

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

HEALTH SERVICE COMMISSIONER FOR ENGLAND (COMPLAINT HANDLING) BILL

Thursday 15 January 2015

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CLAUSES 1 and 2 agreed to.
Bill to be reported, without amendment.

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The Committee consisted of the following Members:*Chair:* SIR EDWARD LEIGH

Bayley, Sir Hugh (<i>York Central</i>) (Lab)	† Percy, Andrew (<i>Brigg and Goole</i>) (Con)
† Davis, Mr David (<i>Haltemprice and Howden</i>) (Con)	† Poulter, Dr Daniel (<i>Parliamentary Under-Secretary of State for Health</i>)
Gillan, Mrs Cheryl (<i>Chesham and Amersham</i>) (Con)	Roy, Lindsay (<i>Glenrothes</i>) (Lab)
† Gwynne, Andrew (<i>Denton and Reddish</i>) (Lab)	Shannon, Jim (<i>Strangford</i>) (DUP)
† Holloway, Mr Adam (<i>Gravesham</i>) (Con)	† Turner, Mr Andrew (<i>Isle of Wight</i>) (Con)
† Jenkin, Mr Bernard (<i>Harwich and North Essex</i>) (Con)	Twigg, Derek (<i>Halton</i>) (Lab)
Johnson, Alan (<i>Kingston upon Hull West and Hessle</i>) (Lab)	Wilson, Phil (<i>Sedgefield</i>) (Lab)
† Jones, Andrew (<i>Harrogate and Knaresborough</i>) (Con)	Kate Emms, <i>Committee Clerk</i>
Mulholland, Greg (<i>Leeds North West</i>) (LD)	† attended the Committee

Public Bill Committee

Thursday 15 January 2015

[SIR EDWARD LEIGH *in the Chair*]

Health Service Commissioner for England (Complaint Handling) Bill

2 pm

The Chair: Obviously, this will be a short sitting. To my knowledge, the timing for the Bill Committee has been changed three times. I do not know whether that is down to the Minister's office, but I consider it disrespectful to the House and the Panel of Chairs. I appreciate that civil servants are sometimes not fully aware of the courtesies of the House of Commons, but the House of Commons comes first. I am minded to write to the Speaker; I have already raised this issue with the Deputy Speaker. Ministers and civil servants have to realise that these Committees are not about the convenience of Ministers but about the convenience of Parliament.

We now proceed to the Bill. I understand that Mr Davis does not wish to move his amendments. If that is acceptable to the Committee, we can proceed to the debate on clause 1.

Clause 1

STATEMENTS AND REPORTS: INVESTIGATIONS NOT
CONCLUDED WITHIN 12 MONTHS

Question proposed, That the clause stand part of the Bill.

Mr David Davis (Haltemprice and Howden) (Con): It is a pleasure and a privilege to serve under your chairmanship, Sir Edward. I trust that you will make allowance for my inexperience in steering Bills through Committee. The last Bill I steered through the House was the Intelligence Services Bill in 1994, and a little time has elapsed since then.

Clause 1 is the substantive part of the Bill. Everything is in the clause, apart from the bringing into force measures. This is an entirely straightforward Bill with a simple, non-partisan purpose. It has wide support throughout the health service, the ombudsman service and, I hope, all parts of the House. The clause seeks to increase the effectiveness of the health service ombudsman, who is the final tier of the national health service complaints system. It does so, primarily, by requiring that when the health service ombudsman takes action, they do so with a view to concluding their investigations into the complaints within 12 months. If that time scale is not met, they must provide an explanation to the complainant.

This legislative change was triggered by the Sam Morrish case. In June 2014, the ombudsman published a report on an investigation into a complaint by Mr and Mrs Morrish about the care and treatment provided to their son, who died of septic shock on 23 December 2010 at the age of three. Mr and Mrs Morrish also

complained about the way in which the national health service investigated the circumstances surrounding young Sam's death.

In the three days before Sam Morrish died, his family came into contact with the Cricketfield surgery, Devon Doctors Ltd, NHS Direct and the South Devon Healthcare NHS Foundation Trust. The ombudsman found that each of those organisations failed. In the report into Sam's death, the ombudsman highlighted the lack of action being taken to save the lives of people who are suffering from sepsis. She stated that the case demonstrated that the failure to diagnose rapidly and treat sepsis can have tragic consequences. The ombudsman found that had Sam received appropriate care and treatment, he would have survived.

However, it took the ombudsman more than two years to investigate and report on the national health service's handling of Sam's case. During that time, a series of factual errors was made, which Mr and Mrs Morrish repeatedly had to correct. The Patients Association, which supported the Morrish family in their complaints, said that the ombudsman was not "fit for purpose".

The ombudsman, Dame Julie Mellor, personally apologised to the family and said she would meet them to discuss the case. She said:

"We took too long to investigate this case and made errors in the draft report. I recognise the family's experience of us has contributed to their distress", which is putting it mildly.

Although the ombudsman is committed to this change, which will require them to meet a timetable and, if they do not, to explain why, future management may not be, and without legislative backing it will be difficult to enforce the proposed time limits.

Andrew Percy (Brigg and Goole) (Con): The case that my right hon. Friend mentioned is, unfortunately, not the only case of that type. We have all had complaints from constituents that have taken too long to deal with, so I congratulate him on this excellent Bill. Does he agree that the stringing out of some complaints in the NHS damages people and prevents them from healing after they have lost somebody or after one of their relatives has suffered terrible care?

Mr Davis: My hon. Friend is absolutely right. Two major damages are done. The first is clearly to the healing process or, indeed, the closure process, in the case of the Morrish family, who feel they have received bad treatment over and over again, from not just the health service but the system that is designed to put such things right. The second damage is the delay in correcting the problems. The Morrish little boy died from septic shock, which was misdiagnosed several times in the system. Each of those stages that went wrong should have been corrected straight away or as soon as possible thereafter. I have had discussions with the health ombudsman and with the Chair of the Public Administration Committee on the issue, and they both understood that. I will come to the effect of that.

The Bill is the first small step in a series of reforms that is currently countenanced by the Public Administration Committee, the Cabinet Office, the Department of Health and, indeed, by the health service ombudsman; she has already made a lot of managerial

changes to improve things. The reforms that are coming after this and that will further enhance the service are being debated in Whitehall, in the Government system, and in Parliament. It is possible that we may adopt one or two of those on Report if there is a consensus for them. I say very firmly across the Floor that I will take that stance only if there is a consensus. I give the Committee warning of that.

I mention, *en passant*, the two amendments that I will not move. They were given to me by the ombudsman service to make the Bill consistent in its wording with the primary legislation that enables the existence of the ombudsman. I chose not to move them because, frankly, people—including the Department—have not had time to consider them properly. We will come back, either with them or with a modified variant. Please would all Committee members tell me if they think that something needs to be done with them? I do not, under any circumstances, want to dilute what we are doing but I may come back to them on Report.

Beyond that, clause 1 is the substance and the nub of a simple Bill, which is about common sense and will serve to prevent, in the long future, the sort of tragedies and failures of the Sam Morrish case.

Andrew Gwynne (Denton and Reddish) (Lab): It is a pleasure to serve under your chairmanship, Sir Edward. I congratulate the right hon. Member for Haltemprice and Howden on promoting his private Member's Bill. As somebody who successfully steered a private Member's Bill on to the statute book in the 2009-10 Session, I know how proud a moment it can be to make just a small change in legislation that nevertheless helps whatever cause a Member takes up. I also had a private Member's Bill in the 2013-14 Session, which sadly did not get past Second Reading. That is just the luck of the draw. I very much appreciate the right hon. Gentleman's bipartisan approach because his Bill makes a great deal of common sense.

Hon. Members from all parties will have had cases in the time that they have been Members of Parliament where they have had to refer constituents' treatment in the NHS to the parliamentary and health service ombudsmen. They will also have had cases that have taken a great deal of time—often a lot longer than 12 months. In the interests of accountability and transparency, the sensible changes that the right hon. Gentleman proposes in the Bill make a great deal of sense because they allow the public to see the amount of work that the ombudsman has to do in a 12-month period and how many of those cases take longer than 12 months to reach some kind of conclusion and resolution. In terms of accountability to Parliament and to the public outside, that is an important change. It is a small change, but one that will make a great deal of difference to the work of the ombudsman and to confidence in the ombudsman.

I will press the right hon. Gentleman on a couple of points, which I hope he will answer in closing. First, on 31 March 2013, the ombudsman had a maximum of 30 NHS complaints that it had not concluded within 12 months. No figure was given in the annual report for 2013-14. Can he explain a bit more about why he thinks there has been a delay and why he thinks the key issue is lack of communication with the complainants? I suspect

that we will reach the same conclusion, but I would like to tease out of him why he thinks the measure will work.

One thing is clear: when the ombudsman falls short, it is essential that it is open and transparent. An annual report setting out the details of how long investigations and complaints have taken to be concluded is welcome. That is why the Opposition will back the right hon. Gentleman's Bill today.

I note that some have called for much wider changes to the ombudsman service, including proposals for different scrutiny arrangements that would make it easier for Parliament to hold public services to account. That is not really in the scope of the Bill or why we are here, but it is interesting, because it comes on to some of the underlying concerns that the right hon. Gentleman expressed in moving clause 1. I understand that the Cabinet Office is committed to carrying out a review of the ombudsman landscape. The Opposition look forward to the outcome of that review. With the indulgence of the Committee, perhaps the Minister, when he responds to the debate, will update us on whether that review has begun and what its scope is or will be. That will help shape the way that the Bill is introduced.

The right hon. Gentleman has already indicated that he may move the amendments on Report, and the Opposition will look at them with real interest. If anything can sharpen the Bill further, we will support it. I look forward to hearing answers from the right hon. Gentleman and the Minister.

Mr Bernard Jenkin (Harwich and North Essex) (Con): Sir Edward, it is a pleasure to serve under your chairmanship. It is a great pleasure to support the Bill promoted by my right hon. Friend the Member for Haltemprice and Howden, which is a timely reminder that these things matter. The case he described is well known to the Public Administration Committee, of which I am Chair. We have departed from the practice of previous Committees. We want to hear about cases that people feel have not been well handled by the ombudsman, because we learn from them. We do not take up those individual cases; we cannot possibly be a further tier of appeal in those cases, but we learn from them. We are receiving evidence of those cases as we speak, because we are conducting another inquiry, which I will come to in a moment.

I support the Bill, which merely places a reporting requirement on the ombudsman. It is important that we remind ourselves that the ombudsman is ultimately accountable to Parliament. The Public Administration Committee does its best to hold the ombudsman accountable, but the Bill does no harm. Indeed, the ombudsman herself supports the Bill and recognises that it is perfectly reasonable. It is important to see this case and other cases that have gone wrong in the context of the ombudsman service as it is. First, there has been a big financial squeeze in the public sector, and that has reduced the resources that the ombudsman has available. That has had an effect on morale and the effectiveness of staff.

Secondly, a big change programme is going on in the ombudsman service to deal with exactly such failures: a tendency to be over-cautious, to be defensive about criticism and perhaps to be less understanding of the criticisms of some of those it is seeking to serve than it should be.

2.15 pm

These cases also highlight the need for reform of the ombudsman. The hon. Member for Denton and Reddish draws our attention to the fact that the Cabinet Office is conducting just such a review, in response to the report produced by the Public Administration Committee last year, called “Time for a People’s Ombudsman Service”. We are still working in a framework set down in legislation in 1967. We visited ombudsman services in other countries and gathered evidence. We are miles behind our counterparts. The Scottish ombudsman, Jim Martin, told us,

“the model in England is stuck in time. It probably was good for its time, but I think its time has passed.”

We are advocating reforms, such as the ability to receive complaints other than in writing and own-initiative powers for conducting investigations on widespread problems in the NHS. Sepsis and midwifery regulation are two examples that have been highlighted in this Parliament, where the evidence base from complaints has been used to make more general findings and present those to Parliament, exactly as the service is meant to do, but its powers to do so are limited and we need to expand those.

We also need to regard the requirement we are placing in clause 1 in the context of what is happening in the NHS. We are entering a period almost of glasnost in the health service, post-Mid Staffs, where people are expected to draw attention to the things that are going wrong. We are expected to learn from what is going wrong. That culture has not previously existed in the health service. Such a change programme in the health service is going to take some time, but I think it is happening rapidly in parts of the health service, which is a positive development. The result is a lot more complaints.

It is worth reminding ourselves that the ombudsman service does not oversee the NHS complaints system; it is the longstop when the local complaints system has failed and when the Department of Health has failed. When everybody else has failed, people are entitled to go to the ombudsman. It should be a backstop service and it should not become the place where every complaint can go, because it is not set up to do that. In a moment, I will mention a further inquiry I am conducting, after getting way to my hon. Friend.

Andrew Percy: My hon. Friend is right about the increase in complaints. The professional associations—the royal colleges—are also receiving more complaints, but the legislative framework for them to handle those complaints is often quite difficult. In the Health Committee last week, we heard about that from the Nursing and Midwifery Council. Does he agree that, whoever forms the next Government, to deal with this large increase in complaints we have to have a Law Commission Bill to restructure the medical councils, so that they can deal with the complaints properly?

Mr Jenkin: That is an interesting suggestion. We are considering another suggestion in the context of another report we produced concurrently with the people’s ombudsman service report, called, “More complaints please!” That is about changing the atmosphere in our public services, across the public sector, including the health service, so that it is regarded as good to complain

and that complaints are regarded as a good source of information. Every private business knows that a customer who is complaining is giving the business useful information to enable it to improve its service.

We want that kind of atmosphere, but in conversations in the Department of Health, with clinicians and with hospital boards, we find not that there is a lack of avenues to complain through, though the complexity and the maze of complaints channels is dispiriting for people complaining, but that there is no capacity to establish on the ground what exactly has gone wrong and establish the facts of the case soon after the event has occurred. As in the Sam Morrish case, and other cases, there are often arguments about what constitutes legitimate evidence in the complaint. The ombudsman service we have today is not set up to run on-the-ground interviews and post-event investigations. It tends to look at the evidence that it is given. It tends to take the medical records as the medical records. It does not investigate a clinical incident in the manner in which an air accident, for example, would be investigated by experts on the ground immediately after the event. The ombudsman is not there immediately after the event, because the complaint does not get to them until weeks, months or possibly years later. Therefore, we are now conducting an inquiry into NHS complaints and clinical incident investigation.

We do need more capacity. We have a paper in front of us by Carl Macrae and Charles Vincent, which was written up in the *Journal of the Royal Society of Medicine* in October last year, which suggests that the Department of Health should have a new capacity, much like that of the air accident investigation branch of the Department for Transport, that could go in and establish the facts of the case without fear or favour and without the allocation of blame. There would therefore be much quicker understanding of what has gone wrong and quicker guidance and learning to be spread across the health service.

We will take evidence on that before our seminar next week and we will continue to take evidence until the end of February. We hope to have a report to present to Parliament before the House rises.

I say to my hon. Friend the Member for Brigg and Goole that these are the kind of reforms that we need to consider. We need to remember that the parliamentary and health service ombudsman should be the last resort, not the first port of call, for such complaints. When everything else has failed, it should pick up the hardest cases. There is a dangerous expectation that it is the NHS’s complaints system, but it cannot be, it was not intended to be and Parliament does not want it to be. We want a much better, more agile complaints system in the NHS than we have at the moment. I am pleased that, with the Secretary of State and shadow Secretary of State, we are all at one on this. I hope that all parties will give a fair wind to our inquiry.

The Parliamentary Under-Secretary of State for Health (Dr Daniel Poulter): It is a pleasure to serve under your chairmanship again, Sir Edward. I congratulate my right hon. Friend the Member for Haltemprice and Howden on promoting the Bill and on the thought he put into focusing on improving the functionality and transparency of the ombudsman and the ombudsman

process. As he rightly said, there will always be lessons to be learnt in all aspects of our NHS. We can improve care by learning from things that have gone wrong.

The Bill is informed by the terrible events that surrounded the Sam Morrish case and looks to address the lack of timeliness from the ombudsman in looking into the family's concerns. It is right that my right hon. Friend has promoted the Bill and I am pleased to hear that it has support on both sides of the Committee. I am sure that all Members will be able to support it.

I also pay tribute to my hon. Friend the Member for Harwich and North Essex, who has taken a keen interest—understandably so, given his position as Chair of the Public Administration Committee—not only in how the ombudsman works and, more broadly, the working of the ombudsman and how the ombudsman can be better held to account by his Committee and Parliament, but in how the ombudsman's reports and actions can be better implemented by the NHS as a whole. His Committee has done some welcome work on that throughout this Parliament. I thank him for the scrutiny that he brings to bear on such issues.

Undoubtedly, the tragic events surrounding the Sam Morrish case have been the main driving force behind this welcome Bill. When things do go wrong in the health service, be they in a clinical setting or in the handling of complaints, it is important that lessons are learnt. It is about ensuring that things can be put right to improve patient care and that the families and others who are still going through difficult times in trying to come to terms with a terrible event that has affected their lives and the lives of people they care about can, in some way, shape or form, be better understood, if not ever fully reconciled. Nobody can take away the pain of loss from a death or a tragic event, but it is the duty of our health service and of the ombudsman, as an independent part of that public service, to be mindful that there is a public service duty, and that public service is about doing the very best for the people we are trying to look after. That goes to the heart of what my right hon. Friend is trying to achieve in promoting the Bill.

I will try briefly to address some of the points raised by the shadow Minister. As my hon. Friend the Member for Harwich and North Essex outlined, following on from the thoughtful and well-received report by the Public Administration Committee, Robert Gordon has undertaken a review of the ombudsman landscape more generally. The Government are considering that report and will publish their response in the near future. I hope that the Minister present at the next stage of the Bill's consideration will be able to update the House on a better time line if the response has not been published then.

The shadow Minister also raised the 12-month time line in the Bill. As we have discussed today, timeliness is important throughout the regulatory and complaints framework of the health service. In holding the professional regulators to account, the Professional Standards Authority is especially focused on regulators ensuring that they can deal with complaints about a practitioner's fitness to practice in a timely manner, for reasons of safety and of ethics. The importance of timeliness and the consideration that one year is a reasonable time for the ombudsman to conclude investigations lie behind the Bill, and that is consistent with the broader approach in

this area. We wanted a time frame for the handling of complaints not just for the sake of transparency and openness, and our understanding of how we can put things right, but so as to be mindful of the experiences of families at a difficult time and of how they can be helped to come to terms with what has happened, as far as is possible—or, if that is not possible, at least to understand it better.

I do not intend to detain the Committee much longer. The Government fully support the Bill, which has welcome and widespread support on both sides of the House. Clause 1 is fairly self-explanatory. I would like to pay a brief tribute to the ombudsman, who has worked well to make the office more transparent and accountable, as my right hon. Friend explained. She has greatly increased the number of complaints investigated, and those complaints are generally reviewed and assessed in a timely fashion. There are, however, times when that does not happen, so it is important to ensure that we tackle that issue so that that is not the case in the future, which is precisely the reason for the Bill.

The clause will rightly ensure that complainants are given the reason for delay in any case in which the investigation has not been completed. I remind hon. Members that the health service ombudsman is independent of the Government and is directly accountable to Parliament through the Public Administration Committee, which is chaired by my hon. Friend the Member for Harwich and North Essex. I am sure that we are all very grateful for the work that he has been doing in that Committee further to investigate the role of the health service ombudsman.

The Bill will strengthen those arrangements by placing a duty on the ombudsman to inform Parliament annually of how long it has taken to investigate cases, how many investigations have taken more than 12 months and of action being taken to conclude all cases within 12 months. I understand that, during this Parliament, the Health Committee has regularly called in a number of the professional regulatory bodies—on an annual basis, I believe—to report on their performance. That might be something that my hon. Friend the Member for Harwich and North Essex wishes to look at in the Public Administration Committee—an annual review of the ombudsman and, specifically, some issues with performance and dealing with complaints.

2.30 pm

Mr Jenkin: We do, in fact, have an annual evidence session where we look at the Parliamentary and Health Service Ombudsman's annual report in detail and pick over those things. My right hon. Friend the Member for Haltemprice and Howden has drawn my attention to the fact that there was, for example, no reporting of overdue cases in the latest report. That is the sort of thing that we should be looking at.

We have also made a recommendation, as the Committee that receives the reports on behalf of Parliament and responds to them in the same way as the Public Accounts Committee does for the Comptroller and Auditor General, that it would be sensible for performance to be scrutinised by the same body that scrutinises the performance of the NAO. The performance of the NAO is not scrutinised by the PAC; that is done by the House of Commons Commission. We have recommended that there should be some consistency in this because we are conflicted: in

[Mr Jenkin]

one way, we want to champion what the ombudsman does, but, in another, we have to criticise what it does. I think that the PAC model would be more satisfactory, which is why we recommended it.

Dr Poulter: My hon. Friend makes a good point. The Bill has given us an opportunity to reflect further on those processes and the opportunities that may arise for changing how things are done. Although we very much welcome the work of the ombudsman, there will always be cause from time to time to scrutinise what functions could be performed better. In the particularly sensitive area of how complaints are dealt with and doing so in a timely manner, I am sure we would all welcome regular input on and parliamentary scrutiny of that from the Select Committee he chairs.

The Bill will come into force two months after the day on which it is passed. I welcome the fact that my right hon. Friend the Member for Haltemprice and Howden did not move the amendments, as that gave us an opportunity further to discuss them in the consensual manner in which the Committee's proceedings have been carried out. Indeed, the progress of the Bill will undoubtedly continue in that manner.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Clause 2 ordered to stand part of the Bill.

Bill to be reported, without amendment.

2.33 pm

Committee rose.