1. Introduction

Our main legislation is the Local Government Act 1974 (LGA 1974). Section 23(12) of the Act provides that we must undertake a review of the operation of our legislative framework every three years. We call this a triennial review and last produced it in 2015.

As part of this latest triennial review, we have considered possible areas for legislative change in the context of:

- progress towards a new legislative framework to create a single Public Services Ombudsman (PSO) in England
- changes we are calling for within the context of our existing legislative framework and jurisdiction which nonetheless support the wider reform agenda

In developing the recommendations put forward in this review, we have drawn upon our own experience as well as best practice developments both across the UK and internationally. We have also sought views from key local government stakeholders and ombudsman schemes to inform our thinking.

2. Summary of recommendations

The LGA 1974 was a landmark law when originally passed and ensured the public have access to redress when things go wrong with public services. However, we now operate under a legislative framework that is more than 40 years old and that is despite the significant changes within public services we have seen since then.

We have grouped our recommendations into two areas:

Recommendations in the context of legislating for a unified PSO in England

- We propose that legislation to create a future PSO in England should ensure it is equipped with a modern governance structure.
- We propose that legislation to create a future PSO in England needs to reflect the devolution settlement.
We believe there are several areas in which PSO’s powers should be strengthened. In particular, the PSO should have a clear duty to set standards in complaint handling expected of bodies within its jurisdiction.

Recommendations for changes within the scope of our existing legislative framework

- We propose that LGSCO should provide a single point of redress for all social housing and wider local government services, recognising that complaints often span across more than one area.

- We would urge the government to consider addressing existing anomalies which allow LGSCO to investigate complaints about admissions to and exclusions from maintained schools, but not relating to academies.

- We recommend that LGSCO’s jurisdiction should be expanded to cover complaints on wider school-related matters.

- We support recommendations that LGSCO’s jurisdiction should cover complaints about election administration which do not seek to change the outcome of an election and stand ready to work with government on how this might be implemented.

- We propose that a route for independent redress should be explored for complaints about alleged breaches of standards of conduct in local government.

- We welcome further discussions with government about extending our jurisdiction to cover town and parish councils in the future, and the scope of that jurisdiction.

- We propose the current accountability framework and sponsorship arrangements should be reviewed so that LGSCO becomes directly accountable to Parliament for the exercise of our statutory functions.

3. What has changed since the last review?

Since our last Triennial Review, we have seen some welcome progress in bringing forward long-awaited reforms to the public service ombudsman landscape in England. In December 2016, the Cabinet Office published the draft Public Service Ombudsman (PSO) Bill, setting out its proposals to create a single ombudsman scheme in England, which would bring together ourselves and the Parliamentary and Health Service Ombudsman (PHSO).

In July 2017, together with PHSO we responded to the proposals in the draft Bill. We said the Bill contains measures that could deliver an ombudsman system that is fit for 21st century. We also highlighted areas where we believe the reforms could go further and the PSO’s role could be strengthened. The lack of parliamentary time, however, has meant there has been a delay in implementing any reforms to the current landscape.
Most recently, the Public Administration and Constitutional Affairs Committee (PACAC) called on the government to provide clarity about its timetable for legislative reform. The Committee also recommended the draft PSO Bill should be subject to pre-legislative scrutiny, which we support.

While we recognise the demands on Parliament will continue to be significant, we urge the government to address this as soon as possible to remove uncertainty and implement long awaited modernisation of the ombudsman system. It is also important to make sure that reform is not confined to merely an exercise looking to consolidate our and PHSO’s existing powers, roles and responsibilities. The ultimate aim must be to ensure a future PSO is fully equipped to meet changing expectations and demands in the future.

Looking at the wider picture across the UK, there is much to learn from how the devolved administrations have embraced opportunities to reform the public service ombudsman landscape. Scotland, Wales and Northern Ireland have created a unified ombudsman service across public services. Crucially, the devolved jurisdictions have moved beyond an incremental reform agenda to a bolder and more fundamental approach that starts from consideration of what is required to adapt the role of the ombudsman to the 21st century.

The Public Services Ombudsman Act (Northern Ireland) 2016 Act – the legal basis underpinning the Northern Ireland Public Services Ombudsman (NIPSO) – extended the ombudsman’s powers by enabling it to undertake its own investigations where there is evidence of systemic failings. This now puts NIPSO on par with its counterparts internationally and across the Commonwealth. These powers have come into force in April 2018. This is also being pursued in Wales to enable the Public Services Ombudsman for Wales (PSOW) to carry out own initiatives in the future.

Another innovation in the 2016 Act in Northern Ireland was to mirror earlier reforms undertaken in Scotland to strengthen the role of the ombudsman, most notably in relation to its role as a Complaints Standards Authority (CSA). Strengthening the ombudsman’s powers along the same lines is also at the core of legislation proposed in Wales. These developments reflect a growing consensus that a complaints standards role must be part and parcel of the ombudsman’s toolbox in the future. There is a strong case that reform in England should be pursued on this basis too.

Legislation in other parts of the UK has extended access to an independent ombudsman where no equivalent currently exists in England. For example, legislation currently being considered will expand PSOW’s remit to investigate complaints about privately funded healthcare. In Northern Ireland, the ombudsman’s powers have been extended through the 2016 Act to include consideration of complaints of maladministration by schools, further and higher education institutions.

We remain committed to doing as much as we can without legislation. In anticipation of any fundamental reform, we have been working closely with PHSO around the development of our respective strategies for the coming three years so we can maximise the opportunities for aligning our services where appropriate. However, the step-change we need cannot happen unless government makes good its promise to
bring forward legislation to create a modern ombudsman service, in line with what exists already in other parts of the UK.

Looking at our existing jurisdiction, during the period covered by this review, there has been considerable interest in ways to improve the complaints system within the adult social care sector. We were pleased to see the Competition and Markets Authority’s study into care home market reinforce the need to place a statutory requirement for all registered adult social care providers (Part 3A of our legislation) to signpost to the Ombudsman at the conclusion of their complaints process if resolution cannot be achieved at a local level. Although we understand there are no current plans to legislate in this area, we would urge the Government to keep this area under review should any suitable legislative opportunities arise.

We have also responded to a recent government consultation on proposals to strengthen redress in the housing sector and engaged in early discussions about the potential creation of a single housing ombudsman. At the time of writing, the government’s response to this consultation is awaited.

Education is an area we have identified in previous reviews where significant gaps in the current redress system exist. We are pleased to be currently involved in the two-year trial which allows the Special Educational Needs (SEN) and Disability Tribunal to make non-binding recommendations on health and care issues, as well as deciding on educational matters. Moreover, a recent report on academies and the school system in England by London School of Economics (LSE) recommended families and pupils refused a place by, or excluded from, academies should have the same access to independent redress as those at maintained schools and be able to bring a complaint to us.

The UK Law Commissions undertook a review into reform of electoral law which recommended there should be a means of independent redress for complaints about elections which do not aim to overturn the result of an election. It concluded that along with our counterparts across the UK, we would provide the most appropriate forum for handling such complaints. This was also then reiterated in the more recent recommendations made by Sir Eric Pickles as part of his review of electoral fraud.

There remain some aspects of local service delivery that do not currently offer the public access to an independent ombudsman – for example, we cannot currently consider complaints about town and parish councils. A government consultation set out proposals to widen our jurisdiction to include larger town and parish councils.

More recently, the Committee on Standards in Public Life (CSPL) has launched a review into local government standards. This may provide an opportunity to consider creating an independent route for redress through an ombudsman for people seeking to complain about the conduct or behaviour of elected members. If pursued, this could help bring England in line with the other devolved administrations.

Devolution has progressed at pace in recent years and along with it the need to bolster existing accountability mechanisms in a context of a changing model of public service delivery provision. A range of devolution agreements have been reached and
new structures, such as combined authorities, created which have been brought within the scope of our jurisdiction.

4. What could wholesale legislative reform deliver?

We recognise that decisions about legislative change either to create a Public Services Ombudsman in England or to address gaps within our existing legislative framework are for the government and Parliament to make. Below we aim to contribute to thinking on what such changes might achieve.

Legislating for a Public Service Ombudsman (PSO) in England

Reform of the public service ombudsman sector in England is essential and the need for modernisation is becoming particularly acute. The draft PSO Bill, published at the end of 2016, offers the prospect of change in the right direction. We have provided detailed comment on the provisions in the draft Bill elsewhere. We consider the pause in taking the draft Bill forward provides a useful opportunity to consider how the current proposals could be strengthened.

It is important to take into account the environment in which a new PSO in England would operate, both now and in the future, and how it may need to adapt and change. Crucially, under a new legislative framework, reform needs to go beyond a simple merger between existing schemes. Not doing so runs the risk of reconfiguring the public sector ombudsman landscape in a manner that is insufficiently flexible to meet challenges of the future. What should be at issue in any reform is how to create a new organisation that could best respond to current and future demands. Recent initiatives in Scotland, Wales and Northern Ireland highlight the merits of reform with a vision is to future-proof the ombudsman model as much as possible, rather than take an incremental, reactive approach to change.

Below we have outlined areas which require further consideration to ensure a future PSO in England benefits from a modern fit for purpose legislative framework, stronger powers and robust accountability and governance arrangements. We would be pleased to work with parliament, government and stakeholders on how these issues can be translated into draft legislation.

Equipping PSO with a modern governance structure

Equipping PSO with a modern governance structure will be essential for it to operate effectively. As recognised in the Gordon review which looked into our governance model, there are some anomalies within our current legislation which are inconsistent with modern requirements of good governance. To address these issues, we have sought to embed a greater split of responsibilities between the role of the ombudsman and the chief executive and accounting officer. We have also appointed independent members to our board. However, these are pragmatic fixes lacking the weight of statute. The opportunity of legislation brought forward to create PSO offers a chance to formalise the separation of these functions in statute.

A revised governance and accountability framework must ensure that Parliament can exercise effective oversight of PSO’s work in the future. Accountability to Parliament should be divided between Public Accounts Commission for PSO’s performance and
the Public Administration and Constitutional Affairs Committee (PACAC) in terms of reports published by PSO to drive improvements in complaint handling and public services. While the Commission could ensure oversight of PSO’s budget and performance, reporting into a dedicated select committee such as PACAC could give greater voice and add weight to the ombudsman’s findings, promoting active engagement of Parliament with the PSO and its work.

**Recognising the dual role of PSO**
PSO will sit at the apex of the complaints system and act as a final-tier complaint handler. It is essential that as well as resolving individual complaints, the new PSO continues to fulfil the wider role of using the insight from its casework to help others improve public services, and that the legislative framework underpinning it reflects this.

**Creating a model coherent with devolution considerations**
The draft Bill proposed to incorporate the existing jurisdiction of the Parliamentary Ombudsman, including jurisdiction over non-devolved matters in relation to other parts of the UK as well as complaints about maladministration in UK government departments. A new PSO for England will need to operate within a constitutional settlement that is continually evolving.

**Enhancing the PSO’s powers**
The powers available to the PSO need to be comprehensive and embrace best practice. There are some key areas that we would want the government to consider reflecting in the Bill when it comes to PSO’s powers.

**Complaint standards authority role**
As is currently the case in Scotland (and also being adopted in Northern Ireland and Wales), PSO could become a standard setter for complaints handling for all public bodies in England. The Scottish Public Services Ombudsman (SPSO) took on its role as a Complaints Standards Authority (CSA) in 2010 and has developed standard complaints handling procedures for different sectors. In evidence to the Welsh Assembly which is looking to introduce this function to the role of PSOW, the Scottish Ombudsman noted the positive impact of the CSA approach in driving improvements in complaint handling. This was further reinforced in an academic evaluation from October 2017 which recommended to policy makers in other UK jurisdiction to consider “investigating, where appropriate, the scope for adopting a Complaints Standards Authority approach in other parts of the UK public sector”.

The draft Bill in its current form includes provision for PSO to promote best practice in complaint handling by providing information, advice and training to bodies within its jurisdiction. We believe this could be strengthened to replicate the more ambitious arrangements that have been successfully adopted across the other parts of the UK.

**Own initiative powers**
The draft Bill positively mirrors powers currently available to us under section 26(d) of the Local Government Act 1974 to widen the scope of an investigation where there is evidence that others have been affected. Legislation already enacted in Northern Ireland and soon to be adopted in Wales has gone a step further by equipping their respective ombudsmen with powers to launch own investigations as
a means of tackling systemic faults in public services or extending access to redress to those least likely to complain. Most other national ombudsman across the Commonwealth and internationally have such powers at their disposal. The Government may wish to consider lessons from devolved and international approaches around legislating for such powers and particularly how safeguards around their use have been built into legislation.

5. Areas to strengthen within our existing legal framework

As highlighted above, we see a new legislative framework to create an integrated ombudsman operating seamlessly across public services as most valuable, and most likely to deliver clear benefits for the public within a continually changing public service context.

There are also specific reforms we would like to see addressed within the context of our existing legislation and remit. Each of them has real merit to plug gaps and improve the coverage of the current redress system.

Our ability to deliver our existing statutory responsibilities is being increasingly stretched due to significant reductions to our budget and staffing numbers over recent years. Any proposals to extend our jurisdiction should be properly resourced through a commensurate increase in the grant based funding we receive. We would be happy to engage with government to undertake a more detailed assessment of the impact on the proposals discussed in this review on the level of resources required.

Improving the current redress system in housing

Following the changes introduced through the Localism Act 2011, the jurisdictional boundaries between us and the Housing Ombudsman (HO) can be complex and there are gaps in coverage – there is a small number of complaints which fall between the remits of both organisations and cannot be dealt with by either. There are no longer any means of redress for legitimate housing management complaints where the tenure of the complainant’s property is not relevant to the issues being complained about. Complaints from a private owner or tenant in relation to, for example, disrepair/leaks from a neighbouring council property, fall outside our jurisdiction and cannot also be considered by the HO since there is no tenant-landlord relationship. There are also practical inefficiencies resulting from the current division of labour, as proved by the large volume of complaints we redirect to the HO and vice versa.

Our experience of handling complaints about local authorities’ housing duties, such as homelessness and statutory allocations of social housing, is that such complaints are often multi-faceted, usually involving another local authority function or service. We support simplification of the current redress system in housing and strongly believe LGSCO should provide a single point of redress for all social housing and wider local government services, recognising that complaints often span across more than one area. We believe this would represent a significant improvement to the existing arrangements and be a step towards any future legislative changes to bring social housing within the remit of a single public service ombudsman.
Addressing gaps in provision of redress in relation to complaints about school admissions and exclusions

Within education, there are several areas with no independent formal route to seek redress. As recently raised by the LSE in its recent report, the current system is unnecessarily fragmented and there is a significant gap in that parents whose children attend a maintained schools may bring complaints about school admissions or exclusions to the ombudsman, but similar redress is not available to parents whose children attend an academy. The current situation where our jurisdiction is limited to investigating complaints about admissions to and exclusions from maintained schools, but not relating to academies, is unsatisfactory.

We agree with the analysis by the LSE and believe a strong case can be made for moving towards a system that provides the same level of redress regarding admissions or exclusions decisions, irrespective of whether a school is maintained or an academy. We would be keen to work with government to consider how our jurisdiction could be expanded to include investigating complaints about admissions and exclusion decisions by all schools, including academies.

Addressing gaps in provision of redress for wider school-related matters

We have noted in successive triennial reviews the clear need for improving transparency and redress for school complaints. Under our current jurisdiction, we can consider complaints about some school issues such as the provision of special education needs support or school transport. However, we cannot consider complaints about the internal management of schools.

A pilot scheme introduced through the Apprenticeships, Skills, Children and Learning Act 2009 enabled parents and families from 14 local areas with complaints about school matters who have been unable to resolve their concerns through resolution to seek redress through the ombudsman. The independent evaluation of the pilot commissioned by the Department for Education was overwhelmingly positive in its appraisal of the effectiveness of the pilot scheme in empowering schools to address complaints more rigorously and efficiently. Parents valued having an independent route of redress to resolve such complaints. Building on lessons from this pilot, we believe there is compelling evidence for the government to create a mechanism for redress in respect of concerns about all aspects of education provision, from school admissions to pupil safety and wellbeing.

Creating a redress route for complaints about town and parish councils

We believe, as a matter of principle, that people should have access to redress when using any local service, irrespective of who they are delivered by. Therefore, we consider it is desirable for our jurisdiction to be extended to become as comprehensive as possible and include where citizens have been let down by their parish or town council. If this was to be pursued, we believe it needs to be done in a way that is proportionate and careful consideration of the practical implications would be needed, while also avoiding imposing any arbitrary limits on the availability of redress. The government has previously consulted on proposals to widen our jurisdiction to include larger town and parish councils.

There is a recognised but unresolved gap in that town and parish councils do not come within our current jurisdiction. We would welcome further discussion with the
government about extending our jurisdiction to cover town and parish councils in the future, and the scope of that jurisdiction.

Creating a redress route for complaints which do not seek to change the outcome of an election
There is now a consensus that under the current system there is no appropriate route for reviewing complaints about the administration of elections which do not affect the election outcome. Various reports have recommended that our role and that of our counterparts across the UK should be extended to cover such complaints. We welcome that the government has indicated in its response to the Pickles review its support for these proposals and would support further discussions about how they might be implemented.

Improving access to an ombudsman for members of the public wishing to bring a complaint about ethical standards in local government
We have a narrow jurisdiction as far as standards complaints are concerned. If a member of the public is dissatisfied with the council’s handling of a complaint about alleged breaches of standards of conduct they can refer that issue to us. Our powers enable us to investigate the council’s handling of the complaint, and where there is evidence of injustice, we are able to make recommendations for how the issues can be remedied. However, we cannot consider the substantive issues that form the complaint itself and do not provide a right of appeal against a council’s decision whether there has been a breach of standards of conduct.

The Committee on Standards in Public Life is undertaking a review into the effectiveness of the current framework for ethical standards in England. We believe this offers an opportunity to consider the best practice elements of the ethical standards regime that exist in the other devolved jurisdictions. In both Wales and Northern Ireland, a route for independent redress exists for such complaints through the respective ombudsmen. Subject to the final recommendations by the Committee, we would urge the government to consider greater access to independent redress in relation to complaints about the conduct of councillors, where it is not possible to resolve such complaints at a local level, and put England on part with the other devolved jurisdictions.

Reviewing the current accountability framework
The Ombudsman is independent of government. Nevertheless, the Ministry for Housing, Communities and Local Government (MHCLG) plays a specific ‘sponsorship’ role. It acts as the Ombudsman’s principal point of contact with government. The Ombudsman is an appointment made by the Crown on the recommendation of the Secretary of State. The Secretary of State also has responsibilities for setting the level of public resources available to the Ombudsman to deliver its statutory functions and other matters. This is set out in more detail in the LGA 1974 and in the framework document agreed between the Ombudsman and MHCLG.

We appreciate there could be a number of different approaches for how we are held to account and there is some rationale for the arrangements currently in place. We benefit from a constructive relationship with MHCLG which respects our independence regarding the cases we investigate and the decisions we make.
However, we would query whether the current approach is the right one from a constitutional perspective. Our jurisdiction or powers cut across many other parts of government, which creates an imperfect match with the remit of MHCLG as our sponsor department.

Ultimately, a model that provides for direct accountability to Parliament is preferable and also reflects how other schemes currently operate. We would therefore welcome a review of our current sponsorship arrangements, with an intention of making the shift towards establishing our status as a body directly accountable to Parliament.

**CONCLUSION**

We understand that competing interests will need to be balanced when it comes to legislative changes. However, if the legislative time and cost is to be justified, then reform should not be constrained to the pursuit of a narrow focus on consolidation of existing ombudsman schemes. We believe the measures we have outlined above would help future proof legislation and ensure that redesigning the structure of the ombudsman sector in England is pursued in a manner that is appropriate for the way that public services are delivered today and are likely to be delivered in the future.

If legislation to create the PSO is not forthcoming in the near future, we would urge the government to consider alternative legislative vehicles to pursue the changes described above regarding our current legislative framework.