

# Value for Money Study

Report of the independent peer review of the  
Parliamentary and Health Service Ombudsman

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## **Executive summary**

In recent years, the Parliamentary and Health Service Ombudsman (PHSO) has faced organisational crisis. Issues affecting its previous leadership also resulted in a loss of trust in the PHSO. To use a medical metaphor familiar from the Ombudsman's casework, this report concludes that, under its current leadership, the organisation is moving out of 'critical care' and into 'recovery'. Overall, from facing a set of severe challenges, the organisation is on its way to becoming an efficient and effective modern ombudsman service, which provides significant value for its stakeholders.

The conclusions in this report arise from an independent peer review conducted by a three-member panel. The panel was chaired by Peter Tyndall (Ombudsman for the Republic of Ireland) and included Caroline Mitchell (Lead Ombudsman, Financial Ombudsman Service) and Chris Gill (Lecturer, University of Glasgow). Following a recommendation by the Public Administration and Constitutional Affairs Committee of the House of Commons, the panel was appointed by the board of the PHSO to conduct a value for money study, with reference to current best practice in the ombudsman sector.

In conducting its review, the panel examined a large volume of documentation and conducted a two day visit to the PHSO's offices to gain an in-depth insight into the work of the organisation. The resulting report reaches the following conclusions on key areas of the PHSO's activity:

### ***Cost-per-case***

The panel considered that cost-per-case was a very limited measure of value that required significant contextualisation and sensitivity in terms of its interpretation. It was also a measure that excluded or underplayed a large amount of the added value that ombudsman offices delivered for their stakeholders. Nonetheless, the panel concluded – drawing on a comparative analysis with a leading UK public service ombudsman – that, on completion of its transformation programme, the PHSO's cost-per-case would not be significantly out of step with other leading public services ombudsman offices.

### ***Value for money in context***

While the panel appreciated the surface appeal of cost-per-case as a measure of value for money, it was strongly of the view that stakeholders should seek to adopt more qualitative and contextual approaches to understanding the value of ombudsman offices. In particular, cost-per-case approaches tended to under-value the importance of (1) advice, signposting, and support work delivered by ombudsman offices and (2) wider systemic work carried out with a view to improving public services. Consequently, the approach in this report has focused on examining the PHSO's current practices and plans for change and assessing whether these conform to established best practice.

### ***Leadership and change management***

The PHSO's current senior leadership team is a significant strength of the organisation. The panel were impressed by the strong direction provided by senior leaders and the bold steps they had taken as part of their transformation programme. This included the development of a clear strategy and a holistic, cross-organisational approach to improving the structures and processes needed to deliver on that strategy. In the context of significant pressures and historical problems, the panel considered that the PHSO was

now laying strong foundations for the future efficiency and effectiveness of the organisation. The panel was confident that, if current progress was maintained, the PHSO's transformation programme would be successfully implemented.

### ***Casework process***

Despite remaining hampered by its legislation, the PHSO has put in place a set of reforms to its casework process that adopts widely used practices in the ombudsman sector. The panel agreed that the PHSO's previous approach had been "stuck in time" and had failed to keep up to date with expectations from complainants and other stakeholders. Reforms included a greater focus on resolution, less double-handling of cases, and the use of generalist casework teams. While these steps were positive, the panel noted that further thought was required in relation to preserving caseworker expertise and developing a more efficient Casework Management IT System. The panel also noted that the PHSO faced particular challenges in relation to its casework – including the existence of the MP filter, the lack of integrated jurisdiction, and the fact that around 80% of cases were about healthcare – which presented some limitations on achieving greater efficiencies.

### ***Thematic and systemic activities***

The value of the PHSO is not restricted to resolving disputes between individual citizens and public bodies. There is a broader systemic value to its work, where dealing with individual complaints provides information that allows for change in public services. The impact of this work is almost impossible to quantify, but the panel considered that the PHSO had made important contributions to public debate and practices in the public sector as a result of its systemic work, and that lives are likely to be saved and significant financial savings will also flow from this work. The panel's main observation in this respect is that the PHSO's underpinning legislation currently limits its ability to do more in terms of improving public services (see p. 27 where this is discussed in detail). The PHSO is now out of line with other UK public services ombudsman offices and wider international practice in this regard.

### ***Training and development***

The PHSO has created a new training programme for its caseworkers. The panel considered that this represented a model of good practice that was likely to be of interest to others in the ombudsman community. There was good evidence from staff evaluations that the training was effective and was a key part of helping develop better casework practice. The panel also welcomed the PHSO's commitment to develop accreditation for caseworkers, which would be important in providing external assurance and improving public confidence in casework quality.

### ***Quality assurance and stakeholder engagement***

The PHSO has robust systems in place to manage quality. The panel noted that the PHSO had recently moved away from targets that had had unintended consequences on the quality of casework and that performance was now managed more holistically. The panel was particularly impressed by the use of customer feedback as a basis for assessing the delivery of Service Charter commitments. The panel also considered that the PHSO was very open to stakeholder feedback and had taken significant steps to restore public confidence in the service.

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## 1. Introduction

1.1 On 24 April 2018, following its annual scrutiny of the Parliamentary and Health Service Ombudsman (PHSO), the House of Commons' Public Administration and Constitutional Affairs Committee (PACAC) concluded that:

*“... an external audit mechanism is required that will provide robust assurance of the value for money of the PHSO’s operations to its Board, the Committee and the public. We recommend that the Ombudsman asks his non-executive directors to commission this, and report back to us.”<sup>1</sup>*

1.2 In July 2018, responding to this recommendation, and having taken advice from the Ombudsman Association, the board of the PHSO appointed an independent peer review panel to conduct a value for money study. The panel was composed of three members, as shown below.

<b>Name</b>	<b>Position</b>	<b>Role</b>
Peter Tyndall	Ombudsman for the Republic of Ireland & President of International Ombudsman Institute	Panel Chair
Caroline Mitchell	Lead Ombudsman, Financial Ombudsman Service	Panel Member
Chris Gill	Lecturer in Public Law, University of Glasgow	Panel Secretary

Biographies of the panel members are available in Annex A.

1.3 The panel’s terms of reference were set by the board of the PHSO. The purpose of the study was to assess the value for money of the PHSO’s spending, with reference to current best practice in the ombudsman sector. The panel was supported by a secretariat provided by the PHSO.

1.4 The panel met on 24 July 2018 to develop a methodology for conducting the review. The panel agreed some broad principles in relation to its approach:

- The potential for direct benchmarking with other ombudsman offices was limited by differences in context, jurisdiction, and data reporting practices.
- The range of activities conducted by the PHSO (including providing advice and conducting systemic work) meant that quantitative, cost-per-case metrics provided a very limited measure of value for money.
- A more qualitative and contextual approach was required, recognising the multi-dimensional nature of what value means in an ombudsman context, including the value delivered for complainants, Parliament, public services and citizens at large.

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<sup>1</sup> Public Administration and Constitutional Affairs Committee, *PHSO Annual Scrutiny 2016-2017*, (2017-2019, HC 492), p.7.

1.5 The panel's methodology, therefore, involved three main strands:

- A review of documents to establish a qualitative and quantitative baseline for the study (a list of documents reviewed is at Annex B);
- Interviews with staff to understand past and current practice within the organisation (a list of meetings held is at Annex C); *and*
- Assessment and evaluation drawing on the panel's knowledge of current best practice in the ombudsman sector.<sup>2</sup>

1.6 After reviewing the documents listed in Annex B, the panel conducted a two-day study visit to the offices of the PHSO on 8 and 9 August 2018. This provided an opportunity for the panel to observe the work of the office, ask questions of PHSO staff and to understand the detail of the PHSO's current practice and future plans.

1.7 This report summarises the panel's findings and is structured as follows:

<b>Section</b>	<b>Content</b>
2	Outlines the context for the study and focuses on the significant challenges faced by the PHSO in recent years
3	Describes distinctive features of the PHSO's jurisdiction and the ways in which it stands out among ombudsman offices
4	Analyses approaches to calculating cost-per-case and explains why such measures are problematic
5	Evaluates the PHSO's leadership and its change management programme
6	Concentrates on the PHSO's casework process and looks at the end-to-end process of case handling in the organisation
7	Considers the thematic and systemic work conducted by the PHSO, including insight reports
8	Reviews the PHSO's training and development programme for caseworkers
9	Assesses the PHSO's approach to quality assurance and using stakeholder perspectives to improve its work

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<sup>2</sup> Key reference points for the panel also included the Ombudsman Association's *Guide to Principles of Good Complaint Handling* (Ombudsman Association 2007), the International Ombudsman Institute's best practice paper on *Developing and Reforming Ombudsman Institutions* (IOI 2017), and other reviews of ombudsman offices such as Richard Thomas CBE, Jim Martin CBE, Dr Richard Kirkham's *External Evaluation of the Local Government Ombudsman in England* (LGO 2013).

## 2. Context: challenges facing the PHSO

2.1 This report provides an assessment of the PHSO's current and future value for money. The panel considered it was not possible to do so, however, without taking note of where the organisation has come from and the very significant challenges it has faced in recent years. These have been well documented and include:

- A loss of confidence by important stakeholders, such as the Patients Association;
- Governance and leadership failings leading to the early resignation of the previous ombudsman; *and*
- Failures in financial monitoring leading to the organisation's accounts being qualified.<sup>3</sup>

2.2 These problems have been compounded by significant mistakes made in the investigation of particular cases, such as that of Joshua Titcombe.<sup>4</sup> These have contributed to a loss of confidence among some stakeholders and caused significant damage to the PHSO's reputation. All of this has occurred at a time when citizens' expectations of public services and ombudsman offices have been changing, and social media has given greater prominence to the voice of dissatisfied complainants.<sup>5</sup>

2.3 Concerns about the effectiveness of the PHSO have not been confined to complainants, but have been matters of discussion and concern in the media<sup>6</sup> and in Parliament.<sup>7</sup> Intense scrutiny and public criticism of the organisation, along with failures in leadership, affected staff morale and the results of staff surveys showed very high levels of dissatisfaction within the organisation. For example, in 2015:

- 83% of PHSO staff disagreed that morale was good;
- 82% disagreed that change was well managed; *and*
- 64% did not have confidence in the way the leadership team led.<sup>8</sup>

2.4 Longstanding concerns about the PHSO have included the low volume of investigations it appeared to be carrying out, the timeliness of its complaint

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<sup>3</sup> Public Administration and Constitutional Affairs Committee, *PHSO Annual Scrutiny 2016-2017*, (2017-2019, HC 492), p.5

<sup>4</sup> James Titcombe, *Joshua's Story: Uncovering the Morecambe Bay NHS Scandal* (Anderson Wallace Publishing 2009)

<sup>5</sup> Chris Gill, Jane Williams, Carol Brennan, and Nick O'Brien, *The Future of Ombudsman Schemes* (Legal Ombudsman 2013); Naomi Creutzfeldt and Chris Gill, *Critics of the Ombudsman System: Understanding and Engaging Online Activists* (University of Oxford 2015)

<sup>6</sup> Shaun Lintern, 'Whistleblowers Expose Toxic Environment at the PHSO' *Health Services Journal* (22 March 2016)

<sup>7</sup> Public Administration Select Committee, *Time for a People's Ombudsman*, (2013-2014, HC 655)

<sup>8</sup> People Insight, *Employee Survey Feedback and Planning* (PHSO 2015), p. 12

handling, and its lack of accessibility to the public.<sup>9</sup> This was combined with widespread recognition that the PHSO's legislation was out of date and had not kept up with developments in the ombudsman community. Problems arising from the legislation include:

- The 'MP filter' (a requirement that complaints about central government and its agencies be made through an MP) limited the accessibility of the office;
- The outdated focus in the legislation on investigating and reporting was at odds with "the modern purpose" of ombudsman offices to resolve complaints by more flexible and appropriate means;<sup>10</sup> *and*
- Governance arrangements that did not adequately balance the need to provide parliamentary support for the PHSO's work, at the same time as holding the organisation to account.

2.5 Innovations in other UK jurisdictions – including integrated 'one-stop-shop' ombudsman offices (for example, the Financial Ombudsman Service), the granting of own motion investigation powers, enhanced roles in relation to improving complaint handling, and a greater emphasis on frontline resolution of complaints – were not reflected in the PHSO's legislation or practice. This was pointed out by the former Scottish Public Services Ombudsman, Jim Martin CBE, who referred to the organisation as being "stuck in time".<sup>11</sup> While the UK government's Draft Bill represents a tentative attempt to modernise the PHSO,<sup>12</sup> it is difficult to predict whether and when legislation will be introduced.

2.6 Until recently, therefore, the PHSO was an organisation facing a range of significant organisational and leadership challenges. Having been a beacon of good practice within the ombudsman community since its establishment in 1967, the organisation had lost its way and was out of step with modern ombudsman practice. It had lost the confidence of some stakeholders, it had failed to adapt its practices to the realities of modern ombudsman practice, and it was heavily constrained by statutory restrictions and failures in leadership.

2.7 On their own, challenges of this magnitude would be very difficult to tackle. When combined with the 2015 Comprehensive Spending Review's requirement for a 24% real terms budget cut,<sup>13</sup> the scale of the challenge has become even greater.

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<sup>9</sup> Public Administration Select Committee, *Time for a People's Ombudsman*, (2013-2014, HC 655), pp. 8-15

<sup>10</sup> Mary Seneviratne, *Ombudsmen: Public Services and Administrative Justice* (Cambridge University Press 2002)

<sup>11</sup> Public Administration Select Committee, *Time for a People's Ombudsman*, (2013-2014, HC 655), p. 20.

<sup>12</sup> Cabinet Office, *Draft Public Services Ombudsman Bill* (2016-2017, Cm 9374)

<sup>13</sup> Parliamentary and Health Services Ombudsman, *Annual Report 2017-2018*, (2017-2018, HC 1388), p. 32.

### 3. The distinctiveness of the PHSO

3.1 There are several features of the PHSO that are distinctive when compared to other jurisdictions in the UK and internationally. These serve both to explain why crude comparisons to other ombudsman offices are of limited value, as well as to illustrate contextual points that are crucial to understanding the organisation and the value it provides. This section outlines four important contextual issues relating to the PHSO that are important to the discussion in the rest of this report:

- The existence of the MP filter;
- The statutory focus on investigation and reporting;
- The dominance of health cases; *and*
- The office's relative lack of powers.

3.2 *The MP filter.* As noted above, the MP filter is one of the features of the PHSO's legislation that has – for some time – been seen as outdated.<sup>14</sup> The concern generally has been that this limits the access of citizens to the ombudsman, with the effect that fewer are able to access the service and have their complaints investigated. The PHSO told the panel that only a proportion of complainants who are told that they must refer their complaints through an MP ultimately do so; while some of these complaints are likely to be resolved by MPs, some complainants are likely to be put off by having an additional stage of complaint to go through and may not pursue their complaints. In addition to depriving citizens of access to the PHSO, the MP filter leads to the PHSO's ability to scrutinise central government being significantly reduced (the MP filter is only a requirement in relation to central government and not the health service). As noted below, this contributes to an imbalance in the PHSO's casework and contributes to the predominance of health cases within the PHSO's caseload. Overall, the MP filter contributes to a lack of direct public access to, and understanding of the organisation, and in the words of the Public Administration Select Committee<sup>15</sup> represents an "iniquitous restriction on citizens' direct and open access to PHSO".<sup>16</sup>

3.3 *The focus on investigation and reporting.* The PHSO's legislation has an old fashioned emphasis on the conduct of formal investigations followed by the publication of an official report. This reflects the original conception of the office as one that would deal with a small number of matters referred to it by MPs in the public interest. This approach to the ombudsman's role – while historically praised for its high quality and rigour – has largely disappeared from wider ombudsman practice as a result of rising numbers of complaints and expanding jurisdictions.<sup>17</sup> While the PHSO has adapted its practice over time, the conception that formal

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<sup>14</sup> Trevor Buck, Richard Kirkham, and Brian Thompson, *The Ombudsman Enterprise and Administrative Justice*, (Ashgate 2011)

<sup>15</sup> Now the Public Administration and Constitutional Affairs Committee

<sup>16</sup> Public Administration Select Committee, *Time for a People's Ombudsman*, (2013-2014, HC 655), p.3.

<sup>17</sup> Chris Gill, Jane Williams, Carol Brennan, Carolyn Hirst, *Models of Alternative Dispute Resolution* (Legal Ombudsman 2014)

investigation and reporting of a small number of complaints was the core purpose and value of the organisation remained a much stronger feature of the PHSO's practice compared to other ombudsman offices. The very strong link between the PHSO and the UK Parliament may, perhaps, be a reason for this: the PHSO saw its key role as providing a small evidence base of significant cases to inform the work of Parliament, rather than – in the words of the Public Administration and Constitutional Affairs Committee – being a “people’s ombudsman”, concerned with the business of providing mass redress of citizen’s complaints. The legislation’s emphasis, therefore, has been unhelpful in anchoring the PHSO to an outdated model of ombudsman practice.

**3.4 *The predominance of health cases.*** One of the most striking features of the PHSO’s caseload is the extent to which it is dominated by complaints about the National Health Service. In 2017-2018, for example, of the cases received by the PHSO that were in jurisdiction, 24,664 cases (78.9%) were about the NHS and only 6,606 (21.1%) were about central government bodies.<sup>18</sup> Internationally, healthcare is an unusual jurisdiction for a public services ombudsman, as a result of many countries having mixed (rather than public) systems of healthcare provision or because specialist remedies are provided for complaints in the health context.<sup>19</sup> The healthcare jurisdiction is also distinctive in the sense that it allows for the review of substantive clinical judgment, whereas UK public ombudsman offices are generally restricted to looking at matters of maladministration or service failure.

**3.5 The dominance of the healthcare jurisdiction and its inclusion of clinical judgment** has significant consequences in relation to complaint handling costs. In particular, reviewing clinical judgment requires the use of clinical experts in addition to caseworkers, so that costs for health cases can be expected to be higher than other areas. Health cases can also be more emotional and sensitive for caseworkers to deal with, meaning that caseworkers need additional training and support. This is a particular problem where the imbalance between health and other jurisdictions is as significant as it is for the PHSO. Although other UK ombudsman offices have a similar health jurisdiction, there is less of a caseload imbalance as a result of the absence of the MP filter and integrated jurisdictions, which include local government and, therefore, result in more balanced casework profiles. In Scotland, for example, in 2016-2017, 37% of complaints were about local authorities, 34% about health, 13% about the Scottish government (including prisons), and the rest (16%) about housing associations, and further and higher education.<sup>20</sup> A detailed comparison with the Scottish Public Services Ombudsman is provided below in section 4.

**3.6 *Lack of powers.*** The PHSO lacks important powers that would allow it to enhance the service it offers and which would bring it into line with other jurisdictions. Own

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<sup>18</sup> Parliamentary and Health Service Ombudsman, *Annual Report 2017-2018*, (2017-2018, HC 1388), p.18.

<sup>19</sup> As noted below, other UK ombudsman offices have this jurisdiction but it forms a less proportion of their work.

<sup>20</sup> Scottish Public Services Ombudsman, *Annual Report 2016-2017* (SPSO 2017), p. 10

motion/ initiative investigations – where an ombudsman’s office launches an investigation without receiving a complaint – are the norm for public service ombudsman offices across the world. In 2016, the International Ombudsman Institute surveyed its members and found that 71.4% of respondents had own initiative powers of investigation.<sup>21</sup> In the devolved nations of the UK, an increasingly common model, first developed in Scotland, is for the ombudsman to be given a Complaints Standards Authority role. This involves the simplification of public service complaints processes and a proactive role in monitoring complaint handling and promoting best practice.<sup>22</sup> Both own initiative and Complaints Standards Authority powers provide important additional tools through which the ombudsman can help to ensure more effective access to justice for all citizens and seek to improve public service delivery.

3.7 The next section of the report addresses the issue of cost-per-case and provides a comparative analysis of the PHSO and the SPSO.

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<sup>21</sup> International Ombudsman Institute, *Survey of IOI members re “own initiative” investigations* (IOI 2016)

<sup>22</sup> Scottish Public Services Ombudsman, *Annual Report 2016-2017* (SPSO 2017)

## 4. The problem of cost-per-case: a worked example

4.1 Section 3 has outlined some important ways in which the PHSO is distinctive. In this section, the report provides a detailed comparison of the costs, functions, and caseload profile of the PHSO compared to the SPSO.<sup>23</sup> The aim of this comparison is to (a) highlight the challenges of comparing ombudsman offices in this way and (b) suggest that previous estimates of the costs and value for money of the PHSO have been insensitive to important contextual matters.

4.2 *Jurisdiction.* The SPSO has an integrated jurisdiction in relation to devolved public services, whereas the PHSO's jurisdiction is restricted to UK central government bodies and the English NHS. Additional areas covered by the SPSO include: local government, higher education, further education, housing associations, water, prisons, and social welfare fund reviews. As noted in the discussion below, the lack of an integrated jurisdiction means that the PHSO spends more of its time providing advice about complaining and signposting to other organisations than the SPSO.

4.3 *Functions.* In addition to a broader jurisdiction, the SPSO carries out functions which are not part of the PHSO's remit. This includes:

- *Complaints Standards Authority.* Setting standards for and monitoring simplified complaints procedures for public services. Supporting and facilitating best practice in complaint handling.
- *Social Welfare Fund reviews.* Reviewing decisions taken by local authorities in the allocation of the Scottish Welfare Fund.
- *Learning and Improvement Unit.* On a pilot basis, providing enhanced support and advice to organisations that have been subject to SPSO recommendations.<sup>24</sup>

4.4 *Casework profile.* As will be discussed in detail below, a large proportion of the PHSO's work involves the provision of advice in response to enquiries. The proportion of its work devoted to this is significantly higher than the SPSO:

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<sup>23</sup> The SPSO was chosen as a comparator organisation because it is often highlighted as a model of good practice within the UK ombudsman sector and as an innovator in terms of modernising the ombudsman's role.

<sup>24</sup> Scottish Public Services Ombudsman, *Annual Report 2016-2017*, (SPSO 2017)

	<b>PHSO<sup>25</sup></b>	<b>SPSO<sup>26</sup></b>
<i>Advice, information, and signposting provided in response to enquiries</i>	81,899	1,404
<i>Complaints handled<sup>27</sup></i>	32,389	4,104
<i>Approximate ratio of enquiries to complaints</i>	8 enquiries: 3 complaints	1 enquiry: 4 complaints

Despite the traditional focus (noted in section 3) on investigations, the table above shows that the PHSO, in fact, devotes a significantly greater proportion of time to responding to enquiries than the SPSO. Reasons for this may include the greater complexity of the complaint handling ‘maze’ in the UK/ England<sup>28</sup> and the fact that the SPSO has now implemented standardised complaints procedures and is providing significant levels of support on good complaint handling to public bodies. Increased confusion and complexity may be resulting in more citizens requiring the PHSO’s help to navigate the complaints maze.

4.5 In terms of cases assessed and investigated, PHSO and SPSO use slightly different categories. PHSO uses a category called ‘initial assessment’ which includes screening for jurisdiction and prematurity<sup>29</sup> and a separate category called ‘assessment’ where the merits of complaints are considered. SPSO use a single category called ‘early resolution’ (but which appears to be broadly comparable to the PHSO’s ‘initial assessment’ and ‘assessment categories’).<sup>30</sup> This activity is referred to as ‘pre-investigation complaint handling’ in the table below. Both the SPSO and PHSO use a single category to report investigation statistics.

<sup>25</sup> PHSO, *Annual Report 2017-2018*, (PHSO 2018)

<sup>26</sup> Scottish Public Services Ombudsman, ‘SPSO Statistics 2016-2017’, (SPSO Website 2017)

<sup>27</sup> Both PHSO and SPSO include here determinations of ‘maturity’, jurisdiction, resolution, and cases where the merits of the complaint has been determined.

<sup>28</sup> Local Government And Social Care Ombudsman, ‘The Complaints Maze’, Available from: <https://www.flickr.com/photos/110744519@N03/>

<sup>29</sup> Prematurity is a term used by ombudsman offices in relation to complaints that are made to them before having exhausted a public body’s own complaints procedure. Generally, ombudsman offices will only consider a complaint once a public body has had the opportunity to attempt to resolve it first.

<sup>30</sup> Scottish Public Services Ombudsman, ‘SPSO Statistics 2016-2017’, (SPSO Website 2017)

	<b>PHSO<sup>31</sup></b>	<b>SPSO<sup>32</sup></b>
<i>Pre-investigation complaint handling</i>	29,960	3,299
<i>Investigation</i>	2,429	805
<i>Ratio of investigation to pre-investigation complaint handling</i>	1 investigation: 15 pre-investigations	1 investigation: 3 pre-investigations

The bulk of the pre-investigation complaint handling carried out by the PHSO is carried out at the ‘initial assessment’ stage (23,960 cases), where checks are made on jurisdiction and the ‘maturity’ of the complaint. Again, the fact that the PHSO has a narrow remit compared to the SPSO and that the complaints landscape is more difficult for citizens to understand is a probable explanation for the higher number of complaints that are incorrectly made to the PHSO and which require a jurisdictional decision at the pre-investigation stage. The difference is striking: for every 1 investigation, PHSO conducts 15 pre-investigations while SPSO only conducts 3. More of the PHSO’s complaint handling work, therefore, involves sifting work to redirect complaints that are either made too soon or are outside of its jurisdiction.

4.6 *Subject of complaint.* As noted above, health cases form a disproportionate amount of the complaints received by the PHSO. This is well illustrated by comparison to the SPSO, which has an identical jurisdiction for complaints about the Scottish NHS.

	<b>PHSO<sup>33</sup></b>	<b>SPSO</b>
<i>Number of health complaints closed</i>	24,644	1,433
<i>% of total complaints closed</i>	76.1%	34.9%

<sup>31</sup> PHSO, *Annual Report 2017-2018*, (PHSO 2018)

<sup>32</sup> Scottish Public Services Ombudsman, ‘SPSO Statistics 2016-2017’, (SPSO Website 2017)

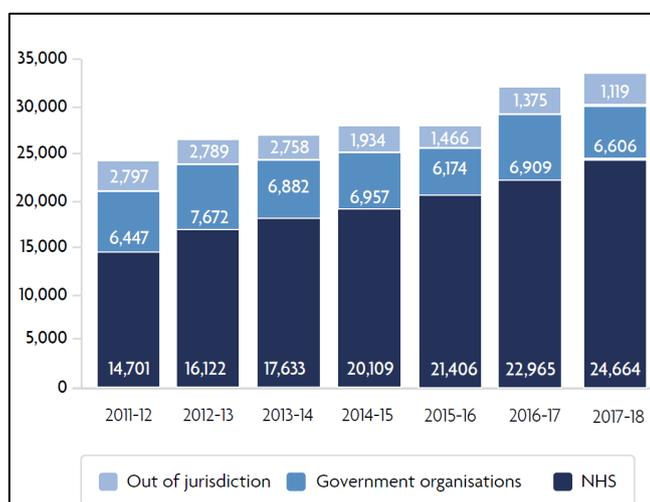
<sup>33</sup> The figures in this table differ from those at paragraphs 3.4 and 3.5 above because the table refers to cases closed in a year (rather than cases received).

As noted above and returned to below, health cases pose particular challenges in terms of complexity and additional costs over complaint handling in other sectors (where matters of judgment are not reviewable and expert advice is not required). It is interesting to note that the SPSO states in the preamble to its statistical reports that health cases “tend to be more complex because they often consist of multiple issues and may need specialist advice.”<sup>34</sup>

4.7 *Annual budgets.* The SPSO’s budget in 2016-2017 was £3,250,000.<sup>35</sup> The PHSO’s budget is reducing rapidly as a result of the 2015 Comprehensive Spending Review settlement:

- 2016-17: £31.993 million;
- 2017-18: £31.186 million;
- 2018-19: £28.004 million; and
- 2019-20: £25.942 million.

4.8 *Approaches to cost per case.* Given that the cost of the PHSO will be drastically reduced by 2019-2020 and that there are no indications that caseloads are likely to reduce, the panel considered it appropriate to use the 2019-2020 budget figure of £25,942,000 for cost-per-case calculations. This provides an assessment of future value for money once the PHSO’s budget cut has been fully effected. The panel considered that the use of this figure is particularly justified, since if recent trends continue, complaint numbers are likely to continue to rise in future, as shown in the graph below.



*Number of complaints handled by PHSO since 2011/2012<sup>36</sup>*

<sup>34</sup> Scottish Public Services Ombudsman, ‘SPSO Statistics 2016-2017’, (SPSO Website 2017)

<sup>35</sup> Scottish Public Services Ombudsman, Annual Accounts (SPSO 2017) p.14. The SPSO also received an additional £742,350 to set up new services in 2016-2017.

<sup>36</sup> PHSO, *Annual Report 2017-2018*, (PHSO 2018), p. 18

In relation to the SPSO, given that additional funding provided to the organisation in 2016-2017 may not be provided in future years, the figure of £3,250,000 is considered to be the most appropriate for use here. The paragraphs below outline three approaches to cost per case calculations and comparisons.

- *Option 1: cost per person helped.* One approach is to take a broad view of an ombudsman’s office function as – not only determining complaints – but helping people by other means such as advice, information, and signposting. The measure here, therefore, involves dividing the organisation’s budget by the total number of enquiries and complaints dealt with.

	<b>PHSO</b>	<b>SPSO<sup>37</sup></b>
<i>Cost per person helped</i>	£227	£501

It is not surprising, given the very high proportion of enquiries received by the PHSO, that a cost per person helped measure is favourable to the PHSO. Of course, the measure is problematic, because enquiries are by their very nature quicker and easier to deal with than complaints. Consequently, although the PHSO deals with many more enquiries than the SPSO, these should be a less costly part of the office’s work when compared to complaint handling.

- *Option 2: cost per complaint handled.* As noted above, both PHSO and SPSO use a similar overall distinction to separate enquiries from complaints that require some form of assessment and decision. Both organisations refer to these complaints as complaints that have been ‘handled’. For the PHSO this include ‘initial assessment’, ‘assessment’, and ‘investigation’; for the SPSO this includes ‘early resolution’ and ‘investigation’. Here the measure involves dividing the organisation’s budget by the number of complaints handled (excluding enquiries responded to).

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<sup>37</sup> For completeness, the figures here include not only the enquiries and complaints closed as part of the SPSO’s maladministration remit (5,408) but the number of enquiries and complaints dealt with as part of the SPSO’s Scottish Welfare Fund review role (1,078). The total figure is 6,486

	<b>PHSO</b>	<b>SPSO<sup>38</sup></b>
<i>Cost per complaint handled</i>	£801	£716

This measure is less favourable to PHSO, since it excludes the bulk of its enquiry work. Nonetheless, it shows that the cost of each complaint handled is broadly comparable with the SPSO.

- *Option 3: cost per investigation.* The PHSO's traditional focus on investigation has meant that cost per investigation has been the measure that has tended to dominate discussions of its value for money. The measure here involves dividing the organisation's budget by the number of investigations conducted.

	<b>PHSO</b>	<b>SPSO<sup>39</sup></b>
<i>Cost per 'investigation'</i>	£10,680	£2,617

This measure clearly favours the SPSO, given the greater proportion of its complaint handling work categorised as investigation and the relatively low number of enquiries it deals with. For the PHSO on the other hand, this measure excludes a significant amount of the work it conducts at enquiry and assessment stages.

**4.9 Issues with cost per case.** The problems inherent in cost per case assessments should be evident from the above discussion. The first point is that cost-per-case comparisons require contextualisation and sensitivity. We can only understand cost-per-case by looking at differences between organisations in terms of their jurisdictions, functions, and casework profiles. It is also evident that different approaches to cost-per-case can produce significantly different headline comparisons. Option 1 above makes PHSO look cheap, option 3 very expensive. Of the three measures, option 2 – although it is less favourable to the PHSO given the PHSO's larger proportion of enquiries – is probably the most useful measure. If this is accepted, then one conclusion is that – even using a questionable cost-per-case assessment, which is not favoured by the panel – the PHSO's costs are not significantly out of line with at least one other UK public services ombudsman.

<sup>38</sup> For the SPSO, figures here include 437 Scottish Welfare Fund cases that were reviewed in 2016-2017. Total: 4,104 complaints handled + 437 reviews = 4,541.

<sup>39</sup> For the SPSO, the figure includes the 805 cases investigated under its general jurisdiction and the 437 Scottish Welfare Fund cases it 'reviewed' (total 1,242). This figure favours the SPSO, as reviews are likely to be less complex than complaint investigations.

4.10 More broadly, however, the panel considers that cost-per-case is an unfair and unnecessarily reductive way to measure and compare the value of ombudsman offices. Cost-per-case fails to account for other activities, particularly standard raising, systemic, and outreach work which are increasingly part of what all ombudsman offices do. The SPSO, for example, devotes significant resources to its complaints standards work and to facilitating improved complaint handling practice. The PHSO similarly devotes considerable attention to systemic work within the legislative limits in which it operates. Cost-per-case ignores this work and the value it creates. If the trend continues for UK ombudsman offices to develop more systemic approaches to their roles, then cost-per-case is likely to become even less useful as a measure of value over time. Indeed, the panel's view is that cost-per-case measures cannot fully quantify the value of the service to the individual complainant, to public bodies (in terms of service improvement), to Parliament (in terms of information about problems in public services), and to citizens (in terms of providing a check on administration and performing service improvement functions). While the panel can understand the temptation of using cost-per-case as a proxy for value for money, it considers that this proxy is inadequate and unhelpful. Value must be considered in more qualitative ways.

## 5. Leadership and change management

5.1 On 1 October 2016, Amanda Campbell CBE began work as the PHSO's Chief Executive Officer and on 6 April 2017 Rob Behrens CBE commenced his appointment as the Parliamentary and Health Services Ombudsman. It was their task to address and recover from the significant challenges outlined in section 2, in the distinctive context outlined in section 3.

5.2 The panel noted the significant amount of work that has gone into improving how the organisation was run. New structures have been devised to deliver change on a large scale, including the creation of a programme office to manage the planned transformation of the organisation. This has helped to ensure that change is managed properly and that strategies can be delivered in practice. This has gone in tandem with improvements in core management practice have been made across the organisation:

- Financial monitoring and governance arrangements have been improved, with enhanced financial literacy in key roles and a governance framework that supports better decision-making;
- Corporate services now operate under a new strategy strongly tied to supporting the delivery of the organisation's overall strategy and enabling wider organisational effectiveness;
- Human resources policies are being reviewed, updated, and amended to support staff better; *and*
- New values have been created, in close consultation with staff, to help develop a shared culture of expectations and behaviours.

5.3 These developments are basic components of a well-managed public body, but had previously not been in place or had not been working well. Deficiencies in the fundamental management structures of the organisation were an important reason for the organisational problems facing the PHSO discussed in section 2. The panel was, therefore, reassured to see that – across the organisation – systems and processes had now been reformed to conform to sound management practice. The implementation of these changes provides a solid platform for the delivery of the PHSO's wider change programme.

5.4 The panel was impressed by the decisiveness and direction demonstrated by the PHSO's senior leadership team in turning the organisation around, reducing costs, and enhancing efficiency. The decision to cut "hard, deep, and quick", relocating most staff to Manchester and bringing about radical and rapid change was a brave one. While this resulted in significant disruption, the need to cut costs and to remodel the organisation to meet its current and future challenges required action on this scale. That this approach is beginning to prove effective is evidenced by the very positive views expressed by staff members in meetings with the panel and

improving staff survey results.<sup>40</sup> In particular, staff members were unanimous in their praise of the Ombudsman and the Chief Executive and their ability both to listen to staff and set a strong direction for improving the organisation.

5.5 The panel noted that the transformation programme included multiple strands and was ambitious and holistic in scope. It included:

- Partial relocation to Manchester resulting in lower office and payroll costs
- Staff redundancies and recruitment
- A reduction in the number of senior managers
- A new programme office to manage transformation projects
- A revised casework operating model
- A revised system for reviewing casework complaints
- A newly designed casework training programme
- Renewed engagement and openness with stakeholders
- A new strategy centred on becoming an 'exemplary ombudsman service'

5.6 The panel noted that the PHSO's recently developed strategy was very clear and provided welcome vision and direction for the organisation. This vision was well understood within the organisation and the panel witnessed high levels of passion and commitment to transforming the PHSO at all levels of the business. This was supported by clear structures, effective governance arrangements, and good working relationships within the senior team. The panel was confident in the ability of the leadership team – particularly in light of the changes that had been made to management and delivery structures in the organisation – to implement the transformation programme effectively.

5.7 The panel was also impressed by the way the PHSO had managed to deal with budget cuts without significantly reducing service levels and avoiding reductions in the overall number of caseworkers. That cuts of that scale have been possible, while sustaining and in many areas improving performance, is an impressive achievement. The panel noted that relocation represents a one-off saving and that, in future, there may be potential to take advantage of flexible working arrangements (such as remote working) to further reduce accommodation costs. Good levels of customer satisfaction and high quality assurance results demonstrate that performance has been maintained.<sup>41</sup> Overall, the panel considered that the PHSO's leadership was a particular strength of the organisation and that the transformation programme – both in its substantive goals and the structures now in place to deliver it – was putting the organisation in a strong position to deliver on its ambition to become an exemplary ombudsman service.

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<sup>40</sup> BMG Research, *Employee Survey 2017* (PHSO 2017)

<sup>41</sup> Parliamentary and Health Service Ombudsman, *Annual Report 2017-2018*, (2017-2018, HC 1388), p.14-16

## 6. Casework process

6.1 The panel noted that the PHSO had shifted its core case work practice in important ways:

- There was a new emphasis on seeking ‘resolution’ at the intake and assessment stage;
- Once a case was found to be within jurisdiction, it was passed to a single caseworker responsible for both assessment and investigation; *and*
- Caseworkers had been shifted away from subject specialisms towards a generalist casework model.

6.2 The panel noted that these practices were congruent with current practice in the ombudsman sector.<sup>42</sup> Here, ombudsman offices have increasingly sought to place more emphasis on ‘front end’ resolution of complaints, seeking to deliver quicker outcomes for complainants and public bodies and avoiding formal procedures where they do not add value and are not required. Similarly, generalist casework is an increasing trend in ombudsman offices, allowing for greater flexibility and efficiency in the use of caseworker resources and providing the resilience to respond effectively to spikes and troughs in demand. While practice in the ombudsman sector still varies on this point, the panel considered that ensuring a single caseworker was responsible for the case was a positive development, reducing double handling of cases and providing a better experience for the complainant and the public body.

6.3 While the panel welcomed changes that had been made to the PHSO’s casework process, questions were raised by members of staff about whether they had led to a loss of specialist knowledge and whether enough had been done to maintain the expertise required in particularly complex areas. The panel agreed that – while generalist casework teams were an important part of delivering an efficient ombudsman service – arrangements were required to ensure expertise was not lost or located in just one person. The panel considered that this was an area in which more work was required to support staff to develop expertise and to give them greater confidence in accessing advice and support when dealing with complex casework. In this regard, the panel also noted that the PHSO’s senior caseworkers had been grouped into separate teams, rather than mixed in with more junior caseworkers. The panel considered that there might be benefits in terms of knowledge management and sharing good practice for senior and junior staff to have more opportunities to interact.

6.4 The panel noted that the PHSO’s approach to performance management had shifted and that KPIs had been reviewed in order to make sure that they did not drive inappropriate behaviours by caseworkers. The panel were told by staff

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<sup>42</sup> The practices now adopted by the PHSO fit broadly with key modern trends identified in interview research with senior members of the ombudsman sector in 2013: Chris Gill, Jane Williams, Carol Brennan, and Nick O’Brien, *The Future of Ombudsman Schemes* (Legal Ombudsman 2013).

members that, previously, performance management had been too driven by artificial targets and process, rather than a concern with the quality of decisions being reached. The panel considered that the PHSO's shift away from such targets and its renewed focus on quality was helpful and would be important in addressing stakeholder criticisms about its casework. The panel was also reassured that the senior leadership had begun to be more directly involved in casework, providing direction to staff, and modelling the values and approaches to cases that were expected. The development of a casework forum in which caseworkers could bring complicated or interesting cases for discussion with the Ombudsman and the Chief Executive was a good example of this more hands on approach to senior involvement in casework.

6.5 The panel noted that while the overall shift in the PHSO's casework process was positive, the PHSO's legislation remained problematic in terms of limiting the organisation's potential to go further in achieving casework efficiencies. The panel considered that the technical meaning of the term 'investigation' in the legislation was unhelpful, as it implied to complainants that anything other than a formal investigation was a second best service. In reality, where a complaint is within jurisdiction, the difference between an 'assessment' and 'investigation' lies largely in whether or not it will result in a formal report being published. In both cases the matter will have been considered in-depth and an evidence-based decision will have been produced. While this may seem like a minor issue of terminology, it remains an important challenge for the organisation in terms of explaining to complainants, Parliament, and the wider public, the value of the work it does and that that value is not confined to the cases that are 'investigated'. An example of much more flexible legislation can be seen in the *Public Services Ombudsman (Wales) Act 2005*, which provides the ombudsman with greater statutory flexibility to use alternatives to formal investigations and provides greater flexibility in terms of deciding whether to publish formal reports on cases.<sup>43</sup>

6.6 Indeed, it was the panel's view that the PHSO's historic, statute-driven, focus on investigation meant that it had not always been very successful in explaining the value of its work outside of formal investigations. In 2017-2018, the number of cases received and actions taken by PHSO were as follows:

- 114,278 calls, emails, online enquiries were received. 72% of these were either not ready for the PHSO to deal with or needed to be redirected to other organisations. 28% proceeded for an initial assessment.
- 32,289 complaints underwent an initial assessment. For 23,960 of these information was given to the complainant about how to make a complaint to a public body or other signposting was provided. For 8,291, the case proceeded to a more in-depth consideration.
- In 2017-2018, 36% of cases that proceeded to a more in-depth consideration were 'investigated', with the remainder 'assessed'.<sup>44</sup>

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<sup>43</sup> Sections 3, and Sections 16-21.

<sup>44</sup> Parliamentary and Health Service Ombudsman, *Annual Report 2017-2018*, (2017-2018, HC 1388), p.17, p.20

6.7 As noted above, the panel was clear that once a complaint is confirmed to be in jurisdiction – from the perspective of the complainant and the public body – there was effectively no *substantive* difference between an assessment and an investigation. The latter involves more procedural steps – and therefore takes longer – but the quality and depth of the enquiries conducted are the same. It is, therefore, unhelpful that current practice requires a distinction to be made at this stage and that that distinction risks undermining the value of work carried out by the PHSO at the assessment stage. The panel noted here that the PHSO’s plans to publish casework decisions taken at the assessment stage was a welcome one in terms of improving transparency and providing clear public examples of the work being done outside of investigation.

6.8 Another misunderstood aspect of the PHSO’s process has been the ‘intake’ stage. In common with other ombudsman offices, the bulk of the enquiries received by the PHSO are ‘redirected’. This activity has often been taken for granted and ignored in the public presentation of the PHSO’s work, given its focus on investigation. However, this underplays the significant value that is delivered for public bodies and complainants. PHSO effectively operates (in a way that was not envisaged in its founding legislation) as an advice and signposting service that helps complainants to navigate complex complaints systems<sup>45</sup> and relieves other public bodies from providing a service that would otherwise fall to them. As noted in section 4, the scale of the PHSO’s advice and signposting service is extensive.

6.9 While there are good arguments for suggesting that better complaint systems at the 1<sup>st</sup> tier level might reduce the need for such advice and signposting, in the current context, PHSO provides a crucially important service in steering complainants towards redress. The panel spent time with the large and busy intake team providing this service and were impressed by the value that the team was providing for complainants who approached the PHSO for help. The panel’s view was that the focus in public debates on the number of investigations carried out by the PHSO, has been – to some extent at least – a red herring. Indeed, in 2017-2018, PHSO helped 105,987 people by providing information, advice, and signposting, and provided evidence based decisions on the 8,291 cases that were within its jurisdiction to deal with and had exhausted a local complaints procedure. Concentrating only on the 2,000 or so cases that had been ‘investigated’ is a narrow and inappropriate basis for discussing the organisation’s value.

6.10 The panel considered, therefore, that the PHSO was currently underselling aspects of its service and that the value of its casework needed to be considered more holistically in future assessments of the organisation. The presentation of its processes as a series of hurdles, with the ultimate prize being an ‘investigation’ contributes, in the panel’s view, both to a misunderstanding of the value of casework outside investigations and to driving dissatisfaction amongst complainants whose cases are not ‘investigated’. The panel was satisfied that

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<sup>45</sup> The ‘Complaints Maze’ identified by the Local Government and Social Care Ombudsman

reforms to the casework process were going in the right direction and seeking to mirror broader changes in good practice within the ombudsman sector. The panel also considered that further efficiencies would be possible with modernised legislation.

6.11 As noted above, a distinctive feature of the PHSO casework is its very significant dominance by health cases. This creates a number of issues for the organisation that do not arise for other public services ombudsman offices or arise to a less extent due to the lower proportion of health cases they deal with. These issues include:

- Additional costs of clinical advice:
  - Direct (cost of advisers)
  - Indirect (more complex process, double handling)
- Often more acute and challenging circumstances for complainants (ill health, bereavement, trauma)
- Potentially higher stakes in terms of the complaint outcome (matters of life and death, rather than simple maladministration)
- A professional context that can lead to more challenges from clinicians and a more adversarial approach
- Clinical advisers are an independent resource advising caseworkers on specific areas of a complaint. They are not a resource for either a complainant or an organisation to access

6.12 The particular issue for the PHSO is that around 80% of its casework is affected by these issues. Consequently, the value for money the PHSO provides must be understood in the context of the very particular and unusual circumstances in which it operates. A further example of the challenges in this area can be seen in the recent case of *Miller v Health Service Commissioner for England*,<sup>46</sup> where a GP successfully challenged the standard of review adopted in the PHSO's clinical advice. Responding to this judgment has required a new standard to be developed for clinical advice. The Court of Appeal's judgment also appears to be suggesting that the courts will in future adopt a more rigorous approach to both the procedural fairness and substantive rationality of the ombudsman's decision-making in relation to health cases. There is a danger here that some of the flexibility and efficiency gains noted in the PHSO's process changes could be reversed, if this marks the beginning of a trend towards judicialisation.<sup>47</sup>

6.13 Finally, the panel noted that significant efficiencies could be obtained through better use of information technology. An example of the way in which the current system was inefficient was that the online complaints form on the PHSO's website did not automatically link up with the casework management system (CMS). Members of staff told the panel that the current CMS was very inefficient compared to the old one, making it hard to find documents, requiring complicated fields to be

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<sup>46</sup> [2018] EWCA Civ 144

<sup>47</sup> See Richard Kirkham, 'Safeguarding Procedural Fairness or Imposing Excessive Legalism', (UKAJI blog 2018)

filled out, and making document uploads very slow. Although a benefit of the CMS was that it was supposed to make it easier to monitor trends and extract information on casework, the panel was told that it was not fully successful in doing so. While the PHSO has plans to improve the CMS, the panel considered that these were fairly limited in scope. The panel understood that the organisation's new ICT and Digital strategy would seek to make better use of technology to support better customer service and more efficient casework. The panel understood that necessary developments in IT (including web chat and basic artificial intelligence) would bring short-term costs at the same time as longer term gains.

## 7. Thematic and systemic activities

7.1 In addition to helping citizens with advice about how to complain and providing decisions on complaints, the PHSO conducts a range of activities outside of casework to help public services to learn from complaints and improve their services. Examples of such work includes:

- *Making recommendations in individual cases.* Individual cases can be a prompt for recommending service changes. In 2017-2018, 543 service improvements were recommended.<sup>48</sup>
- *Guidance.* This includes the *Principles of Good Administration*, *Principles of Good Complaint Handling*, and *Principles for Remedy*, where experience across cases is distilled into good practice guidance.<sup>49</sup>
- *Insight reports.* This includes reports on sepsis and mental health care. These reports analyse topical themes across a number of cases and seek to bring these issues to the attention of public bodies and others.<sup>50</sup>
- *Research.* This includes research to help better understand the experiences of people who complain, such a survey of Gransnet members about care and treatment of older relatives.<sup>51</sup>
- *Liaison with public bodies.* PHSO visited over 100 public bodies to share lessons from complaints and discuss good complaint handling in 2017-2018.<sup>52</sup>

7.2 Measuring the value of this work is very challenging. As a result, the tendency has been to focus on what can be measured (cost-per-case) and simply to ignore the added value activities of the PHSO. It is likely, however, that the work conducted in these areas does help to support positive changes in public services. As an example, the PHSO's work on sepsis has helped to get the issue onto the agenda and catalysed new approaches to diagnosis and treatment. The PHSO has worked with regulators, professional bodies, and public bodies to bring about change in this area and described those involved in the process as being part of a 'consortium' of actors who made change happen and led to lives being saved. This example shows both the clear value that the PHSO can add – bringing the insights from complaints to the fore of public discussions – and the difficulty in isolating the particular impact of the organisation amid the 'consortium' of other actors involved.

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<sup>48</sup> PHSO, *Annual Report 2017-2018* (PHSO, 2018), p.22

<sup>49</sup> PHSO, 'Our Principles', Available from: <https://www.ombudsman.org.uk/about-us/our-principles>

<sup>50</sup> PHSO, *Maintaining Momentum: Driving Improvements in Mental Health Care* (PHSO 2018); PHSO, *Time to Act: Severe Sepsis: Rapid Treatment and Diagnosis Saves Lives* (PHSO 2013).

<sup>51</sup> PHSO, 'Research', Available from: <https://www.ombudsman.org.uk/publications/research>

<sup>52</sup> PHSO, *Annual Report 2017-2018* (PHSO, 2018), p. 35

7.3 In considering value for money, therefore, a broader view of the PHSO's work is required beyond simply looking at the cost of resolving a dispute between a particular citizen and a particular public body. While the panel considered that the PHSO currently delivers significant added value in these areas, it noted that there was potential for it to do more in future. The lack of own initiative powers of investigation limits, to some extent, the PHSO's current ability to drive systemic change in public services. Similarly, the lack of a Complaints Standards Authority role means that there are limits to the extent to which PHSO can influence the way in which public services handle complaints. This in turn creates inefficiencies: as noted above, a confusing complaints landscape and poor complaint handling is a probable explanation for the high number of enquiries the PHSO receives. While PHSO has begun work in this area, it is doing so without a clear legislative basis and without additional resources.<sup>53</sup> Another jurisdictional limit on the PHSO's ability to secure systemic change relates to the narrowness of its current jurisdiction – an integrated jurisdiction would allow for sharing of learning across jurisdictions (as well as, again, reducing the need for signposting by simplifying the way in which the complaints system operates). The panel noted, therefore, that legislative change was likely to be required in order for the PHSO to expand significantly its work in these areas. The potential for enhanced efficiencies was well demonstrated by the PHSO's current joint working with the Local Government and Social Care Ombudsman, which was a benefit to complainants but had potential to be developed further.

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<sup>53</sup> PHSO, *Our Strategy 2018-2021*. (PHSO 2018)

## **8. Training and development**

8.1 The panel noted that the PHSO had invested significant resources into a training and development programme for its caseworkers. It had begun by focusing on 'role ready' training for caseworkers, involving a modular training course for staff lasting up to 4 days depending on existing expertise. A further three days of professional skills training had initially been discussed with an external consultancy, but was then developed internally by trainers at the PHSO experienced in casework. The panel noted that the structure of the course and its content was comprehensive and that the approach was something that other ombudsman offices could learn from. The PHSO had also provided vicarious trauma training for caseworkers, which was particularly important in supporting staff dealing with some of the traumatic issues likely to feature in health complaints. A one day training workshop on equality and diversity had also been provided to staff. Feedback on the training in course evaluations and during the panel's meeting with staff suggested that the training had been very well received. Both new and experienced staff talked about the value of the training in providing common perspectives on good practice. The sessions had also provided opportunities for staff to discuss things that were not working so well and these were then fed back and led to improved processes. As a result, the training was viewed very positively as a learning opportunity for the whole organisation.

8.2 The panel noted that the training and development programme had been part of the senior leadership team's decision to take quick and decisive action to transform the organisation, rather than take a more staggered approach. The panel noted that the investment in training and development, together with the high proportion of staff who have been recently recruited, had led to cases taking longer to be allocated. This has been openly recognised and discussed by the PHSO, with a clear view taken about the long term benefits of the approach. The panel agreed and considered that the training was a key part of ensuring that issues that had been identified in recent criticisms of the PHSO would be effectively addressed. The short-term impact on performance was, therefore, justified in relation to the need for the organisation to address weaknesses in its previous approach to casework and ensure that public confidence in the organisation was restored. The panel also noted that the next phase of the casework training was to provide external accreditation, which would provide both a benefit to employees and help to provide robust external assurance to the PHSO's stakeholders.

## 9. Quality improvement and stakeholder perspectives

9.1 The panel found that the quality assurance arrangements the PHSO has in place are robust. As part of the routine casework process, a significant amount of internal checking and signing off of decisions takes place. This provides an extremely robust internal check on decision-making and ensures that few decisions are delegated without some form of sign-off by a manager. While the panel understood that such intense internal checking was required at a time of significant change and with many new recruits in the organisation, it considered that the degree of checking currently in place was likely to prove inefficient in the longer term. As the organisation stabilises, the panel would expect there to be a lighter touch scheme of delegation, with internal checks on casework being made on the basis of risk. It also noted that accreditation of staff would lead to greater delegation in future. At present, however, the amount of routine checking of work under the PHSO's process is currently excessive and potentially inefficient.

9.2 The panel noted that routine internal checks are supplemented by the use of internal quality assurance and customer feedback. In general, the results of the QA audit and customer feedback are positive, particularly given that the outcome of complaints is likely to colour some of the customer feedback. This is the case across the whole spectrum of ombudsman offices. The areas of particular dissatisfaction in customer feedback relate to the depth of investigation and explanations regarding decisions and how they are reached.<sup>54</sup> While noting that such dissatisfaction is often linked to outcome, the panel considered that these areas would be important to address in order to ensure that – as far as possible – complainants had confidence in investigations and decisions. Generally, however, the panel was impressed by the amount and quality of customer satisfaction data collected by the PHSO and its commitment to measuring performance against its Service Charter using complainant feedback. The panel noted that the PHSO's approach here represented good practice and that most UK public service ombudsman offices had less sophisticated approaches (although some private ombudsman offices, like the Financial Ombudsman Service, were perhaps even more forward looking in their use of customer feedback).

9.3 The final quality check built into the PHSO's process involves a process for challenging decisions and a process for complaining about the quality of the PHSO's service. There were 980 formal service complaints in 2017-2018 and 355 of these were upheld.<sup>55</sup> While this indicates scope for improvement in service delivery, it also demonstrates that the PHSO is willing to identify and acknowledge where poor service takes place. This is part of a broader strategy of engagement and openness with stakeholders adopted by the PHSO. As noted above, the PHSO has been subject to significant criticism in recent years from groups of complainants dissatisfied with the outcomes of their complaints and how they were handled by the PHSO. The current ombudsman has been very open in responding

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<sup>54</sup> PHSO, *Annual Report 2017-2018*, (PHSO 2018)

<sup>55</sup> PHSO, *Annual Report 2017-2018*, (PHSO 2018), p. 28

to these critiques, for example, holding open meetings where concerns can be shared and experiences harnessed to improve the PHSO's future service. This openness is also displayed in the Radio Ombudsman initiative, a podcast where the ombudsman discusses issues around complaint handling with key stakeholders in order to provide an insight into the work of the office. It is noteworthy that the Patients Association, which had been very critical of the ombudsman, now acknowledges that some progress has been made and is actively working with the PHSO to help improve its service in future.<sup>56</sup> Generally, the panel considered that the PHSO was highly responsive to customer feedback and had made concerted efforts to engage with critical opinion and to learn from mistakes were they had occurred.

9.4 In relation to complaints about decisions, it is common for ombudsman's offices to offer only a limited opportunity for complainants to ask that a decision be reviewed. Ombudsman offices are the end of the line in public service processes and, by statute, their decisions are meant to be final and draw complaints to a close (subject only to the judicial review jurisdiction of the courts). Giving closure is an important part of the ombudsman's role, providing complainants and public bodies with an authoritative and conclusive outcome on disputed cases. In this context, and given the significant internal quality assurance arrangements the PHSO has in place, it is important that decisions are reviewed only by exception where there is a good reason for a review to take place (such as new information coming to light or a factual inaccuracy that affected the decision). In 2017-2018, 56 complaints about the PHSO's decisions met the criteria for a review and 20 of these were upheld. While the panel considered that this process was required to allow for new evidence to be considered or factual errors to be highlighted, it was right that reviews of decisions should be limited and that the decisions taken by the PHSO should be final. Doing otherwise risks diverting resources away from the PHSO's core casework and undermining good judgment. The panel, therefore, considered that requests for reviews should only be accepted where strict criteria were met and supported the PHSO's developing approach in this area.

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<sup>56</sup> Patients Association, 'PHSO Position Statement', (Patients Association Website 2018)

## 10. Conclusion

- 10.1 The PHSO is an organisation in transition. To use the kind of medical metaphor that might feature in its casework, PHSO is moving from critical care into recovery. The organisation has suffered from very serious problems in recent years, including outdated processes and practices, failures in leadership, and a loss of confidence amongst key stakeholders. It has had to deal with these issues at the same time as reducing its budget by 24%. It has done so by adopting a bold approach to reform: relocating operations, dealing with significant redundancies and recruitment, drawing up a new strategy, and devising structures throughout the organisation that enable the strategy to be delivered. The panel was impressed by the decisiveness and vision of the senior leadership team and the rigour with which the organisation's management processes are being reformed. The panel was also highly impressed by the enthusiasm and passion shown by the organisation's staff. The panel was confident that – if current progress was maintained – the PHSO's transformation programme will be successful in achieving its aims and in gradually rebuilding confidence in the organisation. Overall, therefore, the panel considered that the PHSO was on its way to becoming a more efficient and effective organisation, having made significant improvements in management systems, casework processes, and training and development for staff.
- 10.2 The panel considered that the PHSO's new casework process conformed to current practice in the wider ombudsman sector. While there were unhelpful limitations resulting from the PHSO's outdated legislation, the new casework process was in a good position to deliver efficient and fair casework, based on modern approaches to complaint handling. A greater focus on resolution, fewer handovers, and a generalist approach to casework were all hallmarks of such modern approaches. The panel was impressed by the systems in place to quality assure casework, in particular the use of customer data to verify performance against the Service Charter. The panel also welcomed the move away from targets and processes that paid insufficient attention to the quality of outcomes, as well as the greater involvement of senior leaders in casework. Along with a range of other tools for quality control (such as internal checks and service complaint processes), the panel considered that the overall arrangements for quality control were robust. The panel was particularly impressed by the PHSO's openness to customer feedback and the attempts that were being made to engage stakeholders and to learn from past practice.
- 10.3 The PHSO's leadership took the decision to invest significantly in training and development, with an awareness that in the short-term this would cause a drop in casework performance. Again, this approach demonstrates a refreshing boldness and sense of direction, which was appreciated by the members of staff the panel met during its visit to the PHSO's offices. The casework training that has been developed has received excellent staff feedback in formal evaluations and amongst staff who spoke with the panel. The panel considered the training to be innovative

and to offer potential for learning for other ombudsman offices seeking to develop staff and begin to offer routes towards accreditation. Alongside other attempts to create a new culture and set of practices within the organisation, the panel concluded that the PHSO's training programme represented a strong step in the right direction.

10.4 The panel concluded, therefore, that in key areas – leadership and management, casework processes, quality assurance, stakeholder engagement, and staff development – the PHSO was performing at a good level and adopting practices that would be widely recognised as effective within the broader ombudsman sector. There were, however, some areas that the panel considered could be improved, including:

- The retention of specialist and expert knowledge in the context of moving to a generalist casework model;
- The inefficiency caused by the current Case Management System and the need to ensure that the IT strategy was sufficiently forward looking; *and*
- The current level of manager-sign off on decisions was likely to prove inefficient in the longer term and would need to be revised once the organisation stabilises.

The panel also noted that the PHSO was operating within statutory constraints that were limiting its potential to deliver greater value in future. Improvements in this area have already been the subject of significant debate,<sup>57</sup> but should include:

- Removal of the MP filter;
- Development of a more integrated jurisdiction;
- A more flexible statutory scheme for casework and reporting;
- Own-initiative powers of investigation; *and*
- A Complaints Standards Authority function.

10.5 With regard to value for money the panel strongly believes that cost-per-case assessments are reductive and unhelpful. The example provided in section 4 above shows the difficulty of making comparisons on cost-per-case and the need to very carefully consider organisational differences when assessing headline figures. Nonetheless, even on this measure, the panel's analysis demonstrates that the PHSO's cost-per-case, once budget cuts are fully in place, will be broadly

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<sup>57</sup> Robert Gordon CB, *Better to Serve the Public: Proposals to Restructure, Reform, Renew and Reinvigorate Public Services Ombudsmen* (Cabinet Office 2014)

comparable to at least one other UK public services ombudsman, which is widely recognised for its efficiency and effectiveness. In particular, the analysis demonstrates that – taking account of differences in jurisdiction and casework profile – the PHSO will not be significantly out of step with the SPSO by the time it completes its budget cuts. While the panel did not have the resources to conduct a broader comparative analysis in the time available, this should provide some reassurance to the PHSO’s stakeholders.

10.6 Nevertheless, the panel strongly urges the PHSO’s stakeholders to avoid making cost-per-case the ultimate measure of the PHSO’s value. Instead, stakeholders should discuss the PHSO’s performance and value by recognising:

- The dominance of health complaints in the PHSO’s caseload and the consequences of this in terms of additional cost and complexity;
- The large number of enquiries dealt with by the PHSO and the value of the advisory and signposting service it provides in the context of the UK/England’s ‘complaint maze’;
- The qualitative value of the PHSO’s service improvement work to public bodies and citizens through insight reports, research, and best practice guidance; *and*
- The statutory limitations on the PHSO which prevent it from operating more efficiently and in a way that delivers wider benefits for public service delivery.

The panel is also strongly of the view that, as UK ombudsman offices seek to increase their systemic roles and to do more to improve public and private services, cost-per-case measures are likely to become even less adequate as measures of value in future.

10.7 Taking this more contextual and holistic approach, the panel’s conclusion is that the PHSO’s recent reforms have significantly enhanced the efficiency of its operations and the value for money it is able to provide. The PHSO and its stakeholders will need to continue to monitor progress and consider ways in which performance can be improved on an ongoing basis. Continuous improvement is one of the PHSO’s own principles<sup>58</sup> and there remains work to be done in seeing through its transformation programme and, once the organisation stabilises, realising its ambition to become an exemplary ombudsman service.

**October 2018**

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<sup>58</sup> PHSO, ‘Our Principles’, Available from: <https://www.ombudsman.org.uk/about-us/our-principles>

## **Annexe A: Panel member biographies**

**Peter Tyndall** has been the Ombudsman for Ireland since December 2013. He is responsible for providing redress in respect of almost all public services provided by or on behalf of the state and local government. Mr Tyndall previously served as Public Services Ombudsman for Wales. He has spoken and written extensively on Ombudsman matters covering areas such as the impact of privatisation and independence. He has developed his offices in an innovative way focusing on improving access, customer care, efficiency and effectiveness. He is President of the International Ombudsman Institute, the only global network for public service Ombudsman offices with more than 190 members in 90 countries worldwide. He was formerly Chair of the Ombudsman Association. He led the introduction of the IOI Best Practice Papers series and has contributed to papers on developing and reforming Ombudsman schemes, making effective recommendations and own-initiative investigations.

**Caroline Mitchell** lead ombudsman at the Financial Ombudsman Service is a solicitor and former litigation partner in a Lincoln's Inn firm. She joined the Insurance Ombudsman Bureau (the first of the UK private ombudsman schemes) in 1984. She has also worked for the Building Societies Ombudsman and the Police Complaints Authority. She has been with the Financial Ombudsman Service since 2002. She spent several years on the executive committee of the British and Irish Ombudsman Association (now the Ombudsman Association) and works with international ombudsman schemes through FIN-NET (the network of ADR schemes for financial services in the EEA) and INFO (the network of international financial ombudsman schemes).

**Chris Gill** is a Lecturer in Public Law at the University of Glasgow. Before becoming an academic, Chris worked in complaint investigation roles at the Advertising Standards Authority and for the Scottish Public Services Ombudsman. His current research interests lie in access to justice, the impact and operation of the administrative justice system, the developing role of the ombudsman, and internal complaint systems. Chris has carried out research and consultancy services for organisations including Utilities Disputes Ltd, Citizens Advice, Ombudsman Services, the Legal Ombudsman, the Welsh Language Commissioner, and the Care Inspectorate. He is a member of the Academic Panel of the Administrative Justice Council and the Ombudsman Association's Validation Committee.

## **Annex B: List of published documents reviewed**

The PHSO secretariat prepared a document review pack for the panel. This included the items noted below.

- 1. Strategy**
  - 1.1 Strategy 2018-21
- 2. Annual reports**
  - 2.1 PHSO 2016-17 Annual Report and Accounts
  - 2.2 PHSO 2017-18 Annual Report and Accounts
- 3. Finance and business planning**
  - 3.1 Business Plan 2018-19
- 4. PACAC**
  - 4.1 PACAC Written Evidence (for year 2016-17)
  - 4.2 PACAC report of annual scrutiny (for year 2016-17)
  - 4.3 PHSO Annual Scrutiny 2016-17 Government and PHSO Response to the Committee's Third Report
- 5. Governance and Risk**
  - 5.1 Governance Framework
- 6. Transformation**
  - 6.1 Transformation Programme Scope
  - 6.2 Transformation Programme Structure
- 7. Insight Reports**
  - 7.1 Ignoring the Alarms, Anorexia report
  - 7.2 Maintaining Momentum, Driving improvements in Mental Health Care
  - 7.3 Time to Act – Severe sepsis – rapid diagnosis and treatment saves lives
- 8. Casework and Quality**
  - 8.1 User Feedback about our Service
- 9. People**
  - 9.1 Organisational Structure
- 10. Ombudsman Scheme Literature**
  - 10.1 Developing and Reforming Ombudsman Schemes
  - 10.2 Service Standards Framework
  - 10.3 Evaluation of the LGO - The Final Report
  - 10.4 Independent Review of Utilities Disputes 2017
  - 10.5 Financial Ombudsman Service - Efficient handling of Financial Services Complaints
  - 10.6 Review of Ombudsman Services: Energy - A report for Ofgem
  - 10.7 Commonwealth Ombudsman Annual Report 2016-17
  - 10.8 European Ombudsman Annual Report 2017
  - 10.9 Financial Ombudsman Services - Annual Report 2016-17

- 10.10 Housing Ombudsman Services - Annual Report 2016-17
- 10.11 LGSCO - Annual Report 2017-18NIPSO Annual Report 2016-17
- 10.12 New Zealand - Annual Report 2016-17
- 10.13 Northern Ireland Public Services Ombudsman -Annual-Report 2016-17
- 10.14 Office of the Ombudsman - Ireland - Annual Report 2017
- 10.15 Public Services Ombudsman for Wales - Annual-Report - 2017-18
- 10.16 Scottish Public Services Ombudsman - Annual Report 2016-17

## **Annex C: Peer review visit**

During the panel's visit to the PHSO offices on 8 and 9 August the panel held meetings with key staff members in the following areas:

- Transformation
- Casework
- Corporate Services – Governance
- Corporate Services – Finance, Risk, Performance, ICT and Programme Office
- Group Discussion with Staff
- Corporate Services – People and Professional Skills
- Insight Work