A REPORT BY JUSTICE

The Citizen and his Council

Ombudsmen for Local Government?

CHAIRMAN OF COMMITTEE
PROFESSOR J. F. GARNER

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INTRODUCTION

1. As is by now reasonably well known, in 1961 JUSTICE published a report entitled "The Citizen and the Administration" (hereafter called "the Whyatt Report"), which eventually proved to be a principal contributing factor to the enactment of the Parliamentary Commissioner Act 1967, which established the Parliamentary Commissioner for Administration, or British "Ombudsman," although it is of course appreciated that there are substantial differences between our institution and the Scandinavian forebears. This Report was introduced by a preface written by the Rt. Hon. Lord Shawcross, part of which is so relevant to our present inquiry that we reproduce it here:

> "The study embodied in the Report which is here published may well form the basis of what could become a real Charter for the little man. In the ever growing complexity of the modern state, the interventions of central and local government into the lives and affairs of the ordinary citizen inevitably multiply. For the most part, no doubt, these interventions are for beneficent purposes and have beneficent results. But the nature of governmental and local governmental activity is now such that large areas of discretion are created in regard to all sorts of matters affecting the lives and rights of ordinary people in varying degrees. The general standards of administration in this country are high, probably indeed higher than in any other. But with the existence of a great bureaucracy there are inevitably occasions, not insignificant in number, when through error or indifference, injustice is done—or appears to be done. The man of substance can deal with these situations. He is near to the establishment; he enjoys the status or possesses the influence which will ensure him the ear of those in authority. He can afford to pursue such legal remedies as may be available. He knows his way around. But too often the little man, the ordinary humble citizen, is incapable of asserting himself. The little farmer with four acres and a cow would never have attempted to force the battlements of Crichel Down. The little man has become too used to being pushed around: it rarely occurs to him that there is any appeal from what 'they' have decided."

2. Ever since this first examination of the idea by JUSTICE, it has been suggested in many quarters that this method of investigating grievances of the citizen against various forms of government could—or should—not be confined to the agencies of the central government. More particularly has this been argued in relation to local administration although we are of course conscious that the modern "third arm," the public corporations (gas and electricity boards, the railways, the hospitals, etc.), are also not at present included in the jurisdiction of the Parliamentary Commissioner. Hospital administration and proposals for a formal complaints machinery therefore have recently been under consideration by H.M. Government; the nationalised industries, and possibly the trading undertakings of local authorities, raise problems in this context different in kind, we feel, from those raised in connection with the traditional local government services, such as health and welfare, housing, planning, education, etc. We have therefore confined our proposals in this Report to maladministration in local government. The administration of the criminal law by the police and probation services we have also regarded as being outside our terms although the organisation of the administration itself, such as the exercise of compulsory acquisition powers for police housing, is within the scope of our inquiry.

3. The Whyatt Report considered the question of maladministration in local government in an Appendix; see, in particular, at page 88:

> "The remedy available to a citizen aggrieved by an act of maladministration is the same as that available to a citizen aggrieved by a discretionary decision; it is to complain to the elected representatives of the Council and try to persuade them to redress his grievance. This method of seeking redress presents serious difficulties since 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. These sanctions are no doubt appropriate to an elected body in relation to the policy matters for which it is responsible but it is open to question how far democratic processes of this kind are suitable for investigating accusations of maladministration."

The present Report, therefore, really begins where the Whyatt Report left off.

4. Since 1961, the Parliamentary Commissioner Act 1967 has been passed by Parliament and the first Commissioner has been in office for some two years. His functions, restricted in other respects which it is not the object of the present Report to examine (except in so far as these restrictions may affect local government), are confined to an investigation into alleged injustice arising out of some act or omission of a "government department or other authority" listed in the Second Schedule to the Act. The nationalised industries are supplied for the most part with consumer councils, although these may not be entirely satisfactory, but there is as yet no formal machinery whereby allegations of maladministration in local government may be ventilated and investigated by some independent authority. It seemed, therefore, to the Council of JUSTICE that the present year, the year of the appearance of the Redcliffe-Maud Report of the Royal Commission on Local Government, was an opportune time to consider the extent and nature of complaints of maladministration in local government, the need for an Ombudsman-like institution, and the nature of such an institution if it were considered to be necessary.

5. As the Whyatt Committee found, there are really two types of complaints against administrative authorities. Again we quote from the Whyatt Report, at page 5:

> "First, there are complaints against discretionary decisions where the citizen disagrees with the way in which an official has exercised his discretion but has no formal means of challenging it. The citizen's complaint in these cases is not that the official has abused his power but that the decision he has reached is not, in all the circumstances, appropriate. There may be no allegation of bias, negligence or incompetence but merely the charge that the decision is misguided. In essence this type of complaint is a complaint that there is no right of appeal to an independent body which can substitute its own discretionary decision for that of the official who made the original decision. Secondly, there are complaints against acts of maladministration. These are, broadly speaking, complaints aimed at official misconduct. In this type of complaint, it is a question, not of appealing from, but of making an accusation against, authority."

We would add in the case of local government, the kind of "Citizens' Advice Bureau" complaint, where the citizen is really only asking advice or information about some local government service which he finds it difficult to obtain elsewhere. The first kind of complaint—against discretionary decisions—is frequently due to failure of the

complainant to appreciate fully the reasons for the decisions. In many discretionary cases the citizens may have a legal right to redress in the courts or by way of an appeal to a Minister (as, for example, where there is some abuse of public health powers or in planning), and in others where policy is involved, he must, we feel, be content with a complaint to his councillor, who may have a separate "surgery" for dealing with that class of case. Lack of information may be met by the Citizens' Advice Bureaux, but unfortunately these do not operate everywhere (notably not in rural areas). We are of the opinion that discretionary decisions which create or lead to injustice should be considered by the Commissioner for Local Administration (hereafter to be described), and where injustice results the Commissioner should be expected to report accordingly. But in this Report we intend to concentrate on complaints of "maladministration," for which at present there is no formal machinery. We of course welcome the recent statement by H.M. Government to the effect that they propose shortly to introduce a scheme for Ombudsmen in local government. We hope that this report will be of value in affording support for the Government's proposals, and expressing our views as to how these proposals could be implemented.

The Need

6. Many members and officials currently engaged in local administration claim that there is no need for an Ombudsman—at least not for their own local authority. Typical is the remark of a town clerk of a large city: "I have 64 Ombudsmen in my city; all the members of my council." It is true of course that there are in all local areas more councillors than there are Members of Parliament, and that the councillors are much "closer" to the administration and the officials than are M.P.s in Westminster to the civil servants in Whitehall or even to regional offices. Decisions on major matters are taken by the elected representatives in local government, not by the officials (as is often the case in central government), and those decisions are, through the medium of the council's minutes, open to public scrutiny (though not always if a committee is acting under delegated powers). As we have said, there are many circumstances where an aggrieved citizen may have a right of appeal to a Minister or to the courts, which right he is guaranteed by statute. The area of discretion, it can justly be argued, is not as wide in local government as may be the case in central government where (it seems now to be admitted, even by the critics) an Ombudsman is demonstrably necessary, but the discretionary powers of a local authority are limited by its financial resources.

7. It can also be argued forcefully, as has been done by the Association of Municipal Corporations, that in all but the largest authorities, the town clerk is an "obvious" Ombudsman. "He is the officer who normally receives complaints and requests for information either directly from the public or councillors and, as chief administrative officer, he is in a position to call for information and investigate." (Memorandum prepared by a Sub-Committee of the AMC in March 1967.) We would add that most town clerks will by their legal training approach complaints objectively and in a fair-minded way, as was done in a recent investigation at Leicester into complaints about flooding in that city (see *post*, page 35). But there will be circumstances where for one reason or another such an approach would not be possible.

8. Besides, we are convinced that this is not the whole of the picture. Complaints are made about local authority administration, some of which may allege some element of maladministration, while others may be concerned only with the "merits" of a discretionary decision. In our examination of this subject we found that complaints of both kinds are commonest in relation to such topics as the allocation of "benefits" of various kinds, from the granting of tenancies of council houses or allotments to the allocation of places in council schools, the placing of council contracts, the granting or withholding of planning permission and the administration of welfare establishments of various kinds. The Whyatt Report in Appendix A gave some examples of local authority decisions not subject to appeal; these are the type of cases on which we have concentrated.

9. In these and similar cases, a complaint about maladministration is not, we feel, always redressed. In the first year of operation the Parliamentary Commissioner received sixty-one complaints against local authorities, which were of course outside his jurisdiction; and this in spite of the provision of the 1967 Act to the effect that all complaints must first be made to a Member of Parliament, who is intended to act as a "filter," and not to send on to the Commissioner complaints that are not within his jurisdiction. We know that a considerable number of complaints of one kind and another received by Members of Parliament from their constituents concern local government. Many complaints alleging maladministration seem to turn on such matters as unnecessary delay or a lack of communication by the administration with the public; complaints of this nature may be alleviated after a fashion by an apology, but there is no assurance that the cause of the complaint has been or will be investigated, or that steps will be taken to prevent any recurrence.

10. We appreciate that many councillors investigate complaints made by their constituents with great care and efficiency. Clearly they have a real function to carry out here in connection with matters concerned principally with "policy." The difference between policy and administration is notoriously difficult to draw, but where the complaint is really aimed at inefficiency, ineptitude or near-corruption, what the 1967 Act understands by "maladministration," it is then much more difficult for a councillor to carry out a proper investigation; *i.e.*, to be an "Ombudsman" in any effective sense. The average councillor, however seriously he may take his council office, may be pursuing a full-time occupation elsewhere, may have no office staff at his command, and probably will have but little expertise in investigating complaints. He, or his political party, may well have been responsible for the decision complained of, or at least have agreed to it. Where there is a one-party council, the danger that a complaint so made will not be vigorously pursued, will be greater. An investigation by a paid official of the authority may be more thorough, especially if it is undertaken on the instructions of the authority, but it may not impress the complainant as being impartial; it can scarcely satisfy the old adage about the importance of justice being seen to be done. Frequently it will be invidious for a chief officer—even a town clerk—to investigate the detailed conduct of affairs in the department of a brother chief officer; and the complaint may allege maladministration in the clerk's own department. Fairness and impartiality, two of the three *desiderata* of the Franks Committee on Administrative Tribunals and Enquiries, are essential, we feel, in this context in the interests of both the complainant and the local authority.

11. In recent months there have been growing signs that many people concerned for such matters consider that a formal machinery for the investigation of complaints of this kind is desirable in local government, as has been acknowledged to be so for central government. Several London boroughs have established "complaints officers," Lord Wade introduced a Private Members' Bill in 1966 in the House of Lords which would have established Regional Commissioners for local government, Mr. Evelyn King introduced a Bill in the Commons in 1967, and Mr. Robert Maclennan introduced a somewhat similar Bill for Scotland in December 1968. None of these Bills has become law, but the Northern Ireland Government have recently announced that they propose to appoint a Commissioner for local government affairs in Ulster, and the New Zealand Government have under consideration a proposal to extend the jurisdiction of their very successful Ombudsman to include local governmen'. Many periodicals, including

some local government journals, have recently published articles suggesting similar provisions in this country; a group of Conservative lawyers recommended adoption of the idea in their pamphlet "Rough Justice" published in October 1968. Further, the Minister of State for Health and Social Security has recently announced that H.M. Government are considering the establishment of a Health Commissioner to deal with complaints about the administration of the national health service, and as noted above the main proposal of this Report has recently been accepted.

12. If local authorities will in future be much larger than they are at present, and if the present tendency for authorities to delegate wider powers to officers to make discretionary decisions, both of which seem very probable future developments, there will be even greater need for a Parliamentary Commissioner type of institution for local government. Councillors will be fewer in number, and they will be more remote from their constituents, and probably also more remote from those junior officers who have daily contact with the public; town and regional offices also will often be geographically further away from many ratepayers.

13. If the proposals of the Royal Commission on Local Government (Cmnd. 4040) are implemented, it may be suggested that members of the local councils within the unitary areas (see Chapter IX of the Report) would be capable of undertaking the task of local "Ombudsmen" on the assumption that "the most important function of the local councils . . . will be the duty to voice the opinions and wishes of the local community" (see para. 381 of the Report). Details of how the Royal Commission's proposals may be implemented are not yet clear, but it seems that there are two principal arguments against the practicability of this suggestion:

(a) Most local councils will have but few powers ("local amenities" and "local conveniences") and only the larger councils will be entitled to take some part in housing, preservation, conservation and development; the voice of the local council or councillor will become at best a stronger form of complaint.

(b) The major functions that may affect the citizen in the way discussed in this Report will be the responsibility of the unitary authorities, the metropolitan authorities and the metropolitan districts, and perhaps to some extent the provinces; obviously the member of a local council will have no status or powers to investigate any allegation of maladministration on the part of one of these authorities (and there will not be more than fifty

of them for any one council: Redcliffe-Maud Report, para. 405).

Members of the unitary authorities and the metropolitan bodies will be comparatively few in number (a maximum of seventy-five for each authority: Redcliffe-Maud Report, para. 459) and although it is recommended that "the 76·6 hours per month devoted on the average by present county borough members to all forms of council work" (see para. 506) should be reduced, it seems unrealistic to suggest that members of these large authorities would have adequate time available to carry out "Ombudsman-like" investigations sufficiently frequently. Perhaps there would be more time for them to spare but there would probably be more complaints of maladministration demanding investigation from each individual councillor.

14. We are confident that the great majority of people in our modern local government—elected councillors and paid officials alike—are strictly honest, conscientious individuals, anxious only to serve the people in their respective communities. Unfortunately, however, allegations of corruption and favouritism are made from time to time, and "Bumbledom" and inefficiency are not unknown. Sometimes a local authority may be in the unfortunate position where virtually any decision they take on a certain matter will be criticised by someone. We consider that in such matters as these it is in the interests of all that complaints, when made, should be investigated thoroughly and efficiently by some independent person. The complainant wishes to know whether his complaint is justified, and if so to have some assurance that the cause will be set right; the local authority on the other hand equally has a right to be cleared from and protected against false or ill-founded accusations. The Danish Ombudsman has today no greater supporter of his office than the civil servants who value his investigations which have so often acquitted them of charges of maladministration.

Cases for the Commissioners for Local Administration

15. With these considerations in mind, the Council of Justice, in the spring of 1969, commissioned a research officer, Mr. G. K. Arran, LL.B., to carry out an investigation in a number of local government areas into the nature of complaints about maladministration against local authorities, and the extent to which these complaints were, or were capable of being, redressed by currently available procedures. In the course of his investigations—taking about six months—Mr. Arran visited towns (including London boroughs) and counties, and was able to see town clerks, other local authority officials, members

of Citizens' Advice Bureaux and other voluntary organisations, representatives of the local press and political parties and members of local councils as well as civil servants, Members of Parliament and members of many national organisations concerned with these matters. The investigations could not cover the whole country but we are satisfied that they were sufficiently representative, and the Council of Justice would like to take this opportunity to express their appreciation and thanks to the many persons who so readily and generously gave of their time in talking or writing to Mr. Arran or members of the Committee.

16. We print extracts from a number of Mr. Arran's reports in the Appendix on page 17. These have been chosen as illustrations and any allegations made have not been investigated by the Committee; they also should not be taken as providing any statistical information on the extent of the problem. As the Whyatt Report said (see p. 36, para. 77), "it has not been possible to do more than form a general impression of the extent to which there is maladministration," in local government. As the Whyatt Report went on to say,

> "there appears to be a continuous flow of relatively minor complaints, not sufficient in themselves to attract public interest but nevertheless of great importance to the individuals concerned, which give rise to feelings of frustration and resentment because of the inadequacy of the existing means of seeking redress" (*ibid.* para. 77).

The rest of this Report is concerned with proposals for remedying the present situation, but we would first like to emphasise that these are intended to be supplementary to all existing means of investigating complaints. The zealous and conscientious councillor need not be prevented from trying to assist his aggrieved constituent; in future the councillor would have at his hand a new instrument whereby the complaint could be thoroughly investigated. Similarly town clerks and other chief officers should be assisted, not hindered, by the new institution. We would commend the action already taken by a few local authorities to set up complaints officers and would hope that their activities will be continued. The other existing procedures, by way of appeals to the courts, an administrative tribunal or a Minister, would also, of course, not be affected.

17. We are confident that an independent machinery for the investigation of complaints of alleged maladministration will frequently find the complaints ill-founded and so confirm public confidence in their

elected representatives. Local government has nothing to lose from such an institution.

The Answer

18. The case for an Ombudsman or Ombudsmen of some kind is therefore, we consider, a strong one. What is needed, it is suggested, is an Ombudsman-like institution, to carry out in relation to local government functions similar to those carried out in relation to the central government by the Parliamentary Commissioner for Administration, with a similar status but without the restrictions placed on the Parliamentary Commissioner by the Act of 1967. We would suggest that any Commissioners appointed should be known as "Commissioners for Local Administration," so as to give the institution the appearance as well as the reality of independence that is clearly essential.

How many Commissioners?

19. Clearly a scale of one Commissioner for each existing local authority, or even one for each of the sixty-one main authorities suggested in the Redcliffe-Maud Report would not be practicable. We have considered whether appointments should be made on a regional (on the lines perhaps of the Ministry of Housing and Local Government's audit districts) or possibly a provincial basis, but on balance we have rejected this in favour of a more flexible arrangement. We consider that initially one Chief Commissioner should be appointed with, say, five or six Commissioners to assist him, based at a central office with a small secretariat in a convenient central location. According to the volume of work more Commissioners could then be subsequently appointed, and their respective work loads could be arranged on a provincial or regional basis if this proved to be desirable, or indeed possibly arranged on a local government service basis, one Commissioner concentrating on welfare and social services, another on housing or education, etc. This will be a novel institution in English local government and we consider such an element of flexibility would be valuable. The designation of a Chief Commissioner should not be treated as suggesting that there would be any right of appeal to him from another Commissioner; he would be only *primus inter pares*, but would be responsible for co-ordinating the work of his colleagues, whilst undertaking some investigations himself. The centralisation of the office would also make easier an effective liaison between the Commissioners for Local Administration and the Parliamentary Commissioner. Liaison with district auditors and government departments also could most conveniently be effected centrally. We can see that in some branches of government such as education, planning and housing,

an investigation into alleged maladministration may involve both local and central administrative authorities, and liaison of this kind will therefore be essential. Consideration should be given to making the Chief Commissioner, like the Parliamentary Commissioner, an *ex officio* member of the Council on Tribunals.

Appointment and Conditions of Service

20. We have considered several suggestions about the method of appointment of the Commissioners:

(i) By local authorities; either by single large authorities, by *ad hoc* groups of authorities or by the local authority associations. None of these suggestions seems acceptable to us; it is vital that the Commissioners should not only be independent of the local authorities they will be required to investigate, but also that they must be seen to the public to be so independent. This view seems to be confirmed by an officer of one of the London boroughs who said he did not like being used as a "political shuttlecock."

(ii) By local election. This may have some attractions from a democratic point of view, but will give no assurance that the right type of man would present himself for election, nor would it give any security of office to the man so elected. Commissioners must clearly be free from political bias.

(iii) By the central government. This seems the only possible or acceptable course. The Commissioners should, it is suggested, be given security of tenure similar to that of the Parliamentary Commissioner and they should be appointed by the Crown on the advice of the Lord Chancellor. We have considered placing them in a subordinate capacity to the Parliamentary Commissioner, but decided that this would be appropriate for neither party; the Parliamentary Commissioner is in no position to supervise or act as a court of appeal from the Commissioners for Local Administration, and they should be independent and not be liable to detailed supervision. It is so that they may be and be seen to be independent that we consider the appointing Minister should be the Lord Chancellor and not the Minister of Housing and Local Government, whose own department may on occasion be involved in an investigation by a Commissioner for Local Administration. The salaries of the Commissioners and the expenses of the office should be borne on the Lord Chancellor's vote and should be substantial enough to make the posts attractive and their holders

respected by those with whom they may be brought into contact.

21. We consider that the Chief Commissioner should be required to prepare an Annual Report for the Lord Chancellor, which should then be laid before each House of Parliament. In this Report the Commissioner should be expected to include summaries of more important cases investigated by himself and his colleagues, and he should also draw attention to any general matters where injustice may have been caused as a consequence of statutory provisions or the terms of regulations or the exercise of discretions vested in local authorities. We do not, however, consider it appropriate to make the work of the Commissioners for Local Administration subject to the Select Committee of the House of Commons concerned with the Parliamentary Commissioner; Parliament would not wish, we are sure, to seem to be passing judgment on the manner in which discretionary decisions have been exercised by local authorities. On the other hand, as the Commissioners would be financed from the central Exchequer, it is only right that the two Houses should receive reports on how the money is being spent. The Commissioners would of course have to be provided with adequate secretarial and office assistants, who would be responsible for the receipt of complaints and their allocation to particular Commissioners, but this staff should be kept to a minimum. It would seem desirable for there to be qualified lawyers among the Commissioners themselves or at least on their staff.

22. The persons to be appointed as Commissioners for Local Administration should, we suggest, be experienced in public or private administration. We see no objection to the appointment of persons with party political affiliations, provided such affiliations are given up on appointment.

Complaints

23. We would suggest that a complaint should be receivable in the central Commissioners' office, and then be allocated to an individual Commissioner for investigation. The complaint should be accepted provided:

(i) It is made by any member of the public (or a company) or local authority, but not a central government department.

(ii) It is made in writing. We have considered whether in order to discourage vexatious complainants, we should recommend a small fee (possibly returnable in cases of hardship) but decided this question in the negative.

(iii) It alleges that the complainant has suffered some injustice not capable of being redressed by a court, tribunal or other statutory appeal body, unless the Commissioner considers it was not reasonable to expect the complainant to resort or have resorted to such a remedy.

(iv) That the injustice so alleged was the result of some act or omission amounting to "maladministration" on the part of a local authority, a committee or sub-committee of such an authority acting under delegated powers, a joint committee of local authorities, or of a member or an officer of such an authority. "Local authority" should be defined for this purpose as including any agency financed directly or indirectly under statutory authority from local rates. This would include such bodies as river authorities, drainage boards, joint planning or sewerage boards and water boards and, in education, the Boards of governors as well as the committees themselves.

Definition of "Maladministration"

24. We should perhaps comment briefly on what we visualise as falling within the meaning of "maladministration" in this context. Clearly the term must include what has become to be known as the "Crossman catalogue" of "bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness and so on"*; also it must include the case of the bad rule, where a rule has been laid down for the application of a discretion and the rule results in injustice. It should also be made clear that *all* local government functions should be within the Commissioners' competence, including the placing of contracts and decisions made on the basis of a factual error whether or not there is maladministration. Although some functions may seem to give rise to more complaints than others, it would seem illogical to isolate particular functions for the Commissioners' jurisdiction, and we would not recommend the formulation of any list of functions corresponding to that in the Second Schedule to the Act of 1967 relating to the Parliamentary Commissioner.

General Observations

25. The proposal set out in paragraph 23 would allow a local authority to raise a "complaint" with the Commissioners concerning its own administration; this would, we feel, provide a valuable safeguard for a local authority subjected to unfair public criticism. We also think that a local authority should be empowered to lodge a

* See Hansard for October 18, 1966, col. 51.

complaint concerning the activities of some other local authority in the area. Like the New Zealand Ombudsman, the Commissioners for Local Administration should also be empowered to investigate a matter on their own initiative without any complaint being made; the case of flooding at Leicester (Appendix, page 35) is an example of the type of case that might be appropriate for this treatment.

26. These proposals make no provision for any "filter," similar to that in the Act of 1967, whereby the Parliamentary Commissioner can investigate a complaint only if it has been forwarded to him by a Member of Parliament. We do not consider such a filter to be necessary; we would certainly not wish to require that a complaint should be routed via a local councillor, as this might act as a deterrent in some cases and go some way towards destroying the appearance of impartiality. A filter through an M.P. would clearly be inappropriate.

27. The address of the Commissioners for Local Administration (and of any regional offices, if these were eventually to be set up) should be required to be posted at all Post Offices and local authority offices. Personal callers should not be encouraged, except on prior appointment; this might dissuade some of the cranks and vexatious complainants.

Citizens' Advice Bureaux

28. Citizens' Advice Bureaux also would continue to be able to play an important role. Indeed the valuable assistance they give at present to members of the public by way of investigation and advice—as was made very apparent to Mr. Arran in the course of many of his interviews—would be enhanced by the implementation of our proposals. Complaints of maladministration received by a C.A.B. which for one reason or another might be too complicated or beyond their resources to deal with, could be referred to the Commissioners for Local Administration, while the C.A.B. could also act as informal "filters," and resolve the more trivial cases themselves as they do so ably at present, and thereby save the time of the Commissioners. We would indeed like to see a wider use made of the C.A.B. throughout the country.

Procedure on a Complaint

29. When a Commissioner receives a complaint he will first have to decide whether the case falls within his jurisdiction; if he decides in the negative, he should be required to notify the complainant to that effect, giving his reasons. But there should be no appeal to the

courts or elsewhere (including the Chief Commissioner) from such a decision. If he decides to entertain the complaint, he should have power to inspect any documents held by a local authority and to take evidence from and make inquiries of any person or government department or other body concerned. Any officer or member of a local authority whose conduct was so called into question should be given a right to meet the criticisms made. A local authority whose affairs are being investigated should not be entitled to claim any privileges from discovery of documents or other evidence, but it should be open to them to request the Commissioner not to publish any document in their possession, or not to disclose it to the complainant or any other named person; if the Commissioner is satisfied that such a request is a reasonable one, he should be required to comply with it.

30. On the completion of an investigation, the Commissioner concerned should be required to prepare a report and send a copy to the complainant and to the clerk of the local authority concerned; it should then be made the duty of the clerk to show the report to his council within a specified time and the item should appear on the agenda for the next full council meeting. We would not wish to exclude the normal procedure of the Public Bodies (Admission to Meetings) Act 1960 in such a case, whereby by passing the appropriate resolution the council may receive and discuss such a report in private session; it may well be in the public interest that this should be so. Ultimate publicity is obviously an essential feature of any "Ombudsman-like" investigation, and therefore we suggest that the Commissioners should be required to keep a register of complaints; this register would contain an abstract of the reports about each local authority with any defamatory matter or details personal to the complainant or any other individual removed, and this register should be made open to public inspection. The local press, who have an invaluable part to play in local government, would be alerted by the item appearing on the council meeting agenda and they would then be able to inspect the register and inform the public accordingly. The Commissioners may also from time to time arrange to issue press releases.

31. The communications made by a Commissioner to a complainant and to the clerk to the authority should be protected by absolute privilege from proceedings in defamation (*cf.* s. 10 (5) of the Parliamentary Commissioner Act 1967). Discussions on the report at a council meeting and reports appearing in the press should not be absolutely privileged, but would normally be protected in accordance with the ordinary law by the defences of qualified privilege and fair comment on a matter of public interest.

32. We think it desirable to emphasise that the office of the Commissioners for Local Administration should not become too large; the essence of the original Scandinavian institution was (and is) personal attention to each complaint by a highly respected investigator. We have necessarily come some way from the ideal, but the Commissioners must not be allowed to become—or appear to become—just another government department. They must also not appear to be a court of appeal from the decisions of local authorities; this is why we would confine their jurisdiction to cases of maladministration (in the wide sense as explained in para. 24). Local councillors will continue, we are confident, to play a vitally important role in local government, and the new institution when it is set up must not appear to interfere with the proper province of the councillor. Indeed we would expect a number of complainants, where no element of maladministration is involved, to be referred by the Commissioner to the complainant's local councillor. Councils—and councillors—must bear sufficient responsibility to be allowed to make the wrong decision; the Commissioners will be concerned only if the decision has been arrived at by the wrong process or by application of a wrong rule.

Conclusion

33. We therefore *recommend* that legislation should be introduced at an early date to provide for the appointment of an adequate number of Commissioners for Local Administration. We hope that their inauguration will not have to await any implementation of the Redcliffe-Maud Report. The need is, we are convinced, urgent.

34. In preparing this Report we have refrained from examining the position in Scotland or Northern Ireland. We see no reason why these proposals should not apply, with appropriate modifications, to Scotland, which could have its own Commissioner for Local Administration with an office in (presumably) Edinburgh. Legislation is, we understand, already under consideration in Northern Ireland.

Summary of Proposals

We recommend that:

(a) Legislation should be introduced to provide for the appointment of an adequate number of Commissioners for Local Administration to serve in a single centralised office (para. 19);

(b) the appointment should be made by the Crown on the advice of the Lord Chancellor with security of tenure similar to that of the Parliamentary Commissioner (para. 20 (iii));

(c) the salary of the Commissioners should be borne on the Lord Chancellor's vote (para. 20 (iii));

(d) one of the Commissioners should be appointed as Chief Commissioner who would be in charge of the central office and responsible for coordinating the work of his colleagues but otherwise would be of equal status with them (para. 19);

(e) complaints should be capable of being made by any member of the public, including a company or local authority, or they could be initiated by the Commissioners themselves (paras. 23 and 25);

(f) complaints should allege some injustice (not capable of being redressed by any court, tribunal or statutory authority) as the result of maladministration (as defined in para. 24) on the part of a local authority (including its committees, officers and members) (para. 23);

(g) the Commissioner should report at the conclusion of his investigation and send a copy to the complainant and the local authority concerned (para. 29);

(h) the Commission should keep a register of complaints with an abstract of its reports which would be open for public inspection (para. 29);

(i) the Chief Commissioner should make an Annual Report to the Lord Chancellor which would be laid before each House of Parliament (para. 21).

APPENDIX

THE CASE HISTORIES

The case histories that follow are a selection taken from reports prepared by Mr. Arran, and from accounts vouched for by members of the Committee. Mr. Arran prepared his report from a number of sources, including interviews with local authority officials, local press representatives, political organisations, Members of Parliament, and such bodies as the National Council for Civil Liberties (abbreviated to "NCCL" in the case histories), the John Hilton Bureau and the Gypsy Council; he has also had interviews with representatives of each of the main local authority associations.

The case histories have been classified according to the various local authority functions; we would also refer readers to Appendix A to the Whyatt Report.

In reporting these case histories we do not wish to suggest that we necessarily agree that any particular allegations of maladministration were well-founded, or indeed that the local authority concerned had

not themselves taken remedial action. Our only object is to give some indication of the kind of case which a Commissioner for Local Administration of the future may be called upon to investigate.

1. *HOUSING*

This is of course the area where most complaints arise in practice. For present purposes we have divided cases which have come to our notice into those concerned with the allocation of tenancies and those concerned with housing management questions.

A. Allocation of Tenancies

Most local authorities make their allocations on the basis of published "points schemes"; in most cases these work well, but some schemes are drafted in highly technical terms, and one such scheme has come to our notice which we reproduce below as an example (in our opinion) of unnecessarily obscure and complicated drafting.

Scheme for the Temporary Relief of Hardship incurred by Tenants of Council Houses

Assessment of income

1. The income of any applicant for temporary relief by way of rent reduction shall be assessed in the following manner:

(a) from the combined gross weekly incomes from all sources (other than those mentioned below) of the husband and wife, there shall be deducted the sum of 25s. in respect of the husband's income and 45s. in respect of the wife's income.

(Note: In cases where the tenant is a widow engaged in insurable employment for the support of her children, a deduction of 55s. per week will be made.)

(b) No account in assessing income shall be taken of the following receipts:

(i) family allowances;
(ii) grants for special educational purposes;
(iii) disability pensions;
(iv) maternity grants;
(v) death grants;
(vi) grants for medical extras;
(vii) any special winter allowances;

(c) the Housing Committee will give special consideration to the particular circumstances of any tenants compelled to work out of the City and thereby to live away from home, to tenants serving away from home in H.M. Forces, and to tenants in receipt of marginal benefits, and the Committee will, in any such case, make any special variation of the provisions of this scheme which they think appropriate.

Calculation of relief

2. The Council will give temporary relief to tenants by way of reduced rent in such a way as to ensure that the weekly amount payable by the tenant by way of rent (excluding general and water rates which in all cases will be payable in full) shall not exceed a sum equal to 10 per cent. of the first £5, 12½ per cent. of the next £2 and 20 per cent. of the balance of the assessable weekly income of the tenant and his wife as calculated above.

Allowances and additions for children

3. The amount of the rent which would otherwise be payable in a case where this scheme operates shall be further adjusted in that deductions shall be made in respect of children of the tenant who are not in earning employment as follows:

1st child	2s. 6d. weekly
2nd and each other child ..	1s. 6d. weekly

and an addition shall be made in respect of each child of the tenant in gainful employment as follows:

Children aged 16 and 17	2s. weekly
Children aged 18, 19 and 20 ..	4s. weekly
Children aged 21 and over	6s. weekly

Lodgers and second family

4. Additions shall be made to the reduced rent assessed as above in respect of occupants of the dwelling other than members of the tenant's family as follows, subject to the rent consequently payable not exceeding the actual net rent of the dwelling:

Second family	10s.
Lodger	7s. 6d.

Under-occupation

5. Where tenants are occupying dwellings larger than their reasonable housing requirements, they shall be offered, where practical, smaller accommodation adequate for their requirements; if the offer of such accommodation is refused the relief

available under this scheme will not exceed that which will have been applicable in respect of the smaller accommodation offered.

Administration and conditions of relief

6. Applications for relief in accordance with this scheme shall be made to the Housing Manager on the appropriate application form to be obtained from him. Responsibility will lie on tenants to satisfy the Housing Committee of the amount of their income. This may be done by a certificate from the tenant's employer, by production of appropriate income tax documents or by other means which the Committee in a particular case regard as acceptable.

7. Any reduction of rent granted under this scheme is for the temporary relief of hardship only and will be subject to review at intervals of three months or on any change in the circumstances of the tenant or his family, which change it is the responsibility of the tenant to bring to the notice of the Housing Manager.

8. No application for relief will be considered under this scheme unless the tenant satisfies the Housing Committee that he has sought and obtained all other forms of assistance available to him.

9. The amount of any rent reduction assessed under the foregoing provisions shall be calculated to the nearest 3d. and no reduction of less than 6d. per week will be granted.

10. Where relief is granted and the applicant is in arrear with his current rent he will be required to pay a sum equivalent to the full rent until the difference between that sum and the reduced rent which otherwise would have been payable under the scheme has equalled the amount of the arrears then owing.

11. This scheme for the relief of hardship is available for the tenants of all houses falling within the Housing Revenue Account and not of other dwellings in the Council's ownership.

12. Any reduction in rent shall date from the beginning of the rent week following that in which the application is received and shall terminate from the beginning of the rent week following that in which the change in the tenant's circumstances no longer entitled him to further relief.

13. The provisions of this scheme may be reviewed by the Housing Committee at any time and, in particular, shall be reviewed in the event of the cost of living index varying by 10 points or more from that applicable at the date when the scheme came into operation o. was last reviewed.

Even if a points scheme is well drafted difficulties often arise in its administration. As a town clerk said to Mr. Arran:

> "Even if a points system is in operation, it is still necessary to assess the relative merits of, for example, a large family living in inadequate accommodation as against a sick woman, three times overweight, and her husband, living with her parents where relations are becoming intolerable. A limited number of points are allocated by instinct."

Case histories falling within this heading include the following:

1. A middle-aged couple and their two adult children were living in furnished accommodation. Their joint income was more than adequate. A re-possession order was granted against them. They had imagined that they would be rehoused automatically by the Housing Department and felt bitter when this did not happen. Their grievance was clearly unjustified as they had sufficient income to rehouse themselves. The C.A.B. officer who had investigated the case said that the Housing Department will "lean over backwards" to rehouse eviction victims, particularly when there are children involved.

2. An R.D.C. asked a firm how many houses it would require for its employees from a group of houses which the council intended to build. The firm asked for eight and were told that they would be ready within six to eight months. The firm began to expand and employed new workers. However, the houses did not appear and council officials remained silent. Workers began to leave the firm which fell behind with its orders. It was learnt that a certain councillor had persuaded the Housing Committee that the site was unsuitable and had then bought it himself.

Meanwhile, fourteen houses had been built on another site. On inquiring, representatives of the firm were told by the secretary of the clerk of the council that three houses were available and they were permitted to view them. Later the clerk told them that all three were taken. The firm persisted and were allowed one house by the Housing Committee. Six months later, one of the other houses was still empty.

The firm wrote to the county council asking for a public inquiry as they believed that certain councillors were attempting to ruin their business. The request was turned down by a county council committee on which sat a councillor who was also an R.D.C. councillor. This councillor claimed to have left the committee before the request was considered but she was not recorded as having done so.

3. Permission was refused two council tenants to effect a mutual exchange as one of them had already done so seven times. After

virtually no debate, the Housing Committee confirmed the decision. Finally, publicity forced the committee to change its mind.

4. A man and his wife and their sick daughter were living in adequate accommodation. The daughter married and her husband moved in with the family. The accommodation was still adequate. Relations were good at the beginning and the father helped his son-in-law in the care of the daughter. The doctor had recommended this arrangement. However, relations became strained and the young couple applied to the council for new accommodation. A complaint subsequently arose as to their position on the housing waiting list. The Housing Officer considered that they had no priority condition as their present accommodation was adequate and the doctor had recommended the existing arrangement. A councillor took up the case and the Housing Committee gave them priority.

5. Usually gypsies are not allowed to stay in an area long enough to qualify for the housing list. Some gypsy families manage to have their names put on the housing list. It sometimes happens that they are subsequently evicted from their site and have to leave the area. When they return at a later date, they are told their names have been taken off the list as they had left the area. There are other problems in the field of housing. In one case it seems that a gypsy family had lived in their caravan in a village for eleven years. They had always wanted a house. They wrote to the local authority who claimed that as they lived in a caravan they had no residential qualifications. The council eventually gave way but insisted on a probationary period of six months before the family's name was put on the housing list.

6. A doctor sent a two-page letter to the Housing Manager concerning the illness of a person applying for accommodation. The Housing Manager would not accept the letter as a certificate, as it did not begin with "I certify that . . . ."

B. Housing Management

7. After her father had died, a ten-year-old girl was given a dog for her protection by her mother who had to go out to work. Someone informed the local authority of this and the council ordered that the dog should go. The Secretary of the Spare our Pets Movement wrote to the Chairman of the Housing Committee. The Chairman replied that his Estate Officer had seen the dog tearing up lawns and his information was that the dog roamed about fouling staircases and keeping people awake. When asked, the Estate Officer could not

even describe the dog. Other tenants said that they were not disturbed. The girl and her mother were held in high esteem and the dog was well kept and under control.

None of the tenants had signed an agreement forbidding the keeping of pets but there was a condition to that effect on the back of their rent books. The Estate Officer offered to help the woman and girl to move to accommodation where pets were permitted.

8. A man, his wife, his mistress and his children by both were living happily together in council property. Under the pressure of gossip, the council evicted the "family."

9. A man and wife lived with their three children in council property. Despite a prison record, the man together with his family had a good reputation with their neighbours. The caretaker of the property, who was unpopular amongst the tenants, was hit by the elder son of the tenant after he had insulted the tenant's daughter and struck the younger son, causing injury for which a medical certificate was issued. The tenant received notice to quit which falsely alleged overcrowding. After an interview at which the town clerk, the Chairman of the Housing Committee, the Secretary of the NCCL, a probation officer and the tenant were present, the council refused to alter its decision. Only the caretaker was consulted. It was considered that a court action would be useless as the court could only decide on the legality of the decision and not on the merits of the case.

It appeared that the caretaker had been transferred from other council property because of similar trouble with tenants. The family were evicted but were offered other accommodation nearby. Subsequently, the caretaker assaulted the man and his younger son again. The town clerk again refused to discuss the matter and no further action was taken.

10. A council tenant refused to allow 6 square feet of his garden to be taken so that his neighbour, a local councillor, could drive his large car into his garage. The tenant was given notice to quit. One councillor described the man as a perfect tenant, but the Chairman of the Housing Committee said "The tenant has no right to refuse to obey the council's instructions."

11. A man was living in council property with a Catholic woman, who could not marry him because he was divorced. Living with them were his two children, aged nine and four, one of them by the woman. The Housing Manager gave them notice to quit on the grounds of

overcrowding. They were not overcrowded according to the definition in the Housing Act, printed on the rent book. The case is incomplete.

12. A woman wished to decorate her council property. She was told that she could not use her own wallpaper and could choose only from a selection offered by the council.

2. WELFARE AND CHILDREN

1. A West Indian couple were living on the ground floor of a tenement house. The wife had been in touch with the local C.A.B. officer in connection with getting a rent reduction. A young English couple, of little intelligence, with their child of five months moved in on the first floor, but their electricity supply had been disconnected. In spite, the landlord had blamed this on the West Indian couple. The West Indian woman contacted the C.A.B. officer to tell her of this, who went to see her immediately. The English woman's accommodation was found to be an intolerably small, cold and damp room and there was, naturally, no heating. The C.A.B. officer returned to her office and phoned the Senior Health Visitor about the child's health; but the Health Department did nothing.

2. A woman had been deserted by her husband and left with their three children. As the husband was in arrears with the rent, she was evicted. She was in a bad state and her children were taken " into care " by the local authority. The local authority Housing Department quickly allocated a house to her and she took the children out of care. This was considered necessary for her complete rehabilitation. The Children's Department, however, had not approved of the children being taken out of care and warned her that if they were to be taken again " into care," they would not be returned to her.

3. A girl of eighteen had given birth to an illegitimate child. She had tried to bring the child up herself but eventually circumstances forced her to put it " into care." Shortly afterwards, she suffered a mild nervous breakdown from which she soon recovered. She always kept close and frequent contact with her child. At the age of twenty-five, she married a responsible young man who was aware of her circumstances. The local authority had assumed parental control over the child. She and her husband now wished to adopt the child and made frequent applications for its return. The applications were always refused on the grounds that the mother had suffered a nervous breakdown some years earlier.

4. The three children of an Irishman were taken into care when his wife was ill. It was clear that he had a persecution complex about any authority and claimed that the council were keeping his family divided and would not tell him where his children were. The NCCL contacted the local authority and the children were eventually returned.

5. A woman was living with her two subnormal children. She was in the habit of being visited by her boy friend who had been convicted many years earlier of indecent assault. The council made a Fit Person Order on the children and the town clerk wrote to the boy friend forbidding him to visit the woman when the children were at home, " threatening " that if he did so, the children would be taken into care. He was not given an opportunity to be heard. A solicitor took up the case, but no action was taken as the town clerk claimed that the council's decision was in the interests of the welfare of the children.

6. A man and wife had both died leaving three daughters and a son who was married with two children. The eldest daughter looked after the two younger daughters. She received from the Children's Department £2 per week for each child as Guardian's Allowance and £2 per week National Assistance for herself. She had also received £8 uniform allowance for each child. She had to pay £8 per month mortgage repayment. She wrote to the John Hilton Bureau who contacted the children's officer. An increase of £1 5s. per week was made by the Children's Department and more National Assistance was given.

7. A married couple had a two-year-old son who was incurably spastic, epileptic and retarded. They had recently moved into a new district and could not get their son into a Home. This they wanted as their marriage was " on the rocks " and the wife spent some time in hospital with asthma. The John Hilton Bureau wrote to the Children's Department who replied that they would see the couple to discuss the future of their son.

8. A Member of Parliament alleged that trouble sometimes arises out of the allocation of places in local authority old people's Homes. There is no system of appeals from such decisions and no formal means of investigating them. Allocations of places are not always made in accordance with any published " points scheme " as in housing allocations. The Member of Parliament who brought this matter to our attention said he would be happier if there were some measure of investigation into such cases.

9. A seventy-three-year-old widow was living in an old folks

Home. The matron of the Home took her Post Office Savings Book and Old Age Pension Book, which then came into the hands of the county council who retained them. A doctor for the council certified that the woman was incapable of managing her own affairs. Her son-in-law, a local councillor, took up the case. The woman's personal doctor certified that she was fully capable and she had just written a book with which her publishers were pleased. The council still refused to return the books. The councillor wrote to the Minister of Housing and Local Government, the Postmaster-General and the NCCL. The county council brought in a consultant and the books were returned.

3. EDUCATION

1. A student had studied for the Ordinary National Certificate with financial support from the local authority. As he had done very well in his exams, his tutor advised him to apply to university. He was accepted by two universities. As he had lived in the area for four years, he applied for a local authority award. His application was turned down and no reasons were given. No reasons were given even when he visited the Education Department. The local C.A.B. officer took up the case and was told that an award for a second course of higher education was discretionary, so that the student did not qualify. The C.A.B. officer wrote back saying that ONC was not really higher education and asked the Department to reconsider their decision. There was no reply. (An award was eventually made after the head of the student's college wrote a stern letter to the Education Department.)

2. Local authorities sometimes neglect gypsy children where education is concerned. There may also be a conflict between local education authority attendance officers and other local authority departments. Thus two years ago in a London borough, 132 gypsy families were camping on the highway. The attendance officer was urging gypsies to send their children to school. Although the Ministry of Transport had not permitted the council to move the gypsies on, the local police prosecuted them for camping on the highway under the Highways Act 1959.

3. A local authority has a duty to care for a child who has certain special handicaps. Often such handicaps are neglected. Thus in a London borough the local authority was attempting to evict gypsies from a temporary site. On the site there was a child with a special handicap, which was brought to the attention of the council. The council ignored the handicap and proceeded with the eviction.

A fourteen-year-old girl, with an obvious need for remedial schooling was ignored by the local authority, although she had been living for two years at the same site. On another site gypsies have been camping for eight months. There are about fifty children on the site and at least two of these have special handicaps. No council officer has visited the site.

4. A Member of Parliament expressed the opinion that the allocation of children to schools is sometimes too rigid. From his experience as a former headmaster, he said that about 5 per cent. of children would get off to a bad start in a school. Local authorities usually make it very difficult for children to transfer from one school to another.

5. Plans for the "reconstruction" of a school passed between the managers and the county authority several times between 1961 and 1965. In an endeavour to expedite matters the managers through their architect got the Ministry of Education architect down to see the building. On inspection he was immediately convinced that it should be completely rebuilt because a reconstructed building would be quite wasteful. Consequently there was further delay in preparing new plans and specifications. The managers were primarily concerned in getting the work started as soon as possible and therefore did not lodge a formal complaint to the county authority asking why they had passed the plans and had never thought about a new building. The suspicion was that the county technical advisers had not bothered to visit the school till the Ministry architect came down.

6. The same county education authority wrote a formal letter of apology to the managers of the same school in January 1968 retracting their complaint against them for not putting in the standard form of application to the Ministry of Education for the third and final stage of the school rebuilding. This in fact had been sent to the county authority twelve months previously. Extra correspondence ensued with the result that the Stage 3 building may not be completed till sometime in 1970.

4. PLANNING

Most case histories under this heading concern instances of lack of information or complaints of inadequacy of compensation in cases of compulsory acquisition. Planning control is of course a source of considerable dissatisfaction, but the right of appeal to the Minister provided by the statutes gives a means of ventilating a sense of grievance in many instances. However, a town clerk was of the opinion that the public interest may be badly served on occasions when the local authority *grant* permission in cases where they should not have

done so and without adequate consideration of the circumstances or consultation with neighbours. This is not to suggest that the position can be rectified but investigation could be salutary.

A. Compensation Cases

1. At the request of the local authority, a woman had spent a lot of money on a house which she subsequently let. It was her sole source of income. The house was later demolished and she was offered £5 compensation. The local M.P. managed to get £50 in the end. It was possible that there was a mix-up between her own and another person's valuation. The Minister could not intervene.

2. The local authority surveyed an area with a view to turning it into playing fields for a school. The property in the area was blighted. The local authority said that if anyone could prove hardship, they would buy his property. The Member of Parliament who advised in this case was of the opinion that it was wrong for the local authority to be able to decide what was hardship according to its own standards.

3. Because of a proposed new road, a man was told by his council in June 1967 that his house would be purchased by February 1968. The man went house hunting and paid survey fees, etc. In July 1968, he was told that the scheme was off and that his house would not be purchased. In September his house was damaged by floods and he spent £100 on repairs. Just after the repairs were completed, the council informed him that his house would be compulsorily purchased.

4. As a redevelopment plan was imminent, a man could not find a purchaser for his house. The council were the only possible purchasers. There was a delay in the council's decision about the purchase and the John Hilton Bureau tried to find out the position. The problem was settled amicably.

5. The borough council granted a young man a 100 per cent. mortgage (after survey by the council) to buy a house for £2,150. The purchaser actually borrowed £1,950, took possession and started paying off the mortgage. A few months later a compulsory purchase order was made by the same council in respect of the house, and the borrower was offered £250 site value on the basis that the house was unfit for habitation.

B. Planning Administration

6. The local authority made a Discontinuance Order against a caravan site. An objection was made and an inquiry held. The local

authority stated that other land was available for a site and the Minister confirmed the order. No other land was made available, and only council houses were offered.

7. On May 5, 1969, *The Times* carried a report to the effect that a couple had been given misleading advice by a local planning office as to the need for planning permission, and relying on this had paid £600 for a derelict cottage and then spent a further £400 on the property. An application for planning permission to alter the property was subsequently refused. After investigation the planning authority agreed to pay the couple an *ex gratia* payment for professional fees "which might otherwise have been avoided."

8. The owner of a house near the sea in the West of England was told by a neighbour that a public footpath was shown on the definitive map made by the county council under the National Parks and Access to the Countryside Act 1949 as going across his property and leading to the shore. On the preliminary and draft maps the footpath was shown as stopping at the edge of the landowner's property, which he contended was correct. No notice had been served on him by the county council to the effect that any alteration of the draft map was proposed. By the time the landowner had heard of this alteration and verified the facts, the six-week period available to him for an appeal to the court under the First Schedule to the 1949 Act had long since elapsed. Lengthy correspondence and many interviews with county council officials proved fruitless and the definitive map remains as described.

9. The R.D.C. exercised planning functions delegated to them by the county council. A local association, representing ratepayers, requested consultation with the Planning Committee about local planning. The clerk of the council wrote back in a rude manner, saying that enough time had already been taken up and all future correspondence would be ignored. The association and the NCCL wrote to the Minister of Housing and Local Government who replied that, while he deplored such action, he had no authority to act.

10. In 1967, a quarry company made an application for substantial winning of ragstone in the parish and an adjoining one. The Minister, owing to the nature of the application, called it in for his own consideration. At the annual meeting of the parish council, the villagers unanimously required the council to oppose the application and to instruct counsel and expert witnesses.

The council were only entitled to use their 1/5 of a penny rate for this purpose without fear of surcharge, unless they had Ministry

approval. An application for the approval was made to the Ministry but they refused to give any direction, except that they felt that legal representation was unnecessary on the grounds that the inspector was qualified to judge the merits of the case.

The decision at the meeting stopped the public subscriptions and accordingly counsel could be retained for part only of the inquiry, no expert witnesses could be instructed and the county council, who supported the application (because they wanted the stone) commented adversely on the lack of evidence given by the parish council, and the application was accordingly approved.

The Parliamentary Commissioner refused to investigate the complaint made against the Minister by the chairman of the parish council on the grounds that it was an application by a local authority.

C. Gypsies and Caravan Sites

11. Councils often refuse to provide sites under the provisions of the Control of Development and Caravan Sites Act 1960 on economic grounds. Although it is suspected that more money is spent on evictions than it would cost to provide sites, it is impossible to discover the figures involved. Thus in one year a London borough spent £3,000 plus the salary of a full-time "Ranger." Gypsies were eventually provided with a temporary site which cost £1,300.

12. Local authority vehicles sometimes tow away gypsy caravans in a dangerous fashion. Inside the caravan there may be people and even lighted fires when the towing takes place. For example:

(a) In a county borough a caravan was towed over rough ground. There were children in bed inside it. One of the children fell out of bed and was injured. The family was not allowed to stop to have the wound attended and was forced to move on for a day. The child was in hospital for a month and now has a speech impediment. This case has now been taken to court. A number of such incidents have been reported, but few gypsies are aware of any legal remedy or are in a position to pursue it.

(b) Employees of an R.D.C. towed some caravans into an adjoining county. There was an outcry from the Chief Constable, who warned the R.D.C. that they might face a court action.

5. RATING

Here complaints seem most frequently to arise in connection with the administration of rate rebates schemes.

1. A man was summoned for non-payment of rates which he did not in fact owe. Despite his explanation, the council persisted with the summons. His wife was upset when the bailiff called and demanded money or goods. Cash was handed over which also included the cost of the summons and bailiff's fee. A few weeks later, without explanation or apology, the money was returned, minus the cost of the summons and bailiff's fee. The NCCL suggested that he should write to the clerk of the council claiming reimbursement.

2. A man was rudely refused when he asked for a rate rebate application form at the Town Hall. The John Hilton Bureau wrote to the treasurer who replied that the scheme was only just coming into operation but that a form would be sent.

3. A seventy-year-old widow had received a death grant on her husband's death. When she applied for a rate rebate, the council insisted that she declare the grant as income. The John Hilton Bureau argued that a death grant was not income for the purposes of a rate rebate but merely a reimbursement. The Ministry of Housing and Local Government agreed that this was the proper interpretation.

4. A woman lived in a council house. Her husband had been in a mental hospital. When he came out he robbed the gas meter and disappeared. The woman was paying all expenses. Her application for a rate rebate was turned down. She wrote to the John Hilton Bureau telling them of this and saying that she had unsuccessfully tried to have the tenancy transferred to her. The John Hilton Bureau argued that as "occupier" she was entitled to a rebate. The council replied that as the husband was liable for payments, he alone was entitled to the rebate. The Ministry of Housing and Local Government agreed with the John Hilton Bureau. However, the John Hilton Bureau advised the woman to re-apply for the tenancy, which was granted. The woman then became entitled to a rebate.

6. CONTRACTS

On occasion, complaints are made about unfair or improper practices in the allocation of council contracts. In some of these cases there may be allegations of corruption and/or offences under section 76 of the Local Government Act 1933 (declarations of interest by councillors). Many of these cases are consequently investigated by the District Auditor and possibly the Director of Public Prosecutions, and they may result in legal proceedings in the criminal courts. With such cases we are not directly concerned, but we include an account

of one such case as a typical example, and also instances of apparent maladministration in local authority Direct Works Departments brought to our attention by the organisation known as "Aims of Industry."

In 1968 the District Auditor found that a London borough Housing Department was being overcharged for repairs both by some depots of the direct labour department and by eleven out of fifteen building firms. Three council supervisors were disciplined and two workmen sacked and the Director of Public Prosecutions instituted criminal proceedings against one of the building firms. It emerged from the District Auditor's report that five firms were paying more than union rates and recouping by charging for hours not worked; and also that closer supervision would have brought the overcharging to light sooner, but that shortcomings could in part be explained by "the considerable pressures under which the Housing Department has worked since reorganisation in April 1965."

"Aims of Industry" Cases

(i) *County Borough (A)*

At least £700,000 and possibly more than £1,000,000 overspent before the capital works department was closed. Four investigations blamed managerial ineffectiveness and inefficiency, including poor control of labour and materials, bad programming, too many unproductive man-hours, and failure to keep proper records. Overgenerous bonus payments included bonuses for putting right defective workmanship — for which bonuses had already been paid.

(ii) *County Borough (B)*

More than £23,000 overspent on only three projects, representing losses of 25 per cent., 11 per cent. and 7 per cent. Reason given: low tenders had to be submitted to maintain continuity of work. Of thirteen projects on which direct labour claimed to have saved money, only two were won in competition. Of twelve on which losses were made, eight were "won" in competition.

(iii) *County Borough (C)*

Accepting a direct labour tender for external painting of 177 houses cost £800 more than the lowest contractor's tender. This loss absorbed the income from two weeks' increase in all council house rents. One reason given for accepting the direct labour tender was that the department "had to be kept employed."

7. *MISCELLANEOUS*

This group defies classification on grounds of function; by the very nature of local government, the functions of local authorities are very varied, and therefore complaints of maladministration may be expected to cover a wide field. For example, it is sometimes alleged that local authorities allow parks to be used for building, close libraries or alter bus routes without giving the public an opportunity of expressing their views, or even informing them adequately when such decisions have been taken. Case histories that have come to our notice include the following:

1. A London borough council carried out landscaping work in a cemetery in 1964 and cleared away headstones, under statutory powers. In 1969 the family of a woman who had been buried there eighteen years before discovered for the first time what had happened to their mother's grave. The council claimed that they had notified the relatives, but they had moved away and the letter had been returned to the council offices unopened.

2. A councillor in a north country town owned a large milk business which supplied half the town's schools. Apparently there was a long history of complaints about the condition of the bottles, which had been hushed up until a test case, brought on the existence of a piece of glass in a bottle, failed because it could not be proved that the milk had been properly attended from its arrival early in the morning. Eventually the MOH and the Chief Education Officer prepared a full memorandum direct to the whole council with the result that the councillor sold his business within a week.

3. While negotiating the value of her cottage with the council Valuation Department a woman offered to let department officers view the inside of her cottage. She was told that this was not necessary and photographs which had been taken of the inside of the cottage were produced. The town clerk apologised, conceding that, though the local authority had statutory powers of entry, no adequate notice of the intention to take photographs had been given.

4. A borough council hired their public hall to the Anglo-Rhodesian Society for a meeting at which violence occurred. Subsequently, the local Vietnam Committee applied to hire the hall and were told that insurance cover was required. The insurance required was so heavy that the Committee had to hold its meeting elsewhere. Later the Anglo-Rhodesian Society were permitted to use the hall again without insurance and violence again took place. A complaint was referred

to the Watch Committee which said every application was considered on its merits.

5. Our informant had been asked by an elderly woman for help. Her cottage was dangerous to health because of the faulty drains of a public house next door. She claimed to have tried for eight years before the situation was corrected. The Health Officer had said that the drains were not faulty. Finally, the health laboratories analysed a water sample and found that there was excessive pollution. The drains were mended.

6. In the same village, effluent from a slaughterhouse had been allowed to run in an open ditch in front of some council houses for two years before steps were taken. The health officer had visited the site regularly.

7. Another case concerned a water board. A couple in modest circumstances lived in a low-grade house. A water board official knocked on their door and informed the wife of a leak, requesting permission to repair the leak. Permission was granted and the workmen dug up the road outside the house. Later, the couple received a charge of £15 for the repair, though no mention of a charge had been made when the official called.

8. A woman brought an action for nuisance against the council in respect of a street lamp which kept her awake. The defence conceded that the lamp could be a nuisance but it was held that the council had acted within its authority. After this, the NCCL wrote to the council and were told that the lamp had been dimmed.

9. An R.D.C. changed street names in a parish causing considerable resentment. A petition was presented and a public meeting was held. The R.D.C. expressed regret but said there was no legal means of changing the names again. There were feelings of being misled by the council.

10. A local authority operated a gratuity scheme for its retiring workmen who had worked for the council for twenty years. The retiring age was sixty-five. A workman wrote to the John Hilton Bureau saying that he had worked for the council for nineteen years nine months before his sixty-fifth birthday and had continued for one year after that date. He had received no gratuity. The John Hilton Bureau wrote to the clerk of the council asking him to reconsider such a "near miss." The clerk wrote back saying that as lines had to be drawn, nothing could be done.

11. A borough surveyor dismissed a young council gardener from his job on grounds of ill health. There was in fact no ill health and the youth's next job was to carry coke at the local gas-works. The Chairman of the Staff Committee said that he would take the matter up with the borough surveyor. He did not do so.

12. As a town clerk observed to Mr. Arran, good relations with the public are important and it is often better to give members of the public the benefit of the doubt. For example, he said a fifteen-year-old boy had found a wallet in the street. He took it straight to a police station and on handing it in was told that if it was unclaimed after three months, it would be his. After three months, he claimed it and it was returned without the money which he claimed had been in it. The Chief Constable said that there was no evidence, but in the end the corporation paid over the amount claimed. Eventually a police cadet was told to leave.

13. There had been severe flooding in Leicester on July 10–11, 1968, which had given rise to many complaints from members of the public. The city council on July 30, 1968, set up a special committee of seven members charged with the duty of inquiring into the flooding. The interesting aspect of this matter is not the setting up of the Committee—a universal panacea for local government ills—but the way in which the Committee performed their duties. They decided at an early stage not only to collect reports from their officers, but also to invite representations from members of the public. No less than seventy-six representations were so received, and the Committee then held two public sessions, at which twenty-one individuals or local organisations appeared or were represented. At these public sessions the widest discussion was permitted, and questions were put and answered by responsible officials of the city council. As the Committee claim in their report, "The Committee and the officers have made every endeavour to ensure that all the material facts, allegations and circumstances should be ascertained, collated, probed and examined." As a result, the Committee presented (after some six months' work) a fifty-page report to the city council, in which they concluded that "the time has come when the council must undertake more works to reduce this risk" (from flooding). The report concluded with a number of detailed recommendations for particular works to be carried out.

JUSTICE

British Section of the International Commission of Jurists

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