HOUSES OF PARLIAMENT

Joint Committee on Human Rights

Oral evidence: Human Rights Ombudsperson, HC 222

Wednesday 29 June 2022

Watch the meeting

Members present: Joanna Cherry MP (In the Chair); Baroness Chisholm of Owlpen; Lord Dubs; Florence Eshalomi MP; Lord Henley; Baroness Ludford; Baroness Massey of Darwen; David Simmonds MP; Lord Singh of Wimbledon.

Questions 1 - 9

Witnesses

I: Melanie Field, Chief Strategy and Policy Officer, Equality and Human Rights Commission; Rob Behrens CBE, Executive Chair, Parliamentary and Health Service Ombudsman; Evan Lerwill, Assistant Ombudsman, Local Government and Social Care Ombudsman.

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Examination of witnesses

Melanie Field, Rob Behrens and Evan Lerwill.

Q1 **Chair:** Good afternoon and welcome to this meeting of the Joint Committee on Human Rights. We are a Joint Committee of Peers and Members of Parliament.

I am Joanna Cherry, Member of Parliament. In the absence of Harriet Harman, I will be taking the chair for today's meeting. By way of introduction to explain what we are doing today, following the committee's work on enforcing human rights and our scrutiny of the Government's proposals to reform the Human Rights Act—I should say, to repeal and replace the Human Rights Act—the committee recommended that more could be done to improve on how human rights are enforced without the need to take legal action. So these two evidence sessions this afternoon will consider whether a human rights ombudsperson should be introduced into the United Kingdom, how such a person could fit within the existing structure of ombudspersons, and how or whether they could improve the protection of rights in the United Kingdom.

I am delighted to say that we are joined for our first panel of witnesses by Robert Behrens, who is the Parliamentary and Health Service Ombudsman—a role he has held since 2017. His previous roles include Complaints Commissioner at the Bar Standards Board and Independent Adjudicator for Higher Education in England and Wales. Welcome, Rob.

Next, we have with us in person Melanie Field, who is the chief strategy and policy officer at the Equality and Human Rights Commission. We are delighted to have you here this afternoon.

Last but not least for our first panel, joining us virtually is Evan Lerwill, who has been an assistant ombudsman for the Local Government and Social Care Ombudsman since 2017. Welcome, all.

I will kick off our questions by asking you, Rob, whether you could briefly outline for us the role of the Parliamentary and Health Service Ombudsman and whether you consider human rights when you are making your decisions.

Rob Behrens: **"**Parliamentary ombudsman" is a legal term, so I use it while recognising that there is a debate about whether "ombudsman" is a gender-biased term. It is the national public service ombudsman for the UK, set up in 1967. We are just about the largest public service ombudsman scheme in the whole of the OECD. We play a leading role in the International Ombudsman Institute, where I am elected to serve on the world board of 150 ombudsman members. We provide an independent, impartial and free complaint-handling service for complaints that have not been resolved either in central government departments or in the National Health Service.

To illustrate, last year we had 122,000 inquiries, 50,000 of them by telephone, and 36,000 complaints. We undertook 7,300 investigations.

We look into complaints where somebody believes that there has been injustice or hardship because a public body or a hospital has not behaved appropriately and not put things right. The generic mandate under the two pieces of legislation is to look at maladministration, which is mentioned in the Acts but not defined in law. Acts of maladministration are not necessarily illegal acts.

We are subject to judicial review. The benchmarks are to the ombudsman's principles of good administration, setting out basically what constitutes maladministration, and the ombudsman's clinical standard in health service cases, which is a different piece of legislation. In health cases, we can look at clinical judgment and investigate cases of avoidable death. We share findings of our casework with the public and Parliament.

The key thing is that, although it is not explicitly mandated in our governing legislation, investigating human rights breaches is an important part of what we do. We consider those breaches to be a form of maladministration. Human rights are prominent in the cases that I look at. You will know of the Windrush scandal and the detriments that UK citizens were subjected to in being threatened with deportation and losing their basic rights to work, live and survive. I investigated a number of those cases, where we found severe breaches of good practice, and human rights failures.

We also see the failure of human rights preservation in mental health hospitals. I have looked at a number of extremely disturbing cases where people have died as a result of a failure to provide an appropriate environment for individuals; cases where incorrect clinical advice has been given, resulting in death; and a whole number of baby deaths in hospitals as a result of poor care.

Finally, we look at cases where people have been deprived of legitimate welfare benefits, lost their ability to easily survive and have not received compensation from the department as a result. So human rights issues are part and parcel of what we do; they are very important.

Chair: I am interested to know to what extent those who make complaints to you frame their complaints in human rights terms. Does that happen frequently, or is it more that you identify human rights issues in the complaints? Which is it: one or the other, or a bit of both?

Rob Behrens: It is both. I strongly support the idea of promoting human rights in administrative justice. With respect, I do not think that creating a human rights ombudsperson will do anything to help. It needs to be integrated into existing ombudsman services. I will come on to explain why, but part of the reasoning for that is that, in our experience, human rights issues are not readily identified in public perception, whereas the death of a baby, a failure by the Home Office to treat people appropriately, or the loss of a house as a result of a failure by HS2 or the Environment Agency are recognised. We are able to translate that into human rights issues and to make sure that they are joined up. It is a

necessary way of making sure that human rights are seen to be concrete lived experience, not just some abstract notion.

Chair: Someone who has been aggrieved by maladministration might not necessarily frame their grievance as a human rights issue in their own mind, so they might not know to go to a human rights ombudsman. However, if they go to your ombudsman, you can then identify human rights issues as part of the complaint.

Rob Behrens: That is the case, but it comes at a price, which is that we have to engage in serious professional development and training for our caseworkers so that they understand the discipline of what constitutes human rights, how to identify it, and what the law and good practice say about it. We have a whole load of training modules on discrimination issues and human rights issues, so this is not a fancy franchise; it is something that you have to work seriously at in order to understand it and do it properly.

Q2 **Chair:** That is extremely interesting. Thank you. If I might turn to you, Evan, I want to ask you similar questions. Can you briefly outline for us the role of the Local Government and Social Care Ombudsman, and explain to what extent you consider human rights when making your decisions?

Evan Lerwill: Thank you for inviting us here to speak about this. In terms of who we are, in many ways we are the companion piece to the PHSO. We are a fully independent, impartial and free service for the public to use if they feel that their complaints have not been resolved locally. Our remit is to look at complaints about local government bodies in England and all CQC-registered adult social care providers, including for people who privately fund their own care.

There are three distinct elements to our role. First, we are here to put things right when we find that individuals or groups of people have suffered injustice because of maladministration or service failure. Last year, we dealt with around 13,000 complaints and inquiries, around 3,500 of which went to detailed investigation, just under 70% of which were upheld with a finding of maladministration.

Secondly, we are here to use the learning from our casework to improve services, and we do so in a number of ways, primarily through making systemic recommendations to the organisations we investigate. We also produce thematic reports on specific areas of legislation and policy where we have seen common mistakes being made. Most recently, we published one on the duty under the Equality Act to make reasonable adjustments for people with disabilities. We also share intelligence from our casework to help to inform wider regulatory work. We talk regularly with the CQC, Ofsted and the EHRC about findings from our casework, and we use our casework to help inform their investigations.

The third aspect of our role—Rob has touched on this already—is publishing standards of good administrative practice, which set clear

benchmarks on what we expect from organisations we deal with. This is something that we developed in conjunction with the PHSO and other UK ombudsman schemes to provide consistency in our work. As you would expect, part of those principles is that we expect organisations to take individuals' rights into account when they provide services.

Do we consider human rights in our decisions? Like Rob, we do not have an expressed mandate to enforce the Human Rights Act in our primary legislation. That said, complaints about maladministration are often intrinsically connected to issues of dignity, fairness, equality and liberty. Taking account of people's rights has always been an implicit part of what we do, but we have recently adopted a policy to be more explicit in highlighting occasions when standards of human rights and equality have not been met in the complaints we see. There is nothing particularly innovative about that; we are simply bringing ourselves in line with the approach taken by other ombudsman schemes in the UK and the wider world. Very similarly to what Rob just said, to achieve this we invest heavily in training and guidance for our casework staff on the Human Rights Act and Equality Act, and how to articulate these issues in their casework. We do this in line with the standards of best practice published by the EHRC.

More recently, we have started to develop technical tools so that we can record and track data about cases where rights-based issues play a central role in our findings. Last year, we published around 160 decisions that made explicit reference to failings of the Human Rights Act and the Equality Act. Much like the PHSO, this is work in progress; these issues feature more in our decisions and with greater competence, but we feel that more can be done.

Chair: Thanks for that. You have mentioned the training you engage in with your staff on human rights and equalities issues. Is your experience the same as Rob's—that those who make complaints may not necessarily frame it as a human rights issue, and it is up to your caseworkers to identify those? Is your experience the same as Rob's or is it different?

Evan Lerwill: It is very much the same: people's complaints are driven primarily by a subjective experience that the state in some way has affected their well-being or denied them a service. More often than not, the complaint will be articulated in subjective terms. It is commonplace for an ombudsman then to decide which legal standards to apply to the complaint. If that is the Human Rights Act, we will apply that accordingly and say so in our decision.

One of the risks in introducing a human rights ombudsman is that it turns that question on its head and expects a member of the public to identify whether their complaint might be a human rights or a maladministration complaint. For many people and organisations—indeed, for us—that is quite a difficult judgment to make until you have had the luxury of unpicking the complaint and looking at the evidence.

Q3 **Baroness Chisholm of Owlpen:** Rob and Evan, thank you so much for

briefly explaining what you both do. Do you feel there are any gaps in coverage, where a person may have human rights complaints against a public body but neither of your institutions would be able to help them?

Rob Behrens: The first issue is that, strategically, there is a superfluity of public service ombudsmen in the UK. That is a problem for all Governments. You perhaps saw from Richard Kirkham's diagram that there are at least 20, whereas in most countries there is one public service ombuds. It is a weakness of our system that people do not know where to go to raise a complaint that might be about human rights. There is no getting away from that. Every time there is a crisis, Governments seem to create a new ombuds service when they should be engaging in strategic reform to create, like OECD countries, one public service ombuds with human rights responsibilities where you could go with your complaint about human rights.

Having said that, we have a wide remit and are sensitive to issues of human rights. For example, we subscribe to the Venice principles, which are the leading set of principles for ombuds schemes in the Council of Europe and the United Nations. They set out the need for ombuds to look carefully at human rights issues. We are aligning ourselves to them; they were founded in 2019. The UK Government are a member of the Venice Commission. They voted in favour of the United Nations General Assembly vote to adopt them worldwide. That gives legitimacy for us to look out for those human rights questions. When people bring in an issue, we will look at it to see if there is a human rights element that we can look at.

Evan Lerwill: I very much endorse everything Rob just said about the issues of fragmentation, particularly in the English ombudsman schemes. That means there is confusion in the public about where to go to seek redress. In addition, I want to highlight four areas that we see in our casework where we do not feel that people have easy ability to access justice.

The first is people, particularly those in institutional care settings, who lack the ability to pursue complaints. This might be because of mental incapacity, isolation or a lack of relatives or friends to support them, or they might be innately fearful of backlash from the organisations that care for them. Despite that context, neither we nor the PHSO have the powers to proactively investigate complaints, even where we have objective evidence to suggest that there might be problems. At present, the law says that a complaint must be brought to us by a person directly affected by the issue, which is just not possible for many people in institutional care settings. A very easy fix to fill that gap would be to provide powers for us and the PHSO to start investigations based on our initiative. That is a common feature in other ombudsman schemes and part of the Venice principles.

Secondly, and linked to that, we have concerns about the unregulated care sector. We have jurisdiction over all adult social care providers registered with the CQC. We know, for example, that day centres, which

do not have to register, form a large and crucial part of the market in their commercial independence, dignity and autonomy for service users, but there is currently no independent way for those people to seek redress beyond going to court. Again, there is an accountability gap there.

Similarly, and I believe this has come up in different sessions, there is a gap in the education system in this country, as no state-funded schools in England have access to an ombudsman scheme or any independent redress mechanism beyond the courts. We temporarily had jurisdiction to look at complaints about schooling. In 2009, this was assessed as a success: schools, parents and the DfE saw it as an effective mechanism at the time, but that legislation was repealed, which means that users of schools do not currently have a place to go to seek redress.

Lastly, and as more of an esoteric point, the legislation that empowers us was passed in 1974 and the changes since then in local government mean that our jurisdiction does not reflect the current state of local government bodies that have been created since that time. A good example is that town and parish councils now have a much more visible role in providing services. A lot of counties and districts have become unitary, but they do not fall within our remit, which again means that people do not have access to redress if they have complaints about those bodies.

Rob Behrens: Could I just add one point to what has been said? Last year, with the International Ombudsman Institute, we published a study of ombudsman services in 53 countries on how they had done in surviving Covid. It is an important document, because it shows that 70% of our international counterparts have the power to undertake on their own initiative investigations where there has not necessarily been a complaint. In the study are examples of how effective that has been in OECD countries.

As you have heard, we do not have that power. The problem is that the people who are most vulnerable and likely to be subject to human rights breaches are the least likely to complain to our services. Therefore, because we do not have that power, they suffer because no one is going to come to them unless they come to us.

Chair: That was a study of how ombudsman services have performed during Covid, yes? Did they do these own initiative investigations during Covid?

Rob Behrens: Absolutely.

Chair: This committee has concerned itself recently with human rights in care home settings. Is that the sort of thing they were looking at?

Rob Behrens: I will leave a copy of the report with the clerks.

Chair: That would be wonderful.

Rob Behrens: There were some very penetrating own initiative studies on provision for elderly care in, I think, Slovakia and Estonia. Inspections of prisons took place in Finland to make sure that people had access to their rights and that they were able to carry out basic functions without being constrained. There were investigations into the corruption of Covid funds in one African country. These took place while the pandemic was taking place. That is excellent, because we can get going only once we have received a complaint, and you have to make the complaint to the front-line body first.

Baroness Chisholm of Owlpen: That is a vital point that you have just made.

Q4 **Baroness Ludford:** I am Sarah Ludford, a Liberal Democrat Member of the House of Lords. I want to ask about the topic of public awareness of ombudsmen. In a way, my question has been covered. I was going to ask whether the public are sufficiently aware of your roles, and whether they know that they can come to you if they have a complaint regarding human rights or any other grievance about maladministration, but I think that we have largely covered that.

Instead, I will focus on my supplementary question. What steps are you taking to improve public awareness? I very much take the point about the most vulnerable and most isolated people perhaps being the most difficult to reach with any raising of awareness—not only awareness that you exist but awareness of how you work.

If I may, without digressing too much or being too anecdotal, I had an experience many years ago of taking a complaint to the Financial Ombudsman Service. I had no idea until my complaint was initially rejected that it had been rejected at the staff level—the caseworker level. I did not realise that there was an internal appeal to an actual ombudsman; I just thought of it as a collective body. I had to read between lots of lines to grasp the process. So it is not just your existence but the process that I would like to ask about.

Rob Behrens: The story is not a happy one, but we are on to it. In countries that have a single public service ombudsman, like Austria, public awareness is around 70%. In part, that is because they have a weekly television programme with the ombudsman behaving like Judge Judy. In the United Kingdom, because there are 20 public service ombuds schemes, the figure is much lower: it is slightly below 20% for all of us. That is a big issue.

We have invested heavily in trying to address that by publishing summaries of all our cases online, by holding open meetings, and by establishing Radio Ombudsman, which you may have come across and which you are very welcome to appear on, where guests and former complainants discuss critical issues to try to democratise the issue. Baroness Hale came on to talk about the vexed issue of binding powers for ombudspeople. Perhaps Lord Dubs would like to come on it. He would be an extremely welcome guest.

We have a liaison team that goes out every week to try to raise awareness of what we do. We know that bodies in jurisdiction must tell their complainants that we exist at the end of their complaint. However, that does not substitute for the fact that we do not have a high enough public profile. Our new strategy, which we have just launched, commits us to adopting European best practice in going out to reach vulnerable and marginal communities so that they understand more about us and do not have to wait to come to us. Instead, we go out and explain and democratise what we do. So we have a lot to do, but we are doing it and the reception is very good.

Evan Lerwill: We have a very similar story to Rob's about awareness and the issues that the fragmentation of ombudsman schemes in England causes in terms of public awareness, so I will not repeat that.

On what we do as a scheme, since 2014 we have published all our casework decisions online bar about 5%, which we have to withhold due to various anonymity reasons. So anyone can search through our decisions, filter them by category, search for keywords to educate themselves about what we do as a scheme, and see what our casework process and decisions look like.

Earlier, I touched on the thematic report that we publish, usually a few each year, which focuses on areas of legislation where we have concerns about high numbers of upheld complaints. Most recently, we did one on the duty to make reasonable adjustments under the Equality Act. Later this year, we will publish a report on the Human Rights Act, picking up on occasions where we see organisations coming up short on policy-making, service delivery and complaint handling.

We also provide training to organisations in our jurisdiction on complaint handling. As part of that course, we include case studies that focus on how the Human Rights Act and the Equality Act should be considered at the lower stage of the complaint-handling process, and how, if you get those issues early, it makes for more effective complaint-handling processes at a local stage.

The only other point I want to pick up on is slightly different from the one that Rob made. Signposting is the way most people will find out about ombudsman schemes, such as through the boilerplate text at the end of your final response to a complaint. We have concerns that this does not happen at all effectively in the private care sector, as borne out by the fact that only 15% of our complaints about adult social care come from people who privately fund their care, even though they make up a far higher proportion of the care market in England. We feel that one way to fix that would be to legislate that private care providers are legally obliged to signpost people to our service, publish information on their websites and provide other materials so that people are better aware of their right to complain.

Baroness Ludford: If there is time, I would just like to press the issue that I raised without, I hope, being too banal or pernickety. Do you work

in a similar way to what I described when I spoke about my experience with the Financial Ombudsman Service? If a complaint is initially rejected, there is then a kind of internal appeal. Do you work in a similar way, and do your complainants understand that? I do not believe that I was given clear guidance about that. I discovered it, I appealed and I won, overturning the staff-level decision. Do you work in similar ways? Are complainants told that?

Evan Lerwill: I am not entirely familiar with its structure and processes and how it works, but all our casework staff receive delegated authority from the ombudsman to make decisions, so a decision you receive would have been investigated and made on behalf of the ombudsman. Having said that, we operate an internal review mechanism, so if people provide new evidence or feel that our decision is fundamentally flawed in some way, we will, in some circumstances, take a fresh look at it and see whether we need to remake our decision.

Rob Behrens: You are quite right that there has to be a joined-up approach in an ombudsman scheme and people have to know what the rules are. The principle of functus officio is being litigated at the moment; where we are being encouraged by the courts to stick to decisions unless there are very good grounds to review them. We have a review and feedback team in our office, and we tell people that they can seek to have a case reviewed if they do not agree with the decision, but that is not a guarantee. We will do that only on the basis that there is evidence of some kind of failure on our part to conduct the investigation properly.

Baroness Ludford: They are told that they have the right to have it looked at again.

Rob Behrens: Yes, they are.

Chair: I do not want to take up too much time on this, but could you expand on what you told us about the principle of functus officio, which is being litigated at present? I am not sure I fully understood that.

Rob Behrens: Bodies in jurisdiction litigate against ombuds schemes when the ombuds makes a decision—for example, in their favour—and then returns to it and comes up with a contrary view. The principle of the courts has been that ombuds need to be very careful about this in order to preserve the rights of the bodies in jurisdiction. We have had to define the specific basis on which we will quash decisions and return to them again to make sure that the reasons for doing it are serious and well-determined.

Chair: I am being reminded of our strict sub judice rules, so I will not ask you any more about what exactly is ongoing, but that is very interesting.

Rob Behrens: There was a case published last week about functus officio in the courts.

Chair: We will follow up on that.

Q5 **Lord Henley:** I am a Conservative Member of the House of Lords, and I want to move on to remedies. This question is directed to both Rob and Evan. What remedies do you think you can offer to individuals who have suffered a breach of their human rights? Do you think they are effective as defined by Article 13 of the European Convention on Human Rights?

Evan Lerwill: In broad terms, our approach to remedies is that we will always try to put people back into the position they would have been in had maladministration or faults not happened. Our focus is primarily on restoring services or recommending some form of practical action to put things right for the individual. In circumstances where that is not possible, we will try to think of creative ways to acknowledge the impact. They might take the form of a payment in some circumstances, which is often a modest, symbolic amount to recognise the distress, time or trouble—the subjective experience of maladministration. It is not our role to assess economic losses or award compensation, and we do not recommend punitive remedies based purely on the fact that a fault has occurred.

Another point is that, when we assess complaints before we start an investigation, we will look closely at what remedy is being sought by the complainant. If someone comes to us seeking a binding judgment on whether their rights have been breached and is very focused on wanting financial compensation, it is quite possible that we will decide that the courts are better suited to considering the matter and we will signpost people in that direction. Going back to the point I made earlier, a minority of people come to us seeking that objective outcome on whether a breach has occurred.

In terms of effectiveness, we achieve compliance in over 99% of our non-binding recommendations. In a very small number of cases where we do not see compliance, we will take follow-up action, which might be using the media to publicly highlight stories or escalating concerns to regulators, locally elected members or government departments to take further action. In most circumstances, that leads to compliance with the recommended action.

We also have powers to issue further reports if there is non-compliance, but we have not done that in over two years. That points to the fact that our systems for compliance are relatively robust. On that point, we make the argument that we do not feel that powers of enforcement or compliance are necessary for ombudsman schemes, given that you already have the complementary of the role if someone is seeking a binding decision, and given the effectiveness of the processes that we have already.

Lord Henley: Have you had no complaints that the various remedies have not been effective, as defined by Article 13?

Evan Lerwill: We have certainly not had complaints framed around Article 13. As I say, when we make recommendations we will seek evidence of compliance with them. When we point to 99% compliance,

that is not simply from a body saying, "Yes, we'll do that". That is from us having received objective evidence that a payment has been made, a policy has been changed or some action has been taken to put things right for the complainant or to learn lessons from the experience.

Rob Behrens: Our position is broadly the same as the Local Government and Social Care Ombudsman. Unlike a lot of national ombuds schemes, we can recommend that the body and jurisdiction will pay financial compensation. We publish a scale of remedies and we ask bodies in jurisdiction to pay around £250,000 a year as a result of their inability to put people back into the position they were in. We make recommendations to try to prevent that happening again. We insist on an apology being made to the complainant, which is very important and is a reason why some people want to bring a complaint in the first place.

One very important issue is about binding powers, and it goes directly to Article 13. Some people believe that the ombuds set-up would be more effective if she or he had the power to make decisions binding on the body in jurisdiction. I strongly disagree; I do not think it is necessary. I think it gets ombuds into very difficult situations and leads to a whole host of litigation, where bodies in jurisdiction will challenge a decision in the courts because it is binding. You only have to look at the mess in South Africa at the moment with the Public Protector, who has spent 67 million rand defending her decisions in court, which have been challenged because she has binding powers. She is now being impeached by the South African Parliament. That is not a good basis for going forward.

As Evan has said, more than 95% of our case decisions are accepted by bodies in jurisdiction, which is good. If it is not done, we will lay a decision before Parliament and ask the PACAC Committee to review it, or we will publish it in a way that causes the body to think very carefully about what it is doing.

Q6 **Baroness Massey of Darwen:** I am a Labour Peer and have two questions for Melanie. I have found the discussion so far to be extremely informative and fascinating. I am sure, Melanie, that you will carry on in such a vein.

Can you briefly outline the powers the Equality and Human Rights Commission has to uphold and enforce human rights? Secondly, are there any gaps in your powers to uphold and enforce human rights? If there are, could they be filled by an ombudsman or perhaps by a commissioner? I would like your comments on that, please.

Melanie Field: Thank you. I will try to follow the high standards set by my colleagues. The Equality and Human Rights Commission is a UN-accredited national human rights institution. We are tasked with protecting and promoting human rights, meaning the convention and other human rights. We seek to ensure that government complies with its domestic and international human rights obligations, so that people in Britain can enjoy their human rights.

Our human rights remit extends to England and Wales and non-devolved matters in Scotland. We are also Britain's national equality body, and our statutory duties and powers are set out in the Equality Act 2006. Our specific human rights duties are to promote the understanding of the importance of human rights; to encourage good practice in relation to human rights; to promote the awareness, understanding and protection of human rights; and to encourage public authorities to comply with the convention rights. We also have duties to monitor the effectiveness of the Human Rights Act, and to monitor and periodically report on progress on human rights in Britain.

To fulfil those duties, we have a number of powers that we can use, ranging from providing information, advice or guidance through to legal enforcement action. We have developed an end-to-end regulatory model that sets out how we use the full range of our powers as the strategic regulator to achieve impact. That is set out in our strategic plan, which I will summarise. First, we evidence human rights issues in Britain through research, data and analysis to inform the decisions of Governments, parliaments and others. For example, we conduct inquiries and research, we publish our periodic *Is Britain Fairer?* reports and we provide reports to UN treaty bodies on Britain's progress in fulfilling its international human rights obligations.

Secondly, we influence human rights standard setting by advising Governments, regulators and others on how to promote rights through regulatory frameworks and standards. We have a specific power to advise the Government on the human rights impacts of existing and proposed legislation. Thirdly, we ensure compliance with human rights standards by providing information, guidance and advice to support organisations to meet their duties under human rights law and to deliver good practice. Lastly, we take enforcement action when organisations break human rights law in order to hold them to account and to send a broader message about the need to comply with the law.

In relation to human rights breaches, we have a power in Section 30 of the Equality Act 2006 to institute or intervene in legal proceedings. However, our human rights enforcement powers are less extensive than those relating to our equality remit. We have previously called for our human rights enforcement powers to be made equivalent to our equality powers in order to strengthen our ability to protect human rights. That would require changes to the Equality Act 2006, and we have called in particular for the power to conduct investigations into suspected breaches of human rights law and the power to provide legal assistance to support individuals whose human rights have been breached. We are grateful for this committee's previous recommendations in that regard.

We feel that increasing our strategic enforcement powers in this way, along with ensuring that we were provided with adequate funding to perform our statutory role, would enable us to use our human rights expertise to better support access to justice through the courts. That is where our enforcement role lies, and it would complement any

strengthened access to justice through administrative remedies such as ombuds schemes.

Baroness Massey of Darwen: That sounds like a gap that you would want to fill in with some other kind of legislation concerning other bodies outside yourselves. Supposing that there were an ombuds man or woman, would that help or would it lead to confusion?

Melanie Field: Ombuds schemes play a different role from the Equality and Human Rights Commission. The commission was set up by Parliament to be a strategic regulator providing institutional support for equality and human rights, and our enforcement powers are strategic ones. That is a different role from dealing with individual complaints that arise in the context of the delivery of public services.

In the past, we operated a helpline, which was where we would hear from individual members of the public about the equality and human rights issues they faced. That helpline is now called the Equality Advisory Support Service and is contracted out by the Government. We have made the case that we in the commission should be responsible for running that service, which enables people to call in and be signposted to appropriate advice about where they can have their issue dealt with, including signposting to the appropriate ombudsman.

As I have said, the commission's role in relation to enforcement is strategic. We will look at cases where they will advance our strategic priorities, where there are egregious or systemic breaches of rights, or where there is a need to clarify the law or set precedent. Those are the types of human rights legal cases that we would get involved in. So I would draw a distinction between the role of our organisation and that of the ombuds schemes, to which I think it is complementary.

Baroness Massey of Darwen: Do you liaise with commissioners, such as the Children's Commissioner, if they have a case?

Melanie Field: Yes, we do. We really welcome this inquiry, because it has caused us to reflect on the relationships we have with ombuds schemes, mediators and other forms of access to administrative redress that people have. We have done some work with both the PHSO and the LGSCO in the past. There is scope for us to work more closely together to make sure that the system is fully joined up and to address some of the questions that came up earlier about public awareness of where to go to get redress for the issues that they are facing.

Q7 **Lord Singh of Wimbledon:** My name is Indarjit Singh, a Cross-Bench Member of the House of Lords. I shall address my question to Melanie, and it is related to the previous one. In evidence to us earlier this year, Elizabeth Prochaska, the former legal director of the Equality and Human Rights Commission, suggested to us that the EHRC should have a beefed-up role as an enforcer of human rights through an ombudsman-like mechanism—not necessarily an ombudsman—through which people could bring their complaints. Do you agree?

Melanie Field: As I have just said, I agree that the public face of the commission, which is currently contracted out through the Government's Equality Advisory Support Scheme, would be better located in the commission, because it would give us a closer relationship with the kinds of issues that individuals are concerned about and the problems they are facing. None the less, that service exists and we get information from it, so we have an awareness of the issues that people are raising. We looked at the option of having a kind of ombuds role. It is not just about hearing about complaints but about determining them.

In 2016 and 2018, we commissioned some research to look at this, which we cited in our written evidence to the committee. In short, we do not think that this would be the best fit with our strategic focus and statutory mandate. As I have just said, it would be a significant shift from the role that Parliament envisaged for us, which was as a strategic regulator. That role is complementary to the ombudsman systems that are already in existence.

Picking up on what Rob was saying earlier about the extent to which individuals identify their problems as human rights issues, it is interesting to note that they tend to present in a different way. The ombuds system is there to support them and is able to look at human rights aspects arising in those complaints. Establishing a new ombudsman-type function in the Equality and Human Rights Commission would involve us establishing teams of caseworkers, case management and oversight structures, with different ways of working. It would be a significant departure from the type of role that we currently undertake. We feel that the existing ombuds services already have the infrastructure, experience and expertise to handle complaints about public services, including where they engage human rights. It is important that these bodies have the right resources and skills to support that important role of dealing with individual complaints.

We see our role as better placed to continue to support and strengthen the capacity of ombudsmen to deal well with human rights issues that are raised in complaints to them. In 2019, we produced a human rights guide for ombudsman schemes, with input from both the PHSO and the LGSCO as well as others. We understand that it has proved helpful. We are currently seeking views on the accessibility and usefulness of that guidance, and we will consider a broader review of it if the feedback suggests that improvements are necessary.

Lord Singh of Wimbledon: You mentioned some sort of external helpline system. In my experience of contacting an ombudsman on behalf of people who feel that their human rights are being discriminated against, it seems to be a very general system where you do not get the support you need; you are just given pretty obvious advice. You are the experts in the field. If you had the resources and powers to investigate, would it not be much better if you did it?

Melanie Field: Yes. We have consistently made the case to this committee, the Women and Equalities Committee and government that

we would like to take back control of that helpline. That is an argument that we continue to make. We think that there would be a number of benefits, both for users of the helpline and to better inform our own strategic decision-making about the areas that we focus on.

Lord Singh of Wimbledon: That is helpful, because there is a limit to the number of different bodies that people have the effort or will to go through. If there was a single channel, that would be a lot better.

Chair: I want to be quite clear. Are you, Melanie, saying that the EHRC does not want to take over an ombudsman role but is very keen to take control of this EASS helpline? Obviously Lord Singh has expressed some concern about the level of advice that comes from that.

Do you make the distinction between an ombudsperson's role and what we as a committee have recommended in the past: that your role in enforcing rights should be strengthened by allowing you to undertake investigations into named bodies, as you can do in your equality remit, and into possible breaches of the Human Rights Act, as well as allowing you to provide legal assistance in human rights cases? Of course, you can do that in equality cases—we know that you have done that recently—but you are not able to do so in human rights cases. That is the angle. When it comes to beefed-up powers, to use Elizabeth Prochaska's words from when she gave evidence to us, the powers you would like are the ones we have recommended—to intervene in cases and undertake investigations—but, separately, you would like to take the EASS helpline back in house.

Melanie Field: That is right. Again, those two things are complementary. First, strengthening our existing powers is in line with our strategic role. Taking back control of the helpline is more about the fact that we have a key role in ensuring that the legal and institutional framework around equality and human rights works effectively. I was talking about working with ombuds schemes and others to try to make sure that they have the capacity and the resources they need, so it is in that kind of space about making sure that the system works well so that, when individuals have a problem, they know where to go and where they go knows how to deal with their complaint appropriately.

Chair: Rob, I think you wanted to come in on the back of Melanie's response to Lord Singh.

Rob Behrens: I want to be helpful, but if you are going to ask for our view about whether there should be a separate human rights ombudsperson, which I hope you are—

Chair: We are just coming on to that.

Rob Behrens: —then I am happy not to follow up.

Chair: Then I will hand over to David Simmonds, who will ask you questions that are close to that issue.

Q8 **David Simmonds:** We have heard a good deal of evidence about the different ombudsman services that exist across different sectors. What is your view on the advantages and potential disadvantages of introducing a specific human rights ombudsman service?

Rob Behrens: Let me just say that I have Ukrainian refugees living in my home. They were thrilled to meet Mr Simmonds and shake his hand at a meeting last week, which shows how much they value our approach to human rights in the United Kingdom.

Chair: Can I just say what an extremely admirable thing to do that is? I am sure people will want to express their admiration for your generosity in taking into your own home people who have suffered so terribly.

Rob Behrens: It is a privilege. I agree with Mr Simmonds: we need a higher profile for human rights in ombuds schemes, and we need the support of Melanie and her colleagues in developing that. However, I speak seriously on behalf of almost all public sector ombuds in the United Kingdom and national public service ombuds in Europe through the IOI. We strongly believe that this should be done through existing ombuds schemes, not through creating yet another ombuds service.

That is for a number of reasons. First, it would confuse individuals even more than it does now. We spend a lot of public money on telling people that they have come to the wrong place when they make a complaint. That is a service, but it would be better if they were a single ombuds for people to know where to come.

Secondly—this is critical—it would create even more overlaps between ombuds schemes, and debates and negotiations about who is going to handle which aspect of an issue that is a public policy issue but also a human rights issue. Without putting too fine a point on it, there would be a turf war between ombuds to decide who would have responsibility for handling complaints.

This is the view of the Venice Commission and the Venice principles, which encourage schemes like the ones in the UK to take on responsibility for human rights alongside the other things that we do.

Here is the point: I believe that this committee could seriously develop human rights effectiveness in the UK by proposing reforms to widen the scope of the existing ombuds schemes that are already here. We have been promised strategic ombuds reform by the Government since at least 2016 but nothing has happened.

There are three or four impediments to human rights effectiveness that could be solved quickly without reform. The first is reform of the MP filter, which was introduced in 1967 and prevents individuals from coming directly to my office to make a complaint. In the Windrush case—I know this because I investigated complaints—a number of complainants did not come forward because they did not believe they would get support from their MP in bringing their case forward, which I think is worrying.

Secondly, as I said, there is the whole issue of own-initiative reform. Elderly people, people with mental health challenges and those who are likely to have human rights challenges do not come to our service. We could go to them, and quickly, if there were not a responsibility to receive an individual complaint. That is very important.

My final point is that when I go to the European ombudsmen's conference in Strasbourg, I'm told: "For most public sector ombuds I send a taxi from the airport, but for you British I have to send a minibus because there are so many of you". The serious point here is that we need to create an integrated public service ombuds—as my friend Nick King, who works with Evan, has made clear—integrating local government, social care, health and parliamentary bodies into a single public service ombuds, which operates in Northern Ireland and in other devolved parts of the UK as we speak. That would create the profile and the basis for human rights development quicker, more cost-effectively and in a better way than creating yet another ombuds service.

David Simmonds: That was a helpful and comprehensive answer. Is that a view that you are confident is representative of everyone across the sector, or are there other voices that would argue for an alternative? Do you feel that it is a clear and consensual view across the ombuds service sector in the UK?

Rob Behrens: I am very exercised about this. I have consulted widely, and I am confident that almost all my colleagues who are public service ombuds in the devolved countries have the same view. If the clerk could arrange it, the distinguished Marie Anderson from Northern Ireland, who was the first public service ombuds in Northern Ireland and developed a human rights mandate within a general scheme, would also confirm that it is the general view of ombuds. What is excellent is that the people you are going to interview next, Richard Kirkham and Robert Thomas, who are distinguished academics—without judging what they are going to say—have the same view that we practitioners have about the issue. So I do not want to be arrogant or overconfident, but I really do believe that there is a general view that creating another ombuds is not the way forward.

David Simmonds: May I put a specific question to you about the Office of the Children's Commissioner, which is not an ombudsman in a technical sense but is charged with the responsibility for upholding children's rights specifically? There may be other equivalent bodies, but that is the one I am aware of. Do you feel that in bringing these bodies together the Office of the Children's Commissioner would take on a greater role, or do you see that as separate from the discussions and consultations that you have undertaken?

Rob Behrens: Without effective consultation with the bodies involved, I need to be very careful not to make judgments about who should be included in a public service ombuds scheme. There are honourable colleagues, such as my colleague who is the higher education ombuds, who would make the case that what bodies such as the Victims'

Commissioner or the Children's Commissioner do is so specialised that there is value in keeping them separate from a public service ombuds. I respect that view. It is not for the likes of me to make that judgment; there should be effective consultation so that you can hear from them and make that judgment.

My last point is that you cannot have everyone in a public service ombudsman scheme. I think the Philippines has a bigger ombuds service than we do, but apart from them we are the biggest in the world. You do not want to keep on creating a gigantic structure that becomes bureaucratic and not sensitive to the people it is trying to serve.

Q9 **Lord Dubs:** I am Alf Dubs, a Labour Member of the Lords. Congratulations on what you have done with the refugees, Rob. It has almost made me forget the thrust of the questions.

Some of this question might have been answered already; Melanie may have come up with an answer, although the rest of you might not have done. Do you think that a better option to improve the enforcement of human rights out of court would be to strengthen your powers to uphold human rights? Melanie, you have probably covered that, but do you want to go first in case I am misinterpreting you?

Melanie Field: I have set out our view that we would like our human rights powers to be strengthened. There are some specific ones that I mentioned, such as investigations and being able to support individual human rights cases. I would not presume to answer the question for my colleagues, although my sense is that they already have the power and capacity to deal with human rights elements of complaints that are brought to them, and we stand ready to support them with the expertise and guidance that we can offer to support them in that role.

Rob Behrens: We can only do this together. We have to make the most of the huge amount of expertise and experience that there is without thinking that creating new institutions is going to be the answer to the challenges that are put before us.

Evan Lerwill: I will happily throw my weight behind everything that Rob has said there. We see no advantages to a human rights ombudsman that sits alongside or in parallel to our schemes. All we see is disadvantage in the confusion, complexity and additional fragmentation that would mean for the system.

Wholesale reform of the ombudsman schemes in England to create a public sector ombudsman with an increased remit for human rights is the direction of travel that we would support. Within that, I stress the points that I made earlier about the power to self-initiate investigations; removing some of the gaping holes in the redress system, particularly for state schools in England, unregulated care settings and parts of the local government system that have come into being in the last few decades; and, lastly, increasing statutory responsibilities for organisations that fall

within our remit to be educated and to be obliged to point people to ombudsmen when they need to come to us.

Chair: I thank all our witnesses for some really fantastic evidence. I certainly feel that I have a much stronger handle on what the ombudspersons do and what reform might need to look like after this session, so I am very grateful to the ombudsmen for that, while Melanie was very clear about what she sees the EHRC needing in order to beef up its powers. Thank you to all three of you.