

DIRECT PUBLIC ACCESS TO THE PARLIAMENTARY OMBUDSMAN

RESPONSE TO THE PARLIAMENTARY AND HEALTH SERVICE OMBUDSMAN'S CONSULTATION

Submission by The Odyssey Trust¹

The Odyssey Trust seeks to promote good governance and the effective protection of human rights. The Trust is directed by Lord Lester of Herne Hill QC, together with two Parliamentary Legal Officers, Joanna Dawson and Sophia Harris, and a Legal Researcher, Caroline Baker.

This submission responds to the Parliamentary and Health Service Ombudsman's consultation on direct public access to the Parliamentary Ombudsman.

We strongly support a public right of direct access to the Parliamentary Ombudsman.

Consultation questions and our answers

Question One

Would you be in favour of complainants having direct access to the Parliamentary Ombudsman, as is the case with the Health Service Ombudsman for England, the Local Government Ombudsman for England and the Public Services Ombudsmen in Scotland and Wales?

Answer: Yes.

Question Two

Specifically, do you think that the MP filter should be:

- Abolished outright and replaced with direct access so that an MP referral is not required to access the Ombudsman?

Answer: No.

¹ For more information about the work of the Trust, please visit our website www.odysseustrust.org

- Replaced with a dual track system which would allow complainants the option of either making a complaint through an MP or accessing the Parliamentary Ombudsman directly?

Answer: Yes.

- Retained, so that the public continue to require a referral from an MP to access the Parliamentary Ombudsman?

Answer: Yes, if it is retained in the sense of a halfway house system (please see answer to Question 3 for more detail about how a halfway house system could work).

Question Three

What are the reasons for your responses to questions 1 and 2?

Answer:

The office of Parliamentary Commissioner for Administration was established almost fifty years ago under the Parliamentary Commissioner Act 1967 (“the 1967 Act”) to investigate complaints from members of the public of injustice resulting from maladministration by government departments. The Parliamentary Commissioner (or Parliamentary Ombudsman as the office is now more commonly known) is an officer of the House of Commons and performs an important constitutional role in calling public officers to account for the way in which they discharge their public functions.

Section 5(1) of the 1967 Act provides that the Parliamentary Ombudsman may undertake an investigation only at the request of an MP. The complainant must submit the complaint in writing to the MP and hope that the MP refers it to the Parliamentary Ombudsman. The Parliamentary Ombudsman reports the result to the MP. This is known as the ‘MP filter’.

The Parliamentary Ombudsman’s office has great potential in promoting good government and in providing the citizen with an inexpensive and non-adversarial form of redress for injustice resulting from maladministration. The office has become a universally accepted and well established part of our parliamentary system of constitutional government, and has increased ministerial accountability. The procedure involves no cost to the complainant

and is an informal, relatively speedy alternative to the legal process. It is an excellent form of alternative dispute resolution.

The hindrance to the public's right of access is the MP filter, which is the only way to reach the Parliamentary Ombudsman and so fetters the Parliamentary Ombudsman's powers and public accountability. Following recent reform in France, the United Kingdom is now the only parliamentary democracy that does not permit a public right of *direct* access to the Parliamentary Ombudsman or equivalent officer, and recourse to the Parliamentary Ombudsman is much less common than would otherwise be the case.

As the consultation paper notes² there is direct access to the Local Government Ombudsman in England, the Public Service Ombudsmen in Scotland and Wales, and the Health Service Ombudsman for England. We agree that the mandatory MP filter leaves the Parliamentary Ombudsman out of step with other modern public sector ombudsmen. It is an outmoded requirement which was politically expedient when the 1967 Act was passed but can no longer be justified as being in the public interest.

Lord Lester QC has introduced three Private Members' Bills and asked many Parliamentary Questions seeking to introduce direct public access to the Parliamentary Ombudsman without success. His attempts were as follows.

Parliamentary Commissioner (Amendment) Bill 2000 - abolishing the MP filter

The Parliamentary Commissioner (Amendment) Bill 2000 was introduced on 24 November 1999. It sought to abolish the MP filter. The aim was to enable and encourage members of the public to submit complaints to the Parliamentary Commissioner directly as far fewer people than expected were making use of the valuable procedure.

The Bill had its Second Reading debate on 17 January 2000³ but although there was strong support for it, the Government opposed it on the grounds that removing the filter would be likely to increase substantially the number of cases that would come before the Parliamentary Ombudsman and that the Parliamentary Ombudsman's procedures would also need to be amended to deal with this increased workload. It was noted that when the Local Government

² Consultation on direct access to the Parliamentary Ombudsman, 2011, p8, paragraph 3.5.

³ *Hansard* HL, vol 608, col. 948, 17 January 2000.

Ombudsman 'councillor filter' was removed, the increase in workload was around 44 per cent.

It is true that the abolition of the MP filter would be likely to increase the workload of the Parliamentary Ombudsman but that is not a good reason to oppose reform. Members of the public should have unimpeded access to the Parliamentary Ombudsman as a matter of good governance and public accountability. And the Parliamentary Ombudsman has indicated that she would welcome direct public access. The UK procedure is significantly underused in comparison with other countries. When Hong Kong, Ireland and France abolished their filters there was a substantial increase in the workload but with beneficial results to fair administration and good governance.

The Government also explained that, as the Cabinet Office was in the process of conducting a review of the procedures for ombudsmen, including consideration of the MP filter, they would await the outcome of that review before taking a decision.

The Minister noted that the 1967 Act intended that the Ombudsman would assist Parliament in holding the Government to account; the MP filter was and is central to preserving the relationship between the Ombudsman and Parliament. It was suggested that to remove the filter would both damage the constitutional position of the Ombudsman and reduce Parliament's ability to hold the Government to account.

Several speakers expressed concern that direct access to the Parliamentary Ombudsman would undermine the constitutional role of MPs. As the MP filter provides a mechanism by which MPs are able to keep in touch with constituents' issues and concerns, it was suggested that providing direct access to the Parliamentary Ombudsman would weaken the relationship between constituent and MP.

Parliamentary Commissioner (Amendment) Bill 2005 – dual track system

Inaction by the Government following their review of the ombudsmen's procedures and renewed calls for direct access to the Parliamentary Ombudsman prompted a second Private Member's Bill on the subject, the Parliamentary Commissioner (Amendment) Bill 2005. It was introduced in the House of Lords on 24 November 2005.

This Bill took into account the Government's previously stated concerns about retaining the link with MPs and their constituents and the link between the

Ombudsman and Parliament by creating a dual track system which meant that the MP filter could be bypassed if desired but was retained for those that wanted to use the procedure.

The Bill had its Second Reading on 4 February 2005⁴. Although the Bill addressed the Government's previous concerns about allowing direct access to the Commissioner and the Government recognised the importance of the issue, they declared themselves unable to support the Bill.⁵ It was suggested that over time the public would simply ignore the MP filter and go directly to the Parliamentary Ombudsman.

Direct access to the Parliamentary Ombudsman is an important right and part of active citizenship. If the Government oppose the dual track system because they fear it would result in the gradual erosion of the MP filter there might be another option. During the Second Reading debate of the 2005 Bill it was suggested by Lord Cope of Berkeley that a halfway house system might be introduced. This would mean initially making a complaint of maladministration in writing to one's MP, giving the MP a reasonable length of time for the filter to operate, with a right of direct access after a prescribed time without reference by the MP.⁶

The MP filter would be retained since a complainant would still have to go to his or her MP in the first instance. After four weeks, or whatever reasonable time was prescribed, if the MP had not dealt with the matter, either through inaction or a refusal to refer it, the individual would have the right, having exhausted the MP remedy, to take the complaint directly to the Parliamentary Ombudsman. This would address concerns that direct access would undermine the constitutional role of MPs.

Constitutional Reform (Prerogative Powers and Civil Service etc) Bill 2006 - dual track system

The provisions of the 2005 Bill were reintroduced as Part 5 of the Constitutional Reform (Prerogative Powers and Civil Service etc) Bill, which had its Second Reading in the House of Lords on 3 March 2006⁷. It passed through all subsequent stages of the House of Lords, with Third Reading on 24 July 2006. Once again, however, the previous Government did not support the Bill.

⁴ *Hansard* HL, vol 669 cc477-98, 04 February 2005.

⁵ The Bill passed successfully through its subsequent stages in the Lords with Committee stage on 25 February 2005 and Third Reading on 3 March 2005. The Bill was not taken up in the Commons.

⁶ *Hansard* HL, vol. 669, col. 492, 4 February 2005.

⁷ *Hansard* HL, vol 679, col 441-485, 3 March 2006.

Parliamentary Questions

Lord Lester has also tabled a number of Questions for Written Answer asking Ministers whether they support measures to enable members of the public to bring complaints of maladministration by the Executive directly to the Parliamentary Ombudsman⁸; whether the restrictions placed on public access to the Parliamentary Commissioner for Administration are in the public interest⁹; whether they will consider introducing legislation enabling members of the public to have direct access to the Parliamentary Ombudsman¹⁰ as well as through their Member of Parliament¹¹; and whether they will consult Members of the House of Commons on the desirability of direct public access to the Parliamentary Commissioner for Administration¹². Despite support for direct access from the Law Commission, academics, the Public Administration Select Committee and the Ombudsman herself, the Government have repeatedly refused to take action to enable direct public access to the Parliamentary Ombudsman.

International comparative data

In 2009-10 the UK Parliamentary and Health Ombudsman received 23, 667 enquiries. Of these enquiries 12, 889 were under her health jurisdiction, which permits direct access and 8,079 enquiries were made covering 8,543 Parliamentary complaints under her Parliamentary jurisdiction, which does not permit direct access¹³. The UK population was estimated at just over 62 million in mid 2010¹⁴.

France has a comparable population of 65m¹⁵. Its equivalent of the Parliamentary Ombudsman was until very recently the *Médiateur de la République*. The system has recently been changed so that the parliamentary filter system no longer operates, and, more recently, the *Médiateur de la République* has been replaced by a new institution with expanded functions – the *Défenseur des droits*. The *Défenseur des droits* has yet to publish an Annual Report but in 2010 the *Médiateur*

⁸ *Hansard* HL, vol. 693, col. WA 164, 28 June 2007.

⁹ *Hansard* HL, vol. 721, col. WA 199, 21 October 2010.

¹⁰ *Hansard* HL, vol. 726, col. WA121, 21 March 2011.

¹¹ *Hansard* HL, vol. 713, col. WA 132, 27 October 2009.

¹² *Hansard* HL, vol. 720, col. WA 462, 27 September 2010.

¹³ Parliamentary and Health Service Ombudsman Annual Report 2009-10.

¹⁴ Source: <http://www.statistics.gov.uk/cci/nugget.asp?id=6>

¹⁵ Source: http://www.insee.fr/fr/themes/document.asp?ref_id=ip1332

received 79,046 cases of which 46,653 were complaints and 32,393 were information and orientation requests.¹⁶

The Irish Ombudsman received 9390 enquiries in 2010 and 5044 complaints¹⁷ despite having a much smaller population of 4.58million.¹⁸

There is no direct access to the Northern Ireland Ombudsman for complaints about a government department or agency - complaints must be made via a Member of the Legislative Assembly - but there is direct access to the Ombudsman for complaints against a public body or health or social care organisation. In 2010-11 the Northern Ireland Ombudsman received 695 written complaints, 208 of which were in his role as Assembly Ombudsman, 242 as Commissioner for Complaints, 186 under his Health and Social Care jurisdiction and 59 which were outside his jurisdiction. He also received 2273 telephone calls and conducted 38 interviews.¹⁹ The Northern Irish population is 1.8 mn.²⁰

Likewise, in New Zealand, which has an even smaller population of just over 4 million²¹, the New Zealand Ombudsman dealt with a similar number of complaints to the UK Ombudsman. There were 8,488 complaints in 2009-10.²²

The Australian equivalent, the Commonwealth Ombudsman, received 37,468 approaches and complaints in 2009-10²³ although Australia's population, estimated at 22.7 million²⁴, is much smaller than the UK's.

Hong Kong also has a much smaller population than the UK. Its population is 7 million²⁵ and its Ombudsman received a total of 12,227 enquiries in 2010-11 of which 5,339 were described as complaints²⁶.

¹⁶ Rapport annuel 2010 (anglais) , The Year in Figures, p4. Source: http://www.mediateur-republique.fr/fic_bdd/pdf_fr_fichier/1307626545_Rapport_annuel_version_anglaise_13.05.2011.pdf

¹⁷ Irish Ombudsman Annual Report 2010.

¹⁸ Source: <http://www.cso.ie/census/documents/Prelim%20complete.pdf>

¹⁹ Northern Ireland Ombudsman Annual Report 2010-2011

²⁰ Source: <http://www.nisra.gov.uk/>

²¹ Source:

http://www.stats.govt.nz/browse_for_stats/population/estimates_and_projections/NationalPopulationEstimates_HOTPD10qtr/Commentary.aspx

²² New Zealand Ombudsman Annual Report 2009/10.

²³ Commonwealth Ombudsman Australia Annual Report 2009-10.

²⁴ Australian Bureau of Statistics:

<http://www.abs.gov.au/ausstats/abs%40.nsf/94713ad445ff1425ca25682000192af2/1647509ef7e25faaca2568a900154b63?OpenDocument>

²⁵ Source:

http://www.google.co.uk/publicdata/explore?ds=d5bncppjof8f9_&met_y=sp_pop_totl&idim=countr:HK&dl=en&hl=en&q=hong+kong+population#ctype=l&strail=false&nslm=h&met_y=

The European Ombudsman investigates complaints about maladministration in the institutions and bodies of the European Union. The Ombudsman registered²⁷²⁸ 2667 complaints and processed 2727 in 2010.²⁹ The EU population is estimated to be 502mn.³⁰

The following table summarises the above statistics and demonstrates the importance of direct access in increasing uptake of the Parliamentary Ombudsman procedure:

Country or Territory	Population	Number of enquiries	Direct Access?
United Kingdom	62mn	23,667 8,079 for Parliamentary jurisdiction 12,889 for health jurisdiction	No for Parliamentary Ombudsman Yes for Health Ombudsman
France	65 mn	79,046 46653 complaints	Yes

sp_pop_totl&scale_y=lin&ind_y=false&rdim=country&idim=country:HKG&ifdim=country&hl=en&dl=en

²⁶ The Ombudsman Hong Kong Annual Report 2011.

²⁷ “Complaints registered” instead of “complaints received” distinguishes between complaints registered in a given calendar year and those received during the same period but registered in the following year.

²⁸ The statistical category “processed” means that the analysis designed to determine whether the complaint (i) falls within the Ombudsman’s mandate, (ii) meets the criteria of admissibility, and (iii) provides grounds to open an inquiry has been completed. Because of the time required for this, the number of “complaints” processed in a given year is different from the number of complaints “registered” in the same year.

²⁹ European Ombudsman Annual Report 2010.

³⁰ Source:

<http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&language=en&pcode=tps00001&tableSelection=1&footnotes=yes&labeling=labels&plugin=1>

		32393 information and orientation requests	
Ireland	4.58mn	9390 enquiries 5044 complaints	Yes
Northern Ireland	1.8mn	695 written complaints 2273 telephone Enquiries 38 interviews	Yes for a public Body or a health and social care organisation. No for a government department or agency.
New Zealand	4mn	8,488 complaints	Yes
Australia	22.7mn	37,468 approaches and complaints	Yes
Hong Kong	7mn	12,227 Enquiries (5339 complaints)	Yes
Europe	502mn	2667 Registered complaints 2727 Processed complaints.	Yes

Conclusion

The comparative data shows that uptake of the Parliamentary Ombudsman procedure is significantly increased where the hurdle of the MP filter does not exist or can be bypassed. The MP filter fetters the powers of the Parliamentary Ombudsman. It is a much criticised and unnecessary hindrance to the public's right of direct access.

Direct access to the Parliamentary Ombudsman is or should be an important public right and a means of promoting active citizenship. The evidence indicates that permitting direct access would increase the number of people making use of the Parliamentary Ombudsman to resolve complaints of maladministration instead of having to resort to judicial review.

The time is over-ripe to create a public right of direct access to the Parliamentary Ombudsman while retaining the MP filter procedure in modified form.

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