

Public Administration Committee

Oral evidence: Parliament's Ombudsman Service, HC 655–ii

Tuesday 10 December 2013

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Written evidence from witnesses:

- [Jim Martin](#)
- [Peter Tyndall](#)
- [Jane Martin](#)

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Members present: **Mr Bernard Jenkin** (Chair); **Paul Flynn**, **Sheila Gilmore**, **Robert Halfon**, **Kelvin Hopkins**, **Greg Mulholland**, **Priti Patel**, **Lindsay Roy** and **Mr Andrew Turner**

Questions 66-142

Witnesses: **Jim Martin**, Scottish Public Service Ombudsman, **Peter Tyndall**, former Public Services Ombudsman for Wales, and **Dr Tom Frawley**, Ombudsman for Northern Ireland gave evidence.

Chair: I welcome our witnesses to this session on the Ombudsman Service today, which is part of two inquiries we are conducting: one into how complaints are handled by Whitehall and Whitehall Departments and their agencies, and one about the role and operation of the Parliamentary and Health Service Ombudsman. I very much hope, with three of you, we can get through quite a lot. We are going to try and keep our questions short, and it is very helpful if you can keep your answers as crisp as possible. We look forward to hearing what you have to say.

For the record, please could each of you identify yourselves?

Jim Martin: I am Jim Martin, the Scottish Public Services Ombudsman.

Dr Frawley: I am Tom Frawley, the Northern Ireland Assembly Ombudsman.

Peter Tyndall: I am Peter Tyndall. I am Ombudsman and Information Commissioner for Ireland.

Chair: And you are here wearing another hat: “formerly of Wales.”

Peter Tyndall: I was formerly the Public Services Ombudsman for Wales.

Chair: We are very interested in both today.

Q66 Kelvin Hopkins: Good morning. The different nations of the United Kingdom have ombudsmen, but their roles and responsibilities are slightly different—obviously, dealing with individual cases, identifying systemic failure, and sometimes auditing and inspecting services. What weight does each of you give to those particular responsibilities, and how do you cope with them?

Jim Martin: My office works under the SPSO Act 2002 of the Scottish Parliament, which was amended in 2010. I have two statutory responsibilities. One is to be the final stage for complaints for most of the public sector in Scotland. The office was created as a one-stop shop, so effectively, for all the public services in Scotland, where a member of the public has a complaint that is not dealt with to their satisfaction—by a local authority, by a health board, by the prisons, or in water—they can come to me for a decision. That is one pillar. The second pillar is that I am responsible for setting standards for complaint handling in public bodies in Scotland, and we do that through a small team within my office called the Complaints Standards Authority. I have to operate with both of these, giving equal weight. The vast majority of my resources goes on handling complaints. Only a tiny proportion of my staff deal with the standardised complaint-handling procedures.

Dr Frawley: In Northern Ireland, it would be similar. There are two offices, both created around the same time, 1969, by the then Stormont Government. One is the Commissioner for Complaints, and that is about looking at complaints in public services, health boards, local authorities, and education boards. I am also the Assembly Ombudsman, which is about looking at Government Departments and complaints about Government Departments and their agencies. To answer your question, I think the core focus of where we commit resources is on investigating individual complaints.

Peter Tyndall: The office in Wales, like the other two offices, essentially deals with the range of public services that are devolved, so all of those public services within the remit of the Welsh Government. Consequently, the bulk of the work is indeed in investigating complaints. Where, in the course of investigating complaints, systemic weaknesses are found, then the investigation can be focused on identifying the systemic causes of a particular failure and identifying solutions to those systemic causes, so the recommendations will be both in respect of putting things right, insofar as is possible, for the individual complainant, and also in requiring the service to make changes, to prevent any repetition and to address the failures.

On occasion, some of the failings will fall outside the individual body. They might fall within, for instance, Government guidance or perhaps unintended consequences of legislation, so you always try to highlight those to Government so that they can make the necessary changes to address them. It is that dual function of an Ombudsman—investigating complaints and improving services—that makes the office unique. However, the third role you mentioned—the role of inspection—does not really fall to an Ombudsman; that falls to the regulators. The Ombudsman can address systemic problems as and when those problems are brought to light by an investigation, but not otherwise.

One of the points I am sure we will move on to is that the lack of own-initiative powers in the UK does restrict the capacity to pursue a complaint. Let us say you investigate a health board and find that there is a systemic problem, and you believe that the same systemic problem may exist elsewhere; you are not able to pursue that through the route of investigation; you have to take that up with Government or regulators. So there are issues about how far you can pursue systemic problems. By way of contrast, in my current position, I do have own-initiative powers.

Q67 Kelvin Hopkins: On investigating systemic problems, my impression is that Wales take these very seriously. Is it fair to say that you have more resource or give more weight to looking at systemic problems than the other two ombudsmen do? I understand that the Ombudsman is overwhelmed with cases, and there is always that problem, so what resource you can devote to reporting on systemic failures may be more difficult. You have said that a relatively small proportion of your resource is devoted to that, but it is important.

Dr Frawley: The difficulty that arises—and it goes to Peter’s point about regulation—is the limit on resources. We make recommendations in most instances out of a complaint, and some of them would address systemic problems. If there is a weakness in our system, it is the lack of capacity then to review whether those recommendations have been properly implemented and consistently implemented, and there is a challenge to get a joined-up relationship with regulators to make sure that, when they come to inspect or examine services, as is their responsibility, they are looking for the recommendations that the Ombudsman made, to see if they have been implemented. In the health service, when you get complaints about nursing practice or an issue that can be as generalised as dignity, which is hugely fundamental, as we know from some awful revelations that have arisen in the recent past, how do you go and inspect an issue like that? You can talk about people being trained or developing procedures and protocols, but you have to walk that space to see, in fact, if that recommendation has been given life. There is a real issue about how we link our recommendations, then, into the work of inspectors and regulators.

Q68 Kelvin Hopkins: Do you report privately to the authorities, or are these public, written reports?

Dr Frawley: Our legislation does not allow us to publish. The report is between the person who complained and the body complained of. It is a real limitation. One of the things that is currently being looked at by our own assembly in Belfast is modernising the legislation, because our colleagues in Wales and Scotland can actually go into the public arena and, where there is a public interest, emphasise the importance of addressing the problem they have identified.

Q69 Chair: Your legislation differs from each other’s, and differs from PHSO. What are the material differences that affect the way you operate?

Peter Tyndall: The legislation can be tracked historically; you can see change over time. PHSO is older legislation. It has characteristics that I think you would probably say in some instances would require modernisation.

Q70 Chair: In particular, what features would be required, in your view?

Peter Tyndall: From a personal perspective, access to the service is problematic.

Chair: We will come to that one later.

Peter Tyndall: It has tended to lead to an emphasis on doing a small number of very high-quality reports, whereas I think that the later bodies are more set up to deal with a greater percentage of the complaints received by way of report, or by way of letter or resolution. The Northern Ireland legislation—I am sure Tom will say this—is of similar vintage.

Q71 Chair: Shall we ask Tom? He is here.

Dr Frawley: I bow to Peter. In this sense, our circumstances are very similar to Westminster's. Our legislation, as I have said, is being reviewed.

Q72 Chair: Is that why it is being reviewed?

Dr Frawley: I think it is. Our colleagues in Wales and Scotland have very new legislation that is fit for purpose and fit for the time, and we have derived great benefit from looking at their practice. The arrangements in Scotland and Wales now will hugely inform how we go forward. In that sense, I think there are issues—the publishing, for example. The visibility of the office is hugely enhanced when you can publish the outcome of a complaint where there is a public interest. The public then become aware of your office. One of the real issues is our tradition that the Ombudsman should not canvass for complaints—should not be in the public space saying, “Have you had a bad experience with the health service? Please get in touch with us.” Actually, we wait for the complainant to engage with us.

Now, what we have developed is a very effective signposting arrangement, so that public bodies are required at the end of their complaints processes to refer the individual complainant to us, but we still find it hard to get traction and visibility. Just to give you an example, in Northern Ireland, one of our issues is that every time I open a newspaper, the headline is “The Ombudsman”, and I think, “Oh my goodness, we are finally in the press,” but it happens to be the Police Ombudsman, on whom there is a huge focus, understandably, in Northern Ireland. It marginalises my office in a way, which I have to be realistic about. We do have to address that issue.

Jim Martin: To your question, Chairman, the Scottish Parliament had the option of replicating the model in England when it created my office, and chose not to do so. It was a deliberate decision. My office is made up of an amalgam of previous UK ombudsmen coming to Scotland. I think the reason they did that is that the model in England is stuck in time. It probably was good for its time, but I think its time has passed.

In my office, for example, we will investigate everything that is fit for my office to look at. If something is out of jurisdiction, we will not do that, and if something comes to us prematurely, we will not do that, but everything else will get some form of investigation. We will also publish all our decisions, and we do that because every decision contains learning for public bodies. We encourage people—regulators, inspectors, public bodies themselves and the umbrella bodies for public bodies, and Government—to take the learning from our complaints. We have been set up, in a way, to make it as easy as possible for the vulnerable individual to get access to administrative justice without having to jump through hoops. We do direct access, we deal directly with people, we publish our

decisions, and because we take in the whole of the public service, there is less confusion in the public mind about where they can go to get something fixed.

Chair: That is very useful. Thank you very much.

Q73 Lindsay Roy: I have a quick question about jurisdiction; do you re-direct elsewhere?

Jim Martin: Yes. Probably about half of the people who come to us do so prematurely, for example, so my office will direct them where to go with their complaint, how to pursue that complaint, and we will very often tell the body that they are going to receive this complaint. If it is out of jurisdiction—for example, if someone comes to me with a pensions query, which happens quite often—we will then direct them to the Pensions Ombudsman, or wherever. That is a very important part of our job.

Q74 Chair: The PHSO does not do that.

Jim Martin: I do not know what PHSO do.

Peter Tyndall: In Wales, as well, the Complaints Wales service will capture the complaint that has come in, and pass the complaint on to the appropriate body, so that the individual does not have to come to one office and then repeat what they say.

Q75 Chair: Briefly, just looking at the health service, for example, in England, all the trusts are meant to have something called PALS, which is a sort of homeproduced complaint service. It is now mooted that there should be a national complaints service for the health service. Do you have something similar in your jurisdictions, or do they just come straight to you?

Dr Frawley: We would not have anything like that in Northern Ireland. We have the difference of having an integrated health and social care system, which means I look at both health and social care, so you can look at a patient or a client right through the spectrum of their care experience. The trust would deal with the complaint on the basis of a complaints procedure protocol that has been designed by the Department of Health, which they are required to utilise and demonstrate that they have complied with.

Q76 Chair: Can I just rephrase my question? I do not think it was specific enough. How does someone complain about, say, the health service or social care in Northern Ireland, Scotland, or Wales, compared with England?

Dr Frawley: I think it is very similar. They go to the body that they have had the negative experience with and explain what that experience was. The focus of the engagement should be about early resolution by the trust to try and give satisfaction to that individual. If that individual is not happy, most trusts have a two-level system, so then—usually around the chief executive's office—the complaints officer would hear the case. If they are dissatisfied, they have the right to come to the Ombudsman.

Q77 Chair: Does that answer do for all three of you?

Jim Martin: No. In Scotland, there are two things you should be aware of. One is that there is a Patient Rights Act in Scotland, which enshrines in law the right to complain and sets up a procedure around that, which might be worth looking at. Secondly, the process

for dealing with complaints in Scotland, if it goes to the health service, goes through a process called “Can I Help You?”, where people are encouraged to give feedback, comments, concerns and complaints. If a complaint is taken to the National Health Service, they have 20 days to respond to that complaint. If they cannot deal with it in 20 days, they must keep notifying the person involved of what they are doing, but by statute, they must also tell them that they can come to me at that point. It is quite a good system. For example, when my office read the Clwyd Report that came out of Mid Staffs, our view was that that would not take complaints in hospitals about the NHS in England to the same level as they would be in Scotland. There is learning that can be had across the four different parts of the UK.

Chair: It is very useful to point us in that direction.

Q78 Robert Halfon: As I understand it, the Ombudsman is still the last port of call. Do you think that should be changed, and it should be the first port of call? The experience of my constituents is that they spend so long going through the various people who they feel have let them down that, by the time they get to the Ombudsman, it is a very, very long time indeed. Would it not be better to have a reformed Ombudsman system, whereby the Ombudsman did the investigation at the beginning on behalf of the constituent?

Jim Martin: I have a very strong view about that. I think a body that is dealing with members of the public has a responsibility to those members of the public to put things right if they are going wrong, to learn from what has happened, and then to apply that learning. I think there is confusion in some minds as to what the Ombudsman is there for. The Ombudsman is there as an independent look at things that have not been resolved, and is—for a good reason—the final level of decision-making in that regard. If you were to take responsibility for complaints away from public bodies, you would need to have a very, very, very big Ombudsman service to deal with all of that. That is number one; secondly, ownership of the solution would not lie where it should lie at that point.

Q79 Robert Halfon: Regarding the MP filter, before the MP filter is used, often the MP is expected to act as a mini-Ombudsman, because MPs get written to all the time about various complaints that people have. The MP does not have the resources that the real Ombudsman has, and yet the MP is expected to act as one.

Jim Martin: May I make two points on that, Chair? I have never understood what you are filtering. I hear the phrase “MP filter”, but I am not certain where in the process you come in, what it is you actually filter, and whether you all filter the same things in the same way.

Chair: Was that a question?

Jim Martin: It was a statement. The second thing is that one of the things that we have done in Scotland, which I would ask people to consider, is that we were charged with putting all of the public services in Scotland on to a simple, standardised complaints process. Now, whether you are a local authority, a housing association, a health service, or whatever, there is a two-stage complaints process. The first seeks to get resolution in five days; the second, to investigate and resolve in 20 days. If that is not met, then people can come to us. One of the reasons that we put that in place is that we were finding that in local authorities, for example—and this will be pretty close to people’s hearts around this table—people were having to go through three, four or five stages within the local

authority before things could even get to that. It could take years to get through that process.

Q80 Robert Halfon: At the moment, if a constituent has a problem with a particular agency, often they may not feel that their complaint has been dealt with satisfactorily. They then write to the MP. The MP then writes to the agency; the agency then starts dealing with the issue properly, on the whole. Either the thing might be resolved, or it goes to the Ombudsman. Is it really the role of the MP to act as a mini-Ombudsman in that way? That is what, in reality, the MP filter is. The MP filter, to me, is not just referring someone to the Ombudsman if the constituent wants it. The MP is the Ombudsman all the time, because we spend so much of our casework acting on behalf of constituents to the agencies. How would you change that?

Jim Martin: Anyone who wants to come to my office, any member of the public, can come with the support of Members of Parliament—and people have done that—with the support of Members of the Scottish Parliament, with advocacy agencies, with lawyers, or by themselves. It is a direct route, and it is quick, and it means the complainant dealing directly with the Ombudsman. To put something in between the complainant and the investigation just seems like a barrier to me. It does not feel right.

Q81 Robert Halfon: Would all of you take away the MP filter? Do we need it?

Dr Frawley: In Northern Ireland, we do have the filter. We call it “sponsorship”, not a filter. The MLA, as we call the equivalent in our legislature, sponsors the complaint against Government Departments. That is under the Assembly Ombudsman legislation. Under the Commissioner for Complaints legislation, there is no sponsorship. That is confusing to the public, and the legislation that is being developed is intended to develop what we call this twin-track model. If someone wants to go to their local elected MLA, then they have the right to do that, but they also have the right to come directly to us if they prefer.

We should remember that some of these issues are very personal, private issues, if you look at healthcare and social care. It would be naïve of us not to believe that people are inhibited, therefore, if they have to go and share that issue with an MP or an MLA, and they should have the choice. I will always try and keep our legislature informed. The digest that Jim Martin has alluded to is a wonderful way to keep informed about how services are performing, and have a sense of where things are and are not working. I would go back to the core of your issue, which is that management in these locations must be made accountable to deliver high-quality services. We should not constantly be adding another bit of scaffolding to take care of the problem that has arisen. We have to be much more demanding of local management in these circumstances, and not take it away from them further by giving them yet another system that comes and engages with them. My concern in our system, quite often, is that it is the poor complaints officer who does all the work, because the senior people are much too busy to get engaged with these issues. It is that ownership that is critical, it seems to me, to get the sort of improving and improved public services we all aspire to.

Peter Tyndall: In the context of health in Wales, there is a standardised complaints system called “Putting Things Right”. It has only two stages, as has been described elsewhere: one where you attempt to resolve things at the point at which a problem arises, and one formal investigation. There is a lot of focus in the interaction between the Welsh

Ombudsman's office and the health boards on their performance in dealing with complaints. There are annual meetings, and more if necessary. There are annual letters that are published that talk about their performance, so there are ways of bringing focus on poor performance, but I absolutely agree with my colleagues that, in the end, organisations have to take responsibility themselves for what goes wrong.

What there is in the Welsh system, which is not used often enough in my opinion, is the capacity for the health board itself to engage an independent person in serious cases to consider a complaint. For a serious case, that person need not be independent of the health board; it may simply be that they are from another hospital, but I think that gives a degree of reassurance. Having that built into a system is the way to deal with some of these issues. Also, we need to keep that focus on performance in dealing with complaints. If people are taking a year or more to respond to a complaint, they need to be held to account for that. That certainly was not the experience in Wales.

Dr Frawley: I would also argue that our pattern in Northern Ireland is to send a complaint to the chief executive of the Trust, say, in health. I think we should send it to the chairman of the board, because the chief executive has already had an opportunity to resolve the problem. They patently have not done so to the satisfaction of the complainant.

Q82 Chair: Why do you not do that?

Dr Frawley: That is the model that we are beginning to develop now, saying that clearly, the management has had its chance. It is vitally important that boards take ownership of these issues, and it is not just seen as some sort of internal management piece. It is a core bit of their standing with the public they are there to serve.

Q83 Robert Halfon: Finally, should the Ombudsman be able to, in law, set the targets for agencies to respond to and deal with complaints?

Dr Frawley: I think so.

Jim Martin: Yes, and it is backed by statute in the Scottish Parliament.

Q84 Robert Halfon: At the moment, it is reliant on individual Parliaments. You think it should be down to the Ombudsman to set how the hospital, or whatever it may be, responds to complaints, and you then monitor how they are responding?

Dr Frawley: What is important is to exercise discretion. There may be circumstances where a delay is understandable—people on leave, people absent—but the onus should be on them to explain why that standard has been breached.

Q85 Robert Halfon: You believe that you should be not just helping people with their individual complaints, but monitoring the agencies to see how they are responding.

Dr Frawley: Absolutely.

Jim Martin: The way that I do it is that, through partnership, we work with each of the sectors—local authority, health, whatever—to agree what the process should be across that sector. We take account of things that may be particular to that sector and give a degree of flexibility. I then ask Audit Scotland, which is the equivalent of the National Audit Office, as part of their audit of these public bodies to audit their complaint-handling processes and

whether or not they have been applied. There is a kind of carrot and stick. Work with us to get it sorted, and that is fine, but on the other hand, it will be part of your audit.

Q86 Chair: Can I just ask a supplementary to all that? Our Ombudsman here is called the Parliamentary Ombudsman, and the Ombudsman is to be treated as an officer of Parliament. What is your relationship with your respective legislative bodies?

Peter Tyndall: The same. The Ombudsman in Wales is appointed by the Assembly, not by the Welsh Government. The budget is voted by the Assembly; it is not set by the Welsh Government, and the office is entirely independent of Government.

Dr Frawley: I am entirely independent of Government, but in the nature of the circumstances when I was appointed, it was the Office of the First Minister and Deputy First Minister that made that appointment in that process. It will be, in the new legislation, an officer of the Assembly, and the appointment will be made by the Assembly and ratified by two-thirds of the membership of the Assembly.

Jim Martin: I am appointed by the Queen on recommendation of the Scottish Parliament, not the Government, and can only be removed from office by the Parliament, not the Government.

Q87 Chair: We still have a rather antiquated appointment system. The appointment is made by the Queen on the recommendation of the Prime Minister, although we have somewhat subverted that by revolutionary means. In terms of what MPs are filtering, I think most MPs feel still to this day that they are preventing the Ombudsman from trampling on MPs' turf. It is our job to deal with the complaints of our constituents, not some empire-building Ombudsman, and we are filtering out complaints that really should not go to the Ombudsman, in theory.

Jim Martin: With respect, Chairman, the view that I would take is that the role of the Member is to be the advocate for the constituent. The role of the Ombudsman is to be the decision-maker on the complaint. I do not think Members actually make decisions on complaints; they seek to get decisions made. That is a very important difference.

Q88 Chair: Any other comments on that point?

Dr Frawley: No, I think that captures it rather well.

Q89 Priti Patel: I would like to discuss the whole issue of investigations. The cases are presented to you. You pick them up. How do you approach them? How do you define an investigation? What has been interesting, while we have been conducting this inquiry, is that of course, that definition seems quite varied, case by case. It would be interesting to hear, obviously, how you define an investigation, and how you communicate that back to members of the public.

Dr Frawley: What we have been doing is trying to refine it, in a way. I would argue that there are three elements to ours. The first phase, when we receive a letter, is the admissibility test: is this in our jurisdiction? Is it in the timeframes that they must be made in? That is done at the front of the office. We then move to what I would call looking at it in terms of an adjudication; in other words, "Is this a case that is resolved; where the person has had a good hearing, and the outcome the public body has made is a defensible one and a reasonable one?" Alternatively, it would go for investigation: "No, there are

issues here, and questions we need to look at in terms of the detail of how this was done and the processes applied to it.” That is when we would say that an investigation is now underway in this case.

Jim Martin: An awful lot is made of this word, “investigation”, in that it becomes less of a description of what is done when a complaint is brought in and more a matter of how we report things. I see other Ombudsman offices reporting the number of investigations. In my office, I would say that we investigate everything that is within our statute to investigate; not with a capital “I”. We investigate. The outcome of that would be either a resolution that we manage to arrange with a local authority or a Board, without having to go through all our full process; or it may be that we issue people with a decision letter, which is the end point of an investigation; or, if it is a very serious issue where I think there is serious injustice, a systemic failing or learnings to be had across the sector, we may lay a report before Parliament.

The process that we go into in each of these can be the same. It is how we report that is different, and the weight that I put on whether or not something should come to Parliament. For example, when I took over as Ombudsman four years ago, the policy in my office was to report every decision that we had and lay it before Parliament. I eventually baulked when I was asked to put a case to Parliament that had to do with a dispute over the construction of a six-foot garden fence. I could not believe that Members of the Scottish Parliament were waiting with bated breath to tackle this issue, but that did not change the way that we investigated the issues that came to us. What it meant was that it changed the way we reported the outcomes of these investigations.

Q90 Priti Patel: What was quite interesting is that, again, mainly through the evidence that we have heard so far from members of the public who have felt dissatisfied with the way their investigation has been handled—which, I appreciate, is separate to the definition of an investigation—a question has arisen with regard to what the communication process is with members of the public when you are looking at their cases, or looking at their investigations. Is it the written form? Is there any dialogue? What are the processes of interaction? If I may also add another question, where there is a degree of dissatisfaction from members of the public, who either do not like the outcome or think it has been thoroughly investigated, how do you approach that?

Peter Tyndall: Inevitably, if you speak to individuals who have not had their case upheld, they are more likely to say that it was a consequence of the investigation, rather than because the investigation came to the correct conclusion. That is an issue that every Ombudsman’s office faces, by their nature. Not every complaint that comes has been mishandled by the body that originally investigated it; in fact, a very large number of them would have been properly dealt with by the body concerned.

Taking the example of the garden fence, some complaints are simply to do with small matters that can be readily put right. When somebody complains to the office that the plumber has not come, you simply ring the housing association or council and get them to send someone out. They do not want a report, they do not want an investigation; they want their central heating working. Once you do decide to go through to an investigation, the practice in Wales was to ask people how they wanted to be communicated with, whether that was by telephone, by text, by email, or in writing, because a lot of people still prefer letters. The communication would be conducted on the basis of the person’s preference. If there were delays, there was a requirement on staff to tell people why there was a delay.

Sometimes you were waiting for information or you were waiting for a medical opinion, and it was just important that people understood why the delay was happening.

The one thing that there has been—probably in all three of the offices—in recent times is a bigger concentration on performance. In the office in Wales, more than 90% of people were told whether their case would be investigated or not within 20 days; similarly, all investigations were concluded within a year of the investigation starting, and those are things that we have all worked together quite hard on and sharing best practice on. If you are going to give the person the outcome they do not want, it is best that you do not spend a lot of time vacillating on it; that you actually look at it and engage, and explain why you are doing it, and do it early.

Jim Martin: In my office, we would contact complainants by telephone. The statute says they have to come to us in writing; we would take it just about any way. The way that we get to taking it in writing is that we will, in the conversations with the complainant, ask them what it is they are complaining about. Very often—you probably see these letters, like we do—you may get 25 pages of closely-argued text, and you are trying to work out what the actual complaint is. The first thing we do is agree what the head of complaint is, and that is what we will investigate. At the end of it, we will remind people “This is what you agreed we would investigate,” so that is clear. We will try to keep them as informed as we can of the process that we are going through.

You asked what happens if someone is unhappy. At each stage in the process, we will remind them that, when the process is complete, they can have a review of the decision that has been reached if they meet certain criteria. That does not mean to say that if you do not like the decision, you can have an appeal. In the system that I inherited in my office, you could have four or five appeals within the Ombudsman’s office, which was just silly. People can have one go. If you do not like the service that we have given to you—if we have been tardy in our responses, or if you do not like the way you have been treated—there is another process you can go through, which goes to an independent person to look at our service. It is interesting, because the number of reviews that we have had was running last year at about 5% of decisions where people asked for reviews. It is not a very high number. I think we upheld more than 50% of all the health cases that came to us, 40%-odd of local authority cases and 40%-odd of housing associations, so there are still substantial numbers of people who are likely to be unhappy with the decision. It is almost half, but not all of these people follow up the right to have a review.

Dr Frawley: The other thing that I would say about the circumstance I operate in in Northern Ireland is that scale is an advantage. There is no doubt about that. We have a population of 1.7 million people, so we have an opportunity to engage in terms of numbers that, when you look at the scales that the PHSO, for example, is dealing with—particularly in health—it becomes a very real managerial challenge, and designing solutions to that problem, I am sure, is very difficult.

One of the real strengths—and I say this without wishing to embarrass my colleagues on either side of me—is that there is a tremendously mutual, supportive environment now between the three of us in terms of learning best practice, learning what is working for people and what is making a difference, and then seeing whether this is applicable in our own context. Our staff would tend to spend a week or two days in different settings, in Wales or in Edinburgh, learning how they are developing and evolving their services. That sort of cross-fertilisation of ideas and stretches keeps us constantly looking for better

ways. Sometimes we live in a very isolated environment, and if we do not have that sort of engagement, we can get locked into the way we have always done it: “This is the way we have always done it.”

Q91 Priti Patel: Do you have a view on the PHSO’s approach, generally? For example, they are mooting investigating many more cases. What is your view on that in relation to public expectation, and the impact on citizens as well?

Jim Martin: It would be wrong of me to give a view on an organisation I have only looked at from afar. What I hear is a willingness to change and to look at how better to do things. We have had people from PHSO come up and look at our quality assurance programme that we have in our office, and one of the best examples of successful transition to better ways of working was with the Local Government Ombudsman in England, who I think you are seeing later. They have shown a willingness to learn, to move, and PHSO are trying to get there.

Q92 Sheila Gilmore: I wanted to pursue this question about internal reviews a bit more, and then there is another couple of questions I want to ask. I think Priti started to look at that. One of the things that causes a lot of anger for some members of the public, it would appear, is what happens if they feel that the Ombudsman has not dealt with their case. Do you see the internal review process that you were beginning to describe as dealing with how your service dealt with it, or re-looking at the decision that was made?

Jim Martin: In my office, there are a number of things that we do, as well as the formal review. In our quality assurance programme—our service improvement programme—we take quite a sizeable sample of cases and check the quality of the work that is going on and the decision-making generally. Everyone in my office operates with my delegated authority, so they act as if they were the Ombudsman. I will personally see every review. Every review that is conducted, I will personally see, and I will satisfy myself that the investigation has been conducted to the best possible professional standards; the decision that is come to is rational, is reasoned, and has been explained well; and that, in my view, the decision is correct.

What we will not do is reopen and reopen and reopen investigations, because, in my experience, one of the failings of my office when I took over was that, by continuing that internal review process, it led to us not being able to deal with cases in a timely fashion. Therefore, what I inherited in my office was around 100 cases that were a year old or older; some cases were two or three years old, some of which had been reviewed four or five times. It is very important to get a balance between having a fair assessment of a decision that has been taken and the process that has been applied, and not disadvantaging other people, because we all operate with small staffs and small resources. It is balancing that fairness, timely dealing with complaints and satisfying ourselves that the quality is appropriate.

Q93 Sheila Gilmore: Do you think it is good enough to have an internal review? Some people have voiced their feeling that an internal review is not sufficiently independent. Although the Ombudsman is independent of the organisations that you are investigating, people feel that internal review is reproducing the same actions.

Dr Frawley: I say these words reluctantly, but the reality is that there are vexatious complainants, as well: people who may have had a hugely devastating experience—I

would not in any way ever diminish how people feel about certain circumstances—but who are unable to move beyond it, and continue to come back and come back and come back. We will look in the way Jim has described, and we will engage with them in a constructive dialogue. We have, unlike Jim's situation, on three occasions this year reopened cases on the basis of it, and they are underway. I will not predict how they will conclude; they may change in their outcome. The core of it is that you could go on with the appeal process, and then someone says "I am not happy with that appeal, either. That was incomplete", and this can go on and on. There is a reality that the end point is the Ombudsman. If there are the assurances described in terms of the reviews and the openness to examine and re-examine the basis on which a decision is reached to make sure that it is proportionate and fair, and has taken in all the aspects, that is all you can do, and I am not sure what another appeal would add to that.

Peter Tyndall: I would absolutely echo those points. Our processes are all quite similar in these regards, in terms of linking quality to reviews, so that you have an intelligence about the standard of decision-making within the office. Fundamentally, at a certain point, you have to say, "This is the end point of the process." With some people, if the decision is not right, they are always looking for the next steps. They will put in Freedom of Information requests; they will make Data Protection subject access inquiries. They will use every avenue available. They will speak to you and so on, but in the end, you have to say "We have a process of administrative justice whereby complaints are dealt with within the body, then there is an adjudication externally and independently, and then, after that, there is a right of recourse to the courts." I think that is right.

Q94 Sheila Gilmore: Would the internal review be carried out by the section that has originally dealt with the complaint?

Peter Tyndall: No. The person, for instance, in the Welsh Office dealing with internal reviews is not otherwise involved in casework. They only look at reviews and quality issues, and I think it is the same.

Jim Martin: I personally see them all.

Peter Tyndall: That would also be the case. The other very important thing to say about this is that reviews are not done on the basis of "I do not like the decision." They are done on the basis that there are a set of criteria that people use: "Was there information that was material that was not taken into account? Was there information that has come to light since the decision was made that might influence it?" There is a proper process for establishing whether the decision was properly made.

Q95 Sheila Gilmore: Have any of you experience of judicial review?

Dr Frawley: Unfortunately—I say this with no pride—I do currently have three cases. For one, judicial review has been granted. One is at the Court of Appeal in Belfast; we won the original judicial review, and now the individuals have challenged that decision. A third has applied to the Supreme Court for a review of the Appeal Court decision.

Jim Martin: There has only been one in Scotland since 2002, and that was taken by a local authority against the decision of the then-Ombudsman, in order to clarify what the Scottish Parliament legislation meant for paying for, or not paying for, care for the elderly in a private setting. It was less to do with the decision that the Ombudsman had come to as it

was about getting clarity on what the statute actually meant. It was actually very helpful and very useful, I think, to everyone, but that is the only one we have had.

Peter Tyndall: In Wales, no case has reached court, but a number of individuals applied for permission to judicially review cases. In each instance, the judge, looking at the papers, determined that there was no basis for the decision to be reviewed; in other words, the decision had been taken correctly.

Q96 Sheila Gilmore: Some complainers have stated that, if they raise the possibility of judicial review, they are told that expenses would be sought by the Ombudsman in the event of the judicial review failing, and they feel put off by that threat, if you like.

Dr Frawley: As I say, for people in Northern Ireland, currently, the cases are running. That is a judgment for the court to make, as to whether expenses will be awarded. My view is that if it was an individual complainant, I would doubt if the court would award them.

Q97 Chair: How much would you expect your staff to try and discourage judicial review by informing the complainant that they are going to get clobbered with the costs if their judicial review fails?

Dr Frawley: I would find that unacceptable, and I would direct them against that. At the end of all our outcome letters, we put in—if it is obviously a rejection of a complaint—“You have the right to take this matter to the courts, and we recommend you take legal advice, if that is the course you wish to take.”

Peter Tyndall: It is the same for us.

Q98 Sheila Gilmore: I have a couple of questions, particularly to Mr Martin. The impression you gave was that the Scottish system, for example, with health complaints worked really quickly. I have a number of cases where people are in that process—with the health service, not with yourselves—for upwards of 18 months to two years. Are you aware of that?

Jim Martin: Yes, and we find against them when that happens. The system that was put in place—which by and large works, actually—allows that they have 20 days in which to come back to your constituent. If, in those 20 days, they cannot resolve the issue, they have to explain why, and it can continue. I have had cases in Lothian health board—and also in Fife, actually—where what has happened is that, as part of the complaints process, meetings are held with patients and their families. More information is sought and another meeting is held, then another meeting is held. People do not actually get to the point of making a decision about the complaint, because there are all kinds of accommodations being found, and I try to discourage the health service from overdoing that. It is very good that they engage and speak to people face to face, but they have to make it very, very clear that there is a statutory process that they are going through for complaints, and that the people coming to them must be aware of that. I am not always sure that they are made aware of that, but where we find a case like that, we will find against the health board.

Q99 Sheila Gilmore: In terms of the standardised complaints process that has, I think, been put in place, is it your intention to review that at any point?

Jim Martin: At the end of this year, the Scottish Government, all the local authorities, the housing associations, universities, and everybody else will be on that. Next year, we intend to work with the National Health Service to review their complaints process, and it will be reviewed and reported on annually.

Q100 Chair: Our PHSO is very dramatically increasing the number of investigations, and that has raised the question of what constitutes an investigation. Just briefly, at what stage do you decide, “This is going to be an investigation,” and how does that differ from each other and from PHSO?

Jim Martin: In my office, we will look at a complaint when it comes in, first of all, and decide whether or not it falls within our jurisdiction and if we can look at it. In a short period of time thereafter, our Early Resolution team will look at it and decide whether or not it can be resolved quickly. If it cannot be resolved quickly, it will be passed to another team who will then go through the investigation process, and the complainant will be informed at each stage what is actually happening.

Dr Frawley: Our process would mirror that. It goes through the three phases. We have two criteria. One is the jurisdiction, and there is a time limit in which people can also apply, although I can exercise a discretion if, for example, there was a frail person who did not understand the way in which the complaints process worked. If someone did not become aware of an issue until a timeframe that was within the legislation, then I also could exercise discretion. Beyond that, then, we have this adjudication process, where we are looking for early resolution or we are looking for an outcome. If that is not forthcoming, we will go into the investigation mode.

Peter Tyndall: There is a single team that looks at all of those issues at the front end: “Is it in jurisdiction? Is it capable of early resolution?” Anything where it is not capable of early resolution, it is within jurisdiction and there is evidence that there may have been a failure gets passed out for investigation to one of two investigation teams.

Q101 Lindsay Roy: You have covered some of my agenda already, but I have two questions for Mr Martin. The first is: what were the resource implications in introducing the Complaints Standards Authority?

Jim Martin: “Complaints Standards Authority” is a very grand term for what we do. When we set it up, there were three people in my office who were responsible for putting in place standardised complaints processes across the whole of the public sector in Scotland. Indeed, when Professor Lorne Crerar was brought in to show the outcome of his work that he began and the three people came into the room, I remember him saying to me “And how many people do they manage, Jim?” Well, they do not. That was them, and it was achieved by partnership with the bodies and trying to get bodies to own the process. Indeed, one of the Complaints Standards Authority teams is here today, listening.

Q102 Lindsay Roy: How effective has the process been?

Jim Martin: I think it has been exceptionally effective. All of the chief executives I speak to in health, in local authorities, in housing associations and everywhere else tell me that it has refocused them on the customer, on the vulnerable people, and it has made them understand again that the place that complaints should be resolved is not with the Ombudsman; it is the front line. Where something happens, as quickly as possible, resolve

it there and then, and it is leading to that culture. I am quite pleased with the way it is going so far.

Q103 Lindsay Roy: You have invested a lot in training. Can you tell us how that training capacity works?

Jim Martin: My training unit is one person. We take people from casework. We did 71, I think, face-to-face courses this year with bodies under jurisdiction. We have produced e-learning materials that are now being used, I think, by all the local authorities in Scotland. They have been used in the health service in Scotland. Indeed, local authorities in New Zealand are using our training material, as I understand, and I believe the health service in England is looking at some of the training materials as well. It is not a labour-intensive process. If you can get it right, and use the technology that we have today, then you can achieve a great deal with very, very few people if they are committed, they know what they are doing, and they have something that is of value to the bodies of the jurisdiction.

Q104 Lindsay Roy: Is there a big buy-in from local authorities?

Jim Martin: Yes.

Q105 Mr Turner: To what extent do you think a single portal for complaints has been a useful innovation in Wales and Northern Ireland?

Peter Tyndall: The Complaints Wales process means that complaints that are not within the jurisdiction of the ombudsmen that might be within Wales—for instance, it might be within the jurisdiction of the Parliamentary Ombudsman, or the Police Complaints Commission—can go to one place, even with complaints about utilities and so on, which people still think of as public services, even though they are provided by private bodies. There is a negotiated arrangement with both the service providers and the various complainthandling tiers, other ombudsmen and so on, to accept the complaints as properly made when they are received. It has proved a very successful way.

The evidence suggests that people put a lot of energy into complaining and picking the phone up. It is hard, and if you have to repeat that process, you lose an awful lot of complainants. Making it easy for people to complain is straightforward: having a good website, having a good telephone system and also recognising that some people still prefer to communicate in writing. If you are in Wales, anywhere except Llandrindod Wells, this month, you will see adverts for Complaints Wales on the back of the buses, right across Wales. It has had radio advertising campaigns; it has been trying to say to people, “If you have got a complaint about a public service, you can go directly to them. If you do not know how to do that, you can come to this service, and it will put your complaint to the people who need to deal with it.”

Q106 Mr Turner: What about Northern Ireland?

Dr Frawley: We do not have the sophisticated model that the Welsh have. We would like to develop it, and our Government is looking at it. Government Departments are now very close to opening a single portal for complaints about any Government Department, or any Government agency. I have recommended to the legislature that they consider locating that portal in our office and mirroring the Welsh model. You get tremendous advantage from it.

You get people, as Peter has said, advised at a very early stage about how to process their complaint. Their complaint is then taken on by someone who puts it in the right place, and they are immediately engaged and it is logged, and one can track those complaints going forward. That gives you a quality and a consistency that is hugely important, because what you find, I think, is that some public bodies are very good at this; others are not very good at it. It is hugely important that geography should not be a disadvantage, and that because you are complaining and you maybe are not as articulate as someone else, you should not be disadvantaged. Having that standardised approach is absolutely the way to go.

Q107 Mr Turner: What would it look like if we had one in England?

Dr Frawley: What do I think it should look like?

Mr Turner: Would you support it, or not?

Dr Frawley: I would. I do think there is confusion, in terms of local government and the Parliamentary Ombudsman. You do need one focus for people. You can then organise internally the complaints-management handling of the Ombudsman's office, but I think having different ombudsmen for different activities and different functions makes the system highly complex for the public and relatively impenetrable.

One of the issues I would have, for example, is that even with all of the facilities that Jim and Peter and myself will describe, we have to be honest and open, and say there are many people with very real complaints that are not reaching us. There are marginalised people; there are people with learning disabilities; there are people in mental health settings; there are people with disabilities living alone and isolated. I would always argue—I do not want to be offensive to some—that the chattering classes know how to complain. Sometimes ordinary, very vulnerable people have no idea, and we make it very difficult for them. That is an issue that needs to be standardised, and it would be standardised much more easily with one single office, as distinct from trying to take that forward at three different levels and in three different places.

Q108 Mr Turner: Could I just ask Mr Martin what his view is on this, and particularly of allowing the private sector as well as the public sector to be directed on matters in Wales?

Jim Martin: There are two things I would like to say to that. The first is that, if I get the drift of your question, if you were trying to replicate what the three of us do in England, the one cautionary thing I would say to you is, do not confuse the role of the UK Parliamentary Ombudsman with an English Public Services Ombudsman. It is very important to remember that the UK Parliamentary Ombudsman is a UK function, not an English function, and it has to be looked at and dealt with—however it is dealt with—in that way.

Q109 Chair: Could you just clarify that before you go on? Do you think, therefore, we need a PHSO, a Parliamentary Ombudsman, and we need a Public Services Ombudsman for England?

Jim Martin: I think what I was saying, Chairman, was that were there to be a decision to go down the road of creating an English Public Services Ombudsman, it would be very important to remember that currently within the PHSO, there are two bodies. There is a Parliamentary Ombudsman, which is a UK body, and the Health Service Ombudsman,

which is an English body. You have to make sure that you do not put the UK as part of an English Public Services Ombudsman. It has got to be thought through.

Chair: That is a very interesting point. Thank you.

Jim Martin: I am sorry: the second point that you asked about was the public/private thing?

Mr Turner: Yes.

Jim Martin: We currently look at some private matters just now, because we can take commercial water complaints in my office, so we will take business-to-business water complaints. My only concern would be that, if we were to arrive in a situation where we were underpinning a private sector Ombudsman's service with public money, that would concern me greatly. Models can be put in place and managed to deal with these things. I do not have as many qualms about using private sector money for public sector complaint resolution, or siphoning it off or skimming, or whatever the technical term is. I have no problems that way, but I would not want an already tight public purse to be used to sponsor a private sector service.

Q110 Priti Patel: I am interested in the unified service that you provide, and the fact that you have various organisations talking to each other or working together collectively, which is obviously very good. Would you be able to share some insights into how those parties were first brought together to work with you on the complaint handling and the investigations approach?

Dr Frawley: In Northern Ireland, what we have is that the Head of the Civil Service, on the basis of us publishing complaints-handling standards and principles of good complaint handling, brought his Permanent Secretaries together, and they began to recognise that it made no sense whatsoever that they all had differing processes, different levels of intervention; their complaints handlers were in different grades and standing, and so on. They have been investing a lot of energy to create a single complaints model for all Government Departments, and a significant part of their responsibility, also, is in public service agencies. They came together with common cause, brought together by a leader who thought this was an important public policy issue.

In the health service, by its nature, they work together anyway, and they have been creating a shared approach. One of the things that, increasingly, is now required by the Minister of Health is that individual trusts will publish their performance on complaints. Again, the big issue is not so much the trusts, but the primary care system is now a huge issue, which has tended not to have complaints made about it in the past, in my experience. Increasingly, now, it is beginning to emerge as a particular problem. One of the challenges there is that individual practices can be very autonomous, very independent. Trying to get standards and systems into that part of the healthcare system is proving a challenge, but again, I think the Department of Health is specifying that as an area of improvement. It is about leadership; it is about common cause; and, equally, it is my impression that people do not want to work in services that are measured "failed". People want to do good work in good places, and that is something leadership needs to harness, rather than have this rather defeatist issue of "It does not really matter."

Q111 Greg Mulholland: I will try to be very brief. I really want to go back to Mr Martin's very interesting point, which I think is one that we must pursue. In a sense, part of the whole mess of the incomplete devolution process is that, as you said, we have an Ombudsman that on the one hand has a UK function and, on the other, an England function, which is a bit of a mess to start with. I would like you to tell us, please, what you mean by the UK Parliament function that you believe could not be done by an umbrella Ombudsman. Assuming you are going to stay in post, that would have to be done by an English Public Services Ombudsman that would do everything, so what would we lose, and what would then not be done by an English Public Services Ombudsman but by you gentlemen?

Jim Martin: Can I preface my remarks by saying that I do not have a solution to the West Lothian question?

Paul Flynn: Yet.

Jim Martin: Yet. I think I have, but I have only ever shared it with Tam Dalyell. The issue I am trying to raise with you, or put in your minds, is that the various devolution settlements that have happened in the United Kingdom have left the United Kingdom Parliament with reserved powers in certain areas, and the other Assemblies and Parliaments with devolved powers. In Wales, Northern Ireland and Scotland, we are responsible for looking at the Ombudsman's role in a devolved setting, but not the reserved powers. That is a matter for the UK PHSO, the UK Parliamentary Ombudsman.

If you try to replicate what we do for English public services—the English health service, English local government, or English housing—and create a body to do that, which may be a sensible thing to do, my caution to you is “Please remember that part of what PHSO does is a UK function, and part of what it currently does is an English function”—that is, the Health Service Ombudsman part. How that UK function is then carried out—how you have an Ombudsman who can deal with complaints people have about UK Government issues—can be addressed in many ways, but I would suggest to you that the wrong way to address it would be to assume that the UK Parliamentary Ombudsman could be part of an English Public Sector Ombudsman operation.

Peter Tyndall: Chair, it might be worth contemplating that there are probably three ways of doing it, broadly speaking in models. One of them would be to have, as Jim is, I think, describing, an English Public Services Ombudsman mirroring the devolved functions ombudsmen in the three devolved countries, with a UK Parliamentary Ombudsman dealing with non-devolved matters. That is one model. The other one is to combine the two, and I think that does cause constitutional difficulties, personally. I think that is problematic, to have a body that is England at one level and UK at another. That does not work for me, and also it has the difficulties.

One of the other solutions, the most radical solution, which is probably worth thinking about, is the question of simply “Why not ask the Ombudsman”—and I am no longer an Ombudsman in one of the devolved countries—“to deal with all of the complaints that arise about public services there, and report to the two Parliaments? Report to this Parliament in respect of complaints that are reserved, and report to the Scottish or the Northern Ireland Assembly in respect of ones that are not.” That way, the public gets a completely joinedup service in England, Wales, Scotland, and Northern Ireland. You have a single Ombudsman to go to who can deal with all the public service issues, and I think that sometimes it is worth thinking the radical thoughts. Of course, it is easier for me to do that.

Q112 Chair: Before we go on, I just want to finish on this point. Until we resolve the West Lothian question, the United Kingdom Parliament is straddled in that position, that we are a United Kingdom Parliament but we spend most of our time talking about domestic things in England, which is clearly very unsatisfactory. Are we not putting the cart before the horse if we try and resolve that in the structure of ombudsmen? Do we not need to resolve it legislatively, or constitutionally, first?

Jim Martin: I think you would know more about that than I do, Chair. The reason I raised it was, having looked at the evidence given to the Committee and some of the questioning from the Committee, it seems to me that the creation of an English Public Services Ombudsman may be something that people are thinking about. One of the things you have to do, if you are doing that, is to be very, very careful of what the impact of creating that body would be on the general landscape, particularly as regards the UK Parliament. Peter has a number of solutions there. I am not sure which one I would prefer, but I am sure, if you go down that route, that would be something the Committee could spend some time thinking about.

Dr Frawley: That is right. I would acknowledge that. At the end of the day, it is possible to develop models, as Peter says, and I take your point: if we wait until there is a full constitutional settlement around the West Lothian question, etc, etc, then this would take a long time to do. I have had the—very limited—experience that, when the Assembly in Northern Ireland was suspended, then the Ombudsman reported into Westminster in that time.

Chair: That is very interesting.

Q113 Greg Mulholland: The point you just made, Mr Tyndall, is fundamental. The question I would like to ask you from that—going back to your point—is “Why do we need a UK Parliamentary Ombudsman?” Surely, should not the Ombudsman be the citizens’ Ombudsman? It should not be the Parliamentary Ombudsman at all. Should it not be the citizens’ Ombudsman? I believe that you would see yourselves, or did see yourselves, as the Ombudsman for the citizens of Scotland, Northern Ireland and Wales. Why are we getting stuck in this constitutional thing, when what people actually want is someone to go to who can deal with complaints about all public services? Is not the solution, then, to stop there being a Parliamentary Ombudsman, do away with that rather false distinction, and have a system—we are going to keep the devolved system, presumably—where people are clear that there is one Ombudsman in their jurisdiction to go to?

Dr Frawley: I would say to you that I do not see myself as the citizens’ Ombudsman. I see myself as standing between the citizen and the public body, acting fairly between both, being independent, making a judgment in terms of what is in front of me, and not just making a judgment in favour of the citizen in that sense. I see myself as an instrument, or an officer, of the legislature who are interested.

I use the analogy that the Comptroller and Auditor General in Northern Ireland looks at what happens with the money, the propriety and the way in which the money is applied. The Ombudsman looks at the experience of individual citizens, in terms of what that money delivered. Did it deliver what Parliament intended when it made the judgments? We can give a unique insight into the experience of individual citizens. That is why it is very important that we share our insights and our reports, when it is appropriate, with the relevant Select Committee. We can offer a very interesting perspective on a healthcare

system, on an environmental system or on a local Government system that is unique. It surprises me sometimes that the Ombudsman is not scheduled into these meetings routinely—and it is not any different in Northern Ireland—to share our advice and our insights with the Committees, as they then interview officers and officials from Departments. I do not see myself just as the citizen's advocate.

Jim Martin: One of the great advantages of having to create a new Parliament in Scotland was that it forced us to look at the governance of Scotland. One of the things that happened in 2007/8 was that there was a committee established to look at the cluttered landscape of scrutiny, complaints bodies and what have you, and then address that and say “What is it that we need?” I see the work that you are doing here as replicating that. The kind of questions you are asking are the questions that the committee need to grapple with. As Peter said, there are many solutions to this issue, but being the “UK Parliamentary Ombudsman” does not mean that it is Parliament's Ombudsman. It describes the kind of work that that Ombudsman can take on. It is the work relating to the UK Parliament.

Greg Mulholland: Ours is the Parliamentary Ombudsman. Legislatively, it is the Ombudsman of Parliament.

Jim Martin: In my view, we should work from the citizen up. How can we make it as easy as possible for the citizen to get a resolution to their problem in time, and how can we make ourselves accessible? I think, last year, 78 constituents went to the PHSO from Scotland, so it is not a huge number. It would not be a great burden on us, but is it the best way to get consistency? I am sure the Committee will think about these things.

Chair: Mr Tyndall, briefly, if you can. I am sorry; we are running short of time.

Peter Tyndall: I can only echo what Mr Martin has said. I think it is absolutely the case that we need to make it easy for people to get resolution to their problems, or an explanation of what happened. That has to be the starting point for designing any process.

Greg Mulholland: Can I just say that it is the reality for us as a Committee, Chair, that we should look at to what extent the Parliamentary Health Service Ombudsman is a UK Ombudsman, or not.

Q114 Chair: I would agree with that. Can I just ask one other thing? Dr Frawley, you talk about sitting alongside the Select Committee Chairman and helping with the scrutiny process. How are you scrutinised by the Parliaments that you serve? They cannot be the same bodies.

Dr Frawley: I accept that, and my argument is, with the new legislation that is proposed, in terms of my funding and my resources and my performance, I will come before the Audit Committee of the Assembly. Then I will report my work and my case outcomes to relevant committees across the Assembly. There will be one committee that would work with me and alongside me in terms of the overall performance of my work, and my work programmes etc.

Q115 Chair: We are the public services committee, if you like; the cross-departmental Public Administration Committee. We also scrutinise the performance of the Ombudsman. Which should we do? Hand the scrutiny role to the Estimates Committee or

the Public Accounts Committee? Should we keep the scrutiny role and hand all the rest over to the other Select Committees?

Dr Frawley: That is a judgment. I think the scrutiny role should be your focus. You need to look at that in the round.

Chair: The scrutiny of the Ombudsman?

Dr Frawley: Yes.

Peter Tyndall: In Ireland, there is a Joint Committee of both Houses for the Ombudsman, which looks specifically at holding the Ombudsman to account, if you like, but then the issues around learning get fed into the relevant subject committees.

Jim Martin: Tomorrow morning, I will be going to the Local Government Committee of the Parliament, with my annual report. If they approach it the same way as they have done in the last two or three years, they will interrogate me quite strongly on our performance. That is one committee that I have to go to every year. I am funded by the Scottish Parliamentary Corporate Body, to which I have to go, to justify the spending and resourcing decisions that I make. So I have two bodies within the Parliament who scrutinise my activity, but I do not have a supporting committee. I do not have a committee that is there to support me; I am there to be scrutinised by Parliament.

Q116 Chair: Do you think that is something that is lacking? We are both a support committee and a scrutiny committee. What is it you lack not having a supporting committee?

Jim Martin: I do not think I lack anything. Where I want to be with Parliament is that I want Parliament to listen to what I have to say, but at the same time I want Parliament to show the public that I am managing the business of the Ombudsman appropriately. I do not need a supporting committee to do that.

Peter Tyndall: Broadly speaking, if you take the relationship with the Auditor General in most situations, there is clearly a holding to account, but also using that information to hold the administration to account. Collectively, as ombudsmen, both here and more widely, that latter part, which is making use of the intelligence that derives from the investigations of Ombudsman services, is less well-used to hold administrations to account than it should be. In balance, as has been described, properly there is a focus on holding the Ombudsman to account, but the other side of that coin seems to be less well-developed.

Q117 Paul Flynn: Dr Frawley, one of your answers echoed one of the backbenchers' 10 Commandments, which is: neglect the rich, the obsessed and the articulate, and seek out the silent voices. Would it help your role to serve those with silent voices if you had own-initiative powers?

Dr Frawley: Seeing as we are pressed for time, yes.

Q118 Paul Flynn: Is this practical for you to do it? Is it a major concern?

Dr Frawley: No, I would say that, like all such powers or authorities, they should be used sparingly and in a very targeted way. They should be evidence-based, not just on a whim, "I think I will go and look at that." We need to look at where we target that resource, and invest very carefully what would be a very scarce resource in terms of expertise on issues.

I remain, because of my background in health in the past, deeply concerned about the lack of complaints from people, as I have said, such as those with learning disabilities.

Q119 Paul Flynn: Does the cross-fertilisation between the three of you extend to knowledge of and working with the Ombudsman in the Netherlands?

Dr Frawley: Peter would be better-placed to answer that question as a member of the International Ombudsman Institute board with Alex.

Peter Tyndall: I have quite close links with Dr Brenninkmeijer and his office. They have clearly taken an approach to resolving complaints through mediation to a much greater extent than is the case traditionally in the UK and Ireland. In terms of own-initiative powers, my current role has own-initiative powers; it is used sparingly. The greatest frustrations in Wales came not from being unable to go and look for complaints, but from not being able to pursue the issue beyond the complaint. Say you had a complaint about a particular thing in Newport, and you thought, “It is likely to be happening in Cardiff; it is likely to be happening elsewhere.” Without own-initiative powers, you cannot widen the investigation to look at the practice of other bodies. That is a failing, and it needs to be addressed. It is worth saying, not just in the Netherlands but in virtually every other European country, all ombudsmen have own-initiative powers. The UK is virtually unique in requiring an Ombudsman only to investigate when there is a valid complaint.

Dr Frawley: One example, Mr Flynn, that really captured it for me in the Republic of Ireland was a very narrow issue, but a hugely significant issue. It was the personal monies of people in nursing homes. These were monies given to elderly people by the state so they could buy comforts like newspapers or cigarettes, or whatever they were—small things. The Ombudsman discovered, in two cases, this money was being applied to offset the maintenance charges. He then said, “I am going to do a systemic inquiry”, and he found, in all health boards, this was practice. None of this money was reaching the purpose for which it was intended; without that own initiative, that would not have been possible. That had to be made good.

Paul Flynn: I am very grateful to you. Thanks.

Chair: I think we have reached the end. It has been a very full and informative session. Can I thank you very much indeed? You have left us with some dilemmas to wrestle with, and I do not think the Committee is by any means resolved one way or another, and it has been very helpful to hear your view on these questions.

Dr Frawley: We thank the Committee for inviting us. We would be delighted to give any further advice and support to this important work if you should require.

Chair: Please do send in any supplementary notes into the clerks, which we can then take as evidence if thoughts occur to you. Thank you very much.

Examination of Witnesses

Witnesses: **Dr Jane Martin**, Local Government Ombudsman, **Adam Sampson**, Legal Ombudsman, and **Tony Boorman**, Deputy Chief Ombudsman, Financial Ombudsman Service, gave evidence.

Chair: Thank you very much for being with us. I am sorry; in reality, we have squeezed your time. I apologise for that, but I think I have met each one of you previously and I am very grateful for that. If we do not cover any points you want to make, please do submit them in writing so that we take them as part of our evidence. I am going to skip one or two questions. Can I ask each of you to introduce yourselves for the record?

Tony Boorman: My name is Tony Boorman, and I am the acting Chief Ombudsman of the Financial Ombudsman Service.

Dr Martin: I am Dr Jane Martin, Local Government Ombudsman.

Adam Sampson: Adam Sampson, Chief Legal Ombudsman.

Q120 Chair: How do you think members of the public's expectations about how complaints should be handled are changing?

Tony Boorman: There is a move, certainly, in the complaints that we see from customers, first of all, to expect a much more informal and rapid system of investigation, consideration and decision. I was slightly perturbed, if I am honest, by the previous session, where there was a lot of focus on stages of complaint. Our experience, to mirror some of the evidence you heard earlier on, is that every stage of complaint tends to see people fall out of the process, and usually it is the more vulnerable customers who fall out earlier on. One of the journeys that we, certainly at the Financial Ombudsman, are going on, is to investigate how we can assist customers in their complaints journey at the earliest possible opportunity, and to ensure that there is an active and informal process for doing so.

Dr Martin: Research that we have had done for us amongst complainants demonstrates that they have very, very high expectations of our services, and ours is no different. That does mean that they want a very good service; they do want speedy decisions. They want to be kept informed as to the process. They want openness and transparency in our organisations and speedy decisions. Those expectations have always been there, but I think they are increasingly heightened. Also, people will hold us to account, so they expect us as organisations to be held properly to account, and for us to hold others to account, where there is poor service.

Adam Sampson: Echoing that, I would probably say two things. First of all, if we limit our conversations to those who believe they have a complaint, those who have conceptualised what has happened to them as a complaint, we actually edit out a significant number of people who regard themselves as having a problem, who have had a negative experience with a service, but have not quite formulated that into a complaint. A lot of the people we see—I suspect the same is true in particular in public services, and it was certainly true when I was setting up the Prisons Ombudsman Office—are not sure whether they have a complaint or not. They are not sure whether they have had what they should expect. It has not felt right to them, and very few of those actually go so far as to conceptualise themselves as having a complaint. Secondly, I have noticed, moving from a public sector

Ombudsman in the past, to a private sector Ombudsman, the extent to which the expectations of how people's complaints are handled, to a degree, mirror the sector from which the complaint has originated. If you are working in the private sector, you have private sector expectations of how the complaint will be handled: speedy, modern and so on. We had less of that sort of expectation in the public sector, where the complaints handling process was seen as being potentially different.

Q121 Chair: Very good. I have discussed with one or two of you the EU directive on alternative dispute resolution. How is this going to affect public sector ombudsmen?

Adam Sampson: Initially, very little, but part of the subtext of the conversation that was going on before is the fact that the boundary between public and private is beginning to blur, as public services are contracted to the private sector, and as people begin to make financial contributions to the purchase of those public services. The minute there is a financial transaction involved, then the directive becomes engaged, so I suspect that some of Jane's work will fall under the EU directive; it may well presumably—some of the care home work, Jane?

Dr Martin: Would you like me to tell you about it?

Chair: I love this co-ordination of answers.

Dr Martin: You will be aware that, since the Health Act 2009, effective from 2010, we have had all social care providers in our jurisdiction. We have thousands and thousands of registered providers in our jurisdiction, and we have dealt with that, I hope, seamlessly over the last couple of years. As I understand it, the ADR directive is simply in one sense designed to make sure that anybody who is in receipt of goods and services has a proper route to complaint and to redress. All I can say is that people already have that, because they have the Local Government Ombudsman as effectively the social care Ombudsman. Our jurisdiction was extended in the Health Act precisely to make it simpler and clearer, and to have that one-stop approach to all adult social care complaints, and that is what we have been operating for over a couple of years now.

Tony Boorman: I am not sure I have much to add. The directive provides a useful assurance that we are all acting in a way that meets our basic requirement to deliver good public service as a complaint handler.

Q122 Chair: Are we saying that the directive as far as the UK is concerned is rather otiose?

Adam Sampson: It depends how the directive is implemented. From my perspective, the directive provides an opportunity for Government to consider the provision of alternative dispute resolution across the piece, and to simplify, and to streamline. The conversation earlier on seemed to get caught up in the notion of ombudsmen as individuals, rather than ombudsmanry as a function. I think the distinction between Tony and myself is that, although we are the holders of the Ombudsman title, in practice there are a dozen ombudsmen within my office, all of whom have delegated authority to make decisions, and Tony, you must have hundreds.

Tony Boorman: 200.

Adam Sampson: Absolutely. We are less ombudsmen as individuals. We perform the function of ombudsmanry. The ADR directive provides the opportunity to simplify, to think about the system of ombudsmanry rather than a whole series of individuals called ombudsmen, and to think about what their shape and remit should be.

Q123 Chair: What is your greatest concern about the application of this directive?

Adam Sampson: That the opportunity is missed, or it is implemented in a way that merely adds complexity to an already complex system. Let me give you an example: the minimum that the Government will have to do is to set up a residuary complaints handling body, reporting to a competent authority, and leave the rest of it untouched. That residuary body could, for example, start taking complaints in my space, about unregulated will writing, or unregulated legal services. That makes it even more confusing for a consumer who thinks they might be coming to my space, but actually end up somewhere else. It is already, as we have discussed earlier, very confusing, not just for some of those described as—

Q124 Chair: What is the solution to that?

Adam Sampson: A single portal, at the very least, and a long-term vision towards the simplification of the Ombudsman landscape.

Q125 Priti Patel: I would like to talk about the whole issue of investigations. I think, Mr Sampson, you mentioned that many individuals are not sure whether or not they have got a complaint, so they are going to come to you. How do you define that investigation? How do you then take it further? How do you then communicate with the individual in question?

Adam Sampson: One of the advantages that we have had in setting up a scheme relatively recently is that we are able to take advantage of technology. We use telephones routed through an IT system, so there is a digital trail, so we can have satisfactory phone conversations. Those will do two things. First of all, those will test out which of the complainants coming to us fall within our formal jurisdiction, and like all Ombudsman schemes, we have tests to do that. Once we are aware they are through our jurisdiction, we will—as has been explained earlier—try to identify precisely what the complaint is about, and what the complainant wants with it, and then we will investigate every single complaint that falls within the scheme.

That does not mean to say we mount a 12-month serious investigation, but we will look at it. If it turns out there is really nothing in it—bear in mind these are legal services, people do not often know whether what has happened to them was good or bad service—if it is very simple, and they really do not have much ground for complaint, we will try and explain that to them swiftly and bring it to an agreed end. If, on the other hand, it is very complicated, we will go through the full process, which may take up to six months, but generally only takes three. That will include a written decision or a written report by an investigator, and if either they or the lawyer disagrees with that, then that will go to one of our Ombudsman team for a final and binding decision.

Tony Boorman: Our process is fundamentally exactly the same; indeed Adam's business was modelled on the Financial Ombudsman, so not surprisingly so. I would caution that we end up using quite technical language in some of these cases. I will just repeat what Adam said by saying we have a chat with the customer to find out what they are unhappy

about, then we probably have to have a quick chat with the business, with the solicitor to see what their side of the story is. We have a little think, and then go back and we say, “We kind of think that actually, that was good, that was not so good.” You can call that what you like. You can call it investigation, you can call it mediation, you can call it a whole raft of things. I think it is just sorting out the problem intelligently and pragmatically. We are charged with being an informal service; we are an alternative to the courts. It is an important part of our role to make sure we stay an informal service.

Q126 Priti Patel: I completely understand how you have just explained the service. How do you manage public expectation in terms of what they think they are therefore going to get out of the service?

Tony Boorman: People who come to us come to us for a whole raft of reasons. You might be complaining about the fact your business was sold an interest rate derivative, which the bank will charge you £1 million to get out of. You might be simply saying that something went wrong on your current account that was a bit inconvenient; the person in the bank was a bit rude to you. We set expectations on an individual basis.

Priti Patel: Case by case?

Tony Boorman: A case-by-case basis. We have a dialogue with the customer and with the business, and say, “This looks like an easy one; we should be able to get through this really quite quickly on the phone.” “No, no, no, this looks like a really difficult, complicated case, where we are going to need to get a little more formal than we would normally like.”

Dr Martin: We have completely changed our business process, effectively, as of April this year. There are a number of reasons for that. We wanted to provide better value for money, but we also wanted to give complainants a better service. We are very clear, now, that we have a three-stage process, which very much mirrors what you have heard here. We are very clear about it, and we make it very clear to customers. First of all, we have an intake team, which we reckon this year will take around about 42,000 first contacts. They deal with those within one day, and our figures are very high for that: over 95%. They then go into an assessment process, where we have a clear assessment criteria, which we have sent to all MPs, which again mirrors what you have heard about whether things are inside or outside of jurisdiction etc, so we are consistent with others.

This year, we reckon we are going to take just short of 23,000 cases through to assessment. Those assessments are short and sharp deliberately, so we can get a decision to every complainant within 20 working days as to whether we are going to do an investigation of their case. If there is something that can be easily resolved in that time, of course we will do it, but our concern is to get a decision, so complainants know within that time period what will happen next with their complaint. Then they go through, and this year we reckon we will be looking at around 12,600 cases into assessment and through into investigation for a formal investigation. Whilst I completely support what you have heard about the informality around the investigations that ombudsmen carry out, we are very conscious that, particularly for local government where we have very complex matters, the value of an independent, impartial Ombudsman investigation, backed by the powers of the High Court, to ask for information that no other body can ask for apart from the courts themselves, is very important.

Then we will close those, in most cases, by a decision statement, which we now publish on our website; there are some 1,800 at the moment on our website. We are the first public sector Ombudsman to do that. If we cannot get agreement, or indeed where we find there is fault leading to injustice—because of course in many cases there is not—nonetheless the investigation sheds light on that, which is equally important. In some cases where we find mal and there is no agreement, that is where we issue a public report, which again has to go to the council or to the body and jurisdiction, has to be considered by full council, and has the oxygen of publicity associated with it. That tends to be around between 50 and 70 a year, so it is a small number. I hope that gives you a real feel for the way in which we are very clear about the process, and we want to make sure complainants understand which bit of the process they were in at any given time.

Q127 Priti Patel: That is very helpful. How do you handle and how do you resource a case that comes out of nowhere and affects everybody? Mr Boorman, for example, PPI, as a scandal when it hit: how do you approach that, and how do you therefore start to resource it, and deal with the influx of claims or cases that then come through to you?

Tony Boorman: What a good question. First of all, it is important to say that we live with a statutory conduct regulator. A lot of the responsibility for investigation of broader themes about systematic bad behaviour, by banks and insurers, is a matter for the conduct regulator, rather than us. Our focus is on resolving individual cases. The reality of the PPI situation you draw our attention to is that I have needed to recruit 2,000 additional staff. We have more than doubled the size of our organisation. Now, nine in ten of the cases I am dealing with—about a third of a million cases this year—will be about those three initials: PPI. That is an example of something that Adam was talking about earlier on, because lots of customers did not know they had payment protection insurance, and they certainly did not know whether it was a product that was suitable for them or not. There has been a lot of work done to make sure that customers understand the basis for complaining. However, the focus has been for the regulator to tackle the systemic problem. It set out guidance about how, in this case, the banks and others should deal with complaints. If customers were not happy with the outcome of the banks' handling of complaints—and the banks have received nearly eight million complaints—then they would come on to the Ombudsman to resolve. That is the difficult and challenging situation we presently find ourselves in.

Q128 Priti Patel: Do you think the same applies to the health service? In light of the various reports we have had now—the spotlight is obviously on Mid Staffs, for example—do you think that sort of experience is now being replicated with the Parliamentary and Health Ombudsman?

Tony Boorman: I had better declare an interest, as non-executive of a foundation trust in the Midlands, but nowhere near Mid Staffs, thankfully. I think there is an issue here, as our experience shows, that when you turn the focus on accessibility for individual customers, in this case for individual citizens, it is very difficult to forecast the volume impact that will have. Often, events which may be unconnected to your own personal experience, and Mid Staffs is a great example of that, will generate a real set of concerns and encourage people to make complaints they probably should have made in the first place. When people turn on a more individually-tailored complaints-handling system, they need to be aware of the potential pent-up demand that exists.

Adam Sampson: Can I just echo that? I am about to pick up the responsibility for taking complaints about claims-management companies, assuming the amendment is accepted today. I have no idea how many that is going to create. Actually, the challenge for many of us is not the challenge of making individual decisions; we are ombudsmen, but actually we are chief executives. The challenge is to run very good complaint-handling factories. In the private sector, the great advantage we have is we can scale up and down the business, not at public expense, because the bills are paid by industry, and that gives us a great advantage that the state does not have. If Jane gets a sudden spike in complaints, presumably, then CLG has to find the money.

Dr Martin: Again, I can tell you how we deal with those. We have been dealing with complaints for 40 years next year, since the Local Government Ombudsman was established. It is important to recognise that, particularly for a public sector Ombudsman, we exist as part of a system, and that our job is as much to support effective local complaints handling as it is to do the job that we are asked to do. I will give you two examples. One is a recent report that we issued. It was a public report on Liverpool City Council, and about failure to pay foster care allowances. That one report and one investigation will affect over 300 people. I am very pleased that Liverpool has agreed with us that they need to do something about this, and they are re-evaluating, and will restore allowances to over 300 families, as a result of one investigation. We did not need to do 300 investigations; we only needed to do one. The point about the public purse, of course, is very well made. The other point is that we need to feed back then. The point about being able to issue a public report—and we also issue focus reports; we issued one only the other week, which was on the same topic—is to ensure that all local authorities learn from what we have found in one local authority. In one sense, we have been quite lucky, because we have been able to work with the sector, and we have done that for many years, to be able to feed back learning. When we look at an individual complaint, we will also, of course, look out for systemic problems and ask them to review policy and practice. That goes to full council, and we are very aware of amplifying the message in order that all local authorities will look at the same issues. By and large, I think that happens. We have been doing it for quite a long time and have developed those relationships.

Q129 Sheila Gilmore: I want to ask you about internal review; that is when a complainant is dissatisfied with what you have done. Some people think that is going to be a review of the whole decision. Do you see it as that, or about your processes?

Dr Martin: I will start. We are very clear that, when someone comes to us to ask for a review, it may be about the decision or it may be about a service complaint, which I think is what you are getting at. Often, the two are linked together, but our job is to make sure that we are very clear about how we are dealing with both of those. We have different routes internally to make sure that we pick up the different aspects of any complaint or challenge which is brought to us. We operate what I would describe as an internal peer-review process, so that, if it is a review of the decision, it is another line manager—or another assistant Ombudsman, in our terminology—from the one who was dealing with it. It gives, I recognise, relative independence but it brings an independent view to look at whether the grounds for the decision, the reasoning, and the evidence on which it was based were sound. If there is any fault found, we would reopen the complaint and have another look at it. Where it is a service complaint, it goes through another route, which would be through the line manager and the normal disciplinary arrangements.

Tony Boorman: Our process is slightly different, because we have an inherently two-stage process. I start with one of my adjudicators—a relatively junior member of staff—who tries to resolve the complaint informally and, to put it bluntly, will tell the losing party, the party that she thinks is the one that is not on the front foot, the reason why she thinks that they are losing, and explain why. Either party can appeal that first-stage decision, but around 80% of our cases get resolved informally in that way. About 20% get appealed internally on to one of my roughly 200 ombudsmen to make a final decision, but that is giving the customer and the financial business an opportunity to look at the way, if you like, the wind is blowing and to put their arguments about all of the issues that they want to put.

A reminder, if I may, that the customer has, in our scheme, their legal rights protected. If I am very fed up with HSBC, and I go to the Ombudsman and the Ombudsman disagrees with me and says, “No, HSBC has done nothing wrong”, that is fine. That was not a step you had to take but you chose to take it, and you could still go off to the courts and seek redress from HSBC in the way that you normally would as a customer. Most of the appeal routes are for customers to take their cases to court. We do have judicial review of our decisions. We have around 20 applications a year for judicial review, ranging from individual customers to, one occasion, the British Bankers Association. None in the last four years have been successful.

Adam Sampson: Our system is very similar to that, but I think the bit that is interesting, strategically, to think about in the longer term is the relationship between schemes such as ours and the courts, because we are alternative routes to the courts, and many of my complainants try to pursue both legal routes and Ombudsman’s routes simultaneously. Given that both Tony and I are, essentially, here to resolve private disputes by private individuals in relation to private service provision, at private expense, in the case of both our schemes—although we are both public bodies, the cost comes from the private sector—there is an interesting question about the point at which the public courts should be engaged: simultaneously, subsequently or under what terms? This is something that the Ministry of Justice is increasingly thinking about in terms of the place that Ombudsman’s schemes play in the administrative-justice system and their relationships with the courts.

Tony Boorman: Because my scheme has been in existence, one way or another, for about 20 years, the UK courts have, probably thankfully, had very little involvement in retail-financial-services disputes, and that is why this House recently passed some new legislation to modernise the 1906 Marine Insurance Act, which was based on, to be slightly pompous, the jurisprudence of the Financial Ombudsman Service, because we are now the body which is determining the way in which the law should be interpreted across much of retail financial services in practice.

Q130 Sheila Gilmore: Do you think that your procedures for internal review are sufficiently independent?

Adam Sampson: Tony’s explanation mirrors what we do. I still do casework. I see cases every week. I start de novo. I will have the investigator’s conclusions, I will have the evidence from both parties and I will have in front of me the comments from the lawyers and from the complainants about why they thought the original investigation’s conclusions were wrong or right. I will make my own judgments. I am not bound by anything that has gone before. I do believe it is genuinely independent. I can understand the losing party may well consider, “It is all part of a fit-up.” Sadly, sooner or later, there has to be an

endpoint for decision processes. In both our cases, if people genuinely do not like what we have done, they can go to the courts.

Tony Boorman: A reminder, if I may: when we say “people” in that context, people who are disappointed by our decisions include, of course, in my case, the financial business. Do I think there should be an appeal of my decisions by financial businesses? No; nor do I think there should be an appeal, frankly, by customers. The purpose of my scheme is to provide an end to a debate and, at some point, you have to have someone who provides an end to the discussion, rather than, as you were hearing in the previous session, systems which have internal appeal and internal appeal, and appeal on to other bodies. Most of what we deal with is really quite straightforward, practical stuff, and building more and more administrative or legal appeals on top of that is, frankly, setting the wrong expectations for both parties. I also worry that it will further favour the industry party—typically, the well-resourced party—and I do not think that that is what my scheme is there to achieve.

Dr Martin: We are also subject to judicial review in the same way, so I echo what has been said about that. I think there is a natural-justice point throughout our processes. We always give a provisional view to all sides, so that they have the opportunity to come back again to challenge the evidence and the reasoning, if they want to do so. We need to make sure that that is robust and works effectively. We have also just set up an advisory forum that will give us feedback on the way in which we are conducting ourselves as part of our service. We have been challenged on the same point that you have put to us about whether we are independent enough, and we are currently looking at it to see whether there is some further external moderation that we could put in place in relation to service complaints, because we want to learn from that and make sure that our service is as good as it can be.

Q131 Lindsay Roy: I want to discuss briefly the MP filter. To what extent has the MP filter been helpful to the Ombudsman service?

Dr Martin: I was interested to hear the earlier discussion about it. All I can tell you is that our experience as local government ombudsmen is that there was a councillor filter—a similar arrangement for local authorities—which was taken away in 1988, as a result of which complaints rose. We have dealt very happily with that direct access through to our organisation ever since. That does not mean to say that councillors are not involved because, very often, they are involved in an advocacy role. Also, MPs, of course, support constituents in bringing complaints through to us but there is not the filter arrangement that there is for the Parliamentary Ombudsman. I would echo some of the comments that were made earlier that, of course, no one wants to construct a system whereby the elected representatives of the people are excluded from a process. At the same time, however, it does not seem to be right for it to be there to create a barrier. That would be my view.

Q132 Lindsay Roy: In your case, Dr Martin, what has been the benefit or impact of removing the democratic filter?

Dr Martin: Our complaints went up at the time by about 44%, which we managed quite happily. We have direct access, so that has to be the right thing for complainants. I would also say that, in our recent advisory forum meeting, the issue was raised of complainants trying to navigate health and social care when there was an MP filter involved. In some cases, they did find that unhelpful, I am afraid. I will make no comment about who that was, but it should not be a barrier.

Q133 Lindsay Roy: Are there any other comments?

Tony Boorman: I am delighted to say—apologies—that we have never had an MP filter in financial services ombudsmanry.

Chair: So am I.

Tony Boorman: If you would like some of my 500,000 complaints, you are welcome to them—no, you are not. It is also important, however, that we do feed back to you what our experience is, and so, somewhere in your bulging in-tray, at least once a year we will write to you and tell you about the experience of your constituents in terms of the volume of complaints that they have raised with us, what those complaints were about and what the summary of the outcome of those complaints is. We take quite seriously our responsibility to feed back to parliamentarians what we have been doing, at both a local and a national level—in our case, through the Treasury Select Committee.

Adam Sampson: Echoing that, while we do not have any formal relationship with MPs, MPs offer an important referral route in for people to complain to us. Part of the service, I think, that we provide to MPs is to take some of the more difficult pieces of casework off them, in particular a vexatious complainant, and say, “Give me this person. Let them come to me. That is what I am paid for.” Coming back to the theme about confusion, however, I have recently sought to explain to one MP’s office the boundary and jurisdiction between myself, for example, and Tony’s jurisdiction. It is an extremely complicated process. When I talk about confusion for complainants, I am not talking here about the complainants who know very little about public service. In fact, those of us who spend our life in public service are also confused, and I certainly see signs of similar confusion in MPs’ offices.

Q134 Lindsay Roy: I think the feedback is appreciated but we realise that there is a general view that the filter is a dead duck.

Adam Sampson: My own view, without taking a direct line on this, is that anything that stands between a complainant and complaints resolution is probably not sensible.

Q135 Lindsay Roy: Thanks very much. We have had some hints to this already, but would you recommend a single complaints portal for England and, if so, why? What are the advantages?

Dr Martin: I certainly would. I am already on record as having said that. The most important thing is that we look at the system. As part of our submission, we put in the complaints maze, which just shows where the connections are and where they are not. It is really important to look at the health system, and the best way of starting to look at that is by having some common portal, which, again, we heard of from our colleagues this morning, so that we are led by the complainant and the complainant’s experience, and we try to brush away the confusion that already exists. As a number of schemes—perhaps not factories, but certainly schemes—it is our job to make sure that we are working together and harmonising, as, indeed, we are already trying to do with PHSO, and that we have a common portal which directs people through and makes their experience much easier to navigate.

Adam Sampson: I used to run Shelter before I did this job. Thinking about some of my former clients—homeless people trying to get housing advice from somewhere—if the

quality of that housing advice was poor, these people had to work out whether the housing advice was delivered on behalf of or by the local authority, in which case Jane is the right person to go to, or whether it was delivered by a regulated lawyer, in which case I am the right person to go to, or whether it was delivered by Shelter, in which there is no route to go to. Similarly, if you go to the Co-op Bank, you will see a sign there saying, "Write your will here." That is in a banking branch with references to the Financial Ombudsman all over the walls, but the active writing of a will engages my scheme rather than Tony's. Frankly, this is madness.

The other point I would make is that the public out there really still do not know what an Ombudsman is and does. They know that it is something to do with complaints. If we had a co-ordinated portal with a co-ordinated approach towards explaining to the public that an Ombudsman is the person who sorts out complaints that they have, then we could give some meaning and some life to the brand. We could give it a single number, a single website and a single way in, and we could then sort it out behind the scenes. It should not be beyond the wit of man to do it.

Tony Boorman: Can I just add an important rider to all of this discussion? What I would be concerned about, is that there are lots of portals. We have had lots of portals before. Do you remember Consumer Direct? Citizens Advice runs an excellent carry-on scheme, in effect, from Consumer Direct. Do you remember 111? There are some risks in introducing all-covering schemes. As Adam has been describing, some of the nuances behind the scenes that we are presenting today are dully complicated and require somebody to make quite intensive investigations of what has happened and to find out what has gone on simply in order to work out what the avenue for that person's problem is.

I am keen, that we, as a group of ombudsmen, make sure that we have an effective system to present ourselves to the public in a joined-up and unified way, and that we have an effective system, as, I think, Peter was describing in the earlier session, so that whoever customers come through to, there is a seamless way of making sure that they get to the right place and that the burden should be on us, rather than the citizen, to do all the complicated work that Adam has described. To be very clear, what I do not want is a helpful Government Department putting in a little telephone call centre in Hartlepool—a lovely place though Hartlepool is—to try to do all of this stuff, because I think that would get in the way rather than help. My scheme presently receives over 2 million customer enquiries every year. We are known by 70% of the UK population. To be honest, I have a slight brand-leader problem in this discussion: I do not want to damage that. I am very happy to share our expertise and work with our colleagues to make sure that we provide that seamless service that customers and citizens deserve.

Dr Martin: I think that is a good point. I would just add one thing very briefly: it is important for complainants to know where to go, when they need to go. The question, then, is one of signposting from the body in our jurisdiction: the local complaints handler, whether it is the local council or the adult-social-care provider etc. In local government, we have had that signposting for years. We would like it to be better for adult-social-care providers. That is the point at which people need to know where to go to, and it is an important point.

Q136 Lindsay Roy: Are there any other significant challenges in having a single portal?

Adam Sampson: Can I just say that I am not suggesting that a portal would be a replacement for the normal ways in; I would suggest that it would be an addition to the normal ways in. As Tony indicated, people could come to us by searching the word “Ombudsman” on the net, in which case you get about 80 different websites—some of them private-sector, pretending to be an Ombudsman when they are not, and we need to deal with that—or they would search “banking problem”, in which case they go straight to Tony. I think we need to mirror the way that consumers work. A portal will not be enough because I think there are two other issues: first of all, many of us operate to subtly different rules, expectations and time limits, some of which are there for good reasons. Many are there because our history is that we were set up by different Government Departments without reference to other Government Departments, and our legislation is different or whatever. Some level of harmonisation of basic rules and expectations would be helpful.

The second is about coverage. Many of us can take certain types of complaints but not other types of complaints, again for no particular good reason. If we are going to make a common offer to the citizen that, if there is a complaint, there is a way of resolving it, we need to make sure that that promise—if it is a promise—is real rather than merely, “There might be a way of resolving it but it is subject to a whole bunch of different bureaucratic rules, expectations and coverage mismatches.”

Tony Boorman: Could I possibly put a request, through this Committee, back to this House? One of the problems that we face is a proliferation of Ombudsman schemes invented by Government and approved by this House. I would like to propose, at the very least, a non-proliferation treaty, so that people think rather hard when they think, as they should, about how they can resolve and complaints and disputes in this sector and where the right place is for those to go. Rather than thinking, “Let us invent our own little Ombudsman scheme”, they should think, “Which of the existing Ombudsman schemes would it be sensible to bolt this service on to?”

I was the last insurance Ombudsman and, if you listened to some of my colleagues 13 years ago, they would have told you that insurance and banking just do not mix: “It is a strange and different world over there in banking.” It is, but we manage a scheme which covers the whole of financial services, from payday lending right the way through to your pension. It is possible to extend the scope of the scheme because, as Adam and Jane have been saying, our business is to resolve disputes. The technical background to those disputes is rather less important than the spirit and style of dispute resolution itself.

Adam Sampson: I would go further than that and argue not merely that there is a non-proliferation, but also simplification. There are some 75 schemes that are members of the Ombudsman Association, covering only 37 sectors. That, for a start, does not seem to make an awful lot of sense. I am fundamentally not a believer that there is a long-term future for a legal-services-only Ombudsman’s scheme. Whether we should be broadened or combined with one of the other schemes, I know not, but I do think, in terms of simplicity and economies of scale, there are, frankly—and forgive me, Jane—too many middle-aged men in suits getting good wages, covering too little parts of those sectors.

Dr Martin: I do not think that is anything to do with me. I agree with a lot of what has been said. Pragmatic incrementalism has served us quite well in ombudsmanry so far, and I think we may find that we do not want to throw that baby out with the bathwater. This is not about structural change. I think we have to hang on to the expertise and the experience.

Fundamentally, however, we need to know where the authority lies to remedy and improve services. We need to hang on to that, while the focus should be on how we get a seamless service and the best possible access. It is the service issues that Adam was highlighting which I completely agree with, but we must hang on to where the authority lies for remedy and improvement to be made.

Q137 Paul Flynn: The main way in which people are likely to be robbed in this country is not through being burgled or mugged, but by dealing with financial salesmen: the six million who were mis-sold personal pensions; endowment mortgages; deals with the bank; and now the annuity scandal that has become apparent today. Who should deal with this? There are millions involved in these cases. Whose responsibility should it be to say that there are endemic problems in the financial-services industry and a propensity to rob their clients?

Tony Boorman: I shall be careful how I respond to that. The primary responsibility, clearly, for addressing systemic problems in the sector rests with the sectoral regulator, which is the Financial Conduct Authority.

Q138 Paul Flynn: They have not done very well, have they?

Tony Boorman: I think we and, in the end, the Financial Conduct Authority—the successor to the Financial Services Authority—have accepted that the history of regulation in the sector has not done very well and has not been, perhaps, as aggressive and forceful in dealing with areas of customer complaints, many of which you have mentioned, as it should have been. The Government, in its reform of financial-services regulation, put in place a regulator and gave it new powers to take further action and, certainly from my perspective as the Ombudsman, I hope that the new regulator does take a forceful view, so that those problems are stopped at source rather than being areas of mass complaint, as they have been in the past.

Q139 Paul Flynn: Just a final point in terms of when we make our report on this. We have read what you have written, Mr Sampson, about the multiplicity of what has been called the complaints maze. When we go through the single portal, we are still in trouble. Are you convinced that what should be required—there seems to be a slight difference between yourself and Dr Martin on this—is really fundamental reform of forced amalgamations, with all the problems there, but possibly organising England on a regional basis, but with single ombudsmen within each region? Would that be the best solution?

Adam Sampson: I think what I am suggesting is that the history of ombudsmen has been that it is a personalised system—a bunch of people with particular power given to them—and that personalised assignation of authority has been organised according to sector and national boundaries. They would normally face off against regulators in the private sector. Forgive me: that works in the producer interest but not in the consumer interest. The citizen just knows that they have a problem and they want somewhere to go. What I am suggesting is that we should think less about ombudsmen and more about ombudsmanry and the complaints-handling and problem-resolution process. We need to come up with a long-term vision of a system of complaints-resolution into which ombudsmen fit.

I think it is an important statement to make from a private-sector perspective. I do not think we necessarily say that ombudsmen are the solution to everything. If you go to

Tesco and do not like the tin of beans that you have bought, you do not need to go to an Ombudsman for that. Where there is a differential in power or authority, however, where you do not know whether the service that you have had is good or not, an Ombudsman's service is the solution. My own philosophy is that there should be a general set of rules for ombudsmanry; there should be, preferably, one central way in, albeit with a multiplicity of sideways ways in; and the citizen should not be required to work out who to go to.

Dr Martin: I am bound to challenge the point that ombudsmen with personal authority are not doing the best for the citizen, because I simply do not accept it. There are many areas in which we would clearly agree. In 40 years of local government ombudsmen, there is time to have a look at whether we are doing this the most effectively we can. I do think that the job that some of us do, which is about giving, as I said before, independent and impartial investigation and route to redress when the state has treated a citizen unfairly, could look and feel quite a lot different from whether your beans were right in Tesco. We cover the whole gamut. I am making the distinction that what we deal with is quite a wide continuum, and the business and the job that we do looks different as a result of that.

In my own organisation, we are already across the private/public rubicon. We can look and see whether the care in your residential home was of the right quality, while, at the same time, looking to see where the local authority has fulfilled its statutory duties to commission care for you. I suppose the impression that I would like to leave is that these things can be dealt with. We do have the wit and the wherewithal to work together effectively and, indeed, many of our schemes are already doing that, but we have to be led by what authority we need to achieve that, and what the purpose of all of this is. Then we can work out from that, but whatever works for the complainant has to be right.

Q140 Chair: Lastly, how should be ombudsmen be held accountable for their service?

Tony Boorman: I am very pleased, as I was describing earlier, to report to my sectoral regulator, which I am required to do. I am required to have my budget approved by my sectoral regulator, the Financial Conduct Authority. I turn up in front of Select Committees to be accountable for the work that we do: this one and the Treasury Select Committee. More importantly, we need to be very transparent about what we do. We publish a host of data, and it is a very important part of what an Ombudsman does to publish that data about the complaints we receive, where they are from and the outcomes of those complaints. We now publish the 25,000 final decisions a year that we make, so everyone can look at and consider the rich detail of the work that we do. Being an open service is an important part of accountability.

Dr Martin: We should be held accountable by the public, and the way in which we are held accountable is through the Communities and Local Government Select Committee, with a recent hearing there. We also present our annual report to Parliament and engage with the All-Party Parliamentary Group on Local Government and our sponsor Department, DCLG. I agree with what has been said, and we are now publishing all our decision statements. We are publishing public reports, as we always have done.

I think it is very important that we are held accountable for the work that we do, and publishing all our statements gives a much better view to the public as to all the work, not just the few public reports that they might have already seen. I also think it is very

important that we are seen as holding local government to account and holding all those who provide public services to account and scrutinising them. In answering your question, it is important, absolutely, that we are held properly publicly accountable, but we ought to be seen as part of that accountability framework in making sure that others are also held accountable.

Adam Sampson: One of the advantages that Tony and I have—and I use the word “advantages” deliberately—is that we both report to non-executive public boards; in fact, my chair and chair-designate are both sitting and scrutinising me at this moment. I do not say this just because they are here, but that is very useful. First of all, I am held to account, as it were, in my chief-executive function, and I get regular input into the running of my business, which I am used to, having worked in other settings. That is very useful. I get immediate access to their business knowledge. The other function that I think is very important is that I, as the Ombudsman, am protected, to a certain degree, by the existence of a non-executive board, because I can take decisions that can be quite controversial and difficult and can have consequences. A really important function of my board is to act as a buffer between me as the decision-maker in an individual case and the authorities, be it Parliament, Ministers or whomever. When I was the prison Ombudsman, that buffer did not exist, and it was much more difficult to negotiate. I think there is something very important about having a non-executive board.

Tony Boorman: For the avoidance of doubt, our non-executive board—and I echo all of Adam’s remarks and more—is responsible for our appointment. We are not appointed by regulators, Government or Parliament, but by our non-executive boards.

Q141 Chair: This is a conundrum for Parliament because any organisation like PHSO, if it was being set up today, would have a chair and a non-executive board, as well as executives on the board, and it would be the board that chose the chief executive. How do you think we resolve this, perhaps in your case, Dr Martin?

Dr Martin: You will be aware, I am sure, that there has just been an independent governance review of our organisation conducted by Robert Gordon. It is true that the governance of our organisation is a little outmoded. As the Ombudsman and the Crown appointee with personal authority, I am also the chair of what is, effectively, my board—the Commission for Local Administration—on which the Parliamentary Ombudsman also sits. Without going into too much detail, I think our experience is that that has not served us well and we are now looking to support that and strengthen that board with more non-executives. I think there is clearly a way that we could adapt the way in which the public sector Ombudsman is governed in order to have greater non-executive input into the governing body, if I can use that phrase.

Tony Boorman: For what it is worth, I think our model works extremely well. I am not a member of our board, formally; only our non-executive directors are members of our board, and they are appointed by, in our case, the Financial Conduct Authority, to be non-executive members of the board and to appoint me and the Ombudsman panel.

Q142 Chair: In respect of PHSO would you imagine that Parliament would appoint a board of non-executives?

Tony Boorman: I make no comment about whether I think this fits PHSO’s circumstances, but the model equivalent would be for Parliament to appoint a non-

executive board, which would govern PHSO and provide the advice that Adam's describes, and would appoint a chief executive and chief Ombudsman to run the service and provide the Ombudsman role. That is our model; whether it fits PHSO's circumstances, I leave to Adam.

Adam Sampson: Plainly, the choice there is whether the chair is, as in Jane's case, the person exercising the Ombudsman authority, which has one advantage, or the sort of advantage that I am describing, where the chair appoints the Ombudsman, which allows for a greater level of protection when ombudsmen get into difficult territory in relation to individual controversial decisions.

Tony Boorman: I am sorry, but as we are on the fascinating topic of constitutions, the other important difference is that my board, like Adam's board, does not concern itself with disputes, in the sense that it is not involved in making judgments about what the right answers to complaints are; nor is it involved in determining how, generally, complaints should be approached. It is solely concerned with securing the independence and impartiality of the Ombudsman and the effective operation of the service.

Adam Sampson: Yes, absolutely.

Chair: I think that that has been a very useful session right to the last minute, and I am very grateful for you being succinct and swift in your replies. Thank you very much indeed. If you do have any supplementary thoughts, do please send them in. We would be very grateful for them.