

## **Electoral Law Consultation Paper LCCP 218/SLCDP 158/ NILC 20(2014)**

### **Joint response from Local Government Ombudsman in England, the Scottish Public Services Ombudsman, the Public Service Ombudsman for Wales and the Northern Ireland Ombudsman**

#### **Introduction**

This response is on behalf of the Local Government Ombudsman in England, the Scottish Public Services Ombudsman, the Public Service Ombudsman for Wales and the Northern Ireland Ombudsman. As members of the Ombudsman Association we all commit to follow the Association's principles of

- independence
- fairness
- effectiveness
- openness and transparency
- accountability

We believe that these are the key features for a complaints system that has the trust of the public and our response to the consultation has been informed by these principles. In our response we focus upon provisional proposal 13-17 in relation to complaints about elections which do not aim to overturn the result.

#### **The Law Commission's proposals**

We agree with the proposal that there should be a means of reviewing such complaints. It is important that the public have access to a route to redress when public services let them down

We support the view expressed in the consultation document that returning officers should, in the first instance, investigate the complaint themselves. We are supportive of local complaints handling by bodies in our respective jurisdictions and in many cases there is a legislative requirement for that local consideration to happen before ombudsmen become involved. Additionally in Scotland, there are legislative requirements which require local authorities to follow model complaints handling procedures issued by the Scottish Public Services Ombudsman for any areas under the Ombudsman's jurisdiction<sup>1</sup>. The SPSO provides training and support to local authorities who use this process and encourages the earliest possible resolution.

Our experience has shown that a quick, appropriate response from the organisation the complaint is about is often be the most effective way to remedy concerns that the public

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<sup>1</sup> More information is available at: <http://www.valuingcomplaints.org.uk/> This is a role currently unique to Scotland but discussions are underway in other jurisdictions in the UK which mean this role may

have, although recognise that there are rare occasions where ombudsmen need to exercise their discretion to consider a complaint immediately.

In the consultation document three options are proposed for addressing complaints that have not been resolved at a local level:

- 1) *Escalation to the Local Government Ombudsman for England, the Public Services Ombudsman for Wales, the Scottish Public Services Ombudsman or the Northern Ireland Ombudsman*

We consider that this proposal would provide people with the reassurance of an independent consideration of their complaint where it has not been possible to resolve matters locally. It is also in line with existing processes and procedures. Most complaints about local authorities are under the jurisdiction of the existing Ombudsman. Local authorities already have established processes in place for signposting people to the relevant ombudsman, in some cases backed by a legislative requirement, so extending this to complaints about the functions of the returning officer's functions would not be burdensome.

As the four ombudsman schemes already work closely together and share learning and good practice, this proposal would also provide a pragmatic opportunity to ensure reasonable consistency, to identify wider lessons in local electoral practice whilst respecting the different electoral systems across the nations of the United Kingdom.

- 2) *Adjacent returning officers consider complaint*

Increasingly public services are delivered by neighbouring authorities working closely together, through vehicles such as combined authorities and local enterprise partnerships, or by sharing services and even staff. Whilst this proposal may allow for the complaint to be considered by someone unconnected to the locality concerned, we do not consider that it provides sufficient independence to ensure trust in the impartiality of the complaint process.

This approach would also mean that complaints are adjudicated upon by a large number of individual returning officers. This increases the risk that complaints are not considered in a consistent manner. For the public to trust the process they need to feel reassured that their complaint would receive the same consideration irrespective of where in their nation they live.

This fragmentation of the final stage of the complaints process also limits the opportunity to identify wider lessons. As ombudsmen we know that public bodies can often deliver service improvements by learning from the outcome of complaints about themselves and other bodies. If there is no organisation that can consider complaints over a large area then these lessons may not be identified.

- 3) *Consideration by Electoral Commission*

This approach would provide for an independent consideration of the complaint and would also support consistency of decision making. Similarly, as with ombudsmen, the Electoral Commission would be able to identify and share wider lessons from those complaints.

However, the role of the Electoral Commission as a regulator, is quite different from that of an ombudsman. The primary purpose of an ombudsman is to remedy injustice that has been caused to an individual through the independent investigation of their complaint. This is distinct from most regulators whose role is to ensure that systems are operating fairly and effectively.

With complaints that do not seek to change the outcome of an election we consider that people will primarily be seeking to have their individual issues considered and put right. As this is the statutory basis of a public sector ombudsman, we believe that our approach would be more suited to providing the appropriate outcome to such complaints. Consideration by a regulator, whilst helping to identify systemic failings, may not provide the type of redress that the public want and need.

As a public body, the Electoral Commission is also under the jurisdiction of Ombudsmen in relation to some aspects of its function and this would include the way it handled such complaints. In England this is the Parliamentary Ombudsman and in Scotland this is the SPSO. This would mean that after the electoral Commission had considered a complaint they would then need to signpost the complainant to the relevant ombudsman. This would seem to introduce undue complexity to the system. It is our experience the most effective complaints processes are simple and easy to understand without unnecessary additional levels.

In contrast, proposal 1 would provide a simpler route to redress whilst still allowing the respective ombudsmen to share relevant trends and issues with the Electoral Commission in order to ensure that systemic issues arising from complaints can be considered by the regulator. Our schemes have already established successful working relationships with regulators in other areas of public services, which allow us to share information in this way. We do not consider that developing similar information sharing agreements with the Electoral Commission would be problematic.

## **Conclusion**

Complaints about public services are often the overlooked piece in the accountability jigsaw and so we welcome the Law Commission's recognition of their value as part of its wider review of electoral law. A complaints process that is independent, fair, effective, open and accountable will help to build and maintain public trust in the electoral process

We would welcome the opportunity to provide independent consideration of those complaints that do not seek to overturn the result of an election would be happy to work with the Law Commission and legislators to enable this to happen.