



The Parliamentary Ombudsman and the MP filter

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This Note sets out the role of the MP in referring complaints to the Parliamentary Ombudsman and refers to other relevant Library Standard Notes.

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1 Introduction

The powers and responsibilities of the Parliamentary Ombudsman are set out in the *Parliamentary Commissioner Act 1967* as amended. The Ombudsman, or Parliamentary Commissioner for Administration, is appointed by the Queen by Letters Patent and is independent of both Government and Parliament. The function of the Parliamentary Ombudsman is to investigate complaints from members of the public who believe that they have suffered injustice due to maladministration by government departments or certain other public bodies.¹

The 1967 Act required the public to approach the Ombudsman through an MP – the so called ‘MP filter’. Despite proposals for reform, the filter remains in place – see Library Standard Note 4832, *The Ombudsman- the developing role in the UK*. This notes as follows:

The MP filter probably reduces the number of complaints received by the Ombudsman, so that the overall volume of work does not compare well with Ombudsman in other jurisdictions

A recent report from the Public Administration Select Committee (PASC) heard evidence from the Ombudsman to the effect that public awareness research conducted by her office suggested that the ‘MP filter’ could discourage individuals from coming forward with complaints. PASC was particularly concerned that the filter would mean that constituents would not have a chance to forward complaints following the dissolution of Parliament for the general election, and immediately afterwards.² It called for an immediate end to the filter by means of an amendment to the *Constitutional Reform and Governance Bill* currently before Parliament. So far, the Government have not tabled such an amendment.

The Parliamentary Ombudsman also acts as Health Service Ombudsman under separate legislation and for such healthcare matters no MP referral is necessary. This can cause issues when a complaint spans both health and central government matters. Further information is available from the [Parliamentary and Health Service Ombudsman](#) website.

2 Making a complaint

Complaints from members of the public to the Parliamentary Ombudsman must be directed through a Member of Parliament, and the complainant must first have put their grievance to the department or public body concerned to allow officials to respond before taking the matter further.

There is no requirement, statutory or otherwise, however, for a Member of Parliament to refer a case to the Ombudsman. Bradley and Ewing’s *Constitutional and Administration Law* states that:

...the citizen has no right to present a complaint to the Parliamentary Ombudsman. In the first instance, a complaint must be address by the person who claims to have suffered injustice to an MP.... It is for the MP to decide whether to refer the complaint to the Ombudsman. Usually complainants will send the complaint to their constituency MP but the Act does not require this. When the Ombudsman receives a complaint from a private person that is clearly investigable, it may be sent with the complainant’s

¹ SN/PC/03079 *Parliamentary Ombudsman: right of Appeal*.

² *Parliament and the Ombudsman*, HC 107 2009-10

agreement to his or her MP, with a statement that the Ombudsman will investigate it if the MP wishes this to be done.³

Section 5(1) of the *Parliamentary Commissioner Act 1967* states:

5 Matters subject to investigation

(1) Subject to the provisions of this section, the Commissioner may investigate any action taken by or on behalf of a government department or other authority to which this Act applies, being action taken in the exercise of administrative functions of that department or authority, in any case where—

(a) a written complaint is duly made to a member of the House of Commons by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken; and

(b) the complaint is referred to the Commissioner, with the consent of the person who made it, by a member of that House with a request to conduct an investigation thereon.

Therefore, a Member of Parliament may refer a case to the Parliamentary Ombudsman without supporting it as such, or else decide not to forward it at all. It is also worth noting that a constituent may approach another Member, if the first decides not to forward the complaint. There is no requirement in the legislation that it is the constituency MP who makes the referral.

3 The Ombudsman's findings

Even if the findings are in favour of the complainant, and against a department, the Ombudsman has no executive powers to alter a department's decision, or award compensation. An appropriate remedy may be suggested, as a recommendation from the Ombudsman.

A minister will usually be under a strong obligation to accept findings and recommendations.⁴ The *Bradley*⁵ case usefully highlights the difference between the two, suggesting that there should be cogent reasons for ministers not to accept the Ombudsman's findings, as opposed to recommendations, as discussed in an evaluation of the first 40 years of the Ombudsman:

In this case Mr Justice Bean was prepared to quash the Secretary of State's decision to reject one of the PO's finding of maladministration in the *Occupational Pensions* report and accordingly directed the government to reconsider one of the PO's recommendations. In doing so, Mr Justice Bean implied that while public authorities retain the discretion not to implement the recommendations of ombudsmen, it is unlawful to reject their findings of maladministration unless those findings can be 'objectively shown to be flawed or irrational, or peripheral, or there is genuine fresh evidence to be considered.' Were public authorities to adhere to such a principle of law on the rare occasion that they refuse to implement the PO's recommendations, it would have the benefit of focusing political attention on the reasons why they made that decision rather than the finding of maladministration by the PO.⁶

³ Bradley and Ewing, *Constitutional and Administrative Law*, 14th Edition, 2006, p718

⁴ SN/PC/03079 [Parliamentary Ombudsman: right of Appeal](#).

⁵ [Bradley, Duncan, Parr and Waugh v Secretary of State for Work and Pensions \[2007\] EWHC 242 \(Admin\)](#)

⁶ [The Parliamentary Ombudsman: withstanding the test of time](#) 4th report HC 421 2006-07 March 2007 p14

4 Matters excluded from Investigation by the Ombudsman

The following cannot normally be investigated by the Parliamentary Ombudsman:

- [Local council](#) (although the Ombudsman can sometimes look into some aspects of social care)
- [Gas, electricity and water](#)
- [Postal services](#)
- [Telecommunications](#)
- [Television, radio, newspapers and advertising](#)
- [Police](#)
- [Financial services and Pensions](#)
- [Consumer issues](#)
- [Members of Parliament](#)⁷

5 Appeals

There is no right to appeal to a decision made by the Parliamentary Ombudsman. As the office is independent of Government and Parliament, decisions on cases cannot be overruled by a government minister or a parliamentary committee. For further information see Library Standard Note *Parliamentary Ombudsman: right of Appeal*.

However, complaints can be made. As the Ombudsman's website states: "Anyone who comes into contact with our service and is unhappy or dissatisfied can complain. For example, you may wish to complain about our decision on your case, about our service or about our decision on your Freedom of Information or Data Protection request."⁸ Complaints are given serious consideration, and if mistakes are identified, they should be rectified. Once a decision has been made on a complaint, that decision is final.

Beyond this there is potentially recourse to judicial review. As stated in [Library Standard Note Parliamentary Ombudsman: Right of Appeal](#), "Decisions of the Ombudsman, as with ministerial decisions, are subject to judicial review. This was confirmed by a court case in 1994."⁹ Such a procedure is long and complex and has rarely been used.

⁷ <http://www.ombudsman.org.uk/make-a-complaint/if-we-cant-help>

⁸ <http://www.ombudsman.org.uk/make-a-complaint/unhappy-with-our-service>

⁹ SN/PC/03079 [Parliamentary Ombudsman: right of Appeal](#)