

PE1594/B

Justice Directorate

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Dear Sigrid,

Response to Petition PE1594

Petition by Richard Burton on behalf of Accountability Scotland calling on the Scottish Parliament to urge the Scottish Government to amend the Scottish Public Services Ombudsman Act 2002 to define maladministration in such a way that formalises the Crossman Catalogue as a source of examples and adds lying to the list of examples.

Pursuant to the Scottish Public Services Ombudsman Act 2002 (“the 2002 Act”), the Scottish Public Services Ombudsman (SPSO) is empowered to investigate in any circumstances where the complainant alleges that he/she has suffered injustice or hardship as a result of maladministration or service failure. As has been noted by the petitioner, the term maladministration is not defined in the 2002 Act, nor is a formal definition provided in other UK ombudsman legislation, including the Parliamentary Commissioner Act 1967. During a parliamentary debate on the passage of the latter, the then Cabinet Secretary Richard Crossman specifically clarified that a formal definition of maladministration had been avoided, in order to ensure that the Ombudsman is permitted to investigate on behalf of the “outraged citizen”, who nevertheless may not have suffered any formal loss.

A number of important sources, notably the Crossman Catalogue, Lord Denning’s judgment in *R v Local Commissioner for Administration for the North and East Area of England ex parte Bradford Metropolitan City Council [1979] QB 287* and the Annual Report of the Parliamentary Commissioner for Administration for 1993, provide important examples of the types of things that the SPSO, when conducting an investigation, might use as evidence to support a finding of maladministration. None of these sources is however designed to be, individually or collectively, an authoritative definition of the meaning of maladministration.

This purposefully broad understanding of the nature of maladministration serves an important function, insofar as it safeguards the functional independence of the SPSO to investigate the matters that are brought to his attention, and to report a finding of maladministration based upon the specific circumstances of the instant case. It is noted that the petitioner seeks to have the ‘Crossman Catalogue’ placed upon a statutory footing. Arguably, placing any of the aforementioned sources on a statutory footing runs the risk of limiting the SPSO’s discretionary authority to investigate, thereby reducing his ability to

effectively hold the bodies that fall under his jurisdiction, to account. As the petitioner acknowledges, providing a catalogue of examples in legislation could prove unsatisfactory, insofar as it might be inadvertently incomplete. Attempting to provide even an illustrative definition of maladministration in the relevant legislation, runs the risk of limiting its scope by reference to the types of things that are listed in that definition.

Further, the petitioner seeks to have 'lying' formally cited as part of a statutory definition of maladministration. Given that there is already no statutory limitation on the SPSO's power to investigate decisions taken by public bodies where there is evidence of lying, it does not appear apposite to make provision in legislation, specifically empowering the SPSO to investigate something he is already entitled to investigate. As the petitioner acknowledges, the Crossman Catalogue cites 'incompetence' and 'ineptitude' as examples of maladministration, it further includes 'perversity'. Equally, as the petitioner has also acknowledged, the Annual Report of the Parliamentary Commissioner for Administration for 1993, cites 'misleading or inaccurate statements' within its list of examples. Each of these examples demonstrates that the SPSO is empowered to investigate, where a public body falling within his jurisdiction has intentionally, or indeed unintentionally, communicated false information to an individual.

In view of the above considerations, we are not minded at this time to amend the 2002 Act as the petitioner has suggested.

I do hope that this clarification is of assistance to the Committee, we are happy to provide further information or assistance as required.

Yours sincerely

Stephen Lea
Tribunals and Administrative Justice Policy