

Health and Care Bill Committee Chairs  
House of Commons  
Sent by email only



## Open Letter to joint Chairs of the Health and Care Bill Committee

19 October 2021

Dear Committee Chairs,

I am writing to inform you that the Venice Commission (the European Commission for Democracy through Law) has adopted unanimously and now [published](#) its Opinion on the prohibition of the Parliamentary and Health Service Ombudsman from accessing protected information to be held by the Health Service Safety Investigations Body (HSSIB) in its 'safe space'. The Commission has ruled that this action is a breach of the Venice Principles on the Protection and Promotion of the Ombudsman Institution (2019), and a breach of the United Nations General Assembly Resolution (A/RES/75/186) on "The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law" (December 2020). The United Kingdom Government was itself a Co-Sponsor of this Resolution.

The Venice Commission is the advisory body on constitutional matters to the Council of Europe, of which the UK is a full member. The Opinion is attached and will repay very careful reading. It sets out in detail the breach of the Venice Principles.

I am aware that access to safe space is an issue that you will be scrutinising in the Health and Care Bill. As national Ombudsman, I requested that the Venice Commission provide an Opinion on this sensitive issue, and with DHSC and HSIB colleagues, I gave evidence to the rapporteurs and to the full Commission meeting on 16 October 2021. I support the Opinion without reservation. The Commission found that:

- The UK Government's proposed approach is a breach of the Venice Principles and the UN General Assembly Resolution;
- The requirement that the Ombudsman must now apply to the High Court to seek access to the 'safe space' is a clear reduction in the powers of the Ombudsman which (until now) has itself had the powers of the High Court to require attendance of witnesses and examine both witnesses and documents. Given that Coroners are to be allowed into the safe space, the exclusion of the Ombudsman has the potential to undermine public trust in the Ombudsman scheme which acts as a last resort in articulating citizen rights;



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- The UK Government has ignored safeguards in the current Ombudsman legislative scheme which could ensure the safe space is not compromised by Ombudsman access. These include the requirement to investigate in private and not to publish material where there is a public interest not to do so.
- The ‘authorities’ should grant PHSO “unrestricted access” to the HSSIB in order to avoid any restrictions in the investigatory powers of PHSO in line with the Venice Principles.

I would be more than happy to discuss this matter further if it would be helpful. Please contact my Assistant Private Secretary, Faye Glover [faye.glover@ombudsman.org.uk](mailto:faye.glover@ombudsman.org.uk) should you welcome a conversation.

Yours sincerely,

*Rob Behrens*

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**Ombudsman and Chair**  
Parliamentary and Health Service Ombudsman



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recycled paper

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