

June 2015

General Comments

The Medical Protection Society (MPS) is pleased to have this opportunity to respond to the Cabinet Office's consultation on the principles that would underpin a Public Service Ombudsman (PSO), as envisaged in the recommendations of the Gordon Review.

As an international, not-for-profit organisation supporting more than 300,000 healthcare professionals around the world, MPS has significant experience of dealings with a number of different Ombudsmen in the jurisdictions in which our members practice.

The proposed merger of the Parliamentary and Health Service Ombudsman (PHSO), the Local Government Ombudsman (LGO) and the Housing Ombudsman, into one single PSO represents a significant reform. As the Minister states in the foreword to the consultation, the issues involved with these proposed reforms are ones with long running consequences, and the Government should take time to consider them carefully.¹ The Government is right to allow the time for the detailed consideration these proposals merit.

MPS welcomes this opportunity to comment on the principle of the proposal for a single PSO in England, and also to raise some of the issues that prevail in the conduct of complaints handling by the existing PHSO. We recognise that the proposals are in their very early stages. A number of detailed and complex issues need to be further considered as the proposal develops. Due to the significant level of interaction that we currently have with the PHSO, MPS is keen to be a part of that process.

Fairness to all parties

The proposals for a single PSO set out Gordon's three principles that should underpin it; Citizens, Parliament and 'Value for Money.' While agreeing with the importance of all these principles, and agreeing that all should underpin a PSO, we are concerned that there is no reference of the need for

¹ A Public Service Ombudsman, Consultation - Cabinet Office 2015. Pg, 2

fairness to all parties. Specifically, there is no reference to the person subject to the complaint and their right to be dealt with in the same just manner as the complainant.

If the Government is minded to create a single PSO in England, it is crucial that it is fair to all parties, and also that it is seen to be so. Omitting reference to this in the list of principles to underpin the PSO would be a missed opportunity to put that fourth basic principle beyond question.

Currently healthcare professionals cannot self-refer to the PHSO, and we note this is an option under consideration for a new PSO. We believe healthcare professionals should have that facility available to them – another reason why ‘fair to all parties’ must sit squarely in the core principles of a new PSO.

The ability to self-refer should exist for a number of reasons. As a scenario; after repeated and substantive attempts on the part of a general medical or dental practice to resolve a complaint from a patient, the relationship between that patient and the practice has become irretrievably broken down. The practice is eager to see resolution to the complaint, and so looks to the Ombudsman, but finds it cannot self-refer. This is nonsensical, and the PSO should ensure self-referral is an option. This would be in the best interests of the three proposed PSO principles; Citizens, Parliament and ‘Value for Money.’ It would also be in the interests of the fourth and currently missing principle – fairness to all parties.

Local conciliation

The PSO could consider providing, and facilitating, local conciliation for complaints wherever possible. These avenues should always be exhausted before a complaint is escalated to the next stage.

There was legislative provision for local conciliation of complaints prior to 2004, and MPS believes such a mechanism should be a feature of a new PSO.² A collaborative approach with joined up working is key to the effective management of complaints resolution, particularly when looking to local resolution. We understand that the PHSO, along with NHS England are currently keen to assess and improve how the regulatory requirements can be met in general practice. MPS has been supporting that process with NHS England and the Ombudsman’s office. We are also providing joint training for GPs on complaints handling.

The PSO should recognise the value of local conciliation and complaint resolution, and the role a number of organisations can play in making that effective.

² The National Health Service (Complaints) Regulations 2004

Consistency

MPS has long had questions about apparent inconsistencies in the way in which the PHSO operates. In our experience, there appear at times to be inconsistencies both in the supply of information and in the recommendations for financial redress.

These questions are wide ranging, and given the numerous references to 'redress' in the consultation document, MPS awaits more information about precisely what it is proposed that might look like within a PSO context. Consistency and transparency in any process of financial redress is absolutely vital in order to instil trust in the process from both complainant and the complained against.

There is also the issue of inconsistency with the supply of information. Currently, under the PHSO, a considerable amount of information is made available to the patient about the resolution process, next steps and so forth.³ However, this is often in contrast to the limited information made available to the organisation/individual subject to the complaint. This situation is unfair and inconsistent, as well as inefficient – as supplying all parties with comprehensive information about the process minimises the risk of delays. Access to the system and effective signposting on the part of the PSO will both be important issues.

Questions

1. Do you agree that these principles should underpin reform of the Ombudsman service?

We agree that Citizens, Parliament and 'Value for Money' are three important principles that should underpin a PSO; however, we are concerned that there is currently no reference to fairness to all parties. This should be introduced as a fourth principle.

If the Government is minded to create a single PSO in England, it is crucial that it is fair to all parties, and also that it is seen to be so.

2. Would you welcome the creation of a single Public Service Ombudsman service and are these the right services to be included?

³ PHSO 'My expectations' for raising concerns and complaints – 5 steps

While MPS recognises the often interconnected nature of health, housing and local government services, the expertise required to properly understand complex clinical complaints should not to be underestimated. When looking to a merger on the scale envisaged in these proposals for a single PSO, there must be a clear recognition of the importance of expertise in the healthcare field. A drive towards a more uniform approach should not be at the expense of that very specific expertise.

MPS looks forward to seeing more details of the practicalities of the merger of the PHSO, LGO and Housing Ombudsman.

3. If so, do you agree that these are the right founding principles for such organisation?

Yes, however as in response to question one, we are concerned that there is no reference to fairness for all parties and specifically from our perspective, fairness to the person subject to the complaint. There should be a fourth principle underpinning the PSO, and that should be 'Fairness to all parties.'

4. Should a single public service ombudsman organisation also retain specific sector facing services and staff in eg. Health or Housing?

Yes, this is essential. As we outline in response to question two, the expertise required to understand complex clinical complaints should not to be underestimated. The detail of how these specific sector facing services will work in practice will be crucial.

5. Should each sector within the organisation be lead by a senior Ombudsman (or someone of equivalent status) eg, a Housing, Local Government or Health Ombudsman?

Yes, this is again essential.

6. Is 'Public Service Ombudsman' the appropriate title for a new organisation?

MPS has no objections to the proposed title for the new organisation.

7. Do you agree that there should be the widest possible routes of entry to a Public Service Ombudsman?

Amongst the routes of access into a PSO, there should be the means for healthcare professionals to self-refer. This is an important route of access, particularly in cases where despite their best efforts the organisation in question has been unable to resolve the complaint, and the relationship between that patient and organisation has become irretrievably broken down.

Allowing healthcare professionals to self-refer would be in the best interests of the three proposed PSO principles; Citizens, Parliament and 'Value for Money.' As we previously noted in our response, it would also be in the interests of the fourth and currently missing principle – fairness to the person subject to the complaint.

8. In what ways could it be made easier for citizens to access resolution and redress?

The overarching priority must be to facilitate and exhaust local resolution first. The PSO should provide for, and facilitate, local conciliation to complaints where ever possible. These avenues should always be exhausted before a complaint is escalated to the next stage.

9. Would you support a wider role for a PSO as a champion of effective complaints handling across the public sector?

If the PSO was to take on this role, it must be executed in both an open and transparent manner, with disclosure of clinical advice and advisers names' done in the same way as the General Medical Council's (GMC) obligation.

Again, we would need to see the detail of this specific proposal in order to provide proper comment.

10. What range of investigative tools do you think the PSO might need?

While it is vital that healthcare professionals are properly regulated, it is equally important to achieve an effective regulatory system which empowers and supports healthcare professionals to do what they entered healthcare to do – care for patient. Healthcare professionals are facing an unprecedented level of regulation. A single adverse incident can lead to separate investigations by an employer, regulator, Ombudsman and in some instances a clinical negligence claim.

There are already enough investigative tools for the purposes of the healthcare profession, and MPS strongly believes there is neither the scope nor need to widen the field of complaints further still.

Rather, the focus should be on proper use of existing processes, instead of looking to give the PSO the power to initiate investigations on its own initiative.

There is currently a culture of fear in healthcare profession, and this needs to be replaced through the creation of a collaborative, open, learning environment where healthcare professionals are encouraged to want to be accountable. We do not believe further, additional, investigatory tools are needed beyond those already available to the PHSO.

About MPS

MPS is the world's leading protection organisation for doctors, dentists and healthcare professionals. We protect and support the professional interests of more than 300,000 members around the world. Our benefits include access to indemnity, expert advice and peace of mind. Highly qualified advisers are on hand to talk through a question or concern at any time.

Our in-house experts assist with the wide range of legal and ethical problems that arise from professional practice. This includes clinical negligence claims, complaints, medical and dental council inquiries, legal and ethical dilemmas, disciplinary procedures, inquests and fatal accident inquiries. Our philosophy is to support safe practice in medicine and dentistry by helping to avert problems in the first place. We do this by promoting risk management through our workshops, E-learning, clinical risk assessments, publications, conferences, lectures and presentations.

MPS is not an insurance company. All the benefits of membership of MPS are discretionary as set out in the Memorandum and Articles of Association.

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