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Governance and accountability arrangements for the Offices of the Ombudsman in other legislatures

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1 Introduction

This briefing paper provides information in response to the Committee's request regarding:

- the comparative governance and accountability arrangements for the offices of the Ombudsman in the other jurisdictions.

Scotland, Wales and Northern Ireland all have unified public service ombudsmen covering devolved public services. In England, there are a number of ombudsmen covering these services. Most relevant to the Committee's query are the Parliamentary and Health Service Ombudsman and the Local Government and Social Care Ombudsman which, respectively, carry out similar roles.

2 Summary

- All of the individual ombudsmen are independent of government, in the exercise of their functions, and cannot be overruled by Parliament, Government Ministers or Committees
- The Offices are all accountable to their respective governments by the laying and publishing of Annual Reports and Accounts before Parliament, which are subject to scrutiny by individual government committees.
- Comparable features across the Offices' governance arrangements include audit and risk committees to advise on corporate governance and internal control, and the designation of the Ombudsman as the Accounting Officer for the Office, responsible for financial probity and regularity. The Parliamentary and Health Service Ombudsman has sought to increase his financial probity further by delegating his role to the Office's Chief Executive. All of the Offices are subject to annual internal and external auditing.

3. The Offices of the Ombudsman in the Other UK Jurisdictions

3.1 Scotland - The Scottish Public Services Ombudsman

The Scottish Public Services Ombudsman's powers and duties derive from the Scottish Public Services Ombudsman Act 2002, as amended, which gives it three distinct statutory functions

- the final stage for complaints about most devolved public services,
- specific powers and responsibilities to publish complaints handling procedures, and monitor and support best practice in complaints handling, and
- Independent Review Service for the Scottish Welfare Fund made by councils on Community Care and Crisis Grant applications.¹

The Scottish Public Services Ombudsman will take up the role of the Independent National Whistleblowing Officer from April 2021.²

The Ombudsman is nominated by the Scottish Parliament, and appointed by the Queen, for a period of no more than eight years.³ The Ombudsman may be relieved of office by the

¹ Scottish Public Services Ombudsman Act 2002: <https://www.legislation.gov.uk/asp/2002/11/contents>

² Scottish Public Services Ombudsman website: <https://inwo.spsso.org.uk/>, accessed 18/11/2020

³ Scottish Public Services Ombudsman Act 2002 Schedule 1, Paragraph 4:
<https://www.legislation.gov.uk/asp/2002/11/schedule/1/paragraph/4>

Queen on request or following a resolution of Parliament which must be voted for by at least two thirds of members. The current Ombudsman is Rosemary Agnew.

Funding

The Act provides for the Scottish Parliamentary Corporate Body to pay the salary and expenses of the Ombudsman and any expenses incurred in the exercise of the Ombudsman's function.⁴

The Ombudsman must provide an annual estimate for the funding required for the next financial year to the Corporate Body for consideration.⁵ The Corporate Body is required to provide a provisional expenditure plan to the Parliament's Finance Committee and the Scottish Government each year. The Finance Committee considers the Body's provisional expenditure plans and produces a report for Parliament. The Body's final expenditure proposals, including the Ombudsman's budget, then appear in the annual Budget Bill which is voted upon by the Parliament.

Accountability

The Ombudsman is, in the performance of her duties, regarded as a juristic person and solely accountable for the conduct and work carried out by the Office.⁶ She is independent and not, in the exercise of her functions, subject to the direction or control of the Scottish Government, Parliament or the Scottish Parliamentary Corporate Body.

However, the Ombudsman is directly accountable to Parliament through the laying of an Annual Report and Accounts.⁷ In addition, the 2002 Act requires the Ombudsman to lay a strategic plan before Parliament every four years.⁸

It is the practice of the Local Government and Communities Committee to scrutinise the work of the Office and to take evidence from the Ombudsman each year on its Annual Report.⁹ The Committee has previously challenged the qualitative analysis of information contained in the Annual Report:

Beyond that, the numbers in the tables in the annual report and other material that you produce tell me and other members very little about what the complaints are;

⁴ Ibid, Paragraph 13: <https://www.legislation.gov.uk/asp/2002/11/schedule/1/paragraph/13>

⁵ Ibid, Paragraph 12: <https://www.legislation.gov.uk/asp/2002/11/schedule/1/paragraph/12n3n1>

⁶ Ibid Paragraph 2: <https://www.legislation.gov.uk/asp/2002/11/schedule/1/paragraph/2>

⁷ Ibid, Section 17: <https://www.legislation.gov.uk/asp/2002/11/section/17>

⁸ Ibid, Section 17a <https://www.legislation.gov.uk/asp/2002/11/section/17A>

⁹ The Scottish Parliament website: <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/69751.aspx>

*they could be the most simple things under the sun or the most severe issues. The statistics could show a smattering of complaints about an organisation that might be one-off cases with no connection whatever or which could be complaints about the same thing. We just cannot analyse that. What we require is something that helps us get to the point where we can say, “Ah—here we go. An intervention is required here to improve the situation for the public.” As it stands, we are unable to do that with the information that we are getting.*¹⁰

Governance Arrangements

The office of the Ombudsman’s governance arrangements are based on a Governance and Risk Overview and a Scheme of Control. Governance meetings are held quarterly to consider and sign-off corporate governance and strategic issues.¹¹

Governance and Risk Overview

The Ombudsman is the Accountable Officer for the Office, designated by, and answerable to, the Scottish Parliamentary Corporate Body.¹²

The Accounting Officer’s functions are:

- to sign the office of the Ombudsman’s accounts of expenditure and receipts;
- ensure the Ombudsman’s financial propriety and regularity; and
- ensure the Ombudsman’s resources are used economically and efficiently.¹³

In performing these functions, she must keep and prepare annual accounts for each financial year. The further, specific duties of the Accounting Officer are set out in the Memorandum to Accountable Officer of the Office of the Scottish Public Services Ombudsman, from the Corporate Body.¹⁴

¹⁰ Local Government and Regeneration Committee, 03 February 2016:
<https://www.parliament.scot/parliamentarybusiness/report.aspx?r=10350>

¹¹ Scottish Public Services Ombudsman, *Governance and Risk Management Handbook*, Pg 3:
<https://www.spsso.org.uk/sites/spso/files/Corporate/SPSO-Policies/1909GovernanceRisk.pdf>

¹² Scottish Public Services Ombudsman Act 2002, Schedule 1, Paragraph 14:
<https://www.legislation.gov.uk/asp/2002/11/schedule/1/paragraph/14>

¹³ Scottish Public Services Ombudsman, *Governance and Risk Management Handbook*, pg 2:
<https://www.spsso.org.uk/sites/spso/files/Corporate/SPSO-Policies/1909GovernanceRisk.pdf>

¹⁴ *Scottish Public Finance Manual*, Annex 2 <https://www.gov.scot/publications/scottish-public-finance-manual/accountability/annex-2-memorandum-to-accountable-officers-other-public-bodies/>

Audit

The Ombudsman's accounts are audited by an external auditor appointed by the Auditor General for Scotland.¹⁵ Internally, the Office agrees an annual programme for audit, based on priority areas identified through assessment of risk. Internal audit services are provided by an external organisation, appointed on the basis of open tender.¹⁶

Scheme of Internal Control

The Scheme of Internal Control is a series of protocols and policies through which the Ombudsman aims to demonstrate that she is meeting her responsibilities as the Ombudsman and as the Accountable Officer. The Scheme is supported by a risk management policy, strategic risk register and operational risk register. These define how the Office manages risk in respect of:

- achievement of, and compliance with, statutory obligations;
- establishment of, and compliance with, effective financial controls;
- achievement of, and reporting on, efficient and effective operational performance against stated standards of service and quality;
- asset management; and
- safeguarding and development of the Office 's reputation.

The key features of the Scheme are:

- the Ombudsman holds the role of Accountable Officer;
- the Ombudsman sets the strategic direction and priorities for the Office, supported by a Leadership Team; and
- the Ombudsman chairs the Leadership Team which has overall responsibility for the development and operation of the Office.

Leadership Team

The Leadership Team consists of the Ombudsman, the Chair and the Director Head of Information, Standards and Engagement.

¹⁵Scottish Public Services Ombudsman Act 2002, Schedule 1 Paragraph 15:
<https://www.legislation.gov.uk/asp/2002/11/schedule/1/paragraph/15>

¹⁶ Scottish Public Services Ombudsman, *Governance and Risk Management Handbook*, pg 2

The Team is responsible for:

- supporting the Ombudsman in setting the strategic direction of the Office;
- supporting the Ombudsman in the exercise of her duties and responsibilities by developing and delivering the annual business plan to deliver the Office's strategic plan; and
- holding the Office to account for its performance.

The Leadership Team is authorised to consider any matter relating to the Office's functions and to make decisions in line with the Ombudsman's Scheme of Delegation.¹⁷

Advisory Audit Board

The Ombudsman has also established an Advisory Audit Board to perform a function similar to that of an Audit Committee.¹⁸ The main purpose of the Board is to advise the Ombudsman and Leadership Team, on the Office's standard of corporate governance and internal control. In particular, the Board provides confirmation for the Ombudsman on whether the necessary Scheme of Internal Control assurances required for the inclusion of the Governance Statement within the annual accounts have been achieved.

The Board specifically considers and advises on:

- the adequacy of the arrangements for ensuring sound governance and internal control;
- the assessment and management of business risk;
- the planned activity of Internal Audit and results of its work; and
- the planned activity of the External Auditor and results of its work, particularly in relation to the Annual Report and Accounts.

Amendment to Governance Arrangements

These governance arrangements can only be amended with the Ombudsman's approval. The Ombudsman must inform the Advisory Audit Board and External Auditors of any

¹⁷ Ibid

¹⁸ Ibid, pg8

changes.¹⁹ In addition, the Ombudsman must review these governance arrangements annually and report the outcome to the Advisory Audit Board.²⁰

3.2 Wales – The Public Services Ombudsman for Wales

The Public Services Ombudsman for Wales was originally established by the Public Services Ombudsman (Wales) Act 2005. It was repealed and replaced by the Public Services Ombudsman (Wales) Act 2019, which now sets out the terms of the Ombudsman's appointment and statutory functions.²¹

The Office deals with complaints from members of the public against bodies which are listed in the Act including local authorities, health boards, housing associations and the Welsh Government. Welsh Ministers have some powers to amend the list of bodies which the Ombudsman has power to investigate.²²

The Ombudsman is appointed by the Queen following a nomination from the National Assembly. The Ombudsman is appointed for a term of seven years and can only be removed from office if they become incapable of performing their duties for medical reasons, or on grounds of misbehaviour.²³ They cannot be removed on grounds of misbehaviour unless at least two-thirds of National Assembly Members have voted in favour of removal. The current Ombudsman is Nick Bennett.

Funding

Funding for the Office is received from the National Assembly for Wales. The Ombudsman is required to produce 'Estimates' for each financial year which set out the resources required for the Ombudsman to carry out his statutory functions, with the exception of the Ombudsman's own salary (and associated costs) which are directly charged to the Welsh Consolidated Fund.²⁴ They are scrutinised and consulted on by the Assembly's Finance Committee which then issues a report with its finding.²⁵ In May 2019, the Finance Committee

¹⁹ Ibid, pg 3

²⁰ Ibid

²¹ Public Services Ombudsman (Wales) Act 2019, Schedule 1: <https://www.legislation.gov.uk/anaw/2019/3/schedule/1/enacted>

²² Public Services Ombudsman (Wales) Act 2019, Section 31: <https://www.legislation.gov.uk/anaw/2019/3/section/31/enacted>

²³ Public Services Ombudsman (Wales) Act 2019, Schedule 1 Paragraph 3:
<https://www.legislation.gov.uk/anaw/2019/3/schedule/1/paragraph/3/enacted>

²⁴ Public Services Ombudsman (Wales) Act 2019, Schedule 1 Paragraph 16:
<https://www.legislation.gov.uk/anaw/2019/3/schedule/1/paragraph/16/enacted>

²⁵ In accordance with Standing Orders 20.23 and 20.24.

published its Statement of Principles which it expects bodies to have regard to when making budget proposals.²⁶

Accountability

The Act provides that the Ombudsman is a 'Corporation Sole' which means that he is a legal entity in his own right.²⁷ Although independent of government, the Ombudsman has statutory responsibilities to report directly to the Welsh Assembly by publishing and laying an Annual Report and Accounts.²⁸ The Ombudsman is required to include a Governance Statement within his Annual Report and Accounts to explain how the governance of the Office works.

The Equality, Local Government and Communities Committee scrutinises the Ombudsman's work more generally, which includes consideration of the Annual Report and Accounts.²⁹ In addition, the Public Accounts Committee periodically scrutinises the Office's use of resources and makes observations and recommendations. The Committee's Scrutiny of the 2017/18 Accounts contained a number of recommendations³⁰ which prompted a detailed response from the Ombudsman³¹:

Recommendation 31. The Committee recommends that, to promote independence, the Ombudsman appoints an independent member to his Advisory Panel who does not sit on the Audit and Risk Assurance Committee.

Recommendation 32. The Committee recommends that, in the interest of transparency, the Ombudsman considers whether more information could be included in the accounts in respect of the future reporting of his potential liabilities and other aspects of his financial statements.

Recommendation 33. The Committee recommends that the Ombudsman explains to the Committee his reasons for making special payments in 2017-18 to former members of staff. This should also set out why such payments were subject to a confidentiality clause.

²⁶ Welsh Parliament Finance Committee *Statement of Principles* May 2019 <https://business.senedd.wales/documents/s88393/Statement%20of%20Principles%20-%20May%202019.pdf> This Statement was introduced following The Finance Committee undertaking a short inquiry into the funding of Directly Funded Bodies (DFBs).

²⁷ Public Services Ombudsman (Wales) Act 2019, Schedule 1 Paragraph 2

²⁸ Public Services Ombudsman (Wales) Act 2019, Schedule 1 Paragraph 5

²⁹ Welsh Parliament website, accessed 18/11/2020: <https://business.senedd.wales/mglssueHistoryHome.aspx?lId=16470>

³⁰ National Assembly for Wales Public Accounts Committee *Scrutiny of Accounts 2017-18* March 2019, pg 65-70: <https://senedd.wales/laid%20documents/cr-ld12407/cr-ld12407-e.pdf>

³¹ Public Service Ombudsman for Wales' response to Public Accounts Committee, 10th April 2019: https://business.senedd.wales/documents/s87776/PAC5-12-19%20P3%20-%20PSOW%20response_e.pdf

Governance Arrangements

The Office's main governance arrangements centre on an Advisory Board and Audit and Risk Assurance Committee. They are supported by a Governance Framework, an internal control environment, internal and external audit arrangements and financial management, risk planning and monitoring procedures.

Audit

The Auditor General for Wales is the External Auditor of the accounts of the Office. Accounts must be submitted to the Auditor General in respect of each financial year for its examination.³²

Deloitte have been appointed as the Ombudsman's internal auditor. Their work is planned based on their overall needs assessment of the Office.³³

Accounting Officer

The Ombudsman is the Accounting Officer for the Office.³⁴ As Accounting Officer, he is required to ensure that the Office operates effectively and to a high standard of probity. He has responsibility for:

- maintaining a sound system of internal control that supports the achievement of Office's policies, aims and objectives,
- safeguarding the public finances and assets for which he is personally responsible, in accordance with the responsibilities assigned in "Managing Welsh Public Money".³⁵

Advisory Panel

The Ombudsman has established an Advisory Panel to advise him on matters of policy and good governance. It consists of 6 independent members and the Ombudsman. The Advisory Panel is a non-statutory forum whose main role is to provide support and advice to the Ombudsman in providing leadership and setting the strategic objectives of the Office. The

³² Public Services Ombudsman (Wales) Act 2019, Schedule 1 Paragraph 17:
<https://www.legislation.gov.uk/anaw/2019/3/schedule/1/paragraph/17/enacted>

³³ Public Service Ombudsman for Wales, *Annual Report and Accounts 2019/20* : <https://www.ombudsman.wales/wp-content/uploads/2020/07/PSOW-Annual-Report-and-Accounts-2019-20.pdf> pg 89

³⁴ Public Services Ombudsman (Wales) Act 2019, Schedule 1 Paragraph 19

³⁵ Welsh Government *Managing Welsh Public Money* January 2016 <https://gov.wales/sites/default/files/publications/2018-10/managing-welsh-public-money.pdf>

Advisory Panel is an advisory-only body.³⁶ Responsibility and accountability for the activities carried out by the Office remain with the Ombudsman. The Panel meets 4 times a year.

Prior to the introduction of the 2005 Act, which originally created the Public Services Ombudsman for Wales, the government consultation document asked whether there should be some formal mechanisms for advising the ombudsman and whether the ombudsman should have an advisory board. Although the legislation provided for the ombudsman to seek advice, the Act did not provide for the establishment of an advisory board:

*This omission accords with the general view among ombudsmen that any such board should be organised on a voluntary, non-statutory basis, as there is a danger that such a board could compromise the independence of the office.*³⁷

Audit & Risk Assurance Committee

The Audit & Risk Assurance Committee's main purpose is to provide independent advice in relation to the Ombudsman's responsibilities as Accounting Officer. It reviews the comprehensiveness and reliability of assurances on governance, risk management, the control environment and the integrity of financial statements and the Annual Report.³⁸ Membership comprises up to 6 independent external members. There are generally 4 meetings of the Committee per year.

Following a review of the governance arrangements in 2018, the Terms of Reference were amended so that it is now a stand-alone committee rather than a sub-committee of the Advisory Panel.³⁹ The Committee sets itself an annual work programme. A standing item for the Committee is risk management. At each meeting, the Committee considers a report on risks to satisfy itself that all key risks have been identified.⁴⁰

Both the Internal and External Auditors have the right to raise issues through an open access policy to the Chair and, by virtue of that, to bring any matter of concern to the attention of the Committee.⁴¹

³⁶ PSOW Advisory Panel Terms of Reference, May 2018 <https://www.ombudsman.wales/wp-content/uploads/2018/10/Advisory-Panel-Terms-of-Ref-May18.pdf>

³⁷ Mary Seneviratne, *A new ombudsman for Wales*. Public Law 2006. <https://core.ac.uk/download/pdf/30637438.pdf> The ombudsman himself did not want a statutory board. See evidence (2004-05 HC 234), Q.129, Q.144-146.

³⁸ Audit & Risk Assurance Committee, *Annual Review 2018/19*, pg 1: <https://www.ombudsman.wales/wp-content/uploads/2019/08/2018-19-ARAC-Annual-Review-ENG-FINAL-002.pdf>

³⁹ Ibid, pg1

⁴⁰ Ibid, pg2

⁴¹ Ibid, pg4

3.3 England - Parliamentary and Health Service Ombudsman

The Parliamentary Commissioner Act 1967⁴² and the Health Service Commissioners Act 1993⁴³, respectively, define the two statutory roles of Parliamentary Commissioner for Administration (the Parliamentary Ombudsman) and Health Service Commissioner for England (the Health Service Ombudsman). These two roles are vested in one individual post as the Parliamentary and Health Service Ombudsman.

The Ombudsman acts as an independent complaint handling service for complaints that have not been resolved by the NHS in England and UK government departments. It is not possible for individuals to complain about parliamentary matters directly to the Ombudsman. Their complaint needs to be referred by a Member of Parliament which is known as the 'MP filter'.⁴⁴ For healthcare matters, no MP referral is required.

The Ombudsman is an appointment made by the Crown under the terms of the Parliamentary Commissioner Act 1967.⁴⁵ The appointment can last a maximum term of seven years. The current Ombudsman is Rob Behrens CBE. The Chief Executive and Director of Legal and Professional Services, are authorised by the Ombudsman to act as Deputy Ombudsman.⁴⁶

Funding

The expenses of the Parliamentary and Health Service are paid out of money provided by Parliament and sanctioned by HM Treasury. HM Treasury requires the annual preparation for of a statement of accounts detailing the use of resources during the financial year.

Accountability

The Ombudsman is independent, and cannot be overruled by Government Ministers or Committees, in the exercise of his functions. The Ombudsman has a personal jurisdiction and is solely responsible and accountable for the conduct and administration of all work carried out by the Office. The Ombudsman may delegate authority to Office staff to act on his

⁴² Parliamentary Commissioner Act 1967, Section 1 <https://www.legislation.gov.uk/ukpga/1967/13/section/1>

⁴³ Health Service Commissioners Act 1993, Section 1 <https://www.legislation.gov.uk/ukpga/1993/46/section/1>

⁴⁴ Parliamentary Commissioner Act 1967, Section 6 <https://www.legislation.gov.uk/ukpga/1967/13/section/6>

⁴⁵ Parliamentary Commissioner Act 1967, Section 1 <https://www.legislation.gov.uk/ukpga/1967/13/section/1>

⁴⁶ Parliamentary and Health Service Ombudsman's website, accessed 18/11/2020 <https://www.ombudsman.org.uk/about-us/who-we-are/the-ombudsman>

behalf. The Ombudsman has statutory responsibilities to report directly to Parliament through the presentation of its Annual Report and Accounts to the House of Commons.⁴⁷

The House of Commons' Public Administration and Constitutional Affairs Committee is the principal liaison mechanism with the Ombudsman which scrutinises its work.⁴⁸ In particular, the Committee scrutinises the Office's Annual Report which it does so by launching an annual scrutiny inquiry.⁴⁹ The Ombudsman also appears before the Committee to give evidence on the work of the Office, usually following the publication of the Annual Report and Accounts.

In 2018, following a recommendation from the Committee, the Office commissioned an Independent Peer Review to examine its ability to secure value for money in the course of its work. The Review concluded that *"the [PHSO] is moving out of 'critical care' and into 'recovery'. Overall, from facing a set of severe challenges, the organisation is on its way to becoming an efficient and effective modern ombudsman service ..."*⁵⁰

However, the process of Peer review was queried:

*Peer review is a relatively new process in the ombudsman sector, and as Dr Gill explained several countries were considering how to evaluate ombudsmen's offices effectively. A number of written submissions criticised the membership of the PHSO's peer review panel as being insufficiently independent as it contained two ombudsmen and an academic expert on ombudsmen (Dr Gill) who was formerly employed by the Scottish Public Sector Ombudsman. The fact that the panel's chair was chosen, and its terms of reference were set, by the PHSO's board, (in-line with PACAC's recommendation) were also raised.*⁵¹

The Committee responded recommending:

The Committee has no doubt in the peer review panel's personal independence and integrity. There is considerable value in the insight that leading practitioners and experts in a field, such as the panel that carried out this review, can bring. A single review, no matter how authoritative, is, however, only a

⁴⁷ Parliamentary Commissioner Act 1967, Section 10: <https://www.legislation.gov.uk/ukpga/1967/13/section/10>

⁴⁸ House of Commons, Standing Orders No 146: https://publications.parliament.uk/pa/cm201919/cmstords/341/so_341_051119_large_web.pdf

⁴⁹ Public Administration and Constitutional Affairs Committee, *Parliamentary and Health Service Ombudsman Scrutiny 2019-20*: <https://committees.parliament.uk/work/609/parliamentary-and-health-service-ombudsman-scrutiny-201920/>

⁵⁰ Peter Tyndall, Caroline Mitchell, and Chris Gill *"Value for Money Study: Report of the independent peer review of the Parliamentary and Health Service Ombudsman"* 12 November 2018, para 10.1

⁵¹ House of Commons Public Administration and Constitutional Affairs Committee, *PHSO Annual Scrutiny 2017/18: Towards a Modern and Effective Ombudsman Service* pg 9: <https://publications.parliament.uk/pa/cm201719/cmselect/cmpubadm/1855/1855.pdf>

snapshot. It will always have to be taken with the other available evidence, and that is how the Committee has approached it.

The Committee recommends that the PHSO repeat a peer review process every three to four years. For future reviews it also recommends that the PHSO considers how to reach outside the Ombudsman sector to obtain informed perspectives from professional peers with relevant experience in related sectors. This would potentially add further value to a review's conclusions in the eyes of Parliament and the public. Engaging directly with people with direct experience of the PHSO's service and other stakeholders would also add value and complement existing customer satisfaction data.⁵²

Governance Arrangements

The current governance arrangements for the Ombudsman's Office include a Governance Framework, which is based on the principles of good governance detailed in the Corporate Governance in Central Departments: Code of Good Practice.⁵³ The Ombudsman's relies on challenge and assurance from the Accounting Officer, a non-statutory Unitary Board, an Audit and Risk Assurance Committee, a Remunerations and Nominations Committee, and a Quality Committee, that good governance is being achieved.

Accounting Officer

Instead of retaining the role of Accountable Office, the current Ombudsman has delegated executive responsibility to the Chief Executive of the Office for financial control arrangements. Explaining his rationale, he said ' *This is a contractual responsibility and allows me to have a separate accountable person charged with stewardship and probity for our use of public money.*'⁵⁴

The responsibilities of the Accounting Officer, for the propriety of the public finances for which it is responsible, are set out in Managing Public Money by HM Treasury.⁵⁵ In preparing the accounts the Accounting Officer must observe the requirements of the Government Financial Reporting Manual. In particular, they must comply with the Accounts

⁵² Ibid, pg 9

⁵³ Cabinet Office and HM Treasury, *Corporate governance code for central government departments* (2017) <https://www.gov.uk/government/publications/corporate-governance-code-for-central-government-departments-2017>

⁵⁴ Parliamentary and Health Service Ombudsman, *Annual Report and Accounts 2019-2020*, pg 63 https://www.ombudsman.org.uk/sites/default/files/The%20Ombudsman%E2%80%99s%20Annual%20Report%20and%20Accounts%202019-2020_Website.pdf

⁵⁵ HM Treasury, *Managing public money* (2013) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742188/Managing_Public_Money_MPM_2018.pdf

Direction issued by HM Treasury including the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis.⁵⁶

Audit

The Office's annual report and accounts are audited by the National Audit Office. In partnership with the Local Government and Social Care Ombudsman, the Office procures and appoints internal auditors. The Audit and Risk Assurance Committee approves the internal audit plan which is based on the risk environment.

Unitary Board

The Office is governed by a non-statutory unitary, decision-making board of 3 executives and 9 non-executives which is chaired by the Ombudsman.

Describing the arrangement in the 2019 Annual Report, the Ombudsman said:

As Parliamentary and Health Service Ombudsman, in statute and by warrant of Her Majesty, I am responsible for the sound governance and effective internal control of the Ombudsman service. In law the Parliamentary and Health Service Ombudsman is a corporation sole and has a personal jurisdiction. This is not consistent with modern requirements of good governance. Therefore I am the Chair of a unitary Board which is in place to improve the governance of PHSO. My executive responsibilities, as a corporation sole, are thus exercised personally as an individual, but also aided by means of defined and corporate arrangements that allow for proper scrutiny. As Chair of the Board I promote collective decision-making. I reserve the right, given my statutory role, to depart from the Board's decisions, but only in exceptional circumstances and with a commitment to put my reasons in writing.⁵⁷

The Board's purpose is to lead and provide collective decision making on strategic direction and performance of the office. The Board monitors compliance with the Governance Framework. The Audit and Risk Assurance Committee, Remunerations and Nominations Committee, Quality Committee and Executive Committee all report to the Board.

The UK Code of Corporate Governance recommends that an independent evaluation of Board effectiveness should be undertaken at least every three years. The Board

⁵⁶ HM Treasury Accounts Directions 2019-20 (2019)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859308/19-20_non_bespoke_DOA_letter_.pdf

⁵⁷ Parliamentary and Health Service Ombudsman, *Annual Report and Accounts 2019-2020*, pg 63

https://www.ombudsman.org.uk/sites/default/files/The%20Ombudsman%E2%80%99s%20Annual%20Report%20and%20Accounts%202019-2020_Website.pdf

commissioned an external independent review in 2018-19. The findings of the review confirmed that the Board operates with good governance.⁵⁸

Audit and Risk Committee

The Audit and Risk Assurance Committee's role is to oversee the adequacy of the corporate governance and control systems. It aims to ensure compliance with accounting policies and standards and ensuring systems are in place to achieve value for money. It scrutinises the quarterly governance reports that detail compliance with the Governance Framework and reviews the risk management process set out in the Risk Management Policy, which is approved by the Board. It consists of 4 non-executive members.

The Committee can seek additional assurances about the governance and risk arrangements including requesting internal audit reports and 'assurance reviews' into specific areas of risk.⁵⁹

Quality Committee

This committee's role is to oversee assurance on the arrangements for assessment of quality, including casework decisions, process and the experience of service users. It consists of 4 Non-Executive Members.

Remuneration and Nominations Committee

The Remuneration and Nominations Committee agrees pay and performance review arrangements for the Chief Executive and Executive Directors. It supports the Ombudsman and Chief Executive with recruitment of senior executives and non-executive Board members. It is made up of 4 Non-Executive Members.

Executive Committee

The Executive Committee oversees operational performance and considers issues affecting delivery, monitors outcomes against objectives and agrees in-year allocation of resources.

⁵⁸ Ibid

⁵⁹Parliamentary and Health Service Ombudsman, *Annual Report and Accounts 2019-2020*, pg 72:
https://www.ombudsman.org.uk/sites/default/files/The%20Ombudsman%E2%80%99s%20Annual%20Report%20and%20Accounts%202019-2020_Website.pdf

3.4 The Commission for Local Administration - Local Government and Social Care Ombudsman

The Commission for Local Administration in England is the independent statutory body created to operate the Local Government and Social Care Ombudsman scheme. The functions of the Commission are set out in the Local Government Act 1974⁶⁰ and are elaborated further in a Framework Document agreed with its sponsor department, Communities and Local Government.⁶¹

The Act defines its main statutory functions as:

- to investigate complaints against councils and some other authorities
- to investigate complaints about adult social care providers from people who arrange or fund their own adult social care
- to provide advice and guidance on good administrative practice.

The Ombudsman is appointed by the Queen on the advice of the Secretary of State. Pre-appointment hearings are conducted by the Communities and Local Government Committee. Following the passage of the Local Government and Public Involvement in Health Act 2007, the Ombudsman is appointed for a period not exceeding seven years.⁶² They may be removed from office at their own request or on grounds of incapacity or misbehaviour. The current ombudsman is Michael King.

The Ombudsman simultaneously holds the role as Chair of the Commission. In this role, he is responsible for ensuring that the Commission fulfils its statutory purpose, delivers its agreed corporate and business plan priorities, and that its affairs are conducted with probity.

Funding

The Secretary of State is responsible for setting the level of public resources available to the Ombudsman to deliver its statutory functions and other matters.

⁶⁰ Local Government Act 1974, Section 23: <https://www.legislation.gov.uk/ukpga/1974/7/section/23>

⁶¹ Local Government Ombudsman Commission for Local Administration in England, *Framework Document* (2017) <https://www.lgo.org.uk/assets/attach/2119/LGO-Framework-Document-Dec-2017-new-logo.pdf>

⁶² Local Government and Public Involvement in Health Act 2007, Section 168: <https://www.legislation.gov.uk/ukpga/2007/28/section/168#section-168-4>

Accountability

Like the Parliamentary and Health Ombudsman, the Local Government and Social Care Ombudsman is independent of both Government and Parliament in all matters relating to the exercise of his functions. However, he has a statutory obligation to present its Annual Report and Accounts before Parliament.⁶³

The Ministry for Housing, Communities and Local Government plays a specific ‘sponsorship’ role for the Office, the details of which are set out in the Framework Document.⁶⁴ It acts as the Ombudsman’s principal point of contact with government. The Secretary of State for Communities and Local Government accounts for the business of the Commission in Parliament.

In his role as Chair of the Commission, the Ombudsman is responsible for ensuring that the Commission fulfils its statutory purpose, delivers its agreed corporate and business plan priorities, and that its affairs are conducted with probity. Therefore, the Chair is responsible to the Secretary of State in his role as Chair of Commission, but not in the exercise of their personal authority as the Local Government Ombudsman.

The Commission is required to review the operation of its legislative framework every three years. In the last report, it recommended:

*We propose the current accountability framework and sponsorship arrangements should be reviewed so that LGSCO becomes directly accountable to Parliament for the exercise of our statutory functions.*⁶⁵

It went on to explain:

We appreciate there could be a number of different approaches for how we are held to account and there is some rationale for the arrangements currently in place. We benefit from a constructive relationship with MHCLG⁶⁶ which respects our independence regarding the cases we investigate and the decisions we make. However, we would query whether the current approach is the right one from a constitutional perspective. Our jurisdiction or powers cut across many other parts of government, which creates an imperfect match with the remit of MHCLG as our sponsor department. Ultimately, a model that provides for direct accountability to Parliament is preferable and also reflects how other schemes currently operate. We would therefore welcome a review of

⁶³Local Government Act 1974, Section 34: <https://www.legislation.gov.uk/ukpga/1974/7/section/34S>

⁶⁴ Local Government Ombudsman Commission for Local Administration in England, *Framework Document* (2017) <https://www.lgo.org.uk/assets/attach/2119/LGO-Framework-Documents-Dec-2017-new-logo.pdf>

⁶⁵ Local Government and Social Care Ombudsman, *Triennial Legislative Review –2018* <https://www.lgo.org.uk/assets/attach/4436/Local-Government-and-Social-Care-Ombudsman-Triennial-Legislative-Review-2018-FINAL-FINAL.pdf>

⁶⁶ Ministry for Housing, Communities and Local Government

our current sponsorship arrangements, with an intention of making the shift towards establishing our status as a body directly accountable to Parliament.

Governance Arrangements

The Commission for Local Administration in England operates as the board of the Ombudsman's scheme. It sets the Annual Business Plan, the Annual Budget and strategic priorities for the organisation. It provides scrutiny and advice on its performance against those priorities. In line with the Government's Code of Good Practice⁶⁷, the Commission consists of a Chairman (Local Government Ombudsman), 3 independent advisory members, and 1 ex-officio member (The Parliamentary and Health Service Ombudsman, Rob Behrens CBE).

In turn, the Board's work is scrutinised by the Audit and Risk Assurance Committee and the Remuneration and Appointments Committee of the Commission.

Governance arrangements are set out in the Framework Document agreed between the Ombudsman and the Ministry. In particular, it defines the arrangements for the governance of the Commission and the respective responsibilities and accountability of the Commission, its Chair, the Accounting Officer, the Secretary of State for Housing, Communities and Local Government and officials in the Ministry for Housing, Communities and Local Government

The document was updated by the Department for Communities and Local Government in consultation with the Commission in 2017. The document does not convey any legal powers or responsibilities.⁶⁸ Any amendments to the Framework Document must be agreed by the Secretary of State and HMT following a process of consultation with the Commission.

Accounting Officer

The Permanent Secretary for Housing, Communities and Local Government has appointed the Chief Executive as Accounting Officer for the Commission. The Accounting Officer, in the course of their role, must adhere to the guidance set out in *Managing Public Money* issued by HM Treasury.⁶⁹

⁶⁷ Cabinet Office and HM Treasury *Corporate governance in central government departments: code of good practice*: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/609903/PU2077_code_of_practice_2017.pdf

⁶⁸ Local Government Ombudsman Commission for Local Administration in England, *Framework Document* (2017) pg 3: <https://www.lgo.org.uk/assets/attach/2119/LGO-Framework-Documents-Dec-2017-new-logo.pdf>

⁶⁹ HM Treasury, *Managing Public Money* (2013) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/742188/Managing_Public_Money_MPM_2018.pdf

The main Commission Accounting Officer's responsibilities for accounting to Parliament include:

- Signing the accounts and ensuring that proper records are kept relating to the accounts and that the accounts are properly prepared and presented in accordance with any directions issued by the Secretary of State; and
- Preparing and signing a Governance Statement covering corporate governance, risk management and oversight of any local responsibilities, for inclusion in the annual report and accounts.

Audit

The Comptroller & Auditor General externally audits the Commission's annual accounts and lays them before parliament, together with his report.⁷⁰

Internal audit arrangements are required to be maintained in accordance with the Treasury's Public Sector Internal Audit Standards.⁷¹ The Commission has procured and appointed internal auditors in partnership with the Parliamentary and Health Ombudsman.

Audit and Risk Assurance Committee

The Audit and Risk Assurance Committee has responsibility to advise the Commission, its Accounting Officer and senior management on matters of probity and economical administration, as identified by internal and external auditors, and through the Commission's system of internal control.⁷² It is also responsible for monitoring and reporting to the Commission on the operation of its Risk Management Strategy.

The scope and remit of the Committee adheres to the model and guidance set out in the Audit Committee Handbook published by HM Treasury.⁷³ There are three independent members, one of whom is appointed as the Chair. It meets 4 times a year.

The Remuneration and Appointments Committee

The Remuneration and Appointments Committee is responsible for advising and making recommendations to the Commission, its Chair and the Accounting Officer, on the

⁷⁰ Local Government Ombudsman Commission for Local Administration in England, *Framework Document* (2017)

⁷¹ *Ibid*, pg 17

⁷² Local Government and Social Care Ombudsman, *Annual Report and Accounts 2018-19*, pg 46:
<https://www.lgo.org.uk/assets/attach/5644/Annual-Report-2018-19-vF-Access.pdf>

⁷³ *Ibid*

appointment, performance management, remuneration and succession planning of senior staff.⁷⁴

Future Reform of Governance Arrangements

In 2013, the Commission's governance arrangements were the subject of an independent review carried out by Robert Gordon on behalf of the then Secretary of State for Communities and Local Government.⁷⁵ It found that the Local Government Act 1974 required reviewing and modernising at the earliest opportunity. The Government published the draft Public Service Ombudsman Bill in December 2016, setting out in detail its plans to introduce a new Public Service Ombudsman.⁷⁶ The draft Bill provides for the creation of a Public Service Ombudsman for UK reserved matters and public services in England. The proposals seek to consolidate the responsibilities of the current Parliamentary and Health Service Ombudsman and the Local Government Ombudsman to create a new organisation with strengthened governance and accountability. The Government intends to introduce the Bill when parliamentary time allows.⁷⁷ In the meantime, the Ombudsman has taken the following approach:

As recognised in the Gordon review which looked into our governance model, there are some anomalies within our current legislation which are inconsistent with modern requirements of good governance. To address these issues, we have sought to embed a greater split of responsibilities between the role of the ombudsman and the chief executive and accounting officer. We have also appointed independent members to our board. However, these are pragmatic fixes lacking the weight of statute. The opportunity of legislation brought forward to create PSO offers a chance to formalise the separation of these functions in statute.⁷⁸

⁷⁴ Local Government Ombudsman Commission for Local Administration in England, *Framework Document*, pg 50

⁷⁵ Department for Communities and Local Government *Governance Review of the Local Government Ombudsman Service* https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/262089/131128_Governance_Review_of_the_Local_Government_Ombudsman_Service.pdf

⁷⁶ Cabinet Office Draft Public Service Ombudsman Bill (2016) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/575921/draft_public_service_ombudsman_bill_web_version_december_2016.pdf

⁷⁷ PQ 141686 [Public Service Ombudsman Bill (Draft)] 15 May 2018

⁷⁸ Local Government and Social Care Ombudsman, *Triennial Legislative Review –2018* pg 5