

By email to:

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30 September 2011

*Dear Mr Kirby*

**JOINT RESPONSE TO THE OPEN PUBLIC SERVICES WHITE PAPER FROM  
THE PUBLIC SECTOR OMBUDSMEN FOR ENGLAND AND WALES**

**Introduction**

We welcome the Government's commitment in the White Paper to engage with the Ombudsmen about the proposals that affect them.

We share the view expressed at the launch of the White Paper that Ombudsmen have much to offer in ensuring fair access to public services for citizens. Ombudsmen have been described as one of the four pillars of administrative justice, alongside the courts, tribunals and internal complaints procedures.

We are also pleased to see the prominence given to the need to explore the role of ombudsmen throughout the White Paper, which mirrors the Law Commission's recent recommendation that there should be a wide ranging review of the public services Ombudsmen in England and Wales.

Ahead of the forthcoming engagement with Government we submit the following preliminary comments.

**Jurisdiction**

We believe that all publicly funded service providers, whether public, private or voluntary bodies, should be within the remit of the relevant Ombudsman and abide by the relevant complaints procedures. Public sector Ombudsmen already operate in this way. For example, if NHS care is delivered by a private provider or if a Local Authority exercises a function through another body, such as through joint arrangements or a contractor, the citizen will still have recourse to the Ombudsman.

**The right to choose**

It is suggested in the White Paper that the concept of maladministration could be enlarged to cover ombudsman oversight of the right to choose public services.



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Maladministration is not defined in legislation which provides flexibility for Ombudsman's findings in relation to citizen choice should statutory powers and duties be imposed on bodies in jurisdiction.

The Principles of Good Administration published by the current UK Parliamentary Ombudsman entail that the failure of a public authority to provide sufficient choice of services could be regarded as maladministration, for example, by reference to a breach of the principle of 'Getting it right'.

### **Enforcement**

Public sector ombudsmen typically exercise a mandate of influence not sanction. From that flows much that is permissive and flexible about the investigatory and adjudicatory process adopted.

The Law Commission has recently recommended that findings should be binding in the absence of successful judicial review but that recommendations should not be binding. This accords with the previously stated view of the public sector ombudsmen themselves and remains our position.

### **Complaints from prospective service providers**

Public sector ombudsmen have predominantly been a resource for individual citizens not for business or third sector organisations. However, Ombudsmen do take complaints from individuals on behalf of third sector organisations and small businesses if they make a credible case that they have suffered an injustice. They also have a role in securing fair treatment for voluntary sector organisations as set out in the Compact arrangements.

It is however important to maintain the distinction between the role of Ombudsmen and that of regulators. For example, during the debate about the proposed so-called 'Supermarket Ombudsman' the British & Irish Ombudsman Association successfully explained to the previous Government and the interested parties that the role proposed was in fact that of a regulator rather than an ombudsman. That body will be known as the Groceries Code Adjudicator.

### **Access to Ombudsmen**

To restrict access to public sector ombudsmen would appear to be at odds with the spirit of the White Paper. The Law Commission's view on the MP filter and related matters is persuasive and has our support: the current MP filter for access to the UK Parliamentary Ombudsman should be modified to provide a dual track approach (either direct access or via an MP, at the discretion of the complainant) and any other proposals for similar filters, for example, concerning access to the Housing Ombudsman in respect of the exercise of his social housing remit, should be dropped.

### **Profile and transparency**

We welcome the Government's proposals to give more profile and transparency to the work of the ombudsmen. We support adoption of the Law Commission's proposals in this area.

### **Published guidance**

We have noted the desire to streamline published guidance to help cut 'red tape'. However we would point out that it is a primary function of Ombudsmen to share lessons learned from complaints brought to them, in the wider public interest, and to effect change and improvement.

Whilst we understand the desire to contain the amount of guidance published, we suggest that publication by Ombudsmen should be protected.

### **Wide ranging review**

We believe that the White Paper proposals reinforce the Law Commission's recommendation for a wide ranging review of ombudsmen in the public and private sectors.


Such a review would be able to consider in depth whether there are any current gaps in ombudsman coverage of services, what other ombudsman institutions are needed and how they might be developed coherently, how far ombudsmen and other complaint handlers currently constitute a coherent 'system' and operate within clearly defined boundaries, and whether the concepts of 'maladministration' and 'service failure' should be defined or changed as threshold requirements.

In short, we view this as an opportunity for the fundamental review of design called for by the Law Commission and for the clarification of future policy development on ombudsmen, as well as of any resource implications of a change of role. We would be pleased to discuss further the terms of reference for such a review.

### **Conclusion**

We welcome the opportunity for review provided by the White Paper and we encourage the Government to take that opportunity wholeheartedly.

We look forward to engaging in further discussion and participating fully in the development process.

*Yours sincerely*  


**Ann Abraham  
UK Parliamentary Ombudsman  
and Health Service Ombudsman for England**

Also on behalf of:

**Mike Biles  
Housing Ombudsman**

**Peter Tyndall  
Public Services Ombudsman for  
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**Jane Martin  
Local Government Ombudsman  
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**Anne Seex  
Local Government Ombudsman**