



Public Administration Committee

Oral evidence: Parliament's Ombudsman Service, HC 655

Tuesday 29 October 2013

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Written evidence from witnesses:

- Brian Thompson, Senior Lecturer, School of Law, University of Liverpool
- Professor Patrick Dunleavy, Professor of Political Science and Public Policy, London School of Economics
- Professor Robert Hazell, Professor of Government and the Constitution, University College London

Members present: Mr Bernard Jenkin (Chair); Paul Flynn; Kelvin Hopkins; Greg Mulholland; Mr Steve Reed; Lindsay Roy

Questions 1-65

Q1 Chair: May I welcome our three witnesses to this session about the role of the Parliamentary and Health Service Ombudsman? Can I ask each of you to identify yourselves for the record, please?

Professor Dunleavy: I am Professor Patrick Dunleavy from the London School of Economics.

Professor Hazell: I am Professor Robert Hazell from the Constitution Unit in the School of Public Policy at University College London.

Brian Thompson: Brian Thompson from the Law School at the University of Liverpool.

Q2 Chair: Welcome to you all, and thank you for being with us. You have each given us some very useful written evidence and we are very grateful for that. There seems to be quite a lot of agreement between you. Could I just start by asking each of you to give your assessment of the performance of the PHSO as a complaints handler?

Professor Dunleavy: There are a large number of problems with the handling of what we might call citizen redress, which is the overall idea of getting things right in public services, making things that have gone wrong better and providing some compensation or amelioration if things have gone wrong.

The problem is that, over the years, the Parliamentary Ombudsman has become more and more marginal in the overall regime of citizen redress. Particularly, there has been a huge growth of regulators in particular services, including health care. More and more people are taking complaints to regulators rather than running them through the Ombudsman service. Similarly, we have done research that repeatedly shows that most citizens do not understand the distinction between complaints and appeals. They see these as very much part of the same process, and so because the Tribunals Service has been reorganised, has become more efficient, more comparable and operated better in the last few years, we have seen a big growth of some kinds of appeals. People are using appeal routes rather than the complaints and Ombudsman route. Finally, in some areas like taxation and perhaps social security, improvements in administrative procedures have slightly reduced the number of complaints.

Basically, the picture is from 2002 to the end of 2011 that the Parliamentary Ombudsman was becoming an increasingly irrelevant figure, even with the new health complaints role. The new Ombudsman, Dame Julie, has made a big difference. There are indications of a much more activist and outgoing approach to complaints. That is the key thing. I would like to see the Ombudsman as the centre of citizen redress, not really just a side figure.

Brian Thompson: The thing to bear in mind is that the Ombudsman is at the top of the ladder for the handling of complaints. Therefore, the bulk of the complaints are expected to be dealt with by the organisation against whom the complaint is directed. It is a different role; it is not dealing with all complaints, but those that are more difficult or have not been resolved lower down.

The jurisdiction is difficult; it is complicated and not helped by the legislation. You will have seen—and of course you will get it in your post bag—that there are people who complain and are not satisfied with the service they have received. It is very difficult to know whether or not they have a justified grievance with that. The Office has a lot of discretion and the annual reports no longer detail the bases on which cases might be winnowed out. This also used to happen with the Local Government Ombudsman that they could say “outside jurisdiction”, “exercise of discretion on the basis that it was not something we thought we could actually help with” and those types of things. It is difficult to find out whether those people who are dissatisfied have a genuine complaint or whether it is understandable that they have complained and they did not get the outcome that they wanted.

Professor Hazell: I have just two things. First, following what Professor Dunleavy said, we should all note that, in part, the reduction in cases coming to the Ombudsman may be because of the success stories elsewhere that Patrick has described, in terms of complaints being better handled at the first instance. Second, a lot of the work of the Parliamentary Ombudsman is constrained by the statutory framework that we will no doubt come on to. In terms of the things that are within her control, it is notable how, under Dame Julie Mellor, there has been a big change in the complaints that they will accept and pursue through to adjudication. There was a statement on her website this month saying that, in terms of health service cases, she expects to process and take through to adjudication three times the number of cases that were similarly processed last year. There has been a big increase in throughput.

Q3 Chair: So we are all agreed that it is not because the Ombudsman has changed its practice; it is because there has been so much practice changed outside. Then the Ombudsman is trapped in a statutory framework, which means the Ombudsman has been consigned to irrelevance. That is probably putting it too strongly, but it is being marginalised by the statutory arrangements, the inability to take own initiative and things like that.

Professor Dunleavy: Yes. Also we have not mentioned other things such as other ombudsmen being set up and other complaints procedures. We have police complaints, service complaints and so on.

Q4 Chair: What impact does the Ombudsman have on administrative practice?

Professor Dunleavy: We did a study back in 2003-4 for the National Audit Office and the problems then were that the Ombudsman was seen by most civil servants and other bodies as being very remote from contact with the large volume of case load and, therefore, dealing with very eccentric, unusual or special cases. Even though the Ombudsman, over the years, has originated and promulgated some useful principles for complaints handling, and I stress the utility of complaints as a source of administrative improvement, I do not think there has been much of an audience for the Ombudsman until very recently. I do not think that the Office has really used any kind of modern, digital or online means of disseminating improvement messages that would have wider resonance. That is always going to be difficult because of the very upper tier case load that the Ombudsman has had. I think other ombudsmen like the Local Government Ombudsman have been a lot more successful in influencing wider administrative practice.

Professor Hazell: It is not directly in the Ombudsman's control whether Whitehall will raise its game in trying to learn systematic lessons from the complaints Departments receive. The Ombudsman at best can be a coach and point the way, but it is up to Whitehall Departments then to decide whether or not they want to devote more energy and resource to that.

Brian Thompson: I would agree with that point that it does depend on the administration itself, as you have seen with the first part of the inquiry into whether complaints matter. It has not always been the case that Departments are willing to take complaints seriously. I would say that Ann Abraham did work on the complaints principles and did do some follow up work. For example, on things like tax credits there was an initial investigation that put forward remedies and changes in practice. She followed that up a couple of years later and found that there had been some improvements, but there was still some way to go. That is a useful thing to do to go back and to keep the pressure up.

There has also been the recent innovation of doing a bit more on the annual survey of complaints across Government Departments, which was echoing what had been happening with health. That seems to have pushed Government into their complaints forum, which is across Permanent Secretaries and various other people who will attend that. I am trying to make the point that there is great variety amongst the complaints machinery of the

different Departments and nobody who is in overall charge. It is pushing and pushing, but if they want to resist, they will resist.

Q5 Chair: We thought we had made a little progress with the Minister of State for Policy when he was in front of our Committee. What effect do you think the demise of the Administrative Justice and Tribunals Council is going to have on the flow of complaints to the Ombudsman, and what effect should it have on what the Ombudsman does?

Brian Thompson: Speaking as someone who was on that body, I probably have a slightly biased view. To go back to the point that was made earlier by Professor Dunleavy, one of the difficulties is that we have this dichotomy between two ways of redressing things—complaints and appeals—and people do not understand that. The way in which that is done, overseen and supported is fragmented. You cannot really deal with tribunal appeals because that would be a matter for the Justice Select Committee. They could not look at complaints because they would see that as being your territory. The AJTC was the only body that had that overview and was therefore trying to look at things from the point of view of the citizen, the user, and how they could see things; they just saw it is all Government and we have a problem that we need to sort out. It is something that the Committee did understand in the past in their report in 2007 about trying to have a collective portal, making an easier access into these things.

Professor Dunleavy: I absolutely agree. The separation of appeals and complaints is just a completely bizarre piece of Whitehall thinking. In some ways, a complaint is supposed to be some kind of attribution of blame, whereas an appeal is asking for a second look. From an ordinary citizen's point of view, the difference between those is abstruse and metaphysical; it is about as relevant as Augustinian philosophy to the normal person in the street. Other ombudsmen, particularly the Financial Ombudsman Service, do not make this distinction. They essentially just conduct investigations; they try to mediate between the body and the complainant, and then they investigate only if the mediation fails.

Q6 Chair: How acceptable is it that procedures should be established on the basis that large numbers of people will, of course, appeal? How acceptable is that?

Professor Dunleavy: In some cases, such as welfare to some extent, tax, immigration decisions and so on, you have to have a pyramiding of appeal rights. It is quite tricky to get things right first time. There are parts of the current welfare state where the appeals process is fundamental to any kind of correct decision making. For example, in the DWP, a large number of decisions are appealed; a large number of those are allowed.

Q7 Chair: So that is not necessarily a bad thing.

Professor Dunleavy: It is not necessarily a bad thing and, to some extent, you can see the Department even recognising that because they do not show up to even represent their side of the case in many of the social security appeals. You have to have an appeals process,

but you could do a lot more. Things that get categorised as complaints are cases where people cannot really appeal, but where something has gone wrong and then, because they have this complaint/blame category, you get adverse reactions by public servants to being involved in those cases and an inadequate service. That is really the root of many of our public service disasters, where we have seen really large-scale things going wrong, and none of the different regulators, ombudsmen or other complaints procedures have been effective. Even, with respect, the huge volume of work that goes through MPs is a very important part of the overall redress process now. That is really the problem.

Chair: On the AJTC, Professor Hazell?

Professor Hazell: I have nothing to add.

Q8 Chair: Do we think the way the PHSO is changing her approach to investigating more cases is a good thing or a bad thing? What effect will it have on citizens?

Brian Thompson: I would like to know how she is doing it. It has been announced; the methodology of this has not been explained. I would welcome it. I think perhaps there were not enough investigations being carried out, but we will just have to wait and see.

Q9 Chair: Do you accept that there was quite a lot of investigation going on and then an announcement that, “Your case is not going to be investigated”? That was a rather undiplomatic way of handling people who felt they had a grievance.

Brian Thompson: Typically in the past the ombudsmen had a two-stage sieve. They have the statutory stuff: whether it is in their jurisdiction, whether it is in time, and whether there might have been an alternative remedy that ought to have been pushed on. Then there are more discretionary matters that they look at. One of those is whether it is worthwhile putting resources into dealing with a particular thing, whether we can actually get a worthwhile outcome and whether that is in fact an outcome that the actual complainant wants. Sometimes it is not, because people do not understand. People may come with all sorts of objectives: an explanation, an apology, perhaps some financial compensation and a head on a plate. Not all of those are going to be served by the Ombudsman.

Professor Dunleavy: Almost anything that could be done to improve the Ombudsman’s level of activity is a very good thing. You can compare, historically, the British Ombudsman with the Dutch Ombudsman, who is very activist, very well known and handles a much larger volume of complaints. He writes a weekly column in one of the main Dutch daily papers. The service has been quite poorly disseminated. It has a tremendous reputation amongst older people, but I fear that younger people are not really coming into contact with it. We have done focus groups and many younger people think that you have to have some very special case to bid it up to the Ombudsman. All the various restrictive limits have been cumulatively very damaging. The website for many years was fairly poor; it is much better now. Use of social media is still just beginning. I

notice that the Office has one-tenth the level of Twitter followers that you have, Chairman, so there is still quite a long way to go.

Chair: I get a lot of complaints.

Professor Hazell: I have only two things. One, I agree with Professor Dunleavy that our Parliamentary Ombudsman does not have the same public profile of some of our counterparts in other countries. In terms of your original question about the increased number of cases or complaints that are being taken through to adjudication, it seems a most impressive achievement, but like Brian Thompson I would like to know a bit more about how it is being done. No doubt those are questions that you can ask of Dame Julie when she comes before you.

Q10 Greg Mulholland: I can tell you that the Ombudsman has one more follower as a result of you telling me that they were on Twitter. They now have 502 followers. This is a very important area. Would you agree with me that part of the problem with the perception, as well as the reality, of the cases that the Ombudsman has historically deemed worthy of investigation has been the way that the system was set up and the way it has been communicated? This is something that I have raised with the previous Ombudsman and the current Ombudsman. What people often simply want, reflecting your comments, Mr Thompson, is for an acknowledgement that there was indeed a form of maladministration or some poor decision-making and an apology. Yet, the way that the system has been set up, many of those cases, if it is not deemed that there can be a substantive award or something more fundamental, or a large scale investigation, are deemed not worthy of having an investigation, when there clearly was some poor decision-making. I know that the current Ombudsman is trying to look at it, but do you agree with me that there needs to be an overhaul of the system, where instead of saying it is not going to be investigated there is a lower level or a first stage of looking at something and writing? If that outcome is then getting acknowledgement that the decision was not made in quite the way it should, and that of course an apology, and no more, would be given to the individual who has suffered as a result, but that lessons would be learnt so that administration would be improved in the future, that would actually go a long way to avoiding this perception that the Ombudsman only investigates a small number of cases and therefore is frustrating and regarded by many people as not being an effective system.

Brian Thompson: On what ombudsmen across the world are doing, we studied ombudsmen in Australia, New Zealand and Ireland as well as the United Kingdom. The investigation is left for the difficult and the tricky, because you might be able to get an intervention that meets the types of things you have pointed out and there is no need to go on. There is the question then of trying to make sure that the point that caused the difficulty is a lesson learnt. That, of course, is the nature of the problem with all of the organisations: they may sincerely apologise and carry out some other kind of redress, but they do not always follow through on learning and implementation of the lessons.

If we go back as far as two ombudsmen ago, when they were setting up the Scottish Public Services Ombudsman following devolution, Michael Buckley intervened to say that the nature of the legislation should be such that it gave the Ombudsman the flexibility of being able to finish early, because that might be appropriate in particular circumstances. The

best example of that is a provision in the legislation for the Public Services Ombudsman for Wales, which has been identified and recognised by the Law Commission in their report on the Public Services Ombudsman. There is a concern that some people think, if they do not get an investigation, it has not been properly looked at. It can be properly looked at without an investigation, but it may be that there needs to be a better alignment of the expectations of the complainant with what the Office wants to do and what it thinks is appropriate.

Chair: Does anybody else want to contribute to that, briefly?

Professor Dunleavy: Yes, quickly. The key thing that a lot of people want is the lesson-drawing thing, and they would like to have some assurance that what happened to them was not going to happen to other people. There could be a quick mediation phase where the Ombudsman really tries to get to the heart of what the complainant is unhappy about and then tries to get the body that has been complained about to really look at this again, and tries to get to a quick resolution. The Financial Ombudsman Service will do this within six weeks. Something like that as a general first phase would mop up a very large proportion of the things and give people a feeling that they had been responded to. It would do it quickly, whereas the whole investigation thing tends to mean very prolonged, very drawn out, very expensive and very poor value for money activity.

Chair: We too want a quick resolution, and I am going to pull you up if your answers are going on too long. Forgive me for that.

Q11 Lindsay Roy: Good morning, gentlemen. We have had a very interesting discussion so far. Can you summarise how the profile and visibility of the Ombudsman can be enhanced?

Professor Dunleavy: I would say that the time is long overdue when we should aim to create within England the same kind of integrated Public Services Ombudsman that we see in Scotland and Wales, which looks across health, local government and central Government services, and does this in an integrated way. Ideally, the Parliamentary Ombudsman Service would have a regional setup like the Local Government Ombudsman has, with a level somewhere between three and nine Government regions. Then there will be a National Ombudsman to do national things and to be a lead to pull together the whole redress picture, to consult with appeals and regulatory bodies. Regional commissioners or regional parliamentary ombudsmen should have a detailed knowledge of their local area and all the authorities, MPs and others in their area. I think that is impossible to do at the national level.

Q12 Lindsay Roy: So greater coordination and integration.

Professor Dunleavy: Absolutely. You just need one Ombudsman service. That is what the Scottish and Welsh pictures suggest.

Professor Hazell: Something Professor Dunleavy has mentioned already is a much bigger presence in social media and in the media more generally. In terms of the one-stop Ombudsman for England, I strongly support that but we must all be aware that there is a devolution wrinkle to this, because the Parliamentary Ombudsman is also responsible for complaints in non-devolved matters in Scotland and Wales.

Lindsay Roy: As I am only too aware.

Brian Thompson: In terms of profile I am sure more could be done in having a presence: issuing more press reports on investigations that have been done; it is also possibly a matter for you, if you have had successful intervention with the Ombudsman on behalf of your constituent, that that is something that you might want to talk about, but then again, you want to be re-elected, so you may not wish to share credit as widely. That is the thing though: the Ombudsman is a partner, not just simply a servant of the House.

Q13 Lindsay Roy: Are there any other lessons we can learn from the Scottish and Welsh experiences?

Brian Thompson: The difficulty is scale because England is so much larger. It would be a very large office if you were to replicate the devolved services in Scotland and Wales within England. I am not sure whether that would be an appropriate size.

Q14 Kelvin Hopkins: Talking about scale, it occurred to me immediately that Wales and Scotland are smaller and much more compact. An Ombudsman there would know many of the senior people in the administrative services. England is much bigger and is there not a case, if you integrate the ombudsman services, to have them based more on a regional basis in Britain rather than having them as a national system?

Brian Thompson: You could do that, but for example the Local Government Ombudsman used to have three offices and they are going to relocate to Coventry. That is the plan now. Whether that is purely because of austerity I do not know, but because of IT you do not need to have a local presence physically to have a local presence.

Professor Dunleavy: One of the great virtues of the Scottish and Welsh ombudsmen is indeed, as Mr Hopkins said, that the Ombudsman has a detailed local knowledge of local authorities, NHS bodies and even police bodies. That is really what we are lacking at the moment: somebody who can be a lead for developing public service complaints handling, appeals handling and regulatory problems, and pulling them together in a regional area. That is why I would like to see either one Ombudsman per region with a national office to handle just the big cases, or maybe four or five regional offices in England.

I would like to see a college of ombudsmen that brought together the English Ombudsman with the Scottish Ombudsman and Welsh Ombudsman. That would be a very helpful thing; we would be able to see ombudsmen developing good practice and we would have a degree of competition by comparison across regions and jurisdictions. That would be very helpful for developing a modern Ombudsman service. It is too nationalised at the moment

in England, and it is impossible for ombudsmen to have a detailed knowledge of 500 local governments and 160 health authorities.

Q15 Chair: Can one of you give a comment? A lot of the objection to giving the Ombudsman more discretion, removing what we call the MP filter—and we will come to that—is that we could not afford an Ombudsman doing what they do in Scotland because it would mean a big increase in resources. What do we say to people like that?

Professor Dunleavy: We already have a Local Government Ombudsman; we have the Parliamentary Ombudsman; we have housing ombudsmen; we have lots of different ombudsmen functions.

Q16 Chair: So reallocation of existing resource could produce a much more coherent effect.

Professor Dunleavy: Absolutely. You would get a lot more value for money if you could reorganise it in the way I have suggested.

Q17 Chair: So we should sell any reform package to the Government as a value for money exercise.

Professor Dunleavy: Absolutely.

Q18 Chair: Do you agree, or are we going to have to spend more money?

Brian Thompson: I think you can spend money more effectively, and it is possibly at the front end, at the portal to get things in, and then that will ease things because you will not have the separate organisations having to do their own winnowing if that could be done commonly at a portal.

Q19 Chair: Professor Hazell, are you confident that we could do a big reform package without having to commit additional resources?

Professor Hazell: Forgive me, Chairman. I have not looked at the budgets of all the different ombudsmen concerned and compared them with Scotland.

Q20 Chair: You academics are so impractical. Can I suggest each of you looks at the resources question? You are all making very big recommendations, but how can the Government consider this without looking at the resources question? If you want to send us further evidence, that would be very useful.

Q21 Lindsay Roy: You will be aware we are visiting the Netherlands next week. To assist the Committee, what key things should we seek to learn and what key questions should we ask?

Professor Dunleavy: I think the Netherlands Ombudsman has developed a tremendous reputation across Europe for being one of the more activist, outgoing and effective ombudsmen. It is well-known amongst citizens, highly visible and highly influential with the Dutch civil service. I think it is just an excellent place to visit.

Q22 Lindsay Roy: Is it about being more proactive?

Professor Dunleavy: Absolutely. They are very proactive; they are very outgoing; and they are very much committed to pulling in complaints and getting something done about them quickly.

Lindsay Roy: So it is action-focused.

Professor Dunleavy: Yes.

Lindsay Roy: Professor Hazell?

Professor Hazell: I have nothing to add.

Brian Thompson: It just may be that the culture in the Netherlands is different. I am sure that is something that our Ombudsman would like to do; it would like to have that effect. It may be that the Dutch civil service is different from British public administration. I do not know.

Chair: We are going to find out.

Q23 Lindsay Roy: Cultural change should be a major focus for us.

Brian Thompson: Absolutely. As we know, complaints culture is terribly important.

Professor Dunleavy: One other thing you might look at is the impact of outsourcing, which has been having a tremendous impact in British public services. There is a good deal of outsourcing in the Netherlands, and so looking at how the Dutch Ombudsman handles tricky issues of services that are outsourced could be a particular point of interest.

Q24 Chair: It undermines public confidence that people can complain.

Professor Dunleavy: Yes, it creates a lot of complexity. For example, there was a case in the summer that got a lot of publicity where an elderly lady died in hospital after the police organised a raid on her private sector care provider for using illegal workers. Then the care provider more-or-less immediately shut down. There are issues about whether the social services bodies involved were fully communicated with, but really you have there

the Border Agency, the police, two different local authorities, the NHS and a private care provider of a rather fragile kind all involved in one particular problem. That is happening all over public services now. It is not a small problem. When every one of those services has different ombudsmen and different complaints channels, that creates a lot of complexity for citizens.

Q25 Mr Reed: I wonder what you see as the ideal relationship between the different roles that an Ombudsman has in dealing with individual cases like identifying systemic failure and inspecting services.

Brian Thompson: In the work that we did, the Ombudsman said that they had the two roles: first of all resolving the complaints that come in and then seeking to distil and disseminate the learning in order to help the public bodies improve their services. They do see the two. Naturally, the emphasis has to be dealing with the complaints that come through the door. One of the techniques they have in other countries, which we do not have here, is the idea of an own-initiative, or as they call it in Australia an own-motion investigation, which allows them to carry out an investigation into something which they think has systemic implications, but they have not actually received a complaint about it. I know that particular power is something that the UK Ombudsman would like to have. Certainly, when we were in Australia and we told them that UK ombudsmen did not have that, they were flabbergasted; they could not conceive that you could be operating as efficiently as you might without that power.

Q26 Mr Reed: Are there particular reasons why we do not have it?

Professor Dunleavy: The time of the original legislation, I think. I agree on individual cases and systemic lead. The systemic effects of the Ombudsman have been weakening, weakening and weakening, largely because regulators have been growing in importance, because regulators do have inspection and active intervention capabilities whereas the Ombudsman does not have any form of that at all. Even so, a lot of regulators are triggered by individual complaints now as well, if you look at the Surveillance Commissioner, the Information Commissioner and so on.

The Ombudsman is looking completely unusual in not having any kind of own-investigation capability. Obviously, you might want to make it fairly restrictive, but it would be incredibly helpful for the Parliamentary Ombudsman to have capability to pull together concerns that a lot of different bodies might have with a particular local authority, a particular health body or something of that kind. I would like to see a duty—and you would have to think how it would be phrased—for regular consultation between the Ombudsman at a regional level, regulators and appeal bodies to look at overall trends, to pull out much more of the systemic lessons and to speed up the process of that. What we cannot have is a disastrous level of public service going unacknowledged for years and years, and chief executives in some cases, as at East Staffordshire, removing demonstrators from their lobbies and nothing getting done over many, many months and years even.

Q27 Mr Reed: How does the relationship work between the Ombudsman and the regulator in that model?

Professor Dunleavy: I would like to see a statutory duty to consult, and also some duty to share information. At the moment, different bodies may have reasons for disquiet arising from different cases. All these cases are kept in separate boxes, and then there is a lack of information-sharing, a lack of proactivity and a lack of appreciation of the scale of the problems, especially because almost all the problems in public services, children's services and so on arise at the gaps between the police, local authorities, social services, health and so on. The Ombudsman has the stature, the access to Parliament via your Committee and the wide public recognition that would allow them to be an effective lead person if these arrangements could be adjusted.

Q28 Mr Reed: That is a further argument for greater integration.

Professor Dunleavy: Yes, indeed.

Professor Hazell: Briefly, on the own-initiative investigation, it is perhaps worth noting that the previous Ombudsman, Ann Abraham, initially did not want such a power, in part because she feared she might then be the subject of media campaigns urging her to initiate investigations. Towards the end of her time, though, she changed her mind and there is no doubt that the present incumbent, Julie Mellor, certainly wants own-initiative investigatory powers.

Q29 Mr Reed: I suppose that pushes us on to the further question, which is: should we be regarding the PHSO as an extension of the legislature, the judiciary, neither or both?

Brian Thompson: They have this odd position. Initially, it was created because there were felt to be failures in legal redress and using political means of redress. That is why you have the statutory bar that says, if there is an alternative means of redress, the Ombudsman should not accept the case unless, in the exercise of discretion, it would be unreasonable to expect the person to have recourse to that other remedy. That is something that the Law Commission has recommended should be abolished.

They have that difficulty, but they are absolutely now part of the justice system. They have moved more and more away from the political thing, and there is more overlap with redress that might be got in the courts, but of course it can be got more cheaply than it would be in the courts. They are mindful that there may be some cases that come to them where the better remedy would be one that would be achieved in the courts. You sometimes get that with health, where if it is a clinical matter and somebody is wanting substantial damages, it would be clinical litigation rather than a complaint to the Ombudsman. They have changed their role; they are definitely part of the justice landscape, but they are unusual in that they have a power of recommendation only. By and large, though, through the moral suasion of having made a report and found injustice

or hardship caused by maladministration or service failure, public bodies will usually act in accordance with the recommendations.

As you know, that does not happen with the Parliamentary Ombudsman; the Parliamentary Ombudsman can lay a report under Section 10.3 of the Act and that is usually where this Committee comes into force, because it will then look into it. That has happened more frequently in the past 10 years than it happened in the 40 years of the life of the Office. Your Committee in the previous Parliament carried out a number of reports there. There were physically four in the past 10 years and there had been two prior to that—six in the lifetime of the Office—which suggests that by and large the co-operation is there.

Q30 Lindsay Roy: Am I right that the focus is on process rather than outcome?

Brian Thompson: Ombudsmen advise us that that is what is wrong with the complaints system: that people focus on process rather than outcome. The strong advice from Dame Julie and her predecessor, Ann Abraham, is you must focus on outcomes. That is what you have to do. You must not tick boxes; you must look at what it is that is going to resolve this particular issue.

Q31 Lindsay Roy: Is that changing?

Brian Thompson: Possibly, if the Minister for Policy has taken on the message, which he seemed to have in his appearance before you.

Professor Dunleavy: There is a case for saying that essentially what the Ombudsman should be is part of parliamentary scrutiny. You have, for example, the National Audit Office, which backs up the PAC. I would like to see the PHSO backing up this Committee in enhancing overall parliamentary scrutiny. We have about 500,000 complaints a year; we have about 850,000 appeals; we have an unknown number of regulatory references by citizens; we have a suggestion that Parliament itself may be handling something like 1.2 million letters and emails a year on public services. It would be great to see more of these things brought together and that is really what the Ombudsman service should do. I do not think myself that making it part of the judiciary or even sticking with its judicial methods is the right solution.

Professor Hazell: Your original question was whether the Ombudsman is more part of the judiciary or the legislature. Interestingly, the tribunals, which we were discussing earlier, have just in the last couple of years formally become much more part of the judiciary. We now have an integrated Courts and Tribunals Service since 2011 and all members of tribunals are now formally part of the judiciary, coming under the Senior President of Tribunals, who is a Court of Appeal judge.

I would not want to see the Ombudsman brigaded in the same camp. The Ombudsman is quite properly called the Parliamentary Ombudsman. As Patrick has said, the Office is an extension of Parliament's much more general scrutiny role. My other wish for not wanting the Ombudsman to move closer to the judiciary is the risk of excessive

legalisation. She is already subject to judicial review and, indeed, there are regularly judicial reviews of her decisions or handling of cases. As everything we have been saying previously points to, we want the Ombudsman to be able to process cases as quickly and informally as possible.

Q32 Mr Reed: Do you see any conflict of interest in the work of this Committee both scrutinising the Ombudsman, but also working hand in hand with the Ombudsman to identify issues to scrutinise?

Professor Dunleavy: There is a case for saying that the Ombudsman should be potentially accountable to a commission similar to the National Audit Commission. The Comptroller and Auditor General reports to the Commission; it provides a Committee overview of the efficacy of the NAO's work. It looks at the budget; it looks at the value for money being delivered and so on. I know that this Committee looks at the Parliamentary Ombudsman in something of that light, but it would be sensible for the Ombudsman to have a kind of commission to whom they were accountable for their day-to-day working. It would be useful to see the National Audit Office fully empowered to cover the Ombudsman's efficiency and so on.

Q33 Chair: But the National Audit Office is the right body. Can I take it you all recognise the discomfort the hybrid role that PASC has at the moment causes?

Professor Hazell: There is clearly a tension. You are both the Ombudsman's champion in Parliament and the wider world, but you are also the primary Select Committee that scrutinises the work of the Ombudsman, her efficiency and her effectiveness. So long as you carry out both those roles, I think you just need to be very clear in your own minds and very clear with the Ombudsman which hat you are wearing in any particular session or activity when you are dealing with the Ombudsman.

Brian Thompson: It might be a bit difficult to pursue particularly the NAO and Comptroller and Auditor General analogy, because the Public Accounts Commission does the scrutiny. It then has the benefit of an audit that is carried out on their behalf into the NAO. I do not think that is something that you would necessarily do. As we said in our evidence, you can blur a little bit the separation between scrutinising and working with. That should be possible. If I can just take this opportunity, when I was talking about justice, I absolutely was not saying that you should be more like the judges. The analogy that the Lord Chief Justice in Northern Ireland has said is that we are like the emergency services: we are complementary and do different things. It is just to make the point that it is part of the provision of justice and it is providing it in a different and necessary way. It is very different..

Mr Reed: Thank you for that clarification. That is helpful.

Q34 Paul Flynn: What messages would the Ombudsman send out on Twitter that would be useful?

Professor Dunleavy: That is an interesting question, Mr Flynn. If you look at public service bodies, they were originally quite sceptical about how many followers and so on they would have. You can look to the Department for Education, for example, which has 88,000 Twitter followers. I am not sure what the natural level should be for the Ombudsman, but certainly several thousand people across the country would be regularly interested in what the Office was doing, where things were going and looking at their advice.

Q35 Paul Flynn: Give me an example of a tweet from the Ombudsman. What would be useful? What would she be talking about in 140 characters?

Professor Dunleavy: Most tweets are short things that then link to something on a website, so a blog, a finding or a report. It is something of that kind. That would be the main character of what the Ombudsman is already doing on Twitter.

Q36 Paul Flynn: In a tweet?

Professor Hazell: Can I give you a very simple example? It would be, “Read my latest report published today”. Preparing for this session, I looked at the Ombudsman’s website and I found a report dated 26 October, I think. I would not have known about that if I had not been doing homework for you. If I had been on a Twitter feed I could have been told about it.

Q37 Paul Flynn: Do we know of any ombudsmen throughout the world that do use Twitter?

Professor Dunleavy: I have not looked at the Dutch experience, but I would be very surprised if they did not use a wide range of social media. Similarly, for example, if you were thinking about how the Ombudsman can better communicate systemic lessons to public servants, then writing a short blog and tweeting that to people following you would be a good way of disseminating it. You would be surprised: once you have tweeted it to somebody they will re-tweet it to other people in their network so that information will then circulate much further.

Q38 Paul Flynn: If we look back over the last 25 years, of the greatest scandals we have had of people being abused by financial bodies, the two major ones were the mis-selling of personal pensions, with 6 million people compensated, and the mis-selling of endowments, which I think was 10 million to 13 million people. We now find that there is the mis-selling of these swap interest rate deals that the banks have been putting out. They all have one thing in common in that they were all fuelled by huge commissions both at the salesman level and all the way up to the directors of the bank level. They all made huge amounts of money. The question is, how can we change the culture if people like the banking system have used the same methods last year as they did 10 or 30 years ago for conning their customers, whose

businesses have been ruined by these deals? What procedure would you have that could alter their mindset? These people are not going to be rescued; their businesses are finished in many cases, and the complaints system would take years. Does the complaints system have the power to punish the banks to a level that would get them to change away from a situation where we are more likely to be robbed by a man who is sitting across a desk than being burgled?

Professor Hazell: Briefly, forgive me, but the examples you have given I think possibly have little to do with the Parliamentary Ombudsman, because these are examples of mis-selling by banks, insurance companies and financial services. They are mainly for the relevant ombudsman in the private sector.

Q39 Paul Flynn: Take the example of the Ombudsman's decision on the wrong advice given to the ASW pensioners, if you remember the case, where the complaint was that the advice given was that occupational pensions were the most reliable form of pensions. Government gave this in a leaflet, and in fact everyone was giving that advice at the time, because they were the safest form of pensions they had. The Government were blamed and happily they compensated, but the reason they compensated was not responsibility; it was due to the fact that they were the only people who could actually pay compensation.

Chair: What is your question, Mr Flynn?

Paul Flynn: Is there a weakness there in the system? The Ombudsman will go for the weakest link, which might be the only body that can pay out, whether it is just or not.

Brian Thompson: The answer to that again is that it depends whether or not it is something over which the Ombudsman has been given jurisdiction. Because it was Government advice, then it was the Department's maladministration in offering that poor advice that enabled her to be able to carry out the investigation. You are making a point generally that there is a line between ombudsmen and regulators, which is Professor Dunleavy's point. There is a spectrum of activity there and it is trying to decide who is the most appropriate. They can work together: Ombudsman investigations can then lead to regulatory action, which has been happening in the financial sector.

Q40 Chair: Should the Ombudsman have the power to investigate private sector organisations?

Brian Thompson: It happens at the moment with the Local Government Ombudsman in relation to adult social care.

Q41 Chair: But these are contracts that have been let by public authorities.

Brian Thompson: Not in all cases.

Q42 Chair: Should the Ombudsman be able to investigate pension mis-selling or bank interest rate swap fixing?

Brian Thompson: If Parliament gives them that jurisdiction.

Q43 Chair: I am asking whether you support that.

Professor Hazell: Let me offer an answer while my colleague is thinking of a better or more informed one. It would be quite a big step for the Parliamentary Ombudsman's jurisdiction to be extended in ways that we were discussing earlier, covering other parts of the public sector: local government, higher education, housing, etc. I would not want to see this public sector Ombudsman extending further into the private sector, save only for services that have been contracted out by public authorities.

Q44 Chair: Do you agree with that, Professor Dunleavy?

Professor Dunleavy: Yes, indeed. If I can just refer to Mr Flynn's question, the key thing to get from that is that, even in the private sector or in the banking sector where you have quite an activist Financial Ombudsman Service, you do have a whole litany of repeated major problems, which are now being addressed by the Financial Conduct Authority. You have this huge problem, as Dr Thompson said, between regulators and ombudsmen. I think you need to just make sure that whatever new provision is set up for the Parliamentary Ombudsman takes account of the fact that this is going to be a recurrent source of problems. It is very difficult at the moment with contracted-out services for people to get effective redress and they are becoming increasingly cynical about it. If we move to a more integrated Ombudsman service, a natural part of that would be to ensure that the integrated Ombudsman had a degree of capability over delegated services.

Q45 Paul Flynn: You used the word "integrated" again. You had the comparison between Wales, Scotland and England. Are the advantages ones of scale rather than system? Almost every Committee that meets to investigate any problem comes up with a report saying we need a more integrated, holistic, joined-up and co-ordinated system. Putting one bad idea and co-ordinating it with another bad idea does not present a good idea; it presents a bigger bad idea. Do you think a possible way forward would be to reduce the scale of the services to the levels of Wales and Scotland when those improvements might well appear rather than throwing some adjectives in it?

Professor Dunleavy: I completely agree. There are very few countries in the world that try to overview services at the level of 55 million people. England and possibly Japan are

some of the largest administrative units in the world. That is why I would say a regionally-based, integrated Ombudsman service would be the key.

Q46 Lindsay Roy: How can the Ombudsman better ensure its recommendations are acted upon?

Brian Thompson: First of all, by making sure they write good recommendations, with a view that they understand the context and that they are things that are not going to be impossible. They should not be trying to do something utopian.

Lindsay Roy: Realistic.

Brian Thompson: Yes, exactly, and I think that it is the case that they try to do that. As I have mentioned before, if we have a general cultural change—which may be coming around because of the NHS, but broadly in the public services—that complaints are things that you do not run away from, but you use to improve your service, things will get better.

Q47 Lindsay Roy: Do you see signs of that realism occurring?

Brian Thompson: I welcomed what the Minister for government policy said. We will wait to see, but he did not seem to know about previous exercises like the Citizens' Charter and the work that had been done by the Citizens' Charter task force on complaints, which did have a process and did have, as part of it, that you had to learn the lessons and the lessons should be disseminated and applied. You have got best practice guidelines, and they just keep being repeated. As was said in Ann Clwyd's report yesterday, they have to be carried out, which is why her report is quite interesting: it puts forward recommendations and an implementation plan. That might be, to get back to your question, a way in which that might be done; you have a detailed implementation plan, along with the recommendations.

Lindsay Roy: Professor Hazell?

Professor Hazell: Nothing to add.

Q48 Paul Flynn: Does the citizen's charter still exist?

Brian Thompson: No.

Paul Flynn: It has been buried, along with the Third Way.

Professor Dunleavy: One of the problems for any ombudsman is they tend to see a tiny fraction of cases, and some of the cases they see are because the complainant is particularly persistent, and some of the cases they see are very critical in revealing

problems in the delivery organisation. It is hard for them to distinguish amongst them. If redress is quicker, faster, and takes more account of the oddness of the cases, and if the Ombudsman's advice is premised on a much greater understanding of the administrative processes of the organisations being covered, then you can get a very positive virtuous cycle going on. In some areas of local government—the not very problematic areas of local government—you have had that virtuous circle between the local government's officers and the Local Government Ombudsman, and there has been a real concern by councils to avoid references to the Ombudsman, to learn lessons, and to do it quickly; none of which has really managed yet to develop between the Ombudsman and the big agencies like HMRC, DWP and the NHS.

Q49 Lindsay Roy: You mentioned Scotland earlier. I have met with Jim Martin; he is a witness in a forthcoming meeting. His priority is about setting standards for complaint handling across the public services. Should that be a priority?

Brian Thompson: I am not sure it is a priority. It was a job that was given to him following a report that looked at complaints, auditing and inspection regimes in Scotland, the Crerar report. In Northern Ireland, they are doing a review of their legislation, and I think they have opted not to follow that. The idea in Wales, for example, of having a portal and Complaints Wales is a good thing, but Scotland is different, and in that sense the Ombudsman may be best placed to develop—as has happened—protocols for different types of public service, and therefore the complaints systems that should be used in those different public services.

Q50 Lindsay Roy: Setting benchmarks?

Brian Thompson: Yes.

Q51 Mr Reed: I wanted to ask about the EU Directive on alternative dispute resolution, and whether you think that has any direct or indirect bearing on the powers of the PHSO.

Brian Thompson: It is consumer redress, so it is in the private sector. What might be interesting is that, in the language of the Directive, it requires that the ADR entities, the people who will provide the service, will have to meet certain quality criteria: independence, expertise, impartiality, transparency, effectiveness and fairness. Therefore, those ideas—which are then elaborated in the Directive—will be benchmarks as to what one would expect to see in consumer ADR. It seems to me that public services ombudsmen in their practice would fit those particular quality criteria that the Directive has promulgated, and indeed, private sector ombudsmen—for example, telecommunications, water and indeed the Financial Services Ombudsman—are also, I would suggest, bodies that would meet those criteria. However, under the terms of the Directive, the UK Government will have to set up a body to oversee this and seek to ensure that all bodies that are providing these services meet those criteria, and then, I think, every three years report to the Health and Consumers Directorate about that.

Professor Dunleavy: What would be valuable is any greater degree of similarity between complaints procedures in the private sector consumer markets and the public sector consumer markets. That would be something that the Ombudsman and other ombudsmen already existing in the public sector should try to fit in with, in order to help citizens to understand what their rights are and what entitlements there are, and what might be best done.

Q52 Mr Reed: How might we achieve that?

Professor Dunleavy: Basically, trying to get across an overall concept of what it is that you are entitled to from service providers. That could be very helpful if you have a private, outsourced service provider responding to a public authority, or funded by a public authority. There is tremendous scope for better communicating to citizens what their rights are and how to go about getting redress, and the more similar public and private redress become, the greater that ease of use for citizens is. The problem citizens have at the moment is that all kinds of different public services have all kinds of different complaints, appeals and redress procedures. Really, you have to be as skilled as Dr Thompson to understand what your rights are in most cases. It is a jungle.

Q53 Kelvin Hopkins: The MP filter is something that there has been a lot of talk about for a long period. Can you just remind me why it was instituted in the first place? It was a long time ago. 46 years is a long time. Why was it instituted, and by whom? Was it Government? Was it Parliament?

Brian Thompson: It was Government. The idea was that nobody knew what the volume of cases would be, and so it was thought that it would be simply that: a filter to help control the cases, and then after perhaps five years, it could be reviewed and decided whether or not it was useful to retain it. You may know that, in Northern Ireland, the Assembly has given the go-ahead for a Bill to reform the second oldest Ombudsman in the UK. That one has an equivalent to the MP filter, the MLA filter, and they have suggested that that should be replaced with dual access, which is also the proposal that the Law Commission has made. In that way, if people wanted to use an MP, they could; those who did not—and there are people who do not want to use you—would not have to, but it should be quite clear that there should be a connection between the Ombudsman and you, because you can help each other. You may be getting information that would be helpful for the Ombudsman, and the Ombudsman may be getting information about your constituency that is not coming directly to you, which would be useful for you. So, again, it is the point I made earlier about partnership.

Q54 Kelvin Hopkins: I suggested at a previous meeting a very large tick box on the front of the form: “Do you want the MP involved, yes or no?” “No”, and that would be no problem. The overwhelming view is now that the MP filter should be got rid of, by most people. Very few people are defending the MP filter. Can I suggest that there might be some points in favour of keeping the MP filter? For example, when matters are referred to the MP, the MP might say, “Well, you do not need to go to the Ombudsman; there is a simple

complaints procedure.” Even just writing a letter to the chief executive of the council or the chief executive of the local hospital might solve the problem quickly. Going to the Ombudsman could be an unnecessary process. That is one case; there are other things, like that the MP wants to be informed of things that are going wrong in his constituency, so he or she can take those things up as well. It is also perhaps helping with the submission, because some people are not very literate, not very competent with bureaucracy and forms and so on. The MP and their staff can be helpful in that respect. I can see all sorts of advantages of the MP involvement.

Brian Thompson: I think the proposal of dual access copes with that. The other thing is that you are talking about the two stages: the stage where you are helping the constituent make their initial complaint, and then the circumstance where we have access to the Ombudsman, but having done that, we have been dissatisfied with it. You go to the Ombudsman, and currently they can only do that if they are referred by you. There are two different stages in the process. You can certainly be involved in the first, and dual access would allow you a role in the second. Dual access is a compromise, but it is better for people who want to get to the Ombudsman, because some people will not be able to go because, unfortunately, they do not want to have anything to do with their MP.

Q55 Kelvin Hopkins: Well, indeed. I understand that in many cases. There is a problem, of course: some people in my constituency are unhappy about dealing with an MP for whom they did not vote themselves. We try to explain that we represent all citizens, but nevertheless.

Professor Dunleavy: Perhaps I could just add that the role that MPs are fulfilling now in public service redress handling and getting a second look for citizens, getting things put right, is very important. As I say, we do not have any statistics or knowledge of the scale of what MPs are doing, but there might perhaps be 1 million or 1.2 million pieces of correspondence or email going through MPs from citizens per year, which is quite a lot. Effective liaison between the Ombudsman and MPs would be a very important thing to safeguard, but with all due respect, I do not think that is what the MP filter is doing. At the moment, what the MP filter is doing is putting off a lot of people, knocking out a lot of communication and inhibiting the ombudsmen in developing their relations with the public, in a very restrictive way. I would really like to see something like a direct access from the public to ombudsmen, but with a tick-box where people could mark if they did not want the MP to be notified regularly.

There should be regular notification of the basic details of complaints and regular consultation between a single, integrated regional-level Ombudsman and the region’s MPs, because MPs have a fantastic amount of knowledge of what is going right and what is going wrong. At the moment, that knowledge is very episodically reaching the Ombudsman and reaching other regulators. I would like to see effective consultation and analysis, so that you would get useful data and information that would help you alert the Ombudsman and alert other responsible regulators and appeals bodies about what is going wrong in your area. Sometimes, for example, a particular DWP or tax office may have far more of a problem than other areas, and at the moment, it takes a long time for all of that

to filter through. Everybody has a little bit of the picture, but are not really putting it together.

Q56 **Kelvin Hopkins:** If I can continue my devil's advocacy of keeping the MP filter, it adds weight to a submission, possibly. It might even—although I am full of admiration for the Ombudsman—mean a quicker response if the MP is involved, because the Ombudsman and the staff do not want MPs on their case, so to speak. That is another possible argument in favour of keeping the MP filter, or at least the choice, so that people can add weight to their case.

Professor Dunleavy: In all the focus group work we have ever done, people are much more likely to refer a case to an MP than they are to the Ombudsman. I think that the MP filter is a completely unnecessary and hampering thing. Everybody knows about the sterling work that MPs do on behalf of their constituents, so I would have thought that there was no reason why you should not have direct access to the Ombudsman. I do not think the MP filter is doing a single constructive thing, really, with due respect.

Q57 **Kelvin Hopkins:** Just for your information, my staff through me put into the post some 6,000 letters a year. A high proportion of those are to do with complaints about public service or problems people have got, so that is just a figure. One final point, really: if the MP filter were taken away, would it mean a significant increase in the volume of work for the Ombudsman—this was the Government's original concern, as you say—or would there not be much change? Any thoughts?

Professor Dunleavy: I do not think there would be much change. I do not think that the Ombudsman would be swamped by new cases that would not otherwise have come. I think there would be an appreciable increase, but there would also be a great increase in the ability of the Ombudsman to deliver value for money redress, and to do it much quicker and much more directly.

Q58 **Kelvin Hopkins:** One final question; it is really a question I have raised on previous occasions. Many people find difficulty coping with bureaucracy. They are not necessarily literate; they may have English as a second or third language, but not their primary language. Many people have probably never heard of the Ombudsman and do not even know. It is a system that works very well for the literate and professionally competent, but does not work so well for the disadvantaged. Does the MP not help with the disadvantage?

Brian Thompson: Bearing in mind that the Ombudsman is meant to come after a complaint has been sent to the organisation and they are dissatisfied with the outcome, what has happened in Scotland and Wales is that that body is under a statutory obligation to say, "You can go to the Ombudsman if you are dissatisfied with the way we have dealt with your complaint." That might possibly drive up the number of complaints more than the removal of the filter. I cannot remember if the Law Commission have recommended

that, but it is certainly in the proposals that the Northern Ireland Assembly are making for their Ombudsman Bill.

Q59 **Kelvin Hopkins:** With the increasing caseload and reforms to the Ombudsman's Office, do they have the staff to cope? I understand that they are under enormous pressure, and that staff are finding work very difficult there, especially with austerity and cuts to public services.

Professor Hazell: If I may say so, it is implicit in your question—"If we remove the MP filter, would the Ombudsman be able to cope?"—that the MP filter is an obstacle. This is why, I think, all experts would say, "Remove the MP filter." But let me offer a suggestion to the Committee: when you go to Holland next week, you might ask the Dutch Ombudsman whether he would like to have an MP filter, since we have this interesting system in the UK that I do not think they have in other countries. Ask him whether he thinks it would be an advantage.

Kelvin Hopkins: I shall do that. Thank you.

Q60 **Chair:** Do you think that there is a way for individual MPs who are concerned that their constituents are somehow going to miss out on their advice because the MP is bypassed to be given this power? We could give this power in statute to individual MPs, so that if MPs wish to waive their right to vet applications to the Ombudsman, we could do so. Can you envisage a system like that working? I imagine that, after a while, every MP would, except a few that felt that this was somehow constitutionally wrong for whatever reason. I have never understood that constitutional argument. Do you think we could have an exception-based approach, MP by MP?

Professor Dunleavy: No, because how would you communicate that to citizens, and how would citizens understand the system? It would create an extra layer of complexity, wouldn't it?

Q61 **Chair:** It would mean what happens now, which is that people go straight to the Ombudsman, and they would either be told, "Well, you are lucky: your MP has given us authority to deal with your complaints without having to go through the MP", or "You are unlucky: I am afraid you will have to go to your MP." It would enable me as an MP to make sure my constituents get a better service from the Ombudsman than perhaps other Members of Parliament want to give their constituents.

Professor Dunleavy: Could I ask, though, why would this apply only to the Ombudsman? Why does it not apply to the Independent Police Complaints Commission? Why does it not apply to tribunals? Why does it not apply to dozens of regulators with whom citizens are interacting?

Chair: That is a question for the MPs who want lots of filters.

Professor Dunleavy: It seems bizarre to me.

Chair: It would not be a question for me. They would have to justify that to their constituents themselves.

Professor Hazell: As you will know, Chairman, it does not apply to the Ombudsman wearing her Health Service hat.

Q62 **Chair:** No, I appreciate that. I am in full agreement with you. Let me pre-judge the outcome of our report, or at least the draft that is going to go in front of the Committee: I am utterly convinced that this is antiquated, and based on groundless fears that somehow the sovereignty of Parliament is going to be impugned. I am rather keen on the sovereignty of Parliament, but I do not think it makes any difference to the sovereignty of Parliament, and it would make it much easier for the Ombudsman to help less fortunate, less educated constituents who do not know how to contact their MP. I am just asking whether this would be a way of resolving the situation, to provide assurance to colleagues.

Brian Thompson: I do not see why it is better than dual access, to say that you can either go straight to the Ombudsman or you can go through your MP, if that is what you wish. When the Ombudsman did a consultation in 2010, one of the suggestions I put forward was that there should then be a *quid pro quo*, and that the Ombudsman's Office should let MPs have details about the complaint coming directly to them, and not through you in your constituency. They accepted that proposal.

Q63 **Chair:** So a Member of Parliament could still assist a constituent with that complaint.

Brian Thompson: But also allow themselves to keep tabs on what is happening in their constituency. Again, you are also adding to that network of information, which then might allow you to be able to say, "Oh, gosh, there is a warning about something that is happening here. We have now had four or five instances of something."

Chair: Silly me. What a silly suggestion I have made. I think your idea is much better. Are there any other questions?

Q64 **Greg Mulholland:** This is a topic that I have raised before. This is a difficult one, and I would be interested to get your views. One of the problems that people have with the Ombudsman Service—or, rather, the key cause of dissatisfaction—is when people believe that the Ombudsman has made the wrong decision, or, indeed, an incorrect decision. There is clearly a difference there, and often people will think the Ombudsman has made a wrong decision because they do not agree with it, but the simple reality is that there will be decisions made—a very small proportion, I suspect, but human nature being what it is, there will be occasions—where the Ombudsman's staff have got it wrong and have made a

mistake. Indeed, I have had legal cases where judges have made factual mistakes, particularly on immigration cases. That is something that, I have to say, is worryingly not that uncommon.

Of course, because of the nature of the Ombudsman's role, being the last stage of the process of complaint, there is no way to effectively challenge that. You need to provide new evidence. Now, the current Ombudsman has acknowledged the issue and has said that they will look at that, but clearly we do not want to add another stage to it. Do you have any ideas of how we could perhaps improve the system so, where it can be shown, perhaps through an MP or perhaps any way, that there is good evidence to suggest there has been a factually flawed decision, we can then have that decision looked at again?

Brian Thompson: What they operate at the moment is what they call a service-based review, which is looking at the way they have handled it rather than challenging the decision. What you might do to enhance that would be to make that independent. That happens in Scotland. In the review of the Local Government Ombudsman, which was suggested by your sister Select Committee, they also made the recommendation that the Local Government Ombudsman's review-based service should have somebody independent doing it. I see no reason why that could not happen, but you are absolutely right: the difficulty is, if you have the decision you do not want, you want to be able to challenge it and challenge it on the merits. However, at the same time, the scheme is set up that this is the final port of call, unless you can afford to go for judicial review.

Greg Mulholland: Which ordinary citizens cannot.

Brian Thompson: They cannot, yes.

Professor Dunleavy: I think, if you looked at other ombudsmen's services like the Financial Ombudsman Service, they have a three-tier process. Somebody makes the complaint, and then they will try and mediate directly by phone between the complainant and bank that is being complained about. They will try and use their expertise—dealing with Mr Hopkins's point about the difficulty of framing a place—to get to the actual core of the problem, and to try and seek some accommodation between what the complainant said and the bank.

If they do not manage to do that within six weeks, then the bank is automatically charged for a more formal investigation. That creates a bit of an incentive for banks to actually do something within the six weeks, and then they do a relatively informal investigation, not using high-powered lawyers and so forth at that stage but just using ordinary, well-trained staff. They come to a preliminary conclusion, which is then reviewed by high-up lawyers but is not itself the final stage. Only if that is rejected by the complainant or the bank do they then go to the full legal thing.

At the moment, what we have is a style of working in the Parliamentary and Health Service Ombudsman where the complainant usually piles in a huge amount of evidence, much of which is irrelevant. The complained-about body may also create a huge pile of

evidence. There is then a very long, thorough and possibly triple-checked investigation, and then a decision is announced, but you do not have that staging through; you do not have that process by which the complainant might become more realistic and more aware of the staging of the process. Anything like that, particularly starting with a quick mediation effort, I think would cope with the austerity and staffing problems by imposing a bit of a charge on public bodies that are resisting and saving your high-powered legal firepower for a very late stage. That is the process I would suggest. I think that would then wean most people off being unhappy with the Ombudsman. They would at least know that there had been a multi-stage process, and it would also be much quicker.

Q65 **Kelvin Hopkins:** Just a brief question on another topic, the abolition of the AJTC: I was very concerned about the idea that somehow the Ministry of Justice could oversee the tribunal system and be judge and jury in their own case. What are your views? Mr Thompson used to be a member of it, and I think there is a very strong case for keeping a high degree of independence of the tribunal system from the Ministry of Justice.

Brian Thompson: We thought we were created to offer advice, and the difficulty with an adviser is if the body you are advising does not wish to continue to receive your advice, you are in a difficult position. The point I made earlier is about this fragmentation: you have systems for looking at different parts of redress, and that fails to take into account the reality for ordinary people, which is that their problems do not neatly fit into these separate channels. That was something that we were able to do: we could be overseeing the work of ombudsmen, the work of the tribunals and, indeed, the courts, and drawing out those things at the edges and then trying to bring them to the attention of Ministers. I do not know who will do that in our absence.

Chair: I think we have reached the end. Thank you very much. We look forward to any other evidence that you want to submit as we continue with this inquiry, and we are very grateful for your appearing before us today.

