

Chris Skidmore MP
Minister for the Constitution
Cabinet Office
70 Whitehall
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17 July 2017

Dear Mr Skidmore,

DRAFT PUBLIC SERVICE OMBUDSMAN BILL

We would like to congratulate you on your reappointment in your role as Minister for the Constitution.

We are writing to comment on the Draft Public Service Ombudsman Bill which was published in December 2016. We had intended to submit our response in April but decided to wait until the appointment of the new Government.

As the Local Government and Social Care Ombudsman (LGO) and Parliamentary and Health Service Ombudsman (PHSO), we both welcome the draft legislation and would like to put on record our gratitude for the excellent work done by the Cabinet Office to date in getting us to this point.

We can confirm that, in our view, the Bill delivers the core principles necessary for a new Public Service Ombudsman to be successfully implemented and is ready for introduction if parliamentary time allows. We do, however, have some thoughts on how the Bill could be further improved before its introduction. These are attached in Annex A, along with some more technical issues to be discussed with your officials in Annex B.



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We understand the pressures on the parliamentary timetable in the coming sessions and recognise there is no immediate plan to put legislation through Parliament. Nevertheless, we would find it helpful to meet and discuss the Government's current thinking with regard to future legislation.

Yours sincerely,



Mick King
Ombudsman and Chair
Local Government and Social Care
Ombudsman



Rob Behrens CBE
Ombudsman and Chair
Parliamentary and Health Service
Ombudsman

Enclosures

- **Annex A: Joint submission by PHSO and LGO on key issues in the Draft Public Service Ombudsman Bill**
- **Annex B: Technical comments by PHSO and LGO on the Draft Public Service Ombudsman Bill**

Annex A - Joint submission by PHSO and LGO on key issues in the Draft Public Service Ombudsman Bill

PHSO and LGO welcome the publication of the draft Public Service Ombudsman (PSO) Bill, which already reflects many of the essential changes that are needed to make the public service ombudsman landscape more navigable and effective for citizens. Our view is that the Bill is well drafted and is ready for introduction to Parliament. However, there are some key areas where we believe the Bill could be strengthened either before introduction should there be time, or that could be considered as it progresses through Parliament.

In addition to these points, we have prepared a short annex of technical changes that we would welcome being explored, while we have also been clear to Ministers that should the Bill receive Royal Assent, both PHSO and LGO's Boards believe that sufficient time will be required to ensure a smooth transition to the new organisation.

1. Status of PSO's findings and recommendations and process for non-compliance

The Draft Bill (clause 14(8)) states that while authorities must have regard to the PSO's recommendations, there is not a requirement for them to carry out these recommendations. There is a separate power (clause 15(2)) for the Ombudsman to require information about the action proposed by the authority in relation to the PSO's *findings* of injustice or hardship, and the Draft Bill further provides for a process for publishing a statement where injustice is not remedied bringing this to the attention of Parliament and third parties including local councillors.

At present, an organisation within jurisdiction may seek to challenge one of our decisions by way of judicial review in the High Court on any public law ground including where our findings can be 'objectively shown to be flawed or irrational, or peripheral, or there is genuine fresh evidence to be considered'.

Our view is that **the provisions currently in the Bill have strengthened the current position on both findings and recommendations**. As a new policy consideration, we propose that Clause 14(8) is strengthened further so that if the authority decides not to comply with the PSO's recommendations, this should only be lawful where the authority has cogent reasons for doing so and where the authority has provided these reasons to the PSO. We would also like to suggest an escalation process through which the PSO can seek a response from the highest level of decision making within the authority. This would be the Permanent Secretary for complaints about central government departments and the Chief Executive for complaints about NDPBs, NHS trusts or local authorities. In respect of local authorities, we would expect either Full Council or Cabinet under delegated arrangements to consider the PSO's recommendations and provide a response. This arrangement would strengthen the power for the PSO's *recommendations*, while ensuring they continue to remain non-binding.

2. Jurisdiction over adult social care

We are concerned there may be unintended restrictions on the PSO's jurisdiction in relation to adult social care. The PSO needs to be able to investigate all aspects of social care, as is the case for the LGO at present, including privately funded care. Some specific clauses (clause 1(4)(a) and clause 9) in the current Draft Bill could potentially curtail the PSO's remit in this area as they appear to link the concept of maladministration to the provision of adult social care but this concept is not applicable in privately funded care settings. We would welcome clarification of this point and for relevant amendments to be made to the Bill prior to its introduction if needed.

3. Housing complaints

The Draft Bill includes provisions to move responsibility for housing complaints from the Housing Ombudsman (HO) to the PSO, but makes this reform subject to consultation with relevant parties and secondary legislation being laid before the House at a future date.

We believe that rather than considering these changes at a later stage, they should form part of the Bill from the start. This is an opportunity to address the challenge that some people face in the housing sector at the moment of having to deal with two different ombudsmen whose jurisdictions overlap in some areas. This situation is creating confusion about the appropriate route for complaints and also means a lack of accountability and organisations being able to shift the blame when things go wrong. In addition, there remain some barriers to accessing the HO and some areas of housing are no longer within the remit of an Ombudsman following the transfer of housing complaints from the LGO to the HO.

These challenges undermine the policy intentions of the Draft Bill of giving the PSO a broad reach, providing a seamless service to both complainants and the organisations complained about and of removing unnecessary barriers to making a complaint. We would therefore welcome the opportunity to explore with you the potential for including housing complaints in the jurisdiction of the PSO from the start.

4. Complaint Standards

We welcome that the Draft Bill puts a duty on the PSO to promote best practice in complaint handling by providing information, advice and training to organisations in its jurisdiction. We believe that the PSO's role in this area could be strengthened further and would like to suggest more ambitious arrangements that mirror the role of the Scottish Public Services Ombudsman (SPSO) as Complaints Standards Authority. SPSO has been very effective in driving improvements in complaint handling, and we would be very happy to set out in more detail how such a role could work for the PSO.

5. Complaints about schools

Schedule 4(1) of the Draft Bill seeks to preserve the current position in respect of complaints about schools that are maintained by their local authority - as the LGO at the moment, the PSO will be prevented from considering complaints about the internal management of schools, except in relation to Special Educational Needs.

The arrangements for handling parental and young people's complaints about schools have been the subject of debate for a number of years. The Apprenticeships, Skills, Children and Learning Act 2009 introduced a pilot scheme which saw the LGO handle complaints about schools from fourteen local authority areas from April 2010 to July 2012. The independent evaluation of the pilot commissioned by the Department for Education was overwhelmingly positive in its appraisal of the effectiveness of the pilot scheme in empowering schools to address complaints more rigorously and efficiently¹.

The creation of the PSO affords a unique opportunity to provide the public with a mechanism for redress in respect of concerns about all aspects of education provision, from school admissions to pupil safety and wellbeing.

6. Powers of investigation

We welcome the proposed powers enabling the PSO to widen an investigation under certain conditions, as set out in the Draft Bill. This will make it easier to address systemic failings earlier in the process than it is at present.

However, we continue to believe that the absence of full own-initiative powers will make it more difficult to achieve justice for the most vulnerable and marginalised parts of society that are least likely to complain. In a situation where the Ombudsman is aware of a problem, but a complainant is either unable or unwilling for any reason to come forward, including where they are worried about the personal impact of doing so, this power would still enable an investigation to take place. We do not believe such a power would require additional resource for the PSO as we anticipate that such cases will be rare, but it could be a critical gap in the PSO's powers were such a situation to arise.

In addition to the protections offered to the most vulnerable in society, we support full own-initiative powers as it would reflect the arrangements for the Northern Ireland Public Service Ombudsman and international best practice, where around 70% of Ombudsman worldwide also have such a power. We also note that own-initiative powers have been recommended by the Welsh Assembly for the Public Service Ombudsman for Wales and it looks increasingly odd that the same arrangements would not be available to the

¹ See *Parents' and Young People's Complaints about Schools*, Department for Education Research Report 193, 23 February 2012

equivalent UK wide body. The UK Parliament's Public Administration and Constitutional Affairs Committee also support giving the PSO own-initiative powers.

We would welcome the opportunity to continue exploring with you how own-initiative powers could work in practice - including whether it would be possible to include provision for such powers in the Bill with a requirement for them to be 'switched on' via secondary legislation once the new PSO is in place and has demonstrated that the organisation is running effectively.

***Local Government and Social Care Ombudsman &
Parliamentary and Health Service Ombudsman
July 2017***