

<b>Title:</b> <b>Public Services Ombudsmen</b>  <b>Lead department or agency:</b> Law Commission  <b>Other departments or agencies:</b> Ministry of Justice Cabinet Office Department for Communities and Local Government Welsh Assembly Government	<b>Impact Assessment (IA)</b>
	<b>IA No:</b> LAWCOM0006
	<b>Date:</b> 14 JULY 2011
	<b>Stage:</b> Final
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
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## Summary: Intervention and Options

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

The public services ombudsman framework has developed over 43 years, and areas of it are disjointed, outdated or overly bureaucratic.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

Government intervention at a national level is required to create a cohesive system for the public services ombudsmen across England and Wales. It is further justified as our proposals promote human rights, by increasing access to justice.

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

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

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

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

*Option 0: Do nothing*

*Option 1: Focused legislative reform*

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

**Will the policy be reviewed?** It will not be reviewed. **If applicable, set review date:** N/A

**What is the basis for this review?** N/A. **If applicable, set sunset clause date:** N/A

**Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?**

N/A

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

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible Chair:

Date:

# Summary: Analysis and Evidence

# Policy Option 1

## Description:

Focussed legislative reform

Price Base Year 09-10	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -5.824	High: -6.518	Best Estimate: -2.055

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	0.7660	6.0430
High	0	3.1920	25.4190
Best Estimate	0	1.1880	9.5550

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

#### Public services ombudsmen:

Reform of the statutory bar means more complaints to the ombudsmen: £324,226 per annum.

New court cases resulting from our reforms: £55,907 per annum.

Costs of accepting non-written complaints (N/Q).

More complaints if the MP filter is removed: £1,067,721 per annum from year 4.

Referrals received on point of law: £21,335 per annum.

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

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	0.2600	0.2200
High	0	2.2730	18.9020
Best Estimate	0	0.8840	7.5010

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

#### Public services ombudsmen:

Fewer full investigations if mediators are used and fewer written complaints (N/Q).

#### Her Majesty's Courts Service:

Removal of some cases from the Administrative Court due to the removal of the statutory bar: £742,849 per annum.

Transfer of cases to ombudsmen: £118,923 per annum.

#### Complainants: Reduction in legal fees.

#### Public bodies: Reduction in legal fees.

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

*Public Services Ombudsmen:* Additional tools to allow the disposal of complaints efficiently and appropriately.

Simplification of legal regime and increased flexibility. Reduced risk of having to return to Parliament to clarify legal regime. Stronger relationship between ombudsmen and Parliament or the National Assembly for Wales.

*Complainants:* Just system allowing for resolution of grievances. Oral submission of complaints will promote racial equality and assist some disabled complainants. Increased access to Parliamentary Commissioner through removal of MP filter. Increased accessibility, accountability and transparency of ombudsmen decisions. Protection of the ombudsmen's findings reduces risk of future litigation.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5

- All five ombudsmen spend approximately 65% of their budget on investigating complaints. There is a moderate risk that they will spend more or less than this and the costs of the policy will be higher or lower.
- The estimated cost per complaint is of the same order of magnitude as the actual cost of disposing of a substantive complaint. There is a moderate risk that costs could be higher or lower.
- Ten to 50 cases a year are appropriate for staying the Administrative Court in favour of the public services ombudsmen. This a low risk as a large range was used and there is a net benefit across the entire range.
- There would be between zero and three referrals annually from the ombudsmen to the courts on a point of law. There is a low risk of more referrals on average; if so, monetised costs will increase.

Direct impact on business (Equivalent Annual) (£m):			In scope of OIOO?	Measure qualifies as
Costs: £0	Benefits: £0	Net: £0	No	N/A

## Enforcement, Implementation and Wider Impacts

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

## Specific Impact Tests: Checklist

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

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

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

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

## Evidence Base (for summary sheets) – Notes

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

### References

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

No.	Legislation or publication
	<a href="#">Law Commission Consultation Paper, Public Services Ombudsmen (2010)</a>

+ Add another row

### Evidence Base

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

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

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

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b>Transition costs</b>	0	0	0	0	0	0	0	0	0	0
<b>Annual recurring cost</b>	0	0.441	0.441	0.441	1.509	1.509	1.509	1.509	1.509	1.509
<b>Total annual costs</b>	0	0.441	0.441	0.441	1.509	1.509	1.509	1.509	1.509	1.509
<b>Transition benefits</b>	0	0	0	0	0	0	0	0	0	0
<b>Annual recurring benefits</b>	0	0.884	0.884	0.884	0.884	0.884	0.884	0.884	0.884	0.884
<b>Total annual benefits</b>	0	0.884	0.884	0.884	0.884	0.884	0.884	0.884	0.884	0.884

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



Microsoft Office  
Excel Worksheet

# EVIDENCE BASE

## INTRODUCTION

### **Background to the problem**

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

### **The problem**

- 1.4 The current system for the public services ombudsmen needs modernisation, as areas of it are disjointed, outdated or overly bureaucratic. The basic model for the ombudsmen was established in 1967 for the Parliamentary Commissioner for Administration. Though there have been more recent developments, such as the formation of the Public Services Ombudsman for Wales in 2005, there is no single, coherent system governing all the public services ombudsmen and some of the outdated procedures contained in the 1967 model have continued to the present day.
- 1.5 Recommendations in the final report and the cost/benefit analysis in the impact assessment are grouped by the four aims of our reform directed at the public services ombudsmen.

### ***Enables citizens to access the ombudsmen.***

- 1.6 The current system contains unnecessary access barriers to the ombudsmen. As a result, many people whose complaints would best be resolved by an ombudsman and who are unable or reluctant to seek a court-based solution to their problem have no opportunity for redress. Vulnerable groups, in particular, are likely to experience access barriers to the ombudsmen due to the inflexible requirement that a complaint to the Parliamentary Commissioner and the Health Service Ombudsman be submitted in writing. There is also a requirement that complaints to the Parliamentary Commissioner must be submitted through a Member of Parliament (the MP filter), which acts as a bar to complainants. In total, 2,597 complaints received by the Parliamentary Commissioner and Health

Service Ombudsman in 2009-10 were referred back to complainants as they were either not submitted in writing or not submitted through an MP.

- 1.7 Furthermore, a statutory bar operates for all of the ombudsmen, meaning that the ombudsmen should not accept complaints which could be, or have already been, the subject of a case before a court. This places a burden on complainants to choose the correct redress mechanism very early in the process, and creates a bar to the ombudsmen for those groups who may lack access to adequate legal advice on which redress forum to use, and for those who cannot afford to use courts.
- 1.8 Finally, the Administrative Court has no dedicated power to stay proceedings in order to allow a public services ombudsman to investigate or otherwise dispose of a matter that is more appropriately dealt with by an ombudsman. The lack of such a mechanism results in cases not being allocated appropriately between the institutions, and an inefficient distribution of public resources.

***Ensures that the ombudsmen process is appropriate for the matter before it***

- 1.9 The current system does not pay adequate regard to the tools needed by the ombudsmen to ensure that their processes are appropriate for resolving the complaint before them.
- 1.10 The public services ombudsmen investigate complaints to determine whether there was maladministration by a public body, and do not make findings on points of law. However, they do not have the power to refer a question to a court on a point of law. They therefore have no mechanism for determining a matter concerning their own jurisdiction or disposing of a complaint that cannot be resolved without prior resolution of a legal issue. The lack of any mechanism to allow legal questions to be resolved in order for the investigation to be dealt with is a barrier to the effective resolution of complaints.
- 1.11 The ombudsmen are also constrained in their use of information obtained during the course of an investigation. They are prevented from releasing such information even if its release is necessary for the investigation of similar complaints or reporting on systemic failure. This further impedes the ombudsmen's ability to adapt the process for investigating complaints to the needs of the particular complaint.

***Ensures that this process leads to proportionate and acceptable outcomes in individual cases and enables the sharing of experience and dissemination of guidance***

- 1.12 The public services ombudsmen do not have sufficient discretion or flexibility to ensure that the outcomes of their investigations are proportionate to the problem before them and acceptable to the parties involved, nor are they adequately empowered to share their experience and provide guidance as needed.
- 1.13 For instance, the ombudsmen do not have specific powers to dispose of complaints in ways other than by conducting an investigation, such as through the use of mediation. This results in a lack of flexibility and an inability to use alternative methods of dispute resolution that are more appropriate for resolving the matter at hand.

- 1.14 The ombudsmen are constrained by restrictive rules concerning the communication and publication of their work. They are restricted in their ability to communicate their reports and statements of reasons for declining to open an investigation to complainants and other parties, to publish their reports and statements of reasons, and to publish general guidance and reports on systemic failure. Those ombudsmen who do have the power to publish reports or statements of reasons often choose not to do so. The accountability and transparency of the ombudsmen services suffer as a result.
- 1.15 Finally, the current system does not provide adequate clarity in relation to the status of findings and recommendations made by the public services ombudsmen, and relies on arbitrary distinctions between the various ombudsmen in terms of the enforceability of findings and recommendations. This diminishes the effectiveness of the ombudsman service and creates uncertainty among complainants, public bodies and the wider public.

***Ensures that the ombudsmen are independent and accountable***

- 1.16 The public services ombudsmen – other than the Parliamentary Commissioner and the Health Services Ombudsman – have insufficient access to elected bodies, in particular Parliament and the National Assembly for Wales. Publicity is key to the ability of the public services ombudsmen to secure the implementation of their reports, which are not legally binding. The lack of involvement in the political arena is a distinct disadvantage to these ombudsmen in pursuing the functions ascribed to them by statute. It also fails to provide an adequate mechanism for the ombudsmen’s accountability to the public.
- 1.17 The Parliamentary Commissioner’s ties with Parliament are not sufficiently strong. The Parliamentary Commissioner’s independence from the executive and its accountability to the public are hampered by the current appointment procedure, which depends on a recommendation from the Prime Minister.

**Rationale for intervention**

- 1.18 The conventional economic approach to government intervention is to resolve a problem based on efficiency or equity arguments. Government may consider intervening if there are failures in the way markets operate or if there are failures in existing government interventions. In either case the proposed new intervention should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for redistributive reasons.
- 1.19 In this project, there are two reasons for Government intervention. First, there are failures in current intervention by Government. The system for ombudsmen could be improved so as to serve both complainants and public bodies in a more efficient and effective way. Second, improving access to the public service ombudsmen would provide a more equitable system for citizens. Ombudsmen do not charge complainants for their services and do not require the instruction of lawyers or necessitate court hearings – which may deter some members of society from pursuing legitimate complaints. Recourse to the public services ombudsmen also has advantages for public bodies. As independent arbiters, the ombudsmen can dispose of unmeritorious claims in a manner that allows for closure of the issue.

- 1.20 There are also wider reasons for intervening. The business of public bodies should be conducted in as transparent a manner as possible.
- 1.21 The rules governing the public services ombudsmen are – for the most part – contained in primary legislation. Therefore, to achieve our aims intervention by Government is required. The need to create a cohesive system of public services ombudsmen across England and Wales requires the involvement of Government at a national level.

***Policy objectives and intended effects***

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

**SCALE AND SCOPE**

**The ombudsman process**

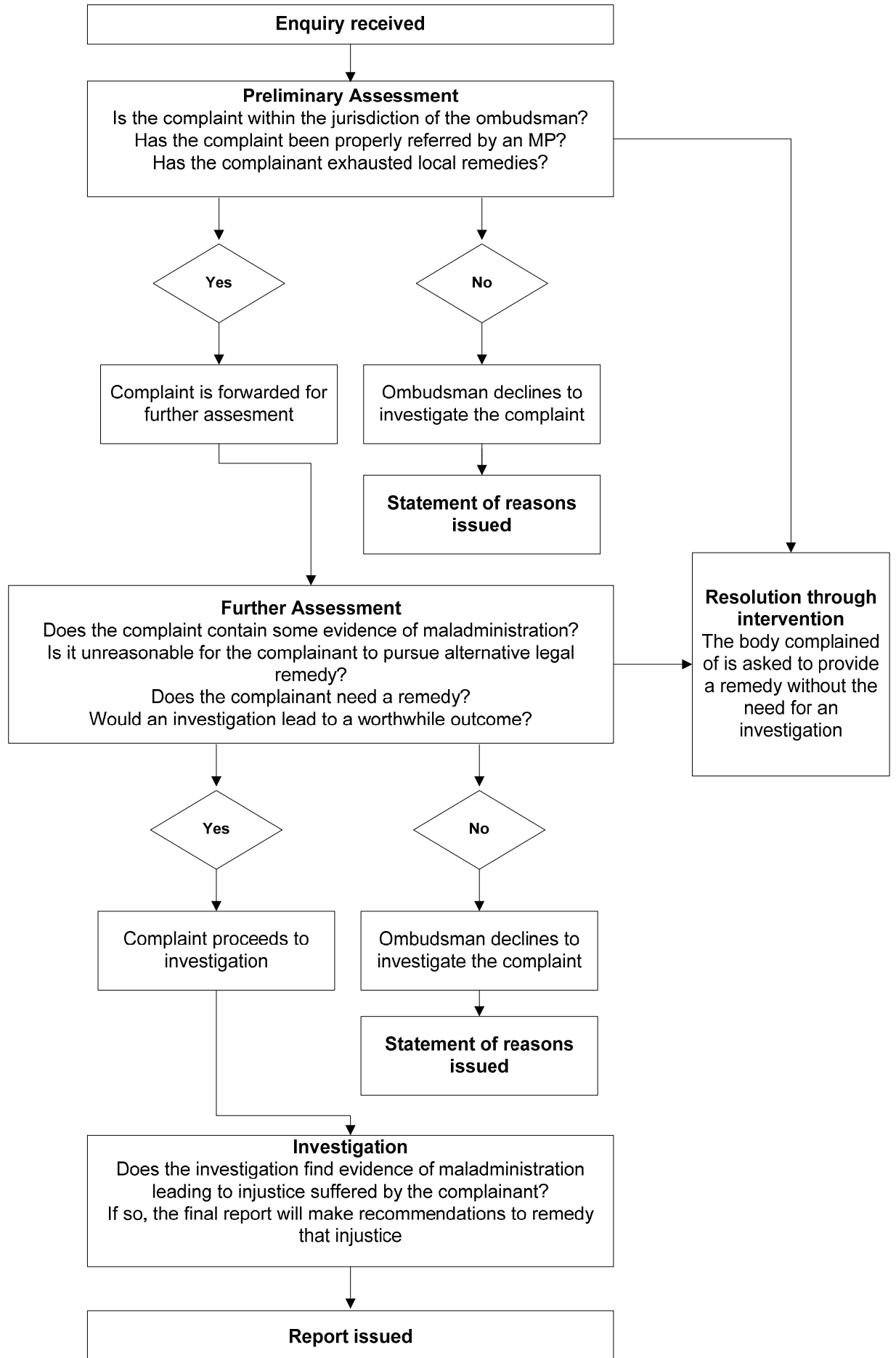
- 1.23 The ombudsman process starts with an enquiry made to an ombudsman. This may or may not disclose a valid complaint. All of the ombudsmen have preliminary procedures that allow them to dispose swiftly of complaints that are outside their jurisdiction or initial enquiries that do not disclose a validly made complaint.
- 1.24 In this impact assessment, where we refer to a complaint proceeding to the “second stage”, we mean a complaint that has passed this initial sifting process. Proceeding to second stage does not mean that an investigation will necessarily be undertaken. Many complaints are disposed of in this stage through the exercise of the ombudsmen’s discretion, through settlement, or are simply withdrawn by the complainant.
- 1.25 Each ombudsman has a different method of processing complaints. Two of the complaints processes have been mapped below.



Chart 1: Local government Ombudsman



Chart 2: Parliamentary commissioner



## The public services ombudsmen

- 1.26 The scale of the issue is reflected in the wide remit of the public services ombudsmen. Collectively, the public services ombudsmen deal with cases from all areas of public administration. Many individuals who feel they have suffered maladministration will have their complaints dealt with internally by the administrative body responsible, or will go to the Administrative Court for redress. However, there is still a large number of claimants who will go on to the ombudsmen.
- 1.27 The Law Commission report on Public Services Ombudsmen focuses on five statutory ombudsmen.
- 1.28 The *Parliamentary Commissioner for Administration* deals with complaints made against central government departments and associated public bodies (as listed in schedule 2 of the Parliamentary Commissioner Act 1967).
- 1.29 The *Health Service Ombudsman* considers primarily complaints relating to potential maladministration in health care provision. The Health Service Ombudsman's jurisdiction is limited to England. The NHS bodies subject to its jurisdiction are listed in section 2 of Health Service Commissioners Act 1993. The posts of Parliamentary Commissioner and Health Service Ombudsman are currently held by a single individual and the two ombudsmen are treated as one for the purposes of this impact assessment. In tables the two together are referred to as the "PHSO".
- 1.30 Their combined gross administrative cost for 2009-10 was £33,610,000, and jointly 23,667 enquiries were received and 24,240 were closed.<sup>1</sup> Complaints proceeding to the second stage total 6,084.<sup>2</sup>
- 1.31 The *Local Government Ombudsman* was initially established to "provide for local government a system for the investigation of maladministration ... but tailored to the specific needs of local government". The role of the Local Government Ombudsman is currently being extended to privately arranged and funded adult social care. Conversely, part of the jurisdiction of the Local Government Ombudsman is set to be transferred to the Housing Ombudsman, under the Localism Bill currently before Parliament. In tables this ombudsman is referred to as the "LGO".
- 1.32 Working from figures for the reporting year 2009-10, the Local Government Ombudsman had a budget of £13,124,296 and received 18,020 complaints and enquiries.<sup>3</sup> Of the complaints and enquiries received, 10,465 were forwarded to the investigative teams, and therefore proceeded to the second stage.

<sup>1</sup> Parliamentary and Health Service Ombudsman, *Making an Impact: Annual Report 2009-10*, p 18 and Parliamentary and Health Service Ombudsman, *Resource Accounts 2009-10*.

<sup>2</sup> Figure supplied by the Parliamentary and Health Service Ombudsman (21 June 2011). This is based on the ombudsman's closure codes and approximates to those withdrawn by the complainant, those dismissed under the ombudsman's discretion and those proceeding to an investigation.

<sup>3</sup> Local Government Ombudsman, *Annual Report 2009-10*, <http://www.lgo.org.uk/publications/annual-report-2009-10/> (last visited 24 June 2011) p 16.

- 1.33 The *Public Services Ombudsman for Wales* was established by the Public Services Ombudsman (Wales) Act 2005, unifies four existing bodies: the Local Government Ombudsman for Wales, the Health Service Ombudsman for Wales, the Welsh Administration Ombudsman and the Social Housing Ombudsman for Wales. The jurisdiction of the Public Services Ombudsman for Wales therefore covers the devolved Welsh Government, local government, social housing and health services in Wales. It is the most recent public services ombudsmen to be created in the United Kingdom. In tables this ombudsman is referred to as the “PSOW”.
- 1.34 In 2009-10 the gross administrative cost of the Public Services Ombudsman for Wales was £3,460,000.<sup>4</sup> The ombudsman received 754 enquires and 1,381 new complaints. In addition, it re-opened 26 old cases and dealt with 585 complaints carried over from 2008-09, and carried over 563 complaints to 2010-11. The Public Services Ombudsman for Wales received 920 complaints that were not rejected as out of jurisdiction or premature. These are taken to be second stage complaints in the remainder of this impact assessment.<sup>56</sup>
- 1.35 Finally, the *Housing Ombudsman* is an officer of the Independent Housing Ombudsman Limited. This is an independently established company that is eligible to run an approved scheme under section 51 and schedule 2 of the Housing Act 1996. The Housing Ombudsman’s investigations cover registered providers of social housing, such as housing associations, which must be members of the scheme. The Housing Ombudsman also runs a voluntary scheme for private sector landlords. The Housing Ombudsman’s jurisdiction is limited to England. The annual report of the Housing Ombudsman does not differentiate between the social housing and private sector schemes. However, we have been informed by its office that approximately 97% of investigations relate to social housing. In tables this ombudsman is referred to as the “HO”.
- 1.36 In 2009-10, the Housing Ombudsman received a total of 4,837 complaints which required some form of decision. It also conducted 458 investigations resulting in a determination. Therefore, 5,295 complaints proceeded to the second stage of the process, assuming that there is no double counting in its figures. Separately to this, the Housing Ombudsman received 2,841 enquiries that resulted in the provision of information generally or signposting to other services.<sup>7</sup> Its gross staff and administrative costs were £3,191,254.
- 1.37 The jurisdiction of the Housing Ombudsman is set to change with the Localism Bill currently before Parliament. Its jurisdiction will be extended to include local authority provided social housing, currently under the remit of the Local Government Ombudsman.

<sup>4</sup> Public Services Ombudsman for Wales, *Annual Accounts for the year ended 31 March 2010*.

<sup>5</sup> Public Services Ombudsman for Wales, *Annual Report 2009-10* (2010), Annex B.

<sup>6</sup> Public Services Ombudsman for Wales, *Annual Report 2009-10*.

<sup>7</sup> Independent Housing Ombudsman Limited, *Annual Report and Accounts 2009-10*.

Table 1: Gross expenditure and complaints and enquiries received, 2009-10

	<b>Gross admin expenditure</b>	<b>Complaints and enquires received</b>	<b>Second stage complaints</b>
Parliamentary Commissioner and Health Service Ombudsman	£33,610,000	23,667	6,084
Local Government Ombudsman	£13,124,296	18,020	10,465
Public Services Ombudsman for Wales	£3,460,000	2,135	920
Housing Ombudsman	£3,191,254	7,678	5,295

### **Cost of disposing of a second stage complaint**

- 1.38 Throughout this impact assessment, we rely on two sets of figures. These are, first, the costs of disposing of a complaint or enquiry by the public services ombudsmen. Second is the cost of an equivalent action before a court.
- 1.39 Below we consider the cost of disposing of complaints by each of the public services ombudsmen, based on the reporting year 2009-10. We deal with the ombudsmen separately as they report in different ways.
- 1.40 We encountered significant problems in constructing a dataset for ombudsman costs, which led us to adopt the approach we did when calculating figures for the costs per complaint.

#### LOCAL GOVERNMENT OMBUDSMAN

- 1.41 The cost of the Local Government Ombudsman Advice Team giving advice without forwarding the complaint in 2008-09 was £23.39 per complaint (in 2009-10 prices).<sup>8</sup> The figure supplied by the Local Government Ombudsman for the cost of disposing of an individual complaint that had been passed on to an investigative team in 2009-10 is £790. This figure is calculated as the average cost of a complaint dealt with by an investigative team. Any complaint processed will first go through the Local Government Ombudsman Advice Team before being forwarded to the investigative team; therefore the total cost of processing a complaint is **£813.39**.
- 1.42 The Local Government Ombudsman Advice Team sent the investigative teams 10,465 complaints to process. Therefore, the total cost of investigating complaints is £8,511,917. The overall expenditure of the Local Government Ombudsman is £13,124,296.
- 1.43 The proportion of its budget spent on the handling of complaints by investigative teams is 0.6486 (£8,511,917 / £13,124,296). The remainder is spent on the Local Government Ombudsman Advice Team, which provides the initial point of contact for complainants, and the wider work of the Local Government Ombudsman.

<sup>8</sup> The figure of £23 is taken from Local Government Ombudsman, *Annual Report 2008-09* (2009) p 31.

#### PARLIAMENTARY COMMISSIONER AND HEALTH SERVICE OMBUDSMAN

- 1.44 We consider these ombudsmen together as their annual accounts are published jointly. The Parliamentary Commissioner and the Health Service Ombudsman do not record the average cost of disposing of a complaint. However, we think it is reasonable to derive a figure by analogy with the Local Government Ombudsman.
- 1.45 The administrative expenditure of the Parliamentary Commissioner and Health Service Ombudsman in the reporting year 2009-10 was £33,610,000. Applying the ratio for the relationship between the total budget and the budget for disposing of individual complaints taken from the Local Government Ombudsman, the cost of disposing of complaints after the preliminary stage was £21,798,162.
- 1.46 In 2009-10, 6,084 complaints reached the second stage of the ombudsman process.<sup>9</sup> Therefore, for the purposes of this impact assessment, we will take the average cost of disposing of an individual complaint by the Parliamentary Commissioner or Health Service Ombudsman as **£3,583**.

#### PUBLIC SERVICES OMBUDSMAN FOR WALES

- 1.47 It is possible to generate similar figures for the Public Services Ombudsman for Wales. The overall budget for 2009-10 was £3,460,000. Applying the ratio between overall budget and the budget for complaint disposal from the Local Government Ombudsman (0.6486), this makes the budget for individual complaints £2,244,024. The number of complaints reaching the second stage was 920. This makes the cost of individual disposals **£2,439**.

#### HOUSING OMBUDSMAN

- 1.48 The final figure that we estimate is the average cost to the Housing Ombudsman of disposing of a complaint. The Housing Ombudsman's accounts do not disaggregate between the cost of investigations into social housing complaints and those relating to the private sector. For the purposes of this impact assessment, we assume that the costs are broadly similar for both social housing and private sector work. Moreover, private sector work accounts for a very small percentage of its overall work, so the average cost of a social housing investigation should be close to that of the average cost of an investigation across its jurisdictions.
- 1.49 The Housing Ombudsman's gross expenditure in 2009-10 was £3,191,254. Applying the Local Government Ombudsman ratio, this gives an investigative budget of £2,069,725. In 2009-10 5,295 complaints reached the second stage of the process. This gives a cost per second stage complaint of **£391**.
- 1.50 Therefore, in tabular form, the costs of disposing of a complaint for each ombudsman are as follows:

<sup>9</sup> The figure supplied by the Parliamentary and Health Service Ombudsman,(21 June 2011).

Table 2: Costs of complaint disposal by ombudsman, 2009-10

	65% of gross expenditure <sup>10</sup>	2nd stage complaints	Cost per 2nd stage complaint
<i>Parliamentary Commissioner and Health Service Ombudsman</i>	£21,798,698	6,084	£3,583
<i>Local Government Ombudsman</i>	£8,512,126	10,465	£813
<i>Public Services Ombudsman for Wales</i>	£2,244,079	920	£2,439
<i>Housing Ombudsman</i>	£2,069,776	5,295	£391

### **Court costs**

- 1.51 Our recommendations will have an impact on the number of matters going before the Administrative Court and the county courts. We therefore need to calculate the cost of a day in court, including the cost of counsel.
- 1.52 Similarly to ombudsmen costs, we encountered significant problems in calculating court costs. The below represents calculations based on figures supplied by the Ministry of Justice. We accept that these figures come to the slightly surprising result that the Administrative Court costs less per day sat than the County Court.
- 1.53 We have calculated the cost of a day in court by dividing the variable and staff costs by the numbers of days sat in court. Following consultation with the Ministry of Justice we added £89 per day for semi-variable costs in both courts. This figure (£89) represents the mathematical product of calculations made by the Ministry of Justice concerning the amount that could be saved by courts sitting less often.
- 1.54 In 2009-10 the Administrative Court sat for 3,172 days and had variable and staff costs, excluding depreciation, of £3,160,802.<sup>11</sup> Therefore, we have taken the daily cost of the Administrative Court sitting to be **£1,085**.
- 1.55 To work out the county court costs, we have taken the variable and staff costs of the county court (£179,867,160) and divided it by the number of days sat (154,754), and added £89.<sup>12</sup> This makes the cost of the county court per day sat **£1,251**. We have taken our half day figure as **£626**.

<sup>10</sup> We have used the precise ratio but have rounded it for the sake of brevity in the text.

<sup>11</sup> Sitting days from HM Courts and Tribunals Service Performance Database, <http://hmcspd.dca.gsi.gov.uk:7777/pls/htmldb/f?p=100:217:1351696336982985::NO:RP::> (last visited 24 June 2011).

<sup>12</sup> Figures supplied by Her Majesty's Courts Service. Sitting days of the county court from HM Courts and Tribunals Service Performance Database, <http://hmcspd.dca.gsi.gov.uk:7777/pls/htmldb/f?p=100:217:1351696336982985::NO:RP::> (last visited 24 June 2011).

Table 3: Average court costs, 2009-10

	<b>Variable and staff costs</b>	<b>Days sat</b>	<b>Cost per half day</b>	<b>Cost per day</b>
<i>Administrative Court</i>	£3,160,802	3,172	£543	£1,085
<i>County court</i>	£179,867,160	154,754	£626	£1,251

- 1.56 Taking commercial rates for junior counsel as £150/hour,<sup>13</sup> the cost, assuming equal representation on both sides and preparation time equal to representation time then a half day would cost **£2,100** (2 x 150 x (3.5 + 3.5)). A full day would, therefore, cost £4,200.

Table 4: Average court and junior counsel costs, 2009-10

	<b>Cost per half day</b>	<b>Cost per day</b>
<i>Administrative Court</i>	£2,643	£5,285
<i>County court</i>	£2,726	£5,451

- 1.57 The Administrative Court and county court both have a large backlog of cases. We assume that any cases removed from the courts as a result of the proposed reform cannot be turned into cashable savings, as the court would hear another case in its place.

#### **OPTION DESCRIPTION**

- 1.58 We have identified two main options, which are discussed below:

Option 0: Do nothing.

Option 1: Focused legislative reform.

#### **OPTION 0: DO NOTHING**

##### **Access to ombudsmen**

- 1.59 This would leave the formal requirements for access to the ombudsmen in place. At present, complaints to the Parliamentary Commissioner and the Health Service Ombudsmen must be submitted in writing and complaints to the Parliamentary Commissioner must be submitted through a Member of Parliament.
- 1.60 Retaining the current regime would also continue the compulsory allocation of complaints to courts in some instances. The operation of the statutory bar would continue to oblige the ombudsmen to reject all complaints that are, or could be, the subject of a court claim.

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



### **Appropriate process**

- 1.61 The present system does not allow the public services ombudsmen to formally refer a question on a point of law to the Administrative Court. If the present system were kept in place, the ombudsmen may have to decline to investigate certain complaints with a contentious legal component, or may persist on a basis which might be subject to legal challenge later.
- 1.62 At present, the ombudsmen cannot release details of a complaint or disclose the complainant's identity (with their consent) during the course of an investigation, even where the release of such information would be beneficial in addressing systemic failure or multiple instances of maladministration.

### **Appropriate and proportionate outcomes and sharing of experience**

- 1.63 Doing nothing would also mean retaining the rules governing the communication of reports and statements of reasons by the public services ombudsmen. The Parliamentary Commissioner does not currently have a duty or even a power to communicate a copy of the report or a statement of reasons for not opening an investigation to the complainant. The remaining public services ombudsmen – except the Public Services Ombudsman for Wales – also have only limited powers to communicate reports and statements of reasons to other individuals and public bodies as they see fit.
- 1.64 Doing nothing would preserve the current rules and procedures governing the publication of reports and guidance. At present, the Parliamentary Commissioner and the Health Service Ombudsman do not have specific powers to publish their reports on investigations or statements of reasons for deciding not to investigate a complaint. Those ombudsmen who do have the power to publish reports or statements of reasons often choose not to do so. Furthermore, the ombudsmen do not currently publicise their procedures for allocating complaints to different “tracks”, which influences the type of report that will be produced.
- 1.65 At present, none of the ombudsmen has a specific power to publish general reports on systemic issues, guidance, principles of good administration, or codes of practice (though the Public Services Ombudsman for Wales does have the power to publish guidance).
- 1.66 Finally, if the current system were retained then the status of an ombudsman's findings would not change and the distinctions between ombudsmen regarding the enforceability of findings would remain in place. The leading case from the Court of Appeal in relation to the findings of the Parliamentary Commissioner held that findings can be rejected if there are “cogent reasons” for doing so. However, another case (endorsed by the Court of Appeal in the above) held that the findings of the Local Government Ombudsman are effectively binding unless successfully challenged by way of judicial review. Doing nothing would preserve the “cogent reasons” test for rejecting the findings of an ombudsman (except the Local Government Ombudsman) and would retain the distinction drawn between the ombudsmen.

### **Independence and accountability**

- 1.67 The public services ombudsmen rely on the publicity inherent in the political process to secure the implementation of their recommendations. However, the

Local Government Ombudsman, the Housing Ombudsman and the Public Services Ombudsman for Wales do not enjoy a formal relationship with any select committees of Parliament or the National Assembly for Wales. The Housing Ombudsman and the Local Government Ombudsman also do not have a power to lay their reports before Parliament. Doing nothing would keep this system in place.

- 1.68 Further, retaining the current appointment procedure for the Parliamentary Commissioner would mean that the Parliamentary Commissioner would continue to be appointed by the Queen on the recommendation of the Prime Minister. Parliament does not presently have any role in the appointment process.

### **OPTION 1: FOCUSED LEGISLATIVE REFORM**

- 1.69 This is the preferred option. It would comprise the reform of parts of the statutes governing each of the public services ombudsmen to ensure greater flexibility with regard to access for complainants, greater uniformity of practice between the different ombudsmen and greater coherence between the ombudsmen and court-based redress mechanisms. This is the least disruptive way of achieving the policy objectives as it would not alter the basic structure of the public services ombudsmen system in England and Wales.
- 1.70 In order to satisfy the policy objectives stated above, a series of specific legislative changes are needed. These are set out in Parts 3 to 6 of the final report and are summarised below.

#### **Access to ombudsmen**

- 1.71 Amend legislation to remove the inflexible formal requirements for making complaints in writing to the public services ombudsmen. We will recommend to the ombudsmen that they publish regularly updated guidance on how complaints should be made.
- 1.72 Reverse the existing statutory bar on opening an ombudsman investigation. This would ensure that the public services ombudsmen would no longer be obliged to decline to open an investigation where the complaint is or could be the subject of a court claim (subject to a discretion to do so). Instead, the public services ombudsmen would have the discretion to open an investigation for all complaints.
- 1.73 Give the Administrative Court dedicated powers to stay proceedings, allowing claims before the court which would most suitably be assessed with reference to maladministration to be considered by the ombudsmen. The Court would halt its own consideration of the legal issues of the complaint and would be able to resume this once the relevant public services ombudsman had come to a decision on the maladministration issue. The ombudsmen would not be forced to accept a complaint transferred to them from a court.
- 1.74 Repeal the requirement that a complaint to the Parliamentary Commissioner must be submitted to a Member of Parliament and forwarded by them to the Parliamentary Commissioner (the “MP filter”). This would be replaced with a “dual-track” option, by which a complainant would have the option of submitting a complaint to a Member of Parliament but could also submit the complaint directly to the Parliamentary Commissioner. This would preserve a formal link between

Parliament and the Parliamentary Commissioner without imposing undue access barriers to complainants.

### **Appropriate process**

- 1.75 Give the public services ombudsmen a power to make references to the Administrative Court on points of law. This would enable them to seek clarification on issues such as the extent of their jurisdiction and thereby reduce the risk that their decisions could be challenged in the courts at a later date. It would also serve to prevent the inefficient allocation of resources to a complaint which the ombudsman cannot resolve and would ensure that the complainant receives careful consideration of the legal issues that form part of the complaint.
- 1.76 Give the ombudsmen discretion to disclose details of a complaint obtained during the course of an investigation, where disclosure is necessary to conduct an investigation concerning a wider group of individuals or into systemic failure. This would provide the ombudsmen with the tools to deal more effectively with complaints where there may be a wider group of citizens affected, or where the complaint suggests the existence of a systemic failure which a wider range of complainants would assist in investigating. The ombudsmen would also be given discretion to reveal the identity of an individual during the course of an investigation, provided their consent is obtained.

### **Appropriate and proportionate outcomes and sharing of experience**

- 1.77 Give the Parliamentary Commissioner, the Health Service Ombudsman and the Local Government Ombudsman clear and specific powers to use alternative methods of resolving complaints, such as mediation, when appropriate to do so. In the interests of transparency, we will recommend that the ombudsmen publish anonymised case digests of complaints resolved through alternative methods of dispute resolution.
- 1.78 Remove barriers to the public services ombudsmen's communication of reports on the investigation to the complainant and/or other relevant parties. This will involve placing a duty on the Parliamentary Commissioner to send a copy of the report or a statement of reasons for declining to investigate a complaint to the individual who submitted the original complaint. The Parliamentary Commissioner, the Health Service Ombudsman and the Local Government Ombudsman will also be given a power to communicate their reports and statements of reasons for not opening an investigation to all other individuals and public bodies as they see fit.
- 1.79 Give the Parliamentary Commissioner and the Health Service Ombudsman specific powers to publish reports of their investigations and statements of reasons for declining to investigate a complaint. We recommend that all the public services ombudsmen – with the exception of the Housing Ombudsman – develop strategies for increasing the publication of all their reports and statements of reasons, unless there are compelling reasons for not publishing. We also recommend that the ombudsmen publicise their internal processes for allocating complaints to certain reporting “tracks”, if indeed they do so.
- 1.80 Give the Parliamentary Commissioner, the Health Service Ombudsman and the Local Government Ombudsman specific powers to publish general reports on

systemic failure, guidance on good administrative principles, codes of practice, and other material as they see fit.

- 1.81 Clarify, and in some cases reform, the status of the public services ombudsmen's findings and recommendations. The findings of all the public services ombudsmen, except the Housing Ombudsman, would be made binding on the public authority unless successfully challenged by way of judicial review. Recommendations of the ombudsmen would continue to be non-binding.

#### **Independence and accountability**

- 1.82 Encourage a stronger relationship with elected bodies to harmonise the positions of all the public services ombudsmen. The governing statutes of the Housing Ombudsman and the Local Government Ombudsman should be amended to give them the power to lay the full range of their reports before Parliament. We also recommend that Parliament and the National Assembly for Wales consider establishing a formal relationship between the public services ombudsmen and select committees. This recommendation would not apply to the Parliamentary Commissioner or the Health Service Ombudsman, who already enjoy such a relationship.
- 1.83 The Parliamentary Commissioner should be appointed by the Queen on the nomination of Parliament.

#### **COST AND BENEFIT ANALYSIS**

- 1.84 Impact assessments identify both monetised and non-monetised impacts on individuals, groups, businesses and the public sector, with the aim of giving a picture of what the overall impact to society might be from implementing the recommendations.
- 1.85 Impact assessments place a strong emphasis on valuing the costs and benefits in monetary terms. We consider the costs and benefits for Option 1 against the base case of Option 0 – which is the “do nothing option”.
- 1.86 There are some important aspects of our recommendations that cannot be monetised sensibly. These include how the recommendations impact differently on particular groups in society or improve equity and fairness. Where non-monetised costs or benefits need to be considered, we have highlighted them.
- 1.87 Where costs and benefits have been monetised, the figures used in relation to the Parliamentary Ombudsman are UK-wide. It is impossible to disaggregate these figures by country. In any event, while the recommendations only apply to England and Wales, we hope that consideration will be given to them on a UK basis..
- 1.88 We have adjusted the figures in this impact assessment to 2009-10 figures using the Gross Domestic Product (GDP) deflator.<sup>14</sup> This is in accordance with HM

<sup>14</sup> The GDP deflator is a measure of the level of prices of all new, domestically produced, final goods and services in an economy. It is equal to nominal GDP divided by real GDP, multiplied by 100.

Treasury guidance. The figure taken for the change between the reporting year 2008-09 and that of 2009-10 is 1.51%.<sup>15</sup>

- 1.89 Net present values in this impact assessment are calculated over 10 years in 2009-10 prices, and discounted at the approved rate of 3.5%. We have assumed that the costs and benefits start to accrue in 2011 (year 1), and stop in 2020 (year 10). There are no transitional costs and benefits accruing in 2010 (year 0).
- 1.90 While we do have some figures for 2010-11, as we do not have the expenditure figures from the ombudsmen's 2010-11 annual reports yet, we cannot calculate a 2010-11 cost per complaint. We have therefore used 2009-10 figures.

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

#### **Costs**

- 1.91 The costs of doing nothing are the costs of the problems that reform is addressing. These costs include:
- (1) Reduced access to the ombudsmen, especially among vulnerable complainants;
  - (2) Increased use of the courts, whose cost and adversarial nature is another barrier to vulnerable complainants;
  - (3) A lack of transparency and openness in the ombudsmen's procedures;
  - (4) A lack of consistency and clarity between the different public services ombudsmen;
  - (5) Inadequate flexibility and discretion for the ombudsmen to structure their processes to resolve a complaint efficiently and satisfactorily; and
  - (6) Diminished or nonexistent ties between the ombudsmen and either Parliament or the National Assembly for Wales.

#### **Benefits**

- 1.92 The benefit of doing nothing is that the costs of reform will not be incurred.

#### **Net present value**

- 1.93 Because the do-nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value (NPV).

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

- 1.94 The purpose of our recommendations is to reform and improve the system of the public services ombudsmen. In certain instances this means allowing matters currently dealt with by courts or tribunals to be considered by the public services ombudsmen.

<sup>15</sup> See HM Treasury, *Economic Data and Tools*, [http://www.hm-treasury.gov.uk/data\\_gdp\\_fig.htm](http://www.hm-treasury.gov.uk/data_gdp_fig.htm) (last visited 24 June 2011).

- 1.95 We have broken down the cost benefit analysis by the seventeen main recommendations in our report. None of our recommendations have transitional benefits, and we have made clear whether costs are transitional or on-going.
- 1.96 There will, of course, be transitional costs. We do not, however, expect any transitional costs to be material. To the extent that there are transitional costs, these would result primarily from minor changes to administrative practice and consequent training. We do not have sufficient information to monetise these, but have described them under the relevant recommendations.

***Wide ranging review of the role of the public services ombudsmen***

- 1.97 We do not consider ourselves able, or in fact for it to be prudent, to seek to monetise the benefits of such a process. Non-monetised benefits would, of course, be that such a review should seek to further the interests of citizens, increase access to justice, improve choice and increase efficiency in the administrative justice system.

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

- 1.98 The costs and benefits of this recommendation will primarily fall on the Parliamentary Commissioner and the Health Service Ombudsman, who currently have no discretion to accept non-written complaints. This is not usually a problem for the Parliamentary Commissioner who cannot accept complaints directly from members of the public; Members of Parliament almost always submit complaints in writing.
- 1.99 If a health enquiry is not made in writing but the complainant has exhausted local remedies, the Health Service Ombudsman would not immediately reject the complaint. Instead the ombudsman would explain to the complainant that the complaint needs to be submitted in writing and would keep the enquiry open for one month to give them the opportunity to do so. If they do not respond, the ombudsman would close the enquiry. In 2009-10, 1,961 enquiries were referred back to the complainant, of which 1,125 were returned in writing. The Health Service Ombudsman closed 836 complaints because they were not written.<sup>16</sup>
- 1.100 In preliminary discussions on this issue with the Local Government Ombudsman, they explained that they greatly appreciate the recent changes to their regime, such that the formal requirement for a written complaint can be dispensed with. The effect of this change has been to alter the way in which they receive complaints. Taking the figures supplied for 2009-10, telephone complaints now form the majority of complaints received (40,200), with e-mail next (30,440) and written postal complaints a distant third (12,836). This, we suggest, reflects general trends in society and is something that should be embraced by the legislative schemes for the Parliamentary Commissioner and the Health Service Ombudsman.

<sup>16</sup> Information from the Health Service Ombudsman.

## COSTS

### *Transitional costs*

- 1.101 We recommend that the public services ombudsmen publish and update regularly guidance as to how complaints can be made. The ombudsmen's websites currently contain guidance on this and we assume the reform would involve minimal additional work.

### *On-going costs*

- 1.102 There may be different administrative costs associated with receiving oral complaints, as opposed to written submissions, but we cannot quantify them.
- 1.103 It is possible that the number of complaints received will increase. In the past users may have been discouraged by the requirement to submit their complaint in writing.

## BENEFITS

- 1.104 Whilst we can see advantages to reforming the formal requirements for making a complaint to the ombudsmen, it is hard to monetise them. This recommendation may have a particularly beneficial impact on individuals who have physical problems writing, who are illiterate or have reduced literacy, or who are not first language English or Welsh speakers.
- 1.105 There may be cost advantages to allowing non-written complaints. Users save in postage costs. Ombudsman may save processing time and postage.
- 1.106 The Local Government Ombudsman has introduced the Local Government Ombudsman Advice Team to deal with matters at a preliminary stage. Through the operation of the advice team's discretion, the Local Government Ombudsman now takes the majority of its complaints by telephone.

## NET IMPACT

- 1.107 While we have been unable to monetise the impact of this recommendation, it will have positive impacts on the accessibility of the ombudsmen, especially for vulnerable groups.

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

- 1.108 The Parliamentary Commissioner and the Health Service Ombudsman jointly rejected four complaints during the reporting year 2009-10 for reasons of the statutory bar.<sup>17</sup> This figure varies considerably annually, 61 complaints were rejected in 2007-08 and 39 complaints were rejected in 2008-09 due to the operation of the statutory bar. We have taken a best estimate of 15 complaints being rejected, which takes into account the downward tendency but treats 2009-10 as exceptionally low.

<sup>17</sup> Figures supplied by the Parliamentary Commissioner and the Health Service Ombudsman.

- 1.109 The Local Government Ombudsman rejected 352 complaints in 2008-09 due to the statutory bar and 362 complaints in 2010-11.<sup>18</sup> We do not have the 2009-10 figures so we use the mid-point: 357.
- 1.110 For the Public Services Ombudsman for Wales, eight complaints were disposed of in this manner in 2008-09. We were not given a more recent figure.
- 1.111 The Housing Ombudsman does not reject complaints on this basis as there is no direct equivalent to the statutory bar in its jurisdiction.

## COSTS

### *Transitional costs*

- 1.112 The main transitional cost would be the dissemination of the new policy to staff and users of the ombudsmen. Information could perhaps be included in normal communications of change in policy. We assume that these costs are minimal.

### *On-going costs*

- 1.113 There is the possibility that reform of the statutory bars would generate new complaints. Currently complainants may be advised not to use the public services ombudsmen but rather to go to court, as a result of the statutory bars. These complainants would not be included in the statistics of rejected complaints, but if the statutory bars were reformed then such complainants may choose to have recourse to the ombudsmen. This would, therefore, create additional burdens for the ombudsmen.
- 1.114 Unfortunately we have no data on the potential increase. For the low and best estimate of costs we have assumed no change in the number of complaints. For the high estimate, we have assumed that the figure for extra cases is 20% more than the current number of complaints rejected. Any increase may depend on the extent of publication of the reform.
- 1.115 This does not necessarily mean that the complaints will all result in full investigations, as many will still be rejected for other reasons, such as through the application of the ombudsmen's general discretion. However, we make the assumption that complaints rejected through the operation of the statutory bar are rejected at an early stage of the ombudsman process. Consequently, the overwhelming majority of the average costs in the second stage would normally accrue subsequent to any decision on whether to reject a complaint on the basis of the statutory bar. Therefore, we are going to take the additional cost of a complaint not being rejected on the basis of the statutory bar as the total average cost proceeding through the second stage. The high estimate of costs is **£436,355**.
- 1.116 The best estimate is that, rather than being rejected at a preliminary stage, complaints are all treated alike but with no increase in numbers. The best estimate of costs is **£363,629**.

<sup>18</sup> Figures supplied by the Local Government Ombudsman.



- 1.117 The minimum annual cost would be **£0**. This would be where reform does not lead to any change in current practice, in that the complaints are still rejected at a preliminary stage, rather than being disposed of later on in the process.

*Table 5: Costs of the statutory bar reform*

	<i>Low</i>	<i>Best</i>	<i>High</i>
Parliamentary Commissioner and Health Service Ombudsman	£0	£53,743	£64,492
Local Government Ombudsman	£0	£290,373	£348,448
Public Services Ombudsman for Wales	£0	£19,513	£23,416
<i>Total annual cost</i>	<i>£0</i>	<i>£363,629</i>	<i>£436,355</i>
<b>Present value</b>	<b>£0</b>	<b>£3,024,162</b>	<b>£3,628,994</b>

#### BENEFITS

- 1.118 The maximum possible benefit is the consequent reduction of judicial review or other court actions. Makes the assumption that all claims currently rejected on the basis of the statutory bars go to court and therefore removing the statutory bars would allow citizens to pursue an ombudsman complaint rather than those court actions. The effect therefore would be to reduce the number of court cases by the number of complaints currently rejected on the basis of the statutory bar. However, this is not really a tenable position to take. Not all cases rejected by the ombudsmen on the basis of the statutory bars will go to court. We make assumptions below to take this into account.
- 1.119 To calculate the maximum benefit we have assumed that each complaint rejected due to the statutory bar would have gone to the Administrative Court for a full day hearing. This is a better assumption than going to the County Court, given the nature of the public services ombudsmen's work taken as a whole. The high estimate of annual benefit is therefore **£2,008,479**. This figure is based on the actual figures for complaints rejected by the ombudsman, and does not include the 20% potential increase we used to identify the high estimate for new cases under the costs calculation above.
- 1.120 We suggest that the best estimate would be much lower than the maximum possible benefit figures. There are several reasons for this. First, as stated above, claims rejected on the basis of the statutory bar do not necessarily go to court. Even when a complainant has a legal right of action, they may choose not to go to court, given litigation risk and the possibility of any legal aid claim being rejected. We estimate that only 50% of claims rejected on the basis of the statutory bar would be suitable for a court. This gives a much smaller figure for benefits.
- 1.121 Second, we suggest that it is appropriate to adjust the estimate on the basis that half of the cases relating to the public services ombudsmen will be taken from the county court rather than the Administrative Court. Third, we estimate that half will be full day hearings and the other half would only require a half day in court. These assumptions were not challenged over the course of consultation. Using these assumptions the best estimate of the annual benefit is **£764,993**.

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

*Table 6: Benefits of reform of the statutory bar*

	<i>Low</i>	<i>Best</i>	<i>High</i>
Parliamentary Commissioner and Health Service Ombudsman	£0	£30,197	£79,282
Local Government Ombudsman	£0	£718,691	£1,886,913
Public Services Ombudsman for Wales	£0	£16,105	£42,284
<i>Total annual benefit</i>	£0	£764,993	£2,008,479
<b>Present value</b>	<b>£0</b>	<b>£6,362,147</b>	<b>£16,703,723</b>

- 1.123 Additional non-monetised benefits are that an ombudsman's investigation is likely to be swifter and that it would not necessitate the potential emotional distress that going to court can cause some people.

#### NET IMPACT

- 1.124 In tabular form, the net impact is as follows.

*Table 7: Net impact of reform of the statutory bar*

	<i>Low NPV</i>	<i>Best NPV</i>	<i>High NPV</i>
Transitional costs	£0	£0	£0
On-going costs (annual)	£0	£363,629	£436,355
Present value of costs	£0	£3,024,162	£3,628,994
Transitional benefits	£0	£0	£0
On-going benefits (annual)	£0	£764,993	£2,008,479
Present value of benefits	£0	£6,362,147	£16,703,723
<b>Net present value (benefits – costs)</b>	<b>£0</b>	<b>£3,337,985</b>	<b>£13,074,729</b>

#### ***Dedicated powers to stay court proceedings and allow a matter to be heard by an ombudsman***

- 1.125 We estimate that there would be some 10 to 50 judicial review cases per year where this stay power would operate. This assumption was not challenged in consultation. The benefit of this power would be the savings from moving a case out of the Administrative Court to an ombudsman, less the additional costs imposed on the ombudsman by having to investigate the case. We assume that the ombudsmen would accept all complaints made to them that arise from the stay procedure.
- 1.126 The Housing Ombudsman is not affected by these reforms, and is therefore not included in the calculations.

## COSTS

### *Transitional costs*

- 1.127 Agreed procedure and guidance would need to be developed. We cannot monetise this cost and assume it to be small.
- 1.128 Administrative Court judges may need some training in the new procedure. We have assumed that the Judicial College will include any necessary information in their regular circulars at no extra cost.

### *On-going costs*

- 1.129 We take as our minimum cost that 10 matters are investigated by the cheapest of the public services ombudsmen, the Local Government Ombudsman. This gives a figure of **£18,635** (£1,864 x 10).
- 1.130 Our best estimate is to take the middle figure, 30, and allocate this in the same way that current complaints are distributed between the ombudsmen. As with the earlier figure, we do not think that this will affect the Housing Ombudsmen, as its jurisdiction does not cover the sort of matters that tend to come before the Administrative Court.
- 1.131 Taking the figures for 2009-10, there were 22,764 complaints that reached the second stage of the ombudsmen's processes, of which 10,465 went to the Local Government Ombudsman, 6,084 to the Parliamentary Commissioner and Health Service Ombudsman and 920 to the Public Services Ombudsman for Wales. Applying these proportions to the 30 cases to be stayed, this would mean 18 cases going to the Local Government Ombudsman, 10 to the Parliamentary Commissioner and Health Service Ombudsman and two to the Public Services Ombudsman for Wales. Applying these proportions to the costs of the three ombudsmen we calculated an average cost per additional complaint of £1,864.
- 1.132 To calculate the cost these numbers should be multiplied by the cost of disposing of a complaint before the relevant ombudsman. Therefore the best estimate costs are **£55,906**.
- 1.133 The maximum costs of this reform would be where 50 new investigations are considered by the public services ombudsmen. This figure, therefore, comes to **£93,177** (50 x £1,864).

*Table 8: Costs of the power to stay*

	<i>Low</i>	<i>Best</i>	<i>High</i>
Additional complaints to ombudsman	10	30	50
Average cost per additional complaint	£1,864	£1,864	£1,864
<i>Total annual cost</i>	<i>£18,635</i>	<i>£55,906</i>	<i>£93,177</i>
<b>Net present value</b>	<b>£154,983</b>	<b>£464,949</b>	<b>£774,914</b>

## BENEFITS

- 1.134 We assume for the low, high and best estimates that the court hearings avoided would have been heard in the Administrative Court, costing £2,643 per half a day and £5,285 per full day.
- 1.135 The high estimate of annual benefit would be where 50 cases are transferred from the Administrative Court. We assume all of these would be heard for a full day, costing £5,285. The high annual estimate for benefits is therefore **£264,273**.
- 1.136 Taking the best estimate as 30 cases again, and assuming that half of these are half day hearings and half are full day hearings, then the best estimate of the possible benefit to reform is **£118,923**.
- 1.137 The low estimate is where 10 are transferred from the Administrative Court, **£26,427**.

*Table 9: Benefits of the power to stay*

	<i>Low</i>	<i>Best</i>	<i>High</i>
Number of hearings prevents	10	30	50
Average cost per hearing	£2,643	£3,964	£5,285
<i>Annual benefit</i>	<i>£26,427</i>	<i>£118,923</i>	<i>£264,273</i>
<b>Net present value</b>	<b>£219,786</b>	<b>£1,138,408</b>	<b>£2,197,858</b>

- 1.138 There is a potential reduction to this benefit where cases return to the Administrative Court after being investigated by the public services ombudsman as there are still issues that need to be dealt with by the Court. However, we do not see this as likely, as the point of the power was for the complaint to be assessed in a way that is the most appropriate.
- 1.139 There are other non-monetised benefits that should be considered here, which would be the same as those for the reform of the statutory bar: that an ombudsman's investigation is likely to be swifter and that it would avoid the potential emotional distress that going to court can cause,.

## NET IMPACT

Table 10: Net impact of the power to stay

	<i>Low NPV</i>	<i>Best NPV</i>	<i>High NPV</i>
Transitional costs	£0	£0	£0
On-going costs (annual)	£18,635	£55,906	£93,177
Present value of costs	£154,983	£464,949	£774,914
Transitional benefits	£0	£0	£0
On-going benefits (annual)	£26,427	£118,923	£264,273
Present value of benefits	£219,786	£1,138,408	£2,197,858
<b>Net present value (benefits – costs)</b>	<b>£64,803</b>	<b>£673,460</b>	<b>£1,422,944</b>

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

- 1.140 This recommendation only affects the Parliamentary Commissioner's work.
- 1.141 The Parliamentary Commissioner refers cases back to complainants when the complaint is not forwarded by an MP. Some of these cases are then referred by an MP, but those which are not have to be closed. The figures in recent years are as follows: [insert table or list]
- 1.142 In the reporting year 2007-08, 756 complaints were referred back to the complainant for MP referral. Of these, 400 were closed as the complainant failed to obtain referral from an MP. In 2008-09, 580 complaints were referred back, with 225 of these closed due to the complainant failing to obtain referral from an MP.<sup>19</sup> In 2009-10, 636 complaints were referred back, with 298 complaints withdrawn because the complainant did not obtain an MP referral.<sup>20</sup> The decrease from 2007-08 is due to a change in the ombudsman's practice and profile, not a statistical anomaly.
- 1.143 The ombudsman only refers back the complaint if it meets all other criteria, to avoid wasting the complainant's time. This means that all of the 298 "lost" complaints in 2009-10 would have proceeded to the second stage.

## COSTS

### *On-going costs*

- 1.144 The low and best estimate of the cost, we think, is that all of the lost 298 complaints reach the second stage. This comes to **£1,067,694** per annum.
- 1.145 The number of complaints received increased when the councillor filter for the Local Government Ombudsman was removed. We do not think that the increase experienced then is a good guide to the impact of reform in relation to the MP filter. In the case of the councillor filter there were specific problems which do not

<sup>19</sup> Figures supplied by the Parliamentary Commissioner.

apply here, as the Parliamentary Commissioner has already taken extensive steps to reduce the adverse impact of the MP filter. However, there is a risk that the number of complaints made will nonetheless increase.

- 1.146 In order to assess the high estimate of the cost of any reform, and after discussion with the Parliamentary Commissioner, we think that the greatest possible increase would include new complaints amounting to 40% of current second stage complaints before the Parliamentary Commissioner. This would equate to 12% of the number of second stage complaints across the joint jurisdiction of the Parliamentary Commissioner and Health Service Ombudsman, or 730 new complaints.
- 1.147 The greatest potential cost, therefore, is the maximum number of possible new complaints plus all of the complaints currently lost proceeding to the second stage (1,028 complaints). This gives a maximum annual cost of **£3,683,474**.
- 1.148 However, we do not think that the financial cost will actually materialise. It is better understood as an economic representation of the new cases being generated. The Parliamentary Commissioner is subject to a four-year “flat money” settlement with HM Treasury. We do not think that it will need to breach that, and the settlement included the possibility of the MP filter being removed. Therefore we have calculated the costs as accruing only after the end of that settlement, that is from year 4.

*Table 11: Cost of the MP filter reform from 2014*

	<i>Low</i>	<i>Best</i>	<i>High</i>
Lost complaints reaching second stage	298	298	298
Growth in complaints as percentage of second stage complaints	0%	0%	12%
Growth in complaints	0	0	730
Total additional complaints	298	298	1,028
Cost per complaint	£3,583	£3,583	£3,583
<i>Total annual cost</i>	<i>£1,067,694</i>	<i>£1,067,694</i>	<i>£3,683,474</i>
<b>Present value</b>	<b>£5,888,300</b>	<b>£5,888,300</b>	<b>£20,314,241</b>

#### BENEFITS

- 1.149 We do not think it practicable to monetise the benefits. The primary benefit, would of course, be the increased access to justice of for those currently lost by the system. Additionally, there would be a reduction in delay for complainants and public bodies and a potential reduction in the administrative costs of Members of Parliament. Finally, there may also be time savings for the Parliamentary Commissioner as complaints would not need to be referred back to complainants.

<sup>20</sup> Parliamentary and Health Service Ombudsman, *Making an Impact: Annual Report 2009-10*.

NET IMPACT

Table 12: Net impact of the MP filter reform

	<i>Low NPV</i>	<i>Best NPV</i>	<i>High NPV</i>
Transitional costs	£0	£0	£0
On-going costs (annual)	£1,067,694	£1,067,694	£3,683,474
Present value of costs	£5,888,300	£5,888,300	£20,314,241
Transitional benefits	£0	£0	£0
On-going benefits (annual)	£0	£0	£0
Present value of benefits	£0	£0	£0
<b>Net present value (benefits – costs)</b>	<b>-£5,888,300</b>	<b>-</b>	<b>-</b>
		<b>£5,888,300</b>	<b>£20,314,241</b>

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

- 1.150 We think that there would be at most no more than two to three of these a year. The costs would be borne by the ombudsman making the referral, excepting those costs incurred by intervening parties.

COSTS

- 1.151 Having discussed the matter with the Legal Services Commission, we think that the time allocation for a reference would reasonably be two days of research, one day of case preparation and one day in court. We have taken the rate for senior counsel as £300 per hour and £150 per hour for a junior.<sup>21</sup> Therefore, one set of counsel would cost £13,500 ((300 x 4 x 7.5) + (150 x 4 x 7.5)).<sup>22</sup>
- 1.152 We have also taken the court cost per day at the Administrative Court to be £1,085.
- 1.153 The low estimate is that no references are made, with an annual cost of **£0**.
- 1.154 Our best estimate is that there would be one of these references a year, lasting one day. We considered whether we should specify whether counsel should be instructed to represent both sides of the argument, or whether one would suffice. We decided to make no recommendation on this issue, but to leave it to the normal case management processes of the court. For the purposes of this impact assessment, we have taken the median figure between one and two sets of counsel. This comes to **£21,335**.
- 1.155 The maximum is three full day hearings and two sets of counsel, therefore **£84,256**.

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

<sup>22</sup> Figures supplied by the Legal Services Commission.

Table 13: Cost of the reference reform, 2009-10

	<i>Low</i>	<i>Best</i>	<i>High</i>
Number of references	0	1	3
Average sets of counsel	1	1.5	2
Length of hearings (days)	1	1	1
Cost per set of counsel	13,500	13,500	13,500
Court fees per day	£1,085	£1,085	£1,085
<i>Total annual cost</i>	<i>£0</i>	<i>£21,335</i>	<i>£84,256</i>
<b>Present value</b>	<b>£0</b>	<b>£177,439</b>	<b>£700,727</b>

#### BENEFITS

- 1.156 The key benefits that we can see would be improving the quality of reports by increasing the ombudsmen's ability to report on technical legal matters, and preventing them from having to discontinue an investigation where a difficult legal issue arises. The latter could also have consequential costs for the parties involved, in that the issue may then have to go to court, with significant costs being incurred by both sides to the dispute. However, we do not think it is possible to monetise these benefits.

#### NET IMPACT

- 1.157 The net impact is tabulated below:

Table 14: Net impact of the reference reform

	<i>Low NPV</i>	<i>Best NPV</i>	<i>High NPV</i>
Transitional costs	£0	£0	£0
On-going costs (annual)	£0	£21,335	£84,256
Present value of costs	£0	£177,439	£700,727
Transitional benefits	£0	£0	£0
On-going benefits (annual)	£0	£0	£0
Present value of benefits	£0	£0	£0
<b>Net present value (benefits – costs)</b>	<b>£0</b>	<b>-£177,439</b>	<b>-£700,727</b>

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

- 1.158 Given the way in which the ombudsmen report, and as the use of alternative dispute resolution is a relatively recent development, we feel unable to monetise the costs and benefits of this reform. Whilst we can see advantages in having a specific statutory power to use alternative means of dispute resolution, many of



the ombudsmen already engage in this practice – particularly the use of mediation –without a specific power to do so.

- 1.159 The costs would be the additional costs of using a mediator or other form of alternative dispute resolution. The benefits would be the money saved by not proceeding with an investigation in the usual sense. There are also many non-monetised benefits associated with methods of alternative dispute resolution such as mediation. Mediation is considered beneficial to complainants as it is a relatively informal, non-adversarial process. It generates mutually-agreed solutions, which is important for people who have an ongoing relationship with the other party, such as housing tenants and some patients of health-care providers. There is typically a high rate of compliance with the terms of mediated solutions, in light of the parties' involvement in the process of reaching agreement. For these reasons, mediated agreements tend to hold up over time in a way that decisions imposed on individuals by another party may not.

#### ***Transparency in reporting***

- 1.160 Though this particular change would have cost implications, we have not monetised them. Our proposal allows the ombudsmen to develop a strategy to accommodate increased costs.
- 1.161 There are, however, non-monetised benefits to the provisional proposal, such as increased accessibility, accountability and transparency. Wider dissemination may also reduce the number of Freedom of Information requests made to the ombudsmen, and challenges to the Information Commissioner. However, it is not possible to monetise this as it is difficult to ascertain with any degree of certainty how many Freedom of Information requests would not be made if our recommendations were accepted.

#### ***Power to publish general reports and guidance***

- 1.162 Here we are suggesting a specific power to do what is, in many cases, already done. We see this as a codification of current practice. We do not, therefore, see it as having cost implications.
- 1.163 There are some non-monetised benefits, such as a reduced risk of legal challenges to the ombudsmen, increased transparency, and a simpler, more coherent legal structure for the publication of general reports and guidance.

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

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

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

- 1.166 We do not see this reform as creating significant additional costs. There is already a recruitment process for the Parliamentary Commissioner and Parliament has already stated that it will conduct pre-appointment hearings for the next Parliamentary Commissioner. Though there would be additional burdens in terms of select committee time – and time for the House sitting to approve a nomination – we think that these would be internalised within the normal budget for the work of Parliament.
- 1.167 The potential non-monetised benefits are that Parliament and the National Assembly for Wales will have a stronger relationship with the public services ombudsmen. This would increase the transparency and profile of the ombudsmen, as well as highlighting their independence from the bodies which they review.

### ***Relationship with Select Committees***

- 1.168 We see this as having non-monetised benefits in improving the transparency, publicity and accountability of the ombudsmen.

### ***Housing Ombudsman laying annual report before Parliament***

- 1.169 We see this as having non-monetised advantages in improving the transparency and accountability of the Housing Ombudsman.

### **Conclusion**

- 1.170 As will be apparent, we have not found it possible to monetise all of the costs and benefits. In some cases, this is because it is too difficult or impossible to assign values to the costs and benefits. In others, it is because costs would be internalised to existing budgets.
- 1.171 The table below collates the ranges calculated above for those costs and benefits that we can monetise. The recommendations concerned are those relating to the reform of the statutory bar, a power to stay court proceedings in favour of an ombudsman, reform of the MP filter, and power to make a reference to a court on a point of law. The table gives annual figures at 2009-10 prices.

*Table 15: Net impact of option 1 (including MP filter impact figures)*

	<i>Low estimate</i>	<i>Best estimate</i>	<i>High estimate</i>
Transitional costs	£0	£0	£0
Ongoing costs (annual)	£1,086,330	£1,508,565	£4,297,262
Present value of costs	£6,043,283	£9,554,850	£25,418,877
Transitional benefits	£0	£0	£0
Ongoing benefits (annual)	£26,427	£883,916	£2,272,752
Present value of benefits	£219,786	£7,500,555	£18,901,582
<b>Net present value (benefits – costs)</b>	<b>-£5,823,498</b>	<b>-£2,054,294</b>	<b>-£6,517,296</b>

- 1.172 It is our recommendation in respect of the MP filter that makes the greatest impact on the outcome of the cost/benefit analysis. The table below shows the effect of excluding that proposal.

*Table 16: Net impact of option 1 (excluding MP filter impact figures)*

	<i>Low estimate</i>	<i>Best estimate</i>	<i>High estimate</i>
Transitional costs	£0	£0	£0
Ongoing costs (annual)	£18,635	£440,871	£613,788
Present value of costs	£154,983	£3,666,549	£5,104,636
Transitional benefits	£0	£0	£0
Ongoing benefits (annual)	£26,427	£883,916	£2,272,752
Present value of benefits	£219,786	£7,500,555	£18,901,582
<b>Net present value (benefits – costs)</b>	<b>£64,803</b>	<b>£3,834,006</b>	<b>£13,796,946</b>

### **Assumptions, sensitivities and risks**

- 1.173 Our calculations are sensitive to the accuracy of the assumptions we make. The main assumptions and the risks associated with inaccuracy are detailed below.
- 1.174 We have assumed that the cost of an ombudsman’s investigative team disposing of a complaint can be calculated by dividing 65% of the budget by the number of individual complaints the ombudsman deals with (not including those not properly made or out of jurisdiction). There is a medium risk that we are incorrect, and if so the costs per ombudsman investigation could be higher or lower.
- 1.175 We have used a wide range when estimating the costs and benefits of the statutory bar. The net impact is positive at all points along the range. Thus there is a low risk that this proposal would have a net cost.
- 1.176 We have assumed that there would be between 10 and 50 cases a year where it would be appropriate for the Administrative Court to stay an action in order for it to be investigated by the public services ombudsmen. Since we have used a wide range there is only a small risk that the actual figure will be less than 10 cases, or more than 50. If there are less than 10 cases, the reform would be less beneficial, and if more than 50, more beneficial.
- 1.177 There is a small risk that cases transferred to the ombudsmen may return to the Administrative Court after being investigated, if there are still issues that need to be dealt with by the Court. This would reduce the estimated cost savings.
- 1.178 We have assumed that complaints rejected currently on the basis of the MP filter would all proceed to the second stage. There is a risk that the overall number of complaints would increase, so we have added in a 20% increase in total complaints to the Parliamentary Commissioner and Health Service Ombudsman as the high estimate of costs. There is a small risk that the numbers will increase further, and then costs would be higher than estimated.

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

### **SPECIFIC IMPACT TESTS**

- 1.181 Here we deal with the specific tests that we suggest are relevant to our recommendations.

#### **Statutory Equality Duties**

- 1.182 We do not anticipate that these proposals will have substantial differential impact in relation to gender. We have not seen any evidence that there is a significant issue in relation to gender nor do we think that our recommendations would have any gender differentiated effects.
- 1.183 Disability equality is a more significant issue in relation to the public services ombudsmen. One provisional proposal is directed at correcting a problem that we perceive in the current framework for two of the public services ombudsmen. This concerns the requirement that a complaint be made in writing to the Parliamentary Commissioner and the Health Service Ombudsman.
- 1.184 Ensuring accessibility is a key duty placed on public bodies. Our provisional conclusions are that a requirement that a complaint be made in writing has a disproportionate impact on some disabled people. This, we suggest, is an impact that should be addressed by reform of the underlying statutory regime. The proposal to remove the formal requirement for writing is therefore likely to have a positive impact on disabled people..
- 1.185 This proposal may also have positive impacts on people whose first language is not English or Welsh.
- 1.186 We have considered the potential for any negative impacts on equality and do not consider that a full equality impact assessment is justified.

#### **Competition**

- 1.187 After considering the Office of Fair Trading's four filter questions we do not think that our recommendations would have any competition effects. Our recommendations do not directly or indirectly limit the number of suppliers, or limit suppliers' ability or incentives to compete.

#### **Small firms**

- 1.188 We do not think that our recommendations would have any effect on small firms.

#### **Greenhouse gas assessment**

- 1.189 We do not think that our recommendations would have any effect on greenhouse gas emissions.

### **Wider environmental issues**

- 1.190 We do not think that our recommendations would have any effect on wider environmental issues.

### **Health**

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

### **Human Rights**

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

- 1.192 Under article 6 of the European Convention on Human Rights and Fundamental Freedoms citizens are entitled to “a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law” in order to determine their civil rights. Although our proposals aim to redirect some complaints about public bodies away from the courts to the ombudsmen (which would not fall within the definition of a “fair and public hearing”) we think that, overall, our proposals strengthen the article 6 right in England and Wales.
- 1.193 This is because our proposals aim to allow citizens a wider choice of redress mechanism and greater flexibility if they choose the wrong mechanism in the first instance. This will mean that complaints regarding maladministration, which cannot properly be classified as a determination of a complainant’s civil rights, will be dealt with in the most appropriate way – namely, by the ombudsmen. However, our proposals regarding the statutory bar, the stay power and the power for ombudsmen to make a reference to a court on a point of law will all allow complainants to return to or go to a court for the determination of purely legal issues. Therefore, by ensuring that complaints are appropriately dealt with as either legal matters or matters of maladministration, our proposals should increase access to the courts for those wishing to determine their legal rights. This, in turn, would serve to uphold citizens’ rights under article 6 by removing the burden of inappropriate complaints of maladministration from the courts.

#### ***Discrimination***

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

### **Justice**

- 1.195 The purpose of the public services ombudsmen is to provide a route to administrative justice and the main body of this impact assessment has

considered the impact on the justice system of our proposals. Therefore, we do not feel it is necessary to conduct a further, specific impact assessment on this issue.

**Rural proofing**

- 1.196 We do not think that our recommendations would have any specific effect on rural communities or the farming industry.

**Sustainable development**

- 1.197 We do not think that our recommendations would have any effect on sustainable development.