

Public Administration and Constitutional Affairs Committee

Oral evidence: Parliamentary and Health Service Ombudsman Scrutiny 2017-18, HC 1855

Tuesday 8 January 2019

Ordered by the House of Commons to be published on 8 Jan 2019.

[Watch the meeting](#)

Members present: Sir Bernard Jenkin (Chair); Ronnie Cowan; Mr Marcus Fysh; Kelvin Hopkins; Dr Rupa Huq; Mr David Jones, David Morris.

Questions 1-54

Witnesses

Examination of witnesses

Witnesses: Peter Tyndall and Dr Chris Gill.

Chair: I welcome our two witnesses this morning. They are members of a panel that scrutinised the work of the Parliamentary and Health Service Ombudsman and reported on that. The remit was “to assess the value for money of the PHSO’s spending, with reference to current best practice in the ombudsman sector.”

We are anxious to establish how much we can rely on your report and what further work needs to be done at the PHSO in order to continue its recovery. First, can I ask you to identify yourselves for the record?

Peter Tyndall: I am Peter Tyndall, the ombudsman for Ireland.

Dr Gill: I am Chris Gill, lecturer in public law at the University of Glasgow.

Q1 **Chair:** First, can you set out the characteristics of an “efficient and effective modern ombudsman service”, as you were looking for in your report?

Peter Tyndall: The panel looked for a number of characteristics, partly to do with process, partly to do with the quality of staffing and also partly to do with how the organisation deals with members of the public who make complaints to it and its engagement with the organisations within its jurisdiction.

First, you are looking to see whether the processes in place are appropriate to deliver an efficient and effective service to complainants.



HOUSE OF COMMONS

One of the issues you are looking at is whether decisions are made in a speedy, but appropriate fashion. Is a high degree of resolution looked for? When a complaint is deemed to be ready for investigation, is that investigation thorough?

Historically, ombudsman offices would have had a series of processes that were quite slow. Partly as a consequence of the recession, people were forced to rethink how they dealt with complaints. One of the key things that emerged from that is that individuals need to have an early response. If they are going to be told that a complaint is within the jurisdiction of the ombudsman and that the complaint has characteristics that enable it to be investigated—it is not premature and has been dealt with by the body about which the complaint was made in the first place—you would be looking for an early decision to be made in all those instances.

One of the other things you are looking for is to minimise the number of people with whom the complainant has to engage. You are looking, where possible, for the individual first to have a decision made as to whether the complaint falls within jurisdiction—whether the complaint has been made previously to the body itself. Once you have done that, you need to quickly come to a decision as to whether to investigate. At that point, there should be a single handover to an individual who will see that complaint through to its conclusion. One of the characteristics of that is that it gives you good customer care, because people do not want to have to state their case to a multiplicity of different people. It also gives you efficiency. Someone is making the complaint, and someone is dealing with it to see whether it is suitable for investigation. If it is suitable, it should be someone's job to investigate it. It is as simple as that.

You are also looking for complaints to be dealt with at an early stage where resolution is possible. For example, let us say that the complaint is that there has not been a response to correspondence. It is more useful for the ombudsman's office in the first instance to contact the body concerned and ask them to make a response and copy that to the ombudsman to ensure that it happens, rather than to commence an investigation as to why it did not happen. You have to have systems in place that enable you to capture the learning from those things, because if you are getting multiple complaints of a similar, resolvable kind from individuals, you need to be able to see whether there is a pattern and a systemic problem that needs to be addressed.

What are you looking for in terms of how things are done? In the first instance, you are looking for the intake process to work and to minimise the number of people dealing with the complaint. The next thing you are looking for is to have processes in place that devolve responsibility to the frontline as far as possible.

If people do not have the authority to make decisions and they have to go up through the hierarchy of the organisation and back down again, that is both inefficient and creates delays for the individual making the complaint. The counterbalance to that is that you are looking for an organisation to have high-quality control measures in place. You need to have solid

processes and people at the frontline making decisions early so that people are not kept waiting for a decision, but on the other hand you need people scrutinising those processes to ensure consistency and that appropriate decisions are being made.

Finally, there are two other characteristics of a modern ombudsman office that I would draw attention to. One of them is a generic case worker arrangement, because you simply cannot deal with the peaks and troughs of casework by having people sitting in narrow silos. Commensurate with that, you need arrangements in place to ensure that expertise is available to those individuals to inform their decision making.

The other issue is having appropriate, well-trained staff in place. For that, you are looking at the quality of the training programme provided to staff at induction to make sure that they are properly equipped to deal with complaints when they start, but also throughout their careers, because of the changing nature of the public services and jurisdiction.

Q2 Chair: Thank you very much for that comprehensive answer. Not all the answers can be that long, I'm afraid, but that was a very useful contribution.

You have a great deal of experience as ombudsman in both the Republic of Ireland and in Wales. How much are the characteristics that you have described generally accepted among ombudsmen across Europe and the world?

Peter Tyndall: The ombudsman community in these islands has very similar characteristics to certain European ombudsman offices—Belgium, the Netherlands and so on—and to those of the former British Commonwealth, including Canada, Australia and New Zealand. These characteristics would be widely accepted in all of those parallel offices. Another ombudsman office is the National Human Rights Institution, which has a slightly different *modus operandi*. These would be the accepted norms for international ombudsman offices with similar characteristics.

Chair: Dr Gill, you are nodding—do you want to add anything?

Dr Gill: The academic consensus is very much that this idea of having modern complaints management, as Peter has described it, involves moving from a 1960s model of ombudsman and complaint handling, which was about very small numbers of in-depth, formal investigations resulting in formal reports, to something that is much more focused on large numbers of people complaining and on providing more individual, flexible and tailored solutions.

I think the title of the Committee's report, "Time for a People's Ombudsman Service", reflected that idea of having to move from a very parliamentary institution, which was all about formal reports to Parliament, to something that was much more about providing mass redress to citizens—something that would work for people. A lot of ombudsmen have done that, but in this report we argue that the PHSO

was a little bit slow, which has perhaps led to some of the problems that we discuss in the report.

- Q3 **Chair:** Of course, our predecessor Committee came to that inquiry and its report via another report on complaints handling in the public sector generally. How much do the principles of a modern ombudsman draw on other sectors, such as private sector complaint handling or consumer complaint handling?

Peter Tyndall: The example often given in the UK of good complaint handling is the John Lewis Partnership. One of the things it does is devolve responsibility for dealing with customer complaints to the people who deal with customers, which seems like a principle that you can apply to any organisation that has dealings with members of the public. I think it is particularly appropriate in the public sector, because people often do not have a choice about the services they use.

- Q4 **Chair:** How well does PHSO deal with complaints about itself?

Peter Tyndall: You have to be very careful to distinguish between complaints about the outcomes of investigations and about the way the organisation manages its business. As the final stage in the public sector complaint process, inevitably the extent of satisfaction with PHSO will very much depend on the outcome of its investigation: people whose complaints are upheld will generally be more satisfied than those whose complaints ultimately are not upheld.

I think that PHSO has mechanisms in place—the current management are much more engaged and prepared to talk to people who have criticisms—but an inevitable consequence of being the final stage in a complaint process is that you will have people who are not happy with the outcome. It is perfectly understandable that they are not, but that does not mean that the outcome has always been wrong.

People's dealings with a public service—particularly in the case of PHSO, with such a predominance of complaint about the treatment within the health sector: there will be disputed outcomes and people will be unhappy. You can understand why that would be. You can perfectly understand why people are very unhappy. PHSO seem prepared to confront those issues, to reconsider if there is evidence that they got things wrong. That is quite important.

- Q5 **Chair:** Did you make much of an assessment of some of the legacy issues that have built up in PHSO about complaints about its own performance, and have you got some advice on how they should be dealt with?

Peter Tyndall: Our concentration was on value for money and process. As a consequence, we were not looking at individual cases. That is a separate job that I know you have undertaken quite a lot.

The evidence we saw about the processes and systems in place for dealing with ensuring good quality outcomes in casework and for dealing with dissatisfaction seem to be the kind of processes that you would expect to

see in place; the evidence we saw of them working seemed to be that they were working appropriately.

- Q6 **Chair:** We are in a similar boat to you. We are looking at how their ship can be righted and set on the right course; the legacy cases are, to some extent, a separate issue. However, part of the credibility of the ombudsman is to be seen to be dealing with those cases.

Peter Tyndall: What we did see—and some of the systemic reports we were looking at, for instance, showed this—was that the organisation is well attuned to issues that are arising and is capable of bringing those to the attention of yourselves and appropriate parliamentary Committees, and the services within their jurisdiction.

- Q7 **Chair:** You have set out the characteristics. To what extent does PHSO meet those characteristics—those standards you have described?

Peter Tyndall: We have said very clearly that PHSO is, in the modern cliché, “on a journey”. It has come from a difficult place and literally has moved a large part of its operation to Manchester. It has a very young team. What we saw was an organisation that reflected those characteristics: a very high quality training programme in place and a lot of attention to having appropriate processes. We were able to sit with people who were dealing with customers and see how they were doing that. We were able to meet staff without management being present, at our own request, so we did get a good sense of an organisation that is moving forward.

It is a youthful organisation, comparatively. It is perhaps lacking a little in the organisational memory that would characterise a long-established ombudsman office. That is partly because of the move, but the low morale did lead to a lot of people leaving. It is an organisation that is going in the right direction. It has achieved very considerable improvements. It has ways to go.

You can see, for instance, at the moment, very high levels of quality checking by managers. That is an inevitable consequence of having a young, inexperienced workforce, comparatively. In the longer term, you would expect some of that to pull back a little because it is a little cumbersome. Similarly, we saw things such as an ICT system that is patently not fit for the purpose. It is not designed to support a modern ombudsman office.

There are large elements of progress, very substantial achievement, but clearly, a recognition that there is work still to be done to achieve a mature and steady-state modern ombudsman office. This is an organisation that has turned around from a very low ebb. Frankly, we were astonished by the staff survey figures before the change process began—astonished.

- Q8 **Chair:** Are there any other particular strengths and weaknesses you would draw attention to?



HOUSE OF COMMONS

Peter Tyndall: The strengths: the leadership is very strong. Both the ombudsman and Amanda Campbell, clearly, are experienced people and have appropriate knowledge and ability to move an organisation forward. They are very well regarded by the workforce. That has been regarded in the staff survey.

The other strengths and weaknesses: the attention to the process, developing a proper process to prevent any return to some of the ways in which the organisation was failing is really important. Quality control is important; staff training is important. The characteristics you expect are in place. I would say that the work on systemic reports was always a strength and has been sustained, so there are good-quality systemic reports coming out. Access has improved, but there are issues about access that we will no doubt return to.

Our judgment would be that this is an organisation that has come from a very difficult place; it has made considerable progress; it has a journey still to travel, but it appears to be doing so in an effective manner.

Q9 **Mr Jones:** To continue that point, I think the expression you used was that it has moved from critical care to recovery. How confident are you that that recovery can be maintained?

Peter Tyndall: I think very confident, because the foundations have been attended to with such detail and because of the leadership teams. I will say, though, that clearly when new management comes in—you can see it in football teams as well as ombudsman offices—you will get a sudden improvement and morale will improve. Sustaining that involves putting the foundations in place but also having a set of metrics that enable you to judge whether that improvement is being sustained, and a capacity to respond if it is not happening.

For instance, one of the consequences of the move and the training programme is that performance in terms of case turnover—and some of those issues I mentioned about quality—is below where it should be. That is a consequence of the change. With the change programme, you should, over time, in the short to medium term, see that metric start to improve, but it will be important to keep track of those.

I know Chris will want to say something about this, but the most recent surveys undertaken with users have shown that there is a noticeable and measurable improvement, but it will be important to continue to measure it: once the halo of the change starts to dim and it becomes routine, then you fall back on having good-quality systems in place.

To ensure that they are working, you have to be able to have evidence. It does appear that the various measures, such as the staff survey and consumer surveys, do give you measures, but also some of the metrics about performance.

Dr Gill: Let me add to that. In terms of the sense we got that the PHSO had turned a corner, the evidence from the staff survey is very strong. We have increases in staff morale; a 45% increase in people thinking that the



HOUSE OF COMMONS

leadership visibility was good; a 30% increase in people thinking that leadership had a clear vision for the organisation; around a 20% increase in people feeling satisfied with their jobs and feeling that it was meaningful work to do. I think those are quite strong evidence of increases in staff morale. We were particularly impressed with the consumer data. That compares very favourably with consumer data collected by other public service ombudsmen.

As to the scope of it and how it is collected, it is independently collected, and it is done in tandem with an internal QA process; all of that, to our mind, was very good-quality evidence that helped put in context some of the more acute issues that have maybe occurred in the past, with particular complainants being dissatisfied. That was one of the things that we built our level of confidence on in terms of this report.

- Q10 Mr Jones:** What more would you say needs to be done to move the PHSO from the stage of recovery to rude good health? You mentioned, for example, the issue of the IT systems, which you say are not fit for purpose. What else would you say needs to be done to improve the PHSO and give it a more viable future?

Peter Tyndall: The training programme clearly needs to be completed and the individuals need to be fully equipped to do the job. The quality mechanisms then need to be stepped back a little, so that they are not interfering with the day-to-day running to quite the extent that they are. You can only do that when you have confidence in the consistency and quality of the casework. That is a process that needs to be seen through.

On the other things that need to be done, as you know, there are difficulties with the legislation, which no doubt we will come to, which put some restrictions on things. I am not just talking about powers; I am talking about restrictions on casework, the focus on investigation and so on. There are constraints, and it would be helpful if they were removed, but that is obviously a separate issue.

We identified a need: you have to have generic casework, but equally you have to have a means of recognising expertise. I will just illustrate that practically. You might have someone who mostly deals with health cases, which would enable them to build up their work in the health field, but if there is a sudden increase in cases about, let's say, social security benefits, it might well be that that person has to be prepared to deal with those peaks and troughs.

Just to give you a sense of my ombudsman office, we know we will get a spate of complaints about student grants at the point at which people apply for them, so we know that at that time of year we are going to have to redirect some resource to deal with an issue that has to be dealt with speedily. It is that capacity to have generic casework and yet retain expertise. That balance was not quite there yet, as we saw it, so getting that will be a task for management.

- Q11 Mr Jones:** Is that an organisational issue or a resource issue?



HOUSE OF COMMONS

Peter Tyndall: It is an organisational issue, and I think it will be dealt with. I have every confidence they will deal with it, but it would be one of the things I would be looking to see: how do you make sure that you have your specialist caseworkers who can advise and support others, and how do you make sure you have access to specialist advice? They have been very strong on the having access to clinical advisers, but it is just that sense of having leading caseworkers with an expertise.

Clearly, with the big change, with the move from London to Manchester and a lot of people not moving, you lose a lot of things and you have to build them up again. You have to do it systematically.

Q12 **Mr Jones:** Do you think the move to Manchester was a sensible decision?

Peter Tyndall: I do. Financially, to deal with the extent of the cutbacks, it is very difficult to see how you could have sustained a service with London prices, in salary terms and particularly in terms of real estate. So it was a sensible thing to do. For much of the work of the organisation, the precise location of the casework is not that significant.

It is very difficult, in a country the size of the UK, to think about how you could manage to have face-to-face contact with ombudsman staff throughout the UK—it is hard to see how you would do that. So from that point of view, having caseworkers based in Manchester works.

On some of the issues about the transition, it was probably very well managed when you consider that the performance levels did not dip more than they did and so on, but the move was a challenge. Now that it is established there, the office seems appropriate and the staff are very comfortable, very committed and very motivated, so I think it will prove a success.

Q13 **Mr Jones:** Dr Gill, how would you measure the success of the recovery programme?

Dr Gill: We considered a number of bits of data. As I say, I think the consumer data was very helpful, the surveys that PHSO conducts—

Mr Jones: But what about going forward?

Dr Gill: Sorry. Going forward it is partly just about keeping track of that kind of routinely collected information. The service model that the PHSO now has in place is linked with some very clear measures that are reported against on a regular basis. I think we can see how that is going to change.

We can monitor staff morale. From that perspective, it is just about keeping an eye on the data as it is reported and looking at the normal kind of stuff you get through annual reviews. I do not think that there is necessarily a need for any further data collection at this stage, above and beyond what is already routinely being collected.

Peter Tyndall: The data that is being collected will be of great assistance to the Committee, because it will enable you to monitor trends in these issues over time and will give you a robust statistical base to analyse the



HOUSE OF COMMONS

issues that have been of concern to you. I think it would be helpful, however, to repeat the assessment at some stage—perhaps three years into the future—to see whether the expected changes have happened and whether they have delivered the expected outcomes.

One thing you see as an ombudsman is that quite often you agree a set of recommendations that are designed to bring about a particular change; and you need to go back at some point and make sure that the recommendations have been implemented, but you also need to make sure that the change has occurred, because sometimes you can apparently be on the right path, yet not achieve the outcome that you were looking for. The process of review needs to be conducted, not highly frequently, but at least sufficiently often to give some reassurance that the direction of travel has secured the outcome.

- Q14 **Dr Huq:** I just wondered, how much progress do you think the PHSO can make in reforming itself, or overcoming the challenges that it faces, on its own, and to what extent will it require structural or legislative changes that need Government intervention?

Peter Tyndall: We were very struck by the disproportionate element of health casework.

- Q15 **Dr Huq:** Is that because of the MP filter?

Peter Tyndall: Yes. In the first instance we were struck by it, and then you start to explore why that might be the case. You do have direct access for health complaints that you do not have for other complaints. If I might illustrate—

- Q16 **Dr Huq:** The balance of those is 80%. Is that right?

Peter Tyndall: In my office, with a broad jurisdiction over public services in Ireland—admittedly a different jurisdiction to the one here—broadly speaking, complaints follow transaction volumes. So the agency that has most individual contacts with members of the public, which is the Department that deals with benefits—the Department of Social Protection in Ireland—would top the list of complaints. That does not suggest, I should say, that there are any particular difficulties there; it just reflects the fact that they deal with more people on more issues, and therefore generate more complaints. It is very striking that the parliamentary ombudsman figures are as they are. It does suggest that there is some negative impact of the MP filter in allowing people to bring their complaints to the office.

That is one of the conclusions that we reached from looking at the issues, but I think there are another set of issues. The legislation is old. It was cutting-edge a long time ago. Since then, a lot of new pieces of ombudsman legislation have been developed internationally. Some of the issues are around reporting. Clearly, when the PHSO was established, the presumption was that it would deal with a small number of very high-profile complaints on behalf of Parliament. That is not the way of an

ombudsman, and it is not the way the public understand what an ombudsman should be doing.

In that sense, the legislation is restrictive in terms of the reporting arrangements. Just in terms of seeking to characterise how the PHSO does its work, it would be much better to have the legislation brought more in line with other more modern legislation. For instance, since the PHSO legislation has been introduced there have been many private ombudsman schemes that are covered by legislation here.

You have Scotland, Wales and Northern Ireland, so there are plenty of examples of other ombudsman legislation that is very different in character and leads to a very different make-up of complaints—a broader range of complaints. It also makes it easier for resolution to take place when that is the appropriate outcome, and it makes it easier for investigations to lead to a report, because it can be a brief report that does not have to be laid before Parliament.

There is a whole set of things. Two of the suggestions that you have looked at in respect of any future legislation relate to issues around new powers. One of them is the complaints standards power, which Scotland has developed and which Northern Ireland will now take on. That seems to be a very positive way of managing improved complaints practice across the public sector in setting standards and so on.

The other one is “own initiative” powers, which the vast majority of ombudsmen offices have. You have heard the debate. From my perspective I would say that they are used sparingly, which is one of the things that people might be concerned about. All ombudsmen offices internationally use them sparingly.

There is a best practice paper from the International Ombudsman Institute, which you would probably find of some interest in looking at the issues. The UK has a fairly cluttered regulatory landscape, so it would be very important that an added value approach was taken—in other words, doing the things that the ombudsman can best do that other people are not better placed to do. For me, it is about people who are under-represented within the complaints landscape: people, for instance, with mental health issues and people with intellectual learning disabilities and so on.

There are people who find it very difficult to make complaints. Where an ombudsman office has “own initiative” powers, you can target those complaints. Those powers have tended to dominate the discussion about changing the legislation.

The two issues we picked up were, as I say, the restrictions on day-to-day casework brought about by the old-fashioned, if you like, nature of the legislation, but also the very complicated landscape for users of public services in England in particular, where the lack of a single access to an ombudsman scheme meant that the PHSO seems to do an inordinate amount of signposting. A huge part of their activity is in dealing with

people who have come to them in error. You would have to say that, from the perspective of a consumer—a user of public services—a simplification of the landscape would be of enormous assistance.

As you would expect, I am not aware of another public service ombudsman in the world that has an MP filter. The IOI has 190 public service ombudsmen in membership—probably nearer 200 now—and you are unique. The evidence is not good. It might be worth saying as well, by way of reassurance, that a very large number of the complaints to my office are brought on behalf of constituents by elected representatives, usually TDs, our equivalent of MPs. So it does not break the engagement between Parliament and the ombudsman, but it does allow for speedier access to the ombudsman.

Dr Huq: We all know those forms that we blithely sign. Our filter is low, I would imagine.

- Q17 **Chair:** The reason for objecting to, or continuing to deny what I call public access to the ombudsman is the perception that it is a sort of empire-building operation by the ombudsman—that MPs are the ones who resolve complaints, and that we don't need people bypassing MPs to resolve complaints. Rather than following the herd, what is the objective argument in favour of removing the obstacle to people having direct access?

Dr Gill: The evidence in Scotland, whatever the MP filters, is quite instructive. MSPs still receive vast quantities of correspondence from their constituents, asking them to help with their complaints and concerns. The ombudsman investigates a very small proportion of complaints made about public services in Scotland. We don't have exact figures.

I am conducting a research project at the moment to try and establish the volume of complaints being dealt with by MSPs. Certainly we know anecdotally that those volumes are still significant. On the idea that removing the MP filter will remove the role of parliamentarians in complaint handling and in securing citizens' redress, there is very little evidence for that in those nations.

- Q18 **Chair:** How much do MSPs regard the ombudsman as an organisation that assists them in their work?

Dr Gill: That is interesting. That is a problematic aspect of the current approach in Scotland. There is not a strong parliamentary link in the way that, for example, this Committee has with its special interest and responsibility for the ombudsman.

If the MP filter is removed—I think it should be—it needs to be replaced by a stronger way of bringing the ombudsman back into a stronger connection with Parliament. One of the ways to do that is through the "own initiative" power, through this Committee taking a more systemic approach to complaint-handling and redress, and through helping the ombudsman make use of its more systemic, proactive powers which could

be granted if complaints standards authority and “own initiative” powers are forthcoming.

Peter Tyndall: I would say that in Ireland, the TDs—the equivalent of MPs—do see my office as a useful way of resolving complaints. They will quite often try to resolve it themselves. If they cannot do that, they will pass it on to my office in the hope that we can find a resolution to it. It is an important part of the constituency work and we have a considerable engagement with TDs, and particularly with their office staff. That was also the case when I worked in Wales.

Q19 **Kelvin Hopkins:** To what extent is the PHSO ready to take on “own initiative” powers and a regulatory role for local complaints systems? Are there capacity issues? What would have to change for it to be able to do this?

Peter Tyndall: Legislation would not happen tomorrow. They would be receiving “own initiative” powers a couple of years down the track, if that. You can take on “own initiative” powers at any point, but your capacity to use them depends on the resources available. The powers themselves would not be problematic, but you would need to make sure that sufficient additional resourcing was available if you were to provide “own initiative” powers. They would not be extensive. We tend to run one “own initiative” investigation a year in my own office in addition to systemic investigations.

“Own initiative” powers often come into their own in surprising ways. If I deal with private nursing homes, relatives often come to me but they do not want their relative to be identified, because they fear they might suffer a disadvantage if they were seen to make a complaint. I can use “own initiative” powers to investigate that nursing home without the individual being identified and where people with intellectual disabilities are not capable of bringing a complaint to my office. They are always seen as being about big, headline-grabbing huge investigations, but they help you do other things.

As for the capacity to conduct systemic investigation: sometimes you receive a complaint about one body but you suspect that the practices there are likely to be occurring in other bodies about whom you have not had a complaint. Own-initiatives make it easy to widen the investigation without challenge. For PHSO to take it on, they would want to make sure that the current changes are bedded in.

For the complaints standards power, Scotland had a small team of additional people who dealt with that—three of them, from memory. Although the UK is a much larger jurisdiction, the number of complaints systems would not be significantly larger than Scotland’s. There would be a resource implication, but not a large one. In terms of the capacities of managers: if it were tomorrow, they are focused on seeing through the current change programme. If it were in two years’ time, their leadership team is well able to take forward that kind of change.



Q20 Kelvin Hopkins: Presumably there are occasions when you see a general problem arising because of a number of complaints, all with similar characteristics, and there clearly is a general problem. Can you pursue that?

Peter Tyndall: Absolutely, you do. It is probably easier to illustrate with an example. I had an individual complaint where somebody's fostering allowance was being taken into account in calculating the rent of their council home, and it should not have been because obviously that money was intended for the benefit of the child they were fostering. On seeing that, you immediately think, "Well, if one local authority is doing this, can it be happening to other people in that local authority, and can it be happening in other local authorities?" By investigating it as a systemic issue, which we did, people got money back, quite unexpectedly; they didn't know that they were paying money they shouldn't have been paying.

So it is easy with those powers to convert to a systemic investigation. It can be, as you say, that you are getting multiple complaints about the same issue and the same organisation, but sometimes even an individual complaint can lead you to believe that its characteristics suggest that others might be having similar problems.

Chair: You have just explained why the Government do not want "own initiative" powers—it's going to be expansive.

Peter Tyndall: The argument would always be made—I would certainly make it—that systemic investigations can identify failings that will prove very costly, and preventing those failings might actually save money.

Q21 Chair: Can you give an example?

Peter Tyndall: Certainly. I will use a Welsh example, as I have been using Irish ones. Within the health service in Wales, some of the investigations led to small specialist units being closed, because they were being staffed over a long period by locum consultants who didn't have the necessary expertise. People's lives were at risk. The NHS would have been sued for failures in treatment.

Those services were just down the road from services in Cardiff that were properly staffed and equipped, but for reasons to do with the NHS in Wales the decision to close them had not been taken. The ombudsman investigation of systemic issues led to those closures and that saved the NHS money.

Q22 Kelvin Hopkins: I have just one more question to finish off this section. How do you respond to people who argue that a wider role for the ombudsman would detract from what should be its core purpose of securing justice for individual complainants?

Peter Tyndall: I would always have said that the core role of a public service ombudsman is twofold: investigating complaints and improving services. Simply to deal with individual complaints is a vitally important thing to do, but of itself it does not take advantage of the learning from



HOUSE OF COMMONS

those complaints, to ensure that the learning from those complaints is driving improvement in public services.

So you have to have both. You need to have the capacity to deal with the individual as an individual, and give them the answers and the redress that they need, but at the same time you have a huge job. A lot of people who come to an ombudsman will say that they are not looking for money or compensation; they are looking to make sure that what happened to them doesn't happen to anyone else. It is therefore important to ensure that the ombudsman is in a position to secure those changes.

Dr Gill: I should just add that there are many people who do not complain about public services. A National Audit Office report in 2015 suggested that out of 10.6 million problems experienced by citizens, only 49% of people will complain in the first place. So going to an ombudsman is very unlikely, and if the ombudsman is only serving individual complainants, then it is not serving the public.

The "own initiative" power is a way of broadening out the mission of the ombudsman and making sure that people who don't complain or people who are particularly vulnerable are able to benefit from the ombudsman's work. So I think it has that aspect to it, which is often lost sight of when we talk about benefits to individuals, because it depends which individuals we are talking about.

- Q23 **Kelvin Hopkins:** Following on from what Mr Tyndall said earlier about foster care payments, there may be lots of hidden cases where people just accept that wrong has been done to them and do not challenge it, but if you take a general position then lots of people will benefit, without necessarily having made a complaint themselves.

Peter Tyndall: Sometimes you can see through your knowledge of what is happening in the public sector that something is about to go wrong in a big way. By investigating early, you can prevent something from mushrooming.

- Q24 **Mr Fysh:** Going back to your study, what sort of limitations did you find were in there? If you had more time or money, for example, who else would you have spoken to? What other things might have been useful to your investigations?

Peter Tyndall: It is difficult. We largely determined our own process. We felt that, with the very comprehensive literature review, access to a lot of statistical and survey information, and the opportunity to meet people across the organisation—managers at different levels and the leadership team—but also to sit with staff doing their work, we did quite a comprehensive study. We didn't feel particularly constrained in doing that.

One of the things we have agreed to do is write up the methodology peer review with a view to holding a symposium later in the year, because we think that developing a methodology for peer review that is more widely used would be helpful. One of the things that we might have done would have been to have some focus groups with a cross section of



HOUSE OF COMMONS

complainants, some of whom had had their cases dealt with, some hadn't, some had had them upheld, and some hadn't—and so on. That would probably be the only element I would add. We did have access to very good consumer data, so we were not entirely constrained in that—but I would probably add that, in retrospect.

- Q25 **Mr Fysh:** Would it be useful for future review processes like that to have input from other people outside the ombudsman community, other than complainants themselves, or is it just complainants from whom you would think it interesting to hear?

Peter Tyndall: I thought it was quite important—most of these reviews will have somebody from the academic community who brings a more objective view than another ombudsman. I think the difficulty in going to generic consultancy-type firms, say, is that although they bring a good approach on some of the process issues, they do not understand the mission sufficiently to add a great deal of value, in my experience.

In our case, clearly I am from outside the jurisdiction, and we have an academic in Chris. We had somebody from a different kind of ombudsman scheme to bring a different perspective. In general, I think you get more value from peer review, because it is harder to hide things from people who understand the business—it is important to say that. We have a quicker sense of whether things are as—in my own case, I have probably got experience of an awful lot of ombudsman offices around the world. You have to achieve a balance. For instance, you have a process of audit, which is as it should be. In terms of looking at processes and systems, I think you need people who understand them.

- Q26 **Mr Fysh:** Dr Gill, are there any other academic perspectives from the rest of the world that are interesting, in terms of trying to implicate them for peer review in future? What does your landscape look like?

Dr Gill: As Peter mentioned, academics have been involved in conducting reviews of ombudsman schemes already. Dr Richard Kirkham at Sheffield conducted a review of the local government ombudsman, and I have conducted several reviews myself.

Ombudsmen are quite engaged and have been working on evaluation methodologies for a number of years, so there is quite a lot of thinking that could be drawn on. Peter's idea of having a symposium where a methodology can be developed would be a really good one and would be the kind of thing that could provide assurance to committees such as yours, not just in this country but around the world. There is that question of how you evaluate ombudsmen's offices; that is not unique to this jurisdiction. I think there would be much wider benefit from that.

Chair: This is a fascinating session, but we are going to have to go a little faster. You have covered quite a lot of the ground, so we are going to drop one or two of the questions that you have covered.

- Q27 **Mr Jones:** To pursue the last point you made, Mr Tyndall, you said that as members of the ombudsman sector you were probably able to get to



HOUSE OF COMMONS

the nub of what was wrong with the organisation more easily than you might otherwise. How would you respond, however, to those who might say that you are actually too close to the organisation that you are scrutinising and that perhaps the review would have benefited from having at least some members who were outside the sector?

Peter Tyndall: Clearly Dr Gill is an academic and not a member of the ombudsman community, so that would answer that in part. All of us have reputational issues that we need to deal with, so a review that patently failed to hit the mark would reflect very poorly on the people engaged in it. We also feel that, with a receptive management, a review is an opportunity to push forward and improve practice. As you have heard, we have been quite clear about the areas in which improvement needs to be sustained and the areas in which further improvement is required.

It is difficult if you bring in people who have no knowledge or experience of the sector—the experience has not been good when people have used generic consultancy companies—but it is possible that you could have a wider range within a peer review that would perhaps enhance it. Maybe that is one to feed into the seminar when we have it, but I think we are reasonably convinced that we have the knowledge, expertise and objectivity to produce a robust set of findings, and we are comfortable with the findings we have produced.

Q28 **Mr Jones:** I would not challenge your knowledge and expertise, but you mentioned Dr Gill, and I am sure that he will not take it amiss if I point out that he has previously worked for the Scottish Public Services Ombudsman—so you are part of the culture to a certain extent, Dr Gill.

I was interested in the last concession that you made, Mr Tyndall, that maybe future reviews would benefit from at least a more independent element.

Peter Tyndall: I don't think that was quite what I said.

Q29 **Mr Jones:** Could you expand on that? I think there is concern that it is ombudsmen marking other ombudsmen's homework, if you like.

Peter Tyndall: I can understand that. The difficulty is that bringing people in who do not understand the business would not give you a particularly helpful outcome. My point was that that is something that we could take up in the symposium to see if there was an appetite for it, but I would not accept a view that we were other than independent in the way we did our business. As I say, I will come back to that point.

If it were to turn out that the review was inaccurate or failed to identify difficulties, that would be reputationally damaging for those of us involved. Our offices are designed to be independent, objective and fair. We have to be seen to behave in that way in all the activities we undertake, and that is what we did in this instance.

Dr Gill: There are obviously pros and cons to peer review. One of the cons is the possibility of groupthink and of having an insider mentality. If you look at how the Financial Ombudsman Service has gone about conducting



HOUSE OF COMMONS

its periodic reviews, it has basically chopped and changed. It has had academics, it has had a QC, it has had the National Audit Office—each time it has had a different approach. To some extent, that is quite good, because it gives you a different perspective, but it also means that you have very little continuity. Different standards are being applied each time, so you are not necessarily having the same approach.

There are pros and cons, but it would probably be helpful to look at some of the reviews that have been conducted of other ombudsman services, to get a sense of what you, as a Committee, find particularly useful—whether the peer review approach is one that you find meaningful, or whether there are other approaches that you find more helpful. I think that each piece of data that can be produced through independent review gives you a piece of the puzzle; I don't think that one approach can necessarily give you everything you would need.

Mr Jones: Yes. I just wonder whether future reviews might not benefit from input, at least, from people of expertise who are outside the culture. Clearly in such reviews there is always the danger that those who are conducting them can be—I cannot think of a better word—tainted by the culture that they are actually investigating. That was just a comment, Chair.

Chair: It did have a question mark, didn't it? In the inflection, anyway.

Mr Jones: There was a bit of uptalk.

Chair: Okay. We will move on.

Q30 **Ronnie Cowan:** Just on that last point, as well as embracing experts and other ombudsmen, should we not also be talking to the people who have brought cases to the ombudsman? To quote you, they surely do understand the business, because they have been at the receiving end of it. Are people encouraged to come forward to these inquiries?

Peter Tyndall: We rely very heavily on the very detailed independent consumer satisfaction surveys that were used for that perspective. As I said, perhaps in retrospect, we might have chosen to have a focus group.

Dr Gill: We did have access to that data through looking at submissions that were made to this Committee and previous inquiries. I have conducted a small research project examining groups of online critics of ombudsman services—

Q31 **Ronnie Cowan:** There is a difference between reading submissions that have been put forward to a Committee and sitting down across a table and, you know, talking to people who have walked the walk and talked the talk. So is that part of the plan?

Peter Tyndall: Well, we were looking predominantly at a value-for-money audit, as requested by the Committee. We were looking at it from a process perspective and also from the evidence that had been gathered

through the various surveys—both the staff surveys and the consumer surveys.

- Q32 Ronnie Cowan:** Okay, let's move on to value for money then. In your view, does the PHSO provide good value for money compared with other similar ombudsmen?

Peter Tyndall: The straightforward answer is yes, but it is a complicated question. Dr Gill will talk a little bit about the comparators with the Scottish Public Services Ombudsman on published figures. Two of the things we would particularly draw attention to are the high volume of health cases, which are expensive to deal with and which tend to have a distorting effect, and also the huge amount of signposting.

- Q33 Ronnie Cowan:** Is that a higher volume for the PHSO?

Peter Tyndall: Yes. The PHSO has a higher proportion of health cases than any other public service ombudsman in these islands.

- Q34 Ronnie Cowan:** Why?

Peter Tyndall: We concluded that it might be a lot to do with the MP filter—because there is direct access on health cases and there is not on other aspects.

- Q35 Ronnie Cowan:** So that is a good thing. Surely if people have issues with the healthcare system, they have to be able to bring them forward?

Peter Tyndall: Yes. In our view, they should be able to bring forward all issues to the ombudsman, without a filter—equality of access would seem like a sensible conclusion—but it has a distorting effect on the cost, because you have to use clinical advisers to a greater extent. Well, you have to use clinical advisers on health cases. The issues are often complex and also have such a deep impact on the people who are bringing the complaints, so the complexity and the care that is required makes it more expensive.

Given those two issues—the fact that there is a high volume of signposting going on, and that there is a preponderance of health cases—we felt that the figures do suggest that there is value for money.

- Q36 Ronnie Cowan:** Is that just with the one comparator—just compared with the SPSO?

Peter Tyndall: The SPSO is regarded as one of the lower cost ombudsman services in these islands.

- Q37 Ronnie Cowan:** Did you just make that one comparison? Did you compare with other ombudsmen?

Dr Gill: We made only one comparison. The basis for selecting the SPSO was partly that it had often been suggested as a kind of leading modern ombudsman service—it had modernised legislation, and it was pioneering in various ways in which it had approached the ombudsman task. Given that we had limited resources to conduct the review, we felt that we could

not choose loads of comparators—we had to select one main comparator and we chose the SPSO.

The other thing we really wanted to do through the cost-per-case comparison was to explain why it is so difficult to use cost per case as a measure. I provide in the report three different approaches that you could use and explain why each one is unsatisfactory as a headline measure of value for money and cost per case. Part of what we were trying to do was to explain why you can't simply have a magic number that says, "Yes, you are providing value for money and that is directly comparable to other ombudsmen," because they all have different functions, ways of operating and different remits.

None the less, based on what we felt was the most reliable cost-per-case measure, we didn't feel that there was a huge discrepancy between PHSO and a leading UK public service ombudsman. That finding could be taken further and more work could be done on comparing it to other ombudsmen, but I think that would be somehow missing the point about the fact that you need to take this more contextual qualitative approach that recognises the difficulty of that bold quantitative figure.

Peter Tyndall: A further issue is that the high-level systemic work—the excellent cross-cutting reports and reports into systemic investigations that PHSO does—have to be taken into consideration when you look at value for money. It is not just about individual casework.

Q38 **Ronnie Cowan:** Beyond value for money, was it ever taken into consideration to measure successful outcomes? By a successful outcome, I mean one where the problem was identified and resolved.

Peter Tyndall: The uphold rates of different ombudsman schemes vary considerably and are often to do with jurisdiction and the quality of secondary compliance mechanisms. For instance, within the UK you have the independent adjudicator looking at social security cases, so you would expect the majority of cases not upheld, having gone through the initial complaints process and the independent adjudicator, not to be upheld when it came to the PHSO, because by then most of the ones that should have been upheld would have been weaned out.

There is quite a high uphold rate among health cases, and that is typical across health ombudsmen—more cases tend to be upheld. But in terms of value for money, a measure that looked at a crude "How many were upheld?" would not be very helpful.

Q39 **Ronnie Cowan:** I am not talking about being upheld. You are talking about a successful resolution. I am talking about somebody bringing forward a case to you and saying, "This was wrong", whether social security or whatever. You then go back and fix the system so that that problem cannot be repeated.

Peter Tyndall: Yes, that is a very useful measure of the effectiveness of an ombudsman.



Q40 Ronnie Cowan: Are you satisfied that the current system is effective?

Peter Tyndall: Certainly, the evidence we saw for systemic work is impressive, yes. It is almost impossible to say that every systemic issue was identified in every case. The important thing is going forward. Up to now, because the concentration has been on large-scale investigation into systemic work, it has been easy to measure that and it was easy for us to see it. As there is a greater degree of resolution, it is very important that measures should be in place to capture the systemic learning from cases that do not go to formal investigation. That would be the next phase in that work.

Q41 Kelvin Hopkins: I understand the argument that making a comparison is not a cost per investigation—the basis is not really valid. Nevertheless, the fact that PHSO investigations cost four times what they do in Scotland shows an extraordinary difference.

Dr Gill: I think that is what we were trying to explain in the report. If you take that as a measure, that would be highly misleading. The way that different ombudsman schemes define investigation is what effectively results in that headline figure. It is a fact that what the Scottish ombudsman calls an investigation is different from what the parliamentary and health service ombudsman calls an investigation.

Our preferred measure was cost per case handled. Any case that effectively had a determination—either a jurisdictional decision or a decision on the merits—would provide a much better basis for comparison. There you are looking at a difference of around £85 per case handled. There is still a difference between a parliamentary and health service ombudsman and a Scottish public service ombudsman. But on the measure that we think is the best, of all these unsatisfactory measures, that difference is fairly small.

Peter Tyndall: We were surprised by that unit cost. We thought that it would be larger. That is partly to do with the reductions in budget at PHSO bringing down the cost. The measure on investigation comes back to the point I was making about the legislation and the way it forces PHSO down a particular route in terms of case handling.

In Scotland, a lot of what the PHSO does in managing a case would be termed an investigation and would lead to an outcome, whereas with PHSO, because of the legislation, some of those are not deemed to be investigations. Therefore, you are not talking about comparing the same process in two organisations.

That is why we went with the cost per case handled, which means it covers the case from beginning to end so that you get a much fairer comparison between the two. Given the preponderance of health cases, we would have expected a higher price differential, so from a value-for-money perspective that was a much better outcome than we expected.

Q42 Mr Jones: Are there any other measures you could suggest that could be employed to assess the value for money of the PHSO?



HOUSE OF COMMONS

Peter Tyndall: Ultimately, it is about that basket of metrics we were suggesting, to do with the speed at which cases are handled and consumer satisfaction. The issues around cost clearly form part of it, but you need to be looking at outputs as well, and you need to be looking at performance. If people are having to wait an extensive time, that is not good value for money. It tends to suggest processes that are not working properly, so I think there is a set of metrics there that can be used at the moment to give a reasonably good overall perspective.

- Q43 **Mr Jones:** Is the data available to support that? What other measures do ombudsmen use internationally to assess value for money?

Peter Tyndall: The cost per case is used very little internationally. I have seen almost no other examples of that, so that one clearly is not used. It tends to be much more qualitative evaluation, and it tends to be Parliaments using the outcomes of ombudsman investigations to hold Governments to account.

That is how Parliaments view the value for money being provided by the ombudsman service, but some of these other performance measures are typically used, such as how long it takes to make a decision as to whether you are going to consider a case and then, having decided to take it on, how long it takes you to produce an outcome. Those measures are typically used; those would be the predominant ones. A lot of it is qualitative. It is to do with the nature of the reports that are being produced.

- Q44 **Mr Jones:** You have already made the point, though, that a well-organised ombudsman service can actually mean significant financial savings in terms of the public purse. Are those savings ever employed in assessing the value for money of ombudsmen internationally?

Peter Tyndall: I think your Chairman also identified the fact that on occasions there will be a cost to the public purse when it turns out that people who were entitled to something did not get what they were entitled to. You have had some very high-profile cases of that.

- Q45 **Mr Jones:** But from the point of view of the individual, that is also value for money.

Peter Tyndall: It is absolutely value for money from the point of view of the individual.

- Q46 **Mr Jones:** So there are two ways of looking at value for money. One is in terms of public saving, and the other is in terms of the value to the individual.

Peter Tyndall: Yes. I think it is helpful for ombudsmen offices, when producing reports, to on occasion identify possible savings to the public purse, but the reality is that it will cut both ways.

Chair: Mr Fysh, has yours been covered?

- Q47 **Mr Fysh:** I think it has pretty much been covered, but with respect to



HOUSE OF COMMONS

what you were saying about the way that systemic investigations can be of benefit, I wondered whether there are any ways that the PHSO could improve its evidence base for those sorts of effects. That will be quite important to our support for that extra expense of going into these things on a more regular basis.

Peter Tyndall: The difficulty that the PHSO will face in taking on more systemic investigations is to do with the fact that they are quite stretched to produce reasonable performance on their day-to-day business, so that, in a sense, Parliament will get a return on whatever investment is made. In general, there are two sets of practice in ombudsmen's offices: one of them is to have separate stand-alone teams that conduct system investigations, often quite well resourced; and the other one is to pull together a team of people from within your existing staff, and you can get some compromises between the two where somebody has overall responsibility but brings a team of caseworkers together to undertake a particular investigation.

At the moment, there are limitations as to how much can be done. I would say that in selecting cases it is very important that PHSO continues to identify areas where it alone can add value: some of those instances that I have talked about of people with limited access to redress within the system currently, or areas that are not particularly well covered by regulation, so that there is not a regulator or auditor who could undertake similar work. As long as PHSO has a very clear set of criteria determining which ones it takes on. Sometimes those systemic investigations take you on. You start to investigate something, as we were exploring, and you find evidence that lots more people are affected, and the only way you can get an evidence base for that is to deploy a lot of people doing investigations.

The kinds of things I have had to do in the past, for instance, are to send people to a selection of different social security offices to establish whether a practice we are witnessing is commonplace or unique. Those kinds of things are more resource-intensive than sitting at a desk dealing with an individual case file.

Q48 Mr Fysh: Are there any other lessons from other parts of the world, Dr Gill, on how evidence bases are collected, which would be useful for us to pick up?

Dr Gill: I think that is a difficult one. In terms of what would be helpful, the policy process leading into potential legislative reform and "own initiative" powers being granted and having some quite clear examples of how the powers might be used now. If the powers were granted today, what would the PHSO use them for, which they would not have been able to do otherwise? Having some thinking about that would probably help deliberations about what they might be used for.

There is another thing that might be done. There are quite limited evaluations available about the effectiveness of ombudsman recommendations, systemic or otherwise. The PHSO conducted a study back in 2010 that showed that, largely speaking, the recommendations

were effective in bringing about changes in public services. Maybe something that was looking at systemic investigations might help.

Internationally, there is a fair amount of evidence but it tends to be largely anecdotal that “own initiative” powers are used, as Peter said, relatively sparingly. They tend to be accepted within the constitutional arrangements where they are used. The people using them and responding to them seem to be quite content with the way that they are used. But, as I said, that is relatively anecdotal. There is not an awful lot in the way of robust systematic evidence out there.

Peter Tyndall: For what it’s worth, the IOI has recently produced a best practice paper on “own initiative” investigations that followed a seminar in the Netherlands. The Netherlands ombudsman has also recently produced a paper in a book, which Dr Richard Kirkham and another academic edited, which has just been published. There is quite a lot of work on practice there, and how best to go about this. There is very considerable experience.

The difficulty that others have with some of these conversations is that “own initiative” powers are not regarded as unusual elsewhere, so it is a very different tone of debate. It tends to be much more about what investigations you did undertake, and how you determined that those were the ones that you would undertake, rather than whether you should have the power or not. For most ombudsman offices, it is just part of the legislation that created them in the first place.

Q49 **Chair:** Moving on to the state of staff morale and the staff engagement surveys, how do you explain the improvement in morale and engagement of staff, following the awful 2015 staff survey, which showed that only 19% were saying that senior leadership was visible and 64% of staff not having confidence in management? That has improved somewhat. Why do you think that is?

Peter Tyndall: First, you have to say leadership. There is an outstanding leadership team at the moment doing a very good job. The visibility of leaders is very important. They are good communicators; they talk to people. The reason it has particularly grown is trust. You would have to remark that previously the figures were so low that they identified a complete lack of trust between staff and managers. It took time, and we could see, from talking to staff members in the absence of managers, that a lot of the reassurances they were being given by the new leadership they had heard before and were deeply cynical about. It was the fact that they were delivered on that built the trust that has led to the confidence.

It is also an organisation with a very clear strategic purpose; it knows where it is going, and it knows how it is going to get there. It is going through trying times, but there is a plan. It is also quite helpful that staff have been recruited who are coming into an organisation that is going forward, and they, in turn, add to the momentum. I believe that the improvement in morale is a lot to do with that trust issue, and the fact



HOUSE OF COMMONS

that people have not only said the right things, but then delivered on them.

Dr Gill: Another helpful aspect to that was the investment in training. I think it was really seen as a positive, in the focus groups that we had with staff, that they felt that the nice words were backed up with actual investment in staff. I think one of the side effects of the move to Manchester was that it allowed for a step change in the culture change process, which I think has been very beneficial. We got that sense when we were talking to staff there.

- Q50 **Chair:** I should say that, on the overall engagement index rising from 50% to 62%, 62% is not an unrespectable figure, but we hope that it will improve. On the question of the staff you met, your panel report does not describe how those people were chosen for those meetings. Can we rely on the independence of that evidence?

Peter Tyndall: The people we met without managers were not chosen; there was an open invitation to any member of staff who wanted to speak to us to attend.

- Q51 **Chair:** But how do you have confidence that you are getting the unvarnished in those meetings?

Peter Tyndall: We walked the floor, as they say. We sat down and talked to people at their desks. We knew that, inevitably, we were speaking to managers at different levels of the organisation, and that was a structured process. We knew that they would have a particular story to tell us, so it was important for us to counterbalance that by talking to staff, both by open invitation and simply by sitting down and talking to people at random. There was no restriction placed on our access to staff.

- Q52 **Chair:** How much confidence do you have that this improvement will be sustained?

Peter Tyndall: I have considerable confidence that the improvement will be sustained, but it will be important, as we have said, to make sure that the measures are in place so that if there is a dip at any point in staff morale, which can come about for reasons that are very difficult to deal with, the organisational performance is not as negatively impacted by that, because there are proper management processes and systems in place to maintain performance.

I would say that you need to go back in two or three years' time and make sure that all of those measures have in fact delivered, but nothing I have seen suggests that they will not.

- Q53 **Chair:** Finally, we have a rather uncomfortable dual role in this Committee, in that we receive the reports and scrutinise the reports and hold Ministers and others to account for responding to the reports, but we also scrutinise the ombudsman. What do you think that Parliament can do to make its scrutiny of the ombudsman more effective, thinking forward rather than retrospectively?



Peter Tyndall: The engagement between Parliament and its ombudsman is a critical one. One of the key functions of that relationship is to provide parliamentarians with the evidence that they need to hold the Government of the day to account. In that sense, that is one role, or one form of engagement.

The second form of engagement: the ombudsman is spending public money and at some level has to be held to account for that expenditure of public money, which involves, to an extent, efficiency but certainly compliance at the very least. Many Parliaments separate those roles. My experience would be that my accountability for the use of resources is to one Committee, whereas my work as an ombudsman scrutinising public services goes to a variety of Committees—Health, Education, as the case may be—but it also goes to the Petitions Committee of the Irish Oireachtas, the Parliament.

So there is a home for the ombudsman in providing that evidence base for Parliament to do its job, but there is also a separate home for holding the ombudsman to account. I can only agree with your characterisation that the dual role is likely to be problematic. Clearly, it is more helpful from both perspectives to separate those two tasks but that is a matter for Parliament, and not for those of us commenting, to address.

Q54 **Chair:** That is what is reflected in the draft legislation. Is there any other comment you would make about the draft legislation, apart from the shortage of “own initiative” powers, which I hope Parliament will rectify?

Peter Tyndall: For me, the starting point has to be the user of public services, to make it as simple as possible for that person to obtain redress if something goes wrong, and to get those guarantees that public services will be improved as a consequence of the learning from those complaints.

If you start from that perspective and scrutinise legislation from that point of view, how easy would it be for somebody to come forward? How complex is the landscape, because it shouldn't be? Does the ombudsman have the requisite powers and tools to deliver on that? The legislation is a step forward. I suspect that were you to ask me that detailed question, I might have some detailed comment on it. It certainly marks a step forward from the current position.

Dr Gill: The major omission is the absence of significant complaints standards authority powers. The limitation to promotion of best practice, rather than a more regulatory model that has been built up in Scotland, is a limitation. One reasons why there ends up being a lot of dissatisfaction with the ombudsman is that the public service complaints processes that lie beneath that are currently so poor. That needs to be addressed extremely urgently.

The National Audit Office's recent report says the Government are not taking it very seriously as an issue. I think that is right. That is a major omission and if it is not in the renewed legislation when the final Bill is



HOUSE OF COMMONS

introduced, there is not going to be as effective an ombudsman as we would have the opportunity to create.

Peter Tyndall: The evidence from Scotland on that front is that compliance mechanisms are not by their nature complex. We make them unnecessarily complicated. If every citizen has the same expectation of what will happen when they complain about a public service—they know the timescales that can be standardised, the number of stages can be standardised—there is no reason not to do that. The big benefit of doing that is that once you standardise complaints systems, you start to generate statistics about problems in the public service.

So what you get from the ombudsman or people who are persistent enough to take their complaints that far, once you start standardising complaints mechanisms across the public service, you can compare one health provider with another health provider. You can compare one local authority with another local authority. That is a hugely powerful tool for parliamentarians and other elected representatives to use in holding providers of service to account on behalf of users of service, so I would endorse those comments.

Kelvin Hopkins: Very briefly, a previous Government abolished community health councils and wanted to institute a system of market forces, where you would choose which particular health institution you wanted to go to, and that would be the way in which a good institution was judged against others. I think that has now passed into history—one hopes—but the point Dr Gill makes is very strong indeed.

Chair: I'm not sure that was a question.

Kelvin Hopkins: It wasn't.

Chair: Thank you very much indeed for joining us today. It has been an absolutely fascinating session. We are not going to take our eye off the ball on this. It seems that the work you have done is very informative, and there is plenty to learn from it for the future. Thank you very much indeed.