



**Direct Access to the
Parliamentary Ombudsman**

**JUSTICE response to
Consultation PHSO-0147**

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Introduction

1. Founded in 1957, JUSTICE is a UK-based human rights and law reform organisation. Its mission is to advance justice, human rights and the rule of law. It is the British section of the International Commission of Jurists.
2. The consultation paper confirms the long engagement JUSTICE has had in the history and development of ombudsmen. The origin of the Parliamentary Commissioner for Administration (PCA) is to be found in JUSTICE's 1961 Whyatt Report,¹ which led directly to the Parliamentary Commissioner Act in 1967.
3. For understandable reasons the original 1964 Act adopted a cautious approach to the workings of the ombudsman. This followed JUSTICE's recommendation of 1961 that the PCA should initially only receive complaints from the Members of the Houses of Lords and Commons. However, this was always intended to be merely an initial stage which John Whyatt had recommended would be desirable 'in the beginning' until it was 'established and well understood'. By 1977, JUSTICE recommended that a less cautious approach would have been appropriate instead.² In 2011, with the system now very well-established, we suggest that there is even less need for retaining the MP filter in its current form and an even more compelling case for direct access to the PCA. We therefore welcome the PHSO's current consultation and the research it has undertaken in respect of the impact of the MP filter.
4. We note that the current PCA, Ann Abraham, highlights in the foreword to the consultation the importance of the ombudsman's links with Parliament. We agree that this must not be diminished by the removal of the MP filter. Reform is however essential to ensure that there is equal access to the PCA by everyone who needs it.
5. We also welcome the level of research that has been undertaken raising issues of deterrents, delay (up to 3 months) and inconvenience in the office of the PCA, highlighting that reform is necessary.

Response to Consultation Questions

Would you be in favour of complainants having direct access to the Parliamentary Ombudsman?

6. We welcome the proposal to widen access to the PCA by removing the restriction that such access should only be granted through an MP. This idea has been suggested for many years from different quarters, not least by JUSTICE. It was, for example, proposed in a

¹ *The Citizen and the Administration: The Redress of Grievances. A Report by Justice*, (1961).

² *Our Fettered Ombudsman* (JUSTICE, 1977).

Parliamentary Commissioner Amendment Bill introduced by Lord Lester QC (expressly introducing himself as a member of the JUSTICE council) into the House of Lords on 17 January 2000. He spoke of:

The much-criticised and unnecessary hindrance to the public's right of access which the Bill seeks to remove is the so-called "MP filter", which fetters the powers of the PCA.³

7. Broadly speaking, the aim of public ombudsmen schemes is to achieve greater fairness between the individual and the state. There is a growing demand by citizens for fairness in situations where the courts do not provide a remedy for maladministration – either because there is no legal liability or because litigation is unaffordable. Given this rise in the need for ombudsmen in the public sphere it is wrong that access to the PCA should be hampered by a barrier requiring individuals to approach their MP first. It is clear from the consultation and from our previous reports on this issue that the key principles to be considered in contemplating reform are the need to ensure equal access (c.f. the variation in how MPs approach referrals), the speed and efficiency in resolving complaints, the simplicity of the process and how unnecessary, vexatious complaints can be restricted.
8. It is evident that increasing the ease with which individuals can go to the ombudsman will increase equality of access for groups who may be unwilling or less likely to approach their constituency MP (the consultation paper itself notes that 19% of people questioned said they would be less likely to bring a complaint to the PCA because of the need to contact an MP first). The removal of the MP filter will likewise end the inconsistency caused by variation between MPs as to their willingness to refer constituency cases to the PCA, as highlighted by the consultation paper (although we note that consideration must be given as to how to make sure MPs are consistent in their approach in making constituents aware of the availability of direct access – see below).
9. The Law Commission has consulted on this question in 2008 and 2010. In its most recent report on Public Services Ombudsmen published 14 July 2011, the Law Commission recommends a dual track system whereby a complaint can be lodged with an MP or the ombudsman directly⁴. We note also the Public Administration Select Committee's approval of the measure in its report of 2009,⁵ and the Cabinet Office's own recognition⁵ of the strong case for direct access in 2000.⁶ This widespread support for the opening up of access to the ombudsman demonstrates a clear basis for reform.

³ Column 949

⁴ <http://www.justice.gov.uk/lawcommission/publications/ombudsmen.htm>

⁵ Public Administration Select Committee, 4th Report of 2009-2010 Session, HC

⁶ Review of the Public Sector Ombudsmen in England, Cabinet Office, 2000, Executive Summary

10. However, we would also add that any changes to the PCA to institute direct access should additionally make provision for complaints to be submitted in forms other than in writing. We note the Law Commission also recommends that restrictions on making complaints in writing should be lifted and support this recommendation. Equal and open access will be best ensured by allowing phone, email and online complaints submissions as well as traditional written applications to the ombudsman. In introducing such reform, clearly it must be remembered that the service must be available to all members of the public, including children, people who use English as a second language and disabled people.
11. Allowing direct access will bring the UK into line with other ombudsmen systems across the world. The Australian Commonwealth Ombudsman allows complaints to be made directly, and even on-line.⁷ So too does the New Zealand Ombudsman⁸ and the French Mediateur de la Republique.⁹ We believe that international experience (particularly in common law jurisdictions) demonstrates that there are no practical obstacles to the use of direct access. This is also confirmed by the PCA's commitment to 'absorbing the cost of any rise in complaints within her current resources' which suggests that the practical impact of allowing direct access will not be substantial.
12. As noted above, consideration is required into how it would be ensured that MPs are consistent in highlighting the availability of direct access to their constituents. In opening up direct access, it will therefore be essential to ensure that there is sufficient signposting in Governmental bodies and guidance materials to highlight their right of direct access to the PCA.

Do you think the MP filter should be abolished outright or replaced with a dual track system?

13. We believe that the MP filter in its current form should be abolished but that a dual track system should exist to ensure that constituents are still able to approach their MPs in respect of any complaints they may have. We note that in practice an MP will always be able to refer a complainant on to the Parliamentary Ombudsman (just as they may currently direct them to the Local Government Ombudsman) and therefore a non-compulsory MP filter is *de facto* abolition of the filter. We feel that the ability to approach one's MP must however be maintained and that this should be expressly protected in a dual track form.
14. Since 1977 JUSTICE has called for a dual track approach that allows access through an MP or directly to the Ombudsman. We have set out above our reasons for supporting direct access to the ombudsman. However, we maintain that there are benefits gained from allowing

⁷ <http://www.ombudsman.gov.au/pages/making-a-complaint/>

⁸ <http://www.ombudsmen.parliament.nz/index.php?CID=100007>

⁹ <https://formulaire.mediateur-republique.fr/formulaire-reclamation/php/accueil.php>

MPs to refer such complaints, for example it allows MPs to be kept aware of administrative problems arising in their constituency which may enable them to act against a pattern of administrative failings at a broader, policy level. We also believe that there is value in MPs dealing with constituency complaints. Firstly, MPs have to be held accountable to their constituents and should be able to be approached by any constituent in their area. This role must be explicitly retained. Maintaining access to a constituent's MP may also allow some complaints to be dealt with directly and by simpler means. Finally, we note that maintaining strong links with Parliament in general is important to the effectiveness of the PCA. This has been most recently demonstrated by the co-operation between the Ombudsman and the Public Administration Select Committee over the Equitable Life affair.

15. In addition to a dual track procedure, we believe that the benefits of MP involvement must not be lost in allowing direct access to the PCA. We would recommend that any such direct complaints should be accompanied by some form of notification mechanism, whereby (subject to the complainant's consent) the PCA would inform the constituency MP of a complaint that has been accepted. Such a mechanism would ensure that the benefits of MPs involvement as described above were maintained (including their important role in law reform). It would also reduce the risk of wasteful overlap in case handling, whilst enabling greater co-operation between the MP and PCA where appropriate and useful.
16. A dual track procedure would ensure that the role of the MP is not diminished from its constitutional role. It would allow an MP to remain as part of the intermediary process but would also allow individuals to approach the PCA directly, where there was any reason that they did not want to approach their MP. This would not take away from the role of the MP but would simply open up access for many more.
17. Retaining a role for MPs would also ensure that the ombudsman's proactive work in suggesting systemic change to government bodies is not lost, despite the increased caseload caused by direct access. The improvements driven by the PCA are important to the administrative process and therefore this must be maintained. By allowing dual access, we believe that this would provide more opportunity to do so.

Other issues

18. We are grateful that the PCA is again raising the important issue of access and supports direct access. However, we do not think the opportunity to reform access to the PCA should be confined solely to this issue. We note that in its recent report, the Law Commission recommended a wide-ranging review of public service ombudsmen's role as institutions for

administrative justice, to assess how best they should be constituted to fulfil that role.¹⁰ We agree with this recommendation. The impending reforms to legal aid funding are likely to put even greater pressure on non-curial dispute mechanisms, such as ombudsmen and constituency MPs, particularly in the wider context of avoiding litigation. In this context, all the issues surrounding the accessibility of the PCA should be reviewed and not simply the MP filter.

19. In particular, it seems strange to consider the deterrence to complainants caused by the MP filter without considering similar difficulties that arise from confusion as to the different jurisdictions of the various public service ombudsmen. The simplest answer to this problem would be consolidation of the various ombudsmen services. We have advocated this option for many years now. Intervening in the 2000 debate, Lord Alexander of Weedon QC, then JUSTICE's chair of council, said:

JUSTICE considers that there would be merit in bringing together the parliamentary, health and local government ombudsmen in one unified scheme or, at any rate, on a more collegiate basis. Precisely because of the complexity of modern society, it can be unclear ... to which public sector ombudsman they should take their complaint. Indeed, many potential complaints involve more than one department of central and local government.¹¹

20. Lord Alexander pointed out that the various private sector ombudsman schemes covering the financial sector (banking, insurance etc.) in the UK were then in the process of being (and have in fact since been) brought together in the single Financial Ombudsman Service. This avoids possible duplication. It also helps to avoid complainants from getting misdirected.

21. We note that similar recommendations were made by the Cabinet Office review of ombudsmen in 2000:

We make recommendations for the creation of a new Commission built on the modernisation and consolidation of the existing legislation. The current PCA, HSC and CLA would be combined in a new collegiate structure which would have a strong customer focus aimed at early and flexible methods of resolution whilst retaining the traditional attributes of an ombudsman. The current requirement for complaints about central government bodies to be put first to a Member of Parliament should, we believe, be removed so that a single gateway could deal with all complaints within the ombudsmen's jurisdiction.¹²

¹⁰ The Law Commission Public Services Ombudsmen (Law Com No 329), p 17.

¹¹ Column 957.

¹² Review of the Public Sector Ombudsmen in England, Cabinet Office, 2000, Executive Summary.

22. We agree with these recommendations and would welcome wider reform in this area.

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