

Joint Committee on Human Rights
Houses of Parliament
London,
SW1A 0AA

30 June 2022

Dear Sir / Madam,

Human Rights Ombudsperson

We welcome the opportunity to respond to the Committee's inquiry into whether a human rights ombudsperson should be established in the UK. We are aware that several of our members will be replying to the Committee separately with detailed responses on taking a human rights-based approach. Our response will address the broader issues.

Summary

1. The Ombudsman Association welcomes the Committee's examination into how the protection of people's rights in the UK could be improved.
2. Ombudsman schemes in the UK can, and do, already consider human rights issues in their casework. More can be done to enhance and strengthen that work, including reform to the roles and powers that existing ombudsman schemes have.
3. The creation of a separate human rights ombudsperson, that cuts across the remits of existing ombudsman schemes, would not be an effective way to improve the protection of people's rights.

Background

4. The Ombudsman Association (OA) was established in 1993 and includes as members all public and private sector Ombudsman schemes and major complaint handling bodies in the United Kingdom, Ireland, the British Crown Dependencies and the British Overseas Territories.
5. The Vision of the OA is that throughout the public and private sectors:
 - It is straightforward and simple for people to complain.
 - People making a complaint are listened to and treated fairly.
 - A complaint is dealt with quickly, fairly and effectively at the earliest stage by suitably trained staff.
 - People have access to an ombudsman in all areas of consumer and public services.
 - The learning from a complaint is used to improve services.
6. An Ombudsman helps to underpin public confidence in the organisations that they cover; by providing accessible and effective redress, and by feeding back the lessons from their work in order to help improve service delivery and complaints-management for the future.
7. The OA's membership criteria are recognised as representing best practice. This is reflected in the Cabinet Office's *Guidance for government departments on setting up Ombudsman schemes*¹, which addresses the point of when it is appropriate to use the title 'ombudsman', and in the criteria used by Companies House on when a company can use the protected term 'ombudsman'².

¹ www.gov.uk/government/publications/new-ombudsman-schemes-guidance

² www.gov.uk/government/publications/incorporation-and-names/annex-a-sensitive-words-and-expressions-or-words-that-could-imply-a-connection-with-government

Response to consultation questions

Q1. Should there be a Human Rights Ombudsperson? If so, what powers and resources would the Ombudsperson need to address the challenges people face in enforcing their rights out of court?

8. We welcome the Committee's focus on how the protection of people's rights in the UK could be improved, including improving access to redress. Ombudsman schemes are well placed to provide that role. However, the creation of a separate human rights ombudsperson, that cuts across the remit and work of existing ombudsman schemes, would not be an effective way to improve the protection of people's rights.
9. An ombudsman is more a doctor than a police officer, diagnosing what is wrong and making recommendations to improve. The additional benefit for organisations covered by an ombudsman, alongside the benefit of addressing individual issues and driving service improvement, is the learning loop that it provides via training, setting standards for complaint handling, and providing data and insights on common issues industry wide.

Current system

10. Many UK ombudsman schemes already take a human rights approach in their casework. Following the pioneering approach taken by the Northern Ireland Public Services Ombudsman (NIPSO) and the Northern Ireland Human Rights Commission, NIPSO adopted a Human Rights Manual³ in 2016 to inform their human rights-based approach to casework.
11. Subsequently, the OA helped co-ordinate engagement between those ombudsman schemes based in Great Britain and the Equality and Human Rights Commission (EHRC) that culminated in the publication of the EHRC's guide for ombudsman schemes on when and how to apply human rights in their casework⁴. That work involved both ombudsman schemes dealing with complaints about public services and those that deal with complaints about the private / consumer sector, such as the Energy Ombudsman, the Pensions Ombudsman, and the Financial Ombudsman Service.
12. There are many other examples of ombudsman schemes taking into account human rights in their investigations and decisions, such as the Local Government & Social Care Ombudsman's (LGSCO) report on how councils arrange reasonable adjustments for people with disabilities⁵ and the Public Services Ombudsman for Wales' annual Equality and Human Rights casebook⁶.

Risks of creating a separate ombudsperson

13. The key risk in creating a separate ombudsman scheme with a cross-cutting human rights remit would be the confusion it would create for the public in an already fragmented landscape. It would also remove the holistic overview that existing ombudsman schemes have of a sector and it would 'other' human rights; implying they are somehow different and separate from every day actions and services and the responsibility of someone else rather than integral to day-to-day lives.
14. The position that there should be one ombudsman within a sector has been reinforced by several reports, including the 2017 Citizens Advice report *Confusion, gaps and overlaps*⁷. Those reports are clear that it is in the interests of citizens for access to redress to be simple and straightforward and that confusion is caused by having multiple routes. Having a holistic view of complaints across the sector enables an ombudsman to spot systemic issues both

³ [NIPSO-Human-Rights-Manual.pdf](#)

⁴ [Ombudsman schemes: a human rights guide | Equality and Human Rights Commission \(equalityhumanrights.com\)](#)

⁵ [Equal access for all should be at the heart of services, Ombudsman says - Local Government and Social Care Ombudsman](#)

⁶ [Equality and Human Rights Casebook \(ombudsman.wales\)](#)

⁷ [www.citizensadvice.org.uk/Global/CitizensAdvice/Consumer%20publications/Gaps%20overlaps%20consumer%20confusion%20201704.pdf](#)

within a single organisation and across several different organisations, providing the insight to inform policy and regulatory activities.

15. Many complaints can have multiple facets to them. Seeking to remove those with a human rights element from the remits of existing ombudsman schemes would create double handling and introduce delay. For example, the Pensions Ombudsman (which is a quasi-judicial tribunal) can already make a determination of law that the treatment of a person under a pension scheme is not compliant with the Human Rights Act. Stripping out that element and creating a new ombudsman scheme to investigate that single element of a wider complaint would fragment the process and 'customer journey'.
16. Our members' experience, particularly in England, is that people rarely articulate their complaint in terms of a breach of their human rights and often a breach might not emerge until an investigation has taken place. In addition, whilst a human rights ombudsman might find there has not been a breach of someone's human rights there might still have been maladministration, which would then require a separate subsequent investigation by the relevant ombudsman. As a result, it would be likely that people would often approach the wrong body with their complaint and time and resource would be spent by both the existing ombudsman and any new human rights ombudsman sending them elsewhere following initial exploration of the issue.
17. There is already a risk of that materialising in the higher education sector. The Office of the Independent Adjudicator for Higher Education (OIA) has a wide remit and approach, which already encompasses human rights and freedom of speech. Despite that, there is legislation currently being debated in Parliament that would establish a separate Freedom of Speech Champion and complaint handling role within the sector regulator. This will overlap with the OIA's existing role and likely cause the issues set out above. The creation of a new human rights ombudsman would have the potential to open a third route for students to raise issues about freedom of expression, further fragmenting oversight and accountability in the sector.

Q2. What powers would the Ombudsperson need to ensure they provide an effective remedy, as required by Article 13 of the European Convention on Human Rights, for individuals trying to enforce their rights?

18. The decisions of private sector ombudsman schemes are legally binding if the complainant accepts the decision. Whilst the recommendations of ombudsman schemes that deal with complaints about public services are not binding, this is not the problem it may be thought to be, with public service ombudsman schemes typically having over 99% compliance with their recommendations.
19. In both sectors, ombudsman schemes do not commonly have enforcement powers. There are however several other ways in which existing ombudsman schemes could be strengthened.
20. Unfortunately, across all sectors people are often hesitant to pursue a complaint. For example, less than 20% of respondents to a recent survey thought complaining about UK public services would make a difference.⁸ In 2020/21, the Public Services Ombudsman for Wales (PSOW) did not receive a single complaint about homelessness. Yet their subsequent own-initiative investigation into the administration of the homelessness review process by local authorities in Wales showed that vulnerable people were suffering injustice as duties under the Human Rights Act were not explicitly taken into account in assessments and reviews, but those individuals affected were either unaware of their rights, did not understand them, or were unable to exercise their right to escalate their complaint.⁹

⁸ [Have your say on improving UK government complaint handling | Parliamentary and Health Service Ombudsman \(PHSO\)](#)

⁹ [Ombudsman publishes his first-ever own initiative investigation into the homelessness review process in Wales, finding evidence of "systemic maladministration" by local authorities](#)

21. The time commitment required to pursue a complaint is another reason why legitimate complaints are not taken forward. As the research undertaken by ICF for the Consumer Green Paper showed, individuals using a redress scheme incurred a higher cost of lost time (£88) than the estimated average internal cost to airlines of dealing with the same complaint (£71).¹⁰ This highlights why people who are experiencing vulnerability or on low incomes are often less likely to pursue a legitimate complaint.
22. Therefore, there should be a focus on how the existing bodies in the landscape can be more effective, equipping them with the powers they need, removing the barriers currently in place, and raising awareness of their roles.
23. English citizens are currently at a disadvantage compared to their counterparts in Scotland, Wales and Northern Ireland when complaining about public services. And all UK citizens are at a disadvantage if complaining about a UK Government service, as opposed to a service that is devolved.
24. There are a number of gaps in English public services where people do not currently have access to redress, including in the school education system and regarding parish councils. Additionally, people often have limited access to redress outside the courts in many areas of private sector services where their human rights may have been breached, such as in the aviation sector (as seen in the recent high-profile failings regarding disabled passengers) or the private rented sector. These loopholes should be plugged by extending the jurisdiction of existing ombudsman schemes or creating new sector specific schemes in the private sector, such as in aviation.
25. The 'MP filter', by which members of the public cannot complain directly to the Parliamentary & Health Service Ombudsman (PHSO) about a UK Government department, but rather need permission from their MP, is a unique and pernicious restriction on access to justice which thankfully citizens in Scotland, Wales or Northern Ireland do not have if complaining about devolved services. PHSO have highlighted the Windrush scandal as just one example where individuals were not able to have violations of their human rights investigated because they did not approach their MP for referral to the ombudsman, assuming their MP would not be sympathetic.
26. 'Own-initiative' powers, the ability to undertake an investigation without having to wait to receive a complaint, as the PSOW did in relation to homelessness, would also strengthen the ability for existing ombudsman schemes to investigate and address human rights issues. Own-initiative powers are commonplace for ombudsman schemes around the world, including in the Republic of Ireland. They are also held by several offices in the UK, including NIPSO, PSOW and the Independent Office for Police Conduct. Those powers are of most benefit in addressing issues in closed communities, where people are detained, where people are excluded or marginalised from mainstream society, or where there is a fear of reprisal from raising a complaint.
27. More broadly, in England there is not a single ombudsman covering all public services, unlike in Scotland, Wales, and Northern Ireland. Wholesale reform is required to bring those existing bodies with an English jurisdiction together into one Public Service Ombudsman, along with the necessary powers, to provide clarity for the public and clearer lines of accountability and redress.

Q3. How would the Human Rights Ombudsperson interact with existing mechanisms such as ombudspersons and Commissioners, including in the devolved nations?

28. There are already several forums through which ombudsman schemes interact with each other, sharing information and best practice, including through the OA and our various

¹⁰ [Mandatory alternative dispute resolution \(ADR\): impact assessment \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/671122/mandatory-alternative-dispute-resolution-adr-impact-assessment.pdf)

Networks, including the Casework Network and the Policy Network, and through the separate Public Sector Ombudsman Group.

29. Where there is the potential for overlap of jurisdictions, such as between the LGSCO and the PHSO, or between the Pensions Ombudsman and the Financial Ombudsman Service, there are either memoranda of understanding in place or the ability to carry out joint investigations.

Q4. How would the Human Rights Ombudsperson interact with other bodies tasked with upholding human rights, including the Equality and Human Rights Commission? and

Q5. Are there other steps that should be taken alongside introducing a Human Rights Ombudsperson to ensure people can effectively enforce their rights out of court?

30. An ombudsman scheme is just one piece of the puzzle in ensuring people are treated fairly, and they are most effective in sectors where they work alongside a regulator and other accountability bodies. This can be seen, for example, when the LGSCO shares information about care homes with the Care Quality Commission to inform their regulatory activity, or in the energy sector where the Energy Ombudsman shares relevant information with Ofgem to inform their regulatory activities and ensure enforcement.
31. An ombudsman is not an enforcement body itself but rather focused, through individual redress, on learning and driving best practice. That needs to be counter balanced by an effective regulator, the EHRC, with the power and resources to enforce compliance themselves.
32. Considering the time that has passed since the publication of the EHRC's guide for ombudsman schemes on when and how to apply human rights in their casework, there would be some value in the ombudsman sector and the EHRC re-visiting how they work together and where things could be improved.

The OA would be happy to provide any further information or meet to discuss if you would find that helpful.

Yours sincerely



Donal Galligan
Chief Executive