

HOUSE OF LORDS
HOUSE OF COMMONS
JOINT COMMITTEE ON DRAFT CONSTITUTIONAL RENEWAL BILL

Memorandum by the UK Parliamentary Ombudsman

1. In a letter to the Prime Minister dated 19 December 2007 (copy and enclosure attached) [Submitted but not printed] I set out my views on the constitutional role of the UK Parliamentary Ombudsman and drew attention to two specific issues: citizens' access to the Ombudsman; and the status of the Ombudsman's findings and recommendations. This note is intended as an addendum to the short paper enclosed with that letter and should be read in conjunction with it.
2. Since I wrote that letter the February 2008 Court of Appeal judgment in the litigation arising from my report on occupational pensions (Trusting in the pensions promise: government bodies and the security of final salary occupational pensions, 15 March 2006) has clarified the status of my findings and recommendations.
3. In effect, that judgment requires Government to have due regard to such findings and to give a reasoned account of any decision on its part not to comply with them. In my view, this provides an adequate framework for the future effective discharge of my functions and I am content to let the matter rest there.
4. I would, however, like to take the opportunity of drawing to the Committee's attention the wider significance of the work of the UK Parliamentary Ombudsman for the overarching questions that you have identified. In particular, I wish to comment on the aim of giving Parliament more ability to hold the Government to account.
5. As the Committee will no doubt be aware, the Office of Parliamentary Ombudsman was established by the Parliamentary Commissioner Act 1967 to provide an innovative means of investigating and exposing any misuse of Government power in its dealings with the citizen. The broader purpose (in the words of the preceding 1965 White Paper) was 'to humanise the whole administration of the state'.
6. In practice, the work of the Office, which now also includes the role of Health Service Ombudsman for England, has at its centre the investigation of complaints of maladministration brought by individual citizens against central government departments and other national bodies. The core business of the Office is this investigative activity. A key feature of the role of Ombudsman, and one that makes it different from the courts and tribunals, is the ability to detect patterns of administrative failure and to propose systemic remedy. Beyond that, there is the ability

to comment upon the way in which policy has been implemented and its impact on the citizen. I am mindful, for example, of my recent reports into the tax credit system, which proposed practical remedies for individual aggrieved citizens, pointed towards systemic failings in the operation of the system, but also asked searching questions about the ability of the policy design ever to deliver the intended results. The objective is therefore to deliver on the dual function of providing both individual and public benefit.

7. A distinguishing feature of the Office is that this investigative and remedial activity, this dual function, is exercised on behalf of Parliament. The Ombudsman has Officer of the House status and reports directly to Parliament, with specific oversight by the Public Administration Select Committee. Complaints must be referred to the Ombudsman through an MP. This so-called MP filter, although it complicates access to the services of the Ombudsman, does symbolise the close relationship between the work of the Ombudsman and the ability of MPs to hold the executive to account. The very fact that my findings are not binding upon Government further reflects the intention that those findings should contribute to the ongoing process of Parliamentary deliberation about the issues raised and so form part of the material available to Parliamentary debate.

8. This is an aspect of the Office's activity that has perhaps been given less prominence in the past than it might have been. The reasons for this are no doubt various. They include, I suspect, the fact that administrative justice and judicial review in particular have developed rapidly since 1967 and so have drawn particular attention to the role of the Ombudsman as an alternative form of dispute resolution. In fact, that dispute resolution function complements the larger role to which I am now drawing attention and is an essential ingredient of it. It should not, however, be taken to define the entire purpose of the Office.

9. The particular salience of these observations to the matters under consideration by the Committee relates to the overarching ambition of reinvigorating democracy and holding the Government of the day to account. In my experience, the encounters between citizen and state that generate the caseload of the Office are precisely the space where most people get their first, and often only, real taste of the democratic process. It is in these encounters that citizens get a sense of whether they count as individuals or are merely cogs in a bureaucratic machine. It is, for example, in the decision-making process about welfare benefits, tax liability, and health care delivery that citizens experience first-hand the way the state tackles the issues of most pressing concern to them and their families. To the extent that those encounters are marred by maladministration, the democratic process itself is damaged, with attendant loss of confidence and commitment on the part of the citizens who should be most engaged with it.

10. In short, I believe that Parliament in general and MPs in particular should be encouraged as part of the scrutiny of the Constitutional Renewal Bill to reflect carefully upon the resource made available to them by the Office of Parliamentary Ombudsman. When we talk about democratic deficit and the desirability of deliberative democracy, I suggest we should keep in mind the apparatus that Parliament itself, with more than a little foresight, put in place in 1967 to contribute precisely to the process of humanising the administration of the state that remains as urgent as ever

and is a critical constituent of the reinvigorated democracy that The Governance of Britain wishes to promote.

11. I would of course be very pleased to expand on these observations either in person or by further correspondence with the Committee.

11 JUNE 2008