

# **PART 1**

## **INTRODUCTION**

- 1.1 This document analyses the responses received to the Law Commission's consultation paper, *Public Services Ombudsmen*.<sup>1</sup> It summarises the views of consultees in relation to the 24 provisional proposals and 13 consultation questions put forward in the paper.

### **THE CONSULTATION PROCESS**

- 1.2 The consultation period started with the publication of the consultation paper on 2 September 2010, and concluded on 3 December 2010. During this period the Law Commission received 57 written responses. These were received from a range of consultees, including:

- (1) the public services ombudsmen in England, Wales and Northern Ireland, and the British and Irish Ombudsman Association;
- (2) several public bodies, including ten local authorities, the Administrative Justice and Tribunals Council, the housing association Sanctuary Group, the Hertfordshire Partnership NHS Foundation Trust, the statutory consumer group Consumer Focus, and the Welsh Assembly Government;
- (3) eight non-governmental organisations, comprising JUSTICE, the Institute of Historical Building Conservation, the Medical Defence Union, the Medical Protection Society, Advice Services Alliance, the Motor Neurone Disease Association, the National Complaints Managers Group (Social Care Services), and LGO Watch and Public Service Ombudsman Watchers;
- (4) members of the legal profession, such as the Council of Her Majesty's Circuit Judges, a barrister, the Housing Law Practitioner's Association, the Law Reform Committee of the Bar Council of England and Wales, and the Association of Council Secretaries and Solicitors;
- (5) a media association;
- (6) two academics;
- (7) individual members of the public; and
- (8) one private company.

- 1.3 A joint response to the consultation was submitted by the Parliamentary Commissioner for Administration, the Health Service Ombudsman, the Local Government Ombudsman, the Public Services Ombudsman for Wales, and the Housing Ombudsman. Their response is referred to throughout this analysis as the public services ombudsmen's response.

<sup>1</sup> Public Services Ombudsmen (2010) Law Commission Consultation Paper No 196.

- 1.4 The British and Irish Ombudsman Association (BIOA) endorsed fully the views expressed in the public services ombudsmen's response. Their endorsement was acknowledged in the quantitative analysis by double counting the ombudsmen's position on each proposal.
- 1.5 LGO Watch and Public Service Ombudsman Watchers also submitted a joint response.
- 1.6 The Law Commission attended a number of meetings and seminars across England and Wales during the consultation period. Comments or concerns raised at these meetings are not included in the analysis below; they have been taken into consideration in the preparation of the policy paper.

#### **OTHER ISSUES RAISED BY CONSULTEES**

- 1.7 Many consultees raised points in their responses that fell outside the remit of this project. For example, nearly a quarter of consultees submitted responses detailing their frustration stemming from their own involvement with one or several of the public services ombudsmen.
- 1.8 Eleven consultees pointed to a perceived lack of independence and accountability on the part of the public services ombudsmen. For example, John Lewis and Jad Adams suggested that the Local Government Ombudsman's close relationship with local authorities was problematic and prevented it from being truly independent. Peter Atkinson suggested that an independent body be established to oversee and audit the work of the ombudsmen. Four consultees suggested abolishing the Local Government Ombudsman.
- 1.9 Some consultees took issue with the remit of the project itself, and suggested the need for a wider review of the role of ombudsmen in the administrative justice landscape. For instance, JUSTICE suggested that there was a "compelling case for the Law Commission – and, ultimately, the Government – to adopt a bolder approach than it has done". The public services ombudsmen wrote that a more far-reaching review of the ombudsman system was required, and that the consultation paper's narrow remit prevented it from engaging with a number of important and pressing issues. They suggested that such a review should seek:

First, to consolidate the ombudsman system as a distinctive system of administrative justice in its own right; secondly, to position the ombudsman system coherently within the broader system of administrative justice so that its relationship with the courts, tribunals and other "scrutiny institutions" is clear and constructive; and thirdly to refine the operation of the ombudsman system so that it can work to its full potential in the public interest.
- 1.10 The Administrative Justice and Tribunals Council also suggested that wider reform was necessary:

The Council has noted the Law Commission's reasons for limiting the scope of consultation to public services ombudsmen, and that its statutory remit only extends to England and Wales. Nevertheless, the Council believes it is desirable that a wider Leggatt-style review of ombudsmen services takes place across the public and private

sectors and throughout the UK. ... Such a review might define the place of ombudsmen within the overall administrative justice landscape, investigate how new ombudsman services are introduced by government or by industry sectors and examine their relationships with other complaint handlers. It might also consider the desirability of making “ombudsman” a protected title.

In the absence of such a universal review, the Council is concerned that legislative change in relationship to public services ombudsmen might have unforeseen consequences, perhaps making their services less flexible and less able to exercise discretion while at the same time making them more legalistic and “court-like”. The Council is also concerned that Parliament is unlikely to wish to legislate on ombudsmen more than once and so a more limited set of legislative proposals may in practice close the door to any wider reform for some time.

- 1.11 Brian Thompson<sup>2</sup> and Richard Kirkham<sup>3</sup> argued, similarly, that it was necessary to conduct a wider Leggatt-style review that would consider the role and place of the public services ombudsmen in the administrative justice landscape. Richard Kirkham explained:

What is needed in the administrative justice system is a permanent holistic oversight of the system as a whole, supported by the occasional targeted in-depth review. ... One of the most pressing issues in the administrative justice system is the increasing complexity, and arguably incoherence, of the complaints branch of that system, and the knock-on potential for user bewilderment in accessing that system and the possibility that, as a whole, the system delivers administrative justice imperfectly and inefficiently. This aspect of the administrative justice system is not picked up in the Law Commission’s work, although commendably it does address another key issue – that is the crossover between the work of the ombudsmen and the courts.

- 1.12 The campaign groups LGO Watch and Public Service Ombudsman Watchers took a similar position, explaining that “until a root and branch reform is undertaken any tinkering around the edges in an attempt to bolster a failing system of administrative justice is doomed to failure”. Consumer Focus agreed that “piecemeal reform is not the best way to tackle a fragmented public service redress system”.

- 1.13 Consumer Focus suggested that a wider review of the ombudsmen could include consideration of merging the Parliamentary, Health Service, Local Government and Housing Ombudsman schemes or, at the very least, creating a gateway service to assist people in making a complaint to the relevant public services ombudsman. JUSTICE agreed that it could be useful to merge all the public services ombudsmen in England, while a member of the public also noted that the ombudsmen should be governed by a single statute. Lancashire County

<sup>2</sup> Senior Lecturer, University of Liverpool Law School.

<sup>3</sup> Senior Lecturer, University of Sheffield School of Law.

Council suggested merging only the Health Service Ombudsman and the Local Government Ombudsman, which would create a body akin to the Public Services Ombudsmen for Wales. Clive Powell, a self-employed independent chair for NHS Continuing Healthcare Appeals and Reviews, noted that there was an area of overlapping jurisdiction between the Health Service Ombudsman and Strategic Health Authorities. He suggested merging the two offices into a single office of independent review for all reviews of work undertaken by Primary Care Trusts in determining entitlement to NHS-funded continuing healthcare.

- 1.14 Consumer Focus' suggestion to create a gateway service for complainants was echoed by Brian Thompson and Sally Hughes, a former solicitor and policy officer for a mental health organisation.
- 1.15 Some consultees made additional comments about the jurisdiction of the ombudsmen, suggesting that issues relating to their jurisdiction might be considered in a wider review of the ombudsmen schemes. Lancashire County Council and the National Complaints Managers Group (Social Care Services) both regretted that the consultation did not take the opportunity to consider and clarify the position regarding self generated complaints and investigations dealing with systematic failure. An anonymous member of the public noted his concerns about the exclusion of employment and staffing matters from the jurisdiction of the Health Service Ombudsman.
- 1.16 Two consultees argued that findings of both maladministration and injustice should not be required in order for the ombudsmen to make recommendations. Jad Adams suggested that the Local Government Ombudsman's jurisdiction should be extended such that a finding of maladministration is not always required, stating that they "should be empowered to investigate manifest injustice, even given a duty to do so, whether or not the correct procedures were followed". Conversely, Anita Jennings wrote that the Local Government Ombudsman should be empowered to investigate complaints that may not disclose personal injustice but could give rise to a finding of maladministration, such as complaints in respect of planning decisions. Ray Barnfield also urged the Law Commission to propose removing the requirement for a complainant to establish injustice.
- 1.17 It should be noted that some consultees expressly approved of the more limited scope of the current consultation. For instance, the Northern Ireland Ombudsman did not think that a Leggatt-style review of its office was necessary, and the Motor Neurone Disease Association agreed that it would not be useful to "attempt a complete reworking of the system in a period of great change in many other public bodies".
- 1.18 Other points raised by consultees that were not addressed in the consultation paper were the need for improved training on the ombudsmen services and legal entitlements for advice providers and advocates (Sally Hughes), and the concern that the term "ombudsman" may be misused or devalued and therefore might need recognition or protection in law (BIOA, Brian Thompson, and the public services ombudsmen).

# **PART 2**

## **THE PUBLIC SERVICES OMBUDSMEN**

### **INTRODUCTION**

- 2.1 There were no consultation questions asked in this Part.

## **PART 3**

# **APPOINTMENT OF OMBUDSMEN**

**3.1 We provisionally propose that Parliament nominate to the Queen a candidate for the post of Parliamentary Commissioner for Administration.**

### ***Introduction***

- 3.1 Of the 57 consultation responses that were received, 12 responses addressed the proposal that Parliament nominate to the Queen a candidate for the post of Parliamentary Commissioner for Administration. Eight of those agreed with the proposal, three were equivocal, and one disagreed.

### ***Greater independence for the ombudsman***

- 3.2 Several consultees noted that the proposal would go some way to achieving greater independence for the Parliamentary Commissioner for Administration. Richard Kirkham of the University of Sheffield stated that:

In principle I agree that the nomination to the Queen for the post of ombudsman should come from Parliament rather than the executive, given that it is the executive that the ombudsman is overseeing and it is independence from the executive that needs to be secured in the appointments process.

Similarly, the Administrative Justice and Tribunals Council “supports the general principle that Government should be completely divorced from the appointment process”.

- 3.3 There was some disagreement among consultees as to whether the proposal should extend beyond the Parliamentary Commissioner for Administration to include some or all of the public services ombudsmen within the remit of the project. For example, the public services ombudsmen argued in their joint response:

We note that, as drafted, the proposal is limited to the Parliamentary Commissioner and we understand the reason for that limitation. In practice, however, it has always been the case that the same person holds the posts of Parliamentary Commissioner and Health Service Commissioner for England. Whilst that remains the case, we consider that the proposal should apply to the Health Service Commissioner also.

- 3.4 Richard Kirkham noted that independence would equally be served if the proposal extended to the Health Service Ombudsman, and that it may “be a neater solution for all public service ombudsmen to be appointed through the same process”. The Medical Protection Society, on the other hand, stated that there was “little need for Parliament to take a role in the appointment of either the Public Health Service Ombudsman or the Local Government Ombudsman”.

### ***Models for reform***

- 3.5 A number of consultees cautioned that the proposal risked politicising the

appointment process. The Administrative Justice and Tribunals Council, while supporting the proposal, warned that “due caution should be taken in implementation” and asked the Law Commission to “consider in detail the approach to appointments adopted by the Scottish Parliament, where steps have been taken to offset the ‘politicisation’ risk”. Richard Kirkham expressed similar concerns, and suggested that the process for appointments be set out in legislation and overseen by an independent body:

The appointments process, therefore, is exactly the sort of issue that should be overseen by an autonomous body (autonomous from both Parliament and the executive) which could be responsible for other sponsoring issues, as well as appointments (this body could be responsible for sponsoring a series of key unelected institutions, not just the ombudsman). Such a body could be provided for in legislation. On appointments, recommendations could be made to a relevant Parliamentary select committee, in this case the Public Administration Select Committee (citation omitted).

- 3.6 Two consultees suggested that the Law Commission’s proposal could be developed with reference to existing models for Parliamentary appointments. JUSTICE noted that:

One appropriate model for advancing nominations to the Queen might be a House of Commons Speakers Committee of the kind that currently deals with the Independent Parliamentary Standards Authority or the Electoral Commission. Both are established by statute.

Richard Kirkham also pointed to the practice adopted by the Speaker’s Committee in its appointment of the Chair of the Electoral Commission as a possible model for appointing the Parliamentary Commissioner.

### ***Cautions and concerns***

- 3.7 The Newspaper Society, an association of regional media companies, neither agreed nor disagreed with the proposal, but cautioned that care must be taken to ensure that changes to the appointment process “do not reduce public access to information about any aspect of the appointment”. The housing association Sanctuary Group warned as well that it would not be in favour of any proposal that would lead to or invite “undue political influence or pressure upon the ombudsmen when making decisions”.
- 3.8 The submission by campaign groups LGO Watch and Public Service Ombudsman Watchers opposed the proposal, suggesting instead that all public services ombudsmen “should be elected and serve a maximum term of 5 years”.

### ***Conclusion***

- 3.9 The majority of consultees who answered this question agreed that Parliament should nominate to the Queen a candidate for the post of Parliamentary Commissioner for Administration, largely on the basis that it would enhance the ombudsman’s independence from Government. A number of consultees pointed to existing models upon which to base the reform.

# **PART 4**

## **OPENING AN OMBUDSMAN INVESTIGATION**

### **THE STATUTORY BARS**

**4.1 We provisionally propose that the existing statutory bars be reformed. We provisionally propose that there is a general presumption in favour of a public services ombudsman being able to open a complaint.**

#### ***Introduction***

- 4.1 Of the 57 consultation responses that were received, 27 consultees expressed a view as to whether there should be a general presumption in favour of a public services ombudsman being able to open a complaint. Nineteen of those agreed with the proposal, three were equivocal, and five disagreed.

#### ***Access to justice***

- 4.2 Several consultees favoured the proposal because it removed the preference for costly litigation in the courts, thus increasing access to justice. Consumer Focus explained that “most consumers see court as a very last resort and would prefer other quicker, cheaper and simpler means of resolving their disputes”.
- 4.3 The Motor Neurone Disease Association welcomed the removal of barriers to the ombudsmen, noting that “the current default position is not sustainable and few living with motor neurone disease (MND) wish to spend their remaining time fighting lengthy and costly legal battles”. It also suggested that reform of the statutory bar might enable people living with MND to benefit more easily from the ombudsman’s ability to address systemic failures of administration, rather than seeking individual remedies from a court.
- 4.4 The Law Reform Committee of the Bar Council of England and Wales suggested that access to justice would be enhanced by improving access to the public services ombudsmen for disputes that were not appropriately dealt with in a legalistic setting. It noted that the proposed reform would provide certainty and clarity to complainants:

Removal of the statutory bar will also make it easier to launch a complaint to the ombudsman without the anxiety that it will be rejected as being more suitable for judicial review. ... The precise dividing line between the ombudsman’s and the court’s jurisdictions may be very hard for non-lawyers to understand. A simple, general presumption would be helpful in removing doubts.

It did not, however, support the removal of the statutory bar where there was a statutory right of appeal:

In our view, a statutory bar to an ombudsman’s investigation is appropriate if there is a right of appeal, reference or review to a statutory tribunal adequate to deal with the entire complaint including the question whether the complainant should be awarded monetary compensation. In such circumstances, a complaint to an ombudsman will add little of value. We are of the view that the statutory appeal



right should have priority as being reflective of Parliament's intentions. Overlapping jurisdiction may lead to forum shopping and to the deployment of one route over another according to which has the more generous time limits. There is the risk of inconsistent decisions as between ombudsmen and the relevant tribunals.

In addition, many tribunals have a specialist jurisdiction which makes them an authoritative and effective forum for dispute resolution in their areas of expertise.

### **Concerns about the reform**

- 4.5 Though the proposal was broadly supported, many consultees expressed concerns about the practical implications of removing the statutory bar. Most notably, several consultees cautioned that the reform might have serious resource implications for public authorities. The Institute of Historic Building Conservation wrote:

A relaxation of these rules is bound to result in a higher case-load for our members at a time when the resources to perform their principal functions are subject to widespread cuts.

The Institute proposed that a more robust complaints filter could be introduced to counter the problem of increased cost, to filter out complaints that were not substantial and not "based on allegations of inconsequential matters of procedures or disagreement with the weight given to the various material considerations involved".

- 4.6 The Motor Neurone Disease Association was concerned that some complaints might go unresolved as a result of the reform. It suggested that any statutory provision for a general presumption in favour of the public services ombudsmen should "be suitably structured to ensure that complaints do not fall between the two investigatory options".

- 4.7 Both Hertfordshire County Council and the Medical Protection Society stressed that reform to the statutory bar should not undercut the need for complainants to seek resolution of their complaints internally before turning to the public services ombudsmen. The latter consultee stated that it:

...would be concerned at changes which widen the scope for an ombudsman investigation in circumstances where there are already adequate mechanisms for investigating complaints in place.

- 4.8 The Medical Defence Union expressed a particular concern about the jurisdiction of the Public Services Ombudsman for Wales and the Health Service Ombudsman to investigate complaints that go to the exercise of clinical judgment by health practitioners. Their ability to investigate these matters was effected by the repeal in 1996 of section 5 of the Health Service Commissioners Act 1993, prior to which those complaints would have had to be raised in a court of law. The Medical Defence Union believed that the usual safeguards for medical practitioners in court actions for professional negligence were absent in an ombudsmen's investigation, and thereby it resisted any move to make it easier to make a complaint to the ombudsmen. It explained:

In short, the [Medical Defence Union] is concerned that, without the statutory bar, the ombudsmen will expand their practice of undertaking investigations of complaints which are, in effect, claims for damages for clinical negligence and which it is inappropriate for them to deal with, in particular having regard to the lack of procedural safeguards and the lack of certainty of the basis upon which liability will be established which form part of the civil litigation procedure which is tailored to the determination of claims for negligence.

- 4.9 To further complicate matters, because the ombudsmen's recommendations "do not constitute a claim for purposes of these individuals' policies of professional indemnity insurance", the Medical Defence Union's members might not be able to claim the amount they were recommended to pay to the complainant from their insurers. For these reasons, the Medical Defence Union opposed the proposal to remove the statutory bar.
- 4.10 Finally, the Housing Law Practitioners' Association pointed out that the ombudsmen already exercise their discretion to accept complaints from people who could have or have had recourse to a court of law, and that the reform – while welcome – was not essential. Richard Kirkham echoed this view, and explained that the proposal simply reflects current practice:

The position described is how the law has been interpreted under the existing terminology, through a liberal interpretation of when it is unreasonable to expect a complainant to pursue a legal remedy.

### ***Conclusion***

- 4.11 In sum, most consultees who replied to this question were in favour of the proposal, though they expressed some concerns as outlined above. The majority of those who disagreed or held equivocal views were concerned about the potential resource implications of the reforms.

## **4.2 Do consultees agree that there should be a general presumption in favour of the ombudsman being able to investigate a complaint coupled with a broad discretion to decline to open an investigation?**

### ***Introduction***

- 4.12 Twenty-two of the 57 consultation responses that were received addressed this question. Fifteen of those agreed that there should be a general presumption in favour of the ombudsman being able to investigate a complaint coupled with a broad discretion to decline to open an investigation, and two disagreed. Five responses were opposed to (or expressed equivocal views on) the general presumption in favour of the ombudsman investigating but, if the presumption were in place, would support a broad discretion to decline to investigate.

### ***Concerns or cautions***

- 4.13 The two consultees who disagreed with this proposal were opposed to extending greater discretion to the public services ombudsmen. Sally Hughes, a former solicitor and policy officer for a mental health organisation, explained that discretion creates a lack of clarity for complainants:

The existence of yet more discretion in the system will disempower ordinary people, who need to know clearly what they are entitled to. Discretion makes processes such as this more esoteric. I am not in favour of this. I believe declining to investigate, if all other conditions are met, should be governed by defined exceptions.

- 4.14 Several consultees were in favour of granting the ombudsmen the discretion to decline to investigate, but with some constraints. Three consultees requested that guidelines be created to provide clarity to complainants as to when the ombudsmen might decline to investigate. Several others suggested that the ombudsmen should consult with complainants in exercising their discretion. Consumer Focus suggested that:

Where they decline there should be a requirement to: seek agreement with the complainant; make sure the complainants understand the reasoning behind the ombudsman's decision; offer and advise on how to use alternatives where they exist; report on the number of cases declined, and the reasons behind those decisions.

Along similar lines, the Housing Law Practitioners' Association stated that:

The ombudsman should not decline to open an investigation without giving the complainant the opportunity to state why he should accept the complaint ... and should give reasons when he does decline.

### ***Broad discretion***

- 4.15 The majority of consultees agreed that the ombudsman's discretion to decline to open an investigation must be broad. Richard Kirkham wrote:

I would reject an attempt to try and define this matter in any more detail. This should be a matter of the sensible exercise of discretion on the part of the ombudsman.

- 4.16 Lancashire County Council and the National Complaints Managers Group (Social Care Services) both noted that this proposal might address their concerns about the resource implications of a presumption in favour of the ombudsman opening an investigation. The Law Reform Committee of the Bar Council of England and Wales thought that the “discretion would go some way towards mitigating the adverse effects of overlapping jurisdiction”.
- 4.17 Finally, the public services ombudsmen agreed in their joint response that the proposal might be “constructive”, despite the fact that they have been able to operate effectively within their existing statutory frameworks.

***Conclusion***

- 4.18 Overall, this proposal was broadly supported. Some consultees suggested that the ombudsman’s discretion be fettered or constrained, but the majority supported a broad discretion to decline to open an investigation.

### **4.3 Do consultees agree that in deciding whether to exercise their discretion to decline to open an investigation ombudsmen should ask themselves whether the complainant has already had or should have had recourse to a court or tribunal?**

#### ***Introduction***

- 4.19 Of the 57 consultation responses that were received, 19 consultees expressed a view as to whether the ombudsmen should ask themselves, when deciding whether to exercise their discretion, whether the complainant has or should have had recourse to a court or tribunal. Seventeen of those agreed with the proposal and two disagreed.

#### ***Qualified support for the proposal***

- 4.20 This proposal enjoyed broad support, though six of the consultees who agreed with it expressed reservations or qualifications.
- 4.21 Several consultees noted resource concerns. The Medical Protection Society agreed with the proposal, “particularly where it is the case that it is the intention of the complainant to simply rehearse the issues which have already been considered by the court or tribunal”. Oxfordshire County Council addressed a similar concern about duplication and wasted resources:

I strongly believe that access to a court or tribunal is a key consideration which should be taken into account when considering whether or not to open an investigation. This is an important consideration as it is fundamentally wrong and a waste of scarce resources to have duplication, in these times more than any other.

- 4.22 The Council of Her Majesty’s Circuit Judges clarified that the ombudsmen should ask themselves whether the complainant has or should have had recourse to a court or tribunal, but should not refuse to investigate a complaint on those grounds if the case was transferred to the ombudsman as a result of the stay and transfer power that was proposed in Part 4 of the consultation paper.
- 4.23 Most of the consultees who indicated their qualified agreement with the scheme emphasised that the question of whether the complainant has or should have had recourse to a court or tribunal should not be considered to the exclusion of other relevant factors. For example, the public services ombudsmen stated in their joint response that “this is only one consideration amongst others and should not be identified separately as obligatory in the legislation”. The Motor Neurone Disease Association also qualified its agreement with the proposal by stating that the ombudsmen should not refuse to investigate on these grounds if there is cause to believe that the complaint concerns systemic failure.
- 4.24 Richard Kirkham noted that a complainant should be required to pursue a complaint in the courts:

...where there is a specific statutory right to appeal (as opposed to review) ... unless there are good reasons to the contrary (such as the complaint was at root really about maladministration).

- 4.25 LGO Watch and Public Service Ombudsman Watchers disagreed with the

proposal on the basis that it provided a “get out clause” for ombudsmen, while Monica Waud preferred simply that the current position not be altered.

***Conclusion***

- 4.26 In general, consultees supported the idea that, in deciding whether to exercise their discretion to decline to open an investigation, ombudsmen should ask themselves whether the complainant has already had or should have had recourse to a court or tribunal. Those concerns or reservations raised by consultees were primarily aimed at ensuring that this factor was not considered to the exclusion of other, equally legitimate factors.

## STAY OF PROCEEDINGS

**4.4 We provisionally propose that there should be a stay and transfer power allowing matters to be transferred from the courts to the public services ombudsmen.**

### *Introduction*

4.27 Of the 57 consultation responses that were received, 25 responses addressed the question of whether the courts should have a power to stay and transfer proceedings to the public services ombudsmen. Sixteen of those agreed with the proposal, seven disagreed, and two were equivocal.

4.28 The Council of Her Majesty's Circuit Judges strongly supported the proposal as it would ensure that the appropriate forum was able to deal with the complaint:

In our experience the County Courts regularly deal with cases in which it becomes apparent that at the heart of the litigant's claim lies a complaint of maladministration by a public authority. Such litigants (increasingly acting in person) have often been driven to bring proceedings as a means of venting his/her frustration with the relevant public service.

### *Resources and delay*

4.29 Several of the consultees who agreed with the proposal emphasised the need for a proportionate and efficient administrative justice system in which disputes could be resolved quickly and at less cost.

4.30 However, there was an equal number of consultees who felt that the proposal would achieve the opposite effect: that it would create additional delay and cost. Devon County Council and Lancashire County Council were concerned that the ombudsmen might not have sufficient resources to shoulder the additional burden of the cases transferred to them by the courts. The Housing Law Practitioners' Association pointed to the potential for the stay and transfer power to lengthen proceedings, which may be of an urgent nature:

Housing cases tend, by their nature, to be urgent, being concerned with the allocation of accommodation because of need, or securing accommodation because of homelessness. By the time a judicial review case reaches the permission stage, there will have been pre-issue correspondence in accordance with the protocol, service of grounds, and an acknowledgment of service with grounds of opposition. In a homelessness case, by the time of the hearing (no permission stage) there will have been a statutory internal review, issue of appeal with grounds, most likely disclosure, and exchange of skeleton arguments. We are concerned about highlighting a process which would delay resolution into what is already a lengthy procedure.

4.31 The Medical Protection Society noted that the potential for delay would be even greater if a case was transferred to the ombudsmen and later returned to the courts. However, it suggested that this problem could be remedied, at least in part:

We suggest that where a matter would more appropriately be dealt with by the ombudsman at “first instance” there should be an administrative process to avoid court proceedings from being issued.

- 4.32 The organisation JUSTICE, which supported the proposal, also noted that delay might be a problem and suggested that “the court might put some framework on its referral”.

***Relationship between courts and ombudsmen***

- 4.33 Several consultees supported the proposal in part because it could save complainants from the stress of adversarial litigation when their complaint would more properly be dealt with in an informal setting. The Motor Neurone Disease Association:

...strongly supports the opinions of Mr Justice Sullivan who argued that many claims involving social care or the health services could be better dealt with by the ombudsman than by the courts. His statement that the, “corrosive effects of adversarial litigation are most unfortunate”, are extremely pertinent and reflect the feelings of many people with Motor Neurone Disease.

- 4.34 Several others thought that the proposal would disturb the balance between courts and ombudsmen. The Law Reform Committee of the Bar Council of England and Wales opposed the proposal partly on the basis that it threatened to undermine the important distinction between the courts and the ombudsmen. The Committee wrote:

(a) It risks imbuing the ombudsman’s essentially informal procedure with elements of a formal, adversarial procedure which may undermine the purpose of the ombudsman.

(b) It carries the risk that, in the case of the Parliamentary Commissioner, the role of the ombudsman as the officer of Parliament will be attenuated in that a transferred case will have its origins in the legal process rather than being an extension of Parliamentary scrutiny....

(d) The ombudsman should not become a substitute for the vindication of individual rights which litigation alone provides.

The Association of Council Secretaries and Solicitors also noted that:

Bringing the separate jurisdictions closer together would inevitably legalise the Local Government Ombudsman service, which is undesirable from the complainant’s perspective and unnecessary for both local government and the Local Government Ombudsman.

- 4.35 Sally Hughes suggested that this proposal “would make it harder for complainants to receive what are seen as the greater benefits of court intervention”. In her opinion, publicly funded court cases are generally preferable to the ombudsmen because:



There are resources for fuller investigation; the authority can be brought to account more effectively, such as via the court's power to order disclosure, and to order that a wide range of steps be taken or compensation provided; the authority is under greater pressure to underwrite the costs (via costs orders and the cost of meeting corrective orders), and therefore to deal positively with the complaint; and it substantially redresses the imbalance of power as between the complainant and authority.

She also noted that the processes and outcomes of the court and ombudsmen systems ought to be harmonised, to reduce complexity for complainants seeking redress from a public body.

### ***Other concerns***

4.36 Several consultees had questions about how the stay and transfer power would operate in practice. Some members of the legal profession, such as the Law Reform Committee of the Bar Council of England and Wales and the Administrative Justice and Tribunals Council, noted that the reform might lead to a lack of clarity that had the potential to confuse complainants. Hertfordshire County Council suggested that the ombudsmen could “review the number and type of references over a period of time with the judiciary to ensure that this is working appropriately in practice”.

4.37 Consumer Focus also highlighted the impact of the reform on complainants:

Transfers need to be done sensitively and transparently to avoid complainants feeling disenfranchised and alienated. Measures will also be required to boost peoples' understanding of the new process, make sure they are fully informed about the benefits and that it is easier to get redress.

4.38 Two consultees, the Advice Services Alliance and the Housing Law Practitioners' Association, pointed out that complainants would likely lose their publicly funded legal aid if their cases were transferred from the courts to the ombudsmen.

4.39 The Housing Law Practitioners' Association also noted that the stay and transfer power could reduce the public authority's incentive to settle the complaint early in the proceedings.

4.40 Finally, the public services ombudsmen explained in their joint response that while they supported the proposal, they preferred to see the stay and transfer power restricted to the Administrative Court:

We do not believe that the lower courts should routinely be able to exercise such a power. Enlarging the scope of such a power in that way would run the risk of inappropriate referral and would be contrary to the public interest.

### ***Conclusion***

4.41 Although more than half of the consultees who answered this question supported the proposal, there was a significant number who opposed it or who had serious

concerns about its implications. Many of those who agreed with the proposal expressed similar concerns, especially in the area of resource allocation and the separate jurisdiction of the courts and the ombudsmen.

#### **4.5 Do consultees agree that the court should invite submissions from the original parties before transferring the matter?**

##### ***Introduction***

- 4.42 Of the 57 consultation responses that were received, 24 expressed views on whether the court should invite submissions from the original parties before transferring the matter to an ombudsman. Twenty-one of those agreed with the proposal and three disagreed.

##### ***Broad support***

- 4.43 There was broad support for the proposal to give parties the opportunity to make submissions to the court before having the matter transferred to an ombudsman. This was generally considered necessary in the interest of fairness, as pointed out in the public services ombudsmen's joint response, among others.
- 4.44 Some consultees went further and suggested additional safeguards to constrain the courts' stay and transfer power. Four consultees wrote that the court should only be able to exercise the stay and transfer power if the parties consented to the transfer. JUSTICE and Worcestershire County Council suggested that agreement should be sought from all parties, while Consumer Focus and the Advice Services Alliance suggested that agreement of the complainant alone should be required. The Advice Services Alliance explained the basis for its position:

Where the complainant does not agree to the "transfer" then they may not co-operate in the ombudsman's investigation. If this results in the ombudsman discontinuing the investigation, then the case would have to return to court. If the complainant is not in agreement with the transfer then it arguably serves no purpose and can only add to costs and delay.

- 4.45 The Alliance suggested that the Law Commission should consider proposing an appeal process for complainants who wanted to challenge the court's decision to transfer a case to an ombudsman. Similarly, the Housing Law Practitioners' Association proposed that complainants should be able to apply to have the stay lifted if the matter was not dealt with effectively by the ombudsman following the transfer:

There should be provision for either party to apply for the stay to be lifted, which might be exercised, if for example, the ombudsman was unable to resolve an issue, was unable to propose a remedy which met the complainant's case or the public authority had declined to follow the ombudsman's recommendation.

- 4.46 Two consultees disagreed with the proposal on the basis that it was not necessary in light of the current rules governing civil procedure. The Council of Her Majesty's Circuit Judges wrote:

The Court should be able to order a stay and transfer of its own initiative and, under the Civil Procedure Rules, any party can require the Court to hold a hearing at which the decision can be challenged. If neither party objects, then no hearing is necessary. Furthermore, it is

always open to a party to apply to the Court for a stay and transfer, which would result in a hearing at which the issue could be argued on its merits. We, therefore, consider it unnecessary to invite submissions from the parties because the present rules are adequate to deal with the situation.

4.47 Richard Kirkham made a similar point:

Under the pre-action protocol should not the onus be already on the respective parties to present their arguments as to why alternative remedies are not appropriate to resolve this dispute ie will not the parties have already had an opportunity to address this issue? If I am correct in this, then requiring a further submission would seem to unnecessarily delay the issue and add cost without providing any extra meaningful information.

4.48 The campaign groups LGO Watch and Public Service Ombudsman Watchers wrote that they disagreed with the proposal as they believed that:

Any party should be able to refuse any matter being transferred from a proper system of justice to an inferior faux system of justice as provided by public service ombudsmen.

### ***Conclusion***

4.49 On the whole, this proposal was widely supported. Two of the three consultees who did not support the proposal took that position on the grounds that such a safeguard was already provided for in the existing Civil Procedure Rules and pre-action protocols.

#### **4.6 Do consultees agree that, in the event of such a transfer, the ombudsman should be obliged to open an investigation?**

##### ***Introduction***

- 4.50 Of the 57 consultation responses that were received, 20 responses expressed views on whether the ombudsman should be obliged to open an investigation that was transferred to it from the courts. Ten of those agreed with the proposal, nine disagreed, and one was equivocal.

##### ***Divided opinion***

- 4.51 Nearly half of the consultees who responded to this question did not agree that the ombudsman should be obliged to open an investigation once the court exercises its stay and transfer power. Many consultees, including the Administrative Justice and Tribunals Council and Brian Thompson, wrote that this proposal would place an unnecessary fetter on the ombudsman's traditionally wide discretion. As the public services ombudsmen explained in their joint response:

We regard it as a fundamental principle that the ombudsman has discretion whether or not to open an investigation. Creating an obligation for an ombudsman to open an investigation in such circumstances would infringe the ombudsman's independence.

Since we regard it as especially important that the ombudsman system of justice be widely recognised as distinctive and different from the courts and tribunals, we consider that the reinforcement of any appearance to the contrary would be a regressive step.

- 4.52 Warwickshire County Council, Oxfordshire County Council and Richard Kirkham suggested that the ombudsmen could instead be required to at least consider opening an investigation once the matter has been referred to them. The latter two consultees suggested additionally that the ombudsmen should provide reasons for a decision not to open an investigation.
- 4.53 Many of those who agreed with the proposal warned that complainants could be left without any recourse if the ombudsman were not obliged to open an investigation. Lancashire County Council and the National Complaints Managers Group (Social Care Services) wrote that "the ombudsman must be obliged to open an investigation; a failure to do so would only frustrate the complainant and lead to unnecessary delay".
- 4.54 The Law Reform Committee of the Bar Council of England and Wales noted that there were strong arguments both for and against granting the ombudsman discretion to refuse to investigate in a transferred case:

On the one hand, the court order transferring the case could be rendered nugatory if the ombudsman did not proceed to an investigation. It would enable the parties to have a second bite at the cherry by making representations against an investigation in an effort to succeed before the ombudsman where they had failed before the court. This would undermine the authoritative nature of court orders. On the other hand, an ombudsman should be master of his own

investigation untrammelled in the exercise of his powers by prior restraints imposed by a court. The difficulty in answering the question highlights in our view the disadvantages of “mixing” forums over the course of one set of proceedings.

***Conclusion***

- 4.55 Overall, this proposal enjoyed only moderate support by consultees. Many were concerned that it would place undue constraints on the ombudsmen’s discretion, while others supported the proposal as a way to prevent delay and frustration on the part of complainants.

#### **4.7 Do consultees agree that the ombudsman should also be able to abandon the investigation should it – in their opinion – not disclose maladministration?**

##### ***Introduction***

- 4.56 Of the 57 consultation responses that were received, 22 responses expressed views on whether the ombudsmen should be able to abandon the investigation if they are of the opinion that it does not disclose maladministration. Eighteen of those agreed with the proposal and four disagreed.

##### ***Discretion to abandon the investigation***

- 4.57 This proposal was broadly supported by the majority of consultees. The Law Reform Committee of the Bar Council of England and Wales stated plainly that the ombudsman must have this power as “otherwise there is the risk that he is compelled to conclude with a full report for no good reason”.
- 4.58 Several consultees who supported this proposal qualified their support with the requirement that the ombudsmen provide written reasons for their decision to abandon the investigation. The Motor Neurone Disease Association, for example, wrote that “as the definition of maladministration is so deliberately loose it is essential to ensure that all parties understand why an investigation has not been continued”. Brian Thompson also agreed with the proposal but noted that a protocol might need to be entered into to guide the development of this mechanism.
- 4.59 The public services ombudsmen agreed in their joint response that the ombudsmen must retain the power to abandon an investigation, and suggested that this discretion should be even wider than what was proposed in the consultation paper:

If such an obligation were to be introduced, we would certainly expect to preserve the ombudsman’s absolute discretion to abandon the investigation, and not just on the grounds that it did not disclose maladministration.

##### ***Concerns with the proposal***

- 4.60 Three of the four consultees who disagreed with the proposal explained that, as the process of reaching the decision that the complaint did not disclose maladministration would have involved full consideration of that complaint, there was no reason in principle why the ombudsmen should not be required to conclude the investigation and complete a report setting out their findings. In the words of the National Complaints Managers Group (Social Care Services):

To reach such a decision [of no maladministration], the investigation has de facto been concluded and all evidence considered. All that remains is to report on the investigation and the findings arrived at. It is not unreasonable for the complainant to expect to have the full rationale behind the decision, given that further time has elapsed by the court transferring the case to the ombudsman. A fully reasoned finding of no maladministration may also provide satisfaction, to some degree to the complaint and preclude any further consideration being

required. The only exception to a complete investigation reaching a finding of maladministration or no maladministration is if an agreed settlement is negotiated between the parties.

A similar position was adopted by Worcestershire County Council and the Medical Protection Society.

- 4.61 Finally, the Housing Law Practitioners' Association noted that the ombudsmen's discretion to abandon the investigation should be coupled with the power to "refer the matter back to Court, if he considers it appropriate to do so eg because his powers are not sufficient".

***Conclusion***

- 4.62 Most consultees who answered this question agreed that the ombudsmen should not be compelled to carry out an investigation into a matter that does not disclose maladministration. However, a few consultees thought that a decision of no maladministration should be treated as the final decision of the ombudsman, rather than as grounds to abandon an investigation.



## ALTERNATIVES TO INVESTIGATION

**4.8 We provisionally propose that the Parliamentary Commissioner, the Local Government Ombudsman and the Health Service Ombudsman be given specific powers to allow them to dispose of complaints in ways other than by conducting an investigation.**

### *Introduction*

- 4.63 Of the 57 consultation responses that were received, 29 responses expressed views on whether the Parliamentary Commissioner, the Local Government Ombudsman and the Health Service Ombudsman should have specific powers to allow them to dispose of complaints in ways other than by conducting an investigation. Twenty-one of those agreed with the proposal, four were equivocal, and four disagreed.

### *Benefits of the proposal*

- 4.64 Several consultees noted that the public services ombudsmen were already employing alternative methods of dispute resolution where appropriate. The Administrative Justice and Tribunals Council welcomed the opportunity to “give statutory recognition to existing practice” and the public services ombudsmen saw no harm in doing so:

In practice, we have developed various ways of disposing of complaints in the discharge of our power of “investigation”. This process of development has been necessary to meet the variable demands of our respective caseloads. We accept, however, that, for the avoidance of doubt, explicit discretion to dispose of complaints as we see fit would be beneficial.

- 4.65 A few consultees, such as the Motor Neurone Disease Association and Redcar and Cleveland Borough Council, supported this proposal on the grounds that it would provide the ombudsmen with greater flexibility in their work and would allow them to conclude investigations in an appropriate and timely way. The Council of Her Majesty’s Circuit Judges also strongly supported the proposal, noting that section 3 of the Public Services Ombudsman (Wales) Act 2005 provided an appropriate model upon which to base the wide powers that ombudsmen should have in this area.

### *Suggestions and cautions*

- 4.66 Richard Kirkham cautioned that the ombudsman should consult with the complainant and provide them with reasons before pursuing other means of resolving the complaint. Similarly, several local authorities noted that mediation was most effective early in the dispute resolution process and suggested that the ombudsman conduct an early scoping exercise with the parties before proposing alternative methods.
- 4.67 Other consultees expressed serious concerns with this proposal. Alex Turner of the company Health Care Resolutions noted that, since the ombudsman would not be a party to the mediation, they would not be able to access the confidential content of the proceedings or draw conclusions from it in conducting their investigation. This could become problematic if the ombudsman were to decide to

continue the investigation following the use of mediation. Oxfordshire County Council specifically addressed this concern and explained how it had resolved it in the past:

This authority has used mediation previously to try and resolve matters with the available option of an ombudsman complaint should that not be successful. The authority placed a requirement that whilst the papers disclosed with the mediation process were confidential, the one exemption was that we reserved the right to disclose them to the ombudsman should there be a subsequent complaint. This seemed to work well.

4.68 The Advice Services Alliance highlighted the proposal's potential impact on the transparency of the ombudsmen's services. Conceding that the use of alternative dispute resolution (ADR) techniques could lead to prompt and fair outcomes for complainants, it noted that the ombudsmen were less likely to publish a report when ADR was used. Since the "vast majority of disputes" are resolved using ADR, these processes become "doubly removed from public scrutiny". To protect transparency, the Alliance suggested that the ombudsmen should be required to publish anonymised case digests or reports on complaints that were resolved using ADR. The Housing Law Practitioners' Association also suggested that the ombudsmen be required to produce "a record in writing identifying the procedure that was used and the outcome, which is sent to or made available to the parties".

4.69 Some consultees warned that this proposal might have the effect of changing the ombudsmen's remit. For example, Lancashire County Council and the National Complaints Managers Group (Social Care Services) wrote:

To adopt mediation as an alternative to investigation, we believe significantly alters the remit of the ombudsman beyond considerations of maladministration and injustice which have formed the bedrock of the administrative justice of the office of the ombudsman, which we perceive as a dilution of the role. We can and do accept the use of mediation as an outcome of an investigation, or in addition to an investigation, but not as an alternative.

A member of the public took this concern one step further and suggested that the proposal was simply an attempt to widen the ombudsmen's discretion "by giving inept and fraudulent ombudsmen even more power to dispose of complaints as they see fit". This concern was echoed by LGO Watch and Public Service Ombudsman Watchers.

### **Conclusion**

4.70 Consultees were generally supportive of this proposal. However, several important issues were raised by consultees concerning confidentiality, transparency, and the potential impact of the proposal on the role and remit of the ombudsmen.

## FORMAL REQUIREMENTS

**4.9 We provisionally propose that a discretionary provision relating to formal requirements, similar to section 26B(3) of the Local Government Act 1974, be inserted into the governing statutes for the Parliamentary Commissioner and the Health Service Ombudsman, excluding the Housing Ombudsman. This would allow them to dispense with the requirement that a complaint be in writing.**

### *Introduction*

- 4.71 Of the 57 consultation responses that were received, 26 responses addressed the question of whether the governing statutes for the Parliamentary Commissioner and the Health Service Ombudsman should be amended to give the ombudsmen discretion to waive the requirement that a complaint be in writing. Twenty-four of those agreed with the proposal and two disagreed with it.

### *Accessibility and clarity*

- 4.72 The consultation responses to this proposal were overwhelmingly positive. Some consultees agreed with it for the reasons stated in the consultation paper. Others supported it in the interests of “uniformity and justice” (the Council of Her Majesty’s Circuit Judges), “accessibility” (the Housing Law Practitioners’ Association), or “to introduce clarity, transparency and consistency across the schemes” (Consumer Focus).
- 4.73 There was some divergence of opinion, however, as to the extent of the reform needed in this area. Sanctuary Group, a large housing association, strongly advocated the abolition of any statutory requirement prescribing the form of a complaint. The Law Reform Committee of the Bar Council of England and Wales, on the other hand, preferred a more limited approach:

It must be recognised that public bodies responding to a complaint will almost certainly find it more difficult to respond if the complaint is not in writing. The discretion should in our view be narrowly drawn to include those who cannot write, with other cases of non-written complaint being the exception rather than the rule.

- 4.74 A number of consultees noted that the complaint would, in many cases, have already been made in writing prior to coming before the ombudsmen, due to the public authorities’ formal requirements in their internal complaints procedures. Luton Borough Council, for instance, stressed that its support for the proposal was contingent on it not displacing the existing formal requirements for making a complaint to a local authority.
- 4.75 It is for this reason that Sally Hughes compared the proposal to “the proverbial re-arrangement of the deck-chairs on the Titanic”. She was concerned that the proposal did not go far enough to rectify the “delay, complication and disincentive that [the Law Commission’s] proposals on access are meant to overcome”. So long as the ombudsmen still require a complainant to first register their complaint with the public authority concerned, the written requirement will not be avoided.
- 4.76 Other consultees suggested a refinement on the proposal: that any complaint to the ombudsmen not made in writing should be subsequently written down and

agreed with the complainant, to ensure that the scope and content of the complaint is clear. Oxfordshire County Council noted the importance of clarity for public bodies tasked with responding to a complaint:

Whilst it seems eminently sensible not to require a complaint to be in writing, I think there needs to be a requirement that in those circumstances the ombudsman must formulate that request in writing himself and have that confirmed as correct by the complainant. It is absolutely essential in my view that the complaint is absolutely clear from the beginning so that we are able to respond to the issues and not have general fishing expeditions or other issues being raised as each matter is addressed by the responses from the local authority.

### ***Conclusion***

- 4.77 With a few exceptions, this proposal enjoyed broad support from consultees. The most common concern raised was the need for the complaint to be in written form at some other stage of the process – either before or after reaching the ombudsman.

## **MP FILTER**

### **4.10 We provisionally propose that a dual-track approach to reform of the MP filter be adopted by Parliament.**

#### ***Introduction***

- 4.78 Of the 57 consultation responses that were received, 15 responses addressed the question of whether a dual-track approach to reform of the MP filter should be adopted by Parliament. Ten of those agreed with the proposal, one disagreed, and four were equivocal.

#### ***Overall support***

- 4.79 Few consultees expressed strong opinions on this question. In their joint response, the public services ombudsmen agreed with the proposal:

The MP filter has long been the subject of debate. We recognise the considerable importance of the Parliamentary Ombudsman's relationship with Parliament and the important role that MPs can play in resolving citizens' grievance.

We are satisfied, however, that, notwithstanding the constitutional considerations that led to its introduction and the residual support for it in some quarters, the interests of citizen access will be greatly served by the removal of the MP filter.

The dual track approach will nevertheless preserve the option of involving an MP for those who want it. We consider this to be an acceptable compromise. Its successful implementation will, however, entail the active raising of awareness of the new framework and its operation on the part of the MPs and citizens.

- 4.80 Similarly, Consumer Focus supported the proposal on the grounds that the MP filter "contradicts the fundamental proposition that an ombudsman is both independent and accessible, and is almost unprecedented in the world community of ombudsmen".

- 4.81 While the Administrative Justice and Tribunals Council fully supported the proposal, it noted that the changed relationship between the Parliamentary Commissioner and MPs would have to be clarified in practical terms.

- 4.82 The housing association Sanctuary Group did not take a stance on the issue, but noted that the dual track approach could conflict with recent legislative developments concerning access to the Housing Ombudsman:

Current proposals suggest that the Housing Ombudsman would only receive complaints via a locally elected representative. This seems to be implementing an elected representative filter for housing complaints. Whilst we have no particular issues with this we would query whether it is appropriate for different public services ombudsmen to be moving in different directions?

- 4.83 JUSTICE disagreed with the proposal as stated. While it welcomed reform to the

MP filter more generally, it advocated the “outright abolition of the MP filter” and suggested that the Law Commission look to the ombudsmen schemes in other jurisdictions for guidance.

***Conclusion***

- 4.84 Only one of fifteen consultees who answered this question disagreed with the proposal to introduce a dual track approach to reform of the MP filter. Several consultees noted that the proposal would improve citizens’ access to the Parliamentary Commissioner.

# PART 5

## OMBUDSMEN INVESTIGATIONS

### CLOSED NATURE OF OMBUDSMEN INVESTIGATIONS

**5.1 We provisionally propose that there should be statutory discretion for the public services ombudsmen to dispense with the requirement that an investigation be conducted in private in situations where they see this as appropriate.**

#### *Introduction*

- 5.1 Of the 57 consultation responses that were received, 29 responses addressed the question of whether the public services ombudsmen should have statutory discretion to dispense with the requirement that an investigation be conducted in private when appropriate. Thirteen of those agreed with the proposal, 13 disagreed, and three were equivocal.
- 5.2 This proposal was controversial among consultees. Even many of those who agreed with it expressed reservations or concerns. This is not to say that consultees thought transparency was not important, or that reforms to enhance transparency would not be useful. Many simply did not believe that the consultation paper had made a strong enough case for the proposal as a means of achieving this end.

#### *Privacy concerns*

- 5.3 Many consultees noted the importance of protecting the privacy interest of complainants, who were often reassured by the closed nature of the ombudsmen's investigations. Openness could impede access to justice by deterring people from bringing complaints to the ombudsmen. The Administrative Justice and Tribunals Council, for example, wrote:

A general preference for transparency in public administration is correct, and in line with the AJTC's own principles. However, there is significant risk in changing a system that works well in practice. Privacy is essential to many complainants and any proposal that presents the perception of risk to it may deter them from referring complaints.

- 5.4 The public services ombudsmen, who did not agree with the proposal, made a similar point in their joint response:

To dispense with the requirement that an investigation be conducted in private would seriously risk deterring complainants, many of whom very much value the privacy of the ombudsman's investigation.

- 5.5 Three consultees agreed with the proposal on the condition that proper safeguards and guidelines are put in place to protect complainants' privacy interests throughout the investigation. For example, the Medical Protection Society explained:

We note however that the impact of a public investigation can lead to

unwarranted adverse publicity and also to patient confidential information being released into the public domain. For this reason we think that it is critical that any statutory discretion be governed by clear guidelines about the circumstances in which a public investigation is appropriate.

***Existing safeguards are sufficient***

- 5.6 A number of consultees opposed the reform on the grounds that the existing safeguards were sufficient to ensure transparency. They noted that transparency could be achieved in a closed investigation by allowing public scrutiny of reports and outcomes once the investigation had concluded. The Association of Council Secretaries and Solicitors suggested that:

It is open to the complainant to seek publicity at any time if so they wish. The appropriate time for transparency is when the investigation has been concluded and conclusions made and reasons can be given.

- 5.7 This view was shared by several local authorities, the National Complaints Managers Group (Social Care Services), and the public services ombudsmen, who wrote in their joint response that “the interests of transparency are already well served by the methods we variously deploy to publicise our processes and to report our findings”.
- 5.8 Hertfordshire County Council, while generally in support of the proposal, noted that the existing system “encourages authorities to share information in a way which may not happen if the investigation is not in private”.

***Threat to inquisitorial, informal proceedings***

- 5.9 Still others were concerned that the reform, if adopted, would compromise the informality of the ombudsmen’s role and import an undesired judicial aspect to investigations. The Council of Her Majesty’s Circuit Judges explained:

Whilst we acknowledge the current trend towards openness and public scrutiny, we feel that this would result in loss of flexibility and informality and introduce a more adversarial atmosphere to the investigation and detract from the strengths of the present system.

- 5.10 Several consultees, such as the public services ombudsmen, questioned how open investigations could be conducted other than by resort to public hearings. In their joint response, the ombudsmen wrote:

It is fundamental to the ombudsman system of justice that investigations should be conducted in private. Indeed we find it hard to see how they could be conducted otherwise unless there were to be a public hearing, which would undermine the inquisitorial process so fundamental to the ombudsman way of proceeding.

- 5.11 This would introduce a major change to the ombudsmen’s inquisitorial functions, which Richard Kirkham noted would “undermine the core rationale of the methodology of the ombudsman technique”. He went on to note two other



concerns with this proposal:

I worry that opening up the detail of an ombudsman investigation in this way might encourage (a) speculative fishing exercises for information to use against an ombudsman in judicial review and (b) a defensive response on the part of the ombudsman and public authorities during investigations, which in turn would undermine the ability of the office to operate effectively.

### ***A move in the right direction***

5.12 As noted above, some consultees – such as Consumer Focus and the Medical Protection Society – agreed with the proposal, provided that clear guidelines and procedures were followed to protect the complainants’ privacy interests during an open investigation. JUSTICE agreed with the proposal as did the Royal Borough of Kensington and Chelsea, Hertfordshire County Council, and the Advice Services Alliance.

5.13 The Newspaper Society supported the proposal as a move to increased transparency and openness, though it advocated more far-reaching reform:

The [Newspaper Society] and its members have long experience of the problems of overcoming official resistance to the development of a culture of openness and combating the UK’s traditional culture of official secrecy and reluctance of exercise of official discretion to release information. ... The [Newspaper Society] therefore strongly advocates changes to introduce a statutory presumption of openness, possibly subject to very narrowly defined exceptions where justified to enable investigations.

Moreover, publicity and media coverage would be facilitated by statutory public inspection, publication and disclosure obligations. These in turn should be framed and implemented, or supplemented, so as to extend or create statutory defences to libel and other legal actions for the benefit of the media and the ombudsmen, protecting not only disclosure of material to press and public, but also media reports of such material.

5.14 LGO Watch and Public Services Ombudsman Watchers thought the proposal did not go far enough in creating a more open process. They suggested instead that “all investigations should be conducted in public unless the public service ombudsman involved can provide a compelling reason not to do so or the complainant requests it”.

### ***Conclusion***

5.15 This proposal was not widely accepted. Many consultees were concerned that it would compromise complainants’ privacy and the inquisitorial and flexible nature of ombudsman investigations. Several consultees noted that the ombudsmen already had sufficient tools and methods at their service to ensure transparency.

## **5.2 Do consultees think that, if such discretion were created, the public services ombudsmen should be protected from additional burdens?**

### ***Introduction***

- 5.16 Of the 57 consultation responses that were received, 19 responses addressed the question of whether the public services ombudsmen should be protected from additional burdens. Sixteen of those agreed with the proposal and three disagreed.

### ***Limited support***

- 5.17 The response rate was relatively low on this question, presumably in part because so many consultees disagreed with the preceding proposal upon which this question was based. Further, many of the points raised by consultees in this Part related primarily to the question of the type of exemption that should be introduced, which will be covered next.
- 5.18 Several consultees, such as the Administrative Justice and Tribunals Council and the public services ombudsmen, reiterated their disagreement with the proposal to grant the ombudsmen discretion to conduct open investigations but added that, if the proposal were adopted, they would want to see the ombudsmen protected from additional burdens.
- 5.19 The Newspaper Society disagreed with the characterisation of Freedom of Information requirements as “burdens”:

Indeed, we are slightly concerned by the Law Commission’s references to the Freedom of Information Act as “an additional burden” for the ombudsmen, which rather fails to acknowledge the benefits of the public’s information rights – which a growing body of caselaw suggests are article 10 rights – and the contribution of publicity and improved public scrutiny to better government.

- 5.20 LGO Watch and Public Service Ombudsman Watchers disagreed with the proposal, and the Medical Protection Society explained that a burden should be placed on the ombudsmen to “ensure communication of reasons not to release information” in the interest of transparency.

### ***Conclusion***

- 5.21 Although the majority of consultees who answered this question agreed that the ombudsmen should be protected from additional burdens, few provided any substantive feedback on the proposal.

**5.3 If so, would consultees prefer a more general exemption from the duty contained in section 1 of Freedom of Information Act 2000 in relation to investigations, as is currently the case? Alternatively, would consultees prefer a more limited exemption modelled on section 36(5)(ka) of the Freedom of Information Act 2000?**

***Introduction***

- 5.22 Of the 57 consultation responses that were received, 20 addressed the question of whether the exemption from the duty in section 1 of the Freedom of Information Act 2000 should be general or limited. Thirteen of those preferred a more general exemption, as is currently the case, while five preferred a more limited exemption modelled on section 36(5)(ka) of the Freedom of Information Act 2000. Two consultees were not in favour of adopting either of the two exemptions.

***General exemption***

- 5.23 The majority of responses to this proposal favoured a general exemption to the duty in section 1 of the Freedom of Information Act 2000. This position was adopted by the majority of the local authorities who responded to this question. Devon County Council, for instance, explained that:

The Local Government Ombudsman is already assuming additional burdens in investigating complaints against schools, for example. The current exemption has not been shown to have harmed any person or the interests of justice. Some better reason is needed for the exemption's removal than the pursuit of "transparency" for its own sake.

Oxfordshire County Council preferred the general exemption because "it would be explicit and clear without having to seek and indeed deal with any challenge on qualified exemption reasons". The Royal Borough of Kensington and Chelsea and Warwickshire County Council agreed.

- 5.24 Sanctuary Group supported a general exemption on the grounds that it would provide greater protection to public bodies whose actions were found to not constitute maladministration. Its support was contingent on the ombudsmen continuing to publish anonymous reports of the outcomes of their investigations.
- 5.25 Most members of the legal profession who answered this question preferred a general exemption, including the Council of Her Majesty's Circuit Judges, JUSTICE, and the Law Reform Committee of the Bar Council of England and Wales. The public services ombudsmen shared this view.

***Qualified exemption***

- 5.26 Five consultees supported the introduction of a qualified exemption to the duty in section 1 of the Freedom of Information Act 2000, modelled on section 36(5)(ka) of the Act. They agreed that it would be sufficient for the ombudsmen to withhold information from disclosure if, in the reasonable opinion of a qualified person, disclosure would "prejudice the effective conduct of public affairs".
- 5.27 The Motor Neurone Disease Association adopted this position and emphasised

that consideration of the “opinion of a reasonable person” must include the wishes of the complainant. The Medical Protection Society predicated its support for a qualified exemption on the requirement that the ombudsmen communicate their reasons for not releasing information to the public.

- 5.28 This position was also adopted by Richard Kirkham, the Housing Law Practitioners' Association, and Hertfordshire County Council.

***No exemption***

- 5.29 Lancashire County Council did not believe that there should be any exemption from the duty contained in section 1 of the 2000 Act. The Council disagreed with the proposal to provide ombudsmen with discretion to conduct investigations in private and instead suggested that all reports and information arising from the investigation should be made available to the public at the close of the investigation.

- 5.30 LGO Watch and Public Service Ombudsman Watchers also did not support an exemption. They stated that the ombudsmen should be guided by the “standard Freedom of Information public interest test” in deciding what information to disclose to the public:

All information given to and produced by a public service ombudsman should be open for public inspection unless the public service ombudsman can provide a compelling reason for the information to remain private.

***Conclusion***

- 5.31 Most of the consultees who answered this question preferred a general exemption to the duty in section 1 of the Freedom of Information Act 2000 to a more limited exemption, such as that in section 36(5)(ka) of the 2000 Act. Only two consultees proposed not having any exemption.

## REFERENCE ON A POINT OF LAW

### **5.4 Before making a reference to a court on a point of law, should there be a requirement that the public services ombudsmen seek either the opinion of or arbitration by an independent counsel?**

#### ***Introduction***

- 5.32 Of the 57 consultation responses that were received, 19 responses addressed the question of whether the ombudsmen should seek the opinion of or arbitration by an independent counsel before making a reference to a court on a point of law. Nine of those agreed with the proposal and ten disagreed.

#### ***A less prescriptive approach***

- 5.33 This proposal was not broadly supported by consultees. Several stated that the ombudsmen's decision to seek counsel's opinion should be at their discretion, and that they should not be required by statute to do that which they would do as a matter of good practice. The public services ombudsmen, for instance, wrote in their joint response:

Ombudsmen are accustomed to taking legal and other advice when necessary, whether from their own lawyers, external solicitors or counsel. It is inconceivable that they would have recourse to the court without such advice. This is not a matter that warrants prescription in legislation.

- 5.34 Similarly, the Administrative Justice and Tribunals Council thought that it was not necessary to prescribe that the ombudsmen seek external advice, as they already "deal with difficult legal matters requiring decisions as to whether to seek counsel's opinion on an ongoing basis". This position was also adopted by Brian Thompson, Richard Kirkham and the Advice Services Alliance.
- 5.35 The Law Reform Committee of the Bar Council of England and Wales agreed that the ombudsmen should not be compelled to seek this opinion, adding that the "constraint might in some cases merely add to delay and cost". Several local authorities – Devon County Council and Worcestershire County Council – disagreed with the proposal on the grounds of the expense it would incur.

#### ***The value of seeking counsel's opinion***

- 5.36 Despite the strong voice of dissent on this proposal, a number of consultees agreed that the ombudsmen should be required to seek counsel's opinion before making a reference to the court. Despite its concerns about the possible cost implications, Oxfordshire County Council supported the proposal as it would:

...ensure that the ombudsman is aware of whether the reference to the court on a point of law is appropriate or indeed whether there is clear case law or legislation available that determines the matter, thus negating the need for court declaration.

- 5.37 JUSTICE also believed that the requirement to seek advice from Queen's Counsel "would be prudent".

- 5.38 Few consultees addressed the issue of whether advice from Queen’s Counsel – rather than a more junior lawyer – was necessary. The Council of Her Majesty’s Circuit Judges preferred that advice be sought from Queen’s Counsel, whereas the Law Reform Committee of the Bar Council of England and Wales thought that a junior lawyer’s advice would be sufficient:

It is unlikely that the question always would be of such complexity as necessarily to warrant a QC. Junior counsel may provide quality advice at lesser cost to the public purse. It should be a matter for the ombudsman to choose his counsel, albeit that he may wish to ask the parties for suggestions.

- 5.39 Four consultees, including the public services ombudsmen, noted that it would not be desirable for the ombudsmen to seek arbitration by independent counsel. The Council of Her Majesty’s Circuit Judges explained:

We prefer the proposal to obtain counsel’s opinion to that of arbitration, because the role of counsel in such circumstances should be to advise and assist the ombudsman who is ultimately responsible for the investigation and decision. Experienced counsel are well able to deal with competing arguments when formulating an opinion without requiring representation and submissions from the parties. Arbitration would, in our judgment, be an expensive and time-consuming alternative.

Warwickshire County Council also noted that arbitration might be a costlier alternative to the provision of counsel’s opinion.

### ***Conclusion***

- 5.40 Consultees were broadly split over this proposal, with just over half preferring that the ombudsmen not be required to seek counsel’s opinion or arbitration before making a reference to the court. Of those who favoured a requirement to seek arbitration by or an opinion of counsel, many explained that it was preferable to require an opinion from counsel rather than the use of arbitration.

**5.5 We provisionally propose that the counsel's fees should be met by the public services ombudsmen.**

***Introduction***

- 5.41 Of the 57 consultation responses that were received, 15 responses addressed the question of whether counsel's fees should be met by the public services ombudsmen. Fourteen of those agreed with the proposal and one disagreed.

***Ombudsmen should bear the cost***

- 5.42 This proposal was broadly accepted by nearly all consultees who addressed it in their response. Devon County Council was the only consultee opposed to it, on the grounds that it was "unrealistic to propose the imposition of additional costs on any public body". Oxfordshire County Council echoed the concern that this proposal could affect the overall cost of the ombudsmen's services.
- 5.43 The Law Reform Committee of the Bar Council of England and Wales noted that the proposal might provide incentive to the ombudsmen not to refer questions to the Administrative Court unnecessarily.
- 5.44 Finally, the public services ombudsmen endorsed the proposal but emphasised that "this is not a matter that warrants prescription in legislation".

***Conclusion***

- 5.45 Although the consultees who answered this question were nearly unanimous in their support for it, a few consultees noted that it could result in higher costs for the public services ombudsmen.

## **5.6 We provisionally propose that there should be a mechanism allowing a public services ombudsman to ask a question of the Administrative Court.**

### ***Introduction***

- 5.46 Of the 57 consultation responses that were received, 23 responses addressed the question of whether there should be a mechanism allowing the public services ombudsmen to refer a question to the Administrative Court. Eighteen of those agreed with the proposal, four disagreed, and one was equivocal.

### ***Qualified support for the proposal***

- 5.47 The Council of Her Majesty's Circuit Judges was in favour of giving the ombudsmen a reference power, noting that "such a power would be exercised sparingly and be restricted to cases identified as important by the previously-obtained opinion of counsel".
- 5.48 The public services ombudsmen, the Advice Services Alliance and Richard Kirkham all agreed that the power was likely to be used only rarely. Richard Kirkham described it as a "reserve power" that could be used both on the rare occasions in which interpretation of a legal question was at the heart of the maladministration inquiry, and when it would be unreasonable to conclude the investigation due to the possible existence of a legal remedy. He suggested that it would be a useful means of negotiating the overlap between questions of law and of maladministration, especially in complex cases involving a large number of complainants.
- 5.49 Sally Hughes supported this proposal along with all of the associated proposals on the reference power. She explained that complainants would benefit from the ability to have a question of law determined by the Administrative Court, as successful actions in the Court "can act as a corrective to illegality, poor practice and maladministration".
- 5.50 Several consultees agreed with the proposal, but expressed concerns or reservations about its use. The public services ombudsmen wanted to ensure that the reference mechanism was not "so cumbersome that it impairs the speed and effectiveness of investigation", since "any unnecessary obstacles to ease of use would quickly make it entirely obsolete". The Administrative Justice and Tribunals Council expressed a similar concern about the complexities of the reference procedure, noting that it found "the detailed proposals in the parts unnecessarily complicated and potentially obtrusive".
- 5.51 Some consultees were concerned that the mechanism might be subject to misuse by parties seeking to delay or otherwise interfere with an ombudsman's investigation. The Advice Services Alliance explained:

There is a danger that the fact that the ombudsman has this power might lead to undesirable behaviours by parties (public bodies especially), eg by insisting that the point of law is essential to the ombudsman's investigation and forcing additional costs and delay. Another risk is that public bodies might challenge an ombudsman's decision to refer, or not to refer.

Oxfordshire County Council suggested restricting the reference power to



complaints that raise “an issue of regional or national importance that requires clarification”.

- 5.52 Devon County Council and the Medical Protection Society also noted the potential for the reference mechanism to create delay and additional costs. Hertfordshire County Council suggested that the ombudsmen ought to consider, before exercising their discretion to refer a question of law to the court, whether the use of such a power would be “timely, reasonable and cost effective”. The Royal Borough of Kensington and Chelsea, on the other hand, believed that the proposal was likely to save costs overall.
- 5.53 Ian Wise QC of Doughty Street Chambers made a wider point about the scope of the Local Government Ombudsman’s remit and the effect of this proposal on their jurisdiction. He noted that the Local Government Ombudsman is empowered to investigate not only maladministration but also the apparent or alleged failure in the provision of a service. In his opinion, an inquiry into service failure requires consideration of whether the public authority fulfilled its legal duties, which “brings matters of law within the remit of the ombudsman”. From this perspective, a reference power would undercut the Local Government Ombudsman’s ability to carry out their statutory function of investigating service failure. As a result, there is a need to clarify the meaning of the scope of these statutory provisions, and:

...if it does mean that matters of law fall within the purview of the ombudsman then the consequences need to be addressed. Either section 26(1) [of the Local Government Act 1974] needs to be amended to take matters of law out of the ombudsman’s reach (thereby restricting the ombudsman to matters of alleged or apparent maladministration as is commonly presumed to be the case) or a clear mechanism (such as the one you suggest) be established for the determination of such matters of law.

#### ***Problems with the proposal***

- 5.54 The Law Reform Committee of the Bar Council of England and Wales did not support the proposal, for three reasons. First, it believed that the reference power would threaten the closed nature of the ombudsman process. Second, it voiced a similar concern to that expressed by the Advice Services Alliance, that the process would be prone to misuse by a party seeking to avoid or delay an investigation. Finally, it pointed out that the proposal would imbue the ombudsman’s informal, inquisitorial investigation with elements of the adversarial process, would create uncertainty for complainants, and would have the unfortunate effect of compelling a person to adopt a procedure they did not choose.
- 5.55 The Association of Council Secretaries and Solicitors opposed the creation of a reference power on the grounds that the role of the Local Government Ombudsman should not be constrained by the decisions of a court. It explained:

The role of the Local Government Ombudsmen is to make a judgment on whether a set of circumstances is acceptable administration or maladministration. The objective analysis properly involves a subjective view of what is an acceptable standard or not. It is not necessary for the Local Government Ombudsmen to know, for

example, that a decision of the local authority would or would not be set aside by a court for legal reasons.

Dealing with complaints is about improving standards of administration. It is not about legal exactitude.

- 5.56 Worcestershire County Council did not support the proposal because it “would easily become a funded means of applying for judicial review”. LGO Watch and Public Service Ombudsman Watchers took a strong stance on the question, and wrote that any case in which a legal issue arises “should be transferred to a court of law in order that the complainant’s and defendant’s legal, civil and human rights are protected”.

### ***Conclusion***

- 5.57 Overall, consultees agreed that it would be useful to have a mechanism allowing an ombudsman to refer a question of law to the Administrative Court. Many consultees who supported the proposal nonetheless remarked that the process should not be too cumbersome so as to prevent its use, that it could have implications for cost and delay, and that it would need to be reconciled with the ombudsman’s jurisdiction over service failure. A small number of consultees rejected the proposal outright.

## **5.7 We provisionally propose that such a reference should not require permission.**

### ***Introduction***

- 5.58 Of the 57 consultation responses that were received, 18 responses expressed views on the proposal that a reference to the Administrative Court should not require permission from the court. Fourteen of those agreed with the proposal, three disagreed, and one was equivocal.

### ***Mixed opinions***

- 5.59 The public services ombudsmen were among those consultees who agreed with the proposal to bypass the permission stage. They noted that reducing the obstacles involved in the reference procedure would ensure that the mechanism did not become obsolete, and thus supported it “in the interests of speed and efficiency”. Devon County Council echoed this view. The other consultees who supported this proposal did not provide reasons for their position.
- 5.60 Two consultees noted a connection between the proposals concerning the permission stage and the requirement to obtain counsel’s opinion before referring a question to the Court. Brian Thompson agreed that permission should not be required, but queried whether it was necessary to require counsel’s opinion as a “safeguard to dispensing with the need for permission”. The Royal Borough of Kensington and Chelsea also agreed that permission was not necessary, but only “provided that legal advice is sought before the reference is made”.
- 5.61 The Council of Her Majesty’s Circuit Judges opposed the idea:

We consider that permission from the Administrative Court should still be required, as this provides an important judicial filter in the court process, and may enable the Court to deal with the case without resorting to a full hearing.

The Medical Protection Society also disagreed with the proposal, on the grounds that the permission stage was a useful way to avoid “unnecessary court involvement”. The third consultee opposed to this proposal was Oxfordshire County Council, which wrote that such a proposal undermined the courts’ ability to manage their own affairs.

- 5.62 Warwickshire County Council did not express a view on the matter, but did suggest that more thought be given to potential safeguards that could “prevent the raising of inappropriate/ ill defined questions”.

### ***Conclusion***

- 5.63 A small number of strong objections were made to this proposal, most notably by the Council of Her Majesty’s Circuit Judges, which suggested that a permission stage was necessary. However, the majority of consultees who answered this question believed that by-passing the permission stage would create a more efficient service.

**5.8 We provisionally propose that the decision of the Administrative Court on such a matter should be considered a judgment of the Court for the purposes of section 16 of the Senior Courts Act 1981 and, therefore, potentially subject to appeal to the Court of Appeal.**

***Introduction***

- 5.64 Of the 57 consultation responses that were received, 16 responses expressed views on whether a decision of the Administrative Court should be considered a judgment of the Court for the purposes of section 16 of the Senior Courts Act 1981 and, therefore, potentially subject to appeal to the Court of Appeal. Fourteen of those agreed with the proposal and two disagreed.

***Overall support***

- 5.65 The Council of Her Majesty's Circuit Judges disagreed with this proposal. It suggested instead that the decision of the Administrative Court on a reference question should be considered final unless it grants permission to appeal the decision to the Court of Appeal:

In this regard a decision of the Administrative Court Judge to refuse permission to appeal to the Court of Appeal should be final. Bearing in mind the restricted purpose of a reference to the court by the ombudsman, and the purpose and nature of the original complaint to the ombudsman, we are strongly of the opinion that it is inappropriate to allow such a complaint to develop into such involved satellite litigation.

Devon County Council also opposed the proposal on the grounds that it would increase costs and cause delay.

- 5.66 Otherwise, this proposal was roundly supported by consultees. The Medical Protection Society noted that the right to appeal a reference decision of the Administrative Court would ensure compliance with article 6 of the European Convention of Human Rights.
- 5.67 Campaign groups LGO Watch and Public Service Ombudsman Watchers agreed that the decision should be subject to appeal, but went much further than other consultees in suggesting that "the whole case should be subject to an appeal to the Court of Appeal no matter how small the part referred to the Administrative Court by the Public Service Ombudsman".

***Conclusion***

- 5.68 This proposal was supported by nearly all of the consultees who addressed it in their response. The two consultees who opposed the proposal were concerned that making an Administrative Court decision on a reference question subject to appeal to the Court of Appeal would create inappropriate satellite litigation and add cost and delay to the ombudsmen's processes.

**5.9 We provisionally propose that the public services ombudsmen should notify the complainant and the relevant public bodies of their intention to make a referral on a point of law, invite them to submit their views and/or to intervene before the court should they wish to.**

***Introduction***

5.69 Of the 57 consultation responses that were received, 17 responses addressed the proposal that the public services ombudsmen should notify the complainant and the relevant public bodies of their intention to make a referral, and invite them to submit their views and/or intervene before the court should they wish to. Fifteen of those agreed with the proposal and two disagreed.

***A fair procedure***

5.70 This proposal enjoyed strong support by consultees. The public services ombudsmen and the housing association Sanctuary Group explained that it was important to notify the parties and invite them to submit their views in the interest of fairness. The Housing Law Practitioners' Association noted that the involvement of the complainant at this stage was important, given the extent to which the reference could affect the outcome of the complaint. Indeed, it queried whether it would be possible to have any "equality of arms" between the complainant and the public authority without this safeguard.

5.71 The Council of Her Majesty's Circuit Judges specified that the ombudsman should notify the parties *after* having obtained counsel's opinion and should give them the opportunity to make written submissions before making the decision to refer a question of law to the Court. The ombudsmen reiterated their concern that the procedure be "as simple as possible".

5.72 The Law Reform Committee of the Bar Council of England and Wales described this proposal as "imperative" should the reference procedure be adopted. It noted, however, that it would be difficult to square this process with the stay and transfer power proposed in the consultation paper. It would be especially incongruous for parties not to have the right to intervene if their case had originated in a court and had been transferred to an ombudsman pursuant to the stay and transfer procedure.

5.73 The Law Reform Committee also noted that parties might feel compelled to intervene on a reference to the court, thus increasing the cost and the "legalistic nature" of the ombudsman's investigation. Three local authorities who supported the proposal – Warwickshire, Devon and Oxfordshire County Councils – also warned that it could lead to additional costs and/or delay.

5.74 Two consultees disagreed with the proposal. Worcestershire County Council opposed it on the grounds that it would too easily "become a funded means of applying for judicial review". LGO Watch and Public Service Ombudsman Watchers disagreed with it because they stressed that the parties – not just the ombudsmen – should have the right to request a referral to the court in the first instance in order to ensure compliance with the Human Rights Act 1998.

***Conclusion***

- 5.75 The consultees who answered this question were generally supportive of the proposal to give parties the opportunity to submit their views and/or intervene before the Court, with only two of seventeen consultees opposed to it.

**5.10 We provisionally propose that the final decision whether to refer a question to the court should be solely that for the public services ombudsman.**

***Introduction***

- 5.76 Sixteen of the 57 consultation responses that were received addressed the proposal that it should be for the public services ombudsmen to decide whether to refer a question to the court. Thirteen of those agreed with the proposal and three disagreed.

***Concerns with the proposal***

- 5.77 Two of the consultees who disagreed with this proposal, the joint response of LGO Watch and Public Service Ombudsman Watchers and the Medical Protection Society, stressed that all parties to the complaint should have the option of referring a question to the Administrative Court, not simply the ombudsmen. The third (anonymous) consultee to disagree was concerned about this proposal in light of their personal experience with the Local Government Ombudsman. They wanted to see an enhanced ability for complainants to take their cases to court.

***Support for the proposal***

- 5.78 The remaining consultees who answered this question agreed that the final decision of whether to refer a question to the court should fall to the public services ombudsman. The Administrative Justice and Tribunals Council, for instance, wrote that this decision should be “entirely at the discretion of the ombudsmen” since the reference questions were likely to concern questions of jurisdiction.
- 5.79 Oxfordshire County Council agreed that this proposal was appropriate as it would not detract from the complainants’ existing legal remedies:

The parties have the right to go for judicial review in any event with regards to the outcome of the ombudsman’s actions and would have the right of appeal in relation to any declaration made.

- 5.80 Members of the legal profession such as the Council of Her Majesty’s Circuit Judges, JUSTICE, and the Law Reform Committee of the Bar Council of England and Wales all agreed with this proposal, as did the public services ombudsmen.

***Conclusion***

- 5.81 The majority of consultees who answered this question agreed that the public services ombudsmen should be left to decide whether to refer a question to the court.

## **5.11 Should the ombudsman routinely instruct one counsel to put both sides of the question or should two opposing counsel be instructed?**

### ***Introduction***

- 5.82 Of the 57 consultation responses that were received, 13 responses addressed the question of whether the ombudsman should instruct one or two counsel to put the reference question before the Court. Seven of those stated that one counsel would be sufficient, three preferred that two opposing counsel be instructed, and three consultees provided other solutions or ideas.

### ***One counsel***

- 5.83 A slight majority of consultees who answered this question, including the public services ombudsmen, JUSTICE and Warwickshire County Council, believed that the ombudsmen should instruct only one counsel.
- 5.84 The Medical Protection Society and Oxfordshire County Council preferred that one counsel be instructed in the interests of cost savings and efficiency. The latter wrote:

One counsel should be appointed to put both sides on grounds of costs and efficacy. It is not for counsel to win a particular argument but to ensure the courts have before [them] the appropriate clarification as to the declaration that is being sought and the arguments for and against. That only requires one counsel.

- 5.85 The Royal Borough of Kensington and Chelsea noted that it was not necessary to instruct more than one counsel provided that the parties to the proceedings had the right to intervene.

### ***Two opposing counsel***

- 5.86 The housing association Sanctuary Group favoured the instruction of two counsel, to ensure “more balanced decision-making”. The Law Reform Committee of the Bar Council of England and Wales took a stronger stance and insisted not only that one counsel would be insufficient, but also that the parties should be able to elect counsel of their choosing:

It would in our view be heterodox and inadvisable for one counsel to represent both sides of the argument or for the ombudsman to impose either the same or different counsel on the parties. ... Each party should at all stages have the freedom to instruct whichever counsel they want.

- 5.87 Richard Kirkham agreed that two counsel should be instructed as, “if nothing else, this rule would surely reduce the likelihood of this measure being used to the few instances in which it was really necessary”.

### ***Different solutions***

- 5.88 The Council of Her Majesty’s Circuit Judges agreed that two counsel should be instructed, but only one by the ombudsmen. The other counsel should be instructed as an amicus.



- 5.89 The Administrative Justice and Tribunals Council preferred that all decisions about how the reference procedure would operate be left entirely to the ombudsmen's discretion, including the number of counsel instructed.
- 5.90 Finally, Devon County Council simply preferred that the "simplest and least burdensome course" be adopted.

***Conclusion***

- 5.91 This proposal elicited a variety of responses, with a small majority preferring that only one counsel be appointed to put the reference question before the Court.

**5.12 We provisionally propose that other interested parties may intervene, subject to case management decisions of the court.**

***Introduction***

- 5.92 Of the 57 consultation responses that were received, 15 responses addressed the proposal that other interested parties should be able to intervene, subject to the case management decisions of the court. Twelve of those agreed with the proposal, two disagreed and one was equivocal.

***Qualified support for the proposal***

- 5.93 Most consultees who answered this question agreed that interested parties should be able to intervene. Two local authorities disagreed. Devon County Council queried whether there was any evidence that such a proposal was necessary, and whether it would assist the public authority or the complainant in any way. Oxfordshire County Council noted that, under existing rules, the presumption was that “other interested parties may not intervene unless there are strong and good grounds for this, eg wider implications for public bodies”. It suggested that the proposal would simply introduce more costs into the procedure.
- 5.94 Several other consultees qualified their support for the proposal by noting their concerns about costs. Warwickshire County Council and the Law Reform Committee of the Bar Council of England and Wales indicated that this proposal could have the effect of increasing the cost, complexity and court-like nature of the ombudsman’s overall procedure. The Law Reform Committee’s concerns, noted earlier with respect to the need to notify parties and invite them to submit their views, are equally pertinent to this question. It noted that parties – who must have the right to intervene and instruct counsel of their choice – might feel compelled to intervene, thus increasing the risk of a more complex and costly investigation.
- 5.95 The Council of Her Majesty’s Circuit Judges emphasised that the Court must be left to decide whether and to what extent interested parties should be able to intervene “in the usual way”. Similarly, the Housing Law Practitioners’ Association agreed with the proposal but suggested that it should be possible under the existing rules for the court to permit other interested parties to intervene.

***Conclusion***

- 5.96 Although most of the consultees who answered this question supported the proposal, some still pointed out concerns or reservations. The most common concern was that the proposal could lead to increased costs and a more formal, court-like ombudsman procedure.

**5.13 We provisionally propose that, subject to the use of costs orders for case management purposes, the default position should be all parties or interveners – including the public services ombudsmen – should meet their own costs.**

***Introduction***

- 5.97 Of the 57 consultation responses that were received, 18 responses addressed the proposal that, subject to the use of costs orders for case management purposes, the default position should be that all parties or interveners meet their own costs. Fourteen of those agreed with the proposal and four disagreed.

***Support for the proposal***

- 5.98 This proposal was generally supported by members of the legal profession. The Administrative Justice and Tribunals Council, the Council of Her Majesty's Circuit Judges, JUSTICE, Brian Thompson, and Richard Kirkham all agreed that parties should bear their own costs. The public services ombudsmen concurred, explaining that "the ombudsmen would no doubt expect to pay their own costs" and that other parties should have to cover their own costs as well.
- 5.99 The Medical Protection Society emphasised that, to offset the expense of intervening, costs orders should be available to "ensure that the 'winning' party is not left out of pocket".

***Cautions and concerns***

- 5.100 Some consultees were concerned that this proposal would not be in the best interest of complainants. For example, the Advice Services Alliance supported the proposal in principle but noted that an "inequality of arms" could arise if each party were responsible for their own costs, especially if the complainant was funded by legal aid:

We assume that, in principle at least, a claimant would be able to receive advice about a proposed referral under the legal aid scheme. If a referral is made, however, and the claimant wished to intervene, would full legal aid be available in a suitable case?

- 5.101 Consumer Focus explained further that the proposal could ultimately act as a barrier to complainants seeking redress:

This could have a disproportionate impact on complainants. Complainants will, wherever possible, need to be protected from incurring costs. Added to the unfamiliarity of courts and intimidatory legal processes this could be the ultimate disincentive to the pursuit of redress.

Oxfordshire County Council suggested that it might be appropriate for other intervening parties to make written submissions only, in light of the increased cost involved in this procedure.

- 5.102 The Law Reform Committee of the Bar Council of England and Wales opposed this proposal principally on the grounds of fairness. The Committee agreed that the ombudsmen should pay their own costs but did not agree that the parties

should do the same:

There are circumstances in which it would be unjust for a party to be unable to recover costs, for example where he or she has analysed the law correctly and made correct representations to the ombudsman, but is nevertheless compelled to go to court because the other party is intransigent.

It suggested that courts should be able to use their existing discretion to take all relevant factors into account before making a costs award.

- 5.103 Of the remaining two consultees who disagreed with this proposal, Warwickshire County Council and the joint response by LGO Watch and Public Service Ombudsman Watchers stated that the ombudsmen should meet the costs associated with the referral procedure of all interested parties.

### ***Conclusion***

- 5.104 Although the majority of the consultees who answered this question agreed that all parties or interveners should meet their own costs, even those in favour of the proposal raised some concerns. Most notably, some consultees believed that it might reduce fairness and equality between the parties.

# PART 6

## REPORTING

### TYPES OF REPORT

**6.1 Do consultees agree that adopting a graduated approach to three different types of report, based on that already in place for the Public Services Ombudsman for Wales, would be desirable for each of the public services ombudsmen except the Housing Ombudsman?**

#### *Introduction*

- 6.1 Of the 57 consultation responses that were received, 22 responses addressed the proposal to adopt three different types of report for each of the public services ombudsmen except the Housing Ombudsman. Seventeen of those agreed with the proposal, four disagreed, and one was equivocal.

#### *Clarity, consistency and fairness*

- 6.2 A number of consultees agreed with this proposal on the grounds that it would enhance the fairness, clarity and transparency of the ombudsman systems. Lancashire County Council and the National Complaints Managers Group (Social Care Services) wrote that a “graduated approach to reporting is a clear and fair system for the ombudsman publishing their findings”. The Motor Neurone Disease Association added that it would allow the ombudsmen to tailor their report “in a manner more appropriate to the individual complaint and investigation”. Finally, the Advice Services Alliance noted that the majority of complaints received by the Local Government Ombudsman do not presently lead to the production of a report, and thus the proposal would have the effect of increasing transparency.
- 6.3 Two consultees noted the value of harmonising the ombudsmen’s reporting systems. The Council of Her Majesty’s Circuit Judges wrote:

We consider that it is highly desirable for the system to be rationalised as far as is possible and the graduated approach, based on the system already in place for the Public Services Ombudsman for Wales, represents a sensible solution. This would not apply to the Housing Ombudsman as is noted in the consultation paper.

Along similar lines, the Advice Services Alliance explained that a consistent reporting system would make it easier to compare the outcomes of complaints across the public services ombudsmen.

- 6.4 Richard Kirkham was particularly supportive of the proposal to require the public body subject to the complaint to report back to the ombudsmen on measures it had taken to address their recommendations. He added:

I would go further and make it a reporting requirement of ombudsman schemes that this information is collated on an annual basis – the idea being to substantiate the degree to which recommendations are actually implemented.

### ***Insufficient need for the proposal***

- 6.5 Not all consultees agreed that this proposal was necessary. The Administrative Justice and Tribunals Council did not object to it, but noted that it was “not aware that the current situation has led to any particular problems”. Likewise, the public services ombudsmen did not believe that there was any good reason for introducing this reform, and they opposed the proposal on this basis:

Although we understand the reasons for this proposal and recognise the successful operation of this process in Wales, we do not consider that there is any compelling case for legislative prescription across all the public service ombudsman schemes.

In fact, we all in various ways already adopt a graduated process of the sort described. To that extent, we consider that there is in place a common approach, albeit the terminology used has developed differently in each case.

Devon County Council agreed that there was “no compelling reason” to introduce a graduated reporting system.

- 6.6 LGO Watch and the Public Service Ombudsman Watchers also disagreed with the proposal and instead suggested that every complaint should be concluded with the issuance of a report of sufficient length to “explain the reasoning behind any decisions or determinations”. They characterised this proposal as a “three sizes fits all” approach that would not work in practice.
- 6.7 Finally, Hertfordshire County Council expressed uncertainty about the function of “special reports” and requested further detail on this matter.

### ***Conclusion***

- 6.8 The majority of consultees who answered this question agreed that a graduated approach to reporting would be desirable for each of the public services ombudsmen except the Housing Ombudsman, to improve transparency, clarity and consistency. However, a number of consultees opposed the proposal on the grounds that there was no good reason to alter the ombudsmen’s present reporting schemes.

## **6.2 Do consultees agree that these should be known as “short-form report”, “report” and “special report”?**

### ***Introduction***

- 6.9 Of the 57 consultation responses that were received, 17 responses addressed the proposal to adopt the terms “short-form report”, “report” and “special report”. Eleven agreed with the proposal and six disagreed.

### ***Mixed opinions***

- 6.10 The public services ombudsmen opposed this proposal for the same reason that they opposed the creation of a graduated reporting system: because reform is unnecessary. They explained that the ombudsmen already adopt a common approach to reporting in practice and, as such, there is no need to prescribe it in legislation.
- 6.11 Lancashire County Council and the National Complaints Managers Group (Social Care Services) agreed with the use of the terms “short-form report” and “report”, but suggested that a “special report” should instead be termed a “further report”. Brian Thompson commented that the proposed names were “very prosaic” and LGO Watch and Public Service Ombudsman Watchers suggested that all reports should simply be called “reports”.
- 6.12 The remaining consultees who answered this question agreed with the proposed terminology. Devon County Council noted that the terms had “the virtue of simplicity” and the Council of Her Majesty’s Circuit Judges simply noted that they were “appropriate”.

### ***Conclusion***

- 6.13 While nearly twice the number consultees agreed with this proposal than disagreed, the opinions were varied as to the need to adopt the proposed terminology and the benefits or drawbacks of such an approach.

**6.3 We provisionally propose that in order to ensure greater transparency, where the public ombudsmen decline to commence an investigation, or decide to abandon an existing investigation, there should be a statutory requirement to publish a “statement of reasons”, setting out clearly the reasons for their decision.**

***Introduction***

- 6.14 Of the 57 consultation responses that were received, 26 responses addressed the proposal to require the ombudsmen to publish a “statement of reasons”, setting out the reasons for their decision to abandon or decline to commence an investigation. Twenty-three of those agreed with the proposal and three disagreed.

***Problems with the proposal***

- 6.15 This proposal enjoyed strong support by consultees. The notable exceptions were the Administrative Justice and Tribunals Council and the public services ombudsmen. The former was concerned, despite its support for transparency in principle, that the proposal would generate a significant amount of work for the ombudsmen, with little in the way of benefit for complainants.
- 6.16 The ombudsmen noted in their joint response that there were existing constraints on the ombudsmen that prevented them from issuing statements of reasons as proposed. The Parliamentary Commissioner was not statutorily empowered to inform a public body of a decision not to investigate, and the notification to a landlord of a declined or discontinued investigation by the Housing Ombudsman would risk jeopardizing the future good relationship between landlord and tenant.
- 6.17 The ombudsmen’s opposition to reform of the current system stemmed from their concerns about placing such information in the public realm and about increasing the administrative workload of the ombudsmen:

We do fully understand the general principle in public law that ordinarily reasons for decisions should be given to those affected by them. However, this proposal seeks to extend that principle to placing those reasons in the public domain and we have reservations about that.

We can see that there is scope for harmonisation of practice in this area in the interests of fairness and transparency, and especially in the interests of disseminating learning from decisions not to investigate.

There is, however, a need to recognise that there is an administrative overhead to publishing statements of reasons, even on websites; and that in many cases ombudsmen do not investigate complaints because they are out of remit, or because they have not exhausted the local complaints procedure. To publish a statement of reasons in all cases where the ombudsmen decline to commence an investigation, or discontinue an existing investigation, would impose a disproportionate burden upon ombudsmen in return for a limited public benefit. It would also limit the ombudsmen’s flexibility to make



the most effective use of the resources available to them.

In any event, we consider that this issue should be addressed in the context of a wider debate about how transparent ombudsmen processes should be and where the balance between competing demands should lie.

***Fairness, clarity and understanding***

- 6.18 All the other consultees who addressed this question – including each of the local authorities – agreed that the ombudsmen should publish statements of reasons in the interests of transparency, fairness, and clarity. Two consultees went so far as to describe this proposal as “essential”. Lancashire and Worcestershire County Councils and the National Complaints Managers Group (Social Care Services) stated that the proposal was in accordance with the principles of natural justice.
- 6.19 One consultee wrote that, in her experience as a complainant to the Local Government Ombudsman, it was not always the case that the ombudsman would provide reasons for their decision not to investigate. To this end, the Motor Neurone Disease Association strongly supported the proposal on the basis that it was “imperative” for the complainant to understand the reason for the ombudsman’s decision to decline or discontinue an investigation. However, Devon County Council did not believe that the ombudsmen were failing to produce statements of reasons at present: “we cannot recall a case in two decades where the investigation was discontinued without reasons being given to the parties”. However, it supported the proposal provided that it would be less onerous or clearer for the ombudsmen to produce a statement of reasons than, for instance, a letter.
- 6.20 Finally, the Sanctuary Group noted that public bodies also had something to gain from this proposal, as the publication of statements of reasons would assist them in “learning from determinations”.

***Conclusion***

- 6.21 There were three significant objectors to this proposal, who pointed out that issuing a statement of reasons would increase the ombudsmen’s workload for limited public benefit. The remaining consultees who answered this question thought that the requirement to issue a statement of reasons would improve fairness and clarity and would help parties to understand why the investigation had been discontinued or declined.

**6.4 We provisionally propose that the Housing Ombudsman's determinations should be recast as reports where they relate to social housing.**

***Introduction***

- 6.22 Of the 57 consultation responses that were received, 11 responses addressed the proposal to recast the Housing Ombudsman's determinations as "reports" where they relate to social housing. Four of those agreed with the proposal, two disagreed, and five were equivocal.

***Few strong opinions***

- 6.23 The majority of consultees who addressed this question had no strong views or did not express an opinion on the matter. LGO Watch and Public Service Ombudsman Watchers were equivocal but characterised the proposal as "unnecessary semantic gymnastics". Warwickshire and Oxfordshire County Councils, Richard Kirkham, and the Medical Protection Society were also equivocal.
- 6.24 The only consultees to provide any substantive feedback on this proposal were the public services ombudsmen, who opposed it. They wrote:

Although the Housing Ombudsman adopts a similar approach to other public service ombudsmen, the language of "report" does not feature in the Housing Ombudsman's scheme and governing constitution. To introduce it, even in the limited circumstances proposed and in the interests of a common approach, would run the risk of constraining the Housing Ombudsman's current flexibility and of imposing a uniform style that there is good reason to avoid.

- 6.25 The Council of Her Majesty's Circuit Judges supported the proposal, along with JUSTICE and the Housing Law Practitioners' Association.

***Conclusion***

- 6.26 The public services ombudsmen did not support the proposal to recast the Housing Ombudsman's determinations as reports where they relate to social housing. The remaining consultees who answered this question were either supportive or equivocal.

## **6.5 We provisionally propose that ombudsmen should routinely ask complainants whether they want to be anonymous.**

### ***Introduction***

- 6.27 Of the 57 consultation responses that were received, 24 responses expressed views on the proposal that ombudsmen should routinely ask complainants whether they want to be anonymous. Twenty of those agreed with the proposal, three disagreed, and one was equivocal.

### ***The importance of anonymity***

- 6.28 The majority of consultees agreed with this proposal. The Motor Neurone Disease Association, for example, explained that asking complainants whether they wished to remain anonymous would protect them from unwanted public exposure.
- 6.29 Several consultees, including a number of local authorities, also agreed but indicated that they wanted to preserve the presumption of anonymity. The Advice Services Alliance noted that complainants should be clearly informed that they can choose to be named in a report but that they should not be put under any pressure to do so.
- 6.30 Notably, the public services ombudsmen did not agree with this proposal. They suggested that the proposal would mean reversing the presumption of anonymity, which would undermine “one of the chief advantages of the ombudsman system”, which is that investigations are conducted in private. Instead, they wished to preserve “the presumption that complainants wish to retain their anonymity and that they are able to do so, subject to public interest considerations”.
- 6.31 Brian Thompson adopted a similar view. He explained that “there could be circumstances in which it might be unpleasant or awkward for a complainant to eschew anonymity” and that it could be useful to “save those people from the consequences of agreeing to lose anonymity”.

### ***Reversing the presumption of anonymity***

- 6.32 The Newspaper Society, a large publishers’ association, agreed with the proposal but strongly supported ending the “automatic anonymity for complainants and other individuals”. In its response, it advocated the release of more detailed information about ombudsmen’s investigations in the interests of the ombudsmen, media agencies, and the public good. It explained that detailed media coverage of investigations, including place names and identification of the complainant and the public body, engages readers’ interest and thus makes the ombudsmen’s work more effective by situating incidents of maladministration in the public realm. It would also improve public scrutiny of public bodies and would facilitate the media’s fact-checking before publication. The Newspaper Society explained that complainants and other parties to the investigation should be identified in all but exceptional circumstances.
- 6.33 Oxfordshire County Council also supported reversing the presumption of anonymity. It explained that it could be helpful to identify complainants more easily, particularly as the identities of representatives of the public body are so readily ascertainable. It suggested that complainants should be asked to justify

their preference for anonymity, and the ombudsmen should then “consider the request”.

***Conclusion***

- 6.34 The majority of consultees who answered this question were keen to retain maximum protection of complainants’ anonymity, although two consultees suggested reversing the presumption of anonymity.

**6.6 We provisionally propose that the ombudsmen should not be able to identify a complainant or other individual without their consent.**

***Introduction***

- 6.35 Of the 57 consultation responses that were received, 25 responses addressed the proposal that the ombudsmen should not be able to identify a complainant or other individual without their consent. Twenty-one of those agreed with the proposal and four disagreed.

***Benefits and drawbacks of anonymity***

- 6.36 Most consultees adopted a similar stance on this proposal as on the previous proposal, with the majority agreeing that complainants or other parties to the investigation should not be identified without their consent. Consumer Focus noted that this proposal was “essential to maintain the reputation and credibility of public services ombudsmen”. The Housing Law Practitioners’ Association stressed that the ombudsmen should make very clear to the complainants that they are entitled to refuse to waive their anonymity.
- 6.37 The Newspaper Society disagreed with this proposal, suggesting instead that the ombudsmen should have discretion to override a complainant’s preference for anonymity. It went on to say:

If instead routine questions as to complainants’ preference for identification or anonymity are introduced, then it should be made clear for legal purposes and otherwise that any preference for anonymity expressed will not be absolute and be subject to the ombudsmen’s discretion and any other circumstances for disclosure of identity or identifying information.

Complainants opting for anonymity should also be given the opportunity to reconsider and opt for identification at any stage, perhaps with an explanation that identification would facilitate the type of publicity which they might seek and welcome, as the consultation paper suggests, before publication of the final reports of the outcome and recommendations.

- 6.38 The public services ombudsmen did not support the proposal. They explained that it was necessary for them, at times, to identify a complainant or third party without their consent and that the Local Government Ombudsman had done so on occasion.
- 6.39 Brian Thompson also disagreed with both proposals relating to anonymity, as he preferred the retention of the presumption of anonymity in the interests of complainants.

***Conclusion***

- 6.40 Although most of the consultees who answered this question supported the proposal, a few disagreed on the grounds that there were occasions in which it was useful or necessary to identify a party to the investigation without their consent.

## FINDINGS AND RECOMMENDATIONS

### 6.7 Do consultees agree that the governing statutes should draw a distinction between findings and recommendations and use those terms?

#### *Introduction*

- 6.41 Of the 57 consultation responses that were received, 23 responses addressed the proposal that the governing statutes should draw a distinction between findings and recommendations and should use those terms. All twenty-three of those agreed with the proposal.

#### *Unanimous support*

- 6.42 All of the local authorities that responded to this question, JUSTICE, the public services ombudsmen, advice organisations, and several members of the public agreed that a distinction should be drawn in the governing statutes between findings and recommendations.
- 6.43 In particular, the Newspaper Society and the Sanctuary Group explained that this proposal would make it easier for readers to understand ombudsmen's reports. The Council of Her Majesty's Circuit Judges also supported reflecting, in the governing legislation and procedures, the:

...clear distinction between the findings relating to a specific complaint (which will be fact specific) and any general recommendations to avoid future repetition of the maladministration.

- 6.44 Worcestershire and Devon County Councils agreed with the proposal but queried how reform in this area would change the current practice of the ombudsmen. Worcestershire County Council noted in particular that the proposal was unlikely to have any effect on the frequency of litigation in this area.
- 6.45 The public services ombudsmen also supported this reform, but noted that the Housing Ombudsman should be insulated from its scope:

In the case of the Housing Ombudsman, the language of "findings" and "recommendations" is in any event absent from the legislation and governing constitution, which instead speak of "orders". We are not convinced that any useful purpose would be served by overhauling the terminology.

- 6.46 Campaign groups LGO Watch and Public Service Ombudsman Watchers added that the ombudsmen should clearly explain to complainants that public bodies are free to ignore the ombudsmen's recommendations and, indeed, frequently do so. They argued that this knowledge might influence a complainant's decision to make a complaint to the ombudsman.
- 6.47 Although Brian Thompson and Richard Kirkham did not agree with the proposals relating to findings and recommendations, they did not dispute this particular proposal. Indeed, in a forthcoming publication that was included in his response, Richard Kirkham described this proposal as "an uncontroversial idea" that:

...reflects the long-held practice of the ombudsman community when

writing reports, notwithstanding that the distinction is rarely referred to in existing legislation. The logic of this practice is fairly simple: for recommendations to be made they must be based upon a finding as to the justification of the grievance submitted.

Their concerns about the proposals on findings and recommendations will be addressed more fully in the subsequent parts of this analysis.

***Conclusion***

- 6.48 This proposal received overwhelming support from the consultees who addressed it in their response.

**6.8 We provisionally propose that there should be a statutory definition for findings. This should include findings of fact and whether there was maladministration and injustice.**

***Introduction***

- 6.49 Of the 57 consultation responses that were received, 27 responses addressed the proposal that there should be a statutory definition for findings, which would include findings of fact and whether there was maladministration and injustice. Twenty-one of those agreed with the proposal, four disagreed, and two were equivocal.

***Is it necessary to define findings?***

- 6.50 The proposal to statutorily define findings enjoyed somewhat less support than the proposal to distinguish between findings and recommendations in the ombudsmen's governing statutes.
- 6.51 Consultees' primary reason for disagreeing with this proposal was that it was not necessary. The public services ombudsmen opposed it on these grounds, and also noted that there was no reason to introduce new terminology for the Housing Ombudsman, who issues "orders". Academics Brian Thompson and Richard Kirkham agreed. Brian Thompson suggested that to define "findings" would "go against the grain of the legislation since the key terms of maladministration and injustice are undefined". Richard Kirkham also noted in a forthcoming publication, submitted in response to the consultation paper, that the statutory definition of findings "would add nothing to the law or current practice of ombudsmen".
- 6.52 Similarly, the Administrative Justice and Tribunals Council supported the proposal but expressed doubt as to its necessity. Devon and Worcestershire County Councils also queried whether a statutory definition of "findings" would make any real difference to complainants or public bodies involved in an investigation.

***Support for the proposal***

- 6.53 Despite these voices of dissent, a majority of the responses indicated support for this proposal – including most of the local authorities, JUSTICE, the Medical Protection Society, several NGOs, and the Council of Her Majesty's Circuit Judges. The Sanctuary Group and Consumer Focus, for instance, noted that a definition for findings could be beneficial in the interests of clarity and consistency.
- 6.54 Finally, LGO Watch and Public Service Ombudsman Watchers agreed with the proposal but went one step further than other consultees by suggesting that maladministration should also be given statutory definition.

***Conclusion***

- 6.55 Although a number of consultees questioned the usefulness of a statutory definition for findings, the majority of consultees who answered this question agreed that a definition could help to improve the clarity and consistency of the ombudsmen's processes.



## STATUS OF FINDINGS AND RECOMMENDATIONS

### **6.9 We provisionally conclude that the proper approach to recommendations is as part of the political process.**

#### *Introduction*

- 6.56 Twenty of the 57 consultation responses that were received addressed the proposal that the proper approach to recommendations is as part of the political process. Eighteen of those agreed with the proposal and two disagreed.

#### *Support for the proposal*

- 6.57 In general, consultees agreed that public bodies should not be compelled to accept the ombudsmen's recommendations. The public services ombudsmen explained that this was important in preserving the distinct nature of the ombudsmen's role:

The public service ombudsmen's mandate is one of influence not sanction. Much of the distinctive character of the ombudsman process flows from that principle. To deviate from it so that recommendations became enforceable would potentially undermine that distinctive character. The response to recommendations should remain part of the deliberative democratic process.

- 6.58 The Association of Council Secretaries and Solicitors made a similar point, pointing to the role of trust in the ombudsmen's relationships with public bodies. Binding recommendations would undermine this trust as well as the democratic decision-making process of public bodies. It explained that public bodies often need to have regard to political considerations in making decisions, and that it would be inappropriate for the ombudsman's perspective to take precedence over "the collective view of democratically elected councillors".
- 6.59 The majority of local authorities who answered this question remarked on the need for public bodies to decide for themselves whether to adopt the ombudsmen's recommendations in light of their possible resource implications. The Council of Her Majesty's Circuit Judges also noted that "it is a matter for Parliament to decide what weight and status should be afforded to recommendations as it is likely to involve resource implications". JUSTICE suggested that, in the case of the Parliamentary Commissioner, there should be a convention – not a statutory obligation – that the recommendation be accepted.
- 6.60 Lancashire County Council and the National Complaints Managers Group (Social Care Services) acknowledged the need for a proportionate approach. While they agreed that public bodies should not be forced to implement the ombudsman's recommendations, they affirmed that principles of natural justice might require that the public body publish its reasons for not implementing them.
- 6.61 However, these two consultees also suggested that recommendations ought to be binding in the case of "self-funder" complaints in adult social care. They explained that their reasons for opposing binding recommendations in most cases did not apply in this particular context:

These organisations are not subject to the political process or local

accountability in any direct manner, nor would any ombudsman recommendation have implications for the public purse. We accept that there are commercial considerations but these need to be weighed against the interest of the, often vulnerable, complainant. We therefore feel that any recommendation should be binding unless subject to a successful judicial review.

- 6.62 The National Complaints Managers Group (Social Care Services) added that greater consistency was needed in this area. It noted that, “in relation to schools complaints, the ombudsman can apply to the Secretary of State to direct the organisation to implement the recommendations” and asked that this anomaly be rectified.

### ***Concerns with the proposal***

- 6.63 LGO Watch and Public Service Ombudsman Watchers strongly opposed this proposal on the grounds that it was wrong “to allow a body to excuse themselves from the repercussions of their wrongdoings because they are controlled by elected representatives”.
- 6.64 Richard Kirkham was the only other consultee to disagree with this proposal. He explained that although this proposal “would do nothing to alter current understanding of the legal status of recommendations” it would, in conjunction with the proposal to make findings effectively binding on public bodies, change the process by which recommendations are considered. He explained:

What the Law Commission’s proposals strive to achieve is enhanced political focus on a public body’s response to an ombudsman’s *recommendations*, by reducing the lawful opportunities for a public body to dispute an ombudsman’s *findings*.

His concerns will be examined further in the subsequent discussion of the proposal to make findings binding on public bodies.

### ***Government initiatives***

- 6.65 The Royal Borough of Kensington and Chelsea noted in its response that the Government had announced on 13 September 2010 its intent to change the powers of the Local Government Ombudsman by making its recommendations legally binding. This move was meant to enhance citizens’ right of redress. The Royal Borough explained that any reforms in this area should take this policy into consideration.
- 6.66 The Association of Council Secretaries and Solicitors also highlighted this initiative in their response. They were concerned that the Government’s plans to reform the Local Government Ombudsman scheme in this way would harm complainants by “substantially changing the relationship, leading inevitably to a more formal and legalistic approach on both sides”.

### ***Conclusion***

- 6.67 Most consultees were keen to see recommendations remain as part of the political process, to protect the distinct roles of the ombudsmen and the public bodies under scrutiny.

**6.10 We provisionally propose that a public body should only be able to reject the findings in a report of a public services ombudsman following the successful judicial review of that report.**

***Introduction***

- 6.68 Of the 57 consultation responses that were received, 25 responses addressed the proposal that a public body should only be able to reject the findings in a report following the successful judicial review of that report. Seventeen of those agreed with the proposal, seven disagreed, and one was equivocal.
- 6.69 A greater number of consultees agreed with this proposal than disagreed with it. However, although many consultees agreed that a public body should only be able to reject the findings in a report following the successful judicial review of that report, many of them offered only qualified support for this proposal and a sizeable number disagreed entirely.

***Cautions and concerns***

- 6.70 Six consultees, primarily local authorities, emphasised that public bodies named in a report must have the opportunity to challenge findings of fact in a report prior to its finalisation and publication. Warwickshire County Council noted that current practice was for both parties to be consulted on the draft findings before they were finalised, and advocated the continuation of this process.
- 6.71 Brian Thompson and Richard Kirkham expressed doubts about this proposal. They favoured the approach adopted by the Court of Appeal in *Bradley*, by which a public body can reject the findings in an ombudsman's report provided there are cogent reasons for doing so.<sup>1</sup> Brian Thompson suggested that if harmonisation is sought, then the approach from *Bradley* should be extended to the Local Government Ombudsman, rather than extending the current law as it presently applies to the Local Government Ombudsman to the other public services ombudsmen. He explained that this approach is "soundly based given the status of the ombudsman as a statutory officer able to conduct investigations and make reports".
- 6.72 Richard Kirkham explained, in a forthcoming publication submitted with his response, that this proposal would undermine the political nature of the ombudsman's work and would unduly "legalise" the investigatory process:

If it were known that an ombudsman's findings are binding, then this might lead to a tendency for all sides to employ lawyers to scrutinise the investigatory process and final report to an extent that has not hitherto been present. This tendency has been avoided in the past precisely because all sides have worked under the assumption that no aspect of an ombudsman report is legally binding. As a result, public bodies have largely operated in a constructive manner, in the knowledge that ultimately they will be able to defend themselves against all aspects of a critical ombudsman report in the political arena.

<sup>1</sup> *R (on the application of Bradley and others) v Secretary of State for Work and Pensions* [2008] EWCA Civ 36, [2009] QB 114.

By making the findings of an ombudsman legally binding then this safeguard is removed. In order to defend themselves in the future, therefore, public bodies will be forced to pursue strongly held differences of opinion in the court. As a result, far from reducing the likelihood of litigation on ombudsman reports, the Law Commission's proposals could increase the potential for judicial review.

6.73 He went on to explain that the "legalisation" of the ombudsman's process was undesirable because, among other reasons, it would contradict the underlying purpose of the ombudsman scheme, which was "to resolve disputes in a forum outside of the courts by using a different methodology". He also noted that this proposal would make it more difficult to hold the ombudsmen accountable by reducing the scope for public bodies to scrutinise and challenge the contents of a report. The proposal could also lead to an abuse of the judicial review process and, finally, was unnecessary in light of the effectiveness of the "political resolution process" by which the ombudsmen's recommendations are almost always adopted.

6.74 The Association of Council Secretaries and Solicitors disagreed with the proposal for similar reasons. It explained that making findings effectively binding on a public body would undermine the relationship of trust it had with the ombudsmen and would run contrary to the Government's localism agenda. It argued that, if this proposal is adopted:

...the process will become divisive as between the Local Government Ombudsman and local authorities and this will lead to the complainant being no longer the party from whom the service exists.

#### ***Greater powers for the ombudsmen***

6.75 On a more positive note, the Motor Neurone Disease Association strongly supported this proposal. The Association was concerned that, given the Government's recent austerity measures, public bodies might refuse to act on the ombudsmen's findings for financial reasons. This proposal would ensure that public bodies were held to account.

6.76 Consumer Focus explained that the proposal would increase the public's confidence in the ombudsmen, as "the reliance on the willing co-operation of the bodies under investigation leads some consumers to conclude that ombudsmen are powerless".

6.77 The Administrative Justice and Tribunals Council and the public services ombudsmen also agreed with this proposal. The ombudsmen noted that public bodies should not be able to unilaterally reject findings even if they claim to have good reasons for doing so. They also emphasised that the reform should apply in respect of all ombudsmen.

***Conclusion***

- 6.78 Consultees expressed mixed views on the proposal to make findings binding on a public body. Although many consultees believed that it would improve public confidence in the ombudsmen and their ability to hold public bodies to account, others were concerned that it would undermine the trust between public bodies and the ombudsmen and would create an unduly legalistic ombudsman service.

## ISSUING GENERAL REPORTS

### **6.11 Do consultees agree that there should be a specific statutory power for each of the public services ombudsmen to publish guidance, principles of good administration and codes of practice?**

#### ***Introduction***

- 6.79 Of the 57 consultation responses that were received, 27 responses addressed the proposal that there should be a specific statutory power for the public services ombudsmen to publish guidance, principles of good administration, and codes of practice. Twenty-three of those agreed with the proposal, three disagreed, and one was equivocal.

#### ***The utility of a power to publish guidance***

- 6.80 This proposal enjoyed fairly broad support by consultees. The public services ombudsmen agreed that they should have specific statutory power to publish guidance, principles of good administration, and codes of practice, even though they are not currently prevented from doing this:

Most ombudsmen already do these things within their existing jurisdictions. ... Nevertheless, we consider that a statutory power to this effect would be beneficial for the avoidance of doubt.

We also consider that the range of permissible “products” could usefully be extended beyond this list so that it includes, for example, other publications that would be in the public interest and in the interest of improving the quality of public administration and complaint handling.

- 6.81 Oxfordshire County Council provided specific examples of the type of guidance that could usefully be produced, including “guidance on avoiding top 10 areas of maladministration” or a “maladministration checklist” for public authorities. Consumer Focus suggested that these publications should include “reports on learning about service design and improvements”.
- 6.82 Several consultees noted that this power would be a useful and consistent extension of the ombudsmen’s work. The Motor Neurone Disease Association noted that it would be effective (and more cost-effective) in addressing systemic or underlying problems in public administration. Brian Thompson explained that this power would emphasise the ombudsman’s role in promoting and improving administration, while Richard Kirkham noted that it would confirm the ombudsman’s potential to give feedback on good administration.
- 6.83 The Medical Protection Society noted that this reform could benefit complainants by making it easier for them to understand the reasons for the ombudsman’s decisions. The Council of Her Majesty’s Circuit Judges agreed with the proposal simply on the grounds that it would promote greater uniformity and consistency between the public services ombudsmen.

#### ***Opposition to the proposal***

- 6.84 As noted above, a few consultees did not support this proposal. The housing

association Sanctuary Group stated that the ombudsmen should have a duty, not merely a power, to publish these types of reports. LGO Watch and the Public Service Ombudsman Watchers, to the contrary, felt that any such reports were a waste of taxpayers' money in light of the ombudsmen's failure to themselves abide by principles of good administration.

- 6.85 Warwickshire County Council opposed the idea of a statutory power to publish guidance because it ran counter to the Government's stated goals of decentralisation and simplification. Hertfordshire County Council, while in general agreement with the proposal, was also concerned that this power may "result in a raft of guidance" from the ombudsmen.

### ***Conclusion***

- 6.86 The objections to the proposal varied widely, while the majority of responses were in favour of introducing a statutory power for the ombudsmen to publish guidance, principles of good administration and codes of practice.

## **PART 7**

# **RELATIONSHIP WITH ELECTED BODIES**

### **7.1 We provisionally propose that a duty is placed on the Housing Ombudsman to lay its annual reports before Parliament.**

#### ***Introduction***

- 7.1 Of the 57 consultation responses that were received, 16 responses addressed the proposal that the Housing Ombudsman should have a duty to lay its annual reports before Parliament. Fourteen of those agreed with the proposal and two were equivocal.

#### ***Improving public scrutiny***

- 7.2 Most consultees – including JUSTICE, several local authorities and the Administrative Justice and Tribunals Council – agreed with this proposal. Several noted that it would strengthen the Housing Ombudsman’s relationship with Parliament and enhance public scrutiny of its work.
- 7.3 The public services ombudsmen, for instance, were in favour of creating “a more direct route and relationship with Parliament”. They added that the proposal highlighted the need for a wider review of the Housing Ombudsman’s service:

We suggest that any amendment of this sort should form part of a wider review of the Housing Ombudsman’s governance arrangements, which already entail accountability to the Secretary of State, the Board of IHOL and, as accounting officer, to Parliament.

- 7.4 Brian Thompson agreed that a wider review might be necessary. This review could consider the possibility of developing a relationship between the Housing Ombudsman and a select committee of the House of Commons, such as the Communities and Local Government Select Committee.
- 7.5 The housing association Sanctuary Group also supported the proposal on the grounds that it would improve scrutiny of both the Housing Ombudsman and housing providers. It suggested that the Housing Ombudsman should also have the power “to provide reports to relevant local authorities”, even where no investigations were conducted in that authority. This would be consistent with the Government’s localism agenda. Similarly, Richard Kirkham explained that this proposal would assist Parliament in holding unelected public bodies, such as the Housing Ombudsman, to account.
- 7.6 While no consultees disagreed with this proposal, a few questioned whether this proposed reform was necessary. Worcestershire County Council noted that, as the Housing Ombudsman’s reports were already laid before Parliament by other means, it was not clear what purpose the reform would serve. Similarly, the campaign groups LGO Watch and Public Service Ombudsman Watchers stressed that self-reporting “has been long discredited in the private sector” as a method of holding people to account, and instead advocated independent scrutiny of the ombudsmen by an external body.



***Conclusion***

- 7.7 Overall, most consultees who addressed this proposal in their response believed that requiring the Housing Ombudsman to lay its annual report before Parliament would improve public scrutiny of the ombudsman and strengthen its ties with Parliament.

**7.2 We provisionally propose that the governing statutes for the Local Government Ombudsman and the Housing Ombudsman be amended to allow them to lay the full range of their reports resulting from investigations before Parliament, in a similar manner to the Parliamentary Commissioner or the Health Service Ombudsman.**

***Introduction***

- 7.8 Of the 57 consultation responses that were received, 20 responses addressed the proposal that the governing statutes for the Local Government Ombudsman and the Housing Ombudsman be amended to allow them to lay their reports resulting from investigations before Parliament. Eighteen of those agreed with the proposal and two were equivocal.

***Accountability, publicity and consistency***

- 7.9 This proposal was widely supported by consultees, many of whom noted that providing the Local Government and Housing Ombudsmen with this power would increase the opportunity for public scrutiny, publicity, and accountability of the ombudsmen. The public services ombudsmen themselves recognised the importance of enhancing accountability in this way:

Notwithstanding ... the spirit of “localism” within which much of the Local Government Ombudsman’s work and that of the Housing Ombudsman is conducted, we consider that it would be a valuable indication of public accountability and in the public interest if the relationship between these ombudsmen and Parliament were to be strengthened.

- 7.10 The Newspaper Society was particularly supportive of this proposal as it “would support any recommendations designed to facilitate publicity for the work of the ombudsmen”. It emphasised, however, that the proposed reform should not displace the ombudsmen’s existing reporting and publication requirements. Similarly, Luton Borough Council agreed with the proposal provided that the existing anonymity protections were retained.
- 7.11 Lancashire County Council and the National Complaints Managers Group (Social Care Services) agreed with the proposal because it would create a more consistent system across the public services ombudsmen. The Administrative Justice and Tribunals Council also stated that “consistency across public services ombudsmen should be the default without good argument to the contrary”.
- 7.12 The constitutional implications of this proposal were raised by academics Richard Kirkham and Brian Thompson, and the Administrative Justice and Tribunals Council. They explained that the central government’s oversight over local authority matters implied by this proposal might raise some concerns. However, Richard Kirkham was confident that this argument had been “much overstated in the past” and that:

The minimal risk to local autonomy in such an arrangement is outweighed by the need for the Local Government Ombudsman to be held to account for its action. Indeed, I would suggest that where a local authority refuses to comply in any way with the findings and

recommendations of a public body (namely the Local Government Ombudsman) established by Parliament for the purpose of promoting good administration, then Parliament should retain a strong legitimate interest in local authority decision-making. This should include inviting officials from local authorities into Parliament to defend their decision-making in response to a Local Government Ombudsman investigation.

- 7.13 The public services ombudsmen suggested that it would be in the public interest to establish a relationship between each of the ombudsmen and “a select committee of their respective national legislatures”. Such a relationship would:

...extend to the other ombudsmen the benefits currently afforded to the Parliamentary Ombudsman by her relationship with the Public Administration Select Committee.

Brian Thompson added that the Communities and Local Government Select Committee might be the appropriate committee to oversee the Housing Ombudsman and the Local Government Ombudsman.

### ***Conclusion***

- 7.14 Overall, no consultees expressed any serious concerns about the proposal to allow the Local Government Ombudsman and the Housing Ombudsman to lay the full range of their reports before Parliament. It was widely accepted despite some concern about the constitutionality of providing central government with an oversight role for matters of a local nature.

## APPENDIX A INDEX OF SUBMISSIONS

Number	Organisation/individual	Category
01	Ian Wise QC, Doughty St Chambers	Legal profession
02	Malcolm Wain	Member of the public
03	The Newspaper Society	Other – media association
04	East Staffordshire Borough Council	Public body – local authority
05	Clive Powell	Member of the public
06	Health Care Resolutions	Other – private company
07	Tony Wise	Member of the public
08	Jane Reeve	Member of the public
09	Anonymous	Member of the public
10	AW & I Tanner	Member of the public
11	Jad Adams	Member of the public
12	Anita Jennings	Member of the public
13	Lancashire County Council	Public body – local authority
14	Royal Borough of Kensington and Chelsea	Public body – local authority
15	National Complaints Managers Group (Social Care Services)	NGO – advice/complaints
16	S Beeson	Member of the public
17	John Lewis	Member of the public
18	L Hume	Member of the public
19	LGO Watch and Public Service Ombudsman Watchers	NGO – community
20	Administrative Justice and Tribunals Council	Public body - advisory
21	Monica Waud	Member of the public
22	Graham Crane	Member of the public
23	Council of Her Majesty's Circuit Judges	Legal profession
24	Gerry Barnfield	Member of the public
25	Ray Barnfield	Member of the public
26	Worcestershire County Council	Public body – local authority
27	Hertfordshire Partnership NHS Foundation Trust	Public body – health
28	Motor Neurone Disease Association	NGO – health
29	Sanctuary Group	Public body – housing association
30	Hertfordshire County Council	Public body – local authority
31	Advice Services Alliance	NGO – advice/complaints
32	Consumer Focus	Public body – other
33	Peter Atkinson	Member of the public
34	Brian Thompson, University of Liverpool	Academic
35	Redcar and Cleveland Borough Council	Public body – local authority
36	Medical Protection Society	NGO – health
37	Medical Defence Union	NGO – health
38	Luton Borough Council	Public body – local authority
39	Housing Law Practitioners Association	Legal profession
40	Richard Kirkham, University of Sheffield	Academic
41	Institute of Historical Building Conservation	NGO – other
42	Warwickshire County Council	Public body – local authority
43	Sally Hughes	Member of the public
44	Devon County Council	Public body – local authority

45	Anonymous	Member of the public
46	Philip Jinman	Member of the public
47	JUSTICE	NGO – legal
48	Ismail Bhamjee	Member of the public
49	R J Cox	Member of the public
50	Oxfordshire County Council	Public body – local authority
51	Law Reform Committee of the Bar Council of England and Wales	Legal profession
52	British and Irish Ombudsman Association	Ombudsmen
53	Association of Council Secretaries and Solicitors	Legal profession
54	Parliamentary Commissioner for Administration, Health Service Ombudsman, Local Government Ombudsman, Public Services Ombudsman for Wales, and Housing Ombudsman	Ombudsmen
55	Northern Ireland Ombudsman	Ombudsmen
56	Welsh Assembly Government	Public body – devolved administration
57	George Cant	Member of the public

## APPENDIX B INDEX OF CONSULTATION EVENTS

Number	Event	Date
01	Meeting with Administrative Justice & Tribunals Council members, secretariat and guests (London)	15 September 2010
02	Meeting with Administrative Justice & Tribunals Council (Welsh committee) (Cardiff)	13 October 2010
03	Meeting with representatives of the Welsh Assembly Government (Cardiff)	13 October 2010
04	Public Law Project - Advisers' Training Day: How to make the perfect complaint (Manchester)	3 November 2010
05	Public Law Project - Advisers' Training Day: How to make the perfect complaint (London)	18 November 2010
06	Visit with Local Government Ombudsman's advice team (Coventry)	22 November 2010
07	Freedom of Information seminar (London)	26 November 2010