

THE PARLIAMENTARY COMMISSIONER -
THE OMBUDSMAN FOR PARLIAMENT

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I. The Parliamentary Commissioner - the Ombudsman for Parliament

The concept of an ombudsman originated in the Scandinavian countries and has been an integral part of the British system of government since 1967 when the Parliamentary Commissioner for Administration was created.¹ During the course of our Anglo-American Legal Exchange in 1984 the U.S. members of the team had the opportunity to visit with and meet the staff of the Parliamentary Commissioner in an effort to learn more about their method of operation.

We felt that an interesting comparison existed between the method of handling citizen complaints in the United States by the Congress on a federal level and that which was engaged in in Great Britain by members of Parliament through the Parliamentary Commissioner. The office operates from the central government in London. It has the power to investigate the actions of most central government departments, and certain other bodies enumerated in an Annex to the Act. The Annex now includes over fifty entities of Her Majesty's Government. It has no authority for nationalized industries and such entities as the Post Office and British rail nor does it have authority to investigate complaints about the police.

Most interestingly, we felt, was the feature which the British have incorporated into their system whereby the Ombudsman can only help a citizen when asked to do so by a Member of Parliament. As in the United States, one of the many duties of a parliamentarian is to help constituents who have complaints about the operation of governmental departments. Parliament decided when they created the Parliamentary Commissioner that he should be brought in only when an MP considers that it is necessary. Thus, a citizen must first go to the MP and ask that his grievance be referred to the Ombudsman. The MP may want to try to put the matter right first by a direct approach to the government department concerned but then can refer it to the Ombudsman thereafter.

Thus, the system protects the Member of Parliament from the development of the different political power base which could resolve grievances of constituents without the involvement of the Member. It provides an interesting contrast to the mode of operation of Members of Congress in the United States who have no Ombudsman to

¹Parliamentary Commissioner Act of 1967.

refer matters to but instead attempt to resolve problems either through direct intervention from their own office or through the committee system of the Congress using committee staff to work out problems for constituents directly with the agencies over which those committees have oversight.

A distinction is drawn in the types of grievance over which the Ombudsman may take cognizance in that the grievance must be caused by administrative actions taken by a department or other body and these actions affect one personally. Thus, the Ombudsman cannot consider complaints about general government policy or legislative proposals in general even if the person might be directly affected should such come into force. The law specifically says that the Ombudsman may investigate matters where someone "claims to have sustained injustice in consequence of maladministration". The Ombudsman requires that evidence be submitted to him and gives examples of "maladministration" to include such things as "delay in answering letters, showing bias or unfair discrimination, failure to examine a case properly or failure to give proper advice". There is a one year period for a statute of limitation in effect since a citizen must bring the complaint to the attention of an MP within a year of realizing that he had a grievance although in some circumstances the Ombudsman may waive the requirement to allow a longer period of time.

The Ombudsman has powers similar to those of a high court judge but operates in an informal fashion and not in a formalistic judicial style. He has the power to inspect government files and papers except those of cabinet members and can summon anyone, even a government minister, to give evidence in an investigation. However, the proceedings are usually informal and always private, not open to the public. If the Ombudsman requires a person concerned in the case to incur certain expenses such as for travel those expenses would normally be paid by the government.

Most cases are actually heard by an investigating officer on the staff of the Ombudsman who collects all relevant facts, then the Ombudsman personally considers them and decides whether to uphold a complaint or disallow it. If the complaint is upheld, the department concerned will be invited to offer a suitable remedy for the injustice caused by maladministration and the Ombudsman will send a full report on the case to the Member of Parliament who referred the complaint with a copy supplied for

the individual. Thus, the Member of Parliament is kept in the system throughout the entire process and is given an opportunity to advise the constituent of the outcome of the matter.

The power of the Ombudsman is persuasive in large measure in that most often the department or office concerned readily corrects matters which the Ombudsman finds to have been wrong but he has no power to order a department to do so. If a department is not prepared to take the action which he finds should be done, it may be reported to the Parliament so that Parliament can decide what action to take. In the rare event of a department refusing to accept the Ombudsman's recommendations he can report that fact to both Houses of Parliament. In practice, the all-party House of Commons Select Committee on the Parliamentary Commissioner would then take the matter up. The Select Committee may summon and question senior officials from the department concerned, and if the issue cannot be settled at that stage it may be raised in debate in the House of Commons and the Minister called upon to justify the actions of his department. Thus the Ombudsman's powers lie in Parliament. The Parliamentary Commissioner cannot by law order compliance with his recommendations. The support of Parliament provides a powerful reason for the department to accept them. There have in fact only been two cases since the establishment of the office in 1967 where the departments continued to refuse to accept his recommendation, and in both cases they eventually took action to remedy the maladministration which had occurred.

There is no appeal against the Ombudsman's findings to a court or to any other body. There is obviously no charge for the Ombudsman's service and the public is advised that it is not necessary to incur legal expenses in submitting the complaint.

There have been five Parliamentary Commissioners since the inception of the office. The current one is Mr. Anthony Barrowclough, Q.C. The Parliamentary Commissioner is usually a barrister of high standing prior to his appointment to the office.

The growth of the Ombudsman concept in the United States has largely centered on local and state offices. At the federal level the principal offices which could be characterized as similar in concept to an Ombudsman are those of the Inspectors

General² which have been established by Congress only in the last ten years. They operate as internal complaint mechanisms within agencies and departments of the federal government hearing both individual grievances as well as complaints of wrongdoing about agency officials. The only known federal office which seems comparable to a true ombudsman handling citizen grievances is in the Internal Revenue Service where the Taxpayer Ombudsman serves on this staff of the Commissioner and runs the Problem Resolution Program to resolve taxpayers grievances.³ On the state level there are four states which now have a state ombudsman and a greater number of cities and counties which have established them.⁴

In Great Britain in addition to the Parliamentary Commissioner for Administration who works as the central government ombudsman, there are local Ombudsmen. As a result of the laws enacted in 1974 and 1975,⁵ Commissions for Local Administration, were established for both England and Wales consisting of local commissioners appointed for each of the two countries and the Parliamentary Commissioner for Administration. In Scotland, there is a local commissioner, but no separate commission. Also, Northern Ireland has its own system. Complaints to these bodies are sent to members of the local authorities and then referred to the local commissioner. If a complaint should overlap between the Parliamentary Commissioner and the local commissioner, there is a provision for consultation and resolution. Thus, these bodies are more closely akin to the development of the Ombudsman in the United States.

The British central government is responsible for much more in local affairs than ours in the United States and thus many of the things over which the Parliamentary Commissioner for Administration has jurisdiction are matters which, in the United States, would fall under state and local government. One example is the responsibility of the Home Office for all prisons in the United Kingdom and this has led to a number of complaints about the building of prisons close to homes and various problems of prison administration. Another fundamental difference is, of course, the size of the countries

²Inspector General Act

³Sec. 1126.1 of Internal Revenue Manual, 100 (10/12/83)

⁴Vol. XII Ombudsman and Other Complaint Handling Systems Survey For FY 83, International Ombudsman Institute

⁵Local Government Act of 1974.

and the number of complaints that are handled by the Parliamentary Commissioner in the United Kingdom as contrasted with the much larger number of complaints which would be handled by a variety of different offices in the United States at the federal level.

The Annual Reports of the Parliamentary Commissioner provide considerable insight into the types and involvement of matters which are considered by him during the course of the year. Approximately half of the work of the Ombudsman has been devoted to complaints concerning tax and social security. The general problem of delay is one which also occasions considerable activity on his part. In 1983 ⁶ the Parliamentary Commissioner reported that he was again pleased to report that in all cases where he found maladministration leading to injustice the remedy proposed was accepted by the department or authority concerned. He also referred to the fact that only twice in the history of the office has a department refused to remedy "out of contumely" and on each occasion Parliament has proved effective as the enforcement agency. He concluded by saying "the teeth are therefore where they belong in a Parliamentary democracy: in Parliament itself."

The figures for 1983 indicated that the Ombudsman received a total of 751 complaints from 230 Members of Parliament. In 1984 ⁷ the Commissioner received a total of 837 complaints from 386 Members of Parliament. Some 840 cases were disposed of during 1984. Of these slightly over 650 were rejected and 183 were the subject of full investigations completed and results filed to Members of Parliament. The primary basis for case rejection is jurisdictional reasons; the principal reasons for rejection are that the complaint does not concern administrative actions, that authorities were outside the scope of the act and that there was a right to appeal to a court or a tribunal. Thus, if there is another available remedy other than through the Ombudsman he cannot act. He also has discretion to decline to take the case and approximately 10 percent of the declinations are based upon that subjective judgement.

If, at the conclusion of an investigation, the Ombudsman decides that the complaint is justified and the department has not already taken remedial action, he will usually suggest a remedy. This may be an apology, an ex gratia payment to compensate

⁶ Annual Report for 1983, Parliamentary Commissioner for Administration

⁷Annual Report for 1984, Parliamentary Commissioner for Administration.

for a loss,³ or a commitment to change procedures with a view to preventing a repetition of the same problem in the future. Even where action is found to be justified the Ombudsman makes some criticism of the actions of the department concerned. When the investigation has been completed, and a remedy obtained where appropriate, a report is issued to the Member who referred the complaint, together with a copy for his constituent.

The question of immediate access to the Ombudsman is one which has raised questions and on which he has commented in Annual Reports. The only other Ombudsman who operates in this manner is the Mediateur in France. The British Ombudsman also appears to be the only national Ombudsman who has no powers on his own initiative to investigate apparent maladministration which might have been brought to his attention. He has recommended that this might be changed so that he share the responsibility jointly with the Chairman of the Select Committee of the House of Commons on the Parliamentary Commissioner.

The general belief is that the system has worked well and that the Members of Parliament like it since it provides an augmentation to their staff resources and ability to resolve citizen complaints at the same time providing that access must be maintained through Members of Parliament and not directly for the public.

³A claim for a large sum of compensation for a legal wrong would usually be a task for the Courts.