



House of Commons
Public Administration Select
Committee

**Work of the
Ombudsman in
2008-09**

Oral and written evidence

Thursday 5 November 2009

*Ann Abraham, Parliamentary and Health
Service Ombudsman, Kathryn Hudson, Deputy
Ombudsman, and Bill Richardson, Deputy Chief
Executive, Office of the Parliamentary and
Health Service Ombudsman*

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The Public Administration Select Committee

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Oral evidence

Taken before the Public Administration Committee on Thursday 5 November 2009

Members present:

Dr Tony Wright, in the Chair

Mr David Burrowes
Paul Flynn
David Heyes

Kelvin Hopkins
Mr Gordon Prentice
Mr Charles Walker

Witnesses: **Ms Ann Abraham**, Parliamentary and Health Service Ombudsman, **Ms Kathryn Hudson**, Deputy Ombudsman, and **Mr Bill Richardson**, Deputy Chief Executive, gave evidence.

Q1 Chairman: Good morning everyone. The Committee is delighted to welcome Ann Abraham, the Parliamentary and Health Service Ombudsman, Kathryn Hudson, the Deputy Ombudsman, and Bill Richardson, who is the Deputy Chief Executive. This is one of our regular meetings with you, Ann. It is always a pleasure, and I understand that yesterday you became the longest ever serving Ombudsman, which is a considerable achievement.

Ms Abraham: Thank you.

Q2 Chairman: I speak as the longest ever serving Chairman of the Public Administration Committee!

Ms Abraham: Precisely. Maybe we could form a support group, Chairman! It was a very nice day yesterday, on my seventh anniversary, and, of course, not only the longest serving, as one of my predecessors managed seven years to the day but not seven years and a day, but because the rules have changed, and the law has changed, indeed, in terms of my successor, nobody will be able to serve more than seven years in the future. So somebody sent me a card saying, "Congratulations on becoming unique".

Q3 Chairman: Briefly, how would you describe any change in the office since your arrival?

Ms Abraham: Goodness. As the Committee is well aware, there has been considerable change in the office in many ways, some of it around the infrastructure—just the way we work, the technology, the systems, the staffing, training and so on. I suppose two things stand out for me over that period. One is the NHS complaints reforms, which came in in April this year, because actually much of the time that I have been in office I have spent arguing for change and that change has come about. So that is a huge change and a big thing for us to absorb this year. I suppose the other thing is about the change in the nature of the relationship with parliamentary bodies and the way, I think, my sense is, that we are dealing with much more complex, sometimes controversial, parliamentary investigations in terms of the cases we take on for a full investigation.

Q4 Chairman: As you know, we ask you questions always about some performance aspect of the office. Is what you describe now, the fact that these investigations are becoming more complex, why it is proving extremely difficult to get the length of time of investigation down? I see that in the current year, 2009/2010, you expect to deal with only 55% of complaints investigated within 12 months. That is a long time and a small percentage, is it not?

Ms Abraham: It is, but in the same corporate business plan which sets out that 55% figure, you will see that there is a two-year plan and next year's target is 90% within 12 months. So the 55% figure is not one that any of us are comfortable with, but it is, in effect, a function of the fact that we started the year with quite a number of cases that had had to wait some time before we could commence investigations. So it would have been dishonest to say, given there were a number of cases in the pipeline that were already old, that we could somehow complete those in this year in a timescale which was less than is set out there, but that is very deliberately why we produced a two-year plan which said 55% is not okay, and we have a plan which will take us to a 90% figure in 2010/2011. I am sure Kathryn can tell you that we are on track to do that.

Q5 Chairman: Do you want to come in?

Ms Hudson: Yes, there is a considerable amount of work going on in the office at the moment which is about reducing the length of time that investigations take, and that is partly to do with getting the processes for the office work to move smoothly through so that from the time when an inquiry first comes into the office we are able, fairly speedily, to get to that, to ask for additional information that we need, to seek clinical advice and then to move through to making a decision on accepting for investigation. One of the reasons why we have a number of cases that prevent us from reaching a higher target this year is that we were rather slower in doing that last year; so we have started to speed that up. We are also adopting a rather different approach to the way in which we manage investigations, which could loosely be described as project management but I would prefer to consider just in terms of: let us think about how we move this through, how we keep things going, how we avoid

things sitting and waiting when there is more that we can do that moves the process on. We are beginning to see, with the investigations that we have taken on in this current year, evidence that that is having an effect; not the sort of startling effect that then halves the length of time it takes to do an investigation, but a steady drawing back of the amount of time that we are spending on individual investigations because we are cutting out time when we are waiting for things to happen, and that, I think, will help us to achieve the 90% target next year.

Q6 Chairman: Even with a 90% target, expecting people to wait up to 12 months for the outcome of an investigation seems an unconscionably long time, which is why people write to me all the time, and write to their Members of Parliament, about waiting forever to hear the outcome of investigations that are going on. Is it because the investigations are much more complex than they used to be? I think somewhere in your submission, Ann, you do say that, in fact, the old individual cases seem to be declining and there are more systemic issues.

Ms Abraham: I think, in terms of investigations, that is right, the memorandum does say that the nature of cases that we take on for full investigation is shifting. That does not mean that we are not seeking to bear down on the timescales that those do take, and I think it is important (and I hope the Annual Report has tried to give a flavour of this) to get the message across that we do look at and assess thousands of cases. It is only a few hundred that go through for full investigation, but we consider thousands of cases. We intervene, short of an investigation, in quite a large number where we get some kind of positive resolution. So a lot is going on at the front end in our customer services and assessment process, and then our investigation directorates are taking for a full investigation a relatively small proportion of those. You say 12 months seems to be very long. I am not so sure of that. To complete that sort of investigation with the volume of material sometimes that we are looking at, with needing to ensure that the process is fair, that we are giving bodies in jurisdiction the opportunity to make sure that we have got our facts right and to satisfy ourselves as to the facts before we move into drawing conclusions; we then have processes of sharing draft reports sequentially if we are minded to uphold a complaint. All of this takes time, and very often complainants will say to us, "I need more time to comment on a draft report", so I do not think it would be realistic of me to say that we could look to drive down those investigation times in the near future beyond the 90% within 12 months, but there is, as Kathryn says, a lot of work going on to examine our processes to see what we can do, and some cases are coming through this year rather more quickly than we had even anticipated. So I would not want to give you an expectation that we could somehow keep bearing down on that.

Q7 Chairman: But when I asked what had changed in your office during your time, it seemed to me that the big change is this move to sort things out lower down the chain, rather than take things on for what we used to call the Rolls Royce treatment.

Ms Abraham: Absolutely.

Q8 Chairman: If you look at the figures, in 2006/2007 you were taking 1,682 complaints for investigation, and in 2008/2009 that was down to 401. That is a huge change in the number of cases being taken on for investigation, is it not?

Ms Abraham: Of course, we talked about this, I think, a bit last year and we subsequently wrote to you about the way in which our methodology and our terminology had changed over the years. I think it is only in the last two or three years, really, that there is a consistency of terminology which enables you to say actually those figures are comparable. I think that historically a lot of the thousand or more cases that you quote would have been called an investigation when, in fact, they were much nearer what we would now call an intervention. So I do not think it is very easy to track it, but I understand entirely why you ask me the question. That is why, over the last couple of years, we have tried to say a great deal more in the Annual Report about the sort of intervention work we are doing, and we will continue to develop that in future years as well. I do not think we are doing a huge amount less work. There is a distinction, I think, to be drawn now between our parliamentary work and our health work, because for the first time, in my experience, we are now having this direct dialogue with the NHS. Generally, if we say to a parliamentary body in jurisdiction, "Somebody has come to us. We have had a look at it. We think you could sort this out", the parliamentary body is more likely to say, "Okay, fine, we will take this back and we will take your steer on this and you will not see that again." If we say that with an NHS trust or a GP practice, I think they will come back to us and say, "We are not sure what you are on about." So that kind of development of our relationship with the NHS people is to be able to do those kinds of interventions. I think you will see a very different picture at the end of this year in terms of the number of health cases we take on for investigation and the number of parliamentary ones, and the parliamentary ones are likely to have those features of a cluster of cases where there is perhaps a similarity of issues across them.

Chairman: This is a big change, is it not? For the first time ever, I think you have got more health complaints coming in than parliamentary complaints; so there are big changes going on. I want, shortly, to ask you some larger questions about your office and some current issues, but just to stay with the performance side for a moment, I think David wants to ask something.

Q9 David Heyes: "More rigorous at the assessment stage" means many fewer cases get through. You made a planning assumption for 750 cases being approved for investigation last year. In fact, there were only 401. That is almost half of what you had

anticipated. What went wrong in your assessment of the outcome of your more rigorous assessment process?

Ms Abraham: I think Kathryn may want to come in here to perhaps provide some of the detail of this, if that is okay. Last year, for us, was very difficult to plan for because of the huge change on NHS complaints, and I think there were a number of things going on, not being clear about how the health complaints transition would actually impact on us. Again, I would go back to the sorts of changes in the relationship with parliamentary bodies in jurisdiction where, if you make your planning assumptions based on what had happened previously and project forward and do the best you can to think about the context in which you are going, actually the changes are happening more rapidly than that. Therefore, the accept rates have been low. We were so concerned about that that we went back and did an exercise to go back through cases that had been assessed and had not come forward for investigation and, actually, there was a very strong view that what was happening there was okay and that we had made the right decisions, but maybe Kathryn could expand on some of that.

Ms Hudson: Could I just add to that in terms of the health investigations? We were projecting at the beginning of the year not knowing what the transition process would be from the Healthcare Commission to ourselves, and, in fact, that transition process started rather earlier than we expected, which meant that we did not receive as many investigations to do against the Healthcare Commission. It became very clear that, as their work wound down, we were going to need to move to substance in some of those cases rather than the investigations we had undertaken against the Healthcare Commission, and we started to move into that process towards the end of last year when originally we had thought that the full impact of that would not hit us until April of this year. I think that probably also accounts for some of the reduction in the number of cases that we took on in that year.

Q10 David Heyes: But a work load that was a little more than half of what you had planned for was accompanied by an easing of your targets. You have explained the temporary easing of your targets for the current year. It would seem, would it not, that if you are only getting half the work you expected to get, it would have been easy to reach your targets, that you would not have had to ease them. Is that too simplistic a view?

Ms Hudson: One of the things we were doing during the course of last year was to recover from a situation in which more work had come into the office than the office was able to deal with, and I think that was discussed quite fully last time we were before you. It was important for us that we had cleared that backlog of work before the new work came in from the Healthcare Commission and that, therefore, is where our resources were going, but, inevitably, some of the investigations waited rather longer than we wanted before we could get to them to start the work, and that is the reason why we have

brought into this year a number of cases which will (indeed some already have) become old before we could finish the work on them, and that was why we set the lower target of 55% for this year. Moving on into next year, we should not be in the same position, because we will have cleared that old work and will also have got ourselves properly acquainted with the new level of work coming in, as a result of the work that now comes to us instead of the Healthcare Commission. So this is a transition.

Q11 David Heyes: I think you were saying that you looked again at the rigor with which you were making judgments about cases and whether to take them on. That would be a cause for concern, if you thought there was a risk that you were being too rigorous and rejecting cases that had merit in them. I think you said you have been back and looked at that. What was the process for doing that, to ensure that you were not being too hard on your decisions?

Ms Hudson: What we have been doing, particularly with some of the parliamentary cases where the number that we have accepted for investigation has fallen during this year, was to go back and look at the way in which those decisions were made using two or three senior members of staff in the office really to go through those cases.

Q12 David Heyes: On a sampling approach?

Ms Hudson: On a sampling approach, yes—we could not go back through the lot—just to make sure that the decisions we made were reasonable ones. What we found was that some of them were taking rather longer than we would have hoped, in terms of getting to a decision point on whether we were taking them for investigation. That is one of the reasons why we are not yet hitting our 80% within 40 working days. We were spending longer but, in spending a bit longer, were able to talk to the agency involved and, as Ann said, persuade them, in some cases, that they might wish to look again at the work that they had done before we took something on for investigation. What happened as a result of that is that many of those cases then were dealt with at an earlier stage, did not need to go through to investigation, but, nevertheless, the complainants had received a good outcome.

Q13 Mr Burrowes: In terms of improving complaint handling by the NHS at a local level, you say in your memorandum that you experienced delays in obtaining from some NHS organisations the information needed to complete your assessments. Just looking through the report, have you named them and, if not, why not name and shame them to help them learn from their mistakes to make sure it is better? Perhaps you could give us some examples of those organisations.

Ms Abraham: I am not going to name anybody today, but it is of concern to me if we actually have problems doing our work because we are frustrated, delayed—more likely delayed than frustrated—by anybody in jurisdiction that does not co-operate with us quickly and appropriately. I think, at the moment, the reason that we are not in the name and

shame business is because those conversations are still going on and, in many ways, the dialogue with the NHS is a very new one. What we are planning to do, though, as a regular event, in addition to the Annual Report that you are used to seeing, is an annual report on NHS complaint handling performance. We will need 12 months data under our belt before we can do that, and, clearly, it will therefore be well into next year before we can publish it, but we have plans well in train now to make sure that we can put information into the parliamentary and the public domain about NHS bodies and how they are doing. Some of that will be about the good and the poor performers, some of it will be about the issues and the trends and the overall standard of complaint handling performance across the NHS. So we have a piece of work in train, but at the moment I think we are continuing the conversations privately and fairly successfully. We do very much make it clear to individual case workers that they must not tolerate this sort of lack of response, and usually, I think, it is not wilful, it is about people having too much to do, but it simply is not acceptable and they must escalate those sorts of concerns very quickly.

Q14 Mr Burrowes: Following on from your comment that you are focusing on looking at systemic issues in order to make the best use of your investigation time, do you link in individual complaints about, say, an NHS trust which may well in time, over perhaps a period of time, show some systemic issue which, if put together, those particular individual complaints are particularly significant and would warrant investigation?

Ms Abraham: Absolutely. I think it is true to say that no complaint that comes to us is looked at in isolation any more, and we have a well developed system now in our casework management system—forgive me—what we call a “corporate taxonomy”. Basically, it is a series of key words which will be around the area in which the complaint is happening, whether this is an acute trust or a GP practice, whether it is about delaying treatment or the attitude of staff. So there is range of data that we are collecting so that we can make connections across cases, and every assessment will have a precedent check looking at what else is in the office from that trust, from that GP practice, from that organisation, whether there are similar issues. So the office, I think, is pretty good, as part of a broader knowledge and information management programme, at making these connections across different complaints.

Q15 Mr Burrowes: Finally, in terms of the accountable body with perhaps moves to transfer or share accountability in relation to healthcare issues, would you envisage your role in terms of challenging perhaps local authorities and other organisations that are not necessarily the traditional accountable bodies in health?

Ms Abraham: I am not sure I understand that question. Is this empire building?

Q16 Mr Burrowes: No, no. For example, say you have traditional primary care trust responsibilities in public health which come under the responsibility (such as in Hammersmith) of the local authority, would you see also the role very much in terms of looking at their systems and challenging their procedures?

Ms Abraham: I think there are a number of things there. Clearly, the extensive powers that the Ombudsman has mean we can obtain information from any source, pretty much, whether it is a body in jurisdiction or not. So sometimes, in order to look at what has gone wrong here, we might need to look at the interface between a health body and a social services body, and so on. We, obviously, have powers to do joint work with the Local Government Ombudsman, and that is an increasing aspect of our work, and sometimes we look at those cases in the round together because, actually, if you are looking at it from the service users’ perspective, you cannot make this distinction between social services’ responsibilities and health responsibilities and, therefore, we would come together and look at it in the round. So we have got quite a lot of scope there, but, clearly, we need to stop short of making findings in relation to bodies that are not in jurisdiction.

Chairman: Perhaps we can look at the questions about what the office does, as opposed to some of the constitutional things.

Q17 Mr Prentice: We read recently about all these botched operations in the private sector—hip operations and so on—and remedial work had to be done by the good old NHS. I just wonder how many of these complaints that you talked about in NHS organisations are about private sector bodies that the NHS now contracts with: because the NHS is increasingly fragmented. So what about investigations on these private sector botch-ups?

Ms Abraham: I suppose the starting point for this, as I see it, is to follow the money. If this is NHS funding, then it is within jurisdiction. So it really does not matter whether an operation, a procedure, a treatment takes place on NHS premises or premises that are contracted out, as long as the NHS funding is what we can detect, then we can look at a complaint. So that is part of an answer. I think there is a much more problematic issue, which is at what point does private healthcare need an ombudsman?

Q18 Mr Prentice: I have touched on this before. Independent treatment centres, and so on: to what extent do they co-operate with you? To what extent are they obliged to co-operate with you? When you told David earlier about delays in getting some of the information, is it more difficult to screw information out of these private sector organisations than traditional NHS bodies?

Ms Abraham: Not noticeably, I would say, but I would also say that actually this is not a substantial component of our work and, therefore, not a big issue for us at the moment. I do not know to what extent the Committee will be up to speed on the changes to the Local Government Ombudsman’s jurisdiction in relation to self-funded social care. I

cannot exactly remember, I think it is next October, the Local Government Ombudsman will have jurisdiction to take complaints from people who are funding their own care in a social care context. It does not seem to me to take a lot of imagination to realise that it is not going to be terribly long before the broader issues of self-funded healthcare start to come in. Again, we have got this mixed economy. It is quite complex, it is quite difficult for service users to find their way around and there is not really, there is not at all, I think, a coherent policy approach in government that I have detected which is trying to make these connections in a sensible way. We have got personal health budgets coming on, indeed, within the Ombudsman's jurisdiction. Again, if you follow the money or follow the personal health budgets, that might be being spent anywhere. So I think we are all going to have to grapple with these things, and probably sooner than we might like.

Q19 Mr Prentice: That is very interesting. Can I ask you a final question again getting back to these delays. Is there a protocol in these NHS bodies that when they get a request from you, the Ombudsman, they are expected to respond within three months, two months, or whatever?

Ms Abraham: Indeed. In fact, as part of supporting the introduction of the complaints reforms, we ran a series of regional conferences for NHS complaints managers in June and July this year, and we had over 300 NHS complaints managers come to the sessions that we did, and I was involved in all of them personally. We have also, on our website, what we describe as an "extranet", which is basically a dedicated piece of the website for NHS Complaints Professionals, and that sets out for them our expectations in terms of responding to us within certain timescales and how we expect the information to come to us. So we have put out very clearly for people what our expectations are.

Q20 Mr Prentice: I should know this, but what is the expectation?

Ms Abraham: I knew you were going to ask me that. I think it is two weeks for an initial assessment.

Ms Hudson: Yes.

Ms Abraham: Quite often it will be three weeks for a draft report, and so on, but, I think, again, we have not had this direct dialogue with the NHS that we have had with parliamentary bodies for so long. Parliamentary bodies know what we expect.

Q21 Chairman: Could I turn to broader territory, there are wider constitutional things that Paul wants to come in on. In your memorandum to us, where you talk about your special report, Equitable Life and all the rest of it, you refer to the fact that on two major recent occasions people have come to you, you have dealt with their cases and then, because of the nature of the Government's response, they have felt obliged to go to the courts. You expressed grave concern about this as a trend and as a development, and you say, "Unless a parliamentary solution is found to cope with situations, however rare they might be, and one of my reports is contested by the

Government, resort to litigation by complainants looks likely to be repeated in the future." You go on to say, "This has the potential to undermine faith in the parliamentary process and the ombudsman system for the resolution of grievances which Parliament has created on its behalf." You obviously feel that this is an extremely serious development and you want Parliament to be aware of it, so could you say a little bit more about it?

Ms Abraham: Indeed. I think there are a number of linked issues around the constitutional position of Parliament's Ombudsman that I hope we might spend some time on this morning, and certainly the importance of the close relationship between my office and Parliament, between my office and MPs, "the MP filter", again, on-going issues, but this promotion and safeguarding of the constitutional position of Parliament's Ombudsman has given me huge pause for thought in recent times and very particularly, I think, in relation to recent events with Equitable Life, but not exclusively. I suppose I would start by reminding us all that there are hundreds of cases, and there have been thousands of cases over the years, where the office is securing good outcomes for people, obtaining compliance with recommendations in 99% of cases, and that, therefore, this is not about the totality of our work but these rare occasions when the Ombudsman is unable to secure what she or he considers to be an appropriate remedy because the Government disagrees. If I could perhaps take some words from a complainant who wrote to us, who says, "What happens now? The Ombudsman upheld our complaint after a long but thorough investigation. A parliamentary committee has reinforced that, but the Government, the guilty party, has rejected this independent assessment. We know that Parliament's role is to scrutinise the Government, but nobody can tell us what happens next. We feel like we are left in limbo and we wonder whether it was worth it." I think my question to Parliament is: what am I supposed to say to the complainant who says, "What happens next?" What we have seen happen does not seem to me to answer the question in the way that is likely to leave our complainant feeling rather less bewildered.

Q22 Chairman: What about an answer which says that Parliament in 1967 expressly said that it did not want the Parliamentary Ombudsman's recommendations to be binding? Is that not the answer?

Ms Abraham: I think it is part of the answer, but I do not think it is the whole story. I start really with the legislation. Yes, the legislation makes provision for me to lay a report before Parliament where there is, as I see it, unremedied injustice. I cannot imagine that Parliament intended that government should be allowed to be judge in its own cause, and I think that is where I start to struggle. There are some legal tests (and we have seen a lot of activity in the courts in recent years) which, it seems to me, are properly for the courts to decide. So the Ombudsman might have erred in law, the process might have been wholly unfair, or, actually, it is a fundamental point of law

that the Ombudsman has just got wrong, or the Government might have cogent reasons—because that is the language we now understand—for disagreeing with the Ombudsman’s findings of maladministration and injustice; and we know because we have had recent court judgments that say that the Government can have cogent reasons, but actually what we also know is that it is a very tough thing for the Government to be able to demonstrate; and the Government has got its fingers burnt twice now in the courts in trying to demonstrate cogent reasons and has really struggled to do so. Those are the legal questions.

Q23 Chairman: Yes, but what I am asking you, Ann, is what you think the remedy to this is. What I am asking you is, have you now come to the conclusion that the remedy is that the Ombudsman’s recommendations should be binding?

Ms Abraham: No, I have not come to that conclusion. What I am saying is you put the legal questions to one side and then, I think, this question, the 10(3) report issue, comes into sharp relief over questions of remedy. If my thesis here (which I will try and explain to the Committee) is not persuasive, then I suppose it does take you to the question of what else would actually give the citizen the answer to the question that they pose to me, and, I think, pose to the Committee and pose to Parliament? I think it is about remedy: I do not think it is about findings. I think what the court did in the Equitable Life case recently is say that the Government has not demonstrated cogent reasons, in the main, for any disagreement with the Ombudsman’s findings of maladministration and injustice—so we are back pretty much where we were on that front—but, actually, it then went on to say, on questions of remedy, the Government is entitled to have a different view here but that is a matter for Parliament. There is nothing unlawful about what the Government has done, but this is now for Parliament. I think the question which certainly, listening to the debate on 21 October, I was hearing asked and I certainly asked, and I understand that the public at large would want to ask, is what happens in a situation where the Government decides that a different remedy is appropriate and explains its reasons for taking that view? What I heard one member say is, “Surely this is the kind of instance in which the Government should be introducing the debate, presenting it to the House and allowing the House the final word.” Is that a forlorn hope?

Mr Walker: Yes.

Q24 Paul Flynn: You make your point very strikingly, and you comment about the debate the other day, about the defects in our House procedures, in that we discuss these matters in opposition debates which are traditionally seen as part of the arm-wrestling match in this place, and people vote on tribal lines, not on the merit of the case, and that might well be a very serious defect in our own procedures here. Hardly any members of this committee are influenced by the whips at all,

may I say, but, unfortunately, that is not true of most MPs. The result is that we really do not have a forum in the House for making fair judgments on these matters. What would you suggest? You make a point on what the Chairman said in that debate drawing attention to this, but most MPs who voted on that debate last week were bound, not by the arguments, but by their tribal loyalties?

Ms Abraham: That is what I observed, and I think that is what the complainants, that is what citizens at large observed. 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 judge in its own cause. What I then see, and I think citizens at large see, is no visible distinction between Parliament and government.

Q25 Paul Flynn: I think possibly you have made the point, but do you think that your decision that you made on Equitable Life was one taken on the merits of the case but you are free of any obligation to consider the financial consequences, which might involve (we have heard) a figure of four billion pounds, and the Government, whatever colour, is going to have to take a decision in a matter of months’ time whether it is reasonable for them to pay the compensation, entirely justified as it may be, while they are actually cutting in essential areas. Is it not right that the supreme judgment has to be made by the Government of the day?

Ms Abraham: I thought the supreme judgment had to be made by Parliament, but maybe I need to go back and re-read my constitution.

Q26 Paul Flynn: That is a very quaint old-fashioned view.

Ms Abraham: But I like to hang on to it.

Q27 Paul Flynn: Indeed; do not we all. I have got to leave, I apologise, I have got a question in the House shortly, but on the question of your long period of office, on which we congratulate you, are there any real disadvantages, and is it not right that there should be restrictions because you find yourself in the position where, in your report on ten years of regulatory failure, part of that failure was your own: you had to reverse a decision that you had taken in the past. Were you tempted to recommend that you should sack yourself? Is it not right, in general terms, with a lesser person in your office, that they would be very inhibited against deciding that their past decision was a wrong one, and that is one of the basic reasons for churning people over in these top jobs? Is it not, generally, a bad thing for someone to serve for seven years?

Ms Abraham: I do not think it is a bad thing for people to serve for seven years. I have always talked about this as my ten-year project. I have always said I am not going to be around for more than ten, but I am not done yet, and I do actually think that extended periods of office can be hugely problematic

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and, therefore, would be concerned, I think, if you see these things extending on. I took the view, in the particular instance that you talk about, that I should, in the face of the evidence, having looked at the totality of the picture, actually say I got it wrong first time round. I can go into that, but I thought it was more important to be open about it and to complete the work. Of course, the Committee will know that there is a mechanism for removing the Parliamentary Ombudsman, which, of course, is with the House. So if the House had felt that that was the right answer, no doubt that is what it would recommend.

Q28 Paul Flynn: We are doing a report into official language and the clarity of language. We know that the Plain English Campaign was set up because of an incomprehensible document that somebody did not understand and lost their life as a consequence? Do you think this area of language that is in official documents, that people do not generally understand people of normal intelligence would not know, could be seen as maladministration and a matter which should be investigated by yourself? Do we need a mechanism for dealing with that?

Ms Abraham: I think if it got to the point that it was actually incomprehensible, then it would be in contravention of my principles about providing information that is clear, accurate and not misleading, and all those documents have actually been through a plain language check before they were published. It always is salutary when you write ten words and they come back and explain that you can actually do this with five, and you think, yes, they are absolutely right about this. So, yes.

Q29 Chairman: That is a good answer. So you are open to the suggestion that this kind of monstrous public language might come under the orbit of maladministration.

Ms Abraham: Yes, I can see circumstances in which it could.

Chairman: Thank you very much for that. Charles.

Q30 Mr Walker: We are a non-partisan committee, so I hope my colleagues do not think this is a partisan point, because when we are in government we will be equally as duplicitous as backbench Members of Parliament. The truth on Parliament and Equitable Life is that 116 Labour MPs signed an EDM calling for fair recompense to Equitable Life policyholders. When it came to the vote a couple of weeks later, 89 of those 116 voted with the Government. That is why EDMs in this place are such a total fraud, and I would advise anybody in the audience not to get over-excited by them because MPs will just sign them. Like throwing confetti, they mean nothing. My research may have got those numbers wrong. I notice you wrote that down. Why do you not go and have a look.

Ms Abraham: I wrote something else down actually.

Q31 Mr Walker: If Parliament had acted on what was on the EDM, Equitable Life policyholders would have been compensated or received

compensation, but Parliament, for whatever reasons, because the whips twisted arms and people thought about their careers, decided not to follow perhaps their hearts on this but follow their heads or follow their careers or follow their whips. Anyway, we still are left with the Equitable Life scenario. Have you given up all hope that these policyholders will receive any form of compensation in the near future, and that is 18 months to two years?

Ms Abraham: I am renowned for my optimism, so I rarely give up hope. I have said, though, on a number of occasions, that my part in this is complete in that I have conducted an extensive investigation, produced a report, have come to this Committee to talk about that report and, clearly, am available to assist Parliament in any way which Parliament sees fit in that respect, but in terms of anything I, as the Parliamentary Ombudsman, could or should do at this stage, proactively, of my own initiative, I do not see that there is a role for me. Like you (and I think I am understanding correctly), I think that recent events have given us cause for concern, because if there is no visible distinction between government and Parliament, I do not think that is how it is supposed work. What I wrote down was “quaint and old-fashioned”. Is that quaint and old-fashioned, in fact?

Q32 Mr Walker: I think many of us on this Committee are extremely concerned about what is going on. I think we share your concerns. We have a very powerful Executive and a humiliated and weakened Parliament, and we are running an inquiry at the moment and we are looking at constitutional settlement, we are talking to a lot of former permanent secretaries and bigwigs, academics, and many of them share your view and the Committee’s view that we need to do something about this; so perhaps you will have a role to play in that as that continues. You have got three years left. You have seen what happened with Equitable Life. You will be replaced by someone in three years’ time. Do you think yourself or your replacement will shy away from big investigations of the type presented by Equitable Life because you fear that, actually, you will spend a lot of energy and emotional capital on those investigations but they are just so enormous you fear that Parliament will just walk away from it and the Government will just walk away? Because that will actually diminish the Office of the Ombudsman. You will make almost a political decision, with your senior colleagues: “What are we going to do with this, because my gut instinct is that, whatever we find, ultimately it will end in failure?”

Ms Abraham: There is a huge amount in that. I think my short answer to the end of that question is, no. If I felt like that, I would not be sitting here and I would not be carrying on with this job. It seems to me that, whatever happens in relation to Equitable Life, it is my job to call it as I see it, and I will continue to call it as I see it, and the Committee may not be enamoured to know that actually there is possibly another 10(3) report not far away from publication. I think that it is my role to investigate cases that meet our assessment criteria for taking on for

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investigation, to make findings of maladministration and injustice as I see it and to propose remedies as I see them, applying the principles which are now available for everybody to see. So I will go on doing that. I would be very interested in a dialogue about how Parliament's Ombudsman, who it seems to me take their strength from the strength of Parliament, can contribute to this wider debate, which I know certainly, Chairman, you are involved in.

Q33 Mr Walker: You are saying some quite radical things actually. You are a very mild mannered person, but you are being quite controversial here, and we love that; we love controversy. If there is a change of administration, will you march in to whoever the new sponsoring minister is in your department and say, "Right, these are some things that I do not think have worked. I want to know what you are going to do to make them work?"—a frank and open conversation.

Ms Abraham: I will certainly want to have early and open dialogue with any new administration.

Q34 Kelvin Hopkins: A rather big question. I remember the excitement when your office was created. We thought the public service ethos on one side and elective democracy on the other needed a little bit extra, and the Ombudsman came in to help where, just occasionally, the public service did not get it right and were not doing their job. It was great, but now we live in an another age, not an age I care for, I much prefer the previous age, and I hope it will come again in the future.

Ms Abraham: You are quaint and old-fashioned like me.

Q35 Kelvin Hopkins: Absolutely. But I hope it will come again in the future. I am, like you, an optimist. We have now moved to a world where markets are seen to be the way to produce human welfare and that somehow your office does not quite fit any more. We have had Equitable Life. The reason why Equitable Life got into such difficulty was because of the feebleness of regulation, and that was deliberate. Government had deliberately weakened regulation because they wanted the market to operate. For people who have lost all their savings with Equitable Life, next time if they have any savings, they will put them somewhere else, except that they will probably die in the meantime and may not have any savings to put away. But that is the idea: it is the market. Are you now a bit of a fly in the marketeers' ointment. Do you not think that there is something in that?

Ms Abraham: I do not know, to be honest. My daily life is not full of 10(3) reports and Equitable Life court cases. My daily life is around citizens, service users battling with the Child Maintenance and Enforcement Commission and the NHS, and in the vast majority of cases where we identify that something is wrong, we find a way to help people and put things right. So we are talking not about the whole system being in disarray or dysfunctional. What, I think, is hugely problematic is the situation where the view that Parliament's Ombudsman takes

of the Government's actions and the remedy that should be applied for failings is not one that the Government is prepared to accept. I think the Ombudsman is a success story in many ways. It is such a success story that they keep popping up all over the place in new formations in ways that are not necessarily terribly clever. There is a lot of dialogue going on across government in various departments about rights and entitlements—how would they be enforced, what is the Ombudsman's role in all of this—so I think the Ombudsman needs to be operating in the world as it is now, and that is not the world that we were experiencing in 1967, but I think we are an institution, the ombudsman institution, that can develop, that can keep pace. I think these constitutional issues are fundamental. I suppose what I am saying is I do not think that we can continue without an answer to my complainant's question: what happens next? I think it is a question for Parliament, but I am so connected with Parliament, I have a huge interest in it.

Q36 Kelvin Hopkins: I am personally very strongly on your side. I think it is wonderful you are still doing the job that you are and that you personally are pursuing these questions so vigorously. But is there not a parallel in something I was concerned about, what I would regard as the downgrading of the patient complaint service in the Health Service by the abolition of community health councils and then two more reforms since then? But—under the surface—what it is really about is that private sector providers do not want some very effective complaints system which is going to make their life difficult and reduce their levels of profit. That, again, strikes me as being a parallel with your situation. Do you not agree that there is a kind of parallel there?

Ms Abraham: Again, I think there are a lot of different issues in that question. I do think, before too much longer, we are going to have to address this mixed economy of service provision where there may be public funding but there is a range of different ways of delivering it, and there may actually be some self-funding in there, private funding, and so on. I think there is a big difference between a few hundred NHS trusts and goodness knows how many private sector providers who are not used to complaints arrangements, and I think the Local Government Ombudsman is thinking about this a lot as we move into an era where self-funded social care is going to be under their jurisdiction, but I think what I detect in your question is a view that, actually, are the Ombudsman's days numbered? No, I do not think they are.

Q37 Kelvin Hopkins: I shall certainly be supporting you. Following Gordon's question about pursuing private sector providers in the Health Service because they are being funded by public funds, that is surely going to become much more difficult the more fragmented the Health Service becomes—more difficult than it is now. In ten years' time I might for example need a hip replacement and the private sector provider might mess it up. The argument then is: "Do not complain about it, just go

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to another provider next time you have a hip replacement". They might again make a mess of it, but that is the market operating. When we get to that stage, the Ombudsman could really be remarginalised.

Ms Abraham: I do not think so. All the discussions I have had with the Department of Health around these issues like personal health budgets have been very much on the basis that there may be different ways in which people can access NHS care, and one way is to give them the cash and off they go, but none of those changes, none of those different ways of accessing care, should take the care providers out of the Ombudsman's jurisdiction; so the Ombudsman's net has to be actually thrown wider.

Q38 Kelvin Hopkins: I have no more questions, just to say that we are on the same side, seeking to hold government and administration to account, so more power to your elbow.

Ms Abraham: Thank you.

Q39 Mr Prentice: Can I stay on Equitable Life? The court said that, in the absence of irrationality, the scope of the remedy would be a matter for Parliament, and you are upset because Parliament reads Government. That is the issue. There are ombudsman systems all round the world. Can you, please, give me an example of where a recommendation from the Ombudsman has trumped the Government of the day, anywhere?

Ms Abraham: I think I could go back through my own office's history and say there were examples. They may not have been trumped.

Q40 Mr Prentice: I am not trying to trip you up here. It is just that Paul made the point that there are huge public expenditure implications and that is why the whips were prowling the corridors on 21 October, or whenever it was. You are saying it really ought to be a House matter and, regardless of the public expenditure implications, MPs ought to vote according to their own conscience.

Ms Abraham: No, I am not saying "regardless of the public expenditure implications" at all.

Q41 Mr Prentice: But they should take that into account.

Ms Abraham: I am saying that Parliament and government are entitled to take that into account. What I am saying is I will call it as I see it, and, therefore, I will apply my principles for remedy to this situation, and what I would say to Parliament is, "That is the answer that I come up with in these circumstances." In this case what I said is, "I have come up with this answer. Goodness, it is rather a large sum of money, and, actually, I do recognise that the public purse is a legitimate consideration here." At which point in my report, I invited Parliament to consider these issues and take a view.

Q42 Mr Prentice: And you say in your memorandum to us that MPs should vote freely, and that that would be in the absence of the whips. So there would be a memorandum from the

Government saying, "On the motion before the House, if you, MPs collectively, accept it, then it will blow apart our financial projections." On the other hand, there is the recommendation from the Ombudsman and individual MPs would just have to make their own minds up—

Ms Abraham: Yes.

Q43 Mr Prentice: ---guided by these two memorandums. I am not going to labour the point.

Ms Abraham: What is wrong with that? I am sorry; I know I am not supposed to ask questions.

Mr Prentice: What is wrong with that? Probably nothing. I think MPs ought to be accountable for their own actions, and, I think, over the coming years with the internet, which is now ubiquitous, which actually breaks down MPs' voting habits, everyone has got access to the internet, then you will get groups like Equitable Life and patient groups in the Health Service checking the voting record of individual MPs, and it is going to be a matter in the election, and that is the way it is going to move. So, there we go.

Q44 Chairman: We have explored this with you before. There has even been an exchange of letters between you and the Chief Secretary of the Treasury on these kinds of matters. Let us try and pin it down once more, shall we? If a Government comes forward and says, "The remedy that you have recommended would break the bank and, therefore, we cannot provide it", your difficulty in this case was that they did not say this, but they might say, "We accept what you say, we accept your findings, but, in fact, the remedy would be so vast that I am afraid, on public interest grounds, we cannot accept it." Is that an acceptable position?

Ms Abraham: It could be, but they did not do that. You mention my exchange with the Chief Secretary to the Treasury. I do not want to misrepresent him, but it seemed to me what the Government were presenting my position as was to say that it would have been better if they had accepted all the findings and said, "We cannot afford any remedy at all", and I did not say that, I said it would have been more logical.

Q45 Chairman: No, you just told me it might be acceptable.

Ms Abraham: It might be, but they did not do that.

Q46 Chairman: We are trying to get underneath this, are we not, to where we might find some firm foundations; so I have got to press you on this, because you are raising fundamental issues. I got a sense, when we had this exchange once before, that you would have been happier—and I think I asked it in those terms and that is what prompted your exchange with the Chief Secretary—for a government to say, "Yes, we accept all your findings but we cannot provide a remedy. We are sorry, but we cannot provide a remedy", and you seemed to be saying, well you said, that you think that might be acceptable?

Ms Abraham: Yes.

Chairman: But that would not meet the needs of complainants, would it, if you were to say, “That might be acceptable”?

Q47 Mr Burrowes: They would still be saying, “What happens next?”

Ms Abraham: It would not be the end of the story, but it actually would be a more coherent playing out of events. I think what I was trying to say, maybe not as clearly or elegantly as I might have done back in February, was that if the Government had said, as now it has pretty much had to say, that it accepted my findings of maladministration and injustice, and it does that because this is a four-year investigation with all of the work that went into that—“This is Parliament’s independent Ombudsman who has the expertise and the authoritative view of maladministration and injustice, and, therefore, no, we are not going to pick over the findings, we are going to say the Ombudsman has found that, and, unless we think she has erred in law, unless we have done our own investigation which is of comparable stature that we can weigh against it” (and I think the High Court was extremely critical of what the Government had done to somehow provide its cogent reasons, which were not very cogent, for disagreeing with me)—fundamentally, unless I have done something unlawful (and only the courts can say that) or they can really demonstrate cogent reasons, which they have, I do not think, had a very good track record of doing, then actually let us leave the findings undisturbed. Unless the Ombudsman has gone off her trolley, let us leave the findings undisturbed.

Q48 Mr Burrowes: I understand fully that argument, but that is not what I am asking you.

Ms Abraham: What next? If the Government then says, “Actually, for all the reasons that we now set out, we do not think that remedy is affordable”, I think government should come to Parliament and say that, and I think Parliament then takes a view, and Parliament can have in front of it the Ombudsman’s view, the Government’s view, the complainant’s view, its own view, and when Parliament has taken a view, that is it.

Q49 Mr Burrowes: It seems to me you are simply asking for more plain speaking.

Ms Abraham: So are you, I think.

Q50 Mr Burrowes: But what you are describing is exactly, in a sense, what the Government has done. It did not put it in that way, but that is what it has done. It decided it did not like the look of the amount of money that was involved here, so it said, “We have got to do something, so we will set up an *ex gratia* scheme”, but it was its way of saying, “This is unaffordable, if we provide a remedy of the kind and the scale the Ombudsman recommends.” You seem to be saying that that is an acceptable position as long as, as it were, Parliament endorses it, but I do not think that meets your point about people’s dissatisfaction with there not being a guaranteed

remedy, and I asked you whether you think, therefore, that we should go to a binding position, because the answer to Gordon’s question about other ombudsman systems is that some of those are binding. The answer is in the system. You do not want that answer. So I am not clear what answer you do want that would meet the case.

Ms Abraham: I think I am saying I want Parliamentary democracy.

Q51 Mr Burrowes: But if it is not binding, then it is ultimately the Government’s call.

Ms Abraham: I think the question of binding findings is a different one again. I am sorry to divert, but I think these are really important issues that we are tackling here. Generally, public sector ombudsman schemes do not have binding findings. Private sector schemes do, but they are industry schemes and it is a very different set-up, because there is no democratic element to them. So I do not know of a parliamentary ombudsman who has binding findings. You may know something that I do not know, but it is the private sector schemes where the binding findings come into play, and that works differently. That is about an industry which has a levy on its members, and that is how it is funded. You look at the financial ombudsman service, you have the whole set up of a financial services authority and a board and it is different. It does not have a democratic element in the way that this scheme does and the local government ombudsman scheme does. It comes down, at the end of the day, to what does your representative in Parliament do when faced with these big decisions. At the end of the day, if Parliament takes the Ombudsman’s report, respects it, listens to the Government’s view about what is affordable and those parliamentarians make their own minds up, that seems to me to be it. I am not arguing for guaranteed remedies, I am arguing for plain speaking.

Q52 Mr Burrowes: So as long as a minister gets up and says, “We accept all the Ombudsman’s findings because it is an independent office and we should not challenge that. In this case, we are very sorry for what happened, but we think the remedy is completely unaffordable, on public interest grounds”, and the Ombudsman—this is the extra bit—has conceded that is a very proper ground—

Ms Abraham: Yes.

Q53 Chairman: And invites Parliament to endorse that position. Now, that would be acceptable!

Ms Abraham: Yes.

Q54 Chairman: Well, we have got there!

Ms Abraham: Have we got there?

Q55 Mr Prentice: Your position is very clear. I do not want to pick over the bones of this Equitable Life business, but I have one or two questions about Chadwick. In paragraph 23 of your memorandum you talk about the Chief Secretary telling Parliament that Sir John Chadwick is expected to report by

“spring 2010”. To use your expression earlier, do you think it is a forlorn hope that he is going to be able to report by spring 2010?

Ms Abraham: I honestly do not know. The spring is always a moveable feast, as we know, which is probably why it is in quotes. I have no reason to believe it is not possible. In fact, you will see from some of the information I provided that Sir John Chadwick has asked for a meeting, and we are in the process of setting that up, so I may have some more direct information soon.

Q56 Mr Prentice: Okay. I have never been able to get my head round this idea of Chadwick working out this hardship test, that he would look at the disproportionate impact on Equitable Life policyholders without having access to Inland Revenue records. Is that something you have raised with him, that in order for this to be applied fairly, he would have to look at the income and assets of all the individual Equitable Life policyholders?

Ms Abraham: No, I have not raised that with him or anything else actually; I have responded to his letters to me and the questions he has asked me, as far as I have been able to do so; and some of my staff have met with his staff to do a guided tour of the report so they can fully understand it. Fundamentally, he is doing his piece of work. I have done mine. He has asked me for the clarification; then I am happy to give it. If he wants to meet and talk, I am happy to do that. However, I do not think it is my role to engage in the Chadwick process.

Q57 Kelvin Hopkins: We talk about affordability and the Government not being able to afford things: is it simply not just a political decision what is affordable and what is not affordable? When it is baling out the banks it is always affordable; when it is nuclear submarines, £100 million it is affordable; when it is baling out people who have lost out because of government regulatory failure, it is not affordable! It is a political decision in the end.

Ms Abraham: Yes.

Chairman: That will do!

Q58 Mr Burrowes: Last October you said the investigations up to July cost £3.5 million. What was the final tab?

Mr Richardson: I am sorry, I do not have that information, but we can supply it.

Q59 Mr Walker: Is it Sir John Chadwick? There are so many knights running around at the moment—Kelly, Chadwick, Legg—it is fantastic—Sir Ian Kennedy doing IPSA—my word, it is a route to riches becoming a knight, is it not? You need to be a dame! How many civil servants do you think Sir John Chadwick has working for him?

Ms Abraham: I do not know, to be honest. I do not think he has a huge number.

Q60 Mr Walker: But they are all looking at your report and the Equitable Life issue.

Ms Abraham: Presumably, yes.

Q61 Mr Walker: It is so amazing, is it not, how all these reports become make-work schemes for yet more people in the public sector? It is very distressing, I think—and I am very much on your side on this—it would just be a shame that we cannot get on with it and do the right thing by Equitable Life policyholders.

Ms Abraham: Well, that would be nice. The exchanges we have been having have been very much about just being direct and honest about this. You say, Chairman, that for the Government this was a round-about way of saying it was not affordable. Why did we have to have a round-about way?

Q62 Mr Walker: Just one point, and I will shut up! You said the minister could go to Parliament and say, “This is unaffordable”; but there would be a vote on it, and Parliament could say, “Sorry, mate, we don’t agree with you. Because we need to do the right thing, we are not going to go with the Government’s position on this. Parliament says something needs to be done for these people asap.” So you have not really compromised your original position at all, have you? You are saying that it should fall back on to Parliament to make the decision.

Ms Abraham: I had not realised that anybody thought I had compromised my original position.

Q63 Mr Walker: For the sake of clarity—

Ms Abraham: That is exactly what I am saying.

Q64 Mr Walker: Parliament could say to the minister, “not on your life, mate!”

Ms Abraham: Yes, the quaint and old-fashioned amongst us think that is so.

Chairman: That takes us back to the problem of what we think Parliament is.

Q65 David Heyes: Can you ever measure the damage that the outcome so far of the Equitable Life situation might have had to the legitimacy of your role? I notice that your strategic plan says that you have developed a range of performance measures and indicators to provide a performance framework. The very first one that you list there is about public awareness of your service, so I am assuming from that that you did gather the intelligence to find out about that. What does it tell you about the way the public view you now after Equitable Life?

Ms Abraham: I do not have a before and after to give you. We have work-in-progress in terms of public awareness of the service, and I think we have work to do in terms of the general public awareness in addition to views about effectiveness. I cannot give you any intelligence about the before and after. We certainly are not seeing any diminution in the work coming to us, so we are not hearing, “It is not worth going to the Ombudsman”.

Q66 David Heyes: I have heard that from two constituents—I do not want to exaggerate it. It is not unusual for me to say to a constituent, “If we cannot

resolve this issue for you, ultimately we can take it to the Ombudsman”, and I have had a kind of shrug of shoulders, “What is the point of that?”

Ms Abraham: Yes, what is the point! It is worrying if people are put off. But the public awareness research we have done shows that people are put off by the MP filter. They may be put off by a range of things. One of my objectives over the next three years is to get a much more comprehensive and balanced view of my office out there in the public domain.

Q67 David Heyes: How are you going to do that?

Ms Abraham: There are varieties of ways in which we can do that; but if you have been reading the corporate business plan you know that a communications strategy and communications capability is part of it, and actually thinking very hard about the way we engage not just with the public at large but with intermediaries like MPs, with the advice sector, and so on. So I think there is proactive work for us to do in this area to not only make ourselves better known, but to get a better engagement with the people and the public themselves, and the intermediaries who are likely to be involved in complaints coming to us. Part of that is, again, in relationship with MPs, in relationship with Parliament; and there are a variety of things that Parliament can be doing, and things that we can be doing to raise awareness and understanding of what we are about and what we are doing.

Q68 Chairman: You mentioned the MP filter: is your feeling about that just as it has always been, which is that it is an impediment to you?

Ms Abraham: Yes, because that is what the research tells us. I think the forthcoming election is just a stark illustration. When Parliament is dissolved, we will have five weeks or more when people cannot bring their complaints to the Ombudsman. That is very stark. And it is embarrassing. Like you, I wander round Europe occasionally and other parts of the world and bump into people who say, “You have not still got that MP filter thing!” So there is something around all of that. I am quite seized about this at the moment because I did think a year or so ago that we were getting somewhere. There were indications coming from the Cabinet Office that we were going to have a public consultation and that we might see the possibility of removal of the MP filter as part of the broader constitution renewal debate. That has been taken away. Maybe my office should organise a public consultation. Again, public consultation—a decision for Parliament: why should government have the preserve of saying whether Parliament wants a filter?

Chairman: We will have one last go at it.

Q69 Mr Walker: Out of interest, if, during the general election, a constituent gets in touch with me with a crisis and I send it to you—I hope to be re-elected; you start looking at it in the anticipation that I would—

Ms Abraham: I cannot.

Q70 Mr Walker: Really? Gosh, how sad!

Ms Abraham: Well, yes.

Mr Walker: It is; it is stupid, is it not?

Q71 Chairman: It is a great shame that we could not have found a peg in the Constitutional Reform Bill that is going through at the moment, but we probably cannot—but that would have been a way.

Ms Abraham: It would indeed, and I thought we were getting somewhere, but my understanding is that when government did the thing that it does on these occasions, which is to write round to get assurance that there is consensus across government, that certain bits of government put their opposition in at that stage, as I understand it, on grounds that are actually about that it would create more work, because citizens would do it—and we cannot have that, can we?

Q72 Chairman: Are we not committed to reducing contact—the whole DWP programme—avoidable contact? We are trying to remove avoidable contact with people, are we not?

Ms Abraham: Are we?

Q73 Chairman: You know this; this is departmental targets. It is called transformational government; it is removing avoidable contacts.

Ms Abraham: It seems to have passed me by!

Q74 Chairman: No, it is big stuff! We are very grateful to you. It is worth saying at the end what you said at one point: although we talk about some of these big ticket items that cause difficulties, the fact is that day after day after day you are remedying injustice caused by mal-administration experienced by citizens and getting remedies. So although we identify the areas of difficulty—and we will reflect on what you have said and think whether we can do something to bring this more to Parliament’s attention—the main business goes on in a way that is to huge citizen benefit, so thank you very much. Congratulations again on your long and distinguished tenure. Thank you, all of you, for coming.

Ms Abraham: May I just say, because I am conscious that this may be the last time—10(3) reports permitting, that I have the pleasure of coming to talk to you and the Committee. I think I made it clear I am not going anywhere, other than back to the office to carry on with my job, but I know that you and this Committee will not be here for me for much longer in the way that you and the Committee have been for the past seven years, providing support and constructive challenge for me and my office; and, if I may say so, relentlessly and powerfully promoting and safeguarding Parliament’s Ombudsman. I know we must not get soppy, as you told Gus O’Donnell last week, but I would, if I may, like to say “thank you” to you and to the Committee for your unfailing support and guidance over those seven years.

Chairman: Thank you, that is very kind of you.

Written evidence

Memorandum from the Parliamentary and Health Service Ombudsman

INTRODUCTION

1. I welcome the opportunity to give evidence to the Public Administration Select Committee on my 2008–09 Annual Report, *Every Complaint Matters*, and also on other matters related to the work of my Office.

2. This memorandum draws attention to the information contained in my Annual Report about our casework performance and supplements that information by providing an update on the half year position. It also updates the Committee on the special reports I have published this year, and the Government's response to them.

3. On 4 November 2009, I become the longest-serving Ombudsman since the Office was established. Given the timing of the Committee's hearing, I hope I will have the opportunity to include some of my reflections on my work and the issues that the Committee and I have considered together over that period. I have in mind the ongoing debate about the removal of the MP filter; the importance of the close relationship between my Office and Parliament; and how best to promote and safeguard the constitutional position of Parliament's Ombudsman.

CASEWORK PERFORMANCE

Casework Performance 2008–09

4. The details of our casework performance last year are set out in my Annual Report. The Committee may remember that we began the 2008–09 business year with more work in hand than we would have liked and that many of our customers had to wait some time before any detailed assessment work on their complaint was undertaken. There were also internal delays in beginning work on complaints which had been assessed and accepted for investigation.

5. We were still tackling these issues when I appeared before the Committee in October 2008—but by February 2009 we had caught up with the incoming work so that there were no delays in responding to new enquiries or in beginning investigations. We achieved this by employing additional staff to help with the initial stages of enquiries, developing greater flexibility in the use of caseworkers, improving our clinical advice resources and by ensuring robust performance management.

NHS Complaints Reforms

6. It was particularly important that we caught up with incoming work during the year because we needed to have capacity at the end of the year to ensure a smooth transition to the new NHS complaints system which came into effect from 1 April 2009 with the removal of the Healthcare Commission as the second stage complaint handler. I very much welcome these reforms which I believe will make things simpler, quicker and better both for complainants and the NHS.

7. Preparing for this transition involved recruiting over 100 new staff, most of whom came into post in our new Manchester office between January and March 2009.

8. A very smooth transition of work took place between January and March, with work which could not be completed by the Healthcare Commission arriving in a planned way from the beginning of 2009. We have now dealt with and absorbed the initial bulge of work generated by the Healthcare Commission's abolition.

9. Casework performance—2009–10

10. Early indications are that, although the overall number of incoming health enquiries is about 10% below our planning assumption, in many cases local resolution of complaints by the NHS has not been completed thoroughly and we have also experienced delays in obtaining from some NHS organisations the information we need to complete our assessments.

11. As a result it is taking us longer than we anticipated to assess a large number of health cases before deciding whether to take them on for investigation, and more cases than we expected are requiring intervention work by us, short of a full investigation. We have put additional resources into this area of work in order to address our target for 2009–10 of responding to 80% of all enquiries within 40 working days. At the half year point we have achieved this for 78% of enquiries.

12. As the number of health cases has increased we have begun to see the anticipated increase in the number of complaints accepted for investigation. To minimise the risk of delays in this area we are again using our staff flexibly and are currently recruiting additional permanent caseworkers who we hope will be in post in January 2010.

13. Although the bulk of our energy has been focused on these significant changes to the system for health complaints, we continue to receive a steady number of Parliamentary enquiries. We are seeing a shift in the way these enquiries are responded to. We are accepting fewer complaints for investigation in relation to individual issues—often because the bodies about which these complaints are brought are able to resolve them when we intervene to bring them to their attention, without our having to conduct a full investigation.

14. At the same time we are accepting for investigation an increasing number of complaints where a number of people are approaching us concerning an issue which may affect them all similarly. These investigations are often complex, lengthy and resource intensive. It seems likely that the trend for us to carry out fewer Parliamentary investigations will continue—but more of those we do carry out will be related to systemic issues and therefore will have a wider impact.

15. Overall, at the half year point our casework performance is broadly in line with the targets we set out in our 2009–10 Corporate Business Plan. We are currently achieving five of those six targets and our aim, which we think is challenging but achievable, is to achieve all six by the end of the business year.

SPECIAL REPORT UPDATES

Equitable Life

16. In October 2008 I gave evidence to the Committee on my report, *Equitable Life: a decade of regulatory failure*, and in January 2009 I appeared before the Committee again to provide my initial observations on the Government's response to that report. I said at that time I believed the Government's response to be an unsatisfactory one.

17. In May 2009, after careful examination of the reasons stated by the Government for rejecting certain of my findings of maladministration and injustice and the rationale for, and scope of, its proposals as to remedy, I published a further special report on these matters. My purpose in doing so was to bring to Parliament's attention that the Government's proposals as to remedy would not right all of the injustice its failings had caused.

18. Since then the specially appointed adviser to the Government, Sir John Chadwick, has published two consultation documents related to the Government's proposals for an *ex gratia* payment scheme. I have corresponded with Sir John and made my position known to him. This correspondence is published on my website.

19. Earlier this year the Equitable Members' Action Group secured a judicial review of the Government's response to my report. On 15 October 2009 the High Court quashed the Government's rejections in respect of three of my findings of maladministration and invited it to say, within 21 days, what it intended to do in the light of the judgment. I welcomed that judgment and hope that every effort will now be made to provide a just outcome to all those who have suffered.

20. There is one point from the judgment I wish to highlight to the Committee. The Court noted that 'the question whether to establish a compensation scheme in any particular context, and the limits of such a scheme, is a matter for the Government, reporting to Parliament, and not reviewable in the courts save on conventional irrationality grounds. As the Court found no such grounds, it left the question of the adequacy and delivery of the Government's proposed *ex gratia* payment scheme a matter for Parliament.

21. Committee members will no doubt be aware that on 20 October 2009 the Chief Secretary to the Treasury announced that, "in the interests of speed and [its] wish to act fairly for policyholders", the Government would not appeal against the decision of the Court.

22. As Committee members will know, on 21 October, a motion tabled by the Liberal Democrats, which called on the Government to accept in full my recommendations for compensating policyholders, was defeated by a majority of 25. Financial redress for Equitable Life policyholders and annuitants now rests with the Government's scheme, the terms of which appear to have been expanded in the light of its acceptance of the High Court ruling.

23. The Chief Secretary said on 21 October that Sir John Chadwick is expected to report to HM Treasury by "spring 2010" with his suggested design for the *ex gratia* payment scheme.

24. Listening to the 21 October debate, I was struck by the intervention by the Committee's Chairman who commented that it was unfortunate that Parliament did not have a mechanism for debating my reports and voting freely on them.

25. Twice now, in recent years, the Courts have decided that my findings should not be challenged without cogent reasons, and also that implementing my recommendations remains a decision for the Executive in the light of all the circumstances. This is the view that I have expressed to the Committee on a number of occasions so I am encouraged that it has been echoed and endorsed by these judgments.

26. At the same time I am concerned that wronged citizens, who had carefully followed the course set out by our legal and constitutional framework to seek remedy for the injustice they have suffered, have twice had to pursue the Government through the courts in order to ensure that my reports were treated with the respect that my Office's constitutional position requires.

27. That complainants have had to resort to costly and uncertain legal proceedings in this way does suggest that the system designed by Parliament has not worked as intended on those occasions.

28. I value the work of the Committee and the invaluable interest, support, and encouragement that it and its predecessors have provided. However, unless a Parliamentary solution is found to cope with situations—however rare they might be—where one of my reports is contested by the Government, resort to litigation by complainants looks likely to be repeated in future. This has the potential to undermine faith in the Parliamentary process and the Ombudsman system for the resolution of grievances which Parliament has created to act on its behalf.

29. I would welcome further discussion with the Committee about these important constitutional issues.

Six Lives

30. On 23 March 2009 I laid before Parliament my report, *Six Lives: the provision of public services to people with learning disabilities*. The report related to six investigations conducted in my capacity as Health Service Ombudsman, three of which were joint investigations with the Local Government Ombudsman. The complaints were made by Mencap on behalf of the families of six people with learning disabilities who died between 2003 and 2005 while in NHS and local authority care and were made against a total of 20 public bodies.

31. While not all of the complaints were upheld, the report illustrated some significant and distressing failures in service across health and social care, which led to situations in which people with learning disabilities experienced prolonged suffering and inappropriate care. In some cases public bodies had failed to live up to human rights principles, especially those of dignity and equality.

32. In addition to recommendations to address the specific unremedied injustice for some of the families involved, we made recommendations to the Department of Health, the Equality and Human Rights Commission, the Care Quality Commission, and Monitor to address our serious questions about how well equipped the NHS and Councils are to plan for and provide services tailored to the needs of people with learning disabilities, and the regulation and performance monitoring of those services. We have recommended that the Department of Health should promote and support the implementation of these recommendations, monitor progress against them, and publish a progress report by October 2010.

33. All of the report's recommendations were accepted in full. We have received updates on the ways the Equality and Human Rights Commission, the Care Quality Commission and Monitor are planning to work both separately and collectively to implement the recommendations. The Department of Health have provided an update on the response from the NHS and social care organisations in England and its co-operation with the Equality and Human Rights Commission, the Care Quality Commission and Monitor. The Department have also discussed with my staff their preparations to publish information on the progress against the report's recommendations in October 2010.

Trawlermen's Compensation Scheme

34. In my October 2008 memorandum to the Committee, I reported that the Department for Business Innovation and Skills' review of the *ex gratia* compensation scheme for Icelandic waters trawlermen was still not completed. Given that my report, Put together in haste: *Cod Wars*' trawlermen's compensation scheme, had been laid before Parliament in February 2007, I found this ongoing delay particularly disappointing.

35. Having completed their review, in July 2009 the Department for Business Innovation and Skills launched a new *ex gratia* compensation scheme for former trawlermen. In a statement to Parliament Lord Young said that the new scheme will enable an estimated 1,000 former trawlermen to receive additional payments totalling around £5-10 million. The running of the new compensation scheme and the associated considerations of claims mean that the Department are now, finally, well on their way to full compliance with the recommendations of my 2007 report. I welcome that positive outcome.

October 2009

Further memorandum from the Parliamentary and Health Service Ombudsman

COST OF EQUITABLE LIFE INVESTIGATION

When I appeared before the Public Administration Select Committee on 5 November 2009, I was asked to confirm the final cost of my investigation into the prudential regulation of The Equitable Life Assurance Society. I agreed to write to the Committee to provide this information.

The final cost was £3.743 million. This reflects all costs incurred since the investigation was launched in July 2004.

This information is set out on page 8 of our Resource Accounts for 2008–09, which were laid before Parliament on 15 July 2009. Those Accounts are available to the public at http://www.ormbudsman.org.uk/pdfs/res_accts_09.pdf

I hope you find this information helpful.

November 2009

