



BRIEFING PAPER

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The Local Government Ombudsman

By Mark Sandford

Contents:

1. Introduction
2. The role of the Local Government Ombudsman
3. Recent reforms to the Local Government Ombudsman



Contents

Summary	3
1. Introduction	4
2. The role of the Local Government Ombudsman	5
2.1 Complaints	5
2.2 Investigations and outcomes	6
2.3 Redress	7
2.4 Changes in jurisdiction	7
2.5 Right of appeal	8
3. Recent reforms to the Local Government Ombudsman	10
3.1 The <i>Local Government (Review of Decisions) Act 2015</i>	10
3.2 Communities and Local Government Committee inquiry	10
3.3 Merger of Ombudsmen	11

Summary

The Commission for Local Administration, usually known as the Local Government and Social Care Ombudsman (LGO), was established by the *Local Government Act 1974*. There is one Ombudsman, appointed by the Queen on the advice of the Secretary of State. The service is independent of government and of Parliament.

The LGO service covers England: similar duties are carried out by the [Public Services Ombudsman for Wales](#), the [Scottish Public Services Ombudsman](#) and the [Northern Ireland Ombudsman](#). Complaints against central government departments and health bodies in England are covered by the Parliamentary and Health Services Ombudsman.

For a valid complaint to be made, a complainant must have suffered injustice through maladministration by the authority concerned. He/she should also have made use of the authority's own complaints procedure before approaching the LGO. The LGOs enjoy a good deal of discretion in the way that they carry out their functions. Moreover, the emphasis has generally been on seeking a settlement between the complainant and the authority rather than in formally identifying maladministration.

The LGO cannot compel an authority to implement its recommendations, although in practice councils almost always do act on them. There is no right of appeal against a decision by the LGO, but it is possible to seek judicial review where it is believed that the legal basis of a decision is flawed.

1. Introduction

The Commission for Local Administration was established by the [*Local Government Act 1974*](#). It is an independent body funded by annual grant from the Government. The Commission comprises the Local Commissioner, or Ombudsman, together with the Parliamentary Commissioner for Administration, otherwise known as the Parliamentary Ombudsman.

The Ombudsman is appointed by the Queen on the recommendation of the Secretary of State. Pre-appointment hearings are now conducted by the Communities and Local Government Committee.¹ Following the passage of the [*Local Government and Public Involvement in Health Act 2007*](#), the LGO is now appointed for a period not exceeding seven years. They may be removed from office at their own request or on grounds of incapacity or misbehaviour.

The Ombudsman has offices in London, York and Coventry. The 1974 Act originally required them to divide England into areas so that each had a separate geographical jurisdiction within which (s)he investigated all complaints of maladministration. The 2007 Act introduced greater flexibility in this regard. Matters for investigation may be categorised as seems most appropriate and may be allocated to one or more commissioners.

Information on the workload of the LGO service can be found in the annual reports, annual accounts and complaints statistics on its website. The annual report must be laid before Parliament. The service employed 165 staff in 2016.²

¹ Communities and Local Government Committee, [*Local Government Ombudsman candidate endorsed by Committee*](#), 4 Nov 2016

² See <http://www.lgo.org.uk/publications/annual-report/>.

2. The role of the Local Government Ombudsman

2.1 Complaints

The Local Government Ombudsman covers local authorities and other specific public bodies within England only. Complaints about English NHS bodies, and about UK government departments, should be addressed to the [Parliamentary and Health Service Ombudsman](#).³

Complaints about public bodies, including health bodies, in Scotland, Wales and Northern Ireland, should be addressed to the Ombudsmen in those territories.⁴ Parish and town councils do not come within the Local Government Ombudsman's jurisdiction (although, in Wales, community councils are covered by the Public Service Ombudsman for Wales).

The various types of authority whose actions may be investigated by the LGO are listed on its website.⁵ The website also includes a page with instructions on [how to make a complaint](#).

The 1974 Act requires that a complainant must have sustained injustice in consequence of maladministration in connection with the action taken by or on behalf of an authority. "Maladministration" is not defined in legislation. The LGO's website gives some examples of "service failure", which could give rise to a valid complaint:

- Delay
- Poor record keeping
- Failure to take action
- Failure to follow procedures or the law
- Poor communication
- Giving out misleading information
- Failure to investigate
- The organisation not doing what it said it would.⁶

The LGO aims to complete its investigations within 26 weeks.

There are certain matters that the Local Government Ombudsman cannot investigate. These include when:

- you have left it more than 12 months since knowing about the problem
- the matter has not affected you personally or caused you an injustice

³ See also the Library standard note [The Ombudsman: the developing role in the UK](#) (SN/PC/04832).

⁴ See, respectively, the Scottish Public Services Ombudsman (<http://www.spsos.org.uk/>); the Public Services Ombudsman for Wales (<http://www.ombudsman-wales.org.uk/>); and the Northern Ireland Ombudsman (<http://www.ni-ombudsman.org.uk/>).

⁵ See <http://www.lgo.org.uk/making-a-complaint/who-you-can-complain-about/>

⁶ See <http://www.lgo.org.uk/make-a-complaint/what-we-can-and-cannot-look-at>

6 The Local Government Ombudsman

- the issue affects most people in the council's area
- you have, or had, a right to appeal or take legal action and we think it is reasonable for you to have done so. This might be to:
 - a tribunal (such as the Housing Benefit Appeals Service)
 - a government minister (such as a planning appeal)
 - the courts
- it is about personnel matters (such as your employment or disciplinary issues).⁷

Where these alternative remedies are available but have not been used by the complainant, the Ombudsman is not required to investigate, though exceptionally they may do so.

As a general rule, the Ombudsman will only consider complaints within **twelve months** of the date on which the person who is complaining first became aware of the matter they are concerned about. Moreover, the complainant must first have used the **council's own complaints procedure**. They need not have exhausted every stage of that procedure but they should have allowed the council a 'reasonable opportunity' (normally defined as 12 weeks from the date of submission of the initial complaint) for the matter to be dealt with.

2.2 Investigations and outcomes

The 1974 Act explicitly allowed the Local Government Ombudsman a good deal of discretion in deciding whether a matter should be investigated and how. Amendments made by the [Local Government and Public Involvement in Health Act 2007](#) confirmed that position in respect of cases coming before the Ombudsman from 1 April 2008. New section 24A states:

(6) In determining whether to initiate, continue or discontinue an investigation, a Local Commissioner shall, subject to the provisions of this section and sections 26 to 26D, act in accordance with his own discretion.

(7) Without prejudice to the discretion conferred by subsection (6), a Local Commissioner may in particular decide—

- (a) not to investigate a matter, or
 - (b) to discontinue an investigation of a matter,
- if he is satisfied with action which the authority concerned have taken or propose to take.

Where the Ombudsman has completed an investigation, s/he may prepare a report on the matter and send it to the persons concerned. However, if having completed the investigation (s)he is satisfied with the action which the authority has already taken or proposed to take, s/he may instead prepare and send a statement of reasons for the decision. Where s/he decides not to investigate a matter or to discontinue an

⁷ <http://www.lgo.org.uk/make-a-complaint/what-we-can-and-cannot-look-at>

investigation, s/he may simply prepare a statement of reasons and send it to the persons concerned.

Where the Ombudsman reports that there has been maladministration or service failure, the report is sent to the authority concerned for follow-up action.

In 2015-16, the Ombudsman received some 65,000 individual contacts from members of the public. These led to some 20,000 complaints and enquiries that were addressed. 11,833 cases received decisions from the Ombudsman as to whether or not maladministration had occurred.⁸ These are [published on the LGO's website](#) as 'decision statements'.

2.3 Redress

Where the Ombudsman has found that a complainant has suffered injustice through maladministration, he will recommend action to put things right. Examples include asking the council to:

- apologise to you
- provide a service you should have had
- make a decision it should have done before
- reconsider a decision it did not take properly in the first place
- improve its procedures so similar problems do not happen again
- make a payment⁹

Decisions are published in an anonymised form after three months, unless the Ombudsman decides it is not in the complainant's interest to do so. Occasionally, the Ombudsman may produce a 'public interest report', making the public aware of a particular type of case. The complainant is not identified in a public interest report.

Section 92 of the [Local Government Act 2000](#) gave local authorities the power to pay compensation or provide some other benefit to a person who has been, or may have been, adversely affected by actions that amount to maladministration. Such restitution may be made irrespective of whether the LGO has become involved.¹⁰

2.4 Changes in jurisdiction

Since October 2010, the Ombudsman has been able to consider complaints from people who arrange or fund their own adult social care (including those who have a personalised budget from a local authority). This group, which was estimated to form about 35% of adult social care users, did not previously have recourse to an independent complaints procedure. By way of contrast, those whose care is funded and arranged by a local authority have long been able to access statutory local authority social services complaints procedures, with

⁸ LGO, [Annual report 2015-16](#), p. 9

⁹ See <http://www.lgo.org.uk/make-a-complaint/possible-outcomes>

¹⁰ [Local Government Act 2000](#), section 92

subsequent recourse to the LGO where they are not satisfied with the local authority's response.

The [Health Act 2009](#) inserted a new part 3A into the *Local Government Act 1974*, creating an extended remit for the LGO to include investigation of complaints about adult social care not arranged or funded by a local authority. The explanatory notes to the Act note that the new scheme was largely modelled on the existing legislation for investigation of complaints concerning local authorities.¹¹ As with councils, the LGO will normally only consider a complaint once the care provider has been given a reasonable opportunity to deal with the situation.

The Ombudsman's role is distinct from that of the Care Quality Commission, which deals with complaints about registered services as a whole and does not consider individual matters. Information and guidance for individual complainants can be found on the LGO's website.¹²

For a trial period, from April 2010 to July 2011, the Ombudsman took on jurisdiction over schools in relation to internal matters. This power was returned to the Secretary of State through the [Education Act 2011](#), and all complaints to the Ombudsman in this area were resolved by 31 March 2013.

From April 2013, the Independent Housing Ombudsman took on the investigation of housing complaints from tenants of local authorities. This was made possible by section 44 of the [Localism Act 2011](#).¹³ This creates a unified service for investigating complaints about the provision of social housing.

2.5 Right of appeal

There is no right of appeal against a decision by the LGO. Like the Parliamentary Ombudsman, the LGO is a statutory body independent of both Government and Parliament. It is publicly funded but is not answerable, in terms of its decisions on cases, to a Secretary of State or to Parliament. Nor is it possible to approach another ombudsman or other body to review a case where the Local Government Ombudsman has found that a local authority is not at fault. The LGO will refer complaints on to an alternative ombudsman if they do not fall within its remit.

The LGO will conduct an internal review under specified circumstances:

We will review our decision if you can show

- it was based on important evidence that contains facts that were not accurate, and you can show this using readily available information, or

¹¹ [Health Act 2009: Explanatory Notes](#)

¹² See <http://www.lgo.org.uk/adult-social-care/>

¹³ See Baroness Hanham's comments at Lords report stage: HL Deb 10 October 2011 c1353.

- you have new and relevant information that was not previously available and which affects the decision we made.

To request a review, you should fill in our form '[Your complaint, our decision: review request form](#)', within one month of our decision.¹⁴

The Government's view on this issue was clarified in September 2009:

Through the Local Government Act 1974 Parliament has established the local government ombudsman as independent of both central Government and local government. Parliament has required the ombudsman to present an annual report to it and the ombudsman's decisions, including on individual cases, can be subject to judicial review by the courts. We consider this sufficient.¹⁵

Brian Thompson, from the University of Liverpool, addressed this issue in evidence to the Communities and Local Government Committee in 2012:

...the whole point of the Ombudsman service in all areas is that it is meant to be accessed after the complainant has engaged with the body that caused the difficulty. In that sense it is meant to be the top of the complaints ladder. Obviously, there has to be finality and people can make a judgment as to where they think that would be, but the Ombudsman is meant to be the final point, subject to law—so there is the possibility of judicial review, but clearly that will not be possible for everybody who feels disgruntled because they will not be able to afford it. But if you start to do that you are really changing the system, because there has to be a final point and where do you draw that?¹⁶

It is possible to seek judicial review of a decision by the LGO, but a constituent would be well advised to seek legal advice before taking this route. There is no automatic right to judicial review: the applicant must seek leave from the High Court before bringing such a case. Moreover, the Court would not be concerned with the merits or otherwise of the case but with the legal basis of the decision.

¹⁴ See <http://www.lgo.org.uk/information-centre/about-us/our-performance/challenging-our-decisions>

¹⁵ HC Deb 9 September 2009 c2011W . See also [the response](#) to the Communities and Local Government Select Committee's report in 2012.

¹⁶ Brian Thompson, [evidence to the Communities and Local Government Select Committee](#), 23 April 2012, Q35, ev6

3. Recent reforms to the Local Government Ombudsman

3.1 The *Local Government (Review of Decisions) Act 2015*

This Act implements recommendations in Lord Young of Graffham's report, [Common Sense, Common Safety](#), which advocate the establishment of a fast-track appeal process where an event has been banned or restricted on health and safety grounds as a result of advice from council officials. Details of its passage through Parliament are available on the [Bill Pages of the Parliament website](#).

This Bill was first introduced by Christopher Chope MP in the 2010-12 Parliamentary session. This Bill reached report stage on 20 January 2012 but fell at the end of the 2010-12 session. A Bill containing almost identical text, the [Local Government \(Review of Decisions\) Bill 2013-14](#), appeared two sessions later, introduced by Charlie Elphicke MP. The 2014-15 session saw the Bill presented by Mark Spencer MP. It passed through both Houses without substantive debate.

3.2 Communities and Local Government Committee inquiry

The CLG Committee announced an inquiry into the Local Government Ombudsman on 21 February 2012.¹⁷ The report was published in July 2012. It outlined the corporate changes taking place at the Ombudsman between 2012 and 2015. The Committee was critical of delays in the Ombudsman investigating cases, and recommended that the Ombudsman should make clearer to complainants that there is a distinction between the Ombudsman deciding whether it has jurisdiction to investigate a complaint and *actually* investigating it.¹⁸

The Committee also raised the issue of whether the Ombudsman should aim to use a process of mediation. The Ombudsman noted that it aimed to take a quasi-legal and non-adversarial approach wherever possible. Actual "mediation" between a complainant and a public body is used relatively rarely:

The Ombudsman procedure is inquisitorial and investigative not adversarial. Its purpose is to determine what is fair and reasonable rather than a strict test of legality. Part 3 of the Local Government Act 1974 [s26 (6) (c)] provides for a system of informal administrative justice in lieu of recourse to alternative remedies available to complainants, including recourse to legal proceedings. The Courts have rejected attempts to introduce into Ombudsmen regimes the judicialisation of the Ombudsman process and the

¹⁷ CLG Committee press notice, [MPs to question the Local Government Ombudsman](#), 21 February 2012

¹⁸ The Ombudsman produced [a response to the Committee's report](#) (HC 615 2012-13), as did [DCLG](#) (HC 650 2012-13).

consequent additional formality and extended timescales that would involve.¹⁹

During and after the inquiry, the Ombudsman embarked on a process of restructuring. Details of the outcome of this process can be found in an independent evaluation report produced for the Ombudsman.²⁰ Amongst other things, the evaluation recommended that the 1974 Act should be amended to provide for a single Ombudsman instead of two or three; and that former senior officials of authorities covered by the Ombudsman should be disqualified from appointment as ombudsmen.

3.3 Merger of Ombudsmen

The Government indicated in its *Open Public Services White Paper* (July 2011) that it would review the role, powers and resources of the Local Government Ombudsman along with those of the other public sector ombudsman services – the Parliamentary and Health Services Ombudsman and the Housing Ombudsman.²¹ In an evidence session with the Public Administration Select Committee on 16 October 2013, Oliver Letwin announced two Government reviews relating to the question of complaints about public services:

I am currently proposing to run two parallel reviews. ...One, to look into the question of how we make better use of complaints and use them to achieve both redress for the citizen and improvement in service delivery; the other, to look at this question of the ombudsmen landscape.²²

The Local Government Ombudsman supported the creation of a single public services ombudsman in evidence to the same inquiry:

Direct access to a single public services ombudsman would provide the public with a clearer route to redress. This would be enhanced by the support of MPs, local councillors or other advocates where the public needed that input. At the same time, an Ombudsman service bringing together the existing expertise of individual ombudsmen, in areas such as local government, health and social care, would provide MPs and local councillors with easier access to the information they need to support their scrutiny of public services both locally and in Parliament.²³

In 2013, an independent review of the Local Government Ombudsman was carried out on behalf of the Government. The review was published alongside a Written Ministerial Statement on 29 November 2013.²⁴ This review, too, recommended a single local government ombudsman structure. It also recommended the creation of "a unified public services

¹⁹ Communities and Local Government Committee, [The work of the Local Government Ombudsman: Local Government Ombudsman Response to the Committee's Third Report of Session 2012–13](#), HC 650 2012-13, p.7

²⁰ See Richard Thomas et al., [External evaluation of the Local Government Ombudsman in England](#), 2013

²¹ HM Government, [Open public services white paper](#), Cm 8145, July 2011, pp22-3

²² Public Administration Select Committee, [Complaints: do they make a difference?](#) HC 229, 16 October 2013, p.16

²³ See [written evidence to the Committee's inquiry](#) on the Parliamentary Ombudsman service, LGO PHS 16.

²⁴ [HC Deb 29 Nov 2013](#) c28-9WS

12 The Local Government Ombudsman

ombudsman in the medium term”,²⁵ and suggested that in the short term, the LGO and the Parliamentary and Health Services Ombudsman should continue their recent pattern of close joint working. The [Regulatory Reform \(Collaboration etc. between Ombudsmen\) Order 2007](#) (SI 2007/1889) already permits joint working and data sharing between the two Ombudsmen, to help with handling cases which straddle their areas of responsibility.

The Government published a [Draft Public Service Ombudsman Bill](#) on 5 December 2016. Further detail on the draft Bill is available in [the Library briefing paper on the Draft Public Service Ombudsman Bill](#). The Communities and Local Government Committee held [a one-off evidence session](#) on the draft Bill in March 2017. The 2017 Queen’s Speech made no mention of introducing the Bill into Parliament at any given date.

The draft Bill would merge the LGO with the Parliamentary and Health Service Ombudsman, leaving open the option of merging in the Housing Ombudsman at a later date. The new Public Service Ombudsman would also see an end to the ‘MP filter’, which provides that complaints must be made to the Parliamentary and Health Service Ombudsman via a Member of Parliament (the MP filter has never applied to complaints to the Local Government Ombudsman).

The draft Bill does not provide the new body with ‘own initiative’ powers. This is a concept long debated in the field of administrative justice. At present, both the PHSO and LGO are reactive organisations: they must receive a complaint before opening a case. The Bill does not state that the conclusions of the new Ombudsman will be binding.

²⁵ Robert Gordon, [Governance Review of the Local Government Ombudsman Service](#), DCLG, 2013, p.16

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