

Public Administration and Constitutional Affairs Committee

Health Committee

Oral evidence: [Pre-appointment hearing:
Parliamentary and Health Service Ombudsman](#), HC
810

Wednesday 18 January 2017

Ordered by the House of Commons to be published on 18 January 2017.

[Watch the meeting](#)

Members present:

Public Administration and Constitutional Affairs Committee: Mrs Cheryl Gillan (Chair); Ronnie Cowan; Paul Flynn; Kelvin Hopkins

Health Committee: Dr Sarah Wollaston (Chair) Rosie Cooper; Andrew Selous;

Questions 1 - 35

Witnesses

[1](#): Robert Behrens CBE, former Ombudsman for Office of the Independent Adjudicator for Higher Education

Examination of Witness

Q1 **Chair:** Can I extend a warm welcome to Rob Behrens who is our witness today in the Public Administration and Constitutional Affairs Select Committee, and would you like to state your name for the record and the reason that you are here, Mr Behrens?

Robert Behrens: Good morning. Thank you. It is a great honour to be here. I am Rob Behrens. I am apparently the preferred candidate for the post of Parliamentary and Health Service Ombudsman.

Q2 **Chair:** Thank you. It may be helpful for you to know that today in this hearing we are joined by the Health Select Committee, and so we are very pleased to welcome them here. On my right is Dr Sarah Wollaston, who is the Chair of that Committee, and we are joined by Rosie Cooper



HOUSE OF COMMONS

and Andrew Selous who sit on the Select Committee with Dr Wollaston. The reason that I am in the chair—I think it is fair to put on record—is because the Chairman of this Select Committee, Mr Jenkins, was on the selection panel for the job, so Mr Cowan, Mr Flynn and Mr Hopkins are all resident members of this Committee and will be participating. I hope that that will explain who we are and where we are all coming from; so welcome.

If I can kick off with the first question. This is a pretty big job you would be taking on, and it would be helpful if we could hear how transferrable your previous experience as Ombudsman for Office of the Independent Adjudicator for Higher Education is, how that dovetails to this particular post and how that experience will be transferrable for you into the new appointment.

Robert Behrens: Thank you. I recognise it is an immensely difficult job and that each sector is different, and so skills are not entirely transferrable. The key issue is that I have 10 years' experience as an ombudsman and, in higher education. I took over an organisation that had done very well at the beginning but needed to become more open, more outward facing, more transparent, and needed to have a conversation not only with universities but with users of the service and complainants, to make sure that the complaints process was user friendly and rigorous in terms of the investigations that were taking place.

Over a period of four years after I joined, I set about three national consultations called the Pathway process, which set out to listen to stakeholders and users about their experience of the OIA. What we got from that process was an acceptance that the OIA performed an important function but, in the view of users and stakeholders, it was insufficiently user friendly, insufficiently transparent, too slow in resolving complaints and not sufficiently flexible in its approach to cases.

Over a period of years, we introduced a whole range of measures that would be applicable in PHSO—and to some extent they have already been adopted—to make the service more professional and better user friendly to people who brought complaints to us.

We handled something like 2,000 to 2,500 cases a year. We had the issue of disappointed complainants whose cases we found to be not justified, and the problem for all ombudsmen is: what do you do with complainants whose cases you do not find to be justified in terms of user satisfaction? That is a problem, a challenge for PHSO, but it applies to all ombudsmen. That is about being clear about what you can do. It is about managing expectations and it is about—and this is critical—having a good exchange with the complainants when they go through the process so that they feel that they are valued and respected.

All those things are easy to say but they are very difficult to do when you are dealing with very large numbers, but I do feel that I have a lot to



HOUSE OF COMMONS

contribute to the conversation about how PHSO can go forward to become even more professional in its approach to complaint handling.

Q3 Chair: You have particularly identified the quality of communications with the complainants as being a key aspect of what you have done in the past and what would serve as a good skill to have for the future.

Robert Behrens: Yes. It is absolutely essential. We commissioned research from independent social researchers at King's College in London, and what complainants wanted in that situation was to be able to state their case individually to a complaint handler, rather than just to submit written evidence, and they wanted their case dealt with in as quick a time as compatible with an excellent and rigorous complaints handling process. If you don't do those two things there will not be user satisfaction, however excellent the investigation is.

Q4 Chair: You are of the view that if you are dispensing administrative justice then your administration needs to be of the highest quality?

Robert Behrens: Absolutely. As far the OIA was concerned—and it is also true of PHSO—we were subject to judicial review, so we had to make sure that our processes were rigorous and transparent as well as user friendly. I have a lot of experience of defending judicial review challenges from complainants who did not get what they thought they deserved.

Chair: Thank you very much.

Q5 Kelvin Hopkins: Good morning. Could you say what you think are your main personal qualities and professional skills and experience, which so equip you to undertake this role?

Robert Behrens: Yes. First of all, as I have said, I have been an ombudsman for 10 years. I have learnt how to be a leader of an organisation. I believe very strongly in collective leadership. I am not into the idea of charismatic leadership. Whatever happens, it will not be my show. It will be a team working together to take an organisation forward, so that is the first thing. The second part of that is to be able to listen and then respond to having listened, and that is an absolutely critical part of every job that I have done: to listen to colleagues and to be able to accept that maybe I haven't done things exactly in the right way.

The third thing I think I would bring is an ability to look at issues from an evidence-based approach. I learnt this very early in my career as a civil servant. I have applied it to every job that I have done: if you don't have the evidence that you need to take policies forward and to take cases forward, then you are going to get into trouble, so that is about being sufficiently prepared in everything that you do to make sure you are competent to deal with situations.

Q6 Kelvin Hopkins: I have to say, you have an impressive CV that I have read with interest, particularly the fact that we both studied at Nottingham University and graduated in the same subject, myself a little



few years before you. Did you find that your university experience provided a good basis for your future career in life? I have to say I did mostly.

Robert Behrens: I went to two excellent universities and I learnt a huge amount from both Nottingham and Exeter Universities. It helped me to grow up. Writing a dissertation was particularly important to me because, again, it taught me how to do research and to defend things that I thought needed to be said even if people disagreed with that. I also played for the Exeter University 4th 11 football team, which was one of the highlights.

Ronnie Cowan: I was going to look for your Manchester City connections, but as for the 4th 11, I don't know. In the first year as PHSO ombudsman what do you hope to achieve?

Robert Behrens: Can I say there is no magic wand for this. This is an immensely difficult job. This is an organisation that has been through considerable trauma in the last year. There is a need to understand the perspective of the staff in the organisation, about their take on how things are, and there is a need to agree together a common approach to deal with the deficits in stakeholder and user opinion of the organisation. That is the first thing.

The second thing is to try to bring down the average time it takes for complaints to be processed by the organisation. As I understand it from the annual report, the average handling time at the moment is 263 days. As an ombudsman, and with respect to those who are involved in it, that is far too long. I notice that in 100 days of those 263 days nothing happens, so there are backlogs and queues. That is part of the frustration that users feel about coming to the PHSO, so those are two critical things.

The third thing I would want to do is to have conversations with stakeholders, user groups, representatives of complainants and sector groups about what we can do, what we cannot do and what we can contribute to making the sector more user friendly to users.

Q7 **Ronnie Cowan:** How are you going to measure your success or failure?

Robert Behrens: There are a number of ways. There are objective ways and there are subjective ways. The subjective way is to ask complainants what they feel about the service. We know from studies of ombudsmen—in Europe and wider—that that is a very difficult challenge to make, particularly for complainants whose complaints are not justified. Nevertheless, it is an important test to see where you are going and you want an incremental year-by-year measure on that.

Objectively, though, there will be—and there are—key performance indicators where we are looking at the number of cases that go through the system, we are looking at the number of cases that go to judicial review, and we are looking at the impact of the thematic reports that the



ombudsman makes to see what impact that has in terms of influencing the sector to change its views. All those things are immensely difficult and there will not be a very quick turnaround to notice, but I believe that some important steps can be taken in my first year.

- Q8** **Ronnie Cowan:** You mentioned earlier on that you started your initiatives in your current position, but you are in a situation now that you are coming in half way through a five-year period of change, and there is going to be future change if the public service ombudsman Bill passes through. How will you manage this state of flux, this continuous change that you are inheriting?

Robert Behrens: When I worked there, this is what the Hungarians called “Playing the piano and moving it upstairs at the same time”.

Ronnie Cowan: I will have that.

Robert Behrens: This is a big challenge and there has to be prioritisation. There is no blanket approach to being an ombudsman. I would not want to begin again a whole strategic review of where the organisation should be going, if it is going to be merged in two years. In my view, looking at all the evidence, people are pretty clear about what has to be done. The key issue is its implementation. It is about prioritising what is important in terms of the effectiveness of the organisation in the next two years, and those are the most important things.

There are things that need to be done, irrespective of whether the legislation goes through. The user experience of the PHSO, together with the staff, has to be improved whether or not there is legislation. That is absolutely fundamental to the credibility of the organisation.

- Q9** **Ronnie Cowan:** What effect do you think this is going to have on staff and the organisation more broadly?

Robert Behrens: It is very important to value, respect and to encourage staff because they are the meat and drink of the effectiveness of the organisation. What all ombudsmen’s staff need, and don’t always get, is continuous, professional development to enable them to continue to be innovative and refreshed in the way that they handle cases. The PHSO—like every other ombudsman organisation—has to make sure that it delivers that for staff because the conditions in which people are working are very stressful and they are doing a very difficult job that needs investment.

- Q10** **Chair:** Thank you. Of course, in your CV you were associated with the Civil Service College, so I presume that that means you have good experience of the training and development that the staff need on a continuous basis?

Robert Behrens: Absolutely. I learnt so much from being a civil servant, in terms of individuals needing to have a demonstrable relationship with



HOUSE OF COMMONS

the performance objectives of the organisation, so having a line of sight between what an individual does and what the organisation does is absolutely critical. That applies to ombudsmen too. The problem for ombudsmen is that it is an embryonic profession in which there has not been sufficient attention to generic training for case handlers to ensure that they can continue to develop their skills, and that is what we have to focus on.

Q11 Chair: At the moment, you are undertaking a research project looking at the role of the ombudsman internationally.

Robert Behrens: Yes.

Chair: Are you finding good pointers from other international examples?

Robert Behrens: There is a rich tapestry of experience to dig into. I have done a study of 18 countries, looking particularly at higher education ombudsmen. I have discovered that we have a huge amount to learn from international experience about non-adjudication approaches to case management. In the United States, in Canada, in Norway and in Holland, most of the ways in which ombudsmen deal with issues is not through the adjudication of cases but is actually through conciliation, through an attempt to mediate between the parties so that adjudication is not necessary. This is something that we are not terribly good at in the United Kingdom. It is a very important skill that can be very useful in making the organisation more efficient.

For example, in the 2015 report of the PHSO, I think only 4% of cases were resolved through mediation. At the OIA we managed to settle or mediate about 10% of cases, and this is a very important way of having conversations between the parties without the need to investigate a complaint, to give satisfaction to both sides and to move on without there being an investigation. That is something that I am very keen to develop.

Chair: I am sure this Committee particularly will be very interested to read your conclusions from your international studies.

Q12 Paul Flynn: The job you are applying for is not merely playing the piano while moving it upstairs but also, simultaneously, rebuilding part of the piano. The task is an enormous one.

Robert Behrens: Yes.

Q13 Paul Flynn: The annual report described the situation. It said the service faced issues with measuring, tracking and reporting on its performance as well as implementing recommendations made by its internal audit committee. Why on earth do you want the job in these circumstances? It really is a formidable one. You have a distinguished career and you are facing a challenge that will require qualities that are very demanding. You are that person?

Robert Behrens: My wife has been asking the same question.



Paul Flynn: A very sensible woman.

Robert Behrens: I don't want to be pompous about this but Disraeli said, "Life is too short to be little". I only have a certain amount of time when I will be coherent. I think this is an opportunity for me to use the experience that I have gained in the course of my career and apply it to what is an immensely difficult job, and that is an exciting possibility. Not only that but it is important. It needs doing because the users of PHSO are people who are distressed. They are aggrieved. They are angry, and there are resources available to be able to do something about it.

Could I just say this? There has been a lot of criticism of PHSO, and I have seen it and read it and so on. Since I left the OIA I have worked for Queen Margaret University in Edinburgh, which has a training programme for ombudsmen, and I have met a number of the case handlers from PHSO. I have to say that they are extremely professional, very committed, and it will be a great pleasure to work with them to address this huge challenge.

Q14 **Paul Flynn:** I am glad you quote Disraeli. I think the quality of leaders of the Conservative Party have rather declined since then.

Could I ask one question, which is a practical one we have come across? There is a tiny, hardcore of complainants who have suffered grievously some tragedy, bereavement and so on. They find it difficult to cope. Often the case is that the fault might lie with themselves, as a family member died or with the deceased one, and those conclusions are unbearable so they seek relief in blaming someone else and finding someone. Those people will go through the system but will never be satisfied with the answers they bring out, and we have found—and this is practical experience—that we, as Members of Parliament and members of Committees, seem to have taken on a role of being the ombudsman's ombudsman. They are not satisfied with the ombudsman and they want to go on and we must disappoint them because, as Members of Parliament, we don't have the capacity to deal with the complex cases they bring up. We cannot go on and judge it again. How do you deal with those cases, and can you identify them, because they are the kind of people that do take a huge amount of time and resources without any possible satisfactory conclusions?

Robert Behrens: At the heart of trust is the idea that you have to respect people that you deal with but you also have to require them to respect you, and that is at the heart of this issue. In every ombudsman service that I have come across—and it applied in legal services and in higher education and it is obviously true here—there are disaffected complainants who are unhappy with what they have received. How you deal with that is very important.

You will never get rid of that completely, but what you, as a Select Committee, and what Parliament have to be confident about, is that the ombudsman has done everything it can to listen and to be sympathetic to



the complainant, short of losing impartiality. Once the ombudsman loses impartiality, he or she ceases to be an ombudsman and ceases to be independent. There always has to be that test, but you need to know that the ombudsman service has done as much as it can, and we have to explain that we are not the consumer champion but that we are an independent ombudsman service that has to adjudicate on the basis of the evidence that is available. We put that out and it can be challenged, but it is not for the user of the service to determine what the outcome will be.

The last point I would make is that we had this issue at the OIA, where a very tiny number of complainants were abusive and rude to case handlers. We had a policy to enable staff to be clear and warn users that they expected appropriate behaviour from them, just as we had to behave appropriately towards the complainants, and that has to be the case.

Q15 Rosie Cooper: The ombudsman service had 100,000 inquiries, investigated about 4,000 cases. You describe the trust that must be established, doing everything you can, bar losing your impartiality, and the fact that you hope to move on without necessarily having to do an investigation. That is a little bit difficult if people already feel aggrieved on that basis. You describe an overall wish to have good communications with complainants as well as a thorough investigation where that is required, yet you must reduce your spending by nearly a quarter between now and 2020. What would be your priority in managing and delivering those spending reductions, while talking about the quality and the trust that will make your term of office a success?

Robert Behrens: That sums up the immense difficulty of this challenge. The first point is: I would not expect an ombudsman service to be treated differently from the bodies under jurisdiction so, if there are spending cuts for bodies under jurisdiction, it is not unreasonable that there should be spending cuts for the ombudsman.

The second point is that I am not saying that mediation is going to get rid of the need for adjudication. One of the good things that PHSO has done, particularly since the Titcombe affair, has been to increase the number of cases that it has taken on, and I think that is absolutely right. But there has to be a very clear clarity of purpose about what can be investigated and what should be investigated, and we have to share that with users.

One of the things I have done—certainly, at the OIA and the Committee on Standards in Public Life—has been to introduce an annual open meeting in which we invite users and complainers to come and to discuss sensitive issues entirely in the open, with the ombudsman and with the senior staff, in order to demonstrate that we are transparent and we have nothing to hide as far as this is concerned. That is part of building up the trust.



HOUSE OF COMMONS

One of the questions that I heard Dr Poulter ask at the annual inquiry evidence was whether or not it is justified to spend so much money on communications, given the spending cuts. You cannot be an ombudsman unless you help the sector to do better professionally, so there must be a rigorous approach to disseminating findings in a way which the sector will find useful. One of the paradoxes is that PHSO—and this applies to all ombudsmen—will not have credibility, with the health service sector and other sectors, unless it can handle complaints effectively and efficiently itself. The key priority has to be to demonstrate a continued competence in closing an increased number of cases. To do that you need to invest in the professional skills of the case handlers and to reduce other aspects of the organisation.

Q16 Rosie Cooper: What other aspects of the organisation would you reduce?

Robert Behrens: It is too early for me to comment in detail about that because I haven't spoken to colleagues. I know that there is continual planning going on about how to address this issue, but perhaps I could illustrate it by talking about what happened previously. I changed the financial basis of the OIA by taking away money from the leadership team and putting it into frontline case handling, because that is where the organisation is going to succeed or fail. I would be looking to invest in the frontline of the operation, which I think is absolutely critical to its success.

The other thing is you and I know that the leases for the property of PHSO in London and Manchester are coming to a conclusion in 2018. There is talk of moving some of the operations to Manchester. That will have a very important cost saving in terms of property. That is a good thing.

The other thing is there are happy conversations with the Local Government Ombudsman about convergence. This is not something that is being resisted, and there will be cost savings in that convergence in a way that the organisation should be able to benefit from.

Q17 Dr Sarah Wollaston: Good morning, Mr Behrens. Although you have an enormous range of experience, that does not currently include anything in health care or medical background. How do you think this may affect your ability to manage the caseload of the PHSO?

Robert Behrens: Thank you. There are a number of things to say about that. The first thing is there is some advantage in not having a link with the health service before one becomes the Health Service Ombudsman, because then one cannot be accused of having a conflict of interest.

The second thing to say is that, at the OIA, I dealt with a large number of fitness to practise questions about students who had complaints about the way in which their professional qualifications were handled. That meant that I investigated a lot of cases in the health service where



students were on placements in hospitals, as either doctors or nurses, and complained about the way in which they were treated, so I know about some aspects of the health service from that point of view.

I have dealt with the GMC and the Nursing & Midwifery Council, in terms of the regulation of training. But it is true that I will need—as I have had to do in my previous ombudsman jobs—to learn fast about the deeply complex nature of the health service and its management.

Q18 Dr Sarah Wollaston: Yes, because you could say you are not only playing the piano, moving it upstairs and fixing it, but you are also discussing with the audience at the same time and understanding the audience. Is that something that you will seek to do in your role, to try to understand the experience of complainants, because of course medical complaints are of such a sensitive nature? It is a very different nature of complaint.

Robert Behrens: I read the Patients Association report. There is an issue about what constitutes evidence, and what the Patients Association say is that they are not sufficiently listened to in comparison with the evidence of medics. What the Titcombe affair taught us—and I think the health service owes an enormous debt to James Titcombe—is that the complainant experience is absolutely central to the integrity of an investigation. This man has been remarkable in resiliently resisting the views of professionals about what happened to his baby in hospital. Eventually that has led to systematic changes, not only in the health service but in the PHSO. There has to be listening. There has to be engagement, and it is not just about listening to the medical advice.

The other thing I need to say goes back to the point I made about leadership: it is not about me. It is about the organisation that I hope to lead, and I know that there is expertise in the organisation to deal with complex cases. The key thing is to give it the resource, the encouragement and the support that it needs to continue to do that.

Q19 Dr Sarah Wollaston: Thank you. Another issue that you have touched on already is how the ombudsman role can improve complaints handling itself within the NHS before cases even arrive, and you have mentioned about trying to increase the proportion of cases that go to mediation. Are there any other areas where you see you can help to improve the complaints system itself?

Robert Behrens: One of the most important things that I managed to do at the OIA was to consult with the sector about a written good practice framework for universities to use in handling complaints and appeals. That was adopted after two consultations in 2014. It now exists in a way that means universities have a good practice written guide to enable them to handle complaints better. When Baroness O'Neill gave evidence to the Leveson inquiry, she said that this kind of document is essential for the professional development of organisations. I want to reassure myself that that does exist in the health service. On the basis of reports that I



HOUSE OF COMMONS

have read, I am not entirely sure that is the case, that there is one generic document that service users can address and it is sufficiently useable for them, so there is a lot to do.

You may want to come on to this, but there is an issue about whether one should follow the Scottish example. Under Scottish legislation, the SPSO requires all public bodies to have a complaints handling process, which has to be approved by the SPSO. That turns the SPSO into something like a regulator, because it has a coercive power over the public bodies. In England that is not the case. At the OIA we managed to work with the sector, universities, doing it on a voluntary basis. But the key thing is that the ambition should be that cases are resolved in the health service itself and that they don't have to come on to the PHSO.

There is some very important work being done by a woman called Sarah Barclay, looking at how to develop mediation in hospitals between doctors and patients, which I think is very important for the development of resolution in the health service.

Q20 Dr Sarah Wollaston: There are two issues there: the culture of handling complaints within hospitals themselves and of course in the community too, but also how those complaints are then handled, the administrative routes within hospitals. That is something you will be looking at in the role?

Robert Behrens: Absolutely.

Q21 Dr Sarah Wollaston: Right. Thank you. Then a final question from me. How do you see your role now dovetailing in with the new Healthcare Safety Investigation Branch?

Robert Behrens: Yes, I know this is a development that the Select Committees have been pressing for. It is going to be an expert resource that will be capable of disseminating important information about good practice, but from my understanding it is not an ombudsman. It is not a second ombudsman service. It is not there to redress individual complaints, and this applies to CQC, to NMC and other bodies. The ombudsman has to be part of the regulatory framework but not a regulator itself, and so we would want to learn from the body you have just talked about, about what constitutes good practice, and use that in our investigations. I don't see there to be a conflict of roles. I think it is very helpful to the service in general.

Q22 Chair: Thank you. We know how important the stakeholders are and Andrew Selous has a series of questions on this front.

Q23 Andrew Selous: Yes. Thank you very much. When constituents come to see us about issues, I find invariably they say two things. First, they want redress about the individual issue, and secondly, they say that they don't want anyone else to go through what they went through. In the light of that, how do you see the ombudsman's work contributing to improvements in the design and delivery of public services generally?



Robert Behrens: Thank you. The PHSO has done a lot, as part of its strategic planning in the last few years, to think about what are the consequences of individual cases in terms of general practice and development, and that has to continue. An ombudsman that does not do that is failing the service it has a responsibility for, so there needs to be continued resource spending on that.

One of the things I saw in the Patients Association report was a claim that PHSO did not check whether or not its recommendations had been implemented by trusts. I don't know whether that is true or not, but what I do know is that, if you are going to make a recommendation in a report, you have to make sure that that is addressed. If it is not addressed you want to know why, and you want to give the oxygen of publicity to the fact that it has not been implemented. I think that the job of the PHSO is to try to make service providers more accountable in terms of the service that they provide.

Q24 **Andrew Selous:** I am pleased to hear you say that. Who do you see as your key stakeholders in your work?

Robert Behrens: There is a whole range. The users of the service are obviously enormously important, because they are the people who need the ombudsman service. We would have to do more to convince the users that the organisation is capable of making a difference, so that is very important.

In addition to that, the PHSO is accountable to Parliament and so Parliament is a stakeholder and this is very important in terms of the credibility of the organisation. Yesterday I came and saw a very important hearing where the ombudsman sat with the Select Committee to discuss with a Department that had not implemented a recommendation why it had not done that. I think that is good practice. It doesn't happen very often.

If I became the PHSO I would insist, time and again, on the independence and impartiality of the organisation, but there would have to be very careful listening and exchanges with Select Committee like this—this one and the Health Select Committee—to ensure that we learnt from each other and had a common approach to policy development in complaints handling.

Q25 **Andrew Selous:** You mentioned the Patients Association specifically just now, and I was pleased to hear you do that. How do you specifically propose to work with the Patients Association, given their recent quite trenchant criticisms?

Robert Behrens: I read the report. I think it is a sign of the tension between PHSO and user groups. This is a tension that an incoming ombudsman will need to address. To me, it is part of a series of meetings with stakeholders and users that I would regard as fundamental to what I do. So I would commit myself to meeting with the chief executive of the



HOUSE OF COMMONS

organisation and other organisations, like phsothefacts, to see whether there can be a better relationship without compromising our independence or our ability to make evidence-based decisions, but I think relationships can be better.

One of the things that all ombudsmen need to do is to have what the Canadians call “structural impartiality”. That is you are impartial but you can demonstrate that you have sufficient lived experience to understand and sympathise with what complainants have been through. That means making sure that your case handlers don’t just sit behind desks and computer screens and look at cases, but they have enough emotional intelligence to deal with very complex cases. I am sure that the people at the PHSO are already doing this but I would want to increase that.

Q26 **Andrew Selous:** So productive engagement with your stakeholders generally is something that you would—

Robert Behrens: It is fundamental. Where you have no coercive powers, you cannot succeed unless you try to take people with you.

Q27 **Chair:** Can I ask: in your previous role as an ombudsman, did you have any organisation that refused to take on board your recommendations?

Robert Behrens: Yes.

Q28 **Chair:** How did you handle that?

Robert Behrens: I think I was the first independent adjudicator to name universities for their failure to implement our recommendations, and—

Q29 **Chair:** To what effect?

Robert Behrens: I think they thought that I would never do it and I thought that, unless I did it, I would not carry the respect and authority that the role needed. I cannot emphasise how important it is to be able to call the bluff of recalcitrant organisations. On three occasions, three universities said they would not implement recommendations that we had made, and we warned them that if they did not do that we would publish the facts in our annual report, online and in newspapers, and we did it. Within half an hour of doing it the universities changed their view and adopted our recommendations, which is entirely honourable. They did not have to do it but they did. What that shows is that there is no substitute, eventually, for using transparency to address the issue of your lack of a coercive option.

Q30 **Chair:** We need have no fear that you would be backwards in coming forwards and standing up to a Department of state that did a similar—

Robert Behrens: You need have no fear but the Department should understand that we would not be gunning for them, that we would hope to resolve matters in a sensible common-sense way but, ultimately, if we believed what they had done was inappropriate, we would make it public.

Q31 **Dr Sarah Wollaston:** The PHSO role comes under an immense amount



HOUSE OF COMMONS

of critical public scrutiny and carries huge personal responsibility, of course. How well equipped are you to deal with that level of critical public scrutiny?

Robert Behrens: Ombudsmen have to lead from the front. They have to accept the decisions that are made and you don't blame the individual case handler. What you do is you accept collective responsibility for what is done. I am in no doubt that there will be an immense amount of pressure and criticism, but I have a lot of experience of dealing with radio, television, newspapers and journals, in defending positions and being prepared to debate and answer questions. That is a very important skill that will be needed in the next two years, and no doubt I will get better at it through practice.

Q32 **Chair:** Lastly, coming to ombudsmen reform, although this is a seven-year appointment, effectively, we have this impending legislation before Parliament that we talked about earlier in the Committee. How are you going to stop that dominating the agenda for the next couple of years?

Robert Behrens: I welcome the Select Committee reports from this Committee and its predecessor, which have promoted this idea. Legislation is important, not least to deal with the governance of the PHSO, which is archaic, fails to make the ombudsman sufficiently accountable internally within the organisation and needs to change, so that is important and I think there are sensible reasons to merge the Local Government Ombudsman with the PHSO. But, as I think I said before, fundamentally, what has to be addressed as a priority is the way in which PHSO interacts with complainants and the way in which it closes cases. That needs to be done whether or not there is legislation, and the better PHSO can deal with that, the more authority it will carry with its stakeholders and users regardless of legislation or not. We need to be prepared. There are a lot of issues that I have views about which I would be happy to share with you at another time. I believe strongly in the possibility of "own motion" powers for ombudsman, which are not currently proposed in the draft Bill, but I am happy to discuss these issues as they come up.

Q33 **Chair:** Would it be fair to say that you can see that there will be new opportunities offered by this change in structure and the merger with the Local Government Ombudsman that we should take advantage of, particularly looking at the role of this Committee?

Robert Behrens: Absolutely. It is nothing but an opportunity for the ombudsman service to become better able to reflect citizens' views about what it does, and the challenge will be to do it properly.

Q34 **Chair:** Would you be prepared to let us know what else you think should be in the Bill and what your concerns are about the Bill, because obviously it is not all-embracing in your view?

Robert Behrens: Absolutely, but I believe in the conversation in which I need to listen to you and to express my views. I don't believe that I know



everything and that I have it all right, but I do have views and I am happy to set them out if that would be helpful.

Q35 **Chair:** I am very happy with that. I don't know, Mr Behrens, whether you would like to make a closing statement because we have come to the end of our questions.

Robert Behrens: Thank you. This has been an enormously lengthy and rigorous process, which has gone on over a number of months, and I have had all kinds of interviews, tests, but it is immensely valuable in terms of the feedback that I have received each time through the process, so I am grateful to that. It has been a model of the way in which open and fair competition should take place.

The last thing I want to say is: it is an enormously difficult role but I would take it on with relish, with huge commitment, and with the expectation that significant changes can be made.

Chair: Thank you very much. On behalf of Dr Wollaston and myself and the members of our Committee, can I thank you so much for what has been a very enlightening session? Your enthusiasm for this role and your undoubted expertise has shone through, I think, throughout the session. I think it would not be beyond my remit to say we have been impressed by your capabilities of playing the piano, moving it upstairs, talking to the audience and writing the music as well, so can you go with our best wishes and I am sure you will look forward to receiving the report from our joint Committees.

Robert Behrens: Thank you very much.

Chair: Thank you very much indeed.