

Public Administration and Constitutional Affairs Committee

Oral evidence: Parliamentary and Health Service Ombudsman Annual Scrutiny 2022-23, HC 198

Tuesday 14 November 2023

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[Watch the meeting](#)

Members present: Mr William Wragg (Chair); Ronnie Cowan; Jo Gideon; Mr David Jones; John McDonnell; Damien Moore; Lloyd Russell-Moyle; John Stevenson.

Questions 1 - 65

Witnesses

I: Rob Behrens CBE, Parliamentary and Health Service Ombudsman; and Rebecca Hilsenrath, Chief Executive Officer, Parliamentary and Health Service Ombudsman.

Written evidence from witnesses:

– [Parliamentary and Health Service Ombudsman](#)

Examination of witnesses

Witnesses: Rob Behrens CBE and Rebecca Hilsenrath.

Chair: Good morning, and welcome to the Public Administration and Constitutional Affairs Committee. Today the Committee is carrying out its annual scrutiny of the Parliamentary and Health Service Ombudsman. In this session we will look at the performance of the organisation over the past year against key metrics, including value for money, as well as delving into the 2022-2025 business strategy to assess its robustness.

We are joined this morning by Rob Behrens, the Parliamentary and Health Service Ombudsman, and Rebecca Hilsenrath, the Deputy Ombudsman and Chief Executive. Good morning and thank you both for joining us. Would you introduce yourselves for the record, please?

Rob Behrens: I am the Parliamentary Ombudsman, as you said, in my last few months of office.



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Rebecca Hilsenrath: Good morning. I am the Chief Executive Officer of the Parliamentary and Health Service Ombudsman.

Q1 **Chair:** Thank you. Mr Behrens, as you alluded to, your tenure in the role ends relatively soon. I want to ask about the main challenges you faced in that period and how you have tackled them.

Rob Behrens: I look back at my pre-appointment hearing in 2017—I think a number of members were on the Committee then—and I made the point, quoting Sir Robin Butler, that the job would be like playing the piano and moving it upstairs at the same time. I think, broadly speaking, that has been the case, and I would like to make six points about the experience that I hope will be useful.

First, the principal challenge was to turn around an organisation in crisis in 2017. I inherited a deeply unhappy organisation, unclear where it was going, with a toxic organisational culture. Within a year the 2018 peer review noted that PHSO was now out of intensive care and into recovery. I do not think this was down to me; it was down to a new collective leadership across the office, in which there has been continuing dialogue and exchange about our values, our role and our direction. What we have done is to create leaders at all levels of the organisation.

The independently run annual staff survey results show an improvement in the scores of between 15% and 25% since 2016. These scores are particularly strong on staff engagement and commitment, being proud to work for PHSO, making a difference, and now, following your prompting, success on the learning and development scores, which you were concerned about right at the beginning.

What this has meant is that the unforeseen challenge of handling covid, which was particularly difficult for us because we are the Health Service Ombudsman, resulted in us dealing with it as a united and joined-up organisation prepared to be flexible and to make sacrifices to keep going. While there can always be improvements, there has been continuous progress throughout the seven years of my leadership, as pointed out by the 2022 peer review that was published last year.

The second thing I want to say is that one of my ambitions that I set out was the need to professionalise our case handling, and we have done that. We have developed case handlers. We have introduced comprehensive training and induction and professional development for our case handlers. We have been the first ombudsman in Europe to introduce accreditation for senior case handlers. We will be doing that for the intake team later this year. We have created an award-winning learning academy and development team, which has also won awards. I introduced an independent review of clinical advice, which is a critical function for us in looking at the relationship between the advice we receive from clinicians and independent case handlers, which was run by Sir Liam Donaldson. We have introduced new benchmarks on quality because this Committee was critical of the processes we used to



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benchmark what was going on. I have created an expert advisory panel to give us advice on very difficult cases and we have also, as you will be asking later, introduced a new public engagement advisory group.

The third thing that we have achieved is that we have turned the national ombudsman into an out-facing organisation. In 2017 I think it is fair to say that there was a bunkerism about our office, a reluctance because of criticism to put our heads above the parapet or to engage with stakeholders. We have changed that culture. We have a positive approach to transparency with a new publication regime, which has led to the publication of over 1,000 case summaries and the prospect of many more to come. We have had a focus on strategic reviews, which we have laid before Parliament, on key issues: eating disorders, avoidable deaths in the health service—which I would like to return to—sepsis, the use of digital imaging, and complaint standards in the public service. We introduced open meetings for critics and stakeholders to come to express their views. We have created “Radio Ombudsman”, which has now had 30 episodes and 13,000 listeners. We have reached out to people, as this Committee has urged us, to ensure that those most vulnerable are aware of who we are and how to get to us, and we have introduced ombudsman roadshows in Belfast, Stockton and Darlington, Bristol, and early next year in Blackpool. That means that I meet people who would not come to me and who, frankly, have very distressing stories to tell, which I need to take account of.

We have also created what I think is a lasting legacy, which is new national frameworks on complaint standards in the NHS and in central Government. This has been created in partnership with public servants, not telling them what to do. We have run pilots, we have created documents for people to use, we run training programmes free of charge, and we now have CPD qualifications to go with this to ensure that the frontline is as good as it should be.

I would like to make three final points. First, we have articulated to Government the experiences of those who are not always listened to and who have often experienced bereavement and injustice. Windrush is a scandal that we had to address; HS2, which fobbed off complainants who lost their housing; welfare benefits for disabled people were not given; the failure of the Foreign Office to look at British citizens abroad—cases in Turkey and the United Arab Emirates; the scandal of continuing healthcare where people have lost vast amounts of money because the system has failed them; avoidable baby deaths in hospital—large numbers of those—and perhaps most importantly the issuing of a causes of concern protocol in relation to the toxic culture at University Hospitals Birmingham, which kicked off a review and reform programme at Birmingham that has made a substantial difference to people’s lives.

Fifthly, we have learned and shared with colleagues in the international ombudsman community. We published, as I reported to the Committee before, “The Art of the Ombudsman”, which was a research study of 58



national and subnational ombudsman institutions, which for the International Ombudsman Institute with 150 members has created the agenda for change across Europe and more widely. We have done this by introducing reforms to how ombudsmen operate and by offering support to colleagues in crisis in, for example, Ukraine, South Africa and Poland in a way that shows the collegiality of what ombudsmen are. One of the things that I am most pleased I did is that I was the first national ombudsman to be invited to go to Kiev last December, during the war, in support of my Ukrainian counterpart and speak deep underground on Human Rights Day at a conference, where I was thanked by President Zelenskyy.

I want to end with an important point. There is a lot of unfinished business. There is no complacency at PHSO. We are grateful—I need to say this and put this on the record—for the constructive engagement and support of this Committee. We have disagreed from time to time but we have also always listened to what you have had to say and mostly acted on your recommendations. We acted on the attack on our powers over the creation of the so-called safe space in the national health service, which I took to the Venice Commission, won their unanimous support and the Government rejected that view. You have supported us rigorously over the issue of the need for legislative reform of the UK and public service ombudsman schemes to create a genuinely joined-up national public service, which brings together health and social care, which are at the moment separate. That has not succeeded, and that is a big disappointment. We may come back to that.

We have also not succeeded in arguing for the reform of the rules to create public inquiries, which is a big, neglected issue, which we have had to address through the Matthew Leahy case where a boy died after several days in a mental health institution, and only now is there to be a public inquiry. But the real scandal is the failure of the case of Robbie Powell, who died over 30 years ago, due to the neglect of doctors and a cover-up, to get a public inquiry that has been campaigned for. His file still remains at the CPS after six years of being open. That is not good.

I leave PHSO in a much stronger position than it was when I arrived and I look forward to my successor taking it forward with rigour and vigour.

Q2 Chair: Thank you very much for that exposition. You touched on several issues that we will certainly be coming back to during this morning's session in our questions on those topics. As you have mentioned, there are many areas on which we agree and are happy to support and then a number that we are less agreeable with, which is a diplomatic way of speaking.

You mentioned those challenges that you encountered when you came into the role and you have alluded to your successor. Notwithstanding the progress that you have outlined, what are the key areas where work still needs to continue, which areas are proving stubborn, and what does your successor, therefore, need to apply themselves to?



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Rob Behrens: This is not a job where the Select Committee would ask the candidate to be appointed were they sensible in considering taking it. It is a real challenge. There are big issues to address. To persuade the Government to adopt ombudsmen reform is a very big question, because to do our job properly we need powers of own initiative and that needs a reform.

The issue of the way in which we use data is a very big issue, to ensure that we are intelligent enough to see trends and how to use that material. We are looking at artificial intelligence, but we have not made decisive progress in taking that forward.

The professionalisation of case handlers does not stop and that needs to continue. One of the things that I am very proud of is that, together with my colleagues in Europe, we have created an International Ombudsman Institute academy to train colleagues across borders. The first session will take place in January, looking at mediation. I know this Committee has been critical of the progress we have made on mediation. It is now built into our system. It is already having an impact, but it will have to be developed in order to continue to develop the skills of people.

There are a couple of other things. We will need to look very seriously at the issue of where people work, because we have now a very happy accommodation of having people coming in 40% of the time. Is this the right way to do it? Should we go back to a pre-covid situation? That is an issue.

The last point is that fundamentally, we are not well enough known in England for people to be sure where to come to and when to come to us. I remember going to Sussex to a mental health hospital a couple of years ago, where a guy came up to me in a dressing-gown at 8 o'clock in the morning and said to me, "Are you a lawyer?" I said, "No, why do you think that?" and he said, "Well, only lawyers come here at 8 o'clock in the morning in a suit and tie." I said no, so he said, "Well, who are you then?" I said, "I am the Health Service Ombudsman" and he said, "What the bloody hell is that?" which is a good reminder that we need to do much more to disseminate who we are to stakeholders in the community. Rebecca, who is going to inherit a lot of these challenges, may want to add to that.

Q3 **Chair:** I was going to come to Ms Hilsenrath next, because you have been recently appointed as Chief Executive. Just briefly, your main priorities. I do not want to limit them to three, but if you had three main priorities in taking on the role in recent months, what are they?

Rebecca Hilsenrath: First, I would like to say that it is a great privilege to have been appointed to this role. I come to it from a background in government law, in the advice sector, and at the Equality and Human Rights Commission, so I come to it with a keen interest in access to justice and user engagement, in diversity and equality. I note what Rob says about unfinished business. I have been in the organisation for a



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couple of years as Director of Strategy, so I have that knowledge, but I also come at a time of change. I led the development of the strategy and I want to be part of the journey going forward and building on what Rob and my predecessor have achieved. I do that with humility but with great excitement.

I was listening to Rob just now and, unsurprisingly, I think a lot of the points that he has made about the challenges ahead are mine. I would add that there is a real importance for me in terms of supporting transition, Rob moving on and the need for me to support his successor, to help him or her embed and go on to a new leadership of the organisation.

We are still, as a human race, in the foothills of understanding what hybrid working looks like, and that is something that I need to support the team to make sure we are getting right. We are looking at a new normal in terms of the demand for our services but also across a very stretched public sector. I know that is something that we will come back to and that is something that we need to focus on. Also that digital ambition for which we need to be alert to the opportunities—we need to have the resources to do it well. Those are all important to me.

Rob talked about raising awareness of who we are and what we do, and for me there is a particular piece about raising awareness and accountability among Government Departments in terms of our work. I am also particularly interested in looking across the justice sector, including the tribunals, and trying to understand better what the different pathways, choices and awareness are that guide people to make a complaint, to go to a tribunal, and what the best solution is in terms of public resources, but also outcomes for people.

Q4 Chair: You mentioned your existing experience within the organisation, particularly working on the strategy. With the change of Chief Executive Officer and Ombudsman coming so close together, do you envisage any difficulties in that transition? Have you identified anything that you need to be aware of?

Rebecca Hilsenrath: It is always going to be a big challenge for the organisation to lose Rob, and you have heard about his personal leadership over a time of great change. The advantage of my having been appointed in advance of his departure and having spent already two and a half years developing the strategy and leading the first 18 months of the delivery of that strategy does provide continuity, at the same time as evidently bringing a difference of perspective and experience to the role. What is important to me and to Rob, and that is evident from the results of the staff survey, which go back to leadership before me but also including me, is the amount of effort we invest in staff engagement. That is about visible leadership, but it is also about ensuring we have good staff networks operating, ensuring we have the internal communications right, ensuring that we are training people and giving



them the support they need, and ensuring that we have an engaged organisation that is contributing to the objectives of the organisation.

Chair: Thank you both for that. That was a useful exposition of high-level thinking. Now we are going to go into some specific areas, starting with Ronnie Cowan.

Q5 Ronnie Cowan: I listened to your answers there and I was waiting for one of you to mention the WASPI campaign, but neither of you did. I appreciate the work you have done within the Department to make it a better Department, to make it more professional and to make it a better place to work, all good stuff, but ultimately the ombudsman will be judged by how it handles its casework, because people come to you sometimes as the very last resort in very desperate situations. There are hundreds of thousands of women waiting for their pension. It is not a new case. It must have been on your desk from day one. It has been going on for seven years and they are no further forward. I am quite disappointed it is not one of your priorities going forward.

Rebecca Hilsenrath: I will answer that one. Thank you; it is a really important point and I am glad that you raised it. I want to be able to talk about it.

Before I say anything I would like to agree with what you have said. This is a very important case for us, but mostly it is important for the many thousands of women who have been impacted by it. It has been going on for a long time. They have been impacted by what originally happened and they have been impacted by the amount of time that it has taken for this investigation to take place. I am deeply and profoundly aware of that and, as you say, it has been on my desk since I took over the role three months ago.

It has been a very challenging case for us. It is true that for all the people who are currently at PHSO it is probably the most challenging that we have handled, for several reasons. One of the impacts of our legislation, our framework, is that we are obliged to investigate in private, and because of that we have not been able, at any point, to discuss in public the substantive findings that we make or any details of the investigation. I would, however, like to take a bit of your time this morning to talk not about the findings and the evidence that we have looked at, but about the process and the reasons why it has taken as long as it has. I think it is important for this Committee to understand that and also for the many thousands of women to understand that.

We started looking at this case in 2018 and at that point we were receiving large numbers of complainants. We stopped accepting new complainants after a couple of years. At that point I think we had received over 500. We identified six that we saw as being representative across the entirety of the cohort of complainants, but we kept a record of the entirety of the complainant cohort so that we were able to communicate with them going forward.



In the entirety of the time since then, about two years of time has been lost to matters outside our control. That is a total of two judicial reviews and it is also the result of several occasions when we have sought views or evidence from all parties to the investigation and they have asked for an extension of the timetable. We have happily agreed to it, because that was the right thing to do, but inevitably these things cause delays.

During the time that we have been investigating this case we have analysed over 650 pieces of evidence. Nearly 400 of those were at stage 1 of the investigation, when we were looking at maladministration. At stage 2 we were looking at injustice and at stage 3 we were looking at potential remedy, and that involved another 250 items of evidence. That included White Papers, legislation, government fact sheets, government correspondence, television campaigns, research publications, media and others. In every instance we had to gather that evidence, we had to evaluate it and we had to consider its impact. Specifically, and most recently, you will be aware that in March we were proposing to publish the findings from stage 2 and stage 3 of that investigation. We have always looked at how we can possibly move this investigation forward as quickly as possible, and we combined the last two stages to be able to do that when a judicial review challenge was brought by WASPI because of concerns that we had not fully explained how we had analysed dates applied to the investigation, which could vary the impact and possibly the remedy.

We reflected on the concerns that were raised. A consent order was agreed on, which was not approved until May. We received the order itself several weeks later. At the end of June we received 22 further pieces of evidence from the DWP. It was important for us to reflect on these. We sought expert external legal advice. Everything all the way through this organisation has received consideration at chief executive level and that was important and we do believe that the approach that we have taken to that judicial review was the right one. It will take less time to get the right outcome than it would have, had we allowed that litigation to be pursued and to continue.

We are now at a stage that we are intending to share with all the parties our provisional views on the investigation by the end of next week. After that, we will provide a timeframe for those parties to come back to us with their comments on our findings. Once we have had time to consider those and make any amendments we think are necessary, we will then be able to publish the final report.

Q6 Chair: Could I interrupt you there? At the end of next week, is that on the basis of it being in confidence?

Rebecca Hilsenrath: At that point it will be in confidence and private to the parties, but it will become a matter of public record once we have received their comments and we are able to publish the final report, which will be, I am assuming, in the new year at some point.



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Q7 **Chair:** Is there a length of time that you are setting for that in confidence period?

Rebecca Hilsenrath: I believe we are seeking comments before Christmas. Maybe 21 December is in my mind, but that sort of length of time. We are deliberately giving more time than we normally would because we understand the importance of the matter.

Q8 **Ronnie Cowan:** Who is this confidential meeting going to be with?

Rebecca Hilsenrath: Sorry, it is not a meeting. As I say, before the end of next week we will provide our provisional views on the injustice caused by the maladministration and on our views—

Q9 **Ronnie Cowan:** To whom?

Rebecca Hilsenrath: To both parties, to the DWP and to the complainants. They will have that in writing.

Q10 **Ronnie Cowan:** Is it the six complainants whose cases you took on?

Rebecca Hilsenrath: It will also go to the other complainants.

Ronnie Cowan: So the 500?

Rebecca Hilsenrath: Yes, all of them.

Q11 **Ronnie Cowan:** You said you had taken on six cases of the 500. One of my concerns is the 494. Are they being kept up to date, even though it is not specifically their case which has been examined?

Rebecca Hilsenrath: They have been kept up to date on the progress of the investigation and we will share the provisional views with them.

Ronnie Cowan: How?

Rebecca Hilsenrath: I believe I am right in saying that the majority of them have asked for that to happen by post.

Q12 **Ronnie Cowan:** So within a week, let us say 10 days, all 500 cases would expect to receive written notification from you—

Rebecca Hilsenrath: That is right.

Ronnie Cowan: —telling them, “This is the stage we are at”—

Rebecca Hilsenrath: That is right.

Ronnie Cowan: —indicating what will be in report 2 and report 3, which will get published at the same time?

Rebecca Hilsenrath: What they will see is essentially a draft of stage 2 and stage 3 and we will be seeking their views on that draft in order for us to take those views into account and then issue the final report, as I say, in the new year.



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Rob Behrens: Could I make a point here, Mr Cowan? One of the difficulties that we have is that under the law we are required to investigate in private. So we cannot comment when somebody leaks the provisional view which we have sent round, so it looks as though we are not caring or not responding, but actually what we are doing is abiding by the process, which is set out in law, that we have to investigate in private.

Q13 **Ronnie Cowan:** I am just trying to make sure that the women whose cases you are investigating are being kept up to date. The public discourse is a completely different thing and I appreciate that. As long as the women are being kept up to date.

Do you believe—and we are talking about seven years here, during which time maybe 250,000 women have died who would have benefited from their pension—do you believe that up until now the WASPI women have received good service from the Ombudsman?

Rebecca Hilsenrath: I think it has been incredibly important that we get this right. As I have said before—

Ronnie Cowan: Of course it is important; that is not my question. Do you believe they have received a good service?

Rebecca Hilsenrath: I think it was important that we looked at every piece of evidence carefully, and that has inevitably taken its time. I am not here to say that we have done a perfect job. It is really important, when we have finished, to take a step back and go through a real lessons learned approach, to ensure—

Ronnie Cowan: It is one of your key performance indicators to provide a good service. I am simply asking if you have met that KPI.

Rebecca Hilsenrath: I do believe that we have taken the time that we needed to give the appropriate handling and consideration to all those pieces of evidence in an incredibly difficult and challenging case. I am open to believing, once I have gone through the lessons learned, that we could have done things differently. At that stage I am very happy to come back to the Committee and discuss what we could and should have done differently. I hope that is something that we build into how we handle cases going forward as a learning organisation.

Q14 **Ronnie Cowan:** In the first report the PHSO found the Department for Work and Pensions failed to publicise the changes to the women affected, which to me was the green light to go. These women were not properly informed of what was going to happen to their pensions. All these years later we are still in a situation where nothing has moved on. What is the reasonable date when these women would know the outcome of this inquiry and would know if they are getting compensation?

Rebecca Hilsenrath: As I said earlier, a good chunk of the time that we have been looking at this case has encountered delays out of our control.



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We would, of course, have published our findings in March, had it not been for the latest judicial review. We have taken the time that we needed to consider the evidence that we were presented with, and I think it was incredibly important, in a very challenging case, that we did that properly.

Q15 Ronnie Cowan: Pressing this point, what sort of timescale are you working towards here? It has been seven years. What timescale are you looking at to bring an end to this, so that the women know the outcome?

Rebecca Hilsenrath: As I said, we will be providing those provisional views by the end of next week.

Rob Behrens: It is not in our hands, Mr Cowan, to be able to be definitive about what the end date is going to be. If there is further litigation, then that will delay the process even further. That is out of our hands.

Ronnie Cowan: You have previously said as soon as you can. "Soon" has become very elastic.

Rebecca Hilsenrath: I don't think it is elastic for us, because we are going to be able to provide those provisional views by the end of next week, and I completely understand how challenging this is for the women in question. That is why we have done our absolute best to get those provisional views out by the end of next week. We were asked for comments back before Christmas. The extent to which it goes on beyond that, as Rob says, is not in our control.

Chair: I take that point. John McDonnell has a supplementary question.

Q16 John McDonnell: Briefly, you can understand the concern that we have as constituency MPs because a number of the women now over these years are no longer with us. That is the problem. So, many of us are under considerable pressure because of the failure to respond. The issue is the four-year wait. I can understand the issue with regard to litigation, but the other issue you mentioned is requests for extensions from the individual parties. Some of the parties include Government Departments. Is that within your control, to deny the extension? If it is, I urge you to prevent extensions being allowed at the request particularly of Government Departments.

Rebecca Hilsenrath: In regard to your first point, I do completely understand the pressure that you are under. I would like to say that we really value the support that is offered by MPs to their constituents, and one of the issues that we continuously raise is the importance of the provision of advocacy for complainants. We really value the role that MPs have in that regard.

One of the important resource issues that we face is the need to keep everybody in the loop, including MPs. My office has written to 160 MPs in the last six months since the judicial review was raised in March.



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We have agreed extensions both with the DWP and with complainants. I understand the point that you are making. We thought it was very important that when women wanted more time to consider the evidence, the issues, whatever was being raised at the time, that we gave it to them.

I was not directly involved myself at the time, but my understanding is that when extensions were sought by the DWP these were a matter of negotiation and challenge and what was agreed was what felt reasonable at the time in terms of wanting to get the comments from the Department in question. I think it is important that PHSO is even-handed. I also think it is important that they are pragmatic and empathetic. All that comes within the framework of what I want to look at going forward, in terms of lessons learned.

Q17 John McDonnell: I am just suggesting that after four years a request for further extensions by the Department for Work and Pensions would be unreasonable at this stage and that justice delayed is justice denied, particularly in this instance, because of the age of the ladies we are talking about.

Rebecca Hilsenrath: I completely understand that and I will wait to see what happens once we have issued the provisional views.

Q18 Mr David Jones: Mr Behrens, could you please explain the purpose of the public engagement advisory group and describe how it functions?

Rob Behrens: As you know, Mr Jones, one of our ambitions is not only to be better known among stakeholders and the community but to become a more empathetic, user-friendly service, not just relying on the data we receive from service charter feedback, to think about how we relate to people. So, in response to views of this Committee, but in our own view as well, we decided to set up a user engagement panel that would give independent views from complainants and members of the public around key issues about how we improved our service. Having talked about it, having planned it, we used an independent headhunter to establish the group for us so we were not seen to be choosing who the members of the panel would be. In the last financial year we created a panel of eight people to begin with, to ask their views about what we were doing and how we could do it better.

Both Rebecca and I have attended those meetings. There have been three of them. The engagement is superb. It is frank and focused, and it deals with some of the big issues that, for example, the peer review of 2022 asked us to reflect on and to look at, one of which was the way in which we write decisions. The peer review panel did not think we were empathetic enough.

So, we have held discussions with the advisory group on the issues of what an empathetic service would look and feel like to them, what written decisions should look like in terms of being understandable and



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appreciated by the people who receive them, and look at us, and generally speaking how to make sure that we have appropriate contact with complainants. The women's state pensions case is a good issue, but you can't just say, "We are going to look at your case" and then not have contact with people once the case has got going.

Those engagements have resulted in feedback from the new members of the panel, which is going to be expanded towards the end of this year and next year, which have caused us to reflect very seriously on the three issues that I have talked about. We have disseminated the views of the panel to people throughout our organisation. We have run programmes in response to this to look at how we are better at writing decisions that are more appreciated by the people who read them, and we have discussed ways of ensuring that we can have continuous contact with complainants through the process.

I would say that this has begun well. It is non-adversarial. It is not exclusive, so we don't say that now we have a public user panel we don't need the service charter or the data from it. As you know, and we will come on to, we have restructured the service charter to ensure we get better returns from it. The challenge is to make sure that the user panel, the operations team and the feedback from the service charter are all brought together to reflect on us becoming a more empathetic, user-friendly service.

Q19 Mr David Jones: You say that the members of the group are independently selected. What criteria are applied in selecting them? What sort of people form part of the group?

Rebecca Hilsenrath: We work through an independent organisation to identify people, so they were not our direct selective choices, but we did give them quite a clear steer, which was largely about the need to ensure that there was a diverse group of people appointed by reference to gender, ethnicity and disability. Six members of the panel are former complainants; four members of the panel are members of the public who have not formerly made complaints. As Rob says, we expect to expand that going forward and we will reflect on the needs of the broad category of individuals that we need, based on our experience.

Rob Behrens: One of the things that I did in Bristol when I went on a roadshow there was I held a meeting with vulnerable young people who told me about their experience with the police and with the health service, which was chastening and frightening. They have asked me to go back in January to continue those discussions. We know from the research that we have done that young people, particularly young carers but young people in general, don't tend to complain and don't tend to use our service. So we have made an effort to look at the age structure of the user panel to ensure that it contains that voice on it, and it does.

Rebecca Hilsenrath: An important point to make, which is very much following on from what Rob has said, is that we have instigated several



initiatives that are all linked, in terms of being an outward-facing organisation, learning from users. Rob talked about the service charter survey, our outreach work, and the roadshow visits we have made. The impact of all this collectively has been something of a culture change within the organisation. We formed a user focus group, which is about a coming together of colleagues across the organisation who are involved in all these different ways of outward learning, and they bring that together to try to understand and triangulate what the best improvement is for us to make in response to that. All that was kicked off, in a way, by the research that we carried out with YouGov to understand essentially who was not complaining. That also formed the basis for the selection of the panel.

Q20 Mr David Jones: You say that six members of the group are former complainants. Is that a sufficiently large sample to achieve the aims of the group?

Rebecca Hilsenrath: We will be looking to grow it. That was where we started and it has been helpful to start growing from a smaller cohort, but we have ambitions to grow it. They are representative.

Rob Behrens: We are going to perhaps go on to talk about what we learned from international experience. We have a link with the health ombudsman in South Africa and they write reports for their website that are chastening to read and make clear the empathy that the organisation shows towards people who have suffered injustices. In contrast to that, our reports are not as empathetic as they might need to be. They go out of their way to be balanced and impartial, but that does not mean that we could not add in the empathy that is necessary. This is a very important development for people to understand what we are trying to do and to have confidence in us.

Q21 Chair: Of those former complainants, are those people who have had their complaint successfully upheld or those who have not? Ms Hilsenrath mentioned that they are representative. Is it, therefore, reflective of the percentage of successful and non-successful rates of those complainants?

Rebecca Hilsenrath: I am afraid I would have to write to you on that point. I am not sure that I know off the top of my head.

Chair: Would you mind doing that?

Rebecca Hilsenrath: I am very happy to do that. I would like to add that we have already started making amendments to the way that we work, based on the outcome from that. While it is absolutely the case that we intend to grow the panel, even with the numbers that we have at the moment the meetings have been extraordinarily constructive and deeply informative.

Rob Behrens: We knew that if we selected those panel members ourselves we would be subject to criticism, so we left it to ORS to do it for us.



Chair: It was just a thought that occurred to me when Ms Hilsenrath mentioned representative.

Q22 **Mr David Jones:** According to your annual report and accounts, around 44% of the individuals using your services report having disabilities. The Committee has received evidence that some complainants with disabilities feel that they have had problems accessing your service. What reassurance are you able to offer those people who have expressed those concerns?

Rebecca Hilsenrath: I completely understand that. I have seen the written evidence and we will take that away and reflect on what we could do. When we receive a complaint our practice is to immediately try to understand whether reasonable adjustments are necessary or whether there are particular ways of working that need to be offered. We offer BSL; we offer a number of different ways of communicating depending on the needs of the individual. We provide training across the organisation under the Equality Act and in terms of inclusive ways of working, with a particular emphasis in the work coming up over the next year on autism and cognitive atypicalities. It is always a focus of the way that we work. I don't say that from a complacent perspective. It is always helpful to receive the information that we have and we are always interested in seeing if we can do better, but it is hardwired into the training that we provide for caseworkers and the ethos of the organisation.

Q23 **Mr David Jones:** The number of complaints you have received has fallen since 2018-19 but the proportion of complaints upheld has increased. What is the cause of this?

Rebecca Hilsenrath: It is quite a complex picture. The number of complaints that are upheld is based on our most focused and intensive form of decision making, which is our detailed investigations where, as you say, the number of complaints that have been upheld have risen slightly. What has happened across the piece is that we are seeing a rise in demand of about 20% since before the pandemic. The key issue is that we are seeing a rise of about 10% over the past year in terms of those most intensive forms of investigation, primary and detailed investigation. The impact of that is on our resources, because that is the thing that requires the most time and the most effort from our caseworkers. The measure of upheld cases relates directly to detailed investigations and not primary investigations. I hope that is not too technical to make sense.

Q24 **Mr David Jones:** It is very complicated. It does seem odd on the face of it that you have a lower number of complaints but a higher number upheld. Is this a process that will continue?

Rebecca Hilsenrath: The background of this is that we are looking at increased demand across the piece. We are looking at about a 20% increase generally and a 10% increase for detailed and primary investigations. Just in the last few months we have seen an increase



above the rates that we were encountering the year before, which you have seen in the annual report. That is not just us. We have also seen a spike in the amount of complaints coming to frontline organisation complaint handlers. We know that the public sector is under quite a lot of strain at the moment. What we have also seen internally is that we are experiencing a greater number of more complex cases. That has implications for the dialogue between us and the complainants who come to us. Many of them are coming from a place of having a long and slightly difficult relationship with the service provider about whom they are complaining. We are seeing elements of broken trust. That makes it a more difficult conversation when it comes to us.

A distressing number of people who come to us are suffering from mental health challenges. I was told recently that in our intake department, which is our frontline case handling centre, we are calling 999 once a week because of the concerns for the wellbeing of the complainant who has contacted us. Because of the increasing number of more challenging complaints we are also seeing a situation where more of them are dealt with at primary investigation stage as opposed to being dealt with at contact centre stage. This is also a challenge for caseworkers, who now have a less diluted casework that is largely more complex, instead of having to work on the basis that some of them will be easier than others. We manage this because we have expanded the amount of work that we do at a stage of triaging cases and looking to see if we can resolve them without the need to go to detailed investigation through mediation, looking at early resolution and to see if we can get to the right and the best outcome for the individual as soon as possible, without going into a detailed investigation.

It is quite a complex picture, but the one that I want to leave you with is that sense that demand is rising across the public sector generally and in terms of how that impacts on us. We have absorbed a great deal of extra pressure on our service as a result, partly by taking on and recruiting extra caseworkers over the past 18 months, but also partly through implementing a number of improvements to the way that we work.

Q25 Mr David Jones: What reassurance can you offer the Committee that your internal complaints route is effective without the need for service users to go to judicial review?

Rebecca Hilsenrath: Every year about 3.5% of our casework is subject to a review and of those reviews about 19% are upheld. It is also the case that across those reviews, because of—

Mr David Jones: That is internal reviews?

Rebecca Hilsenrath: Internal reviews, yes. It is also the case that because of improvements we have made to that system far more of those reviews are being dealt with speedily, which of course is to the benefit of the complainant. We learn from those and we triangulate that learning across all the other learning that we do that we have already talked



about in terms of our public engagement working and our quality control and quality assurance working, but we work to ensure that that process is user-friendly. It runs first through the caseworker who has been involved with the case, then it will go to their manager and then eventually to our independent ombudsman assurance team. We are quite confident that is an effective system. We do not experience numbers as being to a point that we are alarmed by the quantity and we are assured that we learn from what comes out of them.

Rob Behrens: Could I add to that? It is very important. One of the things that worried me when I arrived in 2017 was that on very difficult cases the Ombudsman would commission external reviewers to look at the cases and that bred a sense in the organisation that they did not have to resolve issues because they could be sent externally. To me, an ombudsman service should not have another ombudsman looking at what they are doing. I did recognise that there are some extremely difficult cases that need exceptional oversight, so we have done several things that Rebecca has alluded to, but we have a high-risk panel of stakeholders in the organisation, ombudsmen and deputy ombudsmen, who take responsibility for the very difficult cases and use the meeting as a way of looking at that issue. We also have an external advisory panel that we use to give us advice on the very difficult cases on which we feel we could benefit not only from the external clinical advice that we get anyway, but from integrating them and getting a perspective on that. Thirdly, we have an ombudsman assurance team, as Rebecca said, so that when there is an issue on which people say, "You have got it wrong, ombudsman" we can go to the panel and say, "Could you look at this and give us your best view about it?"

I agree that judicial review, because of changes in Government policy, has become very difficult for people to use routinely and, therefore, we should be doing everything that we can to ensure that we have high quality and review to satisfy people that we are doing the best that we can.

Q26 **Mr David Jones:** Could you give us a sense of how many cases do go to judicial review?

Rob Behrens: Very few.

Rebecca Hilsenrath: Over the past year we have had a very small number of judicial reviews. I know that four of them did not get as far as getting consent from the court to go forward.

Rob Behrens: It is around half a dozen.

Mr David Jones: That is all I need. I do not need the precise numbers. That is helpful. Thank you very much.

Q27 **John McDonnell:** Can I go on from that? I will take you back to this year's annual report and accounts. They show that 77% of the cases that



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received further investigation were closed within one year. Your target was 95%, so significantly down, and that has decreased from 81% in 2021-22. Over the last number of years you have had an increase in budget, unlike several other agencies. You have had a sizeable increase in staff over the last five years. You have no independent appeal mechanism apart from judicial review, so you largely mark your own homework. Why is it the case that with all those additional resources, without having the lengthy delays of external appeals, you have failed to meet your target so significantly? You are almost one quarter of cases not being dealt with, within that year.

Rob Behrens: Rebecca will come in on this. We don't mark our own homework, with respect. We use—

John McDonnell: No independent appeal process.

Rob Behrens: We use the powers that are available to us to investigate impartially. If people don't believe we have done that, they have the right to bring legal process into the situation.

Q28 **John McDonnell:** Which is almost inaccessible for most working people because of the cost.

Rob Behrens: That is an issue for government. It is not an issue for me.

Q29 **John McDonnell:** Exactly, but that does mean essentially that you have marked your own homework. It is an internal review process.

Rob Behrens: I don't accept that term. I think that is a pejorative term.

John McDonnell: Well, okay, so it is an internal review process, isn't it?

Rob Behrens: It is not an internal review process in the sense that we use clinical advisers externally.

John McDonnell: Your appointment.

Rob Behrens: Yes, okay. How else would you do it?

John McDonnell: Independently.

Rob Behrens: In what way?

John McDonnell: Appointed by Government or others.

Rob Behrens: Clinicians?

Q30 **John McDonnell:** Yes, if necessary. There is no process here where someone can appeal on a decision of yours to an independent body other than judicial review, is there? That is the factual reality, isn't it?

Rob Behrens: It is not the same as marking your own homework, which suggests that we are conspiring to keep—

John McDonnell: There is no independent review process of your



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decisions other than judicial review. As a result of that, even though you have had more money and you have had more staffing, you still cannot meet your target with regard to clearing injustice within a year.

Rob Behrens: The key issue that you have not mentioned is that we have dramatically reduced the queue that causes the delay in handling the cases, so that by the end of my term in office we will be back to routine levels of allocating the cases.

John McDonnell: With the greatest respect—

Rob Behrens: I am sorry, could I finish? Without having appointed a significant number of new case handlers, we would not have been in the position to be able to retain the quality, reduce the queue and to keep the processes going.

Q31 **John McDonnell:** You have reduced the queue by your own decisions on what will go forward and the only way that they will be in any way challenged is by your own internal processes of review. That is the case, isn't it? You are making the decisions about whether a case will go forward. You have reduced the queue as a result of making your own decisions, but the only way that will be in any way potentially open to challenge is as a result of an internal review yourselves or as a judicial review, which most people cannot access.

Rob Behrens: You have not mentioned independent peer review of what we have done. Specifically, in 2022 the external panel came to Manchester and said that they felt that we had handled the post-covid situation in the best possible way that we could.

Q32 **John McDonnell:** That is not looking at individual cases, is it? That is looking at your overall performance. That is not a route for an independent constituent of mine, for example, who has had their case review thrown out at the early stage. There is no external review that is done of that; it is all internal.

Rob Behrens: There is no ombudsman service in Europe that I know of that has a process that you are describing.

Q33 **John McDonnell:** I want to make sure that we are the best in the world, to be honest, so that is irrelevant. The issue is whether or not people are getting the opportunity of having their case dealt with on time. That clearly is not the case now. It is a 95% target and 77% performance. Is that good enough?

Rob Behrens: It is pretty good in comparison to where we have been.

Q34 **John McDonnell:** Why did you set yourself a 95% target if you cannot meet it?

Rob Behrens: Given that we started off with a queue in excess of 3,000 and it is now down to just over 700 and reducing, that is a pretty good performance.



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Q35 **John McDonnell:** Mr Behrens, with the greatest respect, it is you who set the 95% target. You have only reached 77%. That means that people are waiting beyond a year for any decision from you. That cannot be right, can it?

Rob Behrens: We would be criticised by you if we set lower targets. You would probably say, "You're just doing that to make yourself look good."

John McDonnell: That is a bizarre response.

Q36 **Chair:** In terms of the determination—I was not going to ask at this point but I will as we seem to be detained on it—why was the figure of 95% arrived at? I would understand if you said that it is an arbitrary figure—people pick figures out of thin air all the time—or was there a certain methodology behind it?

Rebecca Hilsenrath: Can I come in on that? The first thing to say is that we recognise that like many other public services we have struggled through covid and have encountered difficulties. Because of that, people have had to wait.

Chair: Of course.

Rebecca Hilsenrath: That is incredibly important to us and we have real empathy for all the people who have had to wait. It is precisely because of that that we have put so much resource and time and effort into addressing the queue and addressing the backlog. As Rob says, we halved it by the end of last year. At the moment we have a queue of about 770 cases, which means that by the end of this year we will be able to deliver on the commitment that by the end of Rob's term of office we will be operating at effective operational levels, as we should be, as a BAU point.

Chair: Therefore, you determined that to meet the criteria that you described requires a 95% figure in this instance.

Q37 **John McDonnell:** Is that what you are sticking to? I am not trying to set you up here. Is 95% still realistic? Is that what you are saying?

Rebecca Hilsenrath: The figures that measure which proportion of cases will be dealt with in how great a measure of time are basically ombudsman standard, although they do reflect the various different stages that cases go through when they come to us. The percentage of time within which we deal with different cases has been improving steadily last year and even during the first two quarters of this year since we have put into place the various measures that we have already mentioned for reducing the queue.

We are an ombudsman of last resort, so everybody who comes to us has already been through a complaints handling service. At some point you have to have a place where the Ombudsman's decision is final. We go beyond what we need to do in terms of having internal review processes



and ensuring that people get as much chance as possible to have their voice.

One of the purposes of the work that we have carried out that Rob mentioned in relation to our public engagement advisory group is to understand better how to explain our decisions so that people will not need to come to us with those reviews. That will create a better service and a better relationship going forward.

As one more point on the specific that you mentioned about not taking forward lower-level cases, I am aware that the Committee has been concerned about that. Our board has considered very carefully your comments because it was very keen to take them into account. It reviewed the data last year and reviewed it again as recently as September this year. What colours our review of that is partly that we get relatively few complaints from complainants whose cases are not taken forward. We explain to them what the situation is. We don't take cases forward where we think that there is a limited amount of impact on the individual and where there are no systemic failings to be addressed. An example of a case like that might be somebody who had to wait an extra half hour for a GP appointment.

We do take cases forward where the injustice is limited but where we believe that there is a systemic failing. An example of that was a recent case of somebody whose assistance dog was not allowed entry to a hospital. However, we do try to resolve quickly if we can without going through to investigation. An example of that was a recent case of somebody whose family were not informed when they were discharged from hospital. We talked to the hospital and agreed a settlement of £450 without taking the case forward to further investigation.

Because of all those measures, we don't get complaints. We believe that we are acting in alignment with all other ombudsman organisations across the world that operate from a perspective of proportionality, balancing the need of their resources against the impact on public service improvements and better outcomes for people who we can often bring to resolution sooner than we would if we had proceeded with a full investigation of their complaint.

Q38 John McDonnell: Thanks, that was helpful. I do not want to labour the point, but if you have set yourself a target of 95% and you drop to 81% and now you have dropped to 77%—our role as a Select Committee is to hold agencies to account.

Rebecca Hilsenrath: Could I just add one more point to that?

Chair: Let Mr McDonnell just finish his question.

John McDonnell: What I am saying is that our role is to hold agencies to account. When we see a drop like that, we would expect clarity on why that has happened and also the proposals that you are putting in place to



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ensure that you meet that target or, as the Chair has said, if the target is not a reasonable one, inform us of that.

Rebecca Hilsenrath: Can I answer that? One of the reasons for the stats reading the way that they do is the lag effect of the cases that we close. As we move towards improving the queue, the cases that we are closing have been in the queue for a long time. We are now getting to a stage where we are reducing considerably the number of what we call aged cases in the queue. However, while we continue to close them down it is inevitably the case that the statistics will say that the cases that we are closing are older and have been waiting for longer. You will see that we have reduced the queue this year and we are now in a situation where people are waiting only three months for their cases to be allocated to a caseworker. You will see that that will drop dramatically.

Q39 John McDonnell: I understand the issue that you raise about you being the element of last resort. Most constituency MPs are that as well, because people get to us when they have frustrated everything else.

I will just come back to one of your other targets. In the response to our previous Report you said that in the medium term 25% of the cases that you received could be resolved by mediation with buy-in from organisations and complainants. We welcomed that. We saw the role for mediation. However, in 2022-23 you did not meet 25%; you only resolved 0.2% of cases through mediation. What measures are you going to put in place to encourage mediation so that you can meet that target?

Rob Behrens: I always take what you say very seriously and I know that you are not trying to set us up. We did not make a commitment to resolve 25% of cases this year. I came here and I made a commitment—

John McDonnell: You said the medium term.

Rob Behrens: Yes. I made a commitment this last year to double the number of mediations, and we will do that again this current financial year.

John McDonnell: 0.2%.

Rob Behrens: Let me finish, please. What we have done is we have put in place a system that now is able to be expanded because we have the people who now have the professional qualifications and the experience of conducting mediation. Our experience is unique in Europe. I went to Barcelona a couple of weeks ago because I was invited to explain how European ombudsman services could use mediation.

We have already made big strides in explaining to the office, people who are not involved in mediation, what the benefits are of using mediation in routine investigations. That is very important for improving our flexibility and our profile. The big challenge for us is that mediation cannot take place without the agreement of both parties. We know from the post-covid situation that the NHS has been reluctant to commit people to be



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engaged in mediation because they think, particularly clinicians, that it is not a terribly good use of their time. I think that that is unfortunate and it is wrong, but without that consent we cannot take the issue forward.

What we are trying to do now is to think about how we can publicise the success of mediation without betraying the personal confidences that people want if they go through that process, to ensure that people understand that it takes less time, it is more successful in terms of outcomes and it can have a positive effect. I retain the view that my successor can honourably seek a 25% mediation, but we are already ahead of the game as far as any other ombudsman service is concerned.

- Q40 **John McDonnell:** You have nothing but support from this Committee, as in the past, with regards to the development of mediation. However, as a Committee, if you tell us that in the medium term—I take it that that is within a limited number of years—you are aiming for 25% and, a year on from telling us that objective, you are only at 0.2%, you can understand why we are asking questions, can't you? Even if you are doubling each year, it is going to take another decade at this rate.

Rob Behrens: It depends how you define medium term but there is no cynicism in this. As I said—

- Q41 **Chair:** If I might mediate between Mr McDonnell and Mr Behrens on this, we are at risk of violently agreeing with one another. Therefore, what I wish to hear from Mr Behrens is the efforts that the Ombudsman is going to, with the health service and with Government Departments, to showcase the success of mediation, and therefore how that 25% might be reached.

John McDonnell: A demonstration of the success of mediation.

Rob Behrens: On 16 and 17 January, four countries—ourselves, the Estonians, the Dutch, the Greeks and the Slovenians—are meeting in Manchester to launch the International Ombudsman Institute learning academy, and the first two-day training programme is about mediation and how to develop it in ombudsman institutions. And we are leading it because no one else has the skills to do that.

- Q42 **Chair:** In your experience, particularly with the health service where you mentioned the reluctance on the part of the clinicians to engage with this process, how are you refining that, not just within individual trusts but with administrators at the Department of Health as well?

Rob Behrens: It is very difficult. I have talked to a lot of clinicians about this. We have not talked about the culture in the NHS, which is a very big issue, but many of the people who I meet say to me that they were trained as doctors to be self-reliant and to get on with things without being bothered about what other people say. Those are not ideal characteristics to engage in mediation. This is a cultural issue, not just an objective, "This is what can happen."



However, there is a body called the Medical Mediation Foundation, which is run by Sarah Barclay, a brilliant body that mediates between clinicians and young people. We use its understanding and experience to try to push it along. One final thing that I need to say is that one of the things that we have done, which is very important, is that we have trained our clinical advisers in mediation so that they can use that technique when they are dealing with clinicians who are giving us independent advice. That is important.

Rebecca Hilsenrath: On the back of that also we have trained our caseworkers in mediation. There is a lot of indirect impact from our mediation that extends beyond the number of mediations that we carry out. The outcomes, as Rob said, of our mediation work are often particularly impactful. The recommendations are often different and we learn from that. It is very important for us that we have a multiple aspect to resolutions so that we have a number of different ways of resolving complaints. The key thing for us to is apply the right one in the right situation.

Rob and I each have experience in different ways of running mediation programmes in different sectors. The struggles that we have in terms of getting people to agree to mediation are common and it is something that has been exacerbated by covid, by the broken trust that we see between people and service providers. However, one of the things that we will be focusing on going forward is promoting it, not just promoting it to the NHS but promoting it to complainants. One of the ways that we will be able to do that is that we have identified a way forward that will help us to talk about mediations, which we have not done before because we have respected the confidentiality that is intrinsic to mediation work. However, we will be able to talk about mediations on an anonymised basis on our website. We hope that that will encourage more people to mediate, going forward.

Q43 John McDonnell: I will just come on to the NHS issues that you have raised. In response to our issues in 2021-22 to our Report, you said that the organisation would be continuing to prioritise health complaints that involve more serious failings, and that casework methods would be kept under review. When will the next review take place and what criteria are being used to assess whether this is a proportionate approach? In 2021-22, 1,700 healthcare complaints were closed because they did not meet your injustice threshold. Do you know what the number is for 2022-23?

Rob Behrens: We do know, but before Rebecca comes in, because we listened so carefully to your recommendations and because we know how strongly you felt about this issue, I made a decision as Ombudsman that as soon as the queue was down to routine levels I would take the issue back to the board, or my successor would, to see whether or not that proportionality principle should any longer be used. The second thing is that the number of cases has reduced in the last year and the number of people who have complained about it has reduced as well.



Rebecca Hilsenrath: On the back of that, the number of cases that we regarded as lower severity this year reduced from 1,319 to 1,029. Of those, we managed to resolve 77 without the need to go forward to more detailed investigation. We have discussed this earlier this morning so I am not going to go back and give you more examples of the cases that we dealt with, but I hope that helps to understand what that looked like.

Going forward, we want to develop a public value model in terms of adopting that ombudsman principle of proportionality. We will be looking at things like whether or not a case shows evidence of systemic failings, what the likelihood of severity of injustice looks like, proportionality and equality of access. We are looking to test these sorts of ideas out now in the office so that by the time we get to the point of reducing the queue to operational effectiveness, as Rob says, we will be able to take to the board a proposal to go forward in a more agile and sophisticated way.

Q44 **John McDonnell:** That is the review that you promised us, that would be ongoing. When will that review actually be published?

Rebecca Hilsenrath: We will look to discuss that with the board at a point when the queue has been reduced.

John McDonnell: When do you think?

Rob Behrens: We anticipate that that will be by the end of this financial year. We are experiencing higher levels of demand at the moment, and therefore that expectation has to go forward within that context.

Q45 **John McDonnell:** That is a significant area of work. Will you publish that? Will that be a public report?

Rebecca Hilsenrath: If we adopt a different way of working, that will be a matter for the public domain, yes, absolutely.

Rob Behrens: Given your strong interest in this, we will brief you. I don't see why we shouldn't publish it. It seems to be a sensible way of building confidence.

Q46 **John McDonnell:** It is trying to reassure people that these are the criteria that you have used, this is how it has impacted, and you are perfectly open to look at that, and then here are the lessons learnt. That is what people are looking for but they are looking for that within a reasonable timescale.

Rebecca Hilsenrath: Absolutely, and it does go to the fact that we have not received a lot of complaints because people do understand the constraints under which we are operating. However, I would like to tie it back to the discussion that we had earlier on our user engagement work, because we will use that to ensure that whatever we do has been tested with complainants and members of the public to ensure that people will understand what we are doing and why we are doing it.

Q47 **Jo Gideon:** Your service charter survey results show lower feedback



scores than your aims in relation to the following KPIs: explaining your decisions and recommendations, explaining how you reached them, and giving the final decision on a complaint as soon as you can. What measures are you taking to address these concerns?

Rebecca Hilsenrath: Thank you very much for raising that. In fact our service charter survey scores last year did rise across the piece, but you will also be aware that this Committee has raised this issue in the past. To take a step back, this work is incredibly important to us because it joins the work that we have already spoken about on our public-facing work, our user engagement work and our outreach work to understand what people think of our service and how we can address barriers and improve it. We do know that what we are doing is highly regarded across the ombudsman community. In our peer review last year, we were told that other people don't interview the quantity of people that we do or get that richness of feedback.

However, our concern has been for some time that the data doesn't flex; it doesn't really change year on year. Over periods of time when there has been real change, both externally and in our service, that has not been reflected in the data. This Committee has asked us for a way of doing that and we have been grateful for that. As a result, this year we have changed the way that we survey complainants and organisations very considerably. We have reduced the number of questions that we have asked from 30 to seven; we are focusing just on the core areas of our service. We are asking for the first time the same question at every stage of our service, so that we are able to make proper comparisons. We will be able to disaggregate by outcome and by different areas of our service. We are able to offer that channel for feedback online and by telephone.

Our aim is to offer a telephone survey to 2,500 people a year. Two thousand people is nationally statistically significant, so we are confident that that is an appropriate way to go forward. We will be able to report back, we hope, with data that is more susceptible to proper assessment and meaningful conclusions which will help us to improve our service.

We started this in quarter 1 of this year. We have a limited dataset coming out of quarter 1—because we launched it in May and June this year—to be able to look at a sufficient number that will provide meaningful intelligence. We anticipate that we will need six to nine months of data in order to be able to baseline what the data is currently telling us. From that we will extrapolate and go forward and set ourselves KPIs for improvement going forward. At this point we had 383 complainants in quarter 1, and 14 responses from organisations that we investigate. We obviously want to build on that and we need more on both counts. On the basis of that, we anticipate coming back to the Committee this time next year with a far richer seam of data and with the ability to talk to improvements that we will be expecting to make, depending on what the data tells us.



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Q48 Jo Gideon: The annual report and accounts shows that the number of permanent employees has risen by roughly 15%. Where is this extra resource going in the organisation?

Rebecca Hilsenrath: Under the comprehensive spending review 18 months ago, we were given a very positive settlement, which was very good news and it spoke to a confidence in our service and the importance of it and the public value of it, which was something that we welcomed, especially at a time of increasing demand and pressure on our service and across the board on other frontline complaint-handling teams. As a result of that, we took on 50 new caseworkers and additionally 59 other members of staff outside casework to deliver on our strategy. Largely, the recruitment of those individuals has gone into reducing the queue. We spoke about that earlier. We have seen the queue come down to 770 at this moment in time, with the expectation that it will reduce to business as usual levels by the end of this year.

We have also used that extra resource to undertake a number of improvements to our casework operation, which has also in itself been responsible for some of the impact on the queue, such as reforming our decision form, making various amendments to our casework management system, giving our caseworkers the ability to make phone calls over Teams, and a number of others as well. Lastly, we have used that resource to deliver our strategy. Many of the issues we have discussed already this morning: our public engagement advisory group, our outreach work and our roadshows, to which Rob was speaking earlier, and a number of other important pieces under our strategy.

A key piece of our spend is about our digital ambition. We have engaged extensively through that on various digital improvements that we have made in terms of the improvements to our service, but we do have ambition going forward. That is an important part of our strategic objectives. Going forward, we want to improve how we exchange data and how we access information in the NHS. We want to improve how we automate back-office functions to free up the way that we operate. We want to move towards being a digital ombudsman in terms of giving complainants real-time access across the progress of their complaints. We will want to go back to the Treasury for more support and resource in order to be able to do that. If we don't get it, we will do it anyway but it will take us more time.

Q49 Jo Gideon: You touched earlier on the increase in staff training. Can you elaborate a little bit on what that training is and what outcomes you expect from the training?

Rebecca Hilsenrath: Training of our staff is incredibly important to how we operate. We have already spoken to the difference that Rob has made under his tenure in terms of leading a skilled workforce with proper accreditation. This year we have increased the training that we have offered quite considerably. The average number of days per staff has gone from 4.15 to 6.8 days. A lot of the training that we have offered has



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been casework focused. We have taken 57 new staff through our academy in seven cohorts. We have provided training specifically on balancing evidence across all our caseworkers.

We have taken senior caseworkers through the senior casework accreditation scheme. We have innovated a new accreditation scheme for intake caseworkers. We have also provided training across the board to leaders and managers from the Institute of Learning and Management in coaching and performance management. We have taken our leadership team through training as well, both in groups and individually. We have also run a programme across the organisation on "Activating your career development" to support people in their own development and career pathways.

This work is at the heart of what we do in supporting our staff. It has an impact on the feedback that we get through the staff survey and it is very important in ensuring that we are a highly performing organisation and that people feel that they are making their contribution to the objectives of the organisation.

Q50 John Stevenson: The turnover of staff is 12%, so it has gone up by 1% since last year. How are you going about recruiting staff and attracting staff to the organisation, given that level of turnover?

Rebecca Hilsenrath: Sorry, would you mind repeating that?

John Stevenson: Your turnover figure of staff was 12%, which is a worse performance than last year. How are you going about attracting new staff but also retaining staff, because that is quite a high level of turnover of staff?

Rob Behrens: The key issue is the commitment and the morale of the staff in the organisation, which is reflected in the independently run staff survey, which you have a copy of for 2022. That compares with any other civil service organisation in the country in terms of the appreciation that staff have for the way that they are treated, for their participation in the process of decision making, for how they are managed, for their ability to raise issues without fear in the organisation through our speak-up guardian and, as you say, for the learning and development issues.

At the same time as we have managed to give career development to a whole range of people in the organisation, we know that the labour market is extremely attractive to people to develop their careers outside the organisation. That is not going to change very considerably. Therefore, we spend a lot of time using social media to explain to stakeholders what people experience in the office and how much commitment they feel towards making a difference.

I know from the conversations that I have regularly with staff that they have an ethical approach to what they are doing. They are interested in their pay, obviously, but they want to know that they belong to an



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organisation that has values and can make a difference. For example, when I raised issues around avoidable death in the health service, around sepsis, around the Letby killings, and was interviewed on television and in the media, I got a lot of feedback from staff saying, "That's what we want. We want to work for an organisation that stands up for people and that does make a difference." We are doing what we can, in a difficult situation, to energise our colleagues and to ensure their commitment to the organisation.

Q51 John Stevenson: You say that, but I understand one third of your staff disagree that their pay adequately reflects their performance. How do you address that issue?

Rob Behrens: It is a very good question and I will hand it over to Rebecca.

Rebecca Hilsenrath: Our staff survey results are very positive and all our indicators moved up last year apart from that one, which stayed the same. Obviously, that is very much a moment in time. We recognise that the pressure of the cost of living has given people a lot of challenges and it is a challenge that many organisations like us have had to meet.

Q52 John Stevenson: Do you, therefore, think that there is a direct link between your turnover of staff and pay?

Rebecca Hilsenrath: No, I don't think so. Our turnover of staff has come down year to date by a percentage point.

John Stevenson: It is worse by a percentage point.

Rebecca Hilsenrath: It was 12% last year and it is probably 11% year to date now.

John Stevenson: It has gone the other way.

Rebecca Hilsenrath: No, you are comparing 2021-22 to 2022-23. I am saying that in the current year we are probably looking at a lower level. We are very privileged to work in an organisation where, as Rob says, there is an enormous values-driven commitment to what we do, which is a very precious thing to work with.

Q53 John Stevenson: If it is not linked to pay, what is the reason for the turnover?

Rebecca Hilsenrath: I don't think that the turnover is particularly high. The turnover has obviously been impacted by the consequences of covid.

Rob Behrens: Can I make this point, which is directly related to what you are saying? We have a policy, which we think is organisationally important for the culture of the organisation, that people will come in to work for 40% of their time. Other ombudsman services allow people to work at home 100% of the time and they don't have to come in to the office. For people looking at their lifestyle and their work-home balance,



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that is attractive. We have lost a number of people to organisations, which I will not name, that do work entirely from home. However, we believe strongly that the culture of the organisation is critical to its developing success and we are not prepared to leave that alone.

Rebecca Hilsenrath: We have agreed to review our hybrid working policy next year, which we will. We think that it is flexible and in large part we get very positive feedback about it. We have very good relationships with our unions, which are important partners in what we do in relation to staff engagement. The staff survey overall indicates an incredibly positive picture in our progress last year over the period of time that Rob has been in charge of the organisation, and in comparison with the civil service. It is difficult to look at those figures and take away a concern that our turnover reflects staff engagement. There is a very natural movement of people on the back of the changes that we have seen on a societal front over the last few years.

Q54 **John Stevenson:** Are you concerned about the level of turnover? If you are putting a lot of effort into training, which you appear to be doing, and you are losing staff, it is not a very good position to be in as an organisation.

Rebecca Hilsenrath: We expect a certain amount of attrition. Every organisation forecasts the churn of staff; it is inevitable. One of the things that we hear from staff through our survey, not surprisingly, is people coming back to ask about their own career development, their learning development. We are a small organisation and there is always going to be a limit to what we can provide for people's career opportunities. It is positive if people—

John Stevenson: I am trying to get to the bottom of the reasons. You do not think it is pay—you think it is other reasons?

Rob Behrens: We will lose good people. That is the nature of being a disciplined and successful organisation. One of the instances—

Q55 **John Stevenson:** That is fine. You have answered my question adequately and I want to move on. One of your staff survey results indicates there are some concerns about bullying and harassment. Quite clearly, that is a very serious issue. What are we doing with regards to that?

Rebecca Hilsenrath: The staff survey results on bullying and harassment show a limited issue in limited teams.

John Stevenson: I fully accept that. I just want to know what you are doing about it.

Rebecca Hilsenrath: They have been addressed.

Rob Behrens: We have a speak-up guardian, who is brilliant in every respect, whose job it is to hear complaints from people who don't want to



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raise it with their managers or with senior staff, and then to see if they can resolve it. That works and that person has the confidence of the office, which is very important.

Rebecca Hilsenrath: We take those very seriously indeed.

Rob Behrens: The other thing is that what our colleagues want is that senior staff practise what they preach and that if they have a vision for the service, they practise it themselves.

Q56 **John Stevenson:** Last year, the chief executive said that you will continue to look for efficiencies. How are you going about this and how do you align that with your long-term planning?

Rebecca Hilsenrath: Thank you for flagging that. At the risk of sounding like a broken record, I would like to flag that the organisation's financial management is another thing that has improved dramatically under Rob's tenure. We are very proud of what that looks like now in how we run our resources. The NAO has said that we offer best practice in how we measure our value for money across the internal audit, where we had substantive assurance across all measures last year. There was a clean report also from our external audit.

We use the Treasury framework in terms of business planning processes. We produce yearly metrics against economy, equality, effectiveness and efficiency and, of course, we have our peer reviews as well, which offer evidence as to value for money. Our financial management is all within control totals and it is underpinned by our strategy and business plan.

Q57 **John Stevenson:** Could you explain the underspend from last year?

Rebecca Hilsenrath: The underspend from last year was largely in terms of capital budget. That was as a result of the IFRS changes in the treatment of leases, where money was allocated incorrectly to our capital budget. I think that this was common across the public sector.

John Stevenson: Therefore, it is not really an underspend?

Rebecca Hilsenrath: I would not go so far as to say that, but I am not an accountant. It is an important question. I have already spoken to how we have used our budget to date, our settlement under the comprehensive spending review, which has been to reduce the queue, to deliver our strategy and to make improvements to casework. I talked specifically in relation to our digital ambition.

Going forward, I come back to the points that I made at the start of this conversation about demand. We are facing what I think is a new normal in terms of the demand on our services. We are facing an increasingly problematic impact on the comprehensive spending review in that it was predicated on 2% inflation and we have seen 10% inflation. That goes both to our pay and our non-pay budget. We have absorbed the demand that so far we have experienced, but the CSR settlement was predicated



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on demand being a one-off thing. Resources that were given to us to bring down the queue are very important, but we don't think that demand is going away. We will have to manage that and we will have to manage increasing pressure on public services across the piece and increasing challenges of more complex casework, as I have already mentioned.

We have achieved considerable savings in successfully making a robust challenge to the amount of rent we pay in our London office. Smarter working has enabled us to save money in terms of our presence in the office, using technology instead. We have decommissioned the virtual service and all this has helped. However, going forward we are looking at a lot of uncertainty around the general election next year and the possibility of a one-year spending review. We will need to be quite creative with how we use our resources going forward. At the moment we are scrutinising all vacancies at senior leadership level so that we don't commit to spending that we are not absolutely certain that we can afford, using our strategy to prioritise.

However, the key thing that I will come back to—I have mentioned it already but it is very important to us—is our digital ambition. We have already taken steps to strengthen the human resource that we have here to make sure that we have the right team to take forward the incredibly important work that we are doing here. We will complete our ambitions in terms of that roadmap but it will take a lot longer unless we get additional resource.

Q58 John Stevenson: With your digital ambition, do you envisage, therefore, needing fewer staff and becoming a more efficient organisation?

Rebecca Hilsenrath: I think that we will be a more efficient organisation, but at the moment we are looking at the need to free up more caseworkers to do more cases. Our digital roadmap is going to allow a number of things. It will allow a more efficient service. It will allow better mining of the data that is produced so that we can identify systemic failings more easily. It will provide a better service to complainants, who will be able to understand more easily and more quickly what the progress of their case looks like. It will enable us to share data with the NHS and to understand more comprehensively and without delay the material around the complaint. However, at the moment what we see is more demand, more cases and more complex cases. What is necessary is to automate as much as we can the functions that allow us to free up our resource to manage casework.

Q59 Damien Moore: Can you explain to the Committee the practical implications of the Government's ongoing lack of engagement on legislative reform?

Rob Behrens: This is an issue that is not for this year. From the moment that I became the Ombudsman, I was asked if I would stay for a year because by that time a new public service ombudsman scheme would be



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created and I could go away. Seven years later we have had nothing, or almost nothing, from the Government, which is extremely disappointing. However, one has to live in hope. We have had discussions with the Ministry of Justice, which have been productive and useful. As a result of that, the current victims Bill will have a pilot to remove the MP filter to see what implications that would have for victims of crime. That is a useful way of dealing with the issue of the MP filter if it is not going to be replaced straightaway.

Secondly, we held a joint event in partnership with the Institute for Government, stakeholders, parliamentarians and UK ombudsmen and academics to discuss the way forward on this issue. Collectively, we came to the view that the old Bill of 2016 has now passed its sell-by date and it was too backward-looking anyway. The ambition is to move forward with a simple new Bill that would address the key issues of a joined-up ombudsman service, bringing us together with the local government ombudsman, introducing the power of own initiative, which most of my colleagues in Europe have routinely, and introducing a complaints standards authority.

We have had that costed independently using the Treasury model and we have shared that with the political parties. We are reassured that by year 5 there would begin to be substantial savings to the public sector in integrating ombudsman services, which is important. We have had useful discussions with all the political parties about what goes into the manifesto, although I am not holding my breath about what should go into it.

The key thing for us is to utilise the good will that exists throughout Parliament and more widely to keep this issue in the public domain and to explain how not having the reform impedes our opportunity to do things that we could reasonably do. I will give you one example of that. In the case of Matthew Leahy, the boy who died in an Essex mental health institution, I found 19 instances of maladministration in the way in which he was treated. It led to him taking his life.

I then discovered that 20 other people had committed suicide in the same institution. However, because I am only allowed to investigate cases that people bring to me, it was outside my remit. If I had the power of own initiative in that case, I could have prevented the setting up of the failed independent inquiry, which failed because people would not co-operate with the independent inquiry so there is now going to be a public inquiry. That is a huge waste of public money. The trauma for his mother, who has run with this like so many bereaved parents, is very considerable. It would have been a good way for the state to have responded to what was clearly a tragic situation.

Q60 Damien Moore: You have said that you have worked with stakeholders in the Ministry of Justice for some changes but there is a lot more to do. Is that what you are saying?



Rob Behrens: The Minister in the Cabinet Office, Baroness Neville-Rolfe, is excellent and I have had good discussions with her about what ombudsman reform looks like, but there does not seem to be, in my view, a lead Department on ombudsman reform in the Government at the moment. What happens is that there is a government policy of integrating ombudsman services but as soon as there is a crisis, Departments propose the creation of new ombudsmen. So, in the last two years we have had two or three new ombudsman services with a Government committed to integrating them. That means that in health the position is distinctly overcrowded. There are too many regulators and ombudsmen and that is not in the interests of the health service or the people who use it.

Rebecca Hilsenrath: Incidentally, on that point, you may be aware that under our "Broken Trust" report one of our recommendations was that the Department review the number of different bodies in the health regulatory space. We invited them to write to you to look at progress across the recommendations. I don't know whether that has happened or not, but I just bring it to the Committee's attention.

Q61 **Damien Moore:** Touching on some comments made earlier about things that you have been doing internationally, can you update us on your international engagement and how you have made changes to your practices to learn from international best practice?

Rob Behrens: I am the vice-president of the International Ombudsman Institute in Europe; I am an elected member. As a result of that, I have played a critical role in supporting my Ukrainian colleague, who is operating under war conditions. I visited Ukraine and visited his office over five days. I learnt how people can work under the most extreme circumstances, so that when we come home and say that this is all very difficult, it is not all very difficult in comparison to having to go to a bomb shelter to survive. The UK in general has offered support to our counterpart.

We have institutional links with a number of countries, the health ombudsman in South Africa, the Israeli Comptroller General and Ombudsman. We have had a number of exchanges through online seminars and we have looked at issues that we have picked up how to do things on in terms of quality measurement in terms of mediation.

With the Dutch we have a superb relationship where we have stolen their ideas on outreach work and working in the community. Our outreach team went to Amsterdam and The Hague to accompany the Dutch ombudsman on one of his outreach visits and we have completely taken on board what it does and how it does it. We now use it in our ombudsman roadshows. You don't have to travel in order to learn, always, and I think it has been hugely beneficial to see the different experiences that our counterparts have.



We also exchange with our UK national counterparts. I chair the public service commission group where we have looked at very difficult issues, including their reports on an initiative including proportionality, which we talked about before. Without this, we would be impoverished.

Q62 Lloyd Russell-Moyle: Sorry I was late; I was with the housing ombudsperson, trying to make sure that we do not create a new ombudsperson for the private rented sector. But you host some of the housing ombudsperson. How, despite the lack of reform, are you co-ordinating between ombudspersons behind the scenes and the potential for creating a front of house? Is there any potential to create a front of house where people at least can come to a single website to then be directed to the right locations?

Rob Behrens: That is a very good point. We all know each other; we are all members of the Ombudsman Association. We get together regularly. I have just been to Edinburgh as part of the public service ombudsman group and we exchange ideas. I sit on the board of the commission of the local government ombudsman and the local government ombudsman sits on my board. So there is daily contact and exchange of information.

Leasing some part of our property to the housing ombudsman was a good example of sharing without having to reinvent the wheel. As you know, most of the housing ombudsmen work from home; they don't work for an office, and it is not a big problem for us to let them have a small amount of property on an appropriate return. I agree with you that it would be useful to have one central information point that people could use. That is an issue that we have agreed should be run by the Ombudsman Association rather than an individual ombudsman and we are hoping to take that forward.

Rebecca Hilsenrath: In relation to the Local Government and Social Care Ombudsman, you are probably aware that we have a joint working team with it that looks at issues across our jurisdictions because a lot of things engage health and social care. When we were at our most recent outreach roadshow in Bristol, we took members of that team with us. That was very helpful because a lot of the issues that Rob and I heard on the ground very much crossed over those two issues. It is very difficult for members of the public to understand that they are dealing with this ombudsman and not that ombudsman. That was interesting learning for us, which comes back to the point that you are making.

Q63 Lloyd Russell-Moyle: The Government could appoint the same person to be the ombudsperson for both and start integration that way and then bring a Bill, if it does not have Bill time, could it not? That is effectively what it did with the health and parliamentary.

Chair: A suboptimal route, perhaps.

Rob Behrens: That is beyond my remit.

Q64 Lloyd Russell-Moyle: That is fine. Can you update the Committee on



the progress to encourage the adoption of the NHS and government compliance standards and what impact they are having? There was quite good progress last time, we heard.

Rob Behrens: These are two sets of complaint standards. One is for the NHS and one is for central Government. These have been brilliantly successful because these have been a shared endeavour, not something that we have said ought to be adopted on the basis of what we know. We have led a consortium of bodies and jurisdiction both for the health service and for central Government. The good practice is slightly different in each, of course. They have been extremely well supported. We have not only a documentation of good practice for the health service complaint standards but we now have training and development for frontline staff, which is available. About 500 people have been trained so far and 250 of them have got CPD recognition as a result of engaging with this. They are very popular. People recognise our fundamental point that you need professional expertise in order to resolve complaints. You cannot just do it by sitting next to Nellie. That has worked very well.

Q65 **Lloyd Russell-Moyle:** What are the percentages of take-up for the NHS and in Government Departments? Are there some sectors within those two respective groups that are not yet signed up in large numbers?

Rebecca Hilsenrath: In relation to the NHS, Rob has already given you the figures of those who have signed up to our learning management system or been accredited. I had a lovely anecdote a few weeks ago about an offer being made in a particular NHS trust, where apparently all the places were gone within an hour and we were asked to provide another opportunity. As Rob says, that speaks to an incredibly good reception at a time, it needs to be said, where the NHS is under a lot of pressure. It speaks to the success of the initiative that that has happened regardless. What we are doing in relation to the NHS work is rolling out further guidance and best practice toolkits on the back of the feedback that we are receiving. However, we do need to emphasise that although upskilling and supporting frontline complaints handling teams is important, there is another important piece about culture and leadership. We hope to achieve that enabling culture across the piece that is going to help to make a difference.

Briefly on the UK Government's complaint standards, which were launched a year ago, we are working there with trailblazers, various key Government Departments that are working with us, including HMRC, the Cabinet Office and the Department for Transport. We are also working with the Cross Government Complaints Forum, which is looking at networks of complaints handling teams across the piece, again looking to develop resources on the back of that feedback. An important piece is the self-assessment matrix tool that the standards offer. That is about Departments being able to identify what their current practice looks like and measuring that against the standards. I would like to mention particularly that I work with the Cabinet Office; that is one of the trailblazers and has done that self-assessment.



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You have also recommended to us that we talk to the Cabinet Office about its wider role, which was a helpful suggestion. It has amended the guidance that it provides across government in relation to complaints handling so that it is signposting to the UK Government complaint standards, which is helpful. We have also supported an introduction between it and the Government complaint champion, Angela MacDonald, who is the second Permanent Secretary at HMRC, for it to be able to take forward that wider influencing role. We are very grateful for that suggestion.

Rob Behrens: There is a Monty Python element in this. That is that our friends and colleagues at the Local Government and Social Care Ombudsman run training programmes for which they charge local government and councils. We cannot do that under the existing law. We run pro bono courses for health service practitioners and complaints handlers because we cannot charge for it. We are very pleased to do that because we know that it is a public service, but there should not be that distinction between two ombudsman services that are both looking at health and social care.

Rebecca Hilsenrath: It does go to the public value for money that we offer.

Chair: Thank you. On behalf of the Committee, I thank both of our witnesses today, particularly Rob Behrens for what is conceivably his last appearance before the Committee before his retirement. I thank him on behalf of the Committee for his work over the seven years in post, which was substantially longer than the one year that he may have anticipated on application. I also thank Ms Hilsenrath and look forward to her frequent appearance over the years.

A note for members when considering a need for legislative change that the private Members' ballot has just opened and is open tomorrow. We shall know on Thursday those Members who are drawn in it. They perhaps might bear in mind the ombudsman. Thank you all very much indeed.