

A REPORT BY JUSTICE

The Local Ombudsmen

*A review of the first
five years*

CHAIRMEN OF COMMITTEE

VICTOR MOORE

HARRY SALES

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JUSTICE

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SUMMARY OF RECOMMENDATIONS

- SECTION 26 (1) of the Local Government Act 1974 (hereinafter 'the Act of 1974') should be amended to express more clearly the Government's intention that the jurisdiction of the Local Ombudsman should extend to the acts of independent contractors where they act on behalf of an authority in the exercise of that authority's administrative functions (para. 13).
- Parish and Town Councils should be included within the Local Ombudsman's jurisdiction though this may have to be delayed on account of present economic conditions (para. 19).
- New Town Development Corporations and the Commission for New Towns should be brought within the jurisdiction, not of the Local Ombudsman, but of the Parliamentary Commissioner for Administration. So should the proposed Urban Development Corporations if Parliament gives a general power to create such bodies having a similar constitutional relationship to Central Government as that of the New Town Development Corporations (para. 22).
- Consideration should be given to the redrafting of the provisions in Schedule 5, paras 1 and 2 of the Act of 1974 to ensure that the commencement of proceedings, the failure to commence proceedings and the conduct of proceedings falling short of any matter over which the court itself has control, is within the jurisdiction of the Local Ombudsman (para. 34).
- Contractual and commercial matters should be brought within the jurisdiction of the Local Ombudsman (para. 37).
- Internal school matters should be brought within the jurisdiction of the Local Ombudsman though implementation of this may not be feasible in the immediate future for reasons of cost and limited resources (para. 44).
- The jurisdiction of the Local Ombudsman should not be extended to enable them to investigate matters on their own initiative or without a specific complaint having been made in the manner at present required. (para. 49).

- 8 No duty to try to effect a settlement between parties or secure the resolution of a complaint by negotiation should be imposed on the Local Ombudsman. This is without prejudice to any informal steps for conciliation taken by the Local Ombudsmen (para. 49).
- 9 More complainants should be interviewed before a decision is taken whether or not to investigate, and whatever resources are necessary to enable the Local Commission for Administration to do this should be provided (para. 55).
- 10 If the Local Ombudsman decides to hold an adversarial hearing he alone should conduct it (para. 67).
- 11 Section 28(3) of the Act should be amended to make it clear that 'expenses' includes the cost of representation at hearings (para. 67).
- 12 The cost of the Commissions for Local Administration in England and in Wales and the Commissioner for Local Administration in Scotland should be charged to central funds and borne by the vote of the Lord Chancellor's Office (para. 76).
- 13 The Representative Bodies should be abolished (para. 80).
- 14 The Secretary of State should consult more widely than he is now required to do by the 1974 Act when appointing Local Commissioners (para. 81).
- 15 Complaints to the Local Ombudsman should be made either direct or through a member of the authority concerned (para. 104).
- 16 The Act of 1974 should be amended to give express power to an authority to make a payment where the Local Commissioner certifies that the complaint in question is within his jurisdiction (para. 112).
- 17 The Act of 1974 should be amended to require authorities to consider any further reports of Local Ombudsmen and to notify them of the action to be taken (para. 115).
- 18 Section 101 of the Local Government Act 1972 should be amended to preclude an authority from delegating the further consideration of reports of Local Ombudsmen (para. 116).
- 19 The Local Ombudsmen's findings should be enforceable through the courts at the suit of the complainant (paras 147 and 148).

PART 1 – THE REPORT

1 Introduction

1 JUSTICE has always been interested in the Ombudsman. In 1961 a committee under the chairmanship of Sir John Whyatt recommended the appointment of a Parliamentary Commissioner 'to investigate complaints of maladministration against government departments'. Effect was given to that recommendation by the Parliamentary Commissioner Act 1967 which established the Office of Parliamentary Commissioner for Administration, 'the Parliamentary Ombudsman'.

2 In 1971, in a report 'The Citizen and his Council', another committee of JUSTICE added its weight to the growing call for Ombudsmen to be appointed to investigate complaints of maladministration against local authorities. This was done by the Local Government Act 1974, Part III, which established the Commission for Local Administration in England and the Commission for Local Administration in Wales.* These Commissions include, in addition to the Parliamentary Ombudsman, several Local Commissioners whose functions are to investigate and report on complaints made by members of the public who claim to have suffered injustice in consequence of maladministration by a local authority or similar body. A year later, in 1975, the system was extended to Scotland when the Local Government (Scotland) Act of that year created a single Commissioner for Local Administration with similar powers to those possessed by the English and Welsh Local Commissioners. These Local Commissioners, together with the Scottish Commissioner for Local Administration are now commonly referred to as the Local Ombudsmen.

3 More recently a committee of JUSTICE considered the work of the Parliamentary Commissioner for Administration and, in 1978, published its review in the report 'Our Fettered Ombudsman'. As the Local Ombudsmen had by then been operating for a period of over three years, a review of their operation and effectiveness was clearly appropriate. Our review covers the first five years. Statistics relating to complaints received during this period, reports issued and settlements achieved by the English Commission are contained in Appendix B.

4 A special committee was set up by JUSTICE to undertake this review. To our regret we were deprived at an early date of the

* Hereinafter referred to as 'the 1974 Act'. The relevant statutory provisions are set in Appendix A.

benefit of the late Frank Stacey's wisdom and advice. He had a deep interest in the subject and was the author of two books on it.

5 Throughout our study we have received wholehearted co-operation from the Commission for Local Administration in England and from each Local Ombudsman, and for that we are most grateful. Indeed, because of the provisions of the Local Government Act 1974 which protects from disclosure the names of persons concerned in a complaint, it would not have been possible to carry out the research part of our programme without their co-operation.

6 Although we concentrated our attention on the working of the Local Ombudsmen in England we also took due account of the workings of the system in Scotland and Wales. Thus, our evaluation of the system contained in this report, and our recommendations for its improvement, apply equally to all three countries unless otherwise stated.

7 At an early stage we decided that a proper assessment and evaluation of the system required that it be based upon empirical research. Funds for that research were generously provided by the Leverhulme Trust Fund. It was carried out by Dr. Wyn Grant, Senior Lecturer in Politics at the University of Warwick, with the assistance of Mr. Robert Haynes, Senior Lecturer in Public Administration at Wolverhampton Polytechnic, and under the general supervision of the Committee.

8 The research involved three principle surveys, the results of which are set out in Part 2. These surveys were of complainants, local authority officers, and councillors. The survey of complainants was further sub-divided into a survey of those whose complaint had been investigated by the Local Ombudsman, those whose complaint had not been investigated, and a survey of those whose complaint had been withdrawn either before or after the Local Ombudsman had commenced his investigation into it. In addition we got in touch with a number of local authorities against whom the Local Ombudsman had issued a further report. Since these discussions took place on the basis that they remained confidential, we are not free to disclose their detail.

9 During our deliberations we met the English Local Ombudsmen on a number of occasions. We also met and had discussions with the Scottish and Welsh Local Ombudsmen, the Representative Body for England, the Association for Metropolitan Councils, the Association of County Councils, the Association of District Councils, the Society of Local Authority Chief Executives and the Local Government Group of the Law Society. One of our joint chairmen and Dr. Wyn Grant both spent a day at the English Commission's York office seeing at first hand how complaints were processed and dealt with by the Local Ombudsman and his staff. Members of the Committee have also attended meetings held by the English Commission with members of

consumer organisations. In addition we have read all the reports of investigations issued by the Local Ombudsman as well as many of the responses made to those reports by the authorities concerned.

10 In our assessment of the system we have reached the conclusion that the country has been well served by the manner in which the Local Ombudsmen and their staff have discharged their functions. We believe, however, that a number of important defects in the Local Ombudsman system ought to be eliminated, and our recommendations are directed towards that end and otherwise improving it.

2 Jurisdiction

Authorities subject to investigation

11 SUBJECT to the important exceptions discussed later in this chapter, s. 26 (1) of the 1974 Act provides that any action taken by or on behalf of a local authority, a joint board of a local authority, a public authority (other than the Secretary of State) or a water authority in the exercise of the administrative functions of that authority can be investigated by the Local Ombudsman.

12 Section 26 (1) contains the phrase 'action taken by or on behalf of an authority'. Its use has caused some difficulty to the Local Ombudsmen since they consider that it is not clear whether it is meant to give them jurisdiction over the actions of independent contractors employed by an authority as opposed to persons acting as an authority's agent. The Secretary of State has said that he has been advised that Local Ombudsmen are empowered to investigate any case where a third party has acted 'on behalf of an authority . . . in the exercise of administrative functions of that authority', whether or not that third party has actual or only ostensible authority as agent or independent contractor. Consequently he considers that the phrase should not be deleted and does not need clarifying.

13 We sympathise with the view of the English Commission that the meaning of the phrase is not free from doubt, that it is difficult to apply in practice, and that it should be deleted or clarified.

WE RECOMMEND, therefore, that the better course would be that the phrase 'action taken by or on behalf of an authority' be amended to express more clearly Parliament's intention.

14 There are two types of authority to which s. 25 of the 1974 Act does not presently apply and which it might be thought are unnecessarily excluded from the Local Ombudsman's scrutiny. Those bodies are parish and town councils and the New Town Development Corporations and the Commission for New Towns.

15 In their review of the working of the Local Ombudsman system which was submitted to the Secretary of State in February 1978, the Commission for Local Administration in England recommended that no local authority should be outside the jurisdiction of a Local Ombudsman. They also recommended that New Town Development Corporations and the Commission for New Towns should be brought within their jurisdiction. In their response to the Commission's review announced in March 1979 the Government rejected the Commission's recommendation that jurisdiction be extended to include parish and town councils, but indicated that they proposed to consider further the position of New Town Development Corporations and the Commission for New Towns in the light of any recommendation made by the Select Committee on the Parliamentary Commissioner for Administration.

Parish and town councils

16 With regard to parish and town councils, it has been pointed out that there are some 10,000 parishes in England, more than 7,000 of which have parish councils. It is also true that parish councils are not responsible for the administration of the same wide range of functions as are other local authorities. Nevertheless, the manner in which those councils exercise their limited range of functions, which include, for example, the maintenance of footpaths and the provision of off-street parking, parks, open spaces and allotments, can have important implications for the individual citizen.

17 It seems to us that the exclusion of parish and town councils from the jurisdiction of the Local Ombudsman is, strictly speaking, illogical and that the Government's reasons are equally so. On the one hand the Government has said that it has not been suggested that maladministration by those councils is widespread, yet on the other, it contends that to bring parish and town councils within the Local Ombudsman's jurisdiction would be disproportionately high in terms of financial and manpower resources.

18 We recognise that to extend the Local Ombudsman's jurisdiction to include parish and town councils could have important resource implications for both the Local Ombudsmen and for parish and town councils. The former because of a potentially significant increase in their work-load; the latter because few parish or town councils employ full-time or permanent staff. We find these factors to be a convincing reason for delaying any extension of jurisdiction in the manner suggested until appropriate resources to do so can be made available.

19 WE RECOMMEND, therefore, that parish and town councils should be included within the Local Ombudsman's jurisdiction, but accept that this recommendation may have to be delayed because of the present economic climate.

New Town Development Corporation and the Commission for New Towns

20 It was common ground between the Commission for Local Administration in England and the previous Government that the actions of New Town Development Corporations and the Commission for New Towns should be brought within the jurisdiction of either the Parliamentary or the Local Ombudsman. The English Commission recommended that this jurisdiction be given to the Local Ombudsman. The Government however considered that a case would be made out for giving the jurisdiction to the Parliamentary Ombudsman. The view of the English Commission was based on the fact that it was wrong that a housing complaint could be considered by a Local Ombudsman where it emanated from a tenant of a council house, but not if it came from the tenant of a Development Corporation in the same area. We acknowledge that the Local Ombudsmen have acquired considerable expertise in dealing with complaints relating to housing. Also, that with the gradual transfer of New Town assets to local authorities, it could be administratively more convenient for those bodies to be brought within the jurisdiction of the Local Ombudsman rather than his Parliamentary counterpart.

21 We are aware that the present Government intends in due course to wind up both the New Town Development Corporations and the Commission for New Towns. Until that moment arrives, however, we consider that jurisdiction over these bodies should lie with the Parliamentary Ombudsman and not with the Local Ombudsman. Our reason for so recommending is not only that those bodies are not local authorities, but that their members are appointed by the Secretary of State and are responsible to him for the discharge of their functions. Moreover, the Secretary of State is able to give directions to these bodies as to how they exercise their powers. In law, the New Town Development Corporations and the Commission for New Towns are appendages of central government or at one remove from it. Whilst that relationship exists, it is proper that the jurisdiction to scrutinise their administrative actions should lie with the Parliamentary Ombudsman.

22 WE RECOMMEND, therefore, that New Towns Development Corporations and the Commission for New Towns should not be brought within the jurisdiction of the Local Ombudsman but within the jurisdiction of the Parliamentary Ombudsman. Furthermore, we consider that this recommendation should extend to the proposed Urban Development Corporations if Parliament should give to central government a general power to create such bodies having a similar constitutional relationship to central government as that presently possessed by New Town Development Corporations.

Matters subject to investigation

23 The main requirement of the Local Ombudsman's jurisdiction is that a member of the public should claim to have sustained injustice

in consequence of maladministration. Section 26 of the 1974 Act sets out the precise method by which a complaint should be referred to the Local Ombudsman, and we return later in this report to discuss ways in which improvement in that area, particularly as regards access, might be achieved.

24 Section 26 of the 1974 Act restricts in other ways, however, the ability of the Local Ombudsman to conduct an investigation into a complaint where a claim to have sustained injustice in consequence of maladministration is made by a member of the public in the manner required by the Act. We have considered those restrictions and comment on them as follows.

The limitation period

28 Sub-section (4) of s. 26 provides that a complaint should not be entertained unless it is made to a member of the authority concerned within twelve months from the day on which the person aggrieved first had notice of the matter alleged in the complaint. That provision gives to the Local Ombudsman, however, a discretion to conduct an investigation into a complaint not made within that period if he considers that there are special circumstances which make it proper for him to do so. Although in the first five years of the Local Ombudsmen's activities 48 complaints (or 1% of all not accepted by them) were not accepted for investigation on the ground of delay beyond the twelve month period, we are satisfied that the Local Ombudsmen have exercised their discretion to accept for investigation complaints made after the twelve month period has elapsed in a generous and sympathetic way. We note particularly the support given by the Court of Appeal in the case of *R v Local Commissioner for Administration for the North and East Area of England, ex parte Bradford Metropolitan City Council* [1979] 2 WLR1., to the manner in which Local Ombudsmen exercise this discretion. In that case the Court of Appeal had to consider whether there were special circumstances which made it proper for the Local Ombudsman to accept a complaint made out of time. In supporting the action of the Local Ombudsman in accepting the complaint, Lord Denning emphasised that 'The bars are not to be enforced rigidly against a complainant where justice requires that the time be extended. . . '.

An alternative remedy

26 Sub-section (6) of s. 26 provides that a Local Ombudsman shall not conduct an investigation into a complaint in respect of any action in respect of which the person aggrieved has or had a right of appeal before a tribunal, or a right of appeal to a Minister of the Crown, or a remedy by way of proceedings in any court of law. Although this provision is intended to avoid any duplication of jurisdiction between that of the Local Ombudsman and other remedies which may be available to the complainant, a proviso to the sub-section allows the Local Ombudsman to investigate a complaint where the other remedies are or were available to the complainant if satisfied that in the particular

circumstances it is not reasonable to expect the complainant to resort or have resorted to them. In the first five years of the Local Ombudsman system, 62 complaints were not accepted for investigation by Local Ombudsmen on the ground that the complainant had a right of appeal to a tribunal, 138 on the ground that he had a right of appeal to a Minister and 337 on the ground that he had a remedy by way of proceedings in a court of law. As a proportion of the total complaints not accepted for investigation by the Local Ombudsmen during their first five years these figures represented only 1, 1 and 5 per cent of the total respectively.

27 We have discussed with the Local Ombudsmen the manner in which they exercise their discretion to accept a complaint for investigation notwithstanding the existence of another remedy available to the complainant. We are satisfied that they exercise their discretion with commendable good sense. We understand from the English Commission that it is rare for Local Ombudsmen to exercise the discretion where there is, or was, a right of appeal to a tribunal or to a Minister. Within certain acceptable confines, however, it is exercised more frequently in favour of the complainant where he has or has had a remedy by way of proceedings in a court of law.

28 Our discussions with the Local Ombudsmen have shown that the overall criteria used by them to determine whether their discretion should be exercised to accept such a complaint for investigation is the cost to the complainant of pursuing the remedy compared with the value of the right which the complainant wishes to establish or defend. If the former is potentially high compared with the latter, discretion to investigate will normally be exercised in favour of the complainant.

29 An additional criterion used by the Local Ombudsmen in deciding whether or not to exercise their discretion to investigate is whether the complaint can be investigated without the need to interpret disputed legal issues. If it cannot, the Local Ombudsmen's view is that this is a matter properly left to the courts and they will not exercise their discretion to investigate. The application of these criteria mean that:

- (a) if the action complained of is the failure to fulfil a duty which might be enforced by an order of *mandamus*, the Local Ombudsman would not normally expect a complainant to incur high costs to achieve a small benefit;
- (b) complaints about the failure of an authority to comply with obligations that are within jurisdiction, eg housing repairs, mortgage matters, etc. would normally be investigated unless the Local Ombudsman was being asked to interpret the law, eg where there is a legal dispute as to the meaning of a document;
- (c) property rights are matters for the courts and the Local Ombudsman would not generally investigate negligence claims, or claims affecting property rights, except where:
 - (i) the complaint is about the way the claim was handled e.g., delay, members not being given full information, etc; or

- (ii) the cost to the complainant in seeking a remedy in the courts is potentially high compared with the value of the right which the complainant seeks to establish or defend; or the Local Ombudsman is not being asked to pronounce on the legal position of the parties.

We consider the Local Ombudsmen to have exercised their discretion in this area with commendable good sense.

30 As regards the frontier of their jurisdiction with that of the courts, we consider the line between these two methods for securing redress to be so loosely drawn (and rightly so), as to have long term implications for the whole field of remedies by members of the public in respect of improper administrative acts. We discuss this matter further in dealing with redress (chapter 7).

Matters not subject to investigation

31 Schedule 5 of the 1974 Act lists, in paragraphs (1) to (5), a number of other matters not subject to investigation by the Local Ombudsman. Our view in this area was that all administrative actions of those authorities or bodies within the Local Ombudsman's scope should be open to his investigation unless there were convincing reasons for excluding jurisdiction in any particular case. The exclusions listed in Schedule 5 and our views on each particular case or its operation are as follows.

The commencement or conduct of civil or criminal proceedings before any court of law (paragraph 1) and action taken by any authority in connection with the investigation or prevention of crime (paragraph 2).

32 The Commission for Local Administration in England recommended to the Government, in their 1978 review of the workings of the Local Ombudsman system, that complaints relating to these two matters should not be excluded from the Local Ombudsman's jurisdiction. They gave as examples of matters that were excluded, offences, particularly in the field of consumer protection and environmental health, where only the local authority could take effective action. They were concerned that maladministration might occur in the way in which a decision was taken not to prosecute a trader for alleged breaches of the law. We share completely the English Commission's view that such matters ought to be within the Local Ombudsman's jurisdiction. There is no logic in a rule that provides that, for example, a local authority's decision not to serve an enforcement notice for a contravention of planning control is within their jurisdiction, but a decision by an authority not to prosecute for failure to comply with an enforcement notice is outside it.

33 The previous Government's view was that if a Local Ombudsman was able to distinguish between, on the one hand, the prior administrative action leading to a decision to commence or not to commence

proceedings, and on the other hand the decision itself, the provisions *did not* preclude him from investigating that prior administrative action. They also took the view that in cases where a decision is taken to initiate proceedings, the provisions in paragraphs 1 and 2 of the Schedule are designed to prevent any overlap between the jurisdiction of the relevant court and the Local Ombudsman.

34 The correct interpretation of these provisions is a matter which may have to await judicial determination. We are concerned, however, that the provisions should be open to different interpretations, particularly as the phraseology used makes it difficult for the staff of the two Commissions to decide whether or not the exclusion applies in any particular case. We believe that the provision should ensure that the commencement of proceedings, the failure to commence proceedings and the conduct of proceedings should be within the Local Ombudsman's jurisdiction so long as that jurisdiction stops short of any matter relating to the conduct of proceedings over which the court itself has control.

WE RECOMMEND, therefore, that thought should be given to the redrafting of the provisions of Schedule 5, paragraphs 1 and 2 to clarify the matter.

*Contractual or commercial matters other than land and property
(paragraph 3)*

35 Like the Local Ombudsman, the Parliamentary Ombudsman is similarly precluded from investigating complaints into contractual or commercial matters. The Report of the Royal Commission on Standards of Conduct in Public Life (Cmnd 6524) recommended the removal of this exclusion so as to bring such matters within the jurisdiction of the Parliamentary Ombudsman. So too did the Select Committee on the Parliamentary Ombudsman in their Fourth Report for the Session 1977/78. The Government did not accept the recommendations because they felt the Parliamentary Ombudsman's operations should be confined to the field of relations between the Executive and those whom it governed. Furthermore, they felt that to extend jurisdiction to transactions where the relationship was of an essentially commercial nature, such as in the buying of goods or services, would be unfair in that it would open up the commercial activities of government departments to investigation whilst the commercial activities of non-government parties would be free from investigation.

36 The arguments for and against the exclusion of such matters from the jurisdiction of the Local Ombudsman are likewise finely balanced. The Commission for Local Administration in England would like to see the exclusion removed. They point out that as the exclusions do not apply to transactions in land there is consequently a substantial breach in the view that an Ombudsman should only be concerned with relations between the Government and the governed. Furthermore, the

Commission say that in their experience the types of commercial complaint they have had to reject as being outside their jurisdiction included alleged unfair allocation of market stalls and alleged mishandling of concessionary bus passes. Complainants find it hard to understand why these matters cannot be investigated when, for example, it is possible for the Local Ombudsman to investigate the allocation of a council house.

37 WE STRONGLY SUPPORT the recommendation of the English Commission that contractual and commercial matters be brought within the Local Ombudsman's jurisdiction.

In doing so, we note that deletion of the exclusion would not affect the application of s. 26 (6) (c) of the 1974 Act which precludes the Local Ombudsman from investigating any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law. We share the view of the English Commission that implementation of this recommendation is unlikely to lead the Commission into a vast field of commercial activity. Apart from s. 26 (6) (c) of the 1974 Act, the cases the local Ombudsman is likely to investigate will be those where the contractual or commercial activity of the authority is inextricably interwoven with the authority's role as part of the machinery of government, rather than with its role as a commercial enterprise.

Personnel matters (paragraph 4)

38 In personnel matters too the Parliamentary Ombudsman, like the Local Ombudsman, has no jurisdiction to investigate complaints. In their Fourth Report for the Session 1977/78, the Select Committee on the Parliamentary Commissioner for Administration recommended that the Parliamentary Ombudsman should be able to investigate complaints about public service personnel matters, except complaints from serving civil servants and members of the armed forces about discipline, establishment questions and terms of service. The Government's response to the recommendation was that it would not be acceptable for civil servants, retired civil servants and applicants for civil service posts to have the right not available to others, to invoke the intervention of the Parliamentary Ombudsman. Not surprisingly, the Government responded in a similar way to the recommendation made by the Commission for Local Administration in England in February 1978 that Local Ombudsmen be given jurisdiction to consider complaints about personnel matters, except in relation to complaints from current employees of an authority. The English Commission's view is that it is fundamentally wrong that, for example, a complaint by the widow of a local government employee can be investigated if it is about the delay in paying her rates rebate, but not if it is about delay in paying her pension.

39 In our view there is some case for excluding from the jurisdiction of the Local Ombudsman personnel matters concerning an authority's *current* employees. Under general 'labour law' legislation, they enjoy the same protection as is given to employees in nationalised industries or in the private sector. The question of whether or not personnel matters relating to potential or past employees should be similarly excluded from jurisdiction, however, is one on which we feel a less clear answer can be given. We consider that no-one can dismiss lightly the fact that up to 31 March 1979, the Local Ombudsman has had to decline jurisdiction in 101 cases because the complaint was concerned with a personnel matter. Although some of these complaints may have been made by current employees, our own survey shows that retired employees constitute an important element in that total.

40 At the end of the day, on this matter and on this matter alone, we were unable to reach a unanimous conclusion as to the remedy we might recommend. Some of us who wanted the jurisdiction of Local Ombudsmen extended in the manner suggested by the English Commission, namely that their jurisdiction should include personnel matters other than complaints from current employees. The remainder of us, though sharing the concern that the grievances of potential or past employees should receive impartial consideration, felt that the remedy lay not in extending the jurisdiction of the Local Ombudsman in such matters, but in extending general legislation in the field of labour law to cover both public and private employees, whether they be potential, current or past employees.

Internal school matters (paragraph 5)

41 Under paragraph 5 (2) (b) of Schedule 5, the Local Ombudsman may not investigate any action concerning conduct, curriculum, internal organisation, management or discipline in any school maintained by a local education authority or in any college of education or establishment of further education maintained by the authority. The broad effect of this limitation is to preclude from investigation by Local Ombudsmen complaints about how and what pupils are taught and complaints about the rules and conduct of an educational establishment, including the imposition of sanctions such as the temporary or permanent exclusion from a particular institution. The provision, however, does not preclude a Local Ombudsman from investigating complaints concerning such matters as choice of school; assistance with fees at independent schools, school transport, maintenance allowances and other welfare benefits, the provision of milk and meals, medical and dental inspections and treatment, awards to students and the provision of facilities for recreation, social and physical training.

42 In March 1978 the English Commission recommended that those "internal" school matters now excluded from the jurisdiction of Local Ombudsmen should be brought within their jurisdiction. The Government rejected the recommendation on grounds of cost. They

pointed out that there were over 26,000 schools maintained by local education authorities in England, having 8,200,000 pupils and employing 420,000 teachers. In addition, there were 500 maintained colleges of further education having nearly 1,800,000 students and employing 70,000 teachers. In the Government's view implementation of the recommendation would involve a substantial extension of the role of the Local Ombudsman which would be potentially expensive in relation to their work and in relation to the administrative load on the schools themselves.

43 The Committee note that the reason given in the Government's consultation document in 1974 for the exclusion from jurisdiction of internal school matters was not based on cost but the 'complexities of the distribution of powers and duties between the bodies involved in the education process, and the importance of assuring teachers that their professional activities are not to become subject to inappropriate investigation ...'

44 We do not accept that there is any validity in the argument which was put forward in 1974 for excluding school matters from the Local Ombudsman's jurisdiction.

WE RECOMMEND that they should be included. We recognise, however, that to do so could be expensive both in terms of cost and resources, and we accept, therefore, that implementation of this recommendation may not be feasible in the immediate future.

The term 'maladministration'

45 The view of the Commission for Local Administration in England is that experience has shown that the term maladministration is disliked by authorities, councillors and officers, and means little to many complainants. We share that view. Although the term maladministration is used in the Parliamentary Commissioner Act 1967, the Parliamentary Ombudsman is not required to state categorically in his report whether or not maladministration was present in any particular act or decision he has investigated. He can if he wishes describe an irregularity by a name other than maladministration and he frequently does so. The Local Ombudsman, however, cannot be so indeterminate. Because the authority concerned is only required to consider and report back to the Local Ombudsman where he has found injustice sustained in consequence of maladministration, the Local Ombudsman must categorise all conduct as either constituting maladministration or not constituting maladministration.

46 The English Commission would like to be able to call a mistake 'a mistake' in appropriate circumstances and still know that the report will be considered by the authority concerned who will decide what action should be taken to remedy the injustice.

47 We consider that although 'maladministration' is not the easiest term to interpret it is becoming increasingly accepted as the work of the Ombudsmen becomes known. We do not support the English Commission in its view that Local Ombudsmen should be able to give a simple error or common mistake a description other than maladministration, since the impact of their finding is bound to vary according to the description which is used. We consider that a complainant who suffers from a mistake is as much entitled to redress as one who suffers from some other administrative fault and we are disturbed by the oversensitivity of some authorities as to what these mistakes might be called. The proposal would also involve the risk of changing the essential character of the office which we see as providing a remedy for injustice.

Extending the Local Ombudsman's powers

48 In its review of the working of the Local Ombudsman system in February 1978, the Commission for Local Administration in England considered it would be of advantage if the 1974 Act were amended to enable Local Ombudsmen to conciliate. They added without making any recommendation, that they hoped that the general discussion arising from the review would cover the question of whether they should be able to initiate investigations without receiving a specific complaint. The Commission did recommend, however, that Local Ombudsmen should be able to accept requests from authorities or from government departments to investigate matters which have not formed the subject of a complaint under the Act. The Government rejected the English Commission's proposals.

49 We considered whether it would be worthwhile to extend the jurisdiction of the Local Ombudsman in the following ways.

(a) Ad hoc inquiries

The recommendation of the English Commission in this area was that Local Ombudsmen should be able to accept requests from authorities or government departments to investigate matters which have not formed the subject of a complaint under the 1974 Act. The Commission point out that there has been a tendency for matters such as deaths of children or the running of residential homes to be investigated by *ad hoc* inquiries set up either by the local authority or by a Minister. They point out that although these cases are unlikely to be the subject of a complaint under the 1974 Act, Local Ombudsmen are well placed to investigate them carefully and objectively. Requests have in fact been made to Local Ombudsmen to investigate such matters, but have had to be declined as the Commission do not feel that they are empowered to accept them.

We accept that Local Ombudsmen have both the experience and expertise to enable them to undertake *ad hoc* inquiries thoroughly and objectively. The fact that requests for them to do so have been made by local authorities indicates that these authorities also share that view.

We understand the argument for extending the jurisdiction of Local Ombudsmen in this way, but see their first task as being the redress of individual grievances. If resources are sufficient to enable a Local Ombudsman to undertake an *ad hoc* inquiry into a matter which is not the subject of a complaint under the 1974 Act, we would prefer those resources to be used to extend the jurisdiction of the Local Ombudsman to cover those matters previously mentioned in this chapter which are the subject of a complaint under the 1974 Act but which are currently excluded from their jurisdiction.

(b) Investigation without a specific complaint having been made
The English Commission have not pressed for this power; they have merely sought the views of interested parties.

We do not think it desirable to give Local Ombudsmen a power to investigate matters on their own initiative or without a specific complaint having been made by a member of the public alleging he has sustained injustice in consequence of maladministration. Our reason for thinking this is that in the exercise of such power it would not be easy for the Local Ombudsmen to distinguish between the matters they should investigate and those they should not. We consider too that if a matter were serious enough there would be no difficulty in persuading a member of the public who has sustained injustice to make the necessary complaint, so opening the door to investigation by the Local Ombudsman.

(c) Conciliation

The English Commission have said that it would be of advantage if the 1974 Act were amended to enable Local Ombudsmen to conciliate. They refer to the conciliation powers of the Commissioner for Complaints in Northern Ireland.

Our view is that it would not be helpful to impose on Local Ombudsmen a *duty* to try to effect a settlement between the parties or to secure a resolution of the complaint by negotiation with the authority.

We recognise, however, that the Act in no way prohibits Local Ombudsmen from attempting to conciliate in this manner and that they do in fact do so. We note the growing number of complaints being made to Local Ombudsmen which are resolved *before* the Local Ombudsman formally accepts jurisdiction and we welcome that trend. But we see no need for any formal amendment of the 1974 Act in this regard.

3 The Commissions' Working Arrangements

50 AS PART OF our research programme, discussions were held with complainants and local authority officers about the staffing and working practices of the English Commission. Although we received a number of complaints about the handling of particular investigations, the general impression that emerged was one favourable to the Commission and the Local Ombudsmen. As we point out earlier, nearly 60% of complainants whose complaints were investigated express general satisfaction with the thoroughness, fairness and impartiality of the investigation, and many complainants spontaneously offered complimentary comments about the calibre of the Commission's investigating staff and their sympathetic approach to the often difficult problems surrounding the complaint. The majority of local authority officers interviewed also expressed themselves satisfied with the way in which the investigations were carried out.

51 In addition to the research programme described in Part 2 of this report, one of chairmen and Dr. Grant made separate visits to the York office to observe working procedures and had discussions with investigators and with complaint screeners. Members of the Committee met the Secretary to the Commission, Mr. Michael Hyde, to discuss various aspects of the Commission's working practices. We have been favourably impressed by the working arrangements and practices developed by the Commission, in particular by the training arrangements, and also by the Commission's receptivity to new ideas which might improve internal procedures. Although we have a number of observations to make on detailed points, most of the defects that we noted arise simply from a lack of adequate resources to discharge the task of the Commission. We are convinced that the Commission is making every possible effort within these constraints to offer the best possible service to complainants.

PUBLICITY

52 Our research suggests that there is a particular need for publicity capable of reaching the more disadvantaged sections of the population. Conventional publicity modes, particularly newspapers and other media, seem to be less useful for reaching those who are often in most need of help from the Local Ombudsman service. We are satisfied that the Commission is well aware of this problem and that it is continuing

to explore new channels by which the work of the Local Ombudsman service may become more widely known. We have no particular recommendations to make on this point, except to express the hope that the Commission will continue its efforts to secure the greatest possible publicity for the service within the limits of their available resources.

PERSONAL CONTACT WITH THE LOCAL OMBUDSMAN

53 Among the more striking findings of our research were these:

- (i) the main grievance of those whose complaint was rejected was the lack of personal contact with the Local Ombudsman.
- (ii) the overwhelming majority of respondents whose complaint had been rejected would have welcomed an opportunity to discuss their complaint with Commission staff and, in most cases, were prepared to travel a considerable distance to do so.
- (iii) a considerable number of complaints, particularly the poorer ones, found difficulty in putting their complaint into writing.

54 It should also be noted that the Commission's own research has shown that personal visits sometimes lead to a different decision about whether a complaint should be accepted for investigation. It is particularly important that an organisation set up to serve the citizen like the Local Ombudsman service should not present an unsympathetic, 'bureaucratic' image to the public, a point that was mentioned by a minority of the complaints we surveyed. In general, it is much better for a complainant to be told personally rather than by letter why the Local Ombudsman cannot do anything about his or her complaint, particularly if the complaint is concerned with distressing or sensitive personal issues.

55 We know that the Commission is well aware of these needs. In fact, the Commission now interviews 20% of complaints before taking the decision whether or not to investigate. It would be neither necessary or possible to interview all complainants before such decisions were taken.

HOWEVER, WE RECOMMEND that more complainants should be interviewed before a decision is taken whether or not to investigate and that the resources necessary to enable the Commission to do this should be provided.

STAFFING

Number of Ombudsmen and Regional Offices

56 Mr Commissioner Cook has stated (in his 1979 Report) that 'In my opinion each citizen who complains to me has the right to know that a decision on his or her complaint has been taken personally by the Local Ombudsman, not delegated to someone else. Therefore I believe that the supporting team should stay small; and that there is a foreseeable limit to the work which one Local Ombudsman and his team can handle — on experience so far, I put that at most 1,000 referred complaints a year'. (Mr Cook received 759 referred complaints in 1978/9.)

Similarly, Mr Commissioner Harrison has commented: 'The geographical area for which I am now responsible includes counties as far apart as Cheshire and Hampshire, Norfolk and Cornwall . . . The Commission's staff working for me, therefore, have to travel considerable distances and this contributes to the time taken to complete investigations or to make preliminary enquiries when a visit to a site is necessary.'

57 Caseload figures should be carefully monitored so that additional

Local Ombudsmen may be appointed as need arises. Apart from keeping the caseload down to a level which one person can supervise with the aid of a staff that is sufficiently large to permit specialisation but sufficiently small to facilitate easy contact among staff members, the creation of additional Local Ombudsmen and their location at regional offices might have other advantages. By reducing travelling time, it would also enable additional use to be made of regional media such as regional television programmes, local radio stations and regional newspapers.

Staffing arrangements

58 The staff, apart from the Secretary of the Commission and his supporting staff, are divided into three teams, one for each Local Ombudsman and each headed by an Assistant Secretary. One should not overlook the importance of the Assistant Secretaries as links between the Local Ombudsman and the investigators. We were impressed both by their calibre and dedication, and that of the Commission's other staff. Each team includes five or so investigators and a small staff who screen complaints when they are first received. Investigators are drawn from a variety of career backgrounds. Of sixteen in office at the end of 1979, six had a local government background. One of the lessons to be learnt from our research programme was the difficulty of the investigator's job and the wide range of skills necessary (apart from such personal qualities as patience and an even temper). The complaint screeners clearly have a particularly sensitive and important job and the Committee were impressed with the skill and care with which they discharged their task. Equally impressive was the ingenuity of the tests devised by the Commission as part of their selection process for investigators and the arrangements for sharing out work to investigators and for ensuring that each completed his allocated work in a reasonable time.

Training arrangements

59 As one would expect in a small organisation, supervised training 'on the job' has a special importance. A new investigator, for example, will be given an investigation to do very shortly after arrival but he will be closely supervised by an Assistant Secretary who will accompany him on the visits to interview the complainant, Council officials etc. The Commission has a written 'Operating Drill' which covers their procedures from start to finish and an 'Investigation Manual' which covers the investigation process in detail.

60 Staff appraisal arrangements are also thorough for an organisation of the Commission's size. Each year members of staff, other than clerks and typists, have an interview with their senior staff specifically to discuss performance during the year and ways in which performance might be improved, e.g. through job rotation, outside training etc. This annual review is not regarded as a substitute for 'ad hoc' discussion as matters arise during the year but it provides a regular opportunity to consider each individual's work and needs in some detail.

61 In their first five years, the Commission have held five residential seminars — one for all staff, three for all investigators and one for all complaint examiners. They have also held two 'good writing' seminars. Local Ombudsmen, the Secretary of the Commission and other management staff have attended as relevant. Apart from reviewing work and progress generally, the seminars have also studied specific current problems. For example, a seminar held in Peterborough in May 1979 for complaint examiners studied jurisdiction with the aim of producing a manual giving guidance on all the jurisdiction issues that have so far arisen. This is regarded as an important objective given the fact that complaint examiners work in three teams and one is out-stationed at York. Apart from *ad hoc* discussions on particular issues, the Commission has recently started a series of training talks for staff in London. The first was by a Planning Officer and the second by a Director of Social Services, each dealing with relevant problems in their fields.

62 The Commission encourage their staff to pursue outside studies related in some way to their work and give them financial support and time off work to do so. Two investigators in London, for example, are currently reading for degrees — one in law and one in public administration.

63 We consider that the Commission deserves special praise for the training arrangements which it has devised for its staff, and that the Commission's investment of time and money in staff training is a very worthwhile use of scarce resources.

Internal arrangements for processing complaints

64 When a complaint arrives, it is examined by the complaint examiners to see if it falls within jurisdiction. Complaints thought not to do so will be recommended for rejection and passed to the appropriate Local Ombudsman for a final decision. If a complaint is within jurisdiction, a preliminary enquiry is made of the authority concerned in about half the cases. Very often the reply leads to a decision not to investigate.

65 If it is decided to investigate, one of the investigators will be assigned to the investigation and letters will be sent to the authority, the complainant and the referring member. A few authorities expressed disquiet to us about the fact that officers concerned were

generally interviewed individually. It is the Commission's practice to send a note on its procedures to the chief executive before the investigation begins. This includes the following statement: 'If an officer or member feels, because his or her actions have been questioned by the complainant, that he or she would like to have a "friend" present, e.g., a trade union representative, this will normally be permitted, although the decision rests with the investigator. The choice of any "friend" is a matter for the person being interviewed but the investigator will wish to ensure that there will be no conflict of interest for the "friend". This would arise, for example, if the "friend" were someone who was also to be interviewed in the course of the investigation.'

66 Usually the investigator first sees the complainant, often at his home, before going to the Council offices. If the complainant makes new complaints, these will be put to the authority for comment and it may be necessary to have them referred by a member. A number of complainants who responded to our postal questionnaire praised the patience and courtesy of the investigators and the care they took to explain how the investigation would be conducted and the limits of the Commission's powers. A minority of complainants were less satisfied with the conduct of the investigation. The personal interviews conducted by our researchers demonstrated to them the difficulty of the investigator's task. Some complainants have difficulty in expressing themselves succinctly and introduce extraneous matter relating to disputes with neighbours or with authorities outside the commission's remit (e.g., complaints about nationalised industries.) Some complainants feel aggrieved because they consider that matters which they regard as pertinent to the complaint have not received sufficient attention. The investigator, however, has to confine himself to those matters within his remit and also has to proceed with the investigation with reasonable expedition. The Committee are satisfied with the way in which the investigators discharge a very difficult task.

67 In some cases the Local Ombudsmen may wish to obtain information from the parties concerned by holding a hearing in the presence of both, and allowing to each the opportunity of representation and the right to cross-examine the other. Provision for this is made by s. 28(2) of the 1974 Act.

WE RECOMMEND that where that procedure is used the hearing should be conducted only by the Local Ombudsman (and not by his investigators), and that section 28(3) of the 1974 Act should be amended to make it clear that 'expenses' could include the cost of representation at such hearings.

68 Among respondents to our survey whose complaint had been investigated, the second most frequently mentioned suggestion for an improvement in the Local Ombudsman service was that investigations should be completed more quickly. Given the complex and

delicate nature of many of the matters being investigated, the need to ensure that investigations are thorough and fair, and the resources available to the Commission, we believe that the extent to which delay can be reduced is limited. Our confidence that the Commission recognise the importance of reducing delay is strengthened by the fact that the average time from the receipt of a complaint to the completion of an investigation fell from 47.6 weeks in 1977/78 to 43 weeks in 1978/79.

69 We hope that the Commission will keep its internal working arrangements under continuous review in order to maintain and improve the quality of the service offered to complainants, and suggest that from time to time, the Commission should obtain outside research to monitor the effectiveness of its working arrangements.

PART 1 – THE REPORT

4 Finance

70 UNDER SCHEDULE 4 of the 1974 Act the expenses of the Commission for Local Administration in England are met from a levy made upon county councils, the Greater London Council and the Council of the Isles of Scilly. The procedure laid down in the Schedule is for the Commission each year to prepare an estimate of the expenses they will incur in the next financial year. The estimate is then submitted to the Representative Body for their consideration. Any observations on the estimate by the Representative Body must then be considered by the Commission before they take a final decision affecting their expenditure for the next financial year. In the event of an unresolved dispute arising between the Commission and the Representative Body as to whether or not an estimate is excessive, the Schedule provides that the representative body may refer the question to the Secretary of State. The Secretary of State may, then, if he considers that on the basis of the estimate the expenditure of the Commission for the next financial year is likely to be excessive, give a direction to the Commission about its expenditure for that year in order to ensure that it is not excessive. Similar provisions govern the operation of the Commission for Local Administration in Wales.

71 In Scotland the position is slightly different. The Local Government (Scotland) Act 1975 provides that all reasonable expenses incurred by the Commissioner for Local Administration and his officers shall be defrayed by the designated body (presently the Commission for Local Authority Accounts in Scotland) and that the expenses of the designated body be defrayed by local authorities specified by the Secretary of State. In the case of the English Commission, the statutory arrangements made for the financing of Commission's activities have not worked well. According to a report of the Association of Metropolitan Authorities, two of whose members serve on the Representative Body, 'The Commission's expenditure has *always* (our italics) been a matter of concern to the Representative Body, but they have up to now taken the view that the Commission were still in the very early stages of their existence and having to find their feet.'

72 According to that report (which was made in November 1978) the West Yorkshire County Council had, following the receipt of a precept for the County's contribution to the Commission's expenditure

for the year 1979–80, seen fit to express their concern to the Association of Metropolitan Authorities at what they saw as an increase in the Commission's expenditure of 28% over that of the previous year. As reported then by the Commission, the position was, in fact, as follows:

Estimates 1978/79:	£597,700
Anticipated spending 1978/79:	£643,790
Overspending	£46,090 (7.7%)
Estimates 1979/80:	£726,840
Anticipated spending 1978/79:	£643,790
	£83,050 (12.9%)

Although no reference of the matter was made to the Secretary of State under the procedure laid down in Schedule 4, the Representative Body asked the Commission to regard the 1979–80 Estimates as a cash limit and to make a financial report to it half way through that year if there seemed to be any danger of the Commission overspending against its estimate by the end of the year. Quite clearly the message intended to be conveyed by that request was that if the Commission exceeded its estimate the Representative Body would be less reluctant to refer the matter to the Secretary of State when the Commission's estimates for the following year were being considered. We understand that the Representative Body has now considered the English Commissions' estimates for 1980/81, and that at the request of the Representative Body, the English Commission agree to cut its estimates by 1½ per cent.

73 Although no similar difficulties have yet occurred with regard to the working of the Welsh Commission or the Scottish Commissioner, we would be surprised if they did not occur in the very near future. It is apparent from the Fourth Report of the Commission for Local Authority Accounts in Scotland that the Commission sees itself 'designated by the Secretary of State as the body to control and meet all the expenses of the functions of the Ombudsman.' In paragraph 12 of that Report the Commission says that 'Having regard to the reduction in public expenditure by local authorities for which the Government have called, and the imposition on the Accounts Commission of a similar constraint on expenditure, it has been necessary for the Commission in turn to call on the Ombudsman to make a comparable reduction in expenditure.'

74 We are well aware of the difficult situation in which local government finds itself as a result of central government policy which seeks to limit the rise in local authority expenditure. If this policy leads to pressure for a reduction in local authority services, it is not unnatural for local government to want to pass on some of that pressure to other bodies whom they finance.

75 We consider, however, that two of the issues raised by the procedures for financing the English and Welsh Commissions and the Scottish Commissioner could have a fundamental impact on their status and work. One of these issues concerns the total cost to the community of providing a system for identifying maladministration in the local government field and remedying any injustice which results and the extent to which value for money is being obtained from that system. We are in no doubt that value for money is being obtained. Set against the product of a 1p rate in England of about £88½m, the annual cost of the English Commission to the community of under £1 million is infinitesimal, representing no more than 1/120th of the product of the 1p rate. The cost of the Commission might also be compared with the estimated cost of £198m to provide court services in 1979/80; the estimated cost of £100m to provide legal aid, or the projected annual expenditure in 1980/81 of £2,530m on law, order and protective services. Such comparisons should leave few people with experience in the local government field in any doubt that the annual cost of the Commission's services is a small price to pay for an institution which in its very short life has done so much to humanise the administration of local government.

76 Perhaps an equally fundamental issue, however, is the question of whether or not local government should bear *any* responsibility for funding the cost of the Commission and its services. We can see no sense at all in this arrangement. Cost effectiveness, which no one in this period of the country's serious economic difficulties would wish to disregard, can be secured by means other than by the presence or intervention of the Representative Body. So too can public expenditure constraints, which we see in this area as being more properly linked to the cost of law, order and protective services, rather than as at present, to the cost of local government services in general. Indeed we consider that any perpetuation of a system which provides for the inquisitor to be funded by those whose actions he must inquire into has the potential to be a serious fetter on the proper discharge of the Commission's functions and its continuing development as an institution.

WE STRONGLY RECOMMEND, therefore, that the cost of the Commission be a charge against central government funds.

Since too we see the office of Local Ombudsman as one primarily concerned with securing redress for the citizen who suffers injustice in consequence of maladministration,

WE RECOMMEND also that the charge should be borne by the vote of the Lord Chancellor's Office.

PART 1 – THE REPORT

5 The Representative Body

77 **THE REPRESENTATIVE BODY** for England is a body designated by the Secretary of State under the 1974 Act to represent English authorities subject to investigation by the Local Ombudsman. Its present membership consists of persons nominated by the Association of County Councils, the Association of District Councils, the Association of Metropolitan Authorities, the Great London Council and the National Water Council. The Representative Body has six statutory functions. They are:

- (a) to be consulted by the Secretary of State when he recommends to the Queen the appointment of a Local Ombudsman (s.23(4)).
- (b) to convey to local authorities any recommendations or conclusions reached by the Commission following the Commission's annual review of the operation of their powers under the Act to investigate complaints (s.23(12)).
- (c) to comment on the recommendations or conclusions which have been reached by the Commission when conveying them to local authorities (s.24(7)).
- (d) to receive annually a general report from the Commission on the discharge of the Commission's functions (s.24(4)).
- (e) to arrange for the publication of the general reports received from the Commission, together with such comments as they think appropriate (s.24(6) and (8)).
- (f) to receive an estimate of the expenses to be incurred by the Commission in the next financial year and to make observations upon it (Schedule 4).

Similar functions are performed in Wales by the Representative Body for Wales. In Scotland, the designated body has more limited functions.

78 We have recommended elsewhere (para. 75) that the Commission for Local Administration in England and Wales and the Commissioner for Local Administration in Scotland should be centrally funded. If that recommendation were implemented, the Representative Body (and the designated body in Scotland) would cease to have any function in relation to the Commission's finances (item (f) above). As regards the other functions given by the Act to the appropriate Representative Bodies in England and Wales, it is clearly essential for a local authority voice be heard with regard to such important matters as the appointment of Local Ombudsmen (item (a)), the operation of the

provisions of the 1974 Act for the investigation of complaints and any proposals made by the Commissions for amendments to their powers (items (b) and (c)). We do not consider, however, that it is either necessary or desirable for the Representative Body to be required to arrange for the publication of the Commission's annual general reports (item (e)). We welcome, therefore, the Government's acceptance of the recommendation put forward by the English Commission and supported by its Representative Body, that the 1974 Act be amended to provide for the report to be published by the Commission and not by the Representative Body.

79 With regard to those matters where it is right that a local authority voice be heard, we can see no virtue in the creation of a statutory body to provide that voice when this could equally well be provided either individually or collectively (as it already is in other areas of local government activity), by those associations and authorities which now nominate members to the Representative Body. Indeed, it seems to the Committee that by putting the Representative Body on a statutory footing, the Act gives to that body a status which its functions in no way demand or require. What is more, it seems to us that its statutory position lends colour to the belief, rightly or wrongly held, that the Commissions are not independent, or that if they are, they are of subsidiary importance to their respective Representative Body. Such a belief we believe is buttressed by, for example, the fact that the comments of the Representative Body on the English Commission's Annual Report (see the Report for the year ended 31 March 1979), appear at the beginning of the published document *before* the Commission's Report on which the comments are based!

80 The Representative Bodies have no permanent staff and no funds. They are dependent upon the services provided for them by their member organisations. They do not seek to influence individual local authorities with regard to their response to the Local Ombudsman's findings. We readily acknowledge that during its existence the Representative Body for England has made one (but only one) useful contribution to the development of the system. We would have liked to record more such instances; unfortunately, we have been unable to find any. The one area where the Representative Body has made a contribution is with regard to its part in preparing, with the English Commission, the code for the treatment and investigation by local authorities of complaints received by authorities. Yet, here again, this was work which could equally well have been carried out by the local authority associations acting in unison. We considered at length the question of whether there was *any* valuable function that a statutory body representative of local authorities alone could usefully perform and we concluded that there was not.

ACCORDINGLY, WE RECOMMEND that the Representative Bodies should be abolished.

81 Before leaving consideration of the functions of the Representative Body, two related matters require further discussion. Firstly, it has been seen that before the Secretary of State recommends to the Crown the appointment of a Local Ombudsman he is required to consult the appropriate Representative Body. Whilst acknowledging the value of consulting with local authorities before making his recommendation,

WE CONSIDER that the Secretary of State should also consult other bodies with experience of local government activities, whose interests lie with the governed rather than with government.

Although we would expect the duty of consultation to be laid down by statute, we would leave to the Secretary of State's discretion the selection of bodies with whom he consults.

82 The second matter is concerned with the question of whether it is possible to provide a body to whom the Commission might look for guidance, counsel and advice with regard to the manner in which it exercises its functions. It is both a healthy and praiseworthy characteristic of all bodies exercising discretionary power to feel the need for some other body to whom they can relate. In the case of the Parliamentary Ombudsman, this function is performed by the House of Commons Select Committee on the Parliamentary Commissioner for Administration. In the field of local government there is no similar body and it would be difficult to create one. We have considered whether the Select Committee could perform for the Local Ombudsman the function it presently performs for the Parliamentary Ombudsman. This proposal might at first glance appear to be attractive and to have a number of advantages. They are that the Parliamentary Ombudsman is himself a member of the Commissions; that the Select Committee is close to the source of legislation from which local government draws its powers; and that because central government meets a large share of the cost of providing local government services Parliament has the means by which to exercise control over the activities of local government in general and local authorities in particular. On the other hand, we consider the disadvantages of linking the Commissions to the Select Committee to be substantial. One of these is that we doubt the extent to which Members of Parliament would be prepared to intervene in the affairs of local government, especially when at the end of the day, they would have no effective power to ensure that their views (and those of the Select Committee on the Parliamentary Commissioner) were taken into account by the local authorities concerned. It is also doubtful how far the members of local government would take note of or co-operate with the deliberations of the Select Committee. A third reason is that the Select Committee has power to call and examine officers of departments involved in any matter the subject of investigation by the Parliamentary Ombudsman. No such power exists with regard to officers of local government.

The overriding reason for rejecting this proposal, therefore, is that constitutionally, central government and local government are strongly

separate and distinct parts of government, and that the current trend (which we support), is for the division of governmental functions and responsibilities between those two parts to be strengthened rather than weakened.

83 We have given much thought to the question of whether there should be some statutory or other body to whom the Local Ombudsman could relate in the exercise of their functions. We know that the English Commission derives much value from annual informal meetings both with consumer groups and with local authority Chief Executives and their more sporadic meetings with other organisation and professional bodies. We know too that such meetings are greatly valued by those who attend.

84. All members of the Committee viewed sympathetically the continuation of these arrangements, but a few saw an advantage in a more formalised structure. They considered that the Commissions for Local Administration in England and Wales could themselves be enlarged to include representatives of local authorities, professional bodies and consumer groups with an independent chairman. The Commissions would continue to exercise their present powers but in addition would report to the Lord Chancellor on the operation of the Local Ombudsman system as well as to the Secretary of State.

PART 1 – THE REPORT

6 Access

85 IN THIS COUNTRY there are three major Ombudsman systems. In each of them an Ombudsman has power to investigate a different area of governmental action. The three systems are the Health Service Ombudsman, the Parliamentary Ombudsman and the Local Ombudsman. For each there is a different mode of access which a complainant must use if the Ombudsman to whom he complains is to accept the complaint and proceed with an investigation.

86 Under the National Health Service Reorganisation Act 1973 which created the office of Health Service Ombudsman, a complaint by a person who claims to have sustained injustice can be made directly to that Ombudsman provided he has first complained to the Health Authority. Such direct access by the complainant is also a feature of the Commissioner for Complaints Act (Northern Ireland) 1969.

87 Under s.5 of the Parliamentary Commissioner Act 1967, the Parliamentary Ombudsman cannot entertain a complaint unless it is made by the complainant to a Member of the House of Commons and the complaint is then referred to him by a Member of the House of Commons with a request that he conduct an investigation into it. The purpose of this 'parliamentary filter' is to recognize that the primary responsibility for defending the citizen against the executive rests with Members of Parliament. Despite that responsibility, the Parliamentary Ombudsman receives broadly as many complaints direct from members of the public as he does through Members of the House of Commons.

88 Shortly after publication of the report of JUSTICE, 'Our Fettered Ombudsman' in 1977, the Parliamentary Ombudsman adopted a new procedure for dealing with complaints made directly to him by members of the public. Instead of sending the complaint back to the complainant with the advice that he should approach his Member of Parliament, the Parliamentary Ombudsman now facilitates the progress of the complaint by offering to send it to the constituent's Member of Parliament, saying that he is prepared to start an investigation should the Member wish him to do so. This procedure leaves the 'complainant' free to decide whether or not to proceed with the complaint. If he decides to proceed, he is not required to complain again from scratch; and the Member of Parliament is free either to take up the cudgel on

his constituent's behalf or to consent to the Parliamentary Ombudsman proceeding direct to an investigation. Since this procedure was introduced, most Members have chosen to allow the Parliamentary Ombudsman to proceed direct to an investigation.

89 As regards the Local Ombudsman, s.26(2) of the 1974 Act provides that a complaint shall not be entertained unless it is made to a member of the authority concerned, and is referred to the Local Ombudsman by that member or by another member of the authority with a request to investigate the complaint. Section 26(3) provides that if the Local Ombudsman is satisfied that any member of the authority concerned has been requested to refer the complaint to him, and has not done so, he may, if he thinks fit, dispense with the requirement that the complaint be referred to him by a member.

90 We have been concerned at some of the reasons given in Annual Reports as to why members had not referred a complaint to the Local Ombudsman after having been requested to do so. These include telling a complainant that complaints had to be referred through a solicitor; that the Ombudsman would need more facts; and that there would be a long delay before the complaint could be investigated because the Local Ombudsman was too busy. In one case, a member deliberately misrepresented to the complainant that he had referred the complaint to the Local Ombudsman, when in fact he had not done so. Although instances such as these are few in number, it highlights the ignorance of some members as to the Local Ombudsman's functions and procedures, as well as perhaps the unevenness with which local councillors take-up complaints on behalf of local citizens.

91 Like the Parliamentary Ombudsman, the Local Ombudsman receives a high proportion of complaints direct from members of the public. In the year ended 31 March, 1979, for example, no less than 63% of complaints received by the English Local Ombudsmen were received in this way and could not be accepted by them for investigation (See Appendix B). The relevant figure for the same period for the Welsh Ombudsman was 69% and for the Scottish Ombudsman 63%. Because of the large number of complaints being improperly referred to Local Ombudsman in this way, and despite the fact that around 40% of them are eventually re-submitted correctly through a Member, we thought it right to consider whether the system might be improved by allowing complainants the choice of either proceeding through a member of the authority as the law presently requires, or giving him an alternative right to complain directly to the Local Ombudsman.

92 In their review of the working of the Local Ombudsman system made in 1978, the Commission for Local Administration in England were not prepared to recommend direct access at this stage, but they said they intended to keep the question under review in the light of the

fact that 60% of complaints are received direct. The other Local Ombudsmen, however, have viewed more sympathetically the case of giving complainants a right of direct access to the Local Ombudsman.

93 In his Annual Report for the year ending 31 March 1978, the Scottish Local Ombudsman, in giving his impressions of his first two years' work, felt that in principle access should be direct and free of formality. Furthermore, according to the Welsh Local Ombudsman, many complaints are not being investigated because of the requirement that they be submitted through a councillor. At an early stage he said he believed that when more experience had been gained, consideration should be given to whether the reference to a member was necessary. In his Annual Report for the year ended 31 March 1979, the Welsh Local Ombudsman draws attention to the continuing large number of complaints received by him direct from complainants. He says

the wishes and rights of complainants are being frustrated as it is only too clear when it is realized that of the 251 complaints submitted direct to me, only 20% of them were re-submitted correctly. It may be that some of the 80% which 'disappeared' were dealt with subsequently by local authorities, but I have no doubt that the vast majority were dropped because the complainants gave up what they considered to be an unequal struggle against red tape. I am convinced, as is the Representative Body, that direct access with the proviso that the Local Commissioner should send a complaint received direct, to the Local Authority for consideration, would benefit local government in general and individual local authorities.

94 Our survey of local authority officers (para. 252) showed that where definite opinions were held on this matter, there was a fairly even division between those who favoured allowing a complainant direct access to the Local Ombudsman and those who did not.

95 In our survey of councillors (para. 307), 66% of our respondents favoured the existing system. 24% were in favour of allowing direct access and a further 2% in giving the complainant a choice as to the method of access he would use. We were surprised that the percentages (24% + 2%) in the latter groups were so high.

96 In our examination of the question of whether or not complainants ought to be allowed to make a complaint directly to the Local Ombudsman should they so wish, we considered the main factors to be taken into account were the effectiveness of the members' role *vis-a-vis* the local executive and the cost implications of the proposed change in terms both of time and resources. We found however that each of these two factors was inextricably interwoven with the other.

97 In any discussion of the scope for direct access in the local government field, it may not be appreciated that under the present statutory provisions a complaint made in the first instance directly to the Local Ombudsman might be considered by the authority in no fewer than four sets of circumstances. First, where a complaint which appears to be within jurisdiction is received by an English Local Ombudsman direct from the complainant, the Local Ombudsman sends a letter to the Chief Executive of the authority concerned informing him of the complaint and asking him to consider if the complaint could be settled locally. The complainant is also told of the correct procedure to be followed. We believe that the Local Ombudsmen adopt this course not only because of the statutory 'filter' requirement of s.26(2) of the 1974 Act requiring a complaint to them to be referred by a member of the authority concerned, but also because no other practice would make good sense. Secondly, the complainant, as advised, sends his complaint to a councillor, who in most cases, but possibly with differing degrees of motivation, will seek to secure a resolution of the complainant's grievance in discussion with officers of the authority. In some instances this step and the first may coalesce, but there is no guarantee of that. If the complaint had not been resolved the Councillor may then refer the complaint to the Local Ombudsman. Thirdly under s.26(5) of the 1974 Act, the Local Ombudsman, before proceeding to investigate a complaint, must satisfy himself that the complaint has been brought to the notice of the authority concerned and that the authority has been afforded a reasonable opportunity to investigate and reply to the complaint. Fourthly, the authority is involved in the process of investigation by the Local Ombudsman and at that stage may take action which will enable the Local Ombudsman to discontinue his investigation.

98 It seems to us that on the ground of cost alone there is much to be said for telescoping the first three steps listed above into one, leaving the authority to be involved in the consideration of the complaint on two instead of on four separate occasions. The first of these would be either when it was raised with the authority by a Councillor following the complaint being made to him by a constituent or when the authority is informed by the Local Ombudsman that he has received a complaint direct. On this occasion, the authority would have the opportunity to respond to the complaint by investigating it and if necessary taking the appropriate action. Many complaints would in fact be resolved at that stage. The second occasion would be the Local Ombudsman's actual investigation of the complaint if it had not been resolved at the earlier stage.

99 As far as the relationships of members of authorities to their constituents are concerned, we set out in our research with regard to complaints which had been investigated by the Local Ombudsman, to ascertain the extent to which Councillors acted in pursuit of these complaints, and the effectiveness of their action. We found that 64% of the complainants in our survey had first raised their complaint at

an office of the local authority, as against 25% who had first raised their complaint with a councillor (Table 7, page 62). Once these initial contacts had been made, however, councillors were made more aware of the complaint in 69% of all cases (Table 8, page 63). We then asked complainants what happened after their complaint had been lodged with the authority (Table 9, page 63). As many as 35% of the complainants indicated "nothing happened", whilst only 9% indicated "councillor helped".

100 As we have said in the report of our research (on page 63) we have been struck by the number of complainants who indignantly wrote 'NOTHING' in the space provided for the answer to this question, but who did not respond with similar indignation to our other questions. Yet even if the replies given to this question grossly overestimated the extent of local authority inactivity with regard to the complaint, the fact that so many complainants considered that nothing was done by the local authority about their complaint is both significant and disquieting. It suggests that members may not be as deeply and effectively involved in the handling and pursuit of complaints as is often claimed to be the case; a view that seems to be borne out by the fact that the most thorough and detailed investigation of complaints takes place not when it is referred by the complainant to the authority or to a councillor but when, under the provisions of s.26(5) of the 1974 Act, the Local Ombudsman brings it to the notice of the authority before beginning to investigate it. This is perhaps not surprising in view of the limited resources at members disposal.

101 Our research also shows that 79% of our complainants had no difficulty in contacting a councillor (page 68), but that 32% found councillors 'not helpful' (Table 14, page 68). Furthermore, some of the 31% who replied that they found the councillor 'helpful to some extent' mentioned that the councillor was initially helpful, but later lost interest or was reluctant to pursue the complaint after making an initial inquiry.

102 Although there is no doubt that some members are ardent pursuers of their constituents' interests once a complaint has been made to them, there are others who are clearly less eager or able to do so. That may be because as the Whyatt Report ('The Citizen and the Administration', 1961) put it:

complaints of maladministration in local government are, in effect, complaints against a Committee of the elected representatives, rather than officials, because of the close, direct control which elected representatives exercise over the administrative processes of local government. The elected representatives are, therefore, judges in their own cause and the only external checks are public criticism and the ballot-box at the next election.

The action a constituent has complained of may thus be an action which the member himself has taken or has helped to take; and even

where the action complained of is taken by an officer of the authority, it may be unrealistic to expect members to investigate the actions of those with whom they are in daily contact and on whom they depend for much of their advice.

103 It is often argued that to give complainants the right of direct access to the Local Ombudsman would undermine the traditional relationship between a councillor and his constituent. We believe that this need not be the case so long as the procedure adopted is one which at the same time as allowing an individual to complain directly to the Local Ombudsman if he should so wish, allows members who so wish to become fully involved in the authority's consideration of the complaint at a stage prior to any subsequent investigation by the Local Ombudsman.

104 WE RECOMMEND, therefore, that the 1974 Act be amended to allow complaints to be made to the Local Ombudsman either directly or through a member of the authority concerned. Where a complaint is made through a member of the authority the procedure should remain as at present. Where a complaint is made to the Local Ombudsman directly, he would on receipt of the complaint and before proceeding upon an investigation, send a copy of it to the Chief Executive or designated officer of the authority concerned, who would then refer the complaint to the governing body of the authority or to the appropriate committee of the authority in order that the authority investigate the complaint and reply to it. If, after such period of time as the Local Ombudsman considers to be reasonable in the circumstances, the authority fails to complete their investigation, or they do so and the complainant is not satisfied that his grievance has been resolved, the Local Ombudsman may then proceed to investigate the complaint.

105 The value of this procedure would be that where complaints were made directly to a Local Ombudsman, there would be at the earliest possible stage one and only one thorough, detailed and effective investigation of the complaint *by the authority*. Also it would not be open to the objection frequently made in the case of proposals to allow direct access to the Parliamentary Ombudsman, namely, that it would take away from the Member the primary responsibility of securing redress for his constituent. In local government, councillors collectively have constitutional control (though it may not always be exercised) over how a complaint made direct and forwarded by the Local Ombudsman to the Chief Executive of the authority concerned is dealt with, and the extent to which they become involved in its investigation. If members are resolved to be involved they can be.

In this connection we note, however, the limited response (see para 267 of research *post*) made by local authorities to the model complaints' procedure drawn up jointly by the English Commission and the Representative Body for England in 1978. We are aware that the

Commission is monitoring the response of the authorities and welcome this action.

106 We see our recommendation not as diminishing the role of members in the resolution of their constituents complaints, but rather as enhancing it. We accept that by far the majority of complaints are considered by authorities without any reference to the Local Ombudsman and are dealt with by them to the complainant's satisfaction. It is right that authorities themselves should have the prime responsibility for resolving complaints.

7 Redress

107 IN THE EXAMINATION of this aspect of the Commission's work, we considered the dominant purpose of the Local Ombudsman to be to secure redress for citizens who had suffered injustice in consequence of maladministration. In so far as the work of the Local Ombudsman helped also to raise standards of general administration, we saw this to be a valuable, but nevertheless subsidiary, by-product of their work.

108 We believe this approach to be justified for two reasons. Firstly, the 1974 Act requires an authority against whom a complaint has been investigated to inform the Local Ombudsman of the action they propose to take in relation to it only when there has been a finding by him of maladministration *and* injustice. Where there is a finding of maladministration alone, the authority is under no statutory obligation to consider the report; and if they should do so, the authority is under no statutory obligation to inform the Local Ombudsman of the action they propose to take with regard to it.

109 The second reason is that there are a number of fields where maladministration may occur in local government which remain outside the Local Ombudsman's remit. We refer particularly to the provision in the 1974 Act which provides that actions which affect all or most of the inhabitants of a local authority's area cannot be investigated by him.

110 Our research shows that there is a significant feeling among complainants that no remedy, or no adequate remedy, is being given in many cases where a Local Ombudsman has found that injustice has been suffered in consequence of maladministration. In such cases, 20% of the complainants were either 'not satisfied' or 'very dissatisfied' with the result of the Local Ombudsman's investigations. Meetings held by the Commission over the past two years with member of consumer organisations have confirmed this.

111 One problem which at an early stage in the operation of the Local Ombudsman system operated so as to deny to a complainant the redress he might otherwise have received has now been removed. We refer to the unwillingness of local authorities in the past to make financial payments to complainants following a Local Ombudsman's

report for fear that by doing so members and officers could be asked to repay it in whole or in part if the District Auditor obtained from the court a declaration that the payment was contrary to law. To overcome this problem, a number of authorities used the procedure of section 161 (1) of the Local Government Act 1972 to seek the sanction of the Secretary of State for an *ex gratia* payment to the complainant. Unfortunately, the procedure had a number of defects. In the first place the Secretary of State's sanction did not legalize the payment: it merely served to remove the payment from the purview of the District Auditor. This meant that despite sanction being given, an elector who objected to the payment could still seek a remedy in the High Court. The procedure was irrelevant for authorities not subject to District Audit, since other 'approved auditors', unlike the District Auditor, have no power to apply to the court for a declaration that a payment is contrary to law. Lastly, the Secretary of State rightly took the view that in considering applications for sanction, it would be wrong in law for him to grant them automatically in every case. In other words, his sanction was not to be used as an automatic substitute for the absence of a provision in the 1974 Act expressly authorising local authorities to make such payments.

112 Accordingly, the Commission recommended that an amendment be made to the 1974 Act to give local authorities that power. That recommendation was implemented by the Local Government Act 1978. Unfortunately, that Act did not go far enough, since the power to make payments was limited to those cases where the Local Ombudsman had completed his report and made a finding of maladministration and injustice. The consequence of this requirement is that if, whilst an investigation is in progress, a local authority accepts that injustice has been suffered in consequence of maladministration, it has no power to make any payment to the injured complainant until the Local Ombudsman has completed his investigation and issued his report. As a result, the Local Ombudsman may be forced to continue an investigation unnecessarily, with all the attendant expense to the public purse that that could entail.

WE RECOMMEND, therefore, that the 1974 Act be further amended so as to give a local authority express power to make a payment to any person where the Local Ombudsman certifies that he is satisfied that the payment is in respect of a complaint which would fall within his jurisdiction to investigate.

113 The dissatisfaction of complainants with the result of the Local Ombudsman's investigations where he has found injustice to have been suffered in consequence of maladministration may be due to two main causes: first, because the authority concerned has not taken action which has satisfied the Local Ombudsman; secondly, because although the Local Ombudsman is satisfied with the action taken by the local authority, the complainant is not.

Where the authority has not taken action which has satisfied the Local Ombudsman

114 According to the Commission, in the five years to 31 March, 1979, of 406 investigations carried out by Local Ombudsmen in respect of which there has been a finding of maladministration and injustice and where no further action is contemplated, there were no less than 23 cases where the Local Ombudsman was not satisfied with the action taken by the authority concerned. Details of those 23 cases (as supplied by the Commission) are contained in Appendix C.

115 The practice of Local Ombudsmen is for them to set out in the report of their investigation only their findings and conclusions leaving to the authority concerned consideration of what action they should take with regard to it. Then, if after the authority has considered the report and notified the Local Ombudsman of the action they have taken or propose to take with regard to it he is not satisfied with the authority's action, he must make a further report stating that fact. At this stage an indication is given to the authority concerned by the Local Ombudsman as to the action they should take following the investigation that would satisfy him. Surprisingly, the 1974 Act does not require this further report to be considered by the authority, and if it does, there is no requirement that the authority inform the Local Ombudsman of the action it proposes to take on that further report. Although we understand that there have been no cases where an authority has failed to consider a further report and only two cases where an authority has failed to inform the Local Ombudsman of the action taken upon it, we see the absence of a statutory obligation on the authority to do this as an unwarranted omission in the legislation.

WE SUPPORT, therefore, the recommendation of the English Commission that the 1974 Act be amended to require authorities to consider any further reports issued by Local Ombudsmen and to notify them of the action they propose to take with regard to further reports.

116 Before considering the problem raised by the 23 cases mentioned above, some further aspects require comment. First, our research shows that the final decision as to what action to take with regard to the Local Ombudsman's report is a decision which is not always taken by the full council of the authority concerned. We consider that in a matter as important as redress, a decision not to accept a Local Ombudsman's report, or a decision not to act in accordance with a suggestion made by the Local Ombudsman in any further report, is one that ought to be taken by no less a body than the full council.

WE RECOMMEND therefore that s. 101 of the Local Government Act 1972 be amended so as to preclude an authority delegating to a committee, a sub-committee or an officer of the authority the consideration of any further report issued by a Local Ombudsman in cases where he requires this be done by the full council and he has so indicated in that further report.

117 A second aspect on which we would comment concerns the informal action which often follows publication of a Local Ombudsman's first report. Where there has been some indication that the authority concerned is likely to reject the report or to decide to take action insufficient to satisfy the Local Ombudsman, the Local Ombudsman will often invite the authority to meet him to discuss the issues involved, or alternatively, he will respond to an invitation by the authority to meet them. The Local Ombudsman uses this meeting to explain to the authority his duty and powers and to try to persuade the authority of the rightness of taking appropriate remedial action. It is not used by him, and rightly not used, to enable him to add to his published report. Our discussions with the Commissions have shown us how valuable these meetings have been in securing a correct response to the Local Ombudsman's report and how much complainants have benefited from them. The Committee would deprecate any refusal to meet the Local Ombudsman at this stage of the proceedings. We deplore the reaction of one local authority to the Local Ombudsman's invitation, which was that the Council's Housing Committee 'were of the opinion that all necessary action regarding this complaint had now been taken and that there was no need for any further discussion with the Ombudsman.'

118 The last aspect on which we would comment concerns the general nature of further reports. We understand from the Commission that 52 further reports have been issued by Local Ombudsmen since they began operations on 1 April 1974, 23 of these having been issued in respect of the cases listed above. These figures show that many authorities are unable to fulfil their obligations to complainants until they have been shown how to do so. This must be a matter of regret to all concerned with justice including the vast majority of local authorities which have not needed to be so instructed.

119 We now turn to the 23 cases listed above where authorities have not taken the action considered by the Local Ombudsman to be necessary to remedy the injustice to the complainant. An analysis of the reasons given by the authorities show that in 4 cases they considered that they had no power to make a payment to the complainant. In others, the authority denied that its actions constituted maladministration or that the complainant had suffered injustice. In yet others the authority gave no reason to the Local Ombudsman for taking no action on his further report or justified their action by contending that the conduct of the complainant had been such as to warrant their denying him redress.

120 As regards the 4 cases where the authority contended it had no power to make a payment to the complainant, the Local Government Act 1978 now gives authorities that power. We note, however, that in none of the four cases mentioned above have the authority taken the opportunity to use the new provision to make a retrospective payment to the complainant.

121 The cases in which the authorities either denied that their actions constituted maladministration or claimed that the complainant suffered no injustice, amounted in effect to challenges to the findings of the Local Ombudsman. It should not be overlooked that it is possible that in each of these cases the authority was right and the Local Ombudsman wrong.

122 The particular problem with these cases, however, is that the dispute between the authority and the Local Ombudsman as to whom is right is allowed to remain unresolved with the result that redress may be denied to the complainant. Which of the parties is right is a matter which the courts have always had the power to decide, but only when they are asked to do so. In these cases neither the authority concerned nor the Local Ombudsman have felt it desirable to attempt to resolve the issue in the courts. It is, perhaps, not difficult to see why they have not done so. For a Local Ombudsman to take action against an authority would be for him to risk impairing a relationship with authorities which Local Ombudsmen tend to see as based on acceptance and consent. The authority on the other hand, is likely to feel that he who asserts must prove and that it is not for them to take steps to resolve a dispute as to whether or not a particular matter is within the Local Ombudsman's jurisdiction. Yet at the end of the day, if the Local Ombudsman is right and the authority wrong, it is the complainant who suffers.

123 The position in those cases where the authority considered that the complainant did not deserve redress because of his conduct seems to us equally unacceptable. It should clearly be open to the authority concerned to be able to allege that the complainant has contributed to or been the cause of his own misfortune. It should not, however, be a matter which to all intents and purposes is left to be determined conclusively by the authority.

124 We are convinced that matters cannot be left as they were.

The Local Ombudsman system relies to a great extent for its effectiveness on institutional pressure and public opinion. Where a local authority refuses to accept a Local Ombudsman's findings, or fails to offer the complainant adequate redress, there is at present nothing a complainant can do about it but rely on an appeal to the political processes or the pressure of public opinion. Success will vary widely from one locality to another, and may depend upon such matters as the degree of interest shown in the case by the local press and radio. We accept that many local authorities, especially their officers, are sensitive to adverse publicity and do not care for the criticism that might follow the refusal to implement fully a Local Ombudsman's findings. There can be no certainty, however, that there will be adverse publicity in any particular case or that if there is, the local authority, having already demonstrated its recalcitrance, will respond to it by providing redress for the complainant's grievance. The complainant

finds himself, therefore, in the unsatisfactory position of having his grievance recognized by the Local Ombudsman but a remedy for it being refused. Such a situation we believe, does more than merely leave the individual complainant without redress. It tends to bring the whole Ombudsman system into disrepute.

125 We believe that some method must be found to ensure that in such cases a complainant is not denied a remedy. In so doing, we realise that an enforcement procedure would run counter to the procedures used in the Parliamentary Ombudsman system. Nevertheless, we feel there is just reason to depart from that model. The reason is that the effectiveness of the Parliamentary Ombudsman depends upon two factors, namely the doctrine of ministerial responsibility which provides a command or accountability chain from Parliament to Departments of State through Ministers; and the existence of an Opposition. The adversarial system of Parliament ensures that a Minister who refuses to implement a finding of the Parliamentary Ombudsman will face heavy and continuous Parliamentary criticism, not only in the Select Committee, but also on the floor of the House. A Minister may, of course, accept that criticism and still refuse to implement a finding. But should he decide to do so the political price of that action is both more certain and more substantial than in the case of a local authority that refuses to implement a Local Ombudsman's findings. Moreover, for the Minister, the price is a personal one: he must justify his actions at the despatch box. It is a situation which has no counterpart in local government, where moreover, there may be no effective opposition.

126 We considered three possible ways of remedying the matter, all of which involved an enforcement process. They were:

- (a) to make the Local Ombudsman's recommendations binding on local authorities;
- (b) to give the Secretary of State power to direct a local authority to comply with a Local Ombudsman's recommendation; and
- (c) to give the complainants power to enforce the Local Ombudsman's recommendations.

127 The first method of enforcement we rejected on the ground that it would lead to a fundamental change in the role of Local Ombudsmen by giving them executive authority. This is not a power they would want, and is undesirable on the ground that it would give them a discretion for the exercise of which they would not be accountable to another body.

128 The second method of enforcement we rejected on the ground that it would involve an extension of central government interference in local government administration which many consider to be already too high. As presently established, the Local Ombudsman system is independent of central government and we consider that it should remain so. Moreover, the Secretary of State, who would have to

answer to Parliament for this exercise of power to direct, would undoubtedly require a further investigation by his own Department before issuing a direction to the authority. We see no advantage to be gained in replacing a political decision of the local authority, by another, namely that of the Secretary of State. What is more, it would not be right for the Secretary of State to be able to require the authority to comply with the recommendation of the Local Ombudsman in cases where in the local authorities' view the Local Ombudsman had exceeded his jurisdiction. This is an issue for the courts, and for the courts alone.

The third method is the one that more readily commends itself to us. It is that which most conveniently fits into the administrative pattern of government. We consider this recommendation in greater detail later.

Where the local authority has taken action which has satisfied the Local Ombudsman but not the complainant.

129 Our research shows that in cases where there was a finding of injustice suffered in consequence of maladministration, 20% of the complainants were either 'not satisfied' or 'very dissatisfied' with the result of the Local Ombudsman's investigations. Yet in only 5% of cases dealt with by the Local Ombudsman since 1st April, 1974 where there has been a similar finding, was the Local Ombudsman not satisfied with the action taken by the authority. The figures suggest, therefore, that a major cause of complainant dissatisfaction lies with the redress which the Local Ombudsman has obtained for the complainant from the authority.

130 There is no doubt in our minds that the problem of redress is the most intractable that the Local Ombudsman is required to resolve. In some cases it may be that the giving of an apology by the authority concerned could constitute sufficient redress. In others, it will be possible to quantify the loss suffered by the complainant in monetary terms, so that payment of that amount will be sufficient redress. This could occur, for example, where a complainant has failed to secure an improvement grant as a result of his being incorrectly advised by the authority as to the procedures to be followed, or where he has incurred additional charges as a result of the authority's delay in sending him a cheque for a mortgage advance. The Annual Reports of the Commission show many cases where financial compensation has been obtained for the complainant as a result of a Local Ombudsman's investigation. We would mention on the one hand, cases where out of pocket expenses have been paid to the complainant, and on the other, a case involving the Cleveland County Council, who agreed to pay £62,000 to the complainant company (subject to any tax liability) for the loss they sustained as a result of the Council pursuing negotiations to acquire the company's interest in land on a basis different from that which council members had intended.

131 In other cases, the remedy secured by the Local Ombudsman for the complainant may take a different form as, for example, an offer to a complainant of a place for his daughter at the school of his choice; the clearing by the authority of an obstruction to a right of way; or the rehousing of complainants who had been living in unsatisfactory conditions. In such cases an apology may also be given.

132 In deciding upon the most suitable form of redress, however, certain cases present near-insuperable difficulties. An example is a recent investigation into a complaint against the Salford City Council (640/C/78), where the Local Ombudsman upheld a complaint against the Council that because of rent arrears accrued by the complainant's ex-husband, for which she was not responsible, they had refused to allow her to transfer to other accommodation. The opportunity for precise redress having passed (because the other parties to the proposed transfer had found a satisfactory alternative), the Council and the Local Ombudsman were left to consider what redress would be appropriate.

133 Another example of the difficulty faced in determining the proper mode of redress can be seen in the recent investigation into a complaint against the London Borough of Camden (121/S/78). In that case the complainant, a mother, had alleged that the Council had acted without proper enquiry and on incorrect or hearsay information in obtaining a Place of Safety Order for her son whilst he was in hospital. The Local Ombudsman found that when seeking the Place of Safety Order the Council had provided the magistrate with incorrect information (some of which was based on hearsay) and that they were wrong in asking one of their own staff employed at the hospital to act as the magistrate in the case.

134 Perhaps the most common example of the difficulties faced with remedies, however, is in the field of town and country planning. A not uncommon situation is where planning permission is granted by a local planning authority in ignorance of representations made by neighbours against the proposed development; or where, contrary to statute or to the authority's policy, they have not been given the opportunity to make representations. The common response of authorities to this situation is to say that had the representations been considered, or neighbours been given the opportunity to make representations, the decision would have been the same and planning permission granted in the same form. Although one Local Commissioner has gone on record as saying that he was . . . 'never wholly convinced when told by Councils against whom I have found maladministration in the way they have dealt with a planning application that they would have come to the same conclusion had the decision been taken without maladministration', the fact remains that he can only speculate on whether that would or would not have been so (2484/S).

135 Yet another factor which may influence the decision of the Local Ombudsman as to whether to be satisfied with the action of the authority concerned is the attitude of the complainant himself. For example, in a case where a Scottish local authority wrongly informed the Milk Marketing Board that a certificate of registration held by the complainant permitting him to sell milk had been revoked, the Local Ombudsman felt that, bearing in mind that the attitude of the complainant himself had contributed to the problem, the action that would satisfy him would be for the authority to reimburse the complainant a substantial part of the loss he suffered (234/76). Other similar instances are where the Local Ombudsman agreed to the payment of 2/3rds of the complainant's loss on the ground that he was not wholly free from responsibility (837/C/77); where at the suggestion of the Local Ombudsman the authority had agreed to increase from 25 to 33% their contribution to the loss sustained by the complainant in a case in which quantification of the injustice suffered was highly speculative (519/C/78). In another case, in a further report, the Local Ombudsman indicated to the authority that it should apologize to the complainant and offer him partial reimbursement of his solicitor's fees (2696S).

136 The examples above show that without doubt, in deciding whether or not to be satisfied with the action taken by the authority, the Local Ombudsman is taking a discretionary decision. It is also a discretionary decision for which he is not accountable to any other person or body. Furthermore, there is no body in local government comparable to the Select Committee on the Parliamentary Ombudsman to counsel or advise the Local Ombudsman or say whether it agrees with the way in which that discretion is being exercised.

137 We considered that in the absence of a body such as the Select Committee on the Parliamentary Commissioner (and it was felt that it would be impossible to create a like institution in local government) the institution best able to influence the exercise of discretion by the Local Ombudsman was the court. Such involvement would require the courts to act as a kind of 'long-stop' in the Local Ombudsman process in much the same way as they would with regard to our previous recommendation concerning cases where the Local Ombudsman has not been satisfied with the action taken by the local authority. We do not envisage that court proceedings should be brought by the Local Ombudsman, since this itself might involve the exercise of discretion. Rather we would prefer a system where the proceedings could be brought by the complainant, though this would not prevent the Local Ombudsman bringing proceedings in his own name where his jurisdiction was the question in issue.

138 Before moving on to consider the ways and means by which this could be done. We considered that there were a number of other reasons why the Local Ombudsman should be 'plugged in' to

the court system. If the Local Ombudsman's findings were enforceable in the courts, it would give them far greater status and authority in dealing with those bodies subject to their investigations. We have already seen how, in particular cases, some local authorities do not accord to the Local Ombudsman the consideration his status or authority deserve. We would mention, as an instance, a case where a pensioner complained to the Local Ombudsman that the Southampton City Council had discriminated against her in the way in which they had carried out decorations in her flat and had dealt with her complaints about decorations. The Local Ombudsman did not find that the Council had intended to discriminate against her, but found that they had made a mistake which had misled the complainant into thinking that two rooms would be decorated whereas the Council's policy was only to decorate one (425/H/78). The Council considered the Local Ombudsman's report and decided to take no action so far as the complainant was concerned. The Local Ombudsman involved then wrote to the Council expressing his disappointment with their decision. He said that he would not wish further public expenditure to be incurred by the Council or the Commission in issuing a further report when an apology to the complainant and a payment of say, £10, would be satisfactory action to compensate her for the injustice caused by the Council's error. Two weeks later the Council acknowledged receipt of his letter and said 'so far as this authority is concerned the matter is closed'. In a further report which the Local Ombudsman issued he said 'in my first report I said that the Council had made a mistake and should accept its consequences. Their apparently closed minds and the continued refusal to provide a simple remedy for the injustice caused to one of their citizens are a sad reflection on the quality of their administration'.

139 A further reason for linking the Local Ombudsman system to the courts or giving them other enforcement capability is that the Committee considers that it would increase immeasurably public confidence in the Local Ombudsman system. According to our research, 33% of complainants whose complaint had been investigated by a Local Ombudsman considered that they should have power to enforce remedial action against councils. whilst another 10% considered the Local Ombudsman should have more 'teeth' (see Table 34, page 78). Even, where the complaint had been rejected by the Local Ombudsman, 14% considered he should have more teeth and 10% a power to force councils to take remedial action. (See Table 35, page 79).

140 The final reason for our wishing to link the Local Ombudsman system to the courts is one that has implications extending far beyond the system itself. It concerns the relationship of the Ombudsman system (both Parliamentary and Local), to the existing methods of judicial control of the administration. As presently established, the function of the Ombudsman, is, as Professor H.W.R. Wade has stated, 'to operate beyond the frontier where the law stops'. As far as the Local Ombudsman is concerned the demarcation line is expressed in s.26(6)(c)

of the 1974 Act, which denies jurisdiction to the Local Ombudsman to investigate any matter in respect of . . . 'any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law' The sub-section contains the important proviso, however, that a Local Ombudsman may conduct an investigation into such a matter notwithstanding the existence of such a remedy if satisfied that in the particular circumstances it is not reasonable to expect the person aggrieved to resort or have resorted to it. We have already commented elsewhere that we consider the Local Ombudsman to have operated the proviso with commendable good sense. However, we were surprised to learn of the considerable number of investigations undertaken by Local Ombudsmen where the complainant had a legal right infringed and where he could have pursued a remedy in the courts of law. In this context, it should not be forgotten that the investigations themselves sometimes reveal potential causes of action against the authority of which the complainant was not aware at the time he made his complaint. There can be no doubt that despite the intentions of the statutory provisions, there is considerable overlap between a system whereby injustice in one instance may be remedied by the Local Ombudsman and a system whereby injustice in another instance may be remedied by the courts. Under the present legislation the jurisdiction of the Local Ombudsman is confined to 'injustice suffered in consequence of *maladministration*' (our italics). The jurisdiction of the courts is confined to injustice suffered in consequence of public authorities exceeding their powers. What this division of functions fails to recognize is that there are many acts recognized by the Ombudsman as constituting maladministration which the courts have themselves pronounced unlawful and in excess of the power of the authority concerned. In effect, the courts themselves are also dealing with maladministration. One example of this duality of control will suffice. The courts may quash the decision of a public authority where it has failed to take into account all relevant matters. The Local Ombudsman could find, and often has found, this same failure to constitute maladministration.

141 This duplication must have far reaching implications. Both institutions, the Ombudsman and the courts, are in the business of providing remedies for injustice. Yet for the same type of act the two institutions may prescribe a different remedy. The courts may quash the authorities' decision, whilst for the same act the Ombudsman could secure compensation for the complainant. In short not only is there a duplication of function between the Ombudsman and the courts, there is a significant diversity between the remedy each institution may award. Indeed a comment frequently made to our research team by officers from local government was that a better remedy could be obtained by a person complaining to the Local Ombudsman than would be obtained by his taking action against the authority in the courts. It was no part of our remit to consider whether power should be given to the courts to award damages against authorities for unlawful administrative acts. But in making this recommendation that the findings of the

Local Ombudsman should be enforceable through the courts, we are conscious that much more thought needs to be given to the overlapping of jurisdiction between the two institutions. This further action we see as vitally necessary if procedures for the control of administration action and the giving of redress to those unjustly harmed by such are to be harmonized. We see our recommendation, therefore, as a step towards this end. It would not, in our view, in any way impinge on the evolution of the common law in this field which may be discerned in such cases as *Anns v Merton* (1977) AC.

142 To sum up, we offer the following five reasons for recommending that where there has been a finding of injustice suffered in consequence of maladministration, that findings should be enforceable at the suite of the complainant in the courts:

- (a) The provision of a sanction would ensure that a local authority which objected to a Local Ombudsman's findings on the ground that he had exceeded his jurisdiction, would either withdraw their objection or take proceedings in the High Court to have their objection upheld.
- (b) The Local Ombudsmen would have a body to which they could relate in their determination as to the proper redress to be given to an individual complainant.
- (c) Enforceability of findings would enhance the status of the Local Ombudsmen and assist them in their dealings with local authorities.
- (d) The existence of an enforcement procedure in the courts would significantly increase public confidence in the Local Ombudsman system.
- (e) The existence of an enforcement procedure available through the courts would assist in the development of a more cohesive system for the redress of individual grievances.

The mechanism for enforcing the Local Ombudsman's findings

143 In only one jurisdiction where the Ombudsman institution is part of the process of government is his finding enforceable in the courts of law. In Northern Ireland, the findings of the Commissioner for Complaints can be used by a complainant to obtain redress through the courts for any injustice he has suffered. We appreciate the difficult social and political reasons which led to that power being made available in Northern Ireland. We recognize too, that the jurisdiction of the Commissioner for Complaints may be similar, but is by no means identical to that of our own Local Ombudsmen, the jurisdiction of the former having been conceived primarily to meet a need and a desire to eliminate discrimination in employment existing among public authorities in Northern Ireland. Nevertheless, we thought it useful to consider the working of the Northern Ireland system from the point of view of the technique used in the enforcement process.

144 The relevant provisions of the Northern Ireland Commissioner for Complaints Act 1969 are contained in s. 7, ss. (2) to (10). These provisions are as follows:

(2) Where on an investigation made by him under this Act the Commissioner reports that a person aggrieved has sustained injustice in consequence of maladministration, the county court may on an application made to it by that person, in accordance with county court rules and upon notice to the body against whom the complaint investigated was made, by order award that person such damages as the court may think just in all the circumstances to compensate him for any loss or injury which he may have suffered on account of—

- (a) expenses reasonably incurred by him in connection with the subject matter of the maladministration on which his complaint was founded; and
- (b) his loss of opportunity of acquiring the benefit which he might reasonably be expected to have had but for such maladministration: subject, however, to the application of the same rule concerning the duty of a person to mitigate his loss as applies in relation to damages recoverable at common law.

(3) Where on application made to it under subsection (2) appears to the county court that justice could only be done to the person aggrieved by directing the body against whom his complaint was made to take, or to refrain from taking, any particular action, the court may, if satisfied that in all the circumstances it is reasonable so to do, make an order containing such a direction and—

- (i) for the purpose of such an order the county court shall have the like jurisdiction as the High Court to grant any mandatory or other injunction; and
- (ii) disobedience to any such order by any body on whom notice of the making thereof was duly served or by any member or officer of that body may be treated as a contempt of court to which section 141 of the County Courts Act (Northern Ireland) 1959 applies.

(4) Without prejudice to sections 2 and 7 of the County Court Appeals Act (Northern Ireland) 1964, any local or public body or any person aggrieved who is dissatisfied with an order of a county court under subsection (2) or subsection (3) may appeal from that order as if it had been made in the exercise of the jurisdiction conferred by Part III of the County Courts Act (Northern Ireland) 1959 and the appeal were brought under section 1 of the said Act of 1964.

(5) Where on an investigation made by him under this Act the Commissioner reports that a person aggrieved has sustained injustice in consequence of maladministration and it appears to the Commissioner (whether or not so stated in his report) that—

- (a) the local or public body against whom the investigation was made had previously engaged in conduct which was of the same kind as, or of a similar kind to, that which amounted to such maladministration; and
- (b) such body is likely, unless restrained by order of the High

Court under this subsection, to engage in future in such conduct;

the Attorney-General may, at the request of the Commissioner, apply to the High Court for the grant of such mandatory or other injunction, or such declaration or other relief as appears to the High Court to be proper in all the circumstances, including an injunction restraining that local or public body or any member or officer of that body from engaging in, or causing or permitting others to engage in, conduct of the same kind as that which amounted to such maladministration or conduct of any similar kind specified in an order of the High Court and, where any such application is made to it, the High Court if satisfied as to the matters mentioned in paragraphs (a) and (b), may grant such mandatory or other injunction, or such declaration or other relief.

(6) The jurisdiction conferred by subsection (5) shall be exercisable by a single judge of the High Court without a jury, and for all purposes of or incidental to the exercise of that jurisdiction and the execution and enforcement of any orders under that subsection a judge of the High Court may exercise all the power, authority of jurisdiction vested in or capable of being exercised by the High Court in relation to the hearing or determination of any civil cause or matter within the jurisdiction of the Court.

(7) The High Court may, in determining for the purposes of an application made to it under subsection (5) whether or not a local or public body has engaged in a course of conduct, take into account not only the action investigated by the Commissioner on complaint of the person aggrieved but also any other action whether or not the subject of an investigation by the Commissioner which may appear to the High Court to be relevant.

(8) For the purposes of any proceedings authorised by this section, a recommendation of the Commissioner and any report of the Commissioner relating to the complaint in connection with which the recommendation is made shall, unless the contrary is proved, be accepted as evidence of the facts stated therein and in any such proceedings the authenticity of any such recommendation or report may be proved by production of a certificate of its authenticity signed by the Commissioner or an officer of the Commissioner.

(9) The powers conferred on a county court under subsections (2) and (3) may be exercised by that court notwithstanding anything to the contrary in any transferred provision which imposes limitations on its jurisdiction by reference to an amount claimed or to the value of property.

(10) Nothing in this section shall affect the right to bring any proceedings, whether civil or criminal, which might have been brought if this section has not been passed.

145 Like the Ombudsmen in Great Britain, the Commissioner for Complaints in Northern Ireland has no general power to compel a settlement. As will be seen from the provisions mentioned above,

however, a complainant in Northern Ireland has the right to apply to the county court for compensation for a grievance which the Commissioner has upheld but which has not been settled to the complainant's satisfaction. We understand that since the Office of Commissioner for Complaints was established in December 1969 he has issued 273 reports in which there was a finding of maladministration. Since that date there have been 21 applications made to the County Court by aggrieved persons under the provisions of s. 7(2) of the Act. In thirteen cases damages were awarded to the complainant. There has been no formal review made of the operation of provisions in s. 7 of the Northern Ireland Act but we understand that it works well.

146 The status of the Local Ombudsman's report is crucial to any court proceedings. It will be seen that under s.7(8) of the 1969 Act the report of the Commissioner is accepted by the court as evidence of the facts stated therein and that the onus of proof lies upon those who seek to dispute the facts as found by the Commissioner. We understand from the Deputy Director of the Office of the Commissioner for Complaints in Northern Ireland that in only two cases have the provisions of s. 7(8) been the subject of comment by the trial judge. In one case the judge held that he was bound by the Commissioner's findings and that his only function under the Act was to award the applicant such damages as he thought just in accordance with the terms of s. 7(2). In the other case, the judge said that he would not comment on the Commissioner's findings because they had not been challenged by the body complained against.

147 Although the provisions of s. 7(8) have not given rise, so far as the office of the Commissioner for Complaints is concerned, to any practical difficulties, we note that there have been no appeals from any of the decisions of a county court to the Northern Ireland Court of Appeal, so that there is no authorative case law on the working of s. 7(8).

We consider that many of the provisions contained in s. 7 of the Northern Ireland Commissioner for Complaints Act could with advantage be incorporated into the legislation relating to our own Local Ombudsman.

OUR CENTRAL RECOMMENDATION in this area is that where there has been a finding by the Local Ombudsman that injustice has been suffered in consequence of maladministration, the complainant should have a right to apply to the court for an order the authority concerned pay him such amounts as the court thinks just in all the circumstances in order to compensate him for the injustice he has suffered. We recommend that the same considerations as apply in actions in tort or delict regarding measure, remoteness and mitigation of damage should apply here.

148 In cases where the payment of money would not be an appropriate method of remedying injustice in any particular case, as for

example where the authority refuses to rehouse a complainant,

WE RECOMMEND that the court should have the power to order the authority concerned either to take such action as the court may direct, or to refrain from taking a particular action.

This procedure would be useful in cases where a local authority refuses to implement a specific recommendation of a Local Ombudsman.

149 We repeat that we see these enforcement procedures as necessary to remedy the injustice suffered by an individual. We do not see the process as being available to enable the court to prescribe a particular mode of administration or administrative conduct to be followed by an authority. So that where, for example, a local authority's procedure for allocating council housing is defective and causes injustice to one particular applicant for housing, the court will have power to direct that suitable accommodation be made available to the applicant, not that the authority's procedures for allocating housing be altered. Should the authority concerned not take action of its own volition to alter its procedures, it would, of course, run the risk of having further complaints made against it by others who have suffered from the defective procedure.

150 We consider it essential that any enforcement action through the county court should not be available to the complainant until the Local Ombudsman has completed his investigation and indicated to the complainant that he is satisfied with the action taken or proposed to be taken by the authority concerned, or that he is not satisfied and can do no more to effect action by the authority which would satisfy him. Our recommendation, therefore, would still leave the Local Ombudsmen with power to issue further reports, and we expect that when they did they would continue to indicate the action to be taken by the authority which would satisfy them.

151 As for the status of Local Ombudsmen's reports in enforcement proceedings taken in court, we do not see the court as repeating work which has already been undertaken by the Local Ombudsman. It may be that an authority would wish to challenge a Local Ombudsman's findings (indeed they might wish to do so now) by more formal proceedings taken in the High Court. In enforcement proceedings, however, the Local Ombudsman's reports should be conclusive, save only for the nature and extent of the redress which he considers necessary to secure fair settlement. Although the court itself would have the power to quantify the complainant's loss and award accordingly, if the issue should ever come to trial we would expect the court to attach considerable weight to the views expressed by the Local Ombudsman as to what he considers to constitute suitable redress.

152 We make two further comments on our recommendations with regard to redress. First, we are recommending what is essentially a long-stop. We do not expect the courts to be flooded with applications

to enforce the findings of Local Ombudsmen. Like many sanctions in the law the very existence of this one would ensure that few complainants need have resort to it. Secondly, during our research and subsequently, it was suggested to us that an enforcement procedure would sour the relationship existing between local authorities and the Local Ombudsmen, and that in endeavouring to secure that all injustice was remedied there was a danger that the better would be the enemy of the good. We were not persuaded by this argument. Local authorities are already subject to ultimate control by the courts in all their fields of activity. We do not consider that their control sours good relations between local authorities and those subject to this government.

PART 2 – THE RESEARCH

8 The Survey of Complainants

153 THE SAMPLE period for the surveys covered 1 April – 31 December 1977. The initial list of potential respondents included all those whose complaint was rejected or withdrawn within the period as well as all those whose investigation report was issued during the nine months. The English Commission sent a letter to all potential respondents asking them if they would object to completing a questionnaire about their experience of the Local Ombudsman service. A small number of potential respondents did object and their names were removed from the distribution lists for the questionnaires.

154 Three questionnaires were prepared: one for respondents whose complaint had been rejected by the Local Ombudsman; one for respondents whose complaint had been investigated; and one for respondents whose complaint had been withdrawn (the character of these complaints is discussed at p. 86). The questionnaires, which are reproduced in an appendix D to the report, contained some questions common to all three questionnaires as well as questions appropriate to the specific experience of the respondent. We also asked our respondents whether they would agree to a personal interview. A large number of respondents agreed to such an interview but, because of time constraints, it was only possible to interview twenty-three (another three submitted documentary materials which were used as the basis of reports to the committees). A small proportion was selected to give a cross-section of those whose complaints were investigated, rejected or withdrawn; of those from different geographical areas; and of those whose complaints were about particular types of service. A few of the cases were chosen for these 'follow up' interviews because they appeared to present features of particular interest or because they highlighted general problems arising from the work of the Commission. The researchers are of the view that they obtained a greater appreciation of the practical difficulties of the task of investigation from conducting these interviews and that the cases themselves enhanced the Committee's discussion of a variety of aspects of the Local Ombudsmen's work. For reasons of confidentiality, we cannot discuss particular cases, but general lessons drawn from the 'follow up' interviews will be referred to from time to time in the ensuing report. The researchers would like to record their thanks to the complainants who gave up considerable amounts of their time (one visit lasted nearly five hours) to go through their cases once again.

155 In the ensuing analysis, reference will be made from time to time to the *Commission's Survey*. This refers to a survey carried out by the English Commission in February 1977 of complainants who initially contacted the Commission direct instead of referring their complaint through a councillor. 114 replies were obtained from people who did not re-submit their complaints and another 41 replies from people who did re-submit their complaints. The findings of this survey are reported in full in the Commission's report for the year ending 31 March 1978, pp.32-39.

156 The questionnaires for our surveys were sent out from and returned to the University of Warwick. Each questionnaire was accompanied by an appropriate covering letter on JUSTICE headed paper and a stamped addressed envelope for return. The response rates obtained were as follows:

	<i>Survey of rejected complaints</i>	<i>Survey of investigated complaints</i>	<i>Survey of withdrawn complaints</i>
Total number of names on list	876	196	46
'Gone away' excluded	4	—	—
Deceased excluded	1	2	1
More than one complaint — one questionnaire sent	2	—	—
Total valid items on original Commission list	869	194	45
Refusals notified to Commission	21	6	2
Total items on JUSTICE list	848	188	43
Returned postal packets marked 'Gone away' etc.	19	—	2
Complaints involving more than one complainant where only one questionnaire was returned	1	3	—
Total number of questionnaires returned by cut-off date	574	123	30
Response rate as percentage of questionnaires sent out and reaching their destination (deducting non-respondents in joint replies from possible total)	69%	67%	73%
Response rate as percentage of valid items on Commission list	66%	63%	67%

ANALYSIS OF THE RESULTS

157 In the analysis that follows, the responses to common questions from all three surveys will be aggregated as appropriate. Where reference is being made to only one (or two) of the surveys, this limitation will be made clear. Because of rounding errors, percentages do not always add up to one hundred per cent.

Social composition of complainants

158 Before proceeding to an analysis of the social composition of the respondents to the surveys, it should be stressed that there is some evidence of a social bias within the sample itself. Postal surveys are prone to attract a higher response rate from better educated groups within the population being sampled. Although we obtained a respectable response rate in our surveys, there is some evidence that non-manual and better educated complainants were more likely to complete and return the questionnaire than manual and less well educated complainants. We asked respondents which service they had complained about and the replies indicated an overrepresentation of planning complaints and an underrepresentation of housing complaints in the sample.

159 Three difficulties arise in comparing the figures we obtained from the respondents to our surveys relating to service complained about with the figures on service complained about in the English Commission's Annual Report. First, respondents may classify the service complained about in a different way from the Commission (although an attempt was made to avoid this problem by using the Commission's categorisation). Second, our figures relate to a nine-month period, whereas the figures in the Commission's report relate to a twelve-month period. However, unless there is a marked seasonal variation in the type of service complained about, this problem should not lead to too many difficulties when making a comparison. The third problem which was encountered does make the task of comparison more difficult. Eighty-two of the 725 respondents who answered the relevant question (i.e., 11%) claimed that their complaint related to more than one service. In some cases this might be more realistic than the Commission's practice of categorising complaints as relating to a single service, although one can appreciate that a different system of classification might lead to figures that would be more difficult to interpret. In the table below, the problem posed by respondents naming more than one service has been tackled in two ways. Column A gives the relevant figures for the 643 respondents who named a single service. The Column B figures have been obtained by adding to the Column A figures half a point to each relevant service where a respondent mentioned more than one service. For example, fourteen respondents stated

Table 1 SERVICE COMPLAINED ABOUT BY RESPONDENTS

<i>Service</i>	<i>Survey respondents</i>		<i>Commission figures</i>	<i>Difference between</i>
	<i>Column A</i>	<i>Column B</i>	<i>Column C</i>	<i>Columns B & C</i>
Planning	41%	41%	35%	6%
Housing	17%	16%	23%	7%
Education	9%	8%	7%	1%
Highways	8%	8%	6%	2%
Environmental Health	6%	8%	4%	4%
Rating	6%	5%	4%	1%
Social Services	4%	4%	3%	1%
Land	3%	3%	6%	3%
Other Services	8%	7%	12%	5%

that their complaint related to both Planning and Highways. Seven points were then added to the Planning total and seven to the Highways total. The 'Commission figures' referred to in Column C are derived from the third column of Appendix 5 of the English Commission's report for the year ending 31 March 1978, i.e. they relate to all complaints processed in 1977/78.

160 As one might expect, there is a relationship between the social class of the head of household and the type of service complained about:

TABLE 2 SOCIAL CLASS OF HEAD OF HOUSEHOLD AND SERVICES COMPLAINED ABOUT

Service	Complaints from		Percentage of complaints from non-manual households
	Non-manual households	Manual households	
Rating	27	3	90%
Highways	34	9	79%
Other	36	10	78%
Planning	178	51	78%
Education	40	13	76%
Land	12	4	75%
Social Services	15	5	75%
Environmental			
Health	20	11	65%
Housing	39	46	46%

N = 553

Table 2 does not include complaints where respondents stated that their complaint was about more than one service, but adding them in would make little difference to the overall picture, except that some of the distinctiveness of environmental health as a category would be lost. If one adds in complaints which are in part about environmental health, one produces a figure of 70% of environmental health complaints coming from non-manual households.

161 It is apparent that most services lie within a relatively tight band in which 75% to 80% of the complainants come from non-manual households. The main exceptions are housing and rating complaints. No rating complainants came from semi-skilled or unskilled manual households and 58% came from professional and managerial households. The majority of housing complainants came from manual households. Nevertheless, even here the proportion of non-manual complainants was high, with 15% coming from households in Registrar General's Social Class 1 and 20% from Social Class 2. Among complainants about housing from manual households, the largest proportion came from skilled manual households (25%). The median position of education complaints in the table has to be set against the fact that 29% of all education complaints came from households whose head had a terminal education age of 19 or over and only 10% from households where the terminal education age was 15 or less. The comparable figures for all respondents are 21% and 35%.

162 The figures presented in Table 1 showed that the completed questionnaires included an overrepresentation of planning complainants and an underrepresentation of housing complainants. The figures presented in Table 2 showed that planning complainants are preponderantly non-manual while housing complainants are more likely to be manual in origin than any other category of complainants. The clear implication of these figures is that non-response was higher among manual complainants in the sample than among non-manual complainants. One must therefore interpret the figures which follow on the social characteristics of respondents with more than the usual caution. Nevertheless, one should not exaggerate the degree of bias introduced into the data set by differential non-response and the figures are of some value in giving an indication of the social characteristics of those using the Local Ombudsman service.

163 In presenting figures relating to the *age of complainants*, the most reliable procedure is to exclude the small minority of respondents who were not heads of household as including them would tend to exaggerate the age of complainants (given that some heads of household will be significantly older than the complainant, e.g. when the complainant lives with his or her parents).

TABLE 3 AGE OF RESPONDENTS (EXCLUDING NON-HEADS OF HOUSEHOLDS)

Age group		N = 594
Under 25	1% (5)	
23 - 34	8% (49)	
35 - 44	20% (117)	
45 - 54	26% (152)	
55 - 64	24% (143)	
65+	22% (128)	

164 Over one in five of complainants surveyed are over 65 and over seven out of ten are over 45 years of age. Under one in ten of complainants surveyed were under 35. According to the 1976 mid-year estimates, just over 1 in 3 of the male population were over 45 and 1 in 10 were over 65. Our figures are consistent with those reported in the *Commission's Survey* where 32% of respondents were over 60 and 54% were between 40 and 59.

165 *Social class* was measured in the survey in two ways. First, respondents were asked to state the occupation of the head of household and each household head was assigned to one of the Registrar-General's social classes in the usual way. Second, in addition to this 'objective', 'household head' measure, a 'subjective', 'respondent' measure was also employed. Respondents were asked to assign themselves to one of four social groupings which, in the interests of comparability, were the same as those used in the *Commission's Survey*.

TABLE 4 SOCIAL CLASS OF HEADS OF RESPONDENTS' HOUSEHOLDS

RG1, Professional and Managerial	35% (215)
RG2, Intermediate Non-manual	21% (129)
RG3 (NM), Junior Non-manual	16% (97)
RG3(M), Skilled Manual	17% (103)
RG4, Semi-skilled Manual	8% (46)
RG5, Unskilled Manual	3% (21)

N = 611

166 Table 4 shows that over one in three of all complaints in our surveys emanated from households with professional and managerial heads and over three out of five emanated from households with non-manual heads. Although quite a large number of complaints come from households with skilled manual heads (although still far fewer than one would expect given the numbers of such households in the population at large), semi-skilled and unskilled manual households were particularly underrepresented among our respondents. In 1974 around a quarter of all household heads were drawn from these social groupings, but according to our figures they make up only 11% of all complainants.

167 One of the difficulties that arises when one asks respondents to a survey to assign themselves to a social class is the tendency of some respondents to 'inflate' their social status compared with the 'objective' social ranking that would be assigned to them using the Registrar-General's Classification of Occupations. For example, in the survey of rejected complaints, only 56% of those describing themselves as professional and managerial would have been assigned to this category using the Classification of Occupations. 32% would have been assigned to the intermediate non-manual category, 9% to the junior non-manual category and 3% to the skilled manual category. Because of this methodological difficulty, 'objective' social class of head of household has been used as the principal measure of social class throughout this analysis. However, respondents' own perceptions of their social standing are certainly not without relevance and the results are reproduced below.

TABLE 5 SELF-ASSIGNED SOCIAL CLASS OF RESPONDENTS

Professional or managerial	60% (380)
Clerical or non-manual	14% (88)
Skilled manual	21% (130)
Unskilled manual	5% (34)

N = 632

168 These results are somewhat out of line with those in the *Commission's Survey*, where 49% of respondents described themselves as professional or managerial and 33% as skilled manual. However, this difference is in itself interesting as the Commission's study relates to complaints that were initially improperly referred. The different results from the two surveys may suggest that manual workers are less likely than non-manual workers to use the proper procedure for referring a complaint to the Local Ombudsman, i.e. through a councillor.

169 Figures were also obtained about the *terminal education age* of the head of household, i.e. the age at which (s)he completed full-time formal education. As Table 6 shows, the complainants to the Local Ombudsman who replied to our survey contained a high proportion of persons from households where the head of household was well educated. (The table was re-calculated excluding respondents who were not themselves heads of household, but the results did not differ in any significant way).

TABLE 6 TERMINAL EDUCATION AGE OF RESPONDENTS' HEAD OF HOUSEHOLD

Under 15	35% (234)
15 or 16	31% (211)
17 or 18	14% (92)
19 or over	21% (140)

N = 677

170 It is clear, from the evidence we have, that complainants to the Local Ombudsman are older, more likely to be in non-manual (and especially professional and managerial) occupations and better educated than the population as a whole. One's concern about this state of affairs must, however, be tempered with realism. It would be unreasonable to expect complainants to the Local Ombudsman to mirror in their social characteristics the population at large, although the imbalances are arguably larger than should readily be accepted. Nevertheless, one must recognize that the Local Ombudsman service has to operate within the parameters of an existing social system and changing the working arrangements of the Local Ombudsman or experimenting with new publicity initiatives will not alter the overall social context. For example, older people are more likely to use the service because they usually have more time to do so in the sense that they are free of the family commitments and career pressures which often preoccupy younger people. The better-educated and those in the higher social grades are more likely to use the service because they are more confident about their ability to deal with official bodies and are better equipped with relevant skills such as being able to draft a succinct summary of their complaint. Having stressed the importance of recognising the practical limits of what can be done in this area, one should not lose sight of the ideal of a Local Ombudsman service which is as readily available to the unskilled labourer living in Tower Hamlets as it is to a retired professional person living in Worthing. Moreover, as will become apparent later in the analysis, there are features of the operations of the Local Ombudsman service which make it less accessible to some sectors of the population than it might otherwise be.

171 Having made these observations, it must be emphasised that once the more socially disadvantaged members of the population have made contact with the service and brought their complaint to its attention, there is no evidence whatsoever of social bias in the operation of

the service. Indeed, it is clear from our research that the Local Ombudsman service can do a great deal to help such persons when every other channel has failed. Rather than quote statistics, this point can be made much more vividly with a quotation from a questionnaire returned by an unemployed building labourer living in one of the most deprived areas of inner London (for the sake of clarity, spelling mistakes have been corrected and the grammar tidied up):

'I first complained to the Citizens Advice Bureau. Nothing was done and I complained to X Street Law Centre Solicitor . . . Nothing was done, I complained to Councillor Z and nothing was done. I complained to my MP, the Right Hon. (name deleted) and nothing was done . . . I saw a notice in the GLC Information Bureau in Y Road, saying if you receive injustice from the GLC, please write to the Local Ombudsman . . . The investigation was carried out very well and very quickly. I and my wife and child are very pleased with the way in which the investigation was carried out. The Local Ombudsman did a very good job for me and my wife and child . . . (The investigator) worked very hard to investigate my complaint . . . The local council put everything right and last week I received £25 compensation . . . I think that the service offered by the Local Ombudsman is very good and I am very pleased.'

Contacting the council

172 Complaints made to the Commission are, or should have been, first considered by the responsible local authority.* We asked our respondents whom they first raised their complaint with:

TABLE 7 FIRST DESTINATION OF COMPLAINT †

Council office	64% (461)
Councillor	25% (183)
Citizens' Advice Bureau	3% (21)
Solicitor/law centre	3% (24)
Other	5% (37)

N = 726

Although the council office is the first point of contact for most complainants, it was found that complainants from manual households were slightly more likely to make their first contact with a councillor than complainants from non-manual households (29% against 25%).

173 Subsequently, however, councillors became more involved in the handling of complaints once the initial contact had been made,

which is what one would expect. We asked respondents, 'When you made your complaint to the council, did you make it to a councillor, a council employee or both?':

TABLE 8 DESTINATION OF COMPLAINT TO THE COUNCIL

Complaint was made to:	
Councillor	21% (155)
Council employee	30% (220)
Both	48% (283)
Other (water authority etc.)	1% (4)

N = 662

174 These figures are broadly comparable with those of the *Commission's Survey*, except that more of our respondents had complained to a councillor alone which is not a surprising finding from a sample of complainants who had ultimately properly referred their complaints.

175 The action or inaction of the council at this stage of the process of dealing with a complaint is a matter of considerable importance, as a satisfactory system for dealing with complaints against local authorities would ensure that as many as possible were resolved by the authorities themselves. We asked respondents what happened after they had made their complaint to the council:

TABLE 9 RESPONDENTS' VIEW OF COUNCIL RESPONSE TO COMPLAINT

Replies were categorised as follows:

Nothing happened	35% (228)
Correspondence	32% (204)
Meeting with/visit by council official	12% (78)
Councillor helped	9% (55)
Discussed by council committee	7% (48)
Other action taken	4% (24)
M.P. helped	2% (10)

N = 647

176 Thus, over a third of all respondents claimed that nothing happened after they had made their complaint to the local authority. One is, of course, dependent on the veracity of respondents' accounts of events and the category 'nothing happened' could cover both an absence of response and a failure to do anything that satisfied the complainant. Nevertheless, reading through the questionnaires one was struck by the number of respondents who indignantly wrote 'NOTHING!' in the space provided for the answer to this question, but who did not respond with similar indignation to other questions. Yet even if the replies given to this question grossly overestimate the extent of local authority inactivity with regard to the complaint (although our personal interviews did turn up instances where apparently reliable respondents claimed that letters were simply not answered), the fact that so many respondents considered that nothing was done by the local authority about their complaint is both significant and disquieting. However, one should add the important qualification that one is dealing with a group of respondents who complained to the Local Ombudsman, presumably because they were not satisfied with the response to their

* The Commission can, in certain circumstances, consider complaints against water authorities and police authorities. However, these complaints represent such a small proportion of the total number dealt with that it seemed sensible simply to refer to 'local authorities' or 'councils' throughout the analysis.

† Some respondents did not answer every question so the N, which is given for each table may vary from one table to another.

complaint by the local authority. A survey of complainants whose complaint was satisfactory resolved by the responsible local authority might produce a very different picture of the responsiveness of local authorities to complaints.

177 What is clear from the surveys is that the ability of complainants to obtain a positive response from the responsible local authority is in part related to factors such as social class and length of education. Certainly, the personal interviews with a sub-sample of respondents produced numerous instances of the confidence and ability of better educated respondents to obtain access to relevant decision-makers in a way which less educated respondents found more difficult. One simple difference is that better educated respondents are more likely to be aware of how local authorities are organised and the ways in which they function, enabling them to ensure that their complaint is considered by the appropriate person and at a relatively senior level if they consider that to be desirable. In addition to skills acquired through education, simple persistence would seem to be a factor of some importance in eliciting a positive response from a local authority. Such persistence is in part a reflection of personality traits which cannot be properly measured in surveys of the kind being considered here, although the amount of time available to the respondent is also a relevant consideration. Thus, the survey of investigated complaints found that households with retired heads were the most successful in eliciting what has been defined as a positive response from the local authority, although this relationship did not persist when the results from all three surveys were aggregated.

178 Looking at the results from all three surveys, households with non-manual heads were more successful in obtaining a positive response from local authorities than households with manual heads. For every three households with manual heads that obtained a positive response from the local authority, seven such households reported that 'nothing happened'. For non-manual households, 'nothing happened' responses exceeded 'positive action' responses by only a very small margin. Semi-skilled and unskilled manual households found it particularly difficult to secure 'positive action': 'nothing happened' responses outnumbered 'positive action' responses in a ratio of three to one. However, the most successful group in securing a positive response from the local authority were not non-manual households, or even professional and managerial households, but households where the terminal education age of the head of household was 19 or over (i.e., he or she had followed a course of full-time advanced education after leaving school). This was the only category employed in the analysis where 'positive action' responses actually exceeded 'nothing happened' responses (36 to 28).

179 It must be stressed that these results do not mean that local authorities give preferential treatment to groups such as non-manual households, the retired and the well educated or that they

discriminate against manual workers and the less well educated. What the results indicate is the different degrees of difficulty that these social categories encounter in their attempts to get complaints dealt with by a local authority. The results suggest that if you are well educated and in a non-manual occupation, your chances of 'success' in the sense of getting your complaint seriously considered (and discussed, not merely answered) are much greater than if you are working in a manual occupation and left school at the statutory school leaving age. Local authorities are not being accused of a persistent social bias in the way in which they handle complaints. It is simply more difficult for the less well educated and less socially skilled to persist with their complaint in an effective way until they obtain satisfaction from the council concerned.

180 Although the survey evidence supports such a conclusion, it should be pointed out that local authorities may have better established and more systematic procedures for dealing with the kind of complaint, e.g., about housing repairs, more likely to be made by a complainant from a manual background. Where such complaints are not immediately resolved through administrative channels, it may be that councillors in predominantly working class areas are more likely to be approached by their constituents to resolve the complaint. It may also be the case that persons from a non-manual or well educated background have a greater propensity to complain than those from a manual background, i.e. they may be more likely to make 'unjustified' complaints. There is some evidence from the surveys to support such an assertion in that non-manual households made 75% of complaints rejected by the Local Ombudsman, but only 64% of investigated complaints.

181 These important qualifications aside, it would seem evident that the handling of complaints by local authorities is prone to social biases which may to a large degree be unavoidable. These social biases are also present in the working of the Local Ombudsman system in the sense that certain social categories are more likely to use the system than other social categories.

Making the complaint to the Local Ombudsman

182 In our analysis so far we have considered what happens when the complainant first takes his complaint to the local authority. We have also considered the social characteristics of those persons who make use of the Local Ombudsman service. We shall now consider what happens when a complainant, having presumably failed to receive a satisfactory response from his local authority, decides to make contact with the Local Ombudsman. However, before he can do that, he has to be aware that the Local Ombudsman exists and is able to deal with certain kinds of problem.

183 We asked respondents to our surveys how they came to hear about the Local Ombudsman service:

TABLE 10 RESPONDENTS' SOURCE OF INFORMATION ABOUT THE LOCAL OMBUDSMAN

Papers, radio, television	52% (372)
Council or councillor	13% (95)
Friends, relatives, workmates	9% (65)
Citizens Advice Bureau	7% (50)
Member of Parliament	5% (37)
Solicitor	2% (11)
Pressure Group	1% (10)
Library	1% (9)
Consumer Protection	1% (4)
All other sources	9% (65)

N = 718

Clearly, publicity in the mass media is the most important way in which complainants learn about the existence of the Local Ombudsman service. Our figures are broadly consistent with those of the *Commission's Survey*, which found that 54% had learned about the Local Ombudsman through the media and only 11% through a Councillor. Incidentally, 'all other sources' covers two categories of response. Some respondents gave answers such as 'general knowledge', 'own knowledge', 'do you think I am ignorant', etc. Other respondents referred to sources mentioned by at most one or two other respondents, e.g., Army Legal Aid, the police, 'A' level courses, Race Relations Board, local Vicar, the Samaritans and even working as a temporary typist at the Local Ombudsman's office.

184 What is more important than the diversity of sources from which complainants learnt about the Local Ombudsman is the fact that, although the mass media are the most important source for all social groupings, their importance declines as one moves down through the Registrar-General's social categories:

TABLE 11 SOURCE OF INFORMATION ABOUT LOCAL OMBUDSMAN AND SOCIAL CLASS

Source of information	Social class of household				
	RG1	RG2	RG3	RG3	RG4+5
			(NM)	(M)	
Papers, radio, television	62%	55%	51%	45%	42%
Friends, relatives, workmates	7%	5%	12%	12%	8%
Council or councillor	12%	16%	16%	17%	12%
Citizens Advice Bureau	2%	7%	6%	6%	15%
Other sources	12%	18%	16%	21%	24%
	(214)	(128)	(95)	(102)	(67)

N = 606

Apart from the importance of the media as a source for the professional and managerial grouping, the other interesting point to emerge from Table 11 is that some two fifths of the complainants surveyed from semi-skilled and unskilled manual households learnt about the Local Ombudsman either from the Citizens Advice Bureau or some 'other' source (with the Member of Parliament being particularly important for these social categories).

185 The overwhelming majority of complainants had seen the Commission's booklet, *Your Local Ombudsman*:

TABLE 12 RESPONDENTS' AWARENESS OF 'YOUR LOCAL OMBUDSMAN' BOOKLET

Had seen booklet	87% (625)
Had not seen booklet	12% (89)
Can't remember	1% (8)

N = 722

186 Whatever the source of their knowledge of the Local Ombudsman service, it would appear that some complaints take a long time before they find their way to the Local Ombudsman. Respondents were asked when their complaint first arose and when they asked for it to be sent to the Local Ombudsman. By comparing the two answers, the figures reproduced in Table 13 were derived. However, it should be noted that there is some ambiguity about the concept of when a complaint first arose. A problem might arise sometime before it was handled by a local authority in a way giving rise to an allegation of maladministration. Nevertheless, when the delay in referring a complaint to the Local Ombudsman on the part of the complainant is added to the time that is taken by the Ombudsman's office to consider a complaint, it is evident that in many cases a considerable amount of time can elapse before a complaint is finally resolved.

TABLE 13 LENGTH OF TIME BETWEEN COMPLAINT ARISING AND REQUEST FOR REFERRAL

Under 6 months	37% (236)
6 - 11 months	21% (136)
12 - 17 months	14% (90)
18 - 23 months	8% (48)
Over 2 years	20% (128)

187 Although complaints accepted for investigation were less likely to be referred two years or more after they had first arisen than rejected complaints (14% compared with 21%), 38% of complaints accepted for investigation were not referred until over a year after the problem had first arisen - notwithstanding that, as has already been stressed, the alleged act of maladministration may have occurred at a later date than the initial emergence of the problem. In the case of complaints accepted for investigation, it was found that complaints from manual households were referred more quickly than complaints from non-manual households (77% in under a year from manual households as against 50% from non-manual households). However, this tendency did not persist when the results from all three surveys were aggregated. It may be that complainants from non-manual households are more likely to try to exhaust every other channel of complaint before going to the Local Ombudsman, particularly where the complaint has sufficient substance to merit investigation. However, it is difficult to generalise about the reasons why some complaints take so long to be referred to the Local Ombudsman. Sometimes referral to the Ombudsman may be a last act of despair after every other channel has

been exhausted; sometimes the complainant may not learn about the Local Ombudsman until a relatively late stage.

188 Before a complaint can be properly referred, the complainant has to contact a councillor who is a member of the authority concerned. We asked respondents to our surveys whether they had found it easy or difficult to contact a councillor. As Table 14 shows, the vast majority of respondents did not experience any great difficulty in actually getting in touch with a councillor. The minority of respondents who experienced difficulty did not come from any particular social grouping. Often the difficulty was not a systemic one, e.g. the councillor was ill or the complainant had just moved to the area.

TABLE 14 RESPONDENTS' EASE OR DIFFICULTY IN CONTACTING A COUNCILLOR

Easy	79% (562)	N = 711
Difficult	21% (149)	

189 However, it should be emphasised that these figures neither support nor undermine the case for direct access for complainants to the Local Ombudsman. After all, one is dealing with a group of complainants who have managed to overcome the 'hurdle' of going through a councillor. Moreover, just because councillors can be readily contacted does not mean that they are necessarily helpful.

TABLE 15 RESPONDENTS' VIEWS ON THE HELPFULNESS OF COUNCILLORS

Helpful	38% (268)	N = 712
Not helpful	32% (227)	
Helpful to some extent	31% (217)	

Some respondents who selected the 'helpful to some extent' option mentioned that the councillor they contacted was initially helpful, but later lost interest or was reluctant to continue to pursue the complaint after an initial enquiry at the council offices.

190 Having received a properly referred complaint, or having exercised his discretion to accept a complaint not referred through a councillor, the Local Ombudsman then has to decide whether or not to accept the complaint for investigation. It should be noted that in many cases the Ombudsman makes preliminary informal enquiries of the council before deciding whether to launch a full investigation. For example, in 1978-79 Baroness Serota made preliminary informal enquiries into some 55% of the complaints received in her region before deciding whether or not to investigate them formally. She notes, 'In most Ombudsman systems these detailed and often time-consuming enquiries would be recorded as investigations.'

191 Given the existence of this practice of making preliminary enquiries in many cases, it is not surprising that there is often quite a considerable delay before the Local Ombudsman is able to tell the

complainant whether or not the complaint is to be accepted for investigation. We asked our respondents how long it had taken the Local Ombudsman to decide whether or not to accept their complaint for investigation. (This question was not asked in the case of withdrawn complaints).

TABLE 16 TIME TAKEN BY LOCAL OMBUDSMAN TO DECIDE WHETHER OR NOT TO ACCEPT COMPLAINT FOR INVESTIGATION

Under 1 month	29% (180)	N = 617
1 month — under 2 months	27% (168)	
2 months — under 3 months	19% (116)	
Over 3 months	25% (153)	

192 Later in the report the satisfaction of complainants with the speed of decision will be examined. However, it would appear that the time taken to reach a decision is affected to some extent by the type of service about which the complaint has been made. It was decided to examine those complaints where the Local Ombudsman had taken much longer than usual to reach a decision whether or not to investigate, i.e. over 3 months, accounting for approximately a quarter of all respondents whose complaints were rejected or investigated. It was found that most services were grouped around the mean. Rating and housing complaints were the types of complaint least likely to take over three months before a decision whether or not to investigate was reached. However, the most striking finding to emerge from the analysis was the relatively high proportions of social services and education complaints in which a decision whether or not to investigate was not reached within three months of the receipt of the complaint. The probable explanation is that complaints about these services often involve complex and delicate questions of personal welfare which require detailed preliminary enquiries and careful consideration of the results of those enquiries before a decision whether or not to investigate is reached.

TABLE 17 PERCENTAGE OF COMPLAINTS TAKING OVER THREE MONTHS BEFORE DECISION WHETHER TO INVESTIGATE BY SERVICE COMPLAINED ABOUT

Social Services	53% (10)
Education	35% (18)
Other	27% (7)
Environmental Health	25% (8)
Planning	24% (57)
Highways	24% (10)
Land	24% (4)
Housing	21% (17)
Rating	16% (5)

Rejected complaints

193 In 1976/7 and 1977/8, only 20% of properly referred complaints received by the Commission were accepted for investigation leading to a report. We asked respondents whose complaint had not been

accepted for investigation why it was rejected. Unfortunately, a particularly large number of respondents (140) either did not answer this question or answered it in a way which did not permit their reply to be coded accurately. They may have simply mislaid the Commission's letter and been unable to recall its contents. There is no direct evidence that the original letter of explanation could not be readily understood by the complainant. This limitation of the data aside, Table 18 suggests that our sample would appear to be broadly representative of the various reasons for rejection given by the Commission in 1977-78. There would appear to be some overrepresentation of complainants whose complaint was rejected because it arose before 1 April 1974. Some of the personal interviews we conducted indicated that this reason for rejection particularly annoyed some respondents which might make this category of complainants more prone to return their questionnaires as a means of registering their dissatisfaction with this particular limitation on the work of the Local Ombudsman.

194 Our personal interviews did reveal two instances where cases had been re-opened, once after the complainant had been to see the Local Ombudsman and once after the intervention of the complainant's MP. In the former case, there was a finding of injustice and maladministration; in the latter case, there was not.

TABLE 18 REASONS FOR REJECTION

<i>Reason</i>	<i>Our respondents</i>	<i>Commission's figures, 1977/78</i>
No indication of injustice or maladministration	67% (291)	74%
Matter arising before 1 April 1974	11% (49)	6%
Alternative legal remedy	8% (36)	7%
Authority not within jurisdiction or internal school matter	6% (24)	2%
Affecting all/most inhabitants	2% (7)	2%
Right of appeal to minister/tribunal	2% (10)	4%
Personnel matter	1% (6)	1%
Commercial or contractual matter	0.2% (1)	0.3%
Other reasons	2%	4%

N = 434

195 Complaints to the Local Ombudsman have to be submitted in writing. We therefore asked these respondents whose complaint had been rejected whether they had found their complaint a difficult one to put in words on paper.

TABLE 19 WAS YOUR COMPLAINT A DIFFICULT ONE TO PUT IN WORDS ON PAPER?

Yes	41% (232)
No	59% (331)
Can't remember	0.3% (2)

N = 565

196 As one might expect, difficulty in putting the complaint in words on paper was to some extent related to social class, although even 35% of those from professional and managerial households complained

of difficulty in this respect. When the results were examined, it was found that the level of difficulty varied very little among the three non-manual groupings (professional and managerial to junior non-manual); it then increased for skilled manual households; and increased again for semi-skilled and unskilled manual households. In order to bring out these differences, a threefold social class categorisation has been used in Table 20.

TABLE 20 DIFFICULTY IN SUBMITTING WRITTEN COMPLAINT AND SOCIAL CLASS

<i>Difficulty experienced?</i>	<i>Social class of household head</i>		
	<i>Non-Manual</i>	<i>Skilled Manual</i>	<i>Semi- and unskilled manual</i>
Yes	35% (127)	47% (34)	63% (29)
No	64% (224)	53% (38)	37% (17)

N = 469

197 As one complainant observed, 'Anyone without a reasonably good education could not begin to undertake filling in the Form of Complaint to the Ombudsman without a fair amount of help.' In fact, even one in three of complainants from households where the head had a terminal education age of 19 or over found difficulty in putting their complaint in words on paper. This raises the question of whether complainants should be interviewed before a decision whether or not to investigate is made by the Local Ombudsman. Limited resources do not allow for all complainants to be seen before a decision is made although this is increasingly done, and 20% were seen in 1978/79. It is considered that this is particularly helpful where a complicated complaint has to be clarified. Moreover, research undertaken by the Commission shows that if complainants are seen the proportion of complaints investigated arises. In 44 cases where complainants were interviewed before the decision to accept or reject, the interviewer made a different recommendation in 23 cases largely because of new information revealed during the interviews, and except for one case his view was that the complaint should not be rejected but should be investigated or put to the local authority for comment before a decision was made. The eventual outcome was that 6 complaints were accepted for investigation which would probably not have been accepted if the interviews had not been held. (Report of Commission for year ending 31/3/77, p.15).

198 In view of these findings, we asked respondents whose complaint had been rejected whether it would have helped to have been interviewed by a member of the Local Ombudsman's staff. As Table 21 shows, this question produced one of the clearest patterns of response in all three surveys. Nevertheless, it is hardly surprising that such a high proportion should answer 'yes' to this question bearing in mind that complainants would feel that they had everything to gain from an interview and nothing to lose.

TABLE 21 WOULD IT HAVE HELPED TO HAVE BEEN INTERVIEWED BY A MEMBER OF THE LOCAL OMBUDSMAN'S STAFF?

Yes	84% (470)
No	11% (62)
Don't know	5% (30)

N = 562

199 The small minority of respondents who did not think that an interview would have been helpful tended to fall into one of three categories:

- (1) They accepted that their complaint was clearly outside the Local Ombudsman's jurisdiction and therefore considered that an interview would have served little purpose.
- (2) They thought that, as the Ombudsman had insufficient powers to ensure that his recommendations were carried out, there was little point in spending time on an interview.
- (3) As a result of the rejection of their complaint, they had formed the view that the Ombudsman's staff was prejudiced, inefficient, too sympathetic to local authorities etc. and were therefore unwilling to be interviewed.

200 Those respondents who wanted to be interviewed were asked how far they would be prepared to travel and, as Table 22 shows, most of them were willing to travel a considerable distance to be interviewed. It should be noted that the small group of respondents who were unwilling to travel was largely made up of persons suffering from some form of physical disability. Willingness to travel to London or York as against shorter distances was not related in any way to any of the social variables used in the analysis, including age.

TABLE 22 WILLINGNESS OF RESPONDENTS TO TRAVEL FOR INTERVIEW ABOUT THEIR COMPLAINT

Prepared to travel as far as:		
London or York	83% (389)	
Other major centre, over 25 miles	4% (18)	
10 - 24 miles	7% (31)	
Under 10 miles	5% (24)	
Unwilling to travel	2% (7)	N = 469

Investigated complaints

201 We now turn in our analysis from the rejected complaints to those complaints that were accepted for investigation by the Local Ombudsman. We asked those respondents whose complaint had been investigated what they thought about the way in which the investigation had been conducted. Many respondents were highly complimentary about the way in which the investigation was carried out and praised the calibre of the Commission's officers, e.g.:

'Very satisfactorily and fairly. After months and even years of trying to get to the truth and true facts about my case it was an immense relief to find someone who had the powers to do this.'

'I considered that the Local Ombudsman and his staff handled the affair in an extremely thorough way. The investigation took eighteen months, it was complex, but at all times I felt confident with the way the problem was being handled.'

'The investigating officer was very well briefed. We found him easy to talk to and were able to put forward several points which we considered very important. He explained what he had to do and told us who he had to interview. He also checked all the dates and details in our report and visited the site of the complaint.'

'The investigation was meticulously carried out. The staff who saw us were very polite and took great trouble to explain their jobs and responsibilities in the enquiry.'

202 Against this, a much smaller group of respondents expressed general dissatisfaction with the conduct of the investigation, e.g.,

'I was thoroughly disgusted. The Ombudsman's lackey interviewed me, and then took the word of the Council's against mine, he should have arranged to be present at an interview between myself and the council, and then made his report. It stands to reason they couldn't have lied so much with me present.'

203 The replies of respondents to the relevant question were categorised as follows:

TABLE 23 RESPONDENTS' VIEW OF CONDUCT OF INVESTIGATION

General satisfaction	58% (69)	
General dissatisfaction	19% (23)	
Too slow	9% (11)	
Too much concern with Council's viewpoint	6% (7)	
Insufficient changes between draft and final report	3% (4)	
Ombudsman hampered by terms of reference	3% (3)	
Parties should have met	2% (2)	
Other suggestion	1% (1)	N = 120

204 One of the main lessons learnt by the researchers from the personal interviews with a sub-sample of respondents was that of the difficulty and complexity of the tasks faced by the investigators. For example, some complaints are the product of or are entangled with long-running disputes with neighbours, or involve other public authorities such as the nationalised industries.

205 The average time taken by the Local Ombudsman from the decision to investigate to the issue of the report is 29 weeks. The replies given by our respondents to a question about the time between the decision to investigate and the issue of the report are consistent with this figure (under 6 months, 30%; 6-8 months, 35%; 9-11 months, 16%; over 12 months, 19%). The delay involved in resolving some cases must be a cause for concern. One point which emerges from the surveys is that the time taken to investigate a complaint is to some extent related to the social class of the household from which the complaint came. For example, only 23% of complaints from Social Class 1 households took over nine months to resolve, whereas 53% of those from Social Class 5 households took longer than nine months. Although the

contrasts between manual and non-manual households generally are less striking than those between the social extremes, they still persist, as Table 24 shows.

TABLE 24 SOCIAL CLASS AND LENGTH OF INVESTIGATION

<i>Length of investigation</i>	<i>Non-manual households</i>	<i>Manual households</i>	
less than 9 months	68% (47)	57% (21)	N = 106
more than 9 months	32% (22)	42% (16)	

206 It is not, of course, implied that the Local Ombudsman strives to produce reports more quickly for non-manual than for manual complainants, but rather that complainants in the non-manual social grades are more skilled at selecting those facts which are relevant to the investigation and presenting them in a written form which provides a good starting point for the investigator. This contention is supported by the finding that the relationship between the terminal education age of the head of household and the length of the investigation is stronger than that between the social class of the head of household and the length of the investigation. For example, 48% of the complaints raised by households with heads whose terminal education age was 19 or over were dealt with in under six months, compared with 19% of complaints raised by households with heads whose terminal education age was 15 or under. It may be, however, that less socially advantaged households tend to present more complex complaints, something which would not be apparent in our survey findings.

TABLE 25 TERMINAL EDUCATION AGE AND LENGTH OF INVESTIGATION

<i>Length of Investigation</i>	<i>Terminal education age of head of household</i>		
	<i>16 or under</i>	<i>17 or over</i>	
less than 9 months	51% (35)	73% (27)	N = 106
more than 9 months	49% (34)	27% (10)	

207 Sixty-seven per cent of our respondents reported that the investigation had led to a finding of maladministration causing injustice. This figure compares with 63% of actual cases in the period from which the sample was drawn, indicating that in terms of the proportion of cases in which maladministration and injustice was found, our respondents are broadly representative of complainants.

The responses of local authorities to a finding of maladministration and injustice

208 Respondents who had received a finding of maladministration causing injustice were asked what subsequent action had been taken by the local authority complained against. The pattern of responses is reported in Table 26.

209 Although the number of cases in Table 26 in which no action had been taken by the local authority concerned in response to a finding of maladministration causing injustice by the Local Ombudsman is

high, it should be remembered that some of the reports covered by the survey were issued late in 1977 and might not have been acted on by Easter 1978 when the questionnaires were sent out, although action might have been taken since then. Indeed, if the figures given to us by respondents are reported in Table 27 are correct, there is often a considerable delay before remedial action is taken by the local authority.

TABLE 26 NATURE OF REMEDIAL ACTION TAKEN BY LOCAL AUTHORITIES

Remedy — other than financial	31% (25)	N = 82
Remedy — compensation	20% (16)	
Apology	20% (16)	
No action yet taken	31% (25)	

TABLE 27 LENGTH OF TIME BETWEEN ISSUE OF REPORT AND ACTION BY COUNCIL

Action taken before report issued	2% (1)	N = 57
Under 1 month	26% (15)	
Over 1 month and under 3	33% (19)	
Over 3 months and under 6 months	11% (6)	
Over 6 months	9% (5)	
Imprecise answer	19% (11)	

210 Most respondents are not satisfied with the action taken by the local authority after the issue of the report, although it should be remembered that the figures in Table 28 incorporate the twenty-five cases where no action had been taken at the time of the survey, although it might have been taken subsequently.

TABLE 28 SATISFACTION OF RESPONDENTS WITH ACTION TAKEN BY COUNCIL

Satisfied	26% (21)
Not satisfied	74% (61)

211 Respondents who said that they were not satisfied with the action taken by the local authority were asked what they thought the council should do. The answers to this question were not particularly easy to categorise.

TABLE 29 REMEDIAL ACTION REQUIRED BY RESPONDENTS

Specific remedial action	39% (24)
Compensation/reimbursement of fees, expenses etc.	23% (14)
Remarks of a general character not indicating nature of action required	15% (9)
Should act in accordance with Ombudsman's report	7% (4)
Action satisfactory in essence but should have been taken more quickly	3% (2)
Compensation and specific action	3% (2)

Mentioned once: (8%) improve procedures; Council should give reasons for decision; objects to phrase 'ex gratia' in relation to payment; report should not have been discussed in secret; new council officials should be appointed. No answer — one (2%). N = 61.

In Table 29, the category 'specific remedial action', covers answers such as 'connect the disputed septic tank to the sewer in the road', reinstate the footpath by erecting a footbridge', 'the Council should allocate me

a three bedroomed house as promised', 'build a gypsy site', 'remove the porch blocking the light to my sitting room', 'they should have allowed my daughter to extend X School' etc. The category 'remarks of a general character' covers answers such as 'The situation should have been remedied', 'can't answer without being rude' and 'They should have taken notice of my grievance'.

Respondents' views about the Local Ombudsman service

212 This last section of the analysis deals with the views of respondents to all three surveys about the Local Ombudsman service and the ways in which it might be improved. Three main topics will be dealt with: respondents' views about the time taken to process complaints; their priorities for improvements in the service; and their general level of satisfaction with the service, and the main factors influencing that level of satisfaction.

(1) Delay

213 A complainant whose complaint is accepted for investigation generally has to wait a considerable time before he receives the Local Ombudsman's reports. In 1978/9 the average time taken from the receipt of a complaint to completion of the investigation was 43 weeks, compared with 47.6 weeks in the previous year. Nevertheless, as Table 30 shows, most of our respondents were patient about the delay.

TABLE 30 DO YOU THINK THAT YOUR COMPLAINT WAS DEALT WITH BY THE LOCAL OMBUDSMAN TOO QUICKLY, QUICKLY ENOUGH OR TOO SLOWLY? (INVESTIGATED COMPLAINTS)

Too quickly	3% (4)	N = 121
Quickly enough	62% (75)	
Too slowly	35% (42)	

214 As one might expect, there is a relationship between the length of time the investigation by the Local Ombudsman took and respondents' views about whether it was quick enough or too slow (Table 31). Nevertheless, it should be noted that 17% of those whose investigation was dealt with in under six months thought that it was carried out too slowly and 46% of those whose investigation lasted twelve months or more thought that it was dealt with quickly enough. Respondents where the terminal education age of the head of household was 19+ were more likely to complain about slowness (48%, as against 34% for all respondents), but this finding may simply reflect the higher expectations of those with a higher education.

TABLE 31 LENGTH OF INVESTIGATION AND SATISFACTION WITH SPEED OF OMBUDSMAN (INVESTIGATED COMPLAINTS)

Complaint was dealt with	Length of investigation		
	under 9 months	over 9 months	
Quickly enough	71% (54)	50% (19)	N = 114
Too slowly	29% (22)	50% (19)	

215 Although the decision whether or not to accept a complaint for investigation takes much less time than an investigation, respondents whose complaint was rejected were just as likely to complain that the matter had been dealt with too slowly as those respondents who have experienced an investigation. However, while very few respondents in the survey of investigated complaints stated that the matter had been dealt with too quickly, a substantial proportion of respondents whose complaints had been rejected took that view.

TABLE 32 DO YOU THINK THAT THE DECISION NOT TO ACCEPT YOUR COMPLAINT FOR INVESTIGATION BY THE LOCAL OMBUDSMAN WAS MADE TOO QUICKLY, QUICKLY ENOUGH OR TOO SLOWLY? (REJECTED COMPLAINTS)

Too quickly	28% (122)	N = 443
Quickly enough	40% (175)	
Too slowly	33% (146)	

216 Once again, there is a clear relationship between the time taken by the Local Ombudsman to come to a decision and complaints of quickness or slowness. For example, 47% of those respondents complaining that the matter was dealt with too quickly received a reply in under one month. Conversely, 52% of those complaining that the matter was dealt with too slowly did not receive a reply for over three months. Looking at Table 33 in a different way, 43% of those whose complaint had been handled in under a month stated that it had been dealt with too quickly and 64% of those whose complaint was not the subject of a decision for over three months stated that it had been handled too slowly. Up to three months, around 50% of all respondents were satisfied with the speed with which matters were dealt with in so far as they selected the 'quickly enough' option. However, this measure of satisfaction falls away sharply to 20% once three months is passed. Of course, the desirability of reaching a decision speedily has to be balanced against the importance of ensuring that any preliminary enquiries are

TABLE 33 LENGTH OF INVESTIGATION AND SATISFACTION WITH SPEED OF OMBUDSMAN (REJECTED COMPLAINTS)

<i>Time taken</i>		<i>Respondents' views on time taken</i>		
		<i>Too quickly</i>	<i>Quickly enough</i>	<i>Too slowly</i>
Under 1 month	Row %	43%	48%	8%
	Col %	47%	35%	8%
		(53)	(59)	(10)
1 — under 2 months	Row %	23%	50%	27%
	Col %	23%	32%	24%
		(26)	(55)	(30)
2 — under 3 months	Row %	21%	50%	29%
	Col %	13%	21%	16%
		(15)	(36)	(21)
Over 3 months	Row %	16%	20%	64%
	Col %	15%	12%	52%
		(17)	(21)	(66) N = 409

sufficiently thorough. It is also difficult to see why the Local Ombudsman service should be blamed for handling some complaints expeditiously. If a complaint is, for example, clearly outside jurisdiction, the complainant should be told as quickly as possible — as evidently happens.

(2) *Respondents' suggestions for improvements in the service*

217 As one might expect, complainants whose complaints had been investigated had somewhat different priorities for improvements in the service than other complainants and their replies will be examined first.

TABLE 34 IMPROVEMENTS IN LOCAL OMBUDSMAN SERVICE SUGGESTED BY COMPLAINANTS WHOSE COMPLAINT HAD BEEN INVESTIGATED

<i>Suggested Improvement</i>	<i>Mentioned by % of respondents</i>
Local Ombudsman should have power to enforce remedial action by councils	33% (41)
Investigations should be quicker	20% (24)
Local Ombudsman needs more powers, 'more teeth' (nature of additional powers required not specified)	10% (12)
Complainant, council and investigator should all meet together during investigation	9% (11)
More publicity for service	6% (7)
Direct access	4% (5)
More local offices needed	3% (4)
Other suggestions	14% (17)

(N.B. Some respondents made no suggestions and others made more than one suggestion.)

Although 'other suggestions' is a large category, it covers a wide range of suggestions. Among the suggestions mentioned by more than one respondent were: the need for a wider interpretation of maladministration or a more precise definition; the need for assistance to complainants when preparing their complaints for submission; and the abolition of the 1 April 1974 limitation. Also, a number of suggestions were made about the Local Ombudsman's staff — the need for a larger staff; the need for the staff to have more relevant professional expertise at their disposal; and complaints about the local government background of staff and commissioners. In fact, out of 16 investigators employed by the Commission at 1 April 1979, only 6 had a local government background.

218 Respondents were also given an opportunity to make additional comments at the end of the questionnaire. Leaving aside expressions of general satisfaction and dissatisfaction and reiterations of the details of the complaint, the most frequently mentioned suggestion was again that the Local Ombudsman should have power to enforce remedial action by councils (mentioned by 15% of respondents). Eight per cent of respondents complained that the Local Ombudsman's procedures were too bureaucratic or that he was too sympathetic to the viewpoint

of local authorities. However, it was clear that the majority of respondents to the survey of investigated complaints were satisfied with the way in which the Local Ombudsman conducted his investigations and were reasonably satisfied with the speed with which they were conducted. What really worried these respondents is that happens *after* the Local Ombudsman's report has been issued, particularly his lack of powers to force councils to take specific remedial action.

TABLE 35 IMPROVEMENTS IN LOCAL OMBUDSMAN SERVICE SUGGESTED BY COMPLAINANTS WHOSE COMPLAINT WAS REJECTED

<i>Suggested Improvement</i>	<i>Mentioned by % of respondents</i>
More personal contact by/with Local Ombudsman	42% (218)
More power, 'teeth'	14% (72)
Local Ombudsman should have power to enforce remedial action by councils	11% (57)
Direct access	10% (50)
Complainant, council and investigator should all meet together	5% (24)
More local offices	4% (18)
More publicity for service	2% (10)
Quicker investigations	2% (10)
Other suggestions	12% (60)

(N.B. Some respondents made no suggestions and others made more than one suggestion.)

219 As one might expect, the survey of the complainants whose complaint had been rejected produced a rather different pattern of suggestions for improvements in the service than the survey of investigated complaints. The Local Ombudsman's ability to enforce his recommendations was much less prominent in the pattern of replies, although 23% of respondents still referred in one way or another to what they saw as the Local Ombudsman's inadequate powers. As one would expect, quicker investigations — the second most popular improvement in the survey of fully investigated complaints — ranked bottom of the list of suggestions attracting appreciable support from rejected complainants. Once again, 'other suggestions' included a considerable number of suggestions for improvements in the Local Ombudsman's staffing arrangements, but these were of a varied character. Some respondents simply wanted a larger staff: others felt that staff with a local government or civil service background should not be employed; yet others wanted staff with more technical expertise in the fields covered by local government or staff with a legal training. One respondent wanted staff with expertise in the art of interrogation and suggested that ex-police officers and investigative journalists should be recruited for the task. (In fact, two investigators are former police officers and two are former journalists.) The 1 April 1974 limitation was of considerable concern to a small minority of respondents. One of our 'follow up' interviews concerned a case where the complainant had suffered considerable hardship resulting from what, on the face of it,

appeared to be maladministration before 1 April 1974. He was suffering from a particular sense of injustice, given that the Parliamentary Commissioner does not operate a time bar of this kind. However, it must be remembered that there is no parallel in central government for the reorganisation of local government in 1974, and it was not thought appropriate that successor authorities should take on responsibilities for maladministration by predecessor authorities as well as assets. In fact, the Commission rejected more complaints because of the 1 April 1974 limitation in 1978/9 than in the preceding year (99 against 68). Removing this limitation might increase the number of complaints relating to matters arising before April 1974 and investigating such complaints would be at best an onerous burden on the Commission and at worst impossible. Other matters mentioned included the exclusion of personnel questions and the fact that parish councils are not within jurisdiction. The definition of maladministration was also mentioned, as was the need for assistance to complainants in preparing their complaints.

220 However, the major difference between the survey of complainants whose complaint was investigated and the survey of complainants whose complaint was rejected is that nearly four out of ten respondents in the survey of rejected complaints mentioned the lack of personal contact with the Commission. A not untypical comment on this theme was made by a retired bus driver:

'The whole thing is so vague and unreal. You write a complaint in, a thing that not all of us can do. You see no one and then receive an answer that more often than not leaves you more frustrated than ever. I don't think that this is the fault of the Ombudsman but of the system. Still write your complaint in, but allow us to speak as so many can do much better that way.'

221 The lack of personal contact is particularly resented by respondents who are relatively less well educated (terminal education age of head of household being a stronger predictor here than occupational social class).

TABLE 36 TERMINAL EDUCATION AGE OF HEAD OF HOUSEHOLD AND PERSONAL CONTACT AS A SUGGESTED IMPROVEMENT IN THE SERVICE

<i>Terminal education age</i>	<i>Percentage of respondents mentioning need for more personal contact as percentage of respondents making any suggestion</i>
Under 15	49% (60 out of 139)
15 or 16	48% (78 out of 163)
17 or 18	39% (27 out of 69)
19+	27% (30 out of 112)

N = 483

Excluding non-heads of household, i.e. in effect looking at the terminal education age of each respondent, simply serves to sharpen the above figures which then become: under 15, 51%; 15 or 16, 45%; 17 or 18,

36%, 19+, 28%. One of the clearest findings to emerge from the survey of rejected complaints is that more personal contact with the Commission would be appreciated by complainants whose complaint has been rejected, particularly by those complainants who have had less formal education than other complainants.

222 The suggested improvement mentioned most frequently by respondents to all three surveys was the perceived need for the Local Ombudsman to have powers to force local authorities to take specific remedial action (mentioned by 260 respondents). Indeed, if one adds to this total the number of complainants who expressed less specific concern about the Local Ombudsman's lack of powers, a total of 334 respondents suggested that the Local Ombudsman needed additional powers, 46% of all respondents to the three surveys. It should be added that the Local Ombudsman's 'failure' rate, measured in terms of the percentage of injustice reports which did not lead to action by the local authority concerned which satisfied the Local Ombudsman, has been running at a relatively low rate of around 5 per cent a year. Leaving aside the question of personal contact with complainants whose complaints have been rejected, the other improvements which attracted most support from respondents were direct access (mentioned 59 times); quicker investigations (mentioned 35 times); and the suggestion that the complainant, the local authority and the investigator should all meet together during the course of the investigation (mentioned 35 times).

(3) *Levels of satisfaction with the service*

223 As one would expect, respondents whose complaints had been rejected were less satisfied with the service than those respondents whose complaints had been accepted for investigation.

TABLE 37 RESPONDENTS' SATISFACTION WITH THE LOCAL OMBUDSMAN SERVICE

<i>Level of satisfaction</i>	<i>Investigated complaints</i>	<i>Rejected complaints</i>	<i>Withdrawn complaints</i>	<i>All respondents</i>
Very satisfied	34% (42)	5% (30)	67% (18)	13% (90)
Fairly satisfied	29% (35)	14% (77)	15% (4)	17% (116)
Not satisfied	16% (20)	25% (136)	4% (1)	22% (157)
Very dissatisfied	21% (26)	56% (309)	15% (4)	48% (339)

N = 702

The high levels of satisfaction recorded in the case of withdrawn complaints may be attributed to the fact that 77% (23) of these complaints were withdrawn because the local authority concerned took action after the complaint had been made to the Local Ombudsman and in another 10% of cases (3), another person or authority took action which satisfied the complainant. Only 4 complaints were withdrawn because the complainant became fed up with pursuing the complaint.

224 The relatively high levels of dissatisfaction among complainants whose complaint had been rejected and the relatively high levels

of satisfaction among complainants whose complaint had been withdrawn are readily understandable. However, the fact that over a third of respondents to the survey of investigated complaints were still dissatisfied after a report had been issued requires further explanation. In fact, there is a strong relationship between respondents' expressed satisfaction and whether or not injustice and maladministration was found. 98% of those respondents in the survey of investigated complaints who expressed themselves very satisfied had received a finding of injustice and maladministration, whereas 69% of those who expressed themselves very dissatisfied were cases where maladministration and injustice was not found. (Table 38).

TABLE 38 INVESTIGATED COMPLAINTS: RELATIONSHIP BETWEEN RESPONDENTS' LEVEL OF SATISFACTION AND LOCAL OMBUDSMAN'S DECISION

Level of satisfaction of respondents	Was there a finding of maladministration causing injustice?		
		Yes	No
Very satisfied	Row %	98%	2%
	Col %	49%	3%
		(40)	(1)
Fairly satisfied	Row %	71%	29%
	Col %	31%	25%
		(25)	(10)
Not satisfied	Row %	45%	55%
	Col %	11%	28%
		(9)	(11)
Very dissatisfied	Row %	31%	69%
	Col %	10%	45%
		(8)	(18)

N = 122

225 Although the overwhelming majority of those respondents who had expressed themselves very satisfied with the Local Ombudsman service had received findings of maladministration causing injustice and the vast majority of those who expressed themselves very dissatisfied had not received such findings, not all those who did receive findings of maladministration and injustice were satisfied. In fact, a 21% (17) of all respondents receiving findings of maladministration causing injustice nevertheless expressed themselves not satisfied or very dissatisfied. These results may be largely explained in terms of respondents' level of satisfaction with the action taken by the council concerned. All those respondents receiving findings of maladministration and injustice who also said they were satisfied with the remedial action taken by the local authority concerned expressed themselves satisfied or very satisfied with the way in which the Local Ombudsman dealt with their complaint. All 17 respondents who had received findings of maladministration and injustice but nevertheless expressed themselves dissatisfied with the way in which the Local Ombudsman had dealt with their complaint, were also dissatisfied with the remedial action taken by the local authority concerned.

226 Why were these respondents dissatisfied with the action taken by the local authority? In two cases, the council had not taken action but maladministration had been found on relatively minor aspects of the complaint. Of the other 15 cases, the action taken by the council was: Apology, 5 cases; remedial action offered or taken deemed inadequate by complainant, 4 cases; council refused to act up to time of survey, 3 cases; council to revise procedure, 2 cases; delay in investigation made remedial action difficult, 1 case. The respondents who had simply received apologies were particularly resentful as the following quotations show:

'First of all they reported in the local press that the Ombudsman's report was 'very harsh' and that the Ombudsman failed to take proper account of the enforcement procedure. This is how they portrayed their position publicly. The only action they have taken was to send me a letter which I suppose was meant to be an apology but turned out to be restating their position . . . When the Ombudsman has found a council guilty of maladministration they should not be allowed to weaken these findings with unrepentant statements in the local press.'

'They apologised. Great! Is it good enough to apologise?'

'They tendered an apology for their actions at the instigation of the Ombudsman, rather grudgingly.'

227 Eight of these 17 cases were planning complaints. It may be that planning complainants are less likely to be readily satisfied than other complainants because their expectations of a remedy may outrun the realities of the situation. For example, if a house is built out of line with the approved plans, the consequent suffering inflicted on the complainant because a view has been impaired would usually be outweighed by the suffering that would result from demolition. It is not being argued that an apology is necessarily an adequate settlement in such cases, but the complainant may well regard a compensatory payment as an inadequate remedy. In the survey of investigated complainants, it was found 47% of planning complainants were dissatisfied with the Local Ombudsman service compared with 37% of all complainants. On the other hand, 68% of housing complainants were very satisfied. A housing complaint can be relatively easily remedied by such steps as allocating the complainant to a house, transferring him to a different house, executing repairs or changing the complainant's ranking on the waiting list. In relation to planning complaints, it is not always easy to devise a remedy that will satisfy the complainant and will not inflict undue hardship on innocent third parties.

228 Nevertheless, the fact remains, as Table 37 shows, that nearly half of all the complainants we surveyed were very dissatisfied with the way in which the Local Ombudsman service had dealt with their complaint. However, although these results apparently reveal a

very high level of consumer dissatisfaction with the service, they need to be put in a broader perspective. It should be remembered that many complainants would be satisfied by nothing less than a finding in their favour which led to the reversal of a council decision which, although properly taken, happened to displease them (and in some cases probably even that would not suffice). As one respondent commented when asked for his suggestions for improvements in the service, 'The service could be improved by the Ombudsman believing the complainants.' Moreover, the majority of complainants would use the service again if they had another complaint, as Table 39 shows, although some respondents added comments to their answers to this question such as 'What else could I do?' and 'What else is there?'

TABLE 39 WILLINGNESS OF RESPONDENTS TO USE SERVICE AGAIN

Would use service again	55% (398)	
Would not	29% (206)	
Don't know	16% (117)	N = 721

229 One has to be very careful in interpreting the level of dissatisfaction with the service expressed by our complainants. The figure of the 'professional complainant' looms large in the mythology of local government. Undoubtedly, there are some people who are more prone to (or less frightened of) complaining than others and provided that the complaints are soundly based and not used as a means of waging a vendetta against the local authority concerned, such individuals may be helping the local authority by drawing attention to inadequacies and inefficiencies in their services. It must be recognised that some complainants have an unrealistic expectation of what the Local Ombudsman can do, and some display symptoms of mental imbalance or obsession which are not exhibited in matters other than their complaint. As in all matters, a balance has to be drawn. In this case it must be one that will, on the one hand allow elected councillors and qualified officials to deliberate and arrive at decisions which they consider are in the public interest without being inhibited by the fear of unjustified complaints and, on the other, ensure that the individual who suffers injustice as a consequence of maladministration will secure adequate redress.

230 Our research indicates that there are three main obstacles, from the viewpoint of the complainant, in the way of securing a reasonable balance in the operation of the Local Ombudsman system:

(1) Some of the most serious problems arise *before* the complainant makes contact with the Local Ombudsman service in terms of securing an adequate response from the local authority about the complaint; learning about the existence of the Local Ombudsman; and surmounting the direct access hurdle. Our survey does not provide direct evidence on this last point, but the *Commission's Survey* showed that a third of those who went to a councillor gave up at that stage without securing a satisfactory settlement.

(2) The successful operation of the Local Ombudsman service itself is inhibited by a lack of resources. This lack of resources manifests itself in two ways. First, there is often what must be regarded as an unacceptable degree of delay, in particular in investigating a complaint. Although complainants were remarkably tolerant of the degree of delay involved. Only a third of those whose complaints were either investigated or rejected stated that their complaint had been dealt with too slowly, it would surely be desirable if investigations in particular could, where possible, be speeded up. This is not only in the interests of the complainant but also of the local authority. Second, the lack of resources available to the Local Ombudsman service makes it difficult to interview as many complainants as might be desirable before a decision is made whether or not to investigate a complaint. The Commission's research and our research indicates that such interviews might improve the quality of the decision taken; and our own research indicates that such interviews might increase respondents' confidence in the Local Ombudsman system as a service that is responsive to the problems of the individual citizen and not unduly impersonal.

(3) There was widespread concern among the complainants we surveyed about that happened *after* a report was issued, given the absence of enforcement powers. Such concern might appear to be misplaced, given that there are relatively few cases in which a finding of maladministration causing injustice does not lead to action by the local authority concerned. However, it would appear that the absence of an enforcement procedure does undermine the confidence of some complainants in the efficacy of the Local Ombudsman service (although the introduction of such a procedure might diminish the confidence of some authority officers in the service, as is mentioned in a subsequent chapter). Moreover, it is apparent from our research that the statement 'Local Ombudsman satisfied' in relation to remedial action taken by a local authority does not necessarily mean that the complainant is also satisfied. Against this, some complainants are very hard to satisfy and there are dangers in allowing the decision of a democratically elected local authority to be set aside by an appointed official.

231 If there is one general lesson that has emerged from this research, it has been that of the difficulty and importance of the task undertaken by the Local Ombudsman service. Our personal interviews with a sub-sample of respondents revealed instances of the substantial and significant assistance given to many unfortunate individuals by the intervention of the Local Ombudsman. Equally, we met individuals who were disillusioned and disappointed with the Local Ombudsman service. Our research shows that a great deal has been achieved by the Local Ombudsman service in a relatively short span of time, but it also suggests that there is considerable scope for improvement in the operation of the service.

WITHDRAWN COMPLAINTS

232 Forty-five complainants withdrew their complaints during the nine month study period and 30 of these complainants returned the questionnaire which we sent to them. As has already been pointed out, the vast majority (87%) of these complaints were withdrawn because their local council (77%) or some other person or authority (10%) took action which satisfied the complainant. 41% of the complaints (nine) had been withdrawn within three months of their being sent to the Local Ombudsman and another 32% (seven) were withdrawn before six months. However, in three cases the complaint was not withdrawn until between 6 and 11 months after it was first submitted and in another three cases it was over twelve months before the complaint was withdrawn. An example of such a complaint which led to a protracted and considerable involvement on the part of the Local Ombudsman's office is given on p.113 of Baroness Serota's report for 1977-78. Of those cases where action was taken by the council, 91% of respondents thought that action had been taken to deal with the complaint because it had been made to the Local Ombudsman.

233 Housing complaints made up a much larger proportion of withdrawn complaints than any other category of complaint (40% in all) and the impression was gained from the questionnaires that quite a considerable proportion of withdrawn complaints concerned housing matters of a minor character (although not to the person concerned) such as repairs not carried out or properly completed. Forty-one per cent of withdrawn complaints came from manual households and 46 per cent from households where the head of household had a terminal education age of under 15. Although it should be emphasised that the category of withdrawn complaints covers a range of different types of complaint from both socially advantaged and socially disadvantaged complainants, there does seem to be a significant subgroup within the category of housing complaints from less well educated complainants.

234 It would seem that in some cases the mere threat of an investigation by the Local Ombudsman is sufficient to prompt councils to take remedial action, as is illustrated by the following two case studies:

Case A - repair complaint

The complainant was a clerical grade civil servant. He stated: 'We were promised workmen who did not turn up, then when they did they told us the work was outside their field. Every time I phoned the Council I was told the work had been carried out. During the nine months before I went to the Ombudsman, fourteen people visited the flat at various times. When they saw the work had not been done they made all sorts of promises, which once they were outside the flat were promptly forgotten.' After the complaint was taken to the Local Ombudsman, the repair work was carried out and the complainant stated that he had been told this was because he had taken his complaint to the Ombudsman.

Case B - allocation complaint

The complainant was a retired skilled manual worker who obtained the type of flat he wanted after complaining to the Local Ombudsman. He stated,

'The Council offered me a flat in a slum block and I said I was going back to the Ombudsman, they then said that the flats I wanted were all taken, I still said I was going back to the Ombudsman. A month later I was offered where I now live . . . the council treated me like dirt . . . I found out after my complaint that (London Borough) Council does not like the Ombudsman and will act to keep them away . . . I cannot praise the Ombudsman enough. It is good to know they are there and that you get a fair hearing.'

235 Although withdrawn complaints constitute a small proportion of all the complaints dealt with by the Local Ombudsman (only 57 out of 1,962 in 1977-78), in our survey these complainants represented the most satisfied category of clients of the Local Ombudsman service. It may be that there is further scope for some complaints being settled informally without an investigation leading to a report.

9 Survey of Local Authority Officers

The sample

236 A sample of forty local authorities in England was drawn using the procedures described below. Figures relating to the distribution of complaints by type of authority were provided by the Commission for the year 1976–77. Taking the proportion of complaints made in relation to each type of authority as the basis for the sample, the following pattern emerged:

Non-metropolitan districts	19
Metropolitan districts	8
Counties	7
London Boroughs	5
Greater London Council	1
Total	40

237 The following selection procedures were then employed for each authority category:

Non-metropolitan districts – In order to ensure a representative geographical cross-section of authorities, the country was divided into six regional groupings of counties of roughly equivalent population size. Using a random start, a systematic sample of three districts was drawn from each grouping (4 in the case of one grouping which was larger in size).

Metropolitan districts – One authority was chosen at random from each metropolitan county and a further two authorities were selected at random from all the metropolitan counties.

Counties – One metropolitan county was selected at random. Six non-metropolitan counties were selected, one from each of the regional groupings described above, the choice within each grouping being made with the use of a random number table.

London Boroughs – These were selected on the basis of a systematic alphabetical sample proceeding from a random start. The GLC was also included in the sample.

Response rate

238 The response rate for each category of authority was as follows:

Type of authority	Sample Size	Number Interviewed
Non-metropolitan districts	19	14
Metropolitan districts	8	8
Counties	7	6
London Boroughs	5	3
Greater London Council	1	1
	40	32

The overall response rate was 80%. Some non-metropolitan districts declined to participate because they had had little or no contact with the Commission.

The Interviews

239 The interviews were conducted by either Dr Wyn Grant or Mr Robert Haynes between July and December 1978. As is usual in what is termed 'elite interviewing', a questionnaire was not employed. Rather, respondents were notified in advance of a list of seven topics for discussion (sample letter in appendix) which provided an overall structure both for the interview and for this report. However, other topics were also raised during the interviews and these additional matters are dealt with in the report.

240 The initial letter was always sent to the Chief Executive, but the office of the person(s) interviewed varied from authority to authority. An attempt has been made to categorise the offices held by the person(s) interviewed below:

Chief Executive seen alone	7
Chief Executive seen with officer responsible for Ombudsman matters	6
Chief Executive seen with officer from planning staff	2
Deputy Chief Executive	6
Secretary or equivalent	2
Assistant Chief executive or equivalent	3
Officer responsible for Ombudsman matters (e.g., Deputy Secretary, Borough Solicitor)	3
Director of Administration + Chief Planning Officer	1
Director of Administration + officer dealing with Ombudsman matters	1
Chief Executive by correspondence	1
	32

237 Of the 32 interviews, just under half (15) were with Chief Executives (whether or not accompanied by other members of staff); 6 were with Deputy Chief Executives (i.e. two-thirds of the total were either with Chief Executives or their deputies); and another 4 were with Secretaries or Directors of Administration. Chief Executive involvement in Ombudsman matters varies from authority to authority and this largely explains the variations in the pattern of respondents interviewed. The pattern of interviewing shows no tendency for Chief Executives in

smaller authorities to be more willing to be interviewed and we would particularly like to record our appreciation of the considerable amount of time placed at our disposal by the chief executives and other senior officers of county and large city authorities.

The Findings

242 It is sometimes difficult to quantify the results of what are, in effect, extended conversations. Nevertheless, an attempt has been made to quantify findings wherever possible in an attempt to clarify the results of the survey. However, the value of the exercise resides in a general qualitative impression rather than precise quantification.

Thoroughness, fairness and impartiality of the Local Ombudsman's procedures

243 This was the first matter raised at each interview and gave authorities the opportunity to raise a number of matters that were concerning them. The general picture that emerged was that most authorities thought that the Commission was generally thorough, fair and impartial.

244 Twenty-five of the 32 authorities interviewed expressed the view that the Commission's enquiries and investigations were generally thorough. Three thought that they were too thorough in so far as they went into too much detail on relatively minor and trivial points which were not likely to have very much bearing on whether maladministration was found or not. Three authorities thought that the Commission was not thorough and one authority felt unable to express a definite opinion. Although most respondents praised the calibre and sympathetic yet impartial approach of the Commission's investigators to their task, worries were expressed about particular investigators either in terms of their general competence or their ability to cope with investigations which the authorities concerned thought demanded specialist expertise in a particular area of local authority activity.

245 Twenty-seven of the 32 authorities expressed themselves satisfied with the Commission's impartiality (although some made the point that they thought that, if anything, it ought to err on the side of the complainant in the first instance). Leaving aside those authorities which did not express a definite opinion, only two authorities expressed serious reservations about the Commission's impartiality. These two authorities were of a very different type, although both of them had experienced a relatively high number of investigations.

246 Respondents were less certain about the fairness of the Commission, although two-thirds (21 of those interviewed) thought that the Commission was generally fair, with 8 expressing reservations about its fairness and 3 not holding an opinion which could be categorised. Those who expressed worries about the Commission's fairness felt that it did not fully appreciate the constraints under which local government

worked; or that it was attempting to impose on authorities an unrealistic standard of administrative perfection; or that the implementation of its recommendations would place an unfair burden on staff. Among the points made in this connection were:

'The costs resulting from the pursuit of an unrealistically high standard of administration might outweigh the benefits. There had been no attempt to answer the fundamental question: what standard of administration was required?'

(Report of interview with chief executive of non-metropolitan district)

'On the question of fairness both respondents thought that investigators did not fully appreciate the administrative practicalities of local government life, for example time scales, monetary constraints and so on. Sometimes "snap judgements" have to be made and as a consequence it seemed unfair to expect standards of perfection in everyday administration.'

(Report of interview with chief executive and deputy chief planning officer of metropolitan borough)

247 However, these comments represent a minority viewpoint within our sample and may be set against the comments of the chief executive of a city authority with a large Ombudsman caseload:

'The Chief Executive stated that he was quite satisfied that the Commission was very fair. They seemed to know what life was all about, one never felt that one was dealing with people who were not aware of the problems on the ground . . . Draft reports showed that the Commission was very good at marshalling facts as impartially as possible. They were not biased pro-complainant or pro-authority. There was never any partiality in their factual assessment and they had never, in the Chief Executive's experience, drawn a conclusion that the facts didn't support.'

248 It should also be pointed out that a number of authorities told us that when they had been worried about the conduct of a particular investigation or were concerned about a particular point of Commission procedure, they had always received a prompt and helpful response when they had raised the matter with the Local Ombudsman. (One authority, however, accused the Commission of being 'evasive' when it raised points with them.)

249 Our respondents used the discussion on this initial item to raise a number of points which were concerning them. Some of these will be dealt with later at appropriate points in the report, but those that concern the conduct of Commission investigations will be dealt with here. Among the particular points which concerned some authorities were:

(i) The fact that the authority did not know what the complainant had said about them and did not have an opportunity to cross-examine the complainant.

(ii) Worries about damage to an officer's career from a finding of maladministration, particularly given the fact that in small authorities it was evident, and soon became widely known, who 'Officer A or B' was.

(iii) Concern about the fact that complaints sometimes shifted their ground during the investigation. One authority complained that the Commission's assurance to the Representative Body on this problem was not working in practice, as the fact that a new element was being introduced into the investigation was often communicated to a junior officer who might not appreciate the implications for the authority as a whole.

Preliminary enquiries

250 The general picture that emerged on this topic was that this was an aspect of the Commission's procedures which (along with the practice of sending draft reports to authorities for their comments) was particularly appreciated by local authorities and generally seemed to be working well from their point of view. Most authorities seemed to have a clear policy on the kind of reply they provided to the Commission. Although replies varied considerably in their length (e.g., one authority imposing a maximum of two typewritten pages, another usually sending a reply of up to 12 pages), most authorities seemed to give relatively detailed replies for two reasons: (i) to avoid withholding any information which might forestall an investigation; and (ii) to ensure that they were fully prepared if an investigation did take place. One does wonder whether this practice of giving detailed replies on matters which in most cases will not be investigated is in the best interests of either the Commission or the authority. It imposes a considerable burden of work on the authority and it must mean that the Commission receives a large amount of information which must take a considerable time to sift and some of which must inevitably be superfluous. One can understand the wish of authorities to 'play safe' and avoid the additional burden of an investigation wherever possible, but it might be desirable for the Commission to issue more specific guidance to authorities on how much detail is required, both generally and in particular cases.

251 In some cases, the vagueness of particular complaints had led to difficulties. In general, however, respondents were not confused about the kind of reply they should give in response to a preliminary enquiry: as detailed as the response they would give to a formal investigation. There is little uncertainty among authorities how they should respond to preliminary enquiries, but there is a problem about whether this stage of the process has become more formal and time-consuming than it should be.

Direct access

252 The question of whether or not complaints should be referred through councillors is not one that particularly concerns some local authority officers one way or the other. Of those respondents that did express a definite opinion one way or the other, 8 favoured abolition of the councillor filter provided that the authority was always given an opportunity by the Local Ombudsman to try and rectify the matter locally before the start of an investigation. Nine respondents were opposed to direct access and in one case the two officers being interviewed expressed different opinions.

253 Opposition to direct access was usually based on two grounds:

(1) That it would further weaken or usurp the role of the councillor as the representative of his constituent and as someone who was able to take up and attempt to resolve problems with the local authority on behalf of constituents. Two rural authorities particularly stressed the fact that their councillors knew their wards and their electors very well and took the individual complaint resolution aspect of their job very seriously; conversely, there was some evidence from large county and city authorities that councillors were more interested in policy-making than in the individual grievances of their constituents. (This finding is consistent with the extensive literature on councillors' role perceptions which suggests that councillors in rural areas are more likely than those in big cities to adopt roles which place considerable emphasis on dealing with the grievances of individual constituents).

(2) That it would considerably increase the number of complaints made to the Local Ombudsman, particularly by crackpots and cranks. It was argued that the Commission did not have the resources to cope with a large increase in the number of complaints without considerably extending the time taken to reach decisions. On the other hand, if the Commission asked for a considerable increase in its funding to cope with a large workload, there would probably be opposition expressed through the Representative Body. (Similar arguments were advanced in relation to any extension of the Commission's jurisdiction.)

254 Some respondents stressed, as did the chief executive of a county council, 'that the practice of referring complaints through councillors was helpful as long as the authority had a clear practice about what it did to put the matter right at local level'. Even where such procedures existed, they did not always seem to work satisfactorily, either because councillors thought that they could make political capital out of a reference to the Local Ombudsman or because they were alarmed at the prospect of becoming involved in a complaint against the authority or because they had simply forgotten what the correct procedures were. For example, in a large city authority with a

well developed procedure for conducting internal investigations into complaints referred to local councillors for transmission to the Local Ombudsman,

'some councillors saw the authority's procedure as an attempt to keep skeletons hidden in the cupboard... the procedure was not always followed by local councillors, either because they were unaware of the guidance given or because they feel fed up with beating their head against local authority bureaucracy. Some councillors really did not see themselves as part of the local authority and an Ombudsman complaint was an opportunity to demonstrate that they represented the people.' (Report of interview with chief executive).

255 The main argument advanced in favour of direct access was that the councillor filter simply did not work as it was supposed to and placed an unnecessary extra hurdle in the way of the complainant. Over-identification on the part of councillors with the authority appeared to be one problem. The chief executive of a non-metropolitan district in a rural area commented:

'In my experience, the majority of members of the council are reluctant to pass on complaints to the Ombudsman. There is a natural reluctance to do anything which might cause harm or difficulty to the authority. Councillors often come to me in a very worried state when they receive a complaint for transmission to the Ombudsman. There is a widespread reluctance among councillors on the authority to get involved in anything which might lead to trouble.'

The chief executive of a county authority expressed the view that the councillor filter was 'a waste of time'. He explained:

'Councillors don't give any concrete help to complainants... Councillors find it easier to associate with the decision of the Education Committee or the Director of Education than they do with the complainant.'

The officer responsible for Ombudsman complaints in the same authority commented:

'Our philosophy is that part of the councillor's job is to receive complaints and to look into them and we would hope that level of opportunity to resolve is fully explored. It very rarely works like that.'

256 Undoubtedly, there is considerable variation in the way in which councillors deal with complaints and the quality of the advice and help they give to their constituents. Some, to quote one officer, simply act as 'rather embarrassed couriers'; others give a high priority to the resolution of complaints and resent the Ombudsman 'usurping their representative role'. Clear guidance from the authority, repeated at

regular intervals, can do a great deal to ensure that councillors know how they should proceed, but clear guidance cannot by itself overcome the problem of the councillor who is determined to make political capital out of a complaint or who is frightened or worried about doing anything that might have an adverse effect on the authority. It should be noted here that the survey of councillors found that a majority of them favoured the retention of the existing arrangement of referral through a councillor.

Jurisdiction

257 With one or two minor exceptions, the officers interviewed were universally opposed to any extension of the Local Ombudsman's jurisdiction. In some cases, this was simply because officers were either opposed to Ombudsmen or were dubious about whether the benefits resulting from the Commission's existence exceeded the costs it imposed on local government. More specifically, respondents were worried that any extension of jurisdiction would increase the burdens imposed by the existence of the Commission on local government; would stretch even further the Commission's limited resources; or were opposed to particular extensions of jurisdiction. One respondent complained about the way in which the Commission went about justifying extensions of jurisdiction: 'Our main worry about the extension of jurisdiction is that the Commission find a whole area of excluded matters, find one instance with no means of redress which might lead to hardship, then argue from this basis for extending jurisdiction over the whole area.' The only extensions of jurisdiction that were supported by respondents were the investigation of commercial and contractual matters where there was no alternative means of securing redress (by one authority) and the investigation of New Town Development Corporations (by two authorities). In the latter case, it was argued that it was inequitable that the right to approach the Ombudsman should exist for local authority tenants but not for Development Corporation tenants, although they lived in the same local authority area.

258 Some of the Commission's proposals for extension of jurisdiction aroused particular concern among the authorities interviewed. Extension of jurisdiction to any aspect of personnel matters was specifically mentioned as undesirable by seven authorities. The main arguments advanced were that adequate means of redress already existed in this field and that it would involve the Ombudsman in an arena of relationships different from that originally intended. One respondent commented: 'It is difficult to know what the Ombudsman could do even if he was able to intervene. If there was an irregularity in an appointment, would the Commission suggest that the appointment be nullified, What would be the redress?' More generally, respondents were concerned that 'such an extension would go outside the original intention of the Act: the relationship is one between employer and worker, not between the local authority and the consumer of its services.'

259 Five respondents referred with concern to suggestions that the Ombudsman's jurisdiction might be extended to cover internal school matters. Some respondents were worried about the response of the teaching unions; one respondent recalled that an investigation which had involved teachers had met with greater resistance than was normal from staff. A respondent in an area with considerable school discipline problems suggested that this situation might be exacerbated by the intervention of the Ombudsman in internal school matters. More generally, one respondent pointed out that there was considerable ambiguity surrounding authority relationships and the distribution of responsibility in schools and, until this question was resolved, it was difficult to see how the Ombudsman could usefully intervene.

260 Officers from three authorities expressed concern about suggestions that the Local Ombudsman should be given a statutory power to conciliate which they saw as an extension of the Local Ombudsman's responsibilities beyond the original concept in a new and potentially burdensome direction. One authority complained about the Commission's existing procedures in this respect:

'In one case . . . the Commission had suggested that it could play a mediating role. An Assistant Secretary had visited the authority to discuss the matter and had started with the question "How can we help to solve the problem?" The authority took the view that this kind of mediating role was contrary to the Commission's term of reference. They were quite happy with the maladministration side of the Commission's work, but were worried about the introduction of some form of statutory mediation which might have the effect of undermining the authority of the Ombudsman.'

261 Other possible extensions of jurisdiction which were specifically opposed by local authority officers interviewed were:

	<i>Number of authorities mentioning</i>
Commercial and contractual matters	3
Initiating investigations without complaint	2
Commencement of civil proceedings	1
Parish councils	1
Conduct of <i>ad hoc</i> enquiries	1
Passenger transport authority functions	1

262 The general impression that emerged was that authorities considered that the Commission's existing jurisdiction was adequate; indeed, some respondents expressed the view that too many trivial matters were considered by the Local Ombudsman. Any proposals for extensions of jurisdiction would probably be strenuously opposed by local authorities who would seem to generally support the stance of the Representative Body on jurisdictional issues. Indeed, one respondent complained that the Representative Body's strictures were not given sufficient prominence in the Commission's annual report!

Impact on work of authority and staff morale

263 Although some authorities gave estimates of the amount of staff time devoted to particular Ombudsman complaints, they were not able to quantify with any precision the overall impact of dealing with the Commission on the workload of the authority. Any attempt to categorise authorities' replies on the question of whether dealing with Ombudsman enquiries had significantly interfered with the work of the authority must be arbitrary. It should also be remembered that the person interviewed was often the officer responsible for dealing with all Ombudsman matters in the authority and was therefore prone to exaggerate the impact of Commission enquiries on the authority as a whole. A number of authorities pointed out that they treated dealing with the Commission as a necessary and legitimate part of their ordinary work. As one respondent put it, one had to accept nowadays that some of one's time would be written off for complaints machinery. One authority stressed that the burden imposed by the Local Ombudsman was insignificant compared with that imposed by employment legislation. Another respondent made the point that the extra work was well worthwhile since fostering understanding with the public was essential for 'good' local government. Eleven authorities in total thought that the existence of the Ombudsman had significantly interrupted the normal work of the authority compared with 21 who thought that there had been little significant impact on workloads. Authorities who complained about the impact on normal work were not necessarily those who had had a large number of investigations, although smaller non-metropolitan districts which had attracted a relatively large number of complaints were more inclined to state that there had been a significant impact on normal work, particularly at senior officer level. An officer in a large urban authority where one member of the Chief Executive's staff was often employed full time on Ombudsman enquiries pointed out that this did not constitute serious interference, although the same caseload in a small authority might be total interference. Perhaps the most important general point to bear in mind is that any attempt at a cost-benefit analysis of the Local Ombudsman system would have to take account not just of the direct costs, but also of the costs in staff time imposed on individual authorities by preliminary enquiries and investigations.

264 Officers from 5 authorities thought that the existence of the Ombudsman had had an adverse impact on staff morale and one thought that it had had an adverse impact on relations between officers and members. Respondents were particularly worried that Ombudsman reports might lead to a reluctance, particularly on the part of planning staff, to advise the public or that it might be more difficult to delegate responsibility to junior staff who would be more inclined to refer matters 'up the line' in case they were found 'guilty' of maladministration. Some authorities which had had a relatively large number of investigations suggested that, after a while, staff became inured to Commission investigations. One respondent argued that too many findings of maladministration, particularly on trivial matters, devalued

the impact of Local Ombudsman reports. The same respondent argued that the work of the Local Ombudsman had to be seen in the context of a situation where staff in the public service were already coming in for a lot of criticism generally. Also, he felt the relationship on both sides was much better with the District Auditor's staff than with the Commission's staff. The Chief Executive of a large urban authority where findings of maladministration attracted limited press coverage suggested that a small local newspaper might put much more emphasis on such a story. A two-page spread in a local newspaper which everyone read might lead people in the Town Hall to feel that they were being got at. This theme was taken up by a small non-metropolitan district where it was alleged that prominence given by a hostile local press to maladministration findings, particularly editorials in a regional daily, had had the effect of destroying officers' confidence in themselves.

265 The impact of the existence of the Local Ombudsman on local authority staff is perhaps an area in which more 'hard' research is needed. One tentative conclusion that may be drawn from the research is that the impact on staff would seem to be at its greatest in small authorities which have been investigated rather more than usual and which have a local press which places considerable emphasis on maladministration findings; the impact would seem to be less in large authorities which have had relatively few (in relation to their size) investigations or findings of maladministration and have a local press which is not especially interested in Ombudsman reports.

266 One must not disregard the adverse impact that Ombudsman investigations and reports may have had on particular authorities or individual authorities; equally, there is a danger of exaggerating the impact on authority workloads and staff morale and arguing from that position against any changes in the present arrangements.

Complaints code

267 It is perhaps still too early to assess the impact of the complaints code issued by the Commission and the Representative Body. Many of the authorities we interviewed were still considering the matter at the time of the interview. Nevertheless, the general impression we gained was that the majority of authorities were critical of the code of practice drafted by the Commission and the Representative Body. Moreover, only six (i.e., less than a fifth) of the authorities interviewed had taken, or appeared likely to take, significant steps to improve their arrangements for dealing with complaints in response to the Commission/Representative Body document.

268 This general picture conceals a great deal of individual variety. Once again, the information given to us was difficult to categorise without distortion. However, responses may be classified in terms of three subheadings, 'Negative', 'Unsatisfactory' and 'Positive' in relation to authority responses to the code of practice. Of course, it should be

stressed that many authorities would regard the document itself as unsatisfactory and would regard themselves as quite justified in adopting a negative attitude towards it. The adoption of these labels is not meant to imply criticism of any particular local authority or local authorities in general; they are simply an aid to analysis.

'Negative'

269 Eleven authorities may be classified under this heading. Eight of the authorities so classified had no complaints code in the sense of a standardised set of procedures or guidelines for dealing with complaints throughout the authority (allowing for variations in departmental practice in response to operational needs) and, although they had not come to a formal decision on the code of practice, indicated in their replies to us that they were unlikely to introduce standardised procedures for dealing with complaints. The other three authorities were in a similar position, but had already rejected the proposals contained in the code of practice. These 11 authorities advanced a number of reasons for their reluctance to adopt a complaints code and their rejection of the code of practice in particular. It should be stressed that some of these fears were shared by authorities classified under the other subheadings. Four particular worries were mentioned:

(1) Some authorities thought that adoption of the code of practice would lead to an excessive degree of centralisation in the handling of complaints. A report on an interview with officers of a metropolitan borough noted, 'As far as general complaints were concerned the respondents thought it impossible to have a centralised system for the whole authority. It was thought to be far better to allow individual departments to deal with complaints, grumbles and enquiries as they saw fit.' The Chief Executive of a county council commented that those who felt that there was a single, simple method of dealing with complaints didn't realise the difficulties in very large authorities with different degrees of decentralisation between departments.

(2) Some authorities were worried that if they adopted a complaints code, they might then lay themselves open to charges of maladministration if they failed to adhere to the code. They would be creating a whole new area in which they could be found guilty of maladministration.

(3) Some authorities, particularly — but not only — smaller ones, thought that the proposals contained in the code of practice were too rigid, formal or bureaucratic. For example, the chief executive of a non-metropolitan district argued that the proposals were too formal and highly developed for an authority the size of his.

(4) Some authorities were worried about the suggestion in the code of practice that there should be arrangements for keeping records of complaints or queries which could not be immediately resolved. They thought that this could lead to unnecessarily elaborate and costly records systems.

270 It should be emphasised that authorities had not generally failed to give sufficient thought to the question of complaints procedures. Many of the authorities which had decided not to introduce a complaints procedure had clearly devoted a lot of time to considering the problem at senior officer level and had well developed arguments to justify their position. For example, the report on an interview with one county authority, after noting that the respondents thought that the proposals contained in the code of practice were 'quite unacceptable', goes on to record:

'It was stated that failure to comply with a code would constitute maladministration, so in adopting the code the council would be creating a rod for its own back. Some parts of the code were politically naive: for example, it was suggested that the number of complaints would be reduced if the public were told that a service was cut back. As far as publicity was concerned, people with serious complaints had several ways of making their views known. Posters, in effect suggesting "how about a complaint this week?" would create a lot of gratuitous work. The really concerned did find means of complaining... The important point was to encourage staff to have a sensitive feel for the nature of the problem. Lots of rules would encourage staff not to think for themselves... Anything which appeared to increase bureaucratic procedures would not be welcomed by the council.'

'Positive'

271 Ten authorities gave replies which indicated what has been termed a 'positive' approach to the problem. Three authorities already had complaints procedures which appeared to be reasonably comprehensive and which were not being changed in response to the Commission/Representative Body document. Another four authorities also had complaints procedures in existence, but had decided to improve them in various ways in response to suggestions contained in the code of practice. One authority was drawing up a set of procedures when the document had been published and publication had given an added impetus to their efforts. One authority which had not previously had a code gave a reply which indicated that they were likely to adopt one. Another authority had circulated guide notes to councillors and officers based on the code, although they were against a completely centralised system for processing complaints.

'Unsatisfactory'

272 This categorisation covers a more disparate group of replies than the other two subheadings. However, at its core are 8 authorities, 7 of which indicated that they were unlikely to introduce complaints procedures of the kind suggested in the code of practice and one of which had already rejected the code of practice. All 8 authorities, however, already had limited arrangements for dealing with complaints which did not amount to a comprehensive set of procedures. It must

be stressed that quite a generous view has been taken of what constitutes an arrangement for dealing with complaints in relation to these authorities. One authority had confined its arrangements to the creation of a central complaints register which was open to inspection by members. In another case, 'The authority had produced its own code of written guidelines of dealing with complaints from the public and this was confined to such statements as — be frank and open, avoid the appearance of "passing people on" to another officer, etc.' In a county council which was strongly critical of the complaints code, 'An internal memorandum had been circulated advising staff on how to deal with complaints, e.g. the importance of using plain words rather than jargon in explaining matters to the public, stressing that there might be a genuine grievance which should then receive prompt remedial action.'

273 Of the three other authorities categorised under this subheading, two were instances where there was no code and the matter was under discussion with no indication as to the likely outcome. The third case should perhaps be categorised as 'positive' in so far as an authority which had not previously had a complaints code had been stimulated by the publication of the code of practice to introduce new arrangements which were to come into operation 'as soon as the necessary stationery is available'. The central feature of the new arrangements appeared to be the introduction of 'complaint forms for completion by an officer who receives a complaint from a member of the public. The form is in triplicate and pre-carboned — a top copy coloured white, an action copy coloured pink and a copy for records coloured blue which will be retained at an appropriate central control point according to departments involved.' Although the document is not solely concerned with the processing of these forms or related matters such as the effective use of the internal telephone directory, it does place a considerable emphasis on these matters rather than on, say, dealing with the complainant. Certainly, one would not have thought that it was the kind of response the authors of the code of practice hoped to stimulate.

274 It should be stressed that the majority of authorities have developed procedures for dealing with complaints referred to the Commission (i.e., Part 3 of the code of practice). However, while some authorities have admirable procedures for dealing with complaints which do not involve the Commission, such procedures remain 'thin on the ground'. In particular, adequate arrangements for publicising complaints procedures to the public at large seem lacking in the majority of authorities. Only three authorities seemed to be devoting serious attention to this problem, including one metropolitan county which had produced a clearly written publicity leaflet and a rural non-metropolitan district where the Chief Executive had some imaginative ideas about publicity such as putting posters in doctors' surgeries.

275 Having made these points, it should be emphasised that a number of authorities stressed to us the importance of the right general

philosophy or approach at the top of the authority, and the need to communicate this to staff in contact with the public through proper training procedures, as opposed to elaborate and rigid codes of practice. For example, an officer of an authority which attached a high priority to the early and satisfactory resolution of complaints, commented that the important point was that the authority was not simply concerned with responding to complaints when they arose, but with having good relations generally with the public. As far as possible, they should be satisfied at the query stage. If authorities adopted the correct broad philosophy, the need for the Commission would wither away as authorities could put their own houses in order and settle complaints internally. The Commission could then concentrate on matters involving relations between authorities and those where the authority was genuinely uncertain whether it was acting properly.

276 In a similar vein, a respondent in a county authority commented,

'Our approach has been to try and instill in members and officers an attitude of mind towards complaints rather than a whole series of formal procedures, it's too easy to write down a series of rules without changing peoples' attitudes. There is a danger in shunting off complaints to a complaints officer in the Secretariat. I'm not convinced of the need for a formal written code and I haven't detected any enthusiasm among elected members.'

Changes in procedure

277 It is often argued that one of the most beneficial consequences of the creation of a Local Ombudsman system has been the changes in local authority procedures brought about as a result of Commission reports. However, one gets rather a different impression of the scope and importance of such procedural changes when one looks at them through the local authority end of the telescope. For example, a report on one interview notes: 'It was hoped that changes in procedure would ensure that the same thing would not happen again, but the Chief Executive was not confident about this. The system was bound to creak.'

278 Nineteen of the 32 authorities reported changes in procedures resulting from Ombudsman investigations, although in some cases these were what one authority described as 'minor changes, not the introduction of completely new procedures, but the refinement or re-emphasis of existing procedures'. Of specific examples of procedural change cited to us, 7 were in the planning field; three were in housing; two were in education; two related to the hiring of local authority premises; one was in social services; and one concerned improvement grants. A number of authorities mentioned that they did try to learn lessons from Commission reports on the practice of other authorities and it may be that there should be some additional means of disseminating and reinforcing procedural lessons of the kind discussed in the annual reports of the Commissioners. Some authorities told us that they

resented the fact that procedures which they operated in the planning field which went beyond the minimal statutory requirements could lay them open to charges of maladministration and suggested that this could lead to authorities being reluctant to go beyond the strict requirements of the statutes. One authority suggested that the Commission should issue a regular newsletter drawing attention to procedural improvements brought about by its activities which might be applied by other authorities and also discussing and explaining its own procedures.

Enforcement

279 As one might expect, the majority of local authority officers interviewed did not favour the introduction of an enforcement procedure to ensure that local authorities complied with a Commissioner's recommendations. Twenty-two authority officers opposed such an innovation as against 5 who supported it. Three did not express an opinion and in two cases the respondents gave guarded support, in one case arguing that an appeal procedure might provide an opportunity for the authority to reverse the Ombudsman's decision, in the other arguing that an enforcement procedure would have to await a code of administrative behaviour and a proper definition of maladministration.

280 The main arguments advanced against an enforcement procedure were as follows:

(1) Most respondents argued that the members of their authority were usually perfectly willing to comply with any request from the Ombudsman, even if they disagreed with it. Members liked to be on the side of the Ombudsman. One respondent said that he would be much more favourably disposed to an enforcement procedure if the 'failure rate' was significantly higher than the present figure of around five per cent.

(2) An enforcement procedure would represent an interference with the proper exercise of discretion by a democratically elected body and would further undermine the role and status of the elected member.

(3) It would destroy the present generally good working relationship between the Commission and the authorities and would lead authorities to be less open and more cautious in their attitude towards both the Commission and complainants.

(4) It would increase the already considerable delay involved in dealing with complaints which was a source of worry and inconvenience to both the complainant and the authority.

(5) Some decisions made by the Local Ombudsman were wrong or ill-conceived and should not form the basis of an enforcement procedure.

(6) An enforcement procedure based on the notion of maladministration would confer on complainants rights which they did not possess in law.

(7) Particular difficulties would arise in enforcing procedural recommendations (this point was made by some of the respondents who favoured an enforcement procedure).

(8) An enforcement procedure might be used as a device to delay decisions on planning applications.

281 There was general agreement that, if there had to be an enforcement procedure, it would be of a judicial or quasi-judicial character. In particular, there should be an opportunity for the authority, if it so wished, to challenge the Commission's case through a process of cross-examination. Respondents differed in their views about how this might be done, although there was generally little support for involving the Representative Body in the process. Some respondents favoured an adaptation of the Northern Ireland Commissioner for Complaints procedure, whereas others favoured some kind of tribunal system, perhaps analogous to that for appeals against industrial tribunal decisions.

282 One chief executive who favoured an enforcement system argued that in its absence the Local Ombudsman was like an Industrial Tribunal ordering someone's reinstatement but being unable to do anything if they were not reinstated. One of his officers added that the Health and Safety Executive had all sorts of powers that it could use against local authorities. The Chief Executive suggested that the Local Ombudsman could instruct a local authority to take a particular line of action to remedy a grievance. If nothing then happened, the complainant would be able to petition the Minister by writing a simple letter saying that his grievance had not been remedied. The Minister would then proceed by *mandamus*. There might be advantages in making a Minister of the Crown the enforcing agent as he had good legal advice available to him through the Treasury Solicitor. The suggested procedure would allow an aggrieved authority to challenge the Commission in court.

283 One point made by a number of respondents was that if an enforcement procedure was introduced, one likely response from local authorities would be a demand for changes in the Commission's procedures. One chief executive argued,

'From what I know about the experience of others, there would be more concern about the way in which the investigation is carried out. Local authorities might wish to have the opportunity of challenging statements made to the investigator by the complainant. It would be necessary to intrude into the whole of the investigation more legal safeguards. I am not sure that it's desirable, one would end up with the full panoply of legal representation.'

A Deputy Chief Executive commented, 'The introduction of a "legal" element into the complaints process would inevitably complicate matters and could, in certain circumstances, cause an authority to be

more inflexible in its attitude towards "reasonable redress" and "compensation"'. Another respondent said that while the whole procedure remained basically voluntary, it was not worth going to the trouble of having more formalised procedures. At present there was no way of cross-examining complainants. You would either have to have a court type of proceeding during the investigation which would establish facts in depth or a fairly comprehensive court of appeal.

Other matters

284 Data was collected from 17 of the authorities on how decisions were made about Ombudsman reports. What is immediately apparent is that there is no standard procedure for arriving at such decisions; at least 8 different patterns can be distinguished. The most popular arrangement (5 authorities) was for the matter to be discussed first by the service committee or committees concerned which would then make a recommendation for decision by the Policy and Resources Committee (or its equivalent). In two cases, the decision was taken by the Policy and Resources Committee without reference to a service committee, being either a decision taken under delegated powers or a recommendation to the full council depending on the nature of the issues involved. In another three cases, the service committee concerned made a recommendation for decision by the full council. In one case, a special sub-committee of the council reported to the full council. In one case, the decision was taken by the service committee and the General Purposes Committee (although this could be taken as a variant of the most popular pattern described above). In one case, the Policy Committee made a recommendation to full council. In one case, the decision was taken by a special review committee and the service committee concerned. In one case, the decision was taken by the Policy and Resources committee acting under delegated powers. In two cases, the decision was taken either by the service committee concerned acting under delegated powers or by the service committee making a recommendation to the full council, the course taken depending on the nature of the issues involved. The variety of arrangements should not surprise as, given that authorities vary in the extent to which they delegate powers to their committees. In particular, research would seem to indicate that the council meeting plays a far more important role in the decision-making process in nonpartisan rural authorities than it does in highly politicised urban authorities. One generalisation that can be made, however, is that it is relatively unusual for the final decision on the action to be taken on a Commission report to lie with the full council. In only 4 of the 18 cases did the relevant committee recommend an appropriate course of action to the full council, although in another 4 cases, some findings of maladministration would be considered by the council as a whole.

285 We also discussed with respondents their reactions to the term 'maladministration'. It was clear that it was not a popular term,

but equally respondents felt unable to suggest a more suitable alternative. They were also wary of suggestions that it might be possible to distinguish between acts of maladministration in terms of their seriousness, perhaps terming some of them 'mistakes'. One respondent commented that he did not see any merit in the argument that a new word should be devised to replace maladministration: 'whatever you call it, you won't get away from the nastiness of it'. Another respondent expressed the view that the search for a precise definition of maladministration was like looking for the golden fleece. There were certain advantages in having a vague definition.

286. A number of other matters were raised by respondents during the course of the discussions. As has already been mentioned, a number of officers expressed concern about the way in which complaints apparently shifted their ground during the course of investigations and about the fact that they did not know precisely what allegations had been made by the complainant. The officers also complained about the Commission's practice of summarising the complaint made by the complainant, although other authorities complained that there was a lack of precision in the framing of the complaint. Two officers resented the fact that they only received the factual part of the draft decision report and there was some concern expressed about the Local Ombudsman and authorities being dragged into what were essentially disputes between neighbours. One respondent suggested that local authorities should be required by law to publicise the Local Ombudsman through advertisements in local newspapers.

287 Two officers expressed in strong terms their disappointment that the Local Ombudsman was mainly serving the more prosperous and better educated sections of the community. Two respondents from a county authority said that their main worry about the existing arrangements was whether the right people were using the machinery. The Chief Executive of the authority commented that the Local Ombudsman was not being used as a system by the people that one had hoped it might be used by. It was not being used by the poor and illiterate but by the articulate middle class, often employing solicitors. The Deputy Secretary of the same authority commented that all too often the cases where the Commission was assisting were those where there was almost as much might and power on the complainant's side as on the authority's side. In similar vein, a respondent in a non-metropolitan district thought that the big failing of the Commission was that they were not reaching the less articulate part of the population. He was amazed that housing complaints were so few, given the very real personal disadvantage that could be suffered in that area. Instead one got people who were concerned with maintaining the values of their property.

288 Four respondents complained to us about the Commission showing undue sympathy towards complainants, not generally but in particular respects. One respondent in a county authority argued that

it was becoming more and more the Commission's practice to put a complaint into a form which they could accept as within their jurisdiction. Often the Commission's initial response to a complaint seemed to be to almost go out of their way to frame the complaint in a way in which they could take it up. An urban authority complained that the Commission's representatives became too emotionally involved with certain complainants living in difficult conditions which were the product of the economic climate rather than maladministration. The respondent commented, 'one can't avoid the conclusion that they go through things with a fine toothcomb in the hope of finding some little error on which they can pin a finding of maladministration as a means of alleviating these people's position.'

289 Two respondents complained about what they saw as gratuitous comments in reports by a Local Ombudsman. The chief executive of a county council complained that the Local Ombudsman had inserted a gratuitous comment that (the Commissioner) could understand why people were upset at the prospect of (a development). This comment was in his view outside the scope of the enquiry, but had been used ever since as ammunition by the local residents. Letters of this kind left the complainant with the impression that the Local Ombudsman was sorry that it was not possible to find maladministration. The deputy chief executive of another county authority complained:

'The Commission tries to appear helpful to complainants and authorities but the respondent has been aware of a tendency on the part of the Commission to encourage complainants to feel that they have a grievance but that nothing can be done about it, for example by adding comments such as "the authority could have been more helpful" even though no maladministration was found. The press jumps on such comments and gives the impression that the complainant has actually won.'

Conclusions

290 Although senior officers who would like to abolish the Local Ombudsman would appear to be in a minority among their colleagues, any significant extensions in the Local Ombudsman's powers might well lead local authorities to become more vocal about their reservations and worries about some aspects of the Commission's procedures. The Local Ombudsman system as it is at present constituted depends to a considerable extent on the goodwill and cooperation of local authorities. The great majority of authorities accept the Local Ombudsman as a necessary part of the local government system and try to ensure that the Local Ombudsman is given as much cooperation as it needs. As one chief executive commented in correspondence following the interview,

'Whilst local authorities are naturally concerned about the implications of Ombudsman investigations both on staff morale and on public relations generally, it would seem he is here to stay and we

must try to develop a mutually acceptable approach to the problems created by the increasing intrusion of government into all aspects of society.'

291 From time to time the 'cooperative model' does not work in so far as it is necessary for the Local Ombudsman to issue a Second Report. Of particular concern are the small minority of cases where the issue of a Second Report does not lead to an outcome deemed satisfactory by the Local Ombudsman. We correspond with 12 authorities who had not acted as the Local Ombudsman wished on a Second Report to find out their version of that had happened. It is difficult to generalise about the reasons why councils refuse to take action deemed appropriate by the Local Ombudsman after the issue of a Second Report, although in only one of the cases was the authority substantially dissatisfied with the conduct of the investigation. Only one authority appears to have sought advice from a local authority association. Two of the cases, and possibly a third, would have been satisfactorily resolved if the 1978 Local Government Act had been in force at the time that the matter was being dealt with by the authority. In another three cases, the local authority thought that the action that they had taken was adequate and were not disposed to compensate the complainant. Two of these cases raise the question of whether complainants who have taken matters to the Local Ombudsman should be reimbursed in respect of expenses they have incurred in pursuing their complaint. One case involved a highly charged political issue and it should be borne in mind that the Local Ombudsman sometimes has to deal with highly delicate political questions on which feelings run high. One authority thought that they had already taken adequate remedial action and another two were worried about setting costly precedents. Finally, there was a case in which the local authority argued that the Local Ombudsman 'was seeking to substitute his view for the Council's in a matter in which he recognised that the Council had the power to make a decision'. Any enforcement procedure would have to be able to take account of allegations by an authority that the Local Ombudsman was acting *ultra vires* by attempting to interfere with the right of an authority to exercise lawful discretion in a proper manner.

292 The results of our local authority surveys could be interpreted in two ways. On the one hand, they could be seen as emphasising the importance of strengthening the 'cooperative model' through a cautious approach of incremental improvements in the existing arrangements. On the other hand, they could be interpreted as revealing the limitations of a voluntaristic, cooperative model and suggesting the need for comprehensive new legislation to bring about wide-ranging changes. Although it is possible to attempt to steer a middle course, the ultimate choice between a 'cooperative model' and a 'combative model' in terms of relations between the Local Ombudsman and the local authorities cannot be avoided.

PART 2 – THE RESEARCH

10 Survey of Councillors

Response rate

293 This survey attracted a lower response rate than our other surveys (50%). Seven hundred and ninety-three questionnaires were sent out to councillors who had referred the complaints covered by our survey of complainants. The questionnaires were sent to councillors at the offices of their local authority. Nine were returned by the authority concerned on the grounds that the person concerned was no longer a member (although in other cases the questionnaire was forwarded and completed). Nine respondents had died. In eight cases the questionnaire was returned through the post without explanation. Nine councillors stated that they could never remember referring a complaint. Five authorities said that they had never heard of one of the councillors they were sent a questionnaire for. One councillor received two questionnaires as a member of two authorities and completed one. Thus, 41 questionnaires which were not sent to or received by valid respondents have to be deducted from the total. Of the 752 questionnaires sent to and received by valid respondents, 379 (50%) were returned.

294 Three factors seem to have adversely affected the response rate:

(1) The lapse of time between councillors dealing with the complaint and receiving the questionnaire. Undoubtedly, more councillors than we heard about had resigned from the authority or been defeated in an election between 1977 and 1979 and either did not receive the questionnaire or decided not to complete it. Moreover, some councillors who were still members of an authority may have decided not to complete the questionnaire because they could not recall details of the complaint. One councillor wrote to us making this point. The fact that some questionnaires were completed by persons who were no longer councillors does not affect the validity of the results: we were interested in the views of individuals who were councillors at the time that they were involved in handling a complaint.

(2) In general, councillors have less contact with the investigation of a complaint than either complainants or local authority officers. Indeed, some councillors complained about their lack of contact with the investigation. Of course, councillors are considerably involved in some investigations (although not

necessarily the councillor who referred the complaint). For most of our sample, their greatest contact with the process was at the referral stage and after the Commission had issued a report. It is their views on these subjects which are, therefore, of particular interest.

(3) The questionnaires were sent out just before the start of the 1979 general and local election campaign. Even councillors in Greater London, where there were no local elections, were generally deeply involved in the campaign. Indeed a number of councillors apologised for the delay in returning their questionnaires or the brevity of their answers by referring to 'election fever'.

The results analysed

295 Clearly, the replies to this questionnaire have to be treated with more caution than the replies to our other surveys where there were better response rates. However, on some questions the pattern of response was so clear that practically every potential respondent who did not reply would have had to have held an opinion contrary to those who did reply to significantly alter the pattern of results.

296 It should be noted that not all respondents replied to all relevant questions and there will therefore be variations in each question. The first question, which asked respondents how they first became aware of the Commission for Local Administration, produced a pattern of replies which suggests — as one would expect — that the overwhelming majority of councillors learn about the Local Ombudsman through their own authority:

Local authority	64% (241)
Local authority + other source	6% (24)
(All local authority)	70% (265)
Press	14% (52)
'The media', press and television	6% (21)
Television	1% (4)
All other sources	9% (34) N = 376

'All other sources' covers a wide range of answers such as 'through membership of the Race Relations Board' to 'from a fellow member of the World Wildlife Fund committee'. However, most important were: constituents, 5; 'by my own political awareness' etc., 5; work, 4; original legislation, 4; political party source, 4.

297 The overwhelming majority of councillors took up the complaint(s) with their own local authority before referring them to the Commission (the relevant figure includes a small number of cases where the councillor reluctantly referred the complaint straight away at the insistence of the complainant, but launched a simultaneous investigation within the authority):

Took up complaint with authority	79% (295)
Referred straight away	15% (55)
Referred straight away as investigated at earlier stage by local authority	2% (7)
Referred straight away at insistence of complainant	1% (2)
More than one case dealt with, handled differently	3% (10)
Other answer	1% (4) N = 373

298 Where councillors took up complaints with their authority, what ensued in most cases was an investigation by officers of the authority. A considerable number of respondents referred to the existence of standard procedures for processing complaints in their authorities, for example involving referral in the first instance to the Chief Executive or the use of standard forms. A number of councillors stressed that although they were completely satisfied with the results of the investigation undertaken by the officers or with any additional action taken, they felt it was their duty as an elected member to refer the complaint if that was what the constituent wanted.

How complaint was dealt with by authority

Investigated by officers	68% (190)
Investigated by officers and/or discussed by appropriate sub-committee, committee or council	16% (43)
Discussed with officers and chairman of appropriate committee	11% (31)
Other action*	5% (14) N = 278

(* Discussed with committee chairman only, 4; councillor was committee chairman and investigated personally, 4; more than one case handled differently, 4; public meeting called to discuss problem, one. One authority had a special procedure whereby complaints were examined by the Chief Executive and Leader, followed by a meeting with the councillor complaining if necessary.)

299 Most councillors who referred complaints were satisfied with the action taken by the authority, but a significant minority were dissatisfied as well as the complainant. In other words, there are quite a lot of complaints where the councillor thinks that the complaint has a genuine grievance but the councillor's efforts do not bring about a satisfactory solution.

Reason for referral

Councillor was satisfied, but complainant was not	55% (165)
Councillor was dissatisfied with authority's response as well as complainant	27% (80)
More than one case, satisfied in one but not in other(s)	7% (20)
Commission's job to look into complaints	6% (18)
Other answer*	6% (16) N = 299

(* e.g. asked to refer by complainant before matter considered by committee, complaint referred although outside terms of reference to test boundaries of competence, thought investigation might lend weight to public inquiry into matter).

300 The pattern of answers to Question 3 and subsequent questions, which concern the Commission's response to the referred complaint, suggest that there may be some overrepresentation of councillors whose referrals were investigated in the sample, although there may have been some confusion between a preliminary enquiry and an investigation (five councillors said that the complaint was withdrawn and two could not remember what happened). Where a complaint was not accepted for investigation, the majority of respondents were satisfied with the reasons given by the Local Ombudsman for not proceeding for a full investigation, although a few respondents made the point that they thought that the Commissioner had acted correctly but that his terms of reference were too constricted. Of those respondents who had experienced a rejection decision, 83% (142) were satisfied with the reasons given by the Local Ombudsman and 17% (29) were not satisfied (these figures include seven respondents who had other complaints investigated). Not all the 29 respondents who were not satisfied explained why and of those who did there was no common ground for complaint.

301 Turning to those councillors who had experienced an investigation, the overwhelming majority (162, 84%) thought that it was conducted quickly enough. Twenty-eight or 14% thought it had been conducted too slowly, two thought it had been too quick and two gave different answers in relation to different investigations. A number of councillors felt unable to answer the question about the conduct of the investigation, as they had not been sufficiently involved with the investigation to comment on it. Others answered the question, but added remarks such as 'As far as I know.' In all, 143 councillors expressed themselves satisfied with the conduct of the investigation, 4 gave mixed views, and 15 expressed specific criticisms. Four respondents complained that the investigator was too ready to accept the local authority's point of view; three felt that they as councillors should have been involved more; and two thought that the investigator did not really understand the issues involved.

302 Looking at cases where injustice and maladministration was found, 24 respondents reported that the complainant was satisfied with the eventual remedy. Twenty-two of these 24 thought that the complainant ought to have been satisfied, one didn't and one thought that the complainant should not have been satisfied because he should have received compensation. Eighteen respondents reported that the complainant was not satisfied (including one councillor who had two findings of injustice and maladministration). Where the complainant was not satisfied, 9 councillors thought he ought to have been, 7 thought that the complainant was right not to be satisfied and the others didn't know. Three respondents reported that the complainant was partially satisfied, two thinking that this was an understandable reaction and one thinking that he ought to have been completely satisfied. Five councillors didn't know whether the complainant was

satisfied, three of them stating that he ought to have been satisfied, one stating that he ought not to have been and one not knowing. One councillor had had several findings, some complainants being satisfied and others not; another councillor had two findings, with one complainant being satisfied and the other not. There were also 4 cases where the authority had refused to implement the Commissioner's recommendations and the councillor thought that they were wrong in doing so. Leaving aside those cases where both councillor and complainant were satisfied, there is an approximate 50-50 split between cases where the councillor thought the complainant ought to have been satisfied with the outcome and cases where the councillor thought that the complainant was right not to be satisfied.

303 Because of the importance of the question of complainant satisfaction where there has been a finding of maladministration and injustice, it is worth quoting some of the remarks made by councillors on cases where the complainant was not satisfied:

'Nothing would ever satisfy them.'

'There was a mealy-mouthed apology by the Chief Executive and not in public at general council. The compensation was inadequate . . . Often the complainants suffer unwelcome publicity and little account is taken of this.'

'While slight maladministration was found, it did not affect the problem about which the complaint was made. As the subject of the problem was the safety of children and therefore very emotive, and the eventual "solution" to the problem was not accepted by the parents, it is difficult to see how they could have ever felt satisfied, but legally they had no cause for dissatisfaction.'

'Whilst the Council did move an offending temporary classroom from near the property it was replaced by another only slightly further away — after going through the correct planning procedure.'

'Case 1: eventual satisfaction, but much suffering in the meantime. Case 2: satisfaction with monetary compensation — but again a great deal of suffering . . . I think it was reasonable to expect the Commission to act more quickly and effectively. Instead it appeared as a rather laborious pressure group.'

'The complainant thought that the authority should be made to provide a high wall topped with barbed wire and extensive floodlighting on the adjoining estate . . . In my opinion his demands to floodlight the development and provide patrols in the area and 2-metre brick walls topped with barbed wire was somewhat unreasonable.'

304 Respondents were asked whether they felt any sense of conflict as a member of the authority complained against when they referred the complaint to the local Commissioner. Of those councillors

answering the question, an overwhelming 87% (321) reported no sense of conflict as against 13% (50) who did. Among the comments made by councillors who answered 'no' were the following:

'Any councillor wears two hats — (1) as a delegate of the people and (2) as an administrator. These headgears make for occasional headaches, but when in doubt, loyalty to the people must come first since the administration is supposed to be for their benefit.'

'No particular sense of conflict. Local councillors are accustomed to being the channel through which ratepayers complaints are made and there is no possibility of pleasing everyone.'

'No — because by reference through a Member of the Council, one is able to add one's own comments as to whether you feel that the complaint is justified or not against your authority.'

'Conflict is the wrong word. I felt a sense of responsibility to my constituent which conflicted with my personal views but this in no way affected my responsibility as a member.'

'I did not have any sense of conflict rather a sense of duty as a councillor.'

305 The replies to the questionnaires suggested that a sense of conflict was most likely to be felt on highly politicised councils or where the councillor concerned was personally identified with the aspect of the authority's administration that had given rise to the complaint:

'Yes. Particularly as the complaint was against the City Planning Department and I had previously been Chairman of the Planning Committee and consequently worked closely with City Planning Officer.'

'When a local authority is ruled by one party and it is a political party, it is like bringing a case against one's own policies. And if you think your policies are right, how can there be a case of maladministration, (Our authority) was X party 57, Independents 3.'

306 The following comment by a councillor who referred a complaint which led to a finding of injustice and maladministration is of particular interest:

'Most certainly. As the controlling party Group Leader I lost a certain amount of credibility and even support. It has not been forgotten and never will. I was strongly criticised. When the matter finally became a matter of report to the full Council, I was openly criticised and the Chairman of the Council ruled that if I wished to speak he would clear the chamber of all public and officers. An untrue statement had been made in the report, this was quite unfair to me but the Chairman's ruling effectively gagged me. I would have been more than unpopular if I had caused the chamber to be cleared half way through a full Council

meeting. I was given no warning, even as Group Leader, of the Chairman's intentions. I can only conclude this was at the instigation of one or more Chief Officers who wanted no discussion on the matter. They succeeded in this.'

307 The majority of our respondents favoured the retention of the existing system of referral of complaints through a councillor rather than allowing direct access for complainants to the Local Ombudsman:

Through a councillor	66% (240)
Direct access	24% (87)
Give complainant choice	3% (11)
Doesn't matter/no strong feelings either way	2% (8)
Arguments on both sides, unable to make mind up	1% (4)
Other answers	4% (17) N = 367

308 The 'other answers' to this question contain some particularly interesting suggestions. Broadly speaking, the 17 councillors categorised in this way suggested that the existing discretion for the Commissioner to accept complaints direct should be widened, although referral through a councillor would still be the usual route. For example, 5 respondents argued that the Commissioner should be allowed to accept complaints direct, even if a councillor was prepared to refer them, but in such circumstances it would be up to the complainant to provide the Commissioner with satisfactory reasons for taking such a course of action. Three respondents thought that there should be some mechanism for direct referral where the council had conducted its own investigation and this had not satisfied the complainant. Another 4 respondents thought that the present system was basically sound, but there needed to be some additional mechanism to deal with the slothful or unhelpful councillor. Two respondents thought that there should be a time limit for the consideration of the matter by the authority concerned, after which the complainant would be allowed to forward his complaint direct. One respondent felt that complaints concerning the actions of officers should be referred through a councillor but that where the issue was the manner in which a committee decision was taken, there should be direct access. One councillor thought that it should be possible to refer complaints through the Citizens' Advice Bureau as well as through councillors. One councillor thought that the complainant should be allowed to approach the Local Ombudsman direct, but that the Ombudsman should then seek the advice of the local councillor on whether there was any possibility of a local settlement.

309 Those councillors who favoured the present system advanced two main reasons for its retention. Eighty-eight respondents argued that it provided a chance to resolve the problem at the local level, or at least to explain to the complainant more fully the reasons for the decision. Seventy-four respondents argued that direct access would

overload the Commission, particularly with complaints of a frivolous or trivial nature. Some councillors made the point that some complainants tended to 'shoot from the hip', firing the first salvo in inappropriate directions. Nineteen respondents made the point that the present system ensured that they were aware of all the problems arising in their ward and also that possible defects in the authority's procedures were drawn to their attention. Seven respondents argued that the councillor could often help the complainant to prepare his case and five thought that information provided by the councillor could be of assistance to the Ombudsman. Many respondents stressed that they would always refer a complaint, even if they thought that it was not justified, and others pointed out that it was always possible to find a councillor who would refer a complaint even if the ward councillor would not.

310 Specific comments made by respondents who favoured the existing arrangement included the following:

'I think it should be through a councillor. It is important to avoid an excess of frivolous or ill-prepared/ill-informed complaints, and councillors can help to filter these out to some extent. (Our authority has agreed guidelines which are issued to councillors about how to process complaints). It is always possible to find some councillor who will prefer the complaint — so the chance of suppression etc. is negligible. It is desirable that councillors should be aware of grounds for complaint — that is part of what they are for. Complaints should be referred to the authority first so that time and money can be saved and the authority kept on their toes in as non-confrontational a way as possible.'

'My personal view is that reference via a local councillor is a good clearing house for some of the less relevant matters. I would not refuse to send on any case if pressed by the complainant, but where this is suggested I have generally been able to either resolve the matter locally or advise that the case was not a good one and have my advice willingly accepted. The two cases dealt with were sent on my advice and both achieved the expected action.'

'I am anxious that no complaint is lost because of the need to follow a set procedure such as going through a councillor, but on balance I feel that the two advantages of going through a councillor outweigh this disadvantage. The two advantages I see are that the authority will treat the complaint more seriously because the councillor can complain at a higher level and more publicly in committee and if necessary in the local press; and, secondly, the councillor can advise the complainant on the most effective way to make the complaint before he/she completes the form.'

'Through the councillor as this gives the elected member, who may know nothing of the case, an opportunity to look into it and question officers to find out whether similar cases are being dealt with properly.'

'The Ombudsman system was not intended to supplant or to bypass an individual's existing right to approach the authority and/or one of its members . . . to seek explanation and/or redress. It is essential that complaints should only be referred to the Ombudsman through a councillor to ensure that the authority has the opportunity through the intervention of the councillor to seek to resolve by explanation or redress what are fundamentally local issues. To do otherwise is to enhance bureaucracy by diminishing democracy.'

314 Councillors who favoured direct access were generally less likely to give reasons for their preference, simply stating 'direct access' etc. However, one of the more articulate supporters of direct access stated:

'I personally believe that the use of a councillor in this direction is purely another hurdle in the way of the complainant. The Councillor himself, for example, may be afraid of what his colleagues would think of him if he placed a complaint against an authority of which he is a member. It could well, for example, prejudice his position in the group, it could affect his support from his colleagues in seeking chairmanship of committees, and might tempt him to persuade the complainant to withdraw his complaint.'

312 A large number of respondents took up our invitation to make further comments on the operation of the Local Ombudsman system. Sixty-five respondents indicated their general support for the idea, stressed its importance as part of a modern democracy, or praised the way in which the Ombudsman's staff carried out their duties. Forty-one respondents criticised the absence of enforcement powers (although two indicated their opposition to enforcement powers):

'The overriding weakness seems to be that it has no power to enforce any conclusion it arrives at in regard to a complaint.'

'I am convinced that, where the Local Commissioner finds injustice or maladministration, he should be able to enforce appropriate compensation. Watchdogs with rubber teeth are valueless.'

313 Nine respondents complained about limits on the Ombudsman's jurisdiction and eight made general criticisms of the system. Nine complained about the length of time that an investigation took, although one councillor added the comment 'slow but sure'. Seven councillors thought that it was too bureaucratic and remote, 7 thought that there was too much concentration on relatively trivial matters and 7 thought that the publicity arrangements needed improvement. Six councillors were worried about the impact on officers' time and three thought that the cost per complaint processed was high.

314 Among the particular comments made by councillors were the following:

'Too much sympathy is shown to the complainant before even preliminary enquiries are made — they are therefore more disappointed when cases are not investigated, or if investigated found to have no maladministration, than they would have if treated a little more coolly.'

'I believe it needs re-orientating to support councillors and to help them become more effective. In my experience it is in danger of becoming another layer of bureaucracy — slow, remote and only accessible to a dogged few.'

'It seems to concern itself with the minutiae of administration, finding fault in very minor things, while ignoring, apparently, or perhaps not having the power to deal with more important problems.'

'I believe that the Commission has taken on board the role of arbiter between the local authority and the complainant, he is no longer looking for maladministration, but setting himself up as a peacemaker. When I referred the complaint I put in a covering letter stating that I did not agree with the complaint, and I never was asked to see the Commissioner when he came to the local authority.'

'Every local authority has a highly skilled and sometimes over-staffed array of chief officers etc. etc. The "poor little fellow" entering the council house for "his rights" has all these literally against him as they will defend what they have done or advised councillors or others to do. The "fellow" does not often have, and perhaps cannot afford, professional advice and goes away frustrated. Not always but too often, councillors tend to lean towards officers when "the fellow" turns to them. I have been a county borough councillor and now a metro district councillor and metro county councillor for over twenty-five years. In 1966 I advocated a post to be provided by law by every local government authority of "citizens clerk" — a person whom any individual could approach and who would be "on his side". I had to settle for the Local Government Commissioner which to me is better than nothing but is "corrective" when I would have preferred "preventive".'

'It seems to me that the Commission spend an awful lot of time trying to find reasons for not investigating complaints rather than trying to assist persons who feel aggrieved by the actions of some authority or other.'

'A sense of unease about the way evidence is taken and the lack of the normal means to comment on the Commissioner's findings even though the Commissioner's findings are submitted to the

officers on questions of fact. I would prefer a discussion on the conclusions that the investigation is coming to and why.'

'Although the Commission's investigations are indeed thorough, I believe that they do on occasion show a lack of judgment. On more than one occasion, the fact have been correctly ascertained by the Commission, but the conclusions drawn have been wrong. It is unfortunate that at the moment the Housing Department is in a very severe condition and is unable to deal with many individual requests for repairs etc. as quickly as it would like. Every effort is being taken to remedy the situation and it is fair to argue in my view that by and large many tenants have to wait an unacceptably long time for repairs, but those who do wait are not being treated any more unfairly than many tenants. The Ombudsman fails to recognise this distinction and merely concludes that there is maladministration because repairs have taken so long.'

'I wonder whether it could be made more cost effective and streamlined, for example, if before deciding to investigate the Ombudsman were to see the complainant to determine what, if any, issues merited investigation, and then clearly explain what and why he is investigating. At present he does not have to give reasons and on occasions the investigation may appear to be a general "fishing expedition". If he were then able to terminate an investigation if it transpired that there was no substance in the complaint, this would also help to focus everyone's effort where it was really needed. This might also help in cutting down the length of time involved (sometimes over a year) that the full process takes.'

'A balance has to be struck between prompt, efficient, punctilious and fair administration and expensive, supremely correct and slow procedures. Officers looking over their shoulders can rarely be positive and creative.'

315 In general, this survey tends to confirm the impression that emerges from the survey of complainants, i.e. that the two most important stages of the process are before the complaint goes to the Commission and what happens after a report is issued.

APPENDICES

APPENDIX A

LOCAL GOVERNMENT ACT 1974 (as amended) (relevant provisions only)

PART III

LOCAL GOVERNMENT ADMINISTRATION

23. The Commissions for Local Administration.

(1) For the purpose of conducting investigations in accordance with this Part of this Act, there shall be—

- (a) a body of commissioners to be known as the Commission for Local Administration in England, and
- (b) a body consisting of two or more commissioners to be known as the Commission for Local Administration in Wales.

(2) The Parliamentary Commissioner shall be a member of each of the Commissions.

(3) In the following provisions of this Part of this Act the expression 'Local Commissioner' means a person, other than the Parliamentary Commissioner, who is a member of one of the Commissions.

(4) Appointments to the office of Local Commissioner shall be made by Her Majesty on the recommendation of the Secretary of State after consultation with the appropriate representative body, and a person so appointed shall, subject to subsection (6) below, hold office during good behaviour.

(5) Local Commissioners may be appointed to serve either as full-time commissioners or as part-time commissioners.

(6) A Local Commissioner may be relieved of office by Her Majesty at his own request or may be removed from office by Her Majesty on grounds of incapacity or misbehaviour, and shall in any case vacate office on completing the year of service in which he attains the age of sixty-five years.

(7) The Secretary of State shall designate two of the Local Commissioners for England as chairman and vice-chairman respectively of the Commission for Local Administration in England and, in the event of there being more than one Local Commissioner for Wales, shall designate one of them as chairman of the Commission for Local Administration in Wales.

(8) The Commission for Local Administration in England shall divide England into areas and shall provide, in relation to each area, for one or more of the Local Commissioners to be responsible for the area; and where the Commission for Local Administration in Wales consist of more than one Local Commissioner they may, if they think fit, act in a similar way in Wales.

A Local Commissioner may, by virtue of this subsection, be made responsible for more than one area.

(9) It shall be the duty of the Commission for Local Administration in England to ensure that any Local Commissioner made responsible for an area which includes the county of Cornwall is made responsible for an area which also includes the Isles of Scilly.

(10) Each of the Commissions—

- (a) shall make arrangements for Local Commissioners to accept cases for which they are not responsible including, where the other Commission so request, a case arising in the country of that other Commission, and
- (b) shall publish information about the procedures for making complaints under this Part of this Act.

(11) For the year ending on 31st March 1975, and for each subsequent financial year, every Local Commissioner shall prepare a general report on the discharge of his functions and shall submit it to his Commission; and where he has discharged functions at the request of the other Commission he shall prepare a general report on the discharge of those functions and shall submit it to the other Commission.

Any such report shall be submitted to the appropriate Commission not later than two months after the end of the year to which it relates.

(12) The Commissions shall each financial year review the operation of the provisions of this Part of this Act about the investigation of complaints, and shall have power to convey to local authorities (through the appropriate representative body designated under section 24 below), or to government departments, any recommendations or conclusions reached in the course of their reviews.

(13) Schedule 4 to this Act shall have effect as respects the Commissions.

24. Bodies representing authorities to which Part III applies

(1) The Secretary of State shall by order designate bodies to be called respectively 'the representative body for England' and 'the representative body for Wales'.

(2) The said representative bodies shall be bodies appearing to the Secretary of State to represent authorities in England to which this Part of this Act applies, or as the case may be such authorities in Wales.

(3) An order made under subsection (1) above may be varied or revoked by a subsequent order so made, and shall be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(4) For the year ending on 31st March 1975, and for each subsequent financial year, each of the Commissions shall prepare a general report on the discharge of their functions and shall submit it to the appropriate representative body.

(5) The report shall be submitted as soon as may be after the Commission have received the reports for the year from Local Commissioners under section 23(11) above, and each Commission shall submit copies of those reports, together with their own report.

(6) Each representative body shall arrange for the publication of the reports submitted to them under the preceding provisions of this section.

(7) In transmitting to local authorities recommendations or conclusions conveyed by either of the Commissions (in accordance with section 23(12) above) the representative body concerned may make such comments on those recommendations or conclusions as they think appropriate.

(8) Where, in accordance with subsection (6) above, a representative body arrange for the publication of a report submitted to them under subsection (4) above, they may also arrange for the report to be published with an annex containing such comments on the report as they think appropriate.

(9) Without prejudice to the generality of subsection (8) above, comments made by a representative body by virtue of that subsection may relate to particular classes of authorities to which this Part of this Act applies.

(10) Where the Commission for Local Administration in Wales consist of only one Local Commissioner, section 23(11) above and subsection (5) above shall have effect with the necessary modifications.

25. Authorities subject to investigation

(1) This Part of this Act applies to—

- (a) any local authority,
- (b) any joint board the constituent authorities of which are all local authorities,
- (c) any police authority, other than the Secretary of State, and
- (d) any water authority within the meaning of the Water Act 1973.

(2) Her Majesty may by Order in Council provide that this Part of this Act shall also apply, subject to any modifications or exceptions specified in the Order, to any authority specified in the Order, being an authority which is established by or under an Act of Parliament, and which has power to levy a rate, or to issue a precept.

(3) An Order made by virtue of subsection (2) above may be varied or revoked by a subsequent Order so made and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Any reference to an authority to which this Part of this Act applies includes a reference—

- (a) to the members and officers of that authority, and

- (b) to any person or body of persons acting for the authority under section 101 or section 110 of the Local Government Act 1972 (arrangements for discharge of functions by local authorities), or
- (c) any committee mentioned in section 101(9) of the said Act.

26. Matters subject to investigation

(1) Subject to the provisions of this Part of this Act where a written complaint is made by or on behalf of a member of the public who claims to have sustained injustice in consequence of maladministration in connection with action taken by or on behalf of an authority to which this Part of this Act applies, being action taken in the exercise of administrative functions of that authority, a Local Commissioner may investigate that complaint.

(2) A complaint shall not be entertained under this Part of this Act unless—

- (a) it is made in writing to a member of the authority, or of any other authority concerned, specifying the action alleged to constitute maladministration, and
- (b) it is referred to the Local Commissioner, with the consent of the person aggrieved, or of a person acting on his behalf, by that member, or any other person who is a member of any authority concerned, with a request to investigate the complaint.

(3) If the Local Commissioner is satisfied that any member of any authority concerned has been requested to refer the complaint to a Local Commissioner, and has not done so, the Local Commissioner may, if he thinks fit, dispense with the requirements in subsection (2)(b) above.

(4) A complaint shall not be entertained unless it was made to a member of any authority concerned within twelve months from the day on which the person aggrieved first had notice of the matters alleged in the complaint, but a Local Commissioner may conduct an investigation pursuant to a complaint not made within that period if he considers that there are special circumstances which make it proper to do so.

(5) Before proceeding to investigate a complaint, a Local Commissioner shall satisfy himself that the complaint has been brought, by or on behalf of the person aggrieved, to the notice of the authority to which the complaint relates and that that authority has been afforded a reasonable opportunity to investigate, and reply to, the complaint.

(6) A Local Commissioner shall not conduct an investigation under this Part of this Act in respect of any of the following matters, that is to say,—

- (a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any enactment;
- (b) any action in respect of which the person aggrieved has or had a right of appeal to a Minister of the Crown; or

- (c) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:

Provided that a Local Commissioner may conduct an investigation notwithstanding the existence of such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect the person aggrieved to resort or have resorted to it.

(7) A Local Commissioner shall not conduct an investigation in respect of any action which in his opinion affects all or most of the inhabitants in the area of the authority concerned.

(8) Without prejudice to the preceding provisions of this section, a Local Commissioner shall not conduct an investigation under this Part of this Act in respect of any such action or matter as is described in Schedule 5 to this Act.

(9) Her Majesty may by Order in Council amend the said Schedule 5 so as to exclude from the provisions of that Schedule such actions or matters as may be described in the Order; and any Order made by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(10) In determining whether to initiate, continue or discontinue an investigation, a Local Commissioner shall, subject to the preceding provisions of this section, act at discretion; and any question whether a complaint is duly made under this Part of this Act shall be determined by the Local Commissioner.

(11) In this section references to a person aggrieved include references to his personal representatives.

(12) A complaint shall not be entertained under this Part of this Act if so far as it is in respect of anything done before 1st April 1974, or in respect of any default or alleged default first arising before that date.

27. Provisions relating to complaints

(1) A complaint under this Part of this Act may be made by any individual, or by any body or persons whether incorporated or not, not being—

- (a) a local authority or other authority or body constituted for purposes of the public service or of local government, or for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking;
- (b) any other authority or body whose members are appointed by Her Majesty or any Minister of the Crown or government department, or whose revenues consist wholly or mainly of moneys provided by Parliament.

(2) Where the person by whom a complaint might have been made under the preceding provisions of this Part of this Act has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or by some body or individual suitable to represent him; but except as aforesaid a

complaint shall not be entertained under this Part of this Act unless made by the person aggrieved himself.

28. Procedure in respect of investigations

(1) Where a Local Commissioner proposes to conduct an investigation pursuant to a complaint, he shall afford to the authority concerned, and to any person who is alleged in the complaint to have taken or authorised the action complained of, an opportunity to comment on any allegations contained in the complaint.

(2) Every such investigation shall be conducted in private, but except as aforesaid the procedure for conducting an investigation shall be such as the Local Commissioner considers appropriate in the circumstances of the case; and without prejudice to the generality of the preceding provision the Local Commissioner may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and may determine whether any person may be represented (by counsel or solicitor or otherwise) in the investigation.

(3) The Local Commissioner may, if he thinks fit, pay to the person by whom the complaint was made, and to any other person who attends or furnishes information for the purposes of an investigation under this Part of this Act—

- (a) sums in respect of the expenses properly incurred by them;
- (b) allowances by way of compensation for the loss of their time,

in accordance with such scales and subject to such conditions as may be determined by the Minister for the Civil Service.

(4) The conduct of an investigation under this Part of this Act shall not affect any action taken by the authority concerned, or any power or duty of that authority to take further action with respect to any matters subject to the investigation.

29. Investigations: further provisions

(1) For the purposes of an investigation under this Part of this Act a Local Commissioner may require any member or officer of the authority concerned, or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation, to furnish any such information or produce any such documents.

(2) For the purposes of any such investigation a Local Commissioner shall have the same powers as the High Court in respect of the attendance and examination of witnesses, and in respect of the production of documents.

(3) A Local Commissioner may, under subsection (1) above, require any person to furnish information concerning communications between the authority concerned and any Government department, or to produce any correspondence or other documents forming part of any such written communications.

(4) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in Her

Majesty's service, whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information in accordance with subsection (3) above; and where that subsection applies the Crown shall not be entitled to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(5) Nothing in subsection (1) or subsection (3) above affects—

- (a) the restriction, imposed by section 11(2) of the Parliamentary Commissioner Act 1967, on the disclosure of information by the Parliamentary Commissioner or his officers; or
- (b) the restriction, imposed by that section (as applied by section 36 of the National Health Service Reorganisation Act 1973), on the disclosure of information by the Health Service Commissioner for England or the Health Service Commissioner for Wales, or by their officers.

(6) To assist him in any investigation, a Local Commissioner may obtain advice from any person who in his opinion is qualified to give it and may pay to any such person such fees or allowances as he may determine with the approval of the Minister for the Civil Service.

(7) Subject to subsection (4) above, no person shall be compelled for the purposes of an investigation under this Part of this Act to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court.

(8) If any person without lawful excuse obstructs a Local Commissioner in the performance of his functions under this Part of this Act, or any officer of the Commission assisting in the performance of those functions, or is guilty of any act or omission in relation to an investigation under this Part of this Act which, if that investigation were a proceeding in the High Court, would constitute contempt of court, the Local Commissioner may certify the offence to the High Court.

(9) Where an offence is so certified, the High Court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, deal with him in any manner in which the High Court could deal with him if he had committed the like offence in relation to the High Court.

(10) Nothing in subsection (8) above shall be construed as applying to the taking of any such action as is mentioned in section 28(4) above.

30. Reports on investigations

(1) In any case where a Local Commissioner conducts an investigation, or decides not to conduct an investigation, he shall send a report of the results of the investigation, or as the case may be a statement of his reasons for not conducting an investigation—

- (a) to the person, if any, who referred the complaint to the Local Commissioner in accordance with section 26(2) above, and
- (b) to the complainant, and

- (c) to the authority concerned, and to any other authority or person who is alleged in the complaint to have taken or authorised the action complained of.

(2) Where the complaint was referred by a person who was a member of an authority but who has since ceased to be a member of that authority, the report or statement shall be sent to the chairman, or, as the case may be, mayor of that authority.

(3) Apart from identifying the authority or authorities concerned, the report shall not—

- (a) mention the name of any person, or
- (b) contain any particulars which, in the opinion of the Local Commissioner, are likely to identify any person and can be omitted without impairing the effectiveness of the report,

unless, after taking into account the public interest as well as the interests of the complainant and of persons other than the complainant, the Local Commissioner considers it necessary to mention the name of that person or to include in the report any such particulars.

(4) Subject to the provisions of subsection (7) below, the authority concerned shall for a period of three weeks make copies of the report available for inspection by the public without charge at all reasonable hours at one or more of their offices : and any person shall be entitled to take copies of, or extracts from, the report when so made available.

(5) Not later than one week after the report is received by the authority concerned, the proper officer of the authority shall give public notice, by advertisement in newspapers and such other ways as appear to him appropriate, that the report will be available for inspection as provided by subsection (4) above, and shall specify the date, being a date after the giving of the public notice, from which the period of three weeks will begin.

(6) If a person having the custody of a report made available for inspection as provided by subsection (4) above obstructs any person seeking to inspect the report, or to make a copy of, or extract from, the report, he shall be liable on summary conviction to a fine not exceeding £50.

(7) The Local Commissioner may, if he thinks fit after taking into account the public interest as well as the interests of the complainant and of persons other than the complainant, direct that a report specified in the direction shall not be subject to the provisions of subsections (4) and (5) above about its publication.

31. Report on investigations: further provisions

(1) If in the opinion of the Local Commissioner, as set out in the report, injustice has been caused to the person aggrieved in consequence of maladministration, the report shall be laid before the authority concerned, and it shall be the duty of that authority to consider the report,

and to notify the Local Commissioner of the action which the authority have taken, or propose to take.

(2) If the Local Commissioner—

- (a) does not receive any such notification within a reasonable time; or
- (b) is not satisfied with the action which the authority concerned have taken; or
- (c) does not within a reasonable time receive confirmation from the authority concerned that they have taken action, as proposed, to the satisfaction of the Local Commissioner,

he shall make a further report setting out those facts; and section 30 above shall apply, with any necessary modifications, to that further report.

[(3) In any case where—

- (a) a report is laid before an authority under subsection (1) above, and
- (b) on consideration of the report, it appears to the authority that a payment should be made to, or some other benefit should be provided for, a person who has suffered injustice in consequence of maladministration referred to in the report,

the authority may incur such expenditure as appears to them to be appropriate in making such a payment or providing such a benefit.']*

32. Law of defamation, and disclosure of information

(1) For the purposes of the law of defamation, any such publication as is hereinafter mentioned shall be absolutely privileged, that is to say—

- (a) the publication of any matter in communications between a member of an authority and a Local Commissioner, or any officer of either Commission, for the purposes of this Part of this Act;
- (b) the publication of any matter by a Local Commissioner or by any officer of either Commission, in communicating with a complainant for the purposes of this Part of this Act;
- (c) the publication of any matter in preparing, making and sending a report or statement in accordance with section 30 or section 31 above, or, subject to section 30(7) above, in making a report available to the public;
- (d) the publication of any matter contained in a report by a Local Commissioner which has been made available to the public, being publication by inclusion in a report made or published under section 24 above.

* The provisions in parentheses were added by the Local Government Act 1978.

(2) Information obtained by a Local Commissioner, or any officer of either Commission, in the course of or for the purposes of an investigation under this Part of this Act shall not be disclosed except—

- (a) for the purposes of the investigation and of any report to be made under section 30 or section 31 above; or
- (b) for the purposes of any proceedings for an offence under the Official Secrets Acts 1911 to 1939 alleged to have been committed in respect of information obtained, by virtue of this Part of this Act, by a Local Commissioner or by an officer of either Commission or for an offence of perjury alleged to have been committed in the course of an investigation under this Part of this Act for the purposes of an inquiry with a view to the taking of such proceedings, or
- (c) for the purpose of any proceedings under section 29(9) above,

and a Local Commissioner and the officers of his Commission shall not be called upon to give evidence in any proceedings (other than proceedings within paragraph (b) or (c) above) of matters coming to his or their knowledge in the course of an investigation under this Part of this Act.

(3) A Minister of the Crown or any of the authorities mentioned in section 25(1) above may give notice in writing to a Local Commissioner with respect to any document or information specified in the notice, or any class of documents or information so specified, that in the opinion of the Minister, or as the case may be of the authority, the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest: and where such a notice is given nothing in this Part of this Act shall be construed as authorising or requiring any person to communicate to any other person, or for any purpose, any document or information specified in the notice, or any document or information of a class so specified:

Provided that a notice given under this subsection by any authority may be discharged by the Secretary of State.

(4) Nothing in subsection (3) above shall affect the obligations imposed by subsections (3) and (4) of section 29 above.

(5) Where information is disclosed in accordance with section 29(3) above, being information which is derived from a communication from a government department, and which has not been made public, a Local Commissioner shall not without the written consent of an officer of the government department make a report which includes all or any of that information unless he has given the department not less than one month's notice in writing of his intention.

(6) The provisions of this section shall apply to the Commissioners of Customs and Excise and Commissioners of Inland Revenue as they apply to a Minister of the Crown.

33. Consultations between Local Commissioner, the Parliamentary Commissioner and the Health Service Commissioners

(1) If, at any stage in the course of conducting an investigation under this Part of this Act, a Local Commissioner forms the opinion that the

complaint relates partly to a matter which could be the subject of an investigation—

- (a) by the Parliamentary Commissioner, in accordance with section 5 of the Act of 1967, or
- (b) by the Health Service Commissioner for England or the Health Service Commissioner for Wales, in accordance with section 34 of the Act of 1973,

he shall consult with the appropriate Commissioner about the complaint and, if he considers it necessary, inform the person initiating the complaint under this Part of this Act of the steps necessary to initiate a complaint under the Act of 1967 or under Part III of the Act of 1973, as the case may be.

(2) Where, by virtue of subsection (1) above, a Local Commissioner consults the Parliamentary Commissioner or one of the Health Service Commissioners in relation to a complaint under this Part of this Act, he may consult that Commissioner about any matter relating to the complaint, including—

- (a) the conduct of any investigation into the complaint, and
- (b) the form, content and publication of any report of the results of such an investigation.

(3) If, at any stage in the course of conducting an investigation under—

- (a) the Act of 1967, or
- (b) Part III of the Act of 1973,

the Commissioner conducting the investigation forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation under this Part of this Act, he shall consult with the appropriate Local Commissioner about the complaint and, if he considers it necessary, inform the person initiating the complaint under the Act of 1967 or Part III of the Act of 1973, as the case may be, of the steps necessary to initiate a complaint under this Part of this Act.

(4) Where, by virtue of subsection (3) above, a Local Commissioner is consulted about a complaint under the Act of 1967 or Part III of the Act of 1973, subsection (2) above shall apply (with the necessary modifications) as it applies in relation to consultations held by virtue of subsection (1) above.

(5) Nothing in section 11(2) of the Act of 1967, in that section as applied by section 36 of the Act of 1973, or in section 32(2) of this Act (restrictions of disclosure of information) shall apply in relation to the disclosure of information by any of the Commissioners mentioned in this section, or by any of their officers, in the course of consultations held in accordance with this section.

(6) In this section the 'Act of 1967' means the Parliamentary

Commissioner Act 1967 and the 'Act of 1973' means the National Health Service Reorganisation Act 1973.

34. Interpretation of Part III

(1) In this Part of this Act, unless the context otherwise requires—
'action' includes failure to act, and other expressions connoting action shall be construed accordingly,

'the Commissions' means the Commission for Local Administration in England and the Commission for Local Administration in Wales.

'local authority' means a county council, the Greater London Council, a district council, a London borough council, the Common Council of the City of London, or the Council of the Isles of Scilly.

'member', in relation to a joint board, includes a member of any of the constituent authorities of the joint board,

'person aggrieved' means the person who claims or is alleged to have sustained any such injustice as is mentioned in section 26(1) above,

'Parliamentary Commissioner' means the Parliamentary Commissioner for Administration;

'representative body' means a body designated under section 24 above,

'tribunal' includes the person constituting a tribunal consisting of one person.

(2) Section 269 of the Local Government Act 1972 (which relates to the meaning of 'England' and 'Wales' in Acts passed after 1st April 1974) shall apply to this Part of this Act as if it had been passed after that date.

(3) It is hereby declared that nothing in this Part of this Act authorises or requires a Local Commissioner to question the merits of a decision taken without maladministration by an authority in the exercise of a discretion vested in that authority.

SCHEDULE 4

THE COMMISSIONS

Disqualifications

1. (1) A person shall be disqualified for being appointed as, or for being, a Local Commissioner if—

- (a) he is disqualified for being elected, or being, a member of any of the authorities mentioned in section 25(1) of this Act; or
- (b) he is a member of any of those authorities or is a member (by co-option) of a committee of any of those authorities.

(2) A Local Commissioner shall not at any time conduct a case arising in an area if it is wholly or partly within an area for which one of those authorities is responsible and, within the five years ending at that time, the Local Commissioner has been a member of that authority, or a member (by co-option) of a committee of that authority.

(3) The acts and proceedings of a person appointed as a Local Commissioner and acting in that office shall, notwithstanding his disqualification under this paragraph, be as valid and effectual as if he had been qualified.

2. (1) So long as a Local Commissioner is responsible for any area, and for three years after he ceases to be so responsible, he shall be disqualified for being appointed to any paid office by any of the authorities mentioned in section 25(1) of this Act if the area for which the Local Commissioner is, or was, responsible falls wholly or partly within the area for which that authority is responsible.

(2) In this paragraph references to the area for which a Local Commissioner is responsible are references to an area for which he assumes responsibility under section 23 of this Act and, if the Commission for Local Administration in Wales consist of more than one Local Commissioner but Wales has not been divided into areas under that section, each of the Local Commissioners for Wales shall be treated as responsible for the whole of Wales.

Remuneration, etc.

3. (1) Each Commission shall pay to or in respect of their Local Commissioners and their officers such amounts, by way of remuneration, pensions, allowances or gratuities or by way of provision for any such benefits, as the Secretary of State may, with the approval of the Minister for the Civil Service, determine.

(2) If a person ceases to be a Local Commissioner and it appears to the Secretary of State that there are special circumstances which make it right that that person should receive compensation, the appropriate Commission may pay to that person a sum of such amount as the Secretary of State may, with the consent of the Minister for the Civil Service, determine.

Staff and accommodation

4. (1) Each of the Commissions may appoint a secretary, and such other officers as they may consider to be required for the discharge of their functions.

(2) Each of the Commissions shall make arrangements to enable Local Commissioners to investigate complaints, and in particular arrangements for—

- (a) allocating members of their staff to assist Local Commissioners, and
- (b) providing offices and other accommodation.

(3) An officer of a Commission shall not be allocated to assist a Local Commissioner without the approval of that Local Commissioner.

(4) The Commission for Wales shall ensure that staff are available who can enable a Local Commissioner to deal with complaints in the Welsh language.

(5) Any function of a Local Commissioner, other than that of making any report, may be performed by any officer of the Commission who is authorised for the purpose by the Local Commissioner.

Proceedings of the Commissions

5. (1) The Commissions may determine their own procedure, including the quorum necessary for their meetings.

(2) The validity of any proceedings of either Commission shall not be affected by any vacancy among the members of the Commission or by any defect in the appointment of any member of the Commission.

(3) Each of the Commissions shall be a body corporate, and their common seal shall be authenticated by the signature of a member of the Commission, or of some other person authorised in that behalf by the Commission.

Expenses of the Commissions

6. Subject to paragraph 9 below, all expenses incurred by the Commission for Local Administration in England shall be defrayed by the county councils in England, the Greater London Council and the Council of the Isles of Scilly.

7. Subject to paragraph 9 below, all expenses incurred by the Commission for Local Administration in Wales shall be defrayed by the county councils in Wales.

8. (1) The said expenses shall be apportioned among the authorities liable to defray them, each authority being liable for the fraction $\frac{A}{B}$ of the expenses where—

A is the product of a rate levied in the authority's area of 1p in the pound, as ascertained for the purposes of this paragraph by rules made under section 113 of the General Rate Act 1967, and

B is the aggregate product of a rate levied in the area of every authority in England or, as the case may be, in Wales, of 1p in the pound as so ascertained.

(2) Any sums due to a Commission under this Schedule shall be payable on demand and recoverable as a civil debt; and a Commission may, for any financial year, demand payment in advance of part of their expenses.

9. (1) In relation to each of the Commissions, the Secretary of State may by order provide for such part of their expenses as may be specified in the order to be defrayed by such authorities (being authorities to

which this Part of this Act applies other than those mentioned in paragraph 6 or 7 above) as may be so specified.

(2) Where two or more authorities are liable, by virtue of an order made under this paragraph, to defray part of the expenses of a Commission, the order shall provide for the apportionment of the amount concerned among those authorities.

(3) Paragraphs 6 and 7 above shall not apply in relation to so much of the expenses of a Commission as is, by virtue of any order made under this paragraph, to be defrayed by authorities other than those mentioned in those paragraphs.

(4) An order made under this paragraph shall be contained in a statutory instrument and may be varied or revoked by a subsequent order.

10. (1) In each financial year each Commission shall prepare an estimate of the expenses which they will incur in the next financial year, and shall submit it, not later than 1st November in the first of those financial years, for consideration by the appropriate representative body.

(2) Any observations by the representative body shall be submitted to the Commission within one month of receipt of the estimate, and it shall be the duty of the Commission to take any such observations into consideration before taking any final decision affecting their expenditure for the next financial year.

(3) The Commission shall, within fourteen days of taking any final decision as to the estimate for the next financial year, notify the appropriate representative body of the decision.

11. (1) Where—

- (a) a representative body have made observations on the estimate submitted to them in accordance with paragraph 10(1) above;
- (b) the Commission concerned have notified the representative body of their final decision, in accordance with paragraph 10(3) above; and
- (c) the representative body consider that the estimate is excessive;

the representative body may refer the question to the Secretary of State.

(2) Where any question has been referred to the Secretary of State under sub-paragraph (1) above he may, if he considers that the expenditure of the Commission for the next financial year is, on the basis of the estimate, likely to be excessive, give such a direction to the Commission in relation to any matter affecting that expenditure as he considers necessary to ensure that it is not excessive.

(3) It shall be the duty of each of the Commissioners to comply with any direction given to them by the Secretary of State under this paragraph.

(4) Any direction given by the Secretary of State under this paragraph may be varied or revoked by a subsequent direction given by him.

House of Commons Disqualification Act 1957

12. In Part II of Schedule 1 to the House of Commons Disqualification Act 1967 (bodies of which all members are disqualified under that Act) there shall (at the appropriate place in alphabetical order) be inserted the following entries:—

‘The Commission for Local Administration in England’.

‘The Commission for Local Administration in Wales’.

and the like amendments shall be made in the Part substituted for the said Part II by Schedule 3 to that Act in its application to the Northern Ireland Assembly.

SCHEDULE 5

MATTERS NOT SUBJECT TO INVESTIGATION

1. The commencement or conduct of civil or criminal proceedings before any court of law.

2. Action taken by any authority in connection with the investigation or prevention of crime.

3. (1) Action taken in matters relating to contractual or other commercial transactions of any authority to which Part III of this Act applies, including transactions falling within sub-paragraph (2) below but excluding transactions falling within sub-paragraph (3) below.

(2) The transactions mentioned in sub-paragraph (1) above as included in the matters which, by virtue of that sub-paragraph, are not subject to investigation are all transactions of an authority to which Part III of this Act applies relating to the operation of public passenger transport, the carrying on of a dock or harbour undertaking, the provision of entertainment, or the provision and operation of industrial establishments and of markets.

(3) The transactions mentioned in sub-paragraph (1) above as not included in those matters are—

- (a) transactions for or relating to the acquisition or disposal of land; and
- (b) all transactions (not being transactions falling within sub-paragraph (2) above) in the discharge of functions exercisable under any public general Act, other than those required for the procurement of the goods and services necessary to discharge those functions.

4. Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters.

5. (1) Any action taken by a local education authority in the exercise of functions under section 23 of the Education Act 1944 (secular instruction in county schools and in voluntary schools).

(2) Any action concerning—

- (a) the giving of instruction, whether secular or religious, or
- (b) conduct, curriculum, internal organisation, management or discipline.

whether—

- (i) in any school maintained by the authority, or
- (ii) in any college of education or establishment of further education maintained by the authority.

APPENDIX B

COMMISSION FOR LOCAL ADMINISTRATION IN ENGLAND

COMPLAINTS RECEIVED ABOUT EACH SERVICE BY YEAR*

	74/75	%	75/76	%	76/77	%	77/78	%	79/79	%	TOTAL	%
Planning	202	45	691	31	708	31	568	34	724	34	2,691	32
Housing	89	20	488	22	535	23	383	23	577	27	1,983	24
Education	23	5	208	9	192	8	107	6	137	6	644	8
Social Services	17	4	94	4	81	4	54	3	86	4	315	4
Land	—	—	113	5	125	5	104	6	132	6	474	6
Highways	19	4	160	7	138	6	100	6	155	7	553	7
Environmental Health	4	1	105	5	120	5	75	4	99	5	399	5
Amenity (Leisure and Recreation)	—	—	64	3	47	2	50	3	17	1	178	2
Drainage	—	—	28	1	40	2	42	3	42	2	152	2
Rating	—	—	126	6	104	5	67	4	79	4	376	5
Others	94	21	172	8	187	8	134	8	68	3	561	7
TOTALS	448		2,249		2,277		1,684		2,116		8,326	

PERCENTAGE OF COMPLAINTS RECEIVED DIRECT — NOT THROUGH A COUNCILLOR

75/76	76/77	77/78	79/79
40	64	57	63

* The figures for 1974/75, 1975/76 and 1976/77 are for all complaints received — properly referred through a Member and direct. The figures for 1977/78 and 1978/79 are for properly complaints only. All percentages are rounded up to the nearest whole number.

COMPLAINTS NOT ACCEPTED FOR INVESTIGATION AND REASONS*

	75/76	%	76/77	%	77/78	%	78/79	%	TOTAL	%
Authority not within jurisdiction	66	4	61	4	13	1	28	2	168	3
No indication of injustice or maladministration	783	45	895	54	377	32	510	32	2,565	42
No indication of injustice or maladministration (after informal inquiry)	385	22	258	15	488	42	605	39	1,736	28
Not submitted within twelve months	—	—	3	—	6	1	39	2	48	1
Alternative right of appeal to tribunal etc.	17	1	9	1	9	1	27	2	62	1
Alternative right to appeal to Minister	31	2	24	1	34	3	49	3	138	2
Alternative legal remedy	40	2	128	8	78	7	91	6	337	5
Affecting all/most inhabitants of area	43	2	20	1	18	2	15	1	96	2
Discretion of Commissioner	18	1	38	2	24	2	51	3	131	2
Matter arising before April 1974	230	13	137	8	68	6	99	6	534	9
Not statutorily entitled to make complaint	18	1	15	1	5	—	9	1	47	1
Concerned with civil or criminal proceedings	39	2	28	2	30	3	24	2	121	2
Contractual or commercial matter	24	1	14	1	4	—	7	—	49	1
Personnel matter	42	2	34	2	14	1	11	1	101	2
Internal school management etc.	13	1	7	—	5	—	6	—	31	1
TOTALS	1,749		1,671		1,173		1,571		6,164	
Complaints carried forward	363		651		433		447			

* The figures for the year 1974/75 are not included as the Commission's activities were limited in its first year of operation. In that year 473 complaints were received; 347 complaints were not investigated, a large number of them because they related to matters that arose before 1974.

COMPLAINTS ACCEPTED AND RESULTS OF INVESTIGATION

	74/75	%	75/76	%	76/77	%	77/78	%	78/79	%	TOTAL	%
Total accepted for investigation in year	126	—	165		256		299		397			
<i>Reports Issued and Findings</i>												
Maladministration and injustice	6	5	49	48	107	54	169	58	182	56	513	56
Maladministration only	—	—	3	3	8	4	13	4	9	3	33	4
No maladministration	2	0.6	47	46	74	38	95	33	124	38	342	37
Investigation discontinued	—	—	3	3	8	4	12	4	11	3	34	4
TOTAL	8		102		197		289		326		922	

SETTLEMENT OUTCOMES OVER 5 YEAR PERIOD (as as 31 March, 1979)

	74/75	75/76	76/77	77/78	78/79	TOTALS
Total reports finding maladministration and injustice	6	49	107	169	182	513
Satisfactory settlement	6	43	99	145	92	387
Unsatisfactory settlement	—	5	8	7	3	23
Awaiting settlement	—	1	—	17	87	105

APPENDIX C

UNSATISFACTORY RESPONSES TO FURTHER REPORTS

Summarised below are the 23 cases referred to on page 40 of this Report

INV 75 C 9 June 1975

WAKEFIELD Metropolitan District Council

The complaint was about failure to make repairs to a Council House. The Local Ombudsman considered that the Council should make good a defective kitchen unit. The Council did not accept that there had been injustice to the complainant (although they had in fact been pursuing the suppliers about faulty units). They later said that they were prepared to do remedial work to the house, and to other houses affected, but only when funds were available 'which was unlikely to be in the foreseeable future'.

INV 313 27 August 1975

SOUTH HEREFORDSHIRE District Council

The complaint was about the way the Council dealt with a planning application. The Local Ombudsman found maladministration because, inter alia, all relevant information was not considered and the statutory period in which to make representations on the application was not given.

The Council decided to take steps to prevent this happening again. In his second report the Local Ombudsman considered that the complainants should be offered an apology and that further consideration should be given to making payments to them.

The Council decided to apologise to the complainants but not to offer any payments because (i) they considered the decision on the planning application to be good on planning grounds even though the means by which it was reached had been subjected to criticism, and (ii) any such payments would be ultra vires.

INV 261 H 8 September 1975

WEYMOUTH AND PORTLAND Borough Council

The complaint was that an adjoining development did not take place in accordance with approved plans. The Local Ombudsman found maladministration because of delay in ascertaining facts and dealing with the complaint.

The Council decided to take no action. In his second report the Local Ombudsman recommended that the Council should (i) acknowledge that the delay should not have occurred and apologise, (ii) examine the cause of the delay and endeavour to prevent its repetition and (iii) re-consider making a payment to the complainant.

The Council apologised to the complainant, endeavoured to improve its procedures but declined to make a payment since they were not prepared to take the risk of such payment being challenged in the Courts.

INV 447 H 14 October 1975
CHELMSFORD District Council

The complainants made seven allegations about a planning application by a neighbour. The Local Ombudsman found maladministration because of variation in design from outline permission and lack of consideration of Parish Council's and complainants' representations. The Council have improved their procedures.

In his second report the Local Ombudsman recommended that the Council give further consideration to making an *ex gratia* payment to the complainants for their expense and trouble.

The Council declined – confirming their previous decision. Central to their original response was that, even if the Planning Committee had been advised of the change in plans, they would have reached the same decision.

INV 961 H 15 March 1976
EXETER City Council

Maladministration was found because the Council were not properly informed about the lay-out and ownership of premises when they granted planning permission for a poodle parlour in part of them. The Council agreed to revise their procedures for dealing with re-submitted planning applications (which this one was) to avoid a recurrence of the problem and to impose restrictions on the hours of operation of the poodle parlour. They did not accept that the relevant Committee had not had the full facts when they determined the planning application.

The Local Ombudsman issued a second report because progress was slow in imposing the restrictions, because the Council had not apologised to the complainants and because he felt that the Council should consider making an *ex gratia* payment to cover trouble, inconvenience and costs.

The Council declined to apologise or to make a payment because the complainants proposed to sue the Council for negligence. This in fact happened, the Council settled out of Court and paid the complainants £200 and costs; they did not apologise.

INV 2036 C 10 May 1976
BEVERLEY Borough Council

The Council refused to pay improvement grants on four houses because work had not been done which they felt should be done. The Local Ombudsman found maladministration because the Council had failed

to reply to a letter asking for confirmation to agreement to omit the items of work. The Council agreed to allow the complainant company six more months to complete the outstanding work but rejected the Local Ombudsman's view that they should consider financial compensation in view of their admitted error.

INV 1513 H & 1664 H 9 June 1976
WEST DORSET District Council

The complaints were that the Council (i) failed to take enforcement action in respect of a neighbouring bungalow, (ii) were presented with inaccurate and misleading information, and (iii) granted planning permission without being provided with accurate site sections. Maladministration was found on points (ii) and (iii).

The Council apologised to the complainants and agreed not to oppose an application for a reduction in the rateable value of their houses, and to endeavour to improve procedures. The Local Ombudsman asked the Council also to consider making an *ex gratia* payment to the complainants.

The Council declined – they did not think that the complainants had suffered much detriment to their amenities.

INV 2471 H 14 October 1976
EAST DEVON District Council

The complainant made five allegations relating to the Council's service of a Notice to Quit terminating his licence on a beach hut site. The Local Ombudsman found maladministration because the complainant was not given an opportunity to comment, the Council were dilatory in making a subsequent payment and the complainant should not have had to instruct a solicitor.

The Council made a public apology to the complainant, and revised their procedure. The Local Ombudsman issued a second report recommending that the Council reimburse the complainant's expenses necessitated by the Council's failure to repay the rent promptly. The complainant deducted £5 from his rates as a contribution to his expenses and the Council is taking no action to recover it.

The Council declined to take action on the second report in view of the £5 deduction.

INV 2893 H 29 October 1976
EALING, London Borough of

The complaint was of undue delay in considering an application to hire halls for meetings. Maladministration was found because of considerable delay and failure to keep complainant informed.

The Council decided not to let halls to certain movements and to improve procedures for acknowledging 'contentious' applications. In his second report the Local Ombudsman criticised Council's failure to acknowledge delay and to keep complainant informed. Also, a further application by the complainant was, said the Local Ombudsman, treated in such a way as to repeat the original maladministration.

The Council did not reply.

INV 2898 C 30 November 1976

BROXTOWE District Council

Maladministration was found because the Council delayed unreasonably when deciding whether to buy the complainant's house. They proposed to pay estate agent's fees incurred by the complainant but the Department of the Environment refused sanction for payment on the grounds that the expenditure was not a consequence of the maladministration. The Local Ombudsman issued a second report to expose this situation.

(The Local Government Act 1978 has remedied this situation for the future).

INV 2696 S 13 January 1977

HAMMERSMITH, London Borough of

The complaint was that the Council had decided — on insufficient evidence — to place a Compulsory Purchase Order on the complainant's house. The Local Ombudsman found maladministration.

The Council withdrew the Compulsory Purchase Order and introduced new procedures to deal with Compulsory Purchase Orders but failed to acknowledge that the absence of such procedures had caused the complainant additional expense and declined to reimburse his solicitors fees. The Local Ombudsman considered the Council should apologise and offer partial reimbursement.

The Council declined on the grounds that his " 'additional expenses' could have been avoided had he taken the opportunity to give certain undertakings which would have been acceptable by his Council".

INV 2843 H 7 February 1977

FOREST OF DEAN District Council

The main complaint was that the Council had not informed the complainants that properties with a rateable value over £175 were ineligible for house improvement grants. The Local Ombudsman found this as maladministration. After his second report the Council apologised to the complainants but argued that (in the light of a DoE decision on another case in their area) they had no authority to pay compensation to the complainants who had incurred extra building costs and professional fees because of the maladministration.

(This situation has, for the future, been corrected by the Local Government Act 1978).

INV 3322 C 16 March 1977

CAMBRIDGESHIRE County Council

Maladministration was found because the Council withdrew free school transport provided by the former authority in return for parents agreeing to send their children to a particular school. The Local Ombudsman's view was that the Council should honour the deal made. The Council declined arguing that they were free to review commitments when forced to do so by the need to reduce expenditure.

INV 3017 H 28 April 1977

NORTHAVON District Council

The complaint concerns the Council's involvement in a boundary dispute. Maladministration was found because of the wrong weight given to evidence presented and the prejudiced position the Council's action had put the complainant in. The Council took no action.

The Local Ombudsman issued a second report recommending that the Council reimburse the complainant's legal expenses over a given period.

The Council declined, denying that the Council's actions were such as to warrant the payment of a contribution towards the complainant's legal costs.

INV 1448 H 3 June 1977

WEST OXFORDSHIRE District Council & OXFORDSHIRE County Council

The complaint was that the District Council misled a company about the siting of buildings and the location of a sewer; the complainant was a Director. The County Council were accused of failing to keep the District Council informed about the line of the sewer. Maladministration was found against both authorities.

The County Council made an ex gratia payment of £500. In his second report the Local Ombudsman said he would be satisfied if the District Council paid compensation to the complainant.

The District Council declined — saying that the Local Ombudsman had reached false conclusions and they denied delay in informing complainant or giving misleading information.

INV 2572 H 16 June 1977

EPPING FOREST District Council

The complaint concerned the failure of the Council to refund a rate payment and maladministration was found because of shortcomings in communication and inaccurate and insufficient information.

The Council improved communications between themselves and the Valuation office. The Local Ombudsman issued a second report recommending that the sum of £24.85 be refunded to the complainant plus an allowance for inflation.

The Council declined, saying that no new evidence had been produced to justify a change in their policy and that the Treasurer had been fully entitled to exercise his discretion.

INV 3972 H 1 August 1977

WEST DORSET District Council

The complaint concerned rates and charges levied on the complainant who owned a caravan on the Council's site. The Local Ombudsman found maladministration because of failure to invite the appropriate Committee to consider a refund to occupiers of sites as a result of rating changes. The Council took no action.

In his second report the Local Ombudsman recommended that the

Council should apologise to the complainant and waive the additional charges they have demanded.

The Council declined to do so and noted the report. Central to the Council's response to the first report was their contention that the matter was not within the Local Ombudsman's jurisdiction.

INV 4692 H 29 September 1977

CHRISTCHURCH Borough Council

The complaint was that the Council had refused to accept the complainant on the housing waiting list until rent arrears accumulated by her husband had been cleared; had refused an application for rehousing even after payment of the arrears; and had unreasonably delayed in later offering a Council tenancy. Maladministration was found on all three allegations.

The Council intended only to require officers, in future similar cases, to ensure full information is given to relevant Committees and Departments. In his second report the Local Ombudsman asked the Council to repay the rent arrears of £223.08 to the complainant.

The Council declined. In their view the complainant was personally substantially at fault in respect of the accumulation of arrears.

INV 2761 13 October 1977

WALSALL Borough Council

Two allegations were made concerning the Council's disposal of a vacant plot of land they owned and the granting of outline planning permission for it. The Local Ombudsman found maladministration because of the failure of the Council to consult the complainants about the planning application (they owned nearby premises).

The Local Ombudsman felt that an apology would be sufficient remedy. The Council declined to act. They did not accept the Local Ombudsman's findings basically because they did not feel the complainants were closely affected by the application (a view not shared by the Local Ombudsman).

INV 387 H 77 22 February 1978

SLOUGH Borough Council

The complaint was that the Council's refusal of the complainant's application for re-housing was prejudiced by uncorroborated hearsay information placed before the Housing Sub-Committee. The Local Ombudsman found maladministration.

The complainant was rehoused but the Local Ombudsman in his second report considered he should be told that the Council acknowledged that allegations made about him were untrue and he would not be prejudiced in future dealings with the Council.

The Council did not reply.

INV 402 C 77 22 February 1978

SOUTH LAKELAND District Council

The complaint was that an adjoining dwelling had not been built in accordance with the planning consent. The Local Ombudsman found maladministration because the Council had not properly controlled the planning situation and the complainant suffered some overlooking.

The Council agreed to give more attention to site levels in future. The Local Ombudsman recommended in his second report that they should also give financial redress to the complainant and visual improvement to reduce the overlooking.

The Council declined — referring to paragraph 3 of DoE Circular 71/73 which makes the point that the objective of planning is not to protect the value of individual properties.

INV 2774 C 15 March 1978

SOUTH LAKELAND District Council

Maladministration was found because, when a revised planning application was approved by the Council, the attention of Members was not drawn to matters arising over the initial application — including a DoE inspector's report rejecting the appeal against the refusal of that application.

The Council decided to pay more attention to site levels when considering new developments but not to take any further action although the Local Ombudsman recommended in his second report that they should 'seek some practical measures to redress the injustice to the complainant' (who suffers from a massing impact from the development approved).

INV 1240 H 77 3 August 1978

CASTLEPOINT District Council

The complainant alleged failure to supply papers requested by the DoE and the giving of incorrect information in connection with an intended purchase of land by the Council. Maladministration was found and the Council took no action.

In his second report the Local Ombudsman recommended the Council negotiate with the complainant (a company) to ascertain its financial loss incurred because of the former's maladministration and pay the company the amount of that loss, plus expenses.

The Council declined and noted the report.

APPENDIX D

The questionnaires

SURVEYS OF COMPLAINANTS

All respondents were asked the following questions:

- (1) What local service was your complaint about? Planning, Housing, Education, Highways, Environmental Health, Land, Rating, Social Services, Other (please state).
- (2) Who did you first raise your complaint with? Council office, Councillor, Citizens' Advice Bureau, Solicitor or law centre, Trade union or trade association, Other (please state).
- (3) When did your complaint first arise? (Please give month and year).
- (4) When you made your complaint to the council, did you make it to a councillor, a council employee or both? Councillor, Council employee, Both.
- (5) What happened after you made your complaint?
- (6) Did you find it easy or difficult to contact a councillor about your complaint? Easy, Difficult. If you answered 'difficult', please say why.
- (7) Did you find the councillor(s) you contacted helpful? Yes, No, Helpful to some extent.
- (8) When did you ask for your complaint to be sent to the Local Ombudsman? (Please give month and year).
- (9) How did you first come to hear of the Local Ombudsman? Through the papers, radio, television; Through friends, relatives or work-mates; Through the council or a councillor; Through the Citizens Advice Bureau; Other (please state).
- (10) Have you seen the booklet *Your Local Ombudsman*? Yes, No, Don't Know.

Complainants whose complaints had been the subject of a full investigation were then asked to answer the following questions:

- (11) How long did it take the Local Ombudsman to decide whether or not to accept your complaint for investigation?
- (12) What do you think about the way in which the investigation was carried out by the Local Ombudsman?
- (13) How long did it take from the decision to investigate your complaint to the issue of the report?

(14) Do you think that your complaint was dealt with by the Local Ombudsman too quickly, quickly enough or too slowly? Too quickly, quickly enough, too slowly.

(15) Did the investigation find injustice caused by maladministration? Yes, No.

If you answered 'no' to Question 15, please go straight to Question 16. If you answered 'Yes' to Question 15, please answer the additional questions below:

(15A) What has the local council done about your complaint?

(15B) How long was it after the report was issued before they took any action? (If no action has yet been taken, please say so).

(15C) Are you satisfied with the action taken by the council? Yes, No. If you answered 'no', what do you think the council should do?

Complainants whose complaints had not been accepted for investigation were asked to answer the following questions after Question 10:

(11) How long did it take for the Local Ombudsman to decide whether or not to accept your complaint for investigation?

(12) What reasons did the Local Ombudsman give for not accepting your complaint for investigation?

(13) Do you think that the decision not to accept your complaint for investigation by the Local Ombudsman was made too quickly, quickly enough or too slowly? Too quickly, quickly enough, too slowly.

(14) Was your complaint a difficult one to put into words on paper? Yes, No, Can't Remember.

(15) Would it have helped to have been interviewed by a member of the Local Ombudsman's staff? Yes, No, Don't Know.

If you answered 'no' or 'don't know' to Question 15, please go straight to Question 16. If you answered 'yes' to Question 15, please answer Question 15A.

(15A) Would you have been prepared to travel to the Local Ombudsman's offices in London or York for such an interview? Yes, No.

If you answered 'Yes' to Question 15A, please now answer Question 16.

If you answered 'No' to Question 15A, please answer Question 15B.

(15B) Would you have been prepared to travel to some other major centre? Yes, No.

If you answered 'No' to Question 15B, please now answer Question 16.

If you answered 'Yes' to Question 15B, please answer Question 15C.

(15C) How far would you have been prepared to travel? Up to 10 miles, 10-24 miles, over 25 miles.

Complainants who had withdrawn their complaints were asked to answer the following questions after Question 10:

(11) How long was it after you had sent your complaint to the Local Ombudsman that you withdrew your complaint?

(12) Why did you withdraw your complaint?

(13) What action (if any) did the council take after you made your complaint to the Local Ombudsman?

Please answer the next two questions only if the council did take action after you made your complaint to the Local Ombudsman.

(14) How satisfied are you with the action taken by the council?

(15) Do you think that the council took action to deal with your complaint because you had made it to the Local Ombudsman?

All respondents were then asked to answer the following questions:

(16) In general, how satisfied are you with the way your complaint was dealt with by the Local Ombudsman? Very satisfied, fairly satisfied, not satisfied, very dissatisfied.

(17) Would you contact the Local Ombudsman again if you had another complaint? Yes, No, Don't Know.

(18) Could the service offered by the Local Ombudsman be improved and, if so, how?

(19) Are you the head of household? Yes, No.

(20) What is the age of the head of household? Under 25, 25-34, 35-44, 45-54, 55-64, 65 and over.

(21) What is the head of household's occupation? If the head of household is retired, please say so and give details of his or her last full-time occupation. If the head of household is not working in a paid occupation, please write in 'housewife', 'unemployed' etc., then go to Question 23.

(22) Would you describe your job (or your last job before retirement) as: Professional or managerial, clerical or non-manual, skilled manual, unskilled manual.

(23) At what age did the head of household finish full-time education? Under 15, 15 or 16, 17 or 18, 19 or over.

We would like to interview a small cross-section of individuals who have complained to the Local Ombudsman to gain a fuller understanding of their complaints and the way in which they were handled. If you are willing to be interviewed, please write your name and address (and telephone number, if possible) below.

If you have any other comments, please write them here. We assure you that we will take note of any comments you make.

SURVEY OF LOCAL AUTHORITY OFFICERS

A standard letter was sent to each local authority in the sample requesting an interview, detailing the following list of topics for discussion:

(1) Your view of the thoroughness, fairness and impartiality of the Commission's procedures.

(2) Whether the Commission's practice of making preliminary informal enquiries about some complaints leads to any problems, in particular whether your authority is uncertain about how detailed a reply is necessary to such enquiries.

(3) Any changes which you think ought to be made in the jurisdiction or working procedures of the Commission.

(4) Whether dealing with Commission enquiries has significantly interfered with or interrupted the normal work of the authority.

- (5) Has any report issued by the Commission led to any changes in the procedures of the authority?
- (6) Has the authority discussed the code for dealing with complaints issued by the Commission and the Representative Body, and, if such discussions have taken place, have they led to any modifications in existing procedures for dealing with complaints from the public?
- (7) What problems could you foresee if the Commission or complainant could use the Commission's findings as the basis for some kind of enforcement procedure?

SURVEY OF COUNCILLORS

The following were the questions asked:

- (1) How did you first become aware of the Commission for Local Administration? Through your own authority, other publicity (please state nature of publicity), other means (please specify).
- (2) Did you take up the complaint(s) yourself with the local authority before referring to the Local Commissioner or did you refer to the Local Commissioner straight away? Took up complaint with authority, referred straight away.

If you answered 'referred straight away', please answer Question 3 next.
If you answered 'took up complaint with authority', please answer the next two questions.

- (2A) How did you take up the complaint with the authority (e.g., did you raise it with an officer or committee chairman) and what did the authority do about the complaint?
- (2B) Did you refer the complaint(s) to the Local Commissioner because: You were dissatisfied with the authority's response; You were satisfied, but the complainant(s) was/were not; You considered that it was the job of the Local Commissioner to look into complaints; Other reason (please specify).
- (3) If the complaint was not accepted for investigation by the Local Commissioner, were you satisfied with the reasons given by the Local Commissioner for not proceeding to a full investigation? (Please turn to Question 4 next).

If the complaint was accepted for a full investigation by the Local Commissioner, please answer questions 3A-3E.

- (3A) Do you consider that the investigation was conducted: too quickly, quickly enough, too slowly.
- (3B) In your opinion was the investigation carried out by the Local Commissioner thorough or not? (Please add any other comments you have on the conduct of the investigation).
- (3C) Was injustice and maladministration found by the Commissioner? Yes, No.

If you answered 'no', proceed to Question 4. If you answered 'yes', please answer the next two questions.

- (3D) Was the complainant satisfied with the eventual remedy? (If not, why not?)

- (3E) Do you think that the complainant should have been satisfied?
- (4) Did you feel any sense of conflict as a member of the authority complained against when you referred the complaint to the Local Commissioner?
- (5) Do you think complaints should be referred to the Local Ombudsman through a councillor or should people be allowed to complain direct if they wish? (We would be particularly interested in any comments you have on this topic).
- (6) Have you any other comments to make on the work of the Commission for Local Administration?

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