

<b>Title:</b> <b>Public Services Ombudsmen</b>  <b>Lead department or agency:</b> Law Commission  <b>Other departments or agencies:</b> Ministry of Justice Cabinet Office Department for Communities and Local Government Welsh Assembly Government	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> LAWCOM0006
	<b>Date:</b> 02/09/2010
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
<b>Contact for enquiries:</b> Keith Vincent 020 3334 0262	

## Summary: Intervention and Options

### What is the problem under consideration? Why is government intervention necessary?

The system of public services ombudsmen has been developed over 43 years; and areas of it are disjointed, outdated or overly bureaucratic. Current differences in the procedures and powers of the various public services ombudsmen can cause confusion for complainants, operate as a bar to access and do not allow for efficient and appropriate allocation of cases between the ombudsmen and the courts.

Government intervention at a national level is required in order to create a cohesive system for the public services ombudsmen across England and Wales, as the governing statutes for the public services ombudsmen are primary legislation. Government intervention is further justified as our proposals promote human rights, by increasing access to justice, especially for disabled individuals.

### What are the policy objectives and the intended effects?

The intended effect of the policy is to create a modern and coherent system for the public services ombudsmen in England and Wales. There are three policy objectives:

1. The public services ombudsmen will have the tools to dispose of their statutory tasks in an efficient, transparent and effective way.
2. Complainants will have a clear and comprehensible redress system available to remedy administrative failures.
3. Parliament and the National Assembly for Wales will have a stronger relationship with the public services ombudsmen.

### What policy options have been considered? Please justify preferred option (further details in Evidence Base)

*Option 0: Do nothing*

*Option 1: Focused legislative reform*

This is the preferred option. It would comprise the reform of parts of the statutes governing each of the public services ombudsmen to ensure greater flexibility with regard to access for complainants and greater uniformity of practice between the different ombudsmen. Since this would ensure greater coherence without altering the basic structure of the public services ombudsmen system in England and Wales this is the least disruptive way of achieving the policy objectives.

*Option 2: Wholesale legislative reform*

The wholesale reorganisation of the public services ombudsmen landscape would ensure greater consistency and coherence within it. However, this option was discounted as outside the terms of the current project.

<b>When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?</b>	It will not be reviewed
<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	No

**Chair's Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Chair: ..... Date: .....

# Summary: Analysis and Evidence

# Policy Option 1

Description: Focused Legislative Reform

Price Base Year 09/10	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £0.313m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0	£0.588m	£4.893m
High	£0	£1.153m	£9.592m
Best Estimate	£0	£1.023m	£8.508m

### Description and scale of key monetised costs by 'main affected groups'

*Public services ombudsmen:* Reform of the statutory bar means more complaints to the ombudsmen (£358,410). More complaints transferred from courts (£40,373). Use of mediators (N/Q). Costs of accepting non-written complaints (N/Q). More complaints if the MP filter is removed (£581,439). Referrals received on point of law (£47,734).

### Other key non-monetised costs by 'main affected groups' None

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	£0	£0.081m	£0.675m
High	£0	£6.886m	£57.272m
Best Estimate	£0	£1.061m	£8.821m

### Description and scale of key monetised benefits by 'main affected groups'

*Public services ombudsmen:* Fewer full investigations if use mediators and fewer written complaints (N/Q).  
*Her Majesty's Courts Service:* removal of some cases out of administrative court due to the removal of the statutory bar (£816,988). Transfer of cases to ombudsmen (£243,624)  
*Complainants:* reduction in legal fees.  
*Public bodies:* reduction in legal fees.

### Other key non-monetised benefits by 'main affected groups'

*Public Services Ombudsmen:* additional tools to allow them to dispose of complaints efficiently and appropriately. Simplification and standardisation of legal regime. Clarification when cases referred to court on point of law. The public service ombudsmen will have a stronger relationship with Parliament and the National Assembly for Wales.  
*Her Majesty's Court Service:* ability to focus resources on other matters.  
*Complainants:* just system allowing for swift resolution of grievances. Oral submission of complaints will promote racial equality and assist some disabled complainants. Increased access through removal of MP filter. Increased accessibility, accountability and transparency of ombudsmen decisions if reports modernised and the details of ongoing ombudsmen investigations are made more open. Protection of findings might reduce future litigation.  
*Public bodies:* new ability for disputes to be closed by an independent arbiter.

### Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

- All 5 ombudsmen spend approximately 85% of their budget on investigating complaints. Moderate risk that use a higher or lower proportion, and costs of the policy to be higher or lower.
- The estimated cost per complaint is of the same order of magnitude as the actual cost of disposing of a substantive complaint. Moderate risk that costs could be higher or lower.
- 10 to 50 cases a year are appropriate for transfer from the Administrative Court to the public services ombudsmen. This a low risk as a large range was used and there is a net benefit across the entire range.
- Following the removal of the MP filter and statutory bar the same number of complaints received and the same proportion would be rejected. Risk that more received and fewer rejected, causing increased costs.
- Only 2 or 3 referrals annually from the ombudsmen to the courts on a point of law. Low risk of more referrals on average, if so, monetised costs will increase.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):		In scope
New AB: £0	AB savings: £0	Net: £0	Policy cost savings: £0		N/A

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England and Wales				
From what date will the policy be implemented?	N/A				
Which organisation(s) will enforce the policy?	Parliament/National Assembly for Wales/Cabinet Office				
What is the annual change in enforcement cost (£m)?	£0				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	N/A				
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded: 0		Non-traded: 0		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: 100%		Benefits: 100%		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro £0	< 20 £0	Small £0	Medium £0	Large £0
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties<sup>1</sup></b> <a href="#">Statutory Equality Duties Impact Test guidance</a>	Yes	18
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	19
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	19
<b>Environmental impacts</b>		
Greenhouse gas assessment <a href="#">Greenhouse Gas Assessment Impact Test guidance</a>	No	19
Wider environmental issues <a href="#">Wider Environmental Issues Impact Test guidance</a>	No	19
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	Yes/No	19
Human rights <a href="#">Human Rights Impact Test guidance</a>	Yes	19
Justice system <a href="#">Justice Impact Test guidance</a>	Yes	Throughout
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	20
<b>Sustainable development</b> <a href="#">Sustainable Development Impact Test guidance</a>	No	20

<sup>1</sup> Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

### References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Law Commission Consultation Paper, Public Services Ombudsmen (CP 196, 2010)
2	
3	
4	

+ Add another row

### Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

#### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0
<b>Annual recurring cost</b>	£0	£1.023m	£1.023m	£1.023m	£1.023m	£1.023m	£1.023m	£1.023m	£1.023m	£1.023m
<b>Total annual costs</b>	£0	£1.023m	£1.023m	£1.023m	£1.023m	£1.023m	£1.023m	£1.023m	£1.023m	£1.023m
<b>Transition benefits</b>	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0
<b>Annual recurring benefits</b>	£0	£1.061m	£1.061m	£1.061m	£1.061m	£1.061m	£1.061m	£1.061m	£1.061m	£1.061m
<b>Total annual benefits</b>	£0	£1.061m	£1.061m	£1.061m	£1.061m	£1.061m	£1.061m	£1.061m	£1.061m	£1.061m

\* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office  
Excel Worksheet

# Evidence Base (for summary sheets)

## 1. INTRODUCTION

### **Background to the problem**

- 1 The five public services ombudsmen have been established over the last 43 years, to provide citizens and public bodies with a simple and effective mechanism for disposing of administrative complaints against public bodies. The ombudsmen focus on the administrative quality of decision-making. Their key test is whether the behaviour of the relevant public body amounted to “maladministration”. This differs from courts, whose primary focus is on whether a decision is legal.
- 2 Though the primary focus of courts and ombudsmen is different, a given set of facts could potentially allow either to intervene. One feature of ombudsmen is that their process is investigative. It should, therefore, lead to less conflict with public bodies than an action for judicial review. A further feature is that many of the costs of the public services ombudsmen are internalised. There is no need for court hearings or recourse to lawyers and the ombudsmen do not charge users.

### **The problem**

- 3 The current system for the public services ombudsmen needs modernisation, as areas of it are disjointed, outdated or overly bureaucratic. The basic model for the ombudsmen was that established in 1967 for the Parliamentary Commissioner for Administration. Though there have been more recent developments, such as the Public Services Ombudsman for Wales in 2005, there is no coherent system for ombudsmen and some of the outdated procedures contained in the 1967 model have continued to the present day.
- 4 The current system contains unnecessary access barriers to the ombudsmen. A statutory bar operates for all of the ombudsmen, meaning that the ombudsmen should not accept complaints which could be, or have already been, the subject of a case before a court. This places a burden on complainants to choose the correct redress mechanism very early in the process, and creates a bar to the ombudsmen for those groups who may lack access to adequate legal advice on which redress forum to use. There is also a requirement that complaints to the Parliamentary Commissioner must be submitted through an MP (the MP filter), which acts as a bar to complainants. The inflexible requirement that a complaint be submitted in writing for the Parliamentary Commissioner and the Health Service Ombudsman has further potential to inhibit access for vulnerable groups.
- 5 The diversity of reporting procedures used by the public services ombudsmen creates a system which is not easy for complainants to understand or use. It also makes assessment or meaningful comparison of the ombudsmen difficult for those wishing to analyse their work. This reduces the accountability of the system. In certain cases, for instance with the Parliamentary Commissioner and the Health Service Ombudsman, the current reporting system is not sufficiently flexible to allow for the cost-effective, but still transparent, disposal of minor ombudsmen investigations. The Parliamentary Commissioner and Health Service Ombudsman must either give a full and detailed report or discontinue an investigation- they cannot choose to give a summary or short report for more minor investigations.
- 6 There is a lack of clarity in relation to the status of findings and recommendations made by the public services ombudsmen. There is also variation in the enforceability of these findings and recommendations between the various ombudsmen. The current position of the Court of Appeal in relation to the findings of the Parliamentary Commissioner does not afford sufficient protection to their findings of maladministration, although we do not think that the ombudsmen’s recommendations need to be given any more protection.
- 7 The public services ombudsmen – other than the Parliamentary Commissioner and the Public Services Ombudsman for Wales – have insufficient access to elected bodies, and particularly Parliament. Publicity is key to the ability of the public services ombudsmen to secure the implementation of their reports, which are not legally binding. The lack of involvement in the political arena is a distinct disadvantage to ombudsmen in pursuing the functions ascribed to them by statute and creates unjustified disparity in the powers of the various public services ombudsmen.

- 8 Finally, given the developing role of Parliament in the appointment of certain public bodies, we suggest that Parliament does not have a sufficiently strong role in the appointment of the Parliamentary Commissioner.

### **Rationale for intervention**

- 9 The conventional economic approach to government intervention is to resolve a problem based on efficiency or equity arguments. Government may consider intervening if there are failures in the way markets operate or if there are failures in existing government interventions. In either case the proposed new intervention should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for redistributive reasons.
- 10 In this project, there are two reasons for Government intervention. First, there are failures in current intervention by Government. We suggest that the system for ombudsmen could be improved so as to serve both complainants and public bodies in a more efficient and effective way. Second, we suggest that improving access to the public service ombudsmen would provide a more equitable system for citizens. Ombudsmen do not require the instruction of lawyers nor do they necessitate court hearings – which may deter some members of society from pursuing legitimate complaints. Recourse to the public services ombudsmen also has advantages for public bodies, as independent arbiters the ombudsmen can dispose of unmeritorious claims in a manner that allows for closure of the issue.
- 11 There are also wider reasons for intervening. The business of public bodies should be conducted in as transparent a manner as is possible.
- 12 The rules governing the public services ombudsmen are – for the most part – contained in primary legislation. Therefore, to achieve our aims intervention by Government is required. The need to create a cohesive system of public services ombudsmen across England and Wales requires the involvement of Government at a national level.

### **Policy objectives and intended effects**

- 13 The policy objective is to create a modern and coherent system for the public services ombudsmen in England and Wales. There are three intended effects of the policy:
- (1) The public services ombudsmen will have the tools to dispose of their statutory tasks in an efficient, transparent and effective way.
  - (2) Complainants will have a clear and comprehensible redress system available to remedy administrative failures. The system will have with fewer bars to access.
  - (3) Parliament and the National Assembly for Wales will have a stronger relationship with the public services ombudsmen. Parliament will appoint the Parliamentary Commissioner for Administration.

### **Scale and context**

- 14 The scale of the issue is reflected in the wide remit of the public services ombudsmen. Collectively, the public services ombudsmen deal with cases from all areas of public administration. Many individuals who feel they have suffered maladministration will have their complaints dealt with internally by the administrative body responsible, or will go to the Administrative Court for redress. However, there is still a large number of claimants who will go on to the ombudsmen. It is estimated that 468,480 complaints and enquiries will be received by the five public services ombudsmen in the coming 10 years.
- 15 The Law Commission consultation paper *Public Services Ombudsmen* focuses on five statutory ombudsmen.
- The *Parliamentary Commissioner for Administration*, which was the first ombudsman to be established in the UK and deals with complaints made against central government departments and associated public bodies (as listed in Schedule 2 of the Parliamentary Commissioner Act 1967).
  - The *Health Service Ombudsman*, whose primary task is to consider complaints relating to potential maladministration within healthcare provision. The Health Service Ombudsman's jurisdiction is limited to England and the NHS bodies subject to its jurisdiction are listed in section 2 of Health Service Commissioners Act 1993. The

Parliamentary Commissioner's and the Health Service Ombudsman's combined budget<sup>2</sup> for 2008-09 was £26,489,075 (in 2009-10 prices)<sup>3</sup> and jointly 16,317 complaints and enquiries were received.<sup>4</sup>

- The *Local Government Ombudsman*, which was initially established to “provide for local government a system for the investigation of maladministration ... but tailored to the specific needs of local government”. The role of the Local Government Ombudsman is currently being expanded to extend to privately arranged or funded adult social and to complaints made against the governing bodies and head teachers of schools. Working from figures for the reporting year 2008-09 the Local Government Ombudsman had a budget of £14,276,366 (in 2009-10 prices) and received 21,012 complaints and enquiries.
- The *Public Services Ombudsman for Wales*, which was established by the Public Services Ombudsman (Wales) Act 2005, unifies four existing bodies: the Local Government Ombudsman for Wales, the Health Service Ombudsman for Wales, the Welsh Administration Ombudsman and the Social Housing Ombudsman for Wales. The jurisdiction of the Welsh Public Services Ombudsman therefore covers local government, social housing and health services in Wales. It is the most recent of the public services ombudsmen to be created in the United Kingdom. In 2008-09 the budget of the Public Service Ombudsman for Wales was £3,148,840 (in 2009-10 prices) and 2,765 complaints or enquiries were received.
- Finally, the *Housing Ombudsman*, which is an officer of Independent Housing Ombudsman Limited. This is an independently established company which is eligible to run an approved scheme under section 51 and schedule 2 of the Housing Act 1996. The Housing Ombudsman's investigations cover social housing; all landlords of social housing must be members of the scheme and are subject to it. The Housing Ombudsman's jurisdiction is limited to England. The annual report of the Housing Ombudsman does not differentiate between his public services jurisdiction in relation to social housing and his broader private jurisdiction relating to other matters. However, the ombudsman received a total of 6,754 complaints or enquiries and had an income stream of £3,004,081 (in 2009-10 prices) in the year 2008-09.

### **Policy options**

16 We have identified three main options:

- Option 0: Do nothing.
- Option 1: Focused legislative reform.
- Option 2: Wholesale legislative reform.

17 These are discussed in turn below.

#### ***Option 0: Do nothing***

- 18 This would leave the current situation unchanged. As we have outlined above, the present system has some barriers to access, which could operate unfairly against more vulnerable groups. The formal requirement that complaints to the Parliamentary Commissioner Ombudsman and to the Health Service Ombudsmen must be submitted in writing and that complaints to the Parliamentary Commissioner must be submitted through an MP would remain in place. The current obligation that all elements of an ombudsman investigation must remain private would also continue to limit the transparency of the public services ombudsmen scheme. There is not the same problem with the other ombudsmen.
- 19 Leaving the current regime in place would continue the compulsory allocation of complaints to courts in some instances. The operation of the statutory bar would continue to oblige the

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<sup>2</sup> Both roles are currently occupied by a single individual and the two ombudsmen are treated as one for the purposes of this impact assessment

<sup>3</sup> We have adjusted the figures in this impact assessment to 2009-10 figures using the Gross Domestic Product (GDP) deflator. This is in accordance with HM Treasury guidance. The figure taken for the change between the reporting year 2008-09 and that of 2009-10 is 1.51%. Figures have been rounded to pounds.

<sup>4</sup> By complaints and enquiries this includes preliminary enquiries. Therefore the figure differs from those considered in the cost benefit analysis.

ombudsmen to reject all complaints that are, or could be, the subject of a court claim. The absence of a stay and transfer power for the courts means that courts would still be unable to halt proceedings on cases where there were significant elements of them that could be better dealt with by the ombudsmen.

- 20 Doing nothing would continue to compel the Parliamentary Commissioner and Health Service Ombudsmen to issue costly full reports in all investigated cases and not allow them to issue shorter or summary reports. The current system also makes no provision for the ombudsmen to make references to the courts, in order to clarify purely legal questions that may arise in the course of their investigations.
- 21 Doing nothing would allow existing variations in the practices of the ombudsmen to remain. There would be no consistency between the ombudsmen as to the distinction between, and weight of, the ombudsmen's findings and recommendations. The present disparity in the strength of the various ombudsmen's relationships with elected bodies would also remain.
- 22 We take Option 0 as our base and therefore measure our preferred option, Option 1, against this.

### ***Option 1: Focused legislative reform***

- 23 This is the preferred option. It would comprise the reform of parts of the statutes governing each of the public services ombudsmen to ensure greater flexibility with regard to access for complainants, greater uniformity of practice between the different ombudsmen and to create greater coherence between the ombudsmen and court-based redress mechanisms. Since this would ensure greater coherence without altering the basic structure of the public services ombudsmen system in England and Wales this is the least disruptive way of achieving the policy objectives.
- 24 In order to satisfy the policy objectives stated above, a series of specific legislative changes would be appropriate. These are set out in Parts 3 to 7 of our consultation paper and are summarised below.
  - Reverse the existing statutory bar on opening an ombudsman investigation. This would ensure that public services ombudsman would no longer be obliged to decline to open an investigation where the complaint is or could be the subject of a court claim. Instead, there would be a general presumption in favour of the public services ombudsmen opening an investigation for all complaints.
  - Give courts dedicated powers to stay proceedings and transfer matters to an ombudsman. This would enable elements of court claims that could most suitably be assessed with reference to maladministration to be transferred to ombudsmen. The court would halt its own consideration of the legal issues of the complaint and would be able to resume this once the relevant public services ombudsman had come to a judgment on the maladministration issues.
  - Insert additional provisions into the legislation governing public services ombudsmen to give them clear and specific powers to use alternative dispute resolution.
  - Amend legislation to remove the inflexible, formal requirements for making complaints to public services ombudsmen. This would include the removal of the requirement that complaints to the Parliamentary Commissioner must be submitted through an MP (the MP filter) and the requirement that complaints to the Parliamentary Commissioner and the Health Service Ombudsman are made in writing. In addition we suggest that complaints could be submitted over the telephone or email.
  - Give the public services ombudsmen a power to make references to courts on points of law. This would enable them to seek clarification on issues such as the extent of their jurisdiction and thereby reduce the risk that their decisions could be challenged in the courts at a later date.
  - Standardise and modernise the system by which all the public services ombudsmen issue reports. This would give the ombudsmen greater flexibility to issue the most appropriate type of report for each investigation, and ensure greater efficiency. The public services ombudsmen would also be given a specific power to issue general reports.



- Clarify, and in some cases reform, the statutory distinction between, and status of, public services ombudsmen’s findings and recommendations.
- Give the public services ombudsmen a limited power to relax the closed nature of investigations, where this is deemed appropriate.
- Encourage a stronger relationship with elected bodies to harmonise the positions of all the public services ombudsmen. In particular, the Parliamentary Commissioner would be appointed on the nomination of Parliament.

25 As this is our preferred option we will deal with the costs and benefits of this option in detail below.

***Option 2: Wholesale legislative reform***

26 This option would address the fact that the current system of public services ombudsmen is the product of its piecemeal development since 1967 and that the resulting differences between the ombudsmen often lack coherence. The current system of ombudsmen in England and Wales would be reformed along the lines of the Public Services Ombudsman (Wales) Act 2005 by replacing the existing public services ombudsmen with a single Public Services Ombudsman for England and Wales. It would create a single point of access for complainants wishing to access an ombudsman regarding any public service and therefore would make the system easier to use. This would entail repealing all existing ombudsmen legislation and replacing it with a single piece of legislation.

27 Whilst this option would achieve our objective of creating a modern and coherent system of public services ombudsmen, it would entail a very high level of administrative disruption and reorganisation, as well as considerable legislative interference. This option was therefore discounted at an early stage of the policy formulation as a disproportionate response, and no detailed cost and benefit analysis is provided below or summary sheet above.

## **2. COSTS AND BENEFITS**

28 Impact assessments identify both monetised and non-monetised impacts on individuals, groups, businesses and the public sector, with the aim of giving a picture of what the overall impact to society might be from implementing the provisional proposals.

29 Impact assessments place a strong emphasis on valuing the costs and benefits in monetary terms. We considers the costs and benefits for Option 1 against the base case of Option 0 – which is leaving the current regime as is, the “do nothing option”. We do this principally in terms of on-going costs and benefits.

30 The purpose of our provisional proposals is to reform and improve the system of the public services ombudsmen. In certain instances this means transferring matters currently dealt with by courts or tribunals to the public services ombudsmen. We have not provisionally proposed reform to the substantive law relating to the matters that ombudsmen consider, for instance the definition of maladministration.

31 There will, of course, be transitional costs. However, given the open nature of many of our consultation questions, we are not able to quantify these at present. We would not, in any event, expect any transitional costs to be significant. To the extent that there are transitional costs, these would result primarily from minor changes to administrative practice and consequent training.

32 There are, however, other important aspects of our provisional proposals that cannot be monetised sensibly. These include how the provisional proposals impact differently on particular groups in society or improve equity and fairness. Where non-monetised costs or benefits need to be considered, we have highlighted them.

33 As stated above, we have adjusted the figures in this impact assessment to 2009-10 figures using the Gross Domestic Product (GDP) deflator.<sup>5</sup> This is in accordance with HM Treasury guidance. The figure taken for the change between the reporting year 2008-09 and that of

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<sup>5</sup> The GDP deflator is a measure of the level of prices of all new, domestically produced, final goods and services in an economy. It is equal to nominal GDP divided by real GDP, multiplied by 100.

2009-10 is 1.51%.<sup>6</sup>

- 34 Net present values in this impact assessment are calculated over 10 years in 2009-10 prices, and discounted at the approved rate of 3.5%. We have assumed that the costs and benefits start to accrue in 2011 (year 1), and stop in 2020 (year 10). There are no transitional costs and benefits accruing in 2010 (year 0).

### **General costs**

- 35 Throughout this impact assessment, we need to use two sets of figures. These are, first, the costs of disposing of a complaint by the public services ombudsmen. Second is the cost of the equivalent action to an ombudsman complaint before a court.

### **Cost of disposing of a complaint**

- 36 Based on the reporting year 2008-09 we consider the cost of disposing of complaints by each of the public services ombudsmen.<sup>7</sup> We deal with the ombudsmen separately as they report in different ways.

#### **LOCAL GOVERNMENT OMBUDSMAN**

- 37 The figure supplied by the Local Government Ombudsman for the cost of disposing of an individual complaint in 2009-10 is £689. This figure is calculated as the average cost of both the complaints dealt with by an investigative team and prematurely made complaints, for instance where the complainant has not used internal complaints mechanisms.
- 38 The Local Government Ombudsman sends to its investigative teams 11,687 complaints, and removes 5,974 as premature. Therefore, the total budget for complaints comes to is £12,168,429.<sup>8</sup> The overall budget for the Local Government Ombudsman is £14,276,366.
- 39 The proportion of their budget going on the handing of complaints by investigative teams is 85.23% (£12,168,429 / £14,276,366).<sup>9</sup> The assumption that we make, for the purpose of the impact assessment, is that this relationship between the total budget and the budget for disposing of individual complaints is the same for the other public services ombudsmen. We think that this is a defensible assumption, given the broad similarities in their activities.

#### **PARLIAMENTARY COMMISSIONER AND HEALTH SERVICE OMBUDSMAN**

- 40 We consider these ombudsmen together as their annual accounts are published jointly. The Parliamentary Commissioner and the Health Service Ombudsman do not record the average cost of disposing of complaints. However, we think it is reasonable to derive a figure by analogy with the Local Government Ombudsman.
- 41 The overall budget for the Parliamentary Commissioner and Health Service Ombudsman in the reporting year 2008-09 was £26,489,075 (in 2009-10 prices). Applying the ratio for the relationship between the total budget and the budget for disposing of individual complaints taken from the Local Government Ombudsman, this means that the individual disposals budget was £22,577,905.
- 42 In that same year, some 8,737 complaints were considered.<sup>10</sup> This we take as the total number of complaints less those dismissed as "not properly made", for instance where a complaint to the Parliamentary Commissioner had not come from a Member of Parliament or was not made in writing. Therefore, for the purposes of this impact assessment, we will take the average cost of disposing of an individual complaint by the Parliamentary Commissioner or Health Service Ombudsman as £2,584 (£22,577,905 / 8,737), adjusted for 2010.

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<sup>6</sup> See [http://www.hm-treasury.gov.uk/data\\_gdp\\_fig.htm](http://www.hm-treasury.gov.uk/data_gdp_fig.htm) (last visited 16 August 2010).

<sup>7</sup> Figures taken from: Local Government Ombudsman, *Annual Report 2008-09, Delivering public value* (2008-09); Every complaint matters, Annual Report of the Parliamentary and Health Service Ombudsman (2008-09) HC 786.

<sup>8</sup>  $(11,687 + 5,974) \times £689 = £12,168,429$

<sup>9</sup>  $(£12,168,429 / £14,276,366 = 0.852347789$

<sup>10</sup> Every complaint matters, Annual Report of the Parliamentary and Health Service Ombudsman (2008-09) HC 786, p 9.

## PUBLIC SERVICES OMBUDSMAN FOR WALES

- 43 It is possible to generate similar figures for the Public Services Ombudsman for Wales. The 2008-09 overall budget was £3,148,840 (in 2009-10 prices). Applying the ratio between overall budget and the budget for complaint disposal from the Local Government Ombudsman, this makes the budget for individual complaints £2,683,907. The number of substantive complaints disposed of was 1,422.<sup>11</sup> This makes the cost of individual disposals £1,887 (£2,683,907 / 1,422).

## HOUSING OMBUDSMAN

- 44 The final figure that we can derive is the average cost of disposing of a complaint by the Housing Ombudsman. There are particular issues here, as the Housing Ombudsman's accounts do not disaggregate between the cost of investigations into social housing complaints and those relating to the private sector. For the purposes of this impact assessment we assume that the costs are broadly similar, as their private sector work accounts for a very small percentage of their overall work.
- 45 The 2008-09 budget was £3,004,081 (in 2009-10 prices). Applying the Local Government Ombudsman ratio, this gives an investigative budget of £2,560,522. In 2008-09 3,870 complaints were disposed of. This gives a cost per disposal of £662 (2,560,522 / 3,870).
- 46 Therefore, in tabular form, this is as follows.

Public services ombudsman	Average cost of considering complaint
Local Government Ombudsman	£689
Parliamentary Commissioner	£2,584
Health Service Ombudsman	
Public Services Ombudsman for Wales	£1,887
Housing Ombudsman	£662

## Court costs

- 47 We take the figures from the impact assessment accompanying our report on High Court Jurisdiction.<sup>12</sup> There we gave the administrative costs and the costs of instructing counsel for a half-day hearing in the Administrative Court as £8,000. These figures were in 2008-09 prices, representing £8,121 in 2009-10 prices. For the purposes of this impact assessment we will take a full-day hearing as £16,242, including junior counsel.
- 48 In the High Court Jurisdiction impact assessment, we took the costs of an application for permission to bring judicial review proceedings including judicial time and other overheads as £126 and the administrative costs of a half-day substantive hearing as £487. This means that the total administrative costs of a half-day hearing including the granting of permission comes to £613 in 2008-09 prices, or £622 in 2009-10 prices. Therefore, for this project, we take the administrative costs of a full day hearing as £1,117 ((£126 + (2 x £487)) x 1.0151).
- 49 There is also a point where the costs of a county court action, especially in housing matters, should be considered. We have taken such actions as a half day (3.5 hour) hearing, with a half day preparation time. Taking commercial rates for junior counsel as £150/hour,<sup>13</sup> the cost, assuming equal representation on both sides is £2,100 (2 x 150 x (3.5 + 3.5)). A full day would, therefore, cost £4,200.

<sup>11</sup> Public Services Ombudsman for Wales, *Annual Report 2008-09* (2009) p 15.

<sup>12</sup> The High Court's jurisdiction in relation to criminal proceedings (2010) Law Com No 324, Appendix D.

<sup>13</sup> Figures supplied by the Legal Services Commission. Here we are assuming the use of counsel under 5 years call.

- 50 To work out the court costs, we have taken the cost of the county court (£209,157,517) and divided it by the number of days sat (149,467).<sup>14</sup> This makes the cost of the country court per day sat £1,399. We have taken our half day figure as £700.
- 51 The combination of the two gives an overall cost for a half day in the county court of £2,800 (£2,100 + £700). Similarly a full day in the county court is estimated to cost £5,599 (£4,200 + £1,399).

<b>Court</b>	<b>Average cost of half day (junior counsel)</b>	<b>Average cost of day (junior counsel)</b>
Administrative Court	£8,121	£16,242
County court	£2,800	£5,599

### **Reform of the statutory bar**

- 52 The Local Government Ombudsman rejected 352 complaints in 2008-09 on the basis of the statutory bar.<sup>15</sup>
- 53 The Parliamentary Commissioner and the Health Service Ombudsman jointly rejected 39 complaints during the reporting year 2008-09 due to the operation of the statutory bar.<sup>16</sup>
- 54 For the Public Services Ombudsman for Wales, 8 complaints were disposed of in this manner during 2008-09.
- 55 Having contacted the office of the Housing Ombudsman, we do not think that it loses complaints due to the operation of its equivalent to the statutory bar.

### **Costs**

- 56 The maximum possible cost is where all the cases currently rejected due to the application of the statutory bar go to the appropriate public services ombudsman.
- 57 This does not necessarily mean that they will become full investigations, as many will still be rejected for other reasons, such as through application of the ombudsmen's general discretion. One key assumption that we make is that these complaints are currently rejected through the operation of the statutory bar at an early stage of the ombudsman process. Therefore the majority of the average costs of handling a complaint would normally accrue subsequent to any decision on whether to reject a complaint on the basis of the statutory bar. On this basis, we are going to take the additional cost of a complaint not being rejected on the basis of the statutory bar as the average cost of a complaint.
- 58 The maximum annual cost for the Local Government Ombudsman is £242,528 (352 x £689). The maximum cost for the Parliamentary Commissioner and Health Service Ombudsman is £100,783 (39 x £2,584). The maximum cost for the Public Services Ombudsman for Wales is £15,099 (8 x £1,887). Therefore, the total maximum cost for these public services ombudsmen is £358,410.
- 59 The minimum annual cost would be £0. This would be where reform does not lead to any change in current practice, in that the complaints are still rejected at a preliminary stage, rather than being disposed of later on in the process.
- 60 There is also the possibility that reform of the statutory bars would generate new complaints. Currently complainants may be advised not to use the public services ombudsmen but rather to go to court, as a result of the statutory bars. These complainants would not be included in the statistics of rejected complaints, but if the statutory bars were reformed then such complainants may chose to have recourse to the ombudsmen. This would, therefore, create additional burdens for the ombudsmen. However, we do not think that the reform would lead to any significant number of new claims. Consequently, we have not included these in our calculations.

<sup>14</sup> Figures supplied by Her Majesty's Courts Service. Costs include maintenance costs, variable costs, semi-variable costs and staff costs.

<sup>15</sup> Figures supplied by the Local Government Ombudsman.

<sup>16</sup> Figures supplied by the Parliamentary Commissioner and the Health Service Ombudsman.

61 The best estimate is that, rather than being rejected at a preliminary stage, complaints are all treated alike. Therefore, we suggest that the best estimate of the annual cost should be taken as the full figure of £358,410.

### **Benefits**

62 The maximum possible benefit is the consequent reduction of judicial review or other court actions. It is, of course, not a given that cases rejected by the ombudsmen on the basis of the statutory bars will go to court. Furthermore, where complaints are rejected we think that some cases may go to the county court rather than the Administrative Court – especially in the case of the Local Government Ombudsman where the complaint relates to housing.

63 To give the range we have used the Administrative Court costs for a full day hearing. Therefore, the maximum benefit for reform of the Local Government Ombudsman statutory bar is £5,717,043 (352 x £16,242). The maximum benefit for reform of the Parliamentary Commissioner and the Health Service Ombudsman statutory bar is £633,422 (39 x £16,242). The maximum benefit for reform of the Public Services Ombudsman for Wales statutory bar is £129,933 (8 x £16,242). Therefore, the total maximum benefit in respect of these ombudsmen is £6,480,398.

64 The minimum possible benefit is £0. This would be where there is no change to the current situation and the reform has no actual effect on current practice.

65 We suggest that the best estimate would be much lower than the maximum possible benefit figures. There are several reasons for this. First, as stated above, claims rejected on the basis of the statutory bar do not necessarily go to courts. Where rejected complaints do not proceed to court, any reform would not lead to cases being taken back from the courts. We estimate that only 25% of claims rejected on the basis of the statutory bar would be suitable for a court. This gives a much smaller figure for benefits. Second, we suggest that it is appropriate to adjust the estimate on the basis that half of the cases relating to the public services ombudsmen will be taken from the county court rather than the Administrative Court. Third, we estimate that half will be full day and half only require a half day in court. These are, of course, assumptions that we will discuss over the course of consultation.

66 For the Local Government Ombudsman the best estimate of the annual benefit is £720,752.<sup>17</sup> The figure for the Parliamentary and Health Service Ombudsmen is £79,856.<sup>18</sup> The best estimate for the Public Services Ombudsman for Wales is £16,381.<sup>19</sup> Therefore, our best estimate of the annual benefits is £816,988.

67 Additional non-monetised benefits are that an ombudsman's investigation is likely to be swifter, that it would not necessitate the potential emotional distress that going to court can cause some people and that there is a greater possibility of a monetary remedy being awarded to the individual complainant.

### **Net impact**

68 In tabular form, this is as follows.

	<b>High</b>	<b>Low</b>	<b>Best estimate</b>
Annual Cost	£358,410	£0	£358,410
Annual Benefit	£6,480,398	£0	£816,988
<b>Net benefit</b>			<b>£458,578</b>
<b>Net present value</b>			<b>£3,813,814</b>

<sup>17</sup> (22 x £2,800) + (22 x £5,599) + (22 x £16,242) + (22 x £8,121).

<sup>18</sup> (2.5 x £2,800) + (2.5 x £5,599) + (2.5 x £16,242) + (2.5 x £8,121).

<sup>19</sup> (0.5 x £2,800) + (0.5 x £5,599) + (0.5 x £16,242) + (0.5 x £8,121).

## **Dedicated powers to stay court proceedings and transfer matters to an ombudsman**

- 69 We estimate that there would be some 10 to 50 judicial review cases per year where this stay and transfer power would operate. Any benefit to this would be the saving from moving a case out of the Administrative Court to an ombudsman less the additional costs imposed on the ombudsman by having to investigate the case.

### **Costs**

- 70 The maximum costs of this would be where 50 new investigations are considered by the most expensive of the public services ombudsmen, the Parliamentary Commissioner and the Health Service Ombudsman. This, therefore, comes to £129,209 (50 x £2,584).
- 71 It is theoretically possible that the minimum costs are £0, where no complaints are actually investigated by the ombudsmen to whom the matters are transferred. However, we take as our minimum costs that 10 matters are investigated by the cheapest of the public services ombudsmen, the Local Government Ombudsman. This gives a figure of £6,890 (£689 x 10).
- 72 Our best estimate is to take the middle figure, 30, and allocate this in the same way that current complaints are distributed as between the ombudsmen. As with the earlier figure, we do not think that this will affect the Housing Ombudsmen, as their primary jurisdiction does not cover the sort of matters that tend to come before the Administrative Court.
- 73 Taking the figures for 2008-09, there were 27,820 complaints disposed of by the public services ombudsmen considered here, of which 17,661 went to the Local Government Ombudsman, 8,737 to the Parliamentary Commissioner and Health Service Ombudsman and 1,422 to the Public Services Ombudsman for Wales. Applying these proportions to the 30 cases to be stayed and transferred, this would mean 19 cases going to the Local Government Ombudsman, 9 to the Parliamentary Commissioner and Health Service Ombudsman and 2 to the Public Services Ombudsman for Wales.
- 74 To calculate the cost these numbers should be multiplied by the cost of disposing of a complaint before the relevant ombudsman. Therefore the best estimate costs are £40,373 ((19 x £689) + (9 x £2,584) + (2 x £1,887)).

### **Benefits**

- 75 The maximum benefit would be where 50 cases are transferred from the Administrative Court and the minimum benefit is where 10 are transferred from the same court. This gives a range from £81,208 (10 x £8,121) to £406,040 (50 x £8,121).
- 76 Taking the best estimate as 30 cases again, and assuming that these are from half day hearings, then the best estimate of the possible benefit to reform is £243,624.
- 77 There is a potential reduction to this where cases return to the Administrative Court after being investigated by the public services ombudsman as there are still issues that need to be dealt with by the Court. However, we do not see this is particularly likely.
- 78 There are other non-monetised benefits that should be considered here, which would be the same as those for the reform of the statutory bar.

### **Net impact**

	<b>High</b>	<b>Low</b>	<b>Best estimate</b>
Annual Cost	£129,209	£6,890	£40,373
Annual Benefit	£406,040	£81,208	£243,624
<b>Net benefit</b>			<b>£203,251</b>
<b>Net present value</b>			<b>£1,690,356</b>

### **Specific powers for the ombudsmen to use alternative means for dispute resolution**

- 79 Given the way in which the ombudsmen report, and that the use of mediators is a relatively recent development, we feel unable to monetise this. Whilst we can see advantages in having a specific statutory power to do this, it is true that – in relation to mediation – then the ombudsmen can already do this.
- 80 The costs would be the additional costs of using a mediator or other form of alternative dispute resolution. The benefits would be the money saved by not proceeding with an investigation.

### **Amendment to the formal requirements for making a complaint**

- 81 In preliminary discussions on this issue with the Local Government Ombudsman, they have said that they greatly appreciate the recent changes to their regime, such that the formal requirement for a written complaint can be dispensed with. The effect of this change has been to alter the way in which they receive complaints. Taking the figures supplied for 2009-10, telephone complaints now form the majority of complaints received (40,200), with e-mail next (30,440) and written postal complaints a distant third (12,836). This, we suggest, reflects general trends in society and is something that should be embraced by the legislative schemes for the Parliamentary Commissioner and the Health Service Ombudsman.
- 82 There may be different administrative costs associated with receiving oral complaints, as opposed to written submissions, but we cannot quantify them.
- 83 Unfortunately, whilst we can see advantages to this, it is hard to monetise them. We have discussed the positive impacts that this proposal may have on disabled individuals, and how it may promote racial equality, in paragraphs 114 – 166 in Section 3.
- 84 In our final impact assessment, if we proceed with this provisional proposal, we hope to give more specific costs and benefits. This is an issue on which we aim to consult.

### **Reform of the MP filter**

- 85 In the reporting year 2007-08, 756 complaints were referred back to the complainant for MP referral. Of these, 400 were closed as the complainant failed to obtain referral from an MP. In 2008-09, 580 complaints were referred back, with 225 of these being closed due to the complainant failing to obtain referral from an MP.<sup>20</sup>
- 86 Therefore, there were 225 “lost” complaints in 2008-09. The greatest possible burden would be that all of those complaints proceeded to be considered by the Parliamentary Commissioner.

### **Costs**

- 87 The minimum, maximum and best estimate of the cost, we think, are the costs of disposing of the “lost” 225 complaints as if they were other complaints. This comes to £581,439 (225 x £2,584).
- 88 While complaints increased when the councillor filter for the Local Government Ombudsman was removed, we do not think that it is appropriate as a model for the impact of reform in relation to the MP filter. In that case there were specific problems which do not apply here as the Parliamentary Commissioner has already taken extensive steps to reduce the adverse impact of the MP filter.

### **Benefits**

- 89 We do not think it practicable to monetise the benefits. There would be a reduction in delay for complainants and public bodies and a potential reduction in the administrative costs of Members of Parliament.

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<sup>20</sup> Figures supplied by the Parliamentary Commissioner.

### **Net impact**

	<b>High</b>	<b>Low</b>	<b>Best estimate</b>
Annual Cost	£581,439	£581,439	£581,439
<b>Net present value</b>			<b>-£4,835,595</b>

### **Power to make a reference to a court on a point of law**

- 90 We think that there would be no more than 2 to 3 of these a year. Of course, it may be that in some years there are no references made, either because a problematic issue does not arise or because the matter is dealt with by other means, for instance on the basis of an opinion sought from counsel. In this consultation paper we have left open whether there should be two sets of opposing counsel instructed or whether a single set of counsel should put both sides of a question to the court. The costs would be borne by the ombudsman making the referral.

### **Costs**

- 91 Having discussed the matter with the Legal Services Commission, we think that the time allocation for a reference would reasonably be 2 days research, 1 day case preparation and 1 day in court. We have taken the rate for senior counsel as £300 per hour and £150 per hour for a junior.<sup>21</sup> Therefore, one set of counsel would cost £13,500 ((300 x 4 x 7.5) + (150 x 4 x 7.5)).
- 92 We have also taken the figures from the High Court Jurisdiction Impact Assessment, this gives Court fees as £1,117 (in 2009-10 prices) for a full-day.

### **Costs of a single set of counsel**

- 93 To calculate the potential range then the minimum figure would be £0, where no references are made. The maximum would be 3 full-day hearings, therefore, £43,851 (3 x (£1,117 + £13,500)).

### **Costs of two sets of counsel**

- 94 The minimum is £0, again where no references are made. The maximum is three full day hearing and two sets of counsel, therefore £84,351 (3 x (£1,117 + (2 x £13,500))).

### **Best estimate for reforms and total range for potential reform**

- 95 Our best estimate is that there would be two of these references a year. Given the open nature of our consultation question then with two sets of counsel this would be £56,234 (2 x (£1,117 + (2 x £13,500))). With a single set of counsel, this comes to £29,234 (2 x (£1,117 + £13,500)). For the purposes of this impact assessment, we have taken the best estimate to be the median figure of £42,734.

### **Benefits**

- 96 The key benefits that we can see would be the improvement in the quality of ombudsmen's reports on specific legal issues and preventing them from having to discontinue an investigation where a difficult legal issue arises. However, we do not think it is possible to monetise these benefits.

### **Net impact**

	<b>High</b>	<b>Low</b>	<b>Best estimate</b>
Annual Cost	£84,351	£0	£42,734
<b>Net present value</b>			<b>-£355,402</b>

<sup>21</sup> Here we take this as a junior of under 5 years call.



### **Modernising the system for issuing reports on individual investigations**

- 97 We do not think that this particular change would have any significant cost implications. This is a change to the system for reporting and a requirement to release information already generated.
- 98 There are however non-monetised benefits to the provisional proposal, such as increased accessibility, accountability and transparency.

### **Reform of the status of findings and recommendations**

- 99 This is a legislative change to the current legal position, as held by the Court of Appeal. The purpose of doing this is to ensure that an ombudsman's findings are protected from mere dismissal by those subject to a report by the public services ombudsmen. We do not think it would have overall costs implications as we are not altering the status of recommendations.
- 100 There is a potential benefit, in that undertaking this reform could remove the need for future litigation. We do not feel able to predict the likelihood of that happening nor to monetise this.

### **Specific power to issue general reports**

- 101 Here we are suggesting a specific power to do what, in some cases, is already done. We see this as a codification of current practice. We do not, therefore, see it as having costs implications.

### **Changes to the closed nature of ombudsmen investigations**

- 102 We can see that there are possible costs implications in relation to this discretion. However, we do not feel able to quantify these. Our provisional proposal creates a power to do something but we do not, at this stage in the process, feel able to predict how that would in fact be used. Therefore, we treat this as an options proposal and will seek to ascertain potential costs in the context of our consultation.
- 103 There are non-monetised benefits to the provisional proposal, such as increased accessibility, accountability and transparency.

### **Appointment of the Parliamentary Commissioner by Parliament**

- 104 We do not see this as creating significant additional costs. There is already a recruitment process for the Parliamentary Commissioner and Parliament has already stated that it will conduct pre-appointment hearings for the next Parliamentary Commissioner. Though there would be additional burdens in terms of select committee time – and time for the House sitting to approve a nomination – we think that these would be internalised within the normal budget for the work of Parliament. They would not, therefore, increase the burden placed on the public.
- 105 The potential benefits are that Parliament and the National Assembly for Wales will have a stronger relationship with the public services ombudsmen.
- 106 We will, however, explore this matter in greater detail during our consultation

### **Provisional conclusions**

- 107 In this consultation impact assessment we are seeking to set the broad parameters of our provisional proposals. We intend to develop more detailed figures over the course of our consultation.
- 108 There are also certain changes where we do not think that it is possible – or correct – to give figures, as any change would be internalised to an institution. Such theoretical costs or benefits cannot really be seen as such, in that there would be no actual change to the budget of the institution concerned. This may well be the case with the reform of the MP filter and certain issues – such as select committee sittings – in the case of appointment by Parliament of the Parliamentary Commissioner.

109 The table below collate the ranges calculated above, namely the costs and benefits of the reform of the statutory bar, dedicated powers to stay court proceedings and transfer matters to an ombudsman, reform of the MP filter, and power to make a reference to a court on a point of law. The table gives annual figures at 2009-10 prices.

**Annual monetised figures at 2009-10 prices**

	<b>High</b>	<b>Low</b>	<b>Best estimate</b>
Annual Cost	£1,153,409	£588,329	£1,022,956
Annual Benefit	£6,886,438	£81,208	£1,060,612
<b>Net benefit</b>			<b>£37,656</b>
<b>Net present value</b>			<b>£313,173</b>

110 These figures do not take into account all of the non-monetised benefits of our provisional proposals. These include: greater access to the ombudsmen, strengthening mechanisms for administrative justice, and allowing for the closure of on-going complaints.

**Assumptions and risks**

111 In calculating the costs and benefits of our proposals we have made several assumptions, and if they are wrong there is a risk that the actual costs would be higher or lower than those estimated in this impact assessment. The main assumptions and their concomitant risks are detailed below.

- We have assumed that the proportion of the ombudsmen’s total budgets spent on investigating complaints is the same as the proportion of their budget that the Local Government Ombudsman spends on investigating complaints, approximately 85%. There is a medium risk that we are incorrect, and if so the costs per ombudsman investigation could be higher or lower.
- We have assumed that the cost of an ombudsman investigation calculated by dividing 85.23% of the budget by the number of individual complaints the ombudsman deals with (not including those not properly made or out of jurisdiction) is of the same order of magnitude as the actual cost of disposing of a substantive complaint. Again there is a medium risk that we are incorrect, and if so the costs per ombudsman investigation could be higher or lower.
- We have assumed that the removal of the statutory bar and MP filter will not result in a rise of complaints. There is a small risk that there will be an increase in complaints following reform, which would result in increased costs.
- We have used a wide range when estimating the costs and benefits of the statutory bar. The net impact is positive at all points along the range. Thus there is a low risk that this proposal would have a net cost.
- We have assumed that there would be between 10 to 50 cases a year where it would be appropriate to transfer them from the Administrative Court to the public services ombudsmen. Since we have used a wide range there is only a small risk that the actual figure will be less than 10 cases, or more than 50. If there are less than 10 cases, the reform would be less beneficial, and if more than 50, more beneficial.
- There is a small risk that cases transferred to the ombudsmen may return to the Administrative Court after being investigated, as there are still issues that need to be dealt with by the Court. This would reduce the estimated cost savings.
- That complaints rejected currently on the basis of the MP filter are similar to other complaints. Therefore the same proportion would be rejected were the MP filter removed as a requirement. There is a small risk that fewer will be rejected, and then costs would be higher than estimated.

- We have assumed that there would be only 2 or 3 referrals annually from the ombudsmen to the courts on a point of law. If there are more costs would increase, as would non-monetised benefits.
- There is a small risk that the number of complaints received by the Parliamentary Commissioner and Health Service ombudsmen might increase if they can receive non-written complaints. This would increase costs.

### 3. SPECIFIC IMPACT TESTS

112 Here we deal with the specific tests that we suggest are relevant to our provisional proposals.

#### **Statutory Equality Duties**

113 We do not anticipate that these proposals will have substantial differential impact in relation to gender. We have not seen any evidence that there is a significant issue in relation to gender nor do we think that our provisional proposals would have any gender differentiated effects.

114 Disability equality is a more significant issue in relation to the public services ombudsmen. One provisional proposal is directed at correcting a problem that we perceive in the current framework for two of the public services ombudsmen. This concerns the requirement that a complaint be made in writing to the Parliamentary Commissioner and the Health Service Ombudsman.

115 Ensuring accessibility is a key duty placed on public bodies. Our provisional conclusions are that a requirement that a complaint be made in writing has a disproportionate impact on the disabled. This, we suggest, is an impact that should be addressed by reform of the underlying statutory regime – rather than through any other method. We suggest that this would be the reasonable adjustment required by the statutory duties contained in the Disability Discrimination Act 1995 and, when it comes into force, the Equality Act 2010. Therefore, we are provisionally proposing that the written requirement be replaced by discretion to allow complaints to be made by other methods in particular cases.

116 Similar concerns occur with the Race Relations Act 1976. The requirement that a complaint be submitted in writing could, potentially, disadvantage those whose first language is not English. We appreciate that significant steps are taken by the ombudsmen to minimise any disadvantages such groups may suffer. However, we suggest that further reform would be advantageous. Therefore, we also suggest that on this basis the written requirement for the Parliamentary Commissioner and Health Service Ombudsman should be replaced by discretion to take complaints made by other means.

#### **Competition**

117 We do not think that our provisional proposals would have any competition effects.

#### **Small firms**

118 We do not think that our provisional proposals would have any effect on small firms.

#### **Greenhouse gas assessment**

119 We do not think that our provisional proposals would have any effect on greenhouse gas emissions.

#### **Wider environmental issues**

120 We do not think that our provisional proposals would have any effect on wider environmental issues.

## **Health**

- 121 We do not think that our proposals have an impact on health, and think that a health impact assessment is not required after considering the screening questions.

## **Human Rights**

- 122 Our proposals do carry human rights implications.

### ***Access to courts and tribunals***

- 123 Under article 6 of the European Convention on Human Rights and Fundamental Freedoms (ECHR) citizens are entitled to “a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law” in order to determine their civil rights. Although our proposals aim to redirect some complaints about public bodies away from the courts to the ombudsmen (which would not fall within the definition of a “fair and public hearing”) we think that, overall, our proposals strengthen the article 6 right in England and Wales.

- 124 This is because our proposals aim to allow citizens a wider choice of redress mechanism and greater flexibility for them if they choose the wrong mechanism in the first instance. This will mean that complaints regarding maladministration, which cannot properly be classified as a determination of a complainants civil rights, will be dealt with in the most appropriate way—namely by the ombudsmen. However, our proposals regarding the statutory bar, they stay and transfer power and the power for ombudsmen to make a reference to a court on a point of law will all allow complainants to return to or go to a court for the determination of purely legal issues. Therefore, by ensuring that complaints are appropriately dealt with as either legal matters or matters of maladministration our proposals should increase access to the courts for those wishing to determine their legal rights (thereby upholding citizens’ rights under article 6 by removing the burden of inappropriate complaints of maladministration from the courts.

### ***Discrimination***

- 125 Article 14 of the ECHR stipulates that individuals’ human rights shall be secured “without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”. We think that our proposals will moderately strengthen this right. Since our proposals will enable complaints to be transferred between the ombudsmen and the courts this will remove bars to accessing judicial redress for those who choose an inappropriate redress mechanism in the first instance. At present these bars are likely to disproportionately affect those with disabilities or from more vulnerable social groups and so our proposals will address this area of indirect discrimination.

## **Justice**

- 126 The purpose of the public services ombudsmen is to provide a route to administrative justice and the main body of this impact assessment has considered the impact on the justice system of our proposals. Therefore, we do not feel it is necessary to conduct a further, specific impact assessment on this issue.

## **Rural proofing**

- 127 We do not think that our provisional proposals would have any effect on rural communities or the farming industry.

## **Sustainable development**

- 128 We do not think that our provisional proposals would have any effect on sustainable development.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added to provide further information about non-monetary costs and benefits from Specific Impact Tests, if relevant to an overall understanding of policy options.

### Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<b>Basis of the review:</b> N/A
<b>Review objective:</b> N/A
<b>Review approach and rationale:</b> N/A
<b>Baseline:</b> N/A
<b>Success criteria:</b> N/A
<b>Monitoring information arrangements:</b> The public services ombudsmen already collect evidence about the number of complaints and enquiries they receive, and the number of investigations. Information on mediator settled disputes is not currently available, but may become so as mediators become more established.
<b>Reasons for not planning a PIR:</b> The Law Commission does not implement policy, therefore does not review policy implementation.