



House of Commons Public Administration Select Committee

Work of the Ombudsman

Written Evidence

This is a volume of submissions, relevant to the inquiry into Work of the Ombudsman which have been reported to the House for publication.

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**Written evidence submitted by the Parliamentary and Health Service Ombudsman
(OM 1)**

INTRODUCTION

1. I welcome the opportunity to give evidence to the Public Administration Select Committee on my 2009-10 Annual Report, *Making an impact*, and also on other matters related to the work of my Office. I last appeared before the Committee to discuss the work of my Office generally in November 2009. This Memorandum updates the Committee on some of our main activities, includes a brief update on our casework performance at the half year and looks ahead to the rest of this year.

CASEWORK PERFORMANCE

2. The details of our casework performance for the business year 2009-10 are set out in my Annual Report.
3. 2009-10 was the first year in which we saw the operation of the reforms to the NHS complaints system which were introduced in April 2009 and which I had argued for for some time. The reforms included the removal of the Healthcare Commission as the second stage complaint handler, resulting in a substantial increase in our workload and a much simpler system for health complainants to use. We made careful preparations for these changes and were well placed to deal with the increased numbers of enquiries we received during this first year (24,000 against 16,000 in 2008-09).
4. During 2009-10 we saw significant increases in incoming work, a noticeable increase in the number of complaints resolved without the need for a full investigation and considerable improvement (reduction) in the time taken for us to complete a full investigation. These improvements all built on work in earlier years to improve our productivity and the consistency and quality of our work and were delivered during a year of considerable change.
5. At the end of the 2009-10 financial year we were able to report that we had met five out of the six operational targets for customer service that we had set, and we came very close to meeting the sixth.

6. I am very pleased to be able to tell the Committee that at the end of September 2010 we were meeting all six of our customer service standards. Continuing to meet those standards will be a challenge, but I am confident that we will be close to them when the 2010-11 year end figures are available. I will lay my Annual Report detailing our performance for 2010-11 before Parliament in July 2011.

PARLIAMENTARY OMBUDSMAN - REPORT UPDATES

Equitable Life

7. The Committee will remember that I appeared before them on 14 October 2010 to give evidence following the publication of Sir John Chadwick's proposals for payment of compensation to Equitable Life Policyholders. At that time, the Government had not responded to those proposals. On 20 October 2010 the Financial Secretary to the Treasury made a statement in which he accepted in full the findings in my report; and rejected Sir John's final findings but adopted his calculations relating to relative loss by policyholders. He further stated that the Independent Commission on Equitable Life Payments had been told that a sum in the region of £1.5 billion would be made available for payments to policyholders and had been asked to advise Government on how such payments could be calculated and prioritised.
8. On 16 December 2010 I wrote to the All-Party Parliamentary Justice for Equitable Life Group clarifying my views in light of the Government's announcements on Equitable Life made on 20 October 2010. In the letter I recognised that whilst some of the people who complained to me would be extremely disappointed by the Government's decision on affordability and eligibility, I could not say those decisions were incompatible with the recommendations in my report.
9. As Parliamentary Ombudsman it had been my task to report independently to Parliament on this matter so that Parliament could be informed in the decisions that it took. Parliament considered the issues raised in my report and the recommendations I made and provided its response. I do not believe it would be appropriate for me to comment on what Parliament has decided. A copy of my letter to the All Party Parliamentary Group is attached to this Memorandum (as Annex A).

Cold comfort

10. Some members of the Committee will remember my report in December 2009, *Cold comfort*, which drew to Parliament's attention the failure of Defra and the Rural Payments Agency to accept or comply with all of my report's recommendations. I gave evidence before the Committee on 28 January 2010, following which the then Chair of the Committee wrote publicly to the relevant Minister, asking him 'personally to take another look at' my report. On 15 February 2010 I met Dame Helen Ghosh, then Permanent Secretary of Defra, and in March 2010 I received a letter from her informing me that Defra had now accepted all of my recommendations.
11. I would like to take this opportunity to say how much I appreciated the Committee's robust support on that occasion. Most agencies and departments understand and respect the unique constitutional position of the Ombudsman in terms of the Office's independence and authority: my recommendations are nearly always accepted and complied with. On the rare occasions when my recommendations are not accepted, then the intervention of the Committee has proved decisive in achieving justice for citizens. I am grateful on their behalf and on behalf of my Office for the rigour and vigour with which the Committee pursues such issues.
12. Although the cases reported in *Cold Comfort* are now closed, the Rural Payments Agency and the Single Payments Scheme continue to feature heavily in our investigation caseload. We expect to publish a further report in 2010/11.

Trawlermen's compensation scheme

13. In my evidence to the Committee in November 2009, I said that in July of that year the Department for Business, Innovation and Skills had launched a new *ex gratia* compensation scheme for former trawlermen. I thought this meant that the Department were, finally, well on their way to full compliance with the recommendations of my 2007 report, *Put together in haste: 'Cod wars' trawlermen's compensation scheme*. It is disappointing therefore to have to tell the Committee that I have recently accepted for investigation a number of complaints about the revised scheme.

PARLIAMENTARY OMBUDSMAN - OTHER REPORTS

14. I have published two reports so far in the current business year. The first was a report on my decision not to uphold a complaint that the Pensions Regulator failed to exercise its statutory functions properly and its discretion reasonably. Since the start of that investigation I had received a further ten complaints about the Regulator on these matters with referrals from MPs from more than one Party. Putting this report in the public domain enabled the outcome of my investigation of this complaint to be seen openly. The second report was titled *A Breach of Confidence*.

A Breach of Confidence

15. In January 2011 I published this report criticising three government agencies for collectively failing to put things right when a data sharing mistake led to a woman's personal and financial information being wrongfully disclosed to her former partner and her child support payments being reduced without her knowledge. My focus here was less on the initial error than on the complete failure of these three bodies to take responsibility for their part in the error or to sort out the resulting confusion and distress. I recommended that the three agencies, in discussion with the Cabinet Office, agree a customer-focused protocol to deal with complaints of this kind. I also took the significant step of recommending that the Cabinet Office ensures that lessons are learnt from the complainant's experience and that appropriate guidance is disseminated to all government departments.
16. All the recommendations in my report have been accepted.

HEALTH SERVICE OMBUDSMAN REPORTS

Listening and Learning

17. In October 2010 I published the first of my annual reports on the complaint handling performance of the NHS in England. The report made clear that I think the NHS needs to listen harder and learn more from complaints. When it fails to do so, it is missing a rich source of insight and information that comes directly from service users. We followed the publication of this report with a series of regional conferences aimed at supporting local NHS complaint handlers and others to improve customer service and administration for the benefit of patients and their families.

Care and Compassion?

18. The Committee may be interested to know that I will be publishing a new report on the care of older people by the NHS on 15 February 2011.

Using our evidence to support improvements in health services

19. The Committee will wish to be aware that I have submitted written evidence to the Health Select Committee's Inquiry into Complaints and Litigation and I have been called to give oral evidence on 15 February 2011.
20. I have also submitted written evidence to the Public Inquiry into the operation of commissioning, supervisory and regulatory bodies for Mid Staffordshire NHS Foundation Trust (January 2005 - March 2009) and expect to be called to give oral evidence. During the period under investigation the NHS complaints system included a second stage complaint handler, the Healthcare Commission and we had very little direct contact with the Trust. Nonetheless, I believe that we can make a useful contribution to the Inquiry.

WIDER CONTACTS

21. We continue to share our experience and learning with Ombudsmen from the UK and the international community on a regular basis. In August 2010 my Office signed a Memorandum of Understanding with the Public Protector of South Africa, Advocate Thuli Madonsela. The purpose of the agreement is to provide a framework for co-operation between the Public Protector of South Africa and the UK Parliamentary and Health Service Ombudsman with a view to sharing best practices and enhancing the effectiveness of the two institutions. We have had a useful dialogue with the British High Commissioner and her team in South Africa over the importance of international support for the role that the Public Protector plays in the South African constitution, and the strengthening of bi-lateral contacts between our two countries.

LOOKING AHEAD

Major reports

22. In October 2011 I shall publish the second Listening and Learning report on the complaint handling performance of the NHS and a sister report (the first of its type) about the complaint handling performance of government departments and agencies.

Resources

23. 2010-11 is the final year of PHSO's existing three year funding settlement voted by Parliament. Starting in September 2009, my Office undertook a detailed spending review to determine the level of resourcing necessary to deliver our statutory functions, in particular the core business of providing a high quality complaint handling service direct to the public, over the next four years. Our final submission proposed a settlement which equated to a 12.7% reduction in funding over the four year period to include:

- net resource expenditure of £34.0m for each of the four years of the settlement period, a real terms reduction of 10.9% by 2014-15; and
- capital expenditure of £0.7m per annum, a 67% reduction against our 2010-11 settlement provision of £2.1m.

24. HM Treasury has now sanctioned a four year spending plan based on that submission and the funding will be included in Estimates laid before Parliament in the summer. I will publish a four year Strategic Plan alongside our Annual Report in July.

Change

25. The Committee will be aware that I have announced that I plan to retire from this role towards the end of 2011. I hope that there will be further opportunities to discuss the work of my Office before that time.

February 2011

Annex A – Letter from Ombudsman to All Party Parliamentary Group

Bob Blackman MP – Co-Chair
All-Party Parliamentary Justice for Equitable
Life Policyholders Group
House of Commons
London
SW1A 0AA

16 December 2010

I am writing in response to your letter of 1 November 2010. Please accept my apologies for not having been able to reply sooner.

You ask me to clarify my views in light of the Government's announcements on Equitable Life made on 20 October 2010, and subsequently. You also ask me to address a number of specific questions. I will do my best to provide the clarification you are seeking. However, I do not think it would be appropriate or particularly helpful to frame my response in accordance with your detailed questions. Let me explain why.

From my perspective, the position is as follows:

- The Government has made a clear and unequivocal statement that it accepts all of my findings of maladministration and injustice.
- The Government has established and funded a compensation scheme for Equitable Life policyholders, to provide compensation for relative loss, as my report recommended.
- The Government has considered the potential impact on the public purse of payment of compensation in this case, as my report indicated was appropriate, and has decided what is affordable.
- The Government has also made some decisions about eligibility for the scheme and has given reasons for those decisions, which I cannot say are unreasonable.
- Most importantly, Parliament debated the Equitable Life (Payments) Bill at some length on 10 November 2010. In the course of that debate various amendments to the Government's proposals were considered but not supported. Parliament supported the Government's proposals.

As you will recall, the final paragraphs of Chapter 14 of my July 2008 report, which covered remedy and recommendations, read as follows:

'....I invite Parliament to consider the issues that have been raised in this report and the recommendations that I have made and to further reflect on what its response to my report should be.'

'Having alerted Parliament to the injustice that I have found was sustained in consequence of maladministration, I would be very happy to assist Parliament in its deliberations in any way I can.'

I have done all I can to assist Parliament in its deliberations, most recently in my appearance before the Public Administration Select Committee on 14 October 2010. Parliament has

considered the issues raised in my report and has now decided what its response to my report should be, as I invited it to do.

As I am sure you will understand, it would not be appropriate for me to express a view on whether the decisions taken by Parliament on 10 November 2010 were right. My role is to assist Parliament in its deliberations, not to comment on its decisions.

In summary my position is as follows:

- Whilst I recognise that some of the people who complained to me will be extremely disappointed by the Government's decisions on affordability and eligibility, I cannot say that those decisions are incompatible with the recommendations in my report.
- As Parliament's Ombudsman, it has been my task to report independently to Parliament on this matter, so that Parliament can be informed in the decisions it takes. Parliament has considered the issues raised in my report and the recommendations I made and has provided its response. It would not be appropriate for me to comment on what Parliament has decided.

February 2011

Written evidence submitted by Parliamentary and Health Service Ombudsman (OM 2)

PUBLIC ADMINISTRATION SELECT COMMITTEE HEARING THE WORK OF THE OMBUDSMAN 9 FEBRUARY 2011

At my appearance on 9 February 2011 I undertook to supply further information to the Committee in a number of areas. This information is set out below and in the accompanying pages. I also enclose a copy of the uncorrected transcript with some minor suggested changes which I would be grateful if you could include in the finalised transcript.

1 COSTS ASSOCIATED WITH PRESS CUTTINGS AND PR CONSULTANCY (Q11)

The Committee asked for a note of the amount that my office (PHSO) spends on “press-cutting services, communications, PR, consultancies and so on”.

I promised a note on the detail and went on to explain that PHSO’s Communications Division plays a vital role in enabling the Office to share learning from its casework and supporting our strategic objective of improving public services.

Working with the national and regional media is a key part of our promotional activity, helping to raise awareness of our role amongst the general public and inform public policy. We employ one press officer to support this activity.

We use our press cuttings to monitor our success at promoting our work nationally and regionally and to alert us to concerns about complaint handling and administration by bodies within my jurisdiction.

As part of a general overhaul of our Communications function in 2009, PHSO contracted a new press cuttings service. Our spend during 2009-10 on press cuttings was £7,196.

In the current financial year (2010-11) to mid-February 2011 (10 months) we have spent just over £10,500 on that service. In obtaining and using that coverage we are required to pay additional fees to the Newspaper Licensing Agency and in the current year that has amounted to just over £7,350.

PHSO does not currently retain a PR consultancy although we use consultants to provide technical and other advice as shown below.

Our Media and Communications budget for 2010-11 totals £527,000. Salaries account for nearly £273,000 of this. The remaining budget is broken down below:

<i>Item</i>	<i>Budget</i> <i>£000</i>	<i>Major elements Include:</i>
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General budgets	4.2	Staff travel and subsistence
Professional services	10.5	translation services for publications
Consultancy	63.4	Consultancy to improve the accessibility of our website and printed materials, branding, web and print design services and support in improving the management of our stakeholder contact data
Corporate Events	44.4	Annual training event for all staff and other internal communications
Publicity	106.5	Printing of leaflets and published reports; production facilities for audio-visual communications
E-Communications	24.7	Press cuttings, licensing and web hosting charges
Total	253.7	

2 INFORMATION ON REFERRALS FROM MPs (Q24)

The Committee asked for a note setting out how many referrals from MPs are investigated and for information about whether MPs are correctly referring complaints from their constituents.

MPs Complaints investigated

At the hearing I explained that although a great many of the complaints we receive are clearly not for us, we do invest considerable resources in making sure that the remainder are properly considered and where possible resolved without the need for a full statutory investigation. We call this process further assessment.

As the Committee will be aware, no complaint that falls within my Parliamentary jurisdiction can be accepted for investigation without an MP referral. That is not the case for a complaint that falls within my health jurisdiction, but a complainant may still be supported by an MP. As a result there are MP referrals across both jurisdictions.

Tables at Annex A set out the numbers of complaints received with MP involvement over given periods, the number of those which were closed after further assessment and the number which went on to full investigation. The comparable figures for all complaints are also included. From these the Committee will see that for the year 2009-10, 70% of enquiries with MP involvement were considered at further assessment and 3% were accepted for investigation. This compares to 26% of complaints overall being considered at further assessment and 1% of all complaints being investigated.

The Committee will recall that I explained that complainants whose complaints have been through the further assessment process may find their complaint resolved even though we have not carried out a full statutory investigation. Often the involvement of the Ombudsman's office is enough to persuade the body in question to look again at the complaint and, sometimes, to resolve it to the complainant's satisfaction or to ours without recourse to further work.

For the first half of the current business year (April-September 2010) 80% of enquiries with MP involvement were considered at further assessment including 7% accepted for investigation. Comparable figures for all complaints are 29% and 2%.

MPs referrals being correctly made

A second set of tables at Annex B sets out the closure codes for complaints received from MPs. PHSO tracks any MP involvement in complaints, including complaints about health services and complaints where the MP becomes involved after the initial enquiry has been made.

In 2009-10 MPs were involved in 2,056 complaints, of which 968 (48%) were either out of remit or premature. Only 16 (1%) were not properly made (ie not received in writing from the MP or without the consent of the aggrieved). 68 (3%) were accepted for investigation. 16 of these related to the NHS and 52 related to government bodies and agencies.

In the first half of the current business year (April – September 2010) MPs were involved in 1,082 complaints of which only 5 were not properly made while 407 (38%) were out of remit or premature. 77 (7%) were accepted for investigation and of these 6 related to the NHS and 71 related to government bodies and agencies. In addition, six cases were linked to a 'lead' complaint – which is a complaint already under investigation relating to the same or similar issues about the same bodies.

Looking at the wider picture: in the first half of the current business year a total of 11,809 complaints have been received of which 3,806 (32%) were out of remit or premature and 4,831 (41%) were not properly made. 216 (2%) have been accepted for investigation. The high proportion of 'not properly made' complaints from the general population may partly be explained because a complaint within my Parliamentary jurisdiction is not properly made unless it is referred by an MP.

3 BENEFITS OF CHANGES TO THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION (PCA) LEGISLATION TO PERMIT INCREASED INFORMATION SHARING (Q54)

The Committee asked for a note setting out the benefits of changes to the PCA Act on sharing information to mirror changes proposed to the Health Service Ombudsman's legislation in the Health and Social Care Bill. We expect the relevant clauses in the Bill to be debated shortly. I will write separately to give a comprehensive argument for mirroring what looks likely to be agreed following that debate.

4 THE OMBUDSMAN'S ROLE

The Committee asked (Q58) what qualities might be helpful for a new Ombudsman and I offered to send them my thoughts on a person specification. This is attached at Annex C.

Following my appearance before the Committee, you and I discussed ways in which PHSO could make a contribution to the Committee's existing Inquiry into Good Governance and Civil Service Reform. I understand that my Deputy Chief Executive will be attending a meeting you have arranged with other bodies to help you take this piece of work forward.

I hope that the information included in this letter is sufficient to address the questions of the Committee. I remain ready, as ever, to assist their further inquiries in whatever way I can.

March 2011

ANNEX A: PHSO CASES REFERRED TO FURTHER ASSESSMENT AND ACCEPTED FOR INVESTIGATION

ALL CASES

Full year: 2009/10

	Parliamentary	Health Service	Out of Jurisdiction	Total
Total enquiries received	7,909	13,631	2,700	24,240
Closed before further assessment	6,675	8,335	61%	2,697 100% 17,707 73%
Closed following further assessment	1,182	15%	4,992 37%	3 0% 6,177 25%
Accepted for investigation	52	1%	304 2%	- 0% 356 1%

6 months: April - September 2010

Total enquiries received	3,736	6,753	1,320	11,809
Closed before further assessment	2,943	79%	4,157 62%	1,319 100% 8,419 71%
Closed following further assessment	722	19%	2,451 36%	1 0% 3,174 27%
Accepted for investigation	71	2%	145 2%	- 0% 216 2%

MP CASES

Full year: 2009/10

	Parliamentary	Health service	Out of jurisdiction	Total
Total enquiries received	1,764	231	61	2,056
Closed before further assessment	531	30%	36	97%
Closed following further assessment	1,181	67%	179	2
Accepted for investigation	52	3%	16	0
				3%

6 months: April - September 2010

Total enquiries received	965	91	26	1,082
Closed before further assessment	172	18%	18	20%
Closed following further assessment	722	75%	67	74%
Accepted for investigation	71	7%	6	7%

ANNEX B: REASONS FOR COMPLAINTS TO PHSO TO BE CLOSED WITHOUT STATUTORY INVESTIGATION

ALL CASES

Full year: 2009/10

ClosureType	Parliamentary	Health Service	Jurisdiction	Out of jurisdiction	Total
Out of remit	283	4%	344	3%	2,691
Not properly made	5,635	71%	4,221	31%	0%
Premature	746	9%	4,010	29%	0%
General discretion	784	10%	3,206	24%	0%
Specific discretion	37	0%	266	2%	0%
Withdrawn	372	5%	1,280	9%	9
Accepted	52	1%	304	2%	-
Grand Total	7,909	100%	13,631	100%	2,700
				100%	24,240
					100%

6 months: April - September 2010

ClosureType	Out of remit	Not properly made	Premature	Total
Out of remit	106	3%	161	2%
Not properly made	2,548	68%	2,283	34%
Premature	309	8%	1,912	28%

General discretion	477	13%	1,537	23%		0%	2,014	17%
Specific discretion	37	1%	125	2%		0%	162	1%
Withdrawn	182	5%	590	9%	2	0%	774	7%
Linked to lead	6	0%		0%		0%	6	0%
Accepted	71	2%	145	2%		0%	216	2%
Grand Total	3,736	100%	6,753	100%	1,320	100%	11,809	100%

MP CASES

Full year: 2009/10

ClosureType	Parliamentary	Health service	Jurisdiction	Out of	Total
Out of remit	75	4%	7	3%	61
Not properly made	15	1%	1	0%	0%
Premature	746	42%	79	34%	0%
General discretion	784	44%	116	50%	0%
Specific discretion	37	2%	6	3%	0%
Withdrawn	55	3%	6	3%	0%
Accepted	52	3%	16	7%	0%
Grand Total	1,764	100%	231	100%	61
				100%	2,056
					100%

6 months: April - September 2010

ClosureType						Total
Out of remit	34	4%	2	2%	26	100%
Not properly made	5	1%	0%	0%	5	0%
Premature	309	32%	36	40%	0%	345
General discretion	477	49%	43	47%	0%	520
Specific discretion	37	4%	1	1%	0%	38
Withdrawn	26	3%	3	3%	0%	29
Linked to lead	6	1%	0%	0%	6	1%
Accepted	71	7%	6	7%	0%	77
Grand Total	965	100%	91	100%	26	100%
					1,082	100%

ClosureType

Out of remit - common examples	Actions abroad other than consular functions; Administrative action taken on judicial authority; Alternative legal remedy achieved; Body out of jurisdiction.
Commencement/conduct of civil/criminal proceedings; Commercial/contractual matters	
Criminal investigation or national security	
Exercise of judicial/legislative functions	
Ineligible complainant	
Ineligible complaint	
Pre-1996 clinical matters	

	Private healthcare (not NHS funded)
	Public service personnel matters
	Three year rule
	Out of remit – other
Not properly made	A Parliamentary complaint is 'Properly made' if sent by an MP with a request that we investigate and with the aggrieved's consent. A Health complaint is 'Properly made' if it is made in writing.
Premature	The complainant has not completed the local and any second tier complaint handling.
General discretion	Includes: No evidence of unremedied injustice; No evidence of unremedied injustice but complaint resolved by PHSC; No indications of maladministration; No probability of a worthwhile outcome; Other dispute resolution appropriate; Other reason to decline to investigate.
Specific discretion	Specific discretion (suitability of complainant, time bar, alternative legal remedy).
Withdrawn	Withdrawn by the complainant

ANNEX C
PARLIAMENTARY AND HEALTH SERVICE OMBUDSMAN
SUGGESTIONS FOR A PERSON SPECIFICATION

Knowledge, experience and skills

Essential

- An understanding of the Ombudsman institution, its origins, and its constitutional position in relation to Parliament, government and the courts.
- Knowledge of the principles of administrative justice and public law, of good governance and good administration and experience in their application.
- Knowledge and experience of the workings of central and devolved government across the UK.
- Knowledge and experience of the workings of the National Health Service in England.
- Understanding of the views of the users of public services and experience of delivering services to a diverse range of users.
- Knowledge and experience of leading and managing a substantial organisation, together with proven leadership and management skills.
- Knowledge and experience of managing and accounting for the use of public money.
- Strong analytical, critical reasoning and judgement skills.
- Strong interpersonal and negotiating skills.
- Strong ambassadorial skills.

Desirable

- Knowledge of the wider Ombudsman landscape in the UK, particularly the public sector schemes.
- Knowledge of the Westminster Parliament, its Committee structure and its decision making processes.

Personal characteristics

- Visible and demonstrable impartiality, politically and otherwise.
- Unquestionable personal integrity.
- Ability to think and act objectively and independently.
- Commitment to high standards of public administration and public service delivery.
- A strong sense of what is right and fair.
- Tenacious and resilient in the face of challenge.
- Ability to establish personal credibility with senior figures in Parliament, government and the National Health Service, and in the wider administrative justice community in the UK and beyond.
- Ability to inspire confidence in Parliament, with the general public and with bodies in jurisdiction.