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Relationship between public services Ombudsmen and Standards Commissioners in the UK

Overview

None of the Parliamentary/Assembly Standards Commissioners in the UK fall within the remit of the respective Ombudsmen. The Ethical Standards Commissioner for Scotland (who has a remit beyond investigating MSPs) falls within the remit of the Scottish Public Services Ombudsman for some of his functions, but **not** the investigation of MSPs for alleged breaches of the Code of Conduct.

The UK Parliament is sovereign and enjoys 'exclusive cognisance' whereby it regulates its own proceedings. This means that the House of Commons has the right to regulate the conduct of its Members, including the right to punish MPs who are found to have breached parliamentary privilege or been found in contempt of the House. There is no recourse for an MP to appeal to the Ombudsman if he or she is unhappy with the conduct or outcome of an investigation by the Parliamentary Standards Commissioner. The situation is similar in the House of Lords.

The conduct or outcome of investigations by the Ethical Standards Commissioner for

Scotland and the Standards Commissioner for Wales cannot be appealed to the respective Ombudsmen. Rather, it is for the Commissioner to decide whether a breach of the rules has occurred and it is for the relevant standards committee to recommend the imposition of a sanction.

Members of the National Assembly for Wales can appeal to the Presiding Officer if they have been found in breach of the rules by the Standards Committee and in such circumstances the Presiding Officer must appoint an independent legally qualified person to decide the appeal. However, the appeals process is reasonably narrow in scope and is still essentially 'owned' by the Assembly.

There are no mechanisms to investigate complaints against standards commissioners. It is for the legislature to decide on their appointment (after open competition) and, if deemed necessary, their removal.

1 Introduction

This briefing paper has been prepared following a request from the Committee on Standards and Privileges and provides information on the following issues:

- Whether any of the Parliamentary/Assembly standards Commissioners in the UK fall within the remit of their respective Ombudsmen and
- whether there are other accountability mechanisms in place which allow for complaints against Commissioners to be investigated

2 Position in the UK legislatures

House of Commons

Relationship with Ombudsman

Members have no right of appeal to the Parliamentary and Health Services Ombudsman if they are dissatisfied with the outcome of an investigation by the Standards Commissioner¹.

The Committee on Standards, in its February 2015 report *The Standards System in the House of Commons*, considered the appeals process available to MPs:

We have considered whether there are sufficient opportunities for the MP to challenge the findings of an inquiry. The MP may, in effect, appeal from the

¹ Information provided by officials in the House of Commons

Commissioner to the Committee. The Committee's role is to scrutinise the outcome of the Commissioner's inquiry. The Member may then appeal to the House, which may amend the recommendation of the Committee. The advantages of any appeal mechanism from the Committee's findings before a matter reached the House would need to be balanced against the consequent delay².

In terms of appealing decisions of the Commissioner, or indeed questioning the legality of the entire process, the report drew attention to the case of Geoff Hoon:

Mr Hoon, a former MP, had been found by the Commissioner and Committee to have breached the Code while still serving as an MP. Mr Hoon applied to the ECtHR on the grounds that there had been a number of violations of the Convention on Human Rights, that he had been denied access to a court to appeal against the legality of the parliamentary proceedings and the sanctions imposed, that his right to private life had been violated and that he could not bring judicial proceedings to challenge the decisions of the Commissioner, Committee or House.

The ECtHR unanimously declared Mr Hoon's application inadmissible. Particularly relevant is their statement that "the Court considers that the procedure followed gave the applicant a fair opportunity to put his case and defend his interests, as regards both his status as a public office-holder and as regards his private reputation". The judgement also found that "the interference with his private life was not disproportionate to the legitimate aim pursued"³.

Accountability of the Standards Commissioner

The role and functions of the Parliamentary Standards Commissioner are defined in Standing Order 150 which is reproduced at Annex 1. The Commission is appointed on a resolution of the House following an open competition process. The Commissioner may be dismissed only following a resolution of the House, moved for by a Member of the House of Commons Commission, after the Committee on Standards has reported to the House that it is satisfied that the Commissioner is unfit to hold his office or unable to carry out his functions; and any such report shall include a statement of the Committee's reasons for its conclusion.

The Standards Committee has an oversight role in relation to the Commissioner, but the Commissioner is independent. The Committee retains overall responsibility for the disciplinary system and decides on sanctions, subject to the endorsement of the House.

House of Lords

Relationship with Ombudsman

The Parliamentary and Health Service Ombudsman is empowered to investigate alleged maladministration by government bodies only. The Ombudsman has no jurisdiction over parliamentary matters, and her website makes clear that complaints about parliamentarians should be directed to the standards commissioner. Accordingly,

² <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmstandards/383/383.pdf>

³ As above

there would be no basis for referring a complaint to the Ombudsman about the handling of a case by the House of Lords Commissioner for Standards⁴.

The Guide to the Code of Conduct outlines the process for a Member lodging an appeal:

The Member concerned has a right of appeal to the Committee for Privileges and Conduct against both the Commissioner's findings and any recommended sanction. The Committee for Privileges and Conduct, having heard any appeal, reports its conclusions and recommendations to the House. The final decision rests with the House.

On appeal, the Committee will not reopen the Commissioner's investigation. Rather members of the Committee will use their judgment to decide whether, on the balance of probabilities, they endorse the conclusions of the Commissioner; they will also consider whether or not the recommended sanction is appropriate. On appeal a recommended sanction may be endorsed, reduced or increased⁵.

Accountability of the Standards Commissioner

The Commissioner was originally appointed in 2010 by the House following an open competition. He was reappointed in May 2013 for a final term. The Commissioner is independent but submits reports, including annual reports, to the Committee on Standards.

Scotland

Relationship with Ombudsman

Part of the remit of the Commissioner for Ethical Standards is covered by the Scottish Public Services Ombudsman's jurisdiction. That is the part which includes the process for investigating complaints against councillors and people appointed to the boards of regulated public bodies, and the Commissioner's functions in relation to public appointments.

However, that part of the Commissioner's remit which involves the investigation of complaints against Members of the Scottish Parliament **does not** fall within the remit of the Scottish Public Services Ombudsman.

The post of Ethical Standards Commissioner has developed over the years and incorporates functions established by three different acts of the Scottish Parliament. Most recently, it was restructured by the Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013, under which the SPSO Act applies to that which is done "in the performance of the Commissioner's functions

⁴ Information provided by officials in the House of Lords

⁵ <http://www.publications.parliament.uk/pa/ld/lidcond/code.pdf>

under the Ethical Standards in Public Life etc (Scotland) Act 2000 and the Public Appointments and Public Bodies etc (Scotland) Act 2003”.

1. The 2013 Order dissolved the Commission for Ethical Standards and abolished the posts of Public Standards Commissioner and Public Appointments Commissioner. The Commission and those posts had, on 1 April 2011, been created by the Scottish Parliamentary Commissions and Commissioners etc. Act 2010. The 2010 Act brought together the functions of the Chief Investigating Officer, the Commissioner for Public Appointments and the Scottish Parliamentary Standards Commissioner.
2. Councillors or members of devolved public bodies – The Ethical Standards in Public Life etc. (Scotland) Act 2000 set out the powers of the Chief Investigating Officer and of the Standards Commission for Scotland.
3. The Chief Investigating Officer and the Standards Commission were two separate legal bodies. The Chief Investigating Officer had responsibility to investigate alleged breaches of the Codes of Conduct by members of devolved public bodies and the Councillors’ Code of Conduct by councillors after 1 May 2003 and deciding whether to report the outcome of any investigation to the Standards Commission.
4. The Standards Commission had the adjudicatory function of deciding, following a hearing, whether there has been a breach. The Standards Commission also had responsibility for issuing general guidance in relation to the Codes.
5. MSPs – The Scottish Parliamentary Standards Commissioner investigated complaints that an MSP had broken the Code of Conduct for MSPs. Investigations were independent of Parliament and he reported his findings to Parliament, but within a set of rules laid down in an Act of Parliament, the Scottish Parliamentary Standards Commissioner Act 2002.

Accountability

The Commissioner is appointed for a single, eight year term and cannot be reappointed. He may be removed from his post on the following grounds:

- the Parliamentary corporation is satisfied that the Commissioner has breached the Commissioner’s terms and conditions of office and the Parliament resolves that the Commissioner should be removed from office for that breach, or
- the Parliament resolves that it has lost confidence in the Commissioner’s willingness, suitability or ability to perform that Commissioner’s functions,

and, in either case, the resolution is voted for by a number of members not fewer than two thirds of the total number of seats for members of the Parliament⁶.

Section 4 of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 affirms the Commissioner’s independence.

The Commissioner may be given Directions under the Scottish Parliamentary Standards Commissioner Act 2002. Standing Orders provide the detail of this process:

1. Any direction that can be given by the Parliament to the Ethical Standards Commissioner under section 4, 7, 10, 11 or 12 of the Scottish Parliamentary Standards Commissioner Act 2002 (asp 16) shall be given by the Standards, Procedures and Public Appointments Committee.

⁶ <http://www.legislation.gov.uk/asp/2010/11/section/9>

2. A direction is given by the Standards, Procedures and Public Appointments Committee if it is signed on its behalf by the convener of the Standards, Procedures and Public Appointments Committee⁷.

Wales

Relationship with the Ombudsman

Neither the Public Services Ombudsman (Wales) Act 2005 nor the National Assembly for Wales Commissioner for Standards Measure 2009 contain any reference to the Commissioner falling under the remit of the Ombudsman.

Under the Assembly's *Procedure for Dealing with Complaints against Assembly Members*, Members who have been found in breach by the Committee have a right to appeal. The process to be followed is outlined below:

Reporting and appeal procedure⁸

8.1 Where a Member has been found in breach by the Committee, and the Committee does not recommend that the complaint be dismissed, the Member complained of may, within 10 working days of being provided with the Committee's report, appeal to the Presiding Officer.

The Committee must publish the report of its considerations and lay it before the Assembly along with the Commissioner's report to the Committee. Where the Presiding Officer informs the Committee that an appeal has been made, the Committee may not publish its report or lay it before the Assembly until consideration of the appeal has concluded.

If a complaint is referred back to the Committee under paragraph 8.6i the Committee must, at the conclusion of its further consideration of the complaint, prepare a revised report. Paragraph 8.1 will then apply to the revised report instead of to the original report.

Appointment of a person to consider an appeal

8.2 The Presiding Officer must on each occasion appoint an independent legally qualified person to decide the appeal. The person appointed, who may not be an Assembly Member or a member of the Assembly's staff, must have been nominated, at the request of the Presiding Officer, by the senior Presiding Judge of the Wales circuit.

8.3 Following nomination and prior to appointment of the legally qualified independent person, the Presiding Officer shall afford the Member complained of an opportunity to make representations in writing as to any ground for the non-appointment of such person, within five working days of being informed of the name of the nominee. In the event that the Presiding Officer accepts any such ground as valid and determines not to appoint the nominated person, he/she shall seek another nomination as in paragraph 8.2.

Consideration of appeals

8.4 Appeals will only be considered on the following grounds:

- i. that the Committee's conclusions are based on significant factual inaccuracies which, had they been known, might have led to the Committee finding differently;
- ii. that there had been procedural irregularities that prejudiced the Member's right to a fair hearing.

8.5 The independent legally qualified person appointed to decide the appeal will consider only the reports of the Commissioner and the Committee and any additional written representations made by the appellant. That person will not conduct oral hearings or consider representations from any other source.

⁷ <http://www.scottish.parliament.uk/parliamentarybusiness/26533.aspx>

⁸ <http://www.assembly.wales/laid%20documents/gen-ld10220/gen-ld10220-e.pdf>

8.6 The person appointed to decide the appeal must prepare, and provide to the Member and to the Committee, a report of his or her consideration of the appeal and must either:

- i. if the grounds of appeal are established, uphold the appeal and refer the complaint back to the Committee for further consideration; or
- ii. dismiss the appeal

8.7 The Committee must lay before the Assembly the report of the person appointed to decide the appeal, together with the report of the Commissioner and the report or (if the matter has been referred back to the Committee under paragraph 8.6 i.) revised report of the Committee itself.

In those cases where the Committee has considered the complaint in private, and where the Committee has, after it has been referred back to the Committee by the person appointed to decide the appeal, dismissed the complaint, the Committee must arrange for its revised report and that of the person appointed to decide the appeal, to be anonymised.

9. Consideration by the Assembly

Where there is no appeal or an appeal is unsuccessful.

9.1 Where an appeal is unsuccessful or where no appeal is made to the Presiding Officer and where the Committee does not decide on dismissal, the Chair of the Standards Committee must table a motion calling on the Assembly to endorse the Committee's recommendations. Such motions will not be subject to amendment. Time to debate the motion must be made available as soon as may be.

Accountability

The 2009 Measure sets out the terms of appointment and circumstances for dismissal of the Commissioner:

The Commissioner is to be appointed for a term of 6 years.

(5) A person who has held office as the Commissioner may not be appointed for a further term (whether consecutive or not).

(6) A person who has been appointed as the Commissioner may at any time

(a) resign by notice given to the Assembly, or

(b) be removed from office by the Assembly.

(7) A person may not be removed from office as the Commissioner under subsection (6)(b) unless

(a) the Assembly so resolves, and

(b) if the resolution is passed on a vote, the number of votes cast in favour of the resolution is not less than two thirds of the total number of votes cast⁹

The Commissioner is required to submit an annual report to the Assembly, but, unlike the Ethical Standards Commissioner in Scotland, is not subject to Directions from the Standards Committee.

⁹ <http://www.legislation.gov.uk/mwa/2009/4>

3 Conclusion

Public services ombudsmen generally deal with complaints from members of the public about public organisations such as government departments and their agencies. To extend the Northern Ireland Ombudsman's remit to the Standards Commissioner would be to bring the internal disciplinary process of the Assembly under the scope of an independent quasi-judicial office holder. This would be unique in the context of legislatures in the UK.

Appendix 1

Standing Order 150 of the House of Commons

(1) There shall be an Officer of this House, called the Parliamentary Commissioner for Standards, who shall be appointed by the House.

(2) The principal duties of the Commissioner shall be—

(a) to maintain the Register of Members' Financial Interests and any other registers of interest established by the House, and to make such arrangements for the compilation, maintenance and accessibility of those registers as are approved by the Committee on Standards or an appropriate sub-committee thereof;

(b) to provide advice confidentially to Members and other persons or bodies subject to registration on matters relating to the registration of individual interests;

(c) to advise the Committee on Standards, its sub-committees and individual Members on the interpretation of any code of conduct to which the House has agreed and on questions of propriety;

(d) to monitor the operation of such code and registers, and to make recommendations thereon to the Committee on Standards or an appropriate sub-committee thereof; and

(e) to investigate, if he thinks fit, specific matters which have come to his attention relating to the conduct of Members and to report to the Committee on Standards or to an appropriate sub-committee thereof, unless the provisions of paragraph (4) apply.

(3) In determining whether to investigate a specific matter relating to the conduct of a Member the Commissioner shall have regard to whether in his view there is sufficient evidence that the Code of Conduct or the rules relating to registration or declaration of interests may have been breached to justify taking the matter further.

(4) No report shall be made by the Commissioner—

(a) in any case where the Member concerned has agreed that he has failed to register or declare an interest, if it is the Commissioner's opinion that the interest involved is minor, or the failure was inadvertent, and the Member concerned has taken such action by way of rectification as the Commissioner may have required within any procedure approved by the Committee for this purpose; and

(b) in any case involving parliamentary allowances, or the use of facilities or services, if the Commissioner has with the agreement of the Member concerned referred the matter to the relevant Officer of the House for the purpose of securing appropriate financial reimbursement, and the Member has made such reimbursement within such period of time as the Commissioner considers reasonable.

(5) The Commissioner may at any time in the course of investigating a complaint, and if so requested by the Committee on Standards shall, appoint an Investigatory Panel to assist him in establishing the facts relevant to the investigation.

(6) An Investigatory Panel shall—

(a) consist of the Commissioner, who shall be Chair of the Panel, and two assessors, one of whom shall be a legally qualified person appointed by the Commissioner and the other shall be a Member, who shall not be a member of the Committee on Standards, appointed by the Speaker; and

(b) meet in private.

(7) The Commissioner—

(a) shall determine the procedures of the Panel, subject to the provisions of this order; and

(b) may appoint counsel for the purpose of assisting the Panel.

(8) Any report that the Commissioner may have made to the Committee on Standards in relation to the complaint before the appointment of the Panel shall be made available to the Panel by the Committee.

(9) Any Member who is the subject of the complaint under investigation shall, if he so requests, be heard by the Panel; may call witnesses; and may examine other witnesses.

(10) When the Panel has completed its proceedings—

(a) the Commissioner shall report as in paragraph (2)(e);

(b) the legal assessor shall report to the Committee on Standards his opinion as to the extent to which its proceedings have been consistent with the principles of natural justice; and

(c) the Member assessor may report to the Committee on Standards his opinion as to the extent to which its proceedings have had regard to the customs and practice of the House and its Members.

(11) The Commissioner shall report each year to the House on the exercise by him of his functions.

(12) The Commissioner shall have leave to publish from time to time—

(a) information and papers relating to—

(i) matters resolved in accordance with paragraph (4) of this order; and

(ii) complaints not upheld;

and

(b) information about complaints received and matters under investigation.

(13) The Commissioner may be dismissed only following a resolution of the House, moved for by a Member of the House of Commons Commission, after the Committee on Standards has reported to the House that it is satisfied that the Commissioner is unfit to hold his office or unable to carry out his functions; and any such report shall include a statement of the Committee's reasons for its conclusion.