



House of Commons

ODPM: Housing, Planning,
Local Government and the
Regions Committee

The Role and Effectiveness of the Local Government Ombudsmen for England

Eleventh Report of Session 2004–05

*Report, together with formal minutes, oral and
written evidence*

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The ODPM: Housing, Planning, Local Government and the Regions Committee

The ODPM: Housing, Planning, Local Government and the Regions Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Deputy Prime Minister and its associated bodies.

Current membership

Andrew Bennett MP (*Labour, Denton and Reddish*) (Chairman)

Sir Paul Beresford MP (*Conservative, Mole Valley*)

Mr Clive Betts MP (*Labour, Sheffield Attercliffe*)

Mr Graham Brady MP (*Conservative, Altrincham & Sale West*)

Mr David Clelland MP (*Labour, Tyne Bridge*)

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The Committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/parliamentary_committees/odpm.cfm.

Committee staff

The current staff of the Committee are Lynn Gardner (Joint Committee Clerk), Jessica Mulley (Joint Committee Clerk), Charlotte Littleboy (Second Clerk), Ben Kochan (Committee Specialist), Ian Hook (Committee Assistant), Ian Blair (Chief Office Clerk) and Emma Carey (Secretary).

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1 Local Government Ombudsmen for England

1. The Local Government Ombudsmen for England are members of the Commission for Local Administration in England. The Commission was set up under the Local Government Act 1974 and is funded by the Office of the Deputy Prime Minister (ODPM) through a grant top-sliced from the Revenue Support Grant for local government. The ODPM also bears policy responsibility for the legislative framework within which the Ombudsmen operate.

2. We decided to hold a one-off evidence session with the Local Government Ombudsmen for England to look at their role and effectiveness. This session was held on 15th March 2005. Mr Tony Redmond, Mrs Patricia Thomas and Mr Jerry White, the three ombudsmen, gave oral evidence and we received 11 written submissions. Several interesting issues were identified during this session, and the attached transcript contains a great deal of useful information, which we are unable to expand on further at this time.

3. The Commission for Local Administration in England is required to submit a review of its legislation, together with proposals on this, to the ODPM every three years. This is done in consultation with interested bodies. The Commission told us that the most recent review, which contained several recommendations to Government, was submitted in May 2003 and had not yet received a response from ODPM. ODPM informed us that although no response had been published, proposals made in the review had been the subject of discussions between the Commission and Department. The full departmental response is attached. While we welcome this action, there is a lack of transparency regarding the department's reaction to the review. **We recommend that ODPM publish a clear summary of what progress has been made in addressing the recommendations contained in the Commission for Local Administration in England's 2003 Review.**

Formal minutes

Tuesday 5 April 2005

Members present:

Andrew Bennett, in the Chair

Mr Clive Betts

Mr John Cummings

Mr David Clelland

Mr Adrian Sanders

The Committee deliberated.

Draft Report (*The Role and Effectiveness of the Local Government Ombudsmen for England*), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 3 read and agreed to.

Resolved, That the Report be the Eleventh Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

Several Papers were ordered to be appended to the Minutes of Evidence.

Ordered, That the Appendices to the Minutes of Evidence taken before the Committee be reported to the House. – (*The Chairman*)

[The Committee adjourned.]

Witnesses

Tuesday 15 March 2005

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Mr Jerry White, Mrs Patricia Thomas, and Mr Tony Redmond, Local Government Ombudsman for England

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List of written evidence

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| Stuart and Jane Carruthers (LGO 02) | Ev 16 |
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Reports from the ODPM Committee since 2003

The following reports have been produced by the Committee since 2003. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2004-05

| | | |
|----------------------|---|----------------------------|
| First Report | The Draft Regional Assemblies Bill | HC 62-I (<i>HC 459</i>) |
| Second Report | Annual Report to the Liaison Committee | HC 149 |
| Third Report | Homelessness | HC 61-I (<i>CM 6490</i>) |
| Fourth Report | ODPM Annual Report and Accounts 2004 | HC 58 |
| Fifth Report | The Role and Effectiveness of CABE | HC 59 (<i>CM 6509</i>) |
| Sixth Report | Electoral Registration | HC 243-I |
| | (Joint inquiry with the Constitutional Affairs Committee, First Joint Report of Session 2004-05) | |
| Seventh Report | The Role and Effectiveness of the Standards Board for England | HC 60-I |
| Eighth Report | Empty Homes and Low-demand Pathfinders | HC 295-I |
| Ninth Report | Ward Boundaries | HC 315 |
| Tenth Report | Local Government Consultation | HC 316-I |
| First Special Report | Government Response to the Committee's First Report of Session 2004-05, on the Draft Regional Assemblies Bill | HC 459 |

Session 2003-04

| | | |
|-------------------|---|-----------------------------|
| First Report | ODPM Annual Report and Accounts 2003 | HC 102-I (<i>CM 6141</i>) |
| Second Report | Annual Report to the Liaison Committee | HC 221 |
| Third Report | The Fire Service | HC 43-I (<i>CM 6154</i>) |
| Fourth Report | Coalfield Communities | HC 44-I (<i>CM 6265</i>) |
| Fifth Report | Decent Homes | HC 46-I (<i>CM 6266</i>) |
| Sixth Report | Social Cohesion | HC 45-I (<i>CM 6284</i>) |
| Seventh Report | Postal Voting | HC 400-I (<i>HC 973</i>) |
| Eight Report | The Role and Effectiveness of the Housing Corporation | HC 401-I (<i>CM 6351</i>) |
| Ninth Report | Local Government Revenue | HC 402-I (<i>CM 6328</i>) |
| Tenth Report | Supporting Vulnerable and Older People: The Supporting People Programme | HC 504-I (<i>CM 6348</i>) |
| Eleventh Report | The Role of Historic Buildings in Urban Regeneration | HC 47-I (<i>CM 6420</i>) |
| Twelfth Report | Draft Planning Policy Statement 6: Planning for Town Centres | HC 952 |
| Thirteenth Report | Gypsy and Traveller Sites | HC 633-I (<i>CM 6465</i>) |

Oral evidence

**Taken before the ODPM:
Housing, Planning, Local Government and the Regions Committee
on Tuesday 15 March 2005**

Members present:

Mr Bill O'Brien, in the Chair

Andrew Bennett
Mr John Cummings

Chris Mole

Witnesses: Mr Jerry White, Local Government Ombudsman for England, Mrs Patricia Thomas, Local Government Ombudsman for England, and Mr Tony Redmond, Local Government Ombudsman for England, examined.

Q1 Chairman: Good morning everyone and welcome to this session of the Select Committee which is carrying out an inquiry into Local Government Ombudsmen for England and how the Ombudsmen operate. Would you identify yourselves for the record, please?

Mr Redmond: I am Tony Redmond, the Chairman of The Commission for Local Administration and the Local Government Ombudsman for most local authorities in London, north of the Thames and also county, district and unitary authorities in the South-East as well as Coventry.

Mrs Thomas: I am Patricia Thomas. I am the Local Government Ombudsman dealing with complaints against the authorities in the north of England, the North Midlands, Birmingham and Tower Hamlets, and I am Vice Chairman of the Commission.

Mr White: My name is Jerry White. I am the Ombudsman based in Coventry and I deal with south London, the West Midlands and South-West England.

Q2 Chairman: Thank you very much. Do you want to make an opening statement before we begin our questions?

Mr Redmond: No. We are happy to go straight into questions.

Q3 Mr Cummings: It appears as though you are all responsible for a bewildering geographical array of areas. Can you tell the Committee how these areas are decided upon? Does this division cause confusion to the public?

Mr Redmond: The history of it is that, as we have three offices, we are regionally based. The intention was that each would take their own area, ie the north, the Midlands and the south, but in practice the distribution of complaints has made that extremely difficult. In particular, the situation in London and the South-East was exacerbated some years ago when we had a rather significant increase in housing benefit complaints and it was impossible for the London office to manage all those at that time, so some of the areas within the jurisdiction of the Ombudsman in London had to be redistributed to Coventry. Also, there are authorities where each

of us believes that it would be inappropriate to investigate a particular complaint in an area because we may know the individuals within the authority. There has become something of a patchwork in terms of the jurisdiction of the three Ombudsmen and it is something we regret because we would very much like to have greater clarity, if that were possible. We have to acknowledge that we are trying to manage the complaints across the whole of England in an efficient way.

Q4 Mr Cummings: Have you made your frustrations known to the Government, and what has been the response?

Mr Redmond: We have made the point to Government and obviously there is an opportunity from time to time to redistribute the complaints. We review the jurisdiction at the Commission meetings on a regular basis. I suppose the upshot of it is it is trying to predict the incidence of complaints in different areas of the country in order for us to make sure that we manage it better. In the end I think we are always going to face some difficulties in the lumpiness in the distribution of complaints that we receive.

Q5 Mr Cummings: So you would be satisfied to continue the way you are at the present time?

Mr Redmond: I do not think we are satisfied, no. I think the nature of the regional provision is such that it is very difficult to ensure an evenness of distribution.

Q6 Mr Cummings: What has been the response from the Minister in relation to representations the Commission has made?

Mr Redmond: We have not made formal representations.

Q7 Mr Cummings: Why not?

Mr Redmond: I think it is a matter for the Commission to decide.

Q8 Mr Cummings: Have you questioned the Commission as to why they have not made representations?

15 March 2005 Mr Jerry White, Mrs Patricia Thomas and Mr Tony Redmond

Mr Redmond: We have looked regularly at the question of how we distribute our complaints, yes.

Q9 Mr Cummings: So the Commission does not share your views?

Mr Redmond: The Commission does share our views. We look at the complaints trends from time to time.

Q10 Mr Cummings: But the Commission has not made any representation that you are aware of to central government?

Mr Redmond: We have never made, to my knowledge, and I have been with the Commission for some three years now, a formal representation, but I do not know how the ODPM, which is the sponsoring department, would actually resolve that matter because it is a difficulty; it is associated with the incidence of complaints across the country.

Q11 Mr Cummings: Obviously, even if they are not approached officially, it should have been discussed officially or you are never going to know what the official response is.

Mr Redmond: I know that.

Q12 Chairman: What statutory changes would you wish to see to bring it up to the 21st century?

Mr Redmond: I think we feel that within the terms of local authority service provision the areas particularly in relation to the internal management of schools could well be included within our jurisdiction. We deal with admissions arrangements within local authorities for schools and we also deal with special needs, awards and school transport, but we do not investigate the internal management of schools, that is outside of our jurisdiction. It does seem to be a part of the education service that is absent from our jurisdiction.

Q13 Chris Mole: When you say special needs, presumably that is those which are not covered by the special needs appeals tribunal, is it?

Mr Redmond: Indeed. Where there is an appeal mechanism we would tend not to investigate the complaint.

Q14 Mr Cummings: Is three Ombudsmen for England enough?

Mr Redmond: That matter was considered a little while ago. The way we see it is that as long as one has a regional provision it is important that one has an ombudsman in the area able to make those ultimate decisions. I think each of us believes strongly that that situation should continue. It is hard to argue that you need a fourth ombudsman. If there was a massive increase in the number of complaints that we receive then it may be more difficult to manage, but at the moment I think we are content.

Mrs Thomas: The legislation requires us to distribute complaints on a geographic basis. The Act actually says that we are responsible for areas and it is for the Commission to decide which areas. If the law were to be changed to remove that restriction then it would be possible for us to distribute

complaints on a different basis, possibly on a subject basis or any other form of distribution that we thought was appropriate. At the moment it seems to work as we are doing it. So long as we have the staff there is probably no need for additional ombudsmen because you can take on more staff. We have delegated to our staff the ability to make decisions on the vast majority of cases and we oversee that and we supervise the work of our staff.

Q15 Mr Cummings: Mr White?

Mr White: We still like to retain a personal involvement in as many complaints as we can. We thought some years ago that if complaints got above 20,000 there would be a good argument for having four ombudsmen. When I joined, which was 10 years ago, we were dealing with 5,000 complaints each and if it got over 20,000 then we would be up to nearly 7,000. Complaints have hovered around the 19,000 mark. We feel that we are able to retain a personal involvement in those complaints that are the most difficult or where any member of the public wants the ombudsman to take a personal decision in respect of it we still can. At this time we do not think there is a need for a fourth, but I think it is something that the Government would need to keep under review because the personal touch of the ombudsman is an important feature.

Q16 Andrew Bennett: You have got no power at all, have you? You cannot force local authorities to accept your recommendations. You are a bit like a toothless tiger. Fortunately, most people do not get close enough to the tiger to see whether it has got any teeth, so they take some notice of it. Is that your experience?

Mr Redmond: There has been a debate from time to time amongst the Ombudsmen as to whether we would want coercive powers. The current situation is that our recommendations are in large part agreed and adopted by local authorities, so a very tiny proportion of proposed remedies and decisions are not adopted by the councils. We do not believe that we should have those powers and that has always been our view. I would add that it puts us on our mettle in that we have to make sure our decisions are absolutely sound when we make them, so we do not seek those powers.

Q17 Andrew Bennett: Does it not start the relationship between you and the local council on the wrong foot when you go in to investigate because they know that they do not have to take that much notice of you? They feel that on good grounds they will do their best to fob you off, will they not?

Mr Redmond: If they fail to implement our recommendation then we have the power to go to public report. I think the public report is something the councils wish to avoid if they possibly can.

Q18 Andrew Bennett: How many public reports did you make last year?

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Mr Redmond: About 200.

Q19 Andrew Bennett: Are they particular councils or is it totally scattered across the country?

Mr Redmond: It is scattered. Some might have more than others.

Q20 Andrew Bennett: What happens if you make a public report?

Mr Redmond: That will be a public notice, so the local residents will be aware of the fact that we made a recommendation which the council has chosen not to implement. If there is a failure to implement following that report, we can issue a second report.

Q21 Andrew Bennett: How many second reports have you issued?

Mr Redmond: A very small number. In the last three years you can count them on one hand.

Q22 Chris Mole: Is that because they have taken action after the first report?

Mr Redmond: Yes.

Q23 Mr Cummings: The Committee has heard from one complainant who was told by a member of advice call centre staff that the Local Government Ombudsman is "only answerable to the Queen". How does your relationship with the ODPM work in terms of accountability?

Mr Redmond: I think the first thing to say is that we are funded by the ODPM, our money is top-sliced from the Revenue Support Grant and we are wholly accountable for every penny we spend. We submit a statement of accounts to the ODPM every year. We also meet on a regular basis with ODPM officials and I meet the Minister for Local Government at least once a year to account for myself, as Accounting Officer, in terms of the way that money is spent and the performance of the Commission. As far as the investigation of complaints is concerned, each of the Ombudsmen is independent in respect of decisions that they make. We do not have any comeback from that in terms of the ODPM in challenging our decisions, but there is the facility for judicial review of our decisions and they do happen from time to time. If there was a question of any misconduct of the Ombudsman, that would be a matter for the ODPM.

Q24 Mr Cummings: So you are quite happy with the relationship that exists between yourselves and the ODPM?

Mr Redmond: The relationship with the ODPM is consistent with the legislation.

Q25 Mr Cummings: That was not what I asked you. I asked what your relationship with the ODPM is like.

Mr Redmond: I think the relationship is one of the ODPM challenging us in terms of our accountability and I would say that is a reasonable relationship. We certainly are keen to draw to the attention of the ODPM any areas we think are in need of review within the legislation.

Q26 Mr Cummings: The ODPM have yet to respond to the statutory review you carried out in 2003. When do you expect a response to your recommendation? Have you made your frustrations known to the ODPM?

Mr Redmond: The first point to make is that although no action apparently has been taken in respect of our triennial review in 2003, some of the issues that were raised in that paper are being picked up in a draft Regulatory Reform Order which is looking to address issues around joint working, particularly with the Health and Parliamentary Ombudsmen. As far as the remainder is concerned, you are quite right, I do raise concerns from time to time in the meetings that the triennial review has not examined and taken forward.

Q27 Mr Cummings: What has been their response?

Mr Redmond: They have normally said, "Yes, we must look at that".

Q28 Andrew Bennett: You would give a local authority a pretty tough time, would you not, if they were as dilatory?

Mr Redmond: We would go through the process that I outlined earlier. You are absolutely right that we are always concerned that if we produce a triennial review of our own performance and operation we would want that taken seriously.

Q29 Andrew Bennett: Why not produce a report about the ODPM not responding?

Mr Redmond: It is an interesting question. I am not sure whether it would be appropriate for the Ombudsman to do such a thing. I am not sure we could contemplate that.

Q30 Andrew Bennett: Would you like to?

Mr Redmond: No. I would go back to the point that I think the relationship generally with the ODPM is a reasonable one.

Q31 Andrew Bennett: Do you not think that you ought to be making some sort of steer as you have waited now nearly two years for the ODPM to respond?

Mr Redmond: I suppose I have taken on board the fact that the Regulatory Reform Order, which was one of our particular concerns, is now being progressed. Admittedly, that does not cover all of the issues that were raised in the triennial review, but that is where we are at the moment.

Q32 Chairman: On the question of value for money and you say that there is a statement of your expenditure sent to the ODPM, does the Audit Commission become involved?

Mr Redmond: No. The Audit Commission has no jurisdiction in respect of the Ombudsmen operation. We have external auditors that will validate our accounts before we submit them as a public statement but also to the ODPM. We have no relationship with the Audit Commission in that

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respect. We have a relationship in terms of regulatory involvement but not in terms of accountability.

Q33 Chairman: So the only accountability is to the ODPM?

Mr Redmond: In terms of finance, yes.

Q34 Chairman: You said earlier, in response to John Cummings, that if there is a complaint against the Ombudsmen it is for the ODPM to decide.

Mr Redmond: Yes, if it is a complaint about the conduct of the Ombudsmen as opposed to the actual investigation of a complaint which is not within the ODPM's area of responsibility.

Q35 Chairman: Would that apply to anyone making allegations of maladministration on the part of the Ombudsmen?

Mr Redmond: No.

Mr White: We have an internal complaints procedure where members of the public might complain about the delay involved in investigating their complaint or they might complain that an investigator had been rude and there is a way in which internally those complaints are investigated. If there is a complaint that I have got the decision wrong, the only way of taking that forward is to challenge the decision in the High Court through judicial review. The ODPM cannot go over my investigation and tell me to do it differently. The only way to challenge the decision is in the courts.

Q36 Chairman: What happens before it goes to court?

Mr White: The complainant would come back to the Ombudsman and say, "We think you have got this wrong," and there is then an internal process of review.

Q37 Chairman: Who carries out the internal process?

Mr White: Senior officers and then, eventually, me.

Q38 Chairman: What about where the complaint is against you?

Mr White: If I make a final decision and the complainant is not satisfied with that and still feels that I have got the decision wrong, there is nowhere that that can be taken except the High Court.

Q39 Chairman: In a question that was put to the Deputy Prime Minister on 8 December last year on who is responsible for dealing with complaints of maladministration against the Local Government Ombudsman the then Prime Minister said in his response that the matter will then be considered by a senior member of staff or the Deputy Ombudsman and then, if there is no satisfaction, it is referred to the court.

Mr White: That is right.

Q40 Chairman: How can a member of the public expect that the Deputy Ombudsman would judge against his/her boss?

Mr White: The Deputy Ombudsman's role is to look at a complaint about a member of staff. A complaint about me, in terms of the way I have made my decision, can only be made to the High Court.

Q41 Chairman: But that is not what the Deputy Prime Minister says.

Mr Redmond: First of all, most of the investigations of complaints are undertaken by investigators, not by the Ombudsman, the Assistant Ombudsman or the Deputy Ombudsman. The internal complaints procedure we operate is that we will then have a senior member of staff review that and if that, in turn, does not satisfy, it could be reviewed by the Ombudsman him or herself. If there is a complaint against the Ombudsman, the Ombudsman's decision can only be challenged through the High Court. The vast majority of our decisions are, in the first instance, made by our investigators.

Q42 Chairman: When a report is finalised and published it is usually the Ombudsman that signs it off, is it not?

Mr Redmond: Yes.

Q43 Chairman: So if the person who has made a complaint is not satisfied that that report has been carried out fully and in the best interests of the complainant and makes an allegation that the Ombudsman who signed it off is in their opinion guilty of maladministration, what happens then?

Mr Redmond: It is a matter for the High Court.

Q44 Chairman: That is not what the Minister for Local Government says. The Minister for Local Government says that anyone who has a concern about the outcome of their complaint to the Ombudsman or the manner in which the complaint has been dealt with by the Ombudsman's staff can contact the Ombudsman's office and the matter will then be considered by senior members of staff, usually the Deputy Ombudsman. If the concern is about the action of the Ombudsman himself, the matter would be considered by the Ombudsman and if there is a failure to satisfy it it then goes to court.

Mr Redmond: Yes.

Q45 Chairman: How can anyone think fairness is being applied when the Deputy Ombudsman is going to judge it?

Mrs Thomas: That is not right.

Mr Redmond: That is misleading. The Deputy Ombudsman will be involved if there has been a complaint against an investigator who has investigated the complaint, because the Ombudsman does not deal with the vast majority of complaints himself.

Q46 Chairman: The question to the Deputy Prime Minister was fair, "... to ask the Deputy Prime Minister which body is responsible for dealing with complaints against the Local Government Ombudsman", and he said, "Well, in the first instance it should be investigated by the Deputy Ombudsman."

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Mr Redmond: I think it is the Local Government Ombudsman as an institution because the decisions are taken at different levels within the office.

Mr White: What it means is the Local Government Ombudsman's service and then, if you have got complaints about it, they can go up to the Deputy Ombudsman. You are quite right, the Deputy Ombudsman cannot investigate me.

Q47 Chairman: And the Ombudsman cannot investigate himself.

Mr White: No.

Q48 Chairman: That is what it suggested in the reply. The point I am making is that if we want to convince people that what the Ombudsman has done is fair then this kind of thing has got to be above any suspicion that there is an internal issue and the only way is to take the matter to court. People feel aggrieved that the system is not applying what it was intended to do in the first instance, which is to obtain a fair and honest judgment on a complaint that has been made. That is one of the reasons why we wanted to have this meeting, because there appears to be some areas that the Commission should look at because it is not expressing full confidence in the work of the Ombudsman. Do you agree with that?

Mr Redmond: We believe that we have in place a process which tries to ensure fairness and consistency and integrity in the way we investigate complaints, and we have an internal complaints procedure which actually follows through any actions that should be considered against individual investigators and the way they have carried out that investigation of the complaint. I think we believe that we have a rigour and robustness in the way we carry out those internal complaints. Ultimately there is that recourse to law if it is considered we have made a decision which should be challenged, but we do operate within the legislation that we have and we think the way we operate within that means we make proportionate and reasonable decisions.

Q49 Chairman: The role of the Commission, as it says in your document, is to offer guidance intended for fair and effective administration in local government. How do you judge what is fair?

Mr Redmond: By making sure that the operating drill we have covers every possible aspect of an investigation of a complaint and we have a series of steps to be taken in order to ensure that the investigator who is carrying out that investigation follows those. There is a monitoring process within the Commission to ensure those are adhered to right through to the Ombudsman him/herself. That consistency is fundamental to the way in which the Ombudsman considers the job should be done. We think we fulfill that role as best we can.

Q50 Chairman: I accept that. My question was how do you judge what is fair?

Mr Redmond: We judge what is fair by actually taking the complaint that is put before us, we examine the complaint and we look at the key concerns of the complainant. We then take the

information, we look at the council's response, we look at the council's records, we may interview a series of people, we form a judgment and that judgment is based on all the information and evidence that we need in order to make that judgment and that is an equitable way of carrying out the investigation which leads to a fair judgment.

Q51 Chairman: Do you include third or fourth parties in that investigation?

Mr Redmond: We will include whoever we need to include in that investigation.

Q52 Chairman: What about the complainant and what they think should be investigated?

Mr White: We have the power of the High Court to require people to provide us with information, not only councils but third parties as well. We obviously take into account what complainants say. When they say, "Well, you should interview so and so," we make a decision as to whether we do interview so and so.

Q53 Chairman: On what basis is that decision made?

Mr White: A judgment is made as to whether or not that interview is going to be crucial for reaching the right decision in a particular case and it depends on the facts and circumstance of each case. We only investigate so far as we consider it necessary to be able to produce a reasoned and just decision.

Q54 Chairman: What you consider to be reasonable cannot be challenged unless they go to court, can it?

Mr White: That is right. That is the statutory framework. We are here to be the final decision-maker on complaints against local authorities. If there was a different statutory framework there would be a different procedure. The only way in which someone can say my decision on a complaint is wrong is to challenge that decision in the courts.

Q55 Chairman: It was seven cases that went to court last year out of 19,000 and some of those cases were brought by local authorities. There were 19,000 people who had a reasonable objection to the result, but because they do not have the resources that the Ombudsmen have to take it to court a lot of cases that people would wish to be challenged are not challenged. Have you had that complaint made to you?

Mr Redmond: I cannot judge whether seven is a reasonable number or not.

Q56 Chairman: Do you think it is reasonable?

Mr Redmond: I cannot make a comment on that. I think it is down to the individual whether they feel aggrieved about the outcome of the decision. There is a pre-action protocol that deals with some of the people that would wish to consider Judicial Review.

Q57 Chairman: What is that protocol?

Mr Redmond: To go through the process to ensure that Judicial Review is appropriate. It is about whether that is an appropriate process and whether or not the complainant wishes to pursue that course

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of action. There is also the question of how many of the 19,000 complaints received lead to a decision, which is significantly less than the 19,000 itself. In a large number of cases the decisions that the Ombudsman takes will be to recognise that it is a merits matter, it is something that the council has a policy on and it has implemented its policy properly. As long as the administrative process is not unsound the Ombudsman will not find against the council. In those circumstances the complainant may well be dissatisfied, but it is not something we would deal with anyway. I do not know what proportion of those, for instance, would fall within the so-called dissatisfied complainants that might come forward in this situation, so it is very difficult for us to judge this.

Q58 Chairman: Is there a vehicle available to people who consider that the case has not been considered by the Ombudsman in a proper manner to register that? Is that vehicle available to them? Are those figures registered?

Mr Redmond: Yes.

Q59 Chairman: The “comeback” is where the case is reviewed, but there is nothing in here that tells me that in a number of those people would have liked to have taken them to court and because of a lack of resources they have not been able to, is there?

Mr Redmond: No.

Q60 Chairman: Do you think that would be an advisable figure to be registered so that people understand exactly what the situation is?

Mr Redmond: I am not sure how we would find it out.

Mrs Thomas: I think we are refining our processes, but we have decided that when the person gets to the final stage of what we would call the comeback procedure we would include in the letter a statement saying if you are dissatisfied then the only place you can now go is to the court and to tell them about the pre-action protocol. If they choose to follow that, it does not cost a lot of money for them at that point, they would then be sending it to us. We know that there are some people who start this process we then respond and they choose not to go on. I do not know whether it is the cost that puts them off. We do say, “We have looked at it, we have come to a considered view and if you proceed to court we will defend the case and we will ask for costs.”

Q61 Chairman: Are you saying it does not cost much?

Mrs Thomas: It does not cost much. In the last two cases that have gone to JR relating to me the court has awarded costs because that was thought to be appropriate. We do not always ask for costs. It is a cost to the public purse if people are challenging when they have no basis for challenge.

Q62 Chairman: Until it gets to court how do you know there is a basis to challenge or not?

Mrs Thomas: If we think that there is anything wrong, we will accept it and we do start again and we have started again.

Q63 Chairman: If you think there is not a case then obviously you would tell them that, but if the person thinks they have got a case and they take it to court and you say it would not cost a great deal—

Mrs Thomas: I did not say that. I said that the cost of starting JR is not very great. If they want to pursue it further and they win, they will get the costs.

Q64 Chris Mole: You told us that you have reached an all time high in terms of the number of complaints that you handled, 19,200, since you have been trying to raise awareness of the Local Government Ombudsman service. Do you think that number is leveling off now or is it the case that if you were to invest more in raising awareness you would probably be able to generate more complaints coming in?

Mr Redmond: We recognise that there is much more work to be done in raising awareness. A survey that we recently had undertaken for us showed that only about 45 or 46% of the population are fully aware of what we can and cannot do. There is much to be done in that regard.

Q65 Chris Mole: Is that the survey to do with the general population or should you survey people who have made complaints to see how many of them are aware?

Mr Redmond: We need to go behind that as well. One of the issues that were raised at the very outset is sometimes the complexity of our jurisdiction and the understanding of who is responsible for what and it is important for us to do more work on that. In terms of the answer to your question about the 19,000, until very recently the numbers were continuing to rise. They are slowing down a bit now but they could well rise again. If one looks at the analysis of the complaints, they do tend to come in different areas. I mentioned the housing benefits increase a few years ago. Now we seem to be getting increases in planning, in education and social services, so it does seem to fluctuate from time to time.

Mr White: The Poll Tax, for instance, produced a large volume of complaints to us a couple of years after the new tax regime was in place and there was a massive break down, which was largely computer generated, in the number of urban housing benefit schemes which produced a large number of complaints to us. As Tony Redmond was saying, over the last couple of years we have had a rise in planning complaints and there has been a rise in planning volume generally and some of that seems to be filtering through to us. At the present time it looks as though we are in a plateau and the complaints are hovering around about the 19,000/18,500 mark, but we just do not know what is round the corner. In a couple of years’ time there could be another policy change or another computer failure which produces a rise in the number of complaints to us. I do not think we forecast that it is going to go backwards to

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the sort of level that there was 10 years ago when I joined of about 14,000 to 15,000. We seem to be around about the 18,000 mark and that appears to be normal now.

Q66 Chris Mole: That means that the number of complaints per head of staff has gone up from 86.6 in 2000–01 to 96.9 in 2003–04. What effect do you think that has had on the ability of your staff to undertake the reviews in sufficient depth and with appropriate speed?

Mr Redmond: I think the process that we had in place then is the same as the process we have in place now in terms of making sure that the investigation of the complaint is consistently good regardless of where it comes from and what it involves. I think the robustness and the rigour to which I referred earlier are absolutely key to making sure that we achieve that. What we have done is we have tried to improve our office processes to achieve a high productivity level within the investigation. Obviously IT is one area of interest. We have also looked at our support service staff and how they support the investigator. We are gradually trying to move towards an even more efficient and more effective way of doing things. As you can see from the records, over many years we have gradually increased our productivity and we are seeking to continue to do so.

Q67 Chris Mole: Do you have to consider each complaint individually or can you group them in a class action and so on?

Mr Redmond: We are always investigating complaints individually. We may sometimes see trends in complaints that come from different sources. That is something that we have identified in our Special Subject reports, that where we see a trend in a particular type of maladministration and the way councils are operating we should issue a Special Subject report to raise awareness and understanding across the country of the problem and to disseminate good practice of how to avoid a recurrence of that problem.

Q68 Chris Mole: But not multiple complaints against the same authority?

Mr Redmond: You can get that, yes.

Mr White: You can get 30 or 40 complaints about the same planning decision from people who are affected in one way or another and to us that is largely one investigation, although the injustice that might arise could be different for different complainants.

Q69 Andrew Bennett: This is a question about money. Do you think you have got enough from the ODPM?

Mr Redmond: I think in the notes I sent to your good selves we did say that we fell short of what we wanted. We made a bid on the basis of our complaint numbers which have been rising. We have currently a change programme which is being undertaken to try and deal with some of the things I have been outlining and we have got less than we asked for.

Q70 Andrew Bennett: You just admitted to us that in the past you were pretty inefficient and that you have been making significant improvements in your management and use of resources. How long can that go on?

Mr Redmond: I said that we are becoming increasingly efficient because any public service body has to be looking at continuous improvement. That is not to suggest we were inefficient before, but we are always looking for opportunities to make it better. That is where we are and we will continue to do that.

Q71 Andrew Bennett: There must be a limit to how much you can increase the caseloads by and how you can become more efficient.

Mr Redmond: There is. You will see that in terms of the trend and improvements in productivity, they are starting to slow down and that is something where at some stage we are going to reach some sort of ceiling. That is not to say we are not going to look for continuous improvement across the Commission because that is one of our principal strategies.

Mrs Thomas: One way in which we hope to help our dealing with the workload is to improve the way in which councils deal with complaints and we think this has already happened. We work with councils, we provide training, we charge the costs for providing it, but we take the rest of it on board because we think that will benefit the way in which we can deal with complaints and will benefit complainants because if it is a simple straightforward thing the council will sort it out early on, it will not come to us. The corollary of that, unfortunately, is that the things that then do come to us tend to be more difficult and take rather longer to deal with and so to some extent we might be causing ourselves different problems. We think it is important that councils should deal with things properly.

Q72 Andrew Bennett: What I am looking at is how far you can possibly expand the service with the money that is available.

Mrs Thomas: It is difficult.

Mr Redmond: I think we will struggle if the current level of funding is not increased and I think we have made that point clear.

Q73 Andrew Bennett: You are trying to raise your profile, are you not? You are trying to encourage more complainants to come in. Is that not a bit foolish if you have not got the money to deal with it because you are quite likely to find that you are not dealing with the extra complainants efficiently?

Mr Redmond: One of the consequences of increased complaints without the resources to deal with those complaints is that we will end up dealing with backlogs of complaints and the frustration for the public as a consequence. We also believe that the Commission's strategy is right, that if we are not reaching a lot of people who would like to complain or think it is appropriate to complain we would want to continue to carry out that work of better communication and access. In particular, we have

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and looked at areas such as BME groups and children and young people because we feel that we are not registering sufficiently in those areas. We feel, even though that may put us in difficulty in resource terms, it is an important strategy.

Q74 Chris Mole: Do you look at what the composition of the complainants is by social demographic makeup because these are complex processes and one can imagine they may only be available to the articulate and informed in society?

Mr White: We know more about the social and ethnic and gender makeup of our complainants than probably any other ombudsman scheme in the country. We carry out surveys of complainants as complaints come in. We know that approximately 14% of complainants are from ethnic minorities and that compares to about nine% of the population generally. We know the proportion which has a disability and so on and we are able to compare some of this against Census records, and we do look at that quite carefully. We also know that in terms of general awareness people in the socio-economic groups A, B and C1 know more about us than people in the lower socio-economic groups. The question for us is really do people know about us at the point where they need to know about us, and that is where we need to work with councils to ensure that at the end of every council complaint procedure there is a signpost which says "Go to the Ombudsman" and in general that signpost is in place.

Q75 Chris Mole: So it is nearly 100%?

Mr White: Yes, pretty much.

Q76 Chris Mole: In 2003/04 your determinations found maladministration in only 1.6% of cases. Some might consider that to be low. Do you think that is because you are at the end of a process where councils mostly will have dealt with complaints or do you think it is because of the definition of maladministration you use? Do you think there should be a statutory definition?

Mr White: This is a misreading of our statistics. We issue, in respect of about 1.6% of complaints, a public report saying we find maladministration causing injustice. Under the heading of local settlements, which last year was 3,188, which is 27.5% of complaints within jurisdiction, the large majority of local settlements is where we have found fault causing injustice. It also includes components of complaints where the council has said, "We do not agree there has been fault but we will pay up anyway," if we are recommending compensation or they will take the necessary action and in some other cases, without us going too far into a case, the local authority has said, "We would like to compensate. We think something has gone wrong." We do not proceed to finding a fault where we think that what the council is proposing is adequate. If you add the 1.5% to the 27.5 you get 29% of complaints within jurisdiction where something has gone wrong and in almost all of those cases we are satisfied that the council has done something to put it right. It may

not necessarily satisfy the complainant but in our view we have put it right. Maladministration causing injustice is around about 29% or so of the complaints within jurisdiction.

Q77 Chris Mole: In the same year you used the Ombudsmen's discretion not to pursue complaints in nearly a quarter of cases. How does that compare to the other Ombudsmen and complaint handling bodies? What do you think should happen by the right of appeal if they feel it should have been investigated regardless of that decision?

Mrs Thomas: I do not know what other complaint handling bodies do. Essentially that category encompasses quite a number of different grounds for not pursuing it. Perhaps one of the largest categories there is where there is no actual injustice to that individual. The planning decision that somebody is unhappy about is on the other side of town and they do not like it and there may or may not have been maladministration, but they are not affected because our role is to try and get a remedy for a complainant that has been adversely affected by that decision. So quite a lot of those will be where, having looked at it, we do not think there is enough injustice or any injustice to that complainant. It may be a complainant has withdrawn it. It may be where someone is complaining about not getting their child into the school of their choice, which is very topical today, and before we come to a decision they are offered a place at a school that they are happy to accept so they withdraw their complaint. That category is a real mixture of things. I do not know how it compares with other Ombudsmen services.

Q78 Chris Mole: What do you think about the definition of maladministration and whether there should be a statutory definition?

Mrs Thomas: Personally, I would not go for it. The reason we only officially find maladministration in a report is because legally that is the only time we can say there is maladministration. The Act says we should do a full investigation and then we must say whether there is maladministration with injustice. The reality is that when we do a preliminary investigation and we think something has gone wrong, as the Chairman said, we may find fault, that is to say that we have found evidence where we believe, if we went on to a full investigation and report, we would be saying there is maladministration, but the council accepts that some action needs to be taken at that point and so we do not make a finding of maladministration at that stage. We can only do it legally in a formal report and I think this is one of our difficulties. I do not think the definition of maladministration in an Act would be terribly helpful. When the Bill was going through Parliament for the Parliamentary Ombudsman there was a list of things which could be maladministration. In our annual reports and, indeed, in the Parliamentary Ombudsman's annual reports we give examples of the types of things which we have found to be maladministration and delay is probably the most common and a definition would be very difficult. Other ombudsmen services not only

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look at maladministration, they can go beyond that. I think perhaps we feel it might be helpful if the word maladministration was not the only word used in our legislation because it is a word that the public do not understand, it is a technical word and it is a word that bodies within jurisdiction react against as well. I think they would be happier if there was a word that was more acceptable, but we are stuck with the legislation we have got.

Mr White: Can I come back on your point about a right of appeal against our decision? Clearly there is not a right at the minute and people whom we do not satisfy want there to be, but that is a matter for Parliament. Somewhere the buck has to stop on handling a complaint against a local authority. Eventually there has got to be a final decision. The final decision is ours, that is the present arrangement, and where that final decision in the view of the complainant is defective then the recourse is to challenge that decision in the courts. If there were to be a right of appeal then that would still not satisfy everyone because at the end of the day not every complaint is going to be upheld. Whatever system you have, there will always be some complaints where the person deciding the thing does not agree with the complainant. That is the position at the present time and that position will not change even if there is a right of appeal.

Q79 Chris Mole: Funnily enough, that was what I was coming on to in terms of customer satisfaction. You have not published a survey since 1999. Do you have one planned? How do you determine whether you are achieving the values laid out in your Annual Report in the absence of that survey?

Mr Redmond: There is one underway right now. We are hoping to have a report in May, early indications by April and that will actually be an examination of all that we do in terms of stakeholder perceptions and an understanding of how well we do that. It will include complainants, councils and other bodies that have a stake in what we do, so we are looking with great interest to see what that produces.

Q80 Mr Cummings: The Committee has received correspondence from several people who are suggesting that the levels of compensation that you award to complainants are too low. Do you have guidelines on appropriate levels of compensation to be awarded by your officers?

Mr Redmond: We have just reissued guidance on remedies and that indicates a rule of thumb measure for determining what a particular remedy might be for certain types of complaint. It is ultimately not a precise science. We make a judgment as to what we think an appropriate compensation is. The guidance on remedies gives a good steer and a good understanding of our thinking.

Q81 Mr Cummings: And that is guidance accepted by the other two Ombudsmen, is it?

Mrs Thomas: Yes.

Q82 Mr Cummings: You also have recommended to the ODPM, which obviously has not yet responded to the review of 2003, that the Ombudsmen be empowered to investigate complaints initiated by councils. In what circumstances do you consider this to be helpful?

Mr Redmond: There are a number of issues within the public services where we see that there may be a shortcoming in the way a particular service is administered which is not directly related to the complaint that we may be investigating. Sometimes an "own initiative" investigation is helpful in that respect in that we could look at it hopefully from a detached and impartial perspective which can actually assist the administration of the service within the council.

Q83 Mr Cummings: Could you give an example?

Mr White: I could give an example which may be of interest. There was a particularly contentious planning decision by a Devon authority, where the authority itself felt that something might have gone wrong and wanted the Ombudsman to carry out an independent investigation and they raised it with my staff and my staff said they needed a complainant. They then went and did an internal investigation which revealed some criticisms and eventually a complainant brought the matter to me and then I carried out an investigation and issued a report and made a recommendation in respect of it. That was a complaint which could have been short circuited if the local authority had been able to say, "Well, this particular planning decision has raised a great deal of anger locally. Let the Ombudsman look at it." Eventually it came back to me, but that was about nine months after the local authority could have brought it to me.

Q84 Mr Cummings: Are you not making rods for your own backs?

Mr White: It could be difficult. I think we are aware that if local authorities were bringing matters to us to investigate there could be a variety of reasons why they would be doing so. We would have to have the discretion to say, "No, we are not going to investigate this. We accept that something may have gone wrong, but we're not going to investigate it for a variety of reasons." We feel that in the interests of justice it might be of use to local authorities and to citizens if a local authority could bring a matter for us to investigate without a complainant.

Q85 Mr Cummings: It could be used to underpin a decision that has been made by the council which is very unpopular.

Mr White: It could be.

Q86 Mr Cummings: If you could indicate that you have the total support of the Ombudsman—

Mrs Thomas: I think we must make the point that we do not validate councils' decisions. All we say is whether the process has been faulty or not. We cannot look at the merits of the decision. We are

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only looking at the way in which they have reached a decision. The fact that we might not pick it up does not necessarily say we have got the decision right.

Q87 Mr Cummings: Is that not essentially the problem?

Mrs Thomas: I understand that, but unfortunately that is what the jurisdiction says. I think this is why there is more dissatisfaction among the public, because they do not understand that we cannot look at the decisions, we can only look at the processes leading to them.

Mr White: Chairman, we are not a Court of Appeal against council decisions; and sometimes we can see a council decision which, on the face of it, looks very strange indeed but where we have looked at the administrative processes underlying it and we can find no fault. When Members took a particular planning decision they did so with all relevant information in front of them and with no irrelevant information in front of them. It was a perfectly proper process but they made a decision, perhaps against officer advice, that on the face of it looks odd. We cannot question it unless there has been administrative fault in the process. That is why I think in many cases members of the public are dissatisfied because there is not, as it were, an Appeal Court against which you can challenge a properly-made decision by the local authority. In this particular case, there is no third party appeal to the Secretary of State on a planning decision, for instance; that is a matter of public policy; there clearly could be but there are lots of things to be said for and against; but we are not that alternative.

Mr Redmond: Also we recognise that is a responsibility for us to try and communicate better to jurisdictions we hold. That is a frustration, we understand, for a lot of complainants.

Q88 Mr Cummings: Twice this morning you have made reference to the lack of response to the 2003 Review. Will you be making a further robust approach following on from this short inquiry?

Mr Redmond: It will certainly still be on the agenda when I next meet the ODPM, yes.

Q89 Mr Cummings: The question I asked was: will you be making a robust approach?

Mr Redmond: I think I will make—

Q90 Mr Cummings: Why such a faint heart?

Mr Redmond: It is not a faint heart. I am trying to balance this against the fact that some of the work we would like to see advanced is actually being progressed in a regulatory form, which is bringing together the working of individual ombudsmen. To that extent, we are getting some progress. Whether we can expect progress on everything is another matter. Certainly I will be raising it again, yes.

Q91 Chairman: On the question of planning, can I refer to page 8 of your document, because you say you cannot make a decision on planning matters, it can only be a reference. In this report, looking at the second paragraph it says: “We will often recommend

compensation for lost opportunity, for damaged amenity and nuisance for property devalued by development that should never have been permitted”. How can you say that a development should never have been permitted?

Mr White: Through investigation we can sometimes identify that the fault has been so serious in the process leading to the decision that, if the right information had been taken into account, Members would not have permitted the development that was permitted. Sometimes we can say, “This house should never have been built there at all”. With a case, for instance, of a telecommunications mast—one of my cases—we were able to show that had the council done what it wanted to do (which was to resist development) the developer of the mast would have moved away and would have found a different site; but because the council failed to meet the deadline and object to the telecommunications mast the mast was built in what I consider to be the wrong place. The valuations there of the complainants’ houses and of other houses affected cost the council £115,000, because we were able to show that if proper administrative procedures had been followed that telecommunications mast would never have been there. We can do that in a number of other developments, and each year we find out a number of cases where we can say, “This planning development would not have happened had it not been for maladministration”.

Q92 Chairman: On the telecommunications mast, would that apply on permitted development?

Mr White: Not generally, because that is development which is permitted generally and which developers or householders can develop without planning permission at all.

Q93 Chairman: If it is devalued property, as is suggested in here, is that good planning practice?

Mr White: No, it is a result of bad practice. It is the result of a mistake.

Q94 Chairman: If it is bad practice then should it be allowed to go by?

Mr White: In some cases we have recommended that planning permission be rescinded. The difficulty there is that there is then potential injustice to a developer. Indeed, rescission of a planning permission is a difficult thing and has to go through the Secretary of State and all the rest of it. In general we recommend that compensation be paid, and we ask the council to instruct, usually, the district valuer to value the complainant’s property before the development was built and then after and to pay the difference. That can be very substantial. I have had one that was £50,000 on one property.

Q95 Chairman: In all cases where judgment is being considered and a development is considered not to be in the best interests of the community or the area, then that principle of the developer being disappointed always applies. How can you say, in the case of a telecommunications mast, that the

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situation should be different—that the developer would lose if the planning permission was refused for a telecommunications mast?

Mr White: At the end of the day, rescinding a planning permission is a difficult matter that involves the council reaching a decision on how much that will cost it; how much it will cost the public purse to rescind it; and then, indeed, go through a process over which the council is not in control. It is a very difficult process and it is one which does not necessarily bring about the thing that you want.

Q96 Chairman: I am looking at the question of evidence that has been submitted, and this is where I come back to the question of maladministration by the ombudsman. It is a hypothetical case at this moment in time, but if the evidence is there but not judged as being appropriate by the ombudsman, and the case is then upheld by the developer and the council, that is where the maladministration of the ombudsman comes into play because there is evidence there that is not being taken into consideration. That is the background, and I am not making one case; every constituency and every local authority has similar cases and it does create problems. It is reported in here that the chairman says that the biggest increases in cases is on planning. I would imagine that the largest number on planning is telecommunication masts?

Mr White: No, it is not the largest number on planning. It is an issue, but most of the planning complaints we get will be about neighbouring development of one sort or another and quite commonly they are about, “My neighbour has put up an extension which has impacted on my amenity”. That is the general sort of complaint we get.

Q97 Chairman: On the question of the permitted development, do you have any jurisdiction over that at all—telecommunication masts; can you judge on that at all? Where the residents consider that the cost of this permitted development devalues their property, it is a nuisance and it brings discredit to the community, have you any jurisdiction over that at all?

Mr White: No, we can only question the decision to put a mast somewhere where we find a fault in the process.

Q98 Chris Mole: You told us at the start of this hearing that part of your geographical distribution is as quirky as it is because you avoid areas where you might individually or personally be seen to be connected. How do you respond to the more general accusation sometimes made that you tend to side with the councils?

Mr Redmond: I start by saying that the complaint is our focus. We receive a complaint and we investigate the complaint. We are required to carry out a thorough investigation drawing together information, interviewing people and so on, which involves the council. We have a procedure which ensures we stick to that process rigidly in terms of

making sure we are impartial and independent. Of course we have to have a healthy working relationship with councils—it is important in the context of making sure we carry out a rigorous investigation; but I do not accept that we are in any way close to the councils. We carry out an investigation which is basically to try and determine whether or not there is injustice caused by maladministration in that particular complaint. I do know some people’s perception is that we work more closely with the council when they do not like a decision; that is understandable, I suppose, but that is not the way we operate. The relationship is about trying to make sure we draw together all the information, all the evidence that is necessary in order to make that decision.

Q99 Chris Mole: You are equally sometimes criticised for the number of ex-local authority staff either working for the organisation or amongst your number themselves. Do think that it is important to have people with ex-local authority experience in order to understand the area of work, or do you think there is a genuine concern that ex-local authority staff might side with the councils?

Mr Redmond: I suppose the first thing to say is that we recruit individuals from all sectors. We have people working for us from voluntary organisations, the advice sector, from other public services; we have people from central government, education, health; and we have people from the private sector; and, of course, we have people from local government as well. There is some benefit I think, in terms of a balanced workforce, and in having people with some understanding and knowledge of local government services. We do have some people with certain specialisms within the Commission who are of considerable assistance investigating certain types of complaints; but I do not think we set out to recruit a lot more ex-local government employees than from any other area. It is about recruiting the best person for the job and certainly this would not exclude people with ex-local government service.

Q100 Chairman: Of the 230 people that are employed by the Ombudsmen, have you had an indication how many have come from local government?

Mr Redmond: I am sorry, we have not. We do not keep that information, but there are a number of people who used to work with local government who work for us.

Q101 Mr Cummings: The Committee understand you are looking for a seat on the proposed Administrative Justice Council, perhaps alongside the Parliamentary and Health Service Ombudsmen. Can you tell the Committee what improvements this would bring about?

Mr Redmond: I think the concept of the Administrative Justice Council is that it will bring together a number of bodies that operate within the Administrative Justice environment and, indeed, possibly regulate it as well. It is designed to do what is happening in so many other areas in terms of

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trying to get a greater coherence in what we deliver in terms of administrative justice—tribunals, mediators, other adjudicators, ombudsmen from various sectors—so that it might be able to sit as a council thinking about how we can actually present a much more coordinated approach to the whole administrative justice system. The reason why the Commission seeks a place on that is that we are the body which has the most complaints of all the public service ombudsmen and we do believe we play an important role in this area of administrative justice.

Q102 Mr Cummings: Do you think your proposal will meet with favour?

Mr Redmond: I hope so.

Q103 Mr Cummings: No indications at all?

Mr Redmond: Not as yet.

Q104 Mr Cummings: The Administrative Justice White Paper also proposes a change in the jurisdiction of the ombudsmen. Do you welcome this proposal and what impact would it have on your work?

Mr Redmond: The jurisdiction of the ombudsmen is something we look at from time to time. One of the key areas we think sometimes is frustrating for complainants is, where someone has actually gone to the first stage of legal redress and it then appears that this may not be the most appropriate course of action, but the courts cannot then refer it to the ombudsmen because it is outside of our jurisdiction in large part. We would like to be freed up to investigate such complaints. That is an important part of the way we would like to see the ombudsmen develop. We would also like to be able to carry out joint investigations with other ombudsmen. You will appreciate in a local authority sphere now there is more and more partnership-related work going on. If we get a complaint crossing jurisdictions of the Parliamentary, Health and Local Government Ombudsmen we have to carry out different investigations. We think it is in the best interests of the complainant to have a single point of reference for such a complaint. Those are the sorts of things we would like to see unfolding in any change in our jurisdiction.

Q105 Mr Cummings: You have been in operation now for over 30 years, do you think it is time for a wholesale review of the way in which you operate and the way in which you operate in the future?

Mr Redmond: I think much of what we do has stood the test of time; but I think it is an Act from 1974 and this is in need of review.

Q106 Mr Cummings: Do you think the ODPM has left the review from 2003 just lying on a desk somewhere, gathering dust?

Mr Redmond: There have been changes since 1974 in our jurisdiction and there is a recognition, from my point of view, that things have moved on and the local government that is operating now is different

from what it was in 1974; and that the ombudsmen must be in a position to be able to deal with matters in that new environment.

Q107 Mr Cummings: Is the Commission pressing for such a review to take place?

Mr Redmond: The reasons you have just mentioned—certainly we are pressing through the RRO, which I mentioned; we are also looking for this Administrative Justice Council; we are also working with the courts to see if we can release ourselves from—

Q108 Mr Cummings: You are not taking a battering ram—

Mr Redmond: No, we are not taking a battering ram—that is absolutely right.

Q109 Mr Cummings: Why not?

Mr Redmond: We think much of what we have still obtains. There are things within our jurisdiction, within our powers, that need review.

Q110 Andrew Bennett: The setting up of the Standards Board, that was a vote of no confidence in you, was it not?

Mrs Thomas: We did not want it at the time, to be honest—

Q111 Chris Mole: Very wise!

Mrs Thomas: because we did not see us as policing local authorities' members. The Standards Board was set up to punish members for breach of the code; we were set up to provide remedies for complainants where we found justified complaints being brought to us; and we saw that at the time as being a different animal and a different approach. We felt it might change our approach to local government; it might make them very defensive and less willing to sort out the problems.

Q112 Andrew Bennett: You say “at the time”, does that mean your view of the Standards View has changed at all?

Mrs Thomas: No. For a start, they got a lot more money than we did, so maybe we were wrong. Seriously, in Wales it was given to the Welsh Local Government Ombudsman and he does not actually seem to have found it a problem and he has got a separate section in the office. Indeed, in Wales the whole ombudsman service is being united into one service. Maybe at the time we were a little short-sighted, and perhaps it is something we could deal with—because we still deal with breaches of the members' code of conduct. Where there is a complaint that a complainant has suffered injustice as a result of a decision, we look at it; we have a protocol with the Standards Board to enable us—

Q113 Andrew Bennett: You have a protocol with the Standards Board?

Mrs Thomas: We have, yes.

Q114 Andrew Bennett: Masonic complaints—that is the Standards Board, is it?

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Mrs Thomas: No, it could be both, it just depends. They are not actually that common, believe it or not. We would need to work with them, because if a complaint is made to them I think we might well wait for them to decide whether there has been a breach before we look at the impact of the decision. If there was an allegation against one member of a planning committee and a vote was overwhelmingly in favour and that member's vote made no difference either way, we might say, "Well, go to the Standards Board, they will look at the issue but, as far as we are concerned, we cannot see that even if he should not have participated the decision would have been any different". There is a different angle.

Mr Redmond: There is also a particular difference between the Standards Board and ourselves, in that we do not investigate parish councils.

Q115 Andrew Bennett: As far as the Masonic issue is concerned, you make sure that all your staff, in some register, declare if they are members of the Masons?

Mr Redmond: If there was a complaint which involved maladministration we would look at that, yes.

Q116 Andrew Bennett: No, it is put to me on occasions, by people who have complained, "Ah well, they're all in the Masons so it will be sorted out and smoothed over". You are confident that none of your staff doing the investigations are members of the Masons, is that right?

Mr Redmond: Yes. I am sorry—I thought you were talking about council staff.

Q117 Andrew Bennett: No.

Mr Redmond: Our own staff, yes.

Q118 Andrew Bennett: That is clear. What about your relationship with Ofsted and the Audit Commission. There must be occasions when you actually look at a local authority and think, "Well, that wasn't quite right but it wasn't that bad a maladministration". You keep seeing the same thing cropping up—do you pass that information on to the Audit Commission?

Mr Redmond: The relationship with the Audit Commission is one of regular contact. We meet to discuss matters of common interest. In particular, we supply information from our complaints statistics which support the Comprehensive Performance Assessment (CPA); so the CPA process includes information from this Commission. We issue an annual letter to councils and we are planning to furnish the assessors with that as part of the CPA process, not this year but in 2006. We also have a close working relationship on a number of other things but particularly governance. We are both at the moment engaged in work on governance in partnerships, which is a key concern, I know, of regulators; and indeed councils are interested in that. As far as passing on information to the Audit Commission specific to an individual council performance is concerned, beyond what I have just described, no.

Q119 Andrew Bennett: What about speed of actually doing the inquiries. When people complain you are quite a long way down the line, and they have fretted and worried about their complaint for quite a long time and then you take a couple of years or so to do it. It does not help, does it?

Mr Redmond: We resolve nearly 60% of our complaints within three months, and 83% within six months. Yes, there are others that will take longer. It is about 96% within 12 months. One recognises also that some of these cases are highly complex; they require very careful consideration; they require the drawing together of evidence which is not always readily available; sometimes there is recalcitrance on the part of councils in providing information; we need to deal with that, so it can take time. As I said at the beginning, rigour is such an important part of our process that we will take the necessary time.

Q120 Andrew Bennett: I recognise it is an important part of your process, but I do occasionally get letters back which imply that it is taking six or seven weeks to get information out of the council, whereas you expect the complainant to produce the information on the day one of your staff goes to see them.

Mr Redmond: Yes, we have apologised when there have been such occasions, but they are relatively small in number.

Mr White: It is a criticism which is made of us that we say, "Please reply to us in three weeks" and we might have given the council six weeks, or they might have taken six weeks. We always do say to a complainant, "If you need more time to get your comments together, please let us know", and we will extend the time limit to accommodate their particular needs.

Q121 Andrew Bennett: To a certain extent I feel sorry for you because you get a lot of complaints that there is no justification in. I admit, as an MP, there is a tendency for me to try and get a complaint sorted and it is only when I cannot get it sorted, and when I cannot convince the complainant that it is an injustice that will never be put right, that it comes on to Mrs Thomas's desk. That is not a very satisfactory situation, is it?

Mr Redmond: We deal with every complaint we receive. I do not think we make judgments as to whether cases that come to us from MPs should not come to us. We have a lot of cases where the understanding of jurisdiction sometimes is an issue—we understand that. We deal with each case as we consider appropriate.

Q122 Andrew Bennett: Would it not be better if someone was in a position, like yours, to really say to somebody, "Look, there's no hope of this going forward. Stop now and cut your losses"? I try and do that as an MP but it is very difficult to persuade people that nothing can be done; and yet people go on, year after year, and sometimes they come to your advice bureau with a bundle of brown paper which has 30 or 40 years' of complaining in it.

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Mr White: Of course, that is the position in which we find ourselves, because this is where the buck does stop on complaints against local authorities. We are in that position of having to tell people something that they do not like which is, “My decision is final and I don’t agree with you. I’m not going to take this complaint any further”. That can be a very unpopular and difficult thing for people to accept. I am afraid to say, that is a large part of our job.

Q123 Chris Mole: I think you have touched on a potential problem for the future in terms of partnership working between local government and either the private sector or other public sector bodies. Although most partnerships have the notion of accountable authority in them, are you saying a) that does not go far enough and b) are you, in your statutory review, suggesting this is an area where government needs to legislate, and/or is it touched on by the Regulatory Reform Order you have referred to several times this morning?

Mr Redmond: The issue around partnerships is that, we have had a relatively small number of complaints about partnerships but it is on the increase; and in almost every case we have had to try to understand the governance arrangements that underpin that partnership. That is not simply about individual public or private bodies having a partnership arrangement; it is the governance arrangements for the partnership that are the key, because that is what we would look to, to see who is accountable if a complaint occurs. Our view is that we are going to issue a special report which will identify some of the issues that are emerging in the creation of partnerships where governance has not been put in place. We will try to give some advice as to how that might be better handled. The point about the review is that we understand in areas such as health and social care—which would involve the jurisdiction of the Health Ombudsmen and ourselves and in the case of Benefits which could involve the Parliamentary Ombudsman and the Local Government Ombudsman. Those are the sorts of complaints where we should have a facility to carry out joint investigations, and that is part of the recommendation.

Q124 Chris Mole: You need primary legislation to be able to carry out one joint review to produce one joint report?

Mr Redmond: We do. In certain circumstances we can share information. We have got protocols in place already with the Parliamentary and Health Ombudsman which actually assist us in trying to make sure that the complainant sees things that are relatively joined up.

Q125 Chris Mole: Do you need primary legislation?

Mr Redmond: Yes. A Regulatory Reform Order.

Q126 Chairman: What is the purpose of the annual letter to local authorities?

Mr Redmond: The annual letter identifies, through the complaints we have received, certain trends in the way the council is delivering certain services. It may refer to the handling of complaints within the council, whether it is good, bad or indifferent; and the response times to individuals who actually make complaints to the council. We also see it as a diagnostic check because we can identify all the complaints received, a complete history for 12 months and, indeed, previously, and to see if there are any trends that emerge which need addressing. We want to give that to the council. We see that as an opportunity to say to them, “This is how you’re doing and I’m sure you would want to address some of these things and take them forward”. That letter, as I say, will also be copied in due course to the Audit Commission so they too could look at it from a Comprehensive Performance Assessment perspective. So far the letters have been positively received by councils, and they do get publicity.

Mrs Thomas: The important point about the annual letter is that it is going to go into senior levels of the council; whereas individual complaints might be being dealt with at a much lower level within the council. By sending an annual letter to the Chief Executive we hope that it will be considered at a much more senior level.

Q127 Chairman: Do you get any feedback from them?

Mrs Thomas: Yes.

Mr Redmond: Yes, we are getting a lot of feedback, and there is evidence that a lot of the letters are going to meetings of cabinet or scrutiny committees within councils.

Q128 Chairman: If you are highlighting what has happened in the past year, included in that would be some reference to “with more interest in considering these claims at council level”; then perhaps they would not necessarily be referred to the ombudsman?

Mr Redmond: Yes, indeed, that is exactly right.

Q129 Chairman: If that is scrutinised by the scrutiny committee, do you get the report back?

Mr Redmond: We do not get a report back, no, but we have had responses from councils as to how they are handling these matters; but we have not done a follow-up *per se*. We do council visits as well to try and go behind how these things are being handled locally.

Q130 Chairman: How long has the letter been sent out?

Mr Redmond: We started a pilot arrangement in 2003 and 122 councils received it; in 2004 every council received a letter; and this year the same will happen again in June. As I say, the general response has been positive and constructive.

Chairman: Thank you. On that note we will now halt the session. Thank you for coming along and giving your evidence. Obviously the report will be published in due course. Thank you very much.

Memorandum by the Office of the Deputy Prime Minister (LGO 01)

INTRODUCTION

1. The Office of the Deputy Prime Minister has policy responsibility for the legislative framework within which the Local Government Ombudsman operates, and for the Government's sponsorship of the Local Government Ombudsman.
2. The Ombudsman is a long standing and respected organisation which plays an important part in encouraging high standards in local public service provision. The Office fully supports the Ombudsman in carrying out this role.
3. This memorandum provides information on the legislative framework which provides powers to the Local Government Ombudsman and on the Office's operation of its sponsorship role for the Ombudsman service.

LEGISLATIVE FRAMEWORK

4. The Local Government Ombudsman (formally titled the Commission for Local Administration in England) was established by Part III of the Local Government Act 1974. The legislation sets out the Ombudsman's role, which is to conduct investigations into complaints from members of the public that they have sustained injustice in consequence of maladministration by a local authority. The Ombudsman may also provide advice and guidance to authorities on good administrative practice.
5. The Commission comprises three Ombudsmen (their formal title is Commissioners for Local Administration), each responsible for investigating complaints for one part of the country, and the Parliamentary Commissioner for Administration.
6. The Ombudsman's jurisdiction covers all local authorities (excluding town and parish councils); police authorities; education appeal panels; and a range of other bodies providing local public services.
7. The Ombudsman's jurisdiction does not cover parish councils. Every local government elector for parish councils has the right to raise any matter affecting parish business at the annual meeting. In this sense democracy is more direct than in the case of county and district councils and gives the electorate the means themselves to raise any concerns which they may have affecting the business or the conduct of the parish or town council.
8. The Financial Management and Policy Review of the Local Government Ombudsman, laid before the House on 28 November 1996, concluded that, for these reasons, there seemed to be no urgent need to bring parish councils within the jurisdiction of the Ombudsman.

ROLE OF THE LOCAL GOVERNMENT OMBUDSMAN SERVICE

9. The Ombudsman service is impartial, independent of central and local government and access to the service is free to complainants. Where it is found that a complainant has suffered injustice caused through maladministration, the Ombudsman produces a report with recommendations for the remedy to be provided by the authority concerned.
10. Although authorities are under no obligation to implement those recommendations, the fact that Ombudsman's reports are published and feed into the Comprehensive Performance Assessments for local authorities helps to ensure that recommendations are acted upon.
11. The Ombudsman is also empowered to provide advice and guidance to local authorities on good administrative practice. It has significantly expanded this aspect of its work over recent years and plans further expansion through the provision of training courses to authorities. We welcome this development. The provision to local authorities of training in handling complaints and dissemination of good practice should encourage a culture of high standards, and help to reduce the chance of complaints arising in the first place.
12. As part of this continuing programme, and in addition to its reports on individual complaints, the Ombudsman issues special reports on specific subject areas.
13. In addition, following a successful pilot scheme, the Ombudsman sent letters to every principal authority in England in 2004-05 presenting an analysis of complaints it had received during the year relating to each authority. The aim of this is to help councils learn from the outcome of complaints made and to identify where improvements can be made in internal complaints handling.
14. The annual letters have become a central part of the Ombudsman's joint working with the Audit Commission on the Comprehensive Performance Assessment (CPA) process. The Ombudsman sends the Audit Commission copies of statistics used in the annual letters to be fed into its CPA inspections and be taken into account in the assessment of authorities' overall performance.

SPONSORSHIP ARRANGEMENTS

15. The Local Government Ombudsman is funded by a grant made annually by the Office from top-sliced Revenue Support Grant for local government. This means of funding is more administratively efficient than seeking contributions from individual local authorities. Provision of £11,522,400 has been agreed for 2005–06.

16. The three Commissioners are appointed by The Queen (on the advice of the Deputy Prime Minister). The Commission currently comprises Tony Redmond (Chairman and Chief Executive), Patricia Thomas (Vice-Chairman), Jerry White and Ann Abrahams, the Parliamentary Commissioner.

17. Mrs Thomas is due to retire at the end of September this year. As part of its sponsorship responsibilities, the Office is in the process of recruiting Mrs Thomas's successor. It is hoped that the appointment will be made this month, allowing the successful applicant to have the benefit of shadowing Mrs Thomas during her final months in office.

MONITORING ARRANGEMENTS

18. A Grant Memorandum sets out the arrangements agreed between the Ombudsman Commission and the Office, with the consent of the Treasury, for the use of its grant.

19. A report is produced annually on the grant paid to the Ombudsman in respect of the previous financial year. In accordance with the Grant Memorandum, the Ombudsman sends the Office an auditor's certificate together with their audited accounts for the previous financial year, and their initial financial estimates for the following year, and their final estimates in line with projections in their corporate plan.

20. The Ombudsman is required to send the Office copies of its corporate plan, annual report, final outturn statement of expenditure for the previous financial year, audit plans and reports, and management letters.

21. In addition, Ministers meet the Ombudsman from time to time to discuss its budget and workplan. This is supplemented by more regular meetings at official level to consider progress and performance issues.

PERFORMANCE

22. The total number of complaints received by the Local Government Ombudsman is currently running at around 19,000 a year. These are dealt with by the Ombudsman's staff of about 200 operating on a grant of £11.5 million.

23. The Ombudsman has delivered significant improvements in performance in recent years, including increases in the number of cases dealt with per member of staff (from 91.2 in 2002–03 to 96.9 in 2003–04) and an increase in the percentage of cases dealt with within 26 weeks (from 78.7% in 2002–03 to 83.9% in 2003–04). Further efficiency improvements are planned, including a reduction in the number of support staff, and a review of the casework management system.

CLOSER WORKING WITH OTHER PUBLIC SERVICE OMBUDSMEN

24. To help facilitate the Ombudsman's change agenda, we are working with the Cabinet Office on the preparation of a consultation paper on a draft Regulatory Reform Order which would amend primary legislation to facilitate closer working between the Local Government, Health and Parliamentary Ombudsmen.

25. The Order would remove legislative constraints on joint working between these organisations, including limitations on the ability of the Ombudsmen to consult with each other, share information, and undertake joint investigations and reports.

26. The centrepiece of the proposals is a "one-stop" shop approach whereby complaints could be submitted to any one of the Ombudsmen, and could, if necessary, be passed to another Ombudsman to take the lead in the investigation, without having to refer the case back to the complainant, which current legislation requires.

27. Proposed changes enabling information sharing and joint investigations would also deliver a more customer-focused and efficient service for users.

Memorandum by Stuart and Jane Carruthers (LGO 02)

SUMMARY

This report is divided into three sections. The first describes the individuals submitting evidence. The second describes the factual situation that currently exists. The third identifies areas where reform is needed. It is believed that reform of the office of the Ombudsman is urgently needed in the public interest.

1. INTRODUCTION

1.1. Our names are Jane, Alison, Brodie, CARRUTHERS and Stuart HARDWICKE CARRUTHERS. We have been in correspondence with the Local Government Ombudsman since the 1990s related to the activities of South Norfolk District Council—and our evidence is mainly based on being consumers of the Ombudsman system. Stuart HARDWICKE CARRUTHERS has represented the interests of UK local government and national government and Europe in a number of forums related to process renewal and development of organisations of common good through use of enabling technologies. Stuart HARDWICKE CARRUTHERS founded the company (tagish) that is now the main provider of electronic services to UK local government. Jane Alison Brodie CARRUTHERS has been involved in development and realisation of the corporate social responsibility agenda for many years—and helped develop with others the Fair Trade Mark, New Consumer, and Shared Interest.

2. STATEMENT OF ISSUES

2.1 The Local Government Ombudsman is the organisation developed to investigate maladministration by Local Government. Maladministration is normally taken to mean failure to follow rules, poor administration, introduction of delay into decision making, etc There is no statutory definition of maladministration—this enables an Ombudsman to exercise considerable discretion. Maladministration has not been defined by the Courts.

2.2 The Local Government Ombudsman is able to investigate issues on behalf of people where “alleged” maladministration has caused a personal injustice provided that the injustice took place within a year:

- There is no injustice caused for instance through the grant of a consent enabling development (ie planning permission). A planning consent can be implemented a number of years after it is awarded (and a local authority can choose to exercise discretion through its other functions—billing, building control, land charges, etc). This can cause injustice that is not maladministration, and that the Ombudsman if they exercise discretion is not required to investigate.

2.3 In most cases the remedy available to a person that has experienced maladministration or the local authority and/or its regulators choosing to exercise discretion can only be financial. None of the statutes establishing Ombudsman expressly confer on them the power to recommend or require a common good organisation to pay compensation to individual’s that have experienced injustice as a result of decision making by an organisation of common good. These issues related to “negligence” are partly covered by the insurers of a Council. However, a council is simply able to identify that they are not liable to their insurers. Their insurers are required to accept this as fact. This is inequitable following the European Courts decision in relation to *Osman v UK* (2002).

2.4 Any claim against a Council through its insurers (directly) or against the Council in person (due to misfeasance)—is currently simply added to Council Tax. There is very significant pressure on elected representatives (those that decide a budget) to commit corporate misfeasance if there has been an injustice. If they fail to do this they would be identifying that there has been a failure in management (including management of public assets to secure benefits through fraud) for which they are responsible. This creates a situation that brings the UK political system into disrepute, and would be unfair to most residents.

- Effectively, elected representatives are “required” to discriminate against residents that have experienced maladministration and this appears to be through fraud supporting discrimination.
- Residents are most likely to experience fraud and discrimination in areas where a local authority has discretion—particularly if the Ombudsman has also exercised discretion.

2.5 Residents should be protected from these frauds by solicitors (Officers of the Courts) when they enter into property purchase agreements, and by other regulators. However, this becomes unfeasible when Council’s change properties (and identities)—through their discretionary powers—and mistakes in data entry. This is not technically maladministration—as they are able to consult with other tiers of government (ie parish, District Council, County Council and National (ie DEFRA, VoA and Land Registry) to justify their decision making. Mistakes made by government reverberate through many different levels. These mainly originate from the District/Unitary level.

2.6 An individual that disputes an Ombudsman’s findings is able to appeal for Judicial Review of their decision. The Ombudsman is unable to identify this course of action to individuals. The problems with the issues associated with the Ombudsman and Courts system (and their inter-relationships) are well described in the recent Law Commission Report—*Monetary Remedies in Public Law—A Discussion Paper*, October 2004.

2.7 Local Government raises significant issues. It is the main building block for both capital taxation and the UK electoral system. It is subject to External Audit by the Audit Commission. It’s elected representatives are bound by a Local Code of Conduct and Equality legislation. This is “policed” by the Standards Board. The Audit Commission according to its Code of Conduct only needs to inform the Local Authority if fraud is identifiable in the activities of a Local Authority. This enables corrective action. However, both the local authority and the Auditor are able to exercise discretion in reporting these issues to the police. The police are also able to exercise discretion in reporting issues to the Crown Prosecution Service. There is no

requirement on them to inform residents. The Council is able to exercise discretion—in seeking its own abolition, and identifying significant management failures. Citizens are unable to seek a remedy without having a detrimental effect on the UK method of social organisation.

2.8 Effectively, our experience is that a citizen needs to seek to “demolish” both the electoral and capital tax system of the UK to secure any form of remedy when a local authority has established an infrastructure that enables it to commit fraud through its public functions to disguise maladministration and make it very difficult to apply to the Courts for relief. This places considerable stress on individuals. This is supported by the regulatory system for Local Government that has been established in the UK. There is an urgent need for reform. The Ombudsman system can not be examined in isolation from the other regulators of local government decision making. The Ombudsman is there to put things right. It does not have the tools it needs to meet this function.

3. RECOMMENDATIONS

3.1 A statutory definition of maladministration needs to be developed.

3.2 There is statutory identification of the limit and extent of an Ombudsman’s discretion—and when discretion can be exercised reasonably. Currently the Ombudsman must at best be regarded as being unaccountable.

3.3 There is currently confusion as to the role of the Ombudsman and the Courts. The existence of the Ombudsman confuses the issues—and is able to introduce delay preventing citizens taking action through the Courts. This requires urgent clarification—currently the discretion available to the Ombudsman through lack of statutory definition of their role and function.

3.4 Monetary Remedies need to be included in the Ombudsman’s remit, as citizens with a case (where they have suffered injustice) should not be expected to have to progress this through the Courts:

- If monetary remedies are to be included as part of the Ombudsman’s remit this needs to be separated from the local government tax base. Any claim on this tax base will lead Council’s (officers and elected representatives) to act (and to continue to act) in a discriminatory way against residents.

3.5 The Ombudsman should be required in future to base their investigations on the Public Corruption Acts. These identify that a public official (acting on behalf of government) is presumed to have acted corruptly if public expenditure (in any form) has been incurred—and need to demonstrate their innocence. They should be not presumed to be innocent until proven guilty. The Ombudsman should be required to champion the citizen—not support the state.

3.6 Citizens are consumers of public goods. These are monopoly’s. These monopoly’s need to be accountable to consumers—and not display characteristic’s of the worst form of monopoly’s. There needs to be trust and confidence in government. This is currently lacking. The Ombudsman needs to become a champion of consumer rights. This is supposed to be the role of elected representatives. They are unable to meet this role—due to the need for injustice to be corrected through financial remedy—and added to the Council Tax. This can not be regarded as being in the public interest.

3.7 The other regulators of Local Government are required to support the institutions of Local Government. There is a need for reform. This can only be secured through a fundamental examination of the role of the Audit Commission, Standards Board and Local Government Ombudsman. This is required urgently as we move towards increasing use of electronic systems and services and wealth is transferred from a land based system of social organisation to one based on knowledge.

Memorandum by Mrs W McLean (LGO 03)

1. The Office of the Local Government Ombudsman was established to investigate maladministration by local authorities. As Richard Crossman (then Lord President of the Council) said in the debates on the Parliamentary Commissioner Bill in 1967 “maladministration” includes “bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude and so on”. Unfortunately the current LGOs regard substantial delay as acceptable and fail to adequately investigate bias, neglect, inattention, incompetence and so on. They were intended to be a “sharp and piercing instrument of investigation” but in practice they frequently refuse to investigate complaints or fail to investigate thoroughly. In 2002–03, the LGO reported 2,617 cases (21.7%) as “Ombudsman’s discretion not to pursue complaint”. I took a complaint to the Ombudsman that they initially refused to investigate—and where they eventually did make one of their very rare findings of maladministration causing injustice. One wonders how many of the 2,617 cases might have fallen into the same category if thoroughly investigated.

2. The LGO have an important role to play in ensuring high quality public administration by investigating matters of public concern. Few people have the resources necessary to challenge local authorities in court. If public concerns are not properly investigated it undermines confidence in politicians and the political process. This has implications beyond local government.

3. The last published survey of customer satisfaction with the LGO (in 1999)—showed that 41% of those sampled are dissatisfied with the outcome. Even more thought the investigation was unfair. Almost a third of complainants were very dissatisfied. There are methodological concerns about this study (a high percentage of complainants were excluded at the request of the LGO, some local authorities were entirely excluded from the study) suggesting the true level of dissatisfaction may well have been even higher. 40% said their queries had not been answered, 17% that they (LGO) were not interested, other comments mention (the office of the ombudsmen) being patronizing, biased or giving wrong information. Clearly there is little public confidence in those with experience of using the ombudsman's services. The LGO has not conducted a satisfaction survey since 1999, (and did not publish the separate MORI research on councils excluded from the published survey) but there is no reason to believe current levels of satisfaction are any higher. Indeed the Ombudsmen's decision to cease holding such surveys suggests that dissatisfaction may be greater.

4. Local authorities are not required to accept the recommendations of the LGO. They have the resources to challenge LGO decisions in court whereas the Ombudsmen are aware that most complainants do not. The desire to avoid litigation may lead to bias.

5. Representatives of local government have substantial influence in the selection process for LGO. Interview panels have consisted of three people, one a member of the Local Government Association. The ODPM have refused to divulge the backgrounds of other members of the panel but admits that they have extensive experience of local government. There do not appear to have been any consumer representatives to balance the local authority input. Inevitably this will be seen as the accused selecting their own judge. Although ODPM claim that the recruitment process complies with the standards of the Commissioner for Public Appointments the process does not come within her remit. It does not comply with the spirit of the guidance and there must be some doubt whether it is consistent with the Human Right Act requirement for equality of arms.

6. A Local Government Ombudsman is not appointed for a fixed period. This is not compatible with public appointments that are within the remit of the Commissioner for Public Appointments.

7. Senior staff in the office of the LGO have often worked in local authorities. Two of the three current English Local Government Ombudsmen are former Local Authority Chief Executive Officers. All three current Deputy Ombudsmen worked in local government before joining the Commission, as did the current Deputy Chief Executive. The LGO has refused to divulge, even in response to parliamentary questions, exactly how many of its investigators have previously worked in local government. They say the information would be too costly to extract. The number of staff involved is not great and it would not take long to ask each of them a simple question. Inevitably secrecy attracts the suspicion that there is something to hide.

8. Investigators who have worked in local authorities may be inclined to be more sympathetic to local authority staff than those who do not have this background. There is no legal safeguard to prevent an Ombudsman deciding on cases involving former colleagues.

9. There is no legal requirement on the Ombudsmen to be consistent (source LGO solicitor, personal communication).

10. There is no requirement for the Ombudsmen to comply with their own guidance on good administrative practice. They do not do so.

11. The Ombudsmen do not accept that they have to comply with the Human Rights Act (source LGO solicitor, personal communication). The Courts are required to do so. An Ombudsman's salary is similar to that of a high court judge, the courts are reluctant to overturn their decisions because of their quasi-judicial role. Yet the Ombudsmen are not recruited in an unbiased fashion nor do they have the legal training of a judge.

12. There is no appeal against an Ombudsman's judgment except by judicial review—so expensive that few could contemplate this. Where an error is made the Ombudsman has no power to make an *ex gratia* payment to complainants, even if the Ombudsman would admit to error. The courts are reluctant to award costs against an ombudsman—making judicial review of their decisions by an individual even less feasible. The courts can not overturn an ombudsman's decision, they can only be required to reconsider. The Ombudsman can then take the same decision again. Judicial review is no safeguard against arbitrary or biased decisions from an Ombudsman.

13. In the rare cases where the Ombudsman does make an award this is likely to be considerably less than would have been awarded by the courts.

14. Parliament has established a quasi-judicial body that is staffed by people largely recruited from the ranks of those it judges. The recruitment process is not one that can command public confidence, there is no accountability and virtually safeguard against incompetence or maladministration by the Ombudsmen. Those who use the service are frequently dissatisfied. It is more than time than the Office was reformed.

RECOMMENDATIONS

15. The recruitment process should be altered to exclude the Local Government representative. Appointments should be for a fixed period.

16. It should be made clear to the Ombudsmen that they are required to comply with the Human Rights Act, both in terms of the way in which they deal with complainants and in the levels of compensation they award.

17. Reports should be presented to Parliament annually. There should be regular—three yearly—samples of customer satisfaction. The Ombudsmen should either be—and be seen to be—accountable to a Parliamentary Committee for their effectiveness and/or recruited from those with legal training.

18. Local authorities should be required to accept the decision of the Ombudsman and have a legal duty to implement their recommendations. This would be similar to the Financial Ombudsman.

19. The existing Ombudsmen and Deputy Ombudsmen should be replaced. The public dissatisfaction with their performance requires this. I appreciate that this will be very difficult, if the existing Ombudsmen can not be persuaded to resign—but not impossible.

20. There should be a legal power to make *ex gratia* payments where there has been error by the Ombudsman or their staff. Where a court orders an Ombudsman to review their decision the complainant's costs should always be paid by the Ombudsman.

Memorandum by Mr Trevor R Nunn (LGO 05)

1. SUMMARY

1.1 For the last eight years, I have been attempting to bring about a resolution to a complaint of maladministration. During this time I have been able to identify a number of very serious flaws in the procedures of the Local Government Ombudsman (LGO).

1.2 I appreciate that you cannot get involved in individual cases and that is not my intent. However, without a complainant's viewpoint you could not obtain a full insight into the Role and Effectiveness of the LGO.

1.3 Furthermore, during a recent telephone conversation with my wife an investigator said “. . . I have to smile actually that some of the criticisms that Mr Nunn makes, he has obviously researched our procedures, because they are criticisms that I have made internally myself.” (All phone conversations were recorded.) So their own staff even accept there are flaws in the system.

1.4 I offer evidence to the Committee in the hope the service provided by the LGO can be improved by bringing it back into line with Government intention, the LGO's original purpose and the legitimate expectations of all complainants.

1.5 Many of the flaws I have identified are as a result of internal policy. In reality the LGO operates a system far removed from the perceptions of politicians and the legitimate expectations of complainants.

1.6 The only beneficiaries of this flawed system appear to be the organisations that are supposed to be policed by them.

1.7 The original purpose of an Ombudsman was that of a people's champion. What the current LGO has degenerated into over the last few years is that of a Council's champion.

1.8 Every obstacle is put in a complainant's path; every means of terminating a complaint is tried. Even the simple criteria that a complainant must meet to warrant investigation has been surreptitiously manipulated over the years in order to deny more and more people their right to justice.

1.9 Even if you manage to navigate your way through their system and overcome the obstacles that are put in your way your troubles are far from over. Most complainants end up suffering more injustice as a result of the LGO's flawed procedures.

2.0 EVIDENCE

2.1 Firstly, I was one of the lucky complainants. I managed to persuade the LGO to investigate my initial complaints. The LGO even found in my favour for one of them.

2.2 In a letter dated January 1999, the Council promised the LGO they would remedy the situation. The LGO promised to monitor this until the remedy was provided. More than six years later I am still waiting for the promised remedy.

2.3 During 2002 I submitted a second complaint about further acts of Council maladministration.

2.4 However, the LGO, aware that the promised remedy had still not been provided, and without the usual second report, ended their involvement with my first complaint.

2.5 The LGO refused to investigate my second complaint, stating that the Council had assured them they were actively trying to resolve the situation. Without any validation, and in spite of available evidence to the contrary, the LGO accepted the Council's statement.

2.6 We now had the very unusual situation of an LGO refusing to investigate a complaint, about a further serious act of maladministration, because the Council told them they were actively trying to provide a remedy for an earlier act of maladministration.

2.7 The LGO has refused on two occasions to look at evidence that would have independently contradicted the Council's statement.

2.8 The reason such a perverted system exists is because nobody can do anything about it. I was told by the LGO (York office) that they were only answerable to the Queen.

2.9 Until this Select Committee asked for evidence, there was little that a complainant could do to highlight the unjust and flawed system which the current LGO operate.

2.10 I attempted to use the LGO's internal complaints procedure, however, they operate the most unfair and perverse procedure one could imagine. Ironically, even breaching their own published advice and guidelines for running a complaints system. LGO's should not be allowed to investigate, make a decision or be involved in any way in a complaint about themselves.

2.11 With the help of my local MP, Mr Steven O'Brien, I attempted to bring some of the procedural flaws in the LGO system to the attention of the ODPM. However, the response I received was far from encouraging and basically proved just how unaccountable the LGO was.

2.12 My argument could not be simpler. If the LGO is effectively carrying out their role how can a 1997 complaint remain unresolved? One way or another the complaint should have been resolved years ago.

2.13 Furthermore, having let me down so badly over the years, the LGO's office now invite me to submit a third complaint in order to resolve the situation. Why do they want me to submit a third complaint rather than investigate my second one or ensure the remedy for my first complaint is provided? An investigator told me they have a target to resolve 98% of complaints within a year and coming back on my 8 year old and unresolved complaint would compromise their published performance.

2.14 In essence, they are fiddling their statistics by refusing to investigate valid complaints. They prefer the complainant to suffer the injustice of their perverted system by having to submit numerous new and unnecessary complaints, rather than doing their jobs properly in the first place resolving existing and valid complaints.

2.15 I am about to submit a second internal complaint highlighting many of the issues above. Having complained about the LGO before, and being aware of their perverted internal complaints system, I have little anticipation of a satisfactory outcome.

3. ARE THE LGOs GUILTY OF MALADMINISTRATION?

3.1 The LGO's own web-site classifies the following as maladministration.

Delay in taking action.

Taking incorrect action.

Failure to provide information.

Failure to compile and maintain adequate records.

Failure to take action.

Failure to take relevant considerations into account in making a decision.

Failure to investigate.

Failure to deal with letters or other enquiries.

Failure to comply with legal requirements.

Making misleading or inaccurate statements.

3.2 Ironically, the LGO (York office) has been guilty of every single item on the list whilst handling my complaints over the last eight years.

3.3 The problem a complainant faces is that there is no accountability for flaws in the Ombudsman's procedures. You have to complain directly to the LGO. There is no procedure in place to accommodate a complaint that cannot be resolved internally.

4. SOME OF THE FLAWS I HAVE IDENTIFIED

4.1 Manipulation of statistics. Senior staff manipulate statistics to make the LGO's office appear more effective than it actually is. Please refer to my letter in the Appendix for further details.

4.2 Failure to effectively monitor a Council's actions. This consists of little more than ringing them up and asking how things are going. Even when disputed by a complainant with evidence, answers are accepted without validation or further investigation thus defeating the whole purpose of a monitoring exercise.

4.3 Failure to validate Council statements. The reason given to me by an investigator is their belief that Council staff would not mislead an LGO. How can a complainant expect an impartial investigation when they have to support allegations with evidence, but the Ombudsman is predisposed to believe Council Officers without validation?

4.4 Failure to answer, or unwarranted delay when responding to reasonable questions. They constantly ignore requests for information and fail to respond to reasonable questions. A complainant can wait months for answers to questions. Multiple requests have to be made to secure the information.

4.5 Failure to support their decisions with a reasonable or adequate rationale. An investigator informed me that decisions notified to complainants are not supported by an adequate rationale, in order to reduce the chance of them being challenged. I was informed that this was a policy decision of the LGO. The investigator even admitted that they had been reprimanded for giving a detailed rationale for their decisions to a complainant.

4.6 Failure to protect and preserve evidence. During 2002, an Assistant LGO at the York Office accepted a statement from the Council over the telephone without any sort of validation. He used this evidence as a reason for not investigating my complaint. I have asked for a transcript of this evidence on numerous occasions and it has always been refused. However, just as I was about to start legal action to force the LGO to disclose the evidence, it suspiciously went missing.

4.7 Redefine injustice by using terms such as "significant" and "material". Their terms of reference state they can investigate complaints of maladministration if the complainant has suffered injustice. However, over the last few years they have started to introduce subjective words such as "significant" or "material". This enables them to reject valid complaints using subjective words, which they refuse to define.

4.8 Difficulties in bringing a Judicial Review. A complainant can seek a Judicial Review of the LGO's decision, however, they use a number of unfair tactics to substantially reduce the chance of this being successful. Missing evidence and the offer of a new investigation are just two of the tactics I have identified to thwart the chance of a successful Judicial Review. The purpose of an LGO is to reduce the need for expensive court action, not to be the cause of it.

4.9 Furthermore, a Judicial Review is restricted to reviewing an LGO decision. It does not identify and correct flaws in their procedures and systems. In any event, a complainant should not have the additional responsibility of taking legal action to correct the flaws in the LGO organisation. Is that not the role of Government?

5. CONCLUSIONS & RECOMMENDATIONS

5.1 It will remain a complainant's perception that the LGO for England is unfairly biased in favour of the organisations they are meant to be policing, until the serious procedural flaws in the system are rectified.

5.2 I would like to make the following recommendations to improve the overall effectiveness of the LGO. Many are essential to preserve natural justice and public confidence.

5.3 Currently, many of the senior staff within the organisation are not sufficiently impartial. LGO senior staff who are ex Local Government employees should be replaced, with no further recruitment from the organisations they are expected to police.

5.4 The internal complaints system is an affront to natural justice. An external complaint mechanism should be introduced immediately.

5.5 They ignore or fail to take into account evidence, refuse to disclose evidence and refuse to give adequate reasoning in support of their decisions. This covert culture makes it practically impossible for a complainant to effectively challenge their decisions. The LGO's are making quasi-judicial decisions, and no judge would be able to reach a decision without disclosing to both parties the evidence taken into account and the rationale behind it. An open, honest and transparent culture needs to be developed where both parties have a right to access all available information and evidence.

5.6 The current LGO are very skilled in blocking a complainant's right to a Judicial Review. Drip feeding information and evidence is a typical tactic to slow a complainant's progress. It is difficult to gather sufficient information quickly enough to mount an effective Judicial Review within the three-month deadline.

5.7 Furthermore, a Judicial Review is too costly for most complainants to contemplate. Unlike the LGO and the Local Authorities the majority of complainants would not be funded by public money. An alternative to a Judicial Review urgently needs to be made available for challenging an LGO's findings.

5.8 I appreciate that LGO's should not be fettered in their decision making process. However, over the last few years, total unaccountability has allowed the LGO to deviate from the role originally intended by the Government when they set up the service in 1974. To ensure the system is not allowed to favour either party, an independent survey/audit should be undertaken at regular intervals and corrective action taken if bias is revealed.

5.9 Statistics should reflect the work they are doing. LGO's should not be manipulating the work they do to produce favourable statistics. An external review of the statistics should be undertaken.

5.10 As a minimum the LGO should be made accountable for procedural flaws, abuse of position and maladministration.

Memorandum by Lt Col (ret'd) C. J. Piper (LGO 06)

In principle the Local Government Ombudsman Service has its origins in a sensible and genuine attempt to provide redress for the electorate in offering some protection against both maladministration and injustice. As with all public institutions, the system not only has to work properly, and in a free and an unbiased manner, but it must be seen and understood to do so.

Whether justifiably or not, the LGOS in this area is not seen to be an evenly balanced operation—favouring neither the administration nor the public. There have been cases which reflect an overwhelming concern within a community, but which on the face of it appear to have been conducted with an exaggerated bias towards the planning officials and authorities, at the expense of either the individual or of the community.

There is a need for the public to be kept aware of all representations to LGO and of the reasons why the LGO decides that any case is dropped because the LGO decides that there is no injustice—even though the public at large may have very strong views on what it considers to be a clear case of maladministration. Similarly, there should be a legal requirement to publish notice of all referrals to LGOS and to do so for all decisions reached by them. There is an unnecessary element of secrecy which gives unreasonable cover behind which local authorities seek cover.

Allegedly we have an open society and new found access to information under the Freedom of Information Act. Let us be seen to be fair and let us be able to call for an unbiased degree of access to the workings of the unelected bureaucracy that governs our lives under a cloak of secrecy that is mostly unwarranted.

Memorandum by Dr Anita Jennings (LGO 07)

I have taken an interest in the LGO Service since 1987 when my (late) husband and I filed a complaint against East Devon District Council's handling of an application to demolish the town's premier hotel and replace it with 30 flats.

The verdict was no maladministration but some procedural shortcomings. I have perused every Annual Report from the LGO for some 15 years (1988 to 2003), noting the regular trend for the budget to rise, accompanied by a decline in the proportion of complaints resulting in a verdict of maladministration with or without injustice.

Since 1987 I have also gained information about 15 or 16 other complaints in East Devon. Of these, one led to the departure of three councillors; one in the award of £37,500 to the complainants, (maladministration plus injustice); and two entailed much smaller awards to the complainants (maladministration plus injustice). All these were reported in the press resulting from a Press Release issued by the LGO. Practically all the rest of the complaints were dropped at diverse stages by the investigating officer(s). Some entailed "local settlement"—a device instituted well after 1987 and resulting in far less public awareness of the rising numbers of complaints lodged by the public. "Local settlement" is biased in favour of the District Councils by concealing, from the public, the real number of justified complaints.

I am also concerned about the need for a verdict of injustice before a complaint about maladministration is fully investigated. Who decides whether the complaint involves injustice? The decision rests entirely with the LGO, and it cannot be challenged except by means of a costly judicial review. The weight given to injustice means, in practice, that amenity societies, whose officers are knowledgeable about planning regulations, are precluded from lodging complaints unless they live next-door to a controversial development site.. This may result in an immediate neighbour to such a development being "encouraged" to sign the LGO's forms, perhaps with some technical help from organisations (including national ones like the CPRE). The catch is that when the LGO's investigator interviews the complainant, he/she may be incapable of answering searching questions about the procedures involved in processing the "offending" application. This may provide the investigator with a good excuse for prematurely closing his inquiries—which, incidentally, often turn out to be exceedingly slow.

The "procedural shortcomings" that have come to light in the local complaints include a "thick felt pen line" leading to a block of flats being built 10 ft to the South of the approved plan; to the Chairman of the Planning Inspection Committee declaring an interest and leaving the chamber—but subsequently writing

to the Planning Inspectorate to support the appellant; massive felling of trees of amenity value within the Conservation Area; failure of the LPA to inform complainants about a Planning Inspection debate at which they would have been entitled to speak.

To summarize—Firstly, I would like to see the abolition of secrecy surrounding “Local Settlements”, with every verdict of maladministration being given full publicity via press releases. Secondly, I would like the LGO to investigate every complaint about maladministration, whether or not it involves injustice as judged solely by the LGO. Thirdly, enquiries need speeding up—at present they may take 1–3 years to complete.

Memorandum by Mr Gary Powell, LGOWatch (LGO 08)

1 INTRODUCTION

1.1 I am a teacher of German and Philosophy at a school in South London. In 2003 I founded a campaign called Local Government Ombudsman Watch (LGOWatch) in response to grave concerns I developed with regard to the claimed impartiality of the English Local Government Ombudsman, following my dealings with this institution on behalf of a family that had experienced problems with the Housing Department of their local authority.

1.2 This is a personal submission based on my experience as Co-ordinator of LGOWatch, the only UK community group representing citizens who have been treated unjustly by the Local Government Ombudsmen.

1.3 At the outset, I should like to express my conviction that a number of complaints against local government that are submitted to the LGO will genuinely be trivial, vexatious, malicious or simply misguided, and these complaints must of course be rejected. Working as an officer in local government can be a highly stressful experience, with the possibility of unreasonable demands made both by some senior colleagues and by some members of the public. The compassionate and professional approach adopted by the many conscientious local government employees has an invaluable outcome in the community.

1.4 However, there will be times when things go wrong, and indeed seriously wrong. In these circumstances, citizens have a right to expect a fair and even-handed consideration of their complaint from the LGO. The evidence accumulated by supporters of LGOWatch, represented both by statistics in the LGO’s own published documentation, and in the experience of the individuals who have contacted us, indicates that the Commission for Local Administration in England is institutionally biased against complainants, and very reluctant indeed to find or report local government maladministration.

1.5 The main challenge for LGOWatch has been, and remains, publicity. In order to pool evidence and provide support for people who have suffered injustice in their dealings with the LGO, we first needed to let other complainants know we existed. Consequently, a website (www.ombudsmanwatch.org) was set up with a contact e-mail address. In January 2004 I set up a Google advertisement for LGOWatch that links to our website, and that appears whenever “Local Government Ombudsman” is entered into the Google search engine. The vast majority of complainants to the LGO nevertheless remain unaware of our existence.

1.6 I have as a result of the advertisement received many e-mails from people who have suffered real anguish because the LGO has sided unfairly with the council despite compelling evidence and the simple dictates of reason.

1.7 Some people have lost tens of thousands of pounds, or even their life savings, as a result of unrecognised maladministration, or had maladministration recognised but no award of compensation; others have been caused stress and clinical depression by their experience of institutional injustice, and have even shared with me that they contemplated suicide.

1.8 My experience of running this organisation, and as an individual who has dealt with the LGO, has taught me that for some people—perhaps for many people—the bias of the LGO does not have a trivial effect on their lives: depending on the issue and the stakes involved, it can be the cause of intense and protracted anguish and despair. The suffering is made all the more trenchant when an experience of injustice from one institution is then compounded by a further experience of injustice from a second institution, where that second institution is dignified by the State as a government body, and incorrectly publicises itself as an impartial arbitrator. An unfair judgement by the LGO that a council has not acted improperly will also compound the complainant’s experience of injustice by providing the body complained about with an official endorsement of its behaviour that it can then use as a means of closing any further discussion of the injustice in question.

1.9 In 2004–05, the Annual Grant from Government to the CLAE was £11,058,000, and it is a particularly painful thought that the taxpayer is funding an organisation that is generally working against the interests of the citizen, contrary to its remit. It is a lamentable situation for citizens to be funding an organisation that serves deliberately to undermine legitimate complaints against local government.

1.10 Many of the individuals who have clearly experienced injustice from the LGO and have reported their situation to LGOWatch are highly articulate, professional people with a university education. As so many of these people get nowhere with their complaint, I have a particular feeling of dismay with regard to the hopeless plight of people who experience maladministration from a council that profoundly harms their basic quality of life, and yet, struggling to some degree with literacy, are themselves in no position to put up

a struggle against the disingenuous reasons that are used by the LGO to dismiss their cases. I can see no alternative but for such people simply to give up and resign themselves to their miserable circumstances. Citizens who are likely to experience the worst suffering from their experience of maladministration with injustice are probably those on a low income who are at the council's mercy with regard to their basic conditions of existence (particularly housing), or people suffering from stress and depression, who are in no position to marshal further evidence and formulate compelling arguments and counterarguments when the LGO's Investigators disregard important details and act as though they are not bound by their own published definitions of maladministration.

1.11 It is a recipe for disillusionment with and cynicism towards political and government institutions, when local government is not held accountable to a truly fair and impartial arbitrator, and when the arbitrator that exists is not held accountable by politicians to the public. The kind of statistical and semantic spin-doctoring the Commission for Local Administration in England uses in order to lend itself a thin veneer of authenticity and integrity falls far short of the standards our citizens have a right to expect from those appointed ostensibly to safeguard the rights of the good citizen from institutional injustice. This disillusionment erodes the very foundations on which our social values and shared identity as a community are built.

2 THE EVIDENCE

2.1 The LGO's own MORI Customer Satisfaction Poll in 1999 revealed a 73% complainant dissatisfaction level with his service; indeed, 61% of complainants described themselves as "very dissatisfied" with the final outcome of their complaint. There was even a high degree of discontent among those whose complaints had been upheld, with half of them reporting dissatisfaction with the outcome. These results are published rather unobtrusively on the LGO's website, and are described as being broadly similar to the 1995 MORI poll's results. LGOWatch was disappointed to discover that no further Customer Satisfaction Poll was published in 2003; it has been replaced by a Public Awareness Survey. This is a particularly unsatisfactory development in my view, given the very high customer dissatisfaction level the previous polls had exposed, which might have been a cause of concern to an institution genuinely committed to good practice, and where a further similar poll would measure any degree of improvement.

2.2 It is admittedly the case that any complainants who rightly or wrongly feel they have a cast-iron case are going to be disappointed if the LGO's judgement goes against them, and a proportion of the dissatisfaction statistics will no doubt be represented by complainants with a weak case. However, it must be borne in mind that the LGO will only investigate cases where there is prima facie evidence of maladministration with injustice, and this must represent a significant initial filter, and hence a dissatisfaction level of this order, including among those whose complaints have been upheld by the LGO, must be a cause for concern.

2.3 On reading the 1999 MORI report, I was concerned to learn that the LGO even removed 11% of the sample interviewed by MORI, this excised sample to include amongst others "complainants who might have been emotionally unsettled or abusive if contacted". I tried to find out from MORI what proportion of this figure was represented by the potentially unsettled or abusive complainants, but they had no breakdown by category available. As the interviews were conducted by telephone, with the interviewers therefore remote from any physical danger, I found this information to be quite disturbing. I wondered who decided on the definition of being "emotionally unsettled", and on whose authority this judgement about an individual's psychology was made. I wondered whether it included being angry at experiencing blatant institutional injustice. I therefore suspect that the dissatisfaction rates are even higher than those reported.

2.4 Inspection of the LGO's own published statistics provides further evidence of bias with regard to the underreporting of maladministration, where the majority of cases are reported under a euphemism, made possible by a technicality: the LGO closing down complaints either where he has found fault in the local government institution and they have complied with his remedy, or where the investigated body has offered voluntarily to put things right during the investigation, regardless of the harm the complainant has already experienced in the process of suffering the maladministration and exhausting the body's complaints procedure without success before referring the case to the LGO. If the LGO agrees to investigate a case, it implies prima facie evidence of maladministration with injustice, and if he upholds the complaint and requests a remedy, then this in turn implies the prima facie evidence of maladministration with injustice has been borne out. However, if the council agrees to pay the (generally paltry) sum the he suggests in compensation, then the LGO officially terminates the investigation and only reports it as a "local settlement". He can then hold the threat over the council concerned that he will publish a report on the case as maladministration if it does not agree to the remedy, where the case will in fact be reported as maladministration in the statistics. This is an entirely inappropriate policy, as maladministration surely does not suddenly become non-maladministration just because the offending body agrees to settle. This policy leads to a very significant underreporting of the maladministration committed by local councils, depriving the media and the public of important information about their local government, and depriving councils of the incentive to avoid maladministration. In the LGO's Annual Report for 2003-04, for every case of maladministration reported, there were another nineteen cases of maladministration hidden in the 'local settlement' statistics. (Of the 11,600 complaints submitted that he said he could investigate in 2003-04, the

Local Government Ombudsmen in England reported that only 180 cases (1.6%) represented maladministration by local government. There were however a further 3,368 cases (29%) of maladministration that he reported merely as “local settlement”.)

2.5 The senior staff at the CLAE are far too emotionally and professionally connected with the institutions they are meant to be investigating impartially. I have discovered that two of the three current English Local Government Ombudsmen previously served as Local Authority Chief Executive Officers, and indeed all three current Deputy Ombudsmen, and the current Deputy Chief Executive, worked for a local authority before joining the Commission. It does not inspire a great deal of confidence in impartiality where an individual’s own history will encourage an automatic identification and sympathy with those who are currently fulfilling a role he once had himself, given that his own council would have been the subject of Ombudsman’s investigations in his previous employment. The recently-founded Independent Police Complaints Commission has a very different flavour: when I conducted my research in July 2004, not a single one of its chairperson, deputy chairperson or fifteen Commissioners was formerly a police officer.

2.6 Attempts to establish how many LGO Investigators previously worked in local government have been unfruitful. For the sake of transparency, the CLAE should be prepared to divulge this information, which could presumably be obtained by such a simple measure as the LGO e-mailing his staff and asking them where they used to work.

2.7 A correspondent who wrote to LGOWatch informed me that she had discovered from the ODPM that on the appointment of the last LGO, a member of the three-person selection panel represented the Local Government Association. She was told that the other two members of the Panel had a substantial knowledge of local government. I do not think that many of those who take complaints to the LGO are aware of the influence exercised by local government on choosing who exactly is going to monitor them. Once appointed, the LGOs do not seem to be on contracts of fixed length, and this seems to conflict with guidance from the Office of the Commissioner for Public Appointments; and although the Commissioner reports on, regulates and monitors appointments to approximately 10,000 public bodies, the LGO falls outside her remit.

2.8 Ironically, I should imagine that there are few government institutions in the country that commit maladministration with injustice with the same degree of frequency and impunity as the CLAE. The absence of any satisfactory mechanism for challenging unjust judgements by the LGO serves to encourage and perpetuate the CLAE’s bad practice. The measure of judicial review seems to be an avenue that is only open to the wealthy, and even then it is very rare indeed to bring a successful challenge against the Ombudsman via this route.

2.9 Where the LGO does find against a council and requests a “local settlement”, the sums involved are generally quite paltry and frequently incommensurate with the suffering experienced by the complainant.

3 RECOMMENDATIONS

3.1 As the Co-ordinator of LGOWatch I have first-hand experience of the misery that is being brought about by a Commission for Local Administration in England that is anything but impartial. This injustice is being caused by the paradigms of the CLAE’s senior staff, who are too closely connected with the people and institutions they are investigating, and too profoundly associated with the thousands of cases of injustice inflicted upon citizens who have turned to them for help. It is therefore my view that:

- (i) the CLAE must be abolished, and replaced by a truly Independent Local Government Complaints Commission;
- (ii) none of the new Commissioners or senior staff appointed should have previously worked in local government;
- (iii) there should be an independent appeals board to consider complaints against the findings of this new Commission;
- (iv) the new Commission should have the power to fine local government institutions heavily for maladministration, and to make substantial financial awards to complainants who have suffered serious injustice as a result of bad practice;
- (v) judgements of the new Commission should be made legally binding;
- (vi) every case of maladministration should be reported as maladministration, and not as a “local settlement”. There should also be a grading of levels of maladministration according to gravity, so that the most serious cases are easily identifiable in published statistics;
- (vii) a customer satisfaction survey should continue to be carried out every four years in order to encourage good practice within the institution, and statistics relating to customer dissatisfaction published in a prominent position in the new Commission’s Annual Reports and Summaries;
- (viii) Commissioners should be appointed on fixed-term contracts;
- (ix) the new Commission should be brought within the remit of the Office of the Commissioner for Public Appointments.

Memorandum by Mr Hubert Taylor (LGO 09)

INTRODUCTION

1. My name is Hubert Taylor (Mr), a private citizen and elector, resident in Birmingham, England.
2. The feeling of injustice arising from administration in public office, and in particular, maladministration as a complainant might feel, is a great source of disquiet when suffered or felt by citizens. Such senses of injustice, if not abated, can lead to disaffection with the civil and democratic processes, and can lead to civil unrest.
3. It is therefore essential in civil society, that those public offices which mete out "justice", do so in a manner which is not only fair, just, and independent, but also, seen and felt by the public at large, to be effectively and transparently so; particularly those citizens upon whom such "justice" impinge directly. I hope that the members of the ODPM Committee will agree that one source of such "justice" lies in the offices of our Local Government Ombudsmen for England ("LGO").

SOME FACTS (OF WHICH I HAVE SUPPORTING EVIDENCE)

4. In an LGO leaflet (ref LGO 24 (07/02)) titled, "Complaint about the council", in paragraph 2 (on page 2), the LGO say they can only investigate complaints "about 'maladministration'".
5. The same leaflet in paragraph 5 (on page 4), defines "maladministration" as the term is understood by the LGO.
6. The LGO appears to be able to investigate complaints, find in favour of a complainant, recommend that the culprit council pays public money to a the complainant, and yet, permit the culprit council to claim and act, as if there has been no maladministration, because, as claimed by the council and admitted by the LGO, the word "maladministration" does not appear in the letter of findings and decision issued by the LGO.

CONSEQUENCES

7. So public money is paid because of the complaint. The complainant does not get the satisfaction of the culprit council transparently taking action to put its administrators and administration right, so the poor performance continues.
8. Public money is thus spent on an LGO investigation, public money is paid by the culprit council to the complainant, both on account of a wasted cause d because most likely, the complainant remains dissatisfied with the non-decision and with the fact that even more public money has been wasted.

QUESTIONS TO THE LGO FOR CONSIDERATION OF THE ODPM COMMITTEE

9. When the LGO find "maladministration" (and since the LGO can only investigate where there is a complaint of "maladministration"), what reason can there be for the LGO not to include the word in decision letters when maladministration is found?
10. How many complaints do the LGO investigate and find on behalf of the complainant and recommend that a council pay money to a complainant when maladministration is not found?
11. In what circumstances might the LGO recommend to a council to pay public money on a proven complaint when maladministration is not found?
12. Does a council have authority (derived from LGO recommendation) to pay public to complainants when maladministration is not?
13. Have the LGO written investigation reports of such complaints?
14. Have the LGO written published any reports of such complaints?
15. What steps do the LGO take to ensure or assist complainants to ensure, the culprit councils fulfil the remedial promises given to the LGO?
16. Do the LGO have details of complainant-satisfaction on the culmination of such complaints?

CONCLUSION

17. Without clear and unequivocal decisions by the LGO their process is pointless in terms of complainant (and possibly council) satisfaction and confidence in the process.
18. Unless there is some means of persuading councils to fulfil their remedial promises, complainants may well just not bother with complaints to the LGO, excepting those complainants who can afford to pay a lawyer (or like professional) to present and follow-up complaints. So the poor person-on-the street who most needs the LGO complaints process will be the only people not being served.

19. I welcome the attention of the ODPM Committee to issues regarding the role and effectiveness of the LGO. I hope that the Committee's conclusion will be that the LGO are not adequately effective in their present role and/or that their statutory authority need to be reviewed. At present they appear, by common feeling, to be an ineffective drain on the public purse.

Memorandum by Pieter Grootendorst (LGO 10)

1. QUESTIONS TO THE SELECT COMMITTEE

1. Why is there not already a blueprint for the LGO (and audit commission) to ensure that they serve the public and common good adequately?
2. Is the LGO (or Audit Commission) still fit for the purpose? Are they too partial and selective in their audits or investigations?
3. How can this best be overcome to ensure best value to the public?
4. Would the select committee have an examination in public of the LGO system
5. How can the public, (we have personal experience) be spared from the indignities, inconvenience, expense and hardship caused by poor practices and the lack of will within government at all levels to address the cumulative effects of excessive self-protecting mechanisms when such failings could have been tackled once and for all already?

2. OUR COMMENTS ON THE PRESENT SITUATION

1. Too cosy relationships with the bodies audited or investigated that predisposes bias and prejudice, ie. Can you provide figures of what percentage of LGO and Audit Commission staff come direct from and go back to local authorities and health authorities including PCTs and Care Trusts?
2. Independence and impartiality: does evidence show too close contact or links with bodies investigated?
3. LGO is not offering equal opportunities to complainants. Indifference towards complainants can result from a hands-off, remote means of communication that increases distress and compounds problems.
4. The widespread dissatisfaction revealed must have a lot to do with "perceived" bias, flawed communication and questionable management of casework by LGO investigators.
5. LGO appears to be immune from accountability to complainants.
6. It is unreasonable if the LGO can be selective in what is dealt with also has carte blanche to misuse his discretionary powers with impunity.
7. Without the overhaul review and re-evaluation, remedial measures that are long overdue and much wanted will deliver little to us.
8. For the above reasons an examination in public is due plus the blueprint and continuous public scrutiny to restore confidence.

3. WHAT HAS GONE WRONG

It is apparent that over time, self-assessment best value and CPA are NOT adequate; leaving consumers/ tax payers short-changed. In our opinion our aspirations and expectations for satisfactory public services, common courtesy and reliability of the service provider executives have not been met and will not be met under the current system.

4. THE BEST WAY FORWARD FOR THE PUBLIC

Could the public directly lead and participate in satisfaction surveys and monitoring on continuous performance? We pay and we are the users, don't leave us out. The tokenistic public focus groups used by Steve Bundred are just not good enough, and we would like to make the best of the evidence session on 15 March. We ask for open, independent scrutiny of where the fault lies within the executive powers of local authorities, PCTs and health authorities that have not made a success of joint or cross-sector working.

We seek a shift to restore faith, trust and confidence in government and service providers that act as arbiters that have frequently proved one-dimensional. Having looked at the evidence of Steve Bundred and others we are not reassured. Fine words do not match the reality that exists. Qualitative assessments are not transparent or open and are therefore prone to error or worse.

**Memorandum from The Commission for Local Administration in England
(The Local Government Ombudsmen) (LGO 11)**

1. EXECUTIVE SUMMARY

1.1 This paper sets out background information about the organisation and the Ombudsmen, an outline of recent achievement and plans for the next three years. More background is provided in the Commission's Corporate Plan, Annual Report and on its website (www.lgo.org.uk).

1.2 The Commission has been in existence for over 30 years. The past decade has seen a 25% growth in new complaints and current growth is around 3.5%. The Commission's performance has improved across the decade and current staff productivity is at its highest levels on record. Over the past three years the Commission has also been involved in a major development of its advisory role which has included the issue of Annual Letters to all local councils summarising the outcome of complaints and any general lessons, publication of a series of Special Subject Reports with broad advice drawn from a cross-section of complaints, and increasing the training for local councils in complaints investigation. It has been providing data to the Audit Commission in connection with the Comprehensive Performance Assessment of councils.

1.3 Additionally, the Commission has been pursuing a range of initiatives to improve customer services and increase awareness and understanding about its role. This has included development of its telephone advice service, working closely with the advisory sector (including National Citizens Advice) and targeting groups in special need such as children and young adults, and the minority ethnic communities.

1.4 The Commission is facing a difficult year in 2005–06 with further complaint growth expected but at a time when financial resources are very restricted. Nevertheless it has ambitious plans to increase further its training activity and will continue its programme of advice and awareness activity and work to improve accessibility, whilst maintaining its core business of deciding complaints with high standards of quality and customer consideration.

2. BACKGROUND ABOUT THE ORGANISATION

2.1 The Commission for Local Administration in England was established by statute under Part III of the Local Government Act 1974. It is an independent body funded by annual grant from the Government. The Grant in 2004–05 is £11,058,000 and in 2005–06 it will be £11,522,400.

2.2 The four Commissioners who make up the membership of the Commission are the three Local Commissioners (Local Government Ombudsmen (LGOs)) and the Parliamentary Commissioner for Administration. The main statutory functions of the Commission are:

- to enable the LGOs to investigate complaints, in particular by allocating them staff, offices and facilities;
- to provide to bodies within jurisdiction, advice and guidance on good administrative practice.

2.3 Each LGO has a personal statutory responsibility to investigate complaints from the public about maladministration which has led to injustice to that individual, caused by a local authority or other body within the LGOs' jurisdiction. The Commission has allocated to each LGO responsibility for complaints from part of England. Areas are reviewed from time to time to achieve an even distribution of work; the current allocation is as follows:

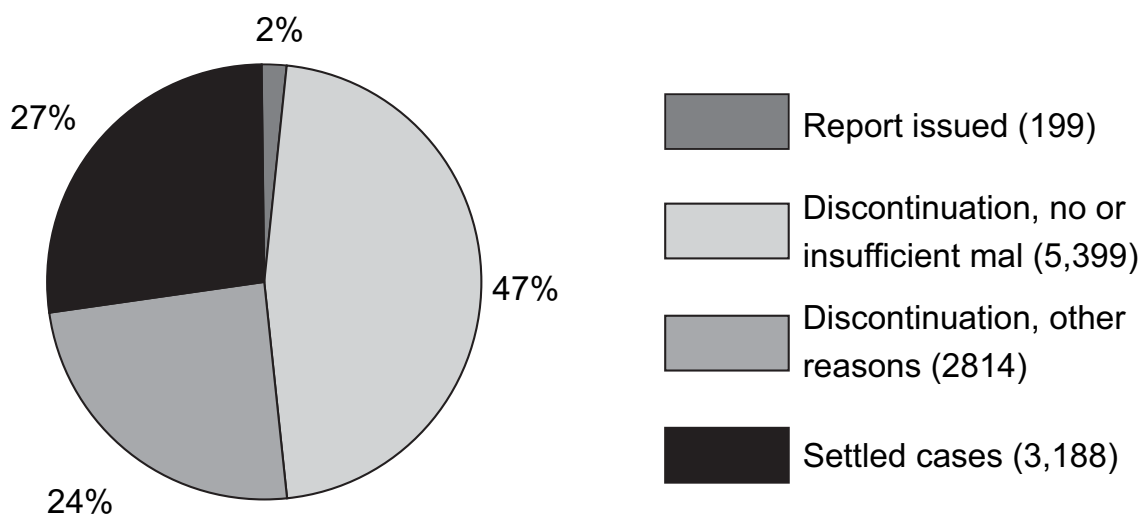
- London: London Boroughs north of the Thames (including Richmond but excluding Harrow and Tower Hamlets) and further encompassing Essex, Kent, Surrey, Suffolk, East & West Sussex, Berkshire, Buckinghamshire, Hertfordshire and Coventry.
- York: Authorities in the North of England (except York and Lancaster), and in the Midlands (Birmingham, Cheshire, Derbyshire, Nottinghamshire, Lincolnshire), and the London Borough of Tower Hamlets.
- Coventry: London Boroughs south of the Thames (excluding Richmond) and Harrow, York, Lancaster and the rest of England.

2.4 The LGOs are appointed by the Queen on the recommendation of the Deputy Prime Minister. The London based LGO, Tony Redmond, is Chairman and Chief Executive of the Commission. The other LGOs are Pat Thomas (Vice-Chairman, based in York) and Jerry White (based in Coventry).

2.5 The Commission employs about 230 people (some of whom are part time). Approximately half the workforce is complaint investigators. These are graduate level appointees with experience of casework, working with complex materials and dealing directly with the public. They come from a wide variety of backgrounds including the private sector, not for profit organisations and local government. They all deal with a varied non-specialised caseload of complaints and take some decisions on the LGO's behalf. Each Ombudsman's office has four teams of Investigators organised into geographical areas and headed by an Assistant Ombudsman. The balance of staff in each office is support and facilities posts. The overall operational management of the office is dealt with by a Deputy Ombudsman. The Deputy Ombudsmen are Peter MacMahon (London), Neville Jones (Coventry) and Michael King (York).

2.6 The Commission's work is supported by a corporate services unit of about 25 people who are mostly based in London. This includes communications, human resources, finance, IT, legal, policy development and research functions. The Unit is headed by the Commission Secretary and Deputy CEO, Nigel Karney. There is also a national Advice Calls service based at the York Office which provides telephone and email advice to the public who are considering lodging a complaint; it handles around 17,000 calls a year.

2.7 In the last complete financial year, 2003–04 the LGOs received 18,982 new complaints and made 18,658 decisions. There is a detailed analysis of the outcomes in the annual report for that year. 7,058 complaints (38%) were rejected as outside of jurisdiction or premature (the council had not had the opportunity to consider the complaint). Of the 11,600 complaints that were investigated the outcomes were as set out below. This breakdown of the Commission workload is fairly typical of recent years.



2.8 It is our published reports which attract publicity, but they are only issued in a relatively small number of cases, where a local settlement has not been achieved and/or where there are issues of public concern which the Ombudsman wishes to highlight by completing a full investigation.

2.9 The LGOs have no powers to enforce their recommendations for remedy where (s)he has found the council at fault, (although the legislation does provide that where a council refuses to comply it must publish the reasons). But the Ombudsmen's recommendations are accepted by councils in all but a very small number of cases (none in 2003–04).

2.10 In 2003–04 we recommended payments totalling £1.5 million. We have recently produced new published guidance on remedies to help bodies determine appropriate settlements. In considering claims for breaches of the Human Rights Act caused by maladministration, the Court of Appeal has recommended that the courts should have regard to the LGO's guidelines in compensation as an appropriate comparator.

2.11 The Commission issues a range of advice to local government and other bodies, which is also useful to complainants and those who advise them. This is done in a variety of ways and key publications include:

- an annual letter to each council, based on the outcome of their complaints;
- an annual digest of cases that provide useful general lessons;
- a range of guidance pamphlets on administrative subjects;
- special subject reports, where the outcome of key cases across the country are brought together with Ombudsmen comments;
- an annual report on Ombudsmen and Commission activity.

2.12 Many publications and other information are available on the Commission's website www.lgo.org.uk.

3. OVERVIEW OF THE PAST DECADE

3.1 The first half of the decade saw a fairly stable complaints level of around 15,500 per annum. The next two years saw a sharp rise which peaked in 2000–01 (19,180). This extraordinary growth was due to Housing Benefit problems in a small number of large urban authorities. Complaint numbers started to fall back in 2001–02 (18,309). This coincided with an Efficiency Review of the organisation conducted by KPMG (an FMPR was conducted in 1996) and the arrival of the new Chairman and Chief Executive.

3.2 There was a further downturn in complaint numbers in 2002–03 (17,610). The organisation used the opportunity to commence initiatives to develop its advisory role and promote awareness and understanding, especially in under-represented parts of the community and amongst advisory bodies. A 2002 MORI survey of awareness and understanding, carried out jointly with the Parliamentary and Health Service Ombudsman

(OPHSO), indicated only 44% of the population was aware of the Ombudsman and their understanding, including the extent of the Ombudsman's powers, was weak; understanding within the advisory sector also needed significant improvement. The Commission also began to pursue recommendations arising from the KPMG Efficiency Review. The Government announced plans in 2002 to merge the Commission and OPHSO and, in April 2003, the Commission's London office moved to Millbank Tower to co-locate with OPHSO. The costs of the move and resulting rental increase (£480,000) significantly increased the Commission's spending.

3.3 The work on advice, awareness and efficiency continued through 2003–04 (broadly referred to as “the Change Agenda”) but, at the same time, there was an upturn in new complaints (18,982). Unlike the Housing Benefit increases, these complaints have come from a variety of sources and subjects with the main growth areas being planning, neighbour nuisance and highways. This growth has continued into 2004–05 and new complaints are expected to be at a record high of about 19,200 by the end of the year. The merger with OPHSO is no longer being pursued by Government, but the two bodies are committed to closer joint working as far as is possible and efficient. This has included the progression of a Regulatory Reform Order to facilitate joint investigations of complaints which have involved service failures in both bodies jurisdiction.

4. PRODUCTIVITY IMPROVEMENT AND SERVICE DEVELOPMENT

4.1 The organisation measures its productivity in a number of ways:

- average number of complaints determined divided by all staff involved in the process;
- average number of complaints determined per investigator;
- the speed of deciding cases in 13 week, 26 week and 52 week time bands, as well as an overall average.

4.2 The productivity in 2003–04 was at the best ever level against these three criteria (tables 1, 2 and 3 attached). Performance in 2004–05 remains very good and the outturn is expected to maintain these high productivity levels. This is particularly impressive as there has been a shift away from the high proportion of straightforward housing benefit complaints from a few authorities in the previous peak years, to a more diverse/complex workload.

4.3 A series of new advice and awareness promoting initiatives have been developed and delivered in 2002–03, 2003–04 and 2004–05. These include:

- special subject reports;
- annual letters to councils;
- special arrangements to deal with complaints from children and young people;
- specialist materials and website resources for advisers.

4.4 The topics of the special subject reports published so far are:

- about the funding of aftercare of people discharged from compulsory detention in hospital under Section 117 of the Mental Health Act 1983;
- about delays in referring housing benefit appeals to the Appeals Service (the recommended 28 day benchmark was subsequently adopted in DWP guidance);
- drawing attention to a range of common faults in dealing with education admissions and appeals;
- about neighbour nuisance and anti-social behaviour and the issues that can arise in dealing with this.

The first of these reports was instrumental in getting £75 million repaid by councils to people who had been wrongly charged.

4.5 In parallel with this a series of efficiency improvements have been pursued.

1. introduction of Performance Related Pay and competency assessment for investigators;
2. a move to greater self-sufficiency by investigators, resulting in fewer support staff and enabling the employment of six more investigators;
3. development of the advice calls service (a KPMG recommendation);
4. development of the Commission's knowledge bank/intranet, including the production of a new investigative guidance manual for staff;
5. enhancing the Commission's professional support on communications and policy development;
6. a review of the Commission's governance arrangements including the appointment of an independent chair of the Audit Committee, Chris Swinson. (He is a Past President of the Institute of Chartered Accountants in England and Wales (ICAEW), a Commissioner of the Audit Commission and senior partner and Chairman of the Policy Board of international accountants BDO Stoy Hayward.)

4.6 The LGOs are independent of the complainant and the council, but they strive to provide complainants with a service that is sensitive to their needs. The decisions on all cases where the complainant expresses concerns about the appropriateness or fairness of the conclusions are reviewed at senior level.

These are termed ‘comebacks’ and the Commission monitors closely both the numbers and outcomes. In 2003–04 there were 1,436 comebacks (7.7% of decisions) of which 207 (1.1% of comebacks) required further action (in 191 cases this was a further explanation of the original decision). The Commission also monitors stakeholder satisfaction at regular intervals by independent survey and measures performance against a number of indicators based on these exercises, one of which is speed of case handling. A study is underway at the present time which will report in early 2005–06.

5. PLANNED DEVELOPMENTS IN 2005–06

5.1 The Government was unable to meet the Commission’s grant request for 2005–06 in full. There was a shortfall of some £600K (around 5%). This was compounded by a later unforeseen increase in employer pension contributions bringing the shortfall close to £1 million (around 9%). The Commission is careful not to overbid for funds and its grant request is normally met in full. Most of the Commission’s costs are related to investigative staff and premises fixed costs and so the scope for additional efficiency improvement or redirection of resources is very small. The Commission will endeavour to maintain most of its planned activity in 2005–06 but will need to utilize its limited reserves to do this.

5.2 New complaints are predicted to increase by 3.5% based on five year, three year and 12 month trends. (These figures represent an update from the predictions in the corporate plan that was published last October in the light of more recent trends.) If this estimate is correct there will be a total of 19,870 new complaints in 2005–06.

5.3 The Commission will be appointing an extra six investigators in 2005–06. But the extra staff will only go part of the way to meeting the increase and there will be some build up of cases within the organisation. If the predictions are correct the proportion of cases carried forward will increase from around 19% in 2004–05 to 22.6% in 2005–06.

5.4 The current high level of productivity of investigators is expected to continue although it may be affected by the build-up of cases within the organisation. High caseloads slow down the speed of case handling and output of decisions. They also impact on morale and stress levels and so need to be kept in careful check.

5.5 Efficiency improvements to be pursued in 2005–06 include:

- completion of planned support staff reductions;
- continuing development of the advice calls service;
- PRP and competency assessment introduced for other categories of staff;
- implementing organisational reviews of other functions including Facilities and Corporate Services;
- review of the casework management system COMTRAC.

5.6 Notwithstanding the funding difficulties, the CLAE plans on continuing to maintain its programme of advice and awareness raising activity in 2005/06. This includes:

- a redesign of its website;
- initiatives targeting minority ethnic communities and groups that assist them;
- continuing development of the young persons and children activity;
- improving awareness of the legal profession;
- three new special subject reports; (charging for residential care; partnerships and health and safety in graveyards)
- meetings with local authority senior management linked to annual letters.

5.7 The Commission also plans a major expansion in its training of local government in effective complaints handling. This is a quadrupling of current activity building up to a capacity of 150 courses a year (50 in each Ombudsman area) being a mixture of regional and local events, as well as some tailor-made training for individual councils. Very considerable demand for these courses is already evident. This initiative will help reduce the number of routine cases that come to the Ombudsman unnecessarily due to poor complaint handling; as well as benefiting complainants and councils. The course charges are set at a level to recover the CLAE’s extra expenditure but there are some sunk costs involved in 2005–06 in developing materials, equipment and marketing.

6. PLANNED DEVELOPMENTS IN 2006–07 AND 2007–08

6.1 Complaint numbers are predicted to continue to grow based on current trends and the Commission’s own activity to increase awareness. To deal with accumulated cases within the system and further growth there would need to be a sharp increase in new investigators in 2006–07 (around 15); this step up reflects the lower productivity of new staff in the first year. If growth continues the following year would require a

further increase but at a lower level (around five) as the staff recruited in the previous year will by then have become fully productive. No additional support or management staff is planned so productivity per head will continue to increase.

6.2 Subject to adequate funding being available, the Commission also plans that the levels of advice, awareness raising and training activity established in 2005–06 will continue throughout the following two year period. This will include the issue of more Special Reports and other advice, targeting awareness raising in other sectors (such as the legal profession) and running around 150 local authority training events in complaints investigation each year.

7. LEGISLATIVE CHANGE

7.1 The Commission is required every three years to review its legislation and to make recommendations to the Government. It does this in consultation with a wide range of bodies. The most recent review was in May 2003. There was no Government response. A number of issues raised at that time are still very relevant today. In broad terms the Commission is labouring under 30 year old legislation to deal with the complexity of modern approaches to public service delivery and the expectations of the public in the 21 century.

7.2 Partnerships—Increasingly, councils are entering into partnerships with other public bodies and the private and voluntary sectors to deliver services. Because of the complex and diverse nature of some of these arrangements, the jurisdiction of the Ombudsmen can be uncertain. The Commission recommended that the Government reviews the legal framework to ensure that any member of the public with a complaint about the administration of a local authority service has a definite recourse to the Ombudsman.

7.3 Internal matters in schools—These are excluded from the Ombudsman’s jurisdiction but the wording of the legislation has led to some anomalies. In 2003 the Commission proposed some amendments to address these matters. There is also the broader issue about whether, with increasing delegation of powers to schools, their management should be brought within the scope of the LGO.

7.4 Investigations at the request of the council—The LGOs can only conduct an investigation if a complaint is received from a member of the public. The Commission suggested that the LGOs should be given discretion to carry out an investigation at the request of a council.

8. THE OMBUDSMAN’S ROLE IN ADMINISTRATIVE JUSTICE

8.1 In July 2004, the publication of the Administrative Justice White Paper (titled “Transforming Public Services: Complaints, Redress and Tribunals”) reflected and stimulated the ongoing public debate about the administrative justice system. The White Paper announced proposals to reform the tribunal system, which are planned to be included in a new Courts and Tribunals Bill, currently in preparation. But it also set out a wider vision “about improving the whole end to end process for administrative justice.” Part of the strategy underlying that vision is to move out of courts and tribunals disputes that could be resolved better and more cost-effectively elsewhere.

8.2 The LGOs’ powers are limited to “investigations” (as distinct from other ADR routes such as mediation or informal arbitration). But the LGOs investigations are as informal, flexible and non-confrontational as possible. Their approach places the complainant’s needs and expectations at the centre of the process. So there is significant direct contact with complainants on the telephone, by email and often by home visit.

8.3 The LGOs may use their wide discretion to end their involvement with complaints where they are satisfied with an authority’s proposals to put right any wrong that it may have done to the complainant. This informal approach, which concentrates on resolving the problems, has the benefit of bringing a swift remedy for a complainant, while avoiding the additional delay and cost of an “in depth” investigation.

8.4 In these (and other) ways, the LGOs consider that through their casework they make a distinctive and important contribution to the administrative justice system as a whole. Their service is without charge to the complainant; it can remedy matters that courts or tribunals currently cannot; it is thorough but not unnecessarily exhaustive; and it is responsive to the needs of complainants. What it cannot do, however, is the job of courts and tribunals in determining and enforcing individuals’ legal rights.

8.5 Looking ahead, there are two issues that are of particular interest to LGOs arising from the proposals to reform the administrative justice system arising from the White Paper:

Changing the Jurisdiction of Ombudsmen—s26(6) of the LGA 1974 effectively prevents LGOs from looking at complaints where the complainant has lodged papers in a court or tribunal about the matter, even though there has been no substantive consideration of the issues by the court or tribunal. This can mean that courts and tribunals will be dealing with inappropriate cases and the LGOs are unable to deal with cases which, but for a technicality, they would normally handle.

Composition of a new Administrative Justice Council—The White Paper proposes in time to replace the Council on Tribunals with a new Administrative Justice Council (AJC). The idea is that the AJC should become “an advisory body for the whole administrative justice sector.” The AJC would be concerned to “ensure that the relationships between the courts, tribunals, ombudsmen

and other ADR routes satisfactorily reflect the needs of users.” Subject to parliamentary approval of the proposal, the LGOs wish to play a full part within the new AJC. They consider that they can only do this effectively if one of them is represented on the AJC alongside the Parliamentary and Health Services Ombudsman.

The LGOs see no reason why both issues should not be progressed within the proposed Courts and Tribunals Bill.

SOME PERFORMANCE DATA

Table 1: Complaints decided per head of staff

| <i>Key indicator</i> | <i>2000-01</i> | <i>2001-02</i> | <i>2002-03</i> | <i>2003-04</i> |
|--|----------------|----------------|----------------|----------------|
| Number of complaints decided per head of average number of staff in post (full time equivalents) | 86.6 | 89.4 | 91.2 | 96.9 |

Table 2: Complaints decided per investigator

| <i>2000-01</i> | <i>2001-02</i> | <i>2002-03</i> | <i>2003-04</i> |
|----------------|----------------|----------------|----------------|
| 189.0 | 191.5 | 184.3 | 198.5 |

Table 3: Cases decided with time bands

| <i>Key indicator</i> | <i>2000-01</i> | <i>2001-02</i> | <i>2002-03</i> | <i>2003-04</i> |
|--|----------------|----------------|----------------|----------------|
| Percentage of all complaints (excluding prematures) determined within 13 weeks | 51.3 | 49.9 | 53.9 | 58.4 |
| Percentage of all complaints (excluding prematures) determined within 26 weeks | 78.7 | 75.8 | 78.4 | 83.9 |
| Percentage of all complaints (excluding prematures) determined within 52 weeks | 95.1 | 93.0 | 93.5 | 96.4 |

Table 4: Older cases in hand

| <i>Key indicator</i> | <i>March 2001</i> | <i>March 2002</i> | <i>March 2003</i> | <i>March 2004</i> |
|----------------------|-------------------|-------------------|-------------------|-------------------|
| More than 52 weeks | 364 | 298 | 158 | 120 |

Table 5: Complaints “carried forward” between financial years

| | <i>Actual</i> | | | | <i>Predicted</i> | | | |
|---|----------------|----------------|----------------|----------------|------------------|----------------|----------------|----------------|
| | <i>2000–01</i> | <i>2001–02</i> | <i>2002–03</i> | <i>2003–04</i> | <i>2004–05</i> | <i>2005–06</i> | <i>2006–07</i> | <i>2007–08</i> |
| a. Carried forward | 4,708 | 5,633 | 4,848 | 3,926 | 4,203 | 4,500 | 5,500 | 5,310 |
| b. Complaints received | 19,179 | 18,309 | 17,610 | 18,932 | 19,200 | 19,870 | 21,030* | 22,250* |
| Total workload (a + b) | 23,887 | 23,942 | 22,456 | 22,858 | 23,403 | 24,370 | 26,530 | 27,560 |
| Decisions | 18,220 | 19,055 | 18,376 | 18,658 | 18,700 | 18,870 | 21,220** | 22,050** |
| Carried forward as % of total workload | 23.6 | 20.2 | 17.5 | 18.4 | 19.0 | 22.6 | 20.0 | 20.0 |

* Based on 5.5% new complaints growth in those years

** Assumes adequate staff growth in those years.

Table 6: Average grant per decision

| <i>Year</i> | <i>Grant</i> | <i>Expenditure</i> | <i>Decisions</i> | <i>Adjusted grant at 2004 rates</i> | <i>Grant per decision</i> | <i>Excludes accommodation</i> | <i>Excludes pensions</i> |
|-------------|--------------|--------------------|------------------|---|-------------------------------|-----------------------------------|------------------------------|
| | £ | £ | £ | £ | £ | £ | £ |
| 2000–01 | 8,650,000 | 8,617,849 | 18,220 | 9,750,000 | 535 | 489 | 471 |
| 2001–02 | 9,244,000 | 9,333,642 | 19,055 | 10,100,000 | 530 | 484 | 463 |
| 200–03 | 9,840,000 | 9,894,353 | 18,376 | 10,400,000 | 538 | 482 | 456 |
| 2003–04 | 10,490,000 | 10,871,410 | 18,658 | 10,800,000 | 551 | 477 | 439 |
| 2004–05 | 10,987,000 | 11,200,000 | 18,700 | 10,987,000 | 560 | 489 | 457 |
| 2005–06 | 11,522,400 | 12,462,800 | 20,500 | | | | |

The years 2002–03 and 2003–04 exclude the exceptional grant and expenditure for the London office move.

The year 2004–05 grant excludes one off pension contribution.

The years 2002–03 onwards excludes the cost of additional advice and awareness in the sum of £28 per complaint.

* Based on inflation restated grant.

Supplementary memorandum from the Office of the Deputy Prime Minister (LGO 01(a))

Thank you for your letter of 15 March to the Deputy Prime Minister, following on from your session to hear evidence from the three Local Government Ombudsmen about the role and effectiveness of the Ombudsman service.

You ask about our response to the Ombudsman’s most recent triennial review of the provisions in Part III of the Local Government Act 1974 on the investigation of complaints. The review is required under Section 23(12) of the Act.

I am disappointed to learn that the Committee is under the impression that the Office has failed to respond to this review. The review was completed in May 2003 and was included in the Commission’s 2002–03 Annual Report, published on 3 July 2003. The conclusions and recommendations of the review, and an appropriate response and timescale for action on these, were initially discussed at a meeting between the Commission and officials on 10 July 2003. They have featured on the agenda, as necessary, at a series of regular meetings between the Commission, officials and Ministers since then.

The focus of the Commission’s recommendations was on measures to facilitate closer working between the Local Government, Health and Parliamentary Ombudsmen. At a Ministerial meeting with the Ombudsmen in November 2003 it was agreed that, as there was no prospect of an early opportunity for primary legislation to remove the legislative constraints on collaborative working, the Cabinet Office would explore alternative means to effect the desired changes. As you will know from our memorandum and the Commission’s evidence, the Ombudsmen and the Office are currently working with the Cabinet Office on the preparation of a consultation paper on a draft Regulatory Reform Order which would amend primary legislation to remove these constraints.

The remaining recommendations in the 2003 review concerned matters about which it was agreed that, although clarification of the Ombudsman’s jurisdiction and powers in the 1974 Act would be helpful, they did not represent a practical hindrance to the Ombudsman’s operations which required urgent action. As the Commission were told, changes to address these matters would require primary legislation, and it was made clear to them that when a suitable legislative opportunity arose, we would, after consulting more widely about any proposed amendments, be seeking to take forward the agenda.

I hope this will reassure the Committee that the Office has responded fully to the Commission's 2003 review, that we are acting on its main recommendations, and that we shall continue to keep in close and collaborative contact with the Commission on addressing the other, less pressing, matters which the review raised.

Nick Raynsford