

LGSCO submission to the APPG on Consumer Protection inquiry's into the effectiveness of ombudsmen and potential for reform

1. About the Ombudsman

1.1 The Local Government and Social Care Ombudsman (LGSCO) investigates complaints about councils and some other authorities and organisations, including education admission appeal panels and independent adult social care providers. It is a free service. Our role is to investigate complaints in a fair and independent way – we do not take sides.

1.2 Our experience, of dealing with situations where things have gone wrong, puts us in a unique position to provide insight into what could be done to improve local public services. We welcome the opportunity to contribute to the APPG's inquiry into the effectiveness of ombudsmen and the potential for reform.

2. Summary of main points

- Since the LGSCO was established by Parliament in 1974, we have been able to consider complaints about most council services. From 2009, our role in providing a route to independent redress in matters relating to council run and funded adult social care was extended to all privately funded social care. Since then we have been able to operate as the single point of redress for all adult social care, however it has been arranged or funded.
- The benefits of an ombudsman scheme lie in our ability to provide independent redress for citizens when things go wrong. Our informal, inquisitorial process is focussed upon making our service as easy to access as possible. A further benefit is our ability to make recommendations that address systemic issues to improve services for the many and to improve complaints handling of bodies within jurisdiction.
- The government published a draft Public Service Ombudsman Bill in December 2016, which would bring the Local Government and Social Care Ombudsman and the Parliamentary and Health Service Ombudsman together into a single body. We responded jointly to the Government's draft legislation after the general election last year supporting the overall approach taken in the legislation and identifying some areas where the Bill could be strengthened.
- Since then, the Public Administration and Constitutional Affairs Committee (PACAC) has recently called on the government to commence the pre-legislative scrutiny of the draft Bill as soon as possible. We would welcome any support the APPG could give to the improvements we suggested to the Bill and for the commencement of pre-legislative scrutiny as recommended by PACAC.
- We recognise the inquiry is likely to reflect the focus of the Money Saving Expert report which concentrated largely on the private sector ombudsmen landscape. Nonetheless, we believe it is important to take into account the important distinctions between the roles and powers of public and private sector ombudsman schemes and also between that of ombudsmen and others in the wider ADR landscape.

3. What is the difference between ombudsmen and other ADR providers?

3.1 ADR entities are an important part of the redress landscape and can provide targeted dispute resolution aimed at resolving a particular dispute. As an ombudsman scheme, our distinctive characteristic is our ability to not only to provide redress for the individual who complained, but also to identify and address systemic issues. What stands us apart from others in the ADR landscape is also our ability to provide feedback to bodies within our jurisdiction that can support service improvements. In 2017-18, we made 730 recommendations aimed at improving services. These recommendations often comprise reviewing policies or procedures, staff training or actions to improve awareness among staff.

3.2 We share our insight widely through a variety of means. We publish reports both of individual investigations and on thematic issues. In 2017-18 we published, and promoted through the media, 42 investigation reports where we uncovered issues in a single investigation that were of wider public interest. We also published four focus reports, on different themes, in which we highlighted systemic issues that we identified through our casework that would enable service providers to learn from the mistakes of others. Through these different channels, we are ensuring that service providers learn from complaints and use that information to improve their services.

4. If the system was being designed now, what would be created?

4.1 The ombudsman sector has tended to be developed in an incremental and ad hoc fashion, rather than informed by principle. This has resulted in an overall landscape that is fragmented and lacks coherence. It has also created gaps in provision of redress as well as the overlaps in jurisdiction between different schemes. If we were designing the ombudsman landscape from scratch, then we would do it differently – probably with fewer points of entry and looking to establish a coherent and comprehensive ombudsman system.

4.2 As a matter of principle, we believe that users of all publicly funded services should have access to an independent ombudsman when those services let them down. We have been calling for the establishment of a single PSO in England that can provide a unified, consistent and comprehensive service which avoids the current systemic confusion that exists where services overlap sectors. The measure of success for any reform will be in ensuring a future PSO is well-equipped to respond rapidly to changing models of service delivery and changes in the relationship between the public and the state.

5. What should the role of an ombudsman be?

5.1 We support and follow the principles and criteria set out by the Ombudsman Association of what an ombudsman is. These are independence, fairness, effectiveness, openness, transparency and accountability¹. We believe these are the key features for an ombudsman scheme that has the trust of the public and can deliver effective and efficient redress.

5.2 Our role is to put things right for the individual as well as help improve public services. We operate at the apex of the complaints system and only get involved when local complaints routes have been exhausted. Our informal, inquisitorial process is focussed upon making our service as easy to access as possible. We provide redress for citizens when things go wrong. An ombudsman is likely to be an appropriate model for redress

¹<http://www.ombudsmanassociation.org/docs/Strategic%20Position%20Statement%20May%202017.pdf>

where there is an imbalance of power between members of the public and the state. This is certainly the case regarding most of the complaints we handle which concern the provision of statutory entitlements, often to the most vulnerable in society. To fulfil our role effectively, we must also be, and be perceived to be, independent from both complainants and bodies within our jurisdiction.

6. What are the problems with the ombudsman system?

6.1 The current system consists of a confusing array of routes of redress and citizens are also left without a route for independent redress in some instances. As services become more integrated, there is a risk that the complaints process could become even more difficult for citizens to navigate. With the blurring of boundaries between organisations and given the trend of more services being delivered through a combination of public, private and third sector providers, this could make it more difficult for citizens to know who to complain to when problems arise.

6.2 A move to a more integrated and comprehensive approach to complaints about public services is central to simplify the current system and also improve the use of complaints as a tool to drive service improvements. We have long called for reform to create a single PSO in England, mirroring reforms that have already been pursued in the other devolved administrations. Together with PHSO, we responded to the draft Public Services Ombudsman bill published by the government in December 2016². We would urge the government to pursue wholesale reform of the public sector ombudsman landscape at the earliest legislative opportunity.

7. Do ombudsmen have the powers they need, should their powers be based in statute? If so, which powers should come from statute?

7.1 We recognise there is a multitude of ombudsman and redress schemes with varying powers across the UK. We are a body set up by statute and derive our powers from our underpinning legislation, the Local Government Act 1974, as amended. It is important to recognise where there are legitimate reasons to justify differences in powers that are available to various ombudsman schemes. The powers we were given by Parliament to make recommendations recognise the democratic accountability of locally elected councillors. This means councils and care providers are not legally bound to implement our recommendations. Despite this, they almost always act on them and we consistently achieve high compliance rates with the recommendations we make. In contrast, private sector ombudsmen generally can issue binding decisions for the sector they are responsible for.

8. Is there enough oversight of ombudsmen, how is this different in regulated sectors? Should (and if so, how) oversight be strengthened?

8.1 We are accountable to Parliament which exercises independent scrutiny of our performance through the Communities and Local Government Select Committee. Our relationship with our sponsor department, the Ministry for Housing, Communities and Local Government, is set out in our framework document³ and our accounts are externally audited by the National Audit Office. We also publish a significant amount of information to open ourselves up to scrutiny. This includes the meeting papers for Commission, and Audit and Risk Assurance Committee, meetings. We also publish our

²https://www.ombudsman.org.uk/sites/default/files/Joint_reponse_on_the_Draft_Public_Service_Ombudsman_Bill.pdf

³ <https://www.lgo.org.uk/assets/attach/2119/LGO%20Framework%20Document-%20Dec%202017%20new%20logo.pdf>

internal staff guidance and process manuals so there is openness around how we reach decisions.

8.2 The primary purpose of an ombudsman is to remedy injustice that has been caused to an individual through the independent investigation of their complaint. This is distinct from most regulators whose role is to ensure that systems are operating fairly and effectively. It is important to avoid any conflation between the role of ombudsmen and regulators. We have established successful working relationships with regulators across areas of public services which fall within our jurisdiction such as CQC and Ofsted, which allows us to share relevant trends and issues in order to ensure that systemic issues arising from complaints can be considered by the regulator.

9. How long should consumers need to wait before escalating their complaint to an ombudsman, should there be any exceptions?

9.1 We strongly believe that complaints and redress processes should be simple and straightforward for citizens to access without unnecessary additional delays. Our legislation requires us to allow councils a 'reasonable opportunity' of dealing with a complaint first. We consider up to 12 weeks is usually a reasonable time for local complaints handling to be exhausted, but this may be longer for some complaints where there are prescribed statutory timescales⁴. Once a body in our jurisdiction has had an opportunity to respond to a complaint, individuals can then bring their complaint to us. We recognise that for some ombudsman schemes, the existence of a 'filter' creates additional barriers for citizens in accessing redress.

10. How long should an ombudsman have to deal with a complaint?

10.1 We do not believe it would be appropriate to adopt a 'one size fits all' approach and impose one timescale for investigation across all ombudsmen schemes. We aim to complete our investigations in a timely manner. Last year, we completed 81% of investigations within 13 weeks (against a target of 65%), 92% were completed within 26 weeks (against a target of 85%) and 99% completed within 52 weeks (against a target of 99%).

10.2 There are many factors that influence the length of time that it takes to reach a decision. The length of time to complete an investigation will inevitably be dependent on the complexity of the specific circumstances of the particular case. Some disputes are purely transactional, whereas others are multi-faceted and complex. Many of the disputes that we deal with concern complex issues around the provision of statutory entitlements, often to the most vulnerable in society.

11. What can ombudsmen do themselves to provide better consumer experiences?

11.1 As mentioned above, we operate in a changing environment and have sought to adapt ourselves. We are increasingly working closely with other organisations and use that close co-operation to provide the public with a clearer path through the complaints system. For example, we use our statutory powers to conduct joint investigations with the PHSO to provide the public with a single investigation and a seamless route to redress where their complaint cuts across health and social care⁵. This means the public do not have to separate out different issues and establish which ombudsman to

⁴ The statutory complaints procedure for adult and children's social care provides that complaints should be dealt with within a maximum of 6 months.

⁵ <https://www.lgo.org.uk/assets/attach/4021/FR%20-%20Joint%20Working%2019.12.2016.final.pdf>

approach. We also work closely with front line complaints handlers across our bodies in jurisdiction to ensure that they are properly signposting people to us.

12. What other improvements could be made to ombudsmen for consumers?

12.1 For complaints to make a difference the public must first be able to access the complaints system. Simplifying the complaints maze would make the single biggest impact on the accessibility of the complaints system. A single access point for all complaints, as is the approach in Wales and Northern Ireland, would help achieve this. The experiences of complaints in other nations, such as Scotland and Wales, provides an example of how a more joined up system gives the public a clear and accessible route to redress.

13. Conclusions

13.1 We recognise that the public often currently face a fragmented system with several different routes to redress. As reforms to public services proceed at pace, it is fundamental that the complaints redress system evolves to match new service provision and ensure that all service users have an accessible and appropriate course of redress for their complaint. The complaints maze is a significant barrier to providing the public with an effective and accessible route to such redress. The creation of a single Public Service Ombudsman in England provides an opportunity to simplify and make the redress system fit for the 21st century.

Thank you for the opportunity to comment and we hope our submission is helpful to you in your considerations.