

# **Written evidence from The Independent Monitoring Authority for the Citizens' Rights Agreements (PHO 31)**

## **Public Administration and Constitutional Affairs Committee Parliamentary and Health Service Ombudsman Scrutiny 2020-21 inquiry**

### **Introduction**

We are pleased to present written evidence to the Public Administration and Constitutional Affairs Committee in relation to the scrutiny inquiry into PHSO's work. We are submitting evidence in relation to the heading 'impact on other organisations'.

The Independent Monitoring Authority for the Citizens' Rights Agreements was established to ensure the rights of EU and EEA EFTA citizens living in the UK and Gibraltar are upheld by public authorities after the UK has left the EU. We have been in operation for almost a year and our evidence provides an overview of the work we have undertaken during that time.

We have benefitted from collaboration with and advice from the PHSO both during the set-up phase of the IMA during late 2020 and since we have been in operation during 2021.

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### **The role of the IMA**

The Independent Monitoring Authority for the Citizens' Rights Agreements (IMA) is an independent body that makes sure the rights of EU and EEA EFTA citizens living in the UK and Gibraltar are upheld following the departure of the UK from the EU. The citizens covered by the Part 2 of the Withdrawal Agreement and Part 2 of the EEA EFTA Separation Agreement ("the Citizens' Rights Agreements") are those from the 27 EU Member states as well as Iceland, Lichtenstein and Norway, along with their family members.

We were established in 2020 by the European Union (Withdrawal Agreement) Act 2020, which implements in the UK the Citizens' Rights Agreements. We became operational at 11pm on December 31st, 2020.

We monitor UK public bodies to make sure they adequately and effectively implement the rights provided for by the Citizens' Rights Agreements. In broad terms these rights relate to:

- residence,
- work and self-employment,
- recognition of professional qualifications, and
- social security

The right to equal treatment and non-discrimination also flows through the rights contained in Part 2 of the Citizens' Rights Agreements.

We can receive complaints; launch inquiries; and consider legal action to remedy breaches in how the agreements are implemented or applied.

Although we do not resolve individual complaints, we consider every complaint to assess whether they indicate a general or systemic failing and decide whether to carry out an inquiry. Individual complaints provide intelligence to help us build a wider picture of possible systemic issues.

More detailed information can be found on our website including our [Annual Plan for 2021/22](#) and [operational guidance](#).

### **Our power to conduct inquiries**

Our powers to conduct inquiries are set out in paragraph 25 of Schedule 2 of the European Union (Withdrawal Agreement) Act 2020. The purpose of an IMA inquiry is to:

- establish whether the United Kingdom has failed to comply with the Citizens' Rights Agreements;
- establish whether a relevant public authority has acted or is proposing to act in a way that prevents a person exercising a relevant right (see definition in paragraph 41 of Schedule 2 to the Act); and/or
- to identify any recommendations for relevant public authorities appropriate to promote the adequate and effective implementation of the Citizens' Rights Agreements.

We may decide to conduct an inquiry in one of three situations:

- I. Following a request from a Secretary of State, Devolved Administration or the Gibraltar government.
- II. As a result of a complaint or series of complaints received.
- III. Of our own initiative.

When considering whether to carry out an inquiry we will consider the importance of addressing general or systemic failings (as required by paragraph 24 of Schedule 2 to the Act). We may not carry out an inquiry in the situations in (ii) or (iii) above unless we have reasonable grounds to believe that the inquiry may conclude that a failure to comply with the Citizens' Rights Agreements has occurred or that a public authority has acted or is proposing to act in a way that prevents a qualifying person exercising a relevant right.

To date we have not started any full inquiries. Our investigations work has led to a number of early resolutions, where we have agreed actions with public authorities to enable relevant citizens to access their rights.

## **Our power to take legal action**

Our powers to take legal action are contained in paragraph 30 of Schedule 2 to the European Union (Withdrawal Agreement) Act 2020 and provide:

*30 (1) The IMA may, if it considers it appropriate to do so in order to promote the adequate and effective implementation or application of Part 2 –*

- a) make an application for review, or*
- b) intervene in any legal proceedings (including proceedings on an application for review).*

*(4) In this paragraph, “application for review” means –*

- a) in relation to England and Wales or Northern Ireland, an application for judicial review, and*
- b) in relation to Scotland, an application to the supervisory jurisdiction of the Court of Session.*

Our approach on whether to exercise these powers is detailed in our operational guidance.

## **The IMA’s relationship with PHSO**

PHSO and the IMA are independent bodies that recognise each other’s statutory responsibilities. There are two sides to the relationship between the PHSO and the IMA:

- PHSO and IMA have agreed to collaborate and co-operate where relevant and lawful to do so in furthering their shared aim of supporting system-wide learning and improvement in relation to the protection of rights arising from Part 2 of the Withdrawal Agreement and Part 2 of the EEA EFTA Separation Agreement (“Part 2”).
- Under the Parliamentary Commissioner Act, the PHSO may conduct investigations into complaints about (the actions of) the IMA.

## **PHSO advice during the set-up of the IMA**

The IMA welcomed the collaboration and advice from the PHSO while the IMA was being established in 2020, and in the early operational period of the IMA in 2021.

During the IMA set-up phase, the PHSO advised on all aspects of operational delivery in handling complaints and conducting investigations. This included advice on receiving and handling complaints, on data retention and records management, and on data protection and handling Freedom of Information and Subject Access Requests.

PHSO also explored with the IMA on how maladministration complaints about the IMA would be handled, drawing on PHSO experience with other organisations where PHSO and the relevant organisations have a good working relationship, but where PHSO also investigate complaints about them.

## **PHSO advice since the IMA has been operational**

The IMA continue to benefit from the collaborative relationship with the PHSO since the launch of the IMA. This has included discussions on operational matters, such as considerations over assessing potential systemic issues arising from complaints.

The IMA requested PHSO advice on building relationships with public authorities where we have monitoring responsibilities. The PHSO advised on IMA plans to establish Memoranda of Understanding and data sharing agreements with relevant public authorities.

PHSO also provided helpful connections to other stakeholders and stakeholder groups, including the European Ombudsman and the Ombudsman Association.

## **Memorandum of Understanding**

We were pleased to sign a [Memorandum of Understanding](#) (MoU) with PHSO recently which sets out the framework for the working relationship between PHSO and the IMA. The MoU is intended to inform our staff and the public about how our organisations work together.

We welcome the engagement we have received from PHSO so far and will continue to collaborate and cooperate where relevant and lawful to do so in furthering our shared aim of supporting system-wide learning and improvement in relation to the protection of citizens' rights.

We will continue to meet as appropriate to consider matters of mutual interest and will consider formalising a separate information sharing agreement for the exchange of data between PHSO and the IMA.

*October 2021*