

AGENDA ITEM

CORPORATE AFFAIRS COMMITTEE

26 OCTOBER 2005

REFORM OF PUBLIC SECTOR OMBUDSMEN SERVICES IN ENGLAND

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PURPOSE OF THE REPORT

1. To seek Members views regarding the proposals for the Reform of Public Sector Ombudsmen Consultation Paper that has been issued by the Cabinet Office.

BACKGROUND

- 2 Consultation Paper has been issued by the Cabinet Office in respect of the services offered by the three different Government Ombudsmen who have responsibility for the oversight of services in England.
- 3 The Parliamentary Ombudsman, and the Local Government Ombudsmen, investigate complaints that injustice has been caused by maladministration on the part of Government Departments, Local Authorities, and certain other bodies.
- 4 The Health Service Ombudsman investigates complaints that a hardship or injustice has been caused by the failure of the National Health Service to provide a service, by failure in service, or by maladministration.
- 5 At the present time, the legislation which governs the role and powers of the various Ombudsmen restricts the way in which they work. Whilst a number of the restrictions act as safeguards, certain of these restrictions have been found to be unhelpful to complainants in respect of the way that their complaints are investigated. Furthermore, some of these restrictions lead to inefficiencies and duplication in effort in the way that the Ombudsmen provide their services to the public.

CABINET OFFICE PROPOSALS

6 The Consultation Paper contains five proposals for Reform. These are as follows:

Proposal 1 – The Power to Work Collaboratively.

- 7 This proposal would amend the existing legislation to enable Ombudsmen to consult each other, share information, and work together on cases and issues that are relevant to more than one of their individual jurisdictions. At present, when a complaint raises issues that fall within more than one of their individual jurisdictions, it is necessary for the relevant Ombudsmen to undertake separate investigations. This situation causes a burden for the various Ombudsmen, and for the complainant who has to deal with more than one Ombudsman.
- 8 The proposed Reform would allow the Ombudsmen to undertake joint investigations of complaints (where appropriate), and to issue joint reports. This would avoid the different Ombudsmen having to undertake separate investigations into the same complaint. It would also permit them to offer a more streamlined and efficient service to the complainant.
- 9 In order to protect complainants, each complainant would be asked for their consent to joint working and investigations. The complainant could still ask for separate investigations to be undertaken if they so wished.
- 10 The proposals do not provide powers for the Ombudsmen to assume control over each other's jurisdictions. Each individual Ombudsman would remain responsible for the work on their part of the complaint, but, for example, there will be provision for the Ombudsmen to delegate functions such as collection of evidence to a single member of staff. The complainant would therefore receive a single investigation covering all aspects of their case, and will receive a single report on the outcome of their complaint.
- 11 At the present time, the Parliamentary Ombudsman will only investigate a case where this has been referred by the complainant's Member of Parliament. Under the proposals, where a complainant asks for a combined investigation, and the Parliamentary Ombudsman is contacted by one of the other two Ombudsmen, then the Parliamentary Ombudsman will write directly to the MP seeking their assistance. This is in order to avoid delay, and to avoid placing additional burdens on the complainant.

Proposal 2 – Delegation of Powers

- 12 This proposal would amend legislation to enable each of the Ombudsmen to delegate their functions to each others' staff if required. This will allow for collaborative working and will also allow a more efficient and streamlined service. As with the previous proposal, this would only happen after the complainant had given consent to collaborative working on the investigation of the complaint.

Proposal 3 – Power to Issue Guidance

- 13 Under the present legislation only a Local Government Ombudsman can issue guidance. The proposal would allow the other two Ombudsmen to similarly issue guidance. The Local Government Ombudsman guidance is of great value to Local Authorities: the proposal to extend this to the Parliamentary and the Health Ombudsmen is absolutely logical.
- 14 There would be a requirement on the other two Ombudsmen to consult before issuing guidance. This would be consistent with the current legislative requirement on the Local Government Ombudsman to undertake consultation.

Proposal 4 – Alternative Resolution of Complaints

- 15 Under the current legislation, the powers of all the Ombudsmen are limited to formal investigation of complaints. There is no room for more informal or alternative means of resolving a complainant's grievance or dispute, for example by mediation. The proposed change would give the Ombudsmen express powers to seek a resolution of a complaint in addition to, or instead of, conducting a formal investigation. The proposal would enable the Ombudsman to develop new means of resolving complaints which could lead to faster outcomes than at present, as currently long and detailed investigations are usually required. As well as being faster and more flexible, the proposals would make for more cost-effective management of complaints by the Ombudsmen.
- 16 As now, the way in which a complaint is managed and resolved will remain within the discretion of the Ombudsman. Under the new proposal, complainants will be safeguarded in that where an alternative or informal resolution has been attempted and failed, the Ombudsman would then treat the matter as not having been resolved. In these cases a formal investigation will almost always follow.

Proposal 5 – Exhaustion of Remedies

- 17 This proposed amendment would enable the Local Government Ombudsman to investigate a complaint that has not previously been notified to the Authority concerned in the small number of cases where the Ombudsman is convinced that no benefit would be achieved in requiring a case to first be considered by the Authorities. This power could be used, for example, where there is a matter of urgency, because of the state of health of the complainant, or where there is an irretrievable breakdown in trust or confidence between the complainant and the authority.
- 18 Additionally, this provision would enable the council to refer a complaint directly to the Local Government Ombudsman through the Courts or Complaints procedure where, for example, there is a history of dissatisfaction on the part of the complainant.
- 19 Both of these proposals appear to be sensible as there have been several cases over the past years where local investigation by the Council, prior to investigation by the Ombudsman, would have been pointless; would have created unnecessary

work for council staff; and would have resulted in delays and an unnecessary layer of bureaucracy for the complainant.

SUMMARY

- 20 The proposals contained in the Cabinet Office Consultation Paper are sensible, and should result in real improvements for complainants, especially those who have complex cases.
- 21 The proposals appear to maintain the necessary protection, in terms of rights and freedoms for complainants, that one would expect from a Public Service Ombudsman. Where collaborative working appears the most effective way to proceed, the complainants permission will be obtained. There should be no increase in the 'bureaucratic burden' on complainants or on the Council.
- 22 There are no significant cost implications in the proposals: in some cases savings could result through more efficient and streamlined working practices.

RECOMMENDATIONS

- 23 Members views are sought in respect of:
 - (1) Proposals contained in the consultation paper issued by the Cabinet Office in respect of Reform of Public Sector Ombudsmen Services in England.
 - (2) Whether Members wish to respond to the Consultation Paper, and if so the terms of the Council's response.

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BACKGROUND PAPERS

Consultation Paper issued by the Cabinet Office, August 2005: "Reform of Public Sector Ombudsmen Services in England".