

20. How do you think we could simplify the existing complaints processes to make them more transparent and easier for victims to use? How could we secure a swifter resolution while allowing for a more consistent approach?

PHSO's role and complaints about the Victims' Code

- The Parliamentary and Health Service Ombudsman (PHSO) is responsible for looking at complaints under the Victims' Code where they have not been resolved by the organisation(s) complained about. PHSO can look at a Victims' Code complaint about any organisation required to deliver the Rights under the Code.
- In the complaints we have received about how organisations have responded to victims under the Victims' Code, we have heard that victims find it complex to navigate the justice system and to realise their rights. Our casework tells us that many victims are under intense emotional strain and can find the justice system unsupportive and confusing. Not only do victims not know their rights, but organisations do not know their obligations to uphold them.
- PHSO plays a critical role in helping individuals achieve justice when public services fail them and in supporting public services to learn from those failings. This includes complaints about the Victims' Code. The existing Code explains that someone wishing to bring a complaint to us on this issue needs to have their complaint referred to us by their MP. This is known as the MP filter.
- Below PHSO sets out its concerns regarding the MP filter as well as suggestions for reform.

The MP filter acts as a barrier to accessing justice

- The MP filter is the requirement, set in legislation dating from 1967, that a complaint about a UK Government department or other public organisation must be referred to PHSO by a sitting Member of the UK Parliament. This is usually the complainant's constituency MP. There is no such requirement for complaints about the NHS, nor is there such a requirement for the public Ombudsman services in the devolved nations.
- In PHSO's [consultation response](#) to the Victims' Code consultation on 28 May 2021 we explained why it is vital to remove the MP filter. The Victims' Bill provides the opportunity to do this, both for complaints brought to PHSO under the Victims' Code, and for all other complaints in our parliamentary jurisdiction.
- The MP filter is a barrier to achieving justice for members of the public when they have been failed by the public services that should be supporting them. We think the low number of cases we currently receive about the Victims' Code may be linked to the MP filter.

- In a well-functioning democracy, there must be accountability when things go wrong in public services. In order for this to happen, the citizen must have free and open access when making a complaint. The Government has made it clear its aspirations to see a public sector that is more receptive to the citizen. The MP filter is directly contradictory to this policy objective.

- Issues with the MP filter for both MPs and members of the public include:
 - **It creates inconsistency across the four nations of the union**, posing a barrier to justice for those who wish to make a complaint about the UK Government, which is not the case for complaints about devolved administrations.
 - **It is outdated.** [The Parliamentary Commissioner Act 1967](#) only intended the MP filter to be a temporary measure.¹ Wider Public Service Ombudsman reforms have been delayed which means the MP filter has remained in place for 55 years.
 - **It is not easy to navigate**, which is burdensome and confusing for members of the public, who struggle to know where to turn when they want to make a complaint. This is amplified for marginalised communities as well as for victims, who may already be traumatised by both the crime they experienced and the poor response of the public services they wish to complain about.
 - **It is overly bureaucratic** as it creates another layer of administrative burden for complainants and MPs offices.
 - **It causes additional delay** to a complaint journey. This could affect our ability to look at a complaint, as there are [time limits](#) for making a complaint to us.
 - **MPs sometimes choose not to refer a complaint**, thereby denying access to PHSO's service. PHSO is best placed to make a decision on what complaints should be looked at by our service.
 - It can cause **extra work for MPs offices** especially as they are often not clear what their role should be in relation to referring complaints to us, and some have never heard of our service at all.

- There are many reasons why someone may not want to ask an MP to refer a complaint to PHSO. It can be traumatic for victims who want to make a complaint to repeat their experience more than is necessary. For example, a victim of sexual assault may not be comfortable sharing their intimate private experience with their MP. More generally, people who have been let down by official institutions may be fearful or sceptical about approaching their MP. This may be exacerbated among marginalised communities, such as

¹ In 1961, the report by Sir John Whyatt, 'The Citizen and the Administration: The Redress of Grievances', which originally proposed the establishment of the Parliamentary Ombudsman, said that "in the beginning" the Parliamentary Commissioner should receive complaints only from Members of the Houses of Lords and Commons, but that at a later stage, when the Commissioner's jurisdiction was "established and well understood", consideration should be given to the public having direct access to the Commissioner.

people from socio-economically deprived backgrounds or people from a Black, Asian or other minority ethnic community.

- As set out in Annex A, MPs can and do refuse to refer constituents' complaints, they may not always respond to complainants' requests to refer complaints or they may choose not to refer a complaint because they disagree with the complainant.
- Correspondence from members of the public has told us of examples where:
 - They do not agree with their MPs conduct or political views, and do not want to approach or be represented by them.
 - Their MP is going on maternity leave and they are not sure where to seek alternative support in referring their complaint.
 - Their MP has not referred their complaint to us, either because they do not think it is suitable for PHSO or because the MP has blocked communication with them due to the volume of their emails.

The filter is being removed for other Ombudsman services

- By retaining the MP filter, England and the UK are now out of line with the other nations of the UK as well as standard practice in the Ombudsman sector internationally.
- For the Housing Ombudsman, the [Draft Building Safety Bill](#) proposes the removal of their mandatory democratic filter to allow direct access to their service and support faster redress. This filter is already less restrictive than the MP filter as complainants can currently bring their complaint directly to the Ombudsman if they wait eight weeks.
- During 2019-20, only 6.9% of the cases entering the Housing Ombudsman's remit were referred by a designated person (MP, local councillor or recognised tenant panel), which is broadly consistent with previous years. In feedback from stakeholders to the Ombudsman, the majority have said the referral process can cause confusion. The eight-week waiting period required before referral was seen as a long time to wait, adding further stress for residents. This evidence indicates how significant a barrier it is for complainants to have to refer their concerns via an MP.

Victims Commissioner survey finds victims with poor experience of the Criminal Justice System will not report crimes again

- A [survey by the Victims' Commissioner](#), launched in summer 2020, received 600 responses from victims outlining their experience of the Criminal Justice System. It found that:
 - over one-third of victims will not report a future crime because of past experience.
 - 42% of victims felt like they had not been treated with respect by the police.
 - 66% of victims said they had to wait too long before their case came to court.

- The MP filter creates an additional burden and barrier and is likely to deter victims of crime from seeking further justice after they have already encountered delays and poor treatment.

There is support from MPs to remove and reform the MP filter

- PHSO surveyed a number of MPs at the end of 2021 and received over 100 responses. Results showed:
 - Only 26% of MPs surveyed were **opposed** to removing the MP filter, with 50% supporting it.
 - One MP who commented in the survey in support of its removal, suggests there is **confusion over what an MP's role is in relation to PHSO**. They said they want to be '*cleared of the chain of escalating complaints*' and that they are '*unclear what an MP's role [is]*' or what value they can add to the process.
 - 24% of MPs surveyed **said they don't know how they feel** about the removal of the MP filter. This suggests there is a lack of understanding about the options for reforming the MP filter and replacing it with a modern alternative.
 - 39% of MPs surveyed said they are either '**unfamiliar**' or '**neither familiar nor unfamiliar**' with our service which suggests they have never referred a complaint to PHSO. This may help to explain why only 21% of the complaints PHSO received last year were complaints about Government departments and agencies, which have to be referred by an MP.

There is Parliamentary and other stakeholder support for the removal of the MP filter

- The Public Administration Committee wholly supported the removal of the MP filter in [Time for a People's Ombudsman Service](#) (1 April 2014):
 - 'The continuing prohibition of direct access for all complaints is the denial of equal access to administrative justice and is an anachronism which is at odds with the expectations of today's citizens. This defies all logic. It disempowers citizens, obstructs access to their rights, and deters people from making complaints' (Paragraph 55).
 - 'We recommend that the Government's new legislation to create a simpler and more straightforward Ombudsman service includes provision to abolish the iniquitous prohibition on citizens' direct and open access to the Parliamentary and Health Service Ombudsman (PHSO), known as the "MP filter". This would allow citizens to make a complaint unimpeded to PHSO in respect of all complaints about government departments and public bodies, as is already the case in respect of NHS complaints' (Paragraph 56).
- In its [2019-20 Scrutiny Report](#), the Public Affairs and Constitutional Affairs Committee, repeated (in paragraph 38): 'its predecessor Committee's calls for modernising legislation, which is plainly necessary to improve the effectiveness and value for money of the

Parliamentary and Health Service Ombudsman'. The Report goes on to say (paragraph 39): 'Specific matters that should be considered as part of any reform include [...] the MP filter (as part of any change to remove the MP filter, the role of Members in assisting complainants must be secured)'.

- The Institute for Government supports the removal of the MP filter. [In March 2019 they said](#) the MP filter 'creates an arbitrary barrier that prevents the Ombudsman from investigating failures, for example the Windrush scandal, unless it is asked to by an MP. Removing the MP filter would shed an arbitrary hurdle that currently limits accountability'.
- The Administrative Justice Council supports the removal of the MP filter. In their [2020-21 annual report](#) they said: 'The MP filter has created a barrier to appellants accessing the PHSO, as it has added an additional tier to the complaints process, resulting in very few complaints [about Windrush]. In addition, with the absence of own initiative powers the PHSO has been unable to investigate systemic maladministration by the Home Office due to a lack of complaints'.

What will the removal of the MP filter mean in practice?

- ***It may increase the number of complaints PHSO receives about Government departments and agencies***
 - Only 21% of the cases PHSO receives are about Government departments and other public bodies (our Parliamentary jurisdiction). We think the MP filter is a contributing factor to this low percentage.
 - If the volume of cases we receive increases after the MP filter is removed, it is an admission that the current system acts as a barrier to justice and suppresses complaints. It would be inappropriate to support its continuation on that basis. Until the filter is removed, we will not have a true sense of the level of public need.
 - A larger number of complaints would grant PHSO more opportunities to support Government bodies to improve by learning from the themes and trends identified in the complaints we see. The current comparatively small number suggests that there are poor levels of service which are not being addressed.
 - If an increase in cases results that cannot be met by PHSO's existing service provision, we will explore the resourcing implications directly with HM Treasury.
- ***MPs could retain their vital democratic link to constituents and support them to bring complaints to PHSO***
 - There are ways to remove the MP filter while retaining the option for MPs to play a valuable role in supporting their constituents in bringing a complaint to PHSO. This 'Dual Track' approach would remove the MP filter as a requirement but maintain the option for complainants to refer their complaint via their MP where they wished to do so. This empowers the citizen and reduces the burden on MPs while retaining the option for MP referrals.

3 February 2022, PHSO response to MoJ Victims' Bill consultation

- There is no such requirement for complaints about the NHS to be referred to our service by an MP. In 2020/21 we received 18,727 complaints about the NHS and only 134 were referred by an MP, which is the equivalent to 0.72%. This reflects that many members of the public are either not aware of the option or have chosen not to pursue it.
- ***It could help rebalance the pressure on MPs***
 - If complaints about Government departments and public bodies came directly to PHSO, this could reduce the burden on MPs, who are often asked to respond to an extremely large number of requests and queries to their offices. [The volume of constituency casework has increased significantly during the pandemic](#), putting severe pressure on MPs' offices.
 - PHSO operates a thorough triaging process, where staff who are trained to fully understand our remit can make an informed decision on what is appropriate for PHSO to look at. PHSO is best placed to make this decision in an independent and objective manner.
- ***It could strengthen democracy across the four nations of the union***
 - The removal of the MP filter will make the complaints process more democratic, as it could allow for members of the devolved legislatures in Scotland, Wales and Northern Ireland to refer a complaint to us on behalf of a member of the public. This would provide greater equity across the four nations of the union.

Removing the MP filter for the Victims' Code alone is not enough

- Victims do not complain to PHSO about the Victims' Code alone. They complain to us about a number of different issues and bodies, which means that we would not be improving victims' access to justice unless we removed the MP filter for all complaints.
- It is common to receive complaints about more than one body. For example, in a single complaint, somebody could complain about the Crown Prosecution Service's application of the Victim's Code and also complain about HM Courts and Tribunals Service. This means that, if the MP filter were removed only for complaints about the Victims' Code, they would have to refer half of their complaint via their MP, while they could bring the other half to PHSO directly. This would be even more burdensome and confusing for complainants than the current situation. It would be irrational and ineffective to remove the filter in one part of our jurisdiction and not another when our complaints often cover multiple organisations and issues. This would also create an operational anomaly for PHSO.
- Victims may not easily understand their rights and how to access them. They may not understand that their complaint falls under the Victims' Code or that an MP referral would be accordingly no longer necessary. Removing the MP filter only for these complaints may well simply compound confusion and fail to signpost effectively in terms of complainants understanding the pathways available to them. If the MP filter is removed for all complaints, this would provide clarity to both members of the public and MPs and prevent victims from being burdened with navigating the system unnecessarily.

Annex A - Examples of complaints we have received from victims of crime

Please note that we cannot name individual organisations or bodies until a case has been closed.

Examples of complaints where there have been issues with MP referrals

- **Case one** - This complaint has been ongoing for the last 12 years (with other bodies) and relates to poor police conduct following the death of the complainant's child. The complainant wants us to look at the police's conduct and the conduct of another body, under the Victims' Code. *The complainant was unhappy with the fact there had to be an MP referral. We advised them we cannot change the provisions currently set out in law.*
- **Case two** - This complaint is regarding two bodies under the Victims' Code. The complainant states that they were a victim of a crime that recently went to court, but they were not made aware of the court dates. *The complainant has told us they have tried without success to get a response from their MP in order to bring the complaint to us.*
- **Case three** - This complaint is about the police under the Victims' Code- *The complainant told us they are unwilling/unable to present a complaint through MP.*
- **Case four** - This complaint is about a body under the Victims' Code. *The complainant stated that their MP would not support them and that they found the system difficult to navigate because they could not read or write.*

Complaints about multiple bodies

PHSO can receive complaints about a number of different bodies as part of the same complaint.

PHSO can look at a Victims' Code complaint about any organisation required to deliver the Rights under the [Code](#). For example, the complaint may be about:

- The Crown Prosecution Service
- HM Courts and Tribunals Service
- Independent Office for Police Conduct
- Police and Crime Commissioner
- A Coroner
- A local Police force
- The General Medical Council.

Examples of the complaints we have received from victims of crime

- **Case five** - This complaint relates to someone that was sexually abused and they complain that a body has failed regarding the Victims' Code for multiple reasons.
- **Case six** - This complaint relates to someone who has been the victim of sexual assault and they complain that the police failed to provide appropriate services under the Victims' Code.

- **Case seven** - This complaint is about the police. The complainant says they have been the victim of hate crime and the police failed to adequately support them.
- **Case eight** - This is a complaint against under the Victim's Code. The complainant states that they have experienced sexual abuse and so they filed a complaint to police, but there was a delay in taking down their statement. They complain about this delay under the Victim's Code.
- **Case nine** - The complaint is about a failure to provide information about pursuing a complaint under the Victim's Code. The complainant also claims that the relevant body failed in their obligation to them to provide information about legal processes during the preparation for the murder trial of their child. The complainant is seeking procedural changes regarding bereaved family treatment at this body.
- **Case ten** - The complaint is about the handling of a case that was brought regarding racial abuse and discrimination.