

**INQUIRY INTO THE ARMED FORCES (SERVICE COMPLAINTS AND FINANCIAL ASSISTANCE) BILL.**

The Ombudsman Association welcomes the Defence Committee's inquiry into the provisions of the Armed Forces Bill relating to the Service Complaints system and the creation of a Service Complaints Ombudsman.

**Summary**

1. The Ombudsman Association is of the opinion that several amendments need to be made to the Armed Forces Bill to create a Service Complaints Ombudsman that would meet the Association's five fundamental criteria<sup>1</sup> of independence, fairness, effectiveness, openness and transparency, and accountability.
2. These include:
  - Strengthening the role of Parliament in the appointment of the Service Complaints Ombudsman;
  - Inserting a fixed term of office, for a minimum of five years, into the Bill;
  - Removing the requirement for a complaint to be made in writing;
  - Adding to the Bill that the Service Complaints Ombudsman's findings are binding.

**Background**

3. The Ombudsman Association (formerly the British and Irish Ombudsman Association) was established in 1991 and includes as members all major public and private sector Ombudsman schemes and complaint handling bodies in the United Kingdom and the Republic of Ireland. The Association's objectives include:
  - Encouraging, developing and safeguarding the role and title of Ombudsmen in both the public and private sectors;
  - Setting criteria for the recognition of Ombudsman offices by the Association; and
  - Formally recognising those persons or offices who satisfy the criteria.
4. Ombudsmen help to underpin public confidence in the institutions that they cover – by providing accessible and effective redress, and by feeding back the lessons from their work in order to help improve service delivery and complaints-management for the future.
5. The Association has two membership levels: 'Ombudsman Member' - for those organisations that meet the five key criteria of independence, fairness, effectiveness, openness and transparency, and accountability – and 'Complaint Handler Member', for those organisations that operate in accordance with the Association's Principles of Good Complaint Handling, but do not meet the criteria for that of an Ombudsman Member. The existing Service Complaints Commissioner is currently a Complaint Handler Member of the Association.
6. The Association's objective to safeguard the role and title of Ombudsmen is reflected in the Association's rules:

"The title of 'Ombudsman' should not be used unless the Association's Criteria for Recognition of Ombudsmen's Offices are met. The Association will not admit to

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<sup>1</sup> <http://www.ombudsmanassociation.org/docs/OA-Rules-Schedule-1.pdf>

Membership in any category organisations or individuals which use the title of 'Ombudsman' but do not meet the Association's Criteria."

7. The Association's position is reflected in the Cabinet Office's document *Ombudsman schemes - Guidance for Departments*<sup>2</sup>, which states:

"In considering setting up such a scheme, departments should have regard to BIOA's [the Ombudsman Association's] 'Criteria' for use of the term Ombudsman: independence from those who the Ombudsman has the power to investigate; accessibility; effectiveness; fairness; and public accountability. If these criteria are not met, use of the term Ombudsman must be avoided, and an alternative (Commissioner, Adjudicator, Complaints Examiner, for instance) used... They [Departments] should not describe as an 'Ombudsman' scheme any scheme that is not truly independent from the body to be investigated."

### **The method of appointment of the proposed Service Complaints Ombudsman**

8. An Ombudsman should be visibly and demonstrably independent, as set out in the Ombudsman Association's criteria for membership:

"The persons who appoint the Ombudsman should be independent of those subject to investigation by the Ombudsman."

9. Best practice for the appointment of public sector ombudsmen, both within the British Isles and internationally, is for the ombudsman to be appointed by the Head of State on the recommendation of Parliament, not Government.
10. The recruitment for the Parliamentary and Health Service Ombudsman was carried out by Parliament, with the Chair of the relevant Select Committee (the Public Administration Select Committee) sitting on the interview panel and a pre-appointment hearing taking place before the Committee itself. The Association recommends that the Defence Committee play a similar role in the appointment of the Service Complaints Ombudsman.
11. The Association also sets out in its criteria that:

"The term of office should be of sufficient duration not to undermine independence. The appointment should be for a minimum of five years."

12. This is also recognised internationally as best practice to avoid the perception, or reality, that an ombudsman's decisions might be influenced by their employment position. That fixed term should be set out in legislation.

### **Proposed powers of the Service Complaints Ombudsman**

13. There has already been some debate about the status of the proposed Ombudsman's findings and recommendations. The Law Commission, in its 2011 report *Public Services Ombudsmen*<sup>3</sup>, recommended that the findings of public service ombudsmen should be binding. This should also be the case for the proposed Service Complaints Ombudsman and should be set out in legislation.
14. Recommendations of public services ombudsmen have a different status to their findings, being part of the democratic process whereby Government is held to account by Parliament if an ombudsman's recommendation is rejected, with the relevant Select Committee holding a hearing with the Permanent Secretary, and if necessary the Secretary of State. It has been established by the courts that 'cogent reasons' are

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<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/61197/guide-new-ombudsman-schemes.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61197/guide-new-ombudsman-schemes.pdf)

<sup>3</sup> [http://lawcommission.justice.gov.uk/docs/lc329\\_ombudsmen.pdf](http://lawcommission.justice.gov.uk/docs/lc329_ombudsmen.pdf)

required to reject an ombudsman's recommendations. The Association believes the same approach should apply to the proposed Service Complaints Ombudsman.

15. The Association recognises the unique environment in which the Armed Forces operate and the concern not to undermine the 'chain of command' by allowing the Service Complaints Ombudsman to investigate the substance of a complaint.
16. However, it notes that the Defence Forces Ombudsmen in the Republic of Ireland, Canada and Australia all have the power to investigate the substance of a complaint. This does not appear to have adversely affected the chain of command or capability of those professional armed forces. The Association is unclear why an approach that works internationally should not be adopted in the United Kingdom.

### **Access to the Service Complaints Ombudsman**

17. The Bill, as currently drafted, stipulates that an application to the Ombudsman 'must be made in writing'. This stipulation is out of date in the modern world and does not meet best practice criteria for accessibility.
18. Although this requirement exists in the legislation governing the Parliamentary and Health Service Ombudsman, the Public Administration Select Committee noted in their recent report, *Time for a People's Ombudsman Service*<sup>4</sup>, that it was "a barrier to access and is out of step with other ombudsman services". They went on to recommend that:

"...the Government's new legislation to create a simpler and more straightforward Ombudsman service should allow complaints to the Parliamentary and Health Service Ombudsman to be made other than in writing, such as in person, by telephone or online, just as is expected of other complaints systems."
19. The Law Commission have also recommended that all such requirements be repealed. Ombudsmen that have been created relatively recently, such as the Scottish Public Services Ombudsman and the Public Services Ombudsman for Wales, do not have this restriction. This requirement should be removed from the Bill.

We would be very happy to provide any further information or to meet with the Committee if that would be of assistance.

Yours sincerely

Donal Galligan  
Interim Secretary

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<sup>4</sup> <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmpublicadm/655/65502.htm>