

Better to Serve the Public:

Proposals to restructure, reform, renew and reinvigorate public services ombudsmen.

A report to The Rt Hon Oliver Letwin MP, Minister for Government Policy and Chancellor of the Duchy of Lancaster

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1. Introduction

I was very pleased to be asked by the Minister for Government Policy to undertake a review of the current public sector ombudsman landscape because it provides me with the opportunity to build on the work I started in my earlier independent examination of the Local Government Ombudsman Service (LGO) for the Secretary of State for Communities and Local Government¹. The terms of reference for the current short review are at Annex A.

That earlier review led to a number of recommendations – which Government has accepted – going with the grain of changes previously recommended by others (and being implemented in part during the course of that review) to improve the governance, organisation and performance of the LGO.

That work also highlighted (reflecting the thoughtful conclusions of most key protagonists) the need for consideration of closer collaboration among, and eventual integration of, public services ombudsmen in England for three main reasons – first, to take account of the radical changes in public service delivery arrangements being introduced and in prospect, second, to make access to redress easier for citizens and third, to secure best value for scarce public resources.

At the point of submitting my report to the Secretary of State in August 2013, the LGO and the Parliamentary and Health Service Ombudsman (PHSO) had committed to closer working. I recommended that they should build with energy and urgency on that commitment by engaging in substantial initiatives (to the extent this was achievable within their outdated legislative frameworks) to achieve economies, to harmonise processes and provide the public with clearer routes to as swift redress as could be delivered.

I was also then aware that the Public Administration Select Committee (PASC) was about to embark on two inquiries: the first into complaints handling and the second into the work of the PHSO. I expressed the hope that these investigations would provide a forum for exploring further the case for a unified public services ombudsman in the medium term. That hope turns out to have been well founded. The PASC initiative, the evidence submitted to its two inquiries by key interests, its examination of witnesses and its definitive reports all help to identify a way forward which seems likely to command broad agreement.

¹ Robert Gordon, Governance Review of the Local Government Ombudsman Service: <https://www.gov.uk/government/publications/governance-review-of-the-local-government-ombudsman-service>

Here I draw on PASC's important and detailed work and that of the Law Commission², and also draw in the significant work underway in the health sector around complaints and the role of the PHSO. 78% of the investigations taken forward by the PHSO in 2013/14 were about the NHS. Recent parliamentary interest and media coverage have demonstrated that health is the public service area where ombudsman cases are most often likely to be the subject of public concern. The Department of Health (DH) have put in place a series of initiatives designed to develop a positive patient centred culture across the NHS, led by a new Complaints Programme Board. The PHSO and LGO sit on this Board and are working with DH, NHS England and Care Quality Commission (CQC) on a range of fronts, including the development of universal expectations for complaints handling. My recommendations here go with the grain of these significant changes and are intended to strengthen their impact.

From my engagement with key interests³ right from the outset of the earlier work it has been evident that they see value in pursuing, and have an appetite for taking, a pragmatic and evolutionary approach to reform and modernisation but with the aspiration and expectation that the process will result in radically improved arrangements and a better service to the citizen. It has been encouraging to learn from the PHSO and LGO of progress with the collaborative agenda to which they committed a year ago. I have sought to go with the grain of on-going reforms and stated ambitions. This does not signal any complacency about the scale and nature of the changes required, or a lack of willingness to challenge robustly the status quo. Rather, it comes from a desire to ensure that any recommendations put forward here are achievable and can harness the energy of a range of willing partners to work to bring about a significant improvement in complaint handling both by public sector ombudsmen and within all organisations delivering public services.

Alongside this, I am clear that an evolutionary approach best supports the broad consensus that what is needed is a contemporary ombudsman service which has the focus, flexibility and authority to adapt to prevailing circumstances, and to respond quickly and nimbly to changing modes of and approaches to public service delivery and changing expectations and demands of the consumers of those services.

In summary I have sought to draw on my terms of reference to ensure that any proposed changes meet the following tests:

² 'Public Services Ombudsmen' The Law Commission, July 2011
http://lawcommission.justice.gov.uk/docs/lc329_ombudsmen.pdf

³ Details of individuals and bodies I have met in the course of the review are listed in Annex B

- **Best for Citizens - Accessibility and Effectiveness:** reformed arrangements and institutions should be easily accessible by and intelligible to members of the public with a complaint; should inspire confidence that complaints will be investigated thoroughly; and should provide assurance that public service providers will take action to learn from mistakes and to prevent repetition.
- **Best for Parliament - Accountability and Governance:** reformed arrangements should meet contemporary standards by delivering clear accountability to Parliament – both in terms of performance against key objectives and for the effective and prudent use of public money. They should also meet contemporary norms for effective internal governance.
- **Value for Money:** reformed arrangements should maximise the potential to deliver ever greater value for money reflecting continuing pressure on public funds and the perennial imperative of seeking to achieve more with less.
- **Feasibility and Delivery:** reformed arrangements should be practical and able to be implemented readily; they should be designed with flexibility to accommodate inevitable innovations in public service delivery.

The work also builds on the broad agreement I detect on the following points:

- An independent, citizen centred ombudsman service is a vital part of the redress landscape – but existing structures and associated legislation applying to public sector ombudsmen in England diminish the role the ombudsmen can play – either as advocate or route of redress for the public; or as agent of public service delivery improvement through effective complaint handling;
- The current ombudsman landscape is complex, poorly understood and confusing for the public;
- In a climate of reduced resource, there is a strong need to consider the most effective means by which these services can be delivered, in a way which retains public confidence.

I have already acknowledged that I have drawn heavily on other reviews, reports, analyses and the like because the issues under consideration have been well researched and debated for a long time. I have also again been able to benefit hugely from the wisdom and experience of private and public sector ombudsmen operating in different parts of the British Isles and other observers and commentators. I am grateful to all whose work I have drawn on and to those who have given freely and generously of their time and their views.

I have been greatly assisted in this project by the diligent, thoughtful, energetic and enthusiastic support of Helen Ewen and Michelle Gough of the Cabinet Office. They have masterminded the logistics of the project, researched a wide range of issues assiduously and contributed substantively to the thinking and writing in this report. I am very grateful to them for all they have brought to the review but I take full responsibility for the conclusions and recommendations.

The following pages contain my key recommendations. I consider there is an opportunity for Government to bring forward legislation to provide for a single public services ombudsman equipped to play an enhanced role for the public, and working closely and productively with Parliament, national and local government and all bodies within its jurisdiction.

Robert Gordon

2. Recommendations

This chapter summarises my recommendations in order to provide an overview of the reforms proposed to create a modern public services ombudsman equipped to make a real difference in dispute resolution and effective complaint handling, as well as contributing to public service delivery improvement.

A Public Services Ombudsman for the 21st Century

A renewed ombudsman service should be:

- The final tier of complaints redress for citizens – substantially as now;
- A champion and monitor of complaints handling standards and improvements – a substantially enhanced role;
- An agent for public service delivery improvements – a predominantly new role.

In detail:

Complaint handling:

- Retaining current functions as independent top tier of the complaints process providing the final point of redress for the public (paragraph 10);

Improving systems and the customer experience:

- Taking on advisory roles - issuing and endorsing guidance to public sector organisations on effective complaint handling (including on ways of reducing the incidence of complaints) and engaging more directly in the development or approval of bodies' complaint handling schemes (paragraphs 26 and 27).
- Supporting culture change by sharing best practice, developing and providing training materials, and championing the case for effective complaints handling and setting standards for and appraising complaints handling standards within government departments, local authorities and all other organisations and service providers within jurisdiction (paragraphs 27 and 28).
- Assisting the citizen navigate the complaints system (paragraph 30).

Making effective use of complaints:

- Engaging with senior leadership to assist and inform those tasked with improving or holding public service delivery organisations to account for their performance (paragraph 38).
- Providing readily intelligible and timely management information and thematic reports to enhance accountability of public services to Parliament, national and local government and others (eg boards of arm's length bodies) within jurisdiction (paragraph 43).

A Reformed Public Services Ombudsman: providing an integrated service and facilitating “open door” complaint routing

A Reformed Public Services Ombudsman

- Government should legislate to create a new single public services ombudsman (PSO) (paragraph 57).⁴

Composition and Reach

- The PSO should at the outset comprise at least the current remits and responsibilities of the UK Parliamentary Ombudsman, the Health Service Ombudsman, the LGO and the Housing Ombudsman (HO) (paragraph 69).
- Government should keep under review the justifications for maintaining any separate public services ombudsman, with an emphasis on integration (paragraph 71).
- Those - relatively few - areas of public service not currently within the scope of an ombudsman scheme should be considered by Government for inclusion within the jurisdiction of the PSO on its establishment (paragraph 71).
- If excluded at that point, the possibility of extending ombudsman cover into these areas should be reviewed periodically thereafter in the light of changing circumstances and developments in public service delivery (paragraph 71).
- The legislation establishing the PSO should provide scope to adjust the PSO's jurisdiction readily to assume the functions of other pre-existing public service ombudsmen and/or to incorporate additional functions and bodies in areas of public service not currently within the scope of an ombudsman scheme (paragraph 72).
- Government should ensure that the PSO's jurisdiction is clearly defined in statute, confirming its application to any organisation delivering public services on behalf of a public body within the PSO's jurisdiction (paragraph 77).
- The PSO, working in collaboration with all other public services ombudsmen in England and elsewhere in the UK, should build on existing efforts to help citizens have their complaints addressed by the appropriate service delivery body or ombudsman (paragraph 80).
- The PSO should be empowered to facilitate a clearing house arrangement among public services ombudsmen to deliver a genuine 'open door' approach, which ensures that a

⁴ I have adopted the term PSO here because the proposed organisation will combine the roles of the Parliamentary Commissioner for Administration (otherwise known as the UK Parliamentary Ombudsman) and of several ombudsmen with an England only remit. I acknowledge that it will be necessary to agree later on a means of differentiating the PSO operating in England from the existing public services ombudsmen working in other parts of the United Kingdom.

complaint always reaches the right organisation no matter to which it is initially addressed (paragraph 82).

- The PSO should facilitate consideration of the value and feasibility of extending this clearing house arrangement to ombudsmen in other sectors and to other final tier complaint handling or redress bodies (paragraph 82).

A Reformed Public Services Ombudsman: modern accountability, governance and leadership structure.

PSO Accountability and Reporting

The PSO's accountability and reporting should be to Parliament (paragraph 84). Parliament will wish to take a view on the appropriate arrangements but reflecting the recommendations of PASC I suggest that:

- Accountability might be to a Parliamentary Commission (modelled on the Public Accounts Commission) for its costs and performance against objectives, targets and key performance indicators (KPIs). Such a Commission could also be responsible for setting the PSO's budget and making appointments to its Board (paragraphs 87);
- Reporting to PASC would mainly take the form of data and intelligence collected by the PSO which PASC would use to hold to account the administration of Government and drive public service improvement (paragraph 88); and
- Reporting to appropriate Departmental Select Committees should equip them to hold their Departments and associated bodies to account (paragraph 88).

PSO Governance

- The PSO should have contemporary governance arrangements drawing on current best practice (paragraph 91);
- The PSO should be established as a corporate entity, with a statutory Board with a non-executive Chair, responsible for the overall strategy and effective operation of the organisation, against agreed targets (paragraph 106).

PSO Structure and Leadership

- There should be a clear division of responsibility between this Board and the office holder (the Chief Ombudsman) invested with statutory powers of investigation. The Chief Ombudsman should retain full independence and decision making powers in respect of complaints (paragraph 113);

- The Chief Ombudsman, should be supported by a cadre of senior ombudsmen who would be employees of the PSO but would not be office holders (paragraph 113);
- The selection of senior ombudsmen should ensure that appropriate sectoral expertise and presence is achieved across the whole range of the PSO's responsibilities (paragraph 113).

The UK Dimension

- Public service ombudsman provision should continue to follow the devolution settlements in Northern Ireland, Scotland and Wales (paragraph 119);
- The PSO embracing the role of the UK Parliamentary Ombudsman (UKPO) would continue to deal with cases relating to matters reserved to the UK Parliament and Government which arise in Northern Ireland, Scotland and Wales (paragraph 121);
- The PSO in the role of UKPO should liaise closely with the Northern Ireland Ombudsman (NIO), Scottish Public Services Ombudsman (SPSO) and Public Services Ombudsman for Wales (PSOW) undertaking joint investigations where cases straddle devolved and reserved areas (paragraph 120);
- The PSO in the role of UKPO should work with the NIO, SPSO and the PSOW to:
 - o help ensure that complainants wishing to raise issues relating to reserved matters in Northern Ireland, Scotland and Wales are, where necessary, assisted to lodge their complaint with the UKPO.
 - o monitor the flow of business on reserved matters from Northern Ireland, Scotland and Wales to ensure that the number of cases to the UKPO is at a level broadly in line with population shares and if necessary take action to improve arrangements for signposting or referring complaints to the UKPO (paragraphs 121 and 122);
- The PSO in the role of UKPO, and following consultation with the NIO, SPSO and PSOW, should report to Parliament on the operation of these arrangements by the third anniversary of their coming into effect with any recommendations for change (paragraph 122).

An Accessible and Enhanced Ombudsman: necessary powers and presence

The opportunity of legislation to give effect to the substantial changes recommended should also be taken to address a number of recurring issues relating to the powers and mode of working of a modern public services ombudsman.

- The MP filter which currently applies to complaints to the UKPO should be removed giving complainants direct access to the PSO, once they have exhausted the complaints process of the organisation complained against (paragraph 131);
- It should still be open to complainants to enlist the support of their MP, local councillor or other advocate to help articulate and present their case to the PSO and they should

retain the right to request that their MP receives notification of their complaint and the progress of proceedings (paragraph 131);

- The PSO should be able to receive complaints in writing, electronically or orally (paragraph 132);
- Government should consider placing a statutory duty on public service providers to signpost citizens to the PSO and also to require them to advertise their own complaint handling procedures (paragraph 133);
- The PSO should be provided with 'own initiative' powers, allowing the PSO to launch investigations in set circumstances and where set tests have been met (paragraphs 137 and 138);
- The PSO should be provided with powers to publish reports and related information at its own discretion (paragraph 141);
- Consideration should be given to wider issues of procedure or jurisdiction, which could benefit from legislative treatment as part of the development of provisions to create the PSO (paragraph 144).

Next Steps

- The programme of change proposed in the previous chapters should be evaluated to determine feasibility of implementation, a realistic timescale for putting the changes in place and the financial and other resource implications of doing so (paragraph 144).
- This work should be undertaken by a short life task group bringing together key interests under Cabinet Office or independent chairmanship - and produce a high level feasibility and implementation project plan to validate the coherence of the changes (paragraph 145).
- In parallel with this work Government may wish to seek the views of Parliament, key stakeholders and the public more generally on the proposals (paragraph 146).
- The programme of joint convergence work to which the PHSO and LGO are committed should continue with pace (paragraph 147).

3. The Case for Change: a timely opportunity for evolutionary yet radical reform

1. Given the history of well-argued proposals for significant reform in this area going unimplemented an initial question to address is what makes the case for change persuasive now? What has become clear to me, in the course of this and my earlier review, is that there is now a clear appetite for modernisation among key interests and a stronger need than ever to make the ombudsman fit for the 21st Century.
2. Some 15 years ago the Review of the Public Sector Ombudsmen in England in 2000⁵ set out a comprehensive case for change in a thorough and eloquent report. The themes and issues highlighted there remain pertinent today and the need for action has been strengthened by a further period of significant change within the public sector. PASC and others have now restated compellingly the importance of an effective ombudsman function as a critical assurer of public service delivery. The shifting public perception of complaints; changing and increasingly complex models of service delivery; and prolonged downward pressure on budgets have created a context in which it is no longer tenable for existing public sector ombudsman arrangements to remain static – and the significant changes already implemented by the LGO in response to policy and budgetary pressures (and referenced in more detail below) are demonstrative of this.
3. Alongside this, the very factors that now make an effective ombudsman function such a key element in excellent public service delivery arrangements, are also those which are necessitating changes to the ombudsman organisations themselves. As I set out in my review of the LGO, the proliferation of service delivery arrangements, the integration of previously discrete services, the partnering of delivery agents and the blurring of institutional boundaries are all innovations which increasingly call into question the traditional boundaries and jurisdictions of ombudsmen. The public should not have to make complex determinations about who is accountable for delivering a service and to whom they should turn for redress if the service deliverer fails to address their complaint to their satisfaction. Growing complexity in public service delivery should be balanced by determined and imaginative efforts to ease access to redress.

⁵ Philip Collcutt and Mary Hourihan, Review of the Public Sector Ombudsmen in England (2000)

4. PASC in its report⁶ calls for the establishment of a more effective people's ombudsman service that better serves the public and Parliament. The ombudsman landscape is complicated and confusing, with a proliferation of organisations across the public and private sectors with over 20 ombudsman services in the UK and over 10 public service ombudsmen alone (and this is quite apart from bodies in the wider regulatory or administrative justice landscape). Alongside this, there are questions around brand recognition and the extent to which consumers are aware of ombudsman provision as a means of redress. A 2013 study by Queen Margaret University highlighted the challenges faced by ombudsmen in raising their public profile and cementing themselves in the minds of the public as an alternative source of redress.⁷
5. Recent Which? research highlighted that two thirds (64%) of people who made a complaint to an NHS organisation in the past year and felt it had not been resolved did not take the complaint any further. Only half of those people surveyed had heard of the PHSO compared to 94% who had heard of Trading Standards and 86% who had heard of the Financial Ombudsman Service.⁸ These obstacles to redress argue for uniform public service complaint processes which would make complaining more straightforward and more accessible both for complainants and for organisations and services complained about.
6. As noted earlier, the PHSO and LGO have both taken steps to reform their organisations. Pressure on their budgets is likely to continue for the foreseeable future and could be a strong driver of innovation and performance improvement. But I consider that budget driven change will be more readily achieved if the public services ombudsman is endowed with a modern fit for purpose legislative framework, a clearly defined (and enhanced) role to play in the contemporary public service delivery environment and robust accountability and governance arrangements.
7. In parallel with these factors, I am struck by the readiness of most to acknowledge the need for change and to show a willingness to play their part in bringing it about. The PHSO's strategy 2013 – 2018 set out a vision for an enhanced role for the ombudsman, with a particular focus on increasing the number of complaints investigated. The LGO has already undertaken a substantial change programme in response to policy and

⁶ Public Administration Select Committee 'Time for a People's Ombudsman', 1 April 2014, <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpublicadm/655/655.pdf>

⁷ Queen Margaret University: The Future of Ombudsman Schemes, 15 July 2013 <http://www.legalombudsman.org.uk/downloads/documents/publications/QMU-the-future-of-ombudsman-schemes-final-130722.pdf>

⁸ Which? <http://press.which.co.uk/whichstatements/the-complaints-system-across-public-services-should-be-overhauled-our-response-to-phso-showing-case-summaries-online/>

budgetary pressures, and, as noted, both organisations are exploring ways to work more closely together. Both argue, however, that the maximum benefit to be gained by such moves, and in particular the extent to which they are able to respond to changing modes of consumer engagement, is constrained by existing legislative and jurisdictional boundaries, limiting the room they have to make their organisations truly fit for contemporary purpose.

8. My terms of reference require me to consider the existing landscape – the extent to which it remains appropriate - and in particular to explore the case for a single public sector ombudsman for England. I have sought to address the following key questions:
 - What should be the role and functions of a contemporary public services ombudsman?
 - What is the case for an integrated public services ombudsman and which areas of public services should come within its jurisdiction?
 - What is an appropriate model of accountability, governance, organisation and leadership structure for the delivery of that role and functions?
 - What additions to powers are required to enable such an integrated public services ombudsman to deliver that role and functions?
9. The chapters which follow set out my analysis, conclusions and recommendations in each of these areas. I also address the continued discharge of the UK Parliamentary ombudsman role in Northern Ireland, Scotland and Wales. Finally I offer suggestions for the next steps to be taken towards implementing the recommendations.

4. A Public Services Ombudsman for the 21st Century: providing excellent final tier complaints adjudication and promoting effective complaints handling as a driver of public service reform

10. This review provides a timely opportunity to reflect on the role and function of the ombudsmen. The Ombudsman Association's definition of an ombudsman service is one that is visibly and demonstrably independent from those whom the ombudsman has the power to investigate; that the ombudsman alone must have the power to decide whether or not a complaint is within jurisdiction and then have the power to determine it; that the ombudsman's determination should be final and should not be able to be overturned other than by the courts and that the ombudsman should be accountable to a body independent of those subject to investigation.⁹ **I consider that these criteria should apply to any public services ombudsman arrangements for the future and that the core functions of the ombudsman should not alter.**

11. There are then two substantive sets of questions to address. The first asks whether these core functions are delivered effectively now and are able to meet contemporary expectations. The second concerns the scale and nature of the role the contemporary ombudsman should play beyond these traditional core functions and what action is required to support its delivery.

Current Performance of Core Function

12. There are mixed views about the quality and level of service currently provided to the public by the ombudsmen. The LGO annual report 2013–2014¹⁰ records the results of independent customer satisfaction research. 60% of customers were satisfied or very satisfied with the LGO's service; 80% of customers said it was easy or very easy to contact the LGO; 57% of customers were happy with the amount of contact they received from the LGO during the investigation. The PHSO report for the same period records that 70% of customers at enquiry stage and 66% of customers at assessment stage were satisfied with the service the PHSO provided; 80% of customers whose complaint was upheld were satisfied while 53% of those whose complaint was not upheld were satisfied¹¹.

⁹ Ombudsman Association, Criteria for the Recognition of Ombudsman Offices, May 2011: www.ombudsmanassociation.org/docs/BIOA-Rules-New-May2011-Schedule-1.pdf

¹⁰ 'Accountable, Efficient, Transparent', LGO Annual Report and Accounts 2013-2014 <http://www.lgo.org.uk/publications/annual-report/>

¹¹ 'A Voice for Change', PHSO Annual Report and Accounts 2013-2014, <http://www.ombudsman.org.uk/a-voice-for-change>

13. The LGO received 1107 requests for reviews of its decisions. Following investigation the LGO found that the decision making was not of the standard it would expect in 6.7% of those cases representing just under 0.4% of all complaints and enquiries. The LGO received 107 complaints about the service it provided representing 0.5% of all complaints and enquiries received. After investigation the LGO accepted that it had not provided the service that people should expect in 28 cases and took steps to correct the failings and learn from the mistakes. The PHSO reviewed 596 decisions made at enquiry, assessment or decision stage and upheld 74 representing 0.2% of all decisions made. The PHSO received 108 complaints about its service and after investigation upheld 48 representing 0.2% of decisions made. Both reports record further steps that the PHSO and LGO are taking in the current year further to improve their decision-making and complaints handling arrangements and to better understand the needs and expectations of their customers.
14. By contrast a number of organisations representing complainants have campaigned strenuously over the years about their concern over the failings of both the LGO and PHSO and have highlighted in evidence to both PASC and the Communities and Local Government (CLG) Committee grievances about aspects of the approach and procedures of the ombudsmen as well as dissatisfaction with decision-making in particular cases. I too had the opportunity to hear from representatives of some of these organisations (as captured at Annex B) and to receive a wealth of written material from other organisations and individuals.
15. PASC in its report drew particular attention to the then very live issue of the number of investigations the PHSO was taking forward and to the very low proportion of complaints to the PHSO which had historically triggered investigations.¹² The PHSO indicated with the publication of More Impact for More People plans to radically alter this policy by adopting an approach to casework – akin to that now embedded in the LGO – which has enabled the PHSO to increase significantly over a short period the number of investigations undertaken.¹³
16. Establishing a public services ombudsman to undertake expanded functions – and to encourage and lead others in improving approaches and behaviours – places an even greater emphasis on the need for that organisation to lead by example. This is only in

¹² 'Time for a People's Ombudsman', PASC, 1 April 2014

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpubadm/655/655.pdf>

¹³ 'More Impact for More People', PHSO 2013 – 2018 Strategy, p8

http://www.ombudsman.org.uk/__data/assets/pdf_file/0017/19205/PHSO_Strategy_doc_2013-18lowres.pdf

part about the number of cases investigated. It is also about the extent to which the public are well informed about and understand the nature and scope of the role the ombudsman can (and indeed cannot) play on their behalf (and the extent to which their expectations can or cannot be met).

17. This requires, on the part of the ombudsman, a commitment to excel in understanding the customer's perspective, demonstrating a responsive and empathetic service, building trust in the final tier of the complaints handling structure, and in turn actively demonstrating the benefits of doing so. As a minimum, a public services ombudsman's processes must:

- Be well articulated, with clarity of scope and remit;
- Come with clear commitments in respect of case handling timings and targets;
- Be transparent with the nature of individual functions set out, and undertakings to publish details of findings;
- Lay down standards in terms of nature and function of 'investigations' – including the powers and role as well as training and expertise of those tasked with investigation.

18. The public will rightly have high expectations around the professionalism and skills of the staff employed by a public services ombudsman to assess and investigate cases. This is a significant aspect of building trust in the system. The LGO and PHSO have described in their most recent annual reports the steps they are taking to further improve the quality of their decision making and make more transparent, accessible and intelligible the processes they follow, and where they are making use of internal and external reviewers to inject challenge into the system.¹⁴ The extent to which the ombudsmen themselves are an exemplar of best practice assists the drive to secure improvements in complaint handling across the board.

19. Some complainant representative organisations have called for consideration of the need to build in greater independence within the staffing structures of ombudsmen organisations. Some have questioned whether existing organisations should employ individuals who have previously worked within the sectors they are tasked with overseeing, and have argued that there is a need to separate out the investigatory and decision making functions within the ombudsman organisation. I understand there are examples of this way of working elsewhere in the world: specialisation could be argued to improve professionalism. On the other hand it has been put strongly to me that separation of roles detracts from ownership of a case, and could require complainants to engage with different members of staff at different stages of an investigation,

¹⁴ 'Accountable, Efficient, Transparency', pp 18-21; 'A Voice for Change', pp 7-10.

complicating (and arguably diminishing) an individual's experience of the service. My conclusion is that the better course is for ombudsmen to continue to develop the skills and professionalism of staff at all levels, building on existing good practice and ensuring that all staff are able to balance expertise and knowledge, with an ability to take a balanced and independent judgement on the complaint in question. Additionally I am told that ombudsmen take strenuous efforts to avoid actual conflicts of interest (particularly where staff have previously served in an organisation which comes within jurisdiction). My sense is that contemporary concerns and perceptions require a modernised ombudsman to redouble efforts - through transparent processes, accessibility to complainants, effective governance and robust external accountability - to provide reassurance of independence and integrity.

20. Recent developments in the health sector provide an indication of the kind of impact a reformed service might have – and proposals here seek to complement those efforts. The PHSO is working closely with the DH, CQC and others to apply many of these same principles to that area. The development of CareConnect, with its focus on providing a streamlined and seamless service for the public across the complex regulatory and redress landscape within the health sector is welcome. My intention is that any changes flowing from this review do not alter the ombudsman's focus or the priority being given to reform in this area but rather should ensure that actions taken and lessons learned in health are applied elsewhere.

Improving systems and the customer experience

21. PASC, in its recent report on Complaints Handling¹⁵ highlighted the changing nature of complaints and complaint handling, pointing to a rising number of complaints across sectors in response to rising expectations and new technologies. Given the changing public service delivery landscape, I have no doubt that service providers¹⁶ need to have and publicise well to the users of their services, easily accessible, readily intelligible, swift and fair complaints handling arrangements.

22. Government has already begun work to review complaint handling within public sector organisations, and the Minister for Government Policy has set out a vision for achieving a fundamental shift in the complaint handling culture in these bodies. His focus is on activity and behaviour in the early stages of the complaints process, looking at how systems currently operate within central departments, and what improvements can be

¹⁵ 'More Complaints Please!', PASC, 26th March 2014

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpublicadm/229/229.pdf>

¹⁶ In this report I have used public service delivery bodies and similar terms. For the avoidance of doubt I intend this term to embrace all public bodies within the current and any future ombudsmen's jurisdiction.

made both in terms of how complaints are dealt with but also in the use made of the information arising from complaints to secure improvements to those processes, systems, policies or whatever that give rise to complaints.

23. Ombudsmen already play a part in seeing that effective complaint handling systems are in place. An important part of their function is to provide advice and guidance on good administrative practice. The LGO has taken steps to disseminate learning, providing bulletins in sector specific areas, and aiming for timely (and ideally real time) relay of information to avoid the proliferation of problems across the country, alongside the more formal thematic reports it has historically produced. The HO also has a strong emphasis on improving complaints handling culture at the local level, making effective use of its regular engagement with member landlords (a role very much welcomed by those tenants associations I have engaged with as part of this review). This function is given real prominence in the HO's 2014/15 business plan which commits to ensuring those at all levels of the complaints process are able to play their part in resolving disputes fairly, and through the dissemination of good practice advice and tools.¹⁷
24. Different practices apply in different parts of the UK. In some jurisdictions the ombudsman has gone beyond issuing or endorsing guidance to engage more directly in the development or approval of bodies' schemes. In Northern Ireland the Ombudsman has established guidance on standards for effective complaint handling which have been adopted by those organisations within jurisdiction. Sponsored by the Permanent Secretary Group for Northern Ireland, all departments and agencies now have complaints procedures based on these published standards which include provision for the monitoring of complaints, the identification of learning points and a requirement to report annually on performance.
25. In Scotland, following independent reviews of complaint handling¹⁸ which concluded that there was a clear need for a quicker, more consistent, more user focused approach to handling complaints, the Scottish Parliament passed legislation¹⁹ placing new obligations on the SPSO and establishing a Complaints Standards Authority to work with public bodies to standardise and simplify complaints handling procedures and to help drive improvement. This legislation gives the SPSO the power to publish standard complaints

¹⁷ The Housing Ombudsman Business Plan 2014-15, <http://www.housing-ombudsman.org.uk/media/24874/hos-business-plan-2014-15.pdf>

¹⁸ The Crerar Review, 2007 <http://www.scotland.gov.uk/Resource/Doc/198627/0053093.pdf>; Fit For Purpose Complaints System Action Group, 2008 <http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/IndependentReviewofReg/ActionGroups/FCSAG>

¹⁹ The Public Services Reform (Scotland) Act 2010 <http://www.legislation.gov.uk/asp/2010/8/section/119>

handling procedures for most public authorities including local authorities and the NHS. The SPSO is also under a duty to monitor and promote best practice in complaints handling. Audit Scotland and the Care Commission have a role in monitoring compliance.²⁰

26. In the course of my discussions, some have pointed to challenges of scale in seeking to apply to England models or features of arrangements from the smaller constituent parts of the UK. **I think the prize of significantly improved upstream complaint handling in terms of the benefit to citizens of earlier resolution of their complaints as well as in terms of savings to public bodies themselves bears serious consideration and I recommend action.** This may not involve a direct transposition to England of the precise arrangements applying elsewhere in the UK but the progress made, for instance by the SPSO and public bodies in Scotland over only a few years, does highlight the kind of value adding function a reformed and enhanced ombudsman service could play in a reformed complaints handling landscape.
27. There is **a real opportunity also to consider what role the ombudsman might play in supporting and, potentially, policing any new systems.** The kind of cultural and institutional change the Minister for Government Policy has articulated cannot be driven by an ombudsman alone – but I would argue that **a new public services ombudsman should have at its heart a duty to set the expected standards in complaint handling, to support organisations in making the shift towards best practice and, ultimately, to support Parliament, Ministers, local authorities, and ALB Boards (in short the ‘oversight bodies’) in holding organisations to account for their performance.** As part of this, the Government may wish to consider whether the ombudsman should have a “kite-marking” or “passporting” function, acting as an assurer of practice or proposed complaint handling schemes in organisations within jurisdiction.
28. Both PASC and the PHSO have suggested that leadership is critical in driving improvements – and in ensuring that complaints are given appropriate priority. This is particularly important at Board level within public service organisations. **I consider that a renewed ombudsman function should play an important part in supporting and challenging the commitment of leaders to prioritise complaint handling and resolution in all bodies within the ombudsman’s jurisdiction from government**

²⁰ Transforming Scotland’s Complaints Culture (Scottish Public Services Ombudsman), August 2014
<http://www.spsso.org.uk/news-and-media/transforming-scotlands-complaints-culture-spsso-annual-report-2013-14>

departments and local authorities, to the boards of bodies providing service to the public.²¹

29. There is a question for Government about the extent to which such obligations should be set down in statute – as they are in Scotland – or should be part of an MOU or similar agreement between Government or another part of the public sector and any new ombudsman. The ombudsman would be well placed to contribute by providing support and encouragement by highlighting best practice within the system, whilst retaining the ability to challenge, publishing details of an organisation’s performance around complaint handling or highlighting trends which reveal concerns about particular areas of service delivery. Parliament has a role here too.
30. In addition, I would emphasise **the role an ombudsman should play as the consumer’s navigator through existing systems**, and particularly in recognising the increased complexities within the public sector. A number of witnesses to PASC’s inquiry on complaints made reference to the ‘complaints maze’ currently facing the public (one which has been captured visually by the LGO²²). The growth in popularity of complaints handling services such as Resolver highlights the public appetite for the strain of the process of complaints to be handled for them.
31. Whilst the ombudsman’s role in this area should not seek to alter the key principle that complaints should be handled first at the local level, I consider that there is a critical role for a contemporary ombudsman to play in helping the public make best use and sense of the systems in place, for instance in helping bodies delivering public services take consistent and comprehensive measures to ensure that users of their services are clear to whom within the organisation they should turn if they have a complaint, or indeed in supporting the appropriate use of alternative or local dispute resolution functions, building on activity already present in some sectors, and ensuring the ombudsman service stays in step with forthcoming ADR requirements in the private sector. This would result in fewer complainants turning to the ombudsman “prematurely”. In other words, before having their complaint considered by the appropriate service delivery body.

²¹ In the course of this review I was grateful for the opportunity to hear from Martin Armstrong, Chief Executive of the Glasgow Housing Association (GHA), and from Sarah Melinek, the Director of Customer Experience at Talk Talk who gave me a first-hand insight into the powerful impact leadership focus on complaints can have in the transformation of culture within an organisation.

²² ‘The Complaints Maze’, LGO <https://www.flickr.com/photos/110744519@N03/11234320455/>

32. The experience of the SPSO is instructive here. Four years ago the rate of premature complaints to that ombudsman was 51%. In 2013/14 it had fallen to 34%. SPSO considers that more effective signposting within bodies about who to complain to and when is responsible for this change and explicit signposting guidance contained in SPSO's model complaint handling procedures may have contributed to this.²³

33. I turn later to the concept of an 'open door' policy in which ombudsmen and others, provide a safety net for complainants where even with improved local signposting they struggle to find who is best placed to handle the complaint. I also address whether the signposting function should have statutory force.

Making effective use of complaints

34. PASC has described the dual reasons for people making complaints – first in order to seek redress but significantly also to ensure the service learns from its mistakes and that others do not have a similarly unsatisfactory experience.²⁴

35. This is already a clear and stated part of the PHSO strategic plan for 2013-18. The ombudsman points to a more systematic approach to generating 'insight into service failures', and commits to working with 'experts, service providers, regulators and policy makers to use our insight to influence the development and adoption of solutions to major service failures'.²⁵ The LGO similarly draws attention to its own existing work to promote best practice and highlight problems identified in one area and which may arise elsewhere. The LGO now produces regular e-newsletters for complaints handlers in the social care and children's services sectors and will extend the service later this year to a range of council services.²⁶

36. This was a recurring theme throughout PASC's Inquiry into the ombudsman landscape with a range of witnesses highlighting the real potential for the ombudsman to play a key role in identifying and then helping to resolve issues of maladministration, and in particular those problems which may be occurring or viewed in isolation at a local level, but may amount to a significant trend when assessed at an ombudsman service level. The LGO has published Focus Reports which highlight issues (and put forward proposed remedies) which are common across local authorities. Three reports were published in 2013/14 on Special Educational Needs, the use of bed and breakfast accommodation in

²³ 'Transforming Scotland's Complaints Culture', SPSO Annual Report and Account 2013-2014
<http://issuu.com/spsoc/docs/spsoc2013-14annualreport>

²⁴ 'Time for a Peoples' Ombudsman Service', p5.

²⁵ 'More Impact for More People', PHSO Strategic Plan 2013 – 2018. <http://www.ombudsman.org.uk/about-us/more-impact-for-more-people>

²⁶ 'Accountable, efficient, transparent' <http://www.lgo.org.uk/publications/annual-report/>

tackling homelessness, and services offered by councils to those who look after others' children).²⁷ Similar initiatives are being taken by the PHSO - for instance its December 2013 report on Midwifery regulation²⁸.

37. This work has been welcomed – but PASC considered there was a clear consensus that there is potential for ombudsmen to do more to add value in this area. The Minister for Government Policy has underlined that the focus of the wider work on complaints handling is on how Government can make best use of complaints, and the management information (MI) arising from them. The aspiration behind developing a new complaints portal is to ensure that trend data can be both captured and escalated to the appropriate level in organisations in order to ensure that appropriate action can be taken. Government and ombudsmen share common ground that complaints can be a powerful tool in identifying public service delivery failures, informing their remedy, and informing more effective future policy and delivery design.
38. It is for Government to take the lead in making these changes, but the ombudsman can support the development of such an approach, and sustain it over time by drawing attention to good practice at the pinnacle of the complaints structure, demonstrating the benefits of paying close attention to the lessons to be drawn from the MI and reinforcing culture change wherever necessary and appropriate. **I recommend that the reformed ombudsman service should be explicitly provided with a duty to discharge such a role; the extent of its involvement would be for Government to agree and propose to Parliament in bringing forward any modernising legislation.**
39. As an example Government could invite the ombudsman to be part of any enhanced Government Complaints Forum; to work with the Head of the Civil Service or the Chief Executive of the Civil Service to determine how complaints data can become a more effective part of Departmental Board reports; to contribute to any improved MI reports submitted to Boards on effectiveness of complaint handling; to participate in senior level consideration of the use of complaints information to inform and shape improvements in public service delivery; and to assist in the training and development of staff to ensure that lessons learned are applied successfully and systematically. Similar initiatives could be taken in local government and other sectors.

²⁷ 'Special Education Needs – preparing for the future', March 2014; 'Family values: council services to family and friends who care for others' children', November 2013; 'No place like home: councils' use of unsuitable bed & breakfast accommodation for homeless families and young people', October 2013, LGO <http://www.lgo.org.uk/publications/advice-and-guidance#focus>

²⁸ 'Midwifery supervision and regulation', PHSO <http://www.ombudsman.org.uk/reports-and-consultations/reports/health/midwifery-supervision-and-regulation-recommendations-for-change>

40. Additionally, some in the ombudsman community have drawn attention to the potential for an ombudsman organisation to undertake an independent investigation into an issue of public concern which falls short of a topic which justifies a full public inquiry but which would still benefit from the rigour of independent investigation. My sense is that this is a possibility for Government to keep in view as the proposals for reform of the public services ombudsman arrangements recommended in this report are implemented and there emerges a new organisation displaying sound judgement, a sense of proportion, a strong and developing track record of achievement and with an appetite for innovative engagement and energetic and timely delivery.
41. In a similar vein, the PHSO's strategy describes its function in 'supporting Parliament in holding government and public services to account'.²⁹ The PHSO's relationship with Parliament is a key means through which it can play this enhanced role. PASC has already recommended how it and other Select Committees could make more effective use of reports and findings from ombudsmen. Parliament's proactive engagement with a reformed public services ombudsman will be another critical factor in ensuring the effectiveness and long run sustainability of any enhanced powers and functions given to such an organisation.
42. There is a challenge both for bodies within the ombudsman's jurisdiction and for Parliament here. PASC has captured the defensiveness that can exist within the public sector and other organisations which may be resistant to a more proactive external overview and critique of complaints handling or moves to highlight complaints trends. I look in more detail below at the structures and powers through which this enhanced role could be delivered but to harness the benefits here, the ombudsman will need a mix of mandate and invitation. **I recommend that Government, (working with Local Government and others within ombudsman jurisdiction,) seeks to articulate this role and mandate as part of any legislative and procedural changes.**
43. **There is, in turn, a challenge for the ombudsman because the enhanced role will place even more importance on the quality, accessibility and timeliness of MI produced for use by Parliament and bodies within jurisdiction.**

²⁹ 'More Impact for More People', p4.

5) A Reformed Public Services Ombudsman: providing an integrated service and facilitating “open door” complaint routing.

44. The previous chapter considered the appropriate role and functions of a modern public services ombudsman. In short the key role is to provide clarity and consistency and the key function is to be ambassador and focal point for effective complaint handling. A new organisation needs to be consumer focused, accessible and responsive. How then is this best delivered?
45. Stakeholders agree that a new, single organisation will provide the most appropriate vehicle through which the role and functions of ombudsman can be delivered and, most importantly, enabled to have most impact. The arguments advanced in favour focus both on achieving a means of enhancing the role of ombudsman through greater cohesion and public presence, and on a firm acknowledgement of the need for the ombudsman to respond to a radically changing public sector landscape and to constrained public finances.
46. In my LGO Review I highlighted the challenges changes in service delivery have created for citizens in navigating the ‘complaints maze’. I posed then the question of whether the support and guidance ombudsmen are there to provide can genuinely be maximised when they, as a group, can be said to mirror the very maze they are seeking to help citizens through.
47. This is a view which has been echoed within the sector and in the course of the PASC inquires. The PHSO has set out her strong preference for the creation of a new ‘unified Public Ombudsman Service’, outlining a number of principles which should underpin organisational reform.³⁰ In the course of her evidence to PASC, the PHSO argued that such a move is critical in providing both coherence for the public and comprehensive coverage in jurisdictional terms.
48. The LGO has similarly called for a single Public Services Ombudsman Service for England which would provide a seamless, unified service which would avoid ‘the current systemic confusion’.³¹

³⁰ Further written evidence from the PHSO to PASC

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-administration-committee/parliaments-ombudsman-service/written/5904.html>

³¹ LGO Written Evidence to PASC, December 2013:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-administration-committee/parliaments-ombudsman-service/written/4584.html>

49. I have also noted the evidence to PASC from, and have had the benefit of discussions with, the all (or most) purpose public services ombudsmen in Northern Ireland, Scotland and Wales. They have been able to illustrate the benefits of their ability to operate seamlessly across public services in their territories; they have demonstrated the value of working within (or in the case of NI working towards) modern legislative frameworks. They have also shared some of the challenges of bringing together pre-existing separate organisations.
50. The PHSO and LGO have taken significant steps over the last two years or so to communicate their role and function more clearly, articulating clear visions and working on their web-presence, making efforts to engage better with harder to reach client groups and so on. Despite that energetic and thoughtful outreach there is more to be done. I consider that the focus and direction of a single public services ombudsman operating within a modern legislative framework would enhance the standing of the office, and its impact both in providing redress, and driving improvement in complaint handling across public services. This also mitigates the risks of marginalisation in an already crowded redress landscape to which Professor Patrick Dunleavy has drawn attention.³²
51. Alongside this, a single structure ensures complaints and complainants are not confined to or restricted by administrative or other jurisdictional boundaries. This provides clarity for the complainant and allows the ombudsman to respond dynamically to complaints. Collcutt wrote in 2000 of the need to ensure that the ombudsman is not 'government shaped' but rather that it has organisational and jurisdictional flexibility to allow it to adapt, recognising the fact that the notion of a single government shape is increasingly fluid. A decade and a half of rapid public service delivery evolution later that argument is stronger. The increasing prevalence of complaints which cross boundaries between agencies and institutions requires action to avoid the need to pursue resolution through multiple complaints processes and multiple complaints handlers. The potential for individuals to have to be passed between ombudsmen remains and even with welcome and positive efforts to ensure sensible joint (but sometimes cumbersome) working between existing organisations, differences in schemes and the simple fact of multiple identities risks confusion and disengagement.
52. Housing and health are key examples of areas where the boundary between the responsibilities of the PHSO, LGO and HO is tested. The Ombudsman Association and

³² Professor Patrick Dunleavy, written evidence to PASC, December 2013:
<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-administration-committee/parliaments-ombudsman-service/oral/3293.html>

Professor Dunleavy have highlighted the benefits of information sharing across services, free from concerns over data protection restrictions. All the ombudsmen have sought to manage this pragmatically – and there are examples of procedures to overcome these challenges and to ensure the questions of jurisdiction are not exposed to those seeking to have their complaints resolved.

53. The argument here, then, is not that the position is currently insurmountable, nor that organisations are avoiding action - but that they are having to devote time and energy to circumventing or managing jurisdictional boundaries, rather than maximising their impact for the public and the public services they are working with.
54. Just as there is a need to reflect the shifts in delivery boundaries within the sectors within ombudsman jurisdiction so too they need to respond to and engage with the significant moves to deliver services more effectively and efficiently to maintain or enhance output while working within reduced and potentially further reducing budgets. The LGO has already undergone significant budget reductions (33% over five years) and in enacting its challenging Transformation Plan has delivered savings of over £1m against its 2012/13 budget and with further reductions planned in 2014/15.³³ The implementation of the Transformation Plan has resulted in a fundamental shift in the way the organisation works. By contrast the PHSO budget has come under less severe pressure but as 'More Impact for More People' brings out, the PHSO is, notably in the health sector (by far the largest area of its business), under significant pressure to deliver more within existing resources.
55. It is also important to acknowledge the proactive joint working between the PHSO and LGO with an eye to convergence and to securing best value from public resources. The two organisations have now established a Joint Convergence Committee, chaired by Sir Jon Shortridge KCB (Non-Executive Board Member of both the PHSO and CLAE and chair of both bodies' Audit Committees), to coordinate a shared programme of activities to bring the two organisations into greater alignment. This is all to be welcomed and supported – and is a signal of intent; but both organisations have been clear that this journey would be accelerated and made more robust by confirmation by Government and Parliament that this direction of travel is one which will be supported by the necessary modern legislative framework to ease joint working and remove statutory blockages to progress.

³³ 'A Transformation Plan for the Local Government Ombudsman 2011 – 2015', LGO, September 2011
<http://www.lgo.org.uk/downloads/About%20us/Governance/1588-Transformation-Plan-updated-28-3-12.pdf>

56. I have considered whether the benefits described above could be delivered through other structures or approaches. **It is clear from the weight of existing material in this area and from the consistency of views across the sector and from observers and commentators that whilst improvements can of course be gained from a range of small changes, the real benefits – and those which will deliver the most beneficial outcome for all - will only stem from comprehensive reform and the creation of a new PSO organisation.**

57. The financial implications of a move to a PSO need to be considered carefully and in detail. It has not been possible in the time allowed for this short review to undertake such a careful analysis. However, in chapter 9 on next steps, I recommend scoping work to test assumptions and calculate costs, savings and timescales. There is a significant challenge in bringing together a range of organisations with separate legislation, procedures and cultures. However, there is also a shared appetite for and ambition to deliver reform. There is also a sense that a modernised and improved service could be delivered effectively within existing budgets and headcounts (a combined spend of around £50m and a headcount of around 600), because of the scope for further efficiencies from closer working, bringing together back offices, intake and complaints handling processes and building on what the LGO in particular has achieved in managing within a greatly reducing budget. This work will also need to consider how organisations with different funding sources and revenue generating powers can be brought together – and whether the kind of fee based approach the HO operates should apply in other parts of a PSO's jurisdiction.

PHSO/LGO Joint working

The PHOS/LGO's Joint Convergence Committee's programme is focussed on identifying the opportunities for collaboration that will act as enablers for a new public services ombudsman, principally by reducing the future costs and risks associated with the creation of the new organisation. A jointly-funded Programme Manager will lead this work. Key work streams already running within the project include:

- A common approach to information security standards, removing a key technical barriers to convergence;
- Harmonisation of back-office financial systems;
- Joint procurement of a new casework management system.

The PHSO and LGO executive teams now meet together regularly as a Joint Executive Team and are in the process of establishing a single, joint investigation unit to handle all complaints that involve both health and social care.

Composition and Reach of the PSO

58. If a PSO is the preferred way forward, we then need to consider its scope and which existing organisations should form part of a new modernised ombudsman service.
59. The PHSO and LGO have already clearly committed to being part of a new organisation – subject to the delivery of a modern legislative framework of the kind discussed here and enjoyed by ombudsmen in other parts of the UK.
60. A new organisation formed of the PHSO and LGO would provide the right starting point and have critical mass, would bring many of the benefits identified earlier and would have the immediate practical benefit of simplifying the investigation of complaints in areas of public service which straddle current jurisdictions (such as health and social care).
61. Taking this as an appropriate starting point, we need to consider whether and by how much further to widen the scope of the proposed new organisation. Are there further benefits of integration and scale to be had? To what extent are other existing organisations such as the HO, the Services Complaints Ombudsman or the Prison and Probation Ombudsman appropriate candidates for inclusion? Are there areas of the public services not currently covered by an ombudsman scheme, such as some aspects of education, which would benefit from being within the jurisdiction of a most purpose PSO? The question of what should be ‘in’ or ‘out’ will be impacted by a range of factors. Primary among these must be a judgement around the benefits to the public of a seamless service set against considerations of what is practical, feasible and cost effective.
62. Should the next largest public services ombudsman - the HO - be brought within scope? The Law Commission made clear in their 2011 report³⁴ “the Housing Ombudsman is in a different position to the other public services ombudsmen”, because of a remit that takes it much more firmly into the private sector (through its relationship with social housing landlords), and a funding model which has moved away from direct support from Government.
63. A decision to include the HO in the new PSO would turn on: the value of integration of public service activity; the elimination of the separate jurisdictions of the LGO and HO in certain aspects of housing; the scope to deliver as good value for money as existing

³⁴ ‘Public Services Ombudsmen’ The Law Commission, July 2011
http://lawcommission.justice.gov.uk/docs/lc329_ombudsmen.pdf

arrangements, and the ability to replicate in the PSO the funding arrangements (levied from bodies within jurisdiction and not sourced from public expenditure) that currently apply. A decision to leave the HO outside the new organisation turns on the value of a dedicated ombudsman with particular expertise, an ability to manage administratively the split of housing jurisdiction between the LGO (in future the PSO) and the HO, and failure to devise satisfactory funding arrangements.

64. Under current structures, the LGO still considers some housing matters - those complaints against councils about homelessness, some housing allocations, housing improvement grants and housing benefit. The HO handles complaints about housing associations and some other social landlords, including complaints about a council's relationship as landlord with its tenants and leaseholders.
65. The LGO and HO are able to (and do) conduct joint investigations and have put in place arrangements to ensure that there is early discussion of cases which engage both ombudsmen – but the question remains whether this provides the most coherent offer for the public, and whether having two organisations at work in the same sector aids the public in navigating the system, produces the best results in terms of complaints handling and redress or represents best value for money – in this instance both public and private.
66. The creation of the HO stemmed from a desire within Government to provide a common route of redress for social housing tenants, at a point at which they addressed complaints against their landlord either to the LGO or to the Independent Housing Ombudsman (IHO).³⁵ The concern at that point was the potential for this to give rise to inconsistency in the treatment of complaints – and was driven by a desire to simplify the process for tenants.
67. In determining the best means of delivering this simplification Government did consider whether it would be appropriate to place all these responsibilities with the LGO. It decided against that course of action at the time on the basis that a reformed IHO would have the more immediate necessary expertise. The creation of the PSO does however introduce a significant new dimension. With the interests of the consumer in mind, I see real advantage in integrating the HO in the new organisation thus extending the common route of access to a body dealing not only with all housing issues but covering most other aspects of social policy.

³⁵ Localism Bill: creating a single housing ombudsman

68. The need to ensure the retention of appropriate levels of expertise in and familiarity with the housing sector and the bodies within the HO's current jurisdiction is a significant issue. Similar considerations and concerns have been raised in other areas – for instance health and local government generally - and I refer to means of ensuring appropriate levels of specialist expertise in the PSO leadership (and flowing from that at all levels in the organisation) later. Transitional arrangements will also be important – and this applies too to the Social Care aspect of the LGO's current remit which shares some of the distinctive features of the HO - and I suggest later how these might be scoped as part of the next phase of the work to deliver the PSO.
69. **I conclude that a core PSO discharging the current remits of the PHSO, LGO and HO would provide significant coverage across public services and give a visibly coherent service for the public, reducing the effort or challenge to identify which ombudsman is the right one to consider each complaint.** This also reflects the growing trend towards integrated or joined up public service delivery, and a growing appreciation of the impact that housing provision can have on the health and well-being of individuals. The Francis report highlighted the challenges in ensuring different parts of the system talk to each other or share appropriate information. Through the passage of the Care Bill, the Government has committed to ensuring integrated care should be the norm, with a specific commitment to achieving joined-up health and care by 2018. It seems right to take this opportunity to ensure that the existing patchwork of ombudsmen moves in step with this broader trend.
70. The new core organisation recommended above should not be taken as the final extent of any reform and the new legislative framework should provide scope for future developments – and for the remit of the PSO to adjust over time.
71. **Government should keep under review the justifications for maintaining separate public services ombudsmen with the emphasis on integration in the interests of simplifying redress for the public.** I accept that it is possible that some existing public services ombudsmen with distinct sector specific and/or specialist remits or whose need to be separate is clear and well-articulated should at this stage remain outside the PSO. **The case for merging any or all of these ombudsmen with the PSO once the new service is well established should, however, be reviewed systematically from time to time.**
72. **Those relatively few areas of public service not currently within the scope of an ombudsman scheme should be considered by Government for inclusion within the jurisdiction of the PSO on its establishment.** If excluded, the possibility of

extending ombudsman cover into these areas should be reviewed periodically thereafter in the light of changing circumstances and developments in public service delivery arrangements. **The legislation establishing the PSO should provide scope to adjust the PSO's jurisdiction readily to assume the functions of other pre-existing public services ombudsmen and/or to incorporate additional functions and bodies in areas of public service not currently within the scope of an ombudsman scheme.**

73. The jurisdictions of the various public services ombudsmen operating in different sectors or in different parts of the UK are defined mainly by reference to bodies or services coming within scope. The development of new forms of public service delivery solutions referred to elsewhere and the expectation that the pace of change and innovation in public service delivery will accelerate in future raise issues of definition. Currently most public sector ombudsmen have experience of dealing with complaints against service deliverers who are not public service bodies but who are contracted to deliver a public service on behalf of a public body. Some private and voluntary bodies come within the jurisdiction of some ombudsmen (for instance registered social landlords in the case of the HO; adult social care providers in the case of the LGO).
74. My understanding is that most ombudsmen most of the time find it possible successfully to pursue cases on behalf of complainants where the issue turns on the performance or failure of a body contracted by a public body to provide a service on its behalf. There is, however, concern that as ever more innovative service delivery arrangements are developed the potential for the ombudsman to pursue complaints on behalf of consumers may be eroded. The PHSO has pointed to the need for legislation creating a new ombudsman to provide jurisdictional clarity in this respect, removing any question about a future ombudsman's ability to follow the public pound regardless of the status of the body or person ultimately delivering service.
75. I am told this is a facet of a wider question under active consideration in a number of areas within Government. It concerns the treatment of a range of organisations whose status does not reflect traditional definitions of public sector or arm's length bodies but who are in receipt of public funding and private sector bodies who are directly contracted by Government to deliver public services. It also extends to innovative hybrid delivery vehicles.
76. The Public Accounts Committee has expressed an interest in the extent to which obligations and principles of conduct which apply in the public sector should apply to contracted service deliverers and there have been calls for Government to consider the

extent to which FOI requirements, ethical standards such as the Seven Principles in Public Life and good management practice such as whistleblowing policies should become part of contractual arrangements³⁶.

77. My sense is that in the area of complaints and redress the citizen's interest would be best served by it being clear beyond doubt that the PSO has clear power to follow the public pound assiduously perhaps with powers along the lines of the SPSO. As I understand it that ombudsman is empowered to extend his reach to include bodies who are neither public authorities nor publicly owned companies but who appear to exercise functions of a public nature. However it will be for Government to reach a view on the extent of the power to be conferred in this area taking account of the conclusions it reaches on the related public policy issues identified above.

An Open Door

78. I have highlighted earlier the significance of the navigator function the PSO can play in the complaints system. PASC and others have also articulated the need for a “one stop shop” for complaints. Increased jurisdictional clarity and reach will make the decision about who to complain to and when a more straightforward one than it is currently. It will also leave a PSO much better placed to use its critical mass in order to build upon the work the current ombudsmen do to redirect and signpost complainants around the system.

79. A sizeable amount of the ombudsman organisations’ time is taken up with redirecting complainants to the right place in the complaints process or to other ombudsmen. For the LGO, 11,725 of its 20,306 complaints and enquiries received in 2013/14 went to assessment or investigation. For the PHSO who received 40,000 contacts over the same period, 7,760 went forward to its assessment phase.³⁷ Whilst much attention has rightly been placed on the ombudsman’s complaints resolution role, this advisory and signposting function is a critical part of the wider role a PSO can play in building trust and confidence in the system as a whole.

³⁶ ‘Private Contractors and Public Spending’, Public Accounts Committee, March 2014
<http://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news/public-services-private-contractors-report/> and ‘Ethical Standards for Providers of Public Services’, Committee on Standards in Public Life, June 2014
<https://www.gov.uk/government/collections/ethical-standards-for-providers-of-public-services>

³⁷ ‘Accountable, Efficient and Transparent’, p7 and ‘A Voice for Change’, p14.

80. It has been argued that existing legislation and jurisdictional boundaries inhibit the extent to which the ombudsmen are able to play this active role for the public – and particularly where complaints are within the jurisdiction of other ombudsmen or regulators or where it is not currently possible to share information freely. Whilst the existing ombudsmen have sought to address jurisdiction issues through agreements and MOUs³⁸, there is an opportunity here to enable a new organisation to play this role more freely. **Legislation to create a PSO could enable it to work on the basis that it can provide an ‘open door’ into the complaints system by taking receipt of any complaint and finding the right home for it.** This is what PSOW is seeking to achieve with Complaints Wales.³⁹ The Government will need to judge (in consultation with ombudsmen and others) whether the challenge of scale in England is such a deterrent that a more appropriate and manageable ambition for the PSO, at least initially, could be to undertake to find the right home for any complaint about a public service. To achieve the fully “open door” ambition would require the PSO to foster effective working relationships among public services ombudsmen throughout the UK, those in the private sector, and the wider regulatory community.

81. Alongside this, there is an important question about how the data from all enquires or contacts is captured (those which progress to more detailed stages of the PSO’s process, those which are “premature” and those which are for other ombudsmen or regulators) so as to provide a rich MI picture. Such information will be key in allowing the PSO, to continue to identify and help rectify weaknesses or problems in the wider complaints system; to share insights with bodies within jurisdiction, other ombudsmen and regulators and to report issues and progress towards solutions to oversight bodies.

³⁸ The existing ombudsmen have taken initiatives in this area, for instance the 2010 memorandum between the PSHO, LGO and CQC addressing the handling of complaints from patients subject to the Mental Health Act.

³⁹ Complaints Wales <http://www.complaintswales.org.uk/>

6. A Reformed Public Services Ombudsman: modern accountability, governance and leadership

82. Much of the review has focussed on whether significant reform and a move to a PSO is the right one. It has looked at issues of accountability, governance and leadership required to help ensure the health and sustainable success of such an organisation. I have considered existing structures and alternative models in other (similar) organisations. Concerns raised about the impact, feasibility and possible drawbacks of a new PSO are addressed and I believe are shown capable of resolution in what follows.

83. A central question is how to provide the public with a clear and transparent understanding of all aspects of the ombudsman service. This requires clarity about the role of the ombudsman as office holder and adjudicator of complaints and ultimate decision taker. It needs to embrace the governance arrangements that apply to the running of the organisation and the ultimate accountability beyond the organisation itself to Parliament. This last provides critical external assurance and I deal with this area first in what follows.

Accountability and Relationship with Parliament

84. There is currently a mixed economy of accountability lines within the ombudsmen whose organisations are recommended to be part of the PSO. **There is clear consensus that any new organisation should have ultimate accountability to Parliament.**⁴⁰ This ensures that the status and independence of the new organisation are protected by preventing any conflict that could arise from accountability to an organisation within jurisdiction.

85. PASC has provided a helpfully full and strong set of recommendations in relation to the future Parliamentary accountability of the PHSO:

“We recommend that Parliament should strengthen the accountability of the Parliamentary and Health Service Ombudsman (PHSO). The Public Accounts Commission, or a similar body should take primary responsibility for scrutiny of PHSO, including examining corporate plans, budget and resources. PASC should have its Standing Orders amended to require it to use the intelligence gathered by the PHSO to hold to account the administration of Government. PASC should also ensure that PHSO's reports are referred to the Departmental Select Committee to which they are

⁴⁰ It should also have a significant relationship with the political leadership of Local Government.

most relevant. From now on, we will do so. Departmental Select Committees should use PHSO's reports to hold their respective departments to account."⁴¹

86. It will be for Parliament to determine the precise arrangements to adopt but the model advocated by PASC drawing on the well-established relationship between the Comptroller and Auditor General (C&AG) and Parliament overcomes weaknesses in current arrangements and seems entirely apt for a new PSO.
87. **Under such an arrangement a Parliamentary Commission modelled on the Public Accounts Commission, possibly a Public Administration Commission, would approve the PSO's forward plans and budget proposals and hold the PSO to account for performance against those plans and budgets. The Commission would also be responsible for non-executive appointments and consider the reports of the PSO's external auditor (the C&AG) and would have the power to publish its own reports.**
88. **This would allow PASC as it proposes to refocus its work and to concentrate on using the intelligence collected by the PSO to hold to account the administration of Government.** PASC's further recommendation that the **ombudsman's reports should be referred to the Departmental Select Committees to which they are most relevant** has the potential to increase the impact of the PSO's proposed enhanced role in driving a more effective use of complaints (and where PASC has also been clear that there is scope for the ombudsman to do more). I consider that there would also be value in the development of a similar engagement with and from committees at local government level building on the LGO's recent exploration of the importance of maintaining clarity in local accountability in a multi-agency environment⁴².
89. This separation of the Parliamentary consideration of the results of an ombudsman's work - both lessons to be learnt from cases decided and the intelligence gathered about complaints and complaint handling across its jurisdiction - and the oversight of the ombudsman's plans, performance and spending is paralleled elsewhere in the UK in the arrangements between the PSOW and the Welsh Assembly and the SPSO and the Scottish Parliament.

⁴¹ 'Time for a Peoples Ombudsman', p45-46

⁴² 'Local accountability in a multi-agency environment' LGO, October 2014

PSO Governance

90. My review of LGO highlighted the challenges of running a modern organisation with a leadership structure and governance arrangements designed more than 40 years ago. It identified the need to streamline structures and develop contemporary governance structures as far as was possible within the constraints of the current legislative framework ahead of new legislation.

91. In the course of the current review and with the prospect of a new body and new legislative framework I have sought to identify a set of contemporary structural and governance features which will best support the effective operation of a PSO, learning from the issues faced by the LGO and others. I have drawn on current norms for UK public bodies, including Government's Code of Practice for good Corporate Governance and complementary guidance for Advisory NDPBs which emphasise the importance of effective governance and the value of enhanced Boards supported by Non-Executive members.⁴³

92. I consider that there is agreement among most stakeholders on a number of points:

- While reforms should harness the strengths in the current organisations the opportunity of creating an integrated PSO should be taken to develop new fit for purpose arrangements;
- It is essential to continue to hold to the principle that the office of the ombudsman is independent and any reforms should not diminish the independence of the office and office holder in reaching decisions on complaints;
- The office and office holder should not, however, be free from scrutiny and should be accountable for expenditure and performance against plans and targets;
- The feasibility, practicality and sustainability of vesting ultimate responsibility for complaints investigation and the effective operation of a substantial executive body in one person should be reviewed.

93. Historically public service ombudsmen organisations in the UK have been headed by an office holder who has combined the roles of ombudsman, chief executive and chair (either of a distinctive (eg CLAE) or essentially advisory board). There is a growing view that such an approach does not allow for the most effective operation of these roles, or

⁴³ 'Corporate Governance in Central Government Departments: Code of Good Practice' <https://www.gov.uk/government/publications/corporate-governance-code-for-central-government-departments> and 'Advisory NDPBs: Corporate Governance arrangements' https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80073/Advisory_NDPBs_corporate_governance_arrangements_Dec12.pdf

for the kind of scrutiny, assurance and strategic oversight which is now expected from sizeable public sector organisations.

94. In addition, external observers, including individuals and groups dissatisfied with the service provided, say they find it difficult to comprehend how it can be for the same individual to adjudicate (or be responsible for the framework for decision making on) individual complaints and to have ultimate authority for the organisation and reaching a view on the effectiveness with which it has performed its functions.
95. The challenge, then, is to build public confidence in the governance applying to a final tier authority against whose decisions there are very limited grounds of appeal, so as to enhance the role and perception of the ombudsman.
96. The PHSO in her Governance statement in the 2013/14 Annual Report underlined that as a matter of good practice she seeks to comply with the spirit Government's Corporate Governance Code for Central Government Departments but explains that the constitutional nature of her role could give rise to a departure from that Code as she is in effect both Chair and Chief Executive of the PHSO.⁴⁴ It was in recognition of this tension that on coming in to office she undertook a governance review.
97. She sought to introduce a greater separation between her role as Ombudsman and the running of the organisation through the appointment of a Chief Operating Officer (COO) as Accountable Officer, responsible for day-to-day management of the PHSO. In addition, the PHSO replaced the Executive Board and Advisory Board with a unitary Board (the Board), chaired by the PHSO, with non-executive and executive members. The Board sets the operating framework for the PHSO, agrees strategy, budget and key policies and monitors performance. It also provides the PHSO with greater assurance that governance, management and control arrangements are effective allowing her focus to be leadership of the Board (strategy, performance and governance), handling of high impact cases and sharing information about big or repeated mistakes by public services; and leading work with Parliament, and others, to make the complaint system better.
98. In its evidence to PASC, the LGO argued that a new organisation should include a split of responsibilities between a Board Chair, with responsibility for the strategy and operation of the organisation, and an ombudsman who would retain the powers and responsibilities in respect of the core function of the office (ie taking ultimate responsibility for decisions on complaints). The LGO emphasised the need to retain the

⁴⁴ 'A Voice for Change', p33.

sense that an ombudsman scheme is independent of those organisations complained about and agreed that this is best delivered by a governance structure that can hold the service to account for its performance without being fettered by those bodies in jurisdiction. The LGO has underlined the need for any structures to be underpinned by having 'strong, independent voices providing challenge and scrutiny' and that this could best be achieved through the creation of an independent Board (accountable to Parliament) charged with establishing and delivering the Ombudsman service. The scheme would be led by a Chief Ombudsman, appointed by and accountable to the Board.⁴⁵

99. In my earlier review of the LGO it was evident that the governance and institutional structures set out in legislation did not adequately reflect the multiple responsibilities and functions of the office holders. One of my recommendations was to take administrative steps to strengthen the governance of that service and to ensure that the LGO could operate with a high level leadership board. This recommendation addressed the need to bring a broader range of perspectives to bear in decision making structures, and reflected the fact that it was not credible for an organisation undergoing such significant change to continue to operate with a statutory board made up of two ombudsmen office holders.

100. The Department for Communities and Local Government has also been working closely with the HO to strengthen its governance and accountability, placing a greater emphasis on enhanced KPIs, and using the recently revised Framework Document, to strengthen the Audit and Risk Assurance Committee function (and reflecting the challenges of providing the necessary external challenge and assurance within a Corporation Sole model).

101. The reforms introduced by the PHSO and LGO are positive and present a clear direction of travel - but they are administrative fixes which do not have statutory weight. The opportunity of legislation brought forward to create a new PSO is to formalise the separation of functions in statute, either providing for a non-executive Chair and Board (or a unitary board of executive and non-executive members) or an alternative model which seeks a balance between emphasising the primacy of the office holder, and providing the necessary and effective non-executive scrutiny of the operation of the organisation.

⁴⁵ LGO Written Evidence to PASC

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-administration-committee/parliaments-ombudsman-service/written/4584.html>

102. In pursuit of alternative models I have looked in detail at the recently reformed arrangements of the NAO – another sizeable organisation with direct accountability to Parliament. There are significant parallels between these important parliamentary bodies and the status of their senior executives. In both NAO and the proposed PSO, the independence of an office holding primary decision maker requires to be protected while the effective running of these large executive organisations requires the rigour of contemporary corporate governance.

103. The Budget Responsibility and National Audit Act 2011 provides contemporary enhancements to the NAO's arrangements, balancing the need for appropriate controls and oversight against the preservation of the C&AG's independence. The Act:

- established the NAO as a corporate entity, with a statutory Board;
- requires that the C&AG and a Chairman are appointed by Her Majesty the Queen;
- determined that the Public Accounts Commission is formally responsible for the appointment of the non-executive members of the NAO Board and the external auditor of the NAO; and
- requires the NAO Board to agree a Code of Practice setting out in detail how the relationship between the Board and the C&AG will work in practice. This Code must be approved by the Public Accounts Commission.

104. The C&AG is an office holder and holds 'complete discretion' in discharging his functions and, in particular, in using statutory powers to 'examine' those organisations in jurisdiction.⁴⁶ Alongside this, the organisation is overseen by a Board made up of Executive and Non-Executive members. This Board sets the strategy for the organisation (jointly with the C&AG) and advises the C&AG on the exercise of his functions. The Board includes the C&AG and members of his executive team (nominated by the C&AG but approved by the Chair). The Board provides support and challenge to the C&AG and the executive management of the NAO. It also provides oversight of the development of the NAO's key corporate policies and documents, including the Strategy and Annual Report.

105. On the other hand both the PHSO and LGO favour a model in which the Board would alone be directly accountable to Parliament. The Board would be responsible for the appointment of the Chief Ombudsman. It is argued that such a model provides greater clarity for the organisation in terms of the lines of accountability and the primacy of role and function in its management and strategic direction. The proponents of this model cite

⁴⁶ National Audit Act 1983 Part 1 Section 1 <http://www.legislation.gov.uk/ukpga/1983/44/section/1>

arrangements that apply to private sector ombudsmen notably the Financial Services Ombudsman which is led by a 'scheme operator'. The 'operator' is made up of a Board whose Chairman and members are directors, appointed by the FSA, with the approval of Treasury Ministers. It is for the Board to appoint a panel of ombudsmen, including a Chief Ombudsman, 'appearing to it to have appropriate qualifications and experience, to act as ombudsmen for the purposes of the scheme'.⁴⁷ The scheme operator's board members and staff are not office holders or crown servants.

106. **I am clear that the PSO should be established as a corporate entity, with a statutory Board. There should be a clear division of responsibility between such a Board with a non-executive Chair, responsible for the overall strategy and effective operation of the organisation, against agreed strategies, plans and performance targets and the office holder (the Chief Ombudsman) invested with statutory powers of investigation.**

107. I am clear also that the position of Chair should be a Crown appointment, with the approval of Parliament, and that non-executive members of such a Board should be appointed by Parliament. I consider that the NAO provides an appropriate model for the procedure to be followed subject, of course, to Parliament's view. There are then options for the method of selection and appointment of the Chief Executive equivalent. On the one hand it is argued that selection by the proposed PSO Board would provide clarity of accountability and roles within the organisation, and removes potential scope for conflict between multiple office holders. Set against this are concerns about the impact on the status of the office of the chief ombudsman (as the decision taker on individual complaints) – and the extent to which a model which does not have Parliamentary control over or involvement in the appointment of the Chief Ombudsman creates a disconnect between that function and Parliament (and therefore in turn the public). Ultimately it will be for Government and Parliament to decide.

108. Government in proposing legislation will wish to consider to what extent it is necessary or helpful to be prescriptive in the area of the composition of the non-executive element of the Board of the PSO. For instance it could be argued that legislation should provide for different interests, backgrounds and skillsets to be represented on the Board, or to provide reassurance to particular sectors within jurisdiction, or to ensure that the views of complainants are to the fore, or to provide geographical representation and so on. While this will ultimately be for Parliament, my view is that the legislation should not be overly prescriptive but should ensure that those

⁴⁷ Financial Services and Markets Act 2000, Schedule 17
<http://www.legislation.gov.uk/ukpga/2000/8/schedule/17>

charged with selecting members of the Board seek in preferred candidates experience, abilities and passions that resonate with the overarching ambitions of the PSO as well as the areas of specialist knowledge and background that can make a substantive contribution to the effective, challenging, prudent and aspirational governance of the organisation.

Senior Leadership Structures

109. The detail of the leadership structure and the skills, expertise and experience which the organisation will need to thrive and deliver its objectives will be developed during the period through to the establishment of the PSO. My view is that the organisational and leadership strength in the bodies coming together to form the PSO should be retained, fostered and nurtured - and will have a key part to play in leading through the transition. But the opportunity should be taken - perhaps starting as early as the initial scoping work recommended later - to work up the appropriate leadership structure for a new integrated organisation acknowledging that there will be a period of uncertainty for staff that will need to be managed, that the organisation will have to be dynamic and respond to unexpected challenges and opportunities along the way but that ultimately it will function as one body. My objective here is to identify a range of issues which have been to the fore in previous consideration of a single public services ombudsman and/or have been raised in the course of this review.

110. A starting point is the thinking in the Collcutt review of 2000. That put forward a detailed proposition for the future structure of a new single ombudsman and some of the key elements of that model are favoured by some stakeholders today. Collcutt proposed a new Commission established using a college structure which retained a number of office holding Ombudsmen operating within a single organisation, and with a single point of entry for complainants.

111. The creation of the PSO will bring together a number of existing offices. The Collcutt model assumed that these offices and a number of office holders would continue in this new entity. The Collcutt proposition was that a number of office holders should be appointed with jurisdiction across the entire work of the new Commission, but, by agreement within the organisation, would have responsibility for set groups of bodies. This model reflects the still much repeated view of the need to ensure the public and interests in individual sectors or organisations retain confidence in the expertise and specialisms of the ombudsmen. The HO and those tenants associations who informed this report in particular highlighted the importance of building trusted relationships with the sector, being a 'known quantity' amongst your key stakeholders.

112. I accept that presence and expertise are vital. But these characteristics are not dependent on having office holder status and in practice it is probable that it is the effectiveness of the organisation which makes the most impact in the eyes of the complainant and in the public mind. Alongside this, the prospect of multiple office holders within an integrated organisation could be held to detract from the status and authority of the chief office holder or risks giving an inadvertent signal to sectors or affected individuals about the relative importance of the office holder responsible for a particular area.

113. My conclusion is that given the strong focus on the need to deliver a streamlined, effective organisation, which will work single mindedly to seek to meet complainants' expectations across the wide range of public services within jurisdiction there is clear advantage in appointing a single office holder as the Chief Ombudsman. This office holder should be supported by a cadre of senior ombudsmen who would not be office holders but who would be people of seniority with a public presence, considerable expertise, intimate knowledge of their sector and stakeholders thus ensuring appropriate sectoral cover is achieved across the whole range of the PSO's responsibilities.

7. The UK Dimension: marching in step with the devolution settlements while ensuring that reserved matters are handled consistently across the UK.

114. The preceding chapters have focused mainly on public service ombudsman provision for England. In developing the case for a PSO which continues to perform the UK Parliamentary Ombudsman (UKPO) role, I have been able to draw on the experience of those involved with the arrangements which apply in Northern Ireland, Scotland and Wales in relation to matters devolved from Westminster to the Northern Ireland Assembly, the Scottish Parliament and the Welsh Assembly. Public service ombudsman provision follows the devolution settlements; this means that matters which are reserved to Westminster fall within the jurisdiction of the PHSO.

115. What does this mean in practice and what is the scale of the business at issue? The four main UK Government Departments which discharge some or all of their functions across the UK are HMRC, DWP, Home Office and Department for Transport. Together they account for approximately 7,600 of the cases received by the PHSO. Some 10% (768) of these in turn came from NI, Scotland and Wales. Of the 11,004 complaints closed by the PHSO in 2012/13, 990 came from Northern Ireland, Scotland and Wales.

116. Given current consideration of extending devolved powers, it is probable - on the reasonable assumption that the ombudsman schemes will continue to follow the devolution settlements - that the caseload to the UKPO from NI, Scotland and Wales will in future decline as a proportion of total cases received.

117. A range of options for addressing this issue in the event of the creation of a PSO were set out by witnesses to PASC during its enquiry into the ombudsman.⁴⁸

118. There is consensus on many of the principles of design. I understand that all of the UK national ombudsmen agree that:

- there should be two schemes – one covering England and one covering the UK;
- these should have identical but separate powers;
- the accountability of these schemes should respect and reflect the constitutional settlements;
- there should be an open door for citizens to access the appropriate scheme;

⁴⁸ 'Time for a Peoples Ombudsman Service', p39.

- there should be powers for all the UK public services ombudsmen to conduct investigations with each other.

119. **It seems to me that beyond mirroring and respecting the constitutional settlements, the key consideration in this area as in others is how to provide the citizen with an unresolved complaint against a body delivering a public service with easy access to swift, expert and effective independent adjudication.**

120. Earlier recommendations strengthen the ombudsman's role in promoting best practice in complaint handling among bodies within jurisdiction with the aim of securing more "upstream" resolution and avoiding the need for reference to an ombudsman. I recommend that this activity should be undertaken as energetically in relation to UK reserved matters in NI, Scotland and Wales as in England. The UKPO, in consultation with the NIO, SPSO and PSOW, should consider whether there is a contribution to this important effort, which the UKPO will lead, that these ombudsmen can make in the parts of the UK where they are "most purpose" public services ombudsmen and where they have greater familiarity with public service delivery arrangements and expectations. The earlier recommendations also aim to secure better "signposting" or referral by public bodies of their service users with unresolved complaints to the appropriate ombudsman. The bodies delivering services in reserved areas in Northern Ireland, Scotland and Wales should pursue this activity as assiduously in these parts of the UK as elsewhere.

121. **The "open door" recommendations are intended to ensure that complainants are readily and effortlessly directed to the right organisation to consider their complaint irrespective of which ombudsman they approach.** It is probable that in the area of "reserved matters" complaints the NIO, SPSO and PSOW will be approached more regularly and will be able to play an important role in referring complaints to UKPO.

122. **The UK ombudsmen should keep the operation of these arrangements under review - notably to monitor the numbers of reserved matters cases coming to the UKPO from furth of England to ensure that they are broadly in proportion to population (and reflecting that some of the "reserved Departments" have partially devolved functions eg Transport).** The monitoring should also assess the extent to which the NIO, SPSO and PSOW are being engaged to direct complaints to the UKPO. **The outcome of this monitoring with any recommendations for change should be reported by the third anniversary of the coming into effect of the new arrangements to Parliament.**

8. An Accessible and Enhanced Ombudsman: necessary powers and presence

123. The main earlier recommendations relate to the role of a 21st century ombudsman service, its structure, accountability and governance. These recommendations have sought to provide the kind of clarity of purpose and brand that will give a PSO a basis for making a real impact for the public. I now address the extent to which the PSO needs to be supported or enhanced by additional powers.

124. The Law Commission and PASC have both called for steps to be taken to provide for new powers and to remove a number of current features which can be seen to act as inhibitors to the delivery of a public-centred ombudsman function. The Law Commission's 2011 report highlighted the wide inconsistencies in powers across the existing ombudsmen and called for a number of revisions to provide for harmonisation of approach across the various schemes. Any move to create a PSO will inevitably provide the opportunity to remedy this, with one approach to publication and (to a degree) a resolution of information sharing concerns (at least within the organisation itself).

125. Both the PHSO and LGO have identified areas where their current legislative frameworks fall short. In broad terms these relate to their ability to engage with complainants, to draw attention to their findings or to enable them to pursue redress as assiduously as they would wish. The legislation to establish the PSO needs to address these issues to ensure that the ambitions for the PSO set out above are not constrained by restrictions, ambiguity or absence of powers. There is obviously an opportunity to consider different provisions and conventions in the existing organisations in order to determine what is most appropriate, the better to facilitate the new organisation to realise its potential.

126. In what follows I address the more significant issues which have been the subject of long debate.

Accessibility and Engagement

MP filter

127. The Whyatt report which originally proposed a Parliamentary Commissioner envisaged that after 5 years direct access for the public would be introduced. However, the then Government decided against the trial period and provided that complaints to the PCA should be routed through the constituency MP. It is now embedded into the concept and culture of the PHSO. The overwhelming majority of organisations and individuals who have commented on this issue propose that the MP filter should be removed⁴⁹ and PASC's report underlined the number of recent reports that have recommended this course of action. PASC has now added its own voice recommending that any reforms include provision to abolish the filter⁵⁰.
128. For all, the key is the extent to which the filter inhibits the relationship between ombudsmen and public. It would not be right (or necessary) to lose altogether the valuable role MPs can play in supporting their constituents and there is value in maintaining their interest as a means of supporting the wider push to increase focus on value of complaints – and as an additional level at which trends emerging from complaints can be identified, escalated and acted upon.
129. **However, the requirement to route complaints to the ombudsman as Parliamentary Commissioner through a third party seems out of step with both practice elsewhere and the desire to have an accessible and responsive service able to engage flexibly with its customers and promoting a variety of contemporary modes of communication.**
130. Queen Margaret University's 2013 report placed particular emphasis on the changes in the means by which consumers complain and the challenges and opportunities shifts in technology are throwing up for ombudsman schemes. This means it is easier for ombudsmen to engage more readily with consumers, but it also means that ombudsman performance is under greater public scrutiny. The PHSO's own 2010 opinion surveys on this issue revealed a particular concern amongst those who saw the filter as a deterrent which would build unnecessary delay in to the process. Those surveys showed that for some this is about efficiency, for some privacy, and for others it represents the insertion of what they perceive as an unwelcome political dynamic into what should be a wholly neutral and personal transaction.

⁴⁹ Mirroring the decision to remove a similar filter for the LGO in 1989.

⁵⁰ Time for a People's Ombudsman Service

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpublic/655/65507.htm>

131. I do not suggest that the removal of the filter alone would provide a complete answer to all these concerns. I absolutely accept too that there are circumstances in which it would be beneficial for a complainant to engage their MP and this should not be inhibited. However, I **recommend that it should not be a requirement that complaints to the Parliamentary commissioner (or UKPO) are addressed through an MP and that the PSO should receive complaints in its role as UKPO in the same way as those arising in all other areas of its jurisdiction.**

132. Alongside this, PASC has highlighted the similar impact of the current requirement that the PHSO can only receive complaints in writing. Whilst the removal of both the filter and this requirement may lead to an increase in the volume of enquiries (an issue to be addressed in more detail in any further phases of work), it **is essential that the PSO is able to keep pace with the shifts in modes of communication** highlighted by QMU, making best use of electronic communication and social media, and more readily reflecting the ways citizens are able to interact with private sector providers (or what Jane Martin and Richard Kirkham have most recently described as ‘the shift towards consumerism’)⁵¹. Having the ability to make optimum use of available technologies will ensure the PSO seems more immediately relevant to the public – but will also enhance the extent to which it is able to capture and analyse the valuable data. This in turn, will be critical in developing its public service delivery improvement function and will ensure the PSO is better able to prioritise the focus of its investigations. Professor Dunleavy has emphasised the powerful impact more modern forms of engagement with the public can have for the ombudsman, and the extent to which new technologies would allow a PSO to deal with any significant increase in the volume of complaints which might arise from such changes, whilst maximising the benefit from it (by quickly improving the quality of MI available, and adding weight to reports by being able to point to a much wider picture). This will be critical if the PSO is going to gain credibility as the benchmark for others in this area, and in a world in which Government is looking at similar technological solutions at the Departmental level.⁵²

⁵¹ The Creation of an English Public Services Ombudsman: <http://www.democraticaudit.com/wp-content/uploads/2014/06/Democratic-Audit-Creation-of-a-Public-Services-Ombudsman.pdf>

⁵² Government’s response to ‘More Complaints Please’, July 2014
<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmpublic/618/61804.htm>

Statutory Signposting

133. In strengthening the accessibility of a PSO, **I recommend that Government consider whether bodies within the PSO's jurisdiction should be under a statutory duty to draw attention to the PSO's role and functions and to advertise widely their own complaint handling arrangements.** In her evidence to PASC, the LGO called for the introduction of a statutory requirement for all providers to signpost to the ombudsman, such as exists for the Financial and Legal Services ombudsmen and reflecting practice in the NHS and adult social care sector.⁵³ She has gone on to suggest that a statutory duty be placed on all providers of public service to establish, operate and advertise a complaints system, supported by a duty to comply with appropriate timescales as set by the PSO.⁵⁴ A move in this direction would send a significant signal in terms of a shift in the public sector approach to complaint handling and again would reflect the strength of Government's commitment to a proactive 'open door' complaints culture, led by the PSO. The extension of such a requirement to those delivering services on behalf of Government or local government will, as noted elsewhere, need to be taken forward in the context of Government's wider consideration of its approach in this area.

Impact/Pursuing Redress

Own Initiative Power

134. PASC highlighted concerns that the ombudsman's ability to add value is fettered by an absence of such powers. This view is one expressed most strongly by the PHSO who has highlighted the fact that their absence places unnecessary restrictions on its ability to provide an early warning system or to better engage with those least likely to complain.

135. Previous consideration of this issue has encountered a reluctance to open up an additional channel of investigation, and perhaps led to concern that such a move might divert the ombudsman from his or her main task – that of delivering redress for the individual – whilst resource is channelled in to more wide-ranging reports or investigations (or indeed whether such a move alters the fundamental constitutional position of the ombudsman). This concern may have been heightened by the apparent absence of appropriate checks and balances in a system where the power could be exercised by a single office holder.

⁵³ LGO Written evidence to PASC:

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/public-administration-committee/parliaments-ombudsman-service/written/4584.html>

⁵⁴ Creation of a Public Services Ombudsman: <http://www.democraticaudit.com/wp-content/uploads/2014/06/Democratic-Audit-Creation-of-a-Public-Services-Ombudsman.pdf>

136. Own-initiative investigation powers have traditionally been used sparingly, accounting for just 3% of the caseload of the European Ombudsman and 1% of the complaints investigated by the Swedish Ombudsman, but they can deliver high levels of impact and the subsequent reports provide valuable research and further evidence with which to inform decision making and service delivery improvements.⁵⁵

137. **These powers go directly to the extent to which the PSO is able to play a full and enhanced role in driving up public delivery standards.** The issue then is how to frame such a power so as to ensure that its well-considered and responsible use adds value; avoids duplicating or crossing in to the well-established role of regulators or others in the administrative justice landscape and leads to early interventions which address emerging problems and produce early policy or delivery reforms.

138. **The framework within which such an investigation could be triggered needs to be clearly articulated and understood from the outset.** Specific proposals would need to be tested and I suggest that the framework would include:

- a published statement setting out the ombudsman's general approach to own-initiative investigations;
- a decision framework that is used to document in a systemic way the detailed reasoning that informs the decision to launch an own initiative investigation, covering the rationale and evidence base for the investigation, any relevant jurisdictional issues (and in particular why the ombudsman is better placed than others to act) and other background, the methodology to be used and the proposed timeline; and
- a protocol that commits the ombudsman to notify the leadership of the relevant organisation that it will be subject of an own-initiative investigation. The notification would specify the legal basis and reason for the investigation, as well as the scope or terms of reference of the investigation.
- The Board of the PSO should be required to sign off any proposal, having taken account of any views of the body or bodies in question. A report should then be made to the proposed Public Administration Commission recording the case put to the Board and including any comments received from the leadership of the organisation.

⁵⁵ I understand that of Council of Europe members, only Ombudsmen in the UK, Belgium, Israel, Luxembourg, Azerbaijan, Kyrgyzstan and Liechtenstein do not have equivalent powers.

139. There will inevitably be some concern about the nature of any findings arising from such inquiries or investigations. I do not propose here that they should be underpinned by a statutory requirement for bodies to comply. I consider that a significant and high quality investigation and report from an enhanced PSO, supported by the necessary complementary scrutiny from Parliament, would inevitably create an environment in which there would be a strong public interest in seeing an adequate response from those bodies in jurisdiction to findings of fault.

Publication and Information Sharing

140. In response to the Law Commission's report, the public service ombudsmen in England accepted the need for greater harmonisation of practice around the way that details about complaints and ombudsmen conclusions are published and shared.⁵⁶ The emphasis in the Law Commission's report was rightly placed on how transparency around ombudsman decisions can be increased – and this was subsequently picked up by PASC in the context of how it might be possible to increase the public visibility of the ombudsman brand. Transparency in this area is also a key means by which the PSO can drive its own internal standards, building and demonstrating the quality of investigations and building a sense of autonomy and responsibility amongst staff within the organisation.

141. **Once again, the move to create a PSO provides the opportunity to overcome inconsistencies and establish a contemporary publication and communication baseline norm providing the PSO with the discretion to publish findings and conclusions wherever and however appropriate removing anachronistic constraints** - such as that applying to the UKPO limiting sharing of reports to the complainant's MP and the Head of the Department complained against – whilst continuing to respect the rights of individual complainants.

Other issues

142. In the course of the review I have been made aware of a series of issues of procedure, legislation or jurisdiction, which could benefit from legislative treatment as part of the provisions to create the PSO. These include extending the PSO's power to intervene in circumstances where an alternative legal remedy is available, the discretion to widen the scope of investigation into an individual complaint, and the circumstances in which legally privileged information may be obtained.

⁵⁶ Law Commission: Public Services Ombudsmen
http://lawcommission.justice.gov.uk/docs/lc329_ombudsmen_consultation_analysis.pdf

143. The question of the application of some of these powers to parties contracted to deliver services on behalf of bodies within jurisdiction including under possible future innovative arrangements needs to be addressed. In addition, consideration of consistency of practice - for instance in relation to ensuring that ombudsman findings are acted upon or in relation to recovering the costs of the ombudsman service where non-public service providers are complained against - across different sectors being brought together in an integrated PSO needs further examination.
144. The LGO in her evidence to PASC helpfully restated the principle that ombudsman services must remain free of charge to the complainant – but questioned whether there should be consideration of alternative cost recovery approaches for the tax payer, and particularly where there are bodies within jurisdiction which are not publically funded.
145. Further consideration of these points is for the next phase of this work. Most of the issues would benefit from exposure to wide consultation so that the range of views can be expressed and a considered judgement reached on how to proceed as part of the task of preparing legislation.

9. Next Steps

146. The proposals in the preceding chapters derive from a thorough review of previous consideration of changes to the ombudsman landscape, extensive consultation with key interests and an assessment of the impact of current and forthcoming changes in public service delivery, public expectations and financial pressures.
147. In the course of the current short review there has not been time to consider in detail the programming of the implementation of the various changes. Subject to Government being broadly content with the package proposed, **I recommend testing the coherence, feasibility of implementation and resource (financial and other) implications of making these changes together with producing a fuller assessment of the benefits that would flow from a reformed ombudsman services along the lines proposed.**
148. **I also recommend that this work should be undertaken by a short life (no more than 90 day elapsed time) task group - bringing together key interests in Parliament, Government, PHSO, LGO and HO under Cabinet Office or independent chairmanship – to produce a high level feasibility and implementation project plan both to validate the coherence of the changes and to confirm that they have the potential: (a) to be an adequate response to public service delivery landscape changes, (b) to improve performance and (c) to yield value for money.**
149. While conducting this review I have been able to engage with many people with great experience of the work of ombudsmen and complaint handling generally as practitioners, consumers, observers and commentators – and many of their views are reflected in what is proposed here. However, **I recommend that Government consider, in parallel with the scoping work recommended, conducting wider public consultation on the proposals for change.**
150. **The PHSO and LGO are, as noted earlier, committed to a programme of joint convergence work. This should continue.** A number of natural ‘change’ points will arise in the period ahead such as the conclusions of terms of office, the need for investment decisions (eg in relation to systems) or other contractual issues. These opportunities should be taken to move the programme of reform forward as far and as fast as possible ahead of legislative change.

Government review of the current public service Ombudsman landscape – terms of reference

The purpose of this review is to examine the current public service ombudsmen landscape to assess whether the structures and powers are fit for purpose and to consider the case for reform - including the case for a single public service ombudsman in England. The review will seek sectoral stakeholder views on what works well and where there are obstacles to effective service delivery. It will also put forward proposals for a reformed ombudsmen service, including consideration of any required legislative change.

The review will test whether the current public service ombudsmen landscape is:

- **Best for citizens:** does the existing landscape best meet citizens' expectations that their concerns are taken seriously and acted on, and that by speaking up they will have made a difference for others? Is the system accessible and navigable?
- **Best for Parliament:** does the current system best support Parliament's work in holding government to account for the continuous improvement of public services?
- **Value for money:** does the status quo deliver for the taxpayer the most efficient and effective service and best value for the public pound?

Scope of the Review

The review will include consideration of:

- **Structure and Governance:** an assessment of the wider public service ombudsman landscape. Consideration of whether the current structures and remits of ombudsmen best support the objectives above or whether structural (or other) reform is required. This should include consideration of the case for a unified public service ombudsman service; and
- **Jurisdiction:** to consider the jurisdiction of ombudsmen services in a context of devolution and changing delivery models for public services; and
- **The role of the PHSO:** to look specifically at the role, powers, requirements and accountability of the PHSO in this wider context, taking account of current proposals for the Parliamentary and Health Service Ombudsman (PHSO) to widen its remit.

The review will report by the Autumn 2014

List of Consultees

Chartered Institute of Housing (CIH) (Gavin Smart, Director of Policy and Practice)
Department for Business, Innovation and Skills (BIS)
Department for Communities and Local Government (DCLG)
Department of Health (DH)
Professor Patrick Dunleavy (Professor of Political Science and Public Policy Chair, London School of Economics (LSE))
Financial Ombudsman Services (FOS)
Glasgow Housing Association (Martin Armstrong, Chief Executive and Maureen Dowden, Community Governance and Compliance Leader)
Home Office (HO)
Housing Ombudsman (HO)
Law Commission
Local Government Association (LGA) (Carolyn Downs, Chief Executive)
Local Government Ombudsman (LGO)
Local Government Ombudsman Watch (Founder, Gary Powell)
Ministry of Defence (MoD)
Ministry of Justice (MoJ)
National Audit Office (NAO)
Northern Ireland Ombudsman (NIO)
Office of the Ombudsman, Ireland (OOI)
Dr Nick O'Brien (Honorary Research Fellow, Liverpool University)
Ombudsman Association (OA)
Parliamentary and Health Service Ombudsman (PHSO)
Patients Association (Chief Executive, Katherine Murphy)
Public Accounts Commission (Clerk to the)
Public Services Ombudsman for Wales (PSOW)
PHSO Pressure Group (Co-ordinator, Della Reynolds)
Scottish Parliament (Paul Grice, Chief Executive)
Scottish Power (Neil Clitheroe, CEO Retail and Generation)
Scottish Public Services Ombudsman (SPSO)
Talk Talk (Sarah Melinek, Director of CEO Office and Customer Experience)
Tenant Participation Advisory Service (TPAS) (Jenny Topham, Acting Chief Executive)
Jane Tinkler (Public Policy Group Manager, Research Fellow, London School of Economics (LSE))
Which?