

# Ombudsman in UK

## **1- Introduction and background**

The post of parliamentary ombudsman was established in 1967 in the Parliamentary Commissioner Act as a new type of public official who could investigate complaints of citizens about maladministration by government officials. The statutory office holder was given statutory powers to have access to information, to require the attendance of witnesses and absolute privilege to protect his reports. What 'maladministration' included, in the words of cabinet minister Richard Crossman when introducing the legislation in 1966, was: 'bias, neglect, inattention, delay, incompetence, inaptitude, perversity, turpitude, arbitrariness and so on'. At the time of its introduction the concept was attacked as a constitutional innovation which could not be reconciled with ministerial accountability to Parliament, and which usurped an MP's traditional role of pursuing the grievances of constituents. Partly as an answer to such criticism, the new scheme required that all complaints were to be channelled through MPs who could pass them on to the ombudsman, the 'MP filter'. The office of Health Service Ombudsman was created in the NHS Reorganisation Act 1973 following pressure for an effective resolution of grievances, given the exclusion of the NHS from the 1967 Parliamentary Commissioner Act, as outside the direct responsibility of the then Minister for Health. It was subsequently modified by the Parliamentary and Health Service Commissioners Act 1987, the Health Service Commissioners Act 1993 and the Health Service Commissioner (Amendment) Act 1996. This last Act considerably broadened the scope of the investigations by enabling the HSC to investigate all aspects of NHS care and treatment, including clinical judgement. It was designed to place the Ombudsman at the top of the new unified NHS complaints procedure. Until devolution, the parliamentary ombudsman was chosen by convention as Health Service Ombudsman for each constituent part of the UK, except for Northern Ireland. Currently, the post is combined with Health Service Ombudsman for England, as separate arrangements apply in Scotland, Wales and Northern Ireland. There is no MP filter for the Health Service Ombudsman. The parliamentary ombudsman's office today continues to investigate cases of maladministration in

government departments and agencies and other public bodies. The current Ombudsman is Dame Julie Mellor. Her predecessor, Ann Abraham, retired in January 2012. The Public Administration Select Committee monitors the work of the Parliamentary and Health Services Ombudsman through regular hearings and support. It is due to take oral evidence from Dame Julie in December 2012. The Ombudsman is an appointment made by the Crown under the terms of the Parliamentary Commissioner Act 1967. The Act now specifies a seven year term. In practice, an open competition is held for the post, and an interview panel makes the final selection. The chairman of the Public Administration Select Committee participates in the process and the panel has an external assessor from the Public Appointment Commissioner's office to ensure that the appointment is made fairly according to the Commissioner's Code of Practice. To indicate the constitutional importance of the Ombudsman, the salary is paid from the consolidated fund, standing services, in the same way as a High Court judge. The parliamentary ombudsman's office is funded via a parliamentary vote. In short, it is funded out of government resources, which are approved by Parliament. The Ombudsman is responsible for: 1. providing the Treasury with a 3 Year Funding Settlement Submission as required; 2. providing the Treasury with a Main Estimate of resources, capital and cash requirements, including pay, for the following financial year in accordance with the published timetable; 3. ensuring that such Estimates are scrutinised and approved by the Executive Board with due regard to the need for economy, efficiency and effectiveness in the request for and use of resources; and, for pay, ensuring that full account is taken of the need for broad comparability with the Civil Service.<sup>3</sup> Staff are crown servants recruited separately by the Ombudsman's office.<sup>4</sup> A full history of the office, including the Health Service Commissioner is given in a recent book, *The Ombudsman, the Citizen and Parliament* (2002) Roy Gregory and Philip Giddings. The office also has a non statutory advisory board, established in 2004, to act as a critical friend, providing advice and support. An executive board, chaired by the Ombudsman, exercises management functions.

### 1.1 **Judicial review**

Library Standard Note no 3079 Ombudsman decisions-right of appeal explains that there is no right of appeal against her decisions, apart from the use of judicial review. A judicial review case in 1994, *ex p Dyer* 5 rejected the argument that the Ombudsman was amenable only to control by Parliament and not subject to review by the courts. In the period 1994-2002, there were three reported cases in which the Ombudsman has been subjected to judicial review.<sup>6</sup> 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. However, in December 2004 EMAG announced that it had dropped its judicial review proceedings following the decision of the Ombudsman to conduct a further investigation into the matter. The Court of Appeal judgement in February 2008 in respect of the Ombudsman's recommendation on final salary scheme pensions is discussed below.

## **2 Devolution and ombudsmen**

The advent of devolution in Scotland, Wales and Northern Ireland led to adjustments and developments of the ombudsman schemes in each constituent part. The parliamentary ombudsman still deals with reserved matters in relation to Wales, Scotland and Northern Ireland as well as complaints about maladministration in Government departments, their agencies and some other public bodies in the UK in relation to England. So it has a mix of jurisdictions; some UK wide, some GB wide, some simply English and some NI only.

### **2.1 Scotland**

Scotland took the lead in merging the former ombudsmen's offices of the Scottish Parliamentary and Health Service Commissioners, the Commissioner for Local Administration in Scotland (Local Government Ombudsman for Scotland) and the Housing Association Ombudsman for Scotland in 2002, creating the Scottish Public Services Ombudsman (SPSO). The Scottish Public Services Ombudsman Act 2002 had cross party support in the Scottish Parliament. Key changes made by it included:

- ◆ removing the need for complaints to go through MSPs (the ‘filter’) relevant for the Scottish parliamentary ombudsman cases;
- ◆ greater accessibility to the Ombudsman including provision for a person to authorise a representative to complain on their behalf, and to allow oral complaints to be accepted in special circumstances;
- ◆ publication of all investigation reports;
- ◆ empowering the Ombudsman to publicise cases where an injustice has not been remedied;
- ◆ appointment of the Ombudsman and deputies by the Monarch on the nomination of the Parliament.

The SPSO is appointed by the Monarch on the nomination of Parliament for a 5 year renewable period and may be removed following a resolution passed by more than two-thirds of all MSPs. Salary, expenses and allowances are determined and provided by the Scottish Parliamentary Corporate Body. SCPB also approves the appointment of staff by the SPSO. Unlike the UK Ombudsman and the UK Parliament, the Scottish Parliament (through the SPCB) is within the SPSO’s jurisdiction. The SPSO must lay an Annual Report before Parliament. He or she may also lay any other reports with respect to the exercise of the office's functions and must lay copies of any reports on its investigations before Parliament. Investigation reports must also be sent to the Scottish Executive.

## **2.2 Northern Ireland**

The title of Northern Ireland Ombudsman is a popular name for two offices which are currently held by the same person: The Assembly Ombudsman for Northern Ireland; and The Northern Ireland Commissioner for Complaints. This Office was originally established in 1969, but the current powers and responsibilities are laid down in the Ombudsman (Northern Ireland) Order 1996 and the Commissioner for Complaints (Northern Ireland) Order 1996. On 1 December 1997 these were extended, by the Commissioner for Complaints (Amendment) (Northern Ireland) Order 1997, to include complaints about doctors, dentists, pharmacists and optometrists (ophthalmic opticians) providing family health services and by other health care professionals in health and personal social services. The Northern

Ireland Ombudsman investigates complaints from people who claim to have suffered injustice because of maladministration by the bodies which are specified in the legislation. This includes all local councils, education and library boards, health and social services boards and trusts, as well as all government departments and their agencies. The Northern Ireland Ombudsman currently provides an investigatory service to the Committee on Standards and Privileges of the Northern Ireland Assembly in respect of cases of complaint against Members of the Assembly. This service is operated on a case by case basis and investigatory action is initiated by the Committee. Complaints about Members of the Assembly are directed to the Clerk of Standards in the Northern Ireland Assembly and not to the Northern Ireland Ombudsman. The Northern Ireland Ombudsman is independent of the Northern Ireland Assembly and of the government departments and public bodies which can be investigated. The Northern Ireland Ombudsman is appointed by the Monarch, and reports to the Northern Ireland Assembly.

### **2.3 Wales**

The Public Services Ombudsman (Wales) Act 2005 merged four ombudsman services into a single Public Services Ombudsman for Wales (the "Ombudsman").<sup>11</sup> The four services were the Welsh Administration Ombudsman, the Local Government Ombudsman for Wales, the Health Service Ombudsman for Wales and the Social Housing Ombudsman. The Ombudsman also enforces the Code of Conduct for Local Councillors in Wales. The Act came into force on 1 April 2006. The functions of the office are carried out on behalf of the Crown and the Ombudsman is a Crown servant but not part of the civil service. S.24 of the 2005 Act sets out the required procedure if a special report is made by the Ombudsman in a case where a complaint was made in respect of the Assembly. The First Minister must lay a copy of the report before the Assembly and, unless the required action has already been taken, give the Assembly notice of his or her intention to move that the Assembly resolve to approve the recommendations contained in it. Standing Orders should specify that these actions should be taken as soon as reasonably practicable after the Ombudsman has made his or her recommendations. The Ombudsman is currently appointed by the Monarch,

on the recommendation of the Secretary of State following consultation with the Assembly. During the passage of the Government of Wales Bill 2005-6 this method of appointment was questioned. For example, during the second reading in the Lords, Lord Roberts of Llandudno asked, with 'increasing emphasis on devolution and democratic appointments, is this not an opportunity for the Government to allow the Assembly to make the appointment?' The Government of Wales Act 2006 amends the 2005 Act so that the Ombudsman is to be appointed by the Monarch on the nomination of the Assembly. The Ombudsman is appointed for a non-renewable 7 year term and can resign by requesting that the Monarch relieves him or her from office. The Monarch can also dismiss the Ombudsman if he or she is medically incapable of performing the functions of the office or on the grounds of misbehaviour. Under the 2005 Act the Secretary of State is required to consult the Assembly before recommending the dismissal of the Ombudsman. The Government of Wales Act 2006 amends the 2005 Act so that this can only be done following a resolution passed by at least two thirds of the total number of Assembly Members. The Public Services Ombudsman's Annual Report is required to be laid before the Assembly. Standing Order 6.6. requires that time shall be made available in Plenary, in each twelve month period, to discuss the Report. The Ombudsman can also present extraordinary reports to the Assembly if he or she wishes. Following separation of the Assembly into two constituent parts in the Government of Wales Act 2006, the financial independence of the Ombudsman has been strengthened as the office is now funded from the Welsh Consolidated Fund through the Assembly, rather than the Assembly Government.