



# The Parliamentary and Health Service Ombudsman: right of appeal

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Members often ask on behalf of their constituents whether there is any appeal against a decision by the Parliamentary Ombudsman (also called the Parliamentary Commissioner for Administration). This note provides guidance on this subject.

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## 1 Introduction

The Ombudsman's powers and responsibilities are set out in the *Parliamentary Commissioner Act 1967* as amended. The Ombudsman is appointed by the Queen by Letters Patent and is independent of both Government and Parliament. Her function is to investigate complaints from members of the public that they have suffered injustice because of maladministration by government departments or certain other public bodies. Complaints must be directed through a Member of Parliament (the so-called 'MP filter') and the complainant must first have put their grievance to the department concerned in order to allow officials to respond before taking the matter further.

## 2 Matters which the Ombudsman cannot investigate

The Ombudsman's website sets out those matters which are excluded from investigation. These include:-

- Complaints about Government policy or the content of legislation. Policy is for the Government to determine and legislation is for Parliament
- The investigation of crime, judge's decisions or matters relating to national security
- Staff issues – such as recruitment, pay and discipline
- Commercial or contractual issues except where they involve the compulsory purchase of land.

Further detail is given on the website.<sup>1</sup>

The Ombudsman will not normally investigate a complaint sent to an MP more than twelve months after the complainant first became aware of the matter about which he/she is concerned.

## 3 Right of appeal

There is no right of appeal against decisions of the Parliamentary Ombudsman. As stated above, the office is independent of Government and Parliament and decisions on cases cannot be overruled by a government minister or a parliamentary committee. It is possible to complain to the Ombudsman, including complaints about a decision.<sup>2</sup> Complainants may contact the member of staff that they have been dealing with, or alternatively his/her manager, the Deputy Ombudsman or they may telephone or e-mail the dedicated complaints helpline. Procedures are set out on the website, as follows:-

### What happens to my complaint?

Once you have made a complaint to this Office, we aim to send you an acknowledgement within 5 working days. That acknowledgement will provide an indication as to who will be responsible for responding to you. That person will be either the Ombudsman or one of her appointees.

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<sup>1</sup> <http://www.ombudsman.org.uk/>

<sup>2</sup> Parliamentary and Health Service Ombudsman, *Unhappy with our service?*, <http://www.ombudsman.org.uk/make-a-complaint/unhappy-with-our-service>

We will give serious consideration to the issues you raise. Where we identify mistakes in our earlier decision making or service we will acknowledge those mistakes and offer appropriate remedy.

We expect to respond to the majority of complaints within 16 weeks of the complaint arriving with us. The time taken to respond will vary depending on the urgency and complexity of the complaint. We will assess your complaint about us when it arrives and identify whether, exceptionally, it merits priority. If we are unable to respond within 16 weeks because, for example, the matters you raise require more detailed work, we will let you know.

#### **What if I still disagree?**

Once the Ombudsman or one her appointees has considered your complaint and sent you a response, their decision is final. We will acknowledge any further correspondence from you but, unless it raises new issues that we consider significant, we will not send further replies.<sup>3</sup>

## **4 Judicial review**

Decisions of the Ombudsman, as with ministerial decisions, are subject to judicial review, as acknowledged by the Ombudsman website. This was confirmed by a court case in 1994.<sup>4</sup> Such a procedure is both complex and expensive and a constituent would be well advised to take legal advice before taking this route. An applicant must seek leave from the High Court before bringing such as case and, moreover, judicial review is primarily concerned with the issue of whether the correct legal basis was used to reach a decision rather than the merits or otherwise of that decision.

Judicial review has rarely been used to challenge the findings of the Parliamentary Commissioner.<sup>5</sup> However, in April 2004, the High Court gave representatives of the Equitable Members Action Group leave to challenge the Ombudsman's decision in the case concerning the regulation of Equitable Life. EMAG subsequently announced in December 2004 that it had dropped judicial review proceedings following the decision of the Ombudsman to conduct a further investigation into the matter.

The Ombudsman, Ann Abraham, had the following to say about judicial review when giving evidence to the Public Administration Committee on 27 November 2003:-

It seems to me that there is a right to challenge my decisions and it is almost part of my quality assurance framework, if you like. In principle I do not have a problem with it. In practice I have not had a problem with it. It comes down to the same issues that I address every day of the week when looking at maladministration. I think that if judges are deciding whether I have acted wrongly on a legal issue, if I have got my jurisdiction wrong, if judges are saying that the conclusion I have reached is totally outside the bounds of any reasonable conclusion, that my logic is incomprehensible, I have no problem with that. If we find ourselves as ombudsmen in this situation where judges are regularly substituting their judgment for that of the ombudsman then I think we have a problem but I do not personally have any experience of that and, therefore, I

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<sup>3</sup> <http://www.ombudsman.org.uk/make-a-complaint/unhappy-with-our-service>

<sup>4</sup> *R v Parliamentary Commissioner for Administration ex p Dyer* (1994) (All ER 375)

<sup>5</sup> See Roy Gregory & Philip Giddings, *The Ombudsman, the Citizen and Parliament*, Politico's, 2002, pp429-33.

see it as part of the territory I suppose. It is not an easy situation to be in when you are the final arbiter about a set of circumstances.<sup>6</sup>

The Ombudsman has developed her thoughts on her relationship with the courts in a series of articles for *Parliamentary Affairs* in 2008. These are discussed in Standard Note 4032 *The Developing Role of the Ombudsman in the UK*. In her article “The Ombudsman as part of the UK Constitution”<sup>7</sup> Ann Abraham noted that “as Ombudsmen become more successful, so they are increasingly prone to judicial review.”

## 5 The role of Parliament

As stated above, the Ombudsman is appointed by the Queen and may be relieved of office at her own request, or may be removed from office by Her Majesty as a result of an address from both Houses of Parliament. The Collcutt review into public sector ombudsmen stated that the Ombudsman is ‘practically but not technically an officer of the House of Commons and although answerable to Parliament...has complete independence.’<sup>8</sup>

Section 10 (4) of the *Parliamentary Commissioner Act 1967* requires the Commissioner to lay annually before each House of Parliament a general report on the performance of her functions under the Act, and from time to time such other reports with respect to those functions as she thinks fit. The work of the Ombudsman is monitored by the Select Committee on Public Administration which was created in 1997 as a result of the merger of the Committee on the Parliamentary Commissioner for Administration and the Public Services Committee. Standing Order 146 is worded as follows:-

There shall be a select committee to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service;

In practice, the committee provides support to the Ombudsman, especially in highlighting failure to rectify maladministration, and considers general matters arising from her reports to Parliament. Bradley and Ewing summarise the position of the committee as follows:-

The Ombudsman has no executive powers. Thus he or she cannot alter a departmental decision or award compensation to a citizen, although an appropriate remedy may be suggested. A minister will usually be under a strong obligation to accept the Ombudsman’s findings, but a report might have such political implications that a minister could come under pressure not to accept it. To support the Ombudsman in such a situation, and to watch over the office, a select committee of the Commons...examines the Ombudsman’s reports and takes evidence from departments that have been criticised. The committee has made valuable studies of such matters as the powers and work of the Ombudsman, maladministration, remedies and the need for reform of the various public sector ombudsmen.<sup>9</sup>

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<sup>6</sup> <http://pubs1.tso.parliament.uk/pa/cm200304/cmselect/cmpublicadm/41/3112701.htm>

<sup>7</sup> *Parliamentary Affairs* January 2008 p214

<sup>8</sup> Collcutt, Philip & Mary Hourihan *Review of the public sector ombudsmen in England* (Cabinet Office, April 2000) pp 5-6;

[http://www.cabinetoffice.gov.uk/media/cabinetoffice/propriety\\_and\\_ethics/assets/ombudsmenreview.pdf](http://www.cabinetoffice.gov.uk/media/cabinetoffice/propriety_and_ethics/assets/ombudsmenreview.pdf)

<sup>9</sup> Bradley A.W. & Ewing K.D. *Constitutional and administrative law* (Longman, 14<sup>th</sup> ed, 2006 p719)

There is no reason why a complainant who is dissatisfied with the way in which a complaint has been handled should not write to the Public Administration Committee.<sup>10</sup> The Committee has no power to make the Ombudsman reconsider her decision and the constituent should be aware that this is not in any sense a formal procedure for appealing against an Ombudsman's decision. However, the Committee might wish to be made aware of cases in which the Ombudsman's decision has been adjudged to be unsatisfactory in some way.

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<sup>10</sup> Contact details at:  
[http://www.parliament.uk/parliamentary\\_committees/public\\_administration\\_select\\_committee/public\\_administration\\_select\\_committee\\_contact\\_details.cfm](http://www.parliament.uk/parliamentary_committees/public_administration_select_committee/public_administration_select_committee_contact_details.cfm)