



INTERNATIONAL  
OMBUDSMAN  
INSTITUTE

Venice Commission IOI statement

DATE 01/11/2021

**STATEMENT BY THE INTERNATIONAL OMBUDSMAN INSTITUTE'S  
EUROPEAN PRESIDENT,  
DR ANDREAS POTTAKIS,  
IN RELATION TO BREACHES OF THE VENICE PRINCIPLES AND THE UN  
GENERAL ASSEMBLY RESOLUTION ON NATIONAL OMBUDSMAN  
SCHEMES.**

The International Ombudsman Institute (IOI), strongly endorses the unanimous [Opinion](#) of the Venice Commission (the European Commission for Democracy through Law), dated 19 October 2021. The Opinion rules that proposals to exclude the Parliamentary and Health Service Ombudsman (PHSO, the national Ombudsman in the UK) from a key part of UK public administration in the English health service is a reduction in powers and a violation of both the Venice Principles and the United Nations General Assembly Resolution of December 2020, which was co-sponsored by the UK Government.

The UK Government has introduced new legislation which excludes the Ombudsman from access to 'safe space' information collected by the Health Service Safety Investigations Body (HSSIB) from National Health Service clinicians in England during its patient safety investigations. The Ombudsman will only be allowed to scrutinise these investigations if it receives the permission of the High Court in London.

This aspect of the Health and Care Bill, which is currently passing through Parliament, could have a significant impact on patients and families who complain to PHSO and on citizens who use the NHS.

The Commission found unanimously in its Opinion that:

- This legislation is an overt breach of the Venice Principles and the United National General Assembly Resolution (A/RES/75/186);
- The requirement that the Ombudsman must now apply to the High Court to seek access to ‘safe space’ is a clear and unwarranted reduction in the powers of the Ombudsman which (since 1967 until now) itself has had the powers of the High Court to examine both witnesses and documents. The new requirement constitutes added expense and contributes to the ‘judicialisation’ of Ombudsman process;
- Safeguards (such as the requirement to investigate in private) which ensure that the aims of safe space are preserved are already included in the current legislative scheme of the Ombudsman and were not taken into account in drafting the legislation;
- The exclusion of PHSO from the ‘safe’ space has the potential to undermine public trust in a key national institution articulating citizens’ rights. It also creates an unwanted precedent in the relationship between governments, national Ombudsman schemes and administration of complaints in national health service schemes.

European President of the IOI and Greek National Ombudsman, Dr Andreas Pottakis commented:

*“While we agree with the Venice Commission rapporteur Sorensen that the UK national Ombudsman may be just a “casual victim” of UK Government policy, the Venice Principles were created precisely to address this unwarranted attack on Ombudsman powers.*

*The IOI joins with the Venice Commission, and PHSO in urging the UK Government to reflect carefully on the published Opinion, and to take urgent steps to amend the Bill to ensure that PHSO maintains unrestricted access to ‘safe space’ investigations in line with established good international practice.”*