

Consultation Response

Cabinet Office: A Public Service Ombudsman

Ref 1315

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This consultation, published before the General Election, asks for views on proposals to reform the current public services ombudsman sector, and, in particular, merge the current Parliamentary Ombudsman, Health Ombudsman, Local Government Ombudsman and potentially the Housing Ombudsman into a single Public Service Ombudsman. A Public Service Ombudsman Bill was included in the Queen's Speech following the election.

The merger of these Ombudsman schemes was the main recommendation of the Gordon report, commissioned by the Minister for Government Policy in 2014 with a brief to test whether the current public sector ombudsman sector is best for citizens, best for Parliament and delivers value for money. The Gordon Review itself followed a Law Commission review in 2011, which highlighted the wide inconsistencies in powers across the existing ombudsmen and called for a number of revisions to provide for harmonisation of approach across the various schemes.

Key points and recommendations

- Age UK welcomes the proposal to merge the Parliamentary Ombudsman, Health Ombudsman and Local Government Ombudsman. On balance, we support the inclusion of the Housing Ombudsman.
- We are very pleased that the paper states that the Ombudsman should have jurisdiction over public services even if supplied by a third party organisation.
- We think it is necessary to set out more explicitly the standards that a reformed system should achieve. In particular, it must set up systems that meet the needs of vulnerable complainants, including a fast-track route and support to formulate complaints where appropriate.
- A merged Public Service Ombudsman (PSO) scheme will not remove all jurisdictional complexities so it will need to offer some form of triage service to ensure that complaints brought to it reach the correct body.
- While we support moves to greater efficiency, this must not be at the expense of providing a high quality of dispute resolution in which citizens have confidence. This consultation sets out an ambitious and very welcome role for the Ombudsman in championing better standards: it is vital that it is properly funded.
- While we agree that specific sector facing staff should be retained, we do not think it is necessary to nominate specific 'health' or 'housing' Ombudsmen.
- There is limited brand recognition already for Ombudsman services, so as well as research with the public before deciding the name of the scheme, the Government should consider how best to publicise complaints systems more generally.
- We also support the ability to make complaints in a wider range of formats, rather than just written, but there must be fair treatment for those who are digitally or socially excluded.

Introduction

Age UK welcomes proposals to reform the system for handling complaints about public services. It is clear from those who contact us that the system too often lets down older people and their families when they are at their most vulnerable and also fails to inform public service improvement.

1. Do you agree that these principles should underpin reform of the Ombudsman service?

It is impossible to argue with the principles set in the paper under the headings of citizens, Parliamentary accountability and value for money. However, we think it is necessary to set out more explicitly the standards that a reformed system should achieve. Age UK would like to see the following additional factors taken into account.

Citizens

As well as the standards of accessibility and intelligibility, early and effective resolution in which citizens have confidence, and a system from which public service providers can learn, we would add the following:

- The Ombudsman should have jurisdiction over all relevant public services, even if supplied by a third party organisation. We are very pleased that the paper accepts this principle and when the legislation is published we would expect to see that it specifically includes statutory functions delegated to a third party.
- The ability to look at a single complaint in the round, however many different public services (covered by the scheme) are involved. In many of the complaints we hear about, the complainant is passed from pillar to post by a number of different organisations.
- Cost-free to the complainant – so as well as being free to use, the complainant should not feel the need to pay for advice in order to get a fair hearing.
- In coming to a decision, the Ombudsman should be able to take into account what 'is fair and reasonable' as well as the purely legal position.
- Judgements should be binding on the service provider where a complaint is upheld. The Ombudsman should be free to award compensation but should also be free to recommend other forms of restitution (e.g. an apology) and to recommend wider action (e.g. review of all similar incidents, even if complaints are not made).
- Support for vulnerable complainants – for example, people who may be ill or bereaved, people who rely on the help of a friend or advocate or people who feel intimidated from complaining for fear of losing vital services. The support offered should include fast-track resolution where required and support to formulate

complex complaints, as poorly formulated complaints often exacerbate the problem at hand and can speed up the breakdown of customer-provider relations.

- Allowing joint complaints, for example where a number of complainants have been affected by the same failure.
- Discretion to accept complaints that are still going through the internal complaints-handling process, where delay would have an adverse impact on the service user or where the complaints procedure is being unnecessarily drawn out.
- Able to accept complaints directly from the public, rather than through the medium of an intermediary organisation.

We welcome the emphasis on using complaints to improve practice. To facilitate this, we would like to see:

- The Ombudsman having the power to undertake thematic reviews and 'own initiative' investigations.
- Support for providers covered by the scheme, explaining the standards that the Ombudsman expects in complaints handling.
- Maximum transparency (including publication of case summaries as at present).
- Statutory information gateways allowing the Ombudsman to work effectively with regulators and professional bodies on common issues, and to share learning with them without fear of breaching confidentiality requirements.

Value for Money

While we support moves to greater efficiency, this must not be at the expense of providing a high quality of dispute resolution in which citizens have confidence. This consultation sets out an ambitious and very welcome role for the Ombudsman in championing better standards: it is vital that it is properly funded. To top up existing direct funding from government, we suggest that other funding models could be explored (e.g. central funding supplemented by a case fee element, as currently applied by the Housing Ombudsman) that would give a direct financial incentive to improve practice. This might also be appropriate where there are bodies within jurisdiction which are not publicly funded.

Efficiency may also be dependent on appropriate complaint resolution at a local level. Taking housing as an example, the current system of 'designated person' referrals (which the paper implies would be retained under a new scheme) ostensibly involves the designated person taking steps to assist the complainant at a local level before the case is finally referred to the Ombudsman. However, doing so is not obligatory and a hard-pressed local service may automatically refer constituents who enquired about the Ombudsman to the service without having first taken any action itself. Delays are already a significant problem for the various ombudsman organisations and this would only get

worse if resources were shifted away from investigation and onto early intervention schemes which do not work.

2. Would you welcome the creation of a single Public Service Ombudsman service and are these the right services to be included?

Yes, with some caveats. It is clear that the current statutory foundation of the schemes, with excessively bureaucratic processes set out statute, badly needs reform. We hope that the creation of a single Ombudsman will give the opportunity to rationalise but also strengthen the schemes' powers and processes. It is also clear that if the Government is successful in its aim of greater integration of health and care, jurisdictional boundaries are increasingly problematic.

However, a single PSO would not be entirely free of jurisdictional judgements, as even if all the bodies involved are covered by the scheme, it may ultimately be necessary to decide which body or bodies is at fault in relation to a particular complaint. There will also be many cases where a complaint is not wholly within its remit (for example one of things that can be most confusing for the public is the wide variety of complaints bodies in the health sector and it is often unclear whether a complaint is with the doctor or the hospital). It is also clear that some Ombudsman are already working together and a single (non-statutory) portal for complaints could deal with some of the current complexity. The risk of merging schemes is that the new body becomes too big to manage effectively and that delays in one area could lead to delays in another - although other Ombudsman schemes have merged successfully and we hope that a merged Ombudsman could learn from their experience.

As this suggests, a single PSO should not be an aim in itself. The real value of a single PSO, beyond reducing complexity for complaints and service providers, is to ensure that all the complaints-handling systems covered by the schemes have the powers and processes they need to meet the principles set out earlier under Question 1 and that these are consistent between different public services. These new powers and processes should go hand in hand with a commitment for the PSO to offer a referral or triage service for people coming through to the wrong place.

We support proposals to include the public-sector functions of the Housing Ombudsman, as housing, health and care problems are often inter-linked. However, the Ombudsman operates rather differently, and is funded very differently, from the other schemes. We hope that the PSO can take the best practice from all the merged schemes.

If the decision is taken to include the HO, then it will be necessary to ensure that the private-sector complaints it currently deals with find a home, and to consider, for example

how the PSO relates to the Property Tribunal. We note that the Financial Ombudsman Service at one point had both a 'compulsory jurisdiction' for complaints within the scope of the Financial Conduct Authority, and a 'voluntary jurisdiction' for complaints outside that scope. This model enables one Ombudsman to deal with the industry as a whole. Alternatively, it will be necessary to ensure that another Ombudsman takes over responsibility for private sector providers. Whichever model is chosen, we believe that leasehold landlords should be obliged to belong to an effective scheme, and that new and existing residents are aware of the service.

3. If so, do you agree that these are the right founding principles for such organisation?

See our response to Question 1.

4. Should a single public service ombudsman organisation also retain specific sector facing services and staff in eg. Health or Housing?

Yes - this works effectively for the Financial Ombudsman Service (FOS). It will be important to retain existing expertise and this should be a key objective of the merger.

5. Should each sector within the organisation be led by a senior Ombudsman (or someone of equivalent status) eg a Housing, Local Government or Health Ombudsman?

While we agree that specific sector facing staff should be retained, we do not think it is necessary to nominate specific 'health' or 'housing' Ombudsmen. Having specific Ombudsman might undermine some of the efficiencies to be gained from the merger and might also undermine the position of the Chief Ombudsman. Again, the system used by the FOS, with a number of Ombudsmen who may specialise, but are not tied to one sector, seems to work quite well.

6. Is 'Public Service Ombudsman' the appropriate title for a new organisation?

We recommend that the Government carries out research to establish which title is most meaningful to the general public. However, the name of the body is perhaps less important than ensuring that all the bodies it covers have appropriate systems in place to refer complainants to it when necessary, and that they embrace a culture of welcoming and learning from citizen feedback. Ensuring appropriate referrals may be particularly important for housing complaints which may not be perceived

as a 'public service'.

7. Do you agree that there should be the widest possible routes of entry to a Public Service Ombudsman?

Yes. We agree that the public should be able to approach the Ombudsman direct, rather than through the medium of an intermediary service.

8. In what ways could it be made easier for citizens to access resolution and redress?

We support proposals for a single portal for complaints, which should simplify the system and facilitate greater integration of public services. We also support the ability to make complaints in a wider range of formats, rather than just written, but there must be fair treatment for those who are digitally or socially excluded. Although email may be cheaper, the Ombudsman must accept complaints that are initially made by telephone, and adequately resource telephone and written complaints, and initial enquiries. Some people will need support to make complaints, and the Ombudsman should be permitted to deal with advocates, friends or family assisting a complainant, and with non-profit organisations, and to signpost to organisations that can provide advocacy. Some complaints will need fast-track resolution, and the Ombudsman should be permitted to do this where appropriate.

9. Would you support a wider role for a PSO as a champion of effective complaints handling across the public sector?

Yes.

10. What range of investigative tools do you think the PSO might need?

We think the PSO will need:

- Discretion over the processes it follows, within limits
- Powers to require the production of documents and information
- The right to carry out thematic reviews, to start investigations on its own initiative, and to carry out joint investigations with other bodies (for example regulators, professional bodies or other Ombudsman schemes)
- Formal powers to share information with regulators
- A duty to highlight emerging problems
- A requirement to publish case summaries and statistical data
- A power to publish other data that it regards as necessary, in the public interest, to place in the public domain.