



House of Commons
Public Administration Select
Committee

**Parliament and the
Ombudsman**

Fourth Report of Session 2009–10

Report, together with formal minutes

*Ordered by the House of Commons
to be printed 3 December 2009*

The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England, which are laid before this House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

Current membership

Dr Tony Wright MP (*Labour, Cannock Chase*) (*Chairman*)
Mr David Burrowes MP (*Conservative, Enfield Southgate*)
Paul Flynn MP (*Labour, Newport West*)
David Heyes MP (*Labour, Ashton under Lyne*)
Kelvin Hopkins MP (*Labour, Luton North*)
Mr Ian Liddell-Grainger MP (*Conservative, Bridgwater*)
Julie Morgan MP (*Labour, Cardiff North*)
Mr Gordon Prentice MP (*Labour, Pendle*)
Paul Rowen MP (*Liberal Democrats, Rochdale*)
Mr Charles Walker MP (*Conservative, Broxbourne*)
Jenny Willott MP (*Liberal Democrats, Cardiff Central*)

Powers

The powers of the Committee are set out in House of Commons Standing Orders, principally in SO No 146. These are available on the Internet via www.parliament.uk

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/pasc>

Committee staff

The current staff of the Committee are Steven Mark (Clerk), David Slater (Second Clerk), Pauline Ngan (Committee Specialist), Louise Glen (Senior Committee Assistant) and Su Panchnathan (Committee Assistant)

Contacts

All correspondence should be addressed to the Clerk of the Public Administration Select Committee, Committee Office, First Floor, 7 Millbank, House of Commons, London SW1P 3JA. The telephone number for general enquiries is 020 7219 5730; the Committee's email address is pasc@parliament.uk

Contents

Report	<i>Page</i>
Parliament and the Ombudsman	3
The MP 'filter'	3
Parliamentary debate	4
Formal Minutes	7
List of Reports from the Committee during the current Parliament	8

Parliament and the Ombudsman

1. This short report follows an evidence session with Ann Abraham, the Parliamentary and Health Service Ombudsman ('the Ombudsman'), on 5 November 2009. The evidence session was primarily concerned with the performance of the Ombudsman's office. However, we have decided to report on two wider issues about her relationship with Parliament, which are of increasing concern to the Ombudsman and to us.

The MP 'filter'

2. The Parliamentary Commissioner Act 1967 states that the Ombudsman may only investigate a complaint referred to her by a Member of the House of Commons.¹ This provision was included in the Act because of concerns that the role of the Ombudsman would undermine the position of Members of Parliament in pursuing the grievances of their constituents. This requirement, known as the 'MP filter', has been controversial since its inception, with calls for its abolition dating back to 1977.² The current Ombudsman and her predecessor have repeatedly expressed to us their frustration, reflecting that voiced by members of the public, that the 'MP filter' remains in place.

3. The Ombudsman told us that public awareness research conducted by her office suggested that the 'MP filter' can discourage individuals from coming forward with complaints.³

4. Moreover, the 'MP filter' can throw up serious anomalies. It only applies to complaints received by the Ombudsman in her role as Parliamentary Commissioner for Administration. Health service complaints do not need to be referred to her by a Member of Parliament. This can result in a situation where one aspect of a complaint requires a Member to refer it and another aspect does not.

5. The Ombudsman told us that the up-coming dissolution of Parliament prior to a General Election will result in a five-week period in which people will be unable to take their complaints to the Ombudsman at all because there will be no Members of Parliament.⁴ We suspect that this period will, in practice, be considerably longer in constituencies with new Members who are unfamiliar with the Ombudsman system and who will need time to set up a functioning office to handle their casework.

6. It is deeply unsatisfactory that citizens will be unable to take complaints to the Ombudsman during the dissolution of Parliament. Nearly ten years have passed since a Cabinet Office review of the Ombudsman's role found "almost universal dissatisfaction" with the 'MP filter' and strongly recommended its removal.⁵ A joint survey conducted by the our predecessor Committee and the Ombudsman's office in

1 Parliamentary Commissioner Act 1967, section 5

2 House of Commons Library, Standard Note SN/PCC/1887, *Reform of the Parliamentary Ombudsman's Role*, p 2

3 Public Administration Select Committee, 2009, *Work of the Ombudsman in 2008-09*, evidence taken before the Public Administration Select Committee, HC 122, Q 66

4 *Work of the Ombudsman* Q 68

5 Cabinet Office, 2000, *Review of the Public Sector Ombudsman in England*, p 20

2004 found a clear majority of MPs supported the abolition of the filter.⁶ Members of the public have direct access to all other UK public sector Ombudsmen and all Ombudsman systems in countries with comparable systems except France. The abolition of the ‘MP filter’ is long overdue. The addition of a single clause to the Constitutional Reform and Governance Bill would achieve this and we recommend its introduction as a matter of urgency.

Parliamentary debate

7. The Ombudsman published her report, *Equitable Life: A Decade of Regulatory Failure*, on 17 July 2008. The Government responded on 15 January 2009. On 5 May 2009 the Ombudsman published a report entitled *Injustice unremedied: the Government’s response on Equitable Life*.⁷ The report was laid before Parliament under section 10(3) of the Parliamentary Commissioner Act 1967. This allows the Ombudsman to lay before Parliament a special report where

after conducting an investigation under this Act, it appears to the Commissioner that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied.⁸

8. The report on Equitable Life was only the fifth such report laid by the Ombudsman since the creation of the office in 1967. The report criticised the Government for rejecting various of her findings of maladministration and injustice and breaking the link between injustice and remedy. In particular, it concluded that the Government’s response would leave unremedied a large proportion of the injustice resulting from maladministration that she had found.⁹

9. The Ombudsman made it clear to us in evidence that she considers her involvement is now at an end and, setting aside questions of law, it is for Parliament to judge the validity of the Government’s response.¹⁰

10. Equitable Life has been the subject of four debates in the House of Commons since the Ombudsman’s July 2008 report. Three debates were held in Westminster Hall, where no substantive motion is debated and no decision can be taken, and one in the Chamber on a Liberal Democrat opposition day. The Ombudsman considered that this had been unsatisfactory

There was a debate in the House, apparently secured with some difficulty, where, clearly, members were subject to party political pressure through the whips system, and I am not saying that everybody voted on that basis but that was there, that was part of what was going on, and the Government was able to act as judging its own

6 Parliamentary and Health Service Ombudsman, 2007, *The Parliamentary Ombudsman: withstanding the test of time*, HC 421, p 12

7 Parliamentary and Health Service Ombudsman, 2009, *Injustice unremedied: the Government’s response on Equitable Life*, HC 435

8 Parliamentary Commissioner Act 1967, section 10

9 *Injustice unremedied*

10 *Work of the Ombudsman* Q 23

cause. What I then see, and I think citizens at large see, is no visible distinction between Parliament and government.¹¹

11. When Parliament's Ombudsman takes the exceptional step of issuing a report indicating that the Government is failing to take steps to remedy injustice she has found it has caused, a mechanism is needed to ensure a debate and decision on how to respond, one on which Members can vote on party lines if they wish, but one which would not depend on either the Government or the Opposition to enable it to take place. Under the current system a debate can only take place either through the goodwill of the Government, which might well evaporate in the face of a potentially uncomfortable debate and a critical decision, or through that of an opposition party, which would be likely to frame the debate in a party political, rather than parliamentary, manner.

12. As an interim measure we recommend that the Government commits to providing a three-hour debate, in government time and on a substantive motion, on any future report by the Ombudsman concluding that injustice has gone unremedied and laid under section 10(3) of the Parliamentary Commissioner Act 1967. In the longer term, however, we do not think it is constitutionally appropriate for Parliament to have to rely on the Government's willingness to provide debating time on an ad hoc basis. We therefore also invite the Procedure Committee, in this Parliament or the next, to examine ways in which such a debate could be triggered under Standing Orders.

11 *Work of the Ombudsman Q 24*

Formal Minutes

Thursday 3 December 2009

Members present:

Dr Tony Wright, in the Chair

David Heyes	Mr Gordon Prentice
Kelvin Hopkins	Paul Rowen
Mr Ian Liddell-Grainger	Mr Charles Walker
Julie Morgan	

Draft Report (*Parliament and the Ombudsman*), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 12 read and agreed to.

Resolved, That the Report be the Fourth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Thursday 10 December at 9.45 am

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2009-10

First Report	Bad Language: The Use and Abuse of Official Language	HC 17
Second Report	Work of the Committee in 2008-09	HC 20
Third Report	Selection of a new Chair of the Advisory Committee on Business Appointments	HC 42

Session 2008-09

First Report	Lobbying: Access and Influence in Whitehall	HC 36 (HC 1058)
Second Report	Justice Delayed: The Ombudsman's Report on Equitable Life	HC 41 (HC 953)
Third Report	Ethics and Standards: Further Report	HC 43 (HC 332)
Fourth Report	Work of the Committee in 2007-08	HC 42
Fifth Report	Response to White Paper: "An Elected Second Chamber"	HC 137 (HC 59)
Sixth Report	Justice denied? The Government response to the Ombudsman's report on Equitable Life	HC 219 (HC 569)
Seventh Report	Further Report on Machinery of Government Changes	HC 540
Eight Report	Good Government	HC 97 (HC 1045)
Ninth Report	The Iraq Inquiry	HC 721 (HC 992)
Tenth Report	Leaks and Whistleblowing in Whitehall	HC 83

Session 2007-08

First Report	Machinery of Government Changes: A follow-up Report	HC 160 (HC 514)
Second Report	Propriety and Peerages	HC 153 (Cm 7374)
Third Report	Parliament and public appointments: Pre-appointment hearings by select committees	HC 152 (HC 515)
Fourth Report	Work of the Committee in 2007	HC 236 (HC 458)
Fifth Report	When Citizens Complain	HC 409 (HC 997)
Sixth Report	User Involvement in Public Services	HC 410 (HC 998)
Seventh Report	Investigating the Conduct of Ministers	HC 381 (HC 1056)
Eighth Report	Machinery of Government Changes: Further Report	HC 514 (HC 540, Session 2008-09)
Ninth Report	Parliamentary Commissions of Inquiry	HC 473 (HC 1060)
Tenth Report	Constitutional Renewal: Draft Bill and White Paper	HC 499 (Cm 7688)
Eleventh Report	Public Services and the Third Sector: Rhetoric and Reality	HC 112 (HC 1209)
Twelfth Report	From Citizen's Charter to Public Service Guarantees: Entitlement to Public Services	HC 411 (HC 1147)

Thirteenth Report	Selection of a new Chair of the House of Lords Appointments Commission	HC 985
Fourteenth Report	Mandarins Unpeeled: Memoirs and Commentary by Former Ministers and Civil Servants	HC 664 (<i>HC 428, Session 2008–09</i>)
Session 2006–07		
First Report	The Work of the Committee in 2005–06	HC 258
Second Report	Governing the Future	HC 123 (<i>Cm 7154</i>)
Third Report	Politics and Administration: Ministers and Civil Servants	HC 122 (<i>HC 1057, Session 2007–08</i>)
Fourth Report	Ethics and Standards: The Regulation of Conduct in Public Life	HC 121 (<i>HC 88, Session 2007–08</i>)
Fifth Report	Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme	HC 523 (<i>HC 922</i>)
Sixth Report	The Business Appointment Rules	HC 651 (<i>HC 1087</i>)
Seventh Report	Machinery of Government Changes	HC 672 (<i>HC 90, Session 2007–08</i>)
Eighth Report	The Pensions Bill and the FAS: An Update, Including the Government Response to the Fifth Report of Session 2006–07	HC 922 (<i>HC 1048</i>)
Ninth Report	Skills for Government	HC 93 (<i>HC 89</i>)
First Special Report	The Governance of Britain	HC 901
Session 2005–06		
First Report	A Debt of Honour	HC 735 (<i>Cm 1020</i>)
Second Report	Tax Credits: putting things right	HC 577 (<i>HC 1076</i>)
Third Report	Legislative and Regulatory Reform Bill	HC 1033 (<i>HC 1205</i>)
Fourth Report	Propriety and Honours: Interim Findings	HC 1119 (<i>Cm 7374</i>)
Fifth Report	Whitehall Confidential? The Publication of Political Memoirs	HC 689 (<i>HC 91, Session 2007–08</i>)