



House of Commons

House of Lords

Joint Committee on Human
Rights

Human Rights Ombudsperson: Government Response to the Committee's Eleventh Report

**Seventh Special Report of Session
2022–23**

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Joint Committee on Human Rights

The Joint Committee on Human Rights is appointed by the House of Lords and the House of Commons to consider matters relating to human rights in the United Kingdom (but excluding consideration of individual cases); proposals for remedial orders, draft remedial orders and remedial orders.

The Joint Committee has a maximum of six Members appointed by each House, of whom the quorum for any formal proceedings is two from each House.

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Publication

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Contacts

All correspondence should be addressed to the Clerk of the Joint Committee on Human Rights, Committee Office, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 4710; the Committee's email address is jchr@parliament.uk.

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Seventh Special Report

The Joint Committee on Human Rights published its Eleventh Report of Session 2022–23, *Human Rights Ombudsperson* (HC 222/HL Paper 175) on 28 March 2023. The Government response was received on 26 May 2023 and is appended below.

Appendix: Government Response

The Government is grateful to the Joint Committee on Human Rights for their thought-provoking inquiry into whether a Human Rights Ombudsperson should be created, and whether this would improve how people enforce their rights out of court. The report highlights that human rights are an important consideration for the ombuds, and recommends that more should be done to raise public awareness and improve access to ombudsman services.

The Government is supportive of the existing ombuds, including the PHSO and the LGSCO, and the valuable work they do. We believe the current system works well and that the findings of the ombuds can help to address failings and improve the quality and effectiveness of public services.

We are aware that different nations take a different approach, but we feel that our system is effective in the context in which it operates, ensuring that effective internal complaints processes address issues without the need to involve ombuds and that complainants have recourse to the independent ombuds where necessary, while balancing the need for the Government and ministers to make decisions relating to policy. The Government is not therefore convinced that fundamental reform of the ombuds is a priority at the current time, nor that legislation is generally the answer to any perceived problems. We will, however, continue to look at specific proposals for reform on a case by case basis.

The response to the Committee's recommendations are below:

The current landscape

Conclusion: Ombuds play an important role in upholding human rights and identifying where there may be systemic issues affecting individuals' rights. We were pleased to hear that the PHSO and LGSCO take seriously their role in relation to human rights. (Paragraph 33)

Recommendation: We encourage the PHSO and LGSCO to continue to embed human rights in their work. To this end, it would be helpful for them to refer to human rights standards and principles in their decisions whenever possible. The PHSO and LGSCO should continue to monitor and collect data on the number of decisions they make that engage human rights issues and make that data publicly available online. (Paragraph 33)

The Government is committed to the protection of human rights in the delivery of public services. We therefore support the continuation of activity to monitor and report on decisions that engage human rights issues.

A new Human Rights Ombudsperson?

Conclusion: Whilst we see some force in the argument that a Human Rights Ombudsperson could fill some of the gaps that currently exist in the ombuds landscape, we do not believe the creation of a Human Rights Ombudsperson would be a proportionate response. The creation of a new Human Rights Ombudsperson would not make it easier for people seeking to bring complaints regarding their human rights. (Paragraph 51)

The Government is supportive of the existing ombuds and their role in protecting human rights. We agree that the creation of a separate Human Rights Ombudsperson would not be proportionate.

Improving the current framework

Conclusion: We welcome the work of the PHSO and LGSCO to improve public awareness about their work. It is important that people are aware that there is a free and independent ombud that can consider their complaints outside the courts, including those concerning their human rights. Outreach work is an important part of building public awareness, as vulnerable and hard to reach communities may be less aware of their human rights and the complaints processes available. Despite the efforts made by the PHSO and LGSCO, it is clear that public awareness could be higher. (Paragraph 60)

Recommendation: To improve public awareness the PHSO and LGSCO should ensure they are effectively conducting outreach work with vulnerable communities and those who do not usually engage with their work. They should also collect and publish data to analyse whether outreach work has been successful in increasing public awareness. (Paragraph 60)

The PHSO and LGSCO should also seek to work more closely with the EHRC, public bodies, other public services ombuds and NGOs. Where appropriate, they should produce joined-up strategies to increase public awareness and improve accessibility of their services. They should also collect and publish data to show how effective those strategies have been. (Paragraph 61)

The Government promotes awareness of the importance of the rule of law and of human rights in a variety of ways, including through the EHRC which has a statutory role to raise awareness of human rights issues, and supporting various Public Legal Education initiatives. The Government is supportive of action by the PHSO and LGSCO to raise public awareness of their activities and increase accessibility and accountability through relevant channels and in collaboration with the EHRC.

Conclusion: We have been told about a number of barriers people currently face when trying to make complaints to the PHSO and LGSCO. Where possible, those barriers should be removed to make it easier for people trying to assert their human rights out of court. (Paragraph 70)

Recommendation: The Government should consider amending the statutes which set out the mandate of the PHSO and LGSCO to make it clear that they can consider human rights when determining whether there has been maladministration. (Paragraph 71)

We have heard that the MP filter can act as a barrier for individuals seeking to bring complaints, including those about their human rights. We are also aware, however, of

the importance of the relationship between MPs and their constituents and the role of Members in complaints. The Government should carry out a detailed review of the operation of the MP filter. (Paragraph 72)

The Government should empower the PHSO and LGSCO to initiate investigations where they think there may be systemic breaches of human rights. (Paragraph 73)

Amending statutes to clarify existing powers

As the JCHR recognises, existing ombuds already consider human rights issues when considering complaints and making recommendations. The Government believes that this can be made clearer through the recommended awareness-raising activity by the PHSO and LGSCO, rather than through statute.

MP filter

The MP filter does not apply to complaints made to the LGSCO or to complaints about the health service made to the PHSO in his role as the Health Service Commissioner for England. In the context of services delivered by UK Government departments, overseen by ministers, the MP filter is designed to help complainants. MPs can make confidential enquiries with officials or ministers to resolve issues quickly and, in addition to referring individual cases to be investigated by the Ombudsman, may raise issues publicly in the House of Commons.

The filter was introduced as a measure to manage the demands placed upon the Ombudsman. Those demands have not diminished. The PACAC's report *Parliamentary and Health Service Ombudsman Scrutiny 2021–22* notes the progress made working through backlogs created by the pandemic, the PHSO's approach to the prioritisation of complaints and the likelihood that work to promote awareness and accessibility will increase demand.

The PHSO itself publishes guidance and offers training to MPs to explain their role in the process and the steps they can take to help their constituents, for example: checking that the organisation in question is one the PHSO can investigate, whether they have completed the complaints process of that organisation, and whether they have brought the complaint in time.

Overall, the Government is satisfied that the MP filter strikes the right balance, helping to ensure that complaints are properly directed to the Ombudsman while providing an opportunity for MPs to take additional steps where appropriate. Consistent with our approach to wider ombuds reform, we will continue to monitor the operation of the PHSO and consider specific reform proposals on a case by case basis.

Power to initiate investigations

The Government still has no immediate plans to amend the LGSCO or PHSO's remit but will continue to keep the matter under review. We are aware that ombuds in other administrations have 'own initiative' powers to initiate investigations without the need for a complaint. However, this power is not universal and we have seen no compelling evidence that the current system - which requires that a complaint be made by a member

of the public for an investigation to commence - is not working. Indeed, in 2020–21 the PHSO made over 23,000 complaint decisions and the LGSCO handled around 18,500 complaints and enquiries.

We have also seen no substantive evidence to explain the benefit of own initiative powers. The PHSO may consider systemic issues where a complaint is received and the LGSCO is already able to investigate matters identified during prior investigations. Expanding the powers and role of the PHSO and LGSCO to investigate broader issues about public service delivery could also interfere with the role of other regulators. For example, as noted in the Government's response to the JCHR's report on Protecting Human Rights in Care Settings (HC955), the expansion of the LGSCO's role to investigate broader issues about adult social care may overlap with the regulatory remit of the Care Quality Commission. Without further information on the extent and application of own initiative powers, the Government is also concerned that it could lead to reduced contact with individual complainants and reduced Ombudsman capacity to handle individual complaints.

Conclusion: We have heard that simplifying the current ombuds landscape would make it significantly easier for individuals to make complaints, including those where human rights are engaged. The Government in 2016 was committed to simplifying the landscape and published a draft Public Services Ombudsman Bill. However, that work has slipped from the legislative agenda.

Recommendation: Given the potentially significant benefits that reforms could have for people making complaints where human rights are engaged, we are disappointed that the Government has not brought forward ombuds reform and urge them to do so. (Paragraph 81)

It has been argued that creating a single 'Public Services Ombudsman' for England would create a much simpler and more accessible ombudsman service for complainants, and would allow learning and good practice to be disseminated more easily to public services. However, the scale and scope of a single Ombudsman for England would create significant challenges; these would only partially be addressed through the creation of branch offices, which have been suggested in the past. Combining the existing ombuds would also be a complex and substantial undertaking. This could lead to a reduction in the quality of service during what would likely be a long transition period requiring legislation, the removal of serving ombudsmen, and all the challenges associated with merging separate organisations with different expertise, cultures and geographical locations. Overall, the Government does not see fundamental ombuds reform as a priority at the current time, but we will continue to look at specific proposals for change on a case by case basis.