

Written evidence submitted by Parliamentary and Health Service Ombudsman (PHSO)

## 1. About the Parliamentary and Health Service Ombudsman

1.1. The Parliamentary and Health Service Ombudsman (PHSO) is the complaint-handler of last resort for the NHS in England and UK Government departments. We are a Parliamentary body, accountable directly to Parliament through the Public Administration and Constitutional Affairs Committee (PACAC). We provide an independent, impartial, and fair service, addressing unremedied injustice for individuals, whilst also supporting MPs to hold the Government to account by identifying systemic failures in public services.

1.2. We have a dual role:

- To give the users of public services a voice when things go wrong and provide individual redress and;
- To contribute to a culture of learning and continuous improvement, leading to improvements in standards in the services we scrutinise.

1.3. Public services are experiencing increasing demand and the trust of the public in these services is low. PHSO has an important role in restoring trust. We want to operate more strategically to help to drive the improvements that are needed.

1.4. Public and user voice should be at the front and centre of creating a 'government of service' in line with the Prime Minister's vision for public service reform.

1.5. PHSO's powers derive from two Acts of Parliament. The *Parliamentary Commissioner Act 1967* gives us the power to investigate complaints about UK Government departments and other public organisations listed [here](#). The *Health Service Commissioners Act 1993* gives us the power to investigate complaints about the NHS in England.

1.6. The 1967 Act<sup>1</sup> requires members of the public to refer their complaint to PHSO via an MP (known as the 'MP filter'). This is an outdated and impractical measure which we know is a barrier for people accessing justice through our service, given that 86% of those who approach us without an MP referral (and whom we therefore signpost accordingly) never return to us with their complaint.

1.7. The way we operate our service and the wider landscape of public services has also changed extensively in the 57 years since the creation of our legislation.

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<sup>1</sup> Section 5 of the Parliamentary Commissioner Act 1967 - *Matters subject to investigation* - Subsection (1A) (b) (<https://www.legislation.gov.uk/ukpga/1967/13#commentary-c20131591>)

- 1.8. The very few Ombudsman schemes who did have a similar filter in place have successfully had it removed. The most recent example is the Housing Ombudsman which since the removal of their ‘democratic filter’<sup>2</sup> in October 2022<sup>3</sup>, experienced an immediate c.25% increase<sup>4</sup> in complaints reported in November 2022 compared to the previous month. Its democratic filter had only been in force for less than a decade. Other Ombudsman schemes established more recently do not have this limitation. This makes our service, one of the largest in Europe, an outlier in the sector.
- 1.9. The MP filter places an avoidable administrative burden on MPs. Whilst under our proposals they would remain free to support their constituents’ complaints should they so wish, they are not necessarily best placed to determine whether to refer to PHSO and we are conscious of the many other demands on their time.
- 1.10. The 1993 Act allows members of the public to bring complaints about the NHS in England directly to PHSO, without an MP referral (although the complainant is still able to ask their MP for referral should they wish to do so).
- 1.11. Extending this flexible and accessible approach to Government department complaints would align the processes already in place with regard to our health jurisdiction whilst still retaining the option to complain via an MP if desired.
- 1.12. This would also minimise the confusion (and often distress) experienced by complainants who wish to complain about a UK Government department without being made to face additional hurdles. Independent research conducted by ORS<sup>5</sup> found that “the most common barrier complainants experienced in making their complaint to us was the MP filter”:
  - 1.12.1. Complainants reported that getting approval from their MP was time-consuming, challenging and sometimes impossible.
  - 1.12.2. Some complainants felt that having to share sensitive issue with their MP was distressing and questioned whether this part of the process was necessary.

## **2. What topic(s) do you think the Modernisation Committee should prioritise and how do they link to one or more of the strategic aims set out in the Leader’s memorandum?**

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<sup>2</sup> It should be noted that the Housing Ombudsman’s democratic filter allowed referrals to be made by local councillors as well as MPs, and complainants could also refer themselves directly to the Housing Ombudsman after waiting 8 weeks which wasn’t as restrictive as PHSO’s filter.

<sup>3</sup> Section 160 of the [Building Safety Act 2022](#) abolished Section 180 of the Localism Act 2011 which had originally come into force on 1 April 2013, and revoked on 1 October 2022.

<sup>4</sup> The Department for Levelling Up, Housing and Communities also ran an awareness campaign which coincided with this period which may have been an additional contributing factor in the increase in complaints.

<sup>5</sup> [Research summary: complaints that come to us too early | Parliamentary and Health Service Ombudsman \(PHSO\)](#)

- 2.1. We consider the removal of the mandatory aspect of the MP filter as complementary to the Committee Chair's ambition to '**reform procedures**', enabling Members of Parliament to undertake the scrutiny of Government business and policy as effectively as possible.
- 2.2. As mentioned in the Leader's Memorandum, "*scrutiny of government business is one of Parliament's core functions...to ensure that members are able to perform this function as effectively as possible, whilst ensuring...voices raising wider policy issues and local causes remain a prominent part of business*". The removal of the MP filter contributes to this goal two-fold.
  - 2.2.1. Firstly, removing the mandatory aspect of an MP referral will free up considerable amounts of MP's and their staff's time whilst giving flexibility for MPs to be involved in the complaints process and support their constituents where the constituent wishes them to do so. This will support the aim of allowing Parliament to place "*a greater emphasis on members scrutinising government legislation going forwards*".
  - 2.2.2. Secondly, the proposal would allow both MPs and PHSO to fulfil their roles in a more strategic and impactful way. MPs would not be required to develop expertise in complaints-handling. PHSO would gain greater insights and learning about standards in public services, and so be able to equip MPs with the information they need to support local causes and raise wider policy issues. This complements the strategic aim of the Committee to "*reform parliamentary procedures to make the House of Commons more effective*".

### **3. Why would the topic(s) benefit from the attention of the Modernisation Committee?**

- 3.1. This is a longstanding issue which requires reform and is an opportunity for the Modernisation Committee to push forward and take action on implementing the essential reforms which various parliamentary select committees have called for, whilst furthering the Committee's objective of making Parliament more effective.
- 3.2. A recommendation by the Modernisation Committee to make the minor amendment to the Parliamentary Commissioner Act 1967<sup>6</sup> supporting the removal of the mandatory aspect of the MP filter will significantly benefit:
  - 3.2.1. MPs and their staff by freeing up their limited time, allowing them to focus on Government/legislative scrutiny;

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<sup>6</sup> Section 5 of the Parliamentary Commissioner Act 1967 - *Matters subject to investigation* - Subsection (1A) (a) and (b) (<https://www.legislation.gov.uk/ukpga/1967/13#commentary-c20131591>)

3.2.2. Parliament as a whole by providing it with a more effective and strategic Ombudsman, which could be used as an effective Government-wide scrutiny tool to inform specific areas of improvement for public service delivery;

3.2.3. Members of the public by enhancing direct (and free) access to justice when they are failed by public services, complementing the Committee's aim of tackling the important issue of "eroded public trust and confidence".

**4. Are you aware of examples from other Parliaments relevant to the topic(s) which may be interesting for the Modernisation Committee to consider?**

4.1. The topic of reforming legislation around the Ombudsman landscape has been a longstanding issue for consideration across multiple governments and has historically garnered cross-sector and cross-party support over several successive Parliaments.

4.2. Most recently, the Public Administration and Constitutional Affairs Committee's (PACAC) scrutiny of PHSO for the financial year 2022-23 understood the impact of further inaction on this topic stating "*legislative reform has been neglected for too long and further delay is no longer tenable*". In their final report<sup>7</sup>, they recommended that "*all political parties should include in their manifestos a commitment to early legislation in the next Parliament to enact legislative reform*".

4.3. Further examples of other Parliamentary select committees, think tanks, academics and stakeholders making similar calls for reform can be found in Annex A below. Repeated delays in successive governments failing to take action on this matter, which several independent cross-party select committees have carefully considered, is not an effective use of precious Parliamentary time and risks undermining the power of select committees as a mechanism for holding Government to account.

4.4. All major political parties have supported these calls at some point and in various iterations.

4.5. The Victims and Prisoners Act 2024, which received Royal Assent in the last Parliament, acknowledged this issue as a barrier and removed the mandatory aspect of the MP filter for victims of crime. Although welcome, this precedent, which is due to be implemented in 2025, further complicates a system already complex to navigate.

4.6. No such 'MP filter' applies to other public service Ombudsman schemes in the UK (the Scottish Public Services Ombudsman, the Public Services Ombudsman for

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<sup>7</sup> <https://publications.parliament.uk/pa/cm5804/cmselect/cmpubadm/198/summary.html>

Wales nor the Northern Ireland Public Services Ombudsman) and for the majority of Ombudsman institutions around the world. This presents a challenge in that people in different parts of the UK do not have equal access to justice and PHSO remains out of step with international counterparts.

4.7. The Venice Principles on the Protection and Promotion of the Ombudsman Institute<sup>8</sup> are the internationally recognised standards relating to our service as an Ombudsman. These standards state that citizens must have the ‘right to free, unhindered’ access to the Ombudsman. The UK Government is a co-sponsor of their adoption, yet the requirement for an MP referral is in breach of these internationally adopted principles.

## **5. Is there any existing work relevant to the topic(s) which you think the Modernisation Committee can build on?**

5.1. In 2016, the Draft Public Service Ombudsman Bill was laid<sup>9</sup> before Parliament. This Bill proposed removing the requirement for a mandatory MP referral and also looked to make more widespread reforms to strengthen the Ombudsman landscape. The House of Commons Library published a briefing paper<sup>10</sup> on this issue which would be valuable for the Committee to consider.

5.2. This Bill did not progress due to a lack of Parliamentary time and the removal of the mandatory aspect of the MP filter remains a key priority.

5.3. The Institute for Government held an event<sup>11</sup> in 2023 on ‘How can Ombuds schemes be reformed?’ which considers the options and mechanisms for legislative reform. They also previously considered the issue in 2019<sup>12</sup>. Further examples of other Parliamentary select committees, think tanks, academics and stakeholders making similar calls for reform can be found in Annex A below.

### **Annex A – Additional supportive evidence for removal of MP filter:**

#### **Parliamentary Select Committees:**

- Public Administration and Constitutional Affairs Committee (PACAC), ‘Report on Parliamentary and Health Service Ombudsman Scrutiny 2021–22’, (March 2023), page 25<sup>13</sup>
- Joint Committee on Human Rights (JCHR), ‘Report on Human Rights Ombudsperson 2022-23’, (March 2023), page 23<sup>14</sup>

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<sup>8</sup> <https://www.coe.int/en/web/portal/-/25-venice-principles-democratic-abcs-for-ombudsman-institutions>

<sup>9</sup> <https://www.gov.uk/government/news/draft-public-service-ombudsman-bill-laid-in-parliament>

<sup>10</sup> <https://commonslibrary.parliament.uk/research-briefings/cbp-7864/>

<sup>11</sup> <https://www.instituteforgovernment.org.uk/event/ombuds-schemes-reform>

<sup>12</sup> <https://www.instituteforgovernment.org.uk/article/comment/now-time-government-empower-ombudsman>

<sup>13</sup> <https://publications.parliament.uk/pa/cm5803/cmselect/cmpublicadm/745/summary.html>

- Joint Committee on Human Rights (JCHR), ‘Report on Protecting Human Rights in Care Settings’, (July 2022), page 31<sup>15</sup>
- Public Administration and Constitutional Affairs Committee (PACAC), ‘Report on Parliamentary and Health Service Ombudsman Scrutiny 2020–21’, (May 2022), page 20<sup>16</sup>
- Public Administration and Constitutional Affairs Committee (PACAC) ‘Report on Parliamentary and Health Service Ombudsman Scrutiny 2019–20’ (January 2021), page 14<sup>17</sup>

#### **Thinktank and advocacy organisations:**

- JUSTICE, ‘A Public Service Ombudsman’ (June 2015)<sup>18</sup>
- UK Administrative Justice Institute (UKAJI), ‘The Future of Ombuds Reform’ (February 2021)<sup>19</sup>

#### **Primary research:**

- Analysis of our own complaint statistics from financial year 2022-2023 shows that only 14% of complainants who are told they require referral via their MP to progress their complaint subsequently return to us. Overall, in 2022-2023, we closed 2,321 complaints against Government departments because they had no MP referral.
- In 2023, ‘Opinion Research Services’ on behalf of PHSO surveyed over 1,000 complainants and conducted a series of in-depth interviews on the issue of complaints that come to PHSO too early. This again highlighted that the main barrier for complaints against Government departments was the MP filter<sup>20</sup>.
- Research conducted by ‘YouGov’ on behalf of PHSO to understand what prevents people from bringing a complaint to us found that ‘the MP filter is universally felt to be a barrier’. It also referenced a ‘post code lottery’ based on the perceived expertise and ability of MPs to take complaints forward.<sup>21</sup>
- Through stakeholder engagement and a series of ‘Dilemma Cafes’ PHSO’s Outreach and Public Engagement has invited members of the public and advocacy professionals to share their perspectives on improving our service and making lasting improvements to public services more broadly. Contributions from attendees included that removing the requirement to refer complaints about Government departments via an MP would further increase the accessibility of our service.

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<sup>14</sup> <https://committees.parliament.uk/publications/34570/documents/190370/default/>

<sup>15</sup> <https://committees.parliament.uk/publications/23214/documents/169544/default/>

<sup>16</sup> <https://committees.parliament.uk/publications/22322/documents/168877/default/>

<sup>17</sup> <https://committees.parliament.uk/publications/4403/documents/44466/default/>

<sup>18</sup> [JUSTICE\\_Ombudsman-consultation-response-\\_16-06-2015\\_FINAL.pdf](#)

<sup>19</sup> [The future of ombud reform | Essex CAJI](#)

<sup>20</sup> [Research summary: complaints that come to us too early, page 5](#)

<sup>21</sup> [Parliamentary and Health Service Ombudsman \(PHSO\): Complaints Research, page 54](#)