

## Health and Care Bill

Second Reading, House of Commons, July 2021

### Summary

- The Health and Care Bill is an opportunity to strengthen the voice of patients about failings in their care and treatment. Creating a legal requirement for good complaints handling, and the power to monitor this through a Complaints Standards Authority, would give patients that voice. It would also help the NHS in England to use complaints to improve patient care.
- **PHSO urges MPs to support amendments to the Health and Care Bill to make PHSO the statutory Complaints Standards Authority for the NHS in England, as an extension to its role as the final stage of complaint handling for the NHS.**
- The Health and Care Bill sets out provisions to create a safe space for information held by the Health Service Safety Investigations Body (HSSIB). The proposed specific prohibition on PHSO accessing the information provided by witnesses and held in that safe space could result in different accounts being given to PHSO during its own investigations that could not be reconciled without taking HSSIB to court. This would be the worst possible outcome for a patient who has already experienced a failing in care and treatment.
- **PHSO urges MPs to support amendments to the Health and Care Bill to allow PHSO to access information held in HSSIB's safe space.**

### Background

The Health and Care Bill (the Bill) is wide-ranging legislation covering many aspects of the health and care system in England. The Bill focuses on increasing integration and innovation in local NHS services through the development of Integrated Care Systems. It also aims to improve care quality and patient safety, for example through the establishment of the Health Service Safety Investigations Body (HSSIB), and setting standards, such as hospital food standards.

### About PHSO and the role of the Ombudsman

The Parliamentary and Health Service Ombudsman (PHSO) was set up by Parliament to provide an independent and impartial service to handle complaints about the NHS in England, UK Government Departments, and other UK public organisations. We are the final stage for complaints that have not been resolved through organisations' own complaints processes.

As well as resolving individual complaints and giving patients access to justice when they have been failed by public services, PHSO also helps NHS organisations improve.

We make recommendations to individual NHS organisations and we also share the learning from complaints more widely to encourage improvement in the quality and safety of services. PHSO's casework also helps Parliament scrutinise the NHS in England. Recent examples of reports published include failings in [NHS Continuing Health Care](#)<sup>1</sup>, [North Essex Partnership University NHS Foundation Trust](#)<sup>2</sup> and [eating disorder services](#).<sup>3</sup>

Over the last 10 years, the Public Administration and Constitutional Affairs Committee (PACAC) and its predecessor committees have consistently urged the Government to modernise and strengthen the role of Parliament's Ombudsman, most recently in its annual scrutiny inquiry of PHSO.<sup>4</sup>

### Improving quality and patient safety - Complaints Standards Authority

**PHSO urges MPs to support amendments to the Health and Care Bill to make PHSO the statutory Complaints Standards Authority for the NHS in England, as an extension to its role as the final stage of complaint handling for the NHS, to help improve the quality of front-line services for patients.**

The Bill aims to improve quality and patient safety. Complaints play a vitally important role in this, allowing organisations to hear the patient voice, identify where things go wrong, and learn from mistakes. The Bill is an opportunity to strengthen the role of complaints and of PHSO in promoting and supporting a learning culture that benefits both NHS staff and patients.

In March 2021, PHSO launched the NHS Complaints Standards, developed with organisations and staff across the NHS, the public, and with support from the Department of Health and Social Care (DHSC). These set out how organisations providing NHS services should approach complaint handling. The NHS Complaints Standards aim to support organisations to provide a quicker, simpler, and more streamlined complaint handling service. They also place a strong emphasis on what learning can be taken from complaints, and how this learning should be used to improve services.

PHSO had overwhelming support for the NHS Complaints Standards from NHS organisations, the public, and other oversight organisations such as the Care Quality Commission. Some 91% of respondents to its consultation - nearly half being members of the public - supported the aims of the NHS Complaints Standards. And 76% agreed that PHSO should be given legislative powers to ensure compliance with them.<sup>5</sup>

All public Ombudsman services in the devolved UK nations already have statutory Complaints Standards Authority powers, requiring them to set complaint handling standards for organisations in their jurisdiction, and to hold those organisations to account for their performance against them.

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<sup>1</sup> <https://www.ombudsman.org.uk/publications/continuing-healthcare-getting-it-right-first-time>

<sup>2</sup> <https://www.ombudsman.org.uk/misled-opportunities>

<sup>3</sup> <https://www.ombudsman.org.uk/publications/ignoring-alarms-how-nhs-eating-disorder-services-are-failing-patients>

<sup>4</sup> [Parliamentary and Health Service Ombudsman Scrutiny 2019-20](#)

<sup>5</sup> [www.ombudsman.org.uk/sites/default/files/Report\\_on\\_Complaint\\_Standards\\_consultation.pdf](https://www.ombudsman.org.uk/sites/default/files/Report_on_Complaint_Standards_consultation.pdf)

The Bill is an opportunity to level up England's NHS Ombudsman with the Ombudsman services in the devolved nations. Giving PHSO statutory Complaints Standards Authority powers would demonstrate Parliament's commitment to raising standards and supporting improvement in NHS patient care. These powers would also give greater clarity to NHS staff about how to respond to complaints effectively, driving up the quality of local complaint handling, ensuring patients' and carers' concerns are addressed, and supporting NHS organisations to learn from mistakes and improve the quality of frontline services.

### **Health Service Safety Investigations Body - PHSO's access to information held in safe space**

**PHSO urges MPs to support amendments to the Health and Care Bill to allow PHSO access evidence held in HSSIB's 'safe space'.**

The Bill will establish the Health Service Safety Investigations Body (HSSIB) to investigate incidents which have, or may have, implications for the safety of patients, both in the NHS and independent healthcare providers. The Bill makes provisions for creating a 'safe space' within HSSIB investigations, to enable clinicians and others to provide information without the fear that this will be disclosed or used for disciplinary purposes.

PHSO welcomes the introduction of this 'safe space'. The prohibition on disclosure of information held by HSSIB in a safe space will help to create a culture where people working in the NHS feel it is safe to speak up when things go wrong.

However, this provision will impact on the PHSO's unique constitutional role in investigating complaints about the NHS and other public services. As currently drafted, the Bill would prohibit PHSO from accessing information held in HSSIB's safe space. This creates a risk that PHSO could not effectively conduct independent and robust investigations into complaints about the NHS, for example if evidence given to HSSIB in safe space differs to that given to PHSO. As a result, PHSO may not be able to provide justice for people who have suffered harm and potentially risks PHSO coming to findings contradictory to HSSIB's own. This would undermine confidence in the administrative justice system as well as patients' access to justice when they have been failed by NHS services.

Furthermore, this will also impact on PHSO's ability to investigate HSSIB's own conduct. For example, if PHSO received a complaint about how HSSIB handled evidence which was held in safe space, PHSO would be prohibited from accessing this information to enable a thorough investigation. This would severely curtail PHSO's constitutional powers to conduct thorough investigations and achieve justice for individuals.

PHSO has powers equivalent to the High Court to access evidence or compel witnesses for the purpose of our own investigations.<sup>6</sup> Prohibiting PHSO from accessing HSSIB's safe space would be the first restriction on the Ombudsman's powers since it was established in 1967. It would contravene the international standards as set out in the Council of Europe's Venice Principles<sup>7</sup> and the United Nations Resolution on the role of the Ombudsman, which was co-sponsored by the UK Government<sup>8</sup>. These international standards set out that the Ombudsman must have free and unfettered access to all public services.

The Bill will, however, allow Coroners to access information held in safe space. Allowing Coroners access to information held in safe space without providing PHSO the same access creates a confusing structure that would erode confidence in the justice system. Coroners have no powers to require PHSO to provide information to them, yet PHSO can access information held by Coroners through its existing legal powers.

PHSO firmly believes it is practical and achievable to protect safe space through administrative arrangements between PHSO and HSSIB, without the need to legally prohibit PHSO from accessing evidence held there. PHSO is legally required to investigate in private which would preserve the integrity of information held in safe space.

*PHSO would welcome the opportunity to give Members of the House a verbal briefing on these issues.*

**Contact:**

Rob Bancroft  
Public Affairs and Insight Manager  
[Rob.bancroft@ombudsman.org.uk](mailto:Rob.bancroft@ombudsman.org.uk)  
0300 061 4563

Heather Ransom  
Public Affairs and Insight Manager  
[Heather.ransom@ombudsan.org.uk](mailto:Heather.ransom@ombudsan.org.uk)  
07387 416730

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<sup>6</sup> Under Section 12 of the Health Commissioner Act 1993 and Section 8 of the Parliamentary Commissioner Act, PHSO has the power to require individuals and organisations to produce information and provide documents relevant to an investigation.

<sup>7</sup> [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e), Principle 13

<sup>8</sup> <https://undocs.org/en/A/RES/75/186>