



**Consumer  
Focus**  
Campaigning for a fair deal

# **Consumer Focus response to the Parliamentary Ombudsman consultation on direct access**

**September 2011**

# About Consumer Focus

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Consumer Focus is the statutory consumer champion for England, Wales, Scotland and (for postal consumers) Northern Ireland.

We operate across the whole of the economy, persuading businesses, public services and policy makers to put consumers at the heart of what they do.

Consumer Focus tackles the issues that matter to consumers, and aims to give people a stronger voice. We don't just draw attention to problems – we work with consumers and with a range of organisations to champion creative solutions that make a difference to consumers' lives.

# Summary

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Consumer Focus and our predecessor body the National Consumer Council (NCC) have long argued that the public service ombudsmen schemes should be more accessible and responsive to consumer needs. They should have a higher public profile, and be more flexible in their operation.

We have consistently argued that the MP filter should be removed so welcome the Parliamentary Ombudsman's consultation on this particular issue. We also believe the five public service schemes need to be properly integrated to ensure that problems do not fall between the procedural or statutory gaps that govern each. The continuing piecemeal approach to reform does not adequately address the improvements that are needed within the system as a whole.

Consumer Focus recommends:

- Public access to the Parliamentary Ombudsman is opened up by removing the MP filter. If this is not feasible public access should be improved by allowing complainants the option to go direct to the Ombudsman
- The Parliamentary Ombudsman implements an effective and ongoing communications strategy to raise public awareness of the new access route, the role and remit of the Ombudsman and how to use the service
- Members of Parliament inform constituents and complainants about the direct access route
- Relevant service providers inform complainants about the Parliamentary Ombudsman and how to access the scheme
- The new arrangements are reviewed regularly, including research with consumers and complainants
- The Parliamentary Ombudsman collaborates with the other public service schemes to establish a single portal to simplify consumer access

# Consumer Focus response

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The consultation asks three questions:

1. Would you be in favour of complainants having direct access to the Parliamentary Ombudsman, as is the case with the Health Service Ombudsman for England, the Local Government Ombudsman for England and the Public Services Ombudsmen in Scotland and Wales?
2. Specifically, do you think that the MP filter should be:
  - Abolished outright and replaced with direct access so that an MP referral is not required to access the Ombudsman?
  - Replaced with a dual-track system which would allow complainants the option of either making a complaint through an MP or accessing the Parliamentary Ombudsman directly?
  - Retained, so that the public continue to require a referral from an MP to access the Parliamentary Ombudsman?
3. What are the reasons for your responses to questions 1 and 2?

Our response to this consultation draws on two earlier publications<sup>1</sup> replying to government proposals designed to allow greater transparency, flexibility and co-operation between the public services ombudsmen. We welcomed these earlier proposals but felt the proposed reforms should have gone further. In both cases we called for the removal of the MP filter.

Accordingly, Consumer Focus' response to question 1 is that we are in favour of complainants having direct access to the Parliamentary Ombudsman.

For question 2 we would favour the first option, to abolish the MP filter in favour of direct access, alongside arrangements to ensure that MPs are informed of detriment in their constituency.

However, as a step in the right direction, we can also support the second option to allow the alternative of either making a complaint through an MP or accessing the Parliamentary Ombudsman directly. This is in the light of the Law Commission's recent decision to recommend<sup>2</sup> the MP filter is replaced with a dual-track system and because of the uncertain political will for outright abolition of the filter.

The reasoning behind the Consumer Focus response is outlined below.

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<sup>1</sup> *A fair complaint, the case for an integrated public services ombudsman*, NCC, 2005, and Consumer Focus' response to the Law Commission's 2010 consultation on public services ombudsmen

<sup>2</sup> *Public services ombudsmen*, Law Commission, July 2011

## MP filter

Ombudsman schemes provide the public with a valuable route to redress, and perform an important role in holding public bodies to account. However, the statutory basis and procedural approach of the public service ombudsmen schemes have inhibited, to varying degrees, their ability to respond to consumers' needs. This is particularly true for the Parliamentary Ombudsman where MPs act as gatekeepers, with all communication going through an MP to the Ombudsman and back to their constituent. Removing the filter will, therefore, improve access and introduce greater consistency across the different schemes as complainants already have direct access to the other Ombudsmen.

The MP filter also has the potential to undermine fairness for consumers. With no means of contacting the Parliamentary Ombudsman directly, the consumer has no redress if their MP mistakenly believes that the complaint does not fall within the Ombudsman's remit and declines to pass it on. By using their discretion about whether to refer cases, some issues that are important to consumers may be blocked without the Ombudsman even knowing.

The principal argument for restricting access is that without the MP filter the Parliamentary Ombudsman would be overwhelmed by the sheer number of cases that they received. The MP filter certainly provides a mechanism for weeding out vexatious or irrelevant inquiries which might otherwise be directed to the Ombudsman. However, all the public sector ombudsmen have procedures for screening inquiries and redirecting any that are outside their remit. Precedents such as the removal of the councillor filter in the case of the Local Government Ombudsman and the absence of any filter on access to the Scottish Public Services Ombudsman suggest that the Parliamentary Ombudsman would be able to cope with the impact of direct access.

Given the current low level of public awareness of the scheme and the potential for a large increase in the number of enquiries and cases, the Ombudsman will need to make sure there are sufficient resources to respond effectively to direct contacts. Hopefully any increase in demand will be gradual but it is difficult to predict with certainty. It is important that the scheme's advice and screening processes are sufficiently effective and flexible. Resources may also need to be reviewed or reorganised to ensure the scheme can cope with increased demand.

The MP filter undermines perceptions of the fundamental proposition that an ombudsman is both independent and accessible. It also contradicts the Government's current aspirations to increase openness and transparency in the way public bodies operate, improving accountability and giving individual consumers more choice<sup>3</sup>.

Direct access not only benefits individual consumers by opening up a direct line of communication and avenue to redress. It also gives the Ombudsman a better overall picture of what is happening and where complaints need to be resolved in the bodies within the scheme's remit. MPs dealing with cases on an ad hoc basis are not as well placed to spot systemic problems, and restrict the Ombudsman's ability to do so.

Individual MPs value the direct link with individual constituents, and many MPs play an invaluable role in helping to resolve specific cases. They may champion cases for individuals who often benefit from their MP's expertise and insights into how the system works. In return MPs benefit from being able to demonstrate accountability to their local constituency.

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<sup>3</sup> See Open Public Services White Paper, Cabinet Office 2011; Better choices, better deals, BIS, 2011

But not all MPs are the same. Some are more willing and energetic than others, which means that the amount of time and effort devoted to helping with cases – and the quality of that help and support – varies.

We feel there is a compelling argument for the removal of the MP filter but accept that the dual-track approach is more likely to be adopted, and more quickly. It also has some advantages.

The dual approach allows for the best of both worlds as it retains the positives and reduces the downsides to the filter. MPs will retain the important role in relation to individuals and to their constituencies. At the same time, individuals will be able to choose between contacting the Ombudsman directly and asking an MP to refer their case.

It will be important to make sure arrangements are in place to ensure that MPs are informed of detriment in their constituency. An effective feedback loop between MPs and the Parliamentary Ombudsman will mean that MPs will, where appropriate, be able to advocate on behalf of constituents. The feedback mechanism will also mean that MPs are informed of detriment caused in their constituency so they can continue to scrutinise and challenge poor service providers locally and through Parliamentary procedure as appropriate. An effective feedback loop between the Ombudsman, MPs and their constituents could also help to build links between citizens and MPs, with the potential to boost levels of public trust and confidence in their elected representatives.

## Raising awareness and responsiveness

Consumers tend to support the idea of ombudsman schemes and especially their perceived independence, but public awareness of the schemes is low<sup>4</sup>, particularly in the case of the Parliamentary Ombudsman. The absence of any direct link between individuals and the commissioner may, in part, account for this. There is less need for individual consumers to know about the scheme as its operation depends on and revolves around access to an MP. But low public awareness of all the public service ombudsman schemes suggests that the root of the problem is much wider.

The public services ombudsmen are already taking steps to communicate their role and remit more effectively, to guide potential complainants through their procedures and to signpost consumers to alternative routes to redress. However, as we said earlier, public awareness remains low so more needs to be done to raise their profile and improve public understanding. There is scope for pooling resources and communication strategies to get the message across, including a single access point, a common telephone number, or a unified online gateway for initial contact to all the public service ombudsmen schemes.

Establishing contacts and networking with relevant agencies, intermediaries and specific interest groups will help to raise awareness of the Ombudsman, what the scheme covers, and how to access it. Working with other organisations is particularly effective when trying to establish communication channels with people from groups that are not currently making use of the scheme, for example young people, those with learning difficulties, or mental health conditions. These third parties can act as trusted intermediaries. They also know the most effective ways to communicate with specific groups of people.

The Ombudsman should also be more creative and use new ways of communicating and profile raising, including web links on other sites and using online networks. Being more open and proactive will also help to demonstrate the Ombudsman's transparency, accountability and credibility.

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<sup>4</sup> A fair complaint, NCC, 2005

Communication should not be left entirely to the Ombudsman. Public service providers, MPs and councillors, where people approach them, should also have a responsibility to make sure their users and constituents are aware of the appropriate ombudsman schemes.

In addition to this more general communications strategy, if the MP filter is removed MPs will have a key role to tell any constituents who approach them that they have the option to approach the Ombudsman directly, though some MPs will no doubt offer their help and support too. The Ombudsman will also need to undertake a specific and ongoing communications strategy to inform the public about the direct access route and what the Ombudsman can (and cannot) do.

Consumer Focus believes that a more thorough reform of the overall system would benefit consumers and ombudsmen alike. We continue to support the adoption of the NCC's checklist<sup>5</sup> for reform which sets out the key elements for a scheme that meets the needs of modern government and consumers.

At the very least this will require:

- making it easy to access the schemes by introducing a single access portal
- maximum integration of and consistency across the different schemes and their procedures so that it is clear to consumers and public services alike exactly how redress will be handled
- widening the remit to include service failure and raising public awareness of the schemes
- simplifying procedures to make them easy for consumers to use and understand

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<sup>5</sup> See annex

# Conclusion and recommendations

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The removal, or dilution, of the MP filter for the Parliamentary Ombudsman is a positive step with advantages for consumers and for MPs. It also has the potential to improve the overall effectiveness and efficiency of the Ombudsman scheme and should be adopted as soon as the relevant arrangements can be implemented.

Consumer Focus recommends:

1. That public access to the Parliamentary Ombudsman is opened up by removing the MP filter. If this is not feasible public access should be improved by allowing complainants the option to go direct to the Ombudsman or to make a complaint through an MP, known as the dual-track option.
2. The feedback loop between the Parliamentary Ombudsman and individual MPs is improved and works effectively so that MPs are informed of detriment relevant to their constituency. This is to enable MPs to advocate on behalf of constituents, as well as to scrutinise and challenge poor practice with local providers and through Parliament as appropriate.
3. The Parliamentary Ombudsman implements an effective and ongoing communications strategy to raise:
  - consumer awareness of the new access route, the role and remit of the Ombudsman and how to use the service
  - awareness among relevant third parties of the new access route, the role and remit of the ombudsman and how to work with the Ombudsman to help potential complainants
4. Members of Parliament:
  - ensure that their constituents are informed about the new access route through their newsletters, web sites and other generic communication
  - inform individual complainants who approach MPs of the new direct access route
5. The new arrangements are reviewed after a period of one year and at regular intervals afterwards to assess their impact and effectiveness. These reviews should include research with consumers.
6. We also recommend that the Parliamentary Ombudsman initiate a collaborative project with the other public service ombudsman to establish a single access portal for all the schemes.

# Annex: NCC's checklist for a revised Public Services Ombudsman to meet the needs of modern government and consumers

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1. **Direct access** – legislation should be introduced to remove the MP filter.
2. **Common point of entry** – covering the Parliamentary, Health Service, Local Government and Housing Ombudsmen. This would require primary legislation providing a single 'public ombudsman service' accessible by mechanisms including a telephone helpline.
3. **Focus on the public service experienced by consumers** – not the administrative structures. The extent of the service areas covered would need to be widely consulted upon. It would also require primary legislation. As a minimum it should cover the remit currently of the Parliamentary, Health Service, Local Government and Housing Ombudsmen.
4. **Consistency in process, decision-making and accountability mechanisms** – to improve clarity, reliability and cost-effectiveness. This should include effective reporting both to parliament and to the public, incorporating regular reviews of consumer satisfaction.
5. **Rationalisation** – handling a greater number of complaints but at a lower unit cost.
6. **Wider remit** – allowing intervention, not simply in cases of maladministration but cases of failure to provide a public service, or failure in delivery of those services.
7. **Extended eligibility criteria** – to allow complaints about problems that affect groups of consumers or whole communities, not just cases of hardship to the individual complainant.
8. **Flexible procedures** – to ensure disputes are resolved quickly and as cost-effectively as possible, including the use of alternative dispute resolution mechanisms.
9. **Responsibility for public awareness** – to ensure an effective profile, better public understanding of the role of the Public Services Ombudsman and how and when to access the service. This may lead to an increase in complaints, which could be a sign of an effective and accessible system.
10. **Sharing knowledge and expertise** – feeding into service improvement and standards of best practice across the public sector.

Source: *A fair complaint*, NCC, 2005



## **Consultation response to the Parliamentary Ombudsman on direct access**

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