

Public Sector Ombudsmen in England

1. This Memorandum is a response by a working party of JUSTICE to a letter dated 29 April 1999 from the Cabinet Office requesting views on how the present arrangements for the Parliamentary Commissioner for Administration, the Health Commissioner and the Commission for Local Administration are working and how they might be improved.
2. It was the JUSTICE Report, 'The Citizen and the Administration', published in 1961 which led to the appointment in 1967 of the Parliamentary Commissioner for Administration, the first of the public sector ombudsmen. More recently they have been followed by a number of private sector ombudsmen, mainly in the field of financial services.
3. JUSTICE proposed a Parliamentary Ombudsmen because, by dealing with complaints about maladministration brought by individuals against central government, it was hoped that he would afford a means of access to justice which would otherwise generally not be available.
4. It is important to recognise some of the main reasons why the initial hope has been fulfilled and why the public sector ombudsmen have proved so successful:
 - (a) the independence of the ombudsmen is unquestioned;
 - (b) whilst following the rules of natural justice, the procedures of the ombudsmen are informal, inquisitorial and non-adversarial;
 - (c) legal representation is not necessary;
 - (d) the service provided is free and (unlike the court system) there is no risk to the complainant of having to pay the other party's costs if the complaint is not upheld.
5. It is for largely the same reasons that the private sector schemes have also proved highly successful. Essentially, all the various ombudsmen schemes recognised in England by the British and Irish Ombudsman Association have contributed to wider access to justice for individuals by establishing a 'level playing field' which enables them to bring complaints against public bodies and other organisations which have larger resources.
6. Ombudsmen also benefit the wider public because their reports and recommendations help to promote better practice on the part of those successfully complained against.
7. Successful and beneficial though the existing public sector ombudsmen are to those who have recourse to them, we consider that access to the ombudsmen is unduly restricted and should be much easier and more widespread than it is at present.
8. There are several practical obstacles which impede access to the public sector ombudsmen and which we consider should be removed. We refer to them below.

9. The Parliamentary Commissioner should be officially designated as the Parliamentary Ombudsman. Likewise, the Health Service Commissioner should be the Health Service Ombudsman. These are titles by which they are more likely to be recognised. More widely, it might help if the legislation by which the public sector ombudsmen are governed were to be rewritten in more accessible plain English. For example, the key term 'maladministration' is not well understood by many.
10. In the case of the Parliamentary Ombudsman, direct access should be permitted and the 'Parliamentary filter' should be abolished, as JUSTICE has for long advocated. Such a filter does not, for example, exist in France, in the comparable scheme there. Moreover, direct access is already permitted here to good effect in the case of our Local Government Ombudsmen.
11. Public awareness of the public sector ombudsmen is much lower than it should be. Greater awareness should be encouraged through education in schools, through the media and by Government itself. What is needed is to give the public sector ombudsmen a much higher public profile. To make this possible some additional resources would be necessary.
12. On a more far-reaching basis and going beyond the removal of the obstacles mentioned, we consider that the present structure and scope of the three existing public sector schemes should be reappraised generally. For potential complainants it can be unclear which public sector ombudsman they should take their complaint to. Besides, with the increasing complexity of modern society, many potential complaints involve more than one department of central or local government. As things now stand this may mean having to complain separately to more than one of the public sector ombudsmen with all the confusion and delay that would involve. This is unsatisfactory.
13. What is happening to the private sector financial services ombudsmen provides a useful pointer for improvement. The various separate schemes will, by the proposed Financial Services and Markets Act, be brought together in a single, all-embracing scheme with standardised procedures. There will be a Chief Ombudsman supported by sectoral ombudsmen dealing with banking, insurance etc. In this way, doubt, which at present often exists as to which of the financial ombudsmen to whom to complain, will be removed. Furthermore, the single unified financial ombudsman scheme will be able to deal with, for instance, the banking and insurance aspects of what is in effect a single claim without the need to go to more than one ombudsman and without the discouraging effect and additional delays which that must inevitably entail.
14. Bringing together the Parliamentary, Health and Local Ombudsmen in a similar manner would bring similar benefits to those entitled to complain to them. In particular, it would improve access, especially for those most in need of it.
15. If there were to be a single unified scheme, the need of the public sector ombudsmen for a higher public profile would be increased. Properly planned and resourced, however, we consider that the higher profile needed – more of a 'human face' – could be achieved by a unified scheme.

16. Whether there should be a Chief Public Sector Ombudsman in a unified scheme rather than a more collegiate structure is a matter for further discussion. What is essential for complainants is that there should be a single point of entry which a unified scheme would ensure.
17. Ombudsmen should be independent, but they should also be accountable. The Parliamentary Ombudsman is accountable to a Parliamentary select committee – now entitled the Select Committee for Public Administration. The Local Authority Ombudsmen are currently not accountable, but should be. In a unified scheme we consider that they, like the Parliamentary Ombudsman, should be made accountable to the Select Committee for Public Administration. That would not compromise their independence but should help improve their profile and standing.
18. At present it is not clear what the consequences of devolution will be for the public sector ombudsmen. There are already separate Local Authority Ombudsmen for England, Scotland and Wales but only one Parliamentary Ombudsman for the three countries. A unified scheme (or schemes) would have to take account of devolution and of the present regional structure of the Commission for Local Administration in England. In particular, it is important to ensure that any changes consequent on devolution should improve, not diminish, rights of access for complainants.

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