



Cabinet Office

# THE OMBUDSMAN IN YOUR FILES





CABINET OFFICE  
Machinery of Government and Standards Group

# **THE OMBUDSMAN IN YOUR FILES**

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# FOREWORD

by Sir Robin Butler

*The work of the Ombudsman is becoming increasingly widely known, both by the general public, and in public services. The Ombudsman has an important part to play in helping public authorities maintain and improve the standards of service they offer.*

*I welcome the publication of this booklet, which I am sure will help staff working in the many different organisations subject to the Ombudsman's jurisdiction.*

*Robin Butler*

# Introduction

Many civil servants in departments and executive agencies will go through their careers without ever becoming involved in an Ombudsman case. However, those who have had this experience will know that responding to a complaint to the Parliamentary Ombudsman can be a demanding process.

This booklet, produced at the suggestion of the Select Committee on the Parliamentary Commissioner for Administration<sup>1</sup> and with the help of the Ombudsman's Office, explains the Ombudsman's<sup>2</sup> role and what happens when a complaint is investigated. It includes some case studies drawn from recent Ombudsman investigations to help you to avoid the problems that can lead to complaints.

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1 *The Select Committee on the PCA following its inquiry into the Powers, Work and Jurisdiction of the PCA recommended that OPSS should produce a booklet on the work of the Ombudsman on similar lines to "The Judge Over Your Shoulder" (1st Report, 1993-94, HC 33-I, para 35). The Government accepted this recommendation (5th Report, 1993-94, HC 619).*

2 *This booklet deals only with the UK Parliamentary Commissioner for Administration. There will be a separate booklet covering the work and role of the Northern Ireland Parliamentary Commissioner for Administration and the Commissioner for Complaints.*

# Who is the Ombudsman?

## What does the Ombudsman do?

### HISTORY AND BACKGROUND

The first Parliamentary Commissioner for Administration (or Parliamentary Ombudsman as the postholder is popularly known) was appointed in 1967 to deal with grievances from individuals who felt they had suffered an injustice as a result of maladministration<sup>3</sup> by a central Government department, but for whom there was no available avenue for pursuing their complaint.

The role of the Parliamentary Commissioner was modelled in part on the Scandinavian "Ombudsman" (a Swedish word meaning attorney or representative) - officers of Parliament who conduct open and informal investigations into complaints about the administration.

The Parliamentary Ombudsman is an officer of the House of Commons (appointed by the Crown), independent of the Government. The powers and responsibilities of the office are set out in the Parliamentary Commissioner Act 1967. The Ombudsman is accountable to Parliament through the Select Committee on the Parliamentary Commissioner for Administration (see also page 13). Complaints to the Ombudsman have to be made through an MP. This is in recognition of the interest of MPs in the relationship between the citizen and the executive.

### RELATIONSHIP TO JUDICIAL REVIEW

The Ombudsman deals with complaints about maladministration, where a public authority is alleged to have

- done something in the wrong way;
- done something they should not have done; or
- failed to do something which they should have done.

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<sup>3</sup> See Annex A for an explanation of maladministration.

This is different from, but complements, Judicial Review<sup>4</sup> which provides a means of challenging in the courts the exercise of statutory or other public law powers. The most common grounds for seeking Judicial Review are when decisions are alleged to be illegal, unreasonable, or to have been taken unfairly.

The Ombudsman on the other hand, does not seek to interpret the law but seeks to establish whether a public body had acted correctly and fairly in carrying out its interpretation of the law. The Ombudsman can also investigate complaints about administrative, rather than statutory, procedures such as the Code of Practice on Access to Government Information. The Ombudsman can recommend a wider variety of remedies than may be available under Judicial Review. Under Judicial Review the decision of the court is binding. The court may quash a particular decision if it is found to be unlawful but any right to damages is limited. The Ombudsman, on the other hand, can **recommend** the payment of compensation to the complainant and to any others who may have suffered in the same way.

The Ombudsman can also recommend that

- procedures should be put in place where their absence has led to failings;
- procedures which are in place but ignored should be observed; and
- where procedures are unclear, they should be clarified.

<sup>4</sup> For more information about the implications of Judicial Review for the work of civil servants, see *"The Judge Over Your Shoulder"*, Cabinet Office (OPSS), 1994.

<sup>5</sup> PCA Sixth Report Session 1994-95, Annual Report for 1994, HC 307, pps 11-12.

<sup>6</sup> PCA Sixth Report, 1994-95, 1994 Annual Report, HC 307, p 63.

### Case Studies

DSS (Benefits Agency) produced an Information Pack for married women about their rights and entitlements, particularly concerning retirement pension. This followed a complaint investigated by the Ombudsman where a married woman, who had not worked for some time, did not realise that she was entitled to some retirement pension.<sup>5</sup>

Following complaints about the mishandling of applications for discretionary purchase of properties close to the sites for road schemes, the Highways Agency agreed to overhaul its internal and publicly available guidance on discretionary purchase, and to provide full reasons for refusals in all future cases.<sup>6</sup>

## JURISDICTION

### Developments since 1967 Act

The Ombudsman's jurisdiction has been extended since 1967

- in 1981, to cover certain consular functions<sup>7</sup>;
- in 1987, to cover complaints about the actions of some 50 non-departmental public bodies (NDPBs)<sup>8</sup>;
- in 1991, to cover the actions of administrative staff appointed by the Lord Chancellor to work for courts or tribunals<sup>9</sup>; and
- in 1994, to cover the actions of administrative staff of other tribunals who are appointed by other Ministers (eg those in the Independent Tribunals Service)<sup>10</sup>.

The Ombudsman's role was further extended from April 1994 to include responsibility for dealing with complaints under the *Code of Practice on Access to Government Information*.

### What the Ombudsman can investigate

The Ombudsman can investigate complaints about actions taken, or about the operation of the Code of Practice on Access to Government Information, by or on behalf of Government departments, executive agencies and other public bodies<sup>11</sup>. This includes complaints about action carried out on behalf of such organisations, for example where a private contractor performs functions previously carried out by a Government department.

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7 As a result of the Parliamentary Commissioner (Consular Complaints) Act 1981.

8 As a result of the Parliamentary and Health Commissioners Act 1987.

9 As a result of the Courts and Legal Services Act 1990.

10 As a result of the Parliamentary Commissioner Act 1994.

11 An up-to-date list of bodies subject to the PCA's jurisdiction can be obtained from the Machinery of Government and Standards Group, Cabinet Office (OPS), telephone 0171 270 0441.

### **Matters not investigated by the Ombudsman**

The Ombudsman cannot investigate complaints about, for example, Government policy, matters affecting relations with other Governments or with international organisations, the administration of British Territories outside the United Kingdom<sup>12</sup>, the investigation of crime or matters connected with national security, contractual or other commercial dealings, and personnel matters.

The Ombudsman does not normally investigate complaints

- where there are other ways of obtaining a remedy - for example, where an individual has a right of appeal to an independent tribunal<sup>13</sup>;
- where there is a right of recourse through the courts;
- if the case is referred to an MP more than 12 months after the event complained about; or
- unless the complainant has first pursued the matter through the organisation's internal complaints procedure.

When public services deal with complaints under their own procedures, including through recourse to their own complaints adjudicators (see page 8) complainants should be told that, if they remain dissatisfied, they have the right to refer the matter to the Ombudsman (through an MP). It is for the Ombudsman to decide whether or not to investigate a complaint. The Ombudsman's jurisdiction is described in more detail in the leaflet - "The Parliamentary Ombudsman: Can the Parliamentary Ombudsman help you?"<sup>14</sup>.

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<sup>12</sup> The Ombudsman cannot investigate complaints about the actions of Government employees overseas except where these concern consular functions undertaken in relation to British Nationals with right of abode in the United Kingdom.

<sup>13</sup> However, the Ombudsman frequently investigates complaints where there are allegations of maladministration, eg of delay in submitting papers to a tribunal, or in failing to inform a complainant of his or her rights.

<sup>14</sup> See page 25 for information about how to obtain copies of this leaflet.

## **OTHER OMBUDSMEN**

Other Ombudsmen deal with complaints about services within the public sector, which fall outside the Parliamentary Ombudsman's remit:

- the Health Service Ombudsmen<sup>15</sup>;
- the Local Government Ombudsmen<sup>16</sup>;
- the Police Complaints Authority (which supervises the investigation of the most serious complaints about the conduct of police officers in England and Wales); and
- the Independent Housing Ombudsman<sup>17</sup>.

There are also Ombudsmen covering various private sector services, such as Banking, Broadcasting, Building Societies, Corporate Estate Agents, Funerals, Insurance, Investments, Personal Investments, Legal Services, and Pensions<sup>18</sup>. Apart from the Legal Services and Pensions Ombudsmen, the Private Sector Ombudsmen do not operate under, nor have, statutory powers.

## **COMPLAINTS ADJUDICATORS**

Under the Citizen's Charter some public services under the Ombudsman's jurisdiction have appointed independent adjudicators to consider complaints that cannot be resolved elsewhere within their organisation. For example, there are adjudicators for the Inland Revenue, Customs and Excise and the Contributions Agency who also deal with complaints under the Code of Practice on Access to Government Information.

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*15 There are separate Health Service Ombudsmen for England, Scotland and Wales.*

*16 There are separate Local Government Ombudsmen for England, Scotland and Wales.*

*17 The Independent Housing Ombudsman will take on his full range of responsibilities from 1 April 1997, pursuant to section 51 of, and schedule 2 to, the Housing Act 1996. He replaces the Housing Association Tenants Ombudsman.*

*18 The Pensions Ombudsman also has some jurisdiction over public sector pensions.*

Companies House, the Prison Service (in England and Wales, and in Scotland), the Child Support Agency<sup>19</sup> and the Department of Transport's Executive Agencies, which include the Driving Standards Agency (DSA) and the Driver and Vehicle Licensing Agency (DVLA), also have independent mediators, adjudicators, or complaints advisors. The arrangements with the mediator for most of the Department of Transport's Agencies include cases under the Code of Practice on Access to Government Information although the Companies House adjudicator does not deal with cases under the Code.

These arrangements do not detract from the right of individuals who remain dissatisfied with the response to their complaint to refer the matter (through an MP) to the Ombudsman.

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<sup>19</sup> The Child Support Agency adjudicator will take up post on 1 April 1997.

# The investigation of complaints

## SCREENING

Complaints arriving in the Ombudsman's office are initially screened to establish whether they concern matters the Ombudsman can and should investigate. In some cases the screening process may reveal a need for additional information, or show that the complainant had not raised the matter with the organisation complained about.

If the Ombudsman decides not to pursue a case, the MP will be sent a letter explaining why.

Only one in four cases go past the screening stage to that of a full investigation, though to help the screeners establish whether an investigation is required they may, on occasions, contact departments informally to check out the background to a complaint. (See also "fast track" cases on page 11.)

## DEPARTMENT'S COMMENTS

Where a full investigation is to be pursued, at the outset the Ombudsman is required by statute to give the Principal Officer (normally the Permanent Secretary) of the department or organisation complained about the opportunity to comment. Where the complaint concerns an executive agency, this responsibility is often delegated to the Agency Chief Executive. Such comments are on the basis of a statement of complaint drawn up by the Ombudsman's office and sent to the Principal Officer. The statement is also copied to the complainant so that all are clear on the scope of the complaint the Ombudsman is investigating.

In preparing their initial comments the organisation will normally investigate fully the issues complained about before writing in detail to the Ombudsman. At this stage any member of staff against whom a complaint is made has the opportunity to give their version of events. Most departments have a central Ombudsman liaison point to co-ordinate contact with the Ombudsman's office. This section may produce more detailed guidance on dealing with Ombudsman cases including the time limits and the position of staff named in complaints. If you have not seen your department's guidance, contact the appropriate central point, or ask your manager to do so.

Departments or agencies are expected to reply with their initial comments within three weeks. The Select Committee on the Parliamentary Commissioner for Administration has asked the Ombudsman to report on any cases where departments fail to provide comments within three, or at most six, weeks.

### FAST-TRACK CASES

Sometimes the initial contact from the Ombudsman's office prompts departments to look afresh at a complaint and offer appropriate redress or provide the information sought immediately and without prejudice to the outcome of the Ombudsman's investigation. In such circumstances, the Ombudsman immediately informs the MP and the complainant, but may also continue the investigation to make sure others do not suffer in the same way.

### INVESTIGATION AND GETTING EVIDENCE

All complaints accepted for investigation are considered thoroughly and impartially. After receiving the organisation's initial reply the investigating officer will want to see the relevant files and may seek further information from the officials (and even, if need be, the Ministers) concerned and the complainant.

In seeking evidence for an investigation, the Ombudsman has the same powers as the Court. However, the Ombudsman cannot require any information or document relating to the proceedings of Cabinet<sup>20</sup>.

In practice it is rarely necessary to invoke these powers as in most cases the Ombudsman relies on evidence resulting from informal interviews and the voluntary provision of all the original papers concerning the complaint. (In cases concerning access to government information, this includes the material to which access is sought.) It is not open to departments to withhold papers on the grounds of a statutory duty of confidentiality, public interest immunity or legal privilege. The Ombudsman's office takes copies and returns files quickly.

### Case study

Mrs A raised a complaint with the Ombudsman of undue delay by the Home Office in granting her husband entry clearance to join her in the United Kingdom, despite her earlier successful appeal to the Immigration Adjudicator.

The Home Office investigated the complaint following notification from the Ombudsman's office. They identified an administrative error which resulted in a failure to notify the High Commission in New Delhi of the outcome of Mrs A's appeal in accordance with the established procedures.

The Home Office apologised to Mrs A and her husband and offered to compensate them for any unnecessary costs they may have incurred. The Department issued a reminder of the correct procedures to staff.

In view of the Home Office's response, the Ombudsman produced a report without a full investigation.

<sup>20</sup> Section 8(4), Parliamentary Commissioner Act 1967.

On occasion the Ombudsman's office may seek further information in addition to the evidence gathered at the outset. That might include evidence from departments which are not within the Ombudsman's jurisdiction, for example the Crown Prosecution Service. Departments need to respond promptly to such requests.

## OMBUDSMAN'S FINDINGS

### Draft report

When the investigative work is completed, the Ombudsman produces a Draft Results Report setting out the evidence and, in most cases, provisional findings and a conclusion. The Ombudsman sends a copy to the relevant Principal Officer (or to the Agency Chief Executive where responsibility for handling the case has been delegated)

- (i) to check that the facts in the report are correct (as far as the organisation complained about is concerned);
- (ii) for any comments on presentation of the facts; and
- (iii) if there is a finding that there has been injustice as a result of maladministration, to find out whether or not the department is prepared to provide an appropriate remedy (see also "Redress" below).

### Time taken for investigations

In 1995, the average time taken to investigate and report on a complaint of maladministration was 74 weeks. Cases under the Code of Practice on Access to Government Information in 1995 took an average of 32 weeks to complete.

## REDRESS

In cases where maladministration has been found, the Ombudsman can recommend that a body complained against should provide a remedy (which need not be financial) but there are no powers to enforce such a recommendation. Ministers have publicly confirmed that the Government normally accepts and implements the Ombudsman's recommendations<sup>21</sup>.

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<sup>21</sup> Francis Maude, the then Financial Secretary told the PCA Select Committee on 18 December 1991

*"That is the basis on which the Government has tended to work - and has, as far as I am aware, always worked - in that we do accept and implement the recommendations that are made [by the Ombudsman]."*

*(Select Committee on the Parliamentary Commissioner for Administration, Second Report, "The Implications of the Citizen's Charter for the work of the Parliamentary Commissioner for Administration", Session 1991-92, HC 158, p3, para 11.)*

If the Ombudsman considers that redress is due in addition to any the department may have already made, the question will be raised at the stage of providing the department or agency with a copy of the draft report.

The Treasury issue guidance on financial redress in cases of maladministration and in the context of the Citizen's Charter (currently set out in DAO (GEN) 7/96). For more information on this and on any internal guidance on redress, contact the central Ombudsman liaison point in your department or agency, or your finance division.

### PROCEDURAL CHANGES

In some cases the Ombudsman's investigation will uncover procedural or systemic faults. When this happens, the Ombudsman's report will include a request to the department to revise its procedures to avoid repetition of the problem in the future (see also the examples on page 5).

### SELECT COMMITTEE ON THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION

The Select Committee is the main focus for Parliamentary involvement in the work of the Ombudsman, for example the Committee published a report into the operation of the Code of Practice on Access to Government Information in March 1996<sup>22</sup>. It stands in the same relationship to the Ombudsman as does the Public Accounts Committee to the Comptroller and Auditor General. The Select Committee meets regularly and takes evidence from the Ombudsman and bodies within the Ombudsman's jurisdiction. It takes evidence on the Ombudsman's annual and other reports and carries out more general or thematic inquiries, for example into the operation of the Code of Practice on Access to Government Information.

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<sup>22</sup> *Select Committee on the Parliamentary Commissioner for Administration Second Report "Open Government" Session 1995-6 HC 556. See also Government Response to this report HC 75.*

## PUBLICATION OF REPORTS

The Ombudsman publishes an annual report, which is laid before Parliament. In addition, the Ombudsman publishes reports three times a year of selected maladministration cases in anonymised form (so as not to identify complainants) together with summaries of those cases both to inform Parliament and so that departments and agencies can learn from others' experience. (The Machinery of Government and Standards Group (OPS) circulates copies of these cases, highlighting lessons to be learned, to Government departments, which in turn circulate copies widely to relevant officials.) The Ombudsman also publishes cases under the Code of Practice on Access to Government Information.

From time to time, the Ombudsman also produces special reports on cases of particular public interest with important implications for public services. Examples include:

- The Barlow Clowes Affair<sup>23</sup>;
- Delays in handling Disability Living Allowance claims<sup>24</sup>;
- Loss of employment caused by mistaken revocation of a licence to drive a heavy goods vehicle<sup>25</sup>;
- Child Support Agency<sup>26</sup>.

The Ombudsman may also lay a special report before Parliament (under section 10(3) of the 1967 Act) if the department does not accept his conclusions and is not prepared to offer redress. This is known as an "unremedied injustice" report.

As at December 1996 the Ombudsman has only made two such reports ("Rochester Way, Bexley" 1977/78, and "The Channel Tunnel Rail Link and Blight" 1994/95).

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23 PCA First Report Session 1989-90 HC 76.

24 PCA Sixth Report Session 1992-93 HC 652.

25 PCA First Report Session 1993-94 HC 13.

26 PCA Third Report Session 1994-95 HC 135 and PCA Third Report Session 1995-6 HC 20. See also page 22 below.

### Case Study

The Rochester Way complaint concerned the Department of Transport's refusal to pay late claims for compensation. The Ombudsman concluded that the Department had been responsible for a degree of defective administration over the publicity provisions for claiming compensation and that claims should be met on an extra statutory basis.

The Department refused to comply with the Ombudsman's suggestion. The Select Committee on the PCA supported the Ombudsman's view. The Government agreed, and late claims were paid following enactment of the amending legislation.

When a report likely to attract major publicity is published, departments will need to consider whether a Ministerial statement, possibly accompanied by a Press Notice, would be appropriate. In any case departments will need to prepare Press briefing as well as briefing for Ministers and, possibly, the Prime Minister's Office. If there is a possibility of a subsequent PCA Select Committee hearing with the Permanent Secretary or Chief Executive, or in exceptional circumstances, Departmental Ministers, any statement or briefing should not pre-empt that hearing.

## Learning from Experience

Many of the complaints the Ombudsman investigates involve basic failures of good practice, such as delay in answering letters or failing to keep adequate records of conversations.

The lessons are often simple:

- treat people **fairly** and **consistently**;
- when giving advice, make sure it is **correct** and that you keep a **record** of all significant telephone calls and other conversations;
- deal with things **promptly**;
- if something goes wrong, investigate objectively, and if it is clear that the fault lies with the public authority, **apologise sincerely** and offer appropriate redress;
- follow laid down **procedures**;
- if procedures do not work, **get them changed**;
- when introducing new procedures or schemes **plan** carefully and, where practical, run **pilot tests** in advance to make sure systems work and staff are properly trained; and
- when responding to requests for information under the Code of Practice, consider disclosure on the merits of the individual case, not simply against the practices which have been followed in the past. When refusing to provide information requested under the Code of Practice, specify the exemptions under which the refusal is framed and tell the person making the request about the department's appeal procedures and their right to appeal to the Ombudsman through an MP.

### TREATING PEOPLE FAIRLY

Not only must you act **fairly** and **impartially**, but you should also ensure that your actions are **seen** to be fair and impartial.

<sup>27</sup> Case C226/92.

### Case study

Mr X appealed against the refusal by his local authority to grant his application for planning permission to build a new bungalow. The Planning Inspector, on a site visit to determine the appeal, went alone into the house of an objector to the application. The Inspector was able to confirm that during that time no discussion with the objector had taken place.

Even so, the Ombudsman was concerned that although there was no indication that the Inspector had shown partiality, he had put himself in a position where his impartiality could be called into question. The Ombudsman criticised the Inspector for that<sup>27</sup>.

It is important to be **consistent** in dealing with members of the public.

### Case Study

Mrs A was the registered keeper of a car, but her husband was the owner and sole driver of the vehicle. The car was seen, unlicensed, on the public road and DVLA wrote to Mrs A about the alleged offence. The correspondence was taken up and continued by Mr A, who explained why he had not been able to get a licence for the car. In the course of further correspondence DVLA twice offered Mr A the opportunity of settling out of court by paying a mitigated penalty.

When Mr A did not take up DVLA's offer to settle, DVLA then summonsed and successfully prosecuted Mrs A, as the registered keeper, for a different but closely related offence without offering her the opportunity of paying a mitigated penalty and despite the fact that DVLA's correspondence with Mr A had suggested that he, not his wife, would face prosecution if he did not pay up.

The Ombudsman found that DVLA had acted unreasonably in not giving Mrs A an opportunity to settle out of court. He also found inadequacies in DVLA's systems and standard letters. DVLA offered Mrs A an ex gratia payment covering the difference between what the Court had required her to pay and the settlement offered to her husband. DVLA also undertook to review their systems and standard letters<sup>28</sup>.

<sup>28</sup> Case 135/92, PCA 7th Report 1992-93, HC 673 p65.

<sup>29</sup> DSS case 922/92, 9th Report 1992-93, HC 826 p70.

### GIVE CORRECT ADVICE AND KEEP A RECORD

Follow **departmental procedures** when giving advice to or answering questions from members of the public, including **keeping appropriate records**.

### Case Study

Mrs S decided to increase her hours of part-time working and claim Family Credit instead of Income Support following discussion with a DSS official, from whom she learned that such a change appeared to be to her financial advantage. She duly completed the necessary formalities to end her claim for Income Support with the official's assistance. Mrs S then submitted her Family Credit claim form after she had completed her first week of working the increased hours.

When Mrs S received her Family Credit order book she discovered that because of the timing of her application there would be a gap of a week between her last Income Support payment and the beginning of her entitlement to Family Credit. Mrs S complained about this loss of benefit and the apparent confusion over the date of claim for Family Credit. She was shuttled backwards and forwards between the Family Credit Unit and the Income Support section but nothing was done to resolve the problem.

Mrs S complained through her MP to the Ombudsman stating that as a result of incorrect advice she had lost a week's benefit. After the Ombudsman's intervention Mrs S's claim was reviewed and her entitlement to Family Credit backdated by a week.

The Ombudsman found no record of the discussion between Mrs S and the official, but it was clear that there had been some misunderstanding as to when Mrs S should submit her claim for Family Credit. The problem would not have arisen had the official made a note on the file, as he should have, as to the date of effect of Family Credit. The Ombudsman criticised the official for this though he did not uphold the complaint that Mrs S had been misdirected. However, the Ombudsman found that the Benefits Agency badly handled its response to Mrs S's attempt to resolve the problem. The Chief Executive of the Benefits Agency duly apologised for the poor service Mrs S had received.

As a result of this case, liaison between district offices and the Family Credit Unit was improved to ensure that all staff took responsibility to resolve problems, even if they were not directly involved. Staff were also reminded of the need to record all telephone calls<sup>29</sup>.

## Case Study

Mr and Mrs L (who had originally bought their house from MOD in 1982) sold their house in 1988 and agreed to the retention of £500 by the purchaser in the expectation that street lighting on the estate would soon be brought up to an acceptable standard for adoption by the local highway authority.

Before adopting the roads on the estate, the local authority required some remedial work and sought rights of access to some of the properties so that they could make repairs to street lighting and associated cables. Over six years the issues were desultorily pursued between the local authority, certain householders, the Property Services Agency and the Treasury Solicitor's Department (both acting on behalf of the Ministry of Defence) in an attempt to resolve the difficulties. Replies were sought from the local defence land agent no less than 11 times, but always in vain.

In 1991 Mr and Mrs L's MP referred their complaint about the delay to the Ombudsman. The Ombudsman found that the task had been given a lower priority than other work, noting that when the defence land agent's office turned their attention to the problem, they were able to offer a solution within 4 weeks. He also criticised Treasury Solicitor's Department for not approaching MOD at a more senior level in the absence of a response to their persistent reminders, although he accepted that the responsibility for taking action here lay with MOD.

After criticising the Ministry's wholly unacceptable lack of action he recommended financial compensation for Mr and Mrs L for the loss of the use of £500 after being given misleading advice about likely progress by MOD<sup>30</sup>.

### DEAL WITH THINGS PROMPTLY

Letters and telephone calls should be acted on **as quickly as** possible and in line with any departmental Charter standards which may apply. If you cannot reply immediately, you should let the person know when they can expect a reply. If other Government departments fail to provide you with information you need within a reasonable timescale, or fail to take action that you have requested, raise the matter at a more senior level. If the matter takes a long time to resolve, **keep those concerned informed of progress** so that they know their case has not been forgotten.

<sup>30</sup> MOD case 188/91 PCA 2nd Report 1992-93, HC 202, p 23.

**IF SOMETHING GOES WRONG, INVESTIGATE OBJECTIVELY, APOLOGISE SINCERELY,  
NOT GRUDGINGLY, AND OFFER APPROPRIATE REDRESS**

Any complaint should be investigated **objectively**. Managers should not automatically take the side of their staff.

### Case Study

Mrs B complained to the DSS (Benefits Agency) that her neighbour, who worked in the department and with whom she was in dispute, had falsely alleged that she was fraudulently receiving income support. The BA local office initially responded to the complaint solely by ensuring that her case papers were kept confidentially.

Later DSS received an anonymous letter alleging fraud, but a subsequent fraud investigation found no evidence to support the allegations. Mrs B maintained that her neighbour (the member of staff) had written the anonymous letter. When the member of staff was eventually interviewed by local management they concluded that there was no foundation to Mrs B's complaint. Mrs B, dissatisfied with this, referred the case to the Ombudsman.

Following the Ombudsman's intervention, the official was interviewed again, when she admitted she had written the letter, claiming she had done so out of a sense of public duty. The Ombudsman found that the DSS investigation had been unsatisfactory, with the main aim of protecting the official, rather than responding to Mrs B's complaints. DSS accepted this criticism. Staff were reminded of their duties in investigating complaints about official misconduct and training sessions were organised<sup>31</sup>.

<sup>31</sup> DSS case 585/92, 4th Report 1994-95, HC 152, p50.

**FOLLOW LAID DOWN PROCEDURES AND IF THEY  
DON'T WORK, CHANGE THEM**

### Case Study

Mr Z submitted to Companies House his company's accounts together with a document intended for another Government department (which occupied the same building as Companies House). The accounts were wrongly forwarded to the other department. Companies House in due course assumed the accounts were overdue and issued a computer-generated penalty notice.

Mr Z protested that he had submitted the accounts on time and Companies House put the penalty notice on hold while they made checks. Unfortunately the matter was not properly resolved and, after delays, Mr Z received a further penalty notice. And after a further period Mr Z was contacted by a debt collection agency instructed by Companies House.

It was only after Mr Z complained to the Ombudsman that Companies House found the original accounts in the other department. It then emerged that the original query made by Companies House to the other department about the mislaid accounts had been of such a general nature that they could not be found. It was only much later, when the other department were asked to make a search for the original balance sheet, that the papers came to light.

The Ombudsman found that Mr Z had been a victim of a chain of errors for which Companies House were to blame. Staff had failed to stop the penalty process and carry out a thorough and effective investigation of Mr Z's case. Companies House offered to meet the costs incurred by Mr Z as a result of their maladministration and the Chief Executive unreservedly apologised for his organisation's shortcomings. The Chief Executive also undertook to change systems and procedures where weaknesses had been exposed by this case<sup>32</sup>.

<sup>32</sup> DTI case 903/92, 2nd Report 1993-94, HC 157, p54.

If the strict application of the law or procedures leads to injustice, it is important to find a way of **righting the injustice**, whilst securing the proper protection of public funds<sup>33</sup>.

### Case Study

A company P found that their reputation was being tarnished because a foreign company of the same name had had an unsatisfied court judgment against them entered in the Registry of County Court Judgments. The company sought the help of staff in the Lord Chancellor's Department (LCD) in overcoming their difficulties.

Officials in LCD sympathised with the company's plight, but took the view that, without changes in legislation, there was nothing they could do. Pressure from the company led to a partial solution - the issue of a letter by LCD stating that the judgment did not apply to the company.

In the course of investigation by the Ombudsman, one of his officers suggested that LCD might approach the creditor in whose favour judgment had been given since it lay in his power to invite the court to amend the order in a way which would distinguish the foreign company from company P. This the Department then did.

The Ombudsman took the view that more concerted action by LCD and others involved at the beginning, with attention concentrated on how company P's problem might be overcome would have been helpful. The Ombudsman noted with approval LCD's eventual action, and welcomed the fact that LCD were taking steps to change the regulations to avoid similar problems in the future<sup>34</sup>.

<sup>33</sup> In cases such as this involving the application of legal powers, legal advice should be sought when remedial action is contemplated to ensure that legal powers are not exceeded.

<sup>34</sup> LCD case C 741/92, 4th Report 1993-94, HC 409, p49.

When introducing new procedures or schemes **plan** carefully, allocate appropriate resources and, where practical, run **pilot tests** in advance to make sure systems work and staff are properly trained.

### Case Study

The Ombudsman received a very large number of complaints about the operation of the Child Support Agency and decided that the most effective use of his resources would be to investigate a number of representative cases.

The cases the Ombudsman investigated involved mistaken identity, inadequate procedures, failure to answer correspondence, incorrect or misleading advice and delay in various aspects of the Agency's responsibilities.

It was not considered practical to have piloted the Child Support Agency before introduction, but as a result of the complaints the Agency made a number of changes in order to improve the standard of service it offered claimants. In a special report to the Select Committee, the Ombudsman welcomed the proposed changes and commented

"Maladministration leading to injustice is likely to arise ... when new staff, perhaps inadequately trained, form a substantial fraction of the workforce; where procedures and technology supporting them are untried; and where quality of service is subordinated to sheer throughput. If the misfortunes [suffered by complainants] are to be avoided, great care should be applied by public servants and those who instruct them whenever a policy decision is taken to devise a fresh administrative task which affects large numbers of the public.<sup>35</sup>"

<sup>35</sup> PCA Third Report, Session 1994-95, HC 135.  
See also PCA Third Report, Session 1995-96

### CONSIDER REQUESTS FOR INFORMATION ON THEIR MERITS

In dealing with requests for information about contracts, the need for commercial confidentiality should be considered stringently, and balanced against the general presumption of openness when public money is at stake.

#### Case Study

Mr M asked for information about a contract for research carried out for the Scottish Office Environment Department, including the value of the contract. In responding to the Ombudsman the Department explained that they had refused to disclose information on the value of the contract because they regarded it as commercially confidential citing exemption 7 of the Code (that disclosure would prejudice negotiations on future contracts). When Mr M made his original request, the contractors had specifically asked the Department to keep the value of the contract confidential as disclosure could undermine the contractor's competitive position. In addition the Department had envisaged that there might be follow-on work as a result of the original contract, and disclosure of its value might risk the integrity of a further tendering process.

However, in view of the passage of time, and having further consulted the contractor, the Department disclosed the information Mr M had sought.

The Ombudsman accepted that there would be occasions when the price quoted by a tenderer would be exempt from disclosure under exemption 7 of the Code. However, he observed that, in future, it would be unwise for departments to give assurances to potential contractors that the price would not, or would never be disclosed<sup>36</sup>.

36 PCA Eighth Report, 1994-95, HC 606, pps 4-7.

## Conclusion

The number of cases referred to the Ombudsman grows every year. In part that is a reflection of the increasing expectations of public services as a result, for example, of the Citizen's Charter. The promotion of higher standards of administration in the public sector is one of the Ombudsman's stated goals. It is one which all the Government departments and other bodies which come under the Ombudsman's jurisdiction share.

However good your systems and procedures, however well staff are trained, people will make mistakes and users of public services will complain. When this happens

- **admit that you have made a mistake, apologise and offer appropriate redress; and**
- **deal with complaints positively.**

The case studies in this booklet and the summaries of Ombudsman cases show that many of the complaints investigated could have been prevented if those involved had followed the basic principles of good practice highlighted here.

### Effective complaints handling

- is good for the user of public services and good for public services;
- saves time and money;
- makes it less likely that complaints will end up with the Ombudsman; and
- makes it easier for the Ombudsman to investigate if the matter is referred to him.

## FURTHER READING

Citizen's Charter Complaints Task Force

*"Effective Complaints Systems: Principles and Checklist"*, 1993

*"Putting things right:" Main report*, June 1995

*"Good Practice Guide"*, June 1995.

*"Redress under The Citizen's Charter"*, July 1996

Copies of these publications can be obtained from

Service First Unit

Cabinet Office

Admiralty Arch

London SW1A 2WH

Tel: 020 7276 1735

*"Code of Practice on Access to Government Information, Guidance on Interpretation, and Annual Monitoring Report"*.

Copies can be obtained from

The Freedom of Information Unit

Home Office

50 Queen Anne's Gate

London SW1A 9AT

Tel: 020 7273 3602

DEO(PM)(96)4 *"Handling of Parliamentary Ombudsman Cases"*, December 1996

Copies can be obtained from

Central Secretariat

Cabinet Office

70 Whitehall

London SW1A 2AS

Tel: 020 7276 2461

*The Parliamentary Ombudsman: Can the Parliamentary Ombudsman help you?*

Copies can be obtained from

Office of the Parliamentary Commissioner for Administration

Church House,

Great Smith Street

London SW1P 3BW

Tel: 0171 276 2130/3000

Treasury Guidance on financial redress in DAO(GEN) 7/96.

## ANNEX A

### WHAT IS MALADMINISTRATION?

#### The “Crossman Catalogue”<sup>37</sup>

Bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness and so on.

Additional examples of **maladministration** in the language of the 1990s (quoted in the PCA’s 1993 Annual Report and endorsed by Treasury Ministers in November 1994 in evidence to the PCA Select Committee):

- rudeness (though that is a matter of degree);
- unwillingness to treat the complainant as a person with rights;
- refusal to answer reasonable questions;
- neglecting to inform a complainant on request of his or her rights or entitlements;
- knowingly giving advice which is misleading or inadequate;
- ignoring valid advice or overruling considerations which would produce an uncomfortable result for the overruler;
- offering no redress or manifestly disproportionate redress;
- showing bias, whether because of colour, sex, or any other grounds;
- omission to notify those who thereby lose a right of appeal;
- refusal to inform adequately of the right to appeal;
- faulty procedures;

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<sup>37</sup> These were the examples quoted by Mr Crossman, as Leader of the House of Commons, when the Parliamentary Commissioner Bill was being taken through Parliament in 1966.

- failure by management to monitor compliance with adequate procedures;
- cavalier disregard of guidance which is intended to be followed in the interest of equitable treatment of those who use a service;
- partiality; and
- failure to mitigate the effects of rigid adherence to the letter of the law where that produces manifestly inequitable treatment.

Neither of these lists is intended to be a comprehensive definition of maladministration.

# INVESTIGATION BY THE OMBUDSMAN: A SUMMARY

See page

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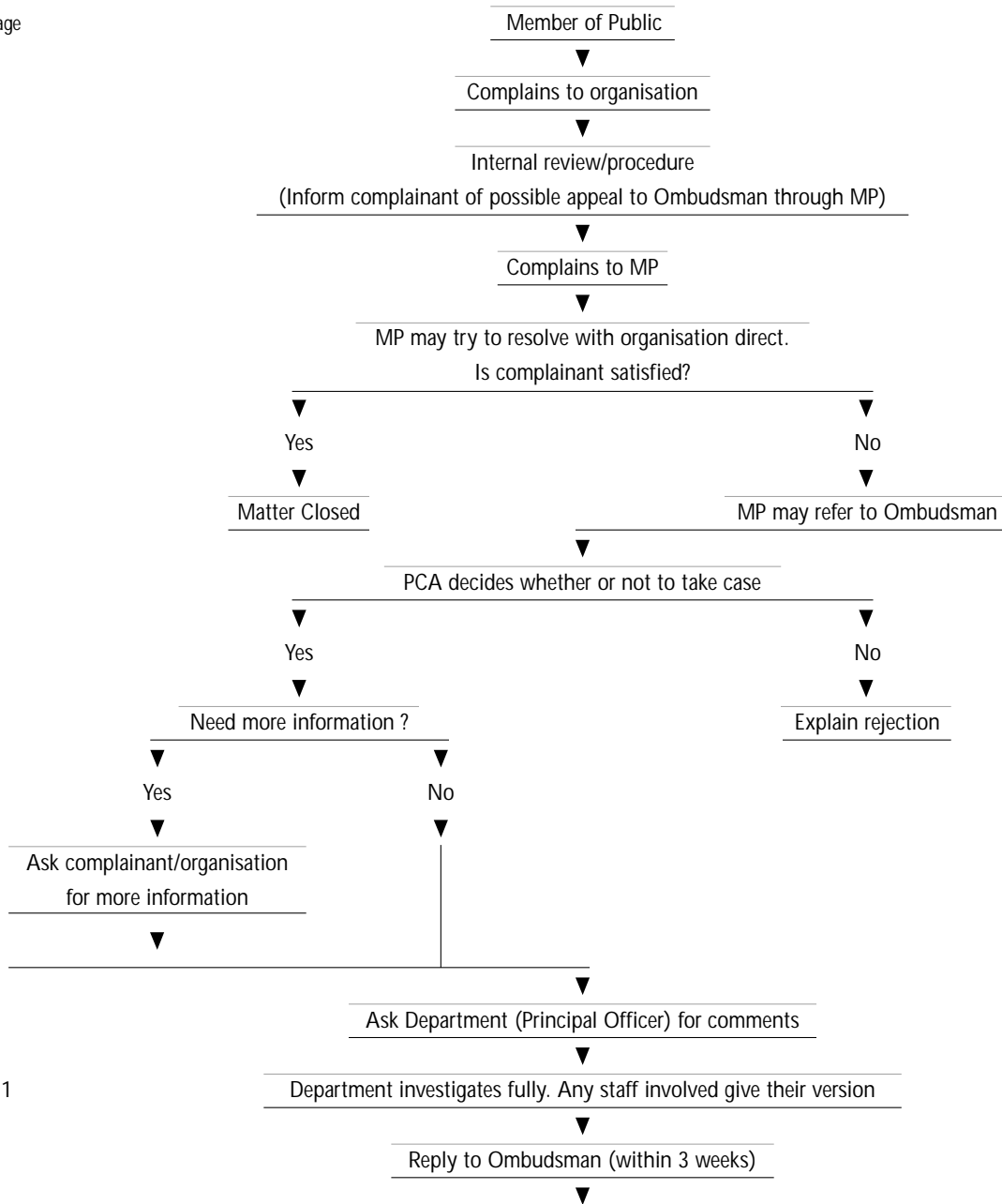
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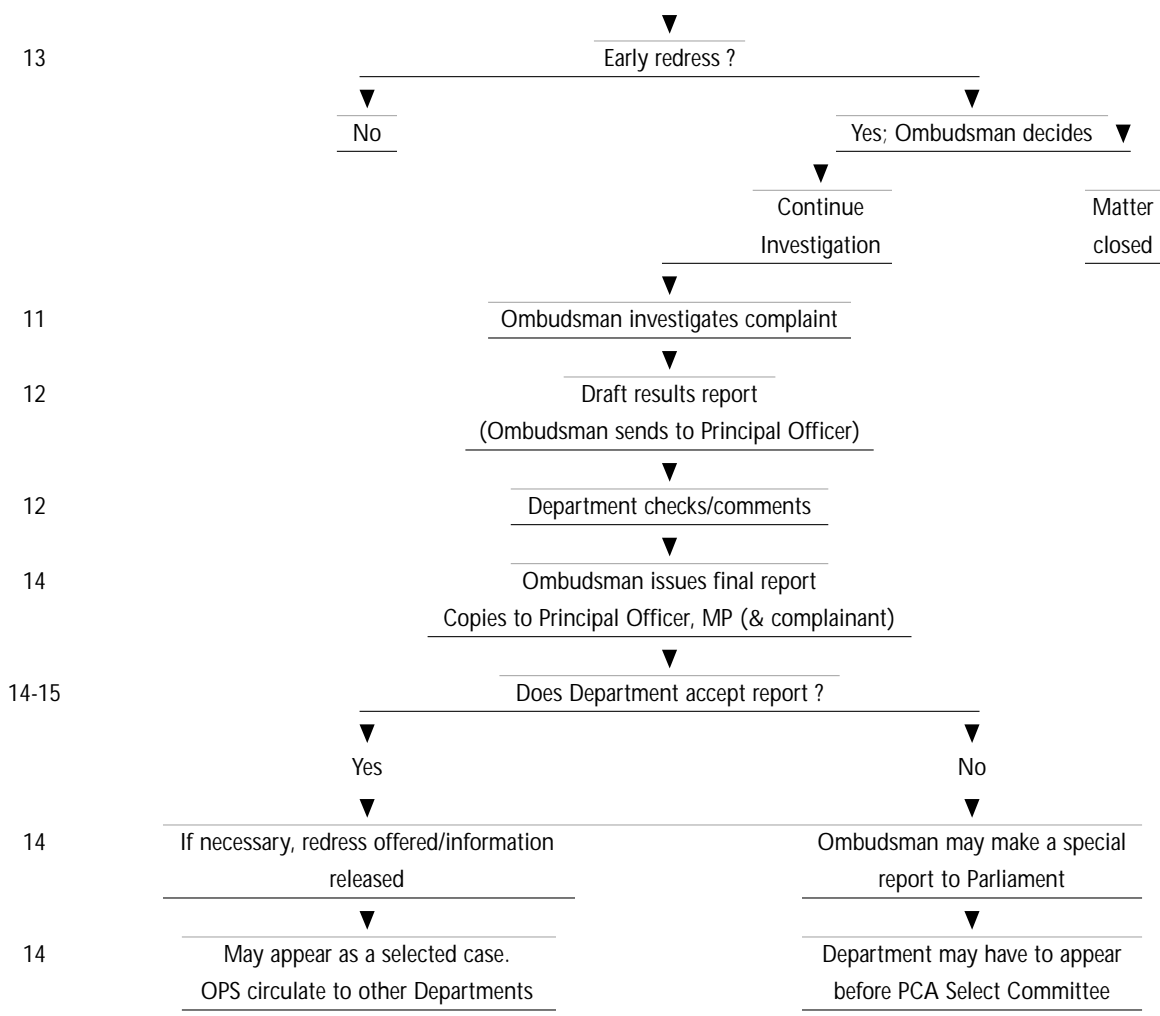
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