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A REPORT BY JUSTICE

*Our Fettered  
Ombudsman*

CHAIRMAN OF THE COMMITTEE

DAVID WIDDICOMBE, Q.C.

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# JUSTICE

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LONDON  
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## PREFACE

This report has its origin in a conference which JUSTICE held in London in July 1975 with its French counterpart, LIBRE JUSTICE, at which one of the topics for discussion was the institution of the Ombudsman. At that conference papers were read by M. Christian Huglo, avocat à la cour, on the French "Médiateur", and by Professor J. F. Garner of Nottingham University on the British Parliamentary Commissioner for Administration.

The interest and discussion which this stimulated within JUSTICE led to its Executive Committee asking the Administrative Law Committee to undertake an up-to-date study of the work of the Parliamentary Commissioner with a view to identifying any reforms which appear to be necessary now that the office has been in existence for some years.

The important part played by JUSTICE in the campaign which led up to the appointment of a Parliamentary Commissioner is not as well-known as it might be. Early in 1958, when virtually nothing was known about the Scandinavian Ombudsman principle in England, JUSTICE set up a small committee to gather information about it, and in November of that year Professor Stefan Hurwitz, the Danish Ombudsman, was invited by JUSTICE to give a series of lectures in London, Bristol, Oxford, Manchester and Nottingham.

In 1960 grants were obtained from two charitable foundations to carry out a full-scale enquiry. This was directed by Sir John Whyatt, a former Chief Justice of Singapore, under the guidance of an Advisory Committee of which the Chairman was Mr. Norman Marsh, a former Secretary-General of the International Commission of Jurists and now a Law Commissioner. The other members were Sir Sidney Caine, then Director of the London School of Economics, and Professor H. W. R. Wade. Lord Franks, Lord Devlin and Lord Shawcross were consulted at various stages of the enquiry.

The Advisory Committee's terms of reference were: "To inquire into the adequacy of the existing means for investigating complaints against administrative acts or decisions of Government Departments and other public bodies, where there is no tribunal or other statutory procedure available for dealing with complaints; and to consider possible improvements to such means, with particular reference to the Scandinavian institution known as the Ombudsman".

In its report, "The Citizen and the Administration", published in 1961, the Committee recommended the appointment of "an officer, to be called the Parliamentary Commissioner (or some other suitable title)" to investigate complaints of maladministration against Government Departments. The proposal was rejected by the government of the day, but shortly before the 1964 General Election it appeared likely that a Labour government, if elected, might view it more favourably. Accordingly Sir John Whyatt's Committee was reconvened and asked to

review its proposals in the light of criticisms made of them and to draft a Bill. For this task the Committee had the benefit of the experience of New Zealand, whose Bill to appoint an Ombudsman had been received in time for inclusion in an appendix to the Whyatt Report, but too late to be taken into account. New Zealand's adoption of the principle was of considerable importance since it disposed of an important constitutional objection to the proposal, namely that it would undermine the doctrine of ministerial responsibility.

The draft Bill, together with a further unpublished report, was submitted to the newly elected Government and was the starting point for the legislation which came on to the Statute Book as the Parliamentary Commissioner Act 1967, nine years after JUSTICE started its campaign.

The events leading up to this Act, and the part played in them by JUSTICE have been well documented by Professor Frank Stacey of Nottingham University in his book "The British Ombudsman" (1971) and by Professor William B. Gwynne of Tulane University in his paper "Perspectives on Public Policy Making" (1975).

The Administrative Law Committee was fortunate in having Professor Frank Stacey as one of its members.<sup>1</sup> His help and advice were invaluable, and he kindly made available to the Committee material assembled for the purpose of his forthcoming book, "Ombudsmen Compared".

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<sup>1</sup> The other members of the Administrative Law Committee are listed at the beginning of this Report.

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# CHAPTER I

## INTRODUCTION

1. The general conclusion which we have reached in this Report is that although the institution of Parliamentary Commissioner for Administration has worked well, it has done so within a very restricted frame of reference. Compared to similar institutions abroad, both in continental and common law systems, it is significantly limited both in scope and effectiveness. We have concluded that if it is to become a really effective safeguard for the citizen against administrative abuse, the institution should be reformed in a number of important respects.

2. The successful aspect of the institution is that it has become established and is now accepted as a permanent part of the constitution, and that the Commissioner has made a number of important and successful investigations. The office has provided an acceptable precedent for the extension of the ombudsman principle, firstly to Northern Ireland (the Northern Ireland Complaints Commissioner) (1969), secondly to the National Health Service (the Health Service Commissioner) (1973), and thirdly to local government (the Local Commissioners for Administration) (1974). The latter were recommended by a JUSTICE Committee under the chairmanship of Professor J. F. Garner in a report entitled "The Citizen and his Council—Ombudsman for Local Government?", published in 1969.

3. But there is no doubt that the existence of the institution is not widely known to the public, and that it is considerably under-utilised; also that the powers of the Commissioner are unduly restricted, and that important areas of administrative action are excluded from his jurisdiction. In this Report we recommend a number of reforms, including the dropping of the phrase "maladministration" in favour of a wider and clearer definition of the Commissioner's function, the abandonment of many of the exclusions from his jurisdiction, and the introduction of direct access to him by members of the public, as well as through a Member of Parliament, which is the only channel of approach at the moment. The adoption of direct access seems to us to be an essential reform if the Commissioner is properly to fulfil the role of providing redress for citizens with complaints against the central administration, and of acting as general watchdog against administrative abuse.

4. We think that it is important to understand that two factors which contributed to the limited nature of the institution in this country are no longer relevant. The first is the understandable desire which existed to be cautious in making a constitutional innovation; for

the Commissioner is now established, and the nature of his work is known. The second is the fact that at the time when the institution was proposed and brought into being in this country the main source of precedent for it lay in the Scandinavian countries. Differences between the continental systems of government and "common law" systems such as our own were thought to justify a more limited type of Ombudsman in this country. However this argument, if ever valid, has now become irrelevant. Since the Ombudsman principle was introduced in this country, there has been widespread adoption of it in Commonwealth countries, so that of the 38 Ombudsmen functioning at state level in the world today (1977), 26 of them are in Commonwealth countries.<sup>1</sup> In these other countries the Ombudsmen have the wider functions and the direct access by the public which we recommend.<sup>2</sup> Indeed, anyone who examines the institution in other countries is bound to wonder why we are lagging so far behind in its development here.

5. The Parliamentary Commissioner must also of course be seen in the wider constitutional context, as one of several responses which are developing to the continually increasing scope of governmental functions. These include the development of procedures for consultation and public participation, the spread and implementation of the idea of "open government", the greater use of Parliamentary committees on administrative matters, and the growth of a coherent body of administrative law in the courts. In the latter connection, JUSTICE has for some years advocated an Administrative Division of the High Court,<sup>3</sup> and is currently pressing for a wide-ranging investigation by an independent committee of inquiry into all aspects of administrative law. The Parliamentary Commissioner is potentially one of the most important of these new constitutional safeguards for the citizen, but the institution needs now to be developed from its modest beginning and given a more effective and widely-known role. The reforms advocated in this Report are designed to accomplish that end.

<sup>1</sup> See Appendix A to this Report for a chronological account of the spread of the Ombudsman idea.

<sup>2</sup> See Appendix B to this Report.

<sup>3</sup> "Administration under Law" (1971).

## CHAPTER II

### ASSESSMENT OF THE SYSTEM

6. Ten years after the passage of the Parliamentary Commissioner Act 1967, the office of Parliamentary Commissioner is ripe for review. As we said in the Introduction, in its restricted frame of reference the system has worked well and the Parliamentary Commissioner has made some notable investigations. His report on the Sachsenhausen case in 1967 (in which he was able to show, from examination of the Foreign Office files and other evidence, that six former servicemen had been wrongly denied compensation out of the money provided for victims of Nazi oppression) demonstrated his ability to expose the inadequacy of a decision which the conventional methods of parliamentary questions, and lobbying of Ministers, had failed to uncover. More recently, his reports on the Court Line case and on the failings of the factory inspectorate in the Acre Mill (asbestosis) case, have helped to provide useful material for people pressing for reforms in these areas.

7. The Parliamentary Commissioner system has, however, proved disappointing in two particular respects. First, he appears to be known about and used by only a small section of the population. Second, the fact that he is limited to "maladministration" means that he has to decline to investigate a great many complaints where his independent assessment would be most valuable.

8. In 1975 the Parliamentary Commissioner received 928 complaints through Members of Parliament. Of these he had to decline 576, as outside his jurisdiction, and he discontinued 19 cases after partial investigation. The number of complaints he eventually investigated was only 341. In the same year he received 1,068 complaints direct from members of the public, all of which he had to decline to investigate because he is only allowed by the Parliamentary Commissioner Act to investigate complaints from members of the public sent on to him by Members of Parliament.<sup>1</sup>

9. The extent to which the Parliamentary Commissioner is under-utilised is well revealed by a comparison of Ombudsmen in Britain, Western Europe, Canada and New Zealand. In all those countries (states or provinces in federal countries) where citizens have direct

<sup>1</sup> *I.e.* Members of the House of Commons. Members of the House of Lords cannot initiate complaints. Only about 1 in 14 of these complaints eventually reached the Commissioner through a Member of Parliament.

access to the Ombudsman, the volume of complaints, in relation to population is much greater than in the United Kingdom. The most striking contrast is seen between the volume of complaints investigated in the United Kingdom; on the one hand, and in Sweden and Quebec, on the other. In the United Kingdom which has a population of more than 55 million, the Parliamentary Commissioner, in 1974, investigated 252 cases. In Sweden, which has a population of about eight million, the three Ombudsmen together investigated 2,368 cases in 1974. In the same year, the Public Protector in Quebec, who has powers modelled on those of the New Zealand Ombudsman, investigated 2,369 cases. Quebec has a population of around six million. In New Zealand in 1974, where the population is three million, the Ombudsman investigated 414 cases.<sup>1</sup>

10. It seems probable that the Parliamentary Commissioner is so under-utilised largely because he is so little known about, or understood, by the ordinary person. If so that is not because he has only been in existence for ten years. The Quebec Public Protector has only been in operation for eight years (since 1968). It is more likely to be because access to the Parliamentary Commissioner is indirect and there is so little publicity for his results reports and his annual report. Whereas to approach the Parliamentary Commissioner the British citizen must write to a Member of Parliament and request him to forward his complaint to the Commissioner, the Swedish citizen merely has to write to "J.O. Stockholm". He does not need to put any other details on the envelope. The initials "J.O." refer to the full title of the office: "Justitie Ombudsman". But everyone speaks of it as the "J.O."

11. In Quebec, a citizen can approach the Public Protector by visiting his office in Quebec or in Montreal: both offices are sited in the central part of the city concerned. He can write to him or he may telephone his complaint to the Quebec or Montreal office. On receipt of a telephoned complaint, one of the Ombudsman's assistants will frequently ask the caller for his telephone number and phone him back at public expense. The assistant, having taken the essential details, will ask the complainant

<sup>1</sup> Sources for these figures are:

H.C. 126 of Session 1974-5. Second Report of the Parliamentary Commissioner for Administration. Annual Report for 1974, p.3.

The Swedish Parliamentary Ombudsmen: Annual Report for 1974. Summary in English, pp. 563-4.

The Public Protector: Sixth Annual Report (Quebec 1974) p.178.

Report of the Ombudsman for the year ended 31 March 1975, p.4 (New Zealand).

Note: In each case the figure given is for cases investigated. Cases found to be outside the Ombudsman's jurisdiction, or referred to other state agencies, are not included.

to send in a written complaint and any other necessary documents, but he does not wait to receive the letter before beginning an investigation with the provincial department, or commission, concerned.

12. In New Zealand also a member of the public can complain to the Ombudsman direct.

13. The Parliamentary Commissioner in the United Kingdom is, by contrast, far from accessible. If an individual is well informed enough to think of writing to him, the Parliamentary Commissioner will write back telling him to take his case to a Member of Parliament. If he is sufficiently determined to do this, the Member of Parliament can nevertheless decline to forward his case to the Parliamentary Commissioner. In this event, the individual can go to another Member but by this time he may well be so discouraged by the process that he gives up. It is from the point of view of the citizen, far from satisfactory that he has to depend on the Member's judgment as to whether or not his complaint is considered by the Parliamentary Commissioner.

14. The complicated procedure for access to the Parliamentary Commissioner probably means that articulate and better informed people are more likely to use the Parliamentary Commissioner than are the less articulate or well informed. A National Opinion Poll survey in 1973, for Granada Television, found that 47% of a national sample of people interviewed did not know the name of their local Member of Parliament.<sup>1</sup> This poorly informed section of the population is also the section in which most under-privileged people are to be found. Such people do complain to the Swedish Ombudsmen, in relatively large numbers. Thus, in 1974, the Swedish Ombudsmen investigated 236 complaints from prisoners, or their families. In the same year, the Parliamentary Commissioner only investigated twenty complaints against the Home Office, and this included all complaints from prisoners.

15. The Whyatt Report published by JUSTICE in 1961 recommended that access to the Parliamentary Commissioner should be through Members of Parliament and peers for the first five years of operation of the office, after which consideration should be given to extending his powers to enable him to receive complaints direct from members of the public. The time has surely now come to make this change. The Parliamentary Commissioner is far from being swamped by cases. In fact, as we have shown, he is under-utilised.

<sup>1</sup> The 1,848 respondents for this poll were drawn from a national stratified sample and were each interviewed for approximately one hour. See: S. E. Finer ed.: *Adversary Politics and Electoral Reform* (Anthony Wigram 1975) p.331.



16. We believe that the most important consideration is that as many as possible of bona fide grievances against government departments should be impartially investigated by the Parliamentary Commissioner. For this to happen we are convinced that there must be provision for direct access to the Commissioner. We consider this further in Chapter 5.

17. The increased volume of complaints to the Commissioner which would and, in our view, should result from direct access could be met in two principal ways. First, the present tendency to set up specialized Ombudsmen could be taken further. The Health Service Commissioners for England, Wales and Scotland are in law separate offices but are, in fact, at present all held by the Parliamentary Commissioner. They could, with an increased volume of complaints, become, in fact as well as in law, separate offices, possibly taking over some social service sections from the Parliamentary Commissioner. The Local Commissioners for Administration for England, Wales and Scotland are already separate. In our view this trend towards specialized Ombudsmen is desirable in a country as populous as the United Kingdom. To combine all types of Ombudsmen function in one office would produce an unwieldy bureaucracy. But while we favour a number of separate Ombudsmen for different functions of government, we think the method of access by the public to all of them should as far as possible be the same.

18. Second, we should note that there is at present spare capacity in the Parliamentary Commissioner's office. The exact size of his staff is difficult to compute because Sir Idwal Pugh, like his predecessor, Sir Alan Marre, holds the offices of Health Service Commissioner as well as being Parliamentary Commissioner. Some of his staff therefore assist him only on the Health Service side and some are administrative staff providing services for both sides of the office. If these administrative staff are allotted, in relation to the size of investigating staff on either side, we arrive at the calculation that, in the autumn of 1976, the Parliamentary Commissioner had a staff of 55. In our view this is more than enough to enable him to deal efficiently with the present case load of around 320 complaints investigated in a year. Indeed he should be able to cope with a considerably increased case load without increase in staff.<sup>1</sup> Beyond a certain point however the case load would become too heavy and this brings us to a change in practice which we suggest would allow a very much heavier case load to be met. At present, all complaints are investigated by an elaborate process in which the investigator visits the government department against whom a complaint is made and examines the files and records there. He also, in many cases, interviews the civil servant concerned in the incident about which there has been complaint. This is a very thorough method of investigation

<sup>1</sup> In 1974-1975, the New Zealand Ombudsman investigated 414 cases, with a staff of only 8.

which is excellent for the most difficult type of case, like the Sachsenhausen case. But it is unnecessary for the more routine or simple type of case in which a telephoned inquiry could often produce a change in decision and immediate redress to the complainant. We suggest that the Parliamentary Commissioner should adopt simpler methods for dealing with many complaints alongside his very thorough, "Rolls-Royce", method of investigation which would still have its place for the more difficult cases.

19. The other major reform which we propose is that the Parliamentary Commissioner should no longer be limited to investigating complaints about "maladministration". He is more restricted than any other Ombudsmen in this respect. The New Zealand Ombudsmen can investigate any complaints that an action or omission by a government department was "unreasonable, unjust, oppressive or improperly discriminatory". The Ombudsmen for the Canadian provinces of Quebec, Ontario, Manitoba, Alberta, Saskatchewan, New Brunswick, Nova Scotia and Newfoundland have similar powers. The Scandinavian Ombudsmen are not limited to maladministration. Neither is the French Médiateur; he is empowered to examine a complaint that a public authority has "failed in its mission of public service". This he interprets to mean that the authority, whether a central department, local or other authority, has shown lack of humanity or has acted inequitably.

20. Other Ombudsmen therefore have much greater scope than the Parliamentary Commissioner who is empowered by the 1967 Act merely to investigate complaints by members of the public who claim to a member of Parliament that they "have sustained injustice in consequence of maladministration". The Act further requires the Parliamentary Commissioner not "to question the merits of a decision taken without maladministration by a government department or other authority in the exercise of a discretion vested in that department or authority" (s. 12(3)).

21. This double restriction means that the Parliamentary Commissioner is mostly concerned with procedural matters. These are of course important in themselves. Thus delay in replying to a letter, misleading advice given by an official, failure to consider all the evidence or failure to consult, are all failures in administration which the Parliamentary Commissioner does well to expose. But he is often not able to consider whether a decision where there is no procedural defect nevertheless constitutes unreasonable or unjust action by the department concerned. The Select Committee on the Parliamentary Commissioner has urged him to consider the quality of a decision, arguing that a very unreasonable decision constitutes maladministration, but he has felt able to do so in relatively few cases. He therefore has to decline to investigate complaints because they are not concerned with maladministration, even though the complainant feels he has a real grievance

against the government department. He discontinues many complaints for the same reason and, in some cases which he does investigate and report on, he has to exclude consideration of aspects of the case in which maladministration is not involved.

22. These restrictions were defended at the time of the passage of the Parliamentary Commissioner Act on the grounds that if he were allowed to question the merits of a decision by a government department he would be taking over the responsibilities of a Minister. But this argument misconceives the function of the Parliamentary Commissioner which is not to supersede a Minister or Department but to provide an independent, and informed, assessment of the adequacy of the decision, or lack of decision, by the Department. We therefore propose that the Parliamentary Commissioner should be empowered to investigate and report on acts, or omissions, which are "unreasonable, unjust or oppressive". We consider this further in Chapter 7.

23. These two major changes which we propose, providing for direct access to the Parliamentary Commissioner and widening his terms of reference, would require new legislation. In planning new legislation there are other features of the Parliamentary Commissioner system which call for improvement. These are, in particular, the method of appointment of the Commissioner and the staffing of his office, the scope of his jurisdiction which is at present undesirably narrow, and the relative lack of publicity which he receives for his reports. In the pages that follow we develop proposals for improvement in these aspects as well as on the two major lines of reform which we have already highlighted.

## CHAPTER III

### APPOINTMENT AND STAFFING

24. The Parliamentary Commissioner is at present appointed, under the 1967 Act, by the Crown. This of course means that in practice the appointment is made by the Prime Minister. In our view, since the Parliamentary Commissioner is a servant of Parliament, the Select Committee on the Parliamentary Commissioner should also play an important part in appointing the Parliamentary Commissioner. On the three occasions of appointment to the office of Parliamentary Commissioner, in 1966, 1971 and 1976, the appointment has been made without any consultation with Parliament and has been treated like an internal civil service appointment. After the appointment of Sir Idwal Pugh in 1976, Mr. Leon Brittan, the Conservative M.P. for Cleveland and Whitby, wrote to "The Times" (25th February 1976) and, while disclaiming any personal criticism of Sir Idwal Pugh and his predecessors, criticised the complete absence of consultation with Parliament in appointing the Parliamentary Commissioner. Parliament he suggested should "now be given a proper say in the appointment of its own Commissioner for Administration". Another M.P., Mr. Ian Gow, the Conservative Member for Eastbourne, introduced in the same session a Private Member's Bill, requiring consultation with the Common's Select Committee on the appointment of a Parliamentary Commissioner. The Bill did not become law but the Select Committee on the Parliamentary Commissioner indicated, in a report on 26th May 1976, their support for a reform of this kind,<sup>1</sup> and their Chairman, Mr. C. Fletcher-Cooke, has introduced a Bill similar to Mr. Gow's.

25. As the Committee commented, a requirement for consultation with the Select Committee, on appointment to the office of Parliamentary Commissioner, is the minimum which should be expected. It would be better for the new legislation to provide that the Select Committee must be asked for nominations for the office of Parliamentary Commissioner, and that the appointment should then be made by resolution of the House of Commons.

26. Three individuals have so far held the office of Parliamentary Commissioner. They are Sir Edmund Compton (1966-1971), Sir Alan Marre (1971-1976) and Sir Idwal Pugh (1976-). All three had been career civil servants. We do not think that former civil servants should be ineligible for appointment to the position of Parliamentary Commissioner; indeed a civil servant may make a very good Ombudsman.

<sup>1</sup> H.C. 480 of Session 1975-76. Second Report from the Select Committee on the Parliamentary Commissioner for Administration, p.xv.

The personal qualities of the individual appointed are more important than his previous career. An Ombudsman should be fair-minded, humane and have an enthusiasm, indeed a passion, for justice. Many civil servants have these qualities. But it seems to us wrong that the office of Parliamentary Commissioner should always be held by a former civil servant. There were two arguments which had some weight in favour of appointing a civil servant as Parliamentary Commissioner when the office was first set up. First, there was the argument that a civil servant as Parliamentary Commissioner would inspire more confidence in the Civil Service and lessen the fears, at that time entertained by some civil servants, that the Parliamentary Commissioner's investigations might lessen the efficiency of the service. Secondly, it was argued that a former civil servant could most effectively expose failings in the service of which he had been a part.

27. Both these considerations carry much less weight now that the Parliamentary Commissioner's office is well established. The fears of adverse effects on the conduct of business in the departments have not been realised and the methods and standards of investigations, which inside knowledge of civil service procedures may have helped in forming in the early stages, have now been tried and proved. The advantages therefore of bringing in as Parliamentary Commissioner someone whose experience lies outside the Civil Service seem correspondingly greater. These advantages are that such a person would look at methods in the departments with different pre-conceptions, and therefore possibly more critically, and would bring a greater degree of independence to the office.

28. The same considerations which should apply in selection of the Parliamentary Commissioner should also apply to his investigating and supporting staff. At present, all his staff are civil servants either on secondment from their departments or on permanent engagement with the Parliamentary Commissioner. There is no reason why some of his staff should not be civil servants, indeed it is an advantage that some of them should have civil service experience. But it is wrong that they should all be civil servants. It would clearly be better if there was a variety of experience among his staff, so that people with experience, for example, of local government, social work or business could bring in a fresh approach and would, on occasion, be prepared to question civil service standards and attitudes, in a way in which civil servants might not. We note that the Local Commissioners for Administration for England (Local Ombudsmen) have appointed people with varied backgrounds to their staff, and have not confined themselves to appointing people with a background of service in local government. We note also that the three Local Commissioners for England themselves have a variety of backgrounds: Lady Serota, the Chairman, is a former councillor and Minister, Denis Harrison was formerly a senior local government officer and Patrick Cook was formerly the administrative head of the English Tourist Board.

29. There is another staffing defect in the Parliamentary Commissioner's office. He does not have a single legal adviser on his staff, and is dependent for legal advice either on the Treasury Solicitor or on the legal advisers of the department under investigation. This is not a satisfactory situation. He should have his own legal adviser, permanently on his staff, and therefore independent both of the government as a whole and of individual government departments. The Parliamentary Commissioner should also be encouraged to take advice, where appropriate, from the legal profession and be provided with the necessary funds for so doing. Here, again, the Local Commissioners compare more than favourably with the Parliamentary Commissioner. One of the English Local Commissioners is himself a lawyer and they have other lawyers on their staff. They are also empowered, by the Local Government Act 1974, to take specialist advice where necessary and this advice is paid for out of public funds.

30. There is a further point of some importance which relates to the independence of the Parliamentary Commissioner's staff. The Commissioner himself is ensured a degree of independence from the Executive since he, like a judge, holds office during good behaviour and can only be removed from office by Her Majesty as a result of Addresses from both Houses of Parliament. (He is however compulsorily retired on reaching the age of sixty-five.) His salary is paid out of the Consolidated Fund. The Commissioner cannot, however, function effectively without adequate staff and here he does not have sufficient independence of the Executive. The Parliamentary Commissioner Act states (s.3(1)) that he "may appoint such officers as he may determine with the approval of the Treasury as to numbers and conditions of service" and (s.3(3)) that the "expenses of the Commissioner under this Act, to such amount as may be sanctioned by the Treasury, shall be defrayed out of moneys provided by Parliament". It does not seem to us right that the Treasury should have power to determine the size of staff of the Commissioner and that its assent should be required for the budget for his office. This gives the Treasury power, at any rate potentially, to hamper the operation of the Parliamentary Commissioner. In our view, the references to Treasury approval in section 3 should be deleted. Section 3 (1) should provide that: "The Commissioner may appoint such officers as he may determine with the approval of the House of Commons as to numbers and conditions of service". Section 3 (3) should provide that "the expenses of the Commissioner, under this Act, shall be defrayed out of moneys provided by Parliament".

31. To sum up this section then, we consider that the Select Committee should be consulted in the appointment of the Parliamentary Commissioner, that the people chosen as Parliamentary Commissioner should be chosen from a variety of backgrounds although former civil servants should be eligible for appointment, that his investigating and supporting staff should be drawn from a number of professions, that

the Parliamentary Commissioner should always have a legal adviser on his staff and should be able to take advice from the legal profession, where appropriate. We also consider that the approval of the Treasury should not have to be obtained for the size of his staff or his budget.

## CHAPTER IV

### SCOPE OF JURISDICTION

32. There are two aspects of the scope of the Parliamentary Commissioner's jurisdiction which require consideration. First, there is the list of departments and authorities subject to his investigation (Schedule 2 to the Act); and second, the list of matters excluded from his investigation (Schedule 3 to the Act).

33. As regards the list of departments and authorities, the only omissions we have noticed are the Law Officers of the Crown (the Attorney-General and Solicitor-General) and the Director of Public Prosecutions; the Scottish Procurator General is expressly excluded. Apart from that, the list appears to include all the elements of the central administration of the country. The National Health Service and local government now have their own separate ombudsmen, and if, as we think, there is a case for the extension of the institution to cover the activities of the nationalised industries and other statutory agencies, that should also be done separately rather than by enlarging the field of operation of the Parliamentary Commissioner. JUSTICE has recently published a report recommending the establishment of a Nationalised Industries and Agencies Commissioner.<sup>1</sup>

34. As regards the list of matters which are excluded from investigation by the Parliamentary Commissioner, Schedule 3 to the Act<sup>2</sup> contains eleven items of exclusion. We think the presumption must be that the Parliamentary Commissioner should be able to investigate unless there are convincing reasons for excluding him. Approaching the exclusions on that basis, we think the list can be much reduced in extent. We think the Commissioner should clearly have jurisdiction over the matters specified in paragraphs 4, 8, 9 and 10, and to some extent over the matters specified in paragraphs 2, 3, 5 and 6. We can understand the case for excluding the matters referred to in paragraphs 1, 7 and 11.

35. Looking at these points in more detail, we take first the paragraphs which should in our view be deleted from the Schedule altogether.

*Paragraph 4:* "Action taken by the Secretary of State under the Extradition Act 1870 or the Fugitive Offenders Act 1881". This seems to us to be a field of administrative action where protection for the citizen against abuse is eminently required, and we can see no justification for the exclusion.

*Paragraph 8:* "Action taken on behalf of the Minister of Health or the Secretary of State by a Regional Health Authority, an Area Health Authority, a special health authority, a Family Practitioner Authority,

<sup>1</sup> "The Citizen and the Public Agencies" (1976).

<sup>2</sup> See Appendix D for the text of the Act.

a Health Board, or the Common Services Agency for the Scottish Health Service or by the Public Health Laboratory Service Board". With the appointment of the Health Service Commissioner in 1973, we think it is anomalous to continue the protection from investigation by the Commissioner of the government departments concerned with the Health services.

*Paragraph 9:* "Action taken in matters relating to contractual or other commercial transactions, whether within the United Kingdom or elsewhere, being transactions of a government department or authority to which this Act applies or of any such authority or body as is mentioned in paragraph (a) or (b) of sub-section (1) of section 6 of this Act and not being transactions for or relating to—(a) the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily; (b) the disposal as surplus of land acquired compulsorily or in such circumstances as aforesaid". The Royal Commission on Standards of Conduct in Public Life (the Salmon Commission)<sup>1</sup> recommended the removal of this exclusion from the Commissioner's jurisdiction. The Report of the Royal Commission stated (para.264), "... in our view there is no convincing reason why an individual or organisation aggrieved by alleged maladministration by a public body in relation to a contractual matter should not be enabled to have his complaint considered by an ombudsman if the body in question is subjected to an ombudsman's scrutiny in respect of other matters". We respectfully agree with the Royal Commission.

*Paragraph 10:* "Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters, in relation to—(a) service in any of the armed forces of the Crown, including reserve and auxilliary and cadet forces; (b) service in any office or employment under the Crown or under any authority listed in Schedule 2 to this Act; or (c) service in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken, in such matters is vested in Her Majesty, any Minister of the Crown or any such authority as aforesaid". Items (b) and (c) have three times been recommended for reconsideration by the Select Committee on the Parliamentary Commissioner and were the subject of a Private Member's Bill in 1975, and in our view should clearly go. We think that (a) should go as well.

36. We now take the paragraphs which in our view require modification.

*Paragraph 2:* "Action taken, in any country or territory outside the United Kingdom, by or on behalf of any officer representing or acting under the authority of Her Majesty in respect of the United Kingdom, or any other officer of the Government of the United Kingdom". We think this should be modified at least to the extent of allowing the Commissioner to entertain complaints from British citizens in respect

<sup>1</sup> Cmnd. 6524 (July 1976).

of action taken outside the United Kingdom. A British citizen may well have a complaint against a British official abroad, e.g. while on holiday, and there seems no good reason why he should not have it investigated by the Commissioner.

*Paragraph 3:* "Action taken in connection with the administration of the government of any country or territory outside the United Kingdom which forms part of Her Majesty's dominions or in which Her Majesty has jurisdiction". We think that the citizens of the remaining British colonies and dependencies should enjoy the protection of an Ombudsman, and the only question is whether it is better to bring them within the scope of the Parliamentary Commissioner, or whether they should have ombudsmen of their own. In the case of small territories such as the Falkland Islands, we think the sensible course is to bring them under the Parliamentary Commissioner; in the case of larger territories, such as Hong Kong, with a population of over four million, a local Ombudsman is more practical. The present unofficial Ombudsman in Hong Kong should be given full statutory status and powers.

*Paragraph 5:* "Action taken by or with the authority of the Secretary of State for the purposes of investigating crime or of protecting the security of the State, including action so taken with respect to passports". We think this item should at least be modified to give the Commissioner jurisdiction in respect of passports. Reference to this lacuna in the Commissioner's jurisdiction was made in the JUSTICE Report on passports, "Going Abroad" (1975).

*Paragraph 6:* "The commencement or conduct of civil or criminal proceedings before any court of law in the United Kingdom, of proceedings at any place under the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955, or of proceedings before any international court or tribunal". We consider that the commencement of (or failure to commence) proceedings by the central administration should certainly be subject to the jurisdiction of the Commissioner; indeed this is an area where he may be specially necessary. The same comment applied to the conduct of proceedings (e.g. withdrawal of a prosecution), so long as the jurisdiction of the Commissioner stops short at any matter relating to the conduct of proceedings over which the court itself has control.

37. The paragraphs which we consider should remain as exclusions from the Commissioner's jurisdiction are these:

*Paragraph 1:* "Action taken in matters certified by the Secretary of State or other Minister of the Crown to affect relations or dealings between the Government of the United Kingdom and any other Government or any international organisation of States or Governments".

*Paragraph 7:* "Any exercise of the prerogative of mercy or of the power of a Secretary of State to make a reference in respect of any person to the Court of Appeal, the High Court of Justiciary or the Courts-Martial Appeal Court".

*Paragraph 11:* "The grant of honours, awards or privileges within the gift of the Crown, including the grant of Royal Charters".

## CHAPTER V

### ACCESS TO THE COMMISSIONER

38. At present the Parliamentary Commissioner can only entertain complaints passed to him by a member of Parliament, to whom alone the initial complaint can be made. "Member of Parliament" is for this purpose limited to members of the House of Commons. Moreover, although by law a complaint can validly be made to any Member of Parliament, by Parliamentary convention the complaint if sent by the complainant to another Member will in many cases be passed to the Member for the complainant's own constituency.

39. Earlier in this report we have expressed the view that it is this indirect method of approach, coupled with the general lack of publicity for the work of the Parliamentary Commissioner, which probably accounts for the fact that in this country the services of the Commissioner are much less used, relatively to the size of the population, than in other places where the Ombudsman system is in operation. It would be pleasant to think that the difference is due to the high quality of our Civil Service; that may well be a factor, but it cannot possibly in our view alone account for such a substantial difference.

40. The lack of accessibility of the Parliamentary Commissioner is highlighted by the list of Ombudsmen in Appendix B to this report. With one exception, all other countries have adopted direct access to him by members of the public. The exception is France, where the institution of *Médiateur* is a limited one, largely because in France there is a well-established and effective system of administrative courts (including the *Conseil d'Etat*) which partly performs the functions of an Ombudsman. In this country extensions of the Ombudsman principle have tended to move towards direct access. There is direct access to the Northern Ireland Complaints Commissioner and to the Health Service Commissioner. The Local Commissioners for Administration can accept direct complaints if a councillor has refused to forward them.

41. JUSTICE itself, in the Whyatt Report (1961), envisaged direct access after an experimental period. The Report states (para.168(ii)): "The Parliamentary Commissioner should at first receive complaints only from Members of both Houses of Parliament, but at a later stage, when his jurisdiction is well-established and understood, consideration should be given to extending his powers to enable him to receive complaints direct from the public". In para.157 of the Report, it was stated more strongly: "As soon as enough experience had been gained of the new procedure, perhaps after five years, the Commissioner should be empowered to receive complaints direct from members of

the public . . . we would emphasise that the ultimate object should be to establish a channel by which the investigation of administrative grievances should take place initially outside the political sphere . . .".

42. Subsequently JUSTICE commented on the Parliamentary Commissioner's lack of accessibility in its Annual Report for 1971; and the JUSTICE Report, 'Administration under Law' (1971) expressed the view that "... The Parliamentary Commissioner's jurisdiction is at present limited seriously limited by statute; he cannot act unless an M.P. requests him to do so, and insufficient publicity is given to many of his decisions".

43. Also of interest and importance are the comments of Sir Alan Marre, the second holder of the office of Parliamentary Commissioner. In an interview reported in "Community Health Council News" (April 1976) he said, "I think it is confusing to the member of public not only that there are a number of different Commissioners, but that the method of access is different to each of them".<sup>1</sup> Although in this passage Sir Alan stops short of actually recommending direct access to the Parliamentary Commissioner, it is difficult to avoid that inference from his remarks, especially when it is recalled that the other Commissioners to whom he refers are the Northern Ireland Complaints Commissioner and the Health Service Commissioner, with direct access, and the Local Commissioners for Administration, with a form of direct access.

44. The conclusion we have reached is that access to the Parliamentary Commissioner should be either through a Member of Parliament or directly by a member of the public. We see the true function of the Commissioner as that of helping the citizen obtain redress against administrative injustice, and consider that direct access is essential if he is to perform that task as effectively as possible. It may have been necessary in the first instance to limit his role to that of helping Members of Parliament rather than that of directly helping the citizen, but now that the experimental period is over, we see no reason why the Commissioner should not be brought into direct relationship with those he exists to protect.<sup>2</sup>

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<sup>1</sup> See also the report in "The Times", 28th April 1976, of Sir Alan Marre's address to the Royal Society of Health Congress.

<sup>2</sup> For critical assessments of the working of the "M.P. Filter", see the articles by L. Cohen in "Public Law", 1972, p.204, and by R. Gregory and A. Alexander in "Public Administration", Autumn 1972. Already more complaints reach the Commissioner directly from the public than through M.P.'s: see para. 8, above. He cannot of course accept the direct complaints.

45. From the constitutional point of view the continuous growth of the administration in size, functions and power, which is such a marked feature of our times, in our view calls for a parallel development of effective checks and balances if the citizen is not to be submerged by bureaucracy. The office of Parliamentary Commissioner has the possibility, we believe, of becoming one of the most important of the safeguards for the citizen against the administration, and to that end should be developed to its full, in particular by direct access.

46. In recommending an initial period during which access to the Parliamentary Commissioner should be only through a Member of Parliament, the Whyatt Committee were influenced by two arguments. The first was that although an Ombudsman might be suitable for a Scandinavian country of five million people, it would not work for a country of 53 million because of the volume of complaints which was likely to be received. The Whyatt Committee were not themselves impressed by this argument, and concluded that taking into account the high standard of our Civil Service it was "improbable that the number of complaints would be greater than the Parliamentary Commissioner, assisted by a small staff, would be able to handle" (para. 159). They also pointed out that if the argument were accepted "it would lead to the ironical result that as there were too many complaints, the attempt to provide means for investigating them should be abandoned". However, the Committee thought that an "M.P. filter"<sup>1</sup> for an initial period would help to obviate any difficulty envisaged on this score. We have considered the question of the volume of complaints earlier in this Report (paras. 17, 18) and given our views on how the Commissioner could deal with an increase in his work.

47. The other argument was the traditional role played by Members of Parliament in taking up complaints on behalf of their constituents, either by questions to Ministers or by adjournment debates. Here again, the Whyatt Committee felt that an "M.P. filter" for an initial period would reassure Members of Parliament that the new institution would supplement their work rather than compete with it. Indeed, it was the generally considered view at the time that without the compromise of an "M.P. filter", the institution would not have been accepted by Parliament.

48. Now that there is experience of the Parliamentary Commissioner's work, we do not think that there is any reason to fear that direct access by the public will in any way diminish the important role which many

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<sup>1</sup> The Whyatt Committee envisaged that complaints would be forwarded to the Parliamentary Commissioner by members of *both* Houses of Parliament. In the event the legislation limited it to members of the House of Commons.

Members of Parliament perform in dealing with complaints. The recognition that there are complaints with which Members of Parliament are not equipped to deal was one of the main factors leading to the establishment of the Commissioner. Members of Parliament have not got the powers, the time or the staff to undertake the kind of detailed investigation into administrative decision-making which the Parliamentary Commissioner is called on to conduct. The fact is that the Parliamentary Commissioner has not taken over any part of the functions of Members of Parliament; he has opened up an entirely new field of control over the administration which did not exist before. With direct access by the public the Parliamentary Commissioner will become much more effective within his proper field, while Members of Parliament will continue to deal with the complaints which they have always dealt with, and which they are best equipped to deal with by virtue of their direct access to Ministers in Parliament<sup>1</sup>. The role of Members of Parliament in forwarding complaints to the Commissioner would of course continue to be important.

49. Parliamentary control of the Commissioner's work will continue through the Select Committee of the House of Commons on the Parliamentary Commissioner which has, since its establishment, provided a very effective "back up" to his work. At the moment this Committee only receives the Commissioner's quarterly reports; we think its work would be strengthened if it received all his "results reports" as well.

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<sup>1</sup> We considered but rejected a suggestion that the Parliamentary Commissioner should notify the complainant's Member of Parliament when he received a complaint; for our reasons, see Appendix C.

## CHAPTER VI

### DETAINED PERSONS

50. An important area in which the Parliamentary Commissioner has failed to live up to his expectations is that of prison administration. This falls entirely within his jurisdiction, as was confirmed when shortly after his appointment a member of the Council of JUSTICE<sup>1</sup> obtained from the then Home Secretary an assurance that the Parliamentary Commissioner or his agent or a member of his staff would have full freedom on request of an M.P. to visit any prison and interview an inmate out of sight and hearing of any prison officer.

51. Complaints by prisoners fall into a number of categories which include:

- (a) the interpretation of and decisions regarding the effective length of sentences imposed by the courts, and release dates;
- (b) unreasonable denial of privileges;
- (c) transfers or refusals of transfers which cause hardship to prisoners' families because of travel difficulties;
- (d) oppressive or brutal treatment by prison officers.

52. The reports of the Parliamentary Commissioner indicate that in respect of heading (a) he has done very useful work. He has caused release dates to be advanced and the Home Office system of calculations to be revised. He has also looked at some cases coming under headings (b) and (c) with varying results.

53. But so far as we are aware he has not dealt effectively with any cases under heading (d). The reason for this may be that the responsibility for investigating and dealing with such complaints rests in the first place with the Board of Visitors. It is, however, widely accepted, as was pointed out in the report<sup>2</sup> of a joint working party of the National Association for the Care and Resettlement of Offenders, the Howard League and JUSTICE, under the chairmanship of Lord Jellicoe, that Boards of Visitors have to perform the dual function of dealing with complaints made by prisoners and of administering punishment to prisoners who have broken regulations. They are thus looked upon by prisoners as an extension of the disciplinary powers of the Governor. Prisoners are liable to punishment if they are considered to have made a malicious complaint and it is therefore inevitable that in some prisons they are either frightened to seek redress or do so only to their own cost.

<sup>1</sup> Tom Williams, Q.C., M.P., now Sir Thomas Williams.

<sup>2</sup> "Boards of Visitors of Penal Institutions" (1975).

54. In more serious situations of tension and riots it has been the practise of the Home Office to send one of its officials down to hold an enquiry or to appoint a special committee of enquiry in which members of the Board of Visitors or of other Boards are included. No use appears ever to have been made of the powers of the Parliamentary Commissioner to investigate allegations of oppressive conduct at an early stage, either in individual cases or in situations where tensions leading to riots were obviously building up. We believe that impartial investigation of grievances at an early stage might well have averted some of the serious situations which have arisen.

55. Further reasons for the failure of the Parliamentary Commissioner to exercise this area of his jurisdiction may well be that (a) the Parliamentary Commissioner cannot be approached directly; (b) prisoners are, under the rules, not allowed to write to their member of Parliament complaining about their treatment in prison until they have exhausted the official channels; and (c) if complaints do reach members of Parliament, they may not be aware that the Parliamentary Commissioner has full jurisdiction in such matters.

56. Experience of Ombudsmen in other countries shows that the Parliamentary Commissioner could have an important role to play in the control of prison administration. Professor Stanley Anderson has recently completed a preliminary study<sup>1</sup> of the way in which the Scandinavian and New Zealand Ombudsmen have exercised their prison jurisdiction. He comes to the conclusion that although they have somewhat differing approaches to the problem, they all receive a substantial number of complaints, find that some of them are justified, and are able to exercise an important humanising influence on prison administration. As a result, for example, in Norway from 1965 to 1974 prison complaints declined from 26% to 4½% of total complaints. He also concluded that Boards of Visitors do not provide effective protection for prisoners against ill-treatment.

57. There thus appears to be an urgent need for free access by prisoners either to a member of Parliament or to the Parliamentary Commissioner, and for the latter to make full use of his powers. The principle should in our view be applied to detained persons of all descriptions, some of whom, such as mental patients, may of course come under Ombudsmen other than the Parliamentary Commissioner. It would be an essential part of such right that the detained person is informed of it and that letters to a member of Parliament or an Ombudsman are forwarded by the detaining authority unopened. This

<sup>1</sup> "Prisons and Ombudsmen: the pattern in Scandinavia and New Zealand" by Professor Stanley V. Anderson, Department of Political Science, University College of Santa Barbara, California (1975).



recommendation is all the more urgent since the Home Secretary has recently decided not to make any change in the functions of Boards of Visitors.<sup>1</sup>

58. Precedents for unrestricted access by persons detained exist in the statutes setting up Ombudsmen in other countries. A recent example is s.12(3) of the Ombudsmen Act 1974 of New South Wales, which provides, "where a person is detained by, or in the custody of, a public authority and informs the public authority or another person having superintendance over him that he wishes to make a complaint to the Ombudsman, the public authority or other person so informed shall— (a) take all steps necessary to facilitate the making of the complaint; and (b) send immediately to the Ombudsman, unopened, any written matter addressed to the Ombudsman". We recommend the enactment of similar legislation in this country.

## CHAPTER VII

### "MALADMINISTRATION"

59. We have already seen that the Parliamentary Commissioner is limited by the 1967 Act to investigating complaints alleging that an individual has suffered maladministration as a result of an act or omission by a government department. This limitation is reinforced by the provision in the Act that the Parliamentary Commissioner may not "question the merits of a decision taken without maladministration by a government department . . . in the exercise of a discretion vested in that department".<sup>1</sup> We also saw that the Parliamentary Commissioner is quite unusual among Ombudsmen in being limited in this way.

60. The Ombudsmen in Scandinavian countries are not so limited, neither are the New Zealand Ombudsmen and the Ombudsmen for Canadian provinces, nor is the French Médiateur. It is true that the Danish Ombudsman concentrates more on procedural defects in administration than his Swedish colleagues do and uses a certain reserve in criticising discretionary decisions by government departments, particularly where specialised skills are in question.<sup>2</sup> But it is now apparent that the Whyatt Report in proposing that the Parliamentary Commissioner should be limited to maladministration had interpreted the Danish Ombudsman's powers too narrowly, and inferred wrongly that he could not question discretionary decisions taken without maladministration. It reasoned that since confining the Parliamentary Commissioner to maladministration would leave large areas of government in which the citizen would not have adequate means of challenging the merits of a decision, taken without maladministration, by a government department, it would be necessary greatly to extend the system of administrative tribunals so that all such decisions could be challenged, either before a specialised tribunal, or a General Tribunal which they proposed should be set up to deal with matters for which a specialised tribunal was not appropriate.

61. These proposals for a vast extension of the system of administrative tribunals have not been taken up by any government since the Whyatt Report appeared in 1961. Indeed the proposals do not now

<sup>1</sup> Section 12(3)

<sup>2</sup> See on this the account given by Stephen Hurwitz, the former Danish Ombudsman, of his role in investigating discretionary administrative decisions. S. Hurwitz: "*The Ombudsman. Denmark's Parliamentary Commissioner for Civil and Military Administration*" (Det Danske Selskab, Copenhagen, 1962) p.18.

<sup>1</sup> 922 H.C. (5th Series) 7th December 1976, 113–114.

seem practicable, or desirable, since experience has shown that Ombudsmen can and do effectively consider the merits of discretionary decisions, and in doing so complement rather than conflict with the processes of parliamentary control.<sup>1</sup>

62. When the Whyatt Committee was preparing its report they had not seen the text of the New Zealand Parliamentary Commissioner (Ombudsman) Act 1962 in which the Ombudsman is given power to report on "unreasonable, unjust, oppressive, or improperly discriminatory" actions or omissions by a government department. The text of the Bill was printed as an appendix to the Whyatt Report. As the preface points out it came too late to be taken into account in drawing up the Report. When another committee of Justice in 1964 came to review the proposals for an Ombudsman, they were able to draw upon New Zealand experience and they recommended that a British Parliamentary Commissioner should have powers modelled on those in the New Zealand statute. That report was not published, but a copy was sent to Lord Gardiner shortly before the general election in October 1964.<sup>4</sup>

63. Experience now points even more clearly in the direction of wider powers for the Ombudsman on New Zealand lines. The New Zealand system has proved so successful that an amending Act passed in 1975 has considerably extended its scope.<sup>3</sup> Under the new Act there are three Ombudsmen who between them examine complaints against central government departments and local authorities. The New Zealand pattern has also been successfully copied in the legislation setting up Ombudsmen in the Canadian provinces of Quebec, Ontario, Alberta, Manitoba, New Brunswick, Nova Scotia, Saskatchewan and Newfoundland. In all these provinces, as in New Zealand, the Ombudsman is able to report on unreasonable action by a government department

<sup>1</sup> The above comment should not be construed to mean that we are opposed to any extension of the administrative tribunal system or to the creation of an Administrative Division of the High Court, as has been done in New Zealand. There are numerous areas where a strong case can be made for new administrative tribunals, and the Whyatt Committee's proposal that the Council on Tribunals should be able to recommend the creation of new tribunals (still not acted on) was a very good one. There is also no conflict between the provision of a well ordered administrative tribunal system and an Ombudsman. Sweden and France, for example, both have an extensive system of administrative tribunals and an administrative appeal court as well as Ombudsmen.

<sup>2</sup> See F. Stacey: "The British Ombudsman" (Clarendon Press, 1971) pp.43-46 for an account of this second initiative by JUSTICE.

<sup>3</sup> The Ombudsmen Act 1975.

as well as being able to report on procedural failures, which is what in this country the Parliamentary Commissioner is mainly confined to.

64. As a result they are able to point out ways in which administrative systems, and indeed legislation, are acting unfairly on individuals. They are able therefore not only to secure redress for citizens in a much wider range of cases than those to which our Parliamentary Commissioner is confined, but they are also able to recommend improved methods of administration, and revisions in departmental rules and in legislation.

65. Their much wider powers do not give rise to constant friction with the government of the day. Indeed it is accepted that the role of the Ombudsman is to provide an independent assessment and criticism of the operation of the administration. Each statute provides that the Ombudsman shall suggest changes in legislation which his investigations indicate would be desirable. Some governments have also set up special machinery to see that the Ombudsmen's recommendations are followed up. A case in point is New Brunswick where, since 1975, the Prime Minister refers recommendations by the Ombudsman, for changes in legislation to the Law Reform Division of the Department of Justice. This Division is instructed to draft proposals for the legislation committee of the New Brunswick Cabinet.

66. Widening the powers of the Parliamentary Commissioner to look at actions by government departments which are "unreasonable, unjust or oppressive", which is what we propose, would not only allow him to look at many more cases than he does at present, and to suggest improved methods of administration, but it would also make for much greater intelligibility and clarity in the operation of his office. At present it is often difficult to forecast whether the Parliamentary Commissioner will, or will not, decide when a complaint is sent to him that *prima facie* maladministration is likely to be involved in the case. Members of Parliament will freely say, in private, that they find it hard to predict whether the Parliamentary Commissioner will find there is maladministration in a case sent to him. The system is therefore uncertain and to some extent haphazard. It also favours, again, the well informed complainant who will specially phrase his complaint in terms that indicate that there have been procedural faults in the department in the hope that when the Parliamentary Commissioner investigates the case he will bring to light information which shows that the government department has acted unreasonably: this being the real, although not the apparent, thrust of his complaint.

67. We propose therefore that the Parliamentary Commissioner should be empowered to investigate complaints that actions, or omissions, by government departments are unreasonable, unjust or oppressive. We also propose that he should be empowered to suggest changes in legislation, including statutory instruments, and in departmental rules

of practice, and to undertake investigations on his own initiative, as well as on complaint from individual citizens or corporate bodies. These also are powers exercised by Ombudsmen in New Zealand, and the Canadian provinces, and shown by experience to be most valuable.

68. One other matter may be mentioned here, although it is not strictly within the subject matter of this chapter. The Royal Commission on Standards of Conduct in Public Life (the Salmon Commission)<sup>1</sup> recommended (para. 264) that as a measure against corruption all Ombudsmen should be empowered to transmit to the police any evidence of criminal conduct which they might discover. We agree with this recommendation.

## CHAPTER VIII

### PUBLICITY

69. Providing for direct access to the Parliamentary Commissioner would of itself do a great deal to improve publicity for his office. The increased flow of cases would rapidly improve knowledge of his activities among the general public. But there would still be need for much greater publicity for his results reports, and his annual reports, than there is now. At present, when he has completed investigation of a case the Parliamentary Commissioner sends a copy of his results report to the member of Parliament who forwarded the complaint, to the person complained against, and to the principal officer of the department concerned. It is then normally a matter for the Member of Parliament to decide whether to give publicity to the Parliamentary Commissioner's findings. Many Members of Parliament do not inform the Press about these results reports or send information to the local newspaper only, and not to the national Press.

70. The Parliamentary Commissioner only publishes full information about his results reports in relatively rare cases. He is empowered by the Act (s.10(4)) to publish special reports of investigations which throw light on the performance of his functions. Sir Edmund Compton only published three such reports, on Sachsenhausen, on a complaint about aircraft noise, and on the Duccio painting case. Sir Alan Marre was similarly sparing in publishing special reports. In August 1972, he did introduce a change of policy in regard to his results reports. From that date he published quarterly reports in which all his results reports were given in an anonymised form. This has not, however, improved the publicity he receives because these quarterly reports in their anonymised form are not very attractive to the journalist or commentator.

71. In his book, *The British Ombudsman* (Clarendon Press 1971) Professor Stacey suggested that there would be much more publicity for the work of the Parliamentary Commissioner if he were to adopt the opposite of his present practice. At present he publishes a results report in full, giving the names and details of people involved, only on rare occasions, in his special reports. For all other reports it is left to the Member of Parliament concerned to give the full details to the Press, if he thinks fit to do so. Professor Stacey suggested that the Parliamentary Commissioner should give the Press full details of each results report, unless the Member of Parliament, or the complainant, wished him not to do so. We agree with this suggestion.

72. It might be argued that Members of Parliament would object to this change. But a very experienced parliamentarian, William Deedes,

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<sup>1</sup> Cmnd. 6524 (July 1976).

welcomed the suggestion in his review of the book in the Daily Telegraph on 11th November, 1971. It is relevant to quote the actual words he used in this review:

"Nobody, however, can seriously disagree with Stacey's proposal that the Ombudsman might, with every advantage, get more publicity for his work. The suggested form of words to the M.P.'s concerned is impeccable: 'I propose to send a copy of this report to the Press unless you, or the complainant, object to my so doing'."

Care would clearly have to be taken to ensure that individual civil servants criticised in such reports were not named or otherwise identifiable in a report for publication.

73. The Parliamentary Commissioner could also do a great deal to make his annual and quarterly Reports more readable and informative. Of all the Ombudsmen's reports we have seen, his are the least communicative. Until 1972 he published a selection of his results reports in anonymised form with his annual report. Since August 1972 he has published all his results reports in quarterly instalments. But each instalment is merely prefaced by the statement that the full texts of the reports are laid before Parliament. He provides no commentary on the trend of cases during the period, or on defects in the administrative process to which the cases investigated have drawn his attention. The anonymised results reports are arranged chronologically by department. They do not have a table of contents, nor an index. Even as works of reference, therefore, his quarterly volumes of results reports are most difficult to use.

74. His annual reports now include some comments on cases which he has investigated in the year and some discussion of developments in the departments. But both comments and discussion are very brief. The report always begins with a clear statement of general statistics for the year but although there is a breakdown of these statistics by department, in a table in an Appendix, this table is far from satisfactory. The information is crowded together in tiny print on two pages where it should be spread over about six pages if it is to be easily read and consulted. The table does not give, as the great majority of Ombudsmen's reports give, the number of cases per department in which maladministration has been found (or a remedy secured). Even the information which is given in the tables is extraordinarily hard to follow. Six columns are allotted for categories of cases rejected by the Parliamentary Commissioner, and six columns for cases discontinued after partial investigation. But instead of the reason for discontinuance or rejection being given at the head of the column *e.g.* "Not-submitted through an M.P.", merely the section and sub-section of the Parliamentary Commissioner Act is given. The journalist, or interested member of the public, must therefore hold the Act in his hand and thumb through it in order to piece together the information given in the table. This amounts not just to obscurity but to obfuscation, although we are sure this is not the Parliamentary Commissioner's intention.

75. In our view, the Parliamentary Commissioner's annual report should include a statistical summary, a discussion of developments in his office during the year, and a discussion by department of the trend of cases, and improvements in administration which he has suggested to the departments. Illustrative cases should follow each relevant departmental section to point up the issues discussed in the text of his report. Finally, good statistical tables, clearly printed, and showing the proportion of cases in which he has found maladministration, or secured a remedy, should complete the report.

76. An objection which may be made to this proposal for making the Parliamentary Commissioner's reports more readable and informative is that he is a parliamentary officer and reports to Parliament, not to the general public. There are two answers to this objection. First, all Ombudsmen are responsible to the legislature of their country or province, in the case of Ombudsmen in federal countries. For example, the summary in English of the annual reports of the Swedish Ombudsmen are headed: "The Swedish Parliamentary Ombudsmen. Report for the year . . .". Second, even if it is argued that the Parliamentary Commissioner has a closer relationship to the relevant Committee of the legislature than other Ombudsmen have, this is not a good argument for making his reports obscure and hard to follow.

77. The Parliamentary Commissioner could also do very much more than he does at present in publicising his activities and reports through giving press conferences, and interviews on radio and television. Sir Alan Marre did more in this respect than his predecessor. For example in 1975 he was the subject of an "It's your line" programme on Radio 4. This was an excellent programme in which listeners had an opportunity to ask him searching questions about the problems of access, and his limited jurisdiction, which the Parliamentary Commissioner answered forthrightly and informatively. But it was an unusual instance of a British Parliamentary Commissioner welcoming, and making good use of, the media.

78. In our view, the Parliamentary Commissioner should, as many other Ombudsmen do, hold regular press conferences and use every opportunity to make himself available for interviews on radio and television. The reserve which Parliamentary Commissioners have, in general, shown towards the media seems to derive partly from the tradition of anonymity in the Civil Service and partly from the view that the Parliamentary Commissioner is *par excellence* a servant of Parliament and only, at one remove, a servant of the public. Other Ombudsmen, although they are all responsible to the legislature, consider themselves rightly as servants of the public and understand that the public must know about them, and appreciate their role, if they are to make good use of them. There is no good reason why the Parliamentary Commissioner should not also take up this attitude and make himself as well known and as accessible as possible to the public.

## CHAPTER IX

### SUMMARY OF RECOMMENDATIONS

*Note: All the recommendations are thought to require legislation in order to implement them, except Nos. 2, 3 and 14. No. 5 could be implemented by Order-in-Council.*

- (1) That there should be an obligation to consult the Select Committee of the House of Commons on the Parliamentary Commissioner before the appointment of a new Commissioner. Alternately, the Select Committee should be asked for nominations, and the appointment be made by resolution of the House of Commons (paras. 24, 25).
- (2) That the Parliamentary Commissioner should not always be a former civil servant (paras. 26, 27).
- (3) That his staff should not be comprised solely of civil servants. It should include persons of varied backgrounds. He should have his own legal advisers, and be encouraged to take independent legal advice when necessary (paras. 28, 29).
- (4) That Treasury control over the numbers of his staff and his expenses should be replaced by House of Commons control (para. 30).
- (5) That the matters referred to in paras. 4, 8, 9 and 10 of Schedule 3 to the Parliamentary Commissioner Act, 1967, should be brought within the jurisdiction of the Commissioner, and that the matters referred to in paras. 2, 3, 5 and 6 of the Schedule to be brought to some extent within the Commissioner's jurisdiction (paras. 34-36).
- (6) That complaints should be made to the Commissioner either through a Member of Parliament or directly by the public (paras. 44, 45).
- (7) That detained persons should be able to send letters to their Member of Parliament or to the Parliamentary Commissioner without the letters being opened (paras. 57, 58).
- (8) That the Commissioner should be empowered to investigate any "unreasonable, unjust or oppressive action", instead of "maladministration" (paras. 59-67).

### Summary of Recommendations

- (9) That the Commissioner should have power to undertake investigations on his own initiative (para. 67).
- (10) That the Commissioner should have power to suggest changes in legislation, including statutory instruments, and in departmental practices (para. 67).
- (11) That the Commissioner should be empowered to transmit evidence of criminal conduct to the police (para. 68).
- (12) That the Commissioner should send all his "results reports" to the Select Committee on the Parliamentary Commissioner (para. 49).
- (13) That the Commissioner should supply the full details of all his "results reports" to the Press, unless requested not to do so either by the referring Member of Parliament or by the person who made the complaint (para. 71).
- (14) That the Commissioner should make his quarterly and annual reports more readable and informative (paras. 73-76).
- (15) That the Commissioner should make more use of press conferences and interviews on radio and television (paras. 77, 78).
- (16) That generally the Commissioner should take steps to get more publicity for his work (paras. 69-78).

## APPENDIX A

## THE SPREAD OF THE OMBUDSMAN IDEA

The following summary traces the spread of the Ombudsman idea from its origin in Sweden in 1809 to the present day (1976). Throughout, the definition followed of an Ombudsman is: "An independent officer, in most instances responsible to the legislature, who investigates citizens' complaints against government departments and agencies".

Since 1713 the Swedish King has had his own official, known as the Chancellor of Justice, who investigates complaints against royal officials. When Sweden gained a democratic Constitution in 1809, the new Constitution included provision for parliament's own officer, the Justitieombudsman (or Commissioner of Justice) to investigate complaints from citizens. The development of the office of Justitieombudsman is outlined below. Then developments in each country which has taken up the Ombudsman idea are sketched in outline. (Note: In the following summary, the words "Ombudsman established" indicate the year in which Ombudsman legislation came into operation and the first Ombudsman began to investigate complaints).

There is little doubt that successive world and regional conferences of the International Commission of Jurists beginning with New Delhi in 1959 have contributed greatly to the spread of the Ombudsman idea, as detailed below.

## SWEDEN

- 1809 Justitieombudsman (Commissioner of Justice) provided for in the new Constitution.
- 1810 First Ombudsman elected.
- 1915 Military Ombudsman established in addition to the Civil Ombudsman.
- 1968 Three Ombudsmen replaced the Civil and Military Ombudsmen, one of the three dealing with complaints from servicemen as well as certain spheres of civil administration.
- 1975-6 New legislation provided for four Ombudsmen, one of whom is Chief Ombudsman.

## FINLAND

- 1919 Ombudsman established.
- 1971 Assistant Ombudsman appointed. (Finland, like Sweden, also has a Chancellor of Justice).

## NORWAY

- 1952 Ombudsman for the Armed Forces established.
- 1962 Ombudsman for Civil Administration established.

## DENMARK

- 1955 Ombudsman established.

## GERMAN FEDERAL REPUBLIC

*Federal level*

- 1957 Ombudsmen for the Armed Forces (Wehrbeauftragter) established. (There is no Ombudsman for civil administration at Federal level).

*State level.*

## Rhineland-Pfalz

- 1974 Ombudsman established.

## NEW ZEALAND

- 1962 Ombudsman established.
- 1975-6 Ombudsman Act provided for three Ombudsmen, one of them to be the Chief Ombudsman.

## TANZANIA

- 1966 Permanent Commission of Inquiry established.

## UNITED KINGDOM

- 1967 Parliamentary Commissioner for Administration established.
- 1969 Northern Ireland Parliamentary Commissioner and Northern Ireland Commissioner for Complaints established.

1972-3 National Health Service Commissioners for England, Wales and Scotland established.  
(All three offices are at present filled by the Parliamentary Commissioner).

1974-5 Local Commissioners for Administration established for England, Wales and Scotland.

## CANADA

*Federal level:*

1969 Commissioner of Official Languages established.

*Provincial level:*

## Alberta

1967 Ombudsman established.

## New Brunswick

1967 Ombudsman established.

## Quebec

1968 Protector of the Public established.

## Manitoba

1969 Ombudsman established.

## Nova Scotia

1969 Ombudsman established.

## Saskatchewan

1973 Ombudsman established.

## Ontario

1975 Ombudsman established.

## Newfoundland

1975 Ombudsman established.  
(Original legislation had been enacted in 1970).

Eight out of Ten Canadian provinces now have Ombudsmen.

## GUYANA

1967 Ombudsman established.

## UNITED STATES

*Federal level:* No Ombudsman.

*State level:*

## Hawai

1969 Ombudsman established.

## Nebraska

1971 Ombudsman established.

## Iowa

1972 Ombudsman established.

## Alaska

1975 Ombudsman established.

Four out of Fifty States in the United States have Ombudsmen. The much slower progress in establishing Ombudsmen at State level than in Canada and Australia is partly to be explained by the elaborate checks and balances written in to the Constitutions of the States which make constitutional innovation difficult. In a number of cases, State Governors have been in favour of appointment of an Ombudsmen but have not been able to get the necessary legislation enacted. Some of them have appointed Executive Ombudsmen responsible to the Governor but they are not included in this summary because they are not independent officers responsible to the legislature.

A number of local authorities in the United States have set up Ombudsmen of their own. They include Atlanta City (Georgia), Dayton City (Ohio), Detroit City (Michigan), Jackson County (Missouri), Jamestown City (New York), Wichita City (Kansas), Berkeley (California) and Anchorage (Alaska).

## MAURITIUS

1970 Ombudsmen established.

## HONG KONG

1970 The Secretary of the Office of Unofficial Members of Executive and Legislative Councils ("UMELCO") acts as unofficial Ombudsman.

## AUSTRALIA

*Federal level:* No Ombudsman.

*State level:*

Western Australia

1972 Ombudsman established.

South Australia

1972 Ombudsman established.

Victoria

1973 Ombudsman established.

Queensland

1974 Ombudsman established.

New South Wales

1975 Ombudsman established.

Five out of six Australian States now have Ombudsmen.

## INDIA

*Federal level:* No Ombudsman.

*State level:*

Maharashtra

1971 Lokayukta established.

Bihar

1973 Lokayukta established.

Rajasthan

1973 Lokayukta established.

## ISRAEL

1971 Commissioner for Complaints from the Public established.

Two Israeli cities, Jerusalem (since 1967) and Haifa (since 1974) also have Ombudsmen.

## FIJI

1972 Ombudsmen established.

## FRANCE

1973 Médiateur established.

## ZAMBIA

1973 Commission of Investigations established.

## ITALY

*National level:* No Ombudsman.

*Regional level:*

Region of Tuscany

1974 Civic Defender established.

## PAPUA NEW GUINEA

1976 Ombudsman Commission established.

## SWITZERLAND

At present does not have an Ombudsman at either Federal or Cantonal level but the City of Zurich has had an Ombudsman since 1971.

In the foregoing summary, no mention has been made of countries, or states, where Ombudsman legislation is pending or has been enacted but no Ombudsman yet appointed. These include the three Indian States of Madhya Pradesh, Orissa, and Uttar Pradesh, Balgladesh, Pakistan, the Phillipines, Cyprus, Trinidad and Tobago and Liguria (Italy).



## APPENDIX B

### A COMPARATIVE TABLE OF OMBUDSMEN

Country or Province	Date when Ombudsman established	Method of access to him by the Public	Limited to Maladministration
Sweden	1809	Direct	No
Denmark	1955	Direct	No
New Zealand	1962	Direct	No
Norway	1962	Direct	No
United Kingdom	1967	Only through a Member of Parliament	Yes
Alberta	1967	Direct	No
New Brunswick	1967	Direct	No
Quebec	1968	Direct	No
Manitoba	1969	Direct	No
Nova Scotia	1969	Direct	No
Canada (Commissioner of Official Languages)	1969	Direct	No
South Australia	1972	Direct	No
Western Australia	1972	Direct	No
Victoria	1973	Direct	No
France	1973	Only through a Deputy or Senator	No
Saskatchewan	1973	Direct	No
Queensland	1974	Direct	No
New South Wales	1975	Direct	No
Ontario	1975	Direct	No
Newfoundland	1975	Direct	No

*Note:* According to the International Bar Association, Ombudsman Committee (Chairman, Dr. Bernard Frank), access to all Ombudsmen throughout the world is direct, with the sole exceptions of the United Kingdom and France. In some instances, the legislation provides for access either directly or through a member of the legislature.

## APPENDIX C

### A PROCEDURE FOR NOTIFYING MEMBERS OF PARLIAMENT

In an endeavour to meet the views of those who want to retain the Member of Parliament as the channel of access to the Commissioner, we did at one stage of our work consider a half-way solution by which complaint should be direct to the Commissioner, who would then pass a copy of the complaint to the complainant's Member of Parliament, asking whether the Member wished in the first instance to deal with the complaint himself. However, when this idea was examined, considerable complications emerged. A procedure, with time limits, has to be devised for dealing with cases where the Member of Parliament does not reply within a reasonable time, and for cases where the constituency member is absent or sick, or holds Ministerial office. Further, we became aware that there is a category of complaint where the complainant may have legitimate reasons for not wishing his complaint to be forwarded to his member of Parliament. Complaints involving personal finance, perhaps in connection with taxation, are an example, and we think it must be recognised also that some complainants object to sending complaints to their Members of Parliament because the Member's politics are unacceptable to them. At the moment this category has no remedy at all. It would be possible to cover this category by providing that the complaint should only be sent to the complainant's Member of Parliament, if the complainant consents. But this introduces more delay, and would we think in practice render reference to Members of Parliament ineffective, because complainants will see no point in having the complaint sent to the Member when the object of the complaint is for the Parliamentary Commissioner to deal with it.

We consider that the aim should be a procedure which will get complaints dealt with as speedily and effectively as possible. In our view direct access is the best way to achieve this. We see no point in complicating and weakening the procedure by a provision for prior reference to Members of Parliament which is in any event likely to prove ineffective.

There is of course no reason why a complainant should not approach the Commissioner through a Member of Parliament if he wishes to.

## APPENDIX D

### PARLIAMENTARY COMMISSIONER ACT 1967 (1967 c.13 as amended)

*An Act to make provision for the appointment and functions of a Parliamentary Commissioner for the investigation of administrative action taken on behalf of the Crown, and for purposes connected therewith*  
[22nd March 1967]

#### *The Parliamentary Commissioner for Administration*

##### I. Appointment and tenure of office

(1) For the purpose of conducting investigations in accordance with the following provisions of this Act there shall be appointed a Commissioner, to be known as the Parliamentary Commissioner for Administration.

(2) Her Majesty may by Letters Patent from time to time appoint a person to be the Commissioner, and any person so appointed shall (subject to subsection (3) of this section) hold office during good behaviour.

(3) A person appointed to be the Commissioner may be relieved of office by Her Majesty at his own request, or may be removed from office by Her Majesty in consequence of Addresses from both Houses of Parliament, and shall in any case vacate office on completing the year of service in which he attains the age of sixty-five years.

(4) [Repealed and replaced by the House of Commons Disqualification Act 1975, s.10(2) Sch. 1, Part II, Sch. 3, and the Northern Ireland Assembly Disqualification Act 1975, s.5(2), Sch. 1, Part III, Sch. 3, Part I.]

(5) [Repealed by the Tribunals and Inquiries Act 1971 and replaced by s.2(3) of that Act.]

##### 2. Salary and pension

(1) There shall be paid to the holder of the office of Commissioner a salary at the rate (subject to subsection (2) of this section) of £8,600 a year.

(2) The House of Commons may from time to time by resolution increase the rate of the salary payable under this section, and any such resolution may take effect from the date on which it is passed or such other date as may be specified therein.

(3) The provisions of Schedule 1 to this Act shall have effect with respect to the pensions and other benefits to be paid to or in respect of persons who have held office as Commissioner.

### *Parliamentary Commissioner Act 1967*

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(4) The salary payable to a holder of the office of Commissioner shall be abated by the amount of any pension payable to him in respect of any public office in the United Kingdom or elsewhere to which he had previously been appointed or elected.

(4A) In computing the salary of a former holder of the office of Commissioner for the purposes of the said Schedule 1—

(a) any abatement of that salary under subsection (4) above,

(b) any temporary abatement of that salary in the national interest, and

(c) any voluntary surrender of that salary in whole or in part, shall be disregarded.

(5) Any salary, pension or other benefit payable by virtue of this section shall be charged on and issued out of the Consolidated Fund.

##### 3. Administrative provisions

(1) The Commissioner may appoint such officers as he may determine with the approval of the Treasury as to numbers and conditions of service.

(2) Any function of the Commissioner under this Act may be performed by any officer of the Commissioner authorised for that purpose by the Commissioner.

(3) The expense of the Commissioner under this Act, to such amount as may be sanctioned by the Treasury, shall be defrayed out of moneys provided by Parliament.

#### *Investigation by the Commissioner*

##### 4. Departments and authorities subject to investigation

(1) Subject to the provisions of this section and to the notes contained in Schedule 2 to this Act, this Act applies to the government departments and other authorities listed in that Schedule.

(2) Her Majesty may by Order in Council amend the said Schedule 2 by the alteration of any entry or note, the removal of any entry or note or the insertion of any additional entry or note; but nothing in this subsection authorises the inclusion in that Schedule of any body or authority not being a department or other body or authority whose functions are exercised on behalf of the Crown.

(3) Any statutory instrument made by virtue of subsection (2) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Any reference in this Act to a government department or other authority to which this Act applies includes a reference to the Ministers, members or officers of that department or authority.

##### 5. Matters subject to investigation

(1) Subject to the provisions of this section, the Commissioner may investigate any action taken by or on behalf of a government department or other authority to which this Act applies, being action taken in

the exercise of administrative functions of that department or authority, in any case where—

- (a) a written complaint is duly made to a member of the House of Commons by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken; and
  - (b) the complaint is referred to the Commissioner, with the consent of the person who made it, by a member of that House with a request to conduct an investigation thereon.
- (2) Except as hereinafter provided, the Commissioner shall not conduct an investigation under this Act in respect of any of the following matters, that is to say—
- (a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any enactment or by virtue of Her Majesty's prerogative;
  - (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:

Provided that the Commissioner may conduct an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to resort or to have resorted to it.

(3) Without prejudice to subsection (2) of this section, the Commissioner shall not conduct an investigation under this Act in respect of any such action or matter as is described in Schedule 3 to this Act.

(4) Her Majesty may by Order in Council amend the said Schedule 3 so as to exclude from the provision of that Schedule such actions or matters as may be described in the Order; and any statutory instrument made by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In determining whether to initiate, continue or discontinue an investigation under this Act, the Commissioner shall, subject to the foregoing provisions of this section, act in accordance with his own discretion; and any question whether a complaint is duly made under this Act shall be determined by the Commissioner.

## 6. Provisions relating to complaints

- (1) A complaint under this Act may be made by any individual, or by any body of persons whether incorporated or not, not being—
  - (a) a local authority or other authority or body constituted for purposes of the public service or of local government or for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking;
  - (b) any other authority or body whose members are appointed by Her Majesty or any Minister of the Crown or government department, or whose revenues consist wholly or mainly of moneys provided by Parliament.

(2) Where the person by whom a complaint might have been made under the foregoing provisions of this Act has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him; but except as aforesaid a complaint shall not be entertained under this Act unless made by the person aggrieved himself.

(3) A complaint shall not be entertained under this Act unless it is made to a member of the House of Commons not later than twelve months from the day on which the person aggrieved first had notice of the matters alleged in the complaint; but the Commissioner may conduct an investigation pursuant to a complaint not made within that period if he considers that there are special circumstances which make it proper to do so.

(4) A complaint shall not be entertained under this Act unless the person aggrieved is resident in the United Kingdom (or, if he is dead, was so resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in the United Kingdom or on an installation in a designated area within the meaning of the Continental Shelf Act 1964 or on a ship registered in the United Kingdom or an aircraft so registered, or in relation to rights or obligations which accrued or arose in the United Kingdom or on such an installation, ship or aircraft.

## 7. Procedure in respect of investigations

(1) Where the Commissioner proposes to conduct an investigation pursuant to a complaint under this Act, he shall afford to the principal officer of the department or authority concerned, and to any other person who is alleged in the complaint to have taken or authorised the action complained of, an opportunity to comment on any allegations contained in the complaint.

(2) Every such investigation shall be conducted in private, but except as aforesaid the procedure for conducting an investigation shall be such as the Commissioner considers appropriate in the circumstances of the case; and without prejudice to the generality of the foregoing provision the Commissioner may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and may determine whether any person may be represented, by counsel or solicitor or otherwise, in the investigation.

(3) The Commissioner may, if he thinks fit, pay to the person by whom the complaint was made and to any other person who attends or furnishes information for the purposes of an investigation under this Act—

- (a) sums in respect of expenses properly incurred by them;
- (b) allowances by way of compensation for the loss of their time,

in accordance with such scales and subject to such conditions as may be determined by the Treasury.

(4) The conduct of an investigation under this Act shall not affect any action taken by the department or authority concerned, or any power or duty of that department or authority to take further action with respect to any matters subject to the investigation; but where the person aggrieved has been removed from the United Kingdom under any Order in force under the Aliens Restriction Acts 1914 and 1919 or under the Commonwealth Immigrants Act 1962, he shall, if the Commissioner so directs, be permitted to re-enter and remain in the United Kingdom, subject to such conditions as the Secretary of State may direct, for the purposes of the investigation.

#### 8. Evidence

(1) For the purposes of an investigation under this Act the Commissioner may require any Minister, officer or member of the department or authority concerned or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For the purposes of any such investigation the Commissioner shall have the same powers as the Court in respect of the attendance and examination of witnesses (including the administration of oaths or affirmations and the examination of witnesses abroad) and in respect of the production of documents.

(3) No obligation to maintain secrecy or other restriction under the disclosure of information obtained by or furnished to persons in Her Majesty's service, whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information for the purposes of an investigation under this Act; and the Crown shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(4) No person shall be required or authorised by virtue of this Act to furnish any information or answer any question relating to proceedings of the Cabinet or of any committee of the Cabinet or to produce so much of any document as relates to such proceedings; and for the purposes of this subsection a certificate issued by the Secretary of the Cabinet with the approval of the Prime Minister and certifying that any information, question, document or part of a document so relates shall be conclusive.

(5) Subject to subsection (3) of this section, no person shall be compelled for the purposes of an investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the Court.

#### 9. Obstruction and contempt

(1) If any person without lawful excuse obstructs the Commissioner or any officer of the Commissioner in the performance of his functions under this Act, or is guilty of any act or omission in relation to an

investigation under this Act which, if that investigation were a proceeding in the Court, would constitute contempt of court, the Commissioner may certify the offence to the Court.

(2) Where an offence is certified under this section, the Court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, deal with him in any manner in which the Court could deal with him if he had committed the like offence in relation to the Court.

(3) Nothing in this section shall be construed as applying to the taking of any such action as is mentioned in subsection (4) of section 7 of this Act.

#### 10. Reports by Commissioner

(1) In any case where the Commissioner conducts an investigation under this Act or decides not to conduct such an investigation, he shall send to the member of the House of Commons by whom the request for investigation was made (or if he is no longer a member of that House, to such member of that House as the Commissioner thinks appropriate) a report of the results of the investigation or, as the case may be, a statement of his reasons for not conducting an investigation.

(2) In any case where the Commissioner conducts an investigation under this Act, he shall also send a report of the results of the investigation to the principal officer of the department or authority concerned and to any other person who is alleged in the relevant complaint to have taken or authorised the action complained of.

(3) If, after conducting an investigation under this Act, it appears to the Commissioner that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied, he may, if he thinks fit, lay before each House of Parliament a special report upon the case.

(4) The Commissioner shall annually lay before each House of Parliament a general report on the performance of his functions under this Act and may from time to time lay before each House of Parliament such other reports with respect to those functions as he thinks fit.

(5) For the purposes of the law of defamation, any such publication as is hereinafter mentioned shall be absolutely privileged, that is to say—

- (a) the publication of any matter by the Commissioner in making a report to either House of Parliament for the purposes of this Act;
- (b) the publication of any matter by a member of the House of Commons in communicating with the Commissioner or his officers for those purposes by the Commissioner or his officers in communicating with such a member for those purposes;
- (c) the publication by such a member to the person by whom a complaint was made under this Act of a report or statement sent to the member in respect of the complaint in pursuance of subsection (1) of this section;

- (d) the publication by the Commissioner to such a person as is mentioned in subsection (2) of this section of a report sent to that person in pursuance of that subsection.

#### 11. Provision for secrecy of information

(1) It is hereby declared that the Commissioner and his officers hold office under Her Majesty within the meaning of the Official Secrets Act 1911.

(2) Information obtained by the Commissioner or his officers in the course of or for the purposes of an investigation under this Act shall not be disclosed except—

- (a) for the purposes of the investigation and of any report to be made thereon under this Act;
- (b) for the purposes of any proceedings for an offence under the Official Secrets Acts 1911 to 1939 alleged to have been committed in respect of information obtained by the Commissioner or any of his officers by virtue of this Act or for an offence of perjury alleged to have been committed in the course of an investigation under this Act or for the purposes of an inquiry with a view to the taking of such proceedings; or

(c) for the purposes of any proceedings under section 9 of this Act; and the Commissioner and his officers shall not be called upon to give evidence in any proceedings (other than such proceedings as aforesaid) of matters coming to his or their knowledge in the course of an investigation under this Act.

(3) A Minister of the Crown may give notice in writing to the Commissioner, with respect to any document or information specified in the notice, or any class of documents or information so specified, that in the opinion of the Minister the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest; and where such a notice is given nothing in this Act shall be construed as authorising or requiring the Commissioner or any officer of the Commissioner to communicate to any person or for any purpose any document or information specified in the notice, or any document or information of a class so specified.

(4) The references in this section to a Minister of the crown include references to the Commissioners of Customs and Excise and the Commissioners of Inland Revenue.

#### *Supplemental*

#### 12. Interpretation

(1) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say—

“action” includes failure to act, and other expressions connoting action shall be construed accordingly;

“the Commissioner” means the Parliamentary Commissioner for Administration;

“the Court” means, in relation to England and Wales the High Court, in relation to Scotland the Court of Session, and in relation to Northern Ireland the High Court of Northern Ireland;

“enactment” includes an enactment of the Parliament of Northern Ireland, and any instrument made by virtue of an enactment;

“officer” includes employee;

“person aggrieved” means the person who claims or is alleged to have sustained such injuries as is mentioned in section 5 (1) (a) of this Act;

“tribunal” includes the person constituting a tribunal consisting of one person.

(2) References in this Act to any enactment are references to that enactment as amended or extended by or under any other enactment.

(3) It is hereby declared that nothing in this Act authorises or requires the Commissioner to question the merits of a decision taken without maladministration by a government department or other authority in the exercise of a discretion vested in that department or authority.

#### 13. Application to Northern Ireland

(1) Subject to the provisions of this section, this Act extends to Northern Ireland.

(2) Nothing in this section shall be construed as authorising the inclusion among the departments and authorities to which this Act applies of any department of the Government of Northern Ireland, or any authority established by or with the authority of the Parliament of Northern Ireland; but this Act shall apply to any such department or authority, in relation to any action taken by them as agent for a department or authority to which this Act applies, as it applies to the last-mentioned department or authority.

(3) In section 6 of this Act the references to a Minister of the Crown or government department and to Parliament shall include references to a Minister or department of the Government of Northern Ireland and to the Parliament of Northern Ireland.

(4) In section 8 of this Act the references to the Cabinet shall include references to the Northern Ireland Executive, and in relation to that Executive for the reference to the Prime Minister there shall be substituted a reference to the Prime Minister of Northern Ireland.

#### 14. Short title and commencement

(1) This Act may be cited as the Parliamentary Commissioner Act 1967.

(2) This Act shall come into force on such date as Her Majesty may by Order in Council appoint.

(3) A complaint under this Act may be made in respect of matters which arose before the commencement of this Act; and for the purposes

of subsection (3) of section 6 of this Act any time elapsing between the date of the passing and the date of the commencement of this Act (but not any time before the first of those dates) shall be disregarded.

## SCHEDULES

### Section 2

#### SCHEDULE 1

##### PENSIONS AND OTHER BENEFITS

1. A person appointed to be the Commissioner may, within such period and in such manner as may be prescribed by regulations under this Schedule, elect between the statutory scheme of pensions and other benefits applicable to the judicial offices listed in Schedule 1 to the Judicial Pensions Act 1959 and the scheme of pensions and other benefits applicable by virtue of section 1 of the Superannuation Act 1972 to the civil service of the State (in this Schedule referred to respectively as the judicial scheme and the civil service scheme), and if he does not so elect shall be treated as having elected for the civil service scheme.

2. Where a person so appointed elects for the judicial scheme, a pension may be granted to him on ceasing to hold office as Commissioner if he has held that office for not less than five years and either—

- (a) has attained the age of sixty-five years; or
- (b) is disabled by permanent infirmity for the performance of the duties of that office;

and (subject to regulations under this Schedule) the provisions of the Judicial Pensions Act 1959, other than section 2 (retiring age), and of sections 2 to 8 of the Administration of Justice (Pensions) Act 1950 (lump sums and widows and dependants pensions), shall apply in relation to him and his service as Commissioner as they apply in relation to the holders of judicial offices listed in schedule 1 to the said Act of 1959 and service in any such office, this paragraph being the relevant pension enactment for the purposes of that Act.

3. Where a person so appointed elects for the civil service scheme, the principle civil service pension scheme within the meaning of section 2 of the Superannuation Act 1972 and for the time being in force shall (subject to regulations under this Schedule) apply as if his service as Commissioner were service in the civil service of the State.

4. The Treasury may by statutory instrument make regulations for purposes supplementary to the foregoing provisions of this Schedule; and such regulations may, without prejudice to section 38 of the Superannuation Act 1965 (employment in more than one public office), make special provision with respect to the pensions and other benefits

payable to or in respect of persons to whom the judicial scheme or the civil service scheme has applied or applies in respect of any service other than service as Commissioner, including provision—

- (a) for aggregating other service falling within the judicial scheme with service as Commissioner, or service as Commissioner with such other service, for the purpose of determining qualification for or the amount of benefit under that scheme;
- (b) for increasing the amount of the benefit under the judicial scheme, in the case of a person to whom that scheme applied in respect of an office held by him before appointment as Commissioner, up to the amount which would have been payable thereunder if he had retired from that office on the ground of permanent infirmity immediately before his appointment;
- (c) for limiting the amount of benefit payable under the judicial scheme, in the case of a person to whom the civil service scheme applied in respect of service before his appointment as Commissioner, by reference to the difference between the amount of benefit granted in his case under the civil service scheme and the amount which would be payable under the judicial scheme if that service had been service as Commissioner.

5. Any statutory instrument made by virtue of this Schedule shall be subject to annulment in pursuance of a resolution of the House of Commons.

#### SCHEDULE 2

#### Section 4

##### DEPARTMENTS AND AUTHORITIES SUBJECT TO INVESTIGATION

Ministry of Agriculture, Fisheries and Food.  
 Charity Commission.  
 Civil Service Commission.  
 Civil Service Department.  
 Crown Estate Office.  
 Customs and Excise.  
 Ministry of Defence.  
 Department of Education and Science.  
 Department of Employment.  
 Employment Service Agency.  
 Department of Energy.  
 Department of the Environment.  
 Exports Credits Guarantee Department.  
 Office of the Director General of Fair Trading.  
 Foreign and Commonwealth Office.  
 Health and Safety Commission.  
 Health and Safety Executive.  
 Department of Health and Social Security.  
 Central Office of Information.

Department of Industry.  
 Inland Revenue.  
 Intervention Board for Agriculture Produce.  
 Land Registry.  
 Lord Chancellor's Department.  
 Lord President of the Council's Office.  
 Manpower Services Commission.  
 National Debt Office.  
 Department for National Savings.  
 Northern Ireland Office.  
 Ministry of Overseas Development.  
 Office of Population Censuses and Surveys.  
 Department of Prices and Consumer Protection.  
 Public Record Office.  
 Public Trustee.  
 Department of the Registers of Scotland.  
 General Register Office, Scotland.  
 Registry of Friendly Societies.  
 Royal Mint.  
 Scottish Office.  
 Scottish Record Office.  
 Stationary Office.  
 Board of Trade.  
 Department of Trade.  
 Training Services Agency.  
 Department of Transport.  
 Treasury.  
 Treasury Solicitor.  
 Welsh Office.

## NOTES

1. The reference to the Ministry of Defence includes the Defence Council, the Admiralty Board, the Army Board and the Air Force Board.
2. The reference to the Lord President of the Council's Office does not include the Privy Council Office.
3. [Repealed by the Post Office Act 1969, s.141, Sch. 11, Part II.]
4. The reference to the Registry of Friendly Societies includes the Central Office, the Office of the Assistant Registrar of Friendly Societies for Scotland and the Office of the Chief Registrar and the Industrial Assurance Commissioner.
5. [Repealed by the Civil Aviation Act 1971, s.69(2), Sch.11.]
6. The references to the Civil Service Department and the Treasury do not include the Cabinet Office, but subject to that include the subordinate departments of the Civil Service Department and of the Treasury and the office of any Minister whose expenses are defrayed out of moneys provided by Parliament for the service of the Civil Service Department or the Treasury.

7. The reference to the Treasury Solicitor does not include a reference to Her Majesty's Procurator General.

8. In relation to any function exercisable by a department or authority for the time being listed in this Schedule which was previously exercisable on behalf of the Crown by a department or authority not so listed, the reference to the department or authority so listed also includes a reference to the other department or authority.

## SCHEDULE 3

## Section 5

## MATTERS NOT SUBJECT TO INVESTIGATION

1. Action taken in matters certified by a Secretary of State or other Minister of the Crown to affect relations or dealings between the Government of the United Kingdom and any other Government or any international organisation of States or Governments.
2. Action taken, in any country or territory outside the United Kingdom, by or on behalf of any officer representing or acting under the authority of Her Majesty in respect of the United Kingdom, or any other officer of the Government of the United Kingdom.
3. Action taken in connection with the administration of the government of any country or territory outside the United Kingdom which forms part of Her Majesty's dominions or in which Her Majesty has jurisdiction.
4. Action taken by the Secretary of State under the Extradition Act 1870 or the Fugitive Offenders Act 1881.
5. Action taken by or with the authority of the Secretary of State for the purposes of investigating crime or of protecting the security of the State, including action so taken with respect to passports.
6. The commencement or conduct of civil or criminal proceedings before any court of law in the United Kingdom, of proceedings at any place under the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955, or of proceedings before any international court or tribunal.
7. Any exercise of the prerogative of mercy or of the power of a Secretary of State to make a reference in respect of any person to the Court of Appeal, the High Court of Justiciary or the Courts-Martial Appeal Court.
8. Action taken on behalf of the Minister of Health or the Secretary of State by a Regional Health Authority, an Area Health Authority, a special health authority, a Family Practitioner Committee, a Health Board or the Common Services Agency for the Scottish Health Service, or by the Public Health Laboratory Service Board.
9. Action taken in matters relating to contractual or other commercial transactions, whether within the United Kingdom or elsewhere, being transactions of a government department or authority to which this Act applies or of any such authority or body as is mentioned in

paragraph (a) or (b) of subsection (1) of section 6 of this Act and not being transactions for or relating to—

- (a) the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily;
- (b) the disposal as surplus of land acquired compulsorily or in such circumstances as aforesaid.

10. Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters, in relation to—

- (a) service in any of the armed forces of the Crown, including reserve and auxiliary and cadet forces;
- (b) service in any office or employment under the Crown or under any authority listed in Schedule 2 to this Act, or
- (c) service in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken, in such matters is vested in Her Majesty, any Minister of the Crown or any such authority as aforesaid.

11. The grant of honours, awards or privileges within the gift of the Crown, including the grant of Royal Charters.



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