**PHSO’s role and complaints about the Victim’s 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 uphold the rights under the Code. PHSO also looks at other complaints that have not been resolved about Government Departments and other public organisations. For instance, about aspects of the justice system, benefits, immigration, and the NHS.
* 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 have their rights upheld. 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 often not know their rights, but organisations frequently 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 way organisations have applied the Victims’ Code. Anyone wishing to bring a complaint to PHSO about a UK Government organisation or other public organisation currently needs to have their complaint referred to us by their MP. This is known as the MP filter.
* If an individual wishes to bring forward a complaint about the NHS to PHSO, they can do so without the need for an MP referral. Health complaints account for the majority of cases received and investigated by PHSO and this current system works well.

**The MP filter acts as a hurdle 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 service Ombudsman schemes in the devolved nations.
* In [PHSO’s consultation response](https://www.ombudsman.org.uk/sites/default/files/PHSO_Victims_Code_Consultation_Response_2020.pdf) to the Victims’ Code consultation on 28 May 2021 and in [PHSO’s consultation response](https://www.ombudsman.org.uk/sites/default/files/2022-02/PHSO_response_to_MoJ_Victims%27_Bill_consultation.pdf) to the Victims’ Bill on 3 February 2022, we explained why it is vital to remove the MP filter. The Victims’ Bill provides the opportunity to do this, for complaints brought to PHSO under the Victims’ Code and for complaints brought to us by victims of crime, as currently proposed, but also for all other complaints in our parliamentary jurisdiction.
* The MP filter is a hurdle to accessing 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 is contributed to by 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 in tension with this policy objective.
* The Council of Europe’s [Principles on the Protection and Promotion of the Ombudsman Institution](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e) (‘The Venice Principles’), endorsed by the United Nations General Assembly and co-sponsored by the UK Government, state that (clause 14) ‘any individual […] shall have the right to free, unhindered and free of charge access to the Ombudsman’. The MP filter impedes access to PHSO’s service and therefore directly undermines this principle and fundamental right of the citizen.
* Issues with the MP filter for both MPs and members of the public include:
* It can cause **extra work for already stretched MPs offices** especially as some have limited awareness and understanding of PHSO’s role and for many cases, they are simply acting as a conduit between PHSO and the complainant.
* **Inconsistency across the four nations of the union**, posing an additional hurdle to accessing justice for those who wish to make a complaint about the UK Government departments on reserved matters, which is not the case for complaints about devolved administrations.
* **It is outdated.** [The Parliamentary Commissioner Act 1967](https://www.legislation.gov.uk/ukpga/1967/13/contents) only intended the MP filter to be a temporary measure.[[1]](#footnote-2) Wider Public Service Ombudsman reforms have been delayed, which means the MP filter has remained in place for 55 years.
* **It is burdensome and confusing for members of the public**, who do not understand why they must seek the agreement of their MP when they want to make a complaint about a UK government department. In an already overly-complex and fragmented complaints system, this confusion 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 causes additional delay** to a complaint journey. This could affect our ability to look at a complaint, as there are [time limits](https://www.ombudsman.org.uk/making-complaint/information-advocates-and-representatives/helping-people-use-our-service/when-did-problem-happen) for making a complaint to us.
* **MPs can choose not to refer a complaint**, thereby denying access to PHSO’s service.
* 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 to repeat their experience more than is necessary. 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.
* As set out in Annex A, MPs can and sometimes do refuse to refer constituents’ complaints. They may not always respond to complainants’ requests to refer complaints and 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 MP’s conduct or political views and do not want to approach or be represented by them.
* Their MP is going on parental leave and they are not sure where to seek alternative support in referring their complaint.
* Their MP has not referred their complaint to us, for instance because they do not think it is suitable for PHSO.
* As set out in Annex B, there is great disparity in the number of complaints that different MPs refer. In 2020-21, 71 MPs did not refer a single complaint to PHSO, and only a small minority referred more than ten. This demonstrates that people’s ability to access justice is significantly influenced by the constituency they happen to live in. This postcode lottery is not acceptable.

**The draft Bill proposes to remove the MP filter for victims only**

* The draft Bill currently proposes to remove the MP filter for victims of crime. This will crucially improve the experience of victims, but that the same arguments apply for removal of the filter for all complaints.
* Removing the MP filter for victims of crime is welcome progress, but to improve users experience of the administrative justice system, the Government should remove the MP filter for all complaints about failings by government departments. This would provide clarity to both members of the public and MPs and prevent victims from being incorrectly signposted to their MP if the filter for them is removed. It would also prevent victims from being burdened with navigating the complexity and fragmentation of the system where a complaint about a different part of the justice system would need a different process including referral to their MP.
* In terms of accessing our service, the Bill proposes that the test for whether a complainant is a victim is decided by whether the victim believes they have been a victim of crime. We support this as it means no one will have to provide a burdensome level of proof to demonstrate they are a victim of crime, which could be challenging and retraumatising. It accounts for those victims where there has been no formal confirmation of the crime.

**There is an opportunity to further improve accessibility and access to justice for victims**

* The legislation that underpins our service states that a complaint must be made in writing for us to consider it. This can act as an additional hurdle to accessing justice and disadvantages those who may not have high literacy skills, such as people with communication difficulties, learning disability, or who communicate using Braille or British Sign Language due to a sensory impairment. The law currently makes it harder for people living in these circumstances to access justice via the Ombudsman, even though our role is to serve all members of the community.
* The Bill should consider proposing that a complaint does not have to be made in writing and instead can be made over the phone or via a video call to give complainants options in the way they communicate their complaint and experience and a choice in how they are heard. This might be particularly important for victims of crime, who may find it less traumatising to communicate their experiences in other formats. This would increase accessibility, which is essential given that the

Crown Prosecution Services has found that disabled people – some of whom may struggle with written communication – are more likely to become victims of crime.

* The legislation that underpins our service also states that if there is an option for an alternate legal remedy then PHSO must determine whether it was reasonable to expect the complainant to have pursued it before progressing a complaint. If the legal remedy was exercised the Ombudsman has no discretion at all. This can create a two-tier system for those who have the funds to take legal action and those without. It also impacts those who prefer to pursue a complaint for service improvement rather than financial compensation. The Bill should consider giving the Ombudsman greater powers of discretion as victims of crime particularly often wish to see service improvements to prevent the same issues happening to somebody else.

**The filter has been or is being removed for other Ombudsman services**

* By retaining the MP filter, England is now out of line with all the other nations of the UK and contrary to standard practice in the Ombudsman sector internationally.
* The [Building Safety Act](https://www.legislation.gov.uk/en/ukpga/2022/30/contents/enacted) which received Royal Assent in April 2022 will remove the mandatory democratic filter to allow the public direct access to the Housing Ombudsman 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.

**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:

o over one-third of victims will not report a future crime because of past experience.

o 42% of victims felt like they had not been treated with respect by the police.

o 66% of victims said they had to wait too long before their case came to court.

* The MP filter creates an additional burden and hurdle to overcome 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 representative sample of over 100 MPs in late 2021. 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 MPs role [is]’ or what value they can add to the process.
* 24% of MPs surveyed **said they do not 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 (unlike complaints about the NHS) have to be referred by an MP.

**There is Parliamentary and wider 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](https://publications.parliament.uk/pa/cm5801/cmselect/cmpubadm/843/84306.htm#footnote-006), 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](https://www.instituteforgovernment.org.uk/blog/now-time-government-empower-ombudsman) 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](https://ajc-justice.co.uk/wp-content/uploads/2021/07/AJC-Annual-Report-2020-21-.pdf) 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.
* Until the filter is removed, we will not have a true sense of the level of public dissatisfaction with the service provided by Government Departments and public bodies.
* 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.
* ***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 or provide their backing where they wished to do so. This empowers the citizen and reduces the burden on MPs while retaining the option for MP referrals.
* We would explore the option of creating a mechanism whereby an MP would be able to access the relevant casework data for their constituency and understand what issues are surfacing. This would apply to both health and Parliamentary cases.
* ***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 send a complaint to us on behalf of a member of the public. They are currently unable to do this, even if the matter is reserved (e.g. immigration matters) and their constituent would like their personal support. This would provide greater equity across the four nations of the union.

**Annex A – Examples of complaints we have received from victims of crime**

**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 public 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 public 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.***

**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.

**Annex B – Referrals by MPs to PHSO, 2020-21**

In total 2,653 complaints were referred to PHSO by MPs during 2020-21.

Just under three quarters of MPs (73%/473) referred five or fewer complaints to PHSO during 2020-21 (including MPs who did not refer any complaints to PHSO). Just under a quarter of MPs (22%/144) referred between 6 and 10 complaints.

71 MPs did not refer a single complaint.

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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. [↑](#footnote-ref-2)