

REVIEW OF THE PUBLIC SECTOR OMBUDSMEN IN ENGLAND - CONSULTATION

1 SUMMARY

- 1.1 This report brings to Members' attention a public consultation exercise into the future organisation and operation of the public sector ombudsmen in England and seeks Members' comments thereon.

3 INTRODUCTION

- 3.1 The Cabinet Office has launched a public consultation exercise into the future organisation and operation of the public sector ombudsmen in England, including the Commission for Local Administration in England. The consultation exercise follows up on the publication in April of a Report reviewing the public sector ombudsmen, the Parliamentary Commissioner for Administration, the Health Service Commissioner for England and the Local Ombudsmen. Comments on the consultation are requested by 29 September 2000.

4 DETAILED CONSIDERATIONS

- 4.1 A copy of the consultation paper is attached as Appendix 1. The paper seeks views on the key recommendations of the Review Team's report:
- (i) The creation of a new college, or commission, of ombudsmen which would incorporate the public sector ombudsmen in England and provide a one-stop shop for complainants.
 - (ii) The removal of the MP filter for complaints to the Parliamentary Ombudsman allowing all complaints the opportunity to approach the ombudsman directly.
 - (iii) A range of other measures to enable the ombudsmen to work more flexibly and more closely with each other and with other organisations. Restrictions on efficient working result from parts of the existing legislation. The review recommends removing these restrictions to enable the ombudsmen to work in a more flexible and "joined-up" fashion.
- 4.2 Members will see that at the rear of the Appendix, there is a six-page questionnaire outlining a series of questions relating to the Review of Public Sector Ombudsmen in England. Members might like to consider their responses to these questions based on their knowledge and experience prior to the meeting. These can then be combined into a collective response on behalf of the Authority.

9 RECOMMENDATION

It is proposed that the Committee **RESOLVES**

The response in relation to the consultation exercise concerning the review of public sector ombudsmen in England.

Paul Warren

Chief Executive

Background Papers:

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CABINET OFFICE

**REVIEW OF THE PUBLIC SECTOR OMBUDSMEN
IN ENGLAND**

A CONSULTATION PAPER

JUNE 2000

FOREWORD

BY THE PARLIAMENTARY SECRETARY, CABINET OFFICE

The Government is committed to a comprehensive programme of modernisation. As part of this, we are determined to ensure that all public bodies are properly and fully accountable to the public. This means delivering joined-up, high quality public services that respond to the needs of users. But it also means ensuring that it is easy to complain and get a result when things go wrong.

To this end, and in response to proposals put forward by the Ombudsmen themselves, the Government has reviewed the organisation and operation of the public sector ombudsmen in England. The review was announced in March 1999 in the *Modernising Government White Paper*. Underlying the review was a strong desire to ease public access and improve efficiency in dealing with complaints across different services.

We recognise and value the contribution made by everyone involved in the work of the ombudsmen and the significant contribution that the Ombudsmen themselves have made to help public bodies to maintain and improve the standards of service they deliver. The challenge now is to consider how to strengthen that contribution and so help ensure that all public bodies provide a first class service to all citizens.

The *Review of the Public Sector Ombudsmen in England* was published on 13 April 2000. The Government welcomed publication of the review but we made it clear that we wished to give as wide an audience as possible the opportunity to comment on the review's recommendations. That is why we are publishing this consultation paper. I look forward to hearing your views.



GRAHAM STRINGER MP

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PART 1

INTRODUCTION

- 1.1 This consultation paper accompanies the report of the *Review of the Public Sector Ombudsmen in England*. It invites comments on the recommendations arising from the *Review* and on any other aspect of the organisation or operation of the public sector ombudsmen in England. Part 2 of the consultation paper seeks responses to specific questions. Part 3 explains how to respond. Everyone has an interest in the work of the ombudsmen; although the consultation paper will be of particular interest to regular users of public services and to those involved in the delivery of public services.
- 1.2 The *Review of the Public Sector Ombudsmen in England* was undertaken following the submission of a paper to the Government by the ombudsmen in October 1998. The public sector ombudsmen in England comprise the Parliamentary Commissioner for Administration (PCA), the Health Service Commissioner (HSC) and the three Commissioners for Local Administration (CLA). All are generally known as ombudsmen. The PCA deals with complaints about central government departments and agencies and certain non-departmental public bodies; the HSC deals with complaints about the National Health Service, including the family health service and matters of clinical judgement; and the CLA deal with complaints about local authorities and some other local service providers.

THE REVIEW

- 1.3 The paper which the ombudsmen submitted in late 1998 to the Minister for the Cabinet Office proposed a review with the aim of creating a Commission for Public Administration. The main suggestion was to unite the public sector ombudsmen in England into some form of single body in order to reduce the complexities and consequent difficulties for complainants which arise under the current structures. Whilst this would require primary legislation it would also create an opportunity to modernise existing legislation and procedures.
- 1.4. The ombudsmen's paper was considered by Ministers who agreed to set up a review with the following terms of reference:

The review will consider whether the present arrangements for the organisation of the Parliamentary Commissioner for Administration, the Health Service Commissioner for England and the Local Government

Ombudsmen in England are in the best interest of complainants and others against a background of moves towards the more integrated provision of public services; and whether those arrangements hinder achieving better value for money.

The review will also consider the potential interaction between those Ombudsmen and other independent complaints authorities, such as the Independent Housing Ombudsman and the Data Protection Registrar.

The review will make recommendations about the public sector Ombudsmen, including recommendations on their statutory powers and duties, having regard for constitutional issues.

- 1.5 The review covered England only but considered boundary issues and interactions with ombudsmen in Scotland, Wales and Northern Ireland. Ombudsmen arrangements in those countries, except for reserved matters, will be for the devolved administrations to consider. (In the case of Wales, a change of primary legislation would require action at Westminster.)
- 1.6 The review was carried out by Cabinet Office officials who consulted widely among representative and professional bodies, central and local government departments, members of the public and academics. The review team also conducted, with the assistance of the Select Committee on Public Administration, a survey of Members of Parliament.

NEXT STEPS

- 1.7 The report of the *Review of the Public Sector Ombudsmen in England* was published on 13 April 2000. Whilst welcoming publication of the report, Ministers made clear the Government's intention of consulting widely on the review's recommendations to give as many people as possible the opportunity to comment on proposals for reforming the ombudsmen system in England.
- 1.8 A full list of the review's recommendations are set out at Annex A. We would welcome comments on any or all of these recommendations. Part 2 of this consultation paper explores some of the key recommendations arising from the review and asks a number of questions on each. We would also welcome responses to these. All comments and responses need to be received by **FRIDAY 29 SEPTEMBER 2000**. Part 3 explains how to respond in more detail.

THE REVIEW

- 2.1 The review noted general agreement that the public sector ombudsmen in England must respond to the changing face of public service delivery. To do this they will need to operate within a different framework which removes divisions in their jurisdictions, powers and processes. They must work more flexibly and more closely with each other and with other organisations. Restrictions on efficient working result from parts of the existing legislation and these restrictions should be removed.
- 2.2 The review made a recommendation for the creation of a new college, or Commission, of ombudsmen built on the modernisation and consolidation of the existing legislation. The current PCA, HSC and CLA would be combined into this 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, the review team believed, be removed so that a single gateway could deal with all complaints within the ombudsmen's jurisdiction.
- 2.3 The review makes no detailed recommendations about the ombudsmen's jurisdiction. The review recommends, however, that jurisdiction is considered during the preparation of the primary legislation which the new Commission will require. This may take time to bring forward. The review team believed that the continuing development of new methods of public service delivery will make evident any resultant need to extend jurisdiction.
- 2.4 The review concludes that its recommendations will increase value for money in a number of ways. Firstly, the removal of the need for complainants about central government to go first to their MP would probably increase the number of complaints received by the new Commission. But with revised working methods, freed from the restriction of the current PCA legislation, more complaints could be dealt with more flexibly without increasing resources. Secondly, the lessons to be learned from dealing holistically with complaints arising from new and innovative partnerships for the delivery of public services could be a valuable management tool. Thirdly, individual members of the public would benefit from faster and more responsive resolution of their complaints. The benefits to the individual could include the satisfactory resolution of complaints.

- 2.5 A full list of the review's recommendations are set out at Annex A. We would welcome comments on any or all of these recommendations. Paragraphs 2.6 to 2.33 below explore some of the key recommendations arising from the review and asks a number of questions. We would also welcome responses to these.

A NEW COMMISSION

- 2.6 The review recommends the creation of a college, or Commission, of ombudsmen. This would incorporate the existing public service ombudsmen and provide a "one-stop shop" for complainants about matters falling within the ombudsmen's jurisdiction.
- 2.7 A collegiate structure would allow for separate ombudsmen appointments to be retained and for each ombudsman to be associated with a particular sector or group of bodies. One ombudsman would take on the role of Chairman and be responsible for corporate matters but would not have the power to overrule his fellow ombudsmen on individual cases.
- 2.8 There are a number of advantages to the "one-stop shop" approach. Clearly, it would provide simpler access to the ombudsmen. It would facilitate the investigation of complaints which currently fall under the jurisdiction of more than one ombudsman. And a single, unified organisation should deliver economy and efficiency gains. This approach would also reflect the Government's modernising agenda, engaging with local people and delivering services to clear standards by the most effective, economic and efficient means available.
- 2.9 There could, however, be disadvantages. The collegiate structure would allow for the retention of expertise in individual sectors but might lack flexibility. It may also suffer from a lack of cohesion if no single individual is responsible for the Commission as a whole. More standardised procedures, whilst a potential benefit, could also lead to changes in traditional features of particular ombudsmen schemes (such as the MP filter - see below). The Commission would not be a "one-stop shop" for all complainants as it would not be responsible for examining matters falling within the jurisdiction of other ombudsmen. The review has, however, recommended that such ombudsmen become "associate" members of the new Commission.
- 2.10 The Government is currently legislating to introduce a new ethical framework for local government. This will include the introduction of a statutory code of conduct for all local councillors and the creation of a new independent body - the Standards Board - to investigate any allegations that the code has been breached. Although the remit of the Standards Board will be limited to the investigation of allegations of

misconduct, it is quite likely that there will be some overlap with cases of maladministration that come before the CLA. It will be important for both organisations to work in close co-operation with one another. They will also both need to work closely with other organisations and agencies that have a role in considering conduct or impropriety in local government e.g. auditors or the police.

- 2.11 We would welcome responses to the review's proposals. In particular:
- should the public sector ombudsman schemes in England be combined to form a Commission;
 - Do you think the collegiate model is more effective than a model comprising one ombudsman and a number of deputies? Are there any other models you would like to propose;
 - the review does not recommend a name for the new Commission but recognises that its name should reflect its role and be chosen with public accessibility in mind. What do you think would be a good name for the Commission;
 - the review suggests that other ombudsmen be made 'associates' of the new Commission as a way of extending the 'one stop shop' idea? Are there other approaches? Which ombudsmen should be associates and why; and
 - are the changes proposed (including in ways of working) sufficient to address any concerns about the quality or operation of the ombudsmen? What are these concerns?

THE MP FILTER

2.12 Under the Parliamentary Commissioner Act 1967 members of the public are required to submit complaints to the PCA through a Member of Parliament (the MP filter). No equivalent filter exists for complaints to the HSC or CLA. The review recommends abolishing the MP filter.

2.13 The MP filter was intended to support the MP's constitutional role in championing and protecting the citizen; the PCA was created to supplement existing arrangements for Parliament to hold the Government to account and to provide MPs with an instrument to assist them in seeking redress for their constituents. The MP filter was also intended to limit the number of complaints received by the PCA as only complaints which had merit, could not be dealt with in a better way by the MP and were suitable for the PCA, would pass through the filter.

- 2.14 The review concludes that the original reasons for introducing the filter no longer apply. Modernisation of government and constitutional change have brought about many means by which the citizen can seek redress. New attitudes to customer service, increased use of judicial review, Human Rights and Freedom of Information legislation and the creation of new ombudsmen all provide, or will provide, means for aggrieved citizens to seek redress. The role of the MP as champion of the citizen is no longer exclusive. The review also challenges the view that the filter effectively screens complaints. Removing the filter and transferring the initial screening of complaints to the PCA's office would result in a consistent policy being applied to the management of complaints which would be transparent to complainants. (MPs would, however, still be able to refer constituents' complaints to the PCA if the filter was removed.) Indeed, abolition of the MP filter is integral to the establishment of a new Commission; it is proposed that the new Commission serve the public directly and, with no MP filter, there would be consistency of access for all complainants.
- 2.15 There are other advantages in abolishing the MP filter. It would speed up the process of complaining; it would enable complainants to engage directly with the PCA; and, in an era of joined-up government, it would facilitate the handling of complaints which cut-across the jurisdiction of more than one of the three ombudsmen concerned. Abolition of the filter might result in an increase in the number of cases received by the ombudsman (as was the case when the requirement ceased for complaints to the CLA to be referred by councillors).
- 2.16 On the other hand, it is recognised that MPs can make a valuable contribution to the process. They can often resolve complaints quickly without involving the PCA and can stop complaints getting to the PCA which are either trivial or which are outside his jurisdiction.

2.17 We would welcome responses to the review's proposals. In particular, do you support abolition of the MP filter for the submission of complaints to the PCA? Do you see any added risks or benefits arising from abolition? Do you think that it would be possible to retain the MP filter under the proposed new arrangements?

JURISDICTION AND POWERS

- 2.18 The review does not recommend any reduction to the existing jurisdiction of the public sector ombudsmen in England; and makes no recommendations for any changes before legislation is brought

forward. A list of the types of body currently within jurisdiction (government departments and agencies, certain non-departmental public bodies, the NHS and local authorities) is set out at Annex B. The matters subject to investigation, and the powers of each ombudsman, would also remain unchanged. A list of those matters currently *not* subject to investigation is set out at Annex C. The review does, however, raise a number of issues which merit further consideration.

- 2.19 A frequently voiced concern about the Parliamentary Commissioner Act 1967 is that it lists the bodies subject to investigation by the PCA rather than specifying which bodies are excluded from investigation (i.e. outside his jurisdiction). The review has considered whether the way in which the current legislation is framed could be improved. One option would be to reverse the current arrangements - i.e. rather than listing the bodies which *are* within jurisdiction, specify those bodies which *are not* within jurisdiction. This would create an automatic presumption that a body was subject to investigation unless specifically excluded. It would also remove the need for regular amendments to the legislation as new bodies are created and existing bodies dissolved. It would also make the whole jurisdiction issue more transparent.
- 2.20 In order for this to work, however, the legislation would need to be clear as to the types of public bodies which were within jurisdiction (subject to any specified exclusion). Some types of public body are easy to define generically - e.g. government departments and agencies, NHS Trusts and local authorities. But others are not. The Freedom of Information Bill, which is currently before Parliament takes a mixed approach over jurisdiction. Some public bodies are covered by a generic description; others are listed individually in a Schedule.
- 2.21 The primary role of the ombudsmen remains the investigation of complaints of maladministration. However, since inception, complaints about contractual and personnel matters have been excluded from investigation by the ombudsmen as the former is a matter of law and there are procedures in place to deal with personnel issues. These exclusions were challenged during the course of the review.
- 2.22 The review also noted that there is increasing concern over where the line should be drawn between the public and the private sector. The ombudsmen have increasingly relied on the term "on behalf of" in their legislation to allow them to handle complaints about contracted-out public services. However, some concern has been expressed over how far "behalf" can be stretched as innovative arrangements such as partnerships, franchises and local authority companies have been introduced, involving the private and voluntary sectors. The review argues that where a service is largely publicly funded, provides a

service to the public and operates within a detailed specification by a public authority to a demanding performance requirement there seems to be a strong case for it to be within the ombudsmen's jurisdiction.

- 2.23 We would welcome responses to the review's proposals. In particular:
- do you agree that the jurisdiction and powers of the new Commission should be the same as those which currently exist for the PCA, HSC and CLAV and that any changes should wait until legislation is brought forward;
 - are there any particular bodies or types of bodies not currently within the jurisdiction of the ombudsmen (see lists at Annex B) which you would like to see subject to investigation by the new Commission;
 - should the legislation specify the bodies which are not within the ombudsmen's jurisdiction rather than those which are;
 - should the primary role of the new Commission remain the investigation of complaints of maladministration? Should complaints about personnel or contractual matters be subject to investigation by the new Commission; and
 - are there any other matters which the new Commission ought to be able to investigate but which are currently outside the jurisdiction of the ombudsmen (see lists at Annex C)?

ACCOUNTABILITY

2.24 The PCA and HSC are currently directly answerable to Parliament. They present reports to Parliament; the Public Administration Select Committee regularly takes evidence from the ombudsmen and reports to Parliament; and the National Audit Office, itself a servant of Parliament, has responsibility for oversight of the ombudsmen's efficiency. This form of accountability to Parliament does not currently extend to the CLA.

2.25 The review recommends that the new Commission should in its entirety be directly answerable to Parliament. This would underline the Commission's independence from Government but would allow full consideration by Parliament of those matters which involve separate actions by local and central government but which required liaison (such as the administration of central and local housing benefits payments). However, because of the sensitivities of Parliamentary

oversight of local democracy, arrangements for pursuing compliance for individual local government cases should not involve Parliament.

- 2.26 The new Commission would be required to lay an annual report before Parliament and would have the power to make special reports from time to time on general issues or individual cases. (The annual report would include an account of the management of casework.) The new Commission might be funded on the basis which currently applies to the PCA and HSC (namely that funds would be voted by Parliament subject to the approval of the Treasury) but would be subject to scrutiny by the National Audit Office and the Committee of Public Accounts. The new Commission would also set itself a range of performance targets and publish a comprehensive report of its work, performance against targets and use of resources.

2.27 We would welcome responses to the review's proposals. In particular:

- do you agree that the Commission should in its entirety be directly answerable to Parliament?
- are the proposed reporting arrangements sufficient? Should any other reports be required?
- should there be more detailed requirements on the content of annual reports?
- should the Commission set its own performance targets, or should targets be agreed with Government or Parliament and?
- do you support the review's conclusions about the benefits of Parliamentary oversight over complaints about local authorities?

APPOINTMENTS

- 2.28 At present, the public sector ombudsmen in England are appointed by The Queen. The review recommends that this continues and that the ombudsmen which form the new Commission are appointed by The Queen by letters patent. This method of appointment is intended to underline the ombudsmen's independence from Government.
- 2.29 The review does not make any recommendations about the role of Parliament in the appointment of the ombudsmen. Parliament does, however, play a role in the appointment of certain office-holders. For example, the Comptroller and Auditor General is only appointed after an address from the House of Commons (made with the agreement of

the Chairman of the Committee of Public Accounts). A similar approach has been proposed for appointments to the new Electoral Commission (although here it has been proposed that an Address will only be made with the agreement of the Speaker and after consultation with the leaders of the political parties). The CLA, however, are concerned with local government. Any role that Parliament plays in the appointments process should not affect the independence which local government has.

- 2.30 The review also recommends that a number of non-executive members should be appointed to the board of the new Commission to serve alongside the ombudsmen. The role of these non-executive members would be to monitor the impact of the new Commission and to offer operational or policy advice.
- 2.31 The review makes no specific recommendations about the terms and conditions of employment of the ombudsmen. However, any moves towards a college of ombudsmen will require some reappraisal of existing terms and conditions. For example, should the ombudsmen continue to serve until they reach retirement age or should they, in future, be appointed on fixed-term contracts. The current arrangements provide continuity and enable office-holders to build up considerable expertise; fixed-term appointments would ensure that fresh blood with new ideas and different experiences was injected into the new Commission on a regular basis and would also provide for greater flexibility to react quickly to changes in circumstances.
- 2.32 The review also makes no recommendations on the titles of any of the new office-holders; although suggests that these should be chosen after careful consideration and with public accessibility in mind. The current titles of the public sector ombudsmen - the Parliamentary Commission for Administration, the Health Service Commissioner for England and the Commissioners for Local Administration in England - are rarely used. They are more commonly known as the Parliamentary Ombudsman, the Health Service Ombudsman for England and the Local Government Ombudsmen for England.

2.33 We would welcome responses to the review's proposals. In particular:

- do you agree that the ombudsmen should continue to be appointed by the Queen?
- what role, if any, should Parliament play in the appointment of the ombudsmen? Is there a role for local government?
- what changes, if any, should be made to the terms and conditions of employment of the ombudsmen? Should ombudsmen continue

to serve until retirement age? Should fixed-term appointments be introduced.

- should non-executive members be appointed to the board of the new Commission? Who should appoint these? What should the role of non-executives be, and

- what do you think the new members of the Commission should be called? Should we retain the current Commissioner titles? Should we replace Commissioner with Ombudsman? How should we refer to non-executive members? Are there any other more appropriate titles?

HOW TO RESPOND

3.1 The paper which the ombudsmen sent to Ministers in 1998, the report of the subsequent review, and this consultation paper together form part of the most significant examination of the public sector ombudsmen in England since the inception of the Parliamentary Commissioner for Administration in 1967. In considering how to take forward the preparations of legislation to give effect to the recommendations of the review, the Government would welcome your responses to this consultation paper by FRIDAY 29 SEPTEMBER 2000.

3.2 Please send your responses to any or all of the questions posed in this consultation paper, or any other views you have about the review or about the ombudsmen themselves, to:

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3.3 This document is also available on the Cabinet Office web site at: www.cabinet-office.gov.uk/central/2000/consultation.pdf

3.4 If you have any complaints or any other comments on the arrangements for consultation being followed here you can send them to Paul Greening, Modernising Public Services Group, Cabinet Office, Horse Guards Road, London SW1P 3AL (Tel: 020 7270 6308, Fax: 020 7270 1833. Email: pgreening@cabinet-office.x.gsi.gov.uk).

3.5 Ministers may wish to publish responses to this consultation paper in due course or deposit copies in the Libraries of the Houses of Parliament. Should you wish your comments to be treated in confidence, please make this clear in your response.

A SUMMARY OF RECOMMENDATIONS OF THE REVIEW OF THE PUBLIC SECTOR OMBUDSMEN IN ENGLAND

The review's detailed recommendations are as follows:

1. The review suggests that a major new emphasis on their initial responses to complainants is needed by the PCA, HSC and CLA. (3.16)
2. The review proposes that the MP filter can no longer be sustained in an era of joined up government and it strongly recommends that it is abolished. (3.52)
3. All ombudsmen should be able to cover the complete jurisdiction, any functional divides being purely an administrative arrangement in the same way as areas of the country are at present with the CLA. The review sees advantages in retaining specific Local Government and Health Service Ombudsman roles to underpin this focus but neither they nor their colleagues should be confined by law to particular areas of the jurisdiction. The review recommends that a collegiate structure (the new Commission) is put in place on the basis described in Chapter 5 (4.4)
4. The review does not consider that the new Commission should include others such as the Prisons Ombudsman who have niche roles, are not established by statute and are properly part of the executive. (4.7)
5. As long as the external requirements of accountability, service to the public, value for money and transparency are met the review recommends that the ombudsmen should be able to manage the internal arrangements of the new Commission, including the location of offices, to adapt it to the changing external environment over time. The review recommends that the following framework is adopted in planning the legislation for, and organisation of, the new Commission:
 - the organisation must be resilient in its ability to respond to developments in the delivery of public services by central and local government. If it is 'government shaped' it may be too inflexible when the shape of government changes.
 - the internal organisation must operate as a single entity for the management of work and generally for accountability, policy-making, funding and resource management.

- the individual ombudsmen must be appointed as office-holders with a personal jurisdiction across the entire work of the new Commission. They should not be appointed to have particular functional or geographical responsibilities. However by agreement within the new Commission they would each be identified with a particular group of the bodies under jurisdiction. Thus, for example, local authorities will know which member of the new Commission will deal with them individually or corporately on questions of policy and practice.
- the staff of the new Commission should specialise in aspects of the functions of bodies under jurisdiction and as necessary form teams to deal with partnership working by those bodies. Such partnerships may involve bodies not under jurisdiction, or under the jurisdiction of another complaints investigation scheme, and innovative collaborative arrangements will be needed.
- the new Commission must work closely with central and local government authorities and the National Health Service, as appropriate through the central unit (which the review recommends later in this chapter) to address the jurisdictional issues raised by partnerships, franchises, contracted out services or other developing mechanisms for the delivery of public services.
- each ombudsman will be responsible for his own cases and will not be subject to any other ombudsman. No ombudsman should be superior to another in making decisions and recommendations about matters under jurisdiction nor should any ombudsman act in any appellate capacity if a complainant disagrees with another ombudsman's decision.
- the new Commission will be answerable to Parliament.
- the new Commission should be chaired by one of the ombudsmen for the purposes of representing it externally, for management purposes and when there is a requirement to answer to Parliament. The review envisages that this ombudsman would be responsible for matters relating to the UK as a whole and for reserved matters in Scotland, Wales and Northern Ireland.
- the responsibilities of the ombudsmen for bodies under jurisdiction or for the geographical division of work should be agreed within the new Commission.
- the chairman of the new Commission should lay a report annually to Parliament on the work of the Commission which should include an account of the management of the casework of each ombudsman. The chairman should be able to present to

Parliament and publish under absolute privilege such other reports as may be necessary on individual or systemic investigation into complaints. Separate arrangements should be made for publishing widely under absolute privilege reports about individual or systemic complaints.

- the new Commission should be funded on the basis which currently applies to the Parliamentary Commissioner and the Health Service Commissioner namely that funds are voted by Parliament subject to the approval of the Treasury. This will entail, for the present Commission for Local Administration, a move away from its current funding arrangements.
 - the new Commission should be subject to value for money scrutiny by the National Audit Office and thus, under present arrangements, would be subject to the scrutiny of the Committee of Public Accounts.
 - the new Commission should set itself a range of performance targets and publish a comprehensive report of its work, expenditure and performance against targets.
 - all the ombudsmen who form the new Commission should be appointed by the Queen by letters patent.
 - the board should include a number of non-executive members drawn from external bodies or the general public. All should be in a position to monitor the impact of the new Commission and to offer operational and policy advice.
 - the review makes no recommendations on the name of the new Commission nor the titles of any office-holders. These should be chosen after careful consideration of the role of the new Commission and with public accessibility in mind. The review knows no reason why the name of the new Commission should reflect the titles of any office-holder and note as an example the Comptroller and Auditor-General and NAO. (5.3)
6. The review does not recommend any reduction in existing jurisdiction and powers for the new Commission. (5.4)
7. The review suggests that piecemeal extensions to jurisdiction should not be made before the higher level decisions are taken about the scope of the new Commission's jurisdiction and what the related guiding principles should be. (5.13)
8. The review thinks that strong and vigorous co-ordination of complaints processes across public services in central and local government and

the health service is essential and it recommends that a strengthened focal point in the Cabinet Office is set up to do this, taking an overview of all public sector complaints processes and the work of the ombudsmen. (5.19)

9. It is essential that focus is maintained during an investigation with an eye to outcomes and transparency. (6.6)
10. An ombudsman's function must remain grounded in addressing injustice caused to an individual and own-initiative investigation appears inconsistent with impartiality. (6.15)
11. The review sees no reason why a complainant should not see a draft report and it so recommends. (6.20)
12. The ombudsmen could provide readily available material perhaps on the Internet. (6.30)
13. There is potential for an integrated approach with (in particular) the Community Legal Service and Community Health Councils aiming at partnership-type collaborations. (6.31)
14. The review recommends that where a complaint is referred back the ombudsmen should be empowered to set conditions which if they are not met will prompt an investigation without a further complaint being submitted. (6.35)
15. The restriction that ombudsmen receive complaints only on paper should be removed and complaint submission provided in whatever form is acceptable to the ombudsmen and convenient to complainants - electronically, by telephone or other format (for example, audio tape). (6.37)
16. The CLA is more likely than the other ombudsmen to engage directly with complainants on the telephone or in person - this should be the favoured style of working throughout the new Commission. Similar informal methods should be used with the respondent bodies. The ombudsmen also need to improve the language used in letters to complainants - too often this is forbidding and full of legalese. (6.38)
17. A really first class web site is essential. Access to the ombudsman's services can also be provided through email and on-line form-filling. (6.39)
18. In designing any new web site and literature the ombudsmen should consider the needs of all their customers - not just complainants but also the intermediaries and staff of respondent bodies. (6.40)

19. The new Commission should have a role (with others) in providing more general guidance. ... but a simple leaflet with a basic explanation of who can help and how, contact details and, importantly, appropriate management of expectations would be useful. Such a leaflet could be available from all major sources of help. (6.41)
20. The need for a gateway to the new Commission with clear guidelines for its work is essential for a highly accessible system. (6.42)
21. The new Commission should be more active in monitoring return rates and finding out what happens to complaints which do not return. (6.43)
22. The new Commission would publish a 'scheme' definition which would describe in some detail the arrangements for their operation including how they would interact with complainants and respondent bodies, and the standards they would seek to achieve, in a similar way to a charter. (6.45)
23. The new Commission's process should be continuous until:
 - it is clear that the complaint is out of jurisdiction and not investigable; or
 - a settlement to the ombudsman's satisfaction has been achieved; or
 - investigation has been completed and a report has been produced.
24. The emphasis should move away from 'acceptance or rejection' to the action or resolution proposed (in some cases, 'no action' by the ombudsman). (6.54)
25. A telephone conversation might quickly establish for a caller that their complaint is outside the new Commission's jurisdiction. Such a call may be regarded as an enquiry rather than submission of a complaint rejected as out of jurisdiction. The new Commission will need to set a policy on how it handles such complaints to avoid producing misleading statistics or, worse, producing misunderstandings with complainants. (6.55)
26. Initially, a conciliatory approach should be adopted, working on the basis that most organisations will wish to adhere to good customer-service and complaints-management principles. (6.56)
27. The new Commission should develop guidance material specifically for the respondent bodies. The new Commission can thus help 'enable' the respondent bodies to resolve complaints - as well as removing barriers to access, barriers to resolution need also to be identified and

removed (for example, requiring an ombudsman's report before compensation can be awarded). (6.57)

28. A simple measure might be to develop an equivalent to the Cabinet Office's 'The Ombudsman in Your Files', available on the Internet and as a web-ready package for organisations with Intranets. (6.58)
29. The requirement of the 1967 Act that the PCA provides the statement of complaint and the investigation report to the principal officer needs to be reconsidered. (6.59)
30. A view will have to be taken on how the new ombudsmen legislation is framed in relation to disciplinary matters and ethical standards. (6.61)
31. The new Commission needs to have sufficient flexibility to deal with a very wide range of complaints covering virtually all of government business. (6.62)
32. Any new legislation should be based around the concept of the ombudsman seeking resolution, by an agreed settlement if possible, with investigation and the ability to make recommendations as an option. (6.63)
33. Cases should be referred by the gateway to an ombudsman's investigating unit quickly with final jurisdictional checks completed, if necessary, by the investigator. (6.65)
34. Staff need to engage with people using the telephone, meetings and email rather than paper-intensive methods where appropriate. (6.66)
35. Modern working also accepts an element of carefully managed risk. (6.67)
36. The new Commission will need to be fully engaged with Information Age Government. As government moves to greater electronic working and record keeping, the ombudsmen need to keep the implications under review. (6.68)
37. The new Commission also needs to ensure it is applying resources in the most effective way by using external specialists and other service providers when appropriate. (6.69)
38. The review agrees that the current position on the non-binding nature of the ombudsmen's recommendations is acceptable and should be reflected in the new Commission's arrangements. The ombudsmen should continue to make recommendations and be able to make special reports if necessary to Parliament and councils, and seek publicity as necessary. Because of the sensitivities of Parliamentary

oversight of local democracy, arrangements for pursuing compliance for individual local government cases should not involve Parliament. (6.75)

39. A function of the new gateway should be to provide information and if necessary refer complainants elsewhere for appropriate advice so that as far as possible complainants have reasonable expectations about what can be achieved and are more likely to set out on the path which is right for them. (6.78)
40. The review has seen no evidence that complainants seeking compensation is distorting the ombudsman's function but it believes that the position needs to be monitored as part of the watching brief which it has recommended as one of the functions of the focal point it recommended in Chapter 5. (6.79)
41. It would be helpful when ombudsmen and complaints examiners are considering which cases to include in reports if the full range of possible outcomes is reflected including failing to obtain redress, apologies, explanations and small levels of compensation. (6.81)
42. The review recommends that the new Commission is given powers to put all publishable case reports into the public domain with absolute privilege. (6.85)
43. In general, the new Commission will need to ensure that investigations are focused and that there is good liaison with the National Audit Office, Audit Commission and other audit and inspection bodies so that matters of concern can be taken forward. (6.89)
44. The review recommends that arrangements to allow 'associate' status with the new Commission be introduced. (7.3)
45. The review envisages that ombudsmen from the devolved administrations and the Information Commissioner/Data Protection Commissioner would be associates of the new Commission. (7.4)
46. Where there is no statutory framework, arrangements for streamlining complaints-handling are likely to be unequal. A non-statutory complaints body might be a departmental independent complaints examiner or a private-sector ombudsman scheme operating entirely on a contract-basis. The new Commission should continue to agree protocols with these other complaints bodies where appropriate but the review recommends that details should be put into the public domain (in particular, on an Internet web site) and as far as possible arrangements for streamlined complaints handling put in place. (7.6)

47. The review recommends that arrangements for a new Commission in England should allow for the 'Parliamentary Ombudsman' function working in partnership with ombudsmen in the three countries perhaps in informal college arrangements similar to England. (7.10)
48. The review recommends that 'associate' arrangements for public sector ombudsmen in the other three countries are put in place. (7.11)
49. The review recommends that the new Commission remains able to report to Parliament on a United Kingdom basis. (7.12)
50. In making recommendations in this report only the HSC and CLA in England have been addressed. The review recommends that DETR, DH and the devolved authorities consider the implications for legislation and the HSCs and CLAs in Scotland and Wales. (7.13)
51. The review sees no immediate reason for making any changes to existing arrangements between public and private sector ombudsmen. (7.18)

LIST OF BODIES WITHIN JURISDICTION OF THE PUBLIC SECTOR OMBUDSMEN IN ENGLAND

THE PARLIAMENTARY OMBUDSMAN

Schedules 2 and 4 to the Parliamentary Commission Act 1967 (as amended) list those public authorities subject to investigation by the Parliamentary Ombudsman. These include:

- Government Departments and Agencies, such as:

- Benefits Agency
- Cabinet Office
- Child Support Agency
- Department for Culture, Media and Sport
- Department for Education and Employment
- Department for International Development
- Department of Health
- Department of Social Security
- Department of the Environment, Transport and the Regions
- Department of Trade and Industry
- Employment Service
- Foreign and Commonwealth Office
- HM Customs and Excise
- HM Treasury
- Home Office
- Inland Revenue
- Lord Chancellor's Department
- Ministry of Agriculture, Fisheries and Food
- Ministry of Defence
- Northern Ireland Office
- Scotland Office
- Wales Office

- Non-Departmental Public Bodies, such as:

- Advisory, Conciliation and Arbitration Service (ACAS)
- Arts Council of England
- British Council
- British Library
- British Museum
- British Tourist Authority
- Broadcasting Standards Commission
- Civil Aviation Authority

Commission for Racial Equality
Competition Commission
Countryside Agency
Data Protection Commissioner
Disability Rights Commission
English Heritage
English Nature
English Partnerships
English Tourist Board
Environment Agency
Equal Opportunities Commission
Further Education Funding Council for England
Health and Safety Commission
Health and Safety Executive
Higher Education Funding Council for England
Housing Corporation
Legal Aid Board
Meat and Livestock Commission
Millennium Commission
National Heritage Memorial Fund
National Lottery Charities Board
National Lottery Commission
National Museums and Galleries
New Millennium Experience Company Ltd
Northern Ireland Human Rights Commission
Parole Board
Regional Development Agencies
Research Councils
Royal Commission on Historical Manuscripts
Royal Commission on the Historical Monuments of England
Sport England
Teacher Training Agency
UK Atomic Energy Authority

▪ Tribunals*, such as:

Agricultural Land Tribunals
Copyright Tribunal
Employment Tribunals
Registered Homes Tribunals
Special Education Needs Tribunal
Valuation Tribunals

* The administrative actions of administrative staff of tribunals only.

THE HEALTH SERVICE OMBUDSMAN

Sections 2 and 2A of the Health Service Commissioners Act 1993, as amended by the Health Service Commissioners (Amendment) Act 1996, place the following bodies within the jurisdiction of the Health Service Ombudsman for England:

- Regional Health Authorities (although these were abolished in April 1996);
- District Health Authorities in England;
- Special Health Authorities exercising functions only or mainly in England and which were either established on or before 1 April 1974 or established after that date but designated by Order in Council as being within the Ombudsman's jurisdiction;
- National Health Service trusts managing a hospital or other establishment or facility in England;
- Family Health Services Authorities whose locality is in England (also abolished in April 1996, with functions taken on by Health Authorities);
- the Dental Practice Board;
- the Public Health Laboratory Service Board;
- providers of general medical services in England* (General Practitioners);
- providers of general dental services in England* (family dentists);
- providers of general ophthalmic services in England* (opticians);
- providers of general pharmaceutical services in England* (pharmacists);
- persons, whether individuals or bodies, who are not themselves any of the above but who provide services in England under arrangements with any of the above (i.e. private providers such as nursing homes, who have NHS funded patients).

* Where these services are being provided under the National Health Services Act 1977.

THE LOCAL GOVERNMENT OMBUDSMEN

The following authorities are within the jurisdiction of the Local Government Ombudsmen:

- District, borough, city and county councils (but not town or parish councils);
- Education appeal committees;
- School governing bodies (admission matters only);
- School organisation committees;
- the Greater London Authority;
- the London Transport Users' Committee;
- the London Development Agency;
- Housing action trusts (but not housing associations);
- Joint boards of local authorities;
- National park authorities;
- Fire authorities;
- Police authorities, including the National Criminal Intelligence Service and the National Crime Squad (but not individual police officers);
- the Commission for New Towns (housing matters only);
- English Partnerships (planning matters only);
- the Norfolk and Suffolk Broads Authority;
- the Environment Agency (flood defence and land drainage matters only).

**MATTERS NOT SUBJECT TO INVESTIGATION BY THE PUBLIC SECTOR
OMBUDSMEN IN ENGLAND**

THE PARLIAMENTARY OMBUDSMAN

Schedule 3 to the Parliamentary Commissioner Act 1967 (as amended) sets out the matters not subject to investigation by the Parliamentary Ombudsman. These are:

- (a) action taken in matters certified to affect relations or dealings between the UK Government and any other Government;
- (b) action taken, outside the UK, by officials acting on behalf of the UK Government. (Action taken by UK Government officials of a consular function, in relation to a UK Citizen, ARE subject to investigation by the PCA);
- (c) action taken in connection with the administration of the government of a country or territory outside the UK which forms part of Her Majesty's dominions or in which Her Majesty has jurisdiction;
- (d) action taken by Ministers under the Extradition Act 1870 or the Fugitive Offenders Act 1881;
- (e) action taken by Ministers to investigate crime or protect the security of the State;
- (f) the commencement or conduct of civil or criminal proceedings before any UK court of law, proceedings under the Naval Discipline Act 1957, the Army Act 1955, the Air Force Act 1955, or any proceedings before an international court or tribunal;
- (g) any exercise of the prerogative of mercy or the power of a Minister to make reference to the Court of Appeal, the High Court of Justiciary or the Courts-Martial Appeal Court;
- (h) action taken on behalf of a Minister by a Health Authority, a special Health Authority, a Family Practitioner Committee or the Public Health Laboratory Service Board;
- (i) matters relating to contractual or other commercial transactions, except in relation to compulsory acquisition of land or disposal of surplus land acquired compulsorily;

- (j) action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters; and
- (k) the grant of honours, awards or privileges within the gift of the Crown, including the grant of Royal Charters.

THE HEALTH SERVICE OMBUDSMAN

Sections 4 to 7 of the Health Service Commissioners Act 1993 (as amended by the Health Service Commissioners (Amendment) Act 1996) set out the circumstances in which the Ombudsman cannot conduct an investigation. These are:

- (a) where the complainant has a right of appeal, reference or review to or before a tribunal constituted by or under any enactment or by virtue of Her Majesty's prerogative, or a remedy by way of proceedings in any court of law, unless the Ombudsman is satisfied that it is not reasonable to expect the complainant to exercise those rights;
- (b) complaints in respect of action which has been, or is, the subject of an inquiry under section 84 of the National Health Service Act 1977 or section 76 of the National Health Service (Scotland) Act 1978 (general powers to hold inquiries);
- (c) complaints in respect of action in relation to which the protective functions of the Mental Welfare Commission for Scotland have been, are being or may be exercised under the Mental Health (Scotland) Act 1984;
- (d) matters which could be pursued under some other complaints procedure (i.e. the NHS complaints procedure) but the complainant has not invoked and exhausted that alternative procedure, unless the Ombudsman is satisfied that it is not reasonable to expect the complainant to do so;
- (e) matters relating to appointments or removals, pay, discipline, superannuation or other personnel matters;
- (f) matters relating to contractual or other commercial transactions, except for NHS contracts (as defined by the NHS and Community Care Act 1990) or matters arising from arrangements between a health service body or a family health services provider (e.g. a GP) and an independent provider for the provision of services to NHS patients;
- (g) matters concerning the actions of Health Authorities in the exercise of their functions to investigate services under regulations relating to the

provision of general medical, dental ophthalmic and pharmaceutical services;

- (h) complaints about the merits of a decision or action of a health service body, family health services provider or independent provider where the action or decision was taken without maladministration in the exercise of a discretion vested in that body or provider.

THE LOCAL GOVERNMENT OMBUDSMEN

Section 26 of the Local Government Act 1974 sets out the matters not subject to investigation by the Local Government Ombudsmen. These are:

- (a) something which a complainant first had knowledge of more than 12 months before the complainant first wrote to the Ombudsman or to a councillor, unless the Ombudsman considers it reasonable to look into the complaint;
- (b) matters for which the complainant has the right to appeal to a tribunal, a government minister (e.g. a planning appeal) or court action, unless the Ombudsman is satisfied that, in the particular circumstances, it would not be reasonable to expect the complainant to seek a remedy through such means;
- (c) matters which affect all or most of the inhabitants in an authority's area (e.g. a complaint that a council has wasted public money);
- (d) the commencement or conduct of civil proceedings before any court of law;
- (e) action taken by any police authority in connection with the investigation or prevention of crime;
- (f) action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters;
- (g)
 - (i) action taken by a local education authority in the exercise of functions under Section 370 of the Education Act 1996 or Section 17 of the Education (No 2) Act 1986 (secular instruction in schools);
 - (ii) action concerning:
 - the giving of instruction, whether secular or religious; or

- conduct, curriculum, internal organisation, management or discipline in any school or educational establishment maintained by the authority;
- (h) action taken by the Commission for the New Towns or any development corporation established for the purposes of a new town which is not in connection with functions in relation to housing, or which was done (or the default first arose) before the coming into force of Schedule 3 to the Local Government Act 1988;
- (i) action taken by any urban development corporation established by an order under section 135 of the Local Government, Planning and Land Act 1980 which is not in connection with functions in relation to town and country planning, or which was done (or the default first arose) before the coming into force of Schedule 3 to the Local Government Act 1988;
- (j) action taken by the Urban Regeneration Agency which is not in connection with functions relating to town and country planning;
- (k) any complaint in respect of anything done or the default first arising before 1 April 1974; and
- (l) action taken in matters relating to contractual or commercial transactions, including:
 - (i) the operation of public passenger transport;
 - (ii) the carrying on of a dock or harbour undertaking;
 - (iii) the provision of entertainment;
 - (iv) the provision and operation of industrial establishments; and
 - (v) markets (other than transactions relating to the grant, renewal or revocation of a licence to occupy a pitch or stall in a fair or market, or the attachment of any condition relating to the licence).

Except that the Ombudsman may investigate:

- (i) transactions relating to the acquisition or disposal of land or the provision of moorings (other than moorings provided in connection with a dock or harbour undertaking); and
- (ii) all transactions in the discharge of functions exercisable under any public general Act, other than those required for the

procurement of goods and services necessary to discharge those functions.

REVIEW OF THE PUBLIC SECTOR OMBUDSMEN IN ENGLAND:

A CONSULTATION PAPER

NAME:

ADDRESS:

1. A NEW COMMISSION (2.6)

Should the public sector ombudsmen schemes in England be combined to form a Commission ?

Do you think the collegiate model is more effective than a model comprising one ombudsman and a number of deputies ? Are there any other models you would like to propose ?

The review does not recommend a name for the new Commission but recognises that its name should reflect its role and be chosen with public accessibility in mind. What do you think would be a good name for the Commission ?

The review suggests that other ombudsmen be made "associates" of the Commission as a way of extending the "one-stop shop" idea ? Are there other approaches ? Which ombudsmen should be associates and why ?

Are the changes proposed (including in ways of working) sufficient to address any concerns about the quality or operation of the ombudsmen ? What are these concerns ?

2. THE MP FILTER (2.12)

Do you support abolition of the MP filter for the submission of complaints to the PCA ? Do you see any added risks or benefits arising from abolition ? Do you think that it would be possible to retain the MP filter under the proposed new arrangements ?

3. JURISDICTION AND POWERS (2.18)

Do you agree that the jurisdiction and powers of the new Commission should be the same as those which currently exist for the PCA, HSC and CLA; and that any changes should wait until legislation is brought forward ?

Are there any particular bodies, or types of bodies, not currently within the jurisdiction of the ombudsmen which you would like to see subject to investigation by the new Commission ?

Should the legislation specify the bodies which are *not* within the ombudsmen's jurisdiction, rather than those which are ?

Should the primary role of the new Commission remain the investigation of complaints of maladministration ? Should complaints about personnel or contractual matters be subject to investigation by the new Commission ?

Are there any other matters which the new Commission ought to be able to investigate but which are currently outside the jurisdiction of the ombudsmen ?

4. ACCOUNTABILITY (2.24)

Do you agree that the Commission should in its entirety be directly answerable to Parliament ?

Are the proposed reporting arrangements sufficient ? Should any other reports be required ?

Should there be more detailed requirements on the content of annual reports ?

Should the Commission set its own performance targets, or should targets be agreed with Government or Parliament ?

Do you support the review's conclusions about the benefits of Parliamentary oversight over complaints about local authorities ?

5. APPOINTMENTS (2.28)

Do you agree that the ombudsmen should continue to be appointed by The Queen ?

What role, if any, should Parliament play in the appointment of the ombudsmen ? Is there a role for local government ?

What changes, if any, should be made to the terms and conditions of employment of the ombudsmen ? Should ombudsmen continue to serve until retirement age ? Should fixed-term appointments be introduced ?

Should non-executive members be appointed to the board of the new Commission ? Who should appoint these ? What should the role of non-executives be ?

What do you think the new members of the Commission should be called ? Should we retain the current Commissioner titles ? Should we replace Commissioner with Ombudsman ? How should we refer to non-executive members ? Are there any other more appropriate titles ?

Please complete and return this questionnaire by FRIDAY 29 SEPTEMBER to:

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Ministers may wish to publish these questionnaires in due course, or place copies in the libraries of the Houses of Parliament. Should you wish your comments to be treated in confidence, please make this clear in your return.