

# Reform of Public Sector Ombudsmen Services in England

The response of the Advice Services Alliance  
to the Cabinet Office consultation paper

## **1 Introduction**

- 1.1 This is a brief response by the Advice Services Alliance (ASA) to the Cabinet Office consultation on reform of the public sector ombudsmen services in England.
- 1.2 This response represents the views of ASA, and we are aware that some of our members will be making separate responses to the consultation.

## **2 The Advice Services Alliance**

- 2.1 The Advice Services Alliance (ASA) was established in 1980, and is the umbrella organisation for independent advice networks in the UK. Our aims are to:
  - champion the development of high quality information, advice and legal services
  - ensure that people are not denied access to such services on account of lack of means, discrimination or other disadvantage
  - encourage co-operation between organisations providing such services
  - provide a forum for the discussion of issues of common interest or concern to advice organisations
- 2.2 Full membership of ASA is open to national networks of independent advice services in the U.K. Current full members include:
  - Advice UK
  - Age Concern England
  - Citizens Advice
  - DIAL UK (the disability information and advice service)
  - Law Centres Federation
  - Shelter (which covers England, Scotland & NI)
  - Shelter Cymru (which covers Wales)
  - Youth Access
- 2.3 Between them our members represent over 2,000 organisations which provide a range of services, including advice, to diverse groups throughout the UK. Most of these organisations offer services within a local area, but some of them are regional or national in scope.
- 2.4 With some limited exceptions, services are offered to all users free of charge and are focused on areas of law which mainly affect poorer people e.g. welfare benefits, debt, housing, employment, immigration, education and community care (now commonly referred to as areas of 'social welfare law').
- 2.5 A significant proportion of the issues which are brought to ASA's members' agencies concern complaints about the actions or inactions of local authorities or government departments, and therefore would be potential cases for a complaint to one of the public services ombudsmen.

## **3 A "one-stop shop"**

- 3.1 ASA supports moves towards a "one-stop shop" which would make complaints about public services simpler and more accessible for the public. Complete integration of

the public sector ombudsmen, with a removal of the MP filter, has been completed in Scotland and Wales, and we believe this to be a helpful model for England.

## **4 Proposals 1, 2, 3 and 5**

4.1 ASA supports these proposals.

## **5 Proposal 4**

- 5.1 This proposal enables the ombudsmen to “develop new means of resolving complaints .. that more closely meet the particular needs of some complainants, whose priority is for an early, satisfactory outcome and not a long and detailed investigation.” (Para 52)
- 5.2 Para 55 states that “the government does not consider that it should be necessary for the ombudsmen to obtain complainant consent for alternative complaint resolution” as the way in which a complaint is managed should remain within the discretion of the ombudsmen.
- 5.3 However, para 39 states that “in order to preserve the necessary protection and rights and freedoms ... the complainant would be asked to give his or her consent to joint working on the investigation of their complaint.”
- 5.4 ASA is not clear about the distinction between proposals 1 and 4 in this respect.
- 5.5 We are aware that early complaint resolution is already used informally by the ombudsmen, and that it can provide a useful remedy for some complaints where the priority of the complainant is for an early resolution and a personal remedy.
- 5.6 However, we do have the following concerns about the proposal that the decision as to whether a complaint should be resolved through early complaint resolution should remain solely with the ombudsmen (para 55):
- All forms of ADR, especially mediation, should be voluntary for both parties. Effectively making mediation or other forms of early complaint resolution compulsory, by denying access to a full investigation, significantly curtails the rights of the complainant. See the Halsey Judgement, Court of Appeal 11<sup>th</sup> May 2004, where the court held that European jurisprudence meant that the court could not order mediation as this would be infringing the parties’ rights.  
[http://www.hmcourts-service.gov.uk/infoabout/scco/case\\_summaries/2004/12\\_04.htm](http://www.hmcourts-service.gov.uk/infoabout/scco/case_summaries/2004/12_04.htm)
  - Complaints which are resolved informally and confidentially lack public transparency and accountability. There are more stakeholders with an interest in the outcome than just the two immediate parties to the dispute. The other major stakeholders are the general public, and parliament, both of which have a vested interest in ensuring that public services are delivered appropriately, and that poor service is identified and remedied, not just for individuals, but for all users of the service.
  - The Financial Ombudsman Service (FOS) resolves over half of its complaints through an early dispute resolution process which is referred to as “guided mediation”. However, this model is not necessarily appropriate for public sector ombudsmen, which provide a remedy for complaints about public services, as distinct from contract disputes between private individuals and financial services providers. However, it should be noted that in the FOS model the decision

whether to engage in guided mediation, and whether to accept an agreement made in this way or to request an adjudication or a full investigation, rests entirely with the complainant.

- Early complaint resolutions where there is an initial finding of maladministration causing injustice, but which do not result in a full investigation and a published report, may compromise the appearance of independence of ombudsman services. There is a risk that the ombudsmen may appear to be protecting public services if there is no public exposure of poor performance.

5.7 There are a number of options which might be considered:

- It could be made a requirement that it should be necessary for the ombudsmen to obtain complainant consent for alternative complaint resolution, following the FOS model. However, this would not necessarily remedy the concerns about transparency and accountability outlined in 5.6, and could also have serious implications for public resources.
- It could be made a requirement that where there is a preliminary finding of maladministration causing injustice which leads to an early negotiated settlement, a short report is published outlining the complaint, the initial finding and the remedy, which identifies the local authority or government department, while maintaining the confidentiality of the complainant.
- Some form of external review procedure could be established, so that a complainant who is dissatisfied with an ombudsman's decision not to conduct a full investigation and publish a report, can ask for that decision to be reviewed. The existence of such a procedure should not act as a bar to an application for judicial review of an ombudsman decision. However, it would provide an element of public accountability for ombudsmen through a quicker, easier and simpler process.