The Health Service Commissioner: 
An extended role in the new NHS

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1. Introduction

This article examines the office and role of the Health Service Commissioner for England, Wales and Scotland, frequently referred to as the Health Service Ombudsman. The need for an extended role for the Health Service Commissioner is explored in the context of the new framework for the delivery of health care which has been established and developed in the UK in the 1990s. The recommendations of the NHS Complaints Review Committee which reported in 1994 are of special significance, as these are now being implemented, and have a bearing on the functions of the Health Service Commissioner in the future. It is always difficult to write with authority when future developments are uncertain and the law and policy are in a state of flux. However, the article considers the position on the assumption that the Health Service Commissioners (Amendment) Act 1996 will prove to be an effective means of expanding the role of the NHS Commissioner within the new NHS structure.

2. The Institutional background

The Health Service Commissioner has played a significant, though limited role in the investigation of complaints in the NHS since 1973. However, there have been major changes in the structure and delivery of health care services in the UK in recent years, and a new patient-centred approach to health care which has led to a radical restructuring of the old complaints systems and a re-examination of the part played by the Health Service Commissioner.

As long ago as 1974 the view was expressed that there was a need to explain policies on health care delivery, when Klein commented that what was
needed was:

Acceptance of the responsibility publicly to explain and justify policies, to welcome rather than stifle discussion of priorities and objectives, awareness of and sensitivity to public needs and a willingness to remedy errors. (Klein R, "Accountability in the Health Service", 1974 Political Quarterly).

To some extent the office of the Health Service Commissioner fulfilled that need, but as so much has changed in the framework for the delivery of health care in the past twenty years, and it is impossible to consider the role and function of the Health Service Commissioner without first explaining briefly the general context of the structure of health care services in the UK today.

Health care and other public services are undergoing major changes in the UK at present. Several of the traditional functions of Government are being "marketised" and privatised, and health care is no exception. A process of reform, initiated by a series of incremental changes in the 1970s and 1980s, was followed by a major statute, the National Health Service and Community Care Act of 1990, and is currently still taking place in the delivery of health care services. This process involves the creation of a managed internal market for health care and gives rise to the need for greater accountability by the medical profession and those responsible for its management. There is no denying that a major factor in the changes has been the containment of costs, but ostensibly the emphasis is upon greater choice for and on behalf of patients as consumers of health care. Indeed it has been argued that the justification for the introduction of a market in health care is freedom of choice as a basic human right (Lewis N "Markets, Regulation and Citizenship; a Constitutional Analysis" in Brownsword R, (ed) Law and the Public Interest 1993). The NHS in the UK is now consumer-led, and is frequently referred to as "patient-centred" by agencies of Government. For example, the NHS Executive document "Priorities and Planning Guidance for the NHS", (1995) emphasises the need for patients to be given a greater voice in their own health care. The Government Report, "Changing Childbirth" (1993) which makes proposals for changes in the delivery of maternity services, takes a similar stance.

The structure of public health service provision in the UK differs in some respects from that in other European countries. Although there are certain charges for medicines and for some services, most health care within the NHS is free to the patient at the point of entry. Since it was first established in 1948 the NHS has offered two main levels of health care provision and in essence this remains unchanged though recent reforms have introduced a element of greater competitiveness. Patients usually first visit a general practitioner