

ANNEXE 2

Background note on the remit, work processes and powers of the Local Government Ombudsman

1. The Commission for Local Administration in England

1.1 The Commission for Local Administration in England was created by Part III of the Local Government Act 1974. The Commission's main purpose is to provide independent, impartial and prompt investigation and resolution of complaints against injustice caused by maladministration by district, borough, city or county councils (and other public authorities) and to promote fair and effective local government.

1.2 There are three Local Government Ombudsmen for England. Mr Redmond is the Ombudsman who deals with complaints about authorities in north London, Buckinghamshire, Berkshire, Hertfordshire, Essex, Kent, Surrey, East and West Sussex, Suffolk and Coventry City.

2. Remit of the Local Government Ombudsman

The Ombudsman may investigate complaints by members of the public who consider that they have been caused injustice by maladministration in connection with action taken by, or on behalf of, authorities within the Ombudsman's jurisdiction in the exercise of their administrative functions.

Normally complaints to the Local Government Ombudsman must be made within 12 months of when the problem first arose, although the Ombudsman does have discretion to conduct an investigation into a complaint that relates to a matter that is more than 12 months old if he or she considers it reasonable to do so.

The Ombudsman may not investigate a complaint where there is a right of appeal to a tribunal or a Minister or where the person aggrieved has a remedy by way of proceedings in a court of law. However again the Ombudsman has discretion to investigate if he or she is satisfied in the particular circumstances that it is not reasonable to expect the aggrieved person to appeal or to go to court. An Ombudsman may also not investigate a complaint about any action which affects all or most of the inhabitants of the authority's area.

Despite these restrictions, most of the administrative actions of local authorities are within the Local Government Ombudsmen's jurisdiction.

3. **Approach taken by the Ombudsman in the investigation of complaints**

Before the Ombudsman investigates a complaint, he or she must be satisfied not only that the subject of the complaint falls within his or her jurisdiction but also that the complaint has been brought to the notice of the authority concerned, and that the authority has had a reasonable opportunity to investigate and respond to the complainant. Where this is not the case, the Ombudsman will refer the complaint to the authority for investigation, on the understanding that the complainant has the right to come back to the Ombudsman if they are not satisfied with the outcome of the authority's investigations. In the statistics published annually by the Ombudsman, such complaints are classified as 'premature complaints'.

Assuming that the complaint is within the Ombudsman's jurisdiction and is not classed as premature, the Ombudsman then decides what information is needed in order to reach a decision on whether the complainant has suffered a personal injustice caused by maladministration on the part of the authority.

There is no statutory definition of maladministration and little judicial authority on the subject. However, the main test of whether there has been maladministration is whether an authority has acted reasonably, and in accordance with the law, in the implementation of its own the generally accepted standards in local administration. The Ombudsman is concerned with the way in which a decision has been reached and not with the merits of the decision.

Similarly there is no statutory definition of injustice, and it is left to the Ombudsman to say what this means in any particular case.

Sometimes a complainant will have provided sufficient information to allow the Ombudsman to conclude with reasonable confidence either that there has been no fault or that there has been no injustice or both, in which case the Ombudsman will write to the complainant to explain why he or she has reached that decision and the complaint is then discontinued. However in many cases it will not be clear exactly what the complainant is objecting to or what injustice the complainant believes he or she has suffered, and having obtained further clarification from the complainant the Ombudsman will then write to the authority, defining the complaint and asking for comments. The Investigator who is dealing with the complaint also usually specifies what information they need eg copies of policies, minutes of meetings, correspondence with the complainant.

On the receipt of a full response from the authority, the Investigator will usually send a copy of the response to the complainant with a request for comments. Once these comments have been received the Investigator considers whether further investigations are needed. The

scope of the Ombudsman's investigation varies from case to case. Sometimes it will be possible to reach a view and determine the complaint in the light of an exchange of correspondence with the authority and the complainant. However, sometimes an Investigator will decide that more detailed work is required, for example an inspection of the relevant files, interviewing officers and members or obtaining information from other sources.

5. **Outcome of complaints**

The Ombudsman classifies the outcome of complaints investigations as follows:

- ❑ Premature complaint
- ❑ Ombudsman's discretion not to pursue complaint
- ❑ No or insufficient evidence of maladministration
- ❑ Local settlement
- ❑ Maladministration , causing no injustice (accompanied by the issuing of a formal report)
- ❑ Maladministration causing injustice (accompanied by the issuing of a formal report)

In a large number of cases, Councils accept in the course of an investigation that they have done something wrong and that they could have provided a better service and that they would like to put the matter right. This initiative may come from a Council itself, or more usually is proposed by the Ombudsman's office. If the Ombudsman is satisfied with the remedial action offered by a council, the complaint is considered to be 'locally settled' and the investigation is discontinued. Local settlements can range from the offer of an apology to the complainant to a payment of compensation.

A local settlement does not always mean that there has been fault on the part of the Council, and occasionally a local settlement is reached in attempt to bring the matter to a satisfactory conclusion, thereby avoiding further lengthy and possibly costly exchanges with the complainant.

6. **Recent changes to the Ombudsman's service**

The Local Government and Public Involvement In Health Act 2007 introduced a number of changes to the Ombudsman's service. These changes were the May edition of the Members' newsletter, Outlook. This article is reproduced as Annexe 5 to the Committee report.

Comms/exec/2008-09/094