service would be well-known and simple to access and would provide consistency of service. It would be able to deal with service failure, regardless of which parts of the public sector were responsible for the services in question. Westminster could learn from the Scottish, Welsh and Northern Irish public service ombudsmen, who provide unified and comprehensive coverage of public services within those nations, including those public services that are accountable locally as well as those accountable to their respective parliaments/assemblies.

We therefore believe that a unified Public Ombudsman Service should be created to bring together ombudsman responsibilities for all UK public services accountable to the Westminster Parliament and all English public services.

### **Question 3: If so, do you agree that these are the right founding principles for such an organisation?**

The principles of design for a new Public Ombudsman Service should be:

### Independent, impartial and authoritative

- provides expert advice, insight and evidence to the Westminster Parliament in order to help it hold the executive to account
- independent of those subject to its jurisdiction
- sits at the apex of public service complaints systems.

### Easily accessible

- simple to understand for the citizen and for those providing public services
- bridges the gap between central and local services, for example, health and social care, Defra and local authorities on sewage and land use, Ministry of Justice and local authorities on supporting victims of crime.

### Comprehensive and coherent

- covers all UK public services accountable to the Westminster Parliament and all public services in England
- able to follow the public pound regardless of the status of the provider (that is, public, private, or third sector)
- provides a common approach to the investigation of complaints, ensuring that service providers do not get different adjudications from different ombudsmen.

### Accountable

- modern and robust governance structure
- accountability model reflects the devolution settlement
- scrutiny of strategy and budget by the Westminster Parliament.

### Better value for money

- best value for the public pound in terms of its own operations (for example, through avoiding duplication of functions between multiple ombudsmen and giving increased flexibility to meet shifting demand)
- best value for the public pound through the impact the service has on the delivery of public services as a whole
- simple and transparent funding arrangements that do not create perverse incentives for service providers.

**Questions 4 and 5: Should a single public service ombudsman organisation also retain specific sector-facing services and staff? Should each sector within the organisation be led by a senior Ombudsman (or someone of equivalent status)?**

The new public ombudsman service should be seamless to those who need to use its service and underpinned by staff who have expert investigative and decision-making skills and are knowledgeable of the sectors within jurisdiction. At the same time, the structure of the organisation needs to be flexible enough to respond to any change in the configuration of public services or increase in demand for its

service in a particular area. As we know from our own experience, such a shift in demand can be prompted by widespread service failure in a particular sector or by changes in public service providers and delivery methods. It is important that a new ombudsman service can meet such shifts in demand quickly and effectively without the need for slow and cumbersome changes in its legislation and/or significant changes in its structure and personnel. To make sure of this, we want a crown-appointed Chair with a Board consisting of publicly appointed non-executive directors. The Board should have the freedom, capacity and capability to determine the best configuration of the service, including the deployment of executive personnel to deliver a robust, expert and comprehensive service to the public.

**Question 6: Is 'Public Service Ombudsman' the appropriate title for a new organisation?**

We are aware that concerns have been expressed about the need to avoid confusion for citizens in relation to the existing bodies in Scotland, Wales and Northern Ireland that already have 'Public Services Ombudsman' in their title. Further consideration may therefore need to be given to the title of the organisation to reflect its territorial extent.

We would suggest that an alternative may be to make use of something similar to the current statutory titles of PHSO or the Local Government Ombudsman - Parliamentary Commissioner for Administration, Health Service Commissioner or Commission for Local Administration - in the legislation, and to let the Board of the new service decide on an every-day title that should be used. This would have the advantage of the Board being able to choose a title that accurately reflects the new service's jurisdiction and service offer. However, we suggest that whatever title is given to the new service, it should make it clear to users that it is not a personal jurisdiction, but a service that is being offered by an organisation rather than an individual. For example, naming the new organisation the 'Public Ombudsman Service' would follow the precedent set by other ombudsman schemes that handle high volumes of complaints, such as the Financial Ombudsman Service (FOS) and Ombudsman Services.

**Questions 7 and 8: Do you agree that there should be the widest possible routes of entry to a Public Service Ombudsman? In what ways could it be made easier for citizens to access resolution and redress?**

As well as providing greater simplicity for the public, it is important that access to a Public Ombudsman Service is made easier. Whilst many welcome the support of their MP in directing them to the Parliamentary Ombudsman, we believe that many other people would expect the same direct access for complaints about government departments and other public organisations as they have for health complaints.

Earlier this year we carried out research to gauge the public's opinion on how they should be able to approach a modern ombudsman service. Sixty-one per cent said that citizens should be able to choose whether or not to involve their MP when asking the Ombudsman to investigate their complaint about a central government department, with only ten per cent supporting the present arrangements. As such, we think that an important reform that will benefit citizens would be to enable the public to have dual access to the new Public Ombudsman Service with a government complaint: *either* with the support of their MP, *or* by coming to us directly.

We also need to make sure that engaging with the Public Ombudsman Service matches best practice for a digital age, and to make sure that the new organisation is able to meet the full expectations of the digital public service agenda. Citizens should be able to access the Ombudsman's service through a variety of channels, and it is certainly time to remove the outdated legal requirement that citizens must do so in writing.

**Question 9: Would you support a wider role for a PSO as a champion of effective complaint handling across the public sector?**

PHSO sits at the apex of the complaints system and provides final adjudications. However, the service we provide extends far beyond that of a final-tier complaint handler. As well as assisting the Westminster Parliament in holding government to account, we provide a form of administrative justice that complements the role of the courts, and we carry out a form of external audit for public organisations to help them to improve standards. It is essential that as well as providing an independent and high-quality complaint handling service that rights individual wrongs, the new public ombudsman service continues to fulfil the wider role of using the insight from its casework to help others improve public services, and is given the legislative toolkit to do so.

**Question 10: What range of investigative tools do you think the PSO might need?**

A new Public Ombudsman Service should be able to:

- extend access to those least likely to complain, that is, the most vulnerable and marginalised in society;
- investigate issues of potential widespread service failure;
- respond to early warnings, maximising its preventative (and not merely reactive) role;
- prevent first-tier complaints systems being over burdened with complaints that are identical or similar in substance;
- enable trends across a particular sector to be addressed in a single investigation; and

- gain insight into service failures and use that insight to recommend systemic remedies.

To achieve the above, the triggers and tools available to the Public Ombudsman Service need to be comprehensive and embrace the best practice..

The new organisation should not need to rely solely on the receipt of a specific individual complaint before embarking on an investigation when there is a clear indication of a public service failure. If, during the course of an investigation of an individual complaint, it becomes apparent that the maladministration has caused systemic injustice, the public service ombudsman should have the discretion to widen the scope of the investigation into the apparent injustice suffered by others who have not complained themselves. Where there is prima facie evidence of service failure, the Public Ombudsman Service should have sufficient jurisdictional freedom to be able to investigate early without the need for an individual complaint. Moreover, where there is clear evidence of maladministration and there would be merit in an independent investigation, organisations in jurisdiction should be able to self-refer to the Public Ombudsman Service.

Such triggers are not unusual or novel for ombudsmen. For example, the ability to launch an investigation without the need to receive a complaint from an individual (sometimes called 'own-initiative') is a feature of most ombudsmen schemes through the world and is now being proposed for the schemes operating in both Northern Ireland and Wales. Exercised subject to the public law tests of propriety, rationality and proportionality these triggers would extend access to justice to those least likely to complain and enable the Public Ombudsman Service to catch service failures early. In addition, the self-referral mechanism is currently available to services in the health jurisdiction of PHSO and the ability to widen the scope of an investigation exists in the Local Government Ombudsman's legislation.

Other aspects of the legislative framework that we would want the Government to consider when drafting a Bill are:

- the ability to work collaboratively, share information, and conduct joint investigations with others, such as regulators, inspectors, and inquiries;
- the freedom to publish reports, findings and recommendations, without laying before the Westminster Parliament;
- to maintain the link with the Westminster Parliament in terms of it receiving and examining the Public Ombudsman Service's reports where the Executive has not accepted its findings of maladministration or injustice, and of strengthening that link to the Westminster Parliament as a customer by making sure Parliament can follow up recommendations arising from themed or sector-specific reports; and

- the establishment of a Parliamentary Commission to sponsor and scrutinise the Public Ombudsman Service through engagement with its strategy, the scrutiny and sanctioning of its budget, and through assurance from the Board of its performance.